MINUTES OF THE TOWN COUNCIL MEETING HELD ON MARCH 14, 2000

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting of March 14, 2000, was called to order by President Jack McDonald at 9:30 a.m. in the Town Council Chambers. On roll call the following elected officials were found to be present: Mayor Lesly Smith, President Jack McDonald, President Pro-Tem Samuel McLendon, Councilman William Brooks, Councilman Norman Goldblum, and Councilman Allen Wyett. Also in attendance for all, or a portion of the meeting, were: Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Jane Skittone, Assistant Finance Director Cheryl Somers, Fire Marshal John Wandell, Fire Inspector Craig Olson, Fire Training Officer Jeff Bankston, Fire-Rescue EMS Captain Charles Price, Fire-Rescue Chief Vincent Elmore, Assistant Fire-Rescue Chief Kent Koelz, Human Resource Director William Crouse, Planning, Zoning & Building Director Robert Moore, Assistant Planning, Zoning & Building Director Veronica Close, Zoning Administrator Paul Castro, Planner/Project Coordinator Timothy Frank, Police Chief Frank Croft, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Town Engineer James Bowser, Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Leslie A. Shaw, Town Council Member - From 1994 to 2000

Mayor Smith presented Leslie A. Shaw with a plaque, recognizing his service as a member of the Town Council from 1994 to 2000.

B. Recognition of Ethel Kinsella, Architectural Commission - Member from 1995 to 2000, Alternate Member from 1994 to 1995

Mayor Smith presented Ethel Kinsella with a plaque, recognizing her service as a member of the Architectural Commission from 1994 to 2000.

C. Recognition of John T. Wandell, Fire Marshal, Fire-Rescue Department - 17 Years and 7 Months

Mayor Smith presented John Wandell with a ring, recognizing his service of 17 years and 7 months as Fire Marshal in the Fire-Rescue Department of the Town of Palm Beach.

IV. COMMENTS OF MAYOR LESLY S. SMITH

President Smith gave the following comments:

"While I will keep my remarks brief – shorter meetings was one of my dreams for the millennium – I do want to set the context for some of the critical issues we will be addressing today and in the next few weeks.

We have a new century, a new Council and a lot of new ideas ... all of which I applaud. It is this kind of vitality and flexibility that we need, as a governmental body, to meet the challenges before us. At the same time, many of the issues we face are, in fact, "old" ones – problems that recur, year after year, because circumstances change and because there is no "perfect" solution. So I would ask the Council's patience in understanding our history and weighing all of the relevant factors before making the important decisions we have before us.

That's one reason I have asked that Committee appointments be postponed until our next meeting – so that Council members can familiarize themselves with the role of Committee members and the track record of the nominees.

– There are some lingering questions that, while not on our agenda, deserve mention.

First, the question of whether or not Council members can, under Florida's Sunshine Law, participate in public forums and discuss Town issues is a critical one and warrants serious exploration. Apparently, my question at the workshop created a flap. My question was raised to clarify the issue not muddy the water, and I would think everyone in town would like a definite answer. We have asked Mr. Randolph to compile the legal opinions we have available. I have initiated conversations with elected officials in other municipalities – and County Commissioners – to get a sense of how this is handled elsewhere. I would urge the Council to refrain from issuing hip-pocket opinions and indulging their own preferences until we have a definitive legal perspective and reach consensus on this issue. It is too important to leave to individual serendipity.

– A brief update on our beach plan and the infamous erosion control line question. Some discussion was initiated informally in Tallahassee last week with a deputy director at the Florida Department of Environmental Protection (FDEP) and several state legislators. This is an issue I intend to pursue, at the direction of the Council, and I should have a progress report next month. Our first step is to get a reality check on whether it is actually possible to change the rules. When we get the answer to that question, we can proceed to make recommendations based on the needs of Palm Beach residents.

– Speaking of the State Legislature, one of my goals as Mayor is to foster close cooperation with not only our own legislative delegation, but with the leadership in Tallahassee who have a say about how our tax dollars are spent and the funds we receive for our projects. House Speaker Thrasher has set three priorities for this session: the second largest tax cut in Florida's history, including the next stage of repealing the intangibles tax; improving our education system, including higher education; and funding one of the largest transportation budgets in the country. Each of these issues has an impact upon those of us who live in Palm Beach and I want to make sure that we are, as they say, in the loop.

– In that same vein, today we are appointing our voting delegate to the League of Cities and I can't emphasize enough how productive that can be for us and our decision making process. Too often we try to reinvent the wheel because we don't know what other towns have done to solve similar problems. Those of us who have attended League workshops and conferences have learned a great deal and have contributed some of the ideas and systems that work for us. I know that whomever we appoint will take this assignment seriously and represent us well.

– Turning to some of the other issues on our agenda today, first let me comment on our exploration of a new framework for planning and zoning in the north end. As you know, we have scheduled a series of neighborhood workshops for public input – and I urge everyone who cares about our architectural legacy and our quality of life to come to Town Hall and voice an opinion. Today we take the first step away from a rigid formula approach by removing the question of size and cubic feet from Arcom's consideration of applications. By doing this, we leave a vacuum that MUST be filled with sensible guidelines that are fair to everyone. There has been a great deal of rhetoric on this issue ... the number of words has greatly exceeded our current cubic foot restrictions! My point is, the time has come to stop talking about what we don't like and move the dialogue to ideas that will work. Today, we made a good start.

– Finally, we are setting the calendar for our 2001 budget and I have a couple of comments related to our budget process. During our Town Council campaigns in January and February, I kept hearing the refrain, "We need long-range planning," as if we have had no long-range planning in the past. Nothing could be further from the truth. Our budget process is just one example of how Town government openly seeks input from citizens, objectively assesses budget needs and makes decisions based on past history and anticipation of future requirements. We have one change this year as part of our charter update approved by voters in February; our Town Manager will provide a written commentary on budget items, which will help both the Council and residents understand the content. We will be scheduling our budget workshops this spring and – as was accurately pointed out during the campaigns – last year there were more staff present at the workshops than citizens. This year, my hope is to reverse those numbers and I urge all of you to come and bring your friends and neighbors. The bottom line is, long-range planning is a three-part process; it requires rigorous preparation by staff and Council members, but too often the missing link is citizen input.

Okay, that's all I have to say – except to repeat to those of you who have joined us in the chambers today that I am grateful for your civic participation and, as the year moves on, I hope you will continue to call me personally when you have questions or comments. Thank you."

V. COMMENTS OF COUNCIL PRESIDENT JACK MCDONALD

President McDonald welcomed Councilmen Brooks and Goldblum as new members of the Town Council. He stated that one of his objectives this year was to shorten the length of the meetings; during the past five years there had been many 12-15 hour meetings that were in the end unfair to the applicants as well as the Town Council. He stated that he would adhere to the following procedure: to speak on a matter one must be recognized by the Chair; voting members would speak first, alternating on a side to side basis. First responses would be limited to one question or comment so that all members would have an equal first opportunity to address the matter. There was no requirement to speak. If a member wishes to make political or philosophical statements, they could be made under "Town Council Comments," not during discussion of a motion. He stated that "brevity is the soul of wit." He encouraged the President Pro-Tem to facilitate motions, and encouraged the Town Council to accomplish the following objectives this year: the resolution of the erosion control line and inlet litigation issues; implementation of the shore protection plan; establishing a planning commission that would encompass issues such as traffic and parking; developing a formal management plan with formal Town Manager performance evaluation; completing the last portion, the park portion, of the Boynton Landscape lot.

VI. APPROVAL OF THE AGENDA

The following changes were made to the Agenda:

DEFER Item XII. B. Other 1. - Royal Park Bridge Status Report by public Works Director Dusey to the April 11, 2000, Town Council Meeting.

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks to defer Item XII. B. 1 to the April 11, 2000, Town Council Meeting. On roll call the motion carried unanimously.

DEFER to a time certain of 3:30 p.m., March 14, 2000, Item XII. B. 2. a.,b., and c.

a. Cable TV System Franchise Renewal Process with Comcast Cable Communications, Inc. - Status Report by Assistant to the Town Manager Jakubiak

b. Cable Wiring of the Town's Par 3 Golf Course by Comcast Cable Communications, Inc.

c. Selection of Financial Consultant to Conduct Public Rights-of-Way Valuation Study

Motion made by Councilman Wyett, seconded by President Pro-Tem McLendon, to defer Item XII. B. 2. a., b., and c., to a time certain of 3:30 p.m., March 14, 2000. On roll call the motion carried unanimously.

DEFER Item XII. B. 3. - Request for Town Support for Proposed Palm Tree Lighting Beautification Project on South County Road by The Greater South County Road Association, Inc. - to the April 11, 2000, Town Council Meeting.

Motion made by Councilman Wyett, seconded by Councilman Brooks, to defer Item XII. B. 3. to the April 11, 2000, Town Council Meeting. On roll call the motion carried unanimously.

