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TOWN OF PALM BEACH

OCT 26 2018

Town Manager's Office

October 23, 2018

Mayor Gail L. Coniglio  
Members of The Town Council  
The Landmarks Preservation Commission  
360 South County Road  
Palm Beach

Dear Mayor and Town Council Members:

I received a letter dated October 15, 2018 by John Eubanks to the Landmarks Preservation Commission. I concur in his remarks, including the quotes of my prior testimony to the Town Council in October of 2014.

As a Fellow AIA architect who has been a member of both ARCOM and Landmarks for many years, I strongly support the addition of the steps on the south side of the Mizner fountain. They are tastefully designed and will serve to activate the south side of Memorial Park. I just as strongly oppose the placement of parallel parking around the park. The issues are aesthetics and safety. In my professional opinion as an architect for over 50 years, parked cars will visually serve to wall off the fountain and park. This is why in all my travels I have never seen such parking around a monument or park.

I also have several safety concerns. Parallel parking will require a car to completely stop and back up in a through lane of traffic in which cars are traveling 25 miles an hour or more, thereby blocking traffic and creating a potential accident. The proposed lane shift will only place cars even closer together and make the matter worse. There is also the issue of children or other passengers exiting the passenger side of a car into fast moving traffic. As I have said before, after parking at the town hall years ago I had my door taken off by a car whose driver was not paying attention. It could have been much worse if I had been getting out of the car.

As a result, I would urge the Town Council to separate the issue of the fountain steps and the parallel parking into two votes. Vote yes to the steps and vote no to the parallel parking. Thank you.



**John C. Randolph**  
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November 5, 2014

Mr. Peter B. Elwell  
Town Manager  
Town of Palm Beach  
Post Office Box 2029  
Palm Beach, Florida 33480

Re: Town of Palm Beach  
Memorial Fountain Park  
Our File No. 13156.8

Dear Peter:

I am writing to suggest that the Mayor and Town Council give further consideration in regard to the Council's decision to move forward with the construction of the stairs at Memorial Park. I have been advised that despite efforts at seeking cooperation and compromise in regard to this issue, it is apparent that a final decision by the Council to move forward with the construction of the stairs will be challenged in court based upon the provisions of Section 1.03 of the Town Charter which prohibits the placement of above ground structures which diminish open green space absent approval by vote of the Town electors in a referendum election.

As stated by some Council members at the last meeting where this issue was considered, the Council should not make policy decisions otherwise deemed to be to the benefit of the Town in reaction to threats of litigation. I agree. I do believe, however, that the Council should give due consideration to the short and long term results of their decisions, if challenged in court, even if deemed appropriate.

In this case, in the event the Town Council decides to move forward with the construction of the stairs after the matter has been fully vetted by the Landmarks Preservation Commission and in the event a Certificate of Appropriateness is ultimately granted, it is apparent that the construction will be delayed as a result of this issue being tied up in lengthy court proceedings. Alternatively, if the Council chooses not to delay the project despite a court action, absent a mandatory injunction prohibiting construction, then the Town faces the prospect of having to remove the stairs in the event it is unsuccessful in its defense of the lawsuit.

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It was stated at the last Council meeting that I had indicated the Town has a good case in the event this matter is brought to litigation. Presumably that statement was made on the basis of my analysis of this matter in my letter of October 7, 2014, a copy of which I have attached. Indeed, I did state that the Town has a strong argument that, since the Park has been expanded, the construction of the stairs does not result in a net loss of green space and is, therefore, not in contravention of the wording or intent of the ordinance. It was not my intent in that statement to predict the prospects of the Town's success in the event of a lawsuit. It was, rather, my intent to advise the Mayor and Town Council that there are legitimate arguments to be made on both sides of this issue, thus leaving the ultimate determination to a court of law in the event of a challenge.

Although it is a policy decision of the Council as to how it wishes to proceed, I am suggesting that the Council give further serious consideration to this matter based upon the almost certain prospect of litigation, the potential for delay resulting therefrom, and the prospect that the Town could be unsuccessful in the litigation despite a vigorous defense.

In the event the Town Council were to consider putting this issue to a referendum, there is time to do so on the February ballot. The referendum question could be framed in a Resolution to be considered and adopted by the Council at its meeting in December. That would allow the requisite time for advertising as required by law and for the language to be included on the ballot which is transmitted to the Supervisor of Elections' office in January.

Alternatively, the Town could stay on its present course, delay or abandon the construction of the stairs, or seek a declaratory judgment from the Court as to whether the Town is entitled to proceed as contemplated, although such an action would, in itself, necessarily involve a lengthy delay and expense to the Town, just as would the defense of a challenge by a plaintiff to the decision of the Council to move forward without a referendum.

I appreciate your providing a copy of this memorandum to the Mayor and Town Council for their consideration at their November 13, 2014 meeting. In further reference to this matter, please provide to the Mayor and Town Council a copy of Bill Cooley's letter to you and me dated October 23, 2014.

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Thank you.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

A handwritten signature in black ink, appearing to read "John C. Randolph".

John C. Randolph  
JCR/ssm  
Enclosures

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**John C. Randolph**  
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October 7, 2014

Mr. Peter B. Elwell  
Town Manager  
Town of Palm Beach  
Post Office Box 2029  
Palm Beach, Florida 33480

Re: Town of Palm Beach  
Memorial Fountain Park – Green Space Amendment  
Our File No. 13156.8

Dear Peter:

Questions have been raised in regard to the ability of the Town to place additional structures in Memorial Fountain Park in light of the language set forth in Section 1.03 of the Town Charter (the Green Space Amendment) which provides that any disposition of certain Town owned open green spaces or any improvement of same by way of placing structures thereon, shall require approval by a vote of the Town's electors in a referendum collection called and held as provided by law. Memorial Park is listed as one of the properties to which this provision shall apply. The Charter provision defines improvement to include the construction of above ground structures which diminish open green space but shall not preclude the construction of structures deemed necessary by the Town for public recreational purposes on those properties described therein on which public recreational structures existed as of 12:01 a.m., February 9, 2000.

I have reviewed Town Council minutes pertaining to the exception just stated. The relevant portion of these minutes which sheds light on the legislative history of this matter is included in the minutes of May 8, 1984 attached hereto. Those minutes reflect action of the Ordinance Rules and Standards Committee held on April 30, 1984. At that meeting, when the amendment to the Charter Ordinance No. 4-84 was being discussed, Mr. Bradford said that there was a master site plan or provision to build several recreational facilities at Seaview Park at a later date and wanted to know that if Seaview Park was included in the ordinance, would this not negate the Town from providing these facilities in the future. I indicated that it would and, therefore, advised that a provision was definitely needed to differentiate this property. I amended the

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ordinance for consideration of the Council at the May 8 Town Council meeting. A copy of Ordinance 4-84 is attached.

At the May 8<sup>th</sup> Council meeting, Town Manager Frost advised that he felt future councils would be unduly hampered with the Alternate Ordinance as the list does contain both active and passive recreational areas. The passive recreational areas could live with the alternate but the active recreational areas, such as Phipps Ocean Park and Seaview Park and Par III Golf Course would be hampered. I responded that I had attempted to address this probability in the definition of improvements in the Alternate Ordinance and I read the definition which is the definition which exists in the Charter today. Mr. Frost felt this definition would eliminate his concern. Further discussion ensued. Mr. Matthews felt the Alternate does require a crystal ball on the Council's part as there may be concerns that will need tending to that Council is not aware of at this point in time. He thought the purpose is to preclude the Town divesting itself of any of its own open space greenery. Mr. Burn thought more leeway was given to the Council under the alternate version since both of the ordinances presented prevent the Council giving away any green space, but the alternate does allow the Council to use the existing green space for a small addition onto the Golf Club structure or some additional construction at Seaview Park, etc. After further discussion, it was moved that Ordinance No. 4-84 be approved on first reading, which motion passed

It appears to me, on the basis of the legislative history that the exception relating to additions on recreational property was only intended to deal with spaces contemplated for the addition of recreational structures such as Phipps Ocean Park, Seaview Park and the Par III Golf Course and that the exception would not apply to other passive green spaces such as Memorial Fountain Park.

The other question which remains in regard to this issue is whether or not the addition of the stairs at Memorial Fountain Park would in fact reduce open green space in contravention of Section 1.03 of the Charter. If Memorial Fountain Park remained as it was originally defined in the Ordinance, clearly the addition of the stairs would reduce open green space. However, additional green space has been added to Memorial Fountain Park since the adoption of the Ordinance and, therefore, the park has been expanded. The question, then, is whether or not the addition of the stairs actually reduces open green space since, even with the addition of the stairs, the green space included within Memorial Fountain Park is today greater than as originally contemplated in the Charter.

I believe the first issue raised in this memorandum is quite clear, i.e., that Memorial Fountain Park was not intended to be included in the exception which provides that this section shall not preclude the construction of structures deemed necessary by the Town

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for public recreational purposes on those properties described herein on which public recreational structures existed as of 12:01 a.m. February 9, 2000. The answer to the second question is, however, subject to interpretation. Therefore, in the event the Town were to choose to go forward with construction of above ground structures in the park without holding a referendum and in the event that the Town's actions were challenged, it would be up to a court to determine whether or not the addition of the stairs or other structures indeed reduces green space in contravention of the Charter. Some might argue that even though the park has been expanded, the construction of the stairs still reduces the green space of the park as originally described in the legal description referenced in the Charter. On the other hand, there is a strong argument that since the park has been expanded, the construction of the stairs does not result in a net loss of green space and is, therefore, not in contravention of the wording or intent of the ordinance.

Please do not hesitate to contact me if I can provide any further information in regard to this matter.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.



John C. Randolph  
JCR/ssm  
Enclosures

MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 8, 1984

The President of the Town Council, Paul Ilyinsky, called the monthly meeting of the Town Council to order at 9:30 AM on Tuesday, May 8, 1984 in the Town Council Chambers.

Pledge of allegiance was recited.

Invocation was given by Monsignor Magner with a moment of silence to pay tribute to those citizens who have passed away since the last Town Council meeting.

On roll call, the following were found to be present: Mayor Marix, President Ilyinsky, President Pro Tem Burn, Councilmen Cummings and Matthews and Councilwoman Douthit. Also in attendance were: Town Manager Frost, Town Attorney Randolph and Town Clerk Peters, and for portions of the meeting, Assistant Town Manager Doney, Town Engineer McCarthy, Fire/Rescue Chief Elmore, Building Official Moore and Deputy Building Official Zimmerman.

Item 3 - Approval of Minutes of April 10, 1984 Mr. Burn asked for changes on two pages, page 13, the word "not" should be inserted in the second last paragraph, which should now read: "Mr. Burn agreed that the traffic could not be used for a reason for the moratorium." Also on page 37, "Motion carried unanimously on roll call." should be inserted at the end of the third paragraph and with those amendments, he moved the minutes be approved. Seconded by Mr. Matthews. On roll call, the motion carried unanimously for approval.

Item 4 - Approval of Agenda for this date. Mr. Ilyinsky explained the Item 15 will become 8 (b) as Mr. Cudahy has to leave the meeting. Mr. Burn asked for elimination of Item 8 (a) as it has been overtaken by the latest Public Works Committee Report. Mr. Frost indicated the Council either has to accept, reject or modify any sealed bids that come to the Town, based on the Bid Statutes. Mr. Cummings asked for two additional items to be added to the Agenda, one being the matter of the Federated Funds and the second being the matter of the North Fire Station Consultant's Negotiation Act. Mr. Matthews stated these can be discussed at the end of the meeting when any Council member may bring up for discussion anything he wishes to. Mr. Burn moved the agenda be approved with the suggested modifications. Seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Item 5 - Mayor's Comments: Mayor Marix indicated she had two items, one is the matter of investments and in view of the opinion handed down from Tallahassee as to the standing of the Federated Fund, she would like the Council to consider the immediate transfer of the funds into direct Treasury paper, keeping whatever is appropriate in insured bank accounts or in the State Fund. Realizing there may be better ways to handle these funds in the long run, she believed it was the Council's duty to withdraw these funds from the Federated Fund immediately.

The second matter is the reorganization of the Town Beautification Committee. Many years ago there was such a Committee in existence and she would like to see this Committee set up again with representatives from the Civic Association, the Garden Club, the Citizens' Association South of Sloan's Curve and the Preservation Society and the Palm Beach Chamber of Commerce, together with the appropriate members of the Town Administration.

Mr. Ilyinsky indicated they would be discussing these matters later in the meeting.

Mr. Matthews referred to the first matter by the Mayor and it was his understanding that counsel for the Federated Funds is in the process of talking to the Attorney General's Office regarding the opinion which was handed down as there has been some talk that there may have been some factor that the Attorney General's Office was not aware of and they feel this can be straightened out so he did not see any need to do anything until this is concluded.

Mrs. Douthit indicated she had a letter from the Attorney General which backed up the decision of the young lady which was received at the Court House October 3, 1983.

Mr. Frost explained Mr. Maloney of the Federated Fund, who is their counsel and who has had this problem in California and several other states is discussing this with the young lady in the Attorney General's Office.

Mr. Burn believed that despite the fact the money is in no danger that the investment is illegal and Council should take action to do something about it.

Mr. Randolph pointed out the Agenda was approved with a suggestion by Mr. Cummings that this be discussed at the end of the agenda.

6. COMMITTEE REPORTS.

ADMINISTRATIVE AND PERSONNEL COMMITTEE REPORT OF THEIR MEETING HELD ON APRIL 13, 1984. Mr. Matthews noted there should be discussion on the hiring of outside consultants for the hiring of a Town Manager and he felt it should be discussed. He has no recommendation since he and the other Committee member do not agree. Mrs. Douthit did not wish to deny Mr. Crouse's expertise but she felt strongly there needed to be a third independent source as the applications at best are sketchy.

MINUTES OF MAY 8, 1984

Mr. Matthews suggested that by virtue of using people who are familiar with Palm Beach more than an outside firm would be, he asked that a Search Committee be formulated from within the ranks of the Town population and if the Council likes this suggestion, he suggested that Mr. Fred Atkinson be the Chairman of such a Committee by virtue of his imminence in the personnel field having been with large corporate firms and being very familiar with personnel matters and also a resident of the Town.

Mrs. Douthit did not agree and wanted someone totally unalterably independent with no close connections to the Town in any way.

Mr. Randolph explained the Minutes can be received and filed and if there is further action which needs to be taken today with regards to this matter, this can be taken up as a separate matter.

Mr. Cummings suggested an impartial third party be employed to assist the Council in the selection process after the applicants have been reviewed by the Council. He suggested a meeting be held of the Council to make this selection from the applicants they have on hand presently.

Mr. Matthews felt the Town is an unique community and he hoped it continued to be and as such, it requires extra thought and consideration by the people who are conducting the search and to go out and get qualified people is simple, but to determine that little extra which makes the Town the special place that it is, really would be best served by community involvement.

Mr. Burn asked if Mr. Matthews meant these people to select the "Head-hunters"? Mr. Matthews stated what he proposed is the Committee of local people would do what the "Head-hunters" propose to do. The Head-hunters would not be selecting the Town Manager but would be refining it down to a small group from which the Council would make the choice. He felt there was always a problem of objectivity and what he wanted to achieve in the selection of a manager is the very best manager possible for the Town of Palm Beach and the selection should be totally objective.

Adm. & Personnel Committee

Mr. Cummings moved that the Council approve the concept of having a qualified personnel man to aid and assist the Council in the final selection process of the applicant for the Town Manager's position. Mrs. Douthit seconded the motion. Mr. Matthews felt it sounded by the motion that they did not think Mr. Crouse was qualified. Mr. Cummings did not mean that as he thought Mr. Crouse was eminently qualified and he has been helpful in the organization of the applicants as they have come in and he has total confidence in him but he did not want Mr. Crouse to be the personnel man to do the final fine-tuning. On roll call, the motion carried with affirmative votes from Mrs. Douthit, Mr. Cummings and Mr. Burn and negative votes from Mr. Matthews and Mr. Ilyinsky. (3-2)

Mr. Randolph asked the President to now approve the minutes.

MINUTES OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE OF MEETING HELD APRIL 13, 1984.

The Administrative and Personnel Committee met on Friday, April 13, 1984 in the Town Hall Conference Room.

Present at the meeting were: Committee Chairman George G. Matthews, Committeewoman Nancy Douthit, Councilmen Burn and Cummings; Director of Personnel W. Crouse; Rise Jackson of the Palm Beach Civic Association; Michelle Armstrong of the Evening Times; Charles Holmes of the Palm Beach Post; Angel Hernandez of the Palm Beach Daily News, Town Residents William C. Howe, Etonella Christlieb, Mrs. E. Packley-Young and Adrian Winterfield and Mariana Haspil.

Administrative & Personnel Committee

The Chairman called the meeting to order at 8:30 AM.

Mr. Matthews stated that he understood that some of the Council members had indicated they supported engaging outside consultants to hire and/or look for a Town Manager and wondered why a consultant was needed as he felt Mr. Crouse was qualified to do the screening of the applications.

Mr. Cummings said that although he had no doubt that Mr. Crouse could do the job, an impartial third opinion was desirable and appropriate.

Mrs. Douthit felt that since information given with the first applications might not be sufficient further investigation of the candidate would be necessary and felt Mr. Crouse should do this in conjunction with another person or outfit.

Mr. Burn said he saw nothing wrong with Mr. Crouse doing the first screening of the applications, but the difficulty was that the Council members would have to do the screening individually because of the Sunshine Law and that created many disadvantages.

Mr. Matthews said that the Town had always selected its own Town Managers in the past and he felt it was a good enough judge of what he wanted as a Town Manager and was competent to sort thru a series of applications to the point where he could determine specially after talking with the finalists, who would be a good manager for the Town. However, since the quorum apparently did not feel the same way, and if they had decided to hire a third party, there was not much sense in arguing further.

Mr. Burn said that since the deadline for applications to be postmarked was the 30th of April, and this report would not go before the Council until their meeting in May, then in the interest of serving all points of view, each Councilman should meet with Mr. Crouse, give their criteria and look thru the applications. By doing this, they might find that it may not be necessary to hire a third party after all.

TOWN CONSULTANTS. Mr. Cummings asked whether Ed Ehinger was retained as a consultant for the Town on an annual basis or just during the Zoning season. Mr. Matthews believed it was only through the

MINUTES OF MAY 8, 1984

Zoning season to study zoning matters on an interim basis. Mr. Cummings noted that the Town also had Aley and Associates as Zoning Consultants and wondered if they were needed again. In addition, he wondered how many consultants the Town had, how much money was paid out to them and what kind of work they were doing for the Town. Mr. Matthews said he would be able to get the latter information from the Town Manager's Office and from the office of the Finance Director.

After further discussion, the COMMITTEE RECOMMENDS that Adley and Associates be utilized for the coming Zoning Season unless there is a special problem that cannot be dealt with by in-house help and providing the Zoning Commission did not have any particular matter which they felt had to be dealt with by them.

signed GEORGE G. MATTHEWS, CHAIRMAN AND NANCY DOUTHIT, COMMITTEEWOMAN

Mr. Burn moved the Minutes of the Administrative and Personnel Committee Report be accepted. Mr. Matthews wondered if they were Minutes or a Report? Mr. Burn amended his motion that the Report be accepted. Seconded by Mr. Matthews.

Mayor Marix asked if the matter of the selection of the firm would have to be made by the entire Council? After some discussion, a motion was made by Mr. Burn that a Special Meeting of the Council be held on Tuesday, May 15, 1984 at 9 AM. Mr. Matthews asked that this meeting be for a single issue only and that would be the selection of the head-hunter, to which Mr. Burn agreed. Mr. Cummings then seconded the motion. On roll call, the motion carried unanimously.

ORDINANCE, RULES & STANDARDS COMMITTEE REPORT OF THEIR MEETING HELD ON APRIL 30, 1984. Mr. Burn moved the Committee Report be approved. Seconded by Mr. Cummings.

MEETING REPORT OF ORDINANCES, RULES AND STANDARDS COMMITTEE HELD ON APRIL 30, 1984

The Ordinances, Rules & Standards Committee met on Monday, April 30, 1984 at 9 AM in the Conference Room of Town Hall.

Present at the meeting were: Chairwoman Nancy Douthit; Committeeman Alan Cummings, Mayor Marix (for the first part of the meeting); Town Attorney John Randolph; Chief J. Trizzese, Police Department, Tom Bradford, Administrative Assistant; Rise Jackson of the Palm Beach Civic Association; Earl E. T. Smith; Polly Earl; Angel Hernandez of the Palm Beach Daily News; R. Carroll Peacock, Architect; Robert Eigelberger; Adrian Winterfield and Mariana Haspil.

The meeting was called to order at 9 AM.

1. Long Range Financial Planning Committee. Mrs. Douthit said that names of people who might serve on this Committee had been handed in to Mr. Frost, and it was suggested that the Council President select the committee members from that list of names. Mrs. Douthit suggested that the Mayor's name be added to the list as Mayor Marix had worked hard for a long time to promote this Committee.

Mr. Randolph said that he had suggested that rather than have names of candidates pass back and forth between individual Council members, that each Councilman give the Town Manager his or her list, the ORS Committee could, however, decide who to appoint or whether to leave the decision to the Council President.

Mr. Cummings suggested having a workshop at the end of the May 8 Council meeting, to discuss the formation of this Committee in more depth.

Mr. Randolph suggested that the people on the list be contacted prior to the Council meeting to advise them of the Sunshine Law regulations and possible financial disclosure requirements. He also said that the Statutes do call for an advisory body to comply with the financial disclosure statements but it does not indicate that a person sitting on a financial committee, which is only advisory, needs to comply so he will check this out further and give the Council a final opinion by the May 8th Council meeting.

After discussion the COMMITTEE RECOMMENDS that the Long Range Financial Planning Committee be composed of five members and two alternate members. The final decision as to membership to be made at the May 8, 1984 Town Council meeting. In the meantime, the Town Manager is requested to send to the Council a list of the names of the people that have been suggested.

2. NORTH FIRE STATION ARCHITECTURAL CONTRACT. Mrs. Douthit said that under the old Council, Mr. Peacock had signed a contract to build a new North Fire Station, however, Mr. Eigelberger had donated plans, drawn by another architect, to preserve the old fire station. The Committee now wanted to discuss what could be done with Mr. Peacock's contract.

Mr. Peacock said he had entered into a Consultant's Competitive Negotiating Act contract with the Town and he had been working on this job for the past two years. He had been asked to draw three different sets of plans and had been paid only for the first set.

Mr. Cummings asked Mr. Randolph if they would have to go thru the Consultant's Competitive Negotiating Act again even though the plans for the rehabilitation of the Old Fire Station had been donated.

Mr. Randolph said that there was a distinction, but there were two phases, one was the cost of the plans, and the other the cost of supervising the construction. He said he will research this further and give a legal written opinion in time for the next Council meeting.

ORS

MINUTES OF MAY 8, 1984

Mrs. Douthit said that the Town owed Mr. Peacock monies for work accomplished, and she asked him if he would be willing to settle or agree to dissolve the contract upon receipt of monies owed to him? Mr. Peacock said he would even though he was not happy with the way things had evolved.

3. Amendment to Charter Ordinance No. 4-84. Mr. Randolph distributed a draft of Ord. No. 4-84 in which certain green town owned properties are listed. He stated that the first draft had been an open ended ordinance but the Committee had felt a list of Town owned green space was more appropriate.

Mr. Cummings said legal descriptions should be included. Mr. Winterfield said that the Charter was the constitution of the Town and its purpose was to establish general principles.

