TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON MARCH 12, 2002

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled Town Council Meeting of March 12, 2002, was called to order by President William Brooks at 9:30 a.m. in the Town Council Chambers. On roll call the following elected officials were found to be in attendance:

Mayor Lesly Smith
President William Brooks
President Pro-Tem Norman Goldblum
Councilman Jack McDonald
Councilman Samuel McLendon
Councilman Allen Wyett

Others in attendance for all or a portion of the meeting were:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Finance Director Jane Skittone
Assistant Finance Director Cheryl Somers
Fire-Rescue Chief Kent Koelz
Assistant Fire-Rescue Chief Deiorio
Police Chief Michael Reiter
Public Works Director Al Dusey
Planning, Zoning & Building Director Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Zoning Administrator Paul Castro
Risk Administrator Karen Temme
Town Engineer James Bowser
Water Resource Division Manager Larry Plympton
Town Clerk Mary Pollitt

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Lowry M. Bell, Jr., Architectural Commission, From 1994 Through 2002.

Mayor Smith presented Mr. Bell with a plaque honoring his years of service on the Architectural Commission.

IV. COMMENTS OF MAYOR LESLY S. SMITH

The comments of Mayor Smith were as follows:

Thank you. It is mid-March and the Florida Legislature is moving toward the end of its 2002 session. I urge Palm Beach residents once again to contact our representatives in Tallahassee to express our concerns about the redistricting process. There has been a great deal of miscommunication and misunderstanding, so let me be very clear: our only goal is to make sure that the people who represent us – in Congress, in the State Senate, in the State House – have our issues at the top of their list – not those of Martin County, or Broward or Dade. Neither do we want to be divided up piecemeal; we deserve a representative who knows us and has the best interests of the entire Town at heart. So pick up the phone or drop a note to State Representative Jeff Atwater and anyone else you know in the Palm Beach County delegation.

One issue that could have a great impact on Palm Beach is Peanut Island; County Commissioner Karen Marcus has asked me to meet with her on

Wednesday to discuss and clarify the land use designation and zoning for Peanut Island. The Town of Palm Beach has consistently opposed extending sewer service to the island on the grounds that it could lead to commercial development. While I am willing to listen to county staff's plans, unless some new and compelling circumstances arise, we will continue to oppose sewer service. Our staff is checking to see if there may be a conflict between the county's adopted land use and the adopted zoning category for Peanut Island, and is also asking that all related zoning amendments be completed before extension of sewer service is considered. I will keep you informed on this issue, because the future of Peanut Island affects the future of Palm Beach. We cannot allow commercial exploitation that harms the environment and threatens our quality of life, as well.

On a positive note, the Town has announced successful conclusion of our mangrove-planting project along the western edge of the Par 3 Golf Course. This is a mangrove habitat restoration project to improve the quality of the Lake Worth Lagoon waters and already it is showing promise in the form of small fiddler crabs and wading birds in the project area. We are grateful to the Palm Beach County Environmental Resources Management Department for supplying the 2,000 red mangrove seedlings and helping us plant; we also thank the county for the Lake Worth Lagoon Management Plan grant we were awarded, and for the enhancement grant from the Florida Department of Environmental Protection.

There are just a couple of items on the agenda I'll mention. First, Tom Bradford is giving us an update on implementing recommendations to increase the Town's role in resolving damage claims in construction contracting and project management. We had a couple of bad experiences last year, and I think the lesson is clear: we must have greater control over the construction projects for which we contract to not only enforce our rules and deadlines, but to impose penalties when these obligations are not met.

Our Director of Public Works, Mr. Dusey, will be proposing schedules and financing for a drainage improvement program, and this, of course, has some urgency as we head toward the rainy season. There is some potential for coordination with the City of West Palm Beach, but I would advise the Council to proceed carefully in this regard because West Palm Beach has a 3 year head start on us in the improvement of our drainage system. The water contract with West Palm Beach was signed in March, 1999. The storm that caused the attention getting and property destroying flooding happened a year and a half later during Thanksgiving, 2000. It was this storm that brought to the attention of the Council the emergency measures required to aid the residents.

The Council is being asked to consider adding a third mobile intensive care unit, to be located at the north end fire-rescue station, and I would urge adoption of this proposal. Right now, we want to be prepared for any possible emergency, however unlikely, and we must make sure our firefighter-paramedics have the equipment they need to save lives.

Finally, we anticipate discussion today of the Town's top priority goals for fiscal year 2003 and I think it is important to remember that this is not just an idle exercise. Our long-range planning board has developed a vision for our future and we must flesh out this vision with specific goals, then timetables and methods for implementing them. We may not be able to do everything we want because, despite signals that the recession is receding, it's a good time to be a bit prudent, a bit cautious with our money. So I hope the Council will set our standards high and our goals realistically.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

DEFER to the October 8, 2002, Town Council meeting - Item XII. 4. Other a., Appeal by The Breakers Hotel Regarding Its Tax Abatement Application;

Motion made by Councilman McLendon, seconded by President Pro-Tem Goldblum to defer Item XII. 4. other a., (Appeal by The Breakers Hotel Regarding Its Tax Abatement Application) to the October 8, 2002, Town Council meeting. On roll call the motion carried unanimously.

ADD Item VIII. B. 10., Consideration of Referring the Issue of Valet Parking to the Ordinances, Rules and Standards (O.R.S.) Committee.

Motion made by Councilman Wyett, seconded by Councilman McLendon to add Item VII. B. 10., to the Agenda (Consideration of Referring the Issue of Valet Parking to the O.R.S. Committee). On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE **(Another Opportunity for Communications From Citizens Will Be Offered Immediately After the Lunch Break)**

Mr. Floyd Wideman commented in favor of creating a building moratorium.

Mr. David Barton questioned the absence of the February 13, 2002, Town Council Meeting minutes on the approved agenda, as well as a reference on the regular agenda regarding the response of the Zoning Commission to a moratorium.

Mr. Eric Gilbertson commented on a variety of subjects, including presenting his issues at Town Council meetings, high property taxes, Palm Beach County services, and the sand jetties.

Mr. Royal Victor encouraged the Mayor and Town Council to be resolute regarding the Peanut island issues before the Palm Beach County Commission.

Mrs. Wendy Victor urged adoption of Proposal No. 1 of the Town Manager to move the Planning, Zoning & Building Department to West Palm Beach

VII. CONSENT AGENDA

A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF JANUARY 17, 2002.

B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF FEBRUARY 4, 2002.

C. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF FEBRUARY 12, 2002.

D. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF

FEBRUARY 19, 2002.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON FEBRUARY 27, 2002.

F. APPROVAL OF CHECK REGISTERS FOR FEBRUARY 2002.

G. OTHER

1. Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 2001. [Mark Veil, CPA, Caler, Donten, Levine, Drucker, Porter & Veil, P.A.]

    a. Acknowledgment of Receipt of Report.

    b. Acknowledgment of Receipt of Management Letter and Staff Response.

2. Proposed Planting of Palm Trees on Hibiscus and Peruvian Avenues. [Albert P. Dusey, Director of Public Works]

3. Status Report on Containerized Yard Trash Pilot Program. [Albert P. Dusey, Director of Public Works]

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

VIII. REGULAR AGENDA

A. Old Business

1. Update on Implementation of Recommendations Regarding Construction Contracting and Project Management - Proposed Increased Town Role in Resolution of Damage Claims.
[Thomas G. Bradford, Assistant Town Manager]

Assistant Town Manager Tom Bradford reported that the draft administrative procedure language regarding the role of Town staff in the administration of damage claims from construction sites for Town projects had been amended, and requested approval of same. He noted that the specific language he was referring to included the elimination of the reference to photo and video activities, the defining of the role of the Risk Administrator, and removal of the request for additional staff.

Councilman McDonald moved approval of the amended language to be included in the administrative procedure regarding the role of Town staff in the administration of damage claims from construction sites for Town projects. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. Revised Design for Peruvian Avenue Park.
[Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that the Peruvian Avenue Park project had been designed within budget, and the plan could be added to in the future, if so desired, by removing landscaping included in the base plan. He suggested that the Town Council move forward with the basic plan, and then amend it over the years, if so desired.

Mrs. Nancy Murray, representing The Garden Club of Palm Beach, addressed the Town Council, stating that there were some questions regarding the current plan, including the material used for the seating benches. She noted that The Garden Club did not like the idea of the tow-tiered trellis.

Town Manager Elwell commented that direction was needed from the Town Council in order to proceed with the final design of the park, put it out to bid, and construct the park this summer. He clarified that staff was recommending the modified plan that could be built within budget, and that additional improvements could be added, if so desired, in the future.

President Pro-Tem Goldblum moved approval of the modified plans, to include a tree on the west side of the entrance to the parking lot, and with input from The Garden Club in the future. The motion was seconded by Councilman McLendon. On

roll call the motion carried unanimously.

3. Update on Options for Addressing Town Facility Needs.
[Peter B. Elwell, Town Manager]

a. Continued Review of Options for Proposed Facilities.

Town Manager Elwell reported that staff was recommending the following:

1. Authorization to continue with the final design and preparation of bid specifications for construction of a new Fire-Rescue station on the Beaumont Parking lot

2. Authorization to proceed with planning for the relocation of the Planning, Zoning, and Building Department to the former Public Works facility site on Quadrille Boulevard in West Palm Beach, with subsequent renovation of the Town Hall for the administrative offices of the Town.

He explained that the reasons for recommending this alternative were that substantial traffic and parking demand would be relieved, and a longer term planning prospective for additional uses of the Town Hall would be afforded.

Mr. Richard Weber, owner 250 Royal Palm Way, commented that he had submitted a space consolidation proposal to the Town, and explained that 250 Royal Palm Way offered the only on-Island and immediate/long term space solution; it would permit consolidation of the Town departments, and would be the most economical solution to the Town space needs.

Mr. Leslie Evans, 257 Sandpiper, commented that he believed that if the Building Department was moved off-Island, the Fire Station could wait, since approximately 4,000 sq. ft. would be available within the Town Hall for both the Fire Department and other Town departments. He discussed parking congestion and parking availability on Australian Ave. He questioned the need for larger fire trucks.

President Brooks noted that Fire-Chief Koelz had addressed many of the concerns enumerated by Mr. Evans at the February 12, 2002, Town Council meeting; he noted that there were federal regulations pertaining to the size of fire apparatus.

Councilman Wyett expressed concern regarding expenses, and suggested that more examination was needed.

President Pro-Tem Goldblum commented that a new fire station was needed; and moved that the Beaumont Lot be used for a new fire station, and that a decision be made regarding that today. Councilman Wyett seconded the motion.

Mayor Smith commented that she had received numerous phone calls from real estate agents concerning the Town property in West Palm Beach, and she had indicated to all that the Town was not selling the property.

On roll call the motion carried unanimously.

Town Manager Elwell clarified that further direction was necessary regarding whether staff was to negotiate with Florida Crystals regarding the concept of a joint project on the Town owned land in West Palm Beach; whether the opportunity would be opened up to the public regarding developing the site; or whether the Town would develop a Town project on Town owned land for the Building Department.

Councilman Wyett recommended the renovation of Town Hall, as originally planned, and that the building or buying of another facility not be considered at this time.

