

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON FEBRUARY 13, 2001

I. CALL TO ORDER AND ROLL CALL

The regular meeting of the Town Council was called to order at 9:30 a.m. on Tuesday, February 13, 2001, in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance:

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

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

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Finance Director Jane Skittone
Acting Fire-Rescue Chief Kent Koelz
Human Resources Director William Crouse
Assistant Human Resources Director Carla Kneipp
Information Systems Manager Spencer Wilson
Police Chief Frank Croft
Public Works Director Al Dusey
Public Works Facility Maintenance Division Manager Joe Ugi
Public Works Services Division Manager Lloyd McCoy
Planning, Zoning & Building Director Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Recreation Director Russ Bitzer
Risk Coordinator Karen Temme

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Zoning Administrator Paul Castro
Chief Code Compliance Officer Brian House
Planner/Projects Coordinator Timothy Frank
Town Engineer James Bowser
Town Clerk Mary Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. SWEARING IN OF NEWLY ELECTED OFFICIALS -The Honorable Walter N. Colbath, Jr., Chief Judge, 15th Judicial Circuit, Palm Beach County.

The Honorable Walter N. Colbath, Jr., Chief Judge, 15th Judicial Circuit, administered the oaths of office for incumbents Mayor Lesly Smith, Councilman Samuel McLendon, and Councilman Allen Wyett, each of whom will serve two year terms.

IV. ORGANIZATIONAL ITEMS

A. Election of Town Council President - Pursuant to Section 3.01 of the Town Charter.

President Jack McDonald was elected as Town Council President.

B. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of the Town Charter.

President Pro-Tem McLendon was elected as Town Council President Pro-Tem.

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V. PRESENTATIONS

A. Chuck Blaine, Director of Government and Community Affairs, Adelphia Cable.

Chuck Blaine, Director of Government and Community Affairs, Adelphia Cable, addressed the Town Council, introducing Doug Bennett, the General Manager of the system that served the Town of Palm Beach, and Jim Bush, the Commercial Development Coordinator, stating that the transfer had been completed on January 1, 2001 from Comcast to Adelphia Cable. He explained that a sub-contractor had been selected who would be commencing installing fiberoptics under the intracoastal waterway, bypassing the current system that was serving the Town. Crews were in place to do the "walk out," basically walking over every inch of the cable system in place to determine what would need to be done to the system to upgrade it; crews would then test the system to ensure the integrity of the system. He stated that the upgrade would be completed by the end of the year, which would offer expanded services to the Town. He pointed out that many buildings in the Town owned the entire internal wiring systems, so coordination with them would be required to assist in getting the internal wiring upgraded in order to provide the expanded services.

Councilman Brooks commented that the Town expected good service and wished Mr. Blaine the best of luck.

In response to Councilman Wyett, Mr. Blaine explained that fiberoptics would not come to the home, but to a node that would serve approximately 135 homes per node; every unit would have coaxial cable coming to it, not fiber.

VI. COMMENTS OF MAYOR LESLY S. SMITH

First, let me say again how pleased I am to begin my first full term as Mayor and to serve with a Town Council that is as diligent and responsible as this one. Looking at today's agenda, I am reminded that in the last year or so we have had to make a number of difficult decisions – some with long-range financial consequences, some that try the patience of residents as we work to repair our infrastructure and maintain the integrity of our neighborhoods. So I appreciate this most recent vote of

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confidence.

I would like to welcome Peter Elwell to his first Town Council meeting as Town Manager. Peter is, of course, a familiar face on the dais, from his earlier role as Assistant Town Manager, and an information resource to the Council. We're glad to have you back, Peter. We couldn't be in better hands with you and Tom Bradford.

Turning to our agenda, we have several critical infrastructure items to discuss and without belaboring the details, I want to assure residents that these projects ARE moving along. We are learning – painfully – how slowly State and Federal agencies move. We are assured by DOT that repair of South County Road WILL be completed this season. The Royal Poinciana Way project may be delayed to 2002. We are assured by the Army Corps of Engineers that the Lake Worth Inlet sand transfer plant upgrade is also proceeding, and the report is due in May. Mr. Dusey will provide us with more details. We have met with appropriate officials, written letters, asked Congressman Shaw to intercede, nagged, badgered and pleaded. I know many of these projects cause great inconvenience to citizens, but I ask for your patience for just a few more weeks.

I also hope we will be patient in allowing Mr. Dusey to explain and refine the five-year capital improvement program for storm drainage. We will be hearing more about criteria for selection and priorities for emergency and immediate relief for easily-flooded areas. This is an ambitious plan, but there is no question that we must overhaul our storm water drainage system immediately before it gets any worse. Two points that I want to make clear: first, this is not a band-aid plan; it is a long-range attack on the problem that is designed to prevent future flooding. Second, there will be ample opportunities for residents to have input into the plan to make sure that every neighborhood is treated fairly.

We have received costs estimates for the new fire station and redevelopment of Town Hall on the Beaumont parking lot site. This is another enormous undertaking, but appears to be a necessary one to maintain our high level of public safety and accommodate our hard working Town staff. I agree with Mr. Bradford's comments that we could not be in a better market to consider issuing bonds for this project. Right now, it is cheaper to borrow than to use our reserve fund.