DEFER Item XII. B. 6. - Lake Worth Inlet Sand Transfer Plant Issues - Proposal to Expedite the United States Army Corps of Engineers' Design Phase by Contracting Lobbying Services of Applied Technology & Management and Rees Engineering & Environmental Services - to the May 9, 2000, Town Council Meeting.

Motion made by Councilman Wyett, seconded by Councilman Brooks, to defer Item XII. B. 6. to the May 9, 2000, Town Council Meeting. On roll call the motion carried unanimously.

MOVE to "Approved Agenda," Item XIII. D. 6. - County School Districts FY2000-2004 Five-Year Plan and FY 2000 Capital Budget Adopted September 1999 - Renovation to Palm Beach Public School.

Motion made by Councilman Wyett, seconded by Councilman Goldblum to move Item XIII. D. 6. to the "Approved Agenda." On roll call the motion carried unanimously.

DEFER Item XV. B. 3. - Variance No. 6-2000 - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd. - to the April 11, 2000, Town Council Meeting.

Motion made by Councilman Wyett, seconded by Councilman Brooks, to defer Item XV.B.3. to the April 11, 2000, Town Council Meeting. On roll call the motion carried unanimously.

WITHDRAW Item XV.B. 4. - Variance No. 9-2000 - David Koch, 150 S. Ocean Blvd.

Motion made by President Pro-Tem McLendon, seconded by Councilman Wyett to approve withdrawal of Item XV. B. 4. from the March 14, 2000, Agenda. On roll call the motion carried unanimously.

DEFER - then ALLOW TO REMAIN ON THE AGENDA - Item XV. B. 5. - Site Plan Review No. 3-2000 with Special Exceptions & Variances - Burt Handlesman, Owner, and George Sharoubim, Applicant, 230 Worth Ave.

Motion made by Councilman Wyett, seconded by Councilman Brooks to defer Item XV. B.5. After discussion with Attorney Ron Kolins, for the applicant, the motion was withdrawn.

Motion made by Councilman Wyett, seconded by President Pro-Tem McLendon to allow Item XV. B. 5. to remain on the March 14, 2000, Agenda. On roll call the motion carried 3/2, with Councilman Wyett, President Pro-Tem McLendon, and President McDonald casting affirmative votes; Councilman Brooks and Councilman Brooks casting dissenting votes.

DEFER Item XV. B.8. - Variance No. 11-2000 - Julie A. Heberlein (Reveley), 200 S. Ocean Blvd. - to the April 11, 2000, Town Council Meeting.

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks to defer Item XV.B.8. to the April 11, 2000, Town Council Meeting. On roll call the motion carried unanimously.

WITHDRAW - Item XV.B.9. - Variance No. 12-2000 - Robert E. Deziel, Trustee, 150 Canterbury Lane.

Motion made by President Pro-Tem McLendon, seconded by Councilman Wyett to approve withdrawal of Item XV.B.9. On roll call the motion carried unanimously.

ADD to Item XIII.D.11 - Consideration of qualifications of members appointed to Commissions as to the establishment of job description and criteria for appointed positions to various commissions and committees in the Town of Palm Beach; that applications for appointments be delivered to staff two weeks before the scheduled hearing to appoint them; and that an application form be established for those applying for appointments to various commissions and committees.

Motion made by Councilman Wyett, seconded by Councilman Goldblum, to add consideration of qualifications of members applying for commission appointments to Item XIII.D.11. of the March 14, 2000, Agenda. On roll call the motion carried unanimously.

ADD - Item XIII. D. 11. a. - Discussion of reviewing voting procedure for commissions.

Motion made by Councilman Wyett, seconded by President Pro-Tem McLendon to add Item XIII.D. 11.a. to the March 14, 2000, Agenda. On roll call the motion carried unanimously.

ADD - Item XIII.D.12. - Consideration of Beach Cleaning Issues in the North End of the Town of Palm Beach.

Motion made by Councilman Wyett, seconded by Councilman Goldblum, to add Item XIII.D. 12. to the March 14, 2000, Agenda. On roll call the motion carried unanimously.

ADD Item XIII. D. 13.- Discussion of issues involving Park Avenue

Motion made by Councilman Wyett, seconded by Councilman Brooks, to add Item XIII. D. 13. to the March 14, 2000, Agenda. On roll call the motion carried unanimously.

ADD - Item XIII. D. 14. - Discussion to review Agenda procedure

Motion made by Councilman Wyett, seconded by Councilman Brooks to add Item XIII. D. 14. To the March 14, 2000, Agenda.. After further discussion, the motion was withdrawn.

ADD - Item XIII. D. 15. - Consideration of advance notice regarding the Town Council Agenda.

Motion made by Councilman Wyett, seconded by President Pro-Tem McLendon to Add Item XIII.D. 15. to the March 14, 2000, Town Council Agenda. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.

ADD - Item XIII. D. 16. - Discussion of budget review process; to have entire Town Council hear the budget discussions together, rather than the Finance & Taxation Committee only.

Motion made by Councilman Wyett to add Item XIII. D. 16. The motion died for lack of a second.

In response to the suggestion of Councilman Wyett to have applicants recite the hardship of variances being requested first in their presentations to the Town Council, Town Attorney Randolph explained that in a quasi-judicial hearing there were several criteria that would need to be met, and he recommended that applicants be instructed to address all criteria set forth in the ordinance, with the Town Council decision based on that criteria.

In response to Councilman Wyett, Town Manager Doney explained that items to be included on the Agenda should be submitted in writing to him at least two Fridays before the Town Council Meeting; the Agenda was on the Internet by 3:00 p.m. on the Thursday before the meeting, and written Agendas were available after 3:00 p.m. on the Thursday before the meeting.

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

VII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Ms. Gilda Beane, resident of Park Avenue, commented that the neighbors were being disturbed as a result of noise emanating from the Palm Beach Hotel, and sometimes from the 251 Club. She agreed that she would speak to Item XIII. D. 14. later this afternoon.

Ms. Marilyn D'Antonio, Facility Engineer with the U. S. Post Office, commented that she had inquired about the Post Office leased parking in the Beaumont Parking lot in January, as the Post Office was in the process, at that time, of renting ten additional spaces for Post Office employees. She was assured at that time that there was no imminent danger of losing the four leased spaces; however, 30 days later she was notified that the lease was terminated as of the end of the month of March. She explained that it would create a great hardship on the Post Office, who had been leasing the spaces for 17 years, and requested an extension of time.

President Pro-Tem McLendon moved approval of a 90-day extension of time for the termination of the leased parking spaces at the Beaumont Parking lot for the Post Office. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

Mr. Eric Gilbertson commented that during the past six years the Town Council had approved erosion studies for the mid-Town beach, negotiated a water agreement with the City of West Palm Beach, and President Smith (now Mayor Smith) had provided excellent leadership. He welcomed the two new members of the Town Council.

Mrs. Nancy Douthit gave the following comments:

"I just wanted for you new gentlemen, to bring up just a few, and I have not pointed out before, hazards with this beach project, and I'm not talking of strictly the mid-Town, which now they're talking expanded, -- strictly mid-Town-- fine, strictly Phipps Ocean Park – fine – proceed, but some of the hazards, just a few, and this is a letter from Mr. Devereaux who heads the State's DEP, so this isn't fiction coming off the top of my head. And, one is here, that when State monies are involved in a beach project, the Town is then required, it is demanded, that they agree to a ten year maintenance program, which I don't think has been budgeted. The other thing is that we presently have an exemption from the State Statute of 100 parking spaces per mile. Now, with this ten year maintenance, you put new sand on the old spot that was done four-five years before, and that parking exemption goes, because it's no longer new – it is a second go 'round, so the exemption is instantly shot. Now, the other thing too is here if you go without – well, if you do not accept State monies, permitting is vital regardless, and a piece of permitting without accepting State monies is a severance fee – maybe required – if the borrow source is State sovereign lands. Well as the law is written presently, State lands begin at the mean high water line, so where in the name of God do you go that isn't State sovereign land? Several years ago this severance fee amounted to about $2.50 a yard. Now the Town's guesstimate, and I would say optimistic guesstimate, was $6.50 a yard in cost for sand. Now you add $2.50, if that is the going rate this moment, and I can't imagine it would be down, you're now up to $9.00, or some roughly 30% – again, that's not in the budget either. So there I'm just pointing out a few of these very challenging problems to this beach project. Thank you."

