TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MARCH 9, 2004

I. CALL TO ORDER AND ROLL CALL

The regular meeting was called to order by President Allen S. Wyett at 9:30 a.m. on Tuesday, March 9, 2004 in the Town Council Chambers. On roll call, the following Elected Officials were found to be present:

Mayor Lesly S. Smith
President Allen S. Wyett
President Pro-Tem Samuel C. McLendon
Councilman William J. Brooks
Councilman Norman P. Goldblum
Councilman Jack McDonald

Also attending for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John C. Randolph
Fire-Rescue Chief Kent Koelz
Assistant Fire-Rescue Chief John Deiorio
Police Chief Michael Reiter
Director of Planning, Zoning & Building Robert L. Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Planning Administrator Timothy M. Frank
Zoning Administrator Paul Castro
Public Works Director Albert Dusey
Assistant Public Works Director Paul Brazil

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Stephen L. Brown, Chairman, Investment Advisory Committee, From October 8, 2002 Through March 1, 2004.

Mayor Smith presented Mr. Brown with a plaque.

B. Recognition of Edward L. Hennessy, Jr., Investment Advisory Committee, From October 8, 2002 Through March 1, 2004.

Mayor Smith presented Mr. Hennessy with a plaque.

C. Recognition of Michael Andrews, Ph.D., Investment Advisory Committee, From October 8, 2002 Through March 1, 2004.

Mayor Smith presented a plaque to Dr. Andrews.

IV. COMMENTS OF MAYOR LESLY S. SMITH

We have had a busy few weeks as we head into our peak season, and there is a lengthy agenda this morning. I have comments on several items.

First, there are appointments to be made for the Landmark Preservation, Architectural Review and Recreation Commissions . . . all important positions for citizen review and input, and critical to subsequent council decisions. In asking that town commissions develop a precise mission statement, the strategic planning committee stressed its conviction that citizens appointed to these commissions should be superbly qualified . . . not only enthusiastic and well-meaning, but with a level of experience and preparedness sufficient to hit the ground running. We have several generous and committed applicants for each of these positions, but I urge the Town Council to consider specific qualifications as the first priority.

Although the timing is just a coincidence, it seems only fitting that we honor Polly Earl's passing late last month by voting to place the Palm Beach Town Hall on the National register of Historic Places. As I execute the registration form, I will think of Polly and her significant contributions . . . not only to the Preservation Foundation, but to Palm Beach itself. The Council also has on its agenda this morning a resolution supporting full funding for the Division of Historical Resources Historic Preservation Program . . . and if Polly were here, she would be sitting in the front row as the Council's conscience.

I note that a previous decision to oppose five-foot bike lanes along A-1-A is being reviewed this morning, and I must re-emphasize my opposition to the bike lanes. There is no need to belabor our increasing concern about traffic congestion . . . but this would only add to it in addition to loss of green space.

While I am on the topic of traffic congestion, we have a letter from the West Palm Beach planning firm of Wilson Miller regarding expediting work on the intersection of Quadrille Street and Olive Avenue - the gateway to our Royal Poinciana bridge. Work on the intersection is scheduled to begin April 1 and is predicted to take about two months to complete . . . during which time they propose reducing traffic to one lane in each direction. We have asked Wilson Miller to consider the possibility of shutting down this intersection entirely on weekends - from Friday evening to early Monday morning - in order to keep it open for weekday traffic accessing the north bridge to the island. April and May are still heavy traffic months for both residents and visitors to Palm Beach, and we cannot tolerate yet another roadblock. As of Monday, Wilson and Miller have verbally agreed to weekend closings and we are awaiting written confirmation.

Last month's election campaigns highlighted the Town's need for a strong, enforceable policy on political signs. I, for one, was appalled at the proliferation of signs on private and public property . . . a major contradiction to sign regulations for businesses and real estate, for example. This has never happened before in the history of Palm Beach so far as I know, and I felt it cheapens our beautiful Town. I encourage the Council to subject political signs to the same restrictions as commercial signage, and to adopt a zero tolerance policy. I have to say that it seems ironic to me that candidates advocating a return to the so-called purity of our past would flaunt our traditions with these ugly and intrusive signs.

Finally, we have had some letters from residents regarding Adelphia's bankruptcy and its impact upon service, especially in the condominiums. It is apparently possible that Adelphia could begin rejecting bulk contracts with condominiums, and our legal counsel advises that condominiums that receive a motion to terminate their contract should retain competent legal counsel. As a practical matter, however, it seems unlikely that Adelphia would want to lose its condominium contracts to the satellite dish market. This is not a matter over which the Town has any legal jurisdiction, but we will work to keep residents informed of any developments.

V. APPROVAL OF AGENDA

The following change was made to the Regular Agenda:

On the Consent Agenda, delete item VII.F.2. Authorization to Commence the D-3 Stormwater Pump Station Project on April 19, 2004.

Mr. Elwell explained the intent of this item had been to expedite construction of a wet well in conjunction with the previously approved control building immediately adjacent to D-4. He said the engineers determined not enough physical space was available to build the wet well in the western portion of Tangier Avenue immediately east of North Lake Way, and the alternative location is in the triangular area at the west end of Miraflores Drive with plans to be drafted.

Mr. Elwell said the notice to the west end of Tangier residents regarding this construction will be posted on the Town's website.

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

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

The following is a verbatim transcript of Walter Ross's comments as requested by President Pro-Tem McLendon.

My name is Walter Ross, 456 Worth Avenue. Good morning, Mayor, President, members of the Council.

I'd like to talk a couple of minutes this morning about a topic that is not on the agenda - Bradley Place - and the loss of the big, legal law suit to Black Top Construction. Apparently, elections come and go but Bradley Place goes on forever.

Whenever the election was going on, whenever anybody mentioned Bradley Place, it was pooh poohed, and the Council – everybody – said, well, it's under control. Don't worry about it. Well, it seems now that the only thing that was under control was the scheduling of the lawsuit which was conveniently held the week after the election was held.

Lawyers apparently know how to schedule a lawsuit, but apparently they don't know how to win it. By my reckoning, by the time you have paid all the construction bills, the legal bills, the interest, maybe the blacktop's so hard – the Black Top lawyers – you'll be approaching $6 million on a contract that started out at $2.1 million.

I previously called Bradley Place the $1 million rat hole. I obviously under estimated. The hole is big enough for an elephant. So far, the only people who have heard you claim – voice responsibility on is the jury. You said the jury didn't understand the case, can't trust the jury to make a fair decision. Well, I guess that is what Martha Stewart said last week too.

This was a fairly simple case – breach of contract, loss of profits. I asked the legal fees for the (inaudible)... by the time you've heard the defensible appeal, it will be over $700,000 which is a lot of money on a $2.1 million contract. If you were so afraid of the jury, why did you not try harder for a negotiated settlement and why was there not an arbitration clause in the contract? That would have solved some problems. I think we can all learn a lot from Bradley Place with the coordination of the Council, the lawyers, the Town Manager, Department of Public Works. There is a lot to be examined and evaluated and if you think I am being too tough on you this morning, I had to delete most of this when my wife heard it last night.

Thank you very much.

End of verbatim transcript.

Deedy Marix, 1570 North Ocean Boulevard, expressed her concerns relating to construction traffic on the north end of the Island.

Dr. Sten Lilja, 1330 North Ocean Boulevard, stated he had received no response from the Mayor or any Council member to correspondence he had mailed to them. He also questioned if the Town's seawalls were up to standards for new construction and if they existed in all parts of Town as this is a public safety issue for the Town.

Susan Lee, 287 Pendleton Avenue, said that Councilmen Brooks and Goldblum had fund-raisers at Cucina's and they should not vote on any issue before the Council at this meeting regarding Cucina's.

Councilman Brooks, responding to Mrs. Lee's remarks stated Mr. Al Marooney paid Cucina del Arte to hold it there.

Councilman Goldblum stated he did not have a fundraiser there nor attended a fundraiser at Cucina del Arte or The Heart of Palm Beach.

Marjorie Cochrane, 2 Wells Circle, said her neighbors are building a house next door involving the building of a wall on a shared easement and the removal of her hedge on that easement. She said her questions and concerns remain unanswered.

Mr. Elwell responded the issue was complicated because in addition to the easement issue, there were also encroachment issues with Mrs. Cochrane's hedge and a portion of the driveway located on the neighbors' property for a number of years. He added the outcome, after several weeks of staff working on a solution, FPL changed their position of allowing any structures in the easement and would accept a wooden fence in the easement. He said the Town allowed the wooden fence with the stipulation the fence be removed if any of the utility companies using the easement so requested. Mr. Elwell reported a twelve foot hedge would be installed and maintained to shield the neighbors' property from Mrs. Cochrane with the resulting work being intrusive on Mrs. Cochrane's property; although everyone has been informed of the decisions being made and what work would occur.

Mayor Smith suggested the staff arrange a meeting with the neighbors and Mrs. Cochrane in an attempt to reach a compromise.

Mr. Moore said he understood the neighbor, Mr. Maschmeyer, did write to Mrs. Cochrane, and the surveys submitted to the Town by Mr. Maschmeyer reflect the property line is in question with encroachments. He offered to meet with Mr. Maschmeyer and Mrs. Cochrane.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF FEBRUARY 10, 2004.

B. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING OF FEBRUARY 10, 2004.

C. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING OF FEBRUARY 27, 2004.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING OF FEBRUARY 25, 2004.

E. RESOLUTIONS

1. RESOLUTION NO. 6-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Placing the Palm Beach Town Hall on the National Register of Historic Places and Authorizing the Mayor to Execute the National Register of Historic Places Registration Form on Behalf of the Town.
[Robert L. Moore, Director of Planning, Zoning, and Building]

2. RESOLUTION NO. 7-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Entry and Testing Agreement Between the Town and Nextel South Corporation and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Assistant Town Manager]

3. RESOLUTION NO. 12-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to National Roofing South Florida, Inc. for the Public Works Facility Re-roofing, Sealed Bid No. 2004-03.
[Albert P. Dusey, Director of Public Works]

4. RESOLUTION NO. 13-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Supporting Legislation Relating to Traffic Control Devices and Permitting the Installation and Use of Traffic Infraction Detection Devices at Intersections; Directing the Town Clerk to Transmit a Copy of this Resolution to the Governor of the State of Florida, to the President of the Florida Senate, to the Speaker of the Florida House of Representatives, to Each Member of the Palm Beach County Legislative Delegation, to the Members of the Palm Beach County Board of Commissioners, to the Mayors of Each Municipality in Palm Beach County, to the Palm Beach League of Cities, and to the Florida League of Cities; Providing for Severability; Providing for Repeal; Providing an Effective Date.
[Michael S. Reiter, Chief of Police]

5. RESOLUTION NO. 14-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Supporting Full Funding for the Division of Historical Resources Historic Preservation Program.
[Robert L. Moore, Director of Planning, Zoning, and Building]

F. OTHER

1. Approval of Budget Calendar for FY 2005 Budget Process.
[Jane Skittone, Director of Finance]

REMOVED BY THE STAFF 2. Authorization to Commence the D-3 Stormwater Pump Station Project on April 19, 2004.
[Albert P. Dusey, Director of Public Works]

PRESIDENT PRO-TEM McLENDON MADE A MOTION TO APPROVE THE CONSENT AGENDA AS AMENDED. THE MOTION WAS SECONDED BY COUNCILMAN GOLDBLUM AND CARRIED 5-0 ON

ROLL CALL.

VIII. COMMITTEE REPORTS

A. ADMINISTRATIVE AND PERSONNEL COMMITTEE MEETING OF FEBRUARY 17, 2004.

The following is the report from the Administrative and Personnel Committee:

MINUTES FROM THE ADMINISTRATIVE AND PERSONNEL COMMITTEE MEETING HELD ON FEBRUARY 17, 2004

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:25 a.m. by Chairman William J. Brooks. On roll call Chairman Brooks and Committee Member Norman P. Goldblum were found to be in attendance. Also attending the meeting were: Town Attorney John C. Randolph; Human Resources Director William C. Crouse; Assistant Human Resources Director Carla Kneipp; Police Support Services Major Gary B. Sallenbach; Police Training - Crime Prevention Manager Janet Kinsella; Counsel for the Committee Jeffrey Pheterson; Police Training-Crime Prevention Secretary Pat McLean and her attorney Arthur Schofield; and Town Clerk Mary A. Pollitt

II. APPROVAL OF AGENDA

The agenda was approved as presented.

III. CONSIDERATION OF APPEAL OF TRANSFER IN THE MATTER OF PATRICIA MC LEAN

The following is a verbatim transcript of the proceedings.

Schofield:
Perhaps we can get this underway by me giving a brief introduction of the issues that we have at hand.

Ms. McLean is a relatively long term employee with the Town of Palm Beach. In April of this year she will be in her tenth year. Recently, she was transferred from the Records Department of the Police Department into what is now being referred to or characterized as the Crime Prevention Training Unit. When Ms. McLean was in the Records Department, she held a rather challenging position. When she was transferred into the Crime Prevention and Training Unit, she was transferred into a secretarial position. Unfortunately for Ms. McLean, she didn't have much of an opportunity to consider the transfer. It was a transfer that she was told was – to put it into simple terms – take it or leave it.

She transferred over to that unit only to find that not only was she being transferred into a secretarial position which she frankly didn't sign on board for, to become an assistant to a recent new employee for the Town of Palm Beach, a Jennifer Bruno. Now, when the transfer had taken place, Ms. McLean was advised this was a potential promotion, and she would be put into a department or unit where there was room for growth, and so accepting those representations, Ms. McLean applied for and sought out training for what she perceived to be a possible growth advancement within a new unit. Unfortunately, the training she has applied for and sought has since been taken away from her, and instead has been allocated to and given to this, again, relatively new employee of less than a year, Jennifer Bruno.

Miss Bruno has, for all intents and purposes, been groomed for this advanced position that Ms. McLean was advised, upon the transfer, was a possibility for advancement within the Town, and what Ms. McLean is now recognizing or seeing is that this representation of an advancement into a potentially greater position within the Town was not an accurate representation. Instead, at the end of the day, Miss Bruno will be put into this advanced position, and Ms. McLean, again a long term, ten year employee for the Town of Palm Beach, will end up being Miss Bruno's assistant. That is the way this is unfolding, and so Ms. McLean is really grieving really two decisions– two movements pertaining to her employment. No. 1 - the transfer from Records to the Training Unit and No. 2 - the denial of being denied the equal opportunity to apply and seek out this advanced position that Miss Bruno is currently being fast-tracked for, and it is Ms. McLean's concern that her age may have something to do with these decisions, not so much for the transfer, but with the opportunity for – equal opportunity – to advance into the position that Miss Bruno is currently being groomed for. Those are the issues, and that is the brief summary of what has transpired.

Brooks:

Thank you, sir. Mr. Schofield, what I will do is listen to the Town's position and then perhaps Mr. Goldblum or myself may have questions for you on behalf of your client. The Town's position will be presented by Mr. Randolph.

Randolph:

Thank you, Mr. Brooks. The summary that has been given is very interesting, because it doesn't sound like the appeal that we've heard – at least until this time – that has been grieved through the Personnel Department. That appeal related to this transfer that was made to the department on the basis that allegedly the Town did not follow the appropriate policies in making this transfer. So, we are prepared today to indicate to you why the transfer was appropriate. It was also mentioned in the appeal that Ms. McLean was appealing the promotion of another individual, Jennifer Bruno, and she was advised that she did not have standing to appeal the transfer or the promotion of another individual. You only have the ability to grieve your own transfer. So, we don't think that it is relevant today to hear about why another particular individual was promoted. It is interesting also that age is mentioned for the first time. That does not appear part of the appeal here today. We believe that it is probably being discussed for other purposes perhaps subsequent to this particular hearing, but that is certainly not before you today.

Patricia McLean has worked as a civilian employee in the Communications Unit and the Records Unit in the Town of Palm Beach for ten years. There is no issue here today as to whether or not she performed properly within those departments. The sole issue is whether or not it was appropriate for the Police Chief to temporarily transfer Ms. McLean from the Records Unit to the Training Unit. In that regard, we will want you to keep in mind that particular provision of the Town Code which says that the Chief of Police shall designate and assign the duties of every member of the Police Force and employees of the Police Department. So the Police Chief had the right to allocate for efficiency sake, people within various departments within the Town.

It is claimed in this summary that was given by Mr. Schofield that Ms. McLean did not like the fact that she was transferred from a position that she felt was very important to a secretarial position in another department. The fact is that her position was indeed classified 'secretary' in the Records Department– just the same way her position is claimed is designated 'secretary' in the Training Department. She doesn't like that word, and she has indicated that she is not a secretary, and she will never be a secretary, because she doesn't like the term 'secretary', but nevertheless that was the position she held within the records unit.

The clear fact of the matter is that the Records Department was over staffed.

There was an administrator or manager of the department and there were three secretary or clerical positions within that department. A determination was made that the department was over staffed, and it was very easily seen that it was over staffed by the fact that Major Sallenbach was able to observe them reading newspapers in that department as early as 2:00 p.m. in the afternoon – that and other reasons.

So, it was also determined that in addition to that department being over staffed, that there was a need for personnel within the training unit, and based upon the fact that the Chief felt that Ms. McLean would be well suited to that position, and based upon the fact that she had the least seniority within that department, it was determined that she would be temporarily transferred from the records unit to the Training Department.

She grieves this temporary transfer and indicates that she is handling demeaning duties within this department that aren't in accordance with her training, but I would like to point out that this is not the first time that Ms. McLean has been unhappy within a particular department. In 1997 she was transferred to Records because she had indicated she was not happy within the Communications Department. It is also interesting that she now grieves this transfer when previously she had indicated to one of the employees within Human Resources, she was curious as to why Jennifer Bruno was transferred to that Department instead of her when an opening became available in that Department.

Well, the reason was that Jennifer Bruno was number two on the eligibility list for that Department, and Ms. McLean was number six, and that was the reason.

So, nevertheless, she – even though she has transferred from the Communications to Records, and now from Records to Training, she grieves it because she doesn't like the fact that she sees herself ultimately working for another individual. Well, she has worked for another individual within the Records Unit and presently she works for another individual in the Training Unit, and quite frankly, the pay and benefits in the two departments are exactly the same. There has not been a reclassification or a reallocation study. This has simply been a temporary transfer, and she is receiving the same pay and benefits. There has been no demotion, and we are here to simply indicate to you that the Chief had the need to transfer Ms. McLean; that she was transferred; that she has the same types of duties and obligations within each department; the pay and benefits are the same; and it was completely appropriate and we don't understand why this grievance is taking place, and we would ask that you support the decision of the Chief to make this temporary transfer so he can properly operate his department.

Brooks:

Mr. Schofield, would you like to comment on that?

Schofield:

I would like to comment on that, and as far as the descriptions of the positions and that the tasks that are being performed by Ms. McLean, either in Records or in the Training Division, I am going to have Ms. McLean address that, if the Board would permit that.

The second thing I would like to address is that Ms. McLean is not grieving her transfer, and she's not grieving the fact that she is in the Crime Prevention Training Unit necessarily. What she is seeking, and what she is grieving, is an equal opportunity to compete for and apply for the representations that were made upon transfer, and that is that this is a potential advancement within the Town. It has become evident through denial of training; the excessive amount fo training provided to Jennifer Bruno, who once again, is a relatively new employee within the Town, that when it comes time for this advanced position to become available, perhaps posted within the Town, that quite simply Ms. McLean is not going to have the training, because it has all been provided to Miss Bruno, and all she is seeking now is equal opportunity to apply for that training, that position, which would be an advancement within the Town.

At this moment, I would just like to....

Randolph:

Before we go forward, may I make one comment in regard to that, because this proceeding is taking an entirely different track than I understood it would. It sounds like it is being called an equal opportunity for an employment issue which is the very first time I have heard that.

