TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE TOWN COUNCIL MEETING HELD ON MARCH 11, 2003

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:30 a.m. on Tuesday March 11, 2003, in the Town Council Chambers by President Brooks.

On roll call, the following Elected Officials were found to be in attendance:
Mayor Lesly S. Smith
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Jack McDonald
Councilman Samuel C. McLendon
Councilman Allen S. Wyett

Also attending for all or part of the meeting were:
Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Town Attorney John C. Randolph
Police Chief Michael S. Reiter
Police Major Gary B. Sallenbach
Police Major Michael F. Mason
Public Works Director Albert P. Dusey
Assistant Public Works Director Paul Brazil
Public Works CM Coordinator Sandy Tate
Public Works Facility Maintenance Division Manager Joe Ugi
Town Engineer James Bowser
Human Resources Director William C. Crouse
Finance Director Jane Skittone
Assistant Finance Director Cheryl Somers
Fire-Rescue Chief Kent Koelz
Director of Planning, Zoning and Building Robert L. Moore
Assistant Director of Planning, Zoning and Building Veronica Close
Zoning Administrator Paul Castro
Chief Code Compliance Officer Brian House
Town Clerk Mary A. Pollitt

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480 • (561) 838-5416
Fax No. (561) 838-5417

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The pledge of allegiance was led by President Brooks.

III. PRESENTATIONS

A. Recognition of Edgar Burroughs, Crime Scene Evidence Unit Manager, Police Department, Upon His Retirement From the Town of Palm Beach After Twenty One Years and Three Months of Service.

Police Officer Burroughs was recognized for his years of service.

B. Recognition of Robert "Kip" Little, Police Sergeant, Police Department, Upon His Retirement From the Town of Palm Beach After Twenty Three Years and Nine Months of Service.

Sergeant Little was not present at the meeting.

IV. COMMENTS OF MAYOR LESLY S. SMITH

I am mindful that we have just retired nearly half a century of excellent police work for the Town – we will miss both Mr. Burroughs and Mr. Little.

Today is election day across the water, and coincidentally, we have on our agenda a report from West Palm Beach Water Utilities Manager Ken Reardon on our water main replacement schedule for this year. It goes without saying that whoever wins the mayoral race will have our full support, and that our confidence will not change in Mr. Reardon's management of our water agreement. I know that road closings will be an inconvenience to Palm Beach residents, but they will be minimal - and infrastructure repair is critical to meet our future water needs.

Palm Beach Public is not on our agenda – but I applaud the Palm Beach County School Board for voting to keep the school here. There is considerable negotiation to be done before the issue is resolved; however, we are adamant that we will not give up our ball fields, so future proposals will have to reflect this position. I am confident that we can reach a consensus and am very proud that public education remains a part of our quality of life.

One important item today is Director of Finance Jane Skittone's presentation of the recommended investment plan for the Town's reserve funds. In looking this over, I find it careful and prudent – especially the recommendation that we allow for investments in corporate bonds rated "A" or higher. In this economy, we are committed to being especially responsible with our reserves, and I thank Jane for her diligence in preparing this plan. A special thanks is due to our Investment Advisory Board: Stephen L. Brown, Michael Andrews, and Edward L. Hennessy.

Another major item today is Peter Elwell's discussion of the Townwide goals, which had considerable input from me and Council Members. While upgrading Town facilities is certainly a legitimate goal, I think we need to listen carefully to Mr. Elwell's discussion of plans for renovating Town Hall and building the new Central Fire-Rescue station – especially the financing options.

Likewise, Mr. Dusey's proposed plan for action on lethal yellowing palm disease is important to the health of our public and private landscaping, and I know the Council will act responsibly and effectively on this issue. Mr. Dusey is also reporting on the Phipps Ocean Park restoration schedule – good news in that it is proceeding on target.

Just a reminder that as our President prepares to go to war with Iraq, we in Palm Beach have done everything possible to safeguard our residents against retaliatory terrorist attacks or danger from biological or chemical weapons. If there is a war, we pray not only for our safety, but for the freedom of the Iraqi people after years of living in fear. Certainly this is a time for reflection on the blessings of living in America.

V. APPROVAL OF AGENDA

President Brooks announced a letter requesting a deferral by Attorney Wade Byrd for project IX.A.2. which was an appeal of an administrative decision which denied permission for a property owner to sell beach access through a non-conforming narrow strip of land in the R-AA zoning district to neighboring property owners. He continued that this project garnered a fair share of opposition from surrounding neighbors. President Brooks asked Attorney Byrd to address the subject.

Town Manager Elwell added that an attorney for one of the neighbors requested the deferral not be granted. He suggested hearing from both attorneys before determining how to proceed.

Attorney Wade Byrd, representing 651 North County Road Corporation, said the deferral was filed because, until last week, he had been dealing with only one property owner on the beach, and no other property owners were heard from. Mr. Byrd continued that Attorney Doyle Rogers is currently representing that owner, and last week Kenny Beall, Attorney for the Waddells, filed an objection. Additionally, Attorney Francis Lynch, representing Leighton Rosenthal, filed an objection. Mr. Byrd said the deferral was requested to give him time to discuss the ramifications of the proposal with all of the attorneys. He added that the property owners would also like to be heard, and they were aware that Mr. Byrd was requesting a deferral and were not present at the meeting.

Attorney Doyle Rogers said he saw no reason for the deferral request, and his client would like to conclude the matter. He said the issue was clearly in opposition to the Town's Code.

Councilman Wyett said he would like to offer a compromise that the matter be deferred but to an uncertain time until the party who wishes to have the matter heard can return to the Council stating he has concurrence with the adjacent property owners.

Planning, Zoning and Building Director Robert Moore stated this issue is an appeal to his decision regarding a zoning matter and the issue is not if the property owners can reach any kind of accommodation with the applicant. He restated the issue is can the property be used as a stand alone piece of property, and the matter has continued from April 7, 1998, based on a letter from Town Attorney Randolph.

Councilman McDonald made a motion to hear the appeal at this meeting. The motion was seconded by President Pro-Tem Goldblum.

Councilman Wyett said he would withdraw his compromise motion.

The motion carried 5-0 on roll call.

President Brooks, acting upon the Mayor's suggestion, said the item would be heard at a time certain of 2:00 p.m. at this meeting.

The following changes were made to the agenda:

DEFER Item X.B.1. Ordinance No. 3-03, First Reading, to the April 8, 2003, Town Council meeting

President Pro-Tem Goldblum made a motion to defer Ordinance No. 3-03 to the April 8, 2003, Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

WITHDRAW Item XII.B.1.a. Variance No. 1-2003, 452 Worth Avenue

Councilman Wyett made a motion to approve the withdrawal of Variance No. 1-2003. Councilman McLendon seconded the motion. On roll call, the motion carried 5-0.

DEFER Item XII.B.1.b. Variance No. 2-2003, 1424 South Ocean Boulevard, to the May 13, 2003, Town Council meeting

Councilman Wyett made a motion to approve the deferral of Variance No. 2-2003 to the May 13, 2003, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

DEFER Item XII.B.1.c. Variance No. 6-2003, 1200 South Ocean Boulevard, to the June 10, 2003, Town Council meeting

Councilman Wyett made a motion to approve the deferral of Variance No. 6-2003 to the June 10, 2003, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

DEFER Item XII.B.1.d. Special Exception No. 6-2003 with Site Plan Review and Variance, 224 South Ocean Boulevard, to the April 8, 2003, Town Council meeting

President Pro-Tem Goldblum made a motion to defer Special Exception No. 6-2003 with Side Plan Review and Variance to the April 8, 2003, Town Council meeting. Councilman McLendon seconded the motion. On roll call, the motion carried 5-0.

DEFER Variances request only, Item XII.B.2.e. Special Exception No. 7-2003 with Site Plan Review and Variances, 100 Everglade Avenue, to the April 8, 2003, Town Council meeting

President Pro-Tem Goldblum made a motion to defer the variance portion only of Special Exception No. 7-2003 to the April 8, 2003, Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

DEFER Variances request only, Item XII.B.2.f. Special Exception No. 8-2003 with Site Plan Review and Variances, 101 Seminole Avenue, to the April 8, 2003, Town Council meeting

President Pro-Tem Goldblum made a motion to defer the variances request only in Special Exception No. 8-2003 to the April 8, 2003, Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

ADD Item IX.B. New Business 11. Discussion of a Florida Senate Bill Introduced by Senators Pruitt and Geller Regarding the Bert J. Harris, Jr., Private Property Rights Protection Act

Councilman McDonald made a motion to add Item IX.B. Discussion of a Florida

Senate Bill Regarding the Expansion of the Bert J. Harris, Jr., Private Property Rights Act. Councilman McDonald explained the legislation would expand the Bert J. Harris Private Property Rights Act which would provide developers the opportunity to collect for any devaluation resulting from re-zoning of any property in the Town. The motion was seconded by Councilman McLendon. On roll call, the motion carried 5-0.

President Pro-Tem Goldblum made a motion to approve the agenda as amended. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

VI. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Eric Gilbertson, 151 Chilian, spoke on beach related issues.

Alan Mason, 1485 Via Manana, thanked the Town for the feral cat program and donated $5,000 to the fund.

Martha Bedford also thanked the Town and all those involved and presented her check for $5,000 to help fund the program.

Connie Gasque, 167 Root Trail, spoke against the proposed El Paso Seafarer National Gas Pipe Line and its proposed relationship to Palm Beach. She stressed the potential problems the pipeline posed including terrorist plots.

President Brooks replied Assistant Town Manager Tom Bradford is aware of the situation and is handling the Town's responses regarding the pipeline.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON FEBRUARY 11, 2003.

B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON FEBRUARY 19, 2003.

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON FEBRUARY 26, 2003.

D. RESOLUTIONS

1. Resolution No. 9-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Council President to Execute an Interlocal Agreement with the Northern Palm Beach County Improvement District for Assistance in the Continuation of the Provisions of the National Pollutant Discharge Elimination System Second Term Permit.
[Albert P. Dusey, Director of Public Works]

E. OTHER

1. Selection of Coastal Engineering Consultants per the Recommendation of the CCNA Selection Team.
[Albert P. Dusey, Director of Public Works]

2. Partial Approval of Foster Marine Contractors Request for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Perform Completion of Water Main Construction. [Albert P. Dusey, Director of Public Works]

3. Conditional Approval of Request from Florida Public Utilities for a Natural Gas Main Easement Across Lakeside Park.
[Albert P. Dusey, Director of Public Works]

4. Approval of Request From Florida Power and Light for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Rebuild a Pole Line Between Sanford Avenue and Emerald Lane and Between Lake Way and North County Road.
[Albert P. Dusey, Director of Public Works]

5. Approval of Proposed Funding for Development of FDOT Grant Application for a Pedestrian Crosswalk Safety Program.
[Michael S. Reiter, Chief of Police]

6. Approval of Purchase of Three Thermal Imaging Cameras with Funding From FEMA Grant Award.
[Kent W. Koelz, Chief of Fire Rescue]

President Pro-Tem Goldblum made a motion to approve the Consent Agenda. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

VIII. COMMITTEE REPORTS

A. ADMINISTRATIVE AND PERSONNEL COMMITTEE

1. Recommendation Regarding Appeal of Jean Massy.

The following is the Report of the Administrative and Personnel Committee:

REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE MEETING HELD ON FRIDAY, FEBRUARY 21, 2003

I. CALL TO ORDER AND ROLL CALL

Chairman Jack McDonald called the meeting of the Administrative and Personnel Committee to order at 9:30 a.m. in the Town Council Chambers. Chairman McDonald and Committee Member William J. Brooks were found to be in attendance on roll call.

Also attending the meeting were: Town Attorney John C. Randolph; Human Resources Director William C. Crouse; Assistant Public Works Director H. Paul Brazil; Trash Supervisor Robert Kennedy; Trash Foreman Romeo Washington; Sanitation Supervisor Tony Higgins; Services Division Manager Lloyd McCoy; and Town Clerk Mary Pollitt.

II. APPOVAL OF AGENDA

The agenda was approved as printed.

III. CONSIDERATION OF TERMINATION APPEAL IN THE MATTER OF JEAN MASSY

Chairman McDonald stated the reason for the meeting was the appeal by Jean Massy regarding his December 30, 2002, termination as a Laborer I, Trash in the Public Works Department.

Jean Massy stated his version of the events leading to his dismissal:

The incident took place on December 24, 2002, in the vicinity of North Lake Way and Esplanade Way in Palm Beach. Mr. Massy was driving the truck with the crane to pick up yard trash; Foreman Romeo Washington was operating the crane behind the truck, and one sweeper, Sidmoth Clarke, was in the street, sweeping the yard trash. Not seeing Mr. Massy in the truck, Mr. Washington directed Mr. Clarke to go to the truck and tell Mr. Massy he was needed to get out of the truck and advise Mr. Washington if any pedestrians or cars were in the way of the crane when it picked up yard trash.

Mr. Massy stated Mr. Clarke came up to the truck and said, "M----- F----- if Elliot would tell you to get out of the truck, you would get out of the truck already." Mr. Massy said he told Mr. Clarke not to curse at him, but Mr. Clarke, using his sweeping broom, came at Mr. Massy repeating the curse. Mr. Massy said he backed up across the street after being punched and pushed with the broom where Mr. Clarke landed two punches to Mr. Massy's nose causing a lot of bleeding from his nose. Mr. Massy said he stayed on the ground as he did not wish to fight and did not hit Mr. Clarke.

Mr. Massy said on December 23rd, the day before the incident, Mr. Clarke observed Mr. Massy during a break with his eyes closed, and Mr. Clarke accused him of sleeping in the truck and said he would inform the supervisor, Tony, that he was sleeping. Mr. Massy denied he was sleeping and considered the episode as 'playing', and later Mr. Clarke said he would do 'something' to Mr. Massy.

Mr. Massy said, as a Haitian, he was not treated as 'Americans' are treated by their peers. He questioned why the employees could not work together and not treat Haitians differently.

Trash Supervisor Robert Kennedy testified that Mr. Massy was employed by the Town for approximately three years and had one corrective action in his file relating to a verbal encounter with a fellow employee which led to discipline of the other employee. Mr. Massy received oral counseling for that incident and did not have an established pattern of incidents.

Assistant Public Works Director Paul Brazil stated the Town's side of the incident leading to dismissal of Jean Massy, calling on Crane Operator/Foreman Romeo Washington to give his version of the events.

Mr. Washington stated that on Tuesday, December 24th , his crew was working at the intersection of North Lake Way and Esplanade. He said he instructed Mr. Clarke to have Jean Massy get out of the truck to help him see if anyone was in the way of the crane. He said he did not know what happened as he started to work and the next thing he knew, very quickly, the two men were entangled with the broom in between them. He continued that Jean Massy fell backwards into the hedge, and that is when Mr. Clarke hit him causing his nose to bleed. Mr. Washington said he got out of the crane and stepped in the middle of the two men. He called his immediate supervisor, Robert Kennedy, who came to the scene.

Mr. Washington, responding to questions from Mr. Brazil, said he did not see Mr. Massy trying to leave the scene of the altercation.

Mr. Brazil called Robert Kennedy as a witness.

Mr. Kennedy said he received a call from Mr. Washington about mid-morning on December 24th and proceeded to the intersection of North Lake Way and Esplanade. Mr. Kennedy said Mr. Clarke was pacing back and forth at the scene and had a frown on his face. He said Mr. Massy had a bloody nose and blood was on his shirt and pants. After Mr. Washington explained what had happened between the two men, Mr. Kennedy said he separated the employees putting one in the front seat and one in the back seat and stopped at the North Fire-Rescue Station to have Mr. Massy's condition evaluated and receive medical care. Mr. Kennedy called Tony Higgins to the scene to transport Mr. Clarke separately to the Public Works Department in West Palm Beach.

Mr. Kennedy said on the way back to Public Works, Mr. Massy explained what had happened leading to the fight. He specifically said that Mr. Clarke approached him and told him Romeo said 'get your lazy butt out of the truck'. In his mind, Mr. Massy thought that with the truck parked in the middle of the roadway, vehicles or pedestrians could not get by any way.

After getting out of the truck, Mr. Massy explained what language and actions led to his bloody nose incident. Mr. Kennedy said that Mr. Massy and Mr. Clarke wrote their statements of the incident after both returned to Public Works.

Mr. Brazil called Tony Higgins as a witness.

Tony Higgins, Sanitation Supervisor, said he picked up Mr. Clarke at the North Fire-Rescue Station. Mr. Higgins reported that Mr. Clarke stated, "Romeo told me to tell Jean Massy to get his lazy butt out of the crane and flag traffic." He reported words were exchanged, and Mr. Massy shoved him twice when he got out of the truck. Mr. Clarke reportedly was using the broom to keep Mr. Massy away from him, and Mr. Massy punched Mr. Clarke. Mr. Clarke punched him back and realized what he had done; grabbing Mr. Massy so no more blows would be exchanged.

Mr. Higgins said Mr. Clarke was concerned about what actions would be taken against him by his supervisors. Mr. Clarke acknowledged both he and Mr. Massy were wrong.

Mr. Higgins said Mr. Clarke did not appear to have been hit by Mr. Massy, but he was pretty 'hot'.