Councilman McLendon agreed that the Building Department should be removed from Town Hall.

President Pro-Tem Goldblum moved that staff proceed with the investigation of negotiations with Florida Crystals, as well as others interested in developing the property.

Mayor Smith commented that she was not in favor of a joint venture with anyone, using public property and the dollars of tax payers; she suggested that staff investigate the costs of the Town building a new building on the property in West Palm Beach, as well as what it would cost to renovate Town Hall for the Building Department.

Councilman McLendon moved that further investigation be done regarding development of the Town owned property on Quadrille Boulevard.

After further discussion, Councilman McLendon withdrew his motion.

Councilman McDonald suggested that consideration be given to the offer of Mr. Spiegel for rental of property in Royal Poinciana Plaza for the use of the Building Department. He suggested that the Building Department could be moved right away while decisions were made on the other Town space needs. He explained that the traffic situation would then be addressed, as well as the Building Department space shortage needs.

Director of Planning, Zoning & Building Robert Moore commented that renting space was not a long term option, and even though all of the employees would rather stay in Town, the need for more space was recognized. He suggested that a building for the Building Department could be built on the Town property in West Palm Beach, with the potential for a future purchaser paying to relocate the operations somewhere else. Therefore, the building would not be wasted on that site.

Town Manager Elwell commented that the only benefit to any of the leasing options was the time that it would buy; the moves from rental space to permanent space would be expensive and would interrupt services of the Town staff. He suggested that another alternative regarding Florida Crystals was the potential of the relocation of Florida Crystals, and the possibility of the Town purchasing the Florida Crystals building. He recommended that the Town Council defer a decision on the Florida Crystals option at this time, in order to give staff time to further discuss the situation with Florida Crystals and report back to the Town Council.

President Pro-Tem Goldblum amended his motion regarding negotiations with Florida Crystals, to direct staff to explore the options with Florida Crystals, and report back to the Town Council at the April 9, 2002, Town Council meeting for consideration of those options as well as the potential of the Town building its own building on the Town owned property on Quadrille Boulevard.

In response to Councilman McDonald, Town Manager Elwell indicated that it would take approximately three years to renovate the space at Town Hall and keep the Building Department in Town; it would take approximately one and a half years to have them in the new space if a building was built in West Palm Beach, depending upon whether the Florida Crystals building was purchased, or the Town built its own building.

After further discussion, the motion of President Pro-Tem Goldblum was seconded by Councilman Wyett.

President Pro-Tem Goldblum clarified his motion as follows:

to direct staff to explore the options with Florida Crystals, and report back to the Town

Council at the April 9, 2002, Town Council meeting for consideration of those options as well as the potential of the Town building its own building on the Town owned property on Quadrille Boulevard; to also explore a short term leasing option at Royal Poinciana Plaza until a new facility would become available. On roll call the motion carried unanimously.

b. Potential Sale of Pike Road Property.

Town Manager Elwell reported that an offer for the purchase of the Pike Road property had been made by Anderson & Carr, Inc., on behalf of Royall Wall Systems, Inc. He advised that staff was recommending that the Town Council consider the sale of the property, based upon the zoning considerations and the competitive offer. He suggested that an appraisal of the property be obtained, with the offer then meeting or exceeding the appraised value of the property.

Mr. Wayne Lewis, Sales Agent, Anderson & Carr, Inc., explained that the only contingency in the sales contract was that the Town convey clear title, with a 90-day due diligence period to conduct soil borings, investigate the zoning situation, and review utility availability; following the 90-day due diligence period the closing would take place in 60 days.

Mayor Smith commented that she found that 90-day due diligence period too long, since the offer was coming from a neighboring property owner.

Mr. Lewis suggested that the 90-day due diligence could be reduced to 60 days, and that he would confer with his client.

Councilman Wyett moved that the property be offered to the potential buyer for $3.25/sf, giving them 60-days due diligence, and 30 days to close; cash transaction, not contingent upon financing, and subject to the conditions identified by Town Manager Elwell (that the purchase value would meet or exceed the appraised value of the property and that all other details of the transaction and documentation be to the satisfaction of the Town Attorney and Town Manager Elwell). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

4. Proposed Drainage Improvement Program.
[Albert P. Dusey, Director of Public Works]

a. Proposed Implementation Schedule and Financing.

b. Potential for Coordination with City of West Palm Beach Water Improvements.

Public Works Director Al Dusey reported to the Town Council regarding the drainage improvement program, recalling that the Town Council had adopted a new level of service for the Town at the February meeting, and requested that staff develop a multi-year program based on the drainage basin studies that had recently been completed. Staff had completed the multi-year program, as follows:

1. The collection system will be designed to accommodate the rainfall from the three year/one hour storm.

2. Pump stations will be sized to accommodate the rainfall from the 100-year/3-day storm.

3. The intent of the level of service is to protect, to the extent reasonably possible, the first floor of residences during the 100-year/3-day storm.

4. Some homes, and many garages, will continue to experience flooding due to the elevation of these particular structures.

5. Street flooding during rainfall events in excess of the 3-year/1-hour storm is expected.

6. Street flooding during the 100-year/3-day storm is a planned element of the drainage plan.

Councilman Wyett suggested that the costs had risen and should be approved by the taxpayers through a referendum.

Councilman McLendon expressed concern with the location of some of the additional pump stations.

Mr. Dusey explained that a flood routing analysis had been done, and additional pump capacities were identified, which would relieve the flooding occurring on the streets.

Councilman McLendon suggested that six inch high curbs be permitted to act as a conduit during the worst storms.

Mr. Dusey stated that the proposed improvement program would involve the addition of a number of pump stations and the expansion of two of the stations; it was important for the Town Council to give its approval so that staff could go through the lengthy permit process.

Councilman McLendon commented that the proposed facilities would be in place for at least 40 years, and that the financing should be arranged so that those using the facilities in the future were also helping pay for them.

Town Manager Elwell commented that the plan emphasized the larger work in the early years, which was why a bond was being proposed for that portion; the work would then slow down somewhat on the work on the side streets, with a pay-as-you-go funding process. He noted that the magnitude of the work was so tremendous that it had to be prioritized into addressing the greatest needs first.

President Pro-Tem Goldblum moved acceptance of the report, as presented by Public Works Director Dusey, with the additional costs. The motion was seconded by Councilman McLendon. *(After lengthy discussion, this motion carried unanimously at a later point in the meeting – immediately preceding the luncheon recess).*

Mr. David Barton, resident, commented that the Town Council was approving something that had not yet been seen by the public, as a detailed report had not yet been prepared for the public.

Town Manager Elwell replied that the report had been available since the past week, was part of the back-up furnished to the Town Council, and that the media had written extensively about it over the past weekend.

Mr. Barton stated that the proposal was predicated on the basis of current land use; he suggested that the supervision of the current proposed project was being done by the same personnel that had supervised the Bradley Place project. He suggested that supervision should be in place before the Town moved forward, and that he did not have the confidence in the Public Works Department to adequately supervise the proposed project; he suggested that coordination with West Palm Beach was an issue, and that further detailed information be presented before the Town Council voted on the proposal.

Town Manager Elwell acknowledged the mistakes at Bradley Place, and the fact that it was a great disappointment to staff as well as the community and the Town Council, however, the project had now been put on the right course. He stated that the proposal that was now before the Town Council was tremendous, of high quality, in priority order, with the steps necessary in order to get over the regulatory hurdles; it had been accomplished within a three-week period, and was of considerable complexity and magnitude – he stated that he was proud of the work done by the Public Works Department to provide the proposal, and was fully confident of the ability of staff to move forward. He advised that work would continue as a team – the elected officials, staff, people in the community, and consulting engineers. He noted that there would be times that tweaking would be required, and the course may change somewhat, however, he was very pleased with the work of staff in providing the information presented today.

Mr. Barton responded that Ordinance No. 15-01 had called for every property owner to have a water management plan; he suggested that the Town of Palm Beach needed a water management plan, and water management supervision. He stated that staff should not have sole responsibility for the project; someone at the citizen level and at the Town Council level was needed for direct supervision. He stated that there were many things that could happen when digging began, and that he was not satisfied with the supervisory structure in place.

Town Manager Elwell commented that the supervision question was separate from whether the appropriate facts were presented for the Town Council to make a decision.

President Brooks commented that Town Manager Elwell was the chief executive officer, with the Town Council acting as the board of directors, and that the Town Council relied upon Mr. Elwell for making decisions, which included supervisory decisions.

Mayor Smith commented that the Town had responded appropriately on the Bradley Place project; everyone recognized that it had been a mistake, and the process had been changed. She noted that Councilman McLendon was a water expert, and President Pro-Tem Goldblum had visited Bradley Place every day during the summer, so there had been supervision when it was realized that the project was going wrong. She also noted that the Director of Utilities for the City of West Palm Beach was present, and that staff had coordinated with him as much as possible, and that the major flooding in the Town had taken place a year and a half after the water contract had been signed with the City of West Palm Beach. She stated that the day after the water contract was signed with the City of West Palm

Beach, the West Palm Beach Utilities Department had started to plan the projects in the Town.

Mr. Ken Reardon, Director of Public Utilities for the City of West Palm Beach addressed the Town Council, stating that $6.5 million had been expended to date on Town of Palm Beach projects – another $9.9 million had been bid. Some of the projects had some impact on the Town storm water, and staffs were coordinating with each other in that regard. He advised that both municipalities were cooperating well, and communicating every day. He suggested that, after consideration and review of the design work, the work could be completed together.

Town Manager Elwell noted that a specific coordination plan would be accomplished by next month, however, he advised that the more staffs coordinated, the more likely the costs of the water/drainage projects would increase. Staff would maximize coordination and limit the degree of higher costs; staff would be prepared to submit a report and recommendation next month.

Director of Planning, Zoning & Building Robert Moore commented that the engineering report had not taken the two inch retention requirement into consideration, which would make the analysis a more conservative approach; he assumed that it took in the first inch, which was a requirement by SFWMD. He noted that, in April, the Zoning Commission would be recommending that a build-out study be done. He further explained that prior to October 2001, all of the development/re-development was required to hold only the first one inch of water; now the requirement was that the post run-off not exceed the pre-run-off, and/or the retention of the first two inches of water. The Zoning Commission wanted to determine how the new requirement functioned before being more restrictive.

Mr. Barton commented that he had been both gratified and disturbed with the reports concerning the Bradley Place project – he was gratified that staff had gotten "their act together," however, the reason for that was the use of friendly contractors, which was in effect a cost plus arrangement. He suggested that the Town Council appoint a Water Management Board to supervise the drainage improvement plan.

Councilman Wyett suggested that consideration be given to requiring existing properties to install gutters, down-drains, and wells, if they physically added on to their property and occupied more of the land.

Mr. Dusey replied that would benefit the drainage system long term, however, it was a policy decision.

Town Manager Elwell noted that such consideration would be directly related to the building regulations, and would be a matter for the Building Department to consider.

President Brooks suggested that a follow-up report concerning the suggestions of Councilman Wyett could be presented at a future meeting.