Here's the grievance: I am grieving my transfer to the Training/Crime Prevention Unit. Although the titles are similar (Records Information Secretary & Training Secretary), the duties, functions and scope of the positions are completely different. This is in violation of Employee Manual: Section 2-2.2,2-2.3, 2-2.5, 2-2.5-1, and 3-2.4. This is also in violation of General Orders I-24 and I-25. Attached is a list of duties and conditions I have experienced while in both positions.

Then she is requesting a resolution:

I am requesting that my transfer to the Training Unit be cancelled and that I either be returned to my position in the Records Unit or placed in another position commensurate with my education and experience. I also request that the Records Unit Secretarial position be reevaluated and/or reclassified–which is in the position of being redone. Based on the duties and functions of the position that I have outlined in the grievance, it should be reclassified as a Records information Specialist and the pay scale should be adjusted to reflect the responsibility involved and the professional, technical position it has become.

I have come here today to show this Board or this Committee why there has been no violation of the sections of the Employee Manual as has been indicated in the grievance. We have not come here today to argue about equal employment opportunity, which I suspect is a subject that is going to be raised in another form, and that's why they are going through this process, but we are willing to sit here and hear what is being presented today, but based upon a summary, it doesn't sound anything like the grievance that has been filed before you today.

Brooks:
Mr. Schofield, I would have to agree with Counsel on that. I have read Ms. McLean's grievance, and I have listened to you, sir, and I don't find that we have a match between what you have just outlined on the equal opportunity factor and the promotion, if that is the word, I guess it is, of Miss Bruno.

Schofield:
I understand, sir, and certainly if you are to take the first of Ms. McLean's grievances, it refers to specific provisions within the Employee Manual as well as General Orders, but there is a follow-up grievance as well, and it talks about the position that Miss Bruno is being put into, and what I have done in my presentation and summary is to take a look at the whole situation and try to sum up what this whole situation is. With all due respect to Counsel, to guess or speculate as to what may proceed forward from these events is unnecessary. We are here – Ms. McLean is here – hopefully in an attempt to resolve the situation. No one is anticipating, no one is desiring to move forward beyond this forum if the matter can be resolved in this forum, and when you take a look at the two grievances, the bottom line is that Ms. McLean was transferred. She wasn't pleased with the transfer, but being the team player that she is, she accepted the transfer with the representations that this was a potential promotion, and what it has now turned out to be is nothing more than a secretarial administrative position for a relatively new employee, and all Ms. McLean is asking for – bottom line – is an equal opportunity to compete for the promotion that was represented to her as being available when she agreed to the transfer.

I am not disagreeing with counsel's representation nor yours, sir, when you say this was not artfully pled in the initial grievances. What I am trying to do, as Ms. McLean's counsel, is to take the two grievances, put them together, and to try to present the issue to the Board so that perhaps the issue that really is at hand can be addressed so that things don't have to go beyond this forum.

Brooks:
Mr. Goldblum.

Goldblum:
I understand your position, and I have to ask legal counsel if we can go forward with what you are proposing or if we just must stick with the grievances that are given us? Legal counsels?

Pheterson:
Well, let me ask a question, if I could. You said there are essentially – the way you referred to it was that there was an initial grievance and then a subsequent grievance, and it's probably really a response and the subsequent response in the process. Is that what you mean?

Schofield:
No, sir. I have, in my possession.......

Pheterson:
Is it the December 12 memo from Ms. McLean to Mr. Crouse?

Schofield:
May I just approach?

Brooks:
Certainly, sir.

Schofield:
What I am going to (inaudible) I am calling the following (inaudible) grievance. This is the initial grievance. Yes, this is the first one.....

Pheterson:
I don't have a copy of that second document.

Schofield:
Hold onto that one. It's the only one I have.....

Pheterson:
Just so we are all singing on the same hymnal so to speak, are you familiar with that?

Randolph:

No, this is the first time I have seen this particular grievance, but I -----attached to what I have just been handed from the Human Resources Department is the response to it which indicates that the promotion of another individual is not a grievable matter to be heard by this Board.

Pheterson:

Well, is this.....okay.

Randolph:

It says – and I am reading from the 11/10/03 letter that was attached from Mr. Crouse which says –well, from Major Sallenbach–which says, "In my opinion, you have no standing to grieve circumstances relating to the duties and responsibilities of a fellow employee; however, I will respond to provide clarification as I believe you are misinformed." I guess that is a follow-up grievance, grieving the unofficial promotion of the Training Secretary Jennifer Bruno, with a response that is not a grievable offense; not an offense, but not a grievable matter.

Pheterson:

I would like the Board members, if we are going to be considering this as an issue, to have a copy of this. Can we make copies of this – what we will call the second grievance? Because there is a response to the second grievance in the packet I have but not the grievance itself. It is just this one page?

Schofield:

Yes, I believe so, sir. That's all I have been given.

Pheterson:

Okay.

Brooks:

While we are waiting on the copies, Jeff, would it be all right – I'd like to ask Major Sallenbach, the plaintiff, through her counsel, has talked about training. Could you elaborate on that?

Sallenbach:

Sure. Actually, at the beginning of this entire transfer situation, I had discussed with Ms. McLean that she would, once being transferred to this new position, receive a reclassification study, a recommendation by the department, to receive a reclassification study in that position, and that there was a potential that she would receive, you know, an improved pay or salary situation. At that time, her response, initially, at my first meeting with her was, I think I remember the quote, "Show me the money." It was explained to her that what we wanted to do was eventually reclassify her position and provide her with all that necessary training that she is discussing now. However, what happened was soon after the transfer, Ms. McLean became unhappy with the position in general, and, in fact, made several remarks to the manager, Janet Kinsella, about her duties and responsibilities in the unit, and they were somewhat derogatory, and that she was also indicating to both myself, Janet Kinsella, and the Chief of Police in separate meetings that she was really not interested in the position. Because of those remarks that were made, and, in fact, a part of the reclassification study involved her filling out an application to show the new job tasks and responsibilities, she made derogatory comments in those, indicating that all her position was to blow up balloons and make coffee.

Because of the fact that those remarks were made and so forth, we had to take a second look at whether we were going to provide an exorbitant amount of training to somebody who indicated to us that she wasn't even interested in the job to begin with.

Brooks:

Thank you, Major Sallenbach. Jeff, had you finished? Did you want to comment more?

Pheterson:

As I see this, there is actually a bit of an unusual circumstance–are there two grievances that are–what's the city's position as to whether we have two grievances before this Board today, or just the one initial grievance having to do with.....?

Randolph:

The Town's position is as follows: We had the initial grievance relating to the transfer which was indicated to be a grievable matter that could be heard by this Board. There was a subsequent, follow-up grievance with which you have just been copied, and there was a response, both from Mr. Crouse and from Major Sallenbach, that she did not have the right to grieve the promotion of another individual. So, we did not feel that the promotion of another individual was a grievable offense. You will see in your package, not only the response from Major Sallenbach which indicates that he does feel that she has standing to grieve circumstances relating to the duties and responsibilities of a fellow employee, but you have in your package the response to Ms. McLean from Bill Course in which he has indicated, as the head of the Human Resources Department, that she did not have the right or the standing to grieve the promotion of another individual.

Pheterson:

But as I read – let's call it the second grievance – not the transfer grievance, she's grieving –starts out by saying, "I'm grieving the unofficial promotion of Training Secretary Jennifer Bruno to the position of Assistant Manager Crime Prevention/Training Unit." What she's asking for is – at the bottom, last sentence – "If a new position is necessary, the Department can and should follow the procedures as outlined by Town policy."

It seems as though she is arguing that the Town has created a position without following its normal procedures. I don't know if that is true or it's not true, but that seems to be the essence of what she is grieving, and she wants the... Is that true? Is there a position of Assistant Manager of Crime Prevention/Training Unit?

Sallenbach:

No, there is not. The word 'unofficial' here is exactly what it says. She's implying, at least from what I read in the grievance, that there wasn't an official promotion. Jennifer Bruno was hired as Training Secretary. That is her position. She has received no promotion, no extra pay, no extra benefits over that position that she has now. So, the word 'unofficial' there is exactly that. She believes that is the case; however, in fact, it is not.

Randolph:

But just so you know, the Town's position is that it is not a grievable matter.

Goldblum:

Was the Training Secretary position always there, or did we just start that with the ... ?

Sallenbach:

No, that position has always been there. Janet Kinsella, the Manager, actually held that position years ago.

Brooks:

I would add, Mr. Schofield, for your benefit, that we're not talking exclusively, but very much involving the revived – the Renaissance of the Crime Watch Program which this Council, two of the members here presently, have strongly supported, so I think that should be kind of in the mix to understand that, if my memory serves me correctly, I think Crime Watch initially came in around the 1970's or 60's, and then it sort of was lying fallow for a while until the tragic circumstances of September 11, 2001, and since that time, efforts have been made to revive it.

Anything else that you would like to say, Jeff?

Pheterson:

No, other than I think that if she is grieving an unofficial promotion based upon a perception that is really not based on a title or additional compensation or benefits, I'm not certain that is–doesn't seem like that is grievable, but if there were to be a position that– Skip, if a position were to be created, there may be a promotional opportunity at that point that she believes she is being denied that may be a subsequent grievance, but I don't see anything, as I am understanding this at this point.

Schofield:

Gentlemen, may I interject?

Brooks:

Go right ahead, sir.

Schofield:

I'm relatively new to the fold on this grievance process, and what I was attempting to do, and I hope to be able to do is to short cut what might be two or three grievances, and to put the issue in its simplest form before the people who can make these decisions. I have in my possession, I guess, an analysis that was done by the Town regarding a reclassification of the position that Jennifer Bruno is currently in, and so, steps are being made to reclassify Miss Bruno's position, a position within that unit which is necessary, and all Ms. McLean is asking for, and I concede that the grievances may not have been artfully pled as presented as a lay person. Ms. McLean tried as best she could. But the issue that ultimately Ms. McLean would like to have addressed is her being provided the equal opportunity, as was represented to her upon transfer, for the promotional opportunities that may be in this training unit, and right now, because of the training that is being taken away from Ms. McLean, the training that is being provided to Miss Bruno, it is apparent, in fact, not only is it apparent, but Miss Bruno is also, as well as Janet Kinsella is also of the mind set that Ms. McLean is Miss Bruno's assistant, and all Ms. McLean wants is an equal opportunity to compete for the same kind of promotional opportunity that exists in the Training unit that Miss Bruno is currently being able to apply for.

I'm just trying to cut to the chase, because you may face another grievance on this, but if we could address it now, I think it would serve the Town best as well as Ms. McLean.

Brooks:

Mr. Schofield, as you heard just a few minutes ago, it appears, and I have read also in the background, that Ms. McLean has been unhappy with the transfer from the moment it was presented to her. My problem with that is this is an administrative function that totally is within the purview, as Mr. Randolph pointed out, of the Police Chief. I mean, I don't – look, I'm not happy that A-Rod went to the Yankees instead of the Red Sox, but I don't have any standing to grieve this. I mean I am trying to be sensitive to your client, and I am trying to be sensitive to the facts, the rules of life, and it appears to me that she is initially grieving a transfer, and then bootstraps onto that maybe "I should have this training" or "I don't want be an assistant to Miss Bruno", and candidly I'm struggling with that. I'm wondering why you are even here. This is an administrative function of the Police Department. Ma'am?

McLean:

If I may just say something.

Brooks:

Yes, ma'am.

McLean:

I made it clear that from the time the transfer was – I was informed of the transfer – that I was not interested in the Training Secretary's position. That had been offered to me sometime back, and I made it clear that was not where I was headed. I've been going to college on my own time for six years, nights and weekends, in order to advance. I did not do that in order to become a secretary. At that point, I was told that my request for transfer was really subject to my approval. It was pretty much a done deal. The way it was phrased to me by the Chief and by Major Sallenbach was that this was an opportunity based on my scholastic efforts and my grade point average, this would be an opportunity to advance. There was some discussion that I would be sent to training for web based–keeping up the web page and some other things, and they were going to be reorganizing the unit, and that I should keep an open mind. Within a very short time of arriving in the Training unit, it became apparent to me that the only advancement that was there was being offered to Jennifer. She was being fast tracked with some thousands of dollars worth of training, being paid for by the Town. I was doing mass mailings, blowing up balloons for Crime Watch. I did not sign on to work for a nonprofit organization. I am still–actually I have no secretarial background; although, my title in the Records Unit was secretarial, it involved nothing having to do with – I have never written a business letter in my life, and now I found myself in the Training Office doing a mass mailing with things like using the title, Honorable Lesly Smith. I had no clue. I still don't how to properly address a business envelope. I have no clue on a lot of things to do with secretarial work. My work in the Records Unit was – my primary job in the

Record Unit was to process the criminal paper work. I would handle all of the criminal charges on the traffic citations and coordinating with the Clerk of the Court and the State Attorney's office, I became a reference point for the officers on the road. There were times when officers would call me when they had just put handcuffs on somebody to ask me about the proper paper work or the proper statutes, and the Chief knew about this and Major Sallenbach was aware of this. Sergeants frequently sought me out regarding information on DUI packets. To go from that to stuffing envelopes for Crime Watch was just totally bizarre to me. I'm not even good at it. My evaluation is coming up. I've been doing this for 8 months. I still have sergeants who seek me out for information regarding DUI, and one sergeant was informed that he should not contact me any more, so now I am being taken away from the Police Department and assigned to a nonprofit organization, and I don't feel I am successful here. As far as the position that Jennifer is doing, I consider that to be an advanced position that actually there is attached to the job survey that Jennifer completed is a recommendation from Janet Kinsella about a new title for this position. It is going to be a Community Relations Specialist or something. So, the outline of the job is already on the table. It is already being formulated, but someone else is being trained for it, and I am supposed to be left in the office answering the phones and stuffing envelopes. It is not an equal transfer. It is just not what I signed up for when I went to work for the Police Department.

Sallenbach:

First of all, at the initial time I spoke with Ms. McLean about this transfer, I did indicate to her that position was going to be reviewed and potentially reclassified and that would entail with a very good potential of an increase in salary. What she is describing here is a one sided issue that only Jennifer Bruno is offered these opportunities. This is incorrect. Myself and the Chief and Janet have indicated to her that these opportunities exist for her. She completed the reclassification questionnaire also. However, unfortunately, instead of taking it as a positive step and a positive move to a potential increase and promotion per say because it's a title change - that's what we were looking for in addition to increase in pay. She completed the questionnaire in a somewhat derogatory and negative manner and since that time, she has indicated to all of us that she does not feel that this is a job for her. She has not taken the opportunity to move forward and the fact of the matter is, I wanted to see her succeed. I wanted to see her attain this training. She was in the process of getting very similar or almost the same training as Jennifer Bruno. I wanted them to go parallel in the situation and develop both jobs; however, she took a negative response to the whole thing, and she even indicated to us several times that it really wasn't for her. She is not a public speaker. She is not really interested in that aspect of the job. I don't what else we can do. We attempted to do that. I'm willing, and continue to be willing to work, you know, with her in that position to improve and to reclassify and so forth.

Brooks:

Thank you, Major Sallenbach.

Sir, has Ms. McLean's position in the Records Division been filled by anyone or as Mr. Randolph pointed out a few minutes ago, that conceivably that position had been overstaffed?

Sallenbach:

It has not been filled since she left. No.

Brooks:

Okay. Thank you. Mr. Goldblum.

Goldblum:

Is there a training schedule published yet? Do you have a format for training for the position that you wanted her to do?

Sallenbach:

We were starting to, for example, Crime Prevention practitioner type schools – the same schools we were sending Jennifer Bruno to, and she just completed. However, like I said, she showed disinterest in this job in general to the point of making comments that she didn't feel that the job was important, that what she was doing, or even remarks to Janet Kinsella about the unit itself.

Goldblum:

Now, Ms. McLean, can I ask you a question?

McLean:

Certainly.

Goldblum:

There are programs that you can attend and salaries are being reclassified or looked at. Are you willing to stay in that position and take the training and see what comes to the salary increases?

McLean:

I was very much interested in the training that Janet cancelled on me.

Goldblum:

In other words, are you interested in taking parallel training like Major Sallenbach said so that you have a chance to advance as things happen?

McLean:

Absolutely.

Goldblum:

And you will do your job there with all the vigorous abilities that you have and be happy?

McLean:

I always have. Productivity has never been an issue. I have always produced. Happiness is another issue.

Goldblum:

All right, so we're going down the same track now as I understand it.

McLean:

Yes, sir.

Goldblum

Am I correct or not?

Sallenbach:

I would have to see Ms McLean show a positive attitude towards this job and position in order to provide her with that appropriate training.

Goldblum:

Could we put a 90 day time frame on that? If they accept 90 days, will you accept 90 days?

McLean:

Yes. Absolutely. And if I may just add one other thing, they – my dissatisfaction was not with the opportunity to advance. It was the opportunity not to advance, and the fact that I was pretty much locked into what I saw as a clerical or secretarial position. I had been promised to advance, so that opportunity thrills me right now–what you are discussing.

Goldblum:

I always liked to have employees do their best job and they can advance under those conditions. I think that you have to work with management and see that it happens on both sides. That's my opinion on it, if it is all right with anybody else.

Schofield:

Might I just interject one thing as well. We, from the grievance side, can understand the Major's position. I see this, unfortunately, many times in my practice as I handle only employment settings, and certainly the Major when he sees dissatisfaction shouldn't be spending money on an employee who is dissatisfied; however, I think where the Major may have missed some information was the source of Ms. McLean's dissatisfaction, and the source stemmed from the feeling that the training that was being provided to Miss Bruno was not equally being provided to her. So, I am hoping that perhaps this meeting, if nothing else, was a clearing of the air, and now Ms. McLean realizing that she has an opportunity for that same training, I hope and trust, that the attitude will change and that the Major will see that, and as long as she is provided the same opportunities as the other people in the department, I think that the Town will be better served by everyone.

Brooks:

I would just add, Mr. Schofield, this is always on of – not quite – he said, she said, they said, but there is certainly some degree of that, and I can readily understand Ms. McLean's frustration as she on her own has sought out, and I applaud her for that, to increase her formal educational background, but as I look at this, the point remains, and we keep hearing Miss Bruno's name, and I don't see that really as relevant to this case, whether that is an unofficial promotion or official. I tend to see this – I think Mr. Goldblum has attempted to proffer a reasonable – I am somewhat leery as I don't want to get into the position, because it really is beyond my purview and Mr. Goldblum's – for the Administration or the department, but if that is a way to resolve this, but personally, I cannot approve the grievance. I think it truly lacks standing, and as I said a moment ago, I can understand Ms. McLean's desire in attempting to boot strap some sort of legitimacy via the Bruno vehicle, but I just don't see that. I see, as you know, this Town is set up with a strong Town Manager type of government. The managers under the Town Manager have the authority to make administrative decisions, and that is blessed by the Council, and that's the way it goes.

Now if a manager should make enough incorrect – questionable, perhaps, better word – decisions, like in business, perhaps they would be looking for another job. I can't make the motion, but I think I need a motion from Mr. Goldblum.....Mr. Randolph?

Randolph:

If I might – just one last comment, if we are winding down here. We would simply ask that you uphold the Administrative decision of the department. We would ask further that you not enter into the Administrative process by making any determination or giving any directive to the Chief as to how many days he should allow for a cooling off period or etcetera.

Brooks:

I believe I addressed that, and I totally agree with you.

Randolph:

So, we would simply ----- I think the benefit of this hearing is for each of us to hear each other's side and the input that you have given, and I think that input is important, and it is input that can be considered by the department, but we are simply here today requesting that you uphold the decision of the Chief in making this transfer, and if need be, to make a determination as to whether or not the other grievance – if she really has standing in regard to the Jennifer Bruno grievance.

Brooks:

Mr. Goldblum, are you ready to make a motion?

Goldblum:

I'll make a motion that we disallow the grievance. Is that the correct word you want?

Randolph:

Jeff?