Mr. Randolph agreed it was a good point and normally in a Charter specific properties would not be mentioned, but if the Committee felt this was a better approach, it was not legally precluded from doing it this way.

Mrs. Jackson asked if the wording "all Town owned open green space to remain open green space in perpetuity" could be included in the Ordinance.

Mr. Bradford said that there was a master site plan or provision to build several recreational facilities at Seaview Park at a later date and wanted to know if Seaview Park was included in the Ordinance would this not negate the Town from providing these facilities in the future?

Mr. Randolph said it would and therefore a provision was definitely needed to differentiate this property.

After further discussion the Committee decided to go back to the original format of the Ord. and asked that an appendix be included stating that legal descriptions for properties listed in said appendix were on file in the Town Clerk's Office. Also it should say that there may be additional Town owned green spaces to be covered under this Ordinance. The Committee asked Mr. Randolph to have the amended ordinance ready for the May 8 Council meeting so that it can be discussed further.

4. Bicycle Riding on Sidewalks in commercial areas. Chief Terlizzese said that in Jan. 1984 at a meeting of this Committee, it was recommended that an Ord be adopted to deal with this problem.

Mrs. Douthit asked if bicycle racks could be placed in different parts of Town so that bikes could be parked. She also asked if bicycle rental shops were required to have bikes equipped with bells, and if not, could this be made a requirement in Town. Chief Terlizzese said that it is required by law, and if riding after dark, they have to have a headlight.

Mr. Randolph said he will make minor amendments to the Ordinance incorporating some of the suggestions discussed. In Section 1, he will add the words: "unless such sidewalk is specifically designed as a bike path" and have it ready for the May 8 Council meeting.

After further discussion, the COMMITTEE RECOMMENDS that the Ordinance be adopted by the Council.

5. Parking stickers Mrs. Douthit said all the parking programs in effect now, benefit only those residents that live within the designated areas. She said she has received many letters from the elderly and handicapped people complaining about the parking problems in the Town. Mrs. Douthit also said that there are no blue invalid parking spaces along the beach.

Chief Terlizzese referred to a memorandum he wrote to the Town Manager on Feb. 7, 1984 regarding handicapped parking. The Chief said that after reviewing the State Statutes, he found that there is a specific formula set forth for the provision of handicapped parking spaces and handicapped parking stickers, and if the Town is to comply with the provisions of the Statute, it must provide 21 handicapped parking spaces in nine different locations throughout the Town. The Chief added that anyone with a handicap or physical impairment can apply for a permit from the Tax Assessor's Office by providing proof of disability from a competent physician.

After further discussion, the COMMITTEE RECOMMENDS that this matter be brought to the attention of the Council at its meeting of May 8, in order to seek further direction on the subject.

6. Refurbishing of Council Chambers. Mrs. Douthit said that since the money budgeted by the Old Council to refurbish the Council Chambers was too much, it was decided by the new Council to reduce this sum. However, it has now been found that the new amounts allocated are not enough because some of the items have to be replaced. The following items cannot be repaired or refurbished: (1) the blinds. (2) the pews are termite ridden and they either have to be treated or replaced. It is not worth fumigating these pews because of extensive damage and because the building itself has termites. Mrs. Douthit suggested getting either refurbished or new theatre seats and this will cost approximately \$10,000 (\$5,000 had been allocated to get cushions for the pews). (3) the floor has to be sanded and refinished. This work has to be done after working hours because of the dust and noise that this work will produce. This work will cost an additional \$1500.

Mr. Cummings said that for the edification of the Council a memorandum be prepared by the Town Manager's office, informing them of the difficulties being encountered.

THE COMMITTEE RECOMMENDS that the extra expenditures be authorized even though they are exceeding the monies originally allocated due to circumstances beyond their control.

There being no further business, the meeting adjourned at 11:05 AM.

signed Nancy Douthit, Chairwoman and Alan Cummings, Committeeman

## TOWN COUNCIL MINUTES OF MAY 8, 1984

The motion to approve the report carried unanimously.

8 (b) (Item 15) Palm Beach International Airport (PBIA) "Draft"  
Environmental Impact Statement by FAA regarding Proposed Elimination of Fanning Comments by William Cudahy, Member of Citizens' Committee on Airport Noise.

Mr. Cudahy handed out some material to the Mayor and Council, indicating that he was appointed to this Committee by County Commissioner Wilkin and is not representing the Town of Palm Beach and he pointed out when the County Commission created this particular Committee, they required one member of the Economic Council of Palm Beach County, three members recommended by the FAA, the Airline's Pilots and the Air Transport Association; two members from the Palm Beach County Municipal League and five members were appointed by the County Commission.

Mr. Cudahy indicated the Citizen's Committee has a Technical Coordinating Committee which Bob Doney sits on and it has a policy Committee on which the Town is represented by Mr. Ilyinsky and an Operations Sub-Committee of which he was Chairman but it has been disbanded since it has completed its job. The Technical Coordinating Committee is a Land Use Committee which is not exactly what the problem is.

He referred to the packet and asked the Mayor and Council to turn to Alternative 1, which would be no action - fanning would continue. He then referred to another page which showed the proposed action and this page showed the fanning eliminated with four black lines, one bent a little bit to avoid Century Village.

He related some background on this, the runway use program has been completed by the Citizen's Committee and in the seventies, they invited the FAA to this area when this problem developed and Robert Martin, Chief of Air Traffic Control of Washington, D. C., and Dr. Powers, the Chief of the Environmental Control for the FAA addressed the Town Council and the fanning was adopted at that time as being a fair way to have aircraft depart from Palm Beach International Airport. In 1976, the Informal Runway Use Program was amended and the key language was: "The amendment continued the departure fanning, but required alternating use of Runway 3113, (the north/west south/east runway) and Runway 9L 27R and the FAA saw fit to tell the Town that the use of both runways was feasible and proper and fair.

He suggested the Town Manager be authorized to represent the Council and address this problem to the FAA immediately and we have until the 31st of May to comment on the 80 page draft of the Environmental Impact Statement which is highly technical. Mr. Frost should advise the FAA that it has reviewed the various alternatives in the FAA's Draft Environmental Impact Statement (EIS) on the elimination of fanning procedures and tell them the Town Council of the Town of Palm Beach is opposed to the various alternatives which would eliminate fanning. Then, going further, the Town Council authorize its manager to inquire of the FAA why it has abandoned the Runway Use Program adopted in 1976 which provides for alternative departures off both the runways, runway east/west and north-west south-east. On the data submitted, it shows: Action: Personnel in the Tower be guided by the following - departures will be assigned random runways as suitable for wind and traffic conditions. Mr. Cudahy felt the runways should be alternated and perhaps if they were made aware of the fact that the Town has no representation on the Citizens Committee and is one of the municipalities most impacted by the noise, they must have procedures to deal directly with the communities most impacted. Otherwise, the County will continue on their present course and it will be in concrete.

Mr. Ilyinsky thanked Mr. Cudahy for his help and for this information and indicated he always has felt most citizens are very happy to have an airport situated where PBIA is, and he is perfectly willing to share the sounds with the whole island.

Mr. Ilyinsky asked for authorization to empower the Town Manager to act on the Council's behalf on proceeding with the FAA on the correct way it should proceed? Mr. Burn thought Council should first decide which way is the correct way to proceed.

Mr. Ilyinsky indicated he was in favor of fanning and the Runway Use Plan which was supposed to be instituted in 1976 but was never actually instituted. He thought all runways were perfectly suitable except in very stormy conditions. Mr. Matthews did not agree and felt the wind was even more important when one was flying a helicopter.

Mr. Matthews felt the essential thing is the wind may favor some of the other runways but they will be using the one which is most favored, although the pilot may always have the discretion of which runway he wants to use, although that rarely happens.

Mr. Matthews recalled a previous Council had decided to go with the fanning procedure so it would be up to this Council as to whether or not they want to change the procedure or reiterate the fanning.

Mr. Frost informed the Council if they would like him to address the FAA, he would like to say more than "continue" but "start"; as fanning is a joke as they are not abiding by it now, so if he is to talk to them, two things should be brought out:

1. Fanning is what the Town Council would like to see them do; and
2. Impose it as the 1976 Order says.

Mr. Burn wanted to know if it was to be total fanning or only limited? Mr. Frost explained the fanning procedure was instituted in 1976 at the behest of this Council when the FAA people were here as previously stated by Mr. Cudahy, but the pilots are not paying any attention to this.

Mr. Burn felt there was fanning done to some extent as they do get over the water very rapidly and asked what was going to be suggested? Mr. Frost suggested that the 1976 FAA Order should be followed and if he enforce d fr...

Palm  
Beach  
Int'l  
Airport



## TOWN COUNCIL MINUTES OF MAY 8, 1984

Mr. Matthews moved the Town Manager be instructed to advise the FAA of:

1. The Town's support of the 1976 Plan on Fanning;
2. The FAA be advised that this Plan to the best of our knowledge has not been followed in the past;
3. They are urged to start following this Order or start it;
4. The Town is indeed in favor of the fanning proposal.

Motion seconded by Mr. Cummings. Motion carried unanimously on roll call.

Item No. 7 - Applications for Charitable Solicitation: (a) Palm Beach Paramedic Association, No. 143-84.

Mr. Matthews moved for approval. Seconded by Mr. Burn. On roll call, the motion carried unanimously.

Item 8 - Sealed Bid Awards:

- (a) Sealed Bid No. 9-83/84 - South Woods Road Drainage Improvements.

Mr. Matthews moved that all bids be rejected. Seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Mr. Ilyinsky explained this is because the project has changed and the entire thing must now be rebid.

Item 9 - Possible Purchase of Aerial Platform.

Mr. Frost indicated a confirmation of the Town Manager's and Fire Rescue Chief's actions needs to be had for putting in a bid on a used aerial platform presently owned by the City of Littleton, Colorado. He has covered this in a memorandum to the Mayor and Council on 4-24-84.

Mr. Frost indicated there would be a saving of approximately \$100,000 as this would generally cost \$350,000 to \$400,000 and would take eighteen months to be delivered after it was ordered, so there are two benefits to this, one being a lower price and secondly, it would be on hand within six to eight weeks instead of waiting eighteen months.

Mr. Cummings pointed out that when this opportunity came up, Chief Elmore was sent to Littleton to inspect the equipment, along with the mechanic and they both were favorably impressed and therefore, they were encouraged to bid on this equipment.

Mayor Marix asked if this was the same aerial platform which was included in part in this year's budget? Mr. Frost indicated it was.

Mr. Frost explained half of the proposed price had been put in this fiscal year's budget and the other half would be budgeted next year for a total of \$400,000.00.

Mayor Marix asked why the City of Littleton was getting rid of this equipment? Mr. Ilyinsky explained they have restructured their operations.

Mr. Matthews moved that the Town Manager's action be confirmed in bidding on the aerial platform piece of equipment. Seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Item No. 10 - Garden Club of Palm Beach by Mrs. Lyn Cudahy - Resolution. Mrs. Cudahy addressed the Mayor and Council on behalf of the Garden Club of Palm Beach thanking them for this opportunity to present a Resolution of the Executive Committee adopted at their meeting held April 5, 1984 commending George R. Frost, Town Manager who is retiring and who has rendered extra-ordinary valuable service to the Town in helping maintain the Town as a place of beauty and tranquility and by virtue of his professional capacity and high integrity has won the friendship and profound respect of the members of the Garden Club. He is highly regarded by the members and has achieved a most enviable reputation and stature in his field for his outstanding ability.

Mr. Frost accepted a copy of the Resolution and there was much applause.

Item 11 - Authorization for the Town to advise the City of West Palm Beach that the State Bond Loan is proper financing method for Energy Conservation Improvements. - Regional Sewage Treatment Plant.

Mr. Doney explained a memorandum dated 4-23-84 has been sent to the Mayor and Council on this matter which gives background information on this subject. In summary, there is an ongoing program at the Regional Sewage Treatment Plant which is a two phase improvement program, one being energy improvements which will reduce operating costs and the second is expansion or increased capacity at the Plant.

Mr. Doney recalled a former Council has granted authorization for the Town to participate in the energy improvements which will result in cost savings to the Town for treatment and disposal of sanitary sewage. The Town has advised the City of West Palm Beach who is the lead agency on the operation of the Plant that the Town does not need additional capacity. This decision is based on the Town Engineer's

Char.  
Solicitation

Sealed  
Bids

Garden  
Club  
Resolution  
on George  
Frost

Regional  
Sewage  
Treatment  
Plant

## TOWN COUNCIL MINUTES OF MAY 8, 1984

estimates of the growth and existing usage at the Plant.

Mr. Doney indicated what is needed today is confirmation and approval that the State Bond Loan program is the best method of financing for the energy improvements and as stated by Mr. Simmons in his letter to the Town of Palm Beach, there are advantages for the five participating entities by pooling and utilizing their resources under the State Bond Loan program.

Mr. Matthews wanted to know what the advantages were to the Town specifically? Mr. Doney responded there would be increased cost savings in future years by the implementation of the Energy improvements and the design of the energy improvements are being done by the consulting engineering firm of Post, Buckley, Shoe & Jernigan.

Mr. Matthews asked if the Town would participate in this, would this freeze our costs as far as the cost of treatment is concerned? Mr. Doney replied it would not freeze the cost of treatment. He noted there were no other options actually as ocean outfalls are no longer allowed and this would allow the Town to enjoy long-term reduced operating and maintenance costs at the Regional Sewage Treatment Plant. It would be a projected cost savings by reducing operating costs.

Mr. Burn asked if there were any plans to ask for increased allocations? Mr. Doney responded negatively.

Mr. Matthews moved the authorization be given. Seconded by Mr. Burn. On roll call, the motion carried unanimously.

E-2  
Emergency  
Repairs

Item 12 - Confirmation of Emergency Repairs to E-2 Sanitary Sewage Ejector Station. Mr. Burn explained the emergency repairs to this station were definitely needed and he moved the repairs be confirmed. Seconded by Mr. Matthews. On roll call, the motion carried unanimously.

Sanitary  
Sewer  
Rehab  
Program

Item 13 - Authorization for Continuation of Sanitary Sewer Rehabilitation Program. Mr. Burn indicated this is authorization for continuation of the sanitary sewer rehabilitation program which was partially completed this year as there were some extra funds available and work has already been started on this and he thinks it should be approved.

Mr. Matthews moved for approval. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Warrant  
List

Item 13A Approval of Warrant List and Fund Expenditure Report for the month of April, 1984. Motion was made by Mr. Matthews, seconded by Mr. Cummings to approve the Warrant List and Fund Expenditure Report for April. On roll call, the motion carried unanimously.

Lease of  
Flagler  
space

Item 14 - Authorization for Town Manager to Execute a Renewal Lease Agreement for Office Space at 45 Coconut Row, with Flagler System. Mr. Frost explained these offices are rented from the Flagler System and the lease expires this Fall. Mr. Matthews moved that authorization be given to the Town Manager to execute the renewal lease agreement for office space at 45 Coconut Row.

Mrs. Douthit asked for how long a period of time this would be leased? Mr. Frost suggested it be for a two year period with an option to renew past that in the event the floor space in the Town Hall does not become available.

Motion was seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Item 15 - see Item 6

Muriel  
Barnett

Item 16 - Muriel Barnett - discussion - Fraud and Equal Protection Under the Law - Palm Beach Law. Mrs. Barnett was not in the audience to discuss this item.

LPC Appts

Item 17 - Landmarks Preservation Commission - Appointment of Members. Mr. Frost stated he has sent a memorandum to the Mayor and Council on May 1, 1984 and Robert T. Eigelberger's name has been submitted for consideration as a regular member of the Commission with term to expire February, 1987 and Sally Gingras, Architect should be considered as an alternate member of the Commission. Mr. Matthews moved that Mrs. Gingras be appointed as an alternate member of the Landmarks Preservation Commission and Mr. Eigelberger be appointed as a regular member. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

O'Hara's  
Var 68-83  
extension

Item 18 - Susan J. O'Hara - O'Hara's Palm Beach Ltd. - Request for six month extension of building permits relative to Variance No 68-83, which was conditionally approved by Council on October 11, 1983. Mr. Frazier Wellmeir addressed the Council indicating he and his wife are general partners in the ownership of O'Hara's and requested a six month extension as they have been many delays which are not of their making. Mr. Matthews moved the six month extension be granted. Seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Sp Ex 3-8  
Palm  
Beach  
Hampton

Item 19 - Modification of Town-imposed conditions of approval on following:

(a) Special Exception No. 3-81 - Palm Beach Hampton, 3100 S. Ocean Blvd., by Marvin Szatmary, request for elimination of water holding tank.

(b) Special Exception No. 4-81 - Enclave Condominium Project, 3170 S. Ocean Blvd., by S. Lyon Sachs, President, Nasa Construction Co., request for elimination of water holding tank.

Mr. Ilyinsky indicated these are both requests for elimination of water holding tank.

## TOWN COUNCIL MINUTES OF MAY 8, 1984

Mr. Moore gave a background on these requests which were tanks required by the Council in late 1981 when one of the major concerns of the Town was water supplies to the South end of the Town. In order for the applicants to receive Site Plan Review, they agreed to install these tanks which would be separate holding tanks that would hold water on site in the event there was a fire and there would not be enough water pressure. In 1979, the Building Code, which these buildings were permitted under, also required an additional tank, however, it is no longer a requirement of the Building Code and the Fire Department Chief has given his blessing to the removal of the tanks on both properties with the installation of a second line running down the west side of the right-of-way which was not in place at the time there was a moratorium and the pressure problem is no longer a problem.

Mr. Frost recalled fire fighting capabilities was one of the reasons these storage tanks were put in and another reason was due to the fact there was a severe water shortage in the late seventies and these water tanks were very welcome to the people in those buildings since they were filled at night and emptied during the daytime.

Mr. Lyon Sachs was asked why he wished to remove the tanks and he explained this is on the fire supply side only and it will be 10,000 gallons of stagnant water just sitting there which will be a nuisance to the condominium association and would be a potential source of contamination. For practical purposes, if there was a fire, the amount that is stored in the tank would not be enough to fight a fire.

Mr. Matthews did not think fire fighting capabilities would be hampered whether the water is or isn't stagnant, but he would be willing to go along with the removal of the tanks with the proviso that if there is a water shortage the Condominium Association will not hold the Council responsible.

Mr. Moore explained what Mr. Sachs and Mr. Szatmary are asking for is the removal of the tanks on the fire line side only, which is a separate line coming into the building and has nothing to do with the domestic potable water.

Mr. Moore again indicated there were no objections from the Fire Chief or the Fire Marshall due to the fact there has been another line installed and in an emergency water can be secured from the pool or the intercoastal waterway.

Mr. Matthews moved the water holding tanks for both the Palm Beach Hampton and the Enclave be allowed to be removed. Seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Item 20 - Variance No. 10-84 with Site Plan Review (Postponed from 4-10-84) John F. Tracey, 230 Park Avenue - permission to construct multi-family apartment building - three units - with variances regarding lot area, lot depth, density, setbacks. R-C District. Attorney Herbert Golden representing John Tracey addressed the Council. Park Avenue is a series of 50' platted lots and there are a number of single family dwellings on these lots and there are a substantial number of duplex dwellings on 50' lots and next to the area in question, there is an annex which consisted of 70 residential units which have been reduced to 29 residential units. Mr. Tracey would like to build the minimum on the lots, which would be one dwelling unit per lot.

Var 10-84  
Tracey

Mr. Golden felt his client had the right to sell off these lots to three individual owners who would all then have the right to build three single family dwellings.

He felt the best use of the three lots together would be to combine a triplex, with the layout as suggested.

Mr. Burn asked for staff comments. Mr. Moore indicated his department felt the best usage of the land would be for hotel usage rather than residential as he felt the property was part of the hotel.

Mr. Ilyinsky asked if there was an Unity of Title on this property? Mr. Moore explained there was not, however, the attorney is willing to have a Unity of Use agreement which he felt would do the same as the Unity of Title because of the different styles of ownership.

Mr. Moore indicated it is the staff's contention that the property is hotel property, even though it is in the R-C zone, and it should be put to some hotel usage, even if it would be green area and a shuffleboard court which it once had.

Mr. Frost noted there is no hardship except the lot depth and until and unless two out of the three properties are sold and built upon, there would be no compulsion on the Town Council to accept the minimum that should be done to this property. He informed the Council that whether this variance or the next item is approved by the Council, it is strongly recommended that this property is required to put money into escrow for the storm drainage.

Mr. Golden asked to address the installation of a parking lot to which the Town Council President agreed.

Item 21 - Special Exception No. 5-84 with variances - John F. Tracey, 230 Park Avenue - permission to construct 27 supplemental parking spaces, four of which are covered by fabric awnings structure for residences of Palm Beach Hotel, providing 23' maneuvering aisle in lieu of 25'; 9' wide parking spaces in lieu of 10'; front setback of 7' instead of 25'. RC District. Attorney Golden felt the best use for this parcel of land would be to keep it for parking since there is a 200 room hotel which has no parking space whatsoever. The proposed parking would meet all the Code requirements. There is more landscaping than the Code requires. They would limit this area entirely to hotel guests and they would be willing to have the approval conditioned upon such a use.

Spec Ex 5-84  
Tracey

## TOWN COUNCIL MINUTES OF MAY 8, 1984

They would be putting in new landscaping with an eight foot high hedge. This will help solve a substantial parking problem and will have no density. This property is not owned by the hotel and he felt this client had a right to use his property. He would be willing to provide a document that they would guarantee the use of this property would be only for the hotel. He can't make the Association buy it but they will guarantee it will only be used for the hotel.

Mr. Cummings asked who owned the property directly across the street from the hotel? Mr. Gelden responded it was owned personally by John Tracey. Mr. Cummings asked if the guests of the hotel used that parking lot? Mr. Gelden stated they don't have any right since they do not own the property but Mr. Tracey does have some arrangements with some of them to park their cars there. Mr. Cummings asked where do all the cars park presently? Mr. Gelden indicated they park on the street or in neighboring parking lots, such as Publix.

Mr. Moore commented if the Council agrees to this use as a parking lot, he would recommend the Council agree to a Unity of Use, acceptable to Mr. Randolph. He also recommended that the parking lot be redesigned to accommodate additional green space in the front yard.

Mr. Burn recalled at a previous meeting there was some discussion about having the parking space size conform to the Code, or ten feet. Mr. Moore indicated this has been done, accommodating 24 cars and the lot has two entrances.

Mr. Frost recalled that one of the previous owners of the hotel about ten years ago donated some property for open green space and asked if the applicant would consider that? Mr. Gelden responded negatively.

Mr. Rob Maas addressed the Council indicating he thought Mr. Frost's suggestion was an excellent one. He was also glad to hear Mr. Moore's suggestion about the green space as if this is not done, it would be an asphalt expanse across the street from two single family residences on a street which is entirely residential with approximately half of the homes on that street being single-family. There are several large trees on the property which would also offer very effective screening and he hoped they would remain on the property and not be removed. More importantly, he felt the Council should address the question of standards as before the Council is an application for Special Exception which does require a number of variances. Before the Council does take action, he noted there are certain requirements set forth in the Town Zoning Code which must be met and he does not believe they have been addressed as yet that the proposed use complies with the Code, for example, the requirement that the use be compatible with adjoining development and the intended purpose of the District in which it is to be located.

Mr. Maas noted another requirement is that the Use will not cause substantial injury to the value of other properties in the neighborhood. Another requirement is that the Use will not result in substantial economic, noise, or odor impacts generally in the District. This is a parking lot which will be operated in conjunction with a hotel so it would be in operation at all hours, so these items should be addressed.