Mr. Moore explained that an applicant could not obtain a building permit without doing an engineering study on the property. He explained that someone building a 10' x 10' utility shed on their property would not be required to retain the first two inches of water for the entire property. The threshold that was built-in to the requirement was 50% of the value of the property or the land.

Mayor Smith commented that she believed it had been a mistake not to have a building moratorium, as many relevant studies would have fallen under the umbrella of looking into whether or not a moratorium would help. She noted that there were several other aspects that would be relevant to such a study.

Mr. Moore advised that he would provide further information relevant to the suggestions made today at a future Town Council meeting, perhaps in May.

Architect Gene Pandula observed that he had been dealing with the two inch drainage requirement, and he had found that there was more and more reliance on systems, and simple percolation through the ground. He noted that he was told by his consulting engineers that these systems lasted three to five years before they became clogged and inoperable. He suggested that either a maintenance program would have to be mandated, or the Town would need to take over and have professional people dealing with the issue.

Town Manager Elwell advised that the maintenance issue would be reviewed so that the proper regulations would be in place. He stressed that the drainage studies had been based upon the one inch retention, and the financing was based upon that.

Town Manager Elwell now addressed the financing portion of the proposed drainage improvement plan, referring to the memorandum dated March 5, 2002, from Jane Skittone, Finance Director, concerning the financing alternatives for drainage projects. He summarized that the recommendation was to pay for the first half of the drainage project with bonds; a pay-as-you go program was recommended for the remainder of the project, with two different options. He noted that a specific recommendation had not been made regarding general obligation bonds vs. revenue bonds, which was a policy question for the Town Council. He explained that the improvements were extremely expensive, with an extremely long life, and the use of bonds would be very appropriate.

Councilman Wyett commented that, since there was approximately one year to accomplish the permitting process, there was time to put the issue to vote before the public.

Town Manager Elwell advised that a decision would need to be made relatively soon regarding financing of the drainage project, so that staff could proceed with the permitting and design process effectively. He noted that it was not urgent that a specific financing decision be made today, as the Town Council had taken the action necessary today to allow staff to proceed.

Councilman Wyett requested that information regarding the interest rate difference between revenue bonds and general obligation bonds be provided to the Town Council.

In response to Councilman McLendon, Town Manager Elwell explained that the rationale for his recommendation of the 20 year bond was two fold: the exact number came from what was necessary to fund the large portion of the work for the first five years, which was approximately $22 million worth of work, which included the $2 million from previous appropriations for drainage improvements. The balance of approximately $17 million to do the side street work was recommended as the $2 million per year pay-as-you-go program; bonding that work would involve timing, how much work could be accomplished at any given time, etc. He explained that bonds could be issued sequentially if the Town Council desired to bond the entire project, however, some cost effectiveness would be lost.

Councilman Wyett expressed concern about the amount of construction being done in the north end, and suggested that staff provide information on stretching the five year plan in order to minimize the impact of the disruptions.

Mr. Dusey replied that staff proposed coming back to the Town Council at the April 9, 2002, Town Council meeting with a schedule indicating the winter and summer construction.

President Brooks clarified that the Town Council action to accept the report of the drainage improvement plan, with additional costs, was in principle today. He noted that Finance Director Skittone would provide financial options in subsequent months.

Town Manager Elwell advised that additional information would be provided particularly to address the differential interest rate. He noted that staff was sensitive to the disruptions to the community when the work was done, and he anticipated that the first five years of the program would be relatively intolerable. He requested direction from the Town Council regarding stretching the time period beyond five years, as well as whether any work should be done in the winter months.

In response to Mayor Smith, former Town Manager Robert Doney advised that the 1980 bond issue had involved the tearing up and closing of North Ocean Blvd. for two seasons.

Town Manager Elwell clarified that the staff would adhere to the five-year program, and that the Town Council could modify that schedule next month if it was thought to be intolerable.

c. Cost and Schedule of Connecting Coral/Crescent/Emerald to D-4 Pump Station.

Town Engineer James Bowser referred to his memorandum dated February 29, 2002, and reported that staff had provided a cost estimate and schedule to complete storm drainage lines on Lake Way from Emerald Lane to the D-4 Pump Station. Based upon estimates prepared by Metric Engineering, the estimated cost was $591,000. The project schedule would be on a conventional process, with the preparation of plans and specifications, bidding, Town Council award, and construction. He advised that the project would extend into the season in order to have it completed in the estimated 170 calendar days; there may be more complexities as the final design proceeded, which would add time to the schedule.

Town Manager Elwell added that staff would report back to the Town Council at the April 9, 2002, Town Council meeting, before staff was committed to the construction of the project. He estimated that the project would be finished in approximately one year.

Mr. Michael McCluskey, Coral Lane resident, commented that it should not take a year to complete the project – the piece that was remaining to be completed was 1,500 ft.

Town Manager Elwell replied that the hourly rate of contractors employed by the Town could not be used to do this project, as they would be completing the D-12/Bradley Place project during the summer. A very detailed design document with bid specifications would be required, and then the process of putting the project out to bid would take place. He noted that the project could have moved more quickly, however, it would have been at risk of constructing something that would not have been the appropriate improvement for the overall plan for the basin in the north end. He recognized that the reason the project had not been pursued until now was that it needed to be part of the overall plan. Town Manager Elwell clarified that the staff would plan on adhering to the five-year program, and that the Town Council could modify that schedule next month if it was thought to be intolerable. He pointed out that staff had a limited ability to manage hourly rate projects, because the Town was then the general contractor on those jobs.

In response to Councilman McLendon regarding temporary measures that could be put into place, Mr. Dusey explained that the problem would be where to put the water; he estimated that there were 200 similar situations in Town that would also require temporary measures. Town Manager Elwell also noted that the interim emergency pump stations installed would hopefully provide some relief while construction of the other improvements took place.

Councilman Wyett expressed concern with the inconvenience to residents in the area.

Town Manager Elwell replied that the Town Council had requested that the information regarding an expedited plan be brought forward this month for consideration, after Mr. McCluskey had addressed the Town Council at its special meeting on drainage held last month. He recognized that the conventional method would require that construction would be pushed into the season, however if the proposal to expedite the project was unacceptable, design could be accomplished during the summer, with construction taking place the next summer.

Mayor Smith commented that she understood the concerns of Councilman Wyett, and suggested that all residents within four blocks of any drainage project would need to be informed that there should not be any construction projects going on in addition to the street drainage projects.

Mr. Moore commented that one of the recommendations that would be coming forward from the Zoning Commission and from the staff was that no construction permits be issued at the time that the drainage projects were being accomplished.

Mr. McCluskey again commented that it should not take one year to complete a project costing $591,000, and that it should not take 90-days to draw plans and specifications. He suggested that it was unacceptable.

In response to President Brooks, Town Engineer Bowser advised that staff could start tomorrow, if authorized today to proceed, in order to begin the design to make the pipes fit. He advised that he would come back with a progress report next month as to the schedule.

Town Manager Elwell advised that staff understood the urgency of the issue, and the schedule presented was the fastest schedule that staff could commit to; it was the best that could be done under the circumstances. If the winter construction was not tolerable, the project could be designed this summer and constructed next summer on a high priority basis.

President Pro-Tem McLendon moved approval of design of the project (increase size of pipes in Lake Way from Emerald Lane north to the D-4 Pump Station) this summer, and construction next summer as expeditiously as possible. The motion was seconded by Councilman Wyett.

After further discussion, the motion failed 2/3, with President Pro-Tem Goldblum and Councilman Wyett casting affirmative votes; Councilman McDonald, Councilman McLendon, and President Brooks casting dissenting vote.

On roll call the original motion made earlier by President Pro-Tem Goldblum, to accept the report of Public Works Director Dusey, with additional costs, seconded by Councilman McLendon, carried unanimously.

Councilman McDonald then moved that the project (increase size of pipes in Lake Way from Emerald lane north to the D-4 Pump Station) be pursued as expeditiously as possible, with work continuing into the season. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

**************The luncheon recess was taken at 12:50 p.m.****************

******The Town Council Meeting of March 12, 2002, was reconvened at 2:15 p.m.******

5. Update on Emergency Medical Transport Fees.
[Kent W. Koelz, Chief of Fire Rescue]

Fire-Rescue Kent Koelz addressed the Town Council, referring to his report of March

1, 2002, furnished as part of the back-up information. He summarized that estimated gross revenue figures totaled $319,660. There were two billing options: using an outside billing agency, at an annual cost of $51,100; or using an in-house billing method, which would total $71,200. He noted that many Fire Chiefs in neighboring municipalities preferred to do the billing on their own, because of the lost time between the billing agency and the finance/fire departments. He concluded that, should the Town Council wish to go forward with the program, staff recommended that the Fire-Rescue and Finance Departments be allowed to start the system in-house, using current personnel and that the implementation of the system not begin until October 1, 2002.

In response to Councilman McDonald Chief Koelz agreed that most people would be covered by their insurance, which usually covered approximately 80%; the remainder would be billed to the patient.

Councilman McDonald commented that part of the incentive for him to support the EMS transport billing was thinking that it would not really cost residents anything, since most of them were covered by insurance, however, it had now been brought to his attention that a portion of the charges would be billed to the patient.

Chief Koelz noted that legally it was necessary to bill both the insurance company and the patient so that each could pay accordingly.

In response to Councilman Wyett concerning resident/non-resident rates, Town Attorney Randolph advised that he did not believe that was advisable, however, he would review the issue if so desired.

Mr. Gerald Frank commented that there was supplemental insurance, in addition to Medicare, which would cover any additional charges. He noted that many people using the EMS service later offered donations to the Fire-Rescue Department. He also recalled that many years ago, some residents and the The Citizens' Association had discussed the idea and were not in favor of this program. An executive committee meeting of The Citizens' Association had been held approximately one month ago where this charge had been discussed, and it had been found that the idea was now supported.

Mayor Smith expressed concern regarding charges for visitors, guests in the homes of residents, and elderly people who did not carry supplemental insurance. She commented that she opposed charges for EMS transport services.

Chief Koelz replied that if the patient was not able to transmit the insurance information, the Fire-Rescue department would follow up with the hospital. Some of the costs attributed to the Fire-Rescue department included follow-up the next day by the office manager to obtain information from the hospital. He explained that the fee in question was a transport fee only, and the patient was responsible for determining whether or not they wanted to go to the hospital. If the paramedic in charge believed the situation to be serious, the patient would be instructed in more detail.

After further discussion, Councilman McLendon moved approval of the recommendation of the Fire-Rescue and Finance Departments to start the EMS transport charge, implementing the system in-house using current personnel and that the implementation of the system not begin until October 1, 2002. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Town Manager Elwell clarified that staff would set the necessary steps in motion to be ready to begin charging October 1, 2002, and that during the budget process in the summer months the actual figures would be presented.

6. Update on Seeking Reimbursement from Defendants for Certain Police Expenses. [Michael S. Reiter, Chief of Police]

Police Chief Michael Reiter addressed the Town Council, referring to his previously submitted report, and adding that the most important consideration of law enforcement at the time of sentencing for any criminal case was that the appropriate punitive and corrective actions be taken. In a plea negotiation, the Police Department would never want the circumstances to be that it would receive costs of investigation refunded to the Town at the expense of a lesser sentence.