Mr. Brazil called Services Division Manager Lloyd McCoy as a witness.

Mr. McCoy reported the two men were separated at the Public Works Department and instructed to write statements providing exact details of the incident. After reviewing the facts of the incident, Mr. McCoy said he had no other choice than to recommend termination for both employees. Mr. McCoy said both employees met expectations as far as their performances were concerned, and it was unfortunate this action was necessary as the Department cannot condone altercations of this type.

Mr. McCoy confirmed that both employees were of equal rank; one was not 'over' the other one. Responding to Mr. Brooks' question regarding any other dismissal cases for fighting, Mr. McCoy said he could not remember any during his tenure other than a resignation during an investigation of fighting.

Mr. Brazil said based on all of the information he received regarding this incident and during Public Works Director Dusey's absence, it was his decision to terminate both employees, as both employees participated in the incident and both had opportunities to walk away from it, and neither one did. He said the Employee Handbook is very specific about not fighting on the job.

Mr. Brooks commented that proper steps for evaluating the situation were taken by Public Works employees.

Mr. Massy, responding to some of the testimony given, denied he touched Mr. Clarke until Mr. Clarke hit him, and they both fell on the ground. He asked if the Town's policy (regarding fighting/termination) was only for the sweepers or was it for the (employees at the) top of the Town down to the bottom?

Mr. McDonald said he was not aware of the policy, but thought it would apply to everyone.

Mr. Massy responded that if it was fair for everyone, Mr. McCoy fought Larry on the ground, and why did it happen to him when it didn't happen to them?

Mr. McDonald replied the Committee could not explain anything when the facts were not known to the Committee.

Mr. Brooks noted that the friction between the two men actually began on December 23rd and suggested that Mr. Massy could have gone to his supervisor on that day. He asked why no attempt was made to resolve the friction between the two?

Mr. Massy replied he was not the type of person who would bring that forward to have another employee fired, and he also did not take Mr. Clarke's remarks seriously on the 23rd but thought he was 'playing'.

Attorney Randolph advised, procedurally, the Committee could deliberate considering the testimony heard at this meeting and make a recommendation to the Town Council. He said that deliberation could take place at this time in the meeting or if it is deemed to be important that the other side of the issue (Sidmoth Clarke) be heard, the Committee could deliberate on both issues at a later time—either today or at sometime before a recommendation is made to Council.

Mr. Brooks said he would be more comfortable making a recommendation after the other party, i.e. Mr. Clarke, is heard from. He continued the staff has presented a clear case but he would prefer to begin deliberations after Mr. Clarke presents his case.

Mr. McDonald said he agreed with Mr. Brooks, and he was not sure who the aggressor was or if there was an aggressor or if it was mutual.

Mr. McDonald announced a decision would not be made until after Mr. Clarke's hearing at 1:00 p.m.

The decision was made by the Committee at the afternoon meeting to deny Mr. Massy's appeal and uphold the decision of the Public Works Department.

IV. ANY OTHER MATTERS

There were no other matters.

V. ADJOURNMENT

The meeting was adjourned at 10:15 a.m.

Jack McDonald, Chairman	William J. Brooks, Member

2. Recommendation Regarding Appeal of Sidmoth Clarke.

The following is the Report of the Administrative and Personnel Committee:

REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE MEETING HELD ON FEBRURY 21, 2003

I. CALL TO ORDER AND ROLL CALL

Chairman Jack McDonald called the meeting of the Administrative and Personnel Committee to order at 1:00 p.m. in the Town Council Chambers. Chairman McDonald and Committee Member William J. Brooks were found to be in attendance on roll call.

Also attending the meeting were: Town Attorney John C. Randolph; Human Resources Director William C. Crouse; Assistant Public Works Director H. Paul Brazil; Trash Supervisor Robert Kennedy; Trash Foreman Romeo Washington; Sanitation Supervisor Tony Higgins; Services Division Manager Lloyd McCoy; and Town Clerk Mary Pollitt.

II. APPOVAL OF AGENDA

The agenda was approved as printed.

III. CONSIDERATION OF TERMINATION APPEAL IN THE MATTER OF SIDMOTH CLARKE

Chairman McDonald, addressing Jean Massy who was in the audience, said he was welcome to listen, but he would not be able to speak during the meeting or after the meeting as his hearing took place in the morning

.

Chairman McDonald stated the reason for the meeting was the appeal by Sidmoth Clarke regarding his December 30, 2002, termination as a Laborer I, Trash in the Public Works Department.

Sidmoth Clarke stated his version of the events leading to his dismissal:

He started with December 23rd when a group of employees was together at Pine Walk. He said a telephone rang and someone said that was Jean's phone, but he was sleeping. Mr. Clarke said he forgot about the incident until Mr. Massey said later in the day (Mr. Clarke) told the supervisor that (Mr. Massy) was sleeping on the job.

Mr. Clarke continued that on December 24th at the intersection of North Lake Way and Esplanade, Romeo Washington (his foreman) told him to tell Jean Massy to get off his lazy butt and get out of the truck and flag the traffic. Mr. Clarke said he did tell Mr. Massy to get off his lazy butt and get out of the truck and flag the traffic. Mr. Massy responded he did not need to get out of the truck because no traffic could get by the truck. He then asked Mr. Massy if it was Elliot telling him to get out of the truck, would he flag the traffic?

Mr. Clarke said he turned his back and when he looked round, Mr. Massy jumped out of the truck, pushed him and said, "Do you want to f….. with me?" Mr. Clarke said he didn't want to fight but used the broom to keep Mr. Massy away from him and struggled with him. He stated Mr. Massy punched him, and he retaliated by hitting him in the face, but he did not see any blood.

Responding to a question from Mr. McDonald, Mr. Clarke replied Mr. Massy hit him in the chest. Mr. Clarke said he told Romeo Washington what happened, but this just happened, and if he could think about it now, he would not have done it.

Mr. Clarke called Romeo Washington as a witness.

Replying to a question from Mr. Clarke, Mr. Washington said he specifically stated to Mr. Clarke that when he made the statement he was talking to Mr. Clarke, not to tell Mr. Massy directly, and he did tell Mr. Clarke to tell him to get out of the truck----and he was talking hypothetically speaking and Mr. Clarke misunderstood, taking it the way he wanted to take it—not in the sense that (Mr. Washington) gave him a work directive.

Mr. Clarke said Mr. Washington definitely turned to him and told him, "Tell Jean to get his lazy butt out of the truck", and that was the expression (Mr. Washington) used.

Mr. Washington responded that he was talking to Mr. Clarke directly, not to Mr. Massy at that time.

Mr. Clarke asked Mr. Washington if he saw him punch Mr. Massy when he fell down?

Mr. Washington replied he saw Mr. Clarke withdraw, but Mr. Clarke caught himself because he did not want to hit Mr. Massy again. He said when that happened, he stopped the crane and got out to find out what was going on.

Mr. Clarke said Mr. Washington wrote that Mr. Clarke hit Mr. Massy when he was in the bushes, and Mr. Clarke said he did not do that.

Mr. Washington said when Mr. Massy came out of the bushes, he sat on the sidewalk and let his nose bleed, and he did not see what happened earlier.

Mr. Clarke concluded that he did not mean to do it, and if he could do it over, he would never be caught up in a situation like that. He stated he is not a violent person; he is sorry for what he did; and he would like to have the opportunity to get his job back.

Assistant Public Works Director Paul Brazil stated the Town's side of the incident leading to dismissal of Sidmoth Clarke, by calling on Crane Operator/Foreman Romeo Washington to give his version of the events.

Mr. Washington stated that on Tuesday, December 24th , his crew was working at the intersection of North Lake Way and Esplanade. He said he had only one sweeper and normally in those situations, the truck driver is asked to assist flagging traffic. He instructed Mr. Clarke to have Mr. Massy get out of the truck and flag the traffic. He said the next thing he knew, very quickly, the two men were entangled with the broom in between them. He continued that Jean Massy fell backwards into the hedge, and that is when Mr. Clarke withdrew his arm at that time causing his nose to bleed. Mr. Washington said he got out of the crane and stepped in the middle of the two men. He called his immediate supervisor, Robert Kennedy, who came to the scene.

Mr. Brazil asked Mr. Washington when he saw the two employees entangled, was either one of them trying to get away from the situation.

Mr. Washington replied, "no".

Trash Supervisor Robert Kennedy testified that he received a call from Mr. Washington about mid-morning on December 24th and proceeded to the intersection of North Lake Way and Esplanade Way. Mr. Kennedy said Mr. Clarke was pacing back and forth at the scene and had a frown on his face. He said Mr. Massy had a bloody nose and blood was on his shirt and pants. After Mr. Washington explained what had happened between the two men, Mr. Kennedy said he called Lloyd McCoy, advising him of what had happened.

Mr. Kennedy said he separated the employees putting one in the front seat and one in the back seat and went directly to the North Fire-Rescue Station so Mr. Massy's could receive medical attention for his bleeding nose. Mr. Kennedy called Tony Higgins to the scene to transport Mr. Clarke separately from the North Fire-Rescue Station to the Public Works Department in West Palm Beach.

Mr. Kennedy said on the way back to Public Works, Mr. Massy explained his version of the story. Mr. Massy explained the actual incident started on December 23rd when Mr. Clarke approached Mr. Massy when he was in the trash truck and said he would report Mr. Massy to Tony (Higgins) that he was sleeping in the truck. Mr. Massy said he made light of the comment, but at the end of the day, Mr. Clarke threatened Mr. Massy, saying he was going to get even with him, actually saying, "I'll get even with you, M------ F------."

Mr. Kennedy reported that at the scene, Mr. Clarke approached him and told him Romeo said 'get your lazy butt out of the truck'. In his mind, Mr. Massy thought that with the truck parked in the middle of the roadway, vehicles or pedestrians could not get by any way. After getting out of the truck, Mr. Massy explained what language and actions led to his bloody nose incident.

Mr. Brazil called Tony Higgins as a witness.

Tony Higgins, Sanitation Supervisor, said he picked up Mr. Clarke at the North Fire-Rescue Station. On the way back to the Public Works facility, Mr. Higgins reported that Mr. Clarke stated, "Romeo told me to tell Jean Massy to get his lazy butt out of the truck and flag traffic." He reported words were exchanged, and Mr. Massy shoved him twice when he got out of the truck. Mr. Clarke reportedly was using the broom to keep Mr. Massy away from him, and Mr. Massy punched Mr. Clarke. Mr. Clarke punched him back and realized what he had done; grabbing Mr. Massy so no more blows would be exchanged.

Mr. Higgins said Mr. Clarke was concerned about what actions would be taken against him by his supervisors. Mr. Clarke acknowledged both he and Mr. Massy were wrong. Mr. Higgins said he told Mr. Clarke that both he and Mr. Massy would be fired if the facts were as Mr. Clarke said.

Mr. Brazil called Services Division Manager Lloyd McCoy as a witness.

Mr. McCoy, Services Division Manager, said he was notified on December 24th, in the morning, that an altercation had occurred between Sidmoth Clarke and Jean Massy. Upon arriving at the Public Works office, Jean Massy was in his office and Mr. Clarke was in Mr. Kennedy's office. The two men were instructed to write statements providing exact details of the incident, given the seriousness of the offense. After reviewing the facts of the incident and advising Mr. Brazil of the incident, Mr. McCoy said he had no other choice than to recommend termination for both employees, since both employees played roles in the escalation of events leading to the fight. Mr. McCoy added that employees are responsible for their actions.

Mr. Brazil said based on all of the information he received regarding this incident and during Public Work Director Dusey's absence, it was his decision to terminate both employees, as both employees participated in the incident and both had opportunities to walk away from it, and neither one did

Mr. Clarke responded he would like to be forgiven for the mistake he made by hitting Mr. Massy and to have the opportunity to work for the Town of Palm Beach one more time.

Mr. McDonald said he and Councilman Brooks would deliberate to try to reach a decision on both Mr. Massy and Mr. Clarke. Mr. McDonald said he wanted to make clear that Mr. Massy and Mr. Clarke appealed the decision of Public Works, and after hearing both sides of the story, Public Works made the decision in December resulting in termination of both employees. He said the Committee would try to reach a decision regarding upholding of the appeal or denying the appeal.

Responding to a question from Councilman Brooks, Attorney Randolph replied he was serving as attorney for the Committee, not as the Public Works Department's attorney.

Mr. Brooks asked Mr. Kennedy to provide information regarding any personnel notices placed in Mr. Clarke's file.

Mr. Kennedy replied Mr. Clarke who was employed by the Town for approximately 3 years and some disciplinary actions are in his file—none relating to misconduct but some for vehicular accidents and attendance.

Mr. Brooks summarized there are some notices in the file but none that would have led to termination.

Mr. Brooks said the Committee did not know who threw the first punch in the altercation, but someone did. He continued that he considered and placed great value on the steps that the Department took in both interviewing and requesting that both gentlemen wrote statements, and the chain of command seems to have been followed. He said he was troubled by the fact that any person was terminated, but it was his judgment that the appeals of Mr. Clarke and Mr. Massey be denied, and the actions of Mr. Brazil, Mr. McCoy, Mr. Kennedy, and Mr. Washington be upheld.

Mr. McDonald said, in his opinion, Public Works did follow procedure, did document the incident, and they did make the best decision they could based on the facts that they had which appear to be all the facts presented at this meeting.

Mr. McDonald said he agreed with Mr. Brooks and would vote to deny the appeals.

Mr. Brooks made the motion that the appeal tendered by former Town employee, Jean Massy, be denied. Mr. McDonald seconded the Motion, and it carried 2-0 on roll call.

Mr. Brooks made the motion that the appeal of former Town employee, Sidmoth Clarke, be denied, and the procedure of the Town prevails. The motion was seconded by Mr. McDonald and carried 2-0 on roll call.

Town Attorney Randolph asked if the statements Mr. Brooks and Mr. McDonald made before the motion were the findings and would they incorporate them in the motions?

Mr. Brooks confirmed those were his findings and incorporated them in the motion. Mr. McDonald agreed.

Mr. McDonald explained that the Committee will recommend to the Town Council that the appeals be denied. The report will be submitted at the March 11, 2003, Town Council meeting. He continued that it is the Council's ultimate decision as to the outcome of the matter, and the Council President would determine if either person would be allowed to speak at the Town Council meeting. He advised that both persons could attend the meeting on March 11, 2003, beginning at 9:30 a.m.

IV. ANY OTHER MATTERS

There were no other matters.

V. ADJOURNMENT

The meeting was adjourned at 1:40 p.m.

Jack McDonald, Chairman

William J. Brooks, Member

Councilman McDonald reported the Committee considered the two appeals at two separate hearings; however, they stemmed from the same incident, a fist fight between Mr. Massy and Mr. Clarke while collecting yard trash on North Lake Way. He said the Committee's recommendation was to uphold the terminations of both employees by the Public Works Department.

Councilman McLendon made a motion to accept the recommendation of the Committee to uphold the termination of Mr. Massy. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

President Pro-Tem Goldblum made a motion to accept the recommendation of the Committee to uphold the termination of Mr. Clarke. The motion was seconded by

Councilman McLendon and carried 5-0 on roll call.

B. INVESTMENT ADVISORY COMMITTEE

1. Presentation of the Recommended Investment Plan for the Town's Reserve Funds. [Jane Skittone, Director of Finance]

Finance Director Skittone thanked the Chairman of the Investment Advisory Committee, Stephen Brown and members Dr. Michael Andrews and Edward L. Hennessy, Jr. for their work.

Ms. Skittone said two actions were necessary if the Town Council approved the recommendations of the Committee: a resolution permitting the Town to invest funds in the Florida League of Cities investment pools and an ordinance that revises the Town's investment policy.

Stephen Brown, Chairman of the Investment Advisory Committee, said the charge to the Investment Advisory Committee was to recommend a plan to improve investment returns on the surplus funds the Town currently holds and in the future. He continued a variety of constraints exist with the most important one being a statutory constraint that the investment objectives for such funds have to be the safety of capital, liquidity, and investment income in that prioritized order.

Mr. Brown said the report emphasized that investment returns can be improved while at the same time maintaining those priorities. He continued the Committee's recommendation included investing a portion of surplus funds in two pools managed by the Florida League of Cities which should improve investment income over time. He said the trade-offs are a slight reduction in liquidity in the sense that not all of the funds would be instantly available; however, they all would be available in a very short period of time.

Mr. Brown said greater monthly fluctuations in the total investment return would occur, because the funds invest in longer maturities than the SBA fund that is currently used for surplus funds. He said the result will be unrealized movements, up and down, in the principal values of the bonds that are the investments. Mr. Brown said the Committee did not think the trade-offs should preclude the Town from moving in the recommended direction, given the size and stability of the surplus funds.

Mr. Brown continued that the two recommended pools use high quality securities, and the Committee did not think any quality of investments would be sacrificed. He said the additional investment income is obtained by a moderate lengthening of maturities compared to the extremely short maturity currently in the SBA fund which is 60 to 90 days. He said that, under current circumstances, and using certain assumptions, the annualized investment income would be increased by approximately $300,000 once the new policy was fully implemented. Mr. Brown said the suggestion was to spread out the implementation over a period of time, nine months.