Other items which must be addressed with connection with the variances is that the variance granted will be a minimum variance making possible a reasonable use of the land; secondly, that it will be in harmony with the general intent and purpose of this Ordinance and it will not be injurious or otherwise detrimental to the public welfare and finally, that the applicant can show a hardship.

Mr. Maas thought it was essential the 25' of green space be preserved to protect the neighborhood properties.

He realized the Town Council is considering this application in an attempt to alleviate some of the traffic and parking problems which now exist, but they on Park Avenue do not feel they have that problem with respect to the properties on their street as most of them do have off-street parking and there is generally adequate on-street parking to accommodate most of the traffic there, but the problem does exist on Sunrise Avenue which was created through renovation of the hotel without providing any parking spaces in the commercial district in which the hotel is located.

Mr. Matthews asked Mr. Maas what he envisioned as a proper use for this property? Mr. Maas thought there were two uses which he would find acceptable and the first is that use originally proposed to the Building Department and that is it would be used as open space pertinent to the hotel. The second use is that of a reasonable residential building, not one that would be built up to the property line, but a reasonable building and one that was compatible with the other residences of the street.

Mr. Burn asked if Mr. Maas would have any objection to Mr. Tracy selling off these lots and three dwellings built on the lots? Mr. Maas felt the properties were much too small to have three individual homes built on them, and he would go along with a duplex or a reasonable triplex, but all of the proposals seen to date are not reasonable when viewed in terms of the number of variances which would be required.

In order to construct what has been proposed, a substantial excavation of the property would have to be done, and in the past homes on this street have all experienced significant vibration damage anytime excavation has been done in the area, Mr. Maas explained.

Mr. Frank Noska, III of 223 Park Avenue addressed the Council indicating when he moved into the house he now occupies, the property in question was being used as a recreational area for the Hotel. They have all taken interest in what the use of this property would be and have always been led to believe it would be used in conjunction with the Hotel. Park Avenue is a one-way street, with parking on the south side of the street which leaves only one lane of traffic. If the parking lot is approved, he believed there would have to be valet service from the front door of the hotel to bring the cars around to Park Avenue and then to retrieve the cars again, which would create traffic problems.

John  
Tracey

## TOWN COUNCIL MINUTES OF MAY 8, 1984

He also thought some security would have to be provided which would either be in the way of people or lights and the people on that street do not want this illumination on their street. They do believe Park Avenue is a residential area and they want to retain it as such. He is opposed to both of the applications submitted to the Council and would like to see this property used as a single family or a duplex.

Attorney Randolph was asked to give his opinion on the use of this property and he advised the Council they are faced with a property owner trying to reasonably use his property and the people on Park Avenue are contending the owner has a reasonable use as this property was tied in with the Palm Beach Hotel and its appropriate use should continue to be as part of the Palm Beach Hotel. Historically speaking, this property was purchased by Mr. Tracy at the same time he acquired the Palm Beach Hotel property but he contends he did not purchase it for use in conjunction with the Hotel and just because it was purchased simultaneously he did not intend to use it with the Hotel property. He subsequently sold off the Palm Beach Hotel.

The Code states a property cannot be made more non-conforming by selling off a portion of it, however, as he understands it, when the it was granted for the Palm Beach Hotel, this lot was not described as part of the Permit. This would indicate that this lot did not have to be used in conjunction with the Palm Beach Hotel.

Mr. Randolph felt the Council is faced has the following options:

- (1) Allow the three unit dwelling to be built on the property;
- (2) Consider the parking request.

John  
Tracey

If neither of the above is what the Council wants to do, the applicant's attorney has indicated they may sell off the lots to three individual owners. If this does happen, the Council would be faced with those applications for variance as the lots could not be built on according to the Code.

Mr. Randolph disagreed with Mr. Gelden on his ability to sell those properties and make them three non-conforming lots and allow three individual property owners to come in and built units on them.

Mr. Matthews thought the issue before the Council was Variance 10-84 and he moved this Variance 10-84 be denied. Seconded by Mr. Burn. On roll call, the motion carried for denial with Mr. Ilyinsky voting against the motion.

Mayor Marix asked if he would want to now design something different, would the applicant have to wait six months to come back before the Council? Mr. Matthews felt he would have to wait the six month period and that was his intention.

Mrs. Douthit stated she knew the rooms at the Palm Beach Hotel are condominium type ownership and there has been discussion here today that if the parking lot were installed, there would be a lot of going and coming in and out of the parking lot and she wondered if an arrangement could be made that the spaces on this lot would be used by only the condo dwellers and the usage would then be no more busier than the home owners would be.

Mr. Maas still wanted to have addressed the major concern of the home-owners on the street and that is the lot would be adequately landscaped and sight-screened.

Mrs. Douthit noted the property is now a sea of naked earth. Mr. Maas noted this may be so, but it is screened by some eighteen feet of hedging and three large trees.

If this plan is accepted, Mr. Maas stated, he would like to know if there was an irrigation system to be installed as required by the Code?

Mr. Moore asked to address Mrs. Douthit's concern as when this was originally proposed, he had asked the applicant's attorney to ensure that this parking lot would be for the residential uses of the hotel only and not encompass any commercial use, so the need for valet service would be precluded. Additionally, one other consideration is that the parking lot would reduce the non-conformity by providing some parking spaces on the property and taking some off of the street.

Mr. Burn asked if in the staff's discussion on this parking lot, was specific assignment to individuals discussed? Mr. Moore responded they only discussed the condominium owners use.

Mr. Gelden recalled they had discussed this with the Building Department and this will only be used by condominium users and not by the commercial uses. They have no objection to going higher with the landscaping.

Mr. Burn asked how much greater would the setback be? Mr. Moore stated it would be an additional ten feet which would give them additional planting and they have called for a redesign of the lot in order to provide for this additional planting. Mr. Gelden indicated he would be willing to do so. Mr. Moore stated this would mean eliminating six to eight parking spaces and they are trying to address all of the problems and reach some sort of a compromise to keep everyone happy. Mayor Marix asked if this hotel would change ownership style and it was not a condominium hotel, what would happen to those spaces? Mr. Gelden did not think this was probable and suggested a condition could be that the parking spaces be only used in connection with the residential uses of the building.

Mr. Burn suggested this matter be continued until the next meeting as he would like to see the redesign plans encompassing all of the concerns of the Building Department.

Mr. Cummings thought perhaps a conditional approval could be granted as this matter has been before the Council for several months now. He moved that conditional approval be granted for Special

## TOWN COUNCIL MINUTES OF MAY 8, 1984

Exception 5-84 with Variances, subject to having the new plan approved by the Building Department.

Mr. Maas noted there were a number of residents of Park Avenue in the audience, Mr. & Mrs. Ray Hager, Mr. & Mrs. Sam Hoffman, Mr. and Mrs. Dale Fenfrock, Mr. Ray Boone and other neighbors and he hoped the Council would not set a dangerous precedent on handling this matter without taking into consideration what the Code actually requires

Mr. Matthews seconded the motion for discussion purposes.

Mr. Randolph cautioned the Council on granting conditional approval when the matter is still not determined and recommended this be postponed. Mr. Matthews then withdrew his second of the motion after which Mr. Cummings withdrew his motion.

Mayor Marix suggested they get in touch with the Preservation Foundation and see if something could be worked out.

Mr. Burn moved that this matter be continued until the next meeting with the understanding there will be a redrawn proposal incorporating the Building Department's comments. Seconded by Mr. Matthews.

Mr. Frost asked if the Administrative comments could be heard to which the Council agreed. Public Works Department and the Town Engineer state the storm drainage matter needs to be addressed if this is going to be parking lot, instead of the long term usage as a recreational area. Mr. Frost thought the Town had been somewhat taken on this issue as he has heard said today the applicant should be allowed to make a parking lot for the residential use of the property and the only reason it looks like a sea of naked earth, the Town did allow Mr. Tracy to use this lot as a staging area and a parking lot during construction.

Mr. Frost indicated if this is allowed to be used as a parking lot, it should have Code landscaping in its entirety and Code setbacks and there should be an agreement this will not become a commercial parking lot since it is located in a residential zone and would destroy the zoning in that area. If the condo dwellers are going to use it, it should be part of their condo ownership. He suggested the only way to resolve the neighborhood problem is to make the property accessible only from the commercial property to the south.

Mr. Matthews asked if these could be incorporated as part of the motion, to which Mr. Burn agreed.

On roll call, the motion carried unanimously.

Five minute break taken.

Meeting called back to order.

Item 22 - Special Exception No. 9-84 - William B. Pace, 218-220 Phipps Plaza - permission to utilize drive off of Seaview Avenue to enter parking area (provide two spaces) permit construction of two supplemental off-street parking spaces to the rear of residence. R-C District. Mr. Pace addressed the Council indicating there is a ten feet easement off of Seaview and he is asking for permission to install two parking spaces in this area. He is presently working on plans to reduce the density of this building from four units to two. Mr. Ilyinsky asked why he did not take advantage of the Permit Parking which the Phipps Plaza owners enjoy? Mr. Pace responded he felt it would be more beneficial to his property to have private parking off the street and it would also be a benefit to the Town to have these cars off the street.

Sp Ex  
9-84  
Pace

Mrs. Douthit and Mr. Burn noted there was a letter of objection in the file from Mr. Belford Shoumate. Mr. Pace indicated Mr. Shoumate is concerned with cars coming in and out late at night as he lives next door, but Mr. Pace felt once the hedges are installed, he did not believe there would be any problem. There is a gazebo in the rear of the property and he could stop the parking before it got to that area.

Mr. Frost gave the Administrative comments: Mr. Frost stated when he and Mr. Ilyinsky went to observe the property, they noted there was 20 to 25 spaces available in Phipps Plaza and he asked Mr. Pace why he would need to have this variance when there seems to be adequate parking at the front of the premises.

Mayor Marix commented they would have to carry their groceries by wading through several inches of water, when it is raining.

Mr. Pace explained he is not eligible for a Permit now as he is not presently residing on the premises but his engineer and his contractor who have been doing work on the property have not been able to find a parking place there during the day.

Mr. Cummings moved the application for Special Exception No. 9-84 be denied. Seconded by Mr. Matthews. On roll call, the motion carried with two negative votes from Mrs. Douthit and Mr. Burn.

Item 23 - Special Exception No. 10-84 with Variances - Oasis III of Palm Beach, Inc., by Asconio Grandinetti, President (Sally Benson, Attorney) 3120 S. Ocean Blvd., request modification of approved Sp. Ex. No 15-80 (with Variance and Site Plan) to allow construction of a Guard House at entrance and Tennis Court along A-1-A, providing 8' frontyard setback instead of 25' and 6' and 20' frontyard setbacks (for Tennis Court) instead of 25' required. RD-1 District. Ms. Benson, attorney, representing Oasis 111 addressed the Council asking for permission to have a setback variance for a tennis court and for a guard house. She exhibited plans which showed the lay-out of the project. They wish to build the tennis court on the west side of A-1-A and to put a guard house behind the planter area as one enters the premises on the east side of A-1-A. They do not have the room to

Sp Ex  
10-84  
Oasis III

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provide the necessary setbacks and they are asking for 17' for the guardhouse. She has spoken to the Building Department with regards to the Staff comments and they have asked for large plantings in the planter which they have no problem in doing, which will help conceal the gate house. The reason the gate house was not originally a part of the plan is because there is a security program already installed which is a closed tv circuit system, but the owners and prospective owners have asked for additional security.

Mr. Matthews asked what the present occupancy of this property was at the moment? Ms. Benson indicated only a few apartments are occupied. Mr. Matthews noted this was a developer's plan. Ms. Benson responded this was so, but it was at the urging of prospective purchasers.

Mr. Matthews felt this was a hardship brought on by the developer himself as he could have arranged for this guard house to be a part of the original plan. He could see no hardship.

Mrs. Douthit asked about the southeast corner of the tennis court which seemed to be located in the right-of-way of A-1-A? Mr. Cummings asked how many units were in the buildings? Ms. Benson responded there were three buildings with 24 units in each building. Mr. Cummings thought with the planning which has gone into the project as it seems to be a well-thought-out development, but he can see no hardship for either the request of the tennis court or the guard house, other than a financial hardship and economic hardships are not considered as hardships under the Code.

Mr. Cummings moved that the application numbered Spec. Exc. #10-84 with variance be denied. Seconded by Mr. Matthews.

Ms. Benson asked for permission to complete her presentation which Mr. Ilyinsky granted. She stated they have angled the tennis court for two reasons as the property has an unusual shape; and secondly, the way the sun rises and sets, this angle is a safer way to construct the court so there is no hazard of balls flying out onto the highway. The tennis court is about 26' away from the bicycle path there and 57' from the center of A-1-A and the guard house is 58' from the center of A-1-A.

Ms. Benson addressed the hardship issue feeling there was no other place the tennis court could be constructed on the property.

Ms. Benson indicated she needed a variance of 5' on one end and she could move it further west two feet on the other end and would need a variance then for 17' on the other end. She pointed out there were variances granted to other developers to build tennis courts so she felt a precedent had been set. She stated they have tried to get approval from the owners of the properties in the immediate area who have tennis courts presently to have their tenants use those tennis courts, but permission was not given.

Mr. Matthews thought their argument on not having any space on the east side in which to put this tennis court was not a valid one, as had the developer in the initial instance, not built to such high density, and possibly left off one building, there would have been plenty of space for the recreational area, so there is no hardship.

Mr. Frost gave the Administrative comments: Building has no objection providing the tennis court is 100% sight-screened and two large trees screen the north west and south west corners of the guard house. The Town Manager objects to the setback variances and to the site west of the Bike Path. If the Path could be moved and pedestrians and cyclists have a clear view of the Lake, then he would not object.

Mr. Burn asked what the density was on the property? Mr. Moore disagreed with Attorney Benson's figure on the density mentioned earlier as he felt it was 45 units on the property. Mr. Burn asked what that worked out to per acre? Mr. Moore responded about 11 to 12 units per acre.

On roll call, the motion carried for denial with Mr. Ilyinsky voting against the motion.

Item 24 - Special Exception No. 11-83 with Site Plan Review - First American Bank and Trust, 218 Sunrise Avenue by Wesley Cawley, Vice-President - permission to construction a two story office building, C-TS District. Mr. Cummings indicated he does serve as a Management Director of the First American Bank and Trust Co., for which he is nominally compensated for each meeting he attends and in addition, he is a nominal stockholder. Attorney Randolph felt a legal conflict does exist and he may abstain from voting, however if he does wish to cast his vote, he may do so and file a Conflict of Interest form with the Clerk. Mr. Cummings indicated he would be abstaining from voting.

Spec Ex  
11-83  
1st Am  
Bank &  
Trust

Mr. Marvin Sztatmary, architect with the Lawrence Group addressed the Council representing the applicant. The property is on Sunrise Avenue and he exhibited a drawing which depicted the property as well as the surrounding properties. On Sunrise Avenue, there were a number of existing buildings which varied in height up to four stories. Immediately surrounding the property is the Palm Beach Hotel, which is four stories; St. Edward's Church which is equivalent in height to a four story building; Paramount Theatre at three stories and under construction behind the property is O'Hara's which will be two stories and an existing commercial office building which is also two stories. In looking at the property, they tried to meet the Code requirements and also define the correct project for this site and after carefully studying it, chose to go the route of Special Exception under Section 5.48 of the Code, which permits additional height in return for reduced lot coverage and increased landscaped open space.

The existing First American Bank is housed in a commercial office building along County Road.

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Right now, existing on the property is an existing commercial building where they propose to put the new building. The existing commercial building is part of what is known as The Mews property which originally consisted of 4000 square feet of commercial space and approximately 14 dwelling units and basically covered the whole site. As part of his submission, he did include a survey what was on that property originally. Presently all that does exist is 3000 square feet which was a portion of the building. In addition on the property there are three drive-in tellers presently. They propose to build a two story office building and eliminate one of the drive-in tellers. The lot coverage will be reduced from 85% down to 42% and the landscaped open space will be increased to 25%. A minimum setback of 15' will be provided off the front yard and access will be allowed to the commercial space off the first floor. Office ingress will be off of Sunrise Ave. Parking is provided through the use of a sub-basement with an entrance and exist ramp at the west end of the property. Parking is also provided on-grade for use by the Bank and some of the commercial space and this will be behind the existing commercial building and will be screened.

They have attempted to tie the property together with the existing First American Bank by providing similar architecture and there will be approximately ten feet of landscaping between the sidewalk and the building itself. Presently there is none as the sidewalk comes right against the existing building.

The traffic proposed to be generated by this project has been reviewed and their traffic expert has indicated the additional traffic will not cause a hardship on Sunrise Avenue.

Mr. Llyinsky asked if there was built a one story building, how much green space would there be left? Mr. Szatmary responded there is approximately 15,000 square feet being developed on this property which does comply with the Code and the reason they are making this proposal is because they feel it is a benefit to themselves and to the Town to provide a better looking project as they believed a two story building with more than 25% open landscaping will be a better looking project. There will be no variances involved and the amount of commercial space they are proposing is about the same as presently exists, with the addition of the second floor office which accounts for about 10,000 square feet. He exhibited a plan showing the one-story building which they only prepared to ensure they would be providing the best looking plan. If they went to one story, green space now existing would have to be eliminated. This would provide a little bit over 12,000 square feet of office and commercial space with 15% open landscaping and the lot coverage would be approximately 70%. Parking would be provided on the roof of the structure.

Mr. Matthews felt he would rather see single story structures remain there as it is in his opinion the proposed two story is too much building on too little land. He thought the building would be doubled over what is now existing and the traffic impact would be substantial and density would be higher than it is now.

Mr. Frost asked what the setback would be for the two story version? Mr. Szatmary indicated it would be 15'. Mr. Frost asked if it were possible to move the building back and provide more landscaping in the front rather than in other areas where it really cannot be seen from the street? Mr. Szatmary responded it is possible, but he had what he considered a good reason for not doing that. To push the building further back, makes it more difficult to use the building as a commercial use as people walking down the street would not be able to walk onto the property fairly easily as they would if it did not have the larger setback.

Mr. Frost asked what the elevation was in the sub-basement to which Mr. Szatmary responded it was minus five feet. Mr. Frost asked what they contemplated doing to prohibit flooding? Mr. Szatmary indicated they would be providing pumps to pump out any water.

Mr. Burn asked how far the building could be moved back? Mr. Szatmary responded potentially it could be moved back an additional ten feet, which would be a problem with regards to the drive-in tellers and the fact they would have to provide beaming which would make the basement even lower. Mr. Burn thought it could be moved back three or four feet without any problem to which Mr. Szatmary agreed. Mr. Moore thought there would be no problem moving the building back five feet to which Mr. Szatmary agreed.

Mr. Frost gave the Administrative Comments: Building Official has noted three conditions: Prohibit the expansion of bank facilities into this new office building unless the Town Council does approve. Unity of Title should be provided between this property and the property surrounding it because of the joint use of parking. New structure since it is in a C-TS zone be limited to Permitted Uses with no more than 2000 square feet. Mr. Szatmary indicated he had no problem with those conditions.

Mr. Moore additionally noted there would be a reduction in the drive-in teller lanes and the parking would now become conforming.

Mr. Burn moved the Special Exception No. 11-84 be approved with the conditions as stated. Mr. Frost indicated the conditions would be the items he read into the record and to move the building back 15' to provide additional landscaping. Seconded by Mrs. Douthit. On roll call, the motion carried with an abstention from Mr. Cummings.

Item 25. Variance No. 16-84 - 401 Worth Avenue Association, Inc., 401 Worth Avenue, by Clarence D. Bell, President; permission to expand non-conforming structure by installing fabric awning from second floor balcony, projecting 3'6" into and over public sidewalk at front door entrance, with lateral dimension of 21'3". R-C District Mr. Bell addressed the Council indicating there was a need to provide shelter for their residents and guests and visitors at the front entrance. They do have a telephone system but if it is raining, there is no cover and they must stand there to wait for a response. Also, there is a problem with maintenance of the telephone system since it is not sheltered from the elements. An awning has been designed to provide the shelter and should be aesthetically acceptable. This does extend over the sidewalk within two feet of the curb which requires the variance. They can modify the awning and limit it to their own property.



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Mr. Frost gave the Administrative comments: The Town Manager's Office objects to the private construction over public property of the awning and recalled that each time anything like this has been proposed in a residential zone in the past, they have been denied. There are no awnings over public sidewalks in this Town.

Mr. Frost stated he sympathizes with their problem but this building must have ten variances as there is just too much building there for the property. This would be a new precedent set if granted as no where in this Town has a property owner been granted the right to use public property for a residential use.

Mrs. Douthit moved that the Council say "yes" to this Special Exception 16-84 provided the awning is cut back to stay on their own property. Seconded by Mr. Cummings. On roll call, the motion carried unanimously for approval.

Item 26. Variance No. 17-84 - Royal Poinciana Plaza, (Sidney Spiegel), by William C. Mitchell, Vice-President; permission to install business identification sign on north face of Slat House Office Building, C-PC District. Jim Broderick from Prudential-Bache Office in Palm Beach addressed the Council for a variance on their sign identification. Presently, they are tenants in the Plaza and wish to move their quarters to the Slat House and wish to put their sign on the north wall.

Var 17-84  
Royal  
Poinciana  
Plaza

Mr. Frost gave the Administrative comments: No objections except from the Town Manager's Office who doesn't really object but in the past there has been cases of a "creeping violation" and that is the first tenant in a building would get approval for a sign and then come other tenants who wish to add their signs and eventually, we have to say "no".

Mayor Marix asked if they were ever told they could have signs? Mr. Moore responded he has no reason to believe that the owner of this project would not be aware of the sign ordinances of this Town.

Mr. Cummings asked if the sign proposed is in accordance with the Code? Mr. Moore stated it was and it will be on the north side which would face the Plaza although it can be seen by southbound traffic on Coconut Row.

Mr. Matthews felt the directory of the building in the lobby of the building would identify all the offices in the building, therefore, he moved that the Variance be denied. Seconded by Mr. Cummings.

On roll call, the motion carried unanimously for denial.

Item 27 - VARIANCE No. 28-84 - Reva Goode, 125 E. Inlet Dr., by Architect Delfin Menendez; permission to construct a swimming pool and 28 deck providing 7'6" setback at north rear side and 20' setback at east corner side. R-B District.

Var 28-84  
Reva Goode

Mr. Menendez addressed the Council indicating this house was built 20 years ago and complied with the Code at that time. His client's doctor has requested she have a pool and they need a variance in order to install the pool.

Mr. Frost gave the Administrative comments: Building Department objects due to no hardship shown and the pool can be relocated or reduced in width so as to reduce or eliminate the variance. The Town Manager's Office agrees and feels they are trying to put too big of a pool in too small of a side and rear yard.

Mr. Moore thought this could be relocated and redesigned and not need a variance.

Mrs. Peters commented a letter of objection was received from an immediate neighbor, Michael and Ann Small of 156 E. Inlet Drive.

Mr. Matthews moved the application be denied. Seconded by Mr. Cummings. On roll call, the motion carried unanimously for denial.

Item 28 - Variance No. 19-84 - Virginia Boyce Lind, 231 Chilean Ave., permission to build new or extend concrete masonry garden walls to 8' high within rear and sideyard setbacks, in lieu of 6'. R-C District.

Var 19-84  
Virginia  
Boyce  
Lind

Mr. Lee Muller, the son of the applicant and also serving his Mother in an architectural capacity addressed the Council. He requested permission to build a perimeter wall two feet higher than what is currently allowed for the purpose of achieving increased security and to give her a higher degree of visual or auditory privacy.