President Pro-Tem Goldblum moved acceptance of the report of Police Chief Reiter concerning reimbursement for costs of investigation and for defendants' damage to Town property. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

B. New Business

1. Consideration of Adding a Third Mobile Intensive Care Unit (MICU) to be Stationed at the North Fire-Rescue Station.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum dated March 6, 2002, included in the back-up material, wherein staff recommended that any action on the proposed implementation of a third mobile intensive care unit be postponed until the report and recommendations were available from the consultants conducting the Fire-Rescue Department study.

Councilman McDonald moved approval of the postponement of any action on the implementation of a third mobile intensive care unit until the report and recommendations were available from the consultants conducting the Fire-Rescue Department study. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. Consideration of Study of Town Protocols for Emergency Medical Services. [Councilman Wyett]

Councilman Wyett explained that he had suggested that an outside consultant evaluate the medical system/procedures, and whether patients should be transferred at all to the Palm Beach Gardens Hospital. He noted that there was a higher incidence of staph infection at Palm Beach Gardens Hospital, and he suggested that patients request that any heart situation be taken directly to JFK Hospital.

Dr. Randall Wolff, Medical Director, Fire-Rescue Department, commented that he had submitted responses to general questions, and noted that when heart patients were transferred to a facility, the closest, most appropriate facility was used. The north end was closer to Palm Beach Gardens, and the patients were not being taken for by-pass surgery, which is where the question of infection would arise. The question of infection was in the realm of by-pass surgery, and patients were not taken directly from the emergency room to the operating room for by-pass surgery. He stated that, having been in the emergency department at JFK Hospital for 20 years, he could not recall a patient going directly to the operating room from the emergency department – it would be an exception. He explained that some patients were unaware that some hospitals offered the option of a catheterization laboratory and angioplasty; those patients were advised to go to the closest facility. If a patient requested a certain hospital, the patient was advised if the catheterization laboratory was an option. He advised that patients were directed to the most appropriate facility, however, if a patient did not want to go to Palm Beach Gardens Hospital, he/she would not be taken there.

Dr. Wolff commented that it was difficult, as an outsider, to get all of the facts about what was going on inside of a hospital. He recalled that there had been a news article in the November Palm Beach Post that talked about Palm Beach Gardens Hospital, and he commented that he assumed that if there were continued problems in the hospital they would have been addressed by regulatory agencies.

Councilman Wyett replied that it was his experience that residents/patients were taken to the nearest hospital, however, he maintained that the north end residents were pushed to go where they were instructed, and it would take a strong person, in the middle of a scare, to fight them.

Dr. Wolff responded that Palm Beach Gardens Hospital had been suggested for the north end residents/patients because of the time constraints, and taking a patient past two other hospitals to a more specialized facility would have to be justified.

Councilman Wyett responded that the resident/patient should be given a choice, rather than be pushed in one direction.

Dr. Wolff concurred, and advised that he would be sure that was an option – the resident/patient could be told of the two facilities that would provide cardiac by-pass and the catheterization laboratory, and be advised of which was closer, and then would be given the option.

Councilman Wyett responded that when a patient was quite ill, he/she was not in a position to tell paramedics where he/she wanted to go.

In response to Councilman McDonald, Dr. Wolff advised that it was his information that JFK Hospital previously had an exclusive contract with the cardiovascular physicians at JFK Hospital. He explained that there had been one set of physicians at JFK Hospital that did by-pass surgery, and no one else from the outside could come in; that had subsequently changed, and now cardiovascular surgeons from around the county could join the staff at JFK Hospital, and could do surgery there once they were on staff. It was also his understanding that the physicians from Palm Beach Gardens Hospital would be coming.

3. Consideration of a Liaison Committee/Person with Good Samaritan and St. Mary's Hospitals to improve the Services to Palm Beach. [Councilman Wyett]

Councilman Wyett suggested the appointment of a liaison committee/person with Good Samaritan and St. Mary's Hospitals to improve the services to Palm Beach. He expressed concern that Good Samaritan Hospital did not have a stroke team presently. He maintained that stroke was the third cause of death, and that the proper treatment at the hospital was a necessity.

Dr. Randall Wolff, Medical Director, Fire-Rescue Department, commented that Good Samaritan was not offering a stroke team, and therefore, he had issued a memorandum that patients be made aware of that, and it would be suggested that another facility be used.

Councilman Wyett commented that he understood that no one in the area had a stroke team.

Dr. Wolff replied that depended on the definition of a stroke team – the other hospitals had emergency plans for stroke patients – he noted that less than 5% of patients who experienced stroke were actually candidates for the clot busting medicine, because most patients got to the hospital too late – the drug had to be given within the first three hours of symptoms.

Councilman McDonald moved that Councilman Wyett be designated as the liaison person with the hospitals. The motion was seconded by Councilman McLendon, and carried unanimously on roll call.

4. Review of Traffic Control Procedures on A1A for Construction

Projects Between Southern Boulevard and Sloan's Curve.
[Councilman McDonald]

Councilman McDonald advised that he was suggesting a procedure dealing with traffic control on A1A between Southern Boulevard and Sloan's Curve, and was hoping that staff could recommend some methods to facilitate traffic in that area, and not have traffic stopped every time a contractor left a construction site. He noted that traffic in that area had been interrupted frequently in the area as a result of the Miller project. He suggested that conditions be attached to building permits when issued, that would address traffic flow during the building process.

Director of Planning, Zoning & Building Robert Moore replied that there had been staff discussion regarding the traffic conditions in the area; some of the sites in the area were large enough to warrant a special duty police officer, who would be instructed to interrupt traffic only at a normal break. Staff was currently addressing the responsibilities of flagmen on job sites. He noted that the Miller project had been a tremendous problem, and a special duty police officer had been placed on the site as a control measure.

Councilman McDonald responded that he was suggesting a procedure that would outline what could be done on job sites, that would be a condition of the permit that could be enforced.

Mr. Moore advised that staff currently had the ability to stop the job when there was a non-compliance issue, and that conditions could be attached to the permits if so desired.

Mayor Smith suggested that it was difficult for the Building Department to police each job site, and that an off duty police officer be placed on all of the large jobs, as a condition of the permit.

Police Chief Reiter advised that it was beyond the capacity of the Police Department to provide police officers six days a week for all of the large projects being constructed.

Mr. Moore responded that all of the jobs being done would not require a police officer.

President Brooks suggested that Mr. Moore provide a list of the houses that would require police officer traffic cooperation at the April 9, 2002, Town Council meeting, and coordinate with Police Chief Reiter to determine what was required.

President Pro-Tem Goldblum recalled that he had heard that a flagman had to be trained to be a flagman.

Mr. Moore responded that he had investigated that issue regarding state roads, but he did not recall the final answer.

President Pro-Tem Goldblum suggested that information on the issue be provided.

Mr. Moore replied that he would not be present at the next Town Council meeting, and requested that Police Chief Reiter respond in his stead at the next Town Council meeting.

Town Manager Elwell advised that a policy statement would be developed that would address both the threshold for the types of projects and the recommended policy as to how the projects would be approached; the policy would be recommended to the Town Council at the April 9, 2002, Town Council meeting.

5. Report on Department of Transportation Plans for Reconstruction of South Ocean Boulevard. [Councilman McDonald]

Public Works Director Al Dusey reported that staff had met with the Florida Department of Transportation (FDOT) regarding the proposed project for South Ocean Boulevard, from Lake Worth Road to Southern Blvd. FDOT explained that, by regulation, when they re-surface a road they are required to bring it up to a certain standard; they were proposing to construct five foot paved shoulders from a section north of Lake Worth Road up to and through Widener's Curve, and then reduce that to two feet, because of limited right-of-way north of Widener's Curve up to Southern Blvd. They would not designate bike lanes; according to them, the grass that grows along the highway stopped water from running off of the road, and could create a hazard, and there was additional room to run off the road if necessary. They had indicated that there were funds available for landscaping, and the FDOT had suggested that they finish the plan on landscaping across from Phipps Park. The area south of Lake Worth Bridge on the west side of A1A would also be pursued with the City of Lake Worth. There was an extensive and aggressive public involvement process – municipalities would be involved, as well as the Citizens Association of Palm Beach; the FDOT would be present at the April 9, 2002, Town Council meeting to discuss the proposal. They had also indicated that the public would be invited to a meeting in the Town Council Chambers, which they had reserved for that purpose. The project was scheduled for construction in 2004.

6. Establishment of Top Priority Townwide Goals for FY 2003. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum of March 6, 2002, addressing the Townwide goals for FY 2003. He explained that individual voting for the goals that were the highest priority reflected that drainage improvements and shore protection projects were of the highest priority. Also identified as high priority goals were controlling development, and maintaining strict zoning regulations in order to preserve increased green space. There were six items tied for fifth place priority. He explained that in order for the goals to be meaningful to staff in the budgeting process, a limited number of top priority goals was suggested – he suggested that the Town Council choose one of the six items tied for fifth place, and make that its fifth highest priority goal. He recommended that the safety and security of Town residents and employees, related to potential natural disasters and acts of terrorism, be adopted as the fifth top priority goal.

Mayor Smith commented that she had not included beach restoration and drainage as her top priority items, as they were already well underway; she had considered new goals that were not currently underway, and had chosen control of development. She also noted that the public forums held in November had identified safety and protection of residents as a concern, and that most people felt very safe in the Town of Palm Beach, and that it was a very important goal to increase safety and security to protect residents and visitors at all times.

Town Manager Elwell suggested that the annual goal setting exercise be viewed as a combination of bringing new goals into the mix, and re-stating the commitment of the Town Council to achieving the things that were of most importance to the community. He explained that he had considered the overwhelming nature of the votes for drainage and the beach projects as a reaffirmation of their critical importance; the goal was to ensure that substantial progress was made on them. He urged the Town Council to focus on limiting the number of goals, as adding more and more goals would limit the focus on priority goals.

Councilman McDonald commented that he believed that the control of development and traffic/parking went hand in hand, and that the public should be able to participate in the objectives/goals; much of the security/safety information would not be available to the public.

President Brooks commented that security/safety was the purview of the Police Department, who would keep the Town Council apprized; he suggested that he would be willing to go along with the suggestion of Councilman McDonald, and chose traffic/parking as the fifth Townwide goal.

Police Chief Reiter commented that the Police Department had great concerns in the safety/security area, and conducted ongoing threat analyses, which were worked on every day; the Police Department agreed that safety/security should be a priority. He stated that if it was decided that safety/security would not be designated as one of the five major efforts conducted by Town staff, he was hopeful that the funding support would continue.

Councilman McDonald commented that there was no question that security was one of the most important reasons people live in Palm Beach; he stated that was why the Police Department was one of the highest paid in the county. He suggested that safety/security be included as the fifth Townwide goal.

Councilman McDonald moved that safety/security be considered the fifth Townwide goal/objective for FY2003. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

7. Update on Potential Change to the Yard Trash Collection Schedule. [Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that the winter schedule had been changed this year, to collect yard trash on all streets on a four day schedule, Tuesday through Friday. The purpose had been to keep yard trash off the street during the weekends. The Public Works Department had been requested to continue with that schedule during the summer months, and after discussion, it had been determined that the four day pick-up schedule could be continued. An additional appropriation of $23,000 would be needed, as there was over-time work involved.