Mr. Brown said the investments in the Florida League pools do not require a change in investment policy; however, a number of changes were considered when, at a later time, the Town might wish to invest in other ways – through individual securities, money managers or whatever. He continued the Committee made recommendations that would change the investment policy; specifically, the recommendation was made to change the maximum maturity of direct investments from 3 to 5 years and allow corporate bond investments of a higher quality. Assuming favorable Town Council action, the Committee will return in February 2004 to review the plan to see if it is operating in the intended manner. He recommended the plan be revisited periodically as circumstances change.

Town Attorney Randolph read Resolution No. 10-03 by title:

a. Resolution No. 10-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town to Join with Other Local Governmental Units as a Participant in the Florida Municipal Investment Trust for the Purpose of Purchasing Shares of Beneficial Interest in the Trust; Providing an Effective Date.

Councilman Wyett made a motion to approve Resolution No. 10-03. Councilman McLendon seconded the motion. The motion carried 5-0 on roll call.

Town Attorney Randolph read Ordinance No. 10-03 by title:

b. Ordinance No. 10-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Investment Policy of the Town at Section VI, Authorized Investments, to Incorporate a New Item G Allowing for Investments in Corporate Bonds Rated A or Higher; Amending Section VII, Investment Parameters, at Paragraph 2 Thereof Relating to Maximum Maturities; Amending Section VIII, Performance Benchmark; Amending Section XI, Reporting; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Councilman Wyett made a motion to approve the first reading of Ordinance No. 10-03. Councilman McLendon seconded the motion. On roll call, the motion carried 5-0.

IX. REGULAR AGENDA

A. Old Business

1. Lethal Yellowing Palm Disease: Review of History, Recent Events, and

Recommended Town Action Plan.
[Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey gave the following report of lethal yellowing in the Town of Palm Beach:

HISTORY OF
THE TOWN OF PALM BEACH
LETHAL YELLOWING INJECTION PROGRAM

Lethal yellowing first appeared in the Florida Keys in 1955. Our records indicate that the Garden Club of Palm Beach began monitoring this problem and followed its path to Palm Beach. The first infestation of lethal yellowing occurred in a Jamaican Tall Coconut Palm at the north end of the Par III Golf Course in 1974. At the urging of Mayor Earl E.T. Smith and Mrs. Betty Bryant of the Garden Club of Palm Beach, the Town Council adopted a comprehensive palm tree injection program in the Town in January, 1975.

Educational programs were conducted to inform residents of a preventative injection program for the approximately 36,550 palms growing within the boundaries of Palm Beach on both public and private property. This program provided for the inoculation of susceptible palms three times per year through injection of oxytetracycline. Town ordinances were passed to allow for a comprehensive control program on private property and for the quick removal of infected palms to lessen the spread of this disease. Susceptible palms identified for the injection program included Pritchardia, Christmas, Phoenix, Fishtail, Spindle, Borassus, and Jamaica Tall. A commercial spray service was contracted to do the palm injections. The Town also had one Town field inspector to monitor the contractor's activities and to keep records. Palms were injected with 2.0 grams of oxytetracycline delivered by a hydraulic pump with10,000-lbs/sq. inch pressure at four month intervals. Each series of injection was completed within 45 days. To manage the control program, the Town was divided into 41 zones. These zones were surveyed on a regular schedule to determine the spread of Lethal Yellowing and trees with the disease were noted and removal notices sent to the property owners.

The leaf hopper was identified as the primary transmitter of Lethal Yellowing disease. The insect was airborne but also traveled in St. Augustine grasses. At the time, the Town of Palm Beach was working closely with Dr. Henry Donselman and Dr. McCoy from the University of Florida, and Clayton E. Hutchinson, Extension Director, Palm Beach County.

Cost for the Palm Injection Program in 1975 was approximately $204,000. Jamaican Tall Palm Lethal Yellowing losses under this initial program were as follows:

Losses

1975	9
1976	36
1977	148
1978	423
1979	1,622
1980	3,425
1981	2,446

In 1980, a committee was formed to discuss ideas and exchange information regarding lethal yellowing. Attending the meetings were Mrs. Parker Bryant, Dr. Sandy Kuvin, Mr. Jim Wearn, Joseph Ugi, Robert Kennedy, Richard Maxwell, Dr. Donselman and Clayton Hutcheon. The meetings were chaired by Dr. Kuvin and conducted over several years.

In 1981, Dr. Don Henry Donselman and Dr. McCoy from the Florida Cooperative Extension Services, University of Florida Institute of Food and Agricultural Services, advised the Town of Palm Beach that the new Mauget Method of injection was more effective than the high pressure injection method being used at the time. More antibiotic entered the palm and did not cause fiber damage or void cavity areas. In June of 1981, the Lethal Yellowing Injection Program was modified to use the new Mauget Method which reduced palm losses substantially from a high month of 381 to a low month of 118. Cost of the program increased to $254,361.

In December of 1981, the Town experimented with an alternative treatment process. Mr. James Dunaway approached the Town claiming that his spray product would reduce Lethal Yellowing losses substantially. The Dunaway Spray Project was started on January 13, 1981. The spraying was supervised by the Town's Parks Division and was started at the Par III Golf Course and progressed northerly, requiring thirteen working days to complete. Five hundred taller palms were sprayed using a leased high lift bucket truck. Shorter palms were sprayed from ground level. Total palms sprayed was 2,690. The results of this spray method proved ineffective, too costly and impractical.

In November of 1982, Clayton Hutchinson, Director of the Palm Beach County Extension Agency informed the Town that Dr. McCoy of the University of Florida, who was considered the expert in Lethal Yellowing, was of the opinion that proper protection against Lethal Yellowing would occur if the tree receives a 1.5 gram dosage three times yearly. The Town was using 2.0 grams per injection. This dosage was implemented back when the Town was using the High Pressure Injection Method in an effort to circumvent the tree's circulatory reaction to the injection itself. The tree's reaction involved reduced internal circulation so it was thought best to increase the dosage of Tetramyacin to insure that adequate amounts of this antibiotic reached all portions of the tree. In an abundance of caution, the Town continued using the 2.0 gram dosage while employing the new Mauget Method of injection.

Contractual services for the program in 1982 - 1983 was estimated at $279,720. Town forces took over the program that year resulting in a savings of $120,925. Also, in 1983, the Maypan seed nuts became available to municipalities from the plant industry. This Maypan Palm was more characteristic of the Jamaican Tall Palm and reportedly more resistant to Lethal Yellowing.

Palm losses for Lethal Yellowing under the Mauget Method Program were as follows:

Losses	
1982	611
1983	182
1984	434
1985	53

The Mauget Capsule later proved to be losing its effectiveness. Innoculent was back feeding from the palm into the Mauget, leaks developed, capsules were difficult to fill and the system was proving to be unreliable.

Having these problems with the Mauget capsules, Town staff explored better ways of injecting palms. This problem was presented to Classic Moulders, Inc. in January of 1985, which then developed the Tree Saver. Dr. McCoy from the University of Florida conducted studies on the Tree Saver and found it to be four times more effective than the Mauget capsule. In March of 1985, the Town started using Tree Saver, one injection per cartridge, upon the recommendation from the University of Florida.

In April of 1985, it was recommended by the University of Florida that we stop injecting the Fishtail and Christmas Palms. The reasons for this decision were based on these palms having a very low mortality rate and because these palms have thin stalks and soft tissue, considerable damage was caused by the injections methods. In 1988, Dr. Henry Donselman from the University of Florida suggested reusing the Tree Saver cartridges for three injections (one year) without drilling a new hole each time. Dr. Donselman thought enough of the antibiotic would be taken in by the palm on the second and third injection and would continue providing resistance to Lethal Yellowing. The Town modified its program by using one cartridge for two injections instead of the recommended three, to insure adequate resistance was provided.

In 1989, the Town purchased approximately five-hundred (500) certified Maypan seedlings which were planted at the Town nursery. These Maypan Palms were to be used for future replacements at Mid-Town Beach (lightning strikes) and for additions to the Town's parks, medians, facilities, and new construction areas.

Town Lethal Yellowing palm losses under the Tree Saver Method were as follows:

Losses	
1986	69
1987	314
1988	371
1989	435

1990	1,181
1991	768
1992	323
1993	640
1994	705
1995	333
1996	479
1997	399
1998	239
1999	68
2000	173
2001	55
2002	69

Since 1975, the palm population has also decreased due to the following causes:

Lightning
Bud rot
New construction
Miscellaneous (i.e., struck by car)

Total Palm Loss Due to Above:	12,357	
Loss Due to Lethal Yellowing	15,707	
Total Palms Lost:		**28,064**
1985 and 1986 stopped injecting Christmas and Fishtail Palms. Less original palm count		6325
		34,389
Present palm population injected:		2,161

GRAND TOTAL 36,550

THE UNDERPLANTING PROGRAM

It was fully realized by all involved in the injection program that it was only "buying time," since the control was not 100 percent effective. Therefore, when the injection program was started, it was decided that an underplanting program of resistant varieties must be started. Research had shown the Malayan Dwarf Coconut variety to be about

96 - 99 percent resistant to Lethal Yellowing so this variety was selected for underplanting. Seed nuts were imported from the Coconut Industry Board, Jamaica, West Indies. These included green, yellow and golden "Malayan." Nuts were germinated at the Town nursery and transplanted on Town properties. Nearly 2,000 Malayan Palms were underplanted. Malayan palms were also being planted by Town property owners, but at a rate much lower than those on Town property. Educational programs by the University of Florida Cooperative Extension Service, and Palm Beach County were emphasizing the importance of palms in a subtropical landscape to hopefully increase the awareness of homeowners of the necessity to replant.

Presently, over 2,300 Malayan and Maypan Palms are planted in Town parks, medians and parkway strips. There are also over 200 Maypan Palms with more than 6-feet of wood planted at the Town nursery, valued at over $1,400 each, which cost the Town $10.00 each at time of purchase. Mr. Dusey estimated that approximately 40,000 – 50,000 palms are planted on private properties.

Mr. Dusey referred to the following memorandum as he continued his presentation.

TO: Peter B. Elwell, Town Manager

FROM: Albert P. Dusey, Director of Public Works

Re: LETHAL YELLOWING PALM DISEASE

Date: February 28, 2003

The Town first became involved in the treatment of lethal yellowing palm disease in 1975 at the urging of the Garden Club of Palm Beach. Joe Ugi, Facilities Maintenance Division Manager, has been involved with this problem almost from the beginning of the program. He has assembled a program history, gleaned from his files, which I urge all to read. (*See previous section.)*

The Town's current program provides for the inoculation of six species of susceptible palms on both public and private property. The program has always inoculated the six species on private property. The program has been aimed primarily at the Jamaican Tall Coconut Palms which have always been an important part of the Town's heritage. In addition to the Jamaican Talls, the Town also inoculates Pritchardia, Phoenix Reclinata, Date, Spindle and Borasis palms. These were the species identified by the experts as most susceptible to lethal yellowing. These palms are inoculated three times per year with oxytetracycline.

When the Town began the inoculation program, we were advised by the experts that the program would serve to buy time to allow replanting of Coconut Palms that were lethal yellowing disease resistant. The Malayan Dwarfs were recommended initially and, later in the program, Maypan Coconut Palms were added as being disease resistant. Maypans are a hybrid cross between Malayan and Panama Tall coconuts. The Maypan variety grow more like the Jamaican Tall variety.

The Town began planting the disease resistant varieties in the parkways and on Town properties. Residents also were encouraged to plant these palms as replacements for the doomed Jamaican Talls. The Town currently has almost 2,300 Malayan and Maypan palms in Town parks, medians and parkways. An inventory of these varieties on private property has not been maintained.

Lethal yellowing is a bacterial disease that is transmitted by a particular insect. The Leafhopper was originally thought to be the primary culprit but we are now told that it is the Planthopper. This insect feeds on palms and breeds in grasses such as Bermuda and St. Augustine. If the Planthopper feeds on a palm with lethal yellowing, it becomes a transmitter of the disease to other palms as it feeds on them.

In tall-type coconut palms, basic lethal yellowing symptoms are premature dropping of the coconuts, followed by blackened inflorescence and yellowing of the older leaves. In dwarf-type palms, symptoms are similar except the older leaves turn brown rather than yellow. We are told that palms will die from 3 to 6 months after symptoms appear. Incubation (with no symptoms) can take about 4 to 14 months.

At the November, 2002, Town Council meeting, Dr. Kuvin expressed concern regarding lethal yellowing in Town and, particularly, in palms on his own property on East Inlet Drive. Upon arrival back in my office, I immediately discussed the question with Division Manager, Joe Ugi, and the Parks Supervisor, Rich Horne. Both employees have been associated with the Town's Lethal Yellowing Program for many years. Neither was aware of any significant problem in Town.

As previously stated, we do not maintain an inventory of Malayan and Maypan Coconut palms on private property. We do, however, have several thousand of these palms in the Town's system. We reviewed our loss records and found that about 1% of these palms are lost annually to all causes. We consider this to be a reasonable loss rate. We also took a sample from one of Dr. Kuvin's coconut palms that was showing signs of disease using the sampling technique given to us verbally by the University of Florida. This sample turned out negative. We concluded, therefore, that we did not have a lethal yellowing problem in Town. At no time did I state that we do not have lethal yellowing in Town. We have had lethal yellowing in Town since 1974 and we are likely to have it in Town as long as we have susceptible palms.

At the December, 2002, Town Council meeting, Mr. Kellogg read a statement from Dr. Kuvin expressing continued concern with lethal yellowing in Town. On December 20, 2002, I sent a letter to Dr. Nigel Harrison of the University of Florida Research Center in Ft. Lauderdale (copy attached). I requested that he provide us with a proposal to conduct a study in the Town to help us answer the question as to whether or not we should initiate a program to inoculate Malayan and Maypan palms.

On January 13, 2003, I again wrote to Dr. Harrison (copy attached) which included my original letter in case the original letter was misplaced or misdirected. On February 5, 2003, Dr. Harrison replied to my original letter apologizing for the tardy reply which occurred because of other pressing obligations (copy attached). It is obvious that concerns about lethal yellowing were diligently pursued over the three-month period, finally resulting in a very helpful letter from Dr. Harrison.

We learned much from Dr. Harrison. He provided a fairly comprehensive report on the status of lethal yellowing in South Florida. The discovery of lethal yellowing in four of Dr. Kuvin's palms was not shocking to us, although I cannot begin to explain why our one sample showed otherwise. Lethal yellowing is always present in Town and Malayan or Maypan palms are not immune to the disease, only resistant. Some things that were learned from Dr. Harrison's letter were surprising:

Second generation Maypan hybrids have no resistance traits found in the first generation palms. There may be thousands of second generation Maypan palms in Town with no resistance to lethal yellowing.

Dr. Harrison co-authored a 19-year study of lethal yellowing resistance in various species of palms. The study concluded that the lethal yellowing resistance of Malayan and Maypan palms had probably been overstated. The loss rate over the 19-year study for Malayan palms was 70% while the Maypan rate was 83%. However, in the text of his letter, Dr. Harrison continued to discuss the positive aspects of the Malayan and Maypan species being lethal yellowing resistant.

Relative immunity can be provided to susceptible palms through an injection program with oxytetracycline. In fact, diseased palms, if treated early, will both survive and prosper.

We feel it is important to try to define the magnitude of the lethal yellowing problem in Malayan and Maypan Coconut palms in the Town. We have very good information on the Town-owned population of these species. We lose about 1% to all causes on an annual basis. Some losses are likely associated with lethal yellowing. These palms are widely spread out around the Town and should reasonably represent the overall population, both public and private. We have a nursery with about 200 maturing Maypan Palms that have suffered no losses.

We randomly selected six properties at about two mile increments from Arabian Road to the 2000 block of South Ocean Boulevard. Malayan and Maypan palms were counted and inspected. These properties contained 342 coconut palms. Of this total, two palms, one on each of two properties, exhibited some signs of distress. We carefully sampled both palms using detailed instructions provided via fax by Dr. Harrison. The samples were analyzed by the University of Florida lab and one of the palms was found to be infected with lethal yellowing In summary then, of the 342 palms, one was confirmed as having lethal yellowing.

This sampling should not be considered statistically representative of the Town's Malayan or Maypan population. However, in combination with the experience with the Town-owned palm population, it may give some measure of comfort regarding how widespread and extensive lethal yellowing is in the Malayan and Maypan palm populations in Town.

We also contacted the three private golf courses in Town. The Palm Beach Country Club has experienced substantial losses in the last year. About 100 Malayan palms were lost and the course superintendent told us that some testing was done which indicated lethal yellowing as the cause.

The Breakers lost three Jamaican Tall coconut palms but had no losses of the approximately 400 other coconut palms on the golf course. The Everglades Golf Course had recently replanted many of their palms as part of the course renovation. They experienced several palm losses but were sure that transplanting was the cause.

In addition to this anecdotal information, we have the confirmation of four lethal yellowing losses on Dr. Kuvin's property, Dr. Lilja's statement of the loss of 27 Jamaican Tall palms and 5 or 6 Malayans, and Mr. Kellogg's statement of the loss of 11 Malayan palms in the last two years, and 5 palms that his Aunt lost in the last two years.