Mr. Muller felt a six foot high wall, which is allowed by the Code, will not accomplish the reasonable goal or objective to basically provide the security and privacy needed. Security is a growing concern of all who live in this Town and there have been some incidences in the past with respect to his Mother's property where there have been intruders due to the fact they did not have adequate enclosures and he felt the six foot wall would not provide the security they would like to have.

Mr. Muller commented there are basically multi-family dwellings all around them does put a hardship on them as they are surrounded by quite a few people.

He is aware that some of his neighbors are not happy with this request and he doesn't mean to cause hardship to them, but is merely trying to achieve goals which will provide them with increased security.

## TOWN COUNCIL MINUTES OF MAY 8, 1984

Mr. Cummings asked how long ago the addition was put on the house as there is an eight foot fence around that. Mr. Muller responded that work was commenced in July of last year and completed in November.

Mr. Cummings commented that all around this property there is a variety of different wall heights. Mr. Muller informed the Council the perimeter walls are pre-existing, dating back to the original construction of the house which was some 50 years ago. The wall heights do vary going from a maximum height of 5' down to 3'. Mr. Cummings asked if they wished to make all of the walls around the property eight feet high? Mr. Muller responded he would like the height of the existing wall to be 8'.

Mr. Matthews informed the Council that one of the main restrictions on height of walls is to allow the free circulation of light, air, and not only for the applicant's property but to the neighboring properties also, however, he felt a person should feel secure in his home, but he felt there was another way of doing such a thing and if suitably screened would allow the passage of light and air and would not be an eye-sore if done correctly and that would be the use of chain link fencing appropriately painted green and planted out.

Mayor Marix thought the chain link fence would help with the sight-screening, however, it will not help with the noise factor.

Mrs. Peters indicated two letters were received, one of no objection from Margaret Hathaway and Donald Smith of 232 Chilean; and a letter from Attorney Kevin Boyles representing Helen Pettie, objecting

Mr. Frost stated the Building Department is the only Department which has an objection and this is due to no hardship shown.

Attorney Boyles addressed the Council indicating he represents Mrs. Pettie who lives next door to the west. Between the two properties there is a wall ranging from six feet in the back of the property to five feet in the middle of the property and subsequently to the front of the property three feet. They are asking for a variance to raise the wall to eight feet. There are two things which will not occur and that is there shall be no injury to the adjoining property and no detriment to the public welfare and thirdly, there must be a hardship.

Mr. Boyles felt his client's property would be the most affected by an eight foot wall being erected as it will alter the amount of light coming onto the property. He exhibited photographs. He felt if the wall was established at eight feet, it would cut off all air circulations, ocean breezes, etc. coming from the east onto the Pettie's property. It would also create an aesthetic problem for the Petties in leasing out the remaining two units on their property.

Attorney Boyles thought the variance would cause injury to his client's property and the hardship has been brought on by the Linds adding on to their property.

Mr. Matthews moved the application be denied. Seconded by Mr. Cummings.

Mr. John Pierce owner of the property at 229 Chilean on the east side of the applicant's property addressed the Council. He has submitted pictures showing the wall from his side. He wondered if they had submitted their security problems to the Town police? They have planted a ficus hedge which he is sure will grow quite swiftly. He informed the Council the applicants do have a lot of guests who love to sunbathe with skimpy bathing suits and that is perhaps the reason they need the higher wall, so he felt their request was unreasonable.

On roll call, the motion failed with a 3-2 vote with negative votes cast by Burn, Douthit and Ilyinsky.

A motion to approve the Variance was made by Mr. Burn, seconded by Mrs. Douthit and this motion passed with Mr. Matthews and Mr. Cummings voting against it.

Meeting adjourned for lunch.

Meeting called back to order at 2:15 PM by the President of the Council.

Item No. 29 - Variance No. 20-84 - Melbourne House, 227 Australian Ave., by William J. Hyland, Attorney, permission to install folding shutter weather enclosure on perimeter of northern exposed walkways of floors 1 thru 5. RC District. Attorney Raymond Royce addressed the Council on behalf of the Melbourne House requesting permission to install folding shutters on the north side which would provide protection in severe weather conditions. He stated this building was built about 13 years ago and has five floors of apartments with five apartments on each floor. The north side of the building consists of two elevator shafts and two stairwell shafts and a long walkway of approximately 200' across the back, on every floor. This walkway is the way to get to all of the apartments. The walkway is approximately 6' wide with an iron railing and it is open to the north. This is a walkway and not a balcony which serves anyone apartment. During rainy weather, the rain and wind comes onto this walkway and makes it very slippery. A carpet was put down to attempt to remedy the situation and in some ways, it does help, but since the sun doesn't hit that side of the building frequently, if at all, the carpet tends to hold the water and is wet and spongy, mildews and discolors and creates a slippery situation. They would like to install a shutter on each of these five floors along the outside of the walkway which would be closed only in inclement weather to keep the weather from getting to the walkway. This shutter would be opened up in good weather. He exhibited photographs taken from South County Road, from Brazilian Avenue and from Brazilian Avenue and Hibiscus, which show the building is barely visible.

Mr. Matthews asked if similar variances of this type have been granted? Mr. Moore stated this is the first of this kind to his knowledge.

Mr. Moore explained there is a twofold problem here - one is the aesthetics of the variance in question but secondly and more importantly is the strict requirement of the building code. Mr. Moore asked the architect if when in designing the building, he did not take advantage of the provision of the open balcony building code which eliminates the two hour requirement for corridors to the existing stairs? Mr. Chilton recalled he complied with all rules and regulations. Mr. Moore agreed that an exemption is allowed but in this request for storm shutters, they would be in violation of the three foot spandrel requirement of similar materials such as concrete blocks and/or glass.

Mr. Matthews noted that for thirteen years they have put up with this weather problem, and recalled he was on the Council when this was originally granted but he doesn't recall a variance of this type ever being granted.

Mr. Moore pointed out that even if Council should grant this, he would not be able to issue a Building Permit and the applicant would have to appeal that decision to the Building Board of Appeals.

Mr. Matthews thought perhaps the applicant should think about this matter for a month and work out some ways to overcome this.

Attorney Royce knows the Council's concern in the past with shutters and the problem they have is that there is a provision in the Code which addresses enclosing rooms and he thought it was important to distinguish this application from that situation as Section 5.32 addresses a wide variety of problems associated with awnings and at the very end, there is a sentence which states: "Said prohibited enclosures as described herein shall not be installed or constructed on any existing balcony." Mr. Royce did not want to debate the problem of whether or not this is a balcony as they look at it as a walkway, but he definitely thought the intent originally of this part of the Code was to keep people from enclosing balconies and making additional rooms. There is no intent here to do that and the way the building is designed, it would not be possible for any of these apartment owners to take for themselves any portion of this walkway and thus expand their apartments.

Mr. Matthews felt there still was an insurmountable problem with regards to the violation of the Building Code as stated by Mr. Moore, and he felt they needed to do some talking with the Building Department.

Mr. Frost indicated the Fire Chief is here and they object to this application as it "hazards the occupants in the building".

Mr. Matthews felt this was a clear and present danger to the people who live in that apartment building and he saw no alternative but to make a motion to deny this.

Attorney Royce asked if he could have a postponement in order that he and his client can meet with Mr. Moore and try to work this out.

Mr. Matthews then moved to defer action on this Variance No. 20-84 until the next regular Town Council Meeting. Seconded by Mr. Cummings.

Mr. Cummings commented that if this type of shutter was approved, it would negate the Code so he thought that should be a consideration in the deliberations.

On roll call, the motion carried unanimously for deferral.

Item 30 - Variance No. 21-84 - Ms. Raymonde Paul, 601 N. County Rd., by Attorney L. Louis Mrachek; to allow future construction of a single-family residence on lot 142.57' wide instead of 150'. R-AA Dist. Attorney Mrachek addressed the Council for Ms. Paul requesting a variance of 7.4' from the 150 width requirement for single family lots in the R-AA District. She has attempted to solve the problem by taking a lower parcel (Parcel A) and increased its width from 110' to 142.6' The lot is about 68,000 and in this District 50,000 is needed so there is an excess of 113% of the required lot coverage. Depth required in this District is 150' and they have 470', which is 313% of the required depth, so the lot is conforming except for the width, which is lacking 7.4'. Mr. Mrachek indicated these Lots, Parcel A and B have been treated as individual lots in the past. The driveway should be relocated.

Mr. Mrachek indicated he was before the Council about a year ago seeking a variance from 110' which was denied.

Mr. Matthews asked if there is a proposal to have a Unity of Title here? Mr. Moore explained they are trying to make another building lot.

Mr. Frost noted Mr. Mrachek has stated there is enough side yard setback on the south side of the existing structure, but he asked what the combination of the two sideyards would be? Mr. Mrachek thought it was about 33'. Mr. Frost noted Mr. Mrachek has tried to satisfy the street width of the lot by increasing it from 110' to 140, but in doing so, the combination of the side yard setbacks on the existing house is deficient.

Mr. Cummings asked if perhaps Mr. Mrachek could work out a dedication of some of the land to make this conforming. Mr. Moore pointed out there would probably have to be one non-conformity here.

Mayor Marix asked if it would help in any way if a jog was made in the property when one approaches the existing house to force more area between any possible buildings? In other words, instead of having a straight property line, when one gets near to the present structure, to cut the property line back a little, so there would be more setback?

Attorney Mrachek indicated he would have to consult with his client. Attorney Randolph wondered if the same thing could be accomplished by granting the variance with the stipulation that there be a larger setback on the proposed structure? Mr. Zimmerman noted 60' could already be provided

V.  
Ra.  
Pat

without doing a thing and that would be the minimum requirement.

Mr. Burn stated since there already is a non-conformity and a second non-conforming lot which non-conforms by less than eight feet, he proposed the Variance No. 21-84 be approved with no stipulations. Seconded by Mr. Matthews. On roll call, the motion carried unanimously for approval.

34 J. Item 31 - Variance No. 22-84 - Philip J. Lack, 2505 S. Ocean Blvd., (Apt. 716 Palm Beach President Apts.) Permission to enclose 7' x 10' balcony by moving window wall to inside of 4' high concrete guard rail and to erect new window wall (non-conforming building). R-C District. Attorney Max Schorr addressed the Council for Mr. Lack who owns a corner apartment at the northwest corner on the seventh floor, which presently has a balcony running the entire length of the apartment on the west side with a jog at the north end of the balcony.

Mr. Frost indicated there was no objection from the Administration, and there were many other balconies enclosed in this building.

Mr. Burn moved the Variance No. 22-84 be approved. Seconded by Mr. Matthews. On roll call, the motion carried unanimously for approval.

34 J. Item 32 - Variance No. 23-84 - Michele F. Testa, Testa's Restaurant, 221 Royal Poinciana Way, by Attorney James R. Brindell, permission to construct addition to non-conforming building. C-TS District. Attorney Brindell addressed the Council for his client, Testa's Restaurant indicating this was a variance to provide handicapped restroom facilities as required by law. It is the minimum expansion to make these accommodations.

Mr. Frost gave the Administrative comments: No objection from all Departments and the Town Manager also does not object but the projection of these facilities onto the adjacent property brings up a question as to whether or not both properties are irrevocably in the same hands? Mr. Brindell stated he is not sure there are irrevocably in the same hands but they are in the same hands. Mr. Ilyinsky asked if there was an Unity of Title? Mr. Brindell stated there was not. Mr. Frost thought if there wasn't an Unity of Title, there should be some instrument or device to preclude a subsequent owner of the east lot from saying there is a building projection in front of his location as there will be a projection out of the principal restaurant onto the adjacent lot.

Mr. Testa was asked if he would be willing to execute an Unity of Title? Mr. Testa agreed. Mr. Matthews moved the Variance No. 23-84 be approved subject to the execution of an Unity of Title. Seconded by Mr. Cummings. On roll call, the motion carried unanimously for approval.

Item 33 - Authority to establish a Custody-Safekeeping Account for Erosion Control Project - Widener's Curve. Mr. Burn stated a line item account has already been created and this authority is to create an escrow account to hold the money that the landowners between Widener's and Sloan's Curves have given the Town in order to partially fund the erosion control project in that area. \$161,000 has been received so far. Mr. Matthews moved this authority be established. Seconded by Mr. Cummings. On roll call, the motion carried unanimously for approval.

4 Item 34 - Ordinance No. 4-84 - FIRST READING - Charter Amendment - Town-Owned Property. Earl E. T. Smith, speaking for the Preservation Foundation addressed the Council asking the Council to adopt this Ordinance which would call for a referendum at the next election to protect the green property and such other property designated by the Town Council from being sold. If, at some future date, the Town Council would like to sell some property so designated, this Ordinance could always be undone by having another referendum.

Attorney Randolph indicated he has prepared two Ordinances for consideration by the Council, the first Ordinance simply prohibits the sale and lease for an excess of five years of any properties listed therein. This only deals with the sale and lease of properties. At the last meeting of the Ordinance, Rules & Standards Committee, discussion was had as to whether or not there should be some prohibition to placing structures on the green area, which was not addressed in the first ordinance which came before the Council. He has prepared an alternate ordinance to encompass that provision.

Mr. Frost felt future Councils would be unduly hampered with the Alternate Ordinance as the list does contain both active and passive recreational areas. The passive recreational areas could live with the alternate but the active recreational areas, such as Phipps Ocean Park and Seaview Park and Par III Golf Course would be hampered.

Attorney Randolph responded he has attempted to address that probability in the definition of improvements in the Alternate Ordinance and he read the definition. Mr. Frost felt this definition would eliminate his concern.

Mr. Matthews felt the Alternate does require a crystal ball on the Council's part as there may be concerns that will need tending to that Council is not aware of at this point in time. He thought the purpose is to preclude the Town divesting itself of any of its open space greenery. Mr. Burn thought more leeway was given to the Council under the alternate version since both of the Ordinances presented prevent the Council giving away any green space, but the alternate does allow the Council to use the existing green space for a small addition onto the Golf Club structure or some additional construction at Seaview Park, etc.

Mayor Marix thought if the object of this Ordinance is to keep green space, then the Council would have to go to the people to obtain the permission which is the object of the whole thing, so she thought the Alternate would achieve what is wanted.

Mr. Burn moved the Alternate version of Ordinance No. 4-84 be adopted on first reading. Seconded by Mrs. Douthit. Mr. Randolph read the Ordinance by title.

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Mr. Adrian Winterfield addressed the Council wondering if on the substantive it appears the Council is over-anxious to yield its responsibilities to the electorate. He thought an alternative method of handling the same problems might be to impose severe restrictions upon any transactions dealing with Town-owned property requiring super majorities and perhaps three readings and an additional safeguard could be allowing the voters to oppose any projected transaction by initiative, which the Zoning Ordinance refers to as "referendum", with a certain period of time being cited, after which if there had been no requests for referendum, then the transaction would become effective. If there was a challenge, then this would be held in suspense until the electorate addresses each transaction.

Mr. Winterfield stated if the Alternate Ordinance was adopted and the Charter was amended, it would still be necessary, notwithstanding the overwhelming public support for such a transaction to go through the electorate procedure.

Mr. Winterfield then addressed the procedural comment: He felt it would be much more effective to identify within the body of the referendum question those properties which are intended to be covered by the referendum, as the way it stands now, Section 3 of Ord. 4-84 (and he presumes Alternate 4-84 is the same) barely presents the question "shall the Charter be amended in accordance with 4-84".

Mayor Marix asked Attorney Randolph that since the voter would have the final say-so and it might be to do easier to do something good, what are his comments about these remarks just made? Mr. Randolph responded in regard to the substantive nature, it is a viable alternative with the advantage that it doesn't tie the hands of the Council in allowing them to go ahead with the transaction with the final say being with the voters. That would be the advantage of it but any contract that would be signed would be subject to a favorable referendum provision.

Mayor Marix asked Mr. Smith if he would be interested in such a way of handling this? Mr. Smith responded the whole point is giving the people a chance to decide and he didn't think anyone would be against it.

Mr. Burn did not think Mr. Winterfield was against it but he was simply suggesting an alternative method of accomplishing the same thing, and it still would be voted on but would be presented in a different form and the Town if it wanted to take an action in the future could do so assuming there would be no initiative to prevent it within a specified period of time, and there would be specific advantages to doing it that way. Mr. Burn felt since nothing can be done on this until November when it will be presented to the voters, he wished to withdraw his motion and suggested that the Town Attorney be asked to redraft the Ordinance along those lines.

Mr. Smith found it complicated to understand what Mr. Winterfield meant and he would like it spelled it out a bit more. Mr. Burn indicated the same properties would be listed and the Town could initiate an action with reference to anyone of these properties in the same manner it can now, except instead of going immediately to referendum, it could be acted upon unless there were objections from the townspeople by virtue of an initiative within a specified period of time. That period of time could be 30, 60 or 90 days, whatever number of days the Council wants and if there were an initiative to estop the Town from doing what it wanted to do, it would then go to referendum. If there were non forthcoming, by default, the Town Council would be allowed to proceed.

Mr. Smith asked the attorney if this wouldn't have to go to referendum initially? Mr. Randolph responded it would have to but subsequent to that, the alternate suggested by Mr. Winterfield that the Town not be compelled to go to referendum in order to sell one of these properties, but that the Town could not sell one of these properties in the event the electorate successfully voted in favor of an initiative to preclude the Council from going ahead with the sale.

Mr. Burn thought the other method was simpler as if we adopted what was proposed, we would have to go referendum in the event the Council wants to sell any property on that list. Mr. Matthews thought basically we were saying, "Dear Townspeople -- if we don't hear from you within ninety days, we will proceed with our plans to sell whatever."

Mayor Marix thought if everyone would be in accord with the selling of a certain piece of land, this would give the Council the opportunity to sell without going to referendum.

Mr. Smith thought this would defeat the very purpose of what he was trying to obtain. For example, the Tangiers piece of property, thirty years ago Mr. Weissman gave that piece of property to the Town and it has been maintained in beautiful shape and as he understands what has been proposed, if this property was put up for sale and no one objected, he could buy it. Mayor Marix commented the Town couldn't sell it until it had been publicized for a period of time, perhaps six months, and then if anyone objected, it would have to go to referendum.

Mr. Randolph explained the initial way would place the burden upon the Council and the alternative way suggested by Mr. Winterfield would place the burden on the electorate.

Mr. Smith thought it boiled down to being given veto power and he didn't think giving veto power to a piece of property was the way to protect this Town. The whole idea was to protect what the Town now owns and not to have this veto power and he felt it was a weak way out.

Mr. Matthews thought the point was well taken as if the idea was to encumber future Councils from disposing of these stated pieces of property, perhaps it should be incumbent upon the Council to go through the hoops of selling the program to the people but the onus would be put on the Council of telling the people why it would be such a great thing. He had a feeling no-one would ever be able to do that.

TOWN COUNCIL MINUTES OF MAY 8, 1984

Mr. Burn thought in any case the decision would be left up to the people since the referendum leaves it up to the people and he thought everyone on the Council was as interested as Mr. Smith and the Preservation Foundation is in saving the green property of the Town, but the question is what is the most workable and feasible way of going about it and he felt Mr. Winterfield's suggestion had merit.

Mr. Smith informed the Council there is nothing to stop him in getting ten per cent of the voters to sign a petition and taking this right to the people now and they can vote on it.

Mr. Ilyinsky stepped down from the Chair with Mr. Burn assuming the Chair and he moved that Alternate 4-84 as read by the Town Attorney be adopted on first reading. Seconded by Mr. Matthews. On roll call, the motion carried with a negative vote from Mr. Burn.

Mr. Winterfield noted this was the first reading and there is nothing to prevent any proposed charter amendment to be initiated by the voters of the Town, nor to prevent both the substance of the Ordinance passed and another ordinance submitted as alternatives being adopted at the next meeting.

Mr. Matthews suggested in the time between now and the second reading, this matter be looked at again by the Ordinance, Rules & Standards Committee again to allow input and come back to the Council with a recommendation. Mr. Burn was in favor of that and called for a motion. Mr. Matthews moved that further consideration be tabled until the next meeting of the Council and during the interim, the Ordinance, Rules and Standards Committee have a continued view. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Ilyinsky then assumed the Chair.

Mr. Winterfield continued by stating that if the Council should decide to adopt the Ordinance which would place the onus on the public it would not be necessary to restrict the scope of the amendment to enumerated properties as it would apply to all Town owned properties.

ORD 5-84

Item 35 - Ordinance No. 5-84 - SECOND READING - Prohibition of Fishing from Town-owned Docks. Attorney Randolph read the Ordinance by title. Mr. Matthews moved the Ordinance on second and final reading. Seconded by Mr. Burn. On roll call, the motion carried unanimously for adoption.

Ord 6-84

Item 36 - Ordinance No. 6-84 - FIRST READING - Prohibition of Bicycles on Sidewalks in Commercial Districts. Mr. Randolph read the Ordinance by title. Mr. Matthews moved for approval of Ord. No. 6-84 on first reading but urged and not part of the motion that in the posting of the regulations that the signing of this could be done as discreetly as possible as this Town has always been very careful about signs.

Mr. Burn suggested the regulations be posted in bicycle shops. Seconded by Mr. Cummings. On roll call, the motion carried unanimously for approval.

Town Beautification

Item 37 - TOWN BEAUTIFICATION. Mr. Ilyinsky indicated all have received a copy of a letter from Mrs. Earl E. T. Smith showing concern that a lot of interested parties were becoming unrelated in terms of total cooperation among themselves and were telling Mr. Ugi what kind of plants to plant and the way to plant them and he thought for those type of recommendations not to come through the Town Manager to Mr. Hadley to Mr. Ugi will cause great confusion.

Mayor Marix commented she had made a suggestion earlier in the day to reorganize the Town Beautification Committee which should include people in the Civic Association and the Garden Club.

Mr. Matthews thought the Town looks better than any he has seen anywhere and he thought the reason is because of the interest by the citizens and input from The Garden Club and as all know, his opinion has always been "If it ain't broke, don't fix it!" and he is therefore hesitant to change that, so he would be reticent to establish another Committee when things look so well the way they are.

Mrs. Earl E. T. Smith addressed the Council indicating the reason the question came up about resurrecting the Beautification Committee because most of the people have agreed that Palm Beach does look sensational. However, when the question did come about the planting beds on Royal Palm Way and Royal Poinciana Way that she learned there was extreme dissatisfaction with the way they looked. She felt Mr. Ugi was to be commended as he has done an excellent job but whatever people's preference is, be it begonias, impatiens or geraniums in whatever color, but it is something that should be decided on as a whole as she felt the Town should be beautified from the Inlet to the Lake Worth Bridge and if Mr. Ugi is growing plants for Royal Palm Way, he should be growing them for south of Sloan's Curve also. A lot can be done on the west side of A-1-A in the south end and a lot can be done to the Marjorie Merriweather Post Causeway at Southern Blvd. where no-one has talked about having any planting beds.

Mr. Matthews felt this was all well and good but he had a problem with that as to have people from outside of the Town directing Town employees causes all sorts of problems, so it would seem to him that the Garden Club has done a fantastic job in the past and he was not aware there was so much dissatisfaction. Mrs. Smith stated so was she and her Club. Mr. Matthews did not feel the Town should be put in the middle with regards to what color or what should be planted but simply should get advisory input from the Garden Club or whomever wants to give it.

Mayor Marix commented this is exactly why this has come up as when people do give their own opinion, it does make it difficult from Mr. Ugi and his people to keep them happy and the idea of resurrecting the Beautification Committee would be that members of the organizations would have a platform to sit down together with Mr. Ugi and give their input or funding if they wish.