Dr. Sten Lilja gave the following comments:

"I would like to point out a detail that appears to have been overlooked in the beach restoration debate. Dr. Strong, and recently, Mr. Decker, as well as the 1986 CCMP, and, perhaps insignificantly, myself, in presentation before this Council, have recognized that seawalls are the most important factors for storm protection – not sand, as we have been led to believe. Sand is nice to look at and to use, but seawalls are the ones that will protect the property in this Town up to a category 2 storm, that is. As we saw during the Halloween storm, sand can even be outright detrimental by providing a slope for the waves, especially when there is a storm surge to exacerbate the wave's ability to do damage. I would like to suggest that Council re-visit this item. As Mrs. Douthit has already said, there is one letter, in particular, from Mr. Devereaux, dated the 7th of February, with a disturbing affirmation about the local obligation to pay for maintenance for a ten-year period. We are being taken for fools. This is trickery. To make us assume the costs for 12 miles of public beaches, I feel is ludicrous. I would like to urge the Council to look into special assessment taxation for beach nourishment before we get too far along by assuming that ad valorem is the proper solution, in more than one respect, I might add. Thank You."

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF FEBRUARY 7, 8, 9, 17, AND 22, 2000

IX. APPROVAL OF CHECK REGISTERS FOR FEBRUARY 2000

X. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF FEBRUARY 23, 2000

XI. OTHER

A. Authorization for the Town Manager to Execute the Addendum to the Professional Services Agreement with Duncan and Associates for the Prototype Neighborhood Design Guidelines for the R-B Zoning District per memorandum dated March 3, 2000, from Zoning Administrator Castro

B. County School Districts FY2000-2004 Five-Year Plan and FY2000 Capital Budget Adopted September 1999 - Renovation to Palm Beach Public School

President Pro-Tem McLendon moved approval of the "Approved Agenda." The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

REGULAR AGENDA

IX OLD BUSINESS

A. Appointments

1. Zoning Commission - Three Member Terms to Expire February 2003, and Three Alternate Member Terms to Expire February 2003 *(Deferred from February 8, 2000)*

After casting votes, the Town Council appointed as regular members of the Zoning Commission:

Rodney Fink
Eugene Lawrence
Richard Kleid

As alternate members:

Peter Broberg
Harrison Robertson

Martin Klein

B. Other

1. Royal Park Bridge Status Report by Public Works Director Dusey *(East End Landscape Plan deferred from February 8, 2000)*

This item was deferred to the April 11, 2000, Town Council Meeting Agenda, earlier in the meeting, under Item VI. "Approval of the Agenda."

2. Telecommunications Issues:

This item was heard at a time certain of 3:30 p.m., as approved earlier in the meeting under Item VI. "Approval of the Agenda."

a. Cable TV System Franchise Renewal Process with Comcast Cable Communications, Inc. - Status Report by Assistant to the Town Manager Jakubiak

Assistant to the Town Manager David Jakubiak reported that an agreement may be presented to the Town Council at the April Town Council Meeting. Based on the advice of Attorney Miller, if there was not an agreement reached with the cable company, the Town would request that the agreement expire, with no month to month extension. If there was an agreement ready in April, an extension would be requested, with hopes of presenting a finalized agreement to the Town Council sometime in May. He explained that anything presented to the Town Council at the April meeting would not require policy action.

Ms. Diane Christie, Director of System Development, Comcast Cable, addressed the Town Council, stating that she would update the Town Council in April, regarding the progress of the franchise agreement. She explained that service to Town residents would continue during negotiations, and service would not be interrupted.

Town Manager Doney suggested that Attorney Miller provide a written report of his latest legal advice in this regard.

b. Cable Wiring of the Town's Par 3 Golf Course by Comcast Cable Communications, Inc.

Assistant to the Town Manager David Jakubiak commented that if a franchise agreement was reached, the cable wiring of the Town's Par 3 Golf Course would be tied into the agreement; if an agreement was not reached, this item would be brought back to the Town Council.

c. Selection of Financial Consultant to Conduct Public Rights-of-Way Valuation Study

Assistant to the Town Manager David Jakubiak reported that he and Finance Director Skittone had conducted telephone interviews with the two companies that had presented proposals to do the rights-of-way study. He noted that he had provided back-up material (memorandum dated March 10, 2000) to the Town Council, which addressed the two options available. He explained that there was some urgency to completing the study; the Town Council could chose one of the two companies who had already submitted proposals, or could chose to allow more bids to be submitted. One of the companies already submitting a proposal had worked with the Town before (A & S), and had submitted their budget in the amount of $30,000 to perform the study, including three trips to the Town. The other proposal was $18,000 higher.

Councilman Wyett moved approval of the selection of the consultant A & S, in the amount of $30,000. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

3. Request for Town Support for Proposed Palm Tree Lighting Beautification Project on South County Road by The Greater South County Road Association, Inc. *(Deferred from October 12, 1999, and February 8, 2000)* - **Request for deferral to April 11, 2000, per letter dated March 2, 2000, from Mr. James Kenneth Brower**

This item was deferred to the April 11, 2000, Town Council Meeting Agenda, earlier in the Agenda, under Item VI. Approval of the Agenda.

4. Discussion of Establishing Severance Packages for Department Heads by Amending Ordinance No. 18-99, Town Charter *(Referred to the Administrative and Personnel Committee on November 9, 1999 - Deferred from December 14, 1999, January 11, 2000, and February 8, 2000)*

Town Manager Doney referred to his memorandum dated March 3,2000, regarding a proposed severance pay policy for department head positions, setting forth a recommended policy, subject to approval by the Town Council. He explained that he had based the figures on his own contract of six months severance pay. He pointed out that a number of ordinance changes would need to be made wherein department heads were identified in the Town Code of Ordinances.

President Pro-Tem McLendon moved approval of the recommendations of Town Manager Doney, as set forth in his memorandum dated March 3, 2000. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

5. Coastal Management Issues Regarding Potential Litigation Against the Federal Government Regarding Lake Worth Inlet and Selection of Law Firm to Analyze Same *(Deferred from December 14, 1999, and January 11, 2000, and February 8, 2000)*

   a. Letters dated February 24, and 29, 2000, from Town Attorney Randolph and Letter dated February 23, 2000, from Mr. Jerry Stouck

   b. Consideration of Scheduling a Special Town Council Meeting with Mr. Jerry Stouck to Discuss his Legal Feasibility Report

Town Attorney Randolph advised that he had spoken with Attorney Stouck, who had indicated that he would be available the week of April 3, except for April 6, and that he would be available for the April 11, 2000, Town Council Meeting.

President McDonald commented that both Councilman Brooks and Councilman McLendon would not be available the week of April 3, 2000.

Councilman Wyett made a motion to schedule a Special Town Council Meeting on Thursday, April 13, 2000, at 9:30 a.m. with Attorney Stouck. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

6. Lake Worth Inlet Sand Transfer Plant Issues - Proposal to Expedite the United States Army Corps of Engineers' Design Phase by Contracting Lobbying Services of Applied Technology & Management and Rees Engineering & Environmental Services *(Deferred from January 11, and February 8, 2000)* - **Request for deferral to May 9, 2000, per memorandum dated March 3, 2000, from Public Works Director Dusey)**

This item was deferred to the May 9, 2000, Town Council Meeting Agenda, earlier in the Agenda, under Item VI. Approval of the Agenda.

7. Discussion of Erosion Control Line Legal Issues and Bullet List from Town Attorney Randolph *(As considered at the February 8, 2000, Town Council meeting)*

President McDonald suggested that this item be discussed at the Special Town Council Meeting scheduled on April 13, 2000.

President Pro-Tem McLendon moved approval of including discussion of the erosion control line issues at the April 13, 2000, Special Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

8. Schedule an Ordinances, Rules, and Standards Committee Meeting to Discuss Code Enforcement Board Issues Regarding Maintenance of Property, Cleanliness of Construction Sites, and Hurricane Preparation Plans for Construction Sites *(Referred to Ordinances, Rules, and Standards Committee at the January 11, 2000, Town Council meeting)*

Town Attorney Randolph advised that he would have the information necessary for an Ordinances, Rules, and Standards Committee Meeting to be scheduled. He estimated that he would have the information ready within the next two weeks.

President McDonald suggested that this item be included on the Agenda for the next Town Council Meeting.

Councilman Wyett moved approval of adding the scheduling of an Ordinances, Rules and Standards Meeting to the agenda for the April 11, 2000, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

XIII. NEW BUSINESS

A. Resolutions

1. Resolution No. 1-00 - Landmark Designation of 120 Casa Bendita

Town Attorney Randolph read Resolution No. 1-00 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING IN PART AND DENYING IN PART THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE A PORTION OF SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

President Pro-Tem McLendon moved approval of Resolution No. 1-00. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. Resolution No. 10-00 - Railway Crossing Agreement with Florida East Coast Railway Company

Town Attorney Randolph read Resolution No. 10-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT WITH FLORIDA EAST COAST RAILWAY COMPANY TO ALLOW THE TOWN SANITARY SEWER FORCE MAIN TO OCCUPY THE RAILWAY RIGHT-OF-WAY.