Given all we recently learned from Dr. Harrison, together with our own experience and testimony from our residents, it would appear that a modification of our approach to lethal yellowing in Town should be considered. I am, therefore, recommending the following program:

<u>Education</u>

Our property owners must be informed of the vulnerability of the Malayan and Maypan palms to lethal yellowing and the options available to them to protect their investment in this element of their landscape.

Property owners should be encouraged to inoculate their coconut palms if they wish to fully protect them against lethal yellowing. The Town will supply a list of qualified applicators that are known to us.

We have found that a three inoculation/year series will cost from almost $30 to $40.50 per palm depending upon the contractor chosen.

<u>Monitoring</u>

The Town should expand the random list of properties being monitored from the six originally chosen to twenty-four spaced at approximately one-half mile increments. These properties should be inspected quarterly for signs of lethal yellowing with testing done on palms showing distress. This will allow the Town to build a data base of information to guide future decision-making. Any signs of significant infestation will be brought to the Town Council's attention immediately. Otherwise, the information gathered will be reported annually to the Town's elected officials and the community. Included in this data base, of course, would be the Town's own palms that will be similarly monitored and tested.

Mr. Dusey recommended 18 additional properties, selected at random, in approximately ½ mile increments from north to south, be selected to count the palms, monitor them, and test the ones that might be in some difficulty on a quarterly basis.

Why not launch a Town-wide, Town-funded program extending the inoculations to Malayan and Maypan palms? We estimate that there are 40,000 to 50,000 Malayan and Maypan coconut palms in Town. These palms are part of private landscaping and their care and maintenance should remain a private responsibility. Dr. Harrison has informed us that inoculating the palms on a regular basis will prevent them from dying from lethal yellowing and that even infected palms, if treated early in the disease, will prosper. The private contracting of this inoculating service should be just as effective as inoculation by the Town. Simply put, there does not appear to be any compelling reason for the Town to undertake a Town-wide program on behalf of its residents.

We are also recommending that we do not inoculate the Malayan and Maypan palms in the Town's system. The losses are very low and we have 200 palms in reserve in our nursery which would last 10 years at our current rate of loss. In addition, I believe it is advantageous to allow these palms to be subjected to lethal yellowing so that we may include them as part of our data base in our monitoring program. If we start seeing signs of more serious infection rates, we can react quickly with an inoculation program.

End of Mr. Dusey's memorandum

Responding to questions from Councilman Wyett, Mr. Dusey said the Town is currently inoculating the six susceptible types of palms as identified in 1974 on both public and private properties. He clarified these are not the Malayans or the Maypans.

Councilman Wyett suggested the Town be pro-active and encourage all residents to inoculate trees, and he agreed private property owners should be doing their own trees.

Mayor Smith suggested a notification letter could be sent to all property owners including a list of companies who do inoculations.

Town Manager Elwell said the cost of doing a mailing would be several thousand dollars, but the mailing could be incorporated with some other information that should go out to all residents.

Mayor Smith replied the notice should be sent out as a one page piece on yellow paper to make it noticeable, announcing it as an emergency. Mayor Smith said she was initially in favor of having the Town inoculate both on public and private properties; however, the cost would be in the range of $500,000 to $600,000. She suggested notices should be available in both the Public Works and Building Departments in addition to the website.

President Pro-Tem Goldblum made a motion to approve a mailing to all Palm Beach residents notifying them of the lethal yellowing problem and approve the Town's inoculation of all Town-owned Mayalyans and Maypans. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McDonald was out of the room.

President Brooks said he was also interested in a statistical undertaking to the approach to provide a data base and a control. He asked if any professional arborists provided information to support Mr. Dusey's recommendations on inoculations?

Mr. Dusey responded his plan was based on Dr. Harrison's information; however, the specifics were not discussed.

President Brooks said the data base and statistical analysis may have to be sacrificed to the over-riding concerns as expressed by Mayor Smith.

Mr. Dusey asked if the Town Council wished to have the Public Works Department to continue to monitor the 18 properties?

Mayor Smith responded affirmatively, but rather than wait for the figures and the data base, inoculation of the trees should be started as well as notifying the public as to the importance of the issue.

Town Manager Elwell said the issue of funding for the inoculations will be presented at a later meeting, but the funding for the mailing can be absorbed.

Dr. Sanford Kuvin, E. Inlet Drive, said he was dismayed that the Council passed a resolution without hearing from the public, and apparently the Council had made up its mind without hearing from the public.

The following remarks were submitted by Dr. Kuvin at the meeting.

What Mr. Dusey has proposed today as a Recommended Town Action Plan is not only inadequate, and inappropriate, but this plan will only accelerate the negligence of the past several years by Town management and Public works since it discontinued inoculating all susceptible palm trees on private property in the 1980's due to budgetary cutbacks. This epidemic is clearly out of control and will ruin a significant part of the Town's environment including its very namesake. Because of this negligence, with the ongoing preventable killing of our cocoanut palm trees, we are in real danger of looking no different than New Jersey.

In his report to Council today Mr. Dusey states, "We estimate there are 40,000 – 50,000 Maylayan and Maypan coconut palms in Town—their care and maintenance should remain a private responsibility—and there is no compelling reason for the Town to undertake a Town-wide program on behalf of its residents." Let me remind Mr. Dusey that LY is a lethal highly infectious plant disease, and its spread can only be contained by inoculating all susceptible palm trees whether on private or Town property. This germ cannot distinguish between the private and public sector. Voluntarism does not work with the control of any serious infectious disease be it TB, plague, typhoid – or even lethal yellowing—or at any other plant, animal or human disease. Control and treatment affecting public and private tress must be mandatory and uniform to be effective.

I would ask the council members how they would react to medical opinion giving misinformation about a serious preventable disease? (e.g. smallpox) That's exactly the analogy of disinformation conveyed by Mr. Dusey to the Council regarding the seriousness of the state of health affecting our coconut palm trees and how to overcome the problem. Yesterday, Chief Reiter informed his audience at the Civic Association that the Public Works Director could be appointed an "incident commander" if this community ever came under the threat of a bioterrorism attack. The lesson to be learned from Mr. Dusey's recommended LY Program is that if the Town cannot adequately deal with a lethal controllable infectious plant disease in a standard epidemiologically correct fashion, what can we expect from Town management and a public works "incident commander" in dealing with the remote but real threat of germ warfare and bioterrorism? Fortunately, as the result of the information presented recently by several others, and myself, and Dr. Nigel Harrison at the University of Florida, Mr. Dusey now states in his current report to Council that a "modification of our approach to LY should be considered." Unfortunately, Mr. Dusey's modification is unacceptable in treating this disease and is a prescription for failure.

Mr. Dusey reminds me of the character Tevya in the production Fiddler on the Roof. When looking for divine intervention, Tevya weighs his problems with the recurring words "On the one hand" such and such is true – but "on the other hand" such and such is true. On the one hand Mr. Dusey states in his report there is no LY of significance in the Town, on the other hand the Palm Beach Country Club reports a loss of 100 trees due to LY over the past year, on the other hand Mr. Dusey's own recent survey of 342 coconut palms revealed only one with LY. On the other hand Mr. Dusey says the study is not statistically significant and should be expanded. On the other hand the Town has certified four LY losses on Dr. Kuvin's property. Dr. Lilja states he lost 27 Jamaican Talls and 5 or 6 Malayans, and Mr. Kellogg states the loss of 11 Malayan palms in the last two years, and five palms his aunt lost also in the last two years. On the other hand I drove the island with a certified arborist recently, and from Green's Drug Store to the Inlet we found 15 infected trees. On the other hand Mr. Dusey never mentions in his report that the incubation of LY is months to a year during which it is impossible to determine which trees are sick and which are not except by treating all susceptible trees mandatorily in a preventative fashion.

The seriousness of this epidemic is attested to not only by my observations and confirmed by two local commercial tree firms who treat the disease, but also by Dr. Nigel Harrison, the Town's own expert and his colleagues who have a current survey of lethal yellowing at the Fort Lauderdale research station recording loses of 74% in Mayalyan and 80% in Maypan coconut palm trees. Can we be far behind?

This Town does not inject the common Malayan Dwarf or Maypan coconut palms even on Town property, and it gave up injecting all palm trees on private property in 1982 except for the few remaining Jamaica Talls and the very rare 5 species mentioned in Mr. Dusey's report. Mr. Dusey's department does no survey or inspection of trees on private property, therefore it is virtually impossible for Mr. Dusey to know of any trees on private property infected with LY, putting us in a two-decade period of what can only be described as a period of negligence allowing an epidemic of LY that could have been prevented and contained, to occur. Jupiter Island just to the north of us has a long standing program of injecting all 9000 of its public and private cocoanut palm trees with the loss of 2 trees over the past year. Over two decades ago our own LY program began before Jupiter Island's, which used Palm Beach as its example of excellence. Today, Jupiter Island's continued success in dealing with LY has been staring Town management in the face for over 20 years, but not even noticed by Mr. Elwell or referred to by Mr. Dusey in his report today. Instead Management and Public Works continue to whitewash the importance of lethal yellowing as a minimalist issue, instead of the epidemic it really is with the significant environmental, material and enormous replacement costs.

What is needed now in this Town is a proven and tried formula of success based on clear scientific infectious disease principles, no different from that of the LY program which was so successful from 1974 through 1980 and 1981, when I chaired that committee.

Specifically, I recommend to this council that an outside expert committee with a creditable plan be established by the Council to recommend to Council how best to proceed with the ongoing LY epidemic.

The Committee should be appointed by the Chairman of the committee and include representation from interested parties including the Garden Club, the Civic Association, the Preservation Society, The Palm Beach Tree Society, The Palm Beach County Cooperative Extension Service Director, the Parks Department of the Town and the Director for LY research at the U. of Florida Agricultural Research Station in Fort Lauderdale. Of critical importance to the success of a proactive LY program is that this program must be adequately funded, with costs yet to be determined, but estimates ranging from $350,000 - $500,000/year – a small amount of money to keep coconut palms in Palm Beach alive and well. We do it for our beaches. We do it for our feral cats. We must certainly do it to protect our namesake coconut palm trees.

The program itself should include:

1.Injecting and inventorying all susceptible palm trees on the island.

2. Estimating the cost of a comprehensive program vs. the losses of continued negligence. The coconut palm trees are obvious invaluable Town assets to all of the residents and the Town's visitors. Jupiter Island values its palm tree replacement cost at $2000 - $3000/tree. With 9000 trees on Jupiter Island that's about $25 million. It has been estimated by Mr. Dusey that we have 40,000 – 50,000 Malayan and Maypan trees which are still uncounted and not identified as to species or state of health. Now we are talking about real money in tree assets.

3. This project should have University of Florida oversight, with part of the budget allocated for ongoing research in Ft. Lauderdale specifically directed at this Palm Beach program. The Town's Finance and Public Works departments should maintain fiscal oversight.

4. The Town's in-house LY program began in 1981 when it cancelled "outsourcing" to its vendor as a budgetary cutback, eventually stopping the injection of all susceptible coconut palm trees on private property except the now uncommon Jamaica Tall. The Town's efforts at LY have not worked out for many reasons, including lack of interest and the passion to carry it out. Therefore, it is imperative for the success of this program that outside vendors be sought by competitive bid with performance records on projects of this size in a company with a proven track record.

5. The Committee should meet with the Council on a regular basis and the Council should receive updated reports of progress.

From 1974- 1981, we had a very successful LY program which made a contribution to the Town of Palm Beach and the world where the coconut industry is the 7th largest agricultural crop. This disease is now globally epidemic and spreading.

In the past, Palm Beach became a paradigm of excellence to the world coconut and ornamental palm industry under an enlightened Town Council, at that time led by Mayor Earl E. T. Smith, who over two decades ago spearheaded the decision for that council to provide $250,000 a year in funding so that all trees would be inoculated.

We must now overcome the neglect of the past, and now we look for the same enlightenment of the Council of over two decades ago, from this Council today.

End of Dr. Kuvin's remarks.

President Brooks said he did not think the resolution, passed earlier in this meeting, was in opposition to Dr. Kuvin's remarks, and requested Town Manager Elwell to investigate the formation of a committee.

Mayor Smith said the issue of a committee could be discussed at the April 8th meeting.

Nancy Murray, Civic Affairs Chairman of the Garden Club, said the Garden Club agreed with the first resolution—the Town should inoculate on public property; private residents should be encouraged to inoculate and provided with names of vendors who are satisfactory and proven. She said the disease should be carefully monitored as, according to Dr. Harrison's writings, the disease comes and goes and the Town will never be free from it until something is found to kill the leafhopper.

Chris Kellogg, 475 North County Road, said the Town can afford to spend money to protect its trees as the trees are valued over $900 million. He said the public needs the support of the Town Council to find a resolution for the problem and requested the Council form a committee to explore all of the possibilities including the raising of funds to resolve the issue. Mr. Kellogg suggested Dr. Kuvin as the chairman of that committee.

Dr. Sten Lilja, 1330 North Ocean Blvd., stated:

I am offended by Mr. Dusey's advising this Council that, "simply put, there does not appear to be any compelling reason for the Town to undertake a Town-wide program on behalf of its residents." That flies in the face of previous Town dedication to do everything possible to save and perpetuate trees in our Town, our community.

The property owners have made a dedicated effort, at great expense, to beautify our Town. They planted those palms, removed diseased trees, and they replanted. Is it so difficult to understand that the property owners are planting palms for the overall beauty of the Town rather than just as a gardening whim. Past Councils understood this and took steps to support and assist its property owners by organizing and paying for inoculation. Town employees later took over the task of inoculation. Mr. Dusey's advice to the Council shows regrettable disregard for property owners situations.

As I stated at the February Council meeting, the mess we are in is due to the Town's negligence in attitude. The Town must come up with an immediate plan for combating this plague and provide for removal and replacement at Town expense. I maintain the property owners relied upon the Town's initiative, and they paid for it. While there was no formally written contract, there was, never the less, an official, mutual understanding and agreement. It was a moral contract that was breeched.

This is an epidemic that is out of control. As Dr. Kuvin explained, we cannot differentiate between Town owned palms and private palms. All susceptible palms must be inoculated immediately. Festina Lente is not an option. I look for the public to join in and bring about some changes.

Deedy Marix, 1570 North Ocean Boulevard, said she was on the Town Council at the time the lethal yellowing problem was identified and she witnessed the concerns of the residents and the solutions that were found with overall inoculation. She continued she did not like the idea of spending money but realized some items need to have money spent on them.

Mrs. Marix said she never heard a major discussion regarding stopping inoculations on trees on private property as inoculations were done uniformly. She concluded the amount of money is not great when it is compared to what the trees mean to the Town, and the program should start immediately and be over all.

Town Manager Elwell clarified the Town continues to inoculate on private property as well as public property.

Mr. Dusey explained the inoculation program started in 1975 and is the same program in place today with inoculation of 6 species of palms and nothing has changed. He said the Public Works Department enters private properties three times a year to do the inoculations.

Richard Maxwell, owner of King Tree Service, said he was the Town's vendor for the injection program from 1974 until 1981 when the program went in-house. He said the Town's program was the role model for lethal yellowing control, and very few trees were lost. He said the Town still loses very few trees of the injected ones, and the current problem is all of the susceptible species that are not being injected.

Mr. Maxwell offered his assistance and said, in his opinion, it was not the best business decision to altar the most successful program in the world, and tens of millions of dollars of assets were lost.

Councilman Wyett asked Mr. Maxwell if he thought it would be practical to educate each individual property owner to inoculate his own trees?

Mr. Maxwell responded that it is achievable with the right tenacity to educate the owners, but it will not be all inclusive resulting in lower results. He said the most efficient efforts are the ones taken by Jupiter Island and Lost Tree where every tree is inoculated three times a year, and the towns pay the bills with costs kept at a bare minimum.

Clayton Hutchinson, Director of Palm Beach County Cooperative Extension Service, stated his concern was with the one year incubation period of the diseases, and during that time, planthoppers can spread the disease before it is detected. He said he thought some way should be found to treat all the susceptible trees. Mr. Hutchinson said the Extension Service will help anyway they can.

Town Manager Elwell summarized the actions to date by the Town Council: the staff will proceed as soon as possible to prepare a notice to the public prior to April 8th; the cost of the inoculation program approved by the Council, inoculating the Town's trees, and the possibility of forming a committee to consider this issue further will be presented at the April 8th meeting.

Mayor Smith requested the costs of inoculating all the trees in Town should be included at next month's meeting also.

The next item heard was Item IX.B. New Business 3. City of West Palm Beach's Water Main Replacement Program for FY2003 in the Town of Palm Beach

2. Appeal of Administrative Decision Which Denied Permission for a Property Owner to Sell Beach Access Through a Nonconforming Narrow Strip of Land in the R-AA Zoning District to Neighboring Property Owners. [Wade Byrd, Esq.] *(Deferred From*

February 11, 2003, Town Council meeting) **(Request for Deferral to the April 8, 2003, Town Council Meeting per Letter Dated March 6, 2003, from Wade R. Byrd, Esq.)**

This item was heard at a time certain of 2:00 p.m.

Attorney Wave Byrd, representing the owner, said some residents in the north end of Palm Beach would like to have a permanent right of access, and they have waited a lifetime for the opportunity to have beach access through this strip of land. He said his client is reasonable and is willing to discuss the situation with the beach owners who are opposed to the idea.