## TOWN COUNCIL MINUTES OF MAY 8, 1984

Mr. Burn stated he was approached by the Civic Association as Chairman of the Public Works Committee and as a result of their efforts, a line item was established for beautification and he was happy to hear Mrs. Smith's comments about the south end as he felt there was some work that needed to be done there. Palm Beach is indeed beautiful and has lovely plantings except on A-1-A coming from the south and there it doesn't look bad on the east side of the road but doesn't look very good on the west side of the road. He would be in favor of coordinating the efforts of all interested groups in beautification and he sees no objection in re-establishing the Beautification Committee and endorses the idea heartily.

Mr. Ilyinsky thought they would have to work through the Manager's Office. Mr. Frost recalled the Beautification Committee was made up of three people and the kind of work they did was field work

as once a month they toured the Town and the Manager, being one member of the Committee, would take the suggestions back to the Superintendent of Public Works who would weigh them and inform the Manager if he could do the work with the monies he had on hand or needed more monies to do it with.

Mr. Frost explained this Committee did not include members from the Chamber of Commerce but involved the President of the Garden Club, the President of the Council and the Town Manager.

Mr. Matthews suggested that Mr. Burn meet with these people and as a Committee of one report back to the Council at next month's meeting.

Mr. Burn agreed.

Item 38 - NORTH FIRE STATION. Mr. Cummings felt a further clarification is needed on this matter as he thought there was a financial obligation to be met with the architects hired, Peacock and Lewis and the attorney has looked into this matter and written a memo to the Town Manager and he asked for the attorney's opinion as to whether or not they had to go through the Competitive Consultant's Negotiation Act? Mr. Randolph responded he has researched this and he felt the Council should go through the Consultant's Competitive Negotiation Act.

Mrs. Douthit asked if this would cost the Town any money? Mr. Randolph stated it is simply a matter of sending out invitations to various architects to respond to certain criteria and follow the same procedure that was done when the new fire station was being considered.

Mayor Marix informed the Council in this case the plans have been donated so what we are being competitive about is the supervision of the plans that have been donated? She felt we were not at this point looking for an architect to tell us how to renovate the North Fire Station as those plans have been donated to us. Mr. Randolph did not think the Council would find an architect who was willing to supervise plans that were not his own, nor would he think the architect was willing to have anyone else supervise construction under his plans.

Mr. Matthews thought Council had to go back to the competitive negotiations, and one of the reasons is that we never asked Peacock and Lewis to come up with renovation plans.

Mayor Marix could not see why the plans donated could not be accepted and Council worry about the supervision at a later time.

Mr. Frost explained to the Council the plans donated are not a set of working drawings. The drawings to renovate the North Fire Station is about four or five months of work including consultations with the Fire Chief. The drawings on hand are a sketch of an idea which needs to be converted into "working drawings". Mayor Marix knows that the Fire Chief has discussed the plans at great length with regards to his point of view and the general lay-out.

Polly Earl of the Preservation Foundation addressed the Council thought what should happen is to define what has been approved at the last meeting which she understood were not working drawings but some very definite acceptance in principle of solutions to the problems with the Fire Station. Mr. Ilyinsky informed her that the Council must go through the competitive drawing. Ms. Earl understood this but thought that an architect could work from the principles already agreed upon, such as solving the structure problem by taking out the two beams and spanning that and if those things are defined, everyone will be bidding on the same thing and there won't be a situation where everyone will be re-designing the Fire Station.

Mr. Randolph explained this is the type of information that would be put in the invitation to bid. With Mr. Steel's permission, a copy of the rendering may be attached to the invitation. Mayor Marix asked if it was possible that if the architect wished to donate the rest of the plans to the Town, we could accept them? Mr. Randolph responded if the architect wishes to state they are a gift and he doesn't care what happens to them after that, it would be possible but he didn't think there was an architect who would be willing to do that.

Mr. Ilyinsky indicated this matter will be turned back to the Public Safety Committee and this can be thrashed out. Mr. Cummings agreed.

Mr. Matthews did not think there was any thrashing out to be done as all needs to be done is with the invitations to bid, a copy of the rendering be sent stating we wish the building to look like that. Mr. Matthews moved that the Town Manager be authorized to send out the invitations to bid under the Competitive Negotiations Act.

Mr. Moore explained to the Council that being familiar with what the charges are for architects and fees for engineering, we are probably talking about a fee of somewhere between \$20,000 and \$30,000 and he thought the proposal put forth about using the conceptual plan, if it was donated, we could put it out as part of the invitation to bid and he thought that was the obvious solution to move this project forward.

North  
Fire  
Station

## TOWN COUNCIL MINUTES OF MAY 8, 1984

Mr. Ilyinsky asked the Town Manager to see that the invitations to bid are sent out. Mr. Frost noted they were talking about "bidding". Mr. Matthews corrected him indicating what he was doing was submitting under the Competitive Negotiations Act, it out just as it was done in the initial instance, except in this instance we will have a picture enclosed that says this is what we are interested in and actually we are soliciting and not bidding.

Prosperi

Item 39 - PROSPERI SUIT. Mrs. Douthit asked about the status of this suit? Mr. Randolph responded this has been continued with the representation made to the Court that we appear to be close to settlement and he has had discussions with Mr. Prosperi and his attorney and we are now working on a settlement proposal which will be submitted to the Council for their consideration.

Federated Funds

Item 40 - FEDERATED FUND. Mr. Burn commented that inasmuch as we have received an opinion from the Attorney General that Federated Fund is not in accordance with State Law so he felt we should take immediate action to remove any Palm Beach monies from Federated Fund. The fact that the Federated Fund's attorney is negotiating with the State doesn't make any difference and if the attorney is able to persuade the State to change the law to allow municipal funds to be invested in Federated Fund, he would then recommend the monies be put back into the Fund, but since they are illegal now, he felt we should now take our monies out of the Federated Fund. To do that requires that we put it into the Municipal Fund that the State of Florida holds for municipalities and he recommended that we do that and further recommended the Town Manager be asked to look into the possibility of other methods of investing the funds of the Town other than keeping in the State of Florida Fund should they prove profitable, i.e., to investigate the possibility of putting the funds into Savings and Loan Associations or wherever in order that we achieve reasonable return.

Mr. Frost explained the forms from the Municipal Fund do require a Resolution and then we must wire the funds on a daily basis. Mr. Frost commented that previously he has been told to not be engaged in direct wire transfers as there was a problem with this some time back. Mr. Burn informed the Council the Town will not be engaged in direct wire transfers, the Bank will be doing that.

Mayor Marix thought the Town has no way to go but out of the Federated Fund. Mr. Cummings moved that effective immediately, all funds be removed from the Pittsburgh Federated Fund and we immediately notify the First National Bank in Palm Beach of this decision and they immediately come up with another suggested fund.

Mr. Burn asked where the funds should be held in the interim? Mr. Cummings thought the financial advisor should make some recommendations.

Mayor Marix knew there are some funds which are not needed now she believed the Town uses five banks in the area, so she thought there would be a possibility of some of the monies put into Treasury paper and the other funds divided up in whatever basis we normally divide up monies in the Bank until we do come up with the right solution. She would recommend the monies be divided up as she did not think it was appropriate to have a large amount of cash in any one bank. Mr. Frost explained the Town does not have cash in any one Bank.

Mr. Burn thought that Mr. Cummings' motion would put cash in banks and he doesn't want to do that and he doesn't want to lose any interest and he saw nothing wrong with after the monies are in the Florida Fund with negotiating with a number of Banks and Savings and Loan to determine if there is a better method of investing the monies.

Mr. Frost thought the money should be moved from Federated as soon as Mr. Randolph can develop the Resolution as the State will require that and the Finance Director will have to reduce the accounts down to four, which is the maximum the State will allow.

Mayor Marix asked what the time frame would be to prepare the Resolution? Mr. Randolph indicated that would probably be next week.

Mr. Burn moved that we proceed in that direction and do it as expeditiously as possible. Seconded by Mr. Cummings. On roll call, the motion carried unanimously.

Renovation of Council Chambers

Item 41 - RENOVATION OF COUNCIL CHAMBERS. Mrs. Douthit asked for an additional expenditure of \$6,900 to put carpeting on top of the rubber matting and theatre seats since all of the pews are full of termites. She informed the Council that \$5000 was allocated for cushions for the pews but she couldn't see spending that amount since the pews are full of termites. She will submit this to the Finance and Tax Committee.

Blackboard

Item 42 - BLACKBOARD DONATED BY ERIK GILBERTSON. Mr. Gilbertson addressed the Council indicating he felt there should be a Citizen's Advocate as many people do not want to bother Council people, especially if they didn't vote for them. He thought the Town management was not receptive to the needs of the very people they serve.

Mr. Ilyinsky pointed out to Mr. Gilbertson the Council members are always available to the people.

Mr. Gilbertson told the Council about a sidewalk assessment he had received around Christmas time and he thought that the bill of around \$900 was excessive because he knew he could have the work done for a lot less. He did come to meetings about it and talked to the Administrator in the Public Works Department and had the bill adjusted to about half of that amount.

Mr. Gilbertson then told about an assessment bill he received for the storm sewer. He also talked about Proposition One and the high taxes and he didn't think it was fair for the taxes to be increased when the city is in Palm Beach. He recalled campaign promises pledging to reduce taxes



## TOWN COUNCIL MINUTES OF MAY 8, 1984 and MAY 15, 1984

Mr. Gilbertson talked about the dark uniforms the police have to wear. He also asked that there be parking provided across the street from Charlie's Crab Restaurant on the Oceanfront.

Mr. Gilbertson informed the Council that he was donating a blackboard for use in the Council Chambers.

There being no further business, the Town Council meeting was adjourned.  
Respectfully submitted,

Grace T. Peters, Town Clerk

MINUTES OF SPECIAL TOWN COUNCIL MEETING HELD ON MAY 15, 1984

The Special meeting of the Town Council was held at St. Edward's Parish Hall, Palm Beach, Fl.

The President called the meeting to order at 9 AM.

On roll call, the following were present: Mayor Marix, Council President Ilyinsky, President Pro Tem Burn and Councilwoman Nancy Douthit (Councilmen Matthews and Cummings were absent). Also present were Town Attorney Randolph, Town Manager Frost, Director of Finance/Treasurer Driscoll and Deputy Town Clerk Haspil.

Mrs. Douthit said that the Council had discussed the question of appointing an outside consultant to check references and qualifications of approximately 35 of the applications received for the Town Manager's position. Of four firms contacted which specialize in the field, the following were interviewed: Mr. Ropes of Ropes and Associates, Ft. Lauderdale. Mr. Lou Benson of Benson Associates, Ft. Lauderdale. Mr. Graham Watts, Ft. Lauderdale and Dr. J. Eassa of West Palm Beach. Mrs. Douthit said that she had interviewed these firms independently and she moved that Ropes and Associates be nominated. Seconded by Mr. Burn. On roll call, the motion carried unanimously.

Hiring  
of  
Consultant  
to  
Screen  
Town  
Manager  
Position

Mr. Frost asked who was going to negotiate with Mr. Ropes for a fee?

Mr. Burn said that Mr. Ropes had indicated that his cost would be around \$5,000 basic fee with approximately an additional \$1,000 in expenditures and he felt this was a fair fee considering the amount of work involved.

Mr. Frost said that a letter of contract was the minimum required.

Mr. Randolph said that some sort of an agreement was needed and he said he would contact Mr Ropes and work something out that would be mutually agreeable.

Investment of the Town's Overnight Monies. Mr. Randolph said that Mr. Driscoll was present to answer any questions they might have on this subject and in addition he had prepared a Resolution which would authorize the investments into the State Pool. There were other matters that had to be considered with regard to ordinances presently in existence which now needed to be revised.

Investment  
of monies

Mr. Driscoll said that he wanted to make the Council aware that some of the duties outlined in the Town Code in Chapter 2, specifically Sections 153, 154, 160 and 161 needed to be amended as they would now in conflict with the new mandate. Mr. Driscoll read into the record several of the above sections and the problems he will have performing his duties in the light of switching to the State Fund.

Mr. Driscoll said that Section 2-161 of the Code states that the Finance Director's duty is to ensure that the investments of the Town are in a "100% collateralized security acceptable to the Federal Reserve Bank at all times." He said he had talked to people in the Federal Reserve Bank in Atlanta and Miami and the only instrument that qualified as such is Direct Obligations of the Federal Government, specifically Treasury Bills, Treasury Notes and Treasury Bonds. The composition of the State Local Government Surplus Fund is almost 95% other than those instruments and this was in conflict with the Section of the Code which he mentioned. Also, the State only allows four separate accounts, and the Town currently has five operating funds, excluding the Retirement Fund, in addition to several trust accounts. Therefore, Mr. Driscoll was asking for direction from the Council regarding the questions he raised.

Mr. Burn said that what he was talking about was that there was a conflict between the Town Code and the State Law on investing on the fund and Mr. Driscoll was asking the Council for a Resolution to ignore the Code or for it to be amended. Mr. Burn said the Code should be amended to allow these investments.

Mr. Randolph said that one other thing needed to be decided and that was whether to merge two separate accounts or to put four major funds into one account and do something else with the other funds.

Mr. Burn said that whatever Code provisions were required in order to accomplish this should be made, and as far as placing four funds into one account in Tallahassee, it was not really a very different problem and it only created an accounting problem which was already there with regard to the Federated Fund, because the Federated Fund is holding pieces of money for various accounts, and the Finance Department simply had to keep that separated on an accounting basis.

Mr. Frost said that he had suggested that the proper way to enter the State Pool might be to accept the limit of four funds initially take the four biggest accounts that the Town has (The General Fund, the Capital Fund, the Golf Fund and the Marina Fund) and for Mr. Driscoll to work out the

ORDINANCE NO. 4-84

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF SAID TOWN A PROPOSED AMENDMENT TO THE TOWN CHARTER SAID AMENDMENT TO PROVIDE THAT THE SALE, LEASE OR IMPROVEMENT OF CERTAIN TOWN OWNED OPEN GREEN SPACES LOCATED WITHIN THE CORPORATE LIMITS OF THE TOWN CAN BE MADE ONLY AFTER THE APPROVAL BY A VOTE OF THE TOWN ELECTORS IN A REFERENDUM ELECTION CALLED AND HELD AS PROVIDED BY LAW, SAID REFERENDUM NOT TO BE HELD BETWEEN THE FIRST DAY OF APRIL AND THE FIFTEENTH DAY OF DECEMBER OF ANY YEAR; PROVIDING AN EFFECTIVE DATE SHOULD THE AMENDMENT TO THE CHARTER BE APPROVED AT SUCH REFERENDUM ELECTION; PROVIDING A SEVERABILITY CLAUSE; SETTING FORTH THE FORM OF THE QUESTION TO BE VOTED UPON AT SAID REFERENDUM ELECTION, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. There shall be submitted to the electors of the Town of Palm Beach, Palm Beach County, Florida (hereinafter referred to as "Town"), at a general election to be held within the Town on November 6, 1984, a proposed amendment to the existing Town Charter, said amendment to be an additional Section 1.03 to ARTICLE I. (Creation and Powers), of the existing Town Charter, which said amendment shall read as follows:

"Sec. 1.03 - Sale of Property; Referendum Required.

Any disposition of certain town owned open green spaces designated herein and located within the corporate limits of the Town of Palm Beach, any improvement of same by way of placing structures thereon, and any lease of said real property by the Town as lessor for a period exceeding five (5) years shall require approval by vote of the Town electors in a referendum election called and held as provided by law. No referendum election held for such purpose shall be between the first day of April and the fifteenth day of December of any year.

The properties to which this provision shall apply are referred to herein by their common names as:

1. Palmo Way Nursery
2. Boyd Park
3. Par 3 Golf Course
4. Lake Drive Park (near docks)
5. Bradley Park
6. Phipps Ocean Park
7. Park Avenue Park
8. Tangier Parks (3)
9. Memorial Park
10. Seaview Park

The full legal description of said properties is a matter of record with the Clerk of the Circuit Court of Palm Beach County and said legal descriptions are hereby incorporated into the terms of this ordinance.

The power to dispose of property shall embrace sale, exchange, lease, mortgage, pledge, or other encumbrance of real property; and also abandonment, or gift to charity of real property officially determined to be of no further use to the Town and of nominal sale value or no value.

Improvements shall include the construction of above ground structures which diminish open green space, but shall not include nor is this section intended to preclude the construction of public utility structures deemed necessary by the Town, underground utility structures including but not limited to water mains, sewer lines, storm water drainage and other utilities. Neither shall this section preclude the construction of structures deemed necessary by the Town for public recreational purposes on those properties described herein on which public recreational structures exist as of the date of adoption of this charter amendment.

Section 2. Should any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 3. At the election provided for in Section 1 of this Ordinance, the question to be voted on by the electors shall be phrased substantially as follows, unless otherwise directed by the Town Council, to-wit:

**SHALL THE TOWN OF PALM BEACH AMEND ITS CHARTER EFFECTIVE 12:01 A.M. ON THE 1ST DAY OF JANUARY, 1985, IN ACCORDANCE WITH THE AMENDMENT SET FORTH IN ORDINANCE 4-84, PASSED AND ADOPTED BY THE TOWN COUNCIL ON THE 12th DAY OF JUNE, 1984, TITLED:**

ORDINANCE NO. 4-84

"AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF SAID TOWN A PROPOSED AMENDMENT TO THE TOWN CHARTER SAID AMENDMENT TO PROVIDE THAT THE SALE, LEASE, OR IMPROVEMENT OF CERTAIN TOWN OWNED GREEN SPACES LOCATED WITHIN THE CORPORATE LIMITS OF THE TOWN CAN BE MADE ONLY AFTER THE APPROVAL BY A VOTE OF THE TOWN ELECTORS IN A REFERENDUM ELECTION CALLED

AND HELD AS PROVIDED BY LAW, SAID REFERENDUM NOT TO BE HELD BETWEEN THE FIRST DAY OF APRIL AND THE FIFTEENTH DAY OF DECEMBER OF ANY YEAR; PROVIDING AN EFFECTIVE DATE SHOULD THE AMENDMENT TO THE CHARTER BE APPROVED AT SUCH REFERENDUM ELECTION; PROVIDING A SEVERABILITY CLAUSE; SETTING FORTH THE FORM OF THE QUESTION TO BE VOTED UPON AT SAID REFERENDUM ELECTION, AND FOR OTHER PURPOSES."

WHICH SAID AMENDMENT ESTABLISHES A REQUIREMENT FOR THE APPROVAL BY VOTE OF THE TOWN ELECTORS IN A REFERENDUM ELECTION BEFORE THE SALE OR LEASE OF CERTAIN MUNICIPAL REAL PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE TOWN CAN BE MADE.

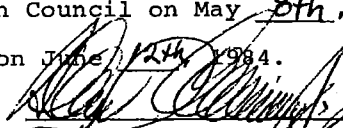
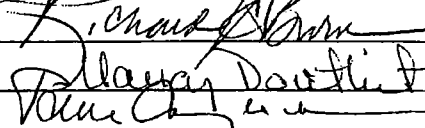
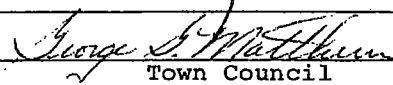
THE PROPERTIES TO WHICH THIS PROVISION SHALL APPLY ARE REFERRED TO HEREIN BY THEIR COMMON NAMES AS:

1. PALMO WAY NURSERY
2. BOYD PARK
3. PAR 3 GOLF COURSE
4. LAKE DRIVE PARK (NEAR DOCKS)
5. BRADLEY PARK
6. PHIPPS OCEAN PARK
7. PARK AVENUE PARK
8. TANGIER PARKS (3)
9. MEMORIAL PARK
10. SEAVIEW PARK

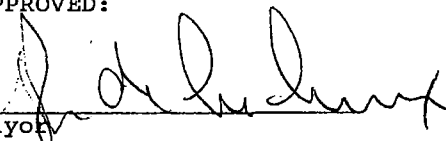
Section 4. The amendment set forth in Section 1 hereof shall become effective as of 12:01 A.M. on the 1st day of January, 1985, if, at the election above provided, the question to be voted upon, as hereinabove stated, receives an affirmative vote of a majority of the votes cast at said election.

Section 5. This Ordinance is enacted pursuant to the provisions of the "Municipal Home Rule Powers Act" (Section 166.031 Florida Statutes, 1977).

PASSED AND ADOPTED at first reading at a regular adjourned session of the Town Council on May 8th, 1984, and on second and final reading on June 12th, 1984.

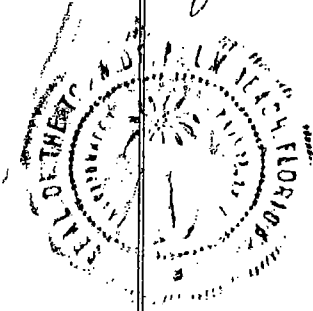
  
\_\_\_\_\_  
Richard Brown  
  
\_\_\_\_\_  
Blayne Daulton  
  
\_\_\_\_\_  
George S. Matthews  
Town Council

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

*Grace J. Peters*  
Town Clerk



**Matias, Sally**

---

**From:** Matias, Sally  
**Sent:** Tuesday, October 07, 2014 5:23 PM  
**To:** PEIwell@townofpalmbeach.com  
**Subject:** Memorial Fountain Park  
**Attachments:** 1KI9033-elwell memorial fountain park green space amendment.PDF

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see attached correspondence.

**JONESFOSTER**  
JOHNSTON & STUBBS, P.A.

Sally Matias Secretary to John C. Randolph, H. Michael Easley, and Keith W. Rizzardi  
Direct Dial: 561.650.0458 | Fax: 561.650.5300 | [smatias@jonesfoster.com](mailto:smatias@jonesfoster.com)

Jones, Foster, Johnston & Stubbs, P.A.  
Flagler Center Tower, 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401  
561-659-3000 | [www.jonesfoster.com](http://www.jonesfoster.com)

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**Matias, Sally**

---

**From:** William Cooley <cool3003@bellsouth.net>  
**Sent:** Thursday, October 23, 2014 8:42 PM  
**To:** Randolph, John C.; PEIwell@townofpalmbeach.com  
**Cc:** 'Robert Wildrick'  
**Subject:** FW: MEMORIAL PARK AND FOUNTAIN  
**Attachments:** Scan1685.pdf

**Peter and Skip,**

**Please look at the attached exhibits and you will note that the vacated right-of-way of Australian Avenue has been made a part of Town Hall parcel and not the Memorial Park parcel.**

**Memorial Park, as it was when the Charter amendment Section 1.03 was adopted in 1984, is depicted in Exhibit 1. There was some "turn around" area added later but the legal description describing Memorial Park was not changed.**

**The legal description for Memorial Park is on file with the Clerk of District Court in Palm Beach County. It shows that neither the additional "turn around" area or additional right-of-way is considered part of Memorial Park.**

**Exhibit 2 shows that the recent addition of right-of-way was added to the Town Hall parcel.**

**Exhibit 3 shows the Memorial Park parcel, including the addition of the turn-around area, but that addition did not change the definition and description of Memorial Park as set forth in 1.03 of the Town Charter.**

**Exhibit 4 is from a 1991 Brisson report on the Town Hall Historic District showing the South end of Memorial Park in a solid line, and the added turn-around area by a dotted line.**

**Exhibit 5 is the language of the Charter Amendment as adopted and as made a part of the Charter as Section 1.03.**

**I bring this to the attention of both of you as a "friend of the family". Not as a threat but just as a piece of friendly advice; please straighten this out before it goes much farther and we end up with a result that will not be good for the town.**

**If a lawsuit follows, which I am assured it will, and one on which I will not be the Plaintiff, it will further divide the town and it does not seem necessary.**

Many of us believe that the "stairway" cannot be legally built without a referendum. The town may be able to argue that the "sidewalk" could be installed as it can be argued that it is not a "structure" and you would have a "public safety" argument. It doesn't matter if "turn-around" space was added to the park or not, as the legal description on file in the Clerk of Court's office defines the boundaries of the park within which no green space may be covered.