President Pro-Tem McLendon moved approval of Resolution No. 10-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

B. Ordinances

1. Ordinance No. 2-00 - Coastal Construction Code, Amending Definition of Substantial Improvement

Town Attorney Randolph read Ordinance No. 2-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 18, BUILDING AND BUILDING REGULATIONS, ARTICLE V, COASTAL CONSTRUCTION CODE, SECTION 18-278, DEFINITIONS, TO REFLECT CHANGE IN FLORIDA

STATUTES DEFINITION OF "SUBSTANTIAL IMPROVEMENT" FS161.54, WHICH NOW ELIMINATES THE 5-YEAR ACCUMULATION OF CONSTRUCTION VALUE IN DETERMINING THE 50% RULE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Goldblum moved approval of Ordinance No. 2-00 on first reading. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. Ordinance No. 3-00 - Hours of Construction Work for Worth Avenue and C-WA Zoning District

Town Attorney Randolph read Ordinance No. 3-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 42, ENVIRONMENT, ARTICLE V, NOISE, SECTION 42-199, HOURS FOR CONSTRUCTION WORK, AND CHAPTER 18 BUILDINGS AND BUILDING REGULATIONS, ARTICLE IV, BUILDING CODES, SECTION 18-242 AMENDMENTS, SO AS TO MAKE CODE REFERENCES TO WORTH AVENUE AND C-WA ZONING DISTRICT CONSISTENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance No. 3-00 on first reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

3. Ordinance No. 4-00 - Amendment to the Retirement Ordinance Relating to the Deferred Retirement Option Program (DROP)

Town Attorney Randolph read Ordinance No. 4-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES RELATING TO THE RETIREMENT SYSTEM AT SECTION 82-64(D) TO DELETE REFERENCES TO A NEW ANNIVERSARY DATE; AT SECTION 82-64(D)3 TO DELETE RESTRICTIONS RELATING TO PAID LEAVE; AT SECTION 82-64(D)7 AND SECTION 82-64(E)(3) TO CORRECT SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance No. 4-00 on first reading. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

4. Ordinance No. 5-00 - Amendments to the Architectural Commission Ordinance

Town Attorney Randolph read Ordinance No. 5-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, BUILDINGS AND BUILDING REGULATIONS, OF THE TOWN CODE OF ORDINANCES AT ARTICLE III, ARCHITECTURAL REVIEW, AMENDING SECTION 18-205 RELATING TO CRITERIA FOR BUILDING PERMIT, AT ITEM (A)(6); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Wyett moved deferral of Ordinance No. 5-00 to the April 11, 2000 Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

After discussion, Ordinance No. 5-00 was referred to the Ordinances, Rules and Standards Committee for further review through motion of Councilman Brooks, seconded by Councilman Goldblum. On roll call the motion carried unanimously.

After further discussion, Town Attorney Randolph advised that the action today simply postponed taking the matter of size away from the Architectural Commission, until the ORS Committee had the opportunity to review it.

5. Ordinance No. 6-00 - Amendments to the Electrical Code

Town Attorney Randolph read Ordinance No. 6-00 by title: (first reading)

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, ARTICLE VI, "ELECTRICAL CODE," OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 18-366 ADOPTING BY REFERENCE THE 1999 EDITION OF THE NATIONAL ELECTRICAL CODE AND ADOPTING BY REFERENCE THE PALM BEACH COUNTY AMENDMENTS; PROVIDING FOR ADDITIONS AND DELETIONS TO SAID CODES IN SECTION 18-367 "AMENDMENTS"; AND AMENDING SECTION 18-372, "PENALTIES"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

President Pro-Tem McLendon moved approval of Ordinance No. 6-00. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

C. Appointments

1. Architectural Commission - Three Member Terms to Expire March 2003, and One Alternate Member Term to Expire March 2003

After voting the following were appointed to the Architectural Commission by the Town Council:

As regular members with three year terms:
Floyd Wideman
Leslie A. Shaw
Marvin Rosenberg

As alternate members:
Joanna Frost-Golino
Gilbert Messing
Morgan Dix Wheelock

2. Landmarks Preservation Commission - Two Member Terms to Expire March 2003, and Three Alternate Member Terms to Expire March 2003

After voting the following were appointed to the Landmarks Preservation Commission by the Town Council:

As regular members with three year terms:
Ann Blades
Elizabeth Dowdle

As alternate members:
Jack Pyms
Nikita Zukov
Judy Wells Hoffman

D. Other

1. Report Regarding Florida Windstorm Underwriting Association Rate Increase by Town Attorney Randolph and Risk Coordinator Temme

President Pro-Tem McLendon moved approval of authorizing Town Attorney Randolph to prepare a letter for the Mayor's signature to be sent to Governor Bush with copies to members of the State House and Senate opposing the windstorm underwriting association rate increase. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/1, as Councilman Goldblum had temporarily left the room.

2. Florida Department of Transportation's Adopt A Highway Program

Public Works Director Al Dusey reported that he had learned, after discussion with the resident maintenance engineer at the local Florida Department of Transportation (FDOT) office, that the Town could pass a resolution assuming responsibility for litter control on the State highway system in the Town, without placing signs, which would take effect when the existing contracts expired.

President McDonald commented that if the FDOT was willing to remove the signs when the contracts expired, he would cancel his contract so that sign could be removed immediately.

Mrs. Ann Keresey, representing the Civic Association Town Beautification Committee, commented that many complaints had been received about the large, obtrusive signs, although the program itself, nationally was good. She noted that locally it was not needed, as the Town could keep its streets clean very well. She requested that the Town Council vote of 1998 be rescinded in this regard.

President Pro-Tem McLendon moved approval of a resolution to opt out of the adopt-a-highway program. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Councilman Wyett moved that letters be written to all Town participants in the adopt-a -highway program requesting that the existing contracts be canceled. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

3. Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 1999

Town Manager Doney commented that the Town had $12,650,056.00 in the Undesignated General Fund Balance; that amount represented approximately 34% of the FY2000 General Fund Operating Budget of $37,425,851.00. The Town policy of maintaining an available General Fund balance of 15% would require a balance of $5,613,878.00. The current available Undesignated General Fund balance was $7,360,178.00 higher than required by this policy, and was considered prudent in recognition of the many emergency problems the Town could experience because of the age and conditions of its infrastructure, and potential ocean-related damage. The Town Council authorized, at the February 8, 2000, Town Council Meeting, an advance of $1,300,000.00 to the Marina Fund from the Undesignated General Fund Balance to retire the Marina debt. This advance would be paid within 10 years; the remaining $5,736,178.00 of Undesignated General Fund Balance is available to finance potential improvements to Town Hall, (which was a major, currently pending project), and to fund coastal protection projects, balance the upcoming FY2001 General Fund budget, or any other expenditures which the Town Council would so designate.

Finance Director Jane Skittone reported that Mark Veil from Caler, Donten, Levine, Druker, Porter & Veil, P.A. would give a brief overview of the comprehensive financial report and management letter for FY1999; motions would then be necessary to accept the Comprehensive Annual Financial Report (CAFR) and to accept the management statement of explanation to the management letter comments.

Mr. Mark Veil reported that the introductory section of the CAFR included a transmittal letter which highlighted the financial situation over the past year, as well as some of the future endeavors anticipated by the Town. The financial section included the opinion of the auditor; the statistical section included trend data; the compliance section included some grant reports and the management letter.

A. Acknowledgment of Receipt

Councilman Brooks moved acceptance of the CAFR for fiscal year ended September 30, 1999. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Management Letter and Staff Response (pages 89 - 92 of CAFR)

President Pro-Tem McLendon moved acceptance of the Management's statement of explanation or rebuttal concerning the auditor's management letter comments. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

4. Fiscal Year 2001 Proposed Budget Calendar dated February 25, 2000

President McDonald noted that there were three crucial meeting dates in regard to the budget calendar: July 11, 2000, September 7, 2000, and September 20, 2000. He asked that all Council members check their calendars for the above dates, and it was then determined that there would be a sufficient number of Council members present for each meeting.

Finance Director Skittone commented that there was one change in the budget calendar on the second item – the capital improvement project requests were to be submitted to the Finance Director and Public Works Director by Friday, April 21, 2000.

President Pro-Tem McLendon moved approval of the budget calendar as amended. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

5. Modification to the Health Insurance Program with Effective Date of April 1, 2000

Human Resources Director William Crouse referred to his memorandum of March 1, 2000, concerning the current 180 day wait for insurance coverage for medical insurance for new employees, and its financial burden to newly hired employees, as well as the burden to the Town it is recruitment efforts. He recommended that the Town Council approve a change to the current waiting period for medical insurance from 180 calendar days to the first of the month following 30 days of employment, effective April 1, 2000.

Councilman Wyett moved approval of a change to the current waiting period for medical insurance for employees from 180 calendar days to the first of the month following 30 days of employment, effective April 1, 2000. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

6. County School Districts FY2000-2004 Five-Year Plan and FY2000 Capital Budget Adopted September 1999 - Renovation to Palm Beach Public School

This item was moved for inclusion under the "Approved Agenda."