Mr. Byrd explained the property on North County Road was purchased in 1998, and after its purchase, numerous people in the area contacted Bill Elias and stated they had been using the beach for years and would like the opportunity to have an ownership interest in the strip of land, either through a homeowners association or through a limited type easement. Mr. Byrd said he contacted Attorney Randolph who issued his opinion in 1998 stating that the zoning did not allow for it. He continued that a house was built on the property and finished in 2000 and was sold to Guy Henderson who said he had friends who would like to buy permanent access in the strip. Mr. Byrd said ownership rights were retained by Mr. Elias and technically, under the Town's zoning, Mr. Elias has an accessory use that is detached. Mr. Byrd said that if this appeal is not successful, ownership of the strip of land to the beach will be transferred to Guy Henderson.

Zoning Administrator Paul Castro explained the decision not to allow beach access for neighboring property owners was based on Mr. Byrd's and Mr. Elias' request to sell rights to neighboring property owners for beach access and it was Mr. Randolph's opinion that was not an acceptable use; could be considered quasi-commercial in nature; although customarily used as beach access by one property owner was never intended to serve the interests of the entire subdivision for beach access. He continued the strip is in the R-AA large estate district, and in this district, a homeowners' association for this type of beach access is not specifically provided for, and the staff's opinion was that it was not permitted.

Mr. Castro continued it could be used as a grandfathered, non-conforming use and piece of property by the property owner across the street for beach access.

Attorney Randolph said this probably could be classified as a quasi-judicial hearing and advised anyone speaking should be sworn in.

Town Clerk Pollitt swore in the witnesses.

Ex-parte discussions were declared by Councilman McLendon and President Pro-Tem Goldblum with Mr. Henderson; Councilman McDonald with Doyle Rogers; and Councilman Wyett with all parties.

Attorney Doyle Rogers said Attorney Byrd made an excellent presentation and an impassioned plea for the people who live on the west side of North County Road, but the fact remains it would be a violation of the Town's Code, and it becomes a commercial operation when parcels are sold. He stated he had two letters from attorneys who represent the beach clients and both object and will oppose all efforts to sell off the interests in the 15 ft. wide parcel. He noted the parcel widens to 25 ft. on the beach, but questioned how 45 or more people could be controlled in that size of space at any time of the day or night.

Mr. Rogers said that, by taking separate titles to the east and west sides of North County Road, a non-conforming lot of this easement strip was created. He added that in the R-AA zone, the only use for the strip of property should be residential. Mr. Rogers said a precedent would be set if the Town Council did not take the advice of its counsel. He urged the Council to adhere to the Code.

Attorney Kenneth Beall, Gunster Yoakley, representing Mrs. C. E. Waddell owner of 615 North County Road, adjacent to the strip of land in question, said the Guest family for many years owned the residential property on the west side of North County Road plus the narrow strip of land which they used for beach access. He recalled that Mr. Byrd in 1998 sought to determine if the strip of property could be sold off separately; and with full knowledge that the property could not be used separately, Mr. Byrd's clients proceeded to purchase the grandfathered accessory use property. He continued the original Guest house west of North County Road was demolished, and Mr. Byrd's client built a larger house that was sold to Mr. Henderson.

Mr. Beall said his clients position was fairly simple—that the applicant with full knowledge of the effect of its election, i.e. Attorney Randolph's letter, severed the non-conforming parcel from the residential parcel; created a stand alone non-conforming parcel; and is requesting relief from the Council for his own actions. Mr. Beall requested the Town Council deny the appeal and uphold the administrative decision.

Attorney Frank Lynch, representing Leighton Rosenthal, owner of property at 656 North County Road, said, unfortunately, Mr. Byrd's argument ignored the Zoning Code which does not allow this particular use. Mr. Lynch said Mr. Byrd's client went ahead knowing full well what the Code interpretation was, and the client has created his own hardship. Mr. Lynch said a multiple of 45 property owners would have access to the beach and the approximately 30 ft. wide area on the beach, abutting his client's property, could not contain that number of people.

Mr. Byrd said no other properties in Palm Beach have the same 'uniqueness' as does this piece of property. He noted that in 1996, the Zoning Code was changed to prevent the separation of the right-of-way strip from the main property; however, no property in Palm Beach has the 'uniqueness' of this property that would be precedent setting. He said he promised the property owners in the area that he would give this his best shot to provide beach access for them.

President Pro-Tem Goldblum suggested the strip could be donated to the Town, and the Town could open it up and let anyone who wanted to use it do so.

Mr. Castro said that it is permitted within the beach area district itself where most of the beach houses are as well as the associations are located to provide those type of uses provided special exception Council approval is received. He noted that no such provision existed in the R-AA district.

Attorney Randolph clarified that this request was an appeal of the administrative official. He said the Council's decision relates to the sustaining of the decision of the administrative official or to overrule the decision.

Councilman Wyett recalled that in 1996, the Zoning Code was changed to prohibit anything that might be considered a 'club' use. He related it to the Mar-a-Lago private club issue, and the approval by the Council of the appeal would not put the Town in a very good legal position if the neighboring property owners objected.

Councilman McDonald asked Mr. Byrd what his client's intent was when he did not sell the strip of land and was it to sell off the memberships or rights of access?

Mr. Byrd responded the buyer, Mr. Henderson, had friends who wanted a permanent right of way to the beach, and it was decided the beach access would be held back to determine if this could be accomplished. He said it was done with compassion and understanding.

Councilman McDonald made a motion to sustain the Building & Zoning decision in the matter as the property cannot stand alone. The motion was seconded by President Pro-Tem Goldblum.

Attorney Randolph said his position from a legal standpoint was stated in his letter dated April 7th and the use of this parcel could continue to be used as an accessory use to the main parcel, but it could not stand alone as an independent use.

Joel Koeppel, 215 Southland Road, said he visited the easement and concurred with the points in Mr. Byrd's presentation although he understood the neighbors concerns regarding privacy by potential visitors to the beach. He added a portion of the beach is public, and residents of the Town of Palm Beach should have the right to enjoy the privilege of visiting the beach. Mr. Koeppel said he believed that portion had been grandfathered, and that use should not be discontinued. He said it was a mistake to dismiss the matter and go along with the administrative order without the ability to address a compromise. He said he vehemently opposed upholding the order as it stands.

President Brooks said he would like to see all residents have access to the beach, but this case concerns the permission of a property owner to sell beach access through a non-conforming narrow strip, and that is a problem. He suggested the neighbors could meet with Mr. Henderson to negotiate beach access, but selling access represents a terrible precedent.

On roll call, the motion to sustain the administrative decision passed 5-0.

3. Staff Update on Proposed Initiation of Foreclosure – 1496 North Lake Way, Code Enforcement Board Case Number 02-1396.

[Robert L. Moore, Director of Planning, Zoning & Building]

Planning, Zoning and Building Director Robert Moore said work continues on the site but not at the rate that would allow the project to be finished to receive a Certificate of Occupancy by the April Town Council meeting. Mr. Moore said his recommendation was to go forward with the foreclosure if Mr. Kino's client can proceed to finish the project.

Mr. Kino, Attorney for the owner, said the process is going forward and his client thinks the project will be substantially finished by the deadline with the goal of improving the exterior of the building. He said a foreclosure effort would further impact his client's financial efforts to finish the project.

President Brooks said he observed the property the day before this meeting and hardly anyone was working and requested the dirt in front of the residence be removed along with the dumpster and the front yard sodded.

Mr. Kino responded the drainage held up the landscaping and everyone is lined up to go ahead after the drainage is filled in. Mr. Kino said within ten days the landscaping will be in.

Councilman Wyett suggested the Council will lose patience by the next Council meeting but urged the Council to wait until the April meeting to take additional action.

Attorney Randolph, responding to Mayor Smith's questions, said a foreclosure would take six months to complete or longer.

Mayor Smith said it is important to get the landscaping in and the dumpster should be removed by April 1st.

Mr. Kino said he would provide a commitment to that.

Mr. Moore said Attorney Randolph had approved a form of a bond that was not acceptable to the Building Department to insure the completion of the project.

Attorney Randolph explained that during his discussions with Mr. Kino, he suggested the Town have an agreement with his client that the Town could lien the property and the lien would be superior in time and right to anyone else regarding any funds spent by the Town for property improvements.

Mr. Kino said that lien would be unencumbered so no impediment would exist for a perfected lien; however, he was attempting to work out a compromise to appease Mr. Moore.

President Brooks said the Council would make no motion but wanted a confirmation from Mr. Kino's client that the grass and dumpster be addressed.

Mayor Smith requested pictures be presented at the April 8th meeting.

4. Staff Update on Proposed Initiation of Foreclosure – 317 Garden Road, Code Enforcement Board Case Number 02-1417.
[Robert L. Moore, Director of Planning, Zoning & Building]

Mr. Moore said the only thing left on this property was the seeding or sodding of the property as the structures have been removed, and the property was graded.

Chief Code Compliance Officer Brian House said some new trash piles are in the back yard, and the property still needs to be seeded, sodded, and irrigated. He said the landscape contractor has been hired, and another person was hired to remove the trash. He added the front gate was removed and needs to be replaced.

Mr. Moore said the Building Department did not recommend foreclosure.

5. Staff Update on the Sea Lord Hotel Property, 2315 South Ocean Boulevard.

[Robert L. Moore, Director of Planning, Zoning, and Building]

Chief Code Compliance Officer reported discussions had taken place with LLC, Limited Liability Corporation, Dwight Bowler, one of the principals in New York City.

Mr. Moore recalled the Town had a development agreement on the property that was extended due to a lender associated problem where the lender will not release the property to be demolished. He said the project is now under the jurisdiction of the Code Enforcement Board with a potential of another $250/day fine.

Mr. House said the Code Enforcement Board, at their last meeting, ordered the work to begin – to clean up the property, to paint it, close in the windows, and to maintain the property as it should be. He continued meaningful work should continue until the property complied with Town ordinances, and at the March 20th meeting the Town will request the Code Enforcement Board authorize a $250/day fine beginning March 5th, because meaningful work has been stopped as of that date.

Mr. House said he was going to determine with the advice of Attorney Randolph if this can be declared a repeat violation at $500/day as this same property was before the Code Enforcement Board previously and paid a $94,500 fine.

President Brooks recalled Attorney Jim Brindell agreed in January that demolition would begin on or about May 1, 2003; and this is an eye sore that continues to affect the neighbors.

Mr. House replied he was told that the plan is still to demolish the building this summer and, according to Mr. Bowler, the hold up is the Department of Environmental Protection has not issued a permit and the lender will not release the property for demolition until that permit is approved.

President Brooks asked if the Town could demolish the building and lien the property to recover the demolition costs?

Attorney Randolph responded the Town could not do that, and the Town must go through the Code Enforcement process with the possibility of doubling the fine.

Councilman McDonald asked Attorney Randolph, if the Code Enforcement Board implements the fine, how quickly could the daily fine be reduced to a lien that could be foreclosed on?

Attorney Randolph responded the order is recorded immediately, and the order has to be recorded for three months before foreclosure can begin.

Councilman McDonald suggested that be done at the next Code Enforcement Board meeting, immediately filing the lien, with the purpose of commencing the foreclosure in 90 days, as that is the fastest the Town can proceed.

Councilman McDonald made a motion to proceed as described in the preceding paragraph. The motion was seconded by President Pro-Tem Goldblum.

Attorney Randolph said a motion was not necessary.

Mr. Elwell reiterated no motion was necessary at this time as a plan of action has been described by the Town Attorney, and the Town Council action would be later, after the 90 days has past.

The motion was withdrawn.

Councilman McDonald asked what the status of permits on the property was?

Mr. House replied the Town approval extension expires June 12, 2003.

6. Staff Update on Installation of Required Landscaping at 420 Royal Palm Way. [Robert L. Moore, Director of Planning, Zoning, and Building]

Mr. Moore reported his department put together an investigation resulting from Attorney Chopin's concerns regarding the development process, the landscaping process, the process of the Architectural Commission and the Town Council's actions. He said the bottom line of the report is that the landscaping that is installed has one year to grow to the height as required by the Architectural Commission and additional landscaping has been planted since last month. He continued that the Town has a $30,000 irrevocable letter of credit to insure that the landscaping will hide the wall within a one year period by January 2004.

President Brooks said he understood the matter is handled by the Building Department and off the Town Council agenda.

7. Proposed Settlement Regarding Maureen N. Donnell vs. Town of Palm Beach. [John C. Randolph, Town Attorney]

Attorney Randolph reported a recommended settlement resulted from mediation that stated that portion of the wall remaining at seven feet (7% portion of the entire wall) be allowed to remain with the understanding that Mrs. Donnell would remove the electrical fixtures that are on the wall. He continued that a letter was received stating Mrs. Donnell is to agree to those terms and requested the Town resolve the matter. Mr Randolph said that, procedurally, a variance needs to be filed to allow those conditions to occur and he recommended moving forward in that manner.

President Pro-Tem Goldblum made a motion to proceed as outlined by Attorney

Randolph. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

B. New Business

1. Adoption of Townwide Goals for FY 2004.
[Peter B. Elwell, Town Manager]

Town Manager Elwell identified the top five FY2004 goals that were the highest priorities as a result of individual voting by the Mayor and Town Council:

1. Continue the implementation of the Town's Coastal Management Plan, including final permitting and construction of the Phipps Ocean Park Beach Restoration Project and initial permitting activities for Reach 2 (Reef Road to Via Los Incas), Reach 5 (Banyan Road to Widener's Curve), and Reach 8 (Ambassador Hotel to South Town Limits).

2. Continue the implementation of the approved 10-year drainage improvement program for the basins north of Wells Road.

3. Implement engineering, financial and legal studies in order to establish a long range plan to bury electric, telephone and cable wires.

4. (Tie) Maintain a high level of safety and security of the community (crime, natural disaster and terrorism) and address new threats as they may develop.

4. (Tie) Implement actions recommended in the Town's strategic Plan and add to it a Strategic Plan for the Fire-Rescue Department and a Traffic and Parking Improvement Plan.

President Pro-Tem Goldblum made a motion to adopt the Townwide Goals for FY 2004. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

2. Upgrade of Town Facilities. [Peter B. Elwell, Town Manager]

a. Update re: Planning for Town Hall Renovation.

Town Manager Elwell said Michael Hole from Saloman, Smith, Barney would address the financial issues—the timing and the particulars of going into the market for refinancing the Town's 2000 Series beach bonds as well as the new financing proposed for the Town's facilities.

Mr. Elwell reported that the Town Hall project was researched to include the needs of the Planning, Zoning and Building Department in addition to other Town Administrative Staff for expanded and modernized office space, and he expressed confidence that this can be accomplished in the Town Hall building. He said a plan will be drawn but reconstruction will be necessary with completely redesigned space to meet the needs of the departments. Additionally, this will provide an opportunity to make the building more secure from an access and freedom of movement point of view as identified in the weeks after September 11, 2001.

Mr. Elwell said the financial bottom line which is a very preliminary number at this time, will exceed the $1.5 million previously projected. He said the range currently projected is between $2 million and $2.5 million to accomplish the two major goals.

b. Update re: New Central Fire-Rescue Station.

Town Manager Elwell reported bids were received and came in at approximately the anticipated amounts with one that had to be withdrawn because it was improperly submitted. He identified the three bids that were properly submitted were for $3.6 million, $3.7 million, and $3.8 million, and the working estimate was $3.6 million. He continued that the firms were pre-qualified and the bid award will come to the Town Council at the March 25th Special Town Council meeting.

Mr. Elwell said $4.2 million, including related costs, professional and contingency fees, will be the amount needed to have the proper project budget for the Fire-Rescue station. He continued that if the Mayor and Town Council tentatively approve the proposed financing for this project and the re-financing of the beach bond at this meeting, the proposed actions to allow the project to go forward would be presented at the March 25th Special Town Council meeting.

Mr. Elwell said the full cost of the known Fire-Rescue costs and the preliminary number for Town Hall would be $5.6 million. He reported that $1.1 million was donated to the Fire-Rescue Station as part of the needed $4.2 million which becomes $3.1 million (funds needed) plus the $2.5 million for Town Hall renovations for a total of $5.6 million.

c. Discussion of Financing Options (including potential refinancing of the 2000 Series Beach Bond).

Mr. Elwell, referring to a summary of six options for proposed revenue bonds, said the magnitude of the projects could be properly financed over twenty or thirty years, and the life of the investments is such that thirty years would be as responsible as twenty years in terms of spreading out the impact of the investments over the future generations who will benefit from them.

Mr. Elwell said that Option 4 on the chart would provide sufficient funding to complete the two projects, and if the Town Hall project is completed at less than the projected $2.5 million, the bond will be structured in such a way that it will mention the drainage work completed in the past few years, funded by accumulated funds in General Fund Balances, and it would be possible to refund the General Fund through the issuance of some debt. He continued that if the Council chooses not to explicitly add to the debt a provision for drainage money, the bond wording will allow any savings achieved through the Town Hall project may be returned to the General Fund as a partial reimbursement for the investment that has been made for drainage.