Pheterson:

Essentially, the grievance is denied, and essentially it has almost been withdrawn. Frankly, there was a statement made by counsel about not grieving her transfer, so...

Schofield:

Necessarily.

Pheterson:

Right, as the primary focus.

Goldblum:

The grievance is denied, and I can't put anything else that I want to put into that motion, so in the record – that I believe that both parties have to look at the problems and work them out successfully.

Randolph:

Now, you have to listen to Jeff as to what your duties are. I am just indicating to you what I am looking for on the part of the department. If you have a question as to your jurisdiction in regard to whether you want to put it in, that's up to him.

Pheterson:

Sure, I would say for clarity of the record, that the second grievance involving this unofficial promotion that you could find that if it is your decision to not – there has not been an adverse action that occurred there at this point. So, therefore there is nothing to be grieved at the present time.

Brooks:

It's moot.

Goldblum:

Moot, moot.

Pheterson:

Then, if you wanted to put in some sort of a general statement that you wish to have some level of cooperation between the parties or whether you........

Brooks:

I would prefer that not be part of the motion, Jeff, but that be part of the record and Major Sallenbach is right here, Mr. Crouse is there and they hear that. Ms. McLean is here, and Council and Mr. Schofield is here, so I think the motion should be like Ivory Soap, and anything else....okay....we need the motion?

Goldblum:

No, that's all, but the other part of what I said is on the record, but not part of the motion.

On roll call, the motion carried 2-0.

End of verbatim transcript.

IV. ANY OTHER MATTERS

There were no other matters.

V. ADJOURNMENT

The meeting was adjourned at 10:15.

William J. Brooks Committee Chairman	Norman P. Goldblum Committee Member

Councilman Brooks explained the report involved a Police Department employee who grieved an administrative transfer by the Chief of Police, and the Committee upheld the Police Chief's decision and denied Ms. McLean's grievance.

PRESIDENT PRO-TEM MCLENDON MADE A MOTION TO APPROVE THE RECOMMENDATION OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE TO DENY THE GRIEVANCE. THE MOTION WAS SECONDED BY COUNCILMAN GOLDBLUM AND CARRIED 5-0 ON ROLL CALL. .

IX. REGULAR AGENDA

A. Old Business

1. Presentation by Florida Department of Transportation (FDOT) and Palm Beach Metropolitan Planning Organization (PBMPO) Regarding State Road A1A Bike Lanes. [Candace Scott, FDOT]

Morteza Alian, Distsrict Consultant Management Engineer, FDOT, introduced Raphael Clemente, MPO, who presented a power point presentation proposing five foot wide bicycle lanes for A1A.

Mr. Clemente's presentation covered the topics of: Sharing the Road, Sidewalks Help, Florida Statutes 335.065 , Bicycle Lanes Help, FDOT Standards for Bicycle Lanes, Examples of Roads with Bicycle Lanes, Bicycle Lanes Facilitate Law Enforcement, and Some Additional Benefits of Bicycle Lanes.

Mr. Clemente said one of the main concerns expressed related to the aesthetic impact that providing space on the road will have for the Town particularly to landscaping and green space. He stated other municipalities have bicycle lanes with additional landscaping added and provided illustrations of examples.

Mr. Clemente added that large groups of cyclists can create havoc and frustrations for motorists and residents and after contacting the State Safety Office, the FDOT State Safety Office, and the General Counsel for the Florida Department of Transportation requesting for an interpretation of the written law. He quoted the State Statute, Section 316: "A bicyclist who is traveling at less than the normal speed of traffic must generally ride as close as is practicable or safe to the right hand edge of the roadway." He continued that a shoulder is not considered part of the roadway, but a bicycle lane is if it is built to standard and marked as such. He added that the Palm Beach Police Department could force large groups of bicyclists to use the bicycle lanes if they were added to A1A thus clearing the road lanes of large numbers of cyclists who are obstructing traffic.

Responding to President Pro-Tem McLendon's question, Mr. Clemente replied a bike lane would be installed on both sides of A1A – one in each direction.

Councilman Goldblum asked where the bicycle lanes would go where parking was allowed in the center of Town?

Mr. Clemente answered the lanes would be next to the traffic lanes with the parking remaining next to the curb.

Councilman Brooks said the desire for bicycle lanes may be admirable, consistency is lacking on A1A to put in model bicycle lanes.

Carol Cosburn, 3400 South Ocean Boulevard, said Mr. Clemente's presentation showed locations in other parts of the United States and in other parts of the world, and the Town of Palm Beach is unique in that the age factor is older. She added the influx of older drivers during the winter months would not fare well with narrower driving lanes. Ms. Cosburn said there is no room for the bike lanes unless the sidewalks are eliminated.

President Wyett commented that narrower driving lanes on A1A in the south end would be difficult for many older drivers, and many of the condominiums do not have turn lanes.

President Smith said the Council appreciated the presentation; however, the item was placed on the agenda as a governmental courtesy, because the Town did work hard to draft Resolution 54-02. She continued that she doubted any member of the Council wished to change any of the conditions worked out with DOT at that time, and although Mr. Clemente's comments were appreciated, those comments were heard previously.

Mayor Smith reiterated that the Town had no room for bicycle lanes in certain sections of Town then or now.

Mr. Clemente questioned if an amendment could be made to the resolution as A1A is owned by all State residents.

Jerry Frank, 2784 South Ocean Boulevard, Officer in the Citizens Association, said the residents have heard this before, and although the presentation was very interesting, it was not Palm Beach. He said a committee went to Ft. Lauderdale and visited with Mr. Chesser and other engineers, and the compromise was the eleven foot driving lanes with four feet being added to the road bed. He continued the three additional feet resulting on each side of the road would provide additional space for drainage and bikers. He stated that the cyclists ride more than two abreast and would require a great deal of police supervision.

Mr. Frank said the walking paths in the south end are used by many more people than the bike lanes would be used by. He added the bike lanes in Palm Beach would create safety issues for the many residents who walk in the area.

Mr. Frank added the lack of turning lanes into condominiums creates stoppage of traffic which is a good thing because it controls speeding cars, but the bike lanes would only add the problem of cars passing on the right side when other cars are trying to make left hand turns.

Mr. Elwell said that District 4 DOT Secretary Rick Chesser participated personally in the discussions with the Town a couple of years ago and signed off on the compromise that was appropriate for this area and since this has been an issue up and down the coast line, Mr. Chesser has reiterated to municipal officials that the local input is very important to FDOT and these kinds of compromises are reasonable approaches to the issues regarding the State's management of its rights-of-way.

Mr. Elwell continued that if the Council was inclined not to change the policy of the Town regarding the matter and wanted to reinforce the position adopted by Resolution 54-02, that could be accomplished by a motion. He noted that Secretary Chesser requested by letter that the Town restate its position.

Dr. Jim Lee addressed the Council stating he had established the Cancer Clinic at JFK Hospital and was currently employed by Hospice.

Dr. Lee said he wanted to appraise the Mayor and Town Council of what was happening in the United States regarding cyclists. He reported 500,000 people received non-fatal injuries in the U.S. riding bicycles in 1999, and 95% of the injured were not wearing helmets. He continued an estimated 140,000 children were treated each year in emergency rooms for injuries sustained while riding bicycles.

Dr. Lee requested the Town Council be patient regarding the issue of bike paths as riding is important for all people especially young people who need exercise, and the bicycle clubs are trying to educate riders to be courteous and behave properly and use intelligence when riding.

Councilman McDonald stated he supported Dr. Lee's recommendation to wear helmets when riding but asked what are the compelling safety numbers for the Town area under discussion?

Mr. Clemente replied he did not have those statistics.

Councilman McDonald said he would need to see supportive documentation to justify any change in the Town's position.

Councilman Goldblum made a motion to ratify Resolution No. 54-02 and make no changes at this time. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

2. Additional Consideration of Town-owned Properties Beautification Projects with Assistance of the Garden Club. [Albert P. Dusey, Director of Public Works]

Mr. Dusey reported that Kit Pannill from the Garden Club provided a list suggesting improvements at 245 Park Avenue which have already been started and are mostly completed; Phipps Park - suggestions were made for beautification; and the last location was Ibis Isle Park. Mr. Dusey requested direction from the Mayor and Town Council as to how this issue should be addressed for future actions.

Mayor Smith asked what costs were involved using the recommendations of the

Garden Club? She noted that two instances required sprinkler systems.

Mr. Dusey responded Phipps Park was a very large area and would be very expensive, but the Ibis Isle Park would be less so. He added that upon Council's direction, he would research cost estimates and return to the Council at the April 13th meeting.

Mayor Smith noted that Phipps Park is such a large project that it might have to be done in several phases including the area around the Little Red School House.

President Wyett said perhaps the report should be given at the May11th Town Council meeting.

Councilman Brooks made a motion to request Mr. Dusey to return to the Council with a cost analysis and a more definitive plan for the May 11th meeting.

Nancy Murray, Garden Club of Palm Beach, said the Garden Club needed guidance from the Council regarding the area north of Phipps Park that is difficult to see.

Councilman McDonald said the property is Town-owned as a result of switching property with Sloan's Curve.

Mrs. Murray said if the Council wants to incorporate that area into the Phipps Park project, then the Garden Club would make recommendations.

Mayor Smith commented that this property might be the 5th stage of the project as the amount of money needed for the project will probably be considerable.

Mr. Elwell added that this piece might be the lowest priority that could be addressed in due time.

The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

3. Review of Insurance Requirements for Valet Parking Companies. [Michael S. Reiter, Chief of Police] *Deferred From the January 13, 2004, Town Council Meeting.*

The following is a verbatim transcript of the minutes.

Reiter:

Thank you. For the record, Mike Reiter, Chief of Police. At last month's Council meeting you addressed this topic and discussed a number of possibilities including establishing some minimum insurance requirements for valet parkers in residential areas. Possible reflective clothing that would be required – Permitting of valet parking in residential areas in much the same way that it is currently permitted in commercial areas.

So, you have our report. We have studied this. There are a number of inherent problems. Valet parkers here in the Town are not even required to be holders of occupational licenses unless they have an office here in Town. So, it does make it very difficult to police or to enforce any additional requirements that you place on them, and there is a broad area of individuals who offer valet parking in the north end of Town including, in some rare cases, the teenage children of residents or neighbors and so on.

So, it is not always a commercial operation. What I would recommend to you is before we consider – before you consider any further regulations of residential valet parking, that you would direct the Police Department to proceed with an educational program, much in the same way that we did at the same time that we instituted regulations for commercial valet parking operations, and I think that most will agree that program was successful – valet parking, at least this season, was much better in my opinion than it was last year. At least partially as a result of the educational campaign and the brochure that we distribute the beginning of every season to all valet parking operators.

Wyett:

(inaudible) Council?

Brooks:

Do you need a motion?

Wyett:

Uh...I would just make a comment before that. I think that probably the most important thing to get across is to have some type of marker on them, whether it be an "X" in a bright orange so we can see them. Very often, as I come out of my home, going down North Lake–there are usually a number of parties on that street, that long street – I can't see them. And they are often darting out of a driveway, camouflaged by high hedges, and all of a sudden "Wow" it's like a black cat going across the street except it is a human being.

Reiter:

Yes, we would make that a component of the educational program. I checked back. We don't actually classify crashes of automobile accidents with individuals whether or not they are valet parkers, but as best as I could determine – best as anybody can recall – in at least the last five years, that has not occurred, but there have been near misses. Absolutely! Yes.

Wyett:

Yes, we should have – somebody make a motion, please?

McDonald:

Mr. Wyett, I have a question, first, please.

Chief, I guess it is a little disconcerting to know that we have large numbers of people coming in to Town and going into the residential areas to park cars, and we don't even have any idea who they are or who they work for. And I think from a crime prevention standpoint, we would at least want to know who they are– who they are working for so you can at least have some way to go back and look for someone if you needed to.

Reiter:

Yes, I would agree. It is my understanding – we have to ask Mr. Randolph – that we are unable to require occupational licenses, which would be the typical scenario under which we would be aware who are here offering services, unless they have an office here in Town. That actually applies to many different industries that come into the Town, offer services here and leave. We have absolutely no idea who they are or where they come from or where to find them as a result of the State law that regulates occupational licenses.

Wyett:

Mrs. Smith.

Smith:

Yeah. Is that not true, Chief, with the Landscape people, because they are in Town more than the valet parkers, and they are not licensed either– none of them. Are they?

Reiter:

That's correct, and there are a variety of other industries, the pool cleaning companies, and so on, unless they have an office in the Town, they are not licensed by us.

Wyett:
Mr. Elwell.

Elwell:
I just wanted to confirm that is true. It is State law that prevents us from requiring a Town license for any of the activities where the business itself is not located within the Town. If the business is located elsewhere, the occupational license is elsewhere, and they can still quite legally come across the bridge and provide a service here on the island, and we don't have an ability to force them to sign up in any formal way. We do, of course, have the voluntary identification card program and that could be part of this educational effort is to – to the degree that these are organized valet services as opposed to neighborhood kids providing the service, we can encourage them to have their employees to voluntarily get an ID card from the Police Department, but that is as far as we can go with identifying the individuals.

Wyett:
Mr. Brooks.

Brooks:
Yes, sir. I would like to make a motion, Mr. Wyett, that we follow the staff recommendation and we authorize the staff, with obviously Chief Reiter's input, to undertake a residential valet parking education program, and if possible to cover some of the points that Mr. McDonald raised from a crime prevention point of view. I hope that is not too much to put on the plate, but that's my motion.

Wyett:
Mr. McDonald.

McDonald:
Chief, before we vote on this, and I guess, Mr. Randolph – Is it your feeling that when you go into a residential neighborhood to conduct a commercial activity that the State precludes you from any kind of licensing or review or approval?

Randolph:
The first part of your question isn't relevant to it. The fact is, that we cannot require an occupational license for them. Now they, in most instances will have occupational licenses elsewhere, I would think, from either another municipality where they got their occupational license and they have their office or perhaps they have a

county-wide license, and I think that is information that anybody that is interested can ask for.

McDonald:

That is a good point, Mr. Randolph, and I would incorporate that, Chief. At least you will have the right to come up and ask for an occupational license from whatever municipality it's from. At least you will know who's here and who's doing it.

Thank you.

Wyett:

And Chief, you will find that there are basically, from my own personal observation and usage – there are 3 firms who do most of the valet parking on the island at private residences.

Reiter:

Yes, sir, that is correct. There are a number of individuals who are valet parkers for commercial establishments in the Town that do on an individual basis offer valet parking for small parties, and there are at least a dozen of them.

Wyett:

We have a motion. Do we have a second?

Can I have a second?

McLendon:

Second.

Goldblum:

Do private individuals have to call the Police Department to tell them they are having a party, and they need extra parking on the streets or anything? Or is that only during the daytime?

Reiter:

If parking is typically prohibited on a street, there are circumstances under which individuals do call us and ask to receive temporary permission. That is the only way really that you can facilitate valet parking in much of the residential part of Town.

Goldblum:

What I was trying to get to is some way of getting reflective arm bands to individuals at night for parking whether we do it for crime watch or something like that of having these arm bands for sale and recommending them to people. If they have car parkers, that they have these arm bands, and that would correct what Mr. Wyett was complaining about.

Wyett:
Well you need better than arm bands. You can't see one arm band.

Goldblum:
Well, use two arm bands.

Wyett:
They can solve that problem. We don't have to tell them how to solve it.

Reiter:
It would be part of our educational program to present the options that are available to them. It would be very difficult to specify a certain item of apparel that would protect them by ordinance.

Wyett:
Mary.

Roll call: motion carried 5-0.

4. Proposed Adjustment in Sales Price for the Pike Road Property. [Peter B. Elwell, Town Manager]

Town Manager Elwell advised that the refined terms of the Agreement for Purchase of the Pike Road property had been set forth in his memorandum of March 4, 2004. With the original Agreement, the buyer had been concerned that they had been obligated to protect the Town against conditions of the property that were currently existing, but also currently unknown. The language had now been modified. He summarized that, because of the environmental assessments that had been done, there had been ground water contamination identified. Discussions had been held with the buyer, and the agreement had been reached that the Town would reduce the purchase price for the property by $150,000 in exchange for certain protections, and in order for the buyer to address the environmental issues. He recommended that the Town Council authorize the amendments to the Agreement for Purchase and Sale between the Town and Royal Concrete Concepts, Inc., in the sale of the Pike Road property.

President Pro-Tem McLendon moved approval of the recommendation of staff to authorize the amendments to the Agreement for Purchase and Sale between the Town and Royal Concrete Concepts, Inc., in the sale of the Pike Road property. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

B. New Business

1. Project Update- Royal Park Bridge Project. [Raj Rangaswamy, P.E., Senior Project Engineer, URS Construction Services]

Raj Rangaswamy, URS Construction Services, reported the bridge work is almost complete on the east side of the bridge with some of the concrete poured in the bascule leafs, and two lanes of traffic should be switched to the new bridge south bound lanes by June 2004. He continued that the entire project is on schedule with completion by May 2005, and the ramp to Flagler Drive will be the last thing to be finished.

Mayor Smith questioned the placement of specimen trees in the Town park before movement to the other side of the bridge. She stated her concern was for the survival of the trees being moved twice and asked if the delivery of the trees could be delayed until the north side was prepared to receive them?

Joe Borello, FDOT, replied the request to use the site temporarily would be in approximately one year, and the contract for the trees will not be executed until February 2005.

Mr. Rangaswamy added the bridge construction will be finished in May 2005 before the trees are planted.

Mr. Elwell said the May 2005 completion date included the removal of the temporary bridge.

Responding to questions from Mayor Smith, Mr. Rangaswamy explained the bridge will be finished in two phases: the south side of the bridge, two west bound lanes, will be finished by June 2004; and four lanes on the bridge will be finished by November 2004 with demolitions after the bridge completion.

The Town Council took no action on this item.

2. Florida Department of Transportation Request To Use Lakeside Park for Temporary Specimen Tree Storage For Ultimate Placement At The Royal Palm Entrance.
[Albert P. Dusey, Director of Public Works]

Mr. Dusey said Betsy Jeffers, FDOT Project Manager, requested permission to temporarily plant two specimen quality green buttonwood trees in Lakeside Park as they were found and purchased with the idea being it would take time to assemble the trees as they would be delivered to Palm Beach by barge. He continued that Public Works had no objection to storing the trees in Lakeside Park but were concerned about moving the trees from the Park to their final resting places on either side of the entry way. He said FDOT was requested to provide a plan to prevent road closures and problems in the future.

Joe Borello, FDOT, said the contract is a design/build contract, and FDOT tries to allow flexibility for the three short listed firms to use their own expertise in handling large trees as FDOT does not have a lot of experience in moving large specimen trees; although a landscaper and an arborist were hired to help put the contract package together and evaluate the proposals. He explained the request is to ask the Town's permission to locate the trees in Lakeside Park if the trees become available at an earlier date and the flexibility to heal the trees in the Park before the final site is available. He added that conditions for lane closures and other concerns will be spelled out in the awarded contracts.

Councilman Goldblum asked if there were any guarantees on the trees?

Mr. Borello replied the trees would be guaranteed for a certain length of time, probably for three years which would include a very specific maintenance program for the trees during that time.

Mr. Elwell suggested if the Town Council approves this request, that the contractor will be responsible for restoring Town property to the condition it was in before the placement of the trees.

President Wyett said he would recommend the contractor leave the trees in place until such time the site was ready for them.

Councilman Goldblum made a motion to approve the request with the conditions Town property be restored and replacement costs for the trees be covered. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

3. Annual Financial Reports

a. Presentation of Annual Report Document for FY 2003. [Jane Skittone, Director of Finance]

Finance Director Jane Skittone presented a copy of the FY2003 Annual report and announced a copy will be mailed to all residences and businesses in the Town of Palm Beach, approximately 11,200 addresses. She added copies will also be available in the Town Manager's Office, Finance Department, and all Town facilities as well as on the Internet.