7. Appointment of a Town Representative to the Citizens' Committee on Airport Noise (CCAN) for Palm Beach International Airport

Councilman Wyett moved approval of appointing President Jack McDonald as the Town representative to the Citizens' Committee on Airport Noise (CCAN) for Palm Beach International Airport. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

8. Appointment of a Voting Delegate and Alternate(s) to the Palm Beach County League of Cities

Town Manager Doney referred to his memorandum dated February 29, 2000, requesting Town Council consideration to appointing a voting delegate and alternate to the Palm Beach County League of Cities. He explained that currently Mayor Ilyinsky had been the designated voting delegate, with Mr. McDonald and Mr. Shaw as the alternate voting delegates.

Councilman Brooks moved approval of appointing Mayor Smith as the voting delegate to the Palm Beach County League of Cities, with the alternate member being President Pro-Tem McLendon. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

9. Appointment of a Town Representative to the Palm Beach Countywide Beaches and Shores Council

Councilman Brooks moved approval of appointing Mayor Smith as the Town representative to the Palm Beach Countywide Beaches and Shores Council, with Public Works Director Al Dusey as the alternate, who also had the ability to vote on issues considered at the Palm Beach Countywide Beaches and Shores Council. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

10. Request by Town Manager to Increase the Starting Salary for Assistant Town Manager Position to Exceed the Mid-Point of Salary Range

Town Manager Doney referred to his memorandum dated March 3, 2000, giving a status report regarding the Assistant Town Manager position. He noted that he had conducted personal interviews with three individuals, and had made a "conditional offer" to Mr. Thomas G. Bradford to fill the vacancy of Assistant Town Manager, anticipating that he would commence employment with the Town on May 1, 2000. He explained that his recommendation was to offer Mr. Bradford a starting salary of $81,350.00, which was approximately 8% above the mid-point for the position.

Councilman Wyett moved approval of the recommendation of Town Manager Doney to offer Mr. Thomas G. Bradford a starting salary of $81,350.00, to fill the vacancy of Assistant Town Manager for the Town of Palm Beach. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Mr. Thomas G. Bradford, who was in attendance at the meeting, was welcomed by the Town Council.

11. Town Boards and Commissions - Consideration of Letter dated March 2, 2000, from Mr. William O. Cooley

President McDonald explained that applications to Board and Commissions would also be included in discussion, as well as a cut off time for submission of applications.

Councilman Brooks commented that everyone could benefit from the seminar Town Attorney Randolph provided earlier this month, and expressed support of the letter of Mr Cooley in a formal action.

Councilman Goldblum commented that he appreciated the letter written by Mr. Cooley in the newspaper on Sunday, and that consideration would be given to a formal application, as well as a job description for the positions. He presented a sample application from the Town of Lake Park that was required for appointed positions to all Boards and Committees in that municipality; it required references and permission to check for references, as well as a background check, including a criminal history check.

In response to Mayor Smith, Police Chief Croft explained that a criminal history would give specific information about arrest histories, sentences, fines, and disposition of adjudications from the court system in the State of Florida. It would not meet the Florida Department of Law Enforcement standard for the Town Police Department to do such a background check; the Police Department would do such checks for criminal investigations, and only criminal investigations, however, there was a vehicle in place that would allow the Town to incorporate a release form, and then send the information on the perspective applicant to Tallahassee, where they would be investigated, and a report submitted back to the Town, which he estimated would take approximately 30 days or longer for a response.

Human Resources Director William Crouse commented that all employees underwent a background check, and that it took an average of 6 weeks to obtain a response with information.

Councilman Wyett commented that if a Town Council member could serve without a police investigation, then those serving on commissions or boards should also be able to serve without a police investigation. He noted that the Town Council had the right to remove any commission member who was derelict in his duties, or for some other sustainable reason.

Town Manager Doney commented that a very thorough background screening was done on all Town employees, and suggested that Town Attorney Randolph give his input.

Town Attorney Randolph commented that he had nothing to add at this time; he had just seen the sample application today, and it appeared to him that if a person applying to a board or commission agreed to sign the consent release form, that it would then be appropriate to do a screening.

Recreation Director Russell Bitzer commented that the Recreation Commission did have an application that was used for those applying.

Director of Planning, Zoning & Building Robert Moore commented that resumes were submitted for the Architectural Commission and the Landmarks Preservation Commission.

Councilman Goldblum moved approval of the use of an application for Boards and Commissions; Town Attorney Randolph could review it and the Town Council could then vote on it. The motion was seconded by President Pro-Tem McLendon.

Town Attorney Randolph requested direction regarding the application form; he suggested that he could then prepare the form, or have staff working with the Boards/Commissions prepare the form, which he could then review.

Councilman Goldblum agreed that staff could prepare the form, which would then come back to the Town Council at the April 11, 2000, Town Council Meeting, as did the seconder of the motion.

Ms. Polly Earl, speaking as a resident, suggested that the application for Boards/Commissions should not be equated with an application for employment, as the applicants would not be paid for being board/commission members, and applicants were doing it as part of a professional obligation/interest. She explained that everyone furnishing a professional resume would expect to have their references checked. She suggested that a criminal investigation could be off-putting to many people who may have something valuable to contribute to the Town.

Town Attorney Randolph requested direction as to whether the Town Council wished to have a criminal investigation included with the application.

After polling the Town Council, President McDonald noted that he, President Pro-Tem McLendon, Councilman Brooks, Councilman Goldblum, Councilman Wyett all agreed that there was no need for a criminal investigation release form as part of the application; Councilman Goldblum requested that conflicts of interest be included in the application form.

Mayor Smith commented that she believed that the criminal record investigation was an intrusion into the private lives of applicants; there were enough drawbacks with people concerned with filing financial disclosure forms, and she considered a criminal record investigation totally inappropriate.

President McDonald explained that Mr. Cooley had written several letters to the Town Council in regard to Boards/Commissions.

Mr. William Cooley addressed the Town Council, stating that the letter regarding the presentation that Town Attorney Randolph and Town Manager Doney had given to the Town Council was one point; the presentation was excellent and he considered that it would be worthwhile to share it with other boards/commissions. He explained that the second letter regarded conflicts of interest, and in his opinion, and the opinion of the law firm of Carlton Fields, the ordinance of the Town was more permissive than the State Statute on conflicts of interest, in that there were voting conflicts of interest and prohibited conflicts of interest; he explained that he had pointed out specifics on prohibited conflicts of interest.

Councilman Wyett suggested that there be a total review of the rules and regulations as outlined in the letter from the law firm of Carlton Fields, and incorporated into the record the letter from Mr. Cooley published in the Palm Beach Daily News on Sunday, March 12, 2000. He moved approval of having a review of both the Architectural Commission and Zoning Commission rules and regulations, and ultimately have one simplified/clarified document that would include all rules and regulations for boards/commissions. The motion died for lack of a second.

Town Attorney Randolph advised that the amendments to the Architectural Commission Ordinance had been referred to the Ordinances, Rules & Standards (ORS) Committee; the legal issues relating to conflicts of interest addressed by Carlton Fields, and Mr. Cooley, could be reviewed and he would respond to the Mayor and the Town Council in that regard, as well as incorporate it into a presentation to the various boards/commissions.

President Pro-Tem McLendon moved approval of authorizing Town Attorney Randolph to review the conflicts of interest issues addressed by Carlton Fields, and respond to the Mayor and Town Council, with the consideration of presenting the findings into a presentation to the various boards/commissions. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Mayor Smith noted that there was already a joint meeting scheduled between the Architectural Commission, Landmarks Preservation Commission, and the Zoning Commission on March 20, 2000 at 9:30 a.m., and suggested that Town Attorney Randolph make his presentation at that meeting. She also suggested that the members of the Recreation Commission be invited to the meeting.

Town Manager Doney commented that he would provide overall comments at the March 20, 2000 joint meeting, with the respective department heads giving input as well.

Town Attorney Randolph advised that he could be prepared to make a presentation at the meeting on March 20, 2000, at 9:30 a.m., primarily aimed at the conflicts of interest issue.

A. Voting Procedures for Commissions

Councilman Wyett moved approval of adding discussion of adopting a different method of voting by the Town Council for boards/commissions to the Town Council Agenda for the meeting to be held on April 11, 2000. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

12. Offer to Purchase Town-Owned Property Located on the Northwest Corner of Quadrille and North Dixie Highway in West Palm Beach by Arvida Realty Services

Mr. Doug Caller, of Arvida Realty Services, addressed the Town Council, stating that he had submitted information to Town Manager Doney identifying the Town-owned property on Quadrille and North Dixie Highway in West Palm Beach that Arvida Realty Services was interested in purchasing.