Mr. Elwell explained that, under Option 4 – 30 year bond, the impact would be $46/annually for each $1 million assessed value.

Councilman McLendon questioned the consideration of the traffic and parking impacts if the Building Department was left in Palm Beach and not moved off island.

Mr. Elwell responded the impact was not objectively measured; however, existing traffic numbers show 300 trips per day to and from the building for the public that is served in addition to approximately 25 to 30 employees who would be housed elsewhere.

Mr. Elwell continued another issue is the question of accommodating employees once the Beaumont Parking lot is no longer in use. He said the issue has been studied and without having to resort to creating a shuttle system, the Town will be able to accommodate the needs of the employees with the remaining two lots and by reallocating some vehicle spaces.

Michael Hole, Salomon Smith Barney, said Town Manager Elwell presented the new money options very well. He said he has been monitoring the issue of refinancing the beach bond for approximately two years, and the Federal Tax Code only allows one opportunity to refinance tax exempt bonds. He continued that the opportunity should be used when it is reasonable to believe that an opportunity will not present itself in the near future to achieve significantly greater savings, and it is appropriate to take the savings at this time, measured against the risk that would be taken if rates go up. He mentioned that all the costs of the refinancing are amortized into the new bond issue.

Mr. Hole said the master documents, under which the current outstanding bonds were issued, are set up for multiple series, and if the Town Council decides to move forward with new borrowing and refinancing at the same time, they could be done together under one offering, one set of documents, one set of costs, which would save a little extra on the refunding and lower the cost of the capital on the new borrowed money.

Councilman Wyett asked Mr. Hole if he had a date in mind for pricing?

Mr. Hole responded if the Council approves going forward at this time, the resolution would be prepared by the March 25th meeting, and the bonds would be priced approximately two weeks after that time.

Councilman Wyett commented that the Town was borrowing too little money, because the Town Hall renovations could easily exceed the projected amount with any overrides coming from the General Fund or affecting the future tax rate. He suggested increasing the borrowed amount from $5.6 million to $6 million. He added if the amount was not spent, it could be added to the drainage fund as previously mentioned or used for water pipes.

President Pro-Tem Goldblum said he could agree with the amount, and the buildings will last for thirty years and it is prudent to approve a thirty year bond.

Councilman Wyett made a motion to approve '4B' on the Salomon Smith Barney sheet, a thirty year bond for $6 million, less than $50/year per $1 million assessment. President Pro-Tem Goldblum seconded the motion.

Town Manager Elwell clarified the $6 million would be issued together with the beach bond refinancing as revenue bonds, and the cost of borrowing between a revenue bond and a general obligation bond is virtually no different.

Mr. Hole stated the beach refinancing, as proposed, is to stay within the remaining seven year term of the original ten year program, and although it will be one offering, it will be a separately structured series with the remaining being the thirty year offering.

Mr. Elwell recommended that any extra monies realized from the issuance of the bond be returned to the General Fund as a reimbursement for drainage projects as the amount needed for water projects is unknown at this time. He continued that Ken Rearden pointed out the possibility of repaying the debt for pipe reconstruction in the Town that could be spread out amongst the rate payers in the Town and in West Palm Beach.

On roll call, the motion carried 5-0.

President Pro-Tem Goldblum made a motion to approve the refinancing of the Beach Bond to stay within the seven year period. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

3. City of West Palm Beach's Water Main Replacement Program for FY 2003 in the Town of Palm Beach.

a. Presentation by Kenneth M. Rearden, Utilities Director, City of West Palm Beach.

Ken Rearden, Utilities Director, City of West Palm Beach, said he was reporting on the progress of the Town's water system improvements and wanted to present some items for the Council's consideration.

Mr. Rearden provided a list of completed projects totaling $16 million. He enumerated the projects that are slated to be completed: the North Lake Way project; Royal Poinciana Way (a joint project with FDOT to begin in the summer of 2004); the Palm Beach repump stations; Ocean Boulevard/Chilian Avenue; Cocoanut Row; South County Road; and Ocean Boulevard from South County to Southern Boulevard. He added the following projects are under contract and scheduled for completion: South County Road; Island Road, Peruvian Avenue and a private road.

Mr. Rearden requested the Town's approval for some projects that have been identified as needing attention and sufficient funding is not in place to do those projects. He said bid prices are much higher than initial estimates and prices are out of sequence from the original estimates that are five years old.

Mr. Rearden requested the working hours be changed for the duration of the work during the summer of 2003; relief from the noise ordinance; and approval of some road closures. He said this would facilitate coordination with FDOT projects and complete some of the smaller projects in a timely manner. He identified the project on Dunbar Road as one that should be completed earlier than scheduled as the crews have repaired five water main breaks in that area in the past three years. Mr. Rearden said it would cost an additional approximately $5 million to complete the list he presented, and $1.3 million is in the R & R fund that is contributed to monthly that is available for these projects; however, the Town's Public Works Department would like to maintain that fund for future R & R. He said there is an option in the agreement that bonds could be used for completion of the projects.

Mr. Rearden added that all of the projects were designed and permitted. He said that funding is the only thing holding them up.

Councilman McLendon asked Mr. Rearden if he would be in favor of postponing the replacement of the 50 year old concrete pipe under the Lake and use the money for some of the projects needing funding?

Mr. Rearden said that issue was discussed and the idea was to do the project when one contractor was mobilized, but the sub-aqueous crossing could be included in the bid specs as an alternate project.

Councilman McLendon questioned if an alternate bid would be appropriate for the Flagler Bridge crossing to allow an additional amount of money for a size or two larger pipe size?

Mr. Rearden replied that could be included in a spec and jack and bore equipment is amenable to the larger pipe sizes, and the dollar amount would not be much greater.

Responding to a question from President Brooks regarding the extension of work hours, Mr. Rearden replied the request is a one time sequence when the pull back of the directional big boring is done, and the request is for a 48 hour working sequence.

Councilman Wyett asked if there was a contingency plan for supplying water to the island if the pipe under the Lake should fail?

Mr. Rearden replied the City has five crossings to the Town of Palm Beach and the Barcelona crossing, next to the Everglades Club, and the system could be maintained with the other pipes.

Councilman Wyett asked for the actual dollar shortage that would complete all of the projects originally envisioned by the Town?

Mr. Rearden responded the amount is slightly over $5 million and the money could come from three or four sources: 1) the Town could bond the project itself; 2) the City of West Palm Beach could bond the project; or 3) use the R & R funds that receive approximately $450,000 yearly.

Councilman Wyett said if the R & R funds were used, it would require approximately ten years to complete the projects.

Mr. Rearden explained the $5 million would not do the entire Town and the R & R fund is intended to do a project every year. Responding to Councilman Wyett's question regarding bonds, Mr. Rearden said the costs of bonding, if done by the City of West Palm Beach, would be passed on to both West Palm Beach and Palm Beach users.

Mayor Smith asked if the Royal Poinciana project could be coordinated with another road project there during the summer of 2004 to eliminate double the inconvenience to the business owners and their customers?

Town Engineer Jim Bowser responded the Royal Poinciana project will close either the northerly or the southerly lanes as the work progresses requiring traffic to be shifted. He explained that if the water main project is tied to that road project, the traffic will have no room to maneuver. He said, as he understands the water main project, the pipe from Palm Beach has to be assembled on the

West Palm Beach side with the restriction of a parking lane and perhaps one lane of traffic during the daytime as they assemble the pipe in Palm Beach and leave it in the parking lane on the south side of Royal Poinciana Way. When the pipe is pulled back, the intersection of Cocoanut Row and Royal Poinciana may have to be closed for two days.

Mayor Smith questioned if this was the project that would be running 24 hours per day and the noise ordinance could not be complied with.

Mr. Rearden confirmed that for two days the pipes would be pulled back. He added machines will move the pipes, but the boring machine, the machine that will run 24 hours per day, will be based in West Palm Beach.

Mr. Bowser said the project will be an impact on the traffic, particularly to the Island Road and Island Drive residents, and coordination will have to take place closer to the date of the project. He added the City of West Palm Beach will have a meeting with the Island Road and Island Drive residents.

Mayor Smith ascertained that Mr. Rearden would be able to open up intersections in case of emergencies.

Councilman McLendon asked Mr. Rearden if the Town could have a commitment to delay the crossing?

Mr. Rearden responded if that were the Council's desire—it could be put into the bid document as an alternate item--- discussed with staff and returned to the Town Council at a later time with pricing.

Mr. Bowser added this had been discussed with West Palm Beach but it appears to be more of a scheduling and cost economy issue rather than an operation question as they do not know of any problems they have had with that crossing.

b. Request for Approval of Road Closures to Facilitate Completion of Subaqueous Water Main Crossings.

President Pro-Tem Goldblum made a motion to conceptually approve the request of the City of West Palm Beach for approval of road closures conditioned upon development of a construction schedule and final maintenance of traffic plans with review by the Town's Police Department and further recommendation that the City be required to conduct a public information meeting regarding this project, particularly for those residing on Island Road and Island Drive. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

4. Appeal of an Administrative Decision Which Denied Permission to Close the North Lane of North Ocean Boulevard in Order to Install Cabana Foundation at 1360 N. Ocean Boulevard. [Charles F. Sarkis]

This item was heard out of order, after Old Business, Item 7.

Charles Sarkis, applicant, explained the dilemma was that in order to finish the project his request to block North Ocean Boulevard for 2.5 hours on one lane only to allow the foundations for the cabana on the beach and the foundation for the pool to be poured at the same time. He further described the problem as the land on the ocean side has seagrapes that cannot be disturbed according to EPA. He said the plan is to use an auger, over the seagrapes, requiring 2 or 2.5 hours, and then to proceed to the pool foundation on the other side of the road which will be done on private property.

Mr. Sarkis said that between Seagate and Dolphin Road, if one lane is open, traffic is light and can be controlled with a flagman or police. He explained his contractor applied for the lane closure and was denied.

Mr. Elwell summarized this appeal would have been handled at the staff level had it not been for the construction occurring on North Lake Way, and in the greater interest of the general public, staff did not think it was appropriate for North Ocean Boulevard lane to be blocked.

President Brooks said if it were not for the North Lake Way construction and the time requested is in the height of the season, the decision might be easier. He said traditionally Council supported staff in these decisions.

Mr. Moore said adjustments could be made administratively to aid Mr. Sarkis in obtaining his certificate of occupancy which could be divided.

Mr. Sarkis said he appreciated that, but the cost of bringing the auger machine back will be $6,000 for a one time job or $5,000 each if the machine has to come back twice.

Attorney Ron Kolins, representing Mr. and Mrs. Sarkis, said given the reasons for denial by staff, the reality is that the traffic in that area is not substantial and to block one lane for 2.5 hours would cause little disruption.

Councilman Wyett asked if the work could be done between the hours of 12:00 p.m. and 3:00 p.m.?

Mr. Kolins agreed that the work could be done anytime of the day the Council determined.

Public Works Director stated his concern was that the work would require more than 3 hours to complete as it would take at least one hour to set up and one hour to break it down.

Mr. Sarkis said the contractor told him the total job would take one day with 2 hours to do the beach work.

Mr. Moore suggested the job would take 4 hours.

Mayor Smith suggested doing the work between 10:00 a.m. and 2:00 p.m.

President Pro-Tem Goldblum made a motion to approve the request to close the north lane of North Ocean Boulevard between the hours of 10:00 a.m. and 2:00 p.m. with off duty policemen directing traffic. The motion was seconded by Councilman Wyett and carried 3-2 on roll call with President Pro-Tem Goldblum, Councilman Wyett, and Councilman McLendon casting affirmative votes. President Brooks and Councilman McDonald cast negative votes.

5. Phipps Ocean Park Beach Restoration Project: Mitigation Reef and Project Schedule.
[Albert P. Dusey, Director of Public Works]

Public Works Director Dusey reported the DEP permit received two years ago had a provision that the Town would construct 3.1 acres of mitigation for the hard bottom coverage within the Phipps Ocean Park Beach Restoration Project. He continued that the provision stated the mitigation be constructed six months in advance of the beach fill project, because the environmental people wanted the mitigation reef to generate growth and provide a habitat for those displaced species when the rock is covered during the construction. Mr. Dusey said this project is on track for construction next winter with the Town in the EIS process and no Corps permit has been obtained yet. He said the construction of the reef needs to proceed within two or three months to meet the six month DEP provision which would preserve the opportunity to build next winter, but the risk is that the Corps will not issue a permit, and the Town would have approximately $1 million investment in a mitigation reef that will not provide benefits to the Town.

Mr. Dusey said he recommended proceeding with the construction of the mitigation reef to preserve the opportunity to do the project next winter if everything else goes well.

Coastal Management Coordinator Sandra Tate said the projected construction time was 45 days minimum and if the project proceeds as fast as possible, the contractor will only have 45 days to complete the project.

Mayor Smith asked how soon the Town would have to receive the permit from the Army Corps of Engineers to know if the project itself could proceed in November?

Ms. Tate responded she expected the Corps permit by April 25th.

Mayor Smith questioned if the issue could be discussed at the April Town Council meeting to see if the Corps had issued the permit before the Council committed to going ahead with the mitigation reef?

Mr. Dusey replied the April 25th date is part of the schedule the Town has established and the Corps does not necessarily move as fast as desired. He explained the bidding process and the contract award are the reasons for requesting Town Council approval at this time.

Mr. Elwell added the reef has to be in the water six months prior to the sand going into the water, and the Town cannot wait until summer to make the decision.

Councilman McLendon made a motion to approve moving ahead with the building of the mitigation reef. The motion was seconded by Councilman McDonald and carried 4-0 on roll call as President Brooks was out of the room.

6. Proposed Pet Waste System. [Lesly S. Smith, Mayor]

Mayor Smith said she had compiled a number of programs that are used in various municipalities to solve the problem of pet waste, and the receptacles cost $298 apiece. She suggested the receptacles could be installed in five or six locations to see if the pet owners would use them.

Mayor Smith identified Animal Solutions as being the provider of the most reasonably priced receptacles.

Town Manager Elwell suggested if the Town Council approved the concept and the locations as identified by the Mayor, the Town staff return at the April 8th meeting with costs.

The Town Council took no action on this item. Staff will return at the April 8th meeting with costs.

7. Proposal to Prioritize Undergrounding Utility Lines on State Roads. [Norman P. Goldblum, Town Council President Pro-Tem]

President Pro-Tem Goldblum referred to the Town Wide Goals which included the relocation of utility lines underground. He suggested the Town work with the Florida Department of Transportation to bury high voltage cables on A1A. He noted that burying the cables would be a safety factor in the event of a disaster, and it is more important not to have wires lying on the roads than to have delays in reconnection of service after disasters.

Mr. Goldblum said he understood grants were available through the Florida Department of Transportation for projects like these.

President Brooks thanked the Strategic Planning Board and the Civic Association for taking up the issue and doing research on same.

Councilman McLendon mentioned FPL was on this agenda for consideration of a replacement between North Lake to County Road on Sanford Avenue. He questioned if FPL could upgrade the line and put it underground when it was replaced?

Attorney Randolph replied this could only be accomplished with negotiations with FPL, and it is not something that can be forced upon them. He said he was not familiar with the project.

Mr. Elwell explained this project was of an emergency nature with the resident having sparking lines bouncing around in her yard, and the time involved in making the arrangements to go underground in this particular case would not be appropriate. He said funding is the key question as FPL will always be willing to go underground, but the differential costs will have to be paid by someone. He added undergrounding could be considered on a project by project basis.

Mr. Elwell said he understood Mr. Goldblum's concerns were with the state roads not only because of their visibility but also because they are used as evacuation routes. He continued that contact could be initiated with DOT to determine if between the Town, FPL, and DOT, a plan can be developed of how to address the state roads and later look at the broader question.

Councilman Wyett suggested the Civic Association has accumulated a large volume of information regarding the issue. He asked that the Council defer this item until after the summer to allow the Civic Association time to prepare for a presentation, but meetings could take place with FPL in the meantime.

Bill Guttman, CEO Palm Beach Civic Association, said he was thrilled that the Council adopted as one of the goals the study of the engineering and financing alternatives for burying the overhead utility lines. He said the Civic Association would be pleased to turn over whatever information is available in grant money, engineers, and to work in collaboration with Town staff. Mr. Guttman added, as it was part of the Council's 2004 goals, it should be a Town-run operation and the Civic Association should only be in a supportive role.

Mayor Smith said it was important to move forward with the investigation as presentations have been made by the Civic Association, FPL, BellSouth, and Adelphia at the Strategic Planning Board, and the grant money is essential. She continued a project is planned in 2004 for Royal Poinciana Way, and this would be a prime location since the street will be torn up to have DOT consider putting the lines underground on one of the Town's major streets and pursue it with other streets. She added the grant money takes a long time to receive, and there is no reason at all to wait until the end of the summer.

Jerry Frank, 2784 South Ocean Boulevard, said Assistant Town Manager Bradford, responding to a request the Citizens Association, contacted FPL regarding the 18 or 20 east/west lines that cross A1A between Sloan's Curve and the south boundary line of Palm Beach. He said the north/south lines are set far enough back from the road that they would not be as serious a problem during a major storm as would the lines that cross the road.