Councilman Wyett moved approval of the recommendation of Public Works Director Dusey to continue with the four day pick-up schedule, with the additional funding of $23,000, to be issued from the General Contingency Fund. The motion was seconded by Councilman McLendon, and carried unanimously on roll call.

8. Architectural Commission Appointments.
[Robert L. Moore, Director of Planning, Zoning & Building]

President Brooks expressed thanks to the many people who had applied to serve on the Architectural Commission.

After casting ballots, the Town Council voted to appoint the following three Architectural Commission membrs:

Regular Members: Eric Adams
Morgan Dix Wheelock

Alternate Member: Rand Araskog

9. Landmarks Preservation Commission Appointments.
[Robert L. Moore, Director of Planning, Zoning & Building]

President Brooks expressed thanks to all those who had applied to serve on the Landmarks Preservation Commission.

After casting ballots, the Town Council voted to appoint the following four Landmarks Preservation Commission members:

Regular Members: Gene Pandula
Ann Vanneck
Judy Hoffman

Alternate Member: Pat Segraves

10. Valet Parking

Councilman Wyett moved that improvements to the Valet parking in Town be referred for discussion to the Ordinances, Rules, and Standards (O.R.S.) Committee. He explained that valet parkers should be trained, and that methods are found to avoid double and triple parking. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

IX. RESOLUTIONS

A. Resolution No. 17-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to OK Generators for the Purchase of Two Generators for the El Brillo Way and Jungle Road Storm Water Pumping Stations. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 17-02 by title (as above).

Councilman Wyett moved approval of Resolution No. 17-02. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

B. Resolution No. 18-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Data Flow Systems, Inc. for the Upgrade of the Radio Telemetry System. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 18-02 by title (as above).

Councilman Wyett moved approval of Resolution No. 18-02. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President

Brooks had temporarily left the room.

C. Resolution No. 19-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for Drainage Structures. [James M. Bowser, Town Engineer]

Town Engineer Bowser reported that Resolution No 19-02 concerned drainage structures for the D-12 station, however, there had not been any bids submitted. He stated that the suppliers would be contacted to find out why they had not submitted bids; in the interim, staff would move forward with requesting quotes within the purchasing guidelines. He advised that he would return at the next Town Council meeting, April 9, 2002, with both Resolution No. 19-02, and Resolution No. 20-02.

Councilman Wyett moved deferral of Resolution No 19-02 to the April 9, 2002, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

D. Resolution No. 20-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for Miscellaneous Construction Materials. [James M. Bowser, Town Engineer]

Councilman Wyett moved deferral of Resolution No 20-02 to the April 9, 2002, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

E. Resolution No. 21-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Semsco for Miscellaneous Pipe Fittings. [James M. Bowser, Town Engineer]

Town Attorney Randolph read Resolution No. 21-02 by title: (as above)

Councilman Wyett moved approval of Resolution No. 21-02. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

F. Resolution No. 22-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to GFA International for Drilling Services. [James M. Bowser, Town Engineer]

Town Attorney Randolph read Resolution No. 22-02 by title: (as above)

Councilman Wyett moved approval of Resolution No. 22-02. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

G. Resolution No. 23-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Extension and Modification of a Lease Agreement Between the Town and National Cable Acquisition Associates, L.P., a Delaware Limited Partnership, D/B/A Adelphia Cable Communications and Lodge Number 19 of the Fraternal Order of Police for Use of a Portion of Town Property for a Steel Radio Tower and Building and Other Cable Television Equipment and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [David F. Jakubiak, Assistant to the Town Manager]

Town Attorney read Resolutin No. 23-02 by title: (as above)

Councilman Wyett moved approval of Resolution No. 23-02. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

H. Resolution 24-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Committing its Portion of Funds Allocated Pursuant to Resolution R-2002-0192 Adopted by the Palm Beach County Board of County Commissioners on February 5, 2002, in Accordance with Section 318.21(10), Florida Statutes, to the Municipal Public Safety Communications Consortium Communications Project, Providing an Effective Date, and for Other Purposes.
[Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Resolution No. 24-02 by title: (as above)

Councilman Wyett moved approval of Resolution No. 24-02. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

I. Resolution 25-02 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Department of Public Works, Engineering Division, Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach by Incorporating a Requirement in Regard to Applications for Permits that Each General Contractor, Subcontractor, Utility Company, Telecommunications Firm, the City of West Palm Beach, and the Florida Department of Transportation Provide the Name, Title, Address and 24-Hour Telephone Number of a Designated Individual to be Contacted by the Town to Discuss and Respond to any Emergency, Problem or Question which May Arise at any Time Relating to the Project; Providing for an Effective Date.
[John C. Randolph, Town Attorney]

Town Attorney Randolph read Resolution No. 25-02 by title: (as above)

Councilman Wyett moved approval of Resolution No. 25-02. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

X. ORDINANCES

A. Third Reading

1. Ordinance No. 1-02 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Section 134-1473, Height, Width and Length Limit for Property Adjacent to Properties in Districts Other than R-b by Providing a Special Exception for Increasing the Size of Allowable Beach Cabanas in the Beach Area Zoning District for Lots Twice the Minimum Allowed for Said District; Section 134-1609, Multilevel and Split Level Structures to Clarify the Number of Stories Allowed; Sections 134-2, Definitions and Rules of Construction, by Clarifying the Definitions of Basement and Story, and Section 134-1608, Basements, Allowing More Flexibility in the Use of a Basement; Section 134-2, Definitions and Rules of Construction, Amending the Definition of a Sub-basement; Sections 134-791, 134-841 and 134-891, Accessory Structures, Providing Conditions for Staff Approval of Second Kitchens; Sections 134-843 and 134-893, Lot, Yard and Area Requirements-generally, by Deleting (C) Requiring Special Exception Approval for Larger Lots in the R-a and R-b Zoning Districts; Section 134-843 and 134-893, Lot, Yard and Area Requirements-generally, by Adding a Provision for Greater Setback on Larger Lots in the R-a and R-b Districts; Section 134-1107, Permitted Uses, and Section 134-1109, Special Exception Uses, Providing Conditions for Staff Approval of Offices on the First Floor in the C-ts District and Section 134-1157, Permitted Uses and 134-1159, Special Exception Uses, Providing for Conditions for Staff Approval of Offices on the First Floor in the C-wa District; Section 134-2440, Height of Signs, Providing Conditions for Staff Approval of Wall Signs above the Maximum Height; Section 134-172, Hearing Procedure, by Increasing the Notice Time and Distance Requirement of Proposed Special Exceptions And/or Variances; Section 134-328, Review by Building Official. Notice of Hearing, by Increasing the Distance Requirement for Notice and Requiring Notice for Site Plan Review; Section 134-793, 134-843, 134-893, 134-948, 134-1004 And134-1059, Landscape Open Space, by Eliminating the Landscape Open Space Credit for Grass-crete Type of Material; Sections 134-948, 134-1004 and 134-1059, Lot, Yard and Area Requirements-generally, by Decreasing the Maximum Lot Coverage and Increasing the Minimum Landscape Open Space for Single-family and Two-family

Residential Development in Certain Districts; Sections 134-943, 134-998 and 134-1053, Accessory Uses, to Allow the Town Manager to Issue a Permit for Charitable Solicitations; Section 134-1670, Retaining Walls, to Clarify the Measurement of Retaining Walls and Said Walls in Combination with Fences and Walls; Section 134-1671, Restrictions, by Providing Conditions to Allow Fences, Walls and Landscape Material on the Back 2.5 Feet of a Property by the Town Engineer; Providing for a Penalty for a Violation Hereof; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.

Town Attorney Randolph read Ordinance No. 1-02 by title: (as above)

Councilman McLendon moved approval of Ordinance No. 1-02. The motion was seconded by President Brooks. On roll call the motion carried 3/0, as Councilman McDonald and Councilman Wyett had temporarily left the room.

B. Second Reading

1. Ordinance No. 7-02 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Ordinance No. 31-01, Which Amended Chapter 102, Solid Waste, Section 102-45, Relating to Curbside Placement and Collection of Trash; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Town Attorney Randolph read Ordinance No. 7-02 by title: (as above)

Councilman McLendon moved approval of Ordinance No. 7-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 3/0, as Councilman McDonald and Councilman Wyett had temporarily left the room.

C. First Reading

1. None.

XI. COMMENTS OF THE TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman McLendon commented that the elected officials in the new Town Calendar were not those elected as of February.

Town Manager Elwell explained that the calendar information that was current as of September 30th was far out of date now, and all names and titles (such as those on Boards/Commissions) and narrative information was listed as of the date of publication of the calendar. The financial data was related to the fiscal year.

Finance Director Jane Skittone addressed the inaugural edition of the annual report, and announced that the first edition of the inaugural report would summarize financial information as of September 30, 2001, and give an overview of the accomplishments and initiatives planned for the next fiscal year. The report would be mailed to all citizens within a week, and additional copies would be provided in the Town Manager's office or in the Finance Department.

President Brooks complimented the Finance Department on the report.

XII. DEVELOPMENT REVIEWS

Town Clerk Pollitt administered the oath to all those who would be speaking to the Development Review items.

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. MODIFIED SITE PLAN REVIEW NO. 21-2001 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Heart of Palm LLC relative to property described as all of Lots 31, 32 and 33, Block F, Royal Park Addition; commonly known as 160 Royal Palm Way; located in the C-B & C-TS Zoning District. Site plan approval requested for a modified site plan to the Heart of Palm Beach Hotel to include one and two story additions to provide for a ballroom/function place and associated service area, elevator, handicap chair lift, meeting room, and new handicap restroom and storage building; and special exception approval requested to allow a two story addition to the existing hotel located in the C-TS District; and variance requested to allow an expansion of a non-conforming hotel use in existence over 15 years; and variance requested to allow the expansion of a non-conforming building or structure by completing the proposed site plan changes; and variance requested for a total building length of 264 feet in lieu of the required maximum of 150 feet for a variance of 114 feet; and variance requested to allow floor area within the C-TS Zoning District of 27,101 square feet in lieu of the 25, 388 square feet existing and 15,000 square feet allowed maximum for a variance of 1713 square feet; and variance requested to allow a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and variance requested to allow valet only parallel parking in existing parking areas and a reduction in aisle width to 13' in lieu of the required 25' for valet parking only for a variance of 12'; and variance to allow parallel parking automobiles to block another automobile requiring one automobile to be moved to allow another to be taken from the property which is contrary to Section 134-2172. **Deferred from December 11, 2001, and January 8, and February 12, 2002, Town Council Meetings.**

Zoning Administrator Paul Castro commented that staff had reviewed the traffic circulation/valet plan from DKS Associates; Carter & Burgess, Inc., traffic engineers had been retained by the Town to review the report. He advised that they had provided recommendations to staff, and that the applicant had met with the Police Department and had drafted additional recommendations to include in the valet operation.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that a meeting had been held with Police Chief Reiter, Director of Planning, Zoning & Building Robert Moore, and traffic consultant Jerry Wentzel, of DKS Associates. DKS had then prepared a memorandum explaining in detail the analysis of the valet operation. He specified the four conditions to be included in the valet operation:

> When the new upstairs function room is being used for a function with anticipated attendance in excess of 25 people, who are not hotel room guests, the valet parking operation plan shall be as set forth in the exhibit prepared by DKS Associates, dated March 1, 2002, subject to the following conditions:
>
> a. when there is a function in the new upstairs function room and the valet parking is in operation, use of the west garage shall be limited to valet parking;
>
> b. when the west garage becomes full during valet operations, no further valet drop-off shall occur in that garage;
>
> c. when there is a function in the new upstairs function room, with attendees in excess of 25, who are not hotel room guests, there shall be a minimum of one valet person for every 12 persons anticipated to be attending the function who are not hotel room guests;
>
> d. when there are functions in the new upstairs function room anticipated to have in excess of 75 attendees, who are not hotel room guests, an overtime Town police officer shall be hired by the hotel for traffic control during the function.