Ms. Skittone said the report included information on citrus canker, lethal yellowing, Palm Beach cats, Town Departments, Town website, and financial and property tax information including the Homestead exemption. She added the Town calendar is also included.

Ms. Skittone requested acceptance by the Town Council.

Councilman Goldblum made a motion to accept the Annual Report. The motion was seconded by President Pro-Tem McLendon and carried 4-0 on roll call as Councilman Brooks was temporarily out of the room.

b. Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 2003.

[Jane Skittone, Director of Finance]

Finance Director Jane Skittone introduced Mark Veil, auditor, Caler, Donten, Levine, Druker, Porter & Veil, P.A., who would present the FY2003 Comprehensive Annual Financial Report (DAFR).

Auditor Mark Veil addressed the Town Council, provided a brief overview of the new reporting model required by Governmental Accounting Standards Board Statement 34 (GASB34). He summarized the report, noting that the Town of Palm Beach assets totaled $127 million.

President Wyett thanked Mr. Veil for the report.

Councilman Brooks moved acceptance of the Comprehensive Annual Financial Report (CAFR) for FY2003. The motion was seconded by President Pro-Tem McLendon and carried unanimously on roll call.

4. Bid Award of Mitigation Reef for the Phipps Ocean Park Beach Restoration Project. [Albert P. Dusey, Director of Public Works]

   a. Resolution No. 11-04

Town Manager Elwell distributed a memorandum, dated March 9, 2004, including the results of yesterday's bid award and some information in furtherance of the back-up material included in the Agenda Back-Up Notebook.

Public Works Director Al Dusey advised that the Army Corps of Engineers had issued the permit on February 3, 2004, for the construction of the mitigation reef for Phipps Ocean Park Beach Restoration Project. This had given the Public Works Department very little time to gather specifications and put the project out to bid, however, the time constraints were governed by the permits issued for the project. The low bid was $1.4 million from Murphy Construction Company, Inc.

Mr. Dusey explained that each year the Town received notification from the Florida Department of Environmental Protection (FDEP) that failure to spend money that had been allocated for a certain project, or failure to show sufficient activity could cause the Governor's office to take the money and use it for other purposes. Therefore, the

Town would need to show some movement on the Phipps project. The State of Florida was cost sharing at approximately 38%, therefore, the costs to the Town for the mitigation reef would approximate $900,000. The Corps had always indicated that they would consider this reef to be a mitigation bank to be used for another project that they would do in the Town. The State of Florida had indicated in the past that they would like mitigation reefs built close to the project that was being mitigated. They did not have a policy regarding that, and the State of Florida had indicated that they would be very willing to consider this reef to be mitigation for another project in Town; staff would simply have to ask for it to be assigned to a different project. He advised that Resolution 11-2004 was recommended for approval to award the bid contract to Murphy Construction Company, Inc., in the amount of $1,405,040 for the construction of the mitigation reef associated with Phipps Ocean Park project.

Town Attorney Randolph read Resolution No. 11-04 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO THE MURPHY CONSTRUCTION COMPANY, INC., FOR ARTIFICIAL REEF CONSTRUCTION.

Councilman McDonald moved approval of Resolution No. 11-04, awarding a contract to the Murphy Construction Company, Inc. for artificial reef construction. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

5. Consideration of Policies Regarding Freestanding Displays. [John C. Randolph, Town Attorney]

a. Seasonal Religious Displays.

Town Attorney Randolph advised that the issues of seasonal religious displays and political signage should be addressed in order to ensure that there were no questions in regard to the manner in which the Town would proceed in the next season. He requested input from the Town Council as to how it wished to proceed – whether the matter would be referred to the Ordinances, Rules & Standards Committee, or whether the matter would be reviewed by the full Town Council. He noted that he had set forth some specifics in his letter dated March 3, 2004, in regard to what he proposed would be included in any ordinances passed in regard to the two issues.

Town Attorney Randolph advised that he was prepared to structure an ordinance for consideration at the next regular Town Council meeting. He suggested that the location of any unattended displays should be identified. He noted that the Town Council had previously approved that unattended displays would go in Bradley Park, and there had not been discussion as to whether unattended displays would be allowed in any other areas of Town. If it was determined that Bradley Park would be the only public park at which unattended displays would be allowed, that would need to be addressed in the ordinance. Also incorporated in the ordinance should be the regulations that had been incorporated on an ad hoc basis in regard to those groups or individuals who have put displays in Bradley Park. He suggested that the times of year that it might be appropriate to have unattended displays should also be included, as well as maximum length of time for display, sizes of displays, whether the displays would be on a first come/first served basis, etc.

Councilman Brooks suggested that the matters be referred to the Ordinances, Rules & Standards (ORS) Committee for review.

President Wyett and Councilman Goldblum commented that the issue should be discussed at a full Town Council meeting.

Town Attorney Randolph advised that the ordinance would be structured in such a way that it would be defensible in court and constitutionally sound.

President Wyett commented that the Town Council had determined in January that seasonal displays would be removed from the median to Bradley Park to indicate to the Town that the Council was looking to restore the tranquillity of the Town. That had included the Holiday Tree, and he suggested that the Council should now decide whether the Holiday Tree should remain at Bradley Park, or be restored to its traditional spot in the median.

Town Attorney Randolph responded that he would need input as to whether it was the intention that Bradley Park be the traditional public forum in which unattended displays would be allowed. He explained that someone could not use the space for commercial purposes, and the ordinance could be very specific as to what unattended displays would be allowed.

Councilman McDonald commented that he believed the intent, several months ago, of the Town Council had been that Bradley Park was to be the designated place for all public displays, no matter what they might be.

Mr. Bill Guttman, 216 West Indies Drive, commented that, as he understand first amendment jurisprudence as it implicated religious symbols – people had an absolute right to display religious symbols in a traditional public park or forum. He stated that to his knowledge the only traditional public forum in the Town was Bradley Park.

Town Attorney Randolph responded that there may be other public forums in the Town, and a court may determine that another place was a traditional public forum, however, at this point in time, the place that was known as a traditional public forum in the Town of Palm Beach was Bradley Park.

Mr. Guttman replied that there was an intermediate concept called a designated public forum, and that he believed that would need some action by some governmental body, like the Town Council, before someone would have an absolute right to display religious symbols on a so-called designated public forum. He stated that it would be helpful to the Town Council to have Mr. Randolph provide a list of the public property areas that could potentially be a designated public forum, and advice from Mr. Randolph as to whether any action could be taken to prevent any property from becoming a designated public forum. He stated that it would be difficult to link the display of religious symbols to seasons of the year, and that the displays would somehow need to be linked to religion.

Town Attorney Randolph replied that the display would be tied to an event, as opposed to a particular place on the calendar, and that the ordinance could be drafted in such a way.

Councilman Brooks asked if the displays were limited to only religious symbols?

Town Attorney Randolph replied that the displays would not be limited to only religious symbols – he stated that he did not know if that issue could be dealt with specifically, and that he would rather struggle with that a little in the ordinance and try to define what particular groups or organizations would be allowed to put unattended displays out for what purpose. He stated that to define it to a particular religious group may have some constitutional infirmities.

Councilman McDonald moved approval of designating Bradley Park as the designated public forum for unattended public displays.

Town Attorney Randolph clarified that some guidelines would be established to indicate when and for what event the unattended displays may be allowed.

The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

b. Political Signage.

Town Attorney Randolph advised that political signs on residential property were allowed constitutionally, however, people had not taken advantage of that in the past. Recently there had been a situation relating to political signs, and the Town did not have regulations on its books which allowed staff to handle the situation adequately – for instance, there was no requirement that political signs be allowed to be placed in public parks. There was a requirement that signs not be placed within the right-of-way. Because it was questionable as to what could be allowed in Bradley Park, signs were allowed in Bradley Park. There were no regulations as to setbacks for political signs of residential property. He suggested that he be allowed to draft an ordinance relating to the placement of political signs, incorporating several criteria, such as the maximum size of the sign, setback of the sign, the maximum number of signs per lot, etc. He stated that he would present the draft ordinance at the next Town Council meeting, if so directed.

Mayor Smith stated that she believed political signs cheapened the image of the Town, and that she did not like the look. She noted that real estate signs had very specific regulations, and that it did not make any sense – windsocks were not even allowed for a child's party, nor were happy birthday banners.

Councilman McDonald asked if political signs could be prohibited in commercial spaces?

Town Attorney Randolph responded that he would review the matter before drafting the ordinance.

Councilman McDonald suggested that political signs be prohibited in all Town right-of-ways, and also limit it to one sign of small dimensions in residential areas.

Town Attorney Randolph advised that normally the sign would have to be large enough to allow someone to express their political message, and have it read from the road right-of-way. He stated that there could be a regulation as to the size of the sign. He explained that the purpose of constitutionally allowing political signs was to allow someone to get out their political message. He indicated that he would review that particular issue when drafting the ordinance.

Town Manager Elwell clarified that it was the intention of the Council to include provisions in the ordinance that would allow that there would be no more than one political sign per lot, and that if it could pass constitutional muster, political signs would not be allowed in commercial areas. Also, it was the intention to include the prohibition of the placement of political signage on any publically owned property in the Town.

President Wyett stated that he was inundated with political signs at the precinct locations, as well as walkers with signs – he expressed concern from a driving safety standpoint

Town Attorney Randolph replied that Florida State statutes addressed the issue, and he believed it was 50 feet.

6. Consideration of Maintenance/Security at Inlet Dock.
[Jack McDonald, Town Council Member]

President Wyett suggested that the dock gate be locked at 6:00 p.m., and proper signage installed notifying of a fine if the lock was broken. He noted that further dock beautification would be considered when the pump station was built.

Town Manager Elwell advised that there would be discussion needed regarding security issues.

Police Chief Reiter commented that the gate had been locked at one point in time, however, it had been completely ineffectual because the gate could easily be climbed over. He suggested that if it was desired to keep people off of the dock, the gate would have to be larger and higher, which would reduce the beautiful vista. He also noted that it was the nearest port in a storm to the Palm Beach Inlet, and frequently that location required medical emergency response to vessels that were incoming. It was also used by law enforcement agencies to make arrests, as it was the nearest place to the Atlantic Ocean and the Inlet. He requested that consideration be given to medical emergencies that may occur, and the possibility of fire-rescue personnel having to climb over a fence for a medical emergency. He stated that he had done a study for all of 2003, and up to

February 9, 2004, and there had been approximately 22 incidents of Town Ordinance violations that had been reported; on 24 incidences there had been reports of suspicious persons; 41 parking complaints, 2 liquor violations, 1 incident of someone setting off fireworks; 3 animal complaints. He stated that he had expected a far greater level of police activity at that location. There had been no arrests made at the Inlet Dock for that time period.

Councilman Goldblum noted that the Palm Tran buses often stopped at the Inlet Dock with their engines running, until it was time for them to start their new run.

Town Manager Elwell advised that the security issue and Palm Tran issue would be reviewed by staff.

After further discussion, the Town Council requested that the Inlet representatives meet with the Public Works staff to improve the maintenance of the area. The entire issue would be further discussed at the April 13, 2004, Town Council meeting.

*********The luncheon recess was taken at 12:10 p.m.**********

*****The regular Town Council meeting of March 9, 2004,
was reconvened at 2:02 p.m.****

7. Consideration of a Town Ordinance Requiring Bicyclists to Ride Single File. [Allen S. Wyett, Town Council President]

Councilman Goldblum moved approval of deferring the consideration of a Town ordinance requiring bicyclists to ride single file to the April 13, 2004, Town Council meeting. The motion was seconded by President Pro-Tem McLendon, and carried unanimously on roll call.

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

After casting ballots, the Town Council appointed Judy Hoffman, Eugene Pandula, Jack Pyms, and Wendy Victor as regular members. Eileen Morris was appointed as an alternate member.

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

After casting ballots, the Town Council appointed Morgan Dix Wheelock and William P. Feldkemp (architect) as regular members and Thomas M. Youchak as an alternate member.

10. Recreation Commission Appointments.
[Russell E. Bitzer, Director of Recreation]

After casting ballots, the Town Council appointed Timothy Coffield and Stuart Shulman as regular members. Henry Jamison and Rita Taca were appointed as alternate members.

X. ORDINANCES- Second Reading

A. <u>ORDINANCE NO. 1-04</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows:

Section 134-1472, Height, Width and Length Limit for Properties Adjacent to Properties in the R-B District by Conditionally Increasing the Size of Beach Cabanas on Larger Lots, by Requiring Existing Cabanas to Create the Ocean Vista under Certain Circumstances; Section 134-1473, Height, Width and Length Limit for Properties Adjacent to Properties in All Other Districts than the R-B District by Requiring Existing Cabanas to Create the Ocean Vista under Certain Circumstances; Section 134-420, to Allow Nonconforming Structures Involuntarily Destroyed by 50 Percent or less and Nonconforming Landmark, Single-family Dwelling, Public Structure or Public/private Group Use Structure Involuntarily Destroyed by Greater than 50 Percent to Be Rebuilt to the Minimum Federal Emergency Management Agency Flood Elevation, to the Same Size and Location Without Requiring a Variance; Sections 134-794, 134-844, 134-894, 134-949, 134-1005, and 134-1060, Existing Single-family Dwelling Development, Substituting the Term "Cubic Content" for the Term "Floor Area" in the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) Districts, Respectively; Section 134-1730, Accessory Buildings and Other Structures, by Prohibiting Freestanding Awning and Carports Within Required Setbacks; by Allowing Freestanding Portable Beach and Swimming Pool Cabanas under Certain Conditions; Section 134-2 Definitions and Rules of Construction, by Providing a Definition for "Carport"and Amending the Definitions of "Pergola" and "Trellis"; Sections 134-790, 134-840 and 134-1209, Special Exception Uses in the R-AA, R-A and C-OPI Zoning Districts Respectively to More Specifically Regulate Places of Assembly and Houses of Worship; Section 134-1518, Churches, Academic Schools and Private Clubs, by Changing the Uses to Places of Assembly, and Section 134-2176, Number of Parking Spaces Required-schedule, to Delineate Off-street Parking Requirements for Theaters and Auditoriums the Same as Required Off-street Parking as Houses of Worship; Subdivision III, Two-family Uses, Section 134-1968, Lot Area, Lot Coverage and Landscape Open Space by Creating Specific Lot Area, Coverage and Landscape Open Space Provisions for Each Dwelling on a Two-family Development; Sections 134-793 And134-843 by Increasing the Landscape Open Space Requirements for New Single-family Dwellings in the R-AA and R-A Zoning Districts; Section 134-1111. Special Exception for Stand, Seated Dining

Area and Open Counters for Eating and Drinking, by Eliminating the Requirement for Annual Renewal of Outdoor Seating and by Creating a Conditioned, Special Exception Provision for Outdoor Seating for Smaller Take-out Food Establishments in the C-TS Zoning District; Section 134-1161, by Eliminating the Requirement for Annual Renewal of Outdoor Seating in the C-WA District; Section 134-1107, Permitted Uses, in the C-TS District by Clarifying Where Office Uses Are Allowed on the First Floor; Section 134-1157, Permitted Uses, in the C-WA Zoning District by Eliminating Office Uses on the First Floor; Section 134-2435, Signs in Vias , by Creating this Section to Specifically Regulate Signs in Vias; Section 134-1699, Lake Trail Access, by Renumbering the Previous Section 134-1699 Through 134-1701, as Appropriate to Create this Section to Prohibit the Use of Bike Trail Access for Private Driveway Use; Section 134-2, Definitions and Rules of Construction, Creating a Definition for Office Suites, Sections 134-1107, 134-1157, 134-1207,134-1257 and 134-1302, Permitted Uses, Creating a Conditioned Permitted Use for Office Suites in the C-TS, C-WA, C-OPI, C-PC and C-B Zoning Districts Respectively; Section 134-2180, Approval of Plan for Ingress, Egress and Landscaping, Providing a Cross Reference to Section 106-4 Which Adopts by Reference the Town's Right-of-way Manual; Sections 134-1109, 134-1159 and 134-1209, Special Exception Uses in the C-TS, C-WA and C-OPI Zoning Districts, Respectively, to Identify Residential Tenancies above the First Floor; Sections 134-1113, 134-1163, 134-1212, Lot, Yard and Area Requirements-generally in the C-TS, C-WA and C-OPI Zoning District, Respectively, to Provide Densities in Those District for Single-family and Multi-family Dwelling Units; Section 134-654, Residential Density, to Eliminate an Incorrect Footnote Reference; Section 134-1059, Lot, Yard and Area Requirements-generally, to Provide the Correct Density Allowed for Two-family Dwellings; Section 134-1607, Permitted Exceptions, Clarifying the Provision; Section 134-2175, Number of Parking Spaces Required-generally, Correctly Referencing the Provision for Required Parking; Section 134-532, Properly Referencing Zoning Season; Section 134-562 Refusal to Grant Variations in Tentatively Approved Plan, by Correctly Referencing the Beginning of Zoning Season; Section 134-36, Powers of Building Official; Council Order for Issuance in the Zoning

Chapter with Regards to Approval of Curb Cuts and Private Drive Site Visibility Triangles; Section 134-261, Town Council Actions; Submission to Zoning Commission for Recommendations and Report; Hearings, Replacing References to the "Zoning Commission" with "Planning and Zoning Commission"; Section 134-478, Town Council Approval for Permitted Use and Special Exception Use; Review by Zoning Commission; Hearing; Site Plan Review of Application, Replacing References to the "Zoning Commission" with "Planning and Zoning Commission"; Section 134-532, Public Hearings, Replacing References to the "Zoning Commission" with "Planning and Zoning Commission"; Section 134-1670, Retaining Wall, Correcting a Typographical Error by Deleting the Word "Any"; Section 134-1262, Lot, Yard and Area Requirements – Generally in the C-PC District Removing Codification Errors Referencing Third Story Provisions; Section 134-796, Exceptions to Height Limitations in the R-AA District, by Eliminating Codification Errors Referencing the R-B District; Section 134-846 Exceptions to Height Limitations in the R-A District, by Eliminating Codification Errors Referencing the R-B District; Section 134-1473, Height, Width and Length Limit for Properties Adjacent to Properties in Districts Other than R-B, by Correcting a Typographical Error in the Reference to Section 134-227; Providing for a Penalty for a Violation Hereof; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.

Town Manager Peter Elwell read Ordinance No. 1-04 by title, as printed above.

Councilman Brooks moved approval of Ordinance No. 1-04, on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

B. ORDINANCE NO. 2-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Application of the Town of Palm Beach to Amend the Official Zoning Map of the Town by Changing the Zoning Designation of Approximately .19 +/- Palm Beach Acres on the Northeast Corner of Bradley Place and Atlantic Avenue from C-TS (Town-serving Commercial District) to R-C (Medium Density Residential District) Zoning District Classification; Providing for Repeal of Conflicting Ordinances; Providing for Severability and Providing for an Effective Date.

Town Attorney Randolph read Ordinance No. 2-04 by title, as printed above.

Councilman Goldblum moved approval of Ordinance No. 2-04 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

C. ORDINANCE NO. 3-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Application by the Town of Palm Beach to Amend the Official Zoning Map of the Town by Changing the Zoning Designation of approximately 1.23 +/- Palm Beach Acres on the Northwest Corner of Royal Palm Way and South Ocean Boulevard from R-C (Medium Density Residential District) to C-B (Commercial District) Zoning District Classification; Providing for Repeal of Conflicting Ordinances; Providing for Severability and Providing for an Effective Date.

Town Attorney Randolph read Ordinance No. 3-04 by title, as printed above.

Councilman Brooks moved approval of Ordinance No. 3-04 on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

D. ORDINANCE NO. 4-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Creating an Investment Advisory Committee; Providing for Appointments, Terms, Qualifications, Functions, Regulations and Procedures;

Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 4-04 by title, as printed above.