Mr. Frank mentioned that A1A would be torn up at least from Lake Worth Bridge to Sloan's Curve in 2005, and probably in 2007, DOT will do the section south of Lake Worth Bridge to the Town limits. He reported that the cost for the east/west lines would be approximately $500,000, but if the Town put the conduit under the road, the amount would be reduced by approximately $180,000.

Mr. Frank concluded that now is the time for everyone to work together and look into this to see if the projects can be done when the roads are redone.

President Brooks responded this is the time for this Council to begin this project as the benefits will be enjoyed by future generations.

President Pro-Tem Goldblum made a motion to have the Town management go forward with FPL and other utilities and work with the Florida Department of Transportation to develop a plan, to focus on the State Roads first then proceed with the other projects, and coordinate with the Civic Association and keep the Town Council informed with updates. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

8. Proposal to Allow Foreclosures to go Forward Based Upon an Order of the Code Enforcement Board. [John C. Randolph, Town Attorney]

Attorney Randolph said the State Statute and the Town Code, regarding Code Enforcement procedures, allows foreclosures to go forward after a lien has been recorded for three months upon approval of the Code Enforcement Board. He continued that as a matter of procedure, after approval of the Code Enforcement Board to go forward with a foreclosure, the issue has been put before the Town Council to receive the Council's approval also; although the State Statute and the Code do not require Council approval.

Mr. Randolph said he has followed that course, because the Town Council holds the purse strings of the Town and those determinations should be made by the Town Council to go forward and incur the costs and expenses involved with foreclosures. Mr. Randolph stated the Code Enforcement Board thought this was an unnecessary process and encumbrance on their duties and obligations as outlined by State Statute and the Town Code and requested this matter be brought before the Town Council requesting that foreclosures go forward simply upon their approval. He said the vote at the Code Enforcement Board voted 4-3 to present this issue to the Town Council.

Mr. Randolph requested the Town Council make the determination. He added that after a foreclosure action was taken by the Code Enforcement Board, an opportunity exists for settlement of the case before the lien is filed.

Councilman Wyett made a motion to leave the procedure as it exists. The motion was seconded by President Pro-Tem Goldblum.

Richard Raffo, 173 E. Inlet Drive, member of the Code Enforcement Board, explained a case came before the code Enforcement Board where Washington Mutual Bank was foreclosing on a property and the Code Enforcement Board recommended the Town initiate foreclosure proceedings immediately; however, the bank closed before the foreclosure could be considered by the Town Council thus putting the Town in a lesser position for recovery of funds.

Mr. Raffo continued that the Code Enforcement Board is there for a reason and the majority of the members thought the Code Enforcement Board was there to do that job.

Mr. Moore said he concurred with Attorney Randolph's position since it does involve Town funds, and staff believes the Town Council should be the final check and balance of the system.

Councilman Wyett questioned if the Town Manager could call a special Town Council meeting regarding a foreclosure if time was of the essence?

Town Manager Elwell responded special meetings could be called for a variety of reasons, and the Mayor or Town Council President can do that on their own initiative or any two Council members may also call a meeting.

Councilman Wyett said Code Enforcement should recommend a special meeting be called if they think time is important.

Attorney Randolph said it would be very unusual for that kind of emergency to exist to have to go to foreclosure that quickly, and the situation Mr. Raffo discussed and where the Town's position was in the foreclosure was not caused by the delay in the foreclosure. He continued it was caused by a delay in the recording of the Town's lien, and as a result, Washington Mutual filed a foreclosure prior to the recording of the lien.

On roll call, the motion to leave the Code Enforcement Board procedure as is carried 5-0.

9. Architectural Review Commission Appointments.
[Robert L. Moore, Director of Planning, Zoning, and Building]

The Town Council appointed the following members to ARCOM:

Regular Members:	**Dr. Marvin Rosenberg** **Leslie Shaw** **Floyd Wideman**
Alternate Members:	**Leslie C. Diver** **William J. Strawbridge**

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

The Town Council appointed the following members to the Landmarks Commission:

Regular Members:	**Ann Blades** **Eugene Pandula (one year)** **Patrick Segraves**
Alternate Members:	**Wendy Victor** **Lee Handley** **Richard Krock**

Town Manager Elwell presented the Mayor and Town Council copies of the Town's Annual Report for the fiscal year ended September 30, 2002. He said the mailing to all Town residents will begin on March 12th and will include a survey that will be stapled in the center of the booklet.

11. Discussion of a Florida Senate Bill Introduced by Senators Pruitt and Geller Regarding the Bert J. Harris, Jr., Private Property Rights Protection Act [Councilman Jack McDonald]

Councilman McDonald said he would like the Council to consider a bill introduced by Senator Pruitt in the State Legislature that would remove the municipality sovereign immunity in rezoning matters which would allow developers to sue the Town, which is presently prohibited because of sovereign immunity, and this would obviously add a great deal of cost to municipalities defending their rezoning issues. He requested the Council direct the Mayor to write a letter or pass a resolution.

Town Manager Elwell replied that under the circumstances because no resolution has been prepared to adopt, it would be appropriate for the Mayor to write a letter as authorized under the Charter provisions regarding legislative matters, and the Town Council could express their feelings to the Mayor.

Councilman McDonald made a motion to have the Town Council direct the Mayor to take whatever actions that are necessary to influence the legislators and the State Legislature to not adopt the bill proposed by Senator Pruitt. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

X. ORDINANCES

A. Second Reading

Town Attorney Randolph read Ordinance No. 1-03 by title:

1. Ordinance No. 1-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, and Chapter 62, Marine Structures, of the Code of Ordinances as Follows: Section 134-2 Definitions and Rules of Construction to Add a Definition for Building Height of Houses on the West Side of South Ocean Boulevard Between Via Agape and Sloan's Curve in The R-AA Zoning District; Sections 134-1109, 134-1159 and 134-1209, Special Exception Uses, to Provide Maximum Density

Requirements for Single-Family and Multi-Family Dwelling Units in the C-TS, Commercial Town Serving and C-WA And C-OPI Zoning Districts; Section 134-1259, Special Exception Uses by Providing a Maximum Number of Units Per Acre for Timesharing and Hotel Uses in the C-PC Zoning District; Section 134-1304, Special Exception Use by Providing a Maximum Number Of Units Per Acre for Hotel and Timesharing Uses in the C-B District; Section 134-654 by Modifying the Maximum Densities Allowed in the Planned Unit Developments in the Town; Section 134-1607 by Modifying the Allowance of Air Conditioning Equipment on the Roof to Accommodate Required Elevated Stands; Section 134-1728, Air Conditioning and Pool Equipment, by Further Clarifying and Regulating the Placement of Air Conditioning Units and Pool Heating Equipment on a Property; by Amending Section 134-1729, Generators and Pool Equipment, by Restricting the Placement of Generators and Regulating the Placement of Swimming Pool Equipment; Section 134-1697 by Eliminating the Requirement that Docks Meet the Same Setback as an Unenclosed Accessory Structure and Referencing Requirement to Meet the Provisions in Section 62-75 of the Code; Section 62-75, Construction Specifications, by Increasing the Side Setback Requirement for Landing Docks, Piers and Groins on Lake Worth; Section 134-38, Filing Fees for Rezoning, Special Exception Use, Variance, Appeal or Other Matters Requiring Public Hearing, by Increasing the Fees for Development Applications; Section 134-793, 134-843, 134-893, 134-948, 134-1004 and 134-1059, Landscape Open Space, by Adding the Required Minimum Front Landscape Open Space Requirement Into the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) Residential Zoning Districts; Section 134-893, Lot, Yard and Area Requirements-Generally, by Adding a Provision for Greater Front Setback Requirement on Deeper Lots in the R-B District; Section 134-142, Exercise of Town Council Powers and Section 134-261, Town Council Actions; Submission to Zoning Commission for Recommendations and Report; Hearings, by Allowing the Mayor to Break a Tie Vote on Zoning Matters and by Extending Zoning Season and Decreasing the Time Line for Submitting Applications for Zoning Season; Submission to Zoning; 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.
[Paul Castro, Zoning Administrator]

Zoning Administrator Castro clarified that a provision had been added regarding landing docks and piers exempting any appurtenances as being part of a dock and grandfathered in. He added to be consistent with the language of the Code, the following verbiage was added: 'For purposes of this section, associated appurtenances shall be considered part of a pier and/or landing dock as it relates to renovation or placement of a non-conforming pier or landing dock.'

President Pro-Tem Goldblum made a motion to approve the second reading of Ordinance No. 1-03. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

2. Ordinance No. 8-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Ordinance No. 18-02, Amending Chapter 38, Emergency Services, Article II, Alarm Systems, at Section 38-62, Item (B) Applications, Fees; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Ordinance No. 8 -03 by title.

President Pro-Tem Goldblum made a motion to approve the second reading of Ordinance No. 8-03. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

B. First Reading

1. Ordinance No. 3-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Benefit Group Firefighter and Benefit Group Police Officer in the Retirement System; Adding Section 82-74 to Establish Share Accounts for Certain Moneys Received from Florida Statutes Chapter 175 and 185 Tax Revenues; Providing for Rollovers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John B. McCracken, Esq.] *(Deferred From January 14, 2003, Town Council meeting)* **(Request for Deferral to the April 8, 2003, Town Council Meeting per Memorandum Dated March 6, 2003 from Peter B. Elwell, Town Manager)**

This Ordinance was deferred earlier in the meeting

XI. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

Town Manager Elwell said he wanted to clarify the mailing of the notices to the residents regarding lethal yellowing. Because of the pending questions that will be addressed by the Council at the April 8th meeting, including the issue of Town-wide inoculations, mailings would be premature because the context of the mailing may change when the Council makes its final decision. Mr. Elwell reiterated the mailings will not be sent out until after the April 8th meeting unless directly otherwise by the Mayor and Council.

Mayor Smith said it was very important to have the mailing go out as soon as possible to alert the residents, and the Town should offer to do the inoculations on private property and bill the owners. She continued the residents could notify the Town if they were interested in a program like this. Mayor Smith said the Town should be able to obtain a cheaper price than an individual.

Mayor Smith said a two pronged approach should be used: a mailing alerting the residences of the emergency, allowing them to take appropriate steps before the April 8th meeting with a better proposal available after the April meeting.

Councilman Wyett said Dr. Kuvin was correct in that infectious diseases know no boundaries, and the Town has an enormous investment in palm trees. He said sending out a notice before the April 8th meeting would only be 8 to 10 days before the meeting and suggested if a resolution was passed in April, companies who inoculate trees would contact or notify the residents resulting in several notices going out to the residents from the companies. Councilman Wyett said he would like to see the issue resolved by April.

Town Manager Elwell said the staff would develop the ideas expressed by the Mayor and Town Council and present the backup at the April 8th meeting.

President Pro-Tem Goldblum said it would be confusing to send out a notice before the Council decides what it wants to do and suggested waiting to mail the notices until after April 8th.

Mayor Smith said the residents may read articles in the Palm Beach Daily News and the Palm Beach Post regarding lethal yellowing for those who want to get a head start on a program.

Town Manager Elwell offered to prepare an op-ed piece that would run in the Sunday Palm Beach Daily News before the April meeting that would inform the community of the program.

Attorney Randolph asked President Brooks if the previous motion was being amended or was action being deferred?

President Brooks said he did not think the previous motion was being amended.

Town Manager Elwell stated the staff was not directed to send a notice, but he had assured the Town Council that it would go out, however, based on the discussion, the notice would wait until after the April 8th meeting.

Councilman Wyett said the Council heard at this meeting the cause for providing additional beach access to those who would like to use the Town's beaches which is partially possible and partially impossible. He said he respects private ownership of property, but the issue may have been overdone in some respects. He continued that in most communities, the headends of the streets on the beach are public property, and he urged the Council to study the issue of opening up, in narrow ways, some of the beach access points as public policy.

Councilman Wyett said areas of the beach have been used by the public to establish common accesses although they cross private lands. Mr. Wyett said without destroying the concept of private beaches, more accesses should be opened up.

XII. DEVELOPMENT REVIEWS

A. Time Extensions

1. Request for a One Year Extension Regarding Variance No. 8-2002, 249 Queens Lane. [Peter S. Broberg, Esq.]

Attorney Broberg, representing the owners, requested a one year extension to develop the property. Mr. Broberg said the request for the extension was based on the interpretation of the words 'lot' and 'lots' in the Zoning Code, and his client's inability to go forward during the past year.

Councilman McLendon made a motion to extend the approval for one year. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE NO. 1-2003 The application of Michael F. Price relative to property described as a part of Block 20, Royal Park Addition as described in lengthy legal description on file; commonly known as 452 Worth Avenue; located in the R-B Zoning District. To allow the replacement of driveway gates in a front yard with a setback of 6 inches in lieu of the 18 feet required. *(Deferred From January 14 and February 11, 2003, Town Council meetings)* **(Request for Withdrawl per Letter Dated February 24, 2003, from Maura A. Ziska, Esq.)**

This item was withdrawn earlier in the meeting.

b. VARIANCE NO. 2-2003 The application of John Moran relative to property described as the North 7.5 feet of Lot 40, Lots 41, 42, 43 and 44 of Ocean Vista; commonly known as 1424 South Ocean Boulevard; located in the R-AA Zoning District. To allow construction of a 450 square foot one story cabana with a side yard setback of 12.5 feet in lieu of the 30 feet required in the R-AA Zoning District.

(Deferred From February 11,2003 Town Council meeting)

(Request for Deferral to the May 13, 2003, Town Council Meeting per Letter Dated February 24, 2003, from Maura A. Ziska, Esq.)

This item was deferred earlier in the meeting.

c. VARIANCE NO. 6-2003 The application of First Allied Jacksonville Corporation (Malcolm Glazer, President) relative to property described as the lengthy legal description on file; commonly known as 1200 South Ocean Boulevard; located in the R-AA Zoning District. To allow the relocation of the landmarked house to a more westerly location on the subject property requiring a side yard setback (south side) of 19.2 feet in lieu of the 30 feet minimum required by code. *(Deferred From February 11, 2003 Town Council meeting)* **(Request for Deferral to the June 10, 2003, Town Council Meeting per Letter Dated February 18, 2003 from James R. Brindell, Esq.)**

This item was deferred earlier in the meeting.

d. SPECIAL EXCEPTION NO. 6-2003 WITH SITE PLAN REVIEW AND VARIANCE The application of Kevin M. and Lisa McGovern relative to property described as Lots 527 and 528 (less westerly 81 feet) and Lots 532 and 533, Poinciana Park 2nd Addition; commonly known as 224 South Ocean Boulevard; located in the R-B Zoning District. To allow construction of a beach cabana in the Beach Area/R-B Zoning District which is 21.75 feet x 51.5 feet in lieu of the 10 feet x 20 feet maximum allowed; variance for beach cabana having 1,003 square feet in lieu of the 200 square foot maximum allowed; and variance for a beach cabana which is 9 feet in height, 21.5 feet in overall height in lieu of 8 feet height and 12 feet overall height maximum allowed in the Beach Area District.

(Deferred From February 11,2003 Town Council meeting)

[Staff recommends Deferral to the April 8, 2003, Town Council Meeting] (Request for Deferral to the April 8, 2003, Town Council Meeting per Letter Dated March 10, 2003 from Ronald K. Kolins, Esq.)

This item was deferred earlier in the meeting.

Town Clerk Pollitt administered the oath to all those who would be testifying in any of the following items.

2. New Business

a. VARIANCE NO. 8-2003 The application of John C. and Diane C. Andrica relative to property described as Lots 68, 69 and 70 Revised Plat of Lake Front Addition to Boca Raton Company's Inlet Subdivision; commonly known as 300 Arabian Road; located in the R-B Zoning District. To allow construction of a pergola with a 14.1 foot setback on a corner lot in lieu of the minimum 20 foot setback required for pergolas.

Ex parte communications were declared by President Brooks with Attorney Ron Kolins.

Attorney Kolins said his client requested to add a pergola over a pre-existing patio with bougainvillea planted over the pergola. He said the problem is the pre-existing patio is 14.1 ft. from the side setback as opposed to the 20 ft. required. Mr. Kolins said, because of the existing landscaping, the pergola will not be seen very easily from the road.

After Mr. Kolins presented pictures of the property and the proposed addition area, Zoning Administrator Paul Castro explained the recent changes in the Zoning Code affecting pergolas. He noted that the new provision was 5 ft. more permissive than the previous setback requirement, and staff questioned the hardship considering the size of the lot. Responding to a question from President Brooks, Mr. Castro said the residence is a brand new home.

Councilman McLendon made a motion to approve Variance No. 8-2003. The motion was seconded by President Pro-Tem Goldblum.

Councilman Wyett said the existence of the patio is not a hardship.

Attorney Kolins responded because the patio exists at its present location, there is no other place to locate it.

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

b. VARIANCE NO. 9-2003 The application of Amigo Partnership relative to property described as the North 91 feet of the East 17.5 feet of Lot 5 and the North 91 feet of Lot 6, Block 3, Revised Map of Royal Park Addition AND the North 91 feet of the East 15 feet of Lot 3; the North 91 feet of Lot 4; and the North 91 feet of the West 7.5 feet of Lot 5, Block 3, Revised Map of Royal Park Addition; commonly known as 346-350 Brazilian Avenue; located in the R-C Zoning District. A variance to allow construction of a single family residence on a lot with 8,190 square feet in lieu of the 10,000 sq. ft. required by Code; and, variance to allow construction of aforementioned residence on a lot with a depth of 91 feet in lieu of the 100 feet required by Code.