Councilman Wyett moved denial of the offer to purchase the Town-owned property located on the northwest corner of Quadrille and North Dixie Highway. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

******The Town Council Meeting of March 14, 2000, was recessed at 12:23 p.m.*****

*****The Town Council Meeting of March 14, 2000, was reconvened at 1:50 p.m.*****

13. Beach Clean Up

Councilman Wyett referred to a letter received from Dr. Rosenberg in regard to beach clean up, and commented that more attention was needed to enforcement of existing rules and regulations in regard to beach clean-up, or that new ones be formulated.

Public Works Director Al Dusey reported that the Town policy on beach cleaning was that Town staff would clean the rack line, which was essentially the high-tide line, once per week, removing foreign debris, and leaving seaweed. Private property was not entered, as that was the responsibility of the private property owner. Public beaches were cleaned more intensely. In the south end, the Town had a contractual relationship with the Citizens' Association, whereby the rack line was mechanically cleaned only at certain times of the year because of sea turtle nesting.

Councilman Wyett asked if there was any requirement for private beach owners to keep the area above the high water mark clean?

Public Works Director Dusey replied that there was a beach cleaning Ordinance that required that private property beach owners keep their beach free of debris.

President McDonald suggested that a letter be written to Dr. Rosenberg explaining the Town policy in regard to beach cleaning.

Mayor Smith commented that it would help if people walking along the beach would pick up trash as they walk; she noted that seaweed could not be picked up for environmental reasons.

Chief Code Compliance Officer Brian House reported that he had written letters many times in regard to beach cleaning; if someone called reporting a problem in the neighborhood it was checked out and the property owner was notified. He noted that he had never failed to get compliance.

14. Park Avenue

Councilman Wyett commented that two residents of Park Avenue were continually having their peace and quiet infringed upon, as the nearby catering service frequently dumped trash and bottles into the dumpsters in the early hours of the morning. He noted that restaurants were required to keep bottles and trash inside until the next morning, and he suggested that the catering services be required to do the same. He explained that the Code Enforcement officers had told the two residents that unless they got a third person to complain there was no recourse.

Councilman Brooks commented that he had visited the site and it was deplorable; when the dumpsters were rolled out they were very loud; he suggested that the two residents (Dr. Nasser and Ms. Beane) obtain some help from the Town.

Ms. Gilda Beane, representing several other neighbors in the Park Avenue area, commented that the disturbances on Park Avenue emanating from the Palm Beach Hotel, C. J.'s, and somewhat from 251 Sunrise, were of great concern. She explained that noises went on all day long, way into the night, and that property owners had lost the right to use and enjoy their properties, and were also being exposed to health hazards as a result of what was going on in back of their residences. She suggested that some type of modern garbage management be implemented by the commercial businesses for the large volumes generated; currently four dumpsters were rolled down the alley and out into the street, and that she had to close up her house when the Town picked up garbage because of the obnoxious odors. She noted that one dumpster, which was located right behind her house, was always opened, and was supposed to hold only cardboard, however garbage was also dumped into it also. She also suggested that the commercial garbage be picked up from Sunrise Avenue. She stated that she was awakened at 4:20 a.m. a few days ago with the crashing of bottles, and that she missed a whole day a week because she lost so much sleep from the noise in the area. She circulated photographs of the area in question.

President McDonald commented that he had heard these problems for five years, and that the Town needed to enforce its Ordinances, even if Mr. House had to go to the scene three times a day to see that the ordinances were being enforced

Councilman Wyett commented that there had been three violations at 2:30 a.m. and 4:00 a.m. verified by the Police Department; these would go to Code Enforcement, however, there had to be three witnesses, and how could that be done at that hour of the morning?

Attorney Ron Kolins, representing Dr. Nasser and Ms. Beane commented that the Town Council had heard these problems for five years, and that the Council had accomplished some resolutions during that period of time; much had been mitigated with the 251 Restaurant; the situation along Park Avenue had improved dramatically. The remaining problem related to activities emanating from the back of the Palm Beach Hotel, opposite the dwellings of Dr. Nasser and Ms. Beane. He recognized that there was a natural tension between a residential area and a commercial area that backed up to each other, and each side had certain rights, and needed to respect the rights of the other side. He maintained that business practices from the commercial side were egregious and did not in any way attempt to mitigate the impact on the residential side. As a consequence, those living directly in the face of the problem, Dr. Nasser and Ms. Beane, were most critically impacted, to the point the Dr. Nasser had not been able to sleep. He explained that it was expected that the commercial side would change the way things were done in order to mitigate the impact on Dr. Nasser and Ms. Beane. He noted that there was a second problem: the informal policy of the Town to require a third complainant in order to have a violation that could be processed through the Code Enforcement Board, which he believed was grossly unfair in this situation. He asked that the requirement be re-considered as it related to the current situation. He stated that he had been told that there appeared to be a problem with the Police, to the extent that these occurrences had happened on off-hours, when Code Enforcement is not on duty anymore, and what one is supposed to do is call the police, who were supposed to act for Code Enforcement during those off-hours. He stated that he had been told that there was a real attitude problem with some of the policemen, and a lack of knowledge as to how they are to handle these situations. He stated that he intended to meet with Police Chief Croft and discuss the issue. He requested that the Town Council give the necessary attention to these problems.

Councilman Wyett commented that the catering people brought all trash, etc., back from the catering operations, and asked if the importation of trash could be banned from an off-site event?

Town Attorney Randolph replied that he would review that issue and discuss it with Town staff.

In response to Mayor Smith, Mr. Moore stated that the noise had been exacerbated by the nightclub operation existing in the area, however, it was his understanding that the nightclub would not continue much longer. In addition, he noted that he had met with Attorney Kolins, however, they had not yet had the opportunity to get together with Police Chief Croft to discuss the problems; he had attempted to contact the attorney for C.J.'s, who was out of Town for a week; he had already visited C.J.'s to suggest cutting an interior door in the restaurant area itself to the garbage container area. Mr. Moore requested some time to address mitigation efforts, and review the Code Enforcement Ordinance. He added that discussions would take place with Town Attorney Randolph regarding renewal of occupational licenses and the "public nuisance" problems.

Councilman Wyett moved approval of directing staff to determine a resolution to the problems occurring behind the Palm Beach Hotel, and make a report to the Town Council in the form of a status report at the April 11, 2000, Town Council Meeting; final recommendations would be submitted at the May 9, 2000, Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Mayor Smith asked Ms. Beane if the acoustical wall erected at 251 did anything to diminish the noise?

Ms. Beane replied that the back section of the restaurant had been closed in with sound material, and it has helped a great deal, however, it was still a nuisance, and had been an excuse for them to turn up the volume, and the STC rating on all of the materials was 65, however, the doors only measured 45, and sound did bounce off of them. She suggested that they be insulated and brought up to 65 like the rest of the building. In addition, she stated that she had investigated a noise one night and could not hear a thing from the back, except the doors were opened to Sunrise Avenue, and the sound was going right up over the building and going north, which was what she had heard.

President Pro-Tem McLendon commented that he had tried to contact the owner of the property to the west of the Palm Beach Hotel about two years ago, and was under the impression that a joint effort could be promoted between that property and the hotel property to take garbage out through a gate existing in the fence. He noted that he had not been able to make contact with the owner, and suggested that staff consider this option when determining resolution to the problems in the area.

Mr. Moore responded that staff had contacted the property owners to propose the idea, and had been turned down.

15. Agenda Procedure

This item had been discussed earlier in the Agenda, with comments included under Item VI. "Approval of the Agenda."

XIV. COMMENTS OF THE TOWN COUNCIL MEMBERS

President Pro-Tem McLendon suggested that when a person already serving on a board/commission wanted to serve on a different board/commission he/she resign before submitting application for the new board/commission. He also suggested that one person applying for two commissions should be prohibited in the future.

Councilman Goldblum concurred that a person should apply only for one board/commission at a time.

Councilman Wyett commented that political considerations had invaded the appointments on various commissions, and hoped that this was the last time he would have to witness it.

XV. **DEVELOPMENT REVIEWS**

a. Time Extensions - None

b. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. SITE PLAN REVIEW NO. 17-99 WITH SPECIAL EXCEPTION AND VARIANCES - The Palm Beach Day School, Inc., The Day School at 241 & 246 Seaview Avenue; located in the R-B Zoning District. To review the demolition of Cushman House for construction of a 15-space parking lot in lieu of previously approved 29 parking spaces which will remain green space. Variances requested are to provide a 10' front yard setback in lieu of 25' for required off-street parking, and to allow a 4' high hedge fronting the street along the parking lot on the south side of Seaview Avenue in lieu of 6' high hedge required. *(Deferred from September 17, 1999, November 9, 1999, December 14, 1999, January 11, 2000, and February 8, 2000)*

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Brindell regarding the parking solution; and by Councilman Goldblum with Attorney Brindell.