Councilman Goldblum moved approval of Ordinance No. 4-04 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll the motion carried unanimously.

XI. CONVENE AS LOCAL PLANNING AGENCY

A. Call to Order and Roll Call

President Wyett called the Local Planning Agency to order at 3:00 p.m. On roll call, all Elected Officials were found to be in attendance.

B. Ordinance 5-04 An Ordinance of the Town Council of the Town of Palm ~~Beach, Palm Beach County, Florida, Amending the Adopted Town of~~ Palm Beach Comprehensive Plan, Pursuant to Chapter 163, Florida Statutes, Amending the Future Land Use Map to Ensure Compatibility with the Town's Zoning Map. The Subject Parcels Are Located At: Parcel 1 - 200 North Ocean Boulevard (From Multi-family Moderate Density to Single Family Residential); Parcel 2 - 160 Brazilian Avenue (From Commercial to Single Family Residential); Parcel 3 - 40 Cocoanut Row (From Multi-family High Density to Commercial); Parcel 4 - 247, 231, & 221 Royal Palm Way (From Multi-family Moderate Density to Commercial); Parcel 5 - 215 Seaview Avenue (From Commercial to Multi Family Moderate Density); Parcel 6 - 218, 222, 224, & 228 Phipps Plaza (West Drive) (From Commercial to Multi Family Moderate Density); Parcel 7 - 236 Phipps Plaza (South Drive) (From Commercial to Multi Family Moderate Density); Parcel 8 - Lots 8, 9, & 10 "The East Plaza" Subdivision, Situated Directly East of 255, 257, & 275 South County Road (From Commercial to Single Family Residential); Parcel 9 - Tres

Vidas Condominium, 2335 South Ocean Boulevard (From Multi-family Moderate Density to Approved Pud); Parcel 10 - Northeastern Portion of the Town Golf Course, 2345 South Ocean Boulevard (From Approved Pud to Public Recreation); Parcel 11 - Audubon Society Property, Situated Directly West of 1236 South Ocean Boulevard (From Private Group Use to Conservation); Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Herewith; Providing for Codification; and Providing for an Effective Date.

The Local Planning Agency recommended approval of Ordinance No. 5-04 by the Town Council.

Zoning Administrator Paul Castro advised that the purpose of Ordinance No. 5-04 was to change some map designations on the Future Land Use Map of the Comprehensive Plan, so that the zoning and land use were consistent with each other, which was required by Florida Statutes. The ordinance changed nine parcels of property, and was heard by the Planning & Zoning Commission, who recommended approval, and by the Town Council at its January 6, 2004 meeting, where the Town Council recommended moving forward with the proposed changes.

President Wyett called for any public comments. There were none.

Councilman Goldblum moved approval of Ordinance No. 5-04 by the Local Planning Agency to the Town Council. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

XII. ADJOURN AS LOCAL PLANNING AGENCY

The Local Planning Agency adjourned at 3:02 p.m.

XIII. RECONVENE AS TOWN COUNCIL

The Local Planning Agency reconvened as the Town Council at 3:03 p.m.

XIV. CALL TO ORDER AND ROLL CALL

President Wyett called the regular Town Council meeting to order at 3:03 p.m. All Elected Officials were found to be in attendance on roll call.

XV. ORDINANCES- First Reading

A. ORDINANCE NO. 5-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Adopted Town of Palm Beach Comprehensive Plan, Pursuant to Chapter 163, Florida Statutes, Amending the Future Land Use Map to Ensure Compatibility with the Town's Zoning Map. The Subject Parcels Are Located At: Parcel 1 - 200 North Ocean Boulevard (From Multi-family Moderate Density to Single Family Residential); Parcel 2 - 160 Brazilian Avenue (From Commercial to Single Family Residential); Parcel 3 - 40 Cocoanut Row (From Multi-family High Density to Commercial); Parcel 4 - 247, 231, & 221 Royal Palm Way (From Multi-family Moderate Density to Commercial); Parcel 5 - 215 Seaview Avenue (From Commercial to Multi Family Moderate Density); Parcel 6 - 218, 222, 224, & 228 Phipps Plaza (West Drive) (From Commercial to Multi Family Moderate Density); Parcel 7 - 236 Phipps Plaza (South Drive) (From Commercial to Multi Family Moderate Density); Parcel 8 - Lots 8, 9, & 10 "The East Plaza" Subdivision, Situated Directly East of 255, 257, & 275 South County Road (From Commercial to Single Family Residential); Parcel 9 - Tres Vidas Condominium, 2335 South Ocean Boulevard (From Multi-family Moderate Density to Approved Pud); Parcel 10 - Northeastern Portion of the Town Golf Course, 2345 South Ocean Boulevard (From Approved Pud to Public Recreation); Parcel 11 - Audubon Society Property, Situated Directly West of 1236 South Ocean Boulevard (From Private Group Use to Conservation); Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Herewith; Providing for Codification; and Providing for an Effective Date.

Town Attorney Randolph read Ordinance No. 5-04 by title, as printed above.

Councilman Brooks moved approval of Ordinance No. 5-04 on first reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

B. ORDINANCE NO. 6-04 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 Duty Disability; Amending Section 82-122 to Restate the Same to Eliminate the Five-year Limit to Minimum Duty Disability Pensions; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Ordinance No. 6-04 by title, as printed above.

President Pro-Tem McLendon moved approval of Ordinance No. 6-04 on first reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

COMMENTS FROM THE PUBLIC (AFTER LUNCH)

Mrs. Susan Lee, Pendleton Avenue, distributed a 'fun' raiser flyer for Councilman Brooks held at Cucinas on February 1st, stating that posed a conflict for Councilmen Brooks and Goldblum to vote on issues related to Cucinas. *Councilman Brooks responded to Mrs. Lee, stating that the ability to accept contributions for the election campaign expired on Thursday, January 30, 2004.*

Jerry Frank, the Citizens Association, reported that Reach 8 on the beach has deteriorated rapidly with waves hitting the seawall. He questioned if Reach 8 could be pushed ahead to allow work to begin as soon as possible. *Mr. Elwell responded that work has begun on Reaches 2, 5, and 8, and plans are at the feasibility state with the plans needing refining at this point.*

XVI. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman McDonald requested that policies and procedures related to traffic flow in Palm Beach as enforced by the Police Department be referred to the Public Safety Committee. *Mr. Elwell suggested it could be included as part of one of the upcoming Town Council meetings to be held on March 26 (Strategic Plan discussion), March 30, or April 1. Mr. Elwell said either* *a committee meeting will be scheduled or the issue will be on the April 13th agenda.*

President Wyett commented that the Town will have to give attention to two traffic causing situations across the bridge: the Convention Center, and the many condominium buildings that are arising.

Town Manager Elwell replied that regional growth was foreseen in the Strategic Plan, and was a matter that would be discussed as a group at the Special Town Council Meeting to be held on March 26, 2004, when the Strategic Plan would be reviewed.

XVII. DEVELOPMENT REVIEWS

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

A. Appeals

1. Appeal of a Public Works Decision Regarding the Use of an Entrance Across the Seaview Avenue Access Path to Lake Trail From the Property at 14 South Lake Trail. [Frank Chopin, Esq.]

Ex-parte communication was declared by Councilman Goldblum via a meeting with Attorney Frank Chopin, by President Pro-tem McLendon via a meeting with Attorney Chopin, by President Wyett via a meeting with Attorney Chopin, and by Councilman Brooks via a meeting with Attorney Chopin, and Architect Smith at the property site.

Attorney Frank Chopin, representing Phyllis Fireman, owner of the property at 14 South Lake Trail, addressed the Town Council, stating that the applicant was appealing a Public Works decision to prohibit the use of the existing drive exit from the home. He acknowledged the cooperation that the applicant had received from the Town of Palm Beach Building Department, Bob Moore and Harry Ackerman. He explained that an issue had come up regarding a conditional certificate of occupancy, and the Town staff had worked diligently to resolve the issue.

Attorney Chopin explained that there had been, for 40 years, a shared, common area in which people exiting the Fireman property had exited into the street over a common area dedicated in a plat to a common usage. In 1968 the Town Council had approved a site plan, which he exhibited; he pointed out the area in question, and nothing had been done to change it to date. Mr. Dusey had suggested that the applicant had intensified the use of the property, and Attorney Chopin maintained that nothing had been done to intensify the use of the property. He explained that the size of the driveway on to the property had been reduced in order to enhance the greenspace cut down on the hardscape, with the effect of reducing the number of instances in which the driveway would be used to exit on Seaview. The driveway had been used as an exit primarily – Seaview was a one-way street going east, except for the lake block when it was used as a two-way street. In order to get to the entrance onto Seaview, one would have to go down to Royal Palm Way and then double back onto the lake block of Seaview, and that situation remained. He distributed several letters from Carolyn Buckley, who lived in the area, and said that the driveway in question has been used as an exit for the period of time that she lived there, and that she would not have been able to use the property for all of the events that had been held. He exhibited the permit drawings that had been submitted to the Town when the applicant had applied for the permit. He explained that the site plan had been stamped "reviewed" by the Public Works Department, as well as the Building Department, with no suggestion that there was any problem with the continued use of the driveway. He maintained that nothing was being done differently than had always been done with the property.

Public Works Director Al Dusey responded that the individual who reviews the plans submitted, Marty Gauthier, indicated that there was no formal site plan review process on this project. Staff had been concerned that the plan had shown a concrete walk that was at its narrowest point 12 feet wide, that led back to an area that looked like a service entrance. What was actually constructed was a continuous drive that started at Seaview and was 20 feet wide and comes through the property, narrowing down to the existing entrance at Seaview. Mr Dusey stated that it looked to be functioning as a circular driveway, which he believed was an intensification of use. There was horrendous site distance to the bike path – if a bicycle was coming up the bike path, a driver could not see the bicyclist.

Attorney Chopin replied that the best evidence of lack of danger was the fact that for 40 years there had not been an accident. He suggested that a permanent ballard be installed, as well as a sign and a mirror. He maintained that one could see the common area when coming out of the driveway. He explained that there had not been site plan review, as this was not a new house, and that when the paperwork submitted was reviewed and stamped as permitted, it was not unfair of the homeowner to expect that the use of the property would be changed.

Councilman Brooks commented that the drive had been used for 40 years as an egress, and he suggested that perhaps there could be a resolution of this issue.

Councilman Goldblum moved denial of the appeal of the Public Works decision regarding the use of an entrance across the Seaview Avenue access path to Lake Trail from the property at 14 South Lake Trail. The motion died for lack of a second.

Councilman Brooks moved approval of the petitioner's request for an appeal; the petitioner would be able to use the driveway, with the conditions that an appropriate mirror and warning sign be installed. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, with Councilman Goldblum casting a dissenting vote.

B. Time Extensions

1. Status of 455 North County Road - Deterioration by Neglect. [Frank Lynch, Esq.]

Director of Planning, Zoning & Building Robert Moore recommended that the Town Council receive quarterly reports on the status of 455 North County Road, as the Landmarks Commission would also receive.

Attorney Frank Lynch, on behalf of the property owner, addressed the Town Council, explaining that the undergrowth had been cleaned out so that the house could be seen from North County Road. Most of the floors had been replaced with poured concrete, the roof had been replaced. He estimated that the project would be completed approximately one year from now.

The report was received by the Town Council.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. <u>SITE PLAN REVIEW #2-2004 WITH VARIANCES</u> The application of Ajit Asrani TR, Ajit Asrani Trust relative to property described as Lot 5 and the west 85 feet of Lot 6, Block E, Royal Park Addition; commonly known as 215 Brazilian Avenue; located in the R-C Zoning District. Site Plan approval for a modification to the site plan of The Plaza Inn, to expand the building area by constructing a 4-story addition on the east side (without increasing the number of rooms) and renovate the hotel, to add a 90-seat function room in addition to relocating the existing bar and 44-seat dining room. Also requesting to add an exercise room, business center, new laundry and storage areas, new kitchen, and management office. The application requests to reconfigure the site plan by relocating and redesigning the swimming pool and associated deck, and reconfiguring the off-street parking lot; increasing parking spaces from 24 to 36 plus 6 valet spaces. Variances are requested to expand a non-conforming use by adding a 90-seat function room; tear down and rebuild more than 50% of a non-conforming building; expand a non-conforming building by adding a four-story addition on the east side of the property (The ground floor of the addition will be 4,221 square feet, and the total square footage of the addition will be 18,049 square feet); a front setback of 25 feet in lieu of the 37.58 feet required because of the building height; a side (east) setback of 10 feet in lieu of the 37.58 feet required because of the building height; a rear setback of 5 feet in lieu of the 30 feet required by code; a building height of 37.58 feet from zero datum in lieu of the maximum 23.5 feet allowed by code for a two-story building; a 4-story building in lieu of the maximum 2-story building allowed by code; an overall building height of 41.58 feet from zero datum in lieu of the 26.5 feet maximum allowed by code; a lot coverage of 34.7% in lieu of the maximum 30% allowed by code; landscaped open space of 21.1 % in lieu of the minimum code requirement of 35%; variance to allow valet only parallel parking in existing parking areas and a reduction in aisle width to 16 feet in lieu of the required 25 feet for valet parking; to allow valet only parallel parked automobiles to block another automobile requiring one automobile to be moved to allow another to be driven from the property; and, to have no loading spaces in lieu of the minimum of 2 loading spaces required by code. *Deferred From the January 13, 2004, and February 10, 2004, Town Council Meeting.*

Verbatim transcript for p9ortions of this item:

Goldblum:

Yes, with Gene Lawrence and Jim Brindell.

Wyett:

Ex-parte?

McLendon:

Yes, I had a conversation with Mr. Brindell.

Wyett:

I also - Mr. Brindell.

Brooks:

Yes sir. Sort of ongoing since this project first was discussed – with Mr. Brindell.

Brindell:

Good afternoon. I am Jim Brindell. I'm here on behalf of the applicant, Mr. Asrani, who is seated here in the Council Chambers, along with Gene Lawrence, the Project Architect. This has been pretty much a three year saga for Mr. Arsani and the Plaza Inn, and because of the special provisions under which these requests arise, I need to take a little bit more time than normal to go through some information that needs to be put into the record. To start with, I've got some documents – they're essentially all Town documents, except for the application, which, of course, is in the record in Mr. Lawrence's plans. I'd like to just submit these to the court reporter and the clerk, so they can be referred to as we go along.

1. Zoning Application - Site Plan Review 2-2004 - these are all applicant exhibits.

2. The project plans - sheets 1-13 Plaza Inn, by the Lawrence Group (11-26-03 and 1-21-04). Certain sheets were revised - sheets 9, 11 and 12.

3. The Town's Comprehensive Plan on Future Land Use. Page 1-4

4. Palm Beach Zoning Code, Section 134-2 - definitions of Town persons and Town serving.

5. Preliminary technical memorandum 1990-1991 Zoning Issues, Town of Palm Beach, Florida (11-15-90) relative to Item 7 a, b, and c.

6. Recommendations and report of the Town Zoning Commission, December 3, 1990, Items 7b, 7c, and 9.

7. Town of Palm Beach 2001-2002 Zoning Proposal Staff Report Item 3.

8. Town of Palm Beach 2002-2003 Zoning Commission Staff Report relative to parcel 7.

9. 2002-2003 Zoning Commission Staff Report study item No. 11.

10. Town of Palm Beach Strategic Plan marked 2001 - April 2003 certain excerpts of that plan that are pertinent.

So, if you'd accept these in the record as support, I'd appreciate it.

Wyett:
yes.

McDonald:
Mr. Wyett, while they're doing that, I would like to disclose that I did have some ex-parte communications. I met with Mr. Pryor regarding this application. I believe that was the only one that I had, and we discussed the merits of the application.

Wyett:
Thank you for reminding me. I also met with Mr. Pryor.

McLendon:
Likewise.

Goldblum:
So did I.

Brindell:
This property has been used as a hotel and only a hotel for 63 years. The plans that are referenced in the exhibits there, which are exhibit no. 2, show that the hotel – first of all is a very narrow building, with a width of only 40.12 feet. It has 50 very small, outdated hotel units, a breakfast room, a small kitchen, a six seat bar, a laundry room accessed only from outside the building, a pool area, and 24 parking spaces. The plans will also show that the hotel does not have adequate sized rooms. The existing rooms average about 225 square feet, including a

bathroom and a closet. I think most of you are actually familiar in being in that hotel to see those rooms. The industry average is substantially greater – around 300-350 square feet. It doesn't have a business center. It doesn't have a dining room and kitchen capable of serving lunch and dinner, and it doesn't have a function room; it doesn't have a workout room, and it doesn't have really adequate laundry or storage for housekeeping supplies. So, it's an old hotel. It has served the community well. It has certainly been Town serving for all of these 63 years. But, I think as everybody recognizes, it's old, it's outdated, and in order for it to have a life into the future, it needs to be renovated substantially. And that's what this application is about.

It comes under that special variance provision which was imposed in 1990-1991 for hotels and some residential uses which are nonconforming, where the Town wanted to make it possible for those to continue on in the future, if they have proven to be compatible with the neighborhood in the past. We have no evidence that this hotel hasn't in fact been compatible with the neighborhood for the last 63 years, if not certainly the last 15 years. It should be noted that the other small hotels of its type in the Town all have substantially more rooms than this hotel has. For example, the Brazilian Court has 80 units now – it used to have 130. Heart of Palm Beach now has 95, or will soon, with 7 additional suites. Chesterfield has 55 units, and The Colony has 90. Again, the Heart of Palm Beach added some units, so that added to that number, but there has, in fact, been a loss of hotel rooms in Town over the last several years, of 136 of these moderately priced units. So, there has been a net loss of Town serving units in the last several years in Town. The Plaza has 15 units, and there is no proposal to increase that number of units as part of this project. The Town's Comprehensive Plan, on page 1-4, which is Exhibit 3, states that the Town has been experiencing a shortage of Town serving services. I just mentioned that the Town has lost at least 136 of these hotel units in the last several years. Those were lost at The Brazilian Court, Beachcomber, and Sea Lord, and the Comprehensive Plan includes a provision of land use protection strategy of encouraging Town serving commercial development as opposed to region serving. This hotel has certainly been Town serving in fact, and is, by definition in your Code, Town serving. That's under section 134-2. The Comprehensive Plan strategy really cannot be met if The Plaza Inn is not allowed to be improved. The Strategic Plan, which is more recently adopted, provides that one of the actions the Town should take with respective commercial redevelopment is to "explore ways to promote retention of small and independent Town serving businesses." I mentioned that the Town Code was amended in the 1990-91 Zoning Season to provide relief through the variance procedure for the expansion, restoration, and alteration of certain non-conforming hotels and residential uses that for at least 15 years have proven compatible with the surrounding uses. The 2001 and 2002 Zoning Proposal Staff Report stated that the Town (unintelligible) has changed because it was recognized that in order to encourage the continued existence and viability, expansion and renovation may be necessary to allow them to successfully compete and operate. The Council reaffirmed that method of relief for the existing hotels, such as The Plaza Inn, at its February 2002 Council meeting when it considered and rejected The Plaza Inn's request to add back hotels as special exception uses in the R-C Zoning District. The Council's concern was that by putting it back in the R-C District, and any property in the R-C District could come here and ask to be a hotel, and while I believe it's fair to say that you wanted to encourage that the Town protect existing hotels, you didn't want a proliferation of new hotels in Town. At that time, the reference was that there was a variance provision available to address those renovations and expansions.