Attorney Brindell explained that the four conditions had been drafted as a result of the meeting with the Police Department; since then, Town staff had requested that the Town consultant review the DKS report, and confer with Mr. Wentzel.

Zoning Administrator Castro explained that the applicant had proposed that all required parking would stack within the parking lot and in the garage down below, which required several variances. He introduced Mr. Karl Peterson, Senior Project Manager, Carter & Burgess, who provided his curriculum vitae for the record.

Mr. Karl Peterson, Senior Project Manager, Carter & Burgess, Inc., addressed the Town Council, stating that the site plan and traffic documents had been reviewed, and in general, he concurred with the findings of Palm Beach County relative to traffic impacts; the parking was minimally acceptable for the following reasons:

- each parking aisle on the site was a dead end aisle, requiring a vehicle to back out of the aisle if a parking space was not found;

- double parking was proposed by the valet operation plan, which reduced the aisle widths for the parking areas;

- there was limited storage for arriving vehicles;

- the driveway radiuses were very tight.

Mr. Peterson advised that the valet operation could still work, with an experienced valet operator and sufficient valet staff on site. He recommended seven valet personnel for parking vehicles, in addition to two supervisory personnel for a major event. Events with less than 25 persons would require no valet parking; for events of 25, up to 50, two parking valets were recommended, and one supervisor; 50 to 74 attendees - four parking valets, and one supervisor; 75 to 110 attendees- seven parking valets and two supervisors. In addition, it was recommended that one special duty Town of Palm Beach Police Officer be on site at any time that the valet operation was implemented at the Heart of Palm Beach Hotel. It was also suggested that valet operations should begin well in advance of an event in order to avoid blocked parking of the hotel guests and retrieval of guest vehicles.

Councilman Wyett expressed concern regarding the limited parking available on the streets in the immediate area, and the ability of valet parkers to handle cars in one or two minutes. He concurred that having under 35 attendees would not be problematic. He suggested day time restrictions to ensure that there would be no problems with the parking.

Mayor Smith suggested that perhaps 50 people could be allowed at day time events, with the applicant coming back to the Town Council for a review after a period of time.

In response to Councilman McDonald, Attorney Brindell explained that the hardship was that the building had been in place for many years; the Comprehensive Plan contained an objective to promote commercial uses oriented to serve the needs of residents, employees and visitors; the variance criteria contained a special provision recognizing the expansion of hotels that had been in existence for 15 years; the additional parking required could be provided via the valet parking operation. He advised that the use would intensify somewhat, however, the application was clearly consistent with the Comprehensive Plan provision.

In response to Councilman Wyett, Attorney Brindell advised that the hotel could park 103 vehicles, including parallel parking. He explained that the parking analysis indicated that a number of parking spaces were vacant, even during the season. He offered that shared parking was available across the street, and there was an agreement for use of the spaces at night.

Councilman Wyett moved approval of Modified Site Plan Review No. 21-2001, with Special Exceptions and Variances with the following conditions:

- **the limitation, during the day, of 74 guests for the early breakfast**
- **no more than 49 people at lunch, with the provision that if traffic becomes a problem the applicant would return to the Town Council, at which time lower limits would be considered;**
- **that the nighttime situation be as proposed, and that the applicant apply for transfer parking should there be an overflow**

The motion was seconded by President Pro-Tem Goldblum.

Zoning Administrator Castro clarified that the conditions recommended by the Town traffic consultant, Carter & Burgess, Inc., would also apply. (Mr. Peterson, Carter & Burgess, recommended seven valet personnel for parking vehicles, in addition to two supervisory personnel for a major event. Events with less than 25 persons would require no valet parking; for events of 25, up to 50, two parking valets were recommended, and one supervisor; 50 to 74 attendees - four parking valets, and one supervisor; 75 to 110 - seven parking valets and two supervisors. In addition, it was recommended that one special duty Town of Palm Beach Police Officer be on site at any time that the valet operation was implemented at the Heart of Palm Beach Hotel. It was also suggested that valet operations should begin well in advance of an event in order to avoid blocked parking of the hotel guests and retrieval of guest vehicles).

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

b. MODIFIED SITE PLAN REVIEW NO. 1-2002 WITH SPECIAL EXCEPTION The application of 447 Primavera Way, LC (Dan Swanson, Authorized Agent) relative to property described as Part of Lot B of Primavera Estates Lake Front (description on file), commonly known as 447 Primavera Avenue, located in the R-A Zoning District. To allow the construction of a two-story single family residence on a non-conforming unplatted parcel that is 137 feet in depth in lieu of the 150 foot minimum required in the R-A Zoning District. **Deferred from February 12, 2002, Town Council Meeting.**

Ex-parte communication was declared by Councilman McLendon with Attorney Maura Ziska and Mr. Dan Swanson; by Councilman Wyett with Attorney Ziska, and the neighbor to the south; by President Pro-Tem Goldblum with Attorney Ziska and Mr. Swanson, and by President Brooks with Attorney Ziska and Mr. Swanson to review pictures and discuss the site plan.

Attorney Maura Ziska, on behalf of Dan Swanson, addressed the Town Council, stating that the site plan had been presented last month, and some concerns had been expressed regarding several issues. After the Town Council meeting, she explained that she and Dan Swanson met with Director of Planning, Zoning & Building Robert Moore to discuss mitigating circumstances.

Attorney Ziska referred to the garage area on the site plan, explaining that it would be destroyed and replaced with a one story garage, according to an architectural rendering that she presented. The view would be mitigated from the road; there would be a wall in place, hedging, solid wooden gate, and landscaping that would screen the gate. She indicated that the landscaping had been lengthened and widened to prevent a view from the street.

Attorney Ziska explained that the house was sited in the proposed location as a result of some very large Banyan trees that would be preserved, and for privacy from Lake Trail. The two Banyan trees would remain, and the trees that were removed would be replaced, however, the applicant was hoping to keep all of the trees on the property without removing any of them.

Attorney Ziska presented the revised drainage plan, which would retain more than two inches on the property; exfiltration trenches had been inserted, as well as an outflow into Lake Worth.

Zoning Administrator Paul Castro commented that the application had been re-designed since the last meeting. The neighbor to the east had expressed concerns relating to the wall on the east side of the property and its maintenance; staff was concerned with the reliance on the hedge material to screen the garage and gates, and recommended that it be retained in perpetuity, as long as the house was in place. The driveway and drainage had been improved since the last meeting.

Councilman Wyett commented that the house was too large for the lot, was too close to the east, solid gates were objectionable, and the architecture could be improved.

In response to the concerns of Councilman Wyett related to drainage, Zoning Administrator Castro replied that the Town Engineer had advised that the drainage into Lake Worth was acceptable.

Director of Planning, Zoning & Building Robert Moore further explained that since it was a small enough piece of property it did not need a separate permit.

In response to Councilman McDonald regarding maintenance of the drainage in place, Mr. Moore advised that he was not aware of a maintenance policy.

Town Attorney Randolph advised that the property owner could be asked to allow the Town to check the drainage system periodically, and in the event that it needed improvement, the applicant would absorb the costs; if it was not done, it would be done at cost to the Town, and the property would then be liened.

Mr. Moore explained that the drainage plan must be filed and recorded with the property deed; any maintenance agreement would be filed at the same time.

In response to President Brooks, Ms. Ziska advised that there was 58-59% greenspace on the plan.

Councilman Wyett moved denial of Site Plan Review No. 1-2002 with Special Exception. The motion died for lack of a second.

President Pro-tem Goldblum moved approval of Site Plan Review No. 1-2002 with Special Exception, with the following conditions: that the required drainage plan

be in place, and that town staff would be allowed to check the drainage system periodically, and in the event that it needed improvement, the applicant would absorb the costs; if it was not done, it would be done at cost to the Town, and the property would then be liened. The motion was seconded by Councilman McLendon.

Mr. Moore suggested that the motion of approval of Site Plan Review No. 1-2002 include the condition that the hedge and wall material be maintained to hide and screen the garage, recorded as a deed restriction, along with the maintenance of the drainage.

Assistant Town Manager Tom Bradford commented that according to the discussion earlier today with Architect Pandula in relation to drainage maintenance of individual sites, he had understood that the evolving on-site retention program would ultimately lead into an ongoing maintenance program; whether the maintenance was done by the Town or the property owner was unknown at this point in time. He suggested that the property owner be requested to agree to comply with *whatever* maintenance program was created by the Town in the future.

Attorney Ziska agreed with the condition as set forth by Mr. Bradford, and requested clarification of the motion.

President Pro-Tem Goldblum clarified the motion to approve Site Plan Review No. 1-2002 with Special Exception: motion to approve, with the following conditions:

- **permanent wall and hedge be maintained**
- **drainage plan be in place, and maintenance of the drainage system and landscaping in perpetuity, included as a deed restriction.**

On roll call the motion to approve Site Plan Review No. 1-2002 with Special Exception, with conditions, carried 3/2, with President Pro-Tem Goldblum, Councilman McLendon, and President Brooks casting affirmative votes; Councilman McDonald and Councilman Wyett casting dissenting votes.

2. New Business

a. VARIANCE NO. 4-2002 The application of Anthony L. and Ingrid U. Morrison relative to property described as Lot 42, East Shore Addition; commonly known as 255 Southland Road; located in the R-B Zoning District. To allow construction of a second story addition on a one story house with a lot coverage of 33.4% in lieu of the 30% maximum permitted.

Ex-parte communication was declared by President Pro-Tem Goldblum with Attorney Ron Kolins; by Councilman Wyett with Attorney Kolins; by President Brooks with Attorney Kolins; by Councilman McLendon with Attorney Kolins.

Attorney Ron Kolins, on behalf of Anthony and Ingrid Morrison, addressed the Town Council, distributing packets of numerous letters of support, stating that the project involved putting up a modest second story on what was presently a one-story home. He explained that the project would not increase the existing lot coverage – the existing lot coverage was 33.4%, and if a partial second story was put on the house it would be required to have 30% lot coverage as a maximum; hence, the need for the variance.

Architect Gene Pandula addressed the Town Council presenting architectural renderings of the proposed project, and a site location map of the area. He explained that the existing house was approximately 3,600 sq. ft., with a circular drive in the front, and a pool area in the northeast corner. He indicated the area of the proposed second floor addition.