Attorney James Brindell, on behalf of the Palm Beach Day School, Inc., addressed the Town Council, stating that this was the third proposal being brought forward to try to provide some additional parking related to the Day School and prior approvals granted last year. He noted that in the prior approvals the Day School agreed to grant an additional easement along the north side of Seaview Avenue so that 14 parking spaces could be created on the street. The proposal today was to provide six parking spaces at the west end of what would be the kindergarten area, which would address the increase in the student cap, and would meet the standards of Town Code, which would eliminate a variance request.

Director of Planning, Zoning & Building Robert Moore reported that staff believed the proposal addressed the parking problems, and had no objection.

Councilman Wyett moved approval of Site Plan Review No. 17-99, with the proposed parking scenario as stated by Attorney Brindell. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. VARIANCE NO. 48-99 - Robert Crompton, 311 Pendleton Lane; located in the R-B Zoning District. To allow expansion of a non-conforming residence by the construction of a two-story addition providing a 10' side yard setback in lieu of 15' required and providing a building height of 23'10" in lieu of 22' maximum allowed. *(Deferred from December 14, 1999, January 11, 2000, and February 8, 2000)*

Ex-parte communication was not declared by any member of the Town Council.

Mayor Smith declared a conflict of interest on Variance No. 48-99, as she was an affected neighbor.

Zoning Administrator Paul Castro advised that the applicant was not present at this time.

President Pro-Tem McLendon moved to defer Variance No. 48-99 to a later time in the meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

At a later point in the meeting, Mr. Moore notified the Town Council that Attorney Lynch had experienced a death in his family and would be unable to appear for the applicant today, and staff was recommending deferral as there was no representation for the applicant.

Councilman Wyett moved deferral of Variance No. 48-99 to the April 11, 2000, Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

3. VARIANCE NO. 6-2000 - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd.; located in the R-B Zoning District. To

allow construction of an awning providing no side yard setbacks on the north or south in lieu of 10' required and providing a 3' rear yard setback in lieu of 10' required. *(Deferred from February 8, 2000)* - **Request for deferral to April 11, 2000, per letter dated March 7, 2000, from Mr. James R. Brindell**

This item was deferred to the April 11,2000, Town Council Meeting Agenda, earlier in the meeting, under Item VI. "Approval of the Agenda."

4. VARIANCE NO. 9-2000 - David Koch, 150 S. Ocean Blvd.; located in the R-B Zoning District. To allow a modification to a previous Town Council Approval (Variance #52-98) which conditioned the approval upon a recorded deed restriction for a view easement for the property owner to the south. Mr. Koch proposes to eliminate this condition. *(Deferred from February 8, 2000)* - **Withdrawn per letter dated February 24, 2000, from Ms. Maura A. Ziska**

This item was withdrawn from the Agenda, earlier in the meeting, under Item VI. "Approval of the Agenda."

5. SITE PLAN REVIEW NO. 3-2000 WITH SPECIAL EXCEPTIONS & VARIANCES - Burt Handlesman, Owner, and George Sharoubim, Applicant, 230 Worth Ave.; located in the C-WA Zoning District. To allow construction of a 2nd story (4,300 sq.ft.). Special Exception requests: to allow a 8,600 sq.ft. retail use; to allow off-site required parking for 21 parking spaces (approx. 450' away); and, to allow construction of an arcade over the public sidewalk. Variance requests: to allow a 2nd story addition with a building coverage of 45.91% in lieu of 35% maximum permitted by the Worth Ave. Design Guidelines; and, to allow the elimination of 1 required off-street loading berth. *(Deferred the Front Facade and the Arcade portion from February 8, 2000)* - **Please note that the revised plans were not received by March 7, 2000, as required by Town Council's policy. Planning, Zoning, and Building Director Moore recommends deferral of this application to April 11, 2000, Town Council meeting.**

Ex-parte communication was declared by Councilman Brooks with Attorney Kolins; by President Pro-Tem McLendon with Attorney Kolins; by President McDonald with Attorney Kolins, and Mr. Sharoubim on the merits of the application; by Councilman Goldblum with Attorney Kolins; and by Councilman Wyett with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council stating that there were essentially two issues remaining to be discussed: the special exception required in order to put an arcade over the street in front of 230 Worth Avenue; and the Town Council wanted to see a revised architectural style for what the two-story building would look like. He distributed some renderings of the arcade plans, noting that the arcade was consistent with the Worth Avenue Guidelines, although the 200 block was devoid of arcades.

Attorney Kolins commented that the revised proposed style was not only consistent with the other second floors along Worth Avenue, but was a representation of what was favored by the Worth Avenue Guidelines, which was the Mediterranean style. He requested approval of the special exception request for the arcade, and the architectural style. He read a letter from Mr. Martin Schwalberg, President of Worth Avenue Association:

"Dear Ms. Smith:

I have met with Mr. George Sharoubim, proprietor of Giorgio's of Palm Beach, located at 230-232 Worth Avenue for the purpose of reviewing his plans for the second story addition, the design proposed for that addition, and the plans for the proposed arcade in front of that property. I am supportive of Mr. Sharoubim's plans, and find his design to be consistent with the style and ambiance of Worth Avenue. I also believe this the proposed arcade will likely encourage more arcades along the 200 block, which would benefit our great street and be helpful to its pedestrians and shoppers. Sincerely."

Attorney Kolins noted that there had been some interest in getting an idea of what the street would look like if there were arcades up an down the street. He presented an architectural perspective showing arcades along the street, using arcades already on the street as the model.

Zoning Administrator Castro asked for clarification on some of the dimensions on the architectural renderings, commenting that staff believed the plan presented was a rationale plan relative to the extension of an arcade that could easily be produced by tenants on either side, and would make a cohesive arcade along the 200-300 block of Worth Avenue on the south side. He explained that it met all zoning requirements and staff had no objections.

Councilman Wyett moved approval of Site Plan No. 3-2000. The motion was seconded by President Pro-Tem McLendon

Town Engineer James Bowser commented that the applicant had not yet provided a survey and questioned whether the dimension between the building and curb was accurate. He clarified that the approval be based upon 3' clearance between the column and the face of the curb, and 7' of sidewalk.

Councilman Wyett amended the motion of approval to include a final approval by the building department; that a survey be submitted showing a 3' clearance and other requirements of the Town, and found that all code requirements for Special Exception had been met.

Town Engineer Bowser then brought up the issue that the Public Works Department would also suggest that trees be maintained, and there was a concern with an obstruction caused by the trees with the clearance that would be created. This was not shown on the plan, and he would have preferred having the trees located on the elevation so that the Town Council could have seen how the trees would impact the elevation.

Mayor Smith asked if there were actual elevations available?

Mr. Moore replied that he did not have actual elevations.

Zoning Administrator Castro commented that the trees were not shown on the elevation received by the Building Department yesterday.

Mr. Moore commented that he had mistakenly understood that Town Engineer Bowser had seen the plans prior to this time.

President McDonald suggested that all applications submitted to the Town Council be complete.

Attorney Kolins replied that he had met with Mr. Bowser a week ago, and he was certainly aware of what was being done; he noted that he had discussed the fact that the arcade must meet the dimensional requirements; he assured the Town Council that those requirements would be met. The survey indicated that there was 11'6" to work with, however, if it turned out that there was less than that the columns would be narrowed to assure that the appropriate dimensions were in place. Regarding the trees, Attorney Kolins stated that the applicant would work with staff to put them wherever they should be. He explained that it was his understanding that the reason for the 3' clearance was to allow people to alight from a car, notwithstanding the arcade; there would be plenty of room to do that; he assured that the applicant would be happy to locate the trees in conjunction with a meeting with Town staff. He clarified that the motion included the provision that before a building permit was issued the Public Works Department must be satisfied that the dimensional criteria had been met.

Mr. Moore stated that he believed the Architectural Commission had already set the location of trees in reference to arcades at the Esplanade, and that would certainly be discussed at the time of submission for permit.

In response to Mayor Smith, Attorney Kolins assured the Town Council that he would not interpret the actions of the Town Council today as overriding any decision the Architectural Commission may make about the trees.

On roll call the motion to approve Site Plan 3-2000, as modified, carried unanimously.

New Business - Minor

6. SITE PLAN REVIEW NO. 4-2000 - Donald & Nancy Carter, 5 Lagomar Rd.; located in the R-A Zoning District. To allow construction of a single family dwelling on a 11,334 sq.ft. lot in lieu of 20,000 sq.ft. minimum required, providing a lot width of 64.35 in lieu of 125' required, and providing a lot depth averaging 124.45' in lieu of 150' required.

Ex-parte communication was not declared by any member of the Town Council.

Zoning Administrator Paul Castro commented that the proposed house did meet all lot, yard, and bulk regulations, and staff had no objections to the placement of the house on the lot.

Councilman Wyett moved approval of Site Plan Review No. 4-2000. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

7. FLOOD VARIANCE NO. 1-2000 - Philip E. Rollhaus, Jr. Trustee, 242 Coral Lane; located in the R-B Zoning District. To allow construction and renovation exceeding 50% of the building's value while maintaining a 7.28' NGVD in lieu of 7.5' required.