Again, this special provision was again reiterated in this years's 2003-2004 Zoning Commission Report, where it discussed the proposal by the applicant to change the zoning to CB, even though the Town has a contrary proposal to change the use to residential, which is now designated to commercial. Certainly, the variance requests before you today are brought under this special provision. They do not constitute any precedent for request under the general variance provisions, because they have been tailored for these particular types of nonconforming uses. They indicated the proposal was to retain the 50 hotel units, but try to create larger units, which actually are conducive to today's market. The plan, which Mr. Lawrence will show you in a minute will have 10 suites, and 40 studios. The existing rooms average about 225 square feet, and the proposed would be about 420 square feet. The plan would add a function room, a dining room, a business center, a workout room, enlarge the bar area, enlarge the kitchen, and provide storage rooms and a laundry room that is accessible from inside the building, and provide a hotel office. There will be an increase in the number of parking spaces, from 24 to 36 self-park spaces, and an additional six valet spaces. Right now there are 24 total spaces out there. The re-design of the pool would also occur, and the handicapped requirements would be met with that provision. Now all of this would be accomplished by adding a fourth story component on the east side of the existing hotel. Most of these function related facilities that I mentioned a minute ago, Mr. Lawrence will show you would be on the first floor. I think he will tell you that they are not overly sized. They are just reasonable sizes. The fourth story element, and I would like to confirm this, would be no higher than the Brazilian Condominium to the west. By adding these components to the east of the hotel, they remain as far away as possible from existing residential at The Brazilian immediately to the west, and then some of the other residential that is to the southwest across the street. The fourth story element would be 131 feet from the west property line, and the existing third story element would remain at 105 feet 4 inches from the property line. I would like Mr. Lawrence, if he would, to go through the plans and show you what's proposed and answer your questions about the elements that are proposed and why they are located where they are, or any other questions that you might have. And then, I'll discuss the requests we are making.

Eugene Lawrence:

Thank you. My name is Eugene Lawrence. I am an architect. I will go through these as quickly as we can, but I do think it's important that you understand what's there and what we are proposing. This drawing shows the property in question. This is South County Road, Brazilian

Avenue. This is a one story commercial building that has the Hamburger Heaven and an art gallery on the corner. This is a three story over parking four story residential building to the west. This is a photograph of the existing hotel. Moving to the right there is an alley that leads behind that commercial block on County Road. This is a one story commercial building on the corner. This is the land that is the parking lot and the swimming pool behind between this building and the residential building to the west. This is the three story over parking building to the west. That's the context in which we are working. I think it's important that you look at what's there. This is the first floor of the existing building. This is the alley between the commercial property and the hotel. This is the swimming pool and a parking area. You'll notice that on the ground floor we have a lobby at the south end, about a six-seat bar off that lobby, a small dining room in the north end and a kitchen, and that, with the laundry, comprises the total amount of common spaces in the hotel. This is a typical second and third floor – these are rooms, bathrooms, and office – double loaded corridor, and I would point out to you that most of the major hotel companies have books that specify their minimum standards for rooms, and suites, and things of this nature. Sheraton has it, Holiday Inn has it, we used a company called Cheedo Hotels in Europe, which, because they have a lot smaller bathrooms, and we've done a lot of these hotels – they use smaller rooms. They're looking – Sheraton is looking for five plumbing fixtures in any bath, a 5 ½ - 6' tub. These bathrooms are 4 ½' and in our first evaluation of it we went through it to say could we re-do this, because we've done several of these on this coast and the other coast, and there's nothing here that even comes close to the criteria established by the hotel companies in the country.

These are elevations of the existing building. You saw the photograph. It has been called art deco by the Architectural Commission. I'm not sure what I'd call it. It is probably built as inexpensively as it could have been built. It is totally out of date. We don't think that what's here is marketable at all in today's world. But, I think you need to look at that as a cold, hard drawing – that's what's there, and there is really not much there. This what we propose. The shaded area that you see – this is the footprint of the existing building. This is the line of columns that goes down through the building to support the wall. We propose to add an approximately 30' addition to the east, away from the building to the west, toward the commercial area. This ground floor would have a function room, a dining room, a food service operation, a computer center, a fitness center, and management offices. A new pool was reconfigured to the west, and then we re-shaped the parking here within basically the same area as we had before to add the cars that Jim pointed out. I will also point out that of the original 24 cars, 4 of them were off the alley to the east, so they really had 20 cars here, so we've been able to shape that up to get a lot more parking. I will also point out that there are several major trees on the property, which screen the building to the west to the hotel. We would propose to retain those trees, and they are indicated here on this site plan. This is again Brazilian, entrance from Brazilian and the alley to the east. This is the second and third floors, and it is difficult to see from where you are, but Jim pointed out that we have 40 additional studios, and 10 suites, with living spaces and sleeping spaces. We relocated the elevators so that we get more central location. We've optimized the views. We've added balconies to all of the units so that we get some outside space, but the addition has been made to the east of the hotel, away from the building to the west. This is the pool down below. The fourth floor addition is only over the new addition that we put on the first three floors. The reason for that is not charity. The reason is that I'm scared to death to put anything on what's already there. So, if we put a fourth floor over just the new portion, we are further away from the neighbors to the west, and we pick up additional suites.

End of this portion of verbatim - verbatim was also done of the portion of the discussion dealing with the motion made regarding Site Plan No. 2-2004.

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Mr. Lawrence continued with his presentation, indicating the elevation from the east and west, as well as the trees he had mentioned earlier. He exhibited the streetscape of the area.

Attorney Brindell continued with his presentation, detailing the requests being made. He advised that the new drainage requirements would be met. There were no significant site plan issues. He stated that the hardship was the fact that the hotel was old and did not have basic amenities anymore, except for the pool. The rooms were extraordinarily small and did not meet the minimum requirements expected today. He maintained that the Town's objective of trying to encourage the retention of these Town serving uses really could not be met, unless hotels of this type would be allowed to provide the minimum kind of facilities and room sizes that the market today expects. Attorney Brindell noted that there were three letters of support provided to the Town.

Zoning Administrator Paul Castro commented that there was a provision in the Code to provide for variances for unique hotels that had been in existence for at least 15 years. That was one criteria for findings of a variance, however, there were five others that the applicant must meet. The major concern of staff was related to the continuance of a unique hotel, and the last item that the applicant requested was to completely tear down the hotel and rebuild it. He explained that the intent of that provision in the Code was to preserve a unique hotel, and to encourage its survival by allowing for some breathing room as it related to growth and trying to meet some of their economic needs as it related to being competitive in the market for small hotels in Palm Beach. If the hotel was torn down and rebuilt it would require twice the parking that was there with the proposal today. Staff had made a determination that any generated parking demand over and above what was there, for the new function rooms and amenities would require additional parking. Parking was a major concern of staff. There was also concern related to the size of the proposed addition. The Code allowed a maximum of two stories, 23 ½' in height, and the applicant was requesting almost double that height, as well as two additional stories over and above what the Code allows. In terms of the alley and the use of the alley and not requesting a loading zone – there were parking spaces that abut the alley that could be used for loading and unloading on the alley, and staff questioned the application as it related to the use of the alley over time, because that was a private alley and it may not be able to be used in the future if the owner of the property eliminated the general public use of the alley. There was also a concern related to fire sprinklering the building, and enlarging the elevator so that there was the ability to provide stretcher service for the Fire Department. There were concerns about the plantings on the walls on the northerly utility easement. There were concerns regarding the applicant truly meeting the test for variances. There were 14 variances proposed within the site plan application. The Architectural Commission had substantial concern over the architecture, and that was something that they had reserved the right to reconsider. If the project was to be considered at all for any type of approval, staff would recommend that a Declaration of Use Agreement be entered into by the applicant as it related to the use of the new function areas and the hotel itself. The hotel would be significantly larger, and would be made much more intense for Brazilian Avenue.

Attorney Ray Royce requested the square footage of the existing building?

Architect Lawrence replied that he did not know offhand.

Attorney Ray Royce clarified that the building was approximately 40' wide and 150' long, which was approximately 6,000 sq. ft. per floor, and with three floors that would equal about 18,000 sq. ft. He clarified that the new building would be approximately 65' in width and 150' long, approximately 9,750 sq. ft. per floor, with three floors that would equal about 29,250 sq. ft., and the fourth floor would add 5,250 sq. ft. for a grand total of approximately 34,500 sq. ft.

Architect Lawrence responded that his calculations resulted in approximately 31,500 to 34,000 sq. ft. In response to Attorney Royce, Architect Lawrence advised that a contractor would be able to provide the cost per square foot, and that he did not have an estimate as to what the building in question would cost.

At this time, members of the public were invited to speak.

Mr. Louis Pryor, 227 Brazilian Avenue, Apt. 3-A, addressed the Town Council, stating that he was addressing the Council both as president of the board of the 28-member condominium association and also as one of the countless Town residents who supported the elected officials in their ongoing efforts to guard against over development, and the reference to only encourage re-development consistent with the existing neighborhoods, as reflected in the Town's Strategic Plan. He stated that he was affected by the fact that everything had been heard to make the hotel more viable and more competitive, even though it would be larger. He stated that the Plaza Inn and the Condominium were two special exceptions on the street, which was zoned two-story residential. Proof of the concern to maintain the neighborhood was the fact that many townhouses built on Brazilian over the years had been held to two stories. He stated that the Condominium had emphasized that if more than 50% of the building were modified or torn down, it would still be restricted to only two stories in any replacement. He stated that the plans were radically different than the plans that had been supported two years ago. In 2003, Mr. Pryor stated that the Condominium had been advised by letter that Mr. Arsani would be asking the Town to allow construction of 13 residential apartments with an anticipated selling price of $1.5 million each, or a total of almost $20 million. The Condominium had opposed such a thing. Now, Mr Arsani was back with a hotel proposal that was much more ambitious than the one he had indicated as recently as two years ago. The proposed fourth floor addition would eliminate the view for residents of the Condominium. He maintained that the height variance was clearly to the detriment of the property values of the Condominium. He requested that the application be denied.

Mr. Lesly Evans, owner of 214 Brazilian, addressed the Town Council, stating that he had stayed in the Plaza Inn and that it was very beautiful, however, much outdated. He stated that he disagreed with Mr. Pryor on several points: he noted that the Heart of Palm had been granted some renovations, and that the Plaza Inn should be treated likewise; Mr. Pryor had been concerned with the economics regarding the re-sale of his own unit, however, he talked about the fact that he thought Mr. Arsani was doing the renovations for economic benefit; the loading zone in the alley was in front of 215 Brazilian, and people carry things with a cart down the alley – there was no way that it could be reconfigured to have a truck pull in or out. Mr. Evans maintained that the building in which he resided on Brazilian was a two story building; there was also an apartment building across the street from Mr. Pryor which was also four floors – therefore, there were other buildings on the street that were more than two stories. He stated that he believed that the hotel was important and that the Town could not afford to lose it.

Mayor Smith commented that the application was for a renovation, however, the whole building would be torn down and a new building would be put up.

Attorney Brindell responded that in order to get the application in front of the Town Council as an option, the request was made in the form that was presented. He explained that Mr. Lawrence had a plan to do this as an addition, with the renovation of the existing three floors. He explained that the 50% rule had been a discussion in a number of other developments, and that he had wanted to put the application in front of the Town Council.

Town Attorney Randolph commented that he believed that this was the first time that the Building Department had heard that this may be a total rebuild, as opposed to a renovation, and a variance for the 50% rule to allow a nonconforming structure to be rebuilt was one thing. However, it was another thing to allow a use which was not otherwise allowed in the district. He explained that the hotel use was a nonconforming use in the district and once the whole structure was torn down the use would no longer be in effect. A variance could not allow for a use in an area that was not otherwise allowed.

Councilman Goldblum recommended that the fourth floor not be built, and the room rates be raised for the remaining rooms.

Attorney Royce entered the following documents into the record:

Section 134-201 of the Town Code
Copy of the Warranty Deed from the First Union Bank, as Trustee, to Mr. Arsani (1990)

He stated that he had listened with great interest, wondering how Attorney Brindell would handle the case, since it was legally impossible. He maintained that the application was not to renovate, but to tear down or to rebuild in some manner a hotel that was twice as big as the current hotel, in terms of square feet. He noted that Mr. Arsani had purchased the property in 1990, subject to restrictions, reservations, and easements of record, taxes, and any and all valid zoning ordinances. He exhibited pictures that he had taken from the fourth floor of the Brazilian Condominium, with a view to the east, and he submitted that it as unfair, unjust, and inequitable to take that view so that Mr. Arsani could benefit. He cited several legal cases in which it had been held that the applicant must demonstrate a unique hardship in order to qualify for a variance; a hardship may not be found unless no reasonable use could be made of the property without the variance. Attorney Royce maintained that there was no hardship in the case at hand, and that economics was not the basis for a hardship.

Attorney Brindell pointed out that in 1990-1991, the Town Council tried to address a fundamental conflict between the normal rule about nonconforming uses, which was that over time, they would go away. In the preliminary technical memorandum of 1990-1991 there was discussion concerning that issue and the observation was that if there were some uses in Town which were nonconforming, but that were not desired to go away, then special provisions would be needed for them. That was why the special provision in the variance criteria had been developed. A special category had been created, that applied to very few properties that were Town serving properties. The Comprehensive Plan encouraged Town serving uses. It was not surprising that an old hotel was now located in what had become a residential district.

Director of Planning, Zoning & Building Robert Moore commented that staff had advised the applicant that they believed the applicant was going down the wrong road. Staff had advised the applicant that staff believed that this application should be denied, and that they ought to apply for a re-zoning on the property to go to multi-family, RD-2, which would allow them by special exception to have that fourth floor, and also would allow them to have the number of units without a variance. A Comprehensive Plan amendment would be required in order to do that.

The motions made are transcribed as verbatim below:

Brindell:

....The suggestion that Mr. Moore made about going to R-D(2) came out of the Zoning Hearing we had in January. I don't want to drag Mr. Asrani through another year and a half of this process. I'd rather see us get something that I know is acceptable for the hotel and then if everybody thinks...we still have the issue of the zoning and the Comp Plan and maybe that would be better referred back to the Zoning Commission for the next season, but at least if we could resolve the hotel renovation issue of the 3rd floor - 4th floor thing and be done with that part, then he would know, he would have some direction he could go.

Brooks:

It has taken us a long time to get to this point, so...

Brindell:

Am I correct, Mr. Asrani? That is correct. So, we will do that

Brooks:

So, are you looking for a motion to defer once again?

Brindell:

No, unless Mr. Lawrence thinks that he might want to play with something on the first floor beyond the footprint that is proposed.

Smith:

Does that mean they are still going to have to tear it down?

Brindell:

Mr. Asrani – I'm sorry, I think....

Smith:

I'm sorry. Does that mean then that you will not have to tear the building down. You'll simply do the addition.

Brindell:

Well, I think Mr. Randolph has cut that option off. We only presented that so you would have it in front of you.

Lawrence:

Let me address that. The building was designed to fit within the footprint of the structure.

Brindell:

It doesn't work.

Smith:

It does work, now. Right?

Lawrence:

The building is designed to fit within the footprint of the structure. The tear down is just a tangent. It can fit with what is there. There is no necessity to tear the building down to do the scheme that we are presenting to you. It's hard, and Mr. Wyett is absolutely right. It is probably going to cost more money, but you can do within the frame work of what is there.

Brindell:

I think the only caveat that Mr. Asrani is willing to give up is the fourth floor, but I think his only caveat is he would like to have time to make sure with Mr. Lawrence that the remaining three floors in that footprint works.

Brooks:

Well, that has to be a deferral. We should...

Brindell:

I think that is probably right. Is that acceptable to you to have us take a look at that?

Wyett:

Excuse me, I don't think you need....

Brindell:

To let Mr. Lawrence evaluate that?

Wyett:

I don't think you need a deferral. Why don't you take the approval. If it doesn't work, you'll come back.

Smith:

You can't approve it.

Brindell:

All right that will be fine. We'll do that too. We could come back and ask for an amendment. We can do that.

Brooks:

So, I'll make a motion to approve Site Plan Review No. 2-2004 with Variances with the exception of the height variance. Is that agreeable, Mr....? That's what I say, the height variance.

Smith:

No fourth floor.

Brindell:

No fourth floor. Yes.

McDonald:

What's the hardship? Gotta have a hardship.

Goldblum:

They don't need a hardship.

Smith:

Of course he needs a hardship. It's a variance.

McDonald:

What do you mean they don't need a hardship? There are variances.

Brindell:

Well, I have some findings that I would like to suggest that you take a look at if you would that deal with that. Again, I will repeat what I – the same thing I said at the Heart of Palm Beach which also came under the Special Provision. If you want to meet your Comp Plan objectives of Town-Serving in trying to encourage those Town-Serving uses to continue, and you want to comply with your Strategic Plan that says to do the same thing, you've got this zoning provision and this variance provision which focuses on that and on the viability – the continued viability – of these special case, non-conforming uses. You cannot achieve those objectives without these variance, and that is the hardship. You cannot achieve your Comprehensive Plan objectives in this case without these variances.

McDonald:

Well, that's sort of like finding a hardship on our part. We are not trying to find a hardship on our part to grant it. We're trying to find a hardship from the applicant to grant it. So, maybe if you reverse that, it might work. But, it doesn't sound quite right the way you've got it right now.

Wyett:

You did for the Heart of Palm, though. I still have lights on. Bob?

Moore:

Before you draft that motion and before you go down the road of making this approval, I think it is vitally important to the applicant to understand that if you are going to give this type of approval today, one of the conditions we are going to ask for is a phasing plan of how they intend to do this.

Brindell:

Absolutely.

Moore:

However, if we find that it is going to be outside of your approval here today, they will be having to readvertise – it will take them two to three months to get back here once we have reviewed that plan and it may be more depending on how long it takes Mr. Lawrence to get a plan to us to look at. So, if you are intent in passing it here today which we think you really ought to defer it so we could look at that plan and you could see that plan too. I don't see the rush to approve, and we would also like to confer with Mr. Randolph just to be sure that how much they are tearing down is going to meet the portion of the non-conformity not being able to rebuild.

Wyett:

Are you saying it would be better to take a deferral?

Smith:

Yes, of course.

Brooks:

I said that eleven minutes ago.

Moore:
Sure.

Smith:
Then they come back next month, and you see a plan.

Wyett:
Do you want to withdraw your motion?

Brooks:
I would like to make my first motion–motion to defer Site Plan Review No. 2-2004.

Wyett:
The Chair entertains a motion to withdraw the motion to approve and will entertain a new motion to defer.

Smith:
Yes. Yes.

Brooks:
I need a second.

Moore:
For the express purpose of reviewing it for three stories and for the staff to review –

Wyett:
The Chair has a motion to ... second ... without...

Randolph:
The maker of the motion can just withdraw. It hasn't been voted on, has it?

Brooks:
No.

Randolph:
Just withdraw that motion.

Brooks:
I have, and I made the second motion...

Randolph:

Right. I thought Mr. Wyett was asking for a motion to allow it to be withdrawn. I think you can just.....

Brooks:

There was no second. I withdrew it. I am now making a motion that Site Plan Review No. 2-2004 be deferred until the April meeting. Is that...

McDonald:

Second.

Wyett:

Mary, may I have a vote?

Randolph:

With specific direction to take off the fourth...

Brindell:

We agreed to take off the fourth floor.

Roll Call:

The motion carried 5-0.

Moore:

Now, we still have a Comp Plan amendment, and Mr. Frank is here, and we believe you do need to take action on that Comp Plan amendment because of the advertising that has been done. If you remember this property on the Comp Plan with scrivener's error showed commercial and we have asked for it to be put it as moderate density residential which would be the correct land use for the RC zone which is on top of it now, and Mr. Frank is at the microphone to present that.

Frank:

I believe that Mr. Moore presented it fairly well, but to fill in, the Comp Plan presently shows commercial, and that commercial was not the result of an action by the Council to change it to commercial. There was some sort of error in the production of the plan maps in the past. Mr. Brisson presented this both to the Zoning Commission and to your Commission. I believe that the error dates back to at least ten years, maybe longer than that. Essentially, the staff believes that the original Comprehensive Planning designation on that particular parcel was residential and our suggestion is to correct the map just like the map corrections you made earlier today.

Smith:
Good.