Skip, I would gently suggest that it is going to be up to you to tell the council that upon further investigation and review of the legal description, that the matter should be reconsidered and if they want a staircase (and sidewalk) it must go to referendum. You could still get it on the February ballot. My hope, however, is that the staircase is just dropped as it desecrates the fountain and adds hundreds of thousands of dollars in costs. And, this election, like the PUD-5, will further divide the town.

This should be done before the next council meeting, and before this matter comes to the Landmarks Commission and everybody chooses sides and the fight starts again.

My suggestion would be to drop the staircase as it is an unnecessary addition and building it forces the removal and replacement of the fuel tank and necessitates tearing up the perfectly good apron of the fire house; and go ahead with the landscaping and flatwork/stone replacement.

I personally believe that closing that piece of Australian should not have been done as it only increases congestion and confusion at the Chilean turn-around at the South end of Town Hall.

Creating another park that nobody will use at the north end of Town Hall doesn't make a lot of sense either. I've never seen anybody in the park at Peruvian and South County Road, and the only people who use the park at Chilean and South County are occasional employees who take a smoke break.

Please take another look at this and head this off.

Best wishes,  
Bill Cooley

CC: Council President Wildrick





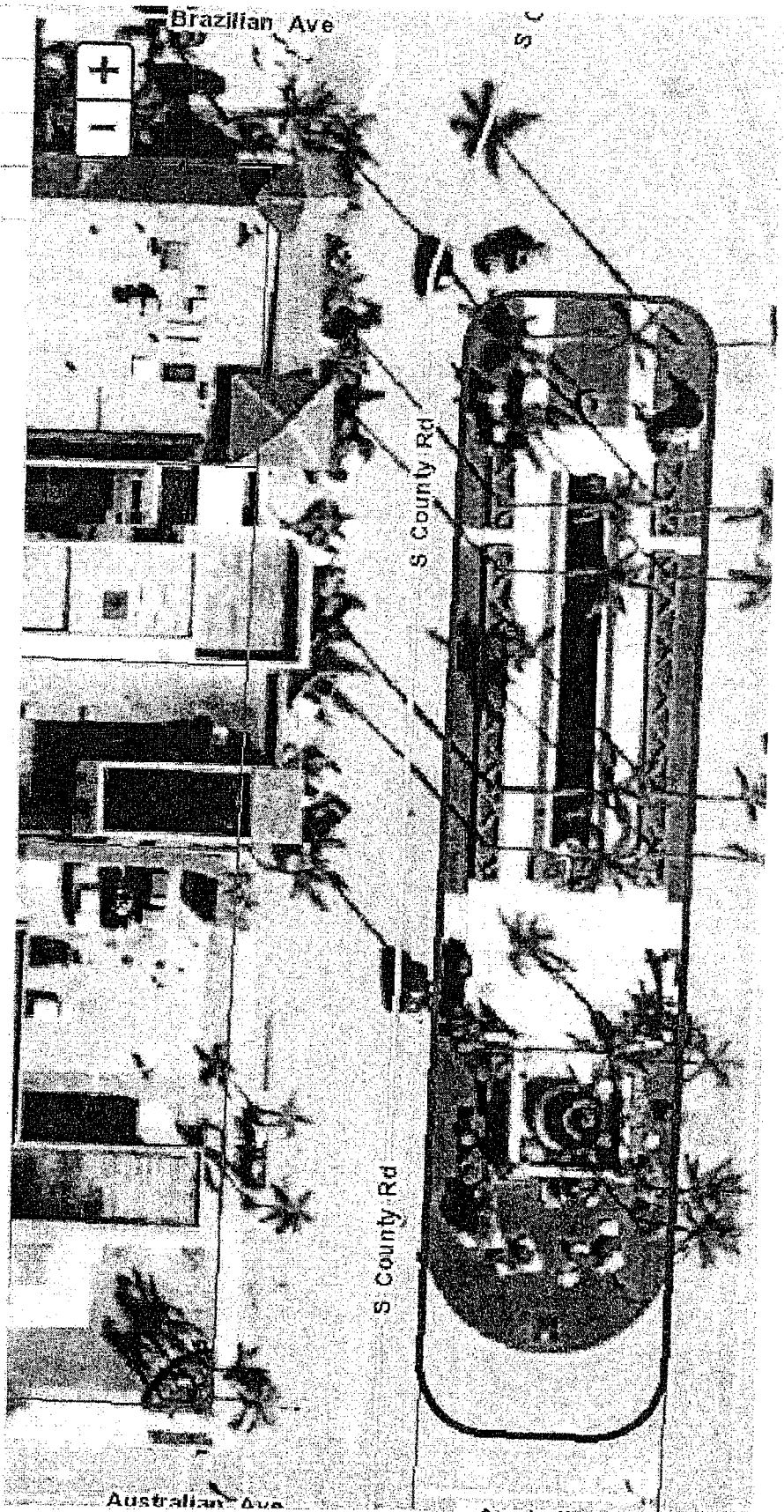
# Exhibit 1

Search

Tools

Layers

Print





Gary R. Ni  
**Property Appr**  
Palm Bea

Search

Search Results Detail

View Property Record

**Owners**

PALM BEACH TOWN OF

**Property detail**

Location 360 S COUNTY RD

Municipality PALM BEACH

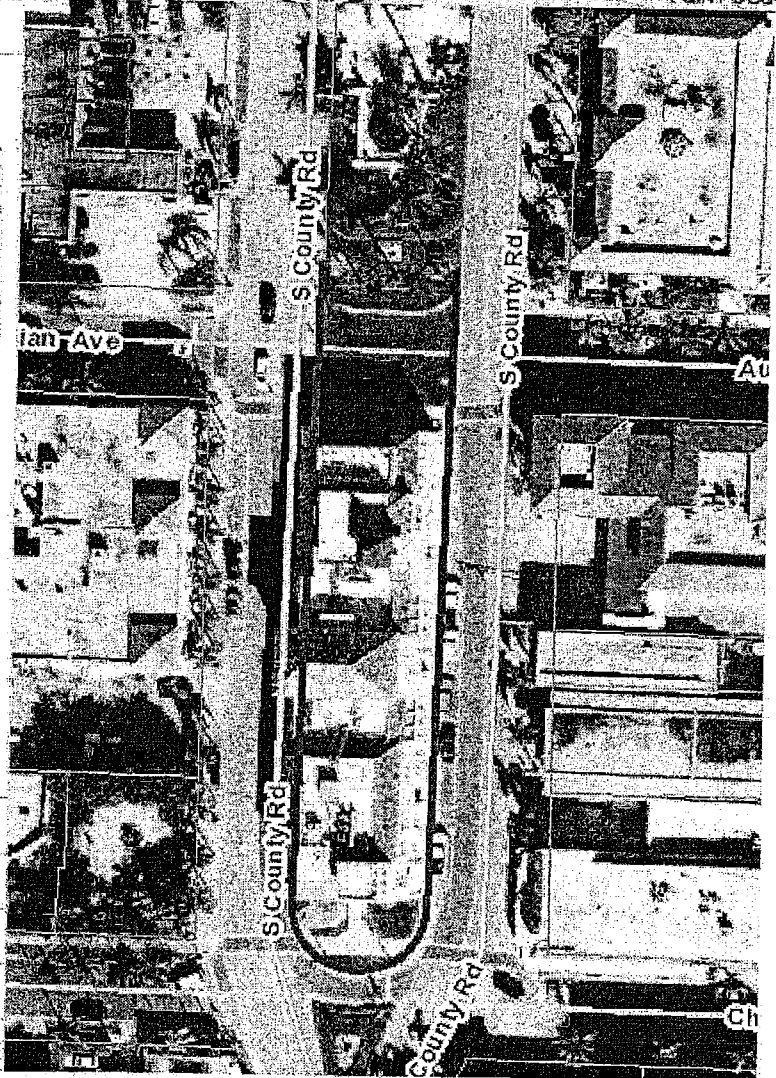
Parcel No. 50434323050200030

Subdivision ROYAL PARK ADD TO P B  
IN

Book Page

Sale Date

PO BOX 2029



Tools

Layers

Print

Messages

Instructional Videos

# Exhibit 3

Search

Search Results Detail

[View Property Record](#)

## Owners

PALM BEACH TOWN OF

## Property detail

Location	COUNTY RD
Municipality	PALM BEACH
Parcel No.	50434323050200040
Subdivision	ROYAL PARK ADD TO P B IN
Book	Page
Sale Date	
Mailing Address	PO BOX 2029 PALM BEACH FL 33480 2029

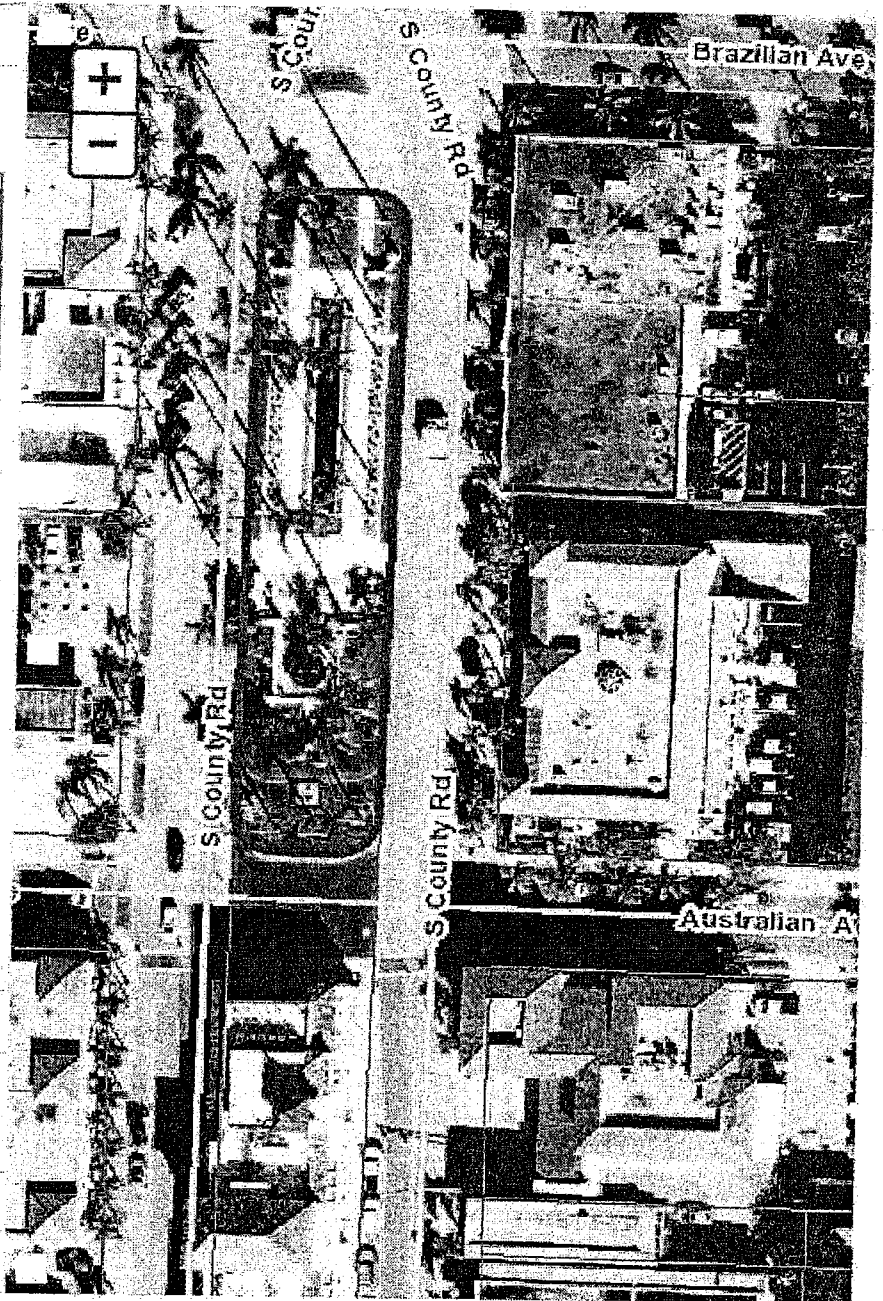
Tools

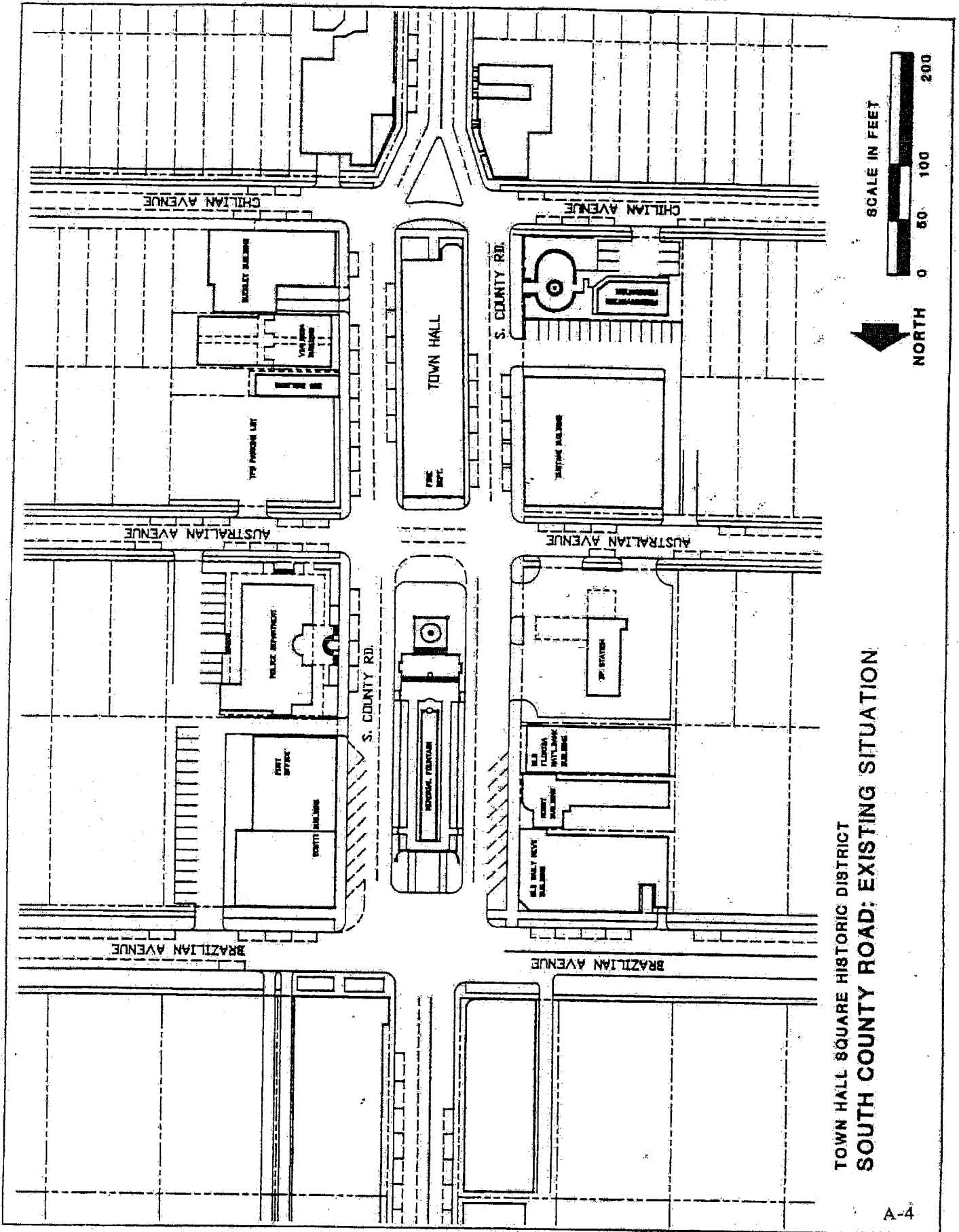
Layers

Print

Messages

Instructional Videos





TOWN HALL SQUARE HISTORIC DISTRICT  
SOUTH COUNTY ROAD; EXISTING SITUATION

**Exhibit 5****Sec. 1.03. Sale of Property; Referendum Required.**

Any disposition of certain town owned, open green spaces designated herein and located within the corporate limits of the Town of Palm Beach, any improvement of same by way of placing structures thereon, and any lease of said real property by the Town as lessor for a period exceeding five (5) years shall require approval by vote of the Town electors in a referendum election called and held as provided by law. No referendum election held for such purpose shall be between the first day of April and the fifteenth day of December of any year.

The properties to which this provision shall apply are referred to herein by their common names as:

1. Palmo Way Nursery
2. Boyd Park
3. Par 3 Golf Course
4. Lake Drive Park (near docks)
5. Bradley Park
6. Phipps Ocean Park
7. Park Avenue Park
8. Tangier Parks (3)
9. Memorial Park
10. Seaview Park

The full legal description of said properties are a matter of record with the Clerk of the Circuit Court of Palm Beach County and said legal descriptions are hereby incorporated into the terms of this Section 1.03.

The power to dispose of property shall embrace sale, exchange, lease, mortgage, pledge, or other encumbrance of real property; and also abandonment, or gift to charity of real property officially determined to be of no further use to the Town and of nominal sale value or no value.

Improvements shall include the construction of above ground structures which diminish open green space, but shall not include nor is this Section intended to preclude the construction of public utility structures deemed necessary by the Town, underground utility structures including but not limited to water mains, sewer lines, stormwater drainage and other utilities. Neither shall this Section preclude the construction of structures deemed necessary by the Town for public recreational purposes on those properties described herein on which public recreational structures existed as of 12:01 a.m., February 9, 2000.

In addition to the properties listed above, there is hereby included an additional property described below, to which all of the provisions of this Section shall apply except, however, the Town Council shall not be precluded by way of these Charter provisions from providing surface parking on said property described herein in the event the Town Council determines to locate parking on said property at any time in its discretion. The property to which this provision applies is described as: 2125 South Ocean Boulevard (Tract 1 and Tract 2, Lot 120, Palm Beach Estates).

(Ord. No. 4-84, § 1, 6-12-84; Ord. No. 18-87, § 1, 12-8-87; Ord. No. 18-99, § 1, 12-14-99)

**John C. Randolph**  
*Attorney*  
561-650-0458  
Fax: 561-650-5300  
jrandolph@jonesfoster.com

December 30, 2014

Jay Boodheshwar  
Town of Palm Beach  
Post Office Box 2029  
Palm Beach, Florida 33480

Re: Town of Palm Beach  
Memorial Park – Restrictive Covenants

Dear Jay:

Enclosed please find the original Restrictive Covenants, relating to the restoration of Addison Mizner's Memorial Fountain, Grant Number SC517, which was recorded in the public records of Palm Beach County, Florida, on December 15, 2014, in Official Record Book 27220, Page 663.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.



John C. Randolph  
JCR/ssm  
Enclosure

p:\docs\13156\00008\tr\1156487 docx

RECORD AND RETURN TO:

John C. Randolph, Esquire  
Jones, Foster, Johnston & Stubbs, P.A.  
Post Office Box 3475, WPB, FL, 33402-3475  
WILL CALL #85



CFN 20140461699  
OR BK 27220 PG 0663  
RECORDED 12/15/2014 15:35:18  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 0663 - 667; (5pgs)

PREPARED BY: Grant Gelhardt  
Florida Department of State  
Bureau of Historic Preservation  
500 South Bronough Street  
Tallahassee, FL 32399

1 of 2

**RESTRICTIVE COVENANTS**

**Project Name: Restoration of Addison Mizner's Memorial Fountain**  
**Grant Number: SC517**

THESE COVENANTS are entered into this 8<sup>th</sup> day of December, 2014, by the Town of Palm Beach, hereinafter referred to as the Owner, and shall be effective for a period of ten years from the date of recordation by the Clerk of the Circuit Court of Palm Beach County, Florida

WHEREAS, the Owner is the fee simple titleholder of the Property located at Memorial Park, South County Road, Palm Beach, Palm Beach County, Florida, as described in Exhibit A, attached to and made a part hereof and

WHEREAS, the Owner is a grant recipient and is to receive State Historic Preservation Grant assistance funds administered by the State of Florida, Department of State, Division of Historical Resources, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, hereinafter referred to as the Department, in the amount of \$350,000, to be used for the preservation of the property of the Owner as described in Exhibit A, and

WHEREAS, said State funds have been or will be expended for the purpose of preserving the historic qualities of the property or contributing to the historic character of the district in which the property is located,

Now THEREFORE, as part of the consideration for the State grant, the Owner hereby make and declare the following restrictive covenants which shall run with the title to said Property and be binding on the Owner and its successors in interest, if any, for a period stated in the preamble above:

1. The Owner agree to maintain the property in accordance with good preservation practices and the Secretary of the Interior's Standards for Rehabilitation.
2. The Owner agree that no modifications will be made to the Property, other than routine repairs and maintenance, without advance review and approval of the plans and specifications by the Department's Bureau of Historic Preservation
3. The Owner agree that every effort will be made to design any modifications to the Property in a manner consistent with the Secretary of the Interior's Standards for Rehabilitation.
4. The Owner agree that the Department, its agents and its designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether the conditions of the Grant Award Agreement and these covenants are being observed
5. The Owner agree that these restrictions shall encumber the property for a period of ten years from the date of recordation, and that if the restrictions are violated within the ten year period, the Department shall be entitled to liquidated damages pursuant to the following schedule:
  - a. If the violation occurs within the first five years of the effective date of these covenants, the Department shall be entitled to return of the entire grant amount.
  - b. If the violation occurs after the first five years, the Department shall be entitled to return of the entire grant amount, less 10% for each year past the first five. For instance, if the violation occurs after the sixth anniversary of the effective date of these covenants, but prior to the seventh anniversary, the Department shall be entitled to return of 80% of the original grant amount
6. The Owner agrees to file these covenants with the Clerk of the Circuit Court of Palm Beach County, Florida, and shall pay any and all expenses associated with their filing and recording
7. The Owner agree that the Department shall incur no tax liability as a result of these restrictive covenants.