Ex-parte communications were declared by President Pro-Tem Goldblum and Councilman McLendon with Attorney Peter Broberg.

Attorney Peter Broberg said the request was for two variances with the site plan review. He explained that the existing two lots are deficient in square footage, and the request is to allow demolition of the two buildings with eight units in each building for a total of sixteen units with a new one story house to be constructed on the two lots. Mr. Broberg continued that the two lots have approximately 8,000 square feet and the proposed residence will be approximately 4,000 square feet.

Mr. Broberg said the hardship was that nothing could be built on the lots without variances as the Code is currently written, and the hardship runs with the land. Referring to the site plan review, Mr. Broberg said the intensity of use goes down; the ingress and egress was addressed with off street parking; the drainage was addressed; and the development minimizes the bulk in the area.

Zoning Administrator Paul Castro said the site plan review is not required but the two variances in the R-C District, moderate density – residential, is required due to the lots not meeting the minimum depth or width. He said staff has no objections but requested the hedge in the rear, as well as the proposed wall, be moved out of the utility easement.

President Pro-Tem Goldblum made a motion to approve Variance No. 9-2003 with the condition the hedges and wall be moved out of the right-of-way. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

c. VARIANCE NO. 10-2003 The application of Century Wines & Spirits, Inc. - James V. Tigani, Jr., Owner relative to property described as the South 128.5 feet of the North 358.5 feet of Subdivision B, Government Lot 1 lying West of Lake Way; commonly known as 940 North Lake Way; located in the R-B Zoning District. To allow a south side yard setback of 9 feet for a 7'6" high extension to an existing addition and for the existing addition itself which was constructed by a previous owner in 1978 in lieu of a 15' setback required by Code.

No ex-parte communications were declared.

Attorney Alan Ciklin, representing owner James Tigani, explained the 30 year old home was originally constructed within 1 ft. in the setback area. He continued the requirement at the time was a 10 ft. setback and the addition is at 9 ft., and the two requests are to allow the existing addition to remain at 9 ft. and a 6 ft. variance for the proposed improvement. Mr. Ciklin continued the request for an addition in that area is for 7.5 ft. in the master bedroom area.

Mr. Ciklin said the hardship is the grade or slope of the land, and no other area is available for the renovations or the modernization of the home. He added the 80 sq. ft. addition cannot be seen from the Bike Path or the front of the residence, and the adjacent property owners have no objections.

Mr. Ciklin noted the green space is being increased to an excess of 60% as opposed to a 45% requirement.

Zoning Administrator Paul Castro said he understood the previous addition was done without a building permit and part of the variance was to legitimize the addition in 1978 along with the new addition that would increase the height of the structure. He questioned the hardship, but if the request is approved, staff's recommendation is that the client meet all of the current Building Code requirements, structural, mechanical, electrical, and plumbing for whatever additions previously built.

Mr. Ciklin responded he was told that permits were obtained for the existing improvements, but committed to obtaining permits and meeting all of the Code requirements. He added the hardship is that the addition cannot be built anywhere else on the property and the slope of the land is not caused by the property owner.

President Pro-Tem Goldblum made a motion to approve Variance No. 10-2003 with the conditions stated by the Building Department. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

d. VARIANCE NO. 11-2003 The application of Roger Yaseen relative to property described as Unit #6, Bienestar Condominium; commonly known as 151 Grace Trail #6; located in the R-C Zoning District. Variance requested to permit the expansion of an existing non-conforming structure by allowing the construction of a roof over an existing walled patio area and conversion of this area into habitable space.

Ex-parte communications were declared by President Brooks with Attorney Ron Kolins.

Attorney Kolins explained the multi-family building (Bienestar) that surrounds this particular portion of the property has setback violations, and any remodeling to the building enlarges the non-conformity. Mr. Kolins said his client wants to add a roof to an area, used for plants, where walls have been constructed to turn the space into an exercise room. Mr. Kolins stated the hardship was the existing walls, already in place, and adding a roof is a result of the setback requirements of the Code.

Mr. Kolins said the greenscape area for the building will be almost 70%, double of the requirement, after this renovation.

Mr. Castro reported one letter of objection was received from a resident living in Sun and Surf who would not be impacted by the change. He said staff had no objections other than the request expanded a non-conforming building.

Councilman McDonald asked if the area was a limited common element?

Mr. Kolins responded it was not a common element but part of Mr. Yaseen's unit.

Councilman McDonald affirmed that Mr. Yaseen's survey showed this area as being part of his property and the Condominium Association approved of the project.

President Pro-Tem Goldblum made a motion to approve Variance No. 11-2003. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

e. SPECIAL EXCEPTION NO. 7-2003 WITH SITE PLAN REVIEW AND VARIANCES The application of T.A.J.A. Realty Trust (James Pappas, Trustee) relative to property described as lengthy legal description on file; commonly known as 100 Everglades Avenue; located in the R-B Zoning District. Special Exception requested to construct a 10' x 20' beach house within the Beach Area district immediately across North Ocean Boulevard from the primary residence; Site Plan approval requested for a beach house and associated site features; Variance requested to change the front yard designation allowing a North Ocean Boulevard address in lieu of the existing Everglades Avenue address; and, Variance requested to allow a side setback of 12.90 feet in lieu of the required 15 ft. setback. **(Request for Deferral of the Variances in the Application to the April 8, 2003, Town Council Meeting per Letter Dated March 7, 2003, from James R. Brindell, Esq.) [The Special Exception with Site Plan Review on the Cabana will be Considered]**

Councilman Wyett declared ex-parte communications with Mr. Pappas.

Attorney James Brindell said consideration for a special exception requested to construct a 10' x 20' beach house within the beach area district immediately across North Ocean Boulevard from the primary residence and the site plan approval requested for a beach house and associated site features will be presented at this meeting.

Mr. Brindell said the project met all of the Code requirements, Unity of Title, etc.

Architect Harold Smith explained the plans for the cabana that will have an 8 ft. ceiling height. He added the cabana was located to the extreme south of the property to preserve the ocean view from Everglade Avenue. He said a 6 to 8 ft. wide access easement exists on the north end of the property, and a wall will separate the easement from the private parcel on the beach.

Zoning Administrator Paul Castro recalled this project came before the Town Council several years ago, and at that time, questions arose regarding public access to the beach. He said a six ft. wide deeded beach access easement is dedicated to the Everglade property owners, and that access will be kept open; although the Atlantic property, one block south, has no access to the beach. He continued this project meets all of the lot, yard, and bulk requirements, and the project has conceptual DEP approval for the beach cabana. He said the only condition placed on the property would be the utilities tie into the main residence.

Planning, Zoning and Building Director Robert Moore requested Mr. Brindell's client to use the jack and bore method of going under the road to tie in the utilities, and Architect Harold Smith agreed to that condition.

President Pro-Tem Goldblum made a motion to approve the Special Exception and Site Plan portions of Special Exception No. 7-2003 with Site Plan Review and Variances with the condition the jack and boring method of going under the road be used. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

f. <u>SPECIAL EXCEPTION NO. 8-2003 WITH SITE PLAN REVIEW AND VARIANCES</u>
The application of T.A.J.A. Realty Trust (James Pappas, Trustee) relative to property described as lengthy legal description on file; commonly known as 101 Seminole Avenue; located in the R-B Zoning District. Special Exception requested to construct a 10' x 20' beach house within the Beach Area district immediately across North Ocean Boulevard from the primary residence; Site Plan approval requested for a beach house and associated site features; Variance requested to change the front yard designation allowing a North Ocean Boulevard address in lieu of the

existing Seminole Avenue address; and, Variance to allow side setback of 13.71 feet in lieu of the required 15 foot setback. **(Request for Deferral of the Variances in the Application to the April 8, 2003, Town Council Meeting per Letter Dated March 7, 2003, from James R. Brindell, Esq.) [The Special Exception with Site Plan Review on the Cabana will be Considered]**

President Brooks noted that only a portion of this item will be considered, and the variance portion is deferred.

Attorney Jim Brindell reported the 10' x 20' cabana meets or exceeds all of the Code requirements, and no variances are required.

Mr. Moore recalled the prior owner of this property closed off a beach access that residents of Seminole Avenue were using. He continued the Town researched the issue and found no legal requirement that the access remain open resulting in the access being completely closed as shown in this presentation.

Gerard Haryman, 144 Seminole Avenue, said the Root Trail access to the Ocean is private, and he and his wife, Carol, would like to have beach access at the end of Seminole. He added that he and his neighbors had been in negotiations and were willing to pay for beach access.

Attorney Brindell responded no legal access exists at the end of Seminole; although some of the residents on Seminole filed a law suit in 1999 alleging a proscriptive easement that was dismissed on January 13, 2000, with prejudice. He continued that there was for a period of time a revocable license which was ultimately revoked, and an attempt was put together to try to buy some land from the Warden House or Mr. Pappas. Mr. Brindell said that effort did not come to fruition because the required $10,000 was not raised. He added this issue was a private matter, and no right of access exists. He said the Town has no right, as part of this approval process, to determine access to the beach.

Mr. Haryman said the law suit was dismissed because the group had an agreement with the previous owner. He continued that the homeowners agreed to pay for the easement, but the lawyer never contacted the group and returned the money saying he was not working on this anymore.

Zoning Administrator Paul Castro said the staff had no objections to the project.

President Pro-Tem Goldblum asked Mr. Brindell if the beach house would be built before the main residence?

Mr. Brindell responded the building permit for the main house has been issued and picked up.

Architect Smith added the two structures will probably be built at the same time, because of the piling needed for both structures.

Councilman Wyett said it was a shame that Warden House refused an offer by Mr. Pappas to buy a six foot entry to the beach to provide beach access. He said he agreed that this was not a Town issue, but he urged the Town to take all the head ends (of the streets) by eminent domain for beach accesses. Mr. Wyett said the ocean and beach is paid for by all of the taxpayers, and yet most of the taxpayers are denied access to the beach. He added this is not right and urged the Town Council to change it should the opportunity arise.

Attorney Brindell said he did not have the authority to reopen the beach access issue, but he said he would explain the problem to Mr. Pappas.

Councilman McLendon made a motion to defer Special Exception No. 8-2003 with Site Plan Review and Variances to the April 8th meeting. President Brooks passed the gavel and seconded the motion.

Mr. Brindell requested any issues that should be addressed before the April 8th meeting.

Councilman McDonald said he supported Mr. Brindell on this issue, because the Council is straying into other areas, and the issue before the Council and that should be dealt with. He added the Council should deal with each issue individually as this is a private matter dealing with private property rights.

President Pro-Tem Goldblum said the cabana houses should be located next to each other as part of the site plan review.

Architect Smith responded the project would have to return to DEP if the houses were located next to each other. He said the plan aligned the south edge of the residence with the south edge of the cabana to preserve the view on Seminole.

President Pro-Tem Goldblum said he was talking about 15 ft. from the property line.

Attorney Randolph reminded the Council that the issue before the Council is a site plan review and a special exception, and the Council's considerations should be based upon the criteria set forth in the Code relating to the granting of special exceptions and site plan reviews, under Section 134.229 of the Code. He said the issue of granting access or private property rights to a neighbor is not listed as one of the items in determining if a special exception should be granted. Mr. Randolph continued if the Town Council thinks this should be deferred for other reasons such as having this connected with the variance that will be heard on April 8th or if the location of this particular building is somehow harmful to the neighborhood or does not otherwise meet the special exception criteria, that is a legitimate reason for deferring the issue until the applicants can review that, but the Town Council should give some ideas as to what they are looking for in determining approval of the project.

Councilman McLendon said he wanted to withdraw his motion. After discussion, Mr. McLendon withdrew his motion and President Brooks withdrew his second.

Attorney Randolph advised that the Town Council has the right to hear everything related to a single property at a single time.

Councilman McDonald made a motion to not allow the applicant to split the variance from the site plan review and the special exceptions and the whole property will be considered at the April 8th meeting. The motion was seconded by Councilman McLendon and carried 4-1 on roll call. ***(Councilman Wyett changed his vote to defer the project and the vote was 5-0.)***

Attorney Brindell said he heard President Pro-Tem Goldblum say he wanted the cabana moved farther north, Councilman Wyett agreed, Councilman McLendon wanted it to stay where it is, Councilman McDonald was ambivalent, and President Brooks could be talked into it. Mr. Brindell said that was the only issue he heard related to the site plan review.

g. SPECIAL EXCEPTION NO. 9-2003 The application of Southern Community Bank of South Florida (Alfred J. and Gay Ann Cinque, property owners) relative to property described as Lots 39 & 40, Block 11, Revised Royal Park Addition; commonly known as 319 Peruvian Avenue; located in the C-TS Zoning District. Special Exception requested to allow a 1,150 square foot bank on the first floor in the C-TS Zoning District.

Ex-parte communications were declared by Councilman McLendon with Ms. Diamond.

Attorney Ron Kolins said a bank is a special exception use in the C-TS zoning district, and the structure at 319 Peruvian is an existing structure and will not be altered or modified in any way. Mr. Kolins said the bank will be town-serving, and the manager of the new bank has been a manager at Colonial Bank and its predecessor on the Island. He added that a number of local customers will be using the bank as soon as it comes on line.

Responding to Mr. Castro's question regarding usage of the building, Mr. Kolins said the bank will operate on the first floor only, and presently the second floor is empty.

Mr. Castro said the town-serving issue was not addressed in the application.

Mr. Kolins replied that the town-serving documents will be submitted in whatever time frame the Town desires.

The Bank Manager said the bank currently has six customers, three businesses on Worth Avenue and three individuals. She explained that Southern Community Bank of South Florida is a private holding company based in Orlando, Florida, and each of the individual franchises are run separately but under the umbrella of the holding company. She added her bank president is located in Boca Raton with a branch in Ft. Lauderdale also and proposed banks will be located in West Palm Beach and Palm Beach Gardens.

Councilman McLendon made a motion to approve Special Exception No. 9-2003 with the condition Town-serving documentation be submitted after six months of operation. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

h. SITE PLAN REVIEW NO. 1-2003 WITH VARIANCE The application of Raymond and Maria Floyd relative to property described as Lot 1 and 1A, East Shore Terrace; commonly known as 322 Plantation Road; located in the R-B Zoning District. The applicant requests a modification to previously approved Site Plan Review #3-2002 and #8-2002 to increase the size of the pool deck and add stairs leading to the Lake Trail bike path on a platted lot on which the home to be constructed is 84.7' wide in lieu of the 100' minimum; and, the applicant requests a variance of 5' from the maximum height for walls or fences lying within 25' of the Easterly right-of-way of Lake Trail to allow a 9' high retaining wall and fence combination in lieu of the 4' maximum permitted by Code and 6' wing walls within that 25' of the bike trail in lieu of the 4' maximum allowed.

Attorney Frank Chopin, representing Mr. and Mrs. Raymond Floyd, said he was seeking modification of a previously approved site plan review that would slightly enlarge the pool deck and adding steps on the west side of the property to the Bike Trail. He added that a variance was requested to allow the west wall on the Bike Trail to increase in height from 4 ft. to 6 ft. and on the west side to install a 3 ft. chain link fence inside of a hedge. He explained the necessity for the variance is based on the steep, dramatic decline in the elevation of the property as it moves from east to west. He continued that within 30 or 40 feet, the property drops off 5 or 6 feet.

Mr. Chopin said a number of other properties in the area had similar problems and variances were granted for them. He said if the walls were not raised, the owners would have no privacy in the pool area as the pool deck is 4 or 5 feet above the wall.

Zoning Administrator Paul Castro said the Building Department received one letter of objection from Attorney Trent Steele and another one from the neighbor across the street. Mr. Castro said the neighbor to the north, Howard Finkelstein, objected to the request and questioned the hardship. Mr. Castro said the staff questioned the hardship as well as the wall is substantial, 6 ft., with a 4 ft. fence inside the wall with a hedge on the outside of the wall. Mr. Castro requested the wall be at least 3 ft. off the Bike Trail to allow adequate room for the hedge to grow.

Mr. Chopin responded the hardship has always been with the contour of the land for several properties in the area.

Councilman Wyett made a motion to approve Site Plan Review No. 1-2003 with Variance with the hardship being the contour of the land. The motion was seconded by President Pro Tem Goldblum and carried 5-0 on roll call.

Councilman McDonald asked if the wall would be set back 3 feet?

Mr. Chopin responded that requirement would seriously affect the plan because of the distance between the pool deck and the wall itself resulting in the pool deck being next to the wall. He stated the applicant did not have enough property to give up 3 ft. on the west side.

Councilman Wyett suggested the wall be moved in about 3 or 4 inches to allow a vine to be planted on the outside of the wall.

Mr. Chopin agreed that could be done although part of the wall was constructed but room is available to plant the vine.

3. Other

a. None.

XIII. ANY OTHER MATTERS

There were no other matters.

XIV. ADJOURNMENT

The meeting was adjourned at 6:00 p.m.

William J. Brooks, President

Mary A. Pollitt, Town Clerk