Ex-parte communication was not declared by any member of the Town Council.

Zoning Administrator Castro commented that the applicant was proposing to put two fairly large additions onto the house, updating the mechanical, electrical and plumbing, and the total cost of the project exceeded 50% of the value of the structure. Therefore, application was needed for a Flood Variance; the applicant had agreed to enter into the standard Hold Harmless Agreement with the Town, and staff had no objections to the variance request.

President Pro-Tem McLendon moved approval of Flood Variance No. 1-2000. The motion was seconded by Councilman Brooks.

Councilman Wyett requested that the motion include the standard Hold Harmless Agreement.

Zoning Administrator Castro explained that the Town Council would be considering a modified standard Hold Harmless Agreement later in the meeting, and the applicant had agreed to enter into what was considered standard after that time.

On roll call the motion carried unanimously.

New Business - Major

8. VARIANCE NO. 11-2000 - Julie A. Heberlein (Reveley), 200 S. Ocean Blvd.; located in the R-B Zoning District. To allow construction of additions at a 27.84% lot coverage in lieu of 25% maximum allowed, and to allow a 4.715 cubic content ratio in lieu of 4.5 maximum allowed. - **Request for deferral to April 11, 2000, per letter dated March 13, 2000, from Mr. James R. Brindell**

This item was deferred to the April 11, 2000, Town Council Meeting Agenda, earlier in the meeting, under Item VI. "Approval of the Agenda."

9. VARIANCE NO. 12-2000 - Robert E. Deziel, Trustee, 150 Canterbury Lane; located in the R-B Zoning District. To allow a 67,300 sq.ft. parcel (336.5' width) to be subdivided into 3 buildable lots in a configuration that would create a nonconforming east side yard setback of 8.3' in lieu of 15' required for the existing house. - **Withdrawn per letter dated February 24, 2000, from Ms. Maura A. Ziska**

This item was withdrawn from the March 14, 2000, Agenda, earlier in the meeting, under Item VI. "Approval of the Agenda."

10. SPECIAL EXCEPTION NO. 4-2000 WITH SITE PLAN REVIEW - Rand & Jessie Araskog, 320 El Vedado Rd.; located in the R-A Zoning District. To allow construction of three (3) driveway gates providing a 3' front yard setback in lieu of 18' required.

Ex-parte communication was not declared by any member of the Town Council.

Attorney John Shaw, on behalf of Attorney Frank Chopin, requested that this item be deferred until later in the meeting.

Councilman Wyett moved deferral to the latter part of the meeting today. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

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Heard immediately following Item XV. B. 5.

Attorney Frank Chopin, representing Rand and Jessie Araskog, addressed the Town Council, explaining that El Vedado Rd. was a dead end street; the Code recognized that street gates could be placed within the setback if the placement met the requirements of the site plan review. He presented photographs of the area in question, explaining that the house had been substantially remodeled; since then the owners had found that their driveway was used by everyone going down the street pulling in one end and going out the other end, which presented both a safety and security problem. He noted that the location of the house, which was grandfathered with a 36' setback did not allow them to meet the required 18' setback, and the proposal was to put the gates inside the setback. He explained that the property line was actually to the center of the road because the road was private; in addition there were other houses next door and immediately to the west, which had gates within the 18' setback. Attorney Chopin then reviewed each of the requirements of the site plan review process, noting that the applicant met all of them.

Zoning Administrator Paul Castro commented that the gates would be outside of the right-of-way utility easement, and that staff had no objections.

Councilman Wyett moved approval of Special Exception No. 4-2000, with Site Plan Review, finding that the applicant met the necessary criteria. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

C. OTHER

1. Proposed Modifications to the Town's "General Release and Hold Harmless Agreement" by Mr. and Mrs. Andrew Aiken as a Condition for Approved Flood Variance No. 2-99 *(Deferred from February 8, 2000)*

Director of Planning, Zoning & Building Robert Moore noted that Town Attorney Randolph had been working on the agreement with Attorney Gregory Young, who was not yet present at the meeting.

Councilman Wyett moved deferral of C. Other 1. - proposed modifications to the Town's "General Release and Hold Harmless Agreement" to a time later in the meeting. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

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At a later time in the meeting, Attorney Gregory Young addressed the Town Council, stating that Town Attorney Randolph had provided the applicant with an acceptable General Release and Hold Harmless Agreement with one exception: one of the items requested was not included, which was a minimum standard for the Town that it cannot act in a way that was grossly negligent or in some way perpetrating an intentional misconduct on the property. He explained that the applicant would not want to release the Town from that clause, and the language was fairly standard in any commercial setting.

Town Attorney Randolph explained that the Town had a standard form that was used when someone applied for a flood insurance variance; basically the form provided that in the event someone applied for a flood insurance variance and was granted it, a condition of granting would be that they signed the Town form. He noted that, as he understood it, the applicant had not reviewed the form before they got their variance, and did not have an opportunity to address the form when they received the granting of the variance with conditions that they sign the form; once they had an opportunity to look at the form, they felt that it was onerous and did not want to sign it as it was.

He explained that the purpose of the form was to provide the Town with a waiver and hold the Town harmless in the event that any flooding occurred to the property as a result of the Town having granted the flood insurance variance. In response to the request of Attorney Young, on behalf of his clients, Mr. Randolph advised that he had modified the standard form to some extent, particularly in regard to the concern that the hold harmless go on forever – the previous form did not have language that put an end to the waiver so that a person had no comfort in knowing that in the event their property ever *did* conform to the Town ordinances, at that point they would no longer be granting a waiver to the Town. That clause was modified to indicate: "that upon cessation of the circumstances which created the need for the variance, in the event the property becomes conforming in regard to the Town ordinances, so that there is no longer a need for a variance, the conditions stated herein shall expire..."

He explained that the reason he had not included the clause as expressed by Attorney Young, was because the Town would need the assurance, when granting flood insurance variances, that the owner understands that if they are getting a flood insurance variance from the Town, they are granting the Town a complete indemnity for any flooding that occurs, and he would not want to see the Town in a dispute with a property owner in regard to some flooding occurring in the future– i.e., the property owner saying that the indemnity did not apply because the property owner felt that the Town was grossly negligent or that this was intentional conduct on the part of the Town.

Attorney Young replied that although it would be absurd to imagine the actions that would rise to the level of gross negligence or intentional misconduct on the part of the Town, however, the applicant ought not to have to release the Town for any such actions; to have no carve out for the exculpation of liability would be even more absurd.

Town Attorney Randolph noted that he was not saying that the Town needed to follow his advice legally, however, he was saying that his suggestions would offer more protection for the Town. He used the example of the Fire Department responding to a call and the property becoming flooded as a result – the Town could then be in a dispute as to whether there was some intentional conduct or gross negligence.

Attorney Young explained that he was not asking for only this document to be revised, but for a better form to be adopted by the Town for any hold harmless agreement signed in the future.

Councilman Wyett moved approval of adopting the hold harmless form developed by Town Attorney Randolph. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

2. Request by Mr. James R. Brindell to Extend the Expiration of the Phipps Estate Subdivision Agreement to April 6, 2003

Attorney James Brindell, on behalf of Phipps Estate, addressed the Town Council, stating that the entire Phipps Estate Subdivision agreement had been for a period of ten years, however, there was one provision which had a five year limit, concerning the application of the then existing code requirements to all of the lots in the subdivision. He explained that there were only two lots left that had not been through the Architectural Commission, so the request affected only two lots out of the entire subdivision.

Director of Planning, Zoning, & Building Robert Moore commented that Town Attorney Randolph was researching the proper procedure to follow, and it was the recommendation of staff that this item be postponed until the April 11, 2000, Town Council Meeting.

Town Attorney Randolph advised that there had been some question as to whether all of the owners in the subdivision must agree to the extension, or whether the developer could make the request. He explained that the agreement had been between the developer and the Town, and that he was comfortable with extending the agreement for a period of time to allow the last two lots to be developed.

Mr. Moore commented that the zoning had been frozen five years ago; there had been multiple changes to the ordinance that would put a burden on the last two lots; it was staff recommendation to extend the agreement to the last two lots, to make them adhere to the zoning that was in effect in 1995, which was the way the rest of the subdivision was constructed.

Councilman Goldblum moved approval of extending the Phipps Estate Subdivision Agreement to the two remaining lots for a period of three years -- to April 6, 2003. Councilman Brooks seconded the motion.

Councilman Wyett commented that almost every neighbor in the area had objected to the way the Phipps Estate had been subdivided, and it had resulted in the most overbuilt subdivision in the Town, and that he saw no reason not to conform with the current zoning.

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

XVI. ANY OTHER MATTERS

There were none.

XVII. ADJOURNMENT

The meeting was adjourned at 3:45 p.m.

Mary A. Pollitt
Town Clerk