IN WITNESS WHEREOF, the Owner has read these Restrictive Covenants and has hereto affixed their signature

WITNESSES:

Ceryl Klean  
Witness Signature

Ceryl Klean  
Witness Name Typed/Printed

Anne Bayles  
Witness Signature

Anne Bayles  
Witness Name Typed/Printed

Peter B. Elwell  
OWNER  
PETER B. ELWELL  
TOWN MANAGER  
360 South County Road  
Owner's Address

Palm Beach, Florida 33480  
City State Zip

The State of Florida  
County of PALM BEACH

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that PETER B. ELWELL personally  
(Name)

appeared as TOWN MANAGER for TOWN OF PALM BEACH  
(Officer) (Name of Corporation/Partnership)

known to me to be or who proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

Executed and sealed by me at PALM BEACH Florida on 9th DECEMBER 200 2014

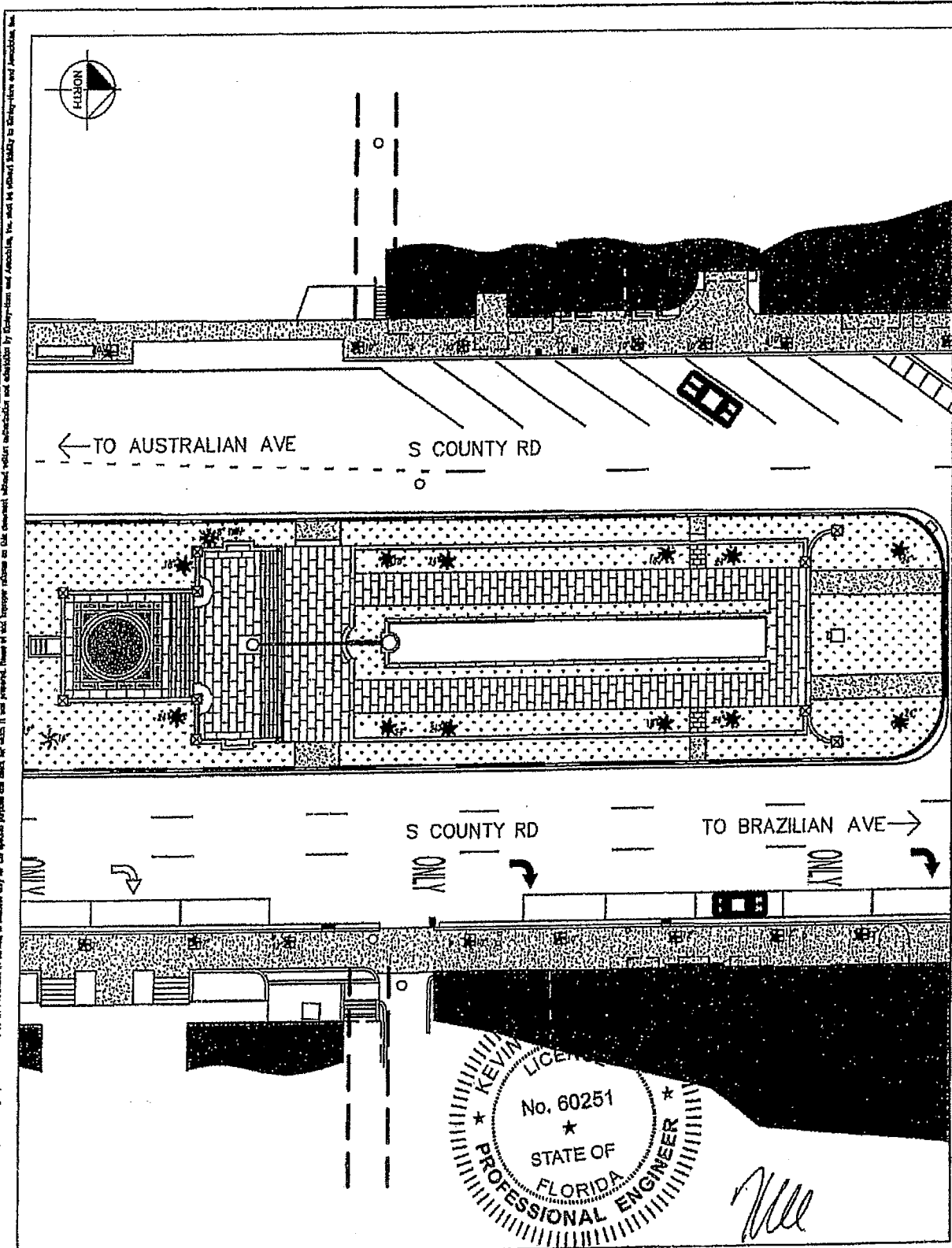
Patricia Gayle-Gordon  
Notary Public in and for

The State of FLORIDA

My commission expires: \_\_\_\_\_



[SEAL]



Drawing name: K:\VPP\_Civ\044053154 - Town Hall Square\Grant Information\2014\_0910\_Grn\Unl\asplan.dwg 01 Sep 19, 2014 1:05pm by: Brett Johnson  
 This document, together with the concept and design presented herein, is to be used for the specific purpose and subject matter only. It is not to be used for any other purpose without the written consent of Kimley-Horn and Associates, Inc. and shall be subject to the terms and conditions of the contract.

SCALE	NTS
DESIGNED BY	
DRAWN BY	
CHECKED BY	

**Kimley»Horn**

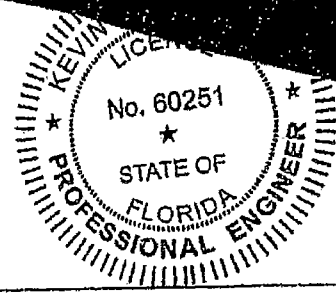
© 2014 KIMLEY-HORN AND ASSOCIATES, INC.  
 1920 MOWA WAY SUITE 200, WEST PALM BEACH, FL 33411  
 PHONE (561) 846-0663 FAX (561) 863-8176  
 WWW.KIMLEY-HORN.COM CA 0000648

09/19/2014
PROJECT NO. 044083152

MIZNER FOUNTAIN  
 SPECIAL CATEGORY GRANT  
 PROJECT AREA

DESIGN DIRECTOR KEVIN W. SCHANEN, P.E.
FLORIDA P.E. LICENSE NUMBER 60251
DATE: 9.19.14

SHEET NUMBER 1
-------------------



**SKETCH & DESCRIPTION FOR:  
TOWN HALL SQUARE FOUNTAIN**

LYING WITHIN THE RIGHT-OF-WAY OF SOUTH COUNTY ROAD  
REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA (PLAT BOOK 4, PAGE 1, P.B.C.R.)  
TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA

**LAND DESCRIPTION:**

A portion of land lying within the right-of-way of South County Road, also know as Poinciana Drive, as shown on the REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA, according to the Plat thereof as recorded in Plat Book 4, Page 1 of the Public Records of Palm Beach County, Florida, described as follows:

COMMENCE at the northeast corner of Block "G", of said REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA; thence S01°07'12"W, along the east line of said Block "G", 224.03 feet; thence S89°01'38"E, 68.83 feet to the POINT OF BEGINNING; thence S89°01'38"E, 22.04 feet; thence S01°09'03"W, 22.02 feet; thence N89°01'38"W, 22.04 feet; thence N01°09'03"E, 22.02 feet to the POINT OF BEGINNING, the preceding four courses and distances being along the grout line of an existing fountain.

Said lands situate and being in Palm Beach County, Florida, containing 485 square feet, more or less.

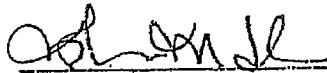
**SURVEYOR'S NOTES:**

1. Reproductions of this Sketch are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor.
3. The land description shown hereon was prepared by the Surveyor.
4. Bearings shown hereon are assumed based on the east line of Block "G", REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA, having a bearing of S01°07'12"W.
5. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
6. Abbreviation Legend: L.B. = Licensed Business; (P) = Per plat of record; P.O.B. = Point of Beginning; P.O.C. = Point of Commencement; P.S.M. = Professional Surveyor & Mapper; R/W = Right-of-Way.

**CERTIFICATION:**

I HEREBY CERTIFY that the attached Sketch and Description of the hereon described property is true and correct to the best of my knowledge and belief as prepared under my direction. I FURTHER CERTIFY that this Sketch and Description meets the Standards of Practice set forth in Chapter 5J-17.050 through 5J-17.052, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Date: 9/16/14

  
MARISHA M. KREITMAN, P.S.M.  
Florida Registration No. 6555  
AVIROM & ASSOCIATES, INC.  
L.B. No. 3300

REVISIONS

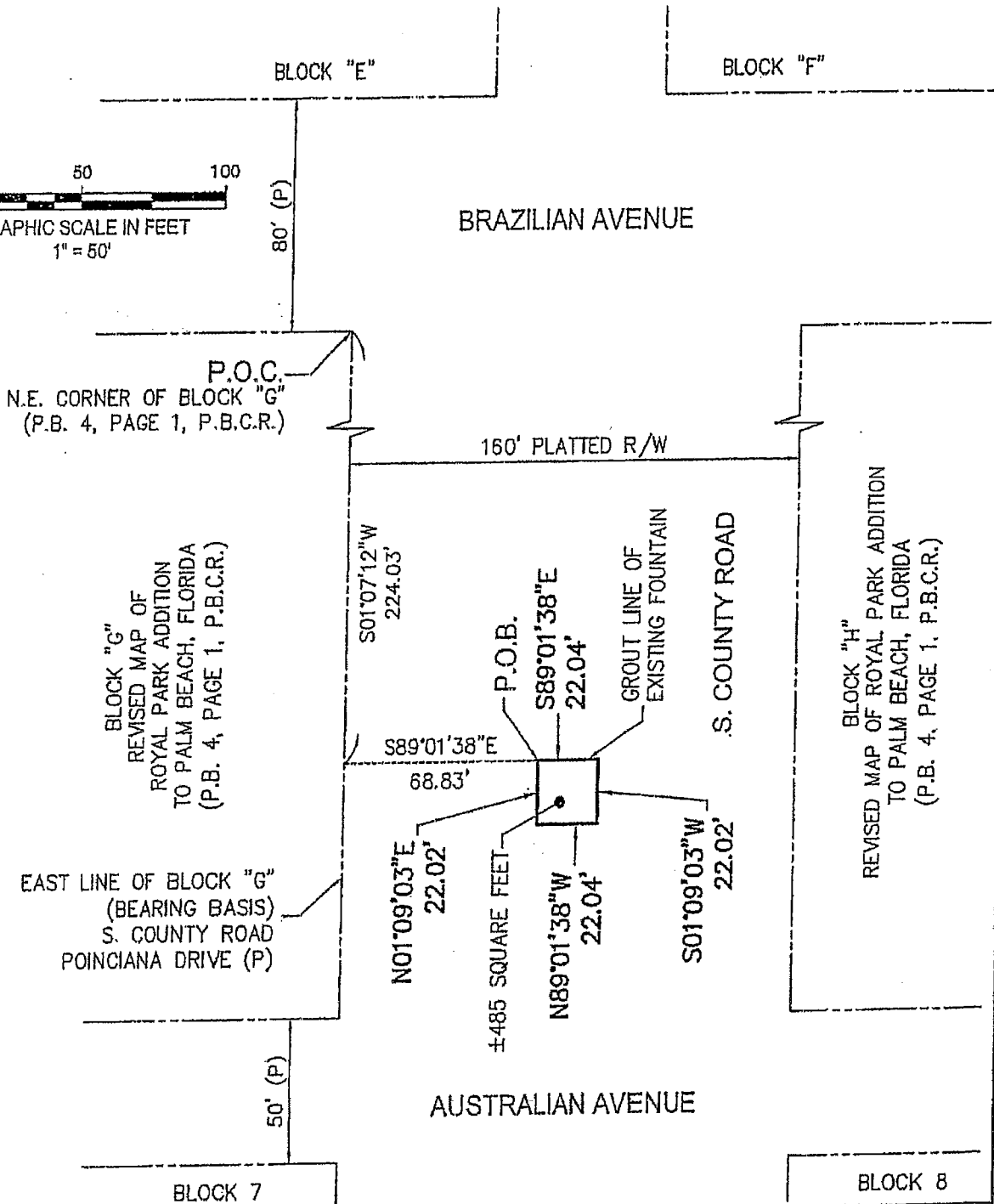
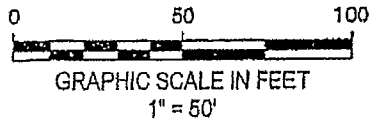


**AVIROM & ASSOCIATES, INC.**  
**SURVEYING & MAPPING**  
50 S.W. 2ND AVENUE, SUITE 102  
BOCA RATON, FLORIDA 33432  
TEL. (561) 392-2594, FAX (561) 394-7125  
www.AVIROM-SURVEY.com  
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JOB #:	9660-1
SCALE:	1" = 50'
DATE:	09/16/2014
BY:	M.M.K.
CHECKED:	
F.B.	N/A PG. N/A
SHEET	1 OF 2

SKETCH & DESCRIPTION FOR:  
**TOWN HALL SQUARE FOUNTAIN**

LYING WITHIN THE RIGHT-OF-WAY OF SOUTH COUNTY ROAD  
 REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA (PLAT BOOK 4, PAGE 1, P.B.C.R.)  
 TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA



REVISIONS



**AVIROM & ASSOCIATES, INC.**  
**SURVEYING & MAPPING**  
 60 S.W. 2ND AVENUE, SUITE 102  
 BOCA RATON, FLORIDA 33432  
 TEL. (561) 392-2594, FAX (561) 394-7125  
 www.AVIROM-SURVEY.com  
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JOB #:	9660-1
SCALE:	1" = 50'
DATE:	09/16/2014
BY:	M.M.K.
CHECKED:	
F.B.	N/A PG. N/A
SHEET	2 OF 2

**John C. Randolph, Esquire**

Direct Dial: 561-650-0458

Direct Fax: 561-650-0435

E-Mail: [jrandolph@jones-foster.com](mailto:jrandolph@jones-foster.com)

## **Via Email**

Kirk Blouin, Town Manager  
Town of Palm Beach  
345 South County Road  
Palm Beach, Florida 33480-4443

Dear Kirk:

In regard to the issue of adding stairs in Memorial Fountain Park, which was raised at the last Town Council Meeting, I am providing, for your information and the information of the Mayor and Town Council, certain memoranda relating to this issue so that the Mayor and Town Council can be advised as to the historical context relating to the matter of the stairs. This information includes my letters of November 5 and October 7, 2014 addressed to Peter Elwell, William Cooley's email to me and to Peter dated October 24, 2014 and, finally, my letter to Jay Boodheshwar dated December 30, 2014 attaching the restrictive covenants relating to Addison Mizner's Memorial Fountain, Grant No: SC517.

In regard to these restrictive covenants it should be specifically noted that the Town has agreed that no modifications will be made to the property other than routine repairs and maintenance without advance review and approval of the plans and specifications by the Department's Bureau of Historic Preservation. These restrictions shall encumber the property for a period of ten years from the date of recordation of the restrictive covenants and if the restrictions are violated within the ten year period, the Department shall be entitled to liquidated damages. If the violation occurs within the first five years of the effective date of the covenants, the Department shall be entitled to the return of the entire grant amount.

I bring these documents to your attention and to the attention of the Mayor and Town Council in order that you and they can be fully informed in regard to this matter going forward.

July 19, 2018  
Page 2

Please do not hesitate to contact me if you have any comments or questions.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.



John C. Randolph  
JCR/of  
Enclosures

cc: Jay Boodheshwar

P:\DOCS\13156\00008\LTR\1AR9599.DOC



MRS. JOHN R DONNELL  
1690 SOUTH OCEAN BOULEVARD  
PALM BEACH, FLORIDA 33480

November 13, 2018

Dear Town Council Members,

I have learned that the Town Council is planning on discussing/voting upon adding Parallel Parking along the north end of Memorial Park, and adding steps to the fountain. Both of these agenda items are not in line with what is best for the residents of Palm Beach, your constituents.

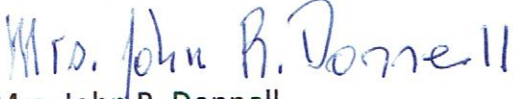
The traffic flow at the North End of Memorial Park is already confusing and dangerous. Vehicles cut others off every day to get into the proper lane they need, cars swerve around already to avoid opening car doors on parallel parked cars and pedestrians. Adding parking there is a recipe for disaster as well as a liability for the Town. Backups already occur there, but taking away one of the traffic lanes is going to exacerbate the problem. Those waiting for Valet parking for Café L'Europe will create backups every evening, people attempting to parallel park will create backups when those behind them don't realize that is what the car in front of them is planning. Memorial Park was recently updated and having a row of automobiles parked all along the Park boundaries takes away from the beauty and ambiance of the park. In addition, the costs for this project are taking away monies from other areas that the town could better utilize it. Taxes here are high enough without having the Town undertake unnecessary projects that residents do not want or need, such as this, stairs on the fountain at Memorial Park, a recreation center that will be serving more people that do not live on Palm Beach than those of us that do, and undergrounding utilities in a flood plain where replacement and repair will be needed long before the project is even paid for.

Additionally, the potential for accidents and injuries creates unnecessary liability for the Town. This is true in adding the parking spaces at the north end of the park as well as steps on the fountain. Homeless people have been seen in town more and more frequently and having steps in the park creates a danger to those traversing the steps as well as lawsuits from those that can easily fall on the steps or even from those who claim the steps are unfair because they are not accessible to all. Is this the path that the Town wants to take, potentially creating more lawsuits that taxpayers will have to cover the cost of. So much has been

changing in Palm Beach in recent years and many of it is not for the betterment of those that live here. Too much priority is put upon tour busses, and accommodating people who are not residents.

I would implore the Town Council to not undertake yet another unnecessary project. Our small town is changing every day, and not for the better. I vehemently object to parallel parking spaces to the north end of Memorial as well as adding steps to the fountain.

Sincerely,

  
Mrs. John R. Donnell



**From:** [Anne Pepper](#)  
**To:** [Kelly Churney](#)  
**Subject:** Please forward to Landmarks Preservation Commission members  
**Date:** Thursday, June 06, 2019 2:34:48 PM  
**Attachments:** [image11.png](#)  
[image31.png](#)  
[image51.png](#)  
[image31.png](#)

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Dear Landmarks Commission,

In the dog days of summer when residents are not around, Bill Bone and possibly others, are once again, trying to destroy one of our most cherished landmarks, the Mizner Fountain At Memorial Park. I do not know if LPC is aware of this activity as I only learned of it yesterday. I am attaching the letters from the State Historic Preservation Officer stating yet again that the addition of these stairs is a fundamental change to a National Register Landmark that would adversely affect its status. These are replies to letters sent by our Town's Planning and Zoning Director at whose behest I do not know. May 2, 2019 is the first response to Josh Martin. There was a 2nd letter by Martin to which the State responded on May 21, 2019. I know LPC is not concerned with money, but I can assure you the residents are. We do not wish to have this monument desecrated or de-landmarked to satisfy someone's ego. Nor do we wish to repay \$700,000.

I beg every one of you to read these letters carefully, think about what the Fountain means to the Town and attend the June 11, 2019 Town Council meeting to defend our landmarked sites. If you are out of town, please write the Council.

Thank you for your time and efforts to keep Palm Beach beautiful and historic,

Anne Pepper  
333 Seaspray Ave

May 2, 2019

Josh Martin, Director  
Planning, Zoning, Building  
Town of Palm Beach  
360 S. County Road  
Palm Beach, FL 33480

Dear Mr. Martin,

The Florida Division of Historical Resources (DHR) reviewed your April 8, 2019 submittal requesting a restrictive covenants review related to the addition of a grand staircase on the back side of the fountain within the historic 1929 Memorial Fountain Park designed by famed local architect Addison Mizner. This is not the first request for review of a grand staircase in this location, and it was denied previously (see letter dated April 3, 2014).

The restrictive covenants on this property result from two historic preservation grant awards from DHR, their execution being a requirement of each grant award. Grant SC517 in the amount of \$350,000 was awarded in state fiscal year 2014 to assist with restoration of the fountain within the park, and grant MP512 in the amount of \$350,000 was awarded in state fiscal year 2015 to assist with restoration of the plaza. Total grant funding for the two projects totaled \$700,000.

The covenants run for a 10-year period from the date of recording with the appropriate County Clerk's office. These covenants are transferrable should ownership of the property transfer to a new owner. The restrictive covenant for grant SC517 was recorded and stamped by the Palm Beach County Clerk's office on December 15, 2014 and will expire on December 14, 2024. The restrictive covenant for grant MP512 was recorded and stamped by the Palm Beach County Clerk's office on August 27, 2015, and will expire on August 26, 2025 (see enclosed copies). If the covenant is violated within the first five years it is in effect, the grantee is responsible

for repayment of the entire grant amount. Beyond five years, the amount owed for a violation of the covenants decreases by 20% each year until the covenant expires. Both covenants are within the first five years since recording.

Our review of the submitted materials finds that the proposed plan would constitute an "adverse effect" to this National Register listed property. Furthermore, the proposed plans are inconsistent with the Secretary of the Interior's Standards for Preservation. The stairs as proposed would require removal of historic fabric from

**Division of Historical Resources**  
**R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399**  
**850.245.6300 • 850.245.6436 (Fax) • FLHeritage.com**



Mr. Martin  
Page 2

the park and create a false impression of the Mizner design. The main focal point of the park would be irreversibly altered. As such, if carried out the proposed plan would constitute a violation of the restrictive covenants.

We compliment the work accomplished thus far on Memorial Fountain Park, and we hope that you will choose to preserve the current layout without the grand staircase. Since we are still within the first five years of both covenants, if the Town of Palm Beach demolishes the original fabric of the park to build the stairs according to the plans submitted (or similar), DHR will pursue recapture of the \$700,000 in funds awarded per grants SC517 and MP512.

If you have questions or need clarification, please contact Alissa Lotane at [Alissa.Lotane@dos.myflorida.com](mailto:Alissa.Lotane@dos.myflorida.com) or 850.245.6345.

Sincerely,

A handwritten signature in blue ink, appearing to read "T. Parsons". The signature is stylized and includes a large, sweeping flourish at the end.

Timothy A. Parsons, Ph.D.  
Director, Division of Historical Resources &  
State Historic Preservation Officer

**From:** [Parsons, Timothy A.](#)  
**To:** [Joshua Martin](#)  
**Cc:** [Lotane, Alissa Slade](#); [Kirk Blouin](#); [Jay Boodheshwar](#); [Nina Toscano](#); [Liko, Sarah M.](#)  
**Subject:** RE: Town Of Palm Beach Memorial Park Fountain Stairs Reconsideration  
**Date:** Tuesday, May 21, 2019 9:57:20 AM

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Good morning Mr. Martin,

Thank you for your letter. I am of course happy to have a meeting with you here in Tallahassee, but I want to be up-front about expectations. Our staff has reviewed this request multiple times, each time with an open mind. Ultimately, the same conclusion has been reach with my consideration of and concurrence with their assessment.

This is a matter where the Secretary of the Interior's standards intersect with two restrictive covenants. The proposed staircase is a fundamental architectural change to a National Register listed property, and would constitute an "adverse effect" under any review criteria, and based on the information that I've reviewed several times I do not believe that the plan is consistent with the standard that you site in your letter. That said, if you'd like to discuss the plans with me in more detail we can either schedule a conference call or meet in person. I am always willing to take a fresh look at a proposal. Please coordinate with Dr. Sarah Liko on a potential meeting time in the next few weeks (Sarah is copied on this email).

Best,  
Tim

**Timothy A. Parsons, Ph.D.**

Division Director | State Historic Preservation Officer

Division of Historical Resources | Florida Department of State

500 South Bronough Street | Tallahassee, Florida 32399

Office: 850.245.6306 | Mobile: 850.519.4373 | [dos.myflorida.com/historical](https://dos.myflorida.com/historical)

**From:** [Cheryl Kleen](#) on behalf of [Town Council](#)  
**To:** [Bobbie Lindsay](#); [Danielle Hickox Moore](#); [Gail Coniglio](#); [Julie Araskog](#); [Lew Crampton](#); [Margaret Zeidman](#)  
**Cc:** [Jay Boodheshwar](#); [Kelly Churney](#); [Public Comment](#)  
**Subject:** FW: Memorial Park stairs and Bradley House Hotel-  
**Date:** Wednesday, November 14, 2018 5:24:46 PM

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-----Original Message-----

From: Anne Pepper <annepepper@mac.com>  
Sent: Wednesday, November 14, 2018 4:50 PM  
To: Town Council <TCouncil@TownofPalmBeach.com>; Gail Coniglio <GConiglio@TownofPalmBeach.com>; John Lindgren <JLindgren@TownofPalmBeach.com>; Kirk Blouin <KBlouin@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>  
Subject: Memorial Park stairs and Bradley House Hotel-

Please forward to Landmarks Preservation Commission:

Dear Landmarks Commission,

Having attended today's Council meeting where the above Landmarks were discussed, I was remiss in not asking why the design of the park at the back of the fountain was so disparate and unrelated in design to the Memorial Fountain area? The iron railing and the pleached oaks look like Paris whereas the Fountain area is Mediterranean and speaks to its place in Palm Beach. It is curious that the park at the back was not designed in the first place to be more harmonious with the historic fountain area. It appears it was designed to be separate and in its separateness would require something to unify it. Is there another way..remove the railings, let the trees take a more natural form, add some colorful plantings? The railing enclosure functions also as a fence and keeps the areas apart and is uninviting.