Attorney Kolins advised that the hardship was the constraint of the lot; if the house was expanded on a one-story basis the pool would have to be eliminated; the interior would have to be completely renovated, with only half as much space as was being added with the proposed second floor. The only other alternative would be a new and more massive house. He noted that Mr. and Mrs. Morrison were full time residents of Palm Beach presently, and were a young family in need of additional space. He referred to a rendering indicating the subdivision and area relating to the property in question, pointing out the existing two-story homes in the area; he pointed out those properties from which letters of support had been received.

Director of Planning, Zoning & Building Moore commented that the application supported the goal of remodeling existing homes, however, he made it clear to the applicants that the addition of the story would require that they not remove more than 50% of the structure by volume, which meant the roof, and involved a very unusual and costly method of construction. He explained that had they been able to take the roof off at will, they would have been required to seek side yard variances to go to 15', and do the project in a more economical way. He pointed out that the applicants had chosen the method of construction, and that staff had not directed them relating the method of construction. Staff had no objection to the application.

President Pro-Tem Goldblum requested that a 2" drainage plan be in place, and moved approval of Variance No. 4-2002. The motion was seconded by Councilman McLendon.

Councilman Wyett commented that it was very possible that the applicants could expect a problem with the 50% rule, and suggested that the applicants clearly explore the method of construction.

Attorney Kolins requested that the applicant retain the ability to have the alternative to come back for another variance in the future for a different method of construction if the proposed method presented problems.

Mr. Moore replied that the applicant would have the alternative to come back for side yard variances; if the 50% tear down was exceeded, the applicant could back and ask for the correction of the rest of the zoning deficiency on the property, which would be the side yards on both sides.

Attorney Kolins clarified that the hardship was the lay of the land, and the house on the land, which required the variance.

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

b. VARIANCE NO. 5-2002 The application of 151 Worth Avenue Partnership Ltd. relative to property described as Royal Park Addition, Lots 13 through 15 and Lots 49 through 59, Block 16; commonly known as 151 Worth Avenue - Nieman Marcus; located in the C-WA Zoning District. To allow a business sign on the west facade of the arcade, which does not front onto a street or street side as required by the code; to allow a business sign on the east facade of the arcade, which does not front onto a street or street side as required by code; to allow business signs totaling 47.0 square feet in lieu of the 20.0 square feet total allowed by the code for a building with over 18 feet of ground floor street frontage business space; to allow a business identification sign on a multi-story building a maximum of 17'11-1/2" high on the west facade of the arcade, in lieu of the 15' maximum which is allowed by code; to allow a business identification sign on a multi-story building a maximum of 16' high on the east facade of the arcade, in lieu of the 15' maximum which is allowed by code.

Ex-parte communication was declared by Councilman Wyett with Attorney James Brindell, and the owner of the property; by Councilman McLendon with Attorney Brindell and Mr. Goodman; by Councilman Goldblum with Attorney Brindell; by President Brooks with Attorney Brindell.

Attorney James Brindell, on behalf of the applicant, Mr. Murray Goodman, owner of the property, addressed the Town Council, stating that Nieman Marcus was requesting the addition of two business signs, one at each end of the arcade. The Worth Avenue Design Guidelines included provisions of arcades that were typical of the Mizner type buildings in the 300 block of Worth Avenue and that had been done on the Nieman Marcus building. He explained that the arcade created a difficulty in seeing the business sign, which was currently on the face of the building, and could not be easily seen.

Architect Gene Lawrence addressed the Town Council, explaining that currently there were four very small signs under the arcade in the windows of Nieman Marcus, which worked well to give identification from the sidewalk. He proposed that they remain. He presented elevations indicating the location of the proposed additional signs: the building sign would remain, signs would be at the west and east end of the arcade so that they could be seen from the street, with a smaller sign where the original Nieman Marcus sign had been located.

Attorney Brindell advised that the east arcade sign had been proposed at 14.3 sf, and the west arcade sign at 19.9 sf – the applicant had agreed to reduce the west sign to be the same size as the east end; the tenant sign underneath the arcade on the building would be reduced from 14.5 sf to 10 sf. A total of 41.4 sf of signage was being requested for the 265' long building, as opposed to the 20 sf that was allowed by code. He maintained that the code had clearly not contemplated a building of this size with one tenant; nor had it contemplated the impact of the Worth Avenue Design Guidelines with respect to creating the difficulty of seeing signs. He explained that normally buildings could only have signs on the side of a building that fronted a street, and the applicant was requesting to have signs on either end of the arcade, which required a variance for each end; two variances were also being requested for the height of the signs in order to get above the arch of the arcade.

Director of Planning, Building & Zoning Robert Moore submitted the following staff comments from the Application Review Sheet: Comprehensive Plan: should not be allowed; request is excessive and does not meet the criteria for granting of a variance; Building Department: hardship must be addressed; Town Manager: questions hardship. He pointed out that the sign issue should have been addressed during the original approvals and original site plan when the building was contemplated. The applicant had maintained that people drove by the Nieman Marcus store, beyond the parking structure, which was currently being vastly underused. He indicated that it would be advantageous to the parking situation if people could recognize the parking structure at Neiman Marcus.

In response to President Brooks, Mr. Moore replied that because this was one building with one tenant, he did not believe that the overall request was excessive.

After discussion, Councilman McDonald moved approval of the signs located on the east and west ends of the building requested in Variance No. 5-2002, with the condition that the approval run with the current single tenant. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

c. VARIANCE NO. 6-2002 The application of Robert K. Wood relative to property described as Lot 36, Singer Addition; commonly known as 116 Gulfstream Road; located in the R-A Zoning District. To allow construction of an 8' high wall in the front and side yard setback, in lieu of the 6' high maximum allowed in the front and the 7' high maximum allowed in the side yard.

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

Architect Ames Bennett addressed the Town Council, stating that the applicant wished to build a wall right on the property line, as there was a condition where the building to the east was a three-story apartment building, and a parking lot in the R-C zoning district was directly against an R-A property; vegetation and planting would be in place; the hardship was that the applicant's property was directly against the utility building of the apartment building.

Director of Planning, Zoning & Building Robert Moore commented that the hardship had been addressed, and the abutting of a large apartment building had been used as a legitimate hardship for such requests in the past. There were no staff objections.

President Pro-Tem Goldblum moved approval of Variance N. 6-2002. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

d. VARIANCE NO. 7-2002 The application of E. Burke Ross, Jr. Family Trust VII relative to property described as Lot 5 & 6, Primavera Estates (Ocean Section);excepting therefrom the south 32.66' of Lot 6, commonly known as 172 South Ocean Boulevard; located in the R-B Zoning District. To allow construction of guest room additions with a rear yard setback of 5' in lieu of the 15' minimum required in the R-B Zoning District and a lot coverage of 28.91% in lieu of the 25% allowed for lots over 20,000 square feet in area in the R-B Zoning District.

Ex-parte communication was declared by Councilman McLendon with Attorney Maura Ziska via visiting the site; by President Pro-Tem Goldblum with Attorney Ziska and Mr. Ross; by Councilman Wyett with Attorney Ziska and Mr. Ross; by President Brooks, via meeting with Attorney Ziska and Mr. Ross.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, presenting photographs of the property in question, stating that the residence surrounded a beautiful garden, pool, and courtyard. The residence had been designated an historic landmark in 1990; the owner now required more room, and was now proposing an addition that would be sensitive to both the landmarked status, and the concerns of the neighbors. She indicated the existing house on an architectural rendering, with the proposed additions indicated. She advised that the hardship ran with the land; the setback requirements in the Zoning Code had become more restrictive since the residence was purchased by Mr. Ross; also, since the intent of landmarking residences was so that it would exist into perpetuity, demolition was unlikely, and any additional proposal should be sensitive to the character of the landmarked residence. She explained that there was an existing wall on the south property line that would shield the neighbor to the south; letters of support had been received from neighboring property owners; drainage had been approved, with two retention areas.

Zoning Administrator Paul Castro commented that staff had found the house to be very unique and beautiful; the proposed additions were in an area of the property that was currently under utilized; the neighbor to the south had furnished a letter of approval; additions to the house at any other location would take away from the character of the house; the proposed additions were needed for additional room; the house was designed in such a fashion that it would be very difficult to put the additions anywhere else while maintaining the integrity of the home as landmarked. Staff had no objections.

President Pro-Tem Goldblum moved approval of Variance No. 7-2002, with the condition that a deed restriction be included, stating that the addition would always remain a one-story addition. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

e. VARIANCE NO. 8-2002 The application of H.G. and Nancy A. Maass relative to property described as Lots 21, 22, 23, 24, 25, 26, 27 and 28, Palm Beach Shores; commonly known as 249 Queens Lane; located in the R-B Zoning District. To allow a lot split that would create two non-conforming lots 80 feet wide in lieu of the 100 foot minimum required and 7,840 square feet in lieu of the 10,000 square foot minimum required.

Ex-parte communication was declared by Councilman McLendon via telephone with Attorney Peter Broberg regarding the merits of the application; by President Pro-Tem Norman Goldblum via telephone conversation with Attorney Broberg; by Councilman Wyett via telephone conversation with Attorney Broberg and with Mrs. Maass; by President Brooks via telephone conversation with Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the vacant lot had been purchased a year after the house was purchased, and had never been built upon, and had never been joined with the house by a unity of title; no portion of the house straddled the two lots; the two lots would not form a conforming lot; the owner of the lot had been advised in the past by the Building Department that the lot was buildable. He presented an architectural rendering of the property in question, as well as a portion of the surrounding area. He noted that the trellis from the existing house would be removed.

Director of Planning, Zoning & Building Robert Moore commented that a variance would be needed in order to build on the undersized lot. He submitted the comments of staff as reported on the Application Review Sheet: Comprehensive Plan: nonconforming lots should not be created by a variance - no hardship; Town Engineer: the existing home be required to retain the first two inches of water on site, as a condition of splitting the properties; in addition the new lot would then need to come back for a site plan review and would also be subject to retention of first two inches of water.

Mr. Moore advised that Attorney Broberg had addressed the hardship in that all of the lots on the street were undersized.

Councilman Wyett moved approval of Variance No. 8-2002, with the condition that the existing home retain the first two inches of water, with the new lot coming back to the Town Council for site plan review and would also be required to retain the first two inches of water. The motion was seconded by President Pro-Tem Goldblum.

Councilman McDonald suggested that a condition be included that the property owner would maintain the water retention system, with an agreement entered into indicating that the owner would maintain the drainage system.

Attorney Broberg agreed that was acceptable.

Councilman Wyett accepted the additional condition as part of the motion to approve Variance No. 8-2002.

Mr. Moore advised that staff would automatically add that condition to any approval of site plan review.

President Brooks expressed concern with the impact of development regarding drainage.

Mr. Moore advised that the first floor elevation was 7.5'.