Moore:
As well as deny the application to go – to have CB zoning on the property. It will stay the RC zoning that exists now.

Smith:
Okay.

Wyett:
Are we ready for a vote?

Brindell:
Excuse me. We were the applicant on the CB. We'd like an opportunity to speak to this issue, please. This is a continuation of the hearing in January. Am I correct, Skip?

Moore:
That's correct. That's still our recommendation that you deny that.

Brindell:
I appreciate your recommendation, but I'd like not to be bulldozed on that quite as fast as you would like to.

Brooks:
Jim, you're the bulldozer on this one for the past hour and one half.

Moore:
For the past hour and one half it's been bulldozer time.

Wyett:
Mr. Brindell, I am going to give you 120 seconds.

Brindell:
We presented an expert at the last hearing in January in support of the fact that this property was not a real legitimate property for R-C for the reason that we have commercial uses on three sides, and we have a grossly non-conforming building to the west that isn't even close to what the density that would be allowed under the Code in any of your categories. We don't believe this was an error. It was, in fact, adopted by this Council. What I would suggest is that there's no need to rush this at this point. Mr. Moore suggested we even look at another option of

R-D(2). It seems to me – and you asked at the last Zoning Hearing in January – could this be sent back to the Zoning Commission? Well, I think we ought to send all of this back to the Zoning Commission. Let them look at it during the next Zoning season in light of the testimony that's come forth during this Zoning season to evaluate the Town's proposal, our proposal in light of the R-D(2) option because the R-D(2) option is a good option.

Then what the Town wants to do in terms of the Future Land Use Map being residential would fit with R-D(2). At the same time, the property wouldn't be hamstrung with an unreasonable R-C. So, that would be my recommendation. I don't really know what the sudden need is to do it now or not.

Wyett:

Mr. Moore?

Moore:

I would respectfully have to disagree with Mr. Brindell. We have advertised this. The State said they want these changes put in place so the zoning and land use will be consistent. Mr. Brindell's application was a good thought to go C-B. You have heard our staff recommendation that in reality the best thing to do for them would be to put in a re-zoning request and a Comp Plan amendment request for next year. They don't have to do that. They have got a deferral to come back to you with a plan that will work that will keep that hotel. The hotel is non-conforming under the R-C. It should remain so. If you don't do that all of a sudden you will make the hotel a conforming use if you change and agree to their land use change - rezoning of C-B. We strongly recommend that you keep the zoning in place of R-C and make the land use agree to it, and that's what we are hoping that you will go ahead and do today. Should be no deferral of this because there is no necessity of it. He is going to apparently get what he was looking for to remodel the hotel.

McDonald:

Move approval.

Wyett:

Second please.

McLendon.

Second.

Wyett:

I have a second. Any discussion?

Smith:
No. Yes.

McDonald:
Moving approval of staff's recommendation to make the change to correct the scrivener's error.

Randolph:
That means that you are going to prepare an ordinance to be read amending the Comprehensive Plan at the next meeting or what?

Frank:
Yes, we can do that.

Randolph:
So, they would have an opportunity to speak in regard to that at that public hearing for that Comprehensive Plan amendment?

Frank:
That's correct.

Randolph:
Well, Mr. Brindell had a concern about him having to be put in a position of appealing this decision within 30 days if he wanted to preserve his rights, and I don't know if you heard what they are doing. They are just suggesting that the staff go ahead and prepare an ordinance so at that time you would have an opportunity to be heard in regard to it.

Brindell:
Actually, this hasn't been transmitted yet, has it?

Moore:
No.

Brindell:
You would be putting this on the agenda for transmittal?

Frank:
This doesn't need a transmittal. This is small scale amendment.

Randolph:

No. He doesn't need to appeal this decision that is being made today to advise staff to come back.

Frank:

That's correct, but he is referring to a transmittal, and this small amendment doesn't need a transmittal, but he will have a reading just as you are suggesting, Mr. Randolph.

Brindell:

That's fine.

Frank:

Because when we put the ones on that you approved earlier in the day, this particular one was deferred. So, now we have to write it as an ordinance and put it on.

McDonald:

Move the question.

Wyett:

Move the question.

Roll Call: Motion carried 4-0 as Councilman Brooks was temporarily out of the room.

i. Consideration of Town Proposed Future Land Use Comprehensive Plan Map Amendment to Change the Future Land Use Designation of 215 Brazilian Avenue from Commercial to Multi Family Moderate Density and of Owner Proposed Rezoning of the Subject Property from R-C (Medium Density Residential Designation) to C-B Commercial Designation). *Deferred from the Special Town Council Meeting of January 6, 2004.*

See discussion above. An Ordinance will be drafted for presentation at the April 13th Town Council meeting.

b. <u>SITE PLAN REVIEW #4-2004 WITH SPECIAL EXCEPTION</u> The application of Amici Partnership and Three Seventy Five South County Associates relative to property described as Royal Park Addition, Lots 1 to 4 inclusive (less road right-of-way), Block 9 and Royal Park Addition, West 22 feet of Lot 66 and Lots 67 to 69 inclusive, Block 9; commonly known as 375 South County Road; located in the C-TS Zoning District. Site Plan review to add a 1,177 square foot awning addition and a 96 square foot marquee along Peruvian Avenue for a new proposed restaurant use. Special Exception to modify a previously approved special exception by adding a wood burning stove in the kitchen. The existing Savanna's P.B.'s name and operation is changing to Amici. Both Savanna's P.B. and Amici are under the same ownership and operation. The indoor and outdoor seating is not proposed to change, and the applicant is proposing to assign the existing off-site parking agreement from Savanna's P. B. to Amici.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the Site Plan had been approved last month, however, the applicant had been asked to explore several issues with various staff departments – the location of the recycling bin for Amici's Restaurant, and the location of loading zones for the delivery trucks. Since that time, staff had met on site and had come up with a proposal to resolve the issues in which Mr Ciminelli can live with, and which also improved the concerns of the Everglades Condominium.

Veronica Close, Assistant Director of Planning, Zoning & Building, addressed the Town Council, stating that the conditions were outlined in the memorandum of February 26, 2004, from Robert More, Director of Planning, Zoning and Building, to the Mayor and Town Council:

1. Move the bus stop currently located on S. County Road adjacent to Peruvian, north to Chilean in order to create a loading zone for large trucks, so that they no longer park adjacent to Scotti's, which is directly in front of the Condominium.

2. Create a loading zone in place of the bus stop.

3. Require all vendors with large trucks currently using the loading zone adjacent to Scotti's on Chilean, to use the newly-created loading zone.

4. Allow passenger vehicle parking in the newly-created loading zone afer 12:00 p.m.

5. Create two new parking spaces on the south side of Chilean across from Scotti's and have the existing fire hydrant moved at applicant's expense.

6. Allow the passenger loading zone with two metered spaces on Peruvian adjacent to the restaurant to be used for valet afer 11:30 p.m. instead of the current time of 6:00 p.m. Prior to 11:30 a.m., they would be limited to 15-minute parking.

7. Require Amici's to move its recycling containers to the dumpster area currently located behind its building on the corner of Chilean and S. County Road.

Ms. Close advised that Amici's had agreed to notify all vendors that deliveries must occur at the new loading zone on S. County Road before noon. In addition, the Public Works Department will be emptying the trash and recycling bins on or after 9:00 a.m.

President Wyett expressed concern regarding the parking meters opposite the Post Office, as it was already inconvenient for people to use the Post Office, and removing the meters would infringe on the rights of the vast majority of people who use the Post Office. He urged that the valet parking not be done at the expense of the public, nor the number of parking meters be reduced at the expense of the public during the day.

Attorney Kolins advised that up until 11:30 a.m. the spaces would be available for post office patrons to park; the only difference was that they would be able to park without using a meter. The meters themselves were physically in the way of the safe alighting of people using the restaurant. They would still be able to park there for 15 minutes, however, there would not be meters. Because of the location and the relationship between the valet area, the garage, and the traffic coming along Peruvian, a back-up and safety problem would be created for the public if the valet was not at the parking lane, but one lane further out into the street. The plan that was proposed had both public and private benefits.

Director of Planning, Zoning and Building Robert Moore commented that there had been a problem with the valet system that was in place; people could not make the left hand turn into Peruvian to go east and then queue up to get into the valet. One more valet person was also being required.

Mr. Irwin Gusman, Vice President, Everglades Plaza Condominium, stated that there was a concern regarding the parking spaces on the street, as the residents of the condominium would not be able to get in and out. He provided photographs of the trucks parked along Chilean.

Mr. Moore explained that the loading zone was proposed to be on the west side along County Road.

Mr. Gusman continued that the garbage was a concern – the noise from the garbage and the bottles was a problem; often the garbage was overflowing, bottles were broken on the floor, etc. There were not enough bins, and a very unsanitary situation was being created. He suggested that the restaurant should determine what it could do to efficiently dispose of the garbage. He suggested that there may be enough space in the underground garage to eliminate the parking problem.

Mr. Moore advised that it had been agreed that all bottles would be stored in the restaurant and dispose of them in the morning, just as was done at the Trevini's in the Esplanade.

Councilman McDonald moved approval of Site Plan No. 4-2004, with all of the conditions that had been worked out with staff and the applicant and the two condominiums (on Chilean and Peruvian) involved. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

c. SITE PLAN REVIEW #7-2003 WITH VARIANCES The application of 11 Via Vizcaya, LLC relative to property described as Lot 13, Via Vizcaya; commonly known as 13 Via Vizcaya; located in the R-A Zoning District. Site plan approval to construct a single family house on a platted, non-conforming lot with an existing lot area of 15,987 square feet in lieu of the 20,000 square foot minimum required, and with a lot depth of 130.8 feet in lieu of the 150 feet minimum required in the R-A Zoning District; variance request for a street side setback of 15 feet on the south side of the property in lieu of the 35 feet minimum required; and, request for a building height plan variance with a setback of 39.2 feet in lieu of the 47 feet minimum required. *Deferred from the December 9, 2003, and January 13, 2004, and February 10, 2004,* *Town Council Meetings.*

Ex-parte communication was declared by Councilman Goldblum with Attorney Ron Kolins; by President Pro-Tem McLendon via a meeting with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the applicant had now come before the Town Council three times in order to secure site plan approval for a home on lot 13 Via Vizcaya. The applicant had been asked to reconsider the issues regarding the objections of one or more neighbors as to the need for any setback whatsoever. He presented plan #3, which would not require any variances, and would satisfy all Code requirements. He requested that the record made at the previous hearings on this subject before the Town Council be incorporated into the record of his hearing. He submitted a two page document entitled Vicinity Plan, which indicated the location of house #3 on the lot, as well as in relationship to all of Via Vizcaya, to Vita Serena, to the 200 sq. ft. of reference as called for in the Code, as well as a great deal of information about each one of the houses in terms of lot size, square footage, etc. He noted that he had met with neighboring property owners and shown them each plan that had been considered to date.

Architect Robert Janssen displayed the new site plan, with the major difference being that the entrance to the building was now on the north side of the property. He presented the landscape design.

Zoning Administrator Paul Castro commented that the applicant had eliminated the requirement for the variance related to the front setback and the building height plane. The new plan was sensitive to the street, as it related to the setbacks. The swimming pool was located at the west side of the house, with a wall in front of it, and a hedge. The only other issue of concern to staff was related to the driveways meeting the site visibility requirements that the Public Works Department would require.

Mrs. Lillian McHugh, 14 Via Vizcaya, addressed the Town Council, stating that out of the three different plans proposed, the third one was more acceptable than the other, however, the architect could do better. She objected to the height of the house at 29 feet, as her house was one story and consequently much smaller.

Attorney Kolins pointed out that the house was 5 ½ feet lower than allowed by Code, and only one-third of the entire back area of the house, as it backed up to Mrs. McHugh's house, was two-story, the other two-thirds was one story.

Town Attorney Randolph pointed out that even though there were no variances, there were still criteria under the Code that were required to be met in order to pass site plan review. When a motion was made there was a requirement that the Town Council should make a finding that any approval of a site plan will or will not adversely affect the public interest, and certify that the standards had been met (Items 1-11).

Attorney Kolins advised that the application addressed each criteria, and that Ms. Anna Catrell, land planner and zoning expert, was present to discuss the issue of the compatibility of the house with the houses in the surrounding neighborhood. Mr. Rick Gonzalez, an expert in architecture design, was also present to provide an analysis of the compatibility of this architectural style with the houses in the surrounding neighborhood.

Mrs. Monnie Donnelley addressed the Town Council, stating that she continued to be concerned about the mass and the compatibility within the neighborhood. She also was concerned with the traffic in the circle in the neighborhood. She stated that she would prefer a one story house with less square footage and less mass.

President Wyett commented that the second house plan was a better looking house.

Mrs. Donnelley responded that the rest of the group of neighbors, including their attorneys, were not present, because there were no variances requested.

Attorney Kolins compared house #2 with house #3, exhibiting the renderings of the two houses. The houses were the same height.

Mrs. McHugh commented that she had assumed that because the applicant was not requesting variances that there would be no objection by the Town Council. She stated that she would prefer it further away from her.

Councilman McDonald commented that it seemed that the neighbors had gotten wrapped up in the variance process and didn't seem to care what the house looked like at the end. He suggested that they might want to re-think the issue.

Attorney Kolins responded that he had tried to show the pros and cons of each design to the three neighbors that had been at the meeting.

Town Attorney Randolph clarified that once the site plan review was passed by the Town Council, the role of the Architectural Commission (ARCOM) would be quite limited. It would be only in regard to the architecture.

Mrs. McHugh replied that she understood that; it was the fact that the applicant had met the Code, and that perhaps the architect could "pretty it up."

Zoning Administrator Paul Castro commented that while the applicant had been asked to look at the design of the house to try to be sensitive to the Zoning Code and the neighbors, both site plans and elevations (#2 and #3) were in front of the Town Council. Nothing had been withdrawn at this time. Plan #3 was designed to meet Code, being as sensitive as possible to the neighbors; plan #2 was more sprawling in terms of the coverage and variances needed, was more sensitive as it related to the property to the east, and provides more architectural detailing and elevation changes.

Attorney Kolins again presented the diagrams for all three houses that had been proposed to date.

Councilman Goldblum moved approval of Site Plan Review #7-2003, PLAN #2, with the hardship being that the shape of the property was three sides on one street, with the finding that the site plan criteria had been met, and the public interest was not adversely affected. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Brooks casting a dissenting vote.

d. SPECIAL EXCEPTION #22-2003 WITH SITE PLAN REVIEW
The application of Palm Beach County Bank relative to property described as Lots 46 through 55 inclusive, Sunrise Avenue Addition No. 2, and Lots 35, 36 and 37, Bungalow Park Addition; commonly known as 165 Bradley Place, 255 Sunrise Avenue, and 285 Sunrise Avenue; located in the C-TS Zoning District. Special exception to allow two bank drive-thru stalls for the existing building on the northwest portion of site; and Site Plan Review for a bank with two new drive-thru stalls, parking reconfiguration and modifications to on-site traffic circulation. *Deferred from the October 14, 2003, November 12, 2003, January 13, 2004, and February 10, 2004, Town Council Meetings.*

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the applicant wanted to resurface and re-mark a parking lot in a small shopping center. In so doing, a number of issues had been raised by staff; the applicant had tried to address each and every one of those issues. He exhibited a graphic illustration of what was being requested. He explained that the applicant was not adding any additional access points; it was proposed to close off the access on Park Avenue; the two access points on Bradley would remain exactly the same; the two access points on Sunrise would remain, however, the access point would be for "out" only and the access point to the east would be two-way. That access point would be widened to accommodate that. That access point was blocked currently, so that traffic had to back out onto Sunrise if a parking place could not be located. All drive aisles would be widened to meet the Town Code. The dumpster had been relocated. The handicapped spaces had been widened and increased. The pavement portion of the lot was now further from the curb, consistent with the 25' distance requirement of the Code. A drive-through teller lane was proposed to be added. The parking lot would be safer and better. The only issue that remained is the question of turning radii for cars coming from various directions to get into and out of the drive-through lanes. He exhibited a graphic illustration regarding the traffic pattern. He stated that for each turn, there was a 21' turning radius, which was plenty for any car. He also provided an analysis of sizes of various automobiles, with an average of 17'.

Zoning Administrator Paul Castro commented that this was not just a re-paving of the parking lot, and narrowing or widening of the drive aisles. The applicant was leaving one drive aisle a little more to the west, and consequently leaving the parking up against the building where it was not before. That cut off between 14 and 16 feet of the drive aisle for Wachovia, and is making an area that had been two lanes before into one lane. In addition, one entrance was being modified. Staff had continually said that there were several problems with the plan; it was physically impossible, the way the site was currently designed, for anyone coming off of Bradley Place to get into the drive through.

Traffic consultant Gareth Klotz addressed the Town Council, stating that there were some things missing from the traffic illustration presented by Attorney Kolins: the turning radii was not based upon the bumper to bumper length, but on the wheel base length. The turning radii was also based on the steering lock handle. He gave examples of cars that he had checked, with an average of 16.75' bumper to bumper – the first one checked was a 2004 Escalade, wheel base 10.83', and that did not make it; a Seville 2004 had a 9.33' wheel base and did not make it; the 2004 Escalade, which was the base model Cadillac Escalade, had a 9.67 wheel base, and that vehicle made the turn only because the steering lock angle on that Escalade was different than the step-up above Escalade. The next thing checked was conditions for emergency vehicles – the wheel base made it, however, the vehicle had to jump the curb in order to make turns coming in off of Bradley or Sunrise. The paramedic had no problem jumping the curb. A 2004 Buick Park Avenue was checked, and that did not make it. In order for the plan to work, the turning radii would need to begin on the driver's side wheel base, 21' towards Wachovia. In order to get the proposed plan to work, the applicant would need to come back with a variance to remove the existing 6-7 parking spaces in order to make the turning radii work for the vehicles just named, which also fit a majority of the vehicles shown on the analysis presented by Attorney Kolins.

Attorney Kolins replied that when he had spoken to the people that had done the program, they had told him that every vehicle can make the turn at a 21' radius, and all of the radii were at least 21'.

Mr. Moore asked if Mr. Kolins would testify as to the traffic patterns or did he have a traffic expert who would testify?

Mr. Kolins responded traffic expert Kahart Pinder would testify and Architect Blue Mingus.

Mr. Moore said he wanted the traffic expert to testify, not Mr. Kolins.

President Wyett said the Council would hear testimony from the two traffic experts which would be in conflict. He suggested the two experts, Mr. Pinder and Gareth Klotz for the Town, confer outside of the meeting with the Council deferring this item.

Responding to Councilman Goldblum's concern regarding the requirement to retain 2 inches of water on the property, Mr. Kolins replied the project was not subject to that requirement because the anticipated work was not over 50% of the value of the property or even 25%.

Mr. Moore said he did not agree with Mr. Kolins interpretation of the Code.

Glen Smith, property manager for John and Mahnaz Whelton, said he met with FPL and was told the FPL pole located on the property (which interferes with the traffic flow) could not be moved but could be placed under ground; however, it would require a 40 ft. underground vault, and there was no room for the vault on the site.

After a lengthy discussion of turning radii, Mr. Kolins offered to reduce the drive aisles to one which would result in stacking only 3 cars, and based on previous numbers, on some days the bank only has 3 to 4 transactions all day. Mr. Kolins continued that his client would be willing to do one of two things: work out a way with Consultant Klotz a solution acceptable to both parties or alternatively have only one traffic lane with one drive up window.

President Wyett said many issues were at stake with this project including the drainage, confusing traffic patterns, and moving the teller, and his suggestion was to resolve as many issues as possible with staff before returning to the Council for final approval.

Mr. Kolins said the property cannot comply with the Town's requirement to retain 2 inches of rainwater, and if this issue is covered by the Town's ordinance, the project makes no financial sense to do.