The stairs at 12' wide with 2 sets of steps going down the side make a very large piece of construction. Could that be modified and made less monolithic? A less large construction which doesn't compete with the fountain might pass the State' preservation board more easily.

Bradley House renovation is great and will be a welcome sight for all.. Everything but the courtyard and the shape of the 15'x15' pool. Cutting the courtyard off from the neighborhood with a high hedge and wall destroys the courtyard feeling that we all love which is inviting and very Palm Beach. Wouldn't the pool look better in a shape that is more Mediterranean - like a quatrefoil or a longer thin, pool that, like the Memorial Fountain is related to the architecture of the building and the town?

Anne Pepper  
333 Seaspray Ave

Comments made by A. Seltzer

Town Council Meeting- 11/14/18 re ~~COA #045-2018~~  
Z-18-00144

What background information did you have to inform you as you casually agreed to again delegate to the Centennial Committee , a private entity , the ability to file an application on behalf of the Town for the construction of steps and added parking? You did this during the summer even though there's voluminous backup which put this issue to rest four years ago?

At last month's Landmarks meeting, Mr. Bone said the Civic Association, Garden Club and Preservation Foundation approved of the construction of the stairs and the parking because "they safely improve access" .

Mr. Bone also said "the Town is neutral". How can you possibly be neutral?

In 1929 Town Minutes, Mrs. McKintock, President of the Garden Club asked that the beautification of plots of ground be designated as gardens and not parks.

The 1929 Garden Club Plan specifically references traffic and safety issues around Town Hall and the Fountain area. "an element of traffic danger has been introduced. "

There are historical reasons why there has been no abutting parking.

pg.2

Much was made by Commission members in response to hearing that Mr. Sanchez and others were donating their time on this project.

Pro bono work is always laudable, but not for projects that shouldn't be implemented.

Were there documents that Landmarks Commissioners should have had in order to make a more informed decision, like Mr. Bendus' letter or the signed Covenant between the Town and the State?

What about the 2014 letter from Mizner scholar Caroline Seebom - ~~Author, "Boca Rocco: How Addison Mizner invented Florida's Gold Coast," published by Clarkson Potter, New York, 2001.~~

who wrote "To trash this last and most elegant public garden designed by Florida's most important (and nationally treasured) architect is an American tragedy. I would imagine that most people who know and love Palm Beach would feel the same way. Please rethink this plan.

and another from Christina Orr-Cahall who wrote ["As a Mizner scholar and the former director of the Norton Museum"] "With this fountain and park, Palm Beach has essentially the only public Mizner monument. Altering it to the degree proposed will ruin the intent of Mizner's

pg.3

architecture. The steps to the back of the fountain, the removal of the magnificent palms, and the parking adjacent to the original park would drastically change the space. Please honor the heritage of the town and its architectural legacy by discarding the proposed design."

These weren't made available to the Commissioners last month. Nor to you.

Landmarks did not discuss specific Secretary of Interiors standards, how would they affect the plan and adherence to it.

Is the Town Square/ fountain on the National Historic Register and will the addition of stairs affect the listing?

Are the steps ADA compliant? ADA compliance was promised in the grant proposal. No one noticed that an existing handicap space was no longer indicated as such on the new parking diagram.

Mr. Bone told Landmarks- don't worry about the State.

Does Section 1.03 of the Town Charter specifically prohibit the addition of stairs as an improvement to the Park? Is a referendum by the voters required to cover any green space.

pg 4

If the Town intends to breach the Covenant it signed with the State, is this in the best interests of the Town's welfare, *if* ~~because~~ we may have to give back the \$350,000? And what about the second \$350,000 the Town received?

There was consensus in 2014 that the shamefully neglected fountain needed to be repaired.

But the Town, as applicant, didn't comply with the same facial and procedural requirements demanded of other applicants. In addition, the project was over - volumized into a massive Public Works project. It's all in the historic record. Last month, LPC approved the stairs and parking.

Now a new application has been filed behind the scene it's déjà vu all over again. I strongly urge you to reject this application.



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On Friday, May 16, 2014 3:07 PM, "CDelp@TownofPalmBeach.com"  
<CDelp@TownofPalmBeach.com> wrote:

This email forwarding has been on hold until the new LPC was appointed. As such, I am forwarding it to you now.

Cindy M. Delp  
Office Manager  
Town of Palm Beach  
Planning Zoning & Building Dept.  
(561) 227-6408

----- Forwarded by Cindy Delp/PalmBeach on 05/16/2014 04:04 PM -----

From: John Lindgren/PalmBeach  
To: Cindy Delp/PalmBeach@PalmBeach  
Date: 04/09/2014 04:09 PM  
Subject: Fw: Mizner Fountain

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Cindy,  
Please forward to the next LPC members.  
John

John Lindgren, AICP  
Planning Administrator  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480  
phone: 561.227-6414  
fax: 561.835-4638  
e-mail: [jlindgren@townofpalmbeach.com](mailto:jlindgren@townofpalmbeach.com)

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the Town of Palm Beach officials and employees regarding public business are public records available to the public and media upon request. Under Florida law e-mail addresses are

PG

public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

Please consider the environment before printing this e-mail.

----- Forwarded by John Lindgren/PalmBeach on 04/09/2014 04:09 PM -----

From: tina cahall <tinacahall@gmail.com>  
To: JLindgren@TownofPalmBeach.com  
Cc: Christina Cahall <tinacahall@gmail.com>  
Date: 04/09/2014 02:35 PM  
Subject: Mizner Fountain

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Hi John,

**As a Mizner scholar and the former director of the Norton Museum as well as a former longtime resident of Palm Beach, I am writing to ask that you reconsider your renovation of the Mizner Fountain in the center of town. I was the curator of the Mizner exhibition which was held at the Norton, the Four Arts and the Flagler Museum in the mid-1970s. It is the only time those three museums have done a collaborative exhibition which speaks to the importance of Mizner both historically and artistically to the community and nationally. Over the three decades I was in Palm Beach I saw the loss of many Mizner homes to the detriment of Palm Beach's unique place in history. With this fountain and park, Palm Beach has essentially the only public Mizner monument. Altering it to the degree proposed will ruin the intent of Mizner's architecture. The steps to the back of the fountain, the removal of the magnificent palms, and the parking adjacent to the original park would drastically change the space. Please honor the heritage of the town and its architectural legacy by discarding the proposed design. If need be, a modified version which allowed additional green space in the newly acquired space behind the fountain, accessed in a completely different manner that did not invade the fountain area, and parking adjacent to that new green space, might be considered as a compromise without integral damage to the fountain and park. Thank you for your consideration. If you should have any questions please don't hesitate to contact me. Gratefully, Christina Orr-Cahall**

Forwarded message -----

From: **Caroline Seebohm** <carolinemem@gmail.com>  
Date: Tue, Jan 28, 2014 at 11:18 AM  
Subject: Mizner Memorial Park

**Sec. 1.03. - Sale of Property; Referendum Required.**

Any disposition of certain town owned, open green spaces designated herein and located within the corporate limits of the Town of Palm Beach, any improvement of same by way of placing structures thereon, and any lease of said real property by the Town as lessor for a period exceeding five (5) years shall require approval by vote of the Town electors in a referendum election called and held as provided by law. No referendum election held for such purpose shall be between the first day of April and the fifteenth day of December of any year.

The properties to which this provision shall apply are referred to herein by their common names as:

1. Palmo Way Nursery
2. Boyd Park
3. Par 3 Golf Course
4. Lake Drive Park (near docks)
5. Bradley Park
6. Phipps Ocean Park
7. Park Avenue Park
8. Tangier Parks (3)
9. Memorial Park
10. Seaview Park

The full legal description of said properties are a matter of record with the Clerk of the Circuit Court of Palm Beach County and said legal descriptions are hereby incorporated into the terms of this Section 1.03.

The power to dispose of property shall embrace sale, exchange, lease, mortgage, pledge, or other encumbrance of real property; and also abandonment, or gift to charity of real property officially determined to be of no further use to the Town and of nominal sale value or no value.

Improvements shall include the construction of above ground structures which diminish open green space, but shall not include nor is this Section intended to preclude the construction of public utility structures deemed necessary by the Town, underground utility structures including but not limited to water mains, sewer lines, storm water drainage and other utilities. Neither shall this Section preclude the construction of structures deemed necessary by the Town for public recreational purposes on those properties described herein on which public recreational structures existed as of 12:01 a.m., February 9, 2000.

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TOWN HALL, APRIL, 6, 1929.

A Special Meeting of the Town Council was held <sup>at</sup> 11 A.M. Saturday, April, 6, 1929. All of the Councilmen and the Mayor being present, a formal call was waived and President Owens called the meeting to order. Councilmen present, James M. Owens Jr., Louis D'Esterre, Oscar G. Davies, William Fremd, H.C. Woodruff, Mayor Warburton and Town Manager L. Trevette Lockwood.

After discussing the improvements contemplated, on motion Woodruff-D'Esterre the Town Manager was directed to communicate with Mr. W. DeWitt Vosbury with regard to the sewer work. This motion was duly carried.

On motion Davies-Woodruff the plans for the repair of the Ocean Boulevard from First street south of Gus' Bath to the first street south of Vita Serena was ordered. The Mayor suggested that Mr. Vanderbilt be advised of plans of the Council.

On motion Davies-Fremd the meeting adjourned.

Attest:

Edith Walker  
Town Clerk.

James M. Owens Jr.  
President Council.

TOWN HALL, APRIL, 8, 1929.

A meeting was held in the Town Hall at 11 A.M. April, 8, 1929. The purpose of the meeting was to meet Mr. Frost, Town Planner.

President Owens called the meeting to order. Councilmen present, James M. Owens Jr., Louis D'Esterre, Oscar G. Davies, William Fremd, H.C. Woodruff, Mayor Warburton, Town Manager L. Trevette Lockwood, representatives of the Garden Club, Zoning Commission and Art Jury; All met to officially meet and welcome Mr. Frost, Town Planner.

Through the generosity of the Garden Club this opportunity was made possible, and is something that the Town Council and Zoning Commission have considered a great necessity in carrying out their proposed improvement plan in the Town.

All of these organizations pledged their hearty support and co-operation to Mr. Frost and desired that he call upon them at any time for assistance.

Mr. Addison Wisner, who drew the plans for the Memorial Fountain, stated that the plan was especially drawn for the location just north of the Town Hall, and if used any where else it would have to be re-drawn or revamped, which he would be glad to do or if the Council wished to have another architect do the plans he would meet with his approval. Mr. Owens, for the Town Council, expressed the appreciation of Mr. Wisner's work and was opposed to anyone else doing the work. He also thanked the Garden Club for their interest in the plans for beautifying the Town of Palm Beach, and especially in providing the Town with an expert Planner.

Mrs. McKintock, President of the Garden Club, asked that Mr. Frost be unhampered in his plans, in any way, and that the criticism be done when the plans are formally presented to the Town and also that the beautification of plots of ground be designated as gardens and not parks.

On motion Davies-Woodruff the meeting adjourned.

Attest:

Edith Walker  
Town Clerk.

James M. Owens Jr.  
President Council.

TOWN HALL, April, 8, 1929.

Special Call meeting of the Town Council was held in the Town Hall, Monday, April, 8, at 5 P.M.

All of the Councilmen and the Mayor being present the formality of a call was waived and the President Mr. James M. Owens Jr. called the meeting to order. Councilmen present, James M. Owens Jr., Louis D'Esterre, Oscar G. Davies, William Fremd, H.C. Woodruff, Mayor Warburton Town Manager L. Trevette Lockwood.

After discussing the action of the Council of Saturday, relative to ordering plans for the repair and protection of the Ocean Boulevard from Gus' Bath to Vita Serena, it appeared to the Council that Mr. Harold Vanderbilt, who represented a large number of property owners in that locality, had left town, recently with the impression that there was still some time in which to present a proposition to the Town Council, suggesting the abandonment of that portion of the Ocean Boulevard.

The Mayor and Town Council desired to be perfectly fair with Mr. Vanderbilt and on motion Davies-Woodruff the action relative to the Ocean Boulevard of Saturday, April, 6th. was rescinded.

Mr. Owens expressed himself as being opposed to closing the boulevard and favored work being commenced at once, and finished, if possible this summer. Mr. Davies was also in favor of repairing the boulevard this summer.

would be purposeful. Street name signs, attached to lighting standards at the «near corner» where possible, are desirable. Cast aluminum, with raised letters and painted, are lasting.

Lighting standards where there are trees should be designed with the light extending beyond the curb into the roadway. The modern practice of selecting the material most adapted to its intended use suggests steel or wrought iron. Modern standards built with flat steel plates, laminated as indicated on the plan of Royal Palm Way, are suggested gradually to replace cast iron and concrete.

## PUBLIC BUILDINGS

### THE TOWN HALL

**B**ETWEEN Australian and Chilian Avenues the Town Hall is located upon a lot which divides the roadways of the County Road. Upon a similar plot in the block to the north a beautiful fountain has been erected. The effect of these improvements is a widening in the County Road for two blocks. In many ways the selection of the Town Hall site is unfortunate.

The principal criticism is that an element of traffic danger has been introduced. On the other hand, to purchase a new site and to build a new town hall would be costly.

The building is creditable and its situation is imposing. If therefore certain changes in the street arrangement can be brought about to increase traffic safety and to add to the beauty of the surroundings, such changes should be carefully considered.

*The plan recommended provides for widening along both sides of the Town Hall Plaza and encouraging the construction of sidewalk arcades between Brazilian and Chilian Avenues. It is proposed to establish new lines not parallel to the existing, but to have the maximum width between buildings at Australian Avenue. From this*

corner northward and southward the lines would converge slightly. The effect thus produced is somewhat informal and interesting, while the traffic difficulty is solved. Upon approaching the plaza, the facade of the arcaded buildings for an entire block would come into view.

The work may be done progressively. Unfortunately a building has recently been erected at the northeast corner of Australian Avenue and the County Road. But the balance of the plan easily may be carried out. The cost of this project is small as compared with the relocation of the Town Hall.

### THE POST OFFICE

Along the County Road there is another opportunity for architectural interest. This is between Main Street and the proposed boulevard a short block south of it. At the intersection of the boulevard with the County Road a plaza is suggested. Framing the north end of this plaza two buildings, one on each side of the County Road, would have imposing settings.

Either of these would be satisfactory as a site for the Post Office. The one not so used may be improved with a Library and community center.

And they should be built of similar materials of about equal mass, and otherwise should be in architectural harmony.

This corner is a convenient place for a Post Office, no more



SIDEWALKS NEED GREATER CONSIDERATION

I'm a long-time resident and Chairman Cooney and others among you know I've been a full-throated supporter of the landmarking program, your Commission, the importance of adherence to your Ordinance and the rule of law. Taking a quote from a science fiction movie, I come to you in peace and with goodwill.

There's almost nothing new about what happens in Town - much can be found in prior minutes. This includes voluminous material for 2014 regarding the request for stairs and parking which the Council ultimately rejected.

You have the material I submitted to the Council including letters received by staff in 2014 from two eminent Mizner scholars and text from the important 1929 Garden Club Plan. None of this was given to you last month even though it could have affected your deliberation by bolstering comments made by Chairman Cooney and others.

Another issue- I don't know the National Historic Register status of the property. Would stairs change the status or impact approval?

What is the obligation to provide ADA access via these \$ 500,000 stairs?

I do know the Town has known that approval of the stairs could trigger a referendum under Sec. 1.03 of the Town Charter. This was confirmed by Town Attorney Randolph at the Council meeting, as reported in Thursday's Shiny Sheet.

Did you ever see the letter sent to the Mayor and Town Council on April 3, 2014 by Robert Bendus, Director, Division of Florida Historical Resources and State Historic Preservation Officer who wrote that the "stair case would have an adverse effect on the historic fabric of the park and create a false impression of the Mizner design" and his recommendation that the stairs be eliminated? He also recommended the elimination of corresponding parallel parking. These concerns were ultimately heeded in 2014 but have now fallen on deaf ears. The expert advice and warnings seem to have been shrouded from your view as if in a fog of amnesia. What has changed in four years other than the fact that there is a new Council and new Commissioners.

With regard to the Agreements the Town signed with the State, it seems problematic for the Town to approve the stairs contrary to the grant and then ask for the State's approval and ruling.

Under the guidelines of your Ordinance, you have authority and you have responsibility and what you do has indelible, far reaching consequences. Please, be mindful of this as you deliberate today.

Finally, I didn't have time at Wednesday's Council meeting to offer a remedy for my concerns about the absence of historic material being given to them and you, but since we have a new Planning Zoning and Building Director, this is an ideal time for there to be a full review of the intake and notice process. And, to take steps to assure that you're given important background information so you can make a better, informed decision, especially when that material is already accessible within historic records.

I hope you'll consider discussing this during your final comments at the end of the meeting.





**FLORIDA DEPARTMENT OF STATE**

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 3, 2014

Peter Elwell, Town Manager  
Town of Palm Beach  
P.O. Box 2029  
Palm Beach, FL 33480

**Subject: Mizner Fountain Proposed Restoration Work**

Dear Mr. Elwell:

We have reviewed the November 20, 2012, report by Conservation Solutions outlining the issues and making recommendation for the restoration of the Mizner Fountain. We found that the recommendations outlined in the report are consistent with the intent of the proposed Historic Preservation Grant project and are consistent with the Secretary of the Interior's Rehabilitation Guidelines. We note that the conservation report you provided deals exclusively with the fountain and not with wall panels, benches or terrace floors. As long as the funds from the Historic Preservation Grant are used for the restoration of the fountain as outlined in the November 20, 2012, report, we see no problem with the proposed restoration work to the fountain.

The Division's preservation architects also reviewed the overall park development plan in light of a possible National Register Nomination. Our preservation architects and our National Register specialists concluded that in order to retain the historic integrity of the park and to allow it to be nominated to the National Register, the following changes to the current park design must be addressed:

**Stair Plan Concerns**

The proposed grand staircase would have an adverse effect on the historic fabric of the park and create a false impression of the Mizner design. The fountain terrace level was meant to be the raised terminus of this small park. Opening up the back wall of the fountain terrace wall would contradict the sight lines originally established by Mizner, creating a pass through design.

**Recommend:** Eliminate the proposed grand staircase from the plan. Provide access to both sides of the fountain plaza by way of proposed perimeter sidewalks. The perimeter sidewalks should extend no further than the plaza area between the first flight of the fountain steps and the reflecting pool.

**Perimeter Parking and Sidewalk Concerns**

The proposed plan would modify perimeter parking and sidewalks adjacent to the original Mizner design. Parked cars would block the views of the park to motorists and pedestrians.



Division of Historical Resources  
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399  
850.245.6300 • 850.245.6436 (Fax) flheritage.com  
Promoting Florida's History and Culture VivaFlorida.org



Mr. Peter Elwell, Town Manager  
Town of Palm Beach  
Mizner Fountain  
Page 2 of 2

*Recommend:* Eliminate the perimeter sidewalk and corresponding parallel parking around the majority of the original Mizner design. Maintain a connecting access between the original Mizner design and the new design by extending the proposed perimeter sidewalk northward from City Hall to the small plaza area in front of the first series of fountain steps. Maintain proposed parallel parking at areas extending from City Hall down to the pedestrian plaza in front of the fountain steps of the historic Mizner Fountain. Provide an extended curb adjacent to the first level of the fountain steps to define the extent of the proposed parallel parking.

Palm Tree Removal Concerns

The replacement of the royal palm trees with coconut palms will have an adverse impact on the historic integrity of the park. In addition, please consider that coconut palms might become a liability due to falling coconuts.

*Recommend:* Replace large royal palm trees with smaller in-kind species and the same number and configuration of royal palm trees, to maintain the historical accuracy of Mizner's design.

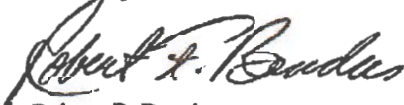
Kapok Tree Concerns

The root system for the large kapok trees will spread out and undermine the foundation of the fountain terrace system as well as any hardscape.

*Recommend:* Eliminate kapok trees to the east and west of the fountain. Leave the area east and west of the fountain to be a small entry plaza area accessible to the new steps and a perimeter sidewalk. Maintain a green strip at the base of the terminus wall (on the proposed new park side) to reflect the natural setting of the fountain terrace. We recommend using small oak trees for shade, as proposed in the new portion of the park.

Our staff is available to discuss any of these issues. If you have questions or would like to schedule a conference call, please contact Grant Gelhardt, Historic Preservation Grant Supervisor, at [Grant.Gelhardt@DOS.MyFlorida.com](mailto:Grant.Gelhardt@DOS.MyFlorida.com) or 850.245.6333. Thank you for your attention to this matter.

Sincerely,



Robert F. Bendus  
Director, Division of Historical Resources  
& State Historic Preservation Officer

ASL/hgg

pc: Gail Coniglio, Mayor, Town of Palm Beach  
Robert Bendus, Director, Division of Historical Resources & State Historic Preservation Officer  
Rick Gonzalez, AIA, REG Architects; and President, Florida Trust for Historic Preservation  
Orator Woodward

## John Lindgren

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**From:** Anne Pepper <annepepper@mac.com>  
**Sent:** Wednesday, November 14, 2018 4:50 PM  
**To:** Town Council; Gail Coniglio; John Lindgren; Kirk Blouin; Joshua Martin  
**Subject:** Memorial Park stairs and Bradley House Hotel-

Please forward to Landmarks Preservation Commission:

Dear Landmarks Commission,

Having attended today's Council meeting where the above Landmarks were discussed, I was remiss in not asking why the design of the park at the back of the fountain was so disparate and unrelated in design to the Memorial Fountain area? The iron railing and the pleached oaks look like Paris whereas the Fountain area is Mediterranean and speaks to its place in Palm Beach. It is curious that the park at the back was not designed in the first place to be more harmonious with the historic fountain area. It appears it was designed to be separate and in its separateness would require something to unify it. Is there another way..remove the railings, let the trees take a more natural form, add some colorful plantings? The railing enclosure functions also as a fence and keeps the areas apart and is uninviting.

The stairs at 12' wide with 2 sets of steps going down the side make a very large piece of construction. Could that be modified and made less monolithic? A less large construction which doesn't compete with the fountain might pass the State' preservation board more easily.

Bradley House renovation is great and will be a welcome sight for all.. Everything but the courtyard and the shape of the 15'x15' pool. Cutting the courtyard off from the neighborhood with a high hedge and wall destroys the courtyard feeling that we all love which is inviting and very Palm Beach. Wouldn't the pool look better in a shape that is more Mediterranean - like a quatrefoil or a longer thin, pool that, like the Memorial Fountain is related to the architecture of the building and the town?

Anne Pepper  
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