On roll call the motion to approve Variance no. 8-2002, with conditions, carried unanimously.

f. SPECIAL EXCEPTION NO. 1-2002 WITH SITE PLAN REVIEW & VARIANCES The application of Richard M. and Marjorie M. Fuscone relative to property described as the South 40 feet of the North 52.5 feet of Lot 41A, Plat of Mockingbird Trail Tract, commonly known as 101 Nightingale Trail; located in the R-B Zoning District. To allow a special exception with site plan review to construct a single story beach house; to allow a variance for a beach house to occupy 50% of the lot width in lieu of the 20% maximum permitted by code; and to allow a variance for a beach house on a property with 40 feet of frontage in lieu of the 100 feet minimum required.

Ex-parte communication was declared by Councilman McLendon via meeting with Attorney Kolins; by President Pro-Tem Goldblum via telephone with Attorney Kolins; by Councilman Wyett via telephone with Attorney Kolins, by President Brooks via telephone with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that two variances were required for the construction of a beach house. He presented the site plan for the property in question; there was an existing beach house of 10' x 12' on the property, and the applicant was actually only requesting an 8' width addition to what was already in place. He explained that the beach house in place was delapidated and useless, and presented photographs of same. In addition, the beach area itself would be substantially improved by the project, and a nonconforming rear setback would be eliminated. He advised that the hardship was the size of the lot. He pointed out that all of the property to the south of the beach house was owned by the 26 residents of Nightingale Trail, with each having a 1/26th interest; the property would clearly not be developed for any more beach houses. He distributed a letter of support from the neighbor to the south; the final Florida Department of Environmental Protection (FDEP) approval for the project; he provided a copy of the application addressing the criteria for special exception, site plan, and variances. He noted that there were requirements in the Town Code which limited the height of vegetation or walls or anything between the street and the beach; he explained that the whole reason for limiting the size of beach houses was so that they would not block off the view of the beach and the ocean. The applicant had agreed to trim the existing vegetation that was in place, and had also agreed to trim the vegetation on the property owned by residents on the street, with their permission; the new house would not be any higher than the existing one.

Zoning Administrator Paul Castro commented that two variances were needed: one, because the minimum width of 100' was not met; the other was because the minimum frontage was not met. The applicant would be required to meet the minimum ocean vista of 50%, which was everything except the cabana itself. The applicant would need to demonstrate the hardship as it related to the two variance requests.

Councilman Wyett commented that he believed the proposed beach house was oversized.

Zoning Administrator Castro explained that the applicant could not put any structure over the tie backs, and there was not enough room to rotate the beach house in another direction.

Councilman Wyett moved approval of Special Exception No. 10-2002, with Site Plan Review and Variances, with a building 10' x 15'. The motion was seconded by Councilman McLendon. After discussion, Councilman Wyett withdrew the motion.

After further discussion, President Pro-Tem Goldblum moved approval of a 10' x 18' beach house, to include the conditions as set forth in the letter of Pillsbury Winthrop, LLP, dated March 8, 2002 *(construction will not be staged from Nightingale Trail; construction operations and staging will be conducted from the applicant's North Ocean Blvd. driveway, which is where the construction dumpster will be placed; applicant agrees that no construction vehicles will be parked on Nightingale Trail, nor construction staging or operations conducted on it; applicant side driveway on Nightingale will be used only to passively park vehicles, including the supervisor's vehicle).* **The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.**

g. <u>SPECIAL EXCEPTION NO. 2-2002</u> The application of The Palm Beach Day School relative to property described as

Lots 664 through 752, Poinciana Park 3rd Addition and as noted in lengthy legal description (on file); commonly known as 241 & 246 Seaview Avenue; located in the R-B Zoning District. To allow modification to previously approved Special Exception Use condition of approval to allow continued use of temporary portable classroom building for two additional years until the end of the 2003-2004 school years.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that two portable classroom buildings had been approved for use until the portion of the renovations concerning the Matthews Building was finished. He explained that the development of funding for the Matthews Building had not proceeded as rapidly as hoped, and the undertaking of that portion of the renovation had not occurred. It was believed that funding would be completed by the end of the 2002-2003 school year, and that construction would then start. He requested extension of the use of the temporary portable classroom buildings for two additional school terms, until the end of the 2004 school term.

Director of Planning, Zoning & Building Robert Moore commented that staff hoped that condition of any approval would be that this would be the last time an extension was granted.

Councilman Wyett moved approval of the continued use of temporary portable classroom buildings for two additional years until the end of the 2004 school term. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

h. <u>SITE PLAN REVIEW NO. 3-2002 WITH VARIANCE</u> The application of Raymond and Maria Floyd relative to property described as Lot 1 and 1A, East Shore Addition; commonly known as 322 Plantation Road; located in the R-B Zoning District. Site Plan Review to construct a new two story home on a platted lot 84.7' wide in lieu of the 100 ft. minimum; and a variance request to allow a point of measurement for the calculation of all lot, yard, area and bulk requirements of 16.20 feet NGVD in lieu of the maximum allowed by code of 12.45 feet NGVD for a variance of 3.75 feet.

Ex-parte communication was declared by Councilman McLendon with Attorney James Brindell and Mr. and Mrs. Floyd relative to the request; by President Pro-Tem Goldblum with Attorney Brindell and Mr. Floyd; by Councilman Wyett with Mr. and Mrs. Floyd, Attorney Brindell, and various other attorneys.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the property was surrounded on three sides by public ways. The street frontage of the property was at a very low elevation relative to the surrounding properties and was a collection point for the Town storm water drain system; flooding occurred up into the Floyd property even during normal rainy seasons. The lot was very large, 30,369 sf, in the R-B District; the R-A requirements must be met since the lot was an R-A sized lot. The configuration of the lot provided only 16 ft. of frontage on Plantation Road; it was within that 16 ft. that the point of measurement calculation must be made. There had been some objections from the neighbors, and the key issues related to the ultimate height of the house, drainage, and landscape buffers. As a result, two written agreements had been created; one between Mr. and Mrs. Floyd and Mr. and Mrs. Fisher, who lived immediately to the south, and one between Mr. and Mrs. Floyd and Mr. and Mrs. Finkelstein, who owned the lot immediately to the north. Staff had been provided with a letter of no objection from the owner of the property immediately to the east, Mr. William Kopp, and a letter of no objection from Mr. and Mrs. Monell, 635 Crest Road. Mr. and Mrs. Floyd had agreed that the two agreements would be made conditions of any approval granted. He distributed copies of the agreements to the Town Clerk. He explained that the variance request had been reduced to a point of measurement of 15.37' ft. NGVD in lieu of 12.45 ft. NGVD; the original request had been for 16.20 ft. NGVD, and had now been reduced. He explained that the hardship was the lay of the land, the property was at a very low point with respect to the public storm water collection system, which collected drainage from other lots on Crest Road and Plantation Road; the lot was also irregular in shape with an inordinately short street frontage.

Attorney Ron Kolins, representing Mr. and Mrs. Fisher, commented that there had been lengthy discussions between Mr. and Mrs. Floyd and their representatives, and himself and the Fishers, and agreement had been reached so that the Fishers were not in opposition to what was being requested by the Floyds. He explained that the overall height of the structure would be 1 ½' less than proposed, and 1 ½' higher than the code would allow; with the landscaping conditions, and other conditions in the agreement, there was no objection.

Zoning Administrator Paul Castro commented that the property was very unique, fronting on a very narrow portion of Plantation Road, with the Bike Trail to the west, and access to the Bike Trail on the north and south sides of the property. The concerns of the neighbor to the south had been related to the overall height, and the applicant had modified the request. The property was also unique in the fact that Crest Road sloped significantly from north to south.

Attorney Kolins commented that the agreement included a number of provisions that had not been referred to specifically, and he clarified that the agreement should be included as a condition of any approval granted.

Ms. Mary Kleckner commented that Mrs. Monell owned the property directly above the Finkelstein property, and that she had a vested interest in expanding and building up higher as well. She urged that the Town Council consider the future sewage and drainage impacts in the future.

Director of Planning, Zoning & Building Robert Moore clarified that construction vehicles could not enter from North Woods, rather than Crest Road and Plantation Road, as there was a spite strip that would not permit that.

Ms. Mary Kleckner commented that she lived on the corner of Crest Road and Plantation Road, and that there had recently been a new no parking sign installed, and she was very appreciative. She explained that there were many nannies, cooks, and gardeners with large trailers, and that there was no place to turn on Crest Road, as it was a dead end street. Therefore, people backed their vehicles. In addition, the gardeners and renovation workers from the Kopp project parked right on the corner, creating a blind curve. She expressed concern regarding traffic accidents.

President Brooks commented that Assistant Town Manager Bradford would ensure that the Police Department was aware of the condition.

Councilman McLendon moved approval of Site Plan Review No. 3-2002, with conditions, which encompassed the two agreements (Floyd/Fisher and Floyd/Finkelstein), 2" water retention, maintenance of the drainage system, and all parking of construction workers be on site. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Discussion later took place regarding the maintenance of drainage systems on Town properties, which was a condition of approval on individual property sites. Town Attorney Randolph advised that currently, maintenance of the drainage systems was a condition attached to approval, however, Town staff would review the issue and determine a regulation that could be included in an ordinance.

4. Other

a. Appeal by the Breakers Hotel Regarding its Tax Abatement Application. [James R. Brindell, Esq.] **Deferred from October 9, November 13, 2001, and February 12, 2002, Town Council Meetings**. *(Request for Deferral to April 9, 2002, Town Council Meeting per Letter Dated March 7, 2002, from James R. Brindell, Esq.)*

This item was deferred earlier in the meeting, under Item V. Approval of the Agenda.

b. Request From McIntyre Elwell & Strammer, General Contractors, Inc., for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project Commencing April 1, 2002, Rather Than May 1, 2002. (Publix Supermarkets, Inc., 265 Sunset Avenue).
[Randy G. Nobles, Project Manager, McIntyre Elwell & Strammer]

Project Manager Randy Nobles, of McIntyre Elwell & Strammer, addressed the Town Council, requesting permission to work nights to perform the interior remodeling of the Publix Supermarket at 265 Sunset Avenue. He explained that the night work would keep the store open and fully operational to meet the needs of the customers, while improving the store in a safe, clean manner.

Director of Planning, Zoning & Building Robert Moore advised that the work could not disturb the neighbors, and if the noise level was exceeded, the work would have to cease.

In response to Councilman Wyett, Mr. Nobles revised the date of the request from

April 1, 2002 to April 15, 2002. In addition, he mentioned that the remodel was a minor project, and estimated that it would take 120 days at the most.

President Pro-Tem Goldblum moved approval of the request of Publix Supermarkets, Inc. for a waiver from Section 42-199 of the Town Code of Ordinances, for a planned construction project to commence on April 15, 2002, with two shifts, one during the day, and one at night from 10:00 p.m. to 7:00 a.m.; the construction trucks would park at the rear of the supermarket. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

c. Request for Authorization to Have First and Second Readings of a Proposed Zoning Ordinance Prior to 5:01 p.m. [Paul Castro, Zoning Administrator]

Councilman McDonald moved approval of the request for authorization to have zoning hearings prior to 5:01 p.m. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the Town Council Meeting of March 12, 2002, was adjourned at 6:45 p.m.

ATTEST:

William J. Brooks
Town Council President

Mary A. Pollitt
Town Clerk

PREPARED BY:
SUSAN EICHHORN
DEPUTY TOWN CLERK
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