Mr. Moore read from the Town's Code of Ordinances (No. 5 in the list of items that triggers the 2 inch retention): 'proposed work - includes new driveways or parking areas. No. 6 - the proposed work includes replacement or reconstruction of parking areas other than parking areas designed for less than 3 residential units.' Mr. Moore reiterated that staff will not recommend approval of the project to the Council unless the 2 inch retention is included.

Mr. Kolins replied the plan helps the drainage but does not retain 2 inches.

Councilman McDonald suggested Mr. Kolins request a waiver from that requirement before proceeding with the rest of the project.

Mr. Kolins said he agreed and requested a waiver.

Robert Canterbury, P.E. Keshavarz and Associates, said the 2 inch retention could not be accomplished physically, because the existing site is as low as 3.4 ft. with the lowest building on the site at elevation 5.0. He continued that to retain water at this elevation nearly a quarter of an acre is required to store the water under ground or in a retention pond or lake. He added that normal water table exists at 1 ft. elevation with seasonal high water tables usually at 1.5 to 2.0 ft. above the 1 ft. resulting with the seasonal high water table at approximately elevation 3.0 resulting with trying to build an infiltration trench in the water table with no available storage capacity.

Mr. Canterbury explained the entire property cannot be raised because of existing conditions with no physical way to store water on site.

Mr. Moore reported the site once had a viable gas station with underground storage tanks.

Mr. Canterbury replied that those tanks were sealed, and if sealed tanks were to be used for water storage, once they filled up, there would be no way for them to drain. He added that if sealed tanks were used for storage, the water would have to be pumped out with no water quality treatment which is the purpose of doing on-site retention in the first place.

Mayor Smith said the issues needed to be resolved before the Town Council could vote, and she suggested a deferral. She suggested locating the drive through window on the east side of the Colonial Bank building with an exit onto Park Avenue.

Mr. Canterbury responded the residents of Park Avenue have historically opposed any commercial activity on the street, although that could be an alternative.

Councilman McDonald made a motion to defer Special Exception No. 22-2003 with Site Plan Review to the April 13th Town Council meeting to work out the traffic pattern and water retention issues. The motion was seconded by Councilman Goldblum and carried 5-0 on roll call.

2. New Business

a. VARIANCE #2-2004 The application of William S. Friedman relative to property described as Lot 10, Primavera Estates (Ocean Section); commonly known as 113 Clarke Avenue; located in the R-B Zoning District. In conjunction with the proposed remodel of the residence, variance requested to allow the point of measurement for height and cubic content ratio (CCR) to be 16.5 ft. NGVD in lieu of the 15.1 feet NGVD maximum allowed; and, variance to allow a lot coverage of 30.7% in lieu of the 20.1% existing, and the 30% maximum allowed.

Ex parte communications were not declared by any Council member.

Attorney Peter Broberg explained the existing house had a 2.9 ft. high crawl space under the house which counted toward the cubic content, and the request was for a point of measurement variance which allowed for a finished floor of 16.5 ft. NGVD in lieu of 15.1 ft. NGVD as measured from 1.5 ft. above the crown of the road. He added the crawl space accounted for 9,000 ft. of the cubic content, and the existing floor is at 16.5 ft. with the request for the addition at the same level with no step downs. He continued that the 4 ft. eaves requested for the new part also add to the lot coverage, and the hardship is the existing construction of the house.

Architect Michael Johnson explained the existing house was a bungalow with Prairie style influences, built in 1910, and the proposal was to save the main 2-story body of the house and remove the one story wings on the north and south sides. He continued the garage would be saved but the plan is to remove the two storage wings, the driveway, and the parking court. Mr. Johnson said the garage would be accessed from the rear alley, and the main entrance would be changed from the west side to the east side. He added a new two story addition would include a kitchen and a loggia plus terraces.

Mr. Johnson said six feet would be added to the existing garage with modifications to the accessory buildings, and if the existing 4 ft. overhangs on the house were excluded from the lot coverage (any overhang over 24 inches is counted in the lot coverage) the lot coverage would be

26.8% where 30% is allowed.

Mr. Castro reported the Architectural Commission reviewed the proposed project and commended Architect Johnson for the design of the additions. Mr. Castro said the only questioned hardship by staff was for lot coverage, and the other requests were in keeping with the architecture of the house and the neighborhood.

Councilman Brooks made a motion to approve Variance No. 2-2004. The motion was seconded by Councilman McDonald and carried 5-0 on roll call.

b. VARIANCE #3-2004 The application of Mary T. Khawly relative to property described as all of Lots 29 and 23 of Via Vizcaya Addition, less a certain portion of Lot 23 as described in the file; commonly known as 888 South Ocean Boulevard; located in the R-A Zoning District. A variance to allow the expansion and enclosure of an existing balcony with a 31'10" front yard setback in lieu of the 35 foot minimum required in the R-A Zoning District; and, a variance to allow a building height plane setback in the front yard of 31'10" in lieu of the 37'7" minimum setback required.

Ex parte communications were declared by Councilmen Brooks, McLendon, and Goldblum with Attorney Maura Ziska.

Attorney Maura Ziska said the Architectural Commission approved a plan approximately one year ago to turn the Deco style house into something more Art or French Deco with permits issued by the Building Department. She continued that during a plan review revision, it was discovered the balcony encroached into the setback area by one foot, and that was the reason for the current variance request for the building height plane as well as the front yard setback. She identified the hardship as the irregular shape of the land.

Mr. Castro said he understood the balcony was already constructed although the plan reviewers caught the infraction and construction was stopped at that point. He added that staff questioned the hardship; however, the Architectural Commission has approved the project.

Ms. Ziska confirmed that the balcony was built but the area had to be closed in to protect the interior wood floors.

Councilman McDonald questioned the number of variances that Town Council had granted on this property.

Mr. Castro responded at least five or six variances had been granted since he was employed by the Town, and he cited a lot coverage variance, gates, driveway pavers, landscape area, and a beach cabana.

Councilman Goldblum made a motion to approve Variance No. 3-2004 with the condition a deed restriction incorporating the provision that the balcony area not be enclosed as part of the residence. The hardship was identified as the irregularity of the lot, the lay of the land, and the diagonal direction of the lot. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

c. VARIANCE #4-2004 The application of Nancy Z. Lane relative to property described as Lot 128 and the South 50 feet of Lot 127, Mark Rafalsky Tract; commonly known as 726 Hi-Mount Road; located in the R-B Zoning District. A variance to allow the expansion of an elevated pool deck which will increase the lot coverage from the existing 30.8% to 36% in lieu of the 25% maximum required in the R-B Zoning District for lots in excess of 20,000 sq. ft.; and, a variance to allow the expansion of an elevated pool deck which will increase the cubic content ratio (CCR) from the existing 4.02 to 5.04 in lieu of the 3.78 maximum allowed in the R-B Zoning District.

Ex parte communications were declared by Councilman Brooks, Councilman Goldblum, and President Pro-Tem McLendon with Attorney Maura Ziska.

Attorney Ziska identified Architect Gene Lawrence and explained the front half of the house faces Hi-Mount Road which is 22.0 ft. NGVD, and the back half of the property severely slopes to Lake Trail with a 5.0 ft. NGVD. She continued that the existing pool deck is at the same elevation as the house, and the home owners want to expand the pool deck, reconfigure the swimming pool, and have additional outdoor space.

Ms. Ziska said hardship runs with the sloping land and the pool deck, because of its elevation, counts as lot coverage and cubic content.

Mr. Castro commented that the pool deck looks like a building with equipment storage and a gym located under the deck. He said the staff did not find a hardship to allow the requested amount of cubic volume on a large lot. He added the intent of the through lot provision in the Code is to insure that on properties with large changes in elevation step downs occur.

Mr. Wyett noted the deck was fifteen years old; however, the house was much older.

Mr. Lawrence said the house has been remodeled at least three times.

President Pro-Tem McLendon made a motion to approve Variance No. 4-2004. The motion was seconded by Councilman Goldblum.

Mayor Smith questioned the hardship and the cubic content increase from 4.02 to 5.04 in lieu of 3.78 which was substantial.

On roll call, the motion carried 5-0.

d. SPECIAL EXCEPTION #7-2004 WITH VARIANCE The application of Ritcon Investments, LLC (Frank Coniglio) relative to property described as Lots 11 & 12, Floral Park Addition No. 1; commonly known as 257 Royal Poinciana Way; located in the C-TS Zoning District. A variance to allow an awning to extend 13 ft. from an exterior wall of the building in lieu of the 8 ft. maximum allowed; Special Exception for a nightclub license, including an amendment to the seating plan approved in SE #11-2003 which would allow the applicant to move 8 bar stools by the cooking area to the front bar; increasing the size of the bar; and, changing out the tables and chairs for smaller "hightop" tables after 11:00 p.m. to allow for a more informal setting; variance to allow awning poles and planter boxes to be situated on private property, but by doing so there is only a 7.5 ft. pedestrian walkway in lieu of the 9.5 ft. previously approved and the 10 ft. minimum required; Special Exception to expand the square footage of the restaurant by 45 square feet for storage space to store tables and chairs in the evening in the building adjacent and next door to the west (also owned by the applicant); and, Special Exception to increase the approved outdoor seating from 8 seats to 16 seats without increasing the total overall seating of 101 seats.

Ex parte communications were declared by Councilman Goldblum, Councilman Brooks, Councilman McDonald, and President Pro-Tem McLendon with Attorney Peter Broberg and the Coniglios. President Wyett and Councilman Goldblum advised they discussed the merits of the issue with Attorney James Bertles.

Mr. Broberg stated an anonymous letter, addressed to the Mayor, plus many conversations with the Director of Planning, Zoning & Building Robert Moore resulted in the applicants applying for a Special Exception with a variance. He added that Mr. Moore encouraged him to apply for a night club license because of the dancing that just happens occasionally at Cucina's.

Mr. Broberg explained that the variance request to extend the awning 12 ft. from the building resulted because of a measuring error made by the awning installer who measured the permitted 8 ft. from the edge of the mansard roof, not the edge of the building. He continued that the Town issued a building permit, the poles were installed, and then the job was red tagged.

Mr. Broberg continued that the Code required the poles to be installed on private property, which they are, with 10 ft. of clear sidewalk ; however, Cucina's has 9.5 ft. of clear sidewalk. He said the Building Department suggested relocating the planters out 2 ft., with the poles on private property, leaving 7.5 ft. of clear sidewalk; however, after the sidewalk before the road is 8 ft. of grass. Mr. Broberg said the hardship for the variance is the reliance the Coniglios placed on the hired professionals who pulled Town permits.

Mr. Broberg, addressing the issue of the special exception to increase the size of the restaurant by 45 square ft., said the seating is not being increased but the plan is to move the seats around and space them differently for lunch, dinner, and breakfast. He explained that the outdoor seating section would have 4 tables of 4 instead of 4 tables of 2, and the 45 sq. ft. would be used to store tables that would be removed at night (with high tops replacing them) and set up again in the morning.

Mr. Broberg presented a proposed seating plan for approval by the Town Council. He continued that Cucina's did not want to be a night club, although several restaurants in Town do have night club licenses. He added that the operation of Cucina's will not change – the dining room, the hours of operation will remain the same.

Mr. Broberg, summarizing the letters the Town received regarding the issue, said Ray Snow and Ann Rowe supported the proposed changes.

Robert Moore, Director of Planning, Zoning and Building, verified that a permit was issued for the awning and the error was not discovered until a framing inspection was done for the piping when it was determined the actual installation did not meet the Code and that the drawing was somewhat misleading but not intentionally. It was the Building Department's decision to allow the canvas to be put on over the December holidays with the understanding the awning would be removed if the Council did not approve the variance.

Mr. Moore said, regarding the issue of the planters, he requested the filing for the additional two feet because the prior operators had moved the four-tops outside before the Coniglios had purchased the establishment. He added that seating problems do not occur during breakfast and lunch but after 9:30 p.m. or 10:00 p.m. when the dinner crowd thins out and the character of the crowd changes. He continued that the Coniglios have hired special duty police officers to maintain crowd control and the decorum of the sidewalk area.

Mr. Moore explained his request for the filing of the night club permit was based on the Code requirement that if there is dancing of any type, or any music of any type – live or piped – that it be required to have a night club license.

Mr. Castro added that a restaurant can have music for background purposes only, but when the music becomes part of an entertainment situation with louder music and the seating plan allows room for dancing, then the situation should be controlled. He said the existing capacity was approved at 101 seats for dining; however, additional patrons can be accommodated if the tables are removed. Mr. Castro said the Fire Marshal requested the seating capacity not exceed 101 people as it relates to the inside of the store.

Mr. Castro said the applicant needs FDOT approval to have the awning overhang within the right-of-way, and that should be a requirement for the approval of the awning. He continued that staff had issues with open containers outside the restaurant, and the condition that no open containers be allowed outside the seating area should be strictly enforced by a police officer during the night club hours, and additional police officers should be hired if the Police Chief so recommends at a later date. Mr. Castro said staff also recommends a Fire-Rescue person be on the premises during the later hours with the night club operation not to start before 10:30 p.m., and hours of operation be from 7:00 a.m., starting with breakfast, to 3:00 a.m. closing time. He included the recommendations that the dinner tables not be removed with high tops to replace them and the present floor plan remain in place unless the Town Council would approve a night club application with Fire-Rescue personnel and Police officers controlling the situation.

Mr. Castro said staff does not have a problem with the four tops outside, but the applicant should provide an update to the Mayor and Town Council after 6 months of operation noting any complaints by the neighbors.

Attorney Gary Brandenberg, representing the owners of the Royal Poinciana Apartments

South, 333 Sunset, reminded the Council that the Congilios bought a small French restaurant some years ago and, after several trips to the Town Council, turned it into Bradley's, a drinking and late night establishment that drew large crowds that filled up the Publix shopping center, the parking along in front of the Royal Poinciana Apartments, causing a ruckus late at night as they were open until 3:00 a.m.

Mr. Brandenberg recalled that with the Council's help in 1994 and after many hours of contentious hearings, the Town Council imposed some restrictions, denied some requests for expansions, but imposed safe guards that helped maintain the area safely. He continued this application provides an opportunity for history to repeat itself again.

Mr. Brandenberg said that Mr. Broberg nor anyone else has mentioned any hardship or need for the proposed changes. He continued that Frank Coniglio has a record of running very successful operations and drawing large numbers of crowds to his establishments. He requested that the Town Council not allow the same type of restaurant as E. R. Bradley's was and a slow creeping of the situation to return to the same conditions.

Leslie Evans, owner of 249-253 Royal Poinciana Way, said his apartments have had almost no problems with Cucina's, either noise or parking. He added that many of the patrons are local people, and the Royal Poinciana Association is behind Cucina's operation which has helped revive business on the street.

Jim Bertles, former chairman of the Zoning Commission, said he supported Cucina's requests, and the facts are that Cucina's has been owned and operated by the Coniglios and Wrightmans for a year. He continued that the request is not to change the functionality of their operation, but they merely want to continue their existing use, and to his knowledge very few complaints were made in the twelve months they have owned and operated Cucina. He noted the closest neighbors have expressed support for the operation, and whenever any complaints were received, the owners have been good citizens in responding to it.

Mr. Bertles continued, that as a parent of children who socialize in bars or night clubs and appreciated Cucina's operation as a local establishment in Palm Beach.

Mr. Moore said he did not believe that Cucina's would be reincarnated as E. R. Bradley's. He continued, in response to Attorney Brandenberg's comments, that a hardship was necessary for the variance only and covered the issues of the awning and the placement two feet outside the main building.

Gail Coniglio said DOT had granted approval for the awning. She added that she would like to continue operating Cucina's in exactly the same manner as it has been since April 1, 2003, and would change only what the Council has requested. Mrs. Coniglio responded she would be happy to have a fire official in the building for late nights as well as the police officers, and approximately 90 parking spaces existed for patrons on both sides of the building which was an adequate number.

President Wyett said he had no problem with the awning request or putting the high top tables outside for the smokers, but changing the tables inside bothered him and suggested a compromise.

Mrs. Coniglio responded she would be happy to compromise where problems exist; however, the police reports indicate (the Coniglios) have done everything to control the situations, and the doors being open lend to the popularity of the restaurant.

President Wyett said if the tables are changed out and the restaurant is open until 3:00 a.m., customers will be attracted who will create a noise factor especially on the weekends. He offered to go in stages and monitor the progress.

Mrs. Coniglio replied Cucina's will be conducting exactly the same operation as it has done for the past year, and nothing will change. She said she did not want a night club license.

Mr. Moore said if there is no night club license and dancing is going on, the Town will have to act on that complaint and charge them with operating without the proper occupational license.

Councilman McDonald said since Mrs. Coniglio and Mr. Broberg have said they are not interested in a night club license, he would like to see the request for the night club license withdrawn. He continued that he had no problem with the high tops outside for patrons who smoke, and suggested if the awning was approved, that approval remain with the current applicant but not passed on to a future tenant.

Attorney Randolph responded that normally a variance ran with the land as opposed to the applicant, but, under the circumstances due to the mistake by the awning contractor, the Council could condition the variance run with the applicant.

Councilman McDonald said he would like to do that and **made a motion to approve the Special Exception and incorporate all the conditions that staff attached to the application. Councilman Goldblum seconded the motion.**

Councilman Brooks asked Mr. Moore to compare the existing awning at Cucina'a to the awnings at Testas and Chuck and Harold's?

Mr. Moore responded he did not know the answer to that.

Mr. Castro replied the awnings are approximately the same distance out.

Councilman Brooks suggested the approval of the variance to run with the tenant may be onerous on the applicant.

Mr. Moore explained a new tenant would have the opportunity to return to the Town Council and apply for the same variance.

Councilman Brooks suggested the applicant return to the Town Council in six months to report on the operations. He said closed doors would destroy the ambience of the restaurant.

Councilman McDonald explained he moved approval of the two special exceptions, one dealing with the increased seating outside and the other one dealing with the high tops, plus the expansion of the inside by 45 sq. ft. He added if the special exception related to the inside seating plan does not go hand in hand with the night club license, he would include that in the motion to approve.

Mr. Castro responded the problem was that a restaurant is defined that 50% of the gross sales have to be from food sales and not alcohol, and he was not sure those requirements could be met.

Mr. Coniglio replied the split was 60/40 presently.

Councilman McDonald said they are meeting the requirements and that is not a problem presently.

Mr. Castro reiterated the establishment is only allowed back ground music and presently the music is being turned up very loud.

Mr. Moore said the police officer can control the loudness of the music, and if there are problems, Code Enforcement will have to investigate.

Mr. Broberg said his clients would be willing to stipulate that there is no deejay, no live band, and no dance floor.

Councilman McDonald said the motion was complete with the 101 approved seats not changing.

Mr. Moore said the applicants were at their own risk regarding 'jiggling in their seats' or dancing.

Councilman McDonald restated the motion:

The applicant is going to withdraw the application for a night club license, and I'm going to move approval of I believe is three Special Exceptions, one to increase the seating outside, it is now 4 - 4 tops; to expand the seating area two feet to allow the high tops outside which would be a smoking area after 11:00 p.m.; inside there is a special exception to increase the square footage of the restaurant by 45 sq. ft; to allow the variance for the awning finding the hardship relating to the contractor who installed it improperly, but it only runs with this applicant and does not inure to the benefit of any successors or assigns; return to the Town Council in 6 months; both variances should be included running with this applicant for the poles and width, the distance at 12 ft.

Councilman Goldblum seconded the motion.

Attorney Randolph said the applicant needs to state the special exception for the night club is withdrawn.

Mr. Broberg said the applicant will withdraw the request for a night club special exception.

On roll call, the motion carried 5-0.

XVIII. ANY OTHER MATTERS

There were no other matters.

XIV. ADJOURNMENT

There being no further business, the regular Town Council meeting of March 9, 2004, was adjourned at 8:10 p.m.

Allen S. Wyett
Town Council President

Mary A. Pollitt
Town Clerk

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