I have mentioned long-range planning in previous meetings, and today we are considering a recommendation for a permanent Long-Range Strategic Planning Board. While I believe this function could as easily be picked up by the existing Planning and Zoning Commission, I recognize the need for a long-range planning body to make sure we are being pro-active rather than re-active in our decisions. And in that regard, I want to mention the upcoming workshop on Mayor/Council goals

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and the 2001-2002 budget. In the past, we have had very little participation in these workshops, and it has been very disappointing. Please, if you want to have a say in how the Town operates and spends your tax dollars, come to the workshop and give us your ideas. Too many times, residents appear at Council meetings with objections when it is too late to change course. The time to get your two-cents worth in is at this workshop, before plans are cast in stone.

It wouldn't be a Town Council meeting without some comment on the St. Mary's/Good Samaritan dispute. I noticed that sometimes I call it a dilemma, sometimes a challenge, sometimes a debacle. . .it seems to be getting more complex rather than simpler, and it is no closer to resolution than it was when we first began discussing it. The good news is, mediation continues with Judge LaBarga, and I am pleased with his persistence in urging all sides to remain at the table until there is some consensus.

Finally, tomorrow is Valentine's day, and I think Valentines are due to Town staff for their ongoing hard work and quality performance. When Mr. Elwell, Mr. Bradford, Mr. Dusey and Mr. Moore, and the other department heads report to us, you can be sure that their comments represent the research and input of dozens of support staff, and for many Palm Beachers, contact with a pleasant, knowledgeable Town staff member is their only link with Town government. So, in keeping with my policy of saying something nice at the end of every meeting, Happy Valentine's Day to the Town of Palm Beach staff!

VII. COMMENTS OF COUNCIL PRESIDENT JACK MCDONALD

President McDonald thanked the Town Council for electing him president for the second year, and that two successive years would be enough – next year he looked forward to moving down the table, however, he appreciated the honor and privilege of serving as president for two years. He thanked Councilmen Brooks and Goldblum, the newest council members, who had been significant additions to the Town Council over the past year. He thanked the Mayor for her support and willingness to help on many matters while he had served as president. He thanked Tom Bradford, who had filled in as Town Manager and had done a wonderful job. He thanked President Pro-Tem McLendon, and the entire Town Council for their dedication and teamwork. He thanked all department heads and staff, and welcomed Peter Elwell as Town Manager.

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VIII. APPROVAL OF THE AGENDA

The following change was made to the agenda:

DEFER Item XVII.B.1.c.Special Exception No. 4-2001 with Variance, 221 Worth Avenue per letter dated February 9, 2001, from James R. Brindell. *(The letter from Mr. Brindell had requested WITHDRAWAL, however the motion and vote were for DEFERRAL.)*

Councilman Wyett moved deferral of Item XVII. B.1.c. Special Exception No. 4-2001 with Variance, 221 Worth Avenue. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

The Agenda, as amended, was approved through motion of Councilman Goldblum, seconded by Councilman Brooks. On roll call the motion carried unanimously.

IX. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Harrison Robertson, 134 Seagate Road, alternate member of the Zoning Commission, urged the Town Council to appoint James Bertles and Peter Broberg as full members of the Zoning Commission.

Eric N. Gilbertson, 151 Chilian, complimented Town Manager Elwell on his return to Palm Beach and the Town Council for its efforts. Mr. Gilbertson reiterated that a rock jetty should be installed to hold the sand south of Mid-Town Beach. He also offered to coordinate an educational crosswalk program with the Police Department. He concluded with remarks regarding Senator Robert Graham who will not be running for Florida Governor in the 2002 election.

Dora Digby (*could not be verified as a current Town resident*) said the Town needs a humane society for people and reported her complaints regarding dogs and cats in Palm Beach at a property she was trying to sell.

Robert Grace, 126 Seagrape Circle, said, as a former Council member, it was his job to serve the interests of the residents and to keep Palm Beach as the greatest town in which to live. He remarked that the Lagomar Road traffic congestion last week from a delivery truck tied South Ocean Blvd. up for four minutes both ways. He questioned if deliveries should be allowed at 8:45 a.m. as this one had been, and noted that the number of eighteen wheelers in the Town has increased. He

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said this issue should be regulated through the permitting process.

Mr. Grace dared the Town Council to mail out postcard questionnaires to the residents asking them if they would rather have a larger Building Department or keep the same one and let the builders wait? He offered to put up the money for the mailing if the Town agreed to be bound by the opinions of the electors. Mr. Grace said the Town's garbage trucks start work at 8:00 a.m. with backing beeping noises, and an ordinance prohibits trucks on construction sites from making those noises.

Mr. Grace said the three Town Managers he worked with, Jake Boyd, Bea Arnold, and George Frost, spoke with authority. He asked that this Town Council let Town Manager Elwell know that the Town Council will back him up when he wants to just say "no".

Nancy Douthit, 330 Cocoanut Row, spoke regarding the economy and the warnings that are coming from Washington, D. C. She noted that \$6.8 million was proposed for street drainage updating; \$5.5 million for a new fire station and Town Hall update; three new rescue vehicles plus interest amount to \$920,000; and the total of the "wishes" is \$13, 220,000 with this amount added to the \$42 million plus interest for the beach, a total of \$57.5 million is to be paid by ad valorem taxpayers in the next ten years. She noted that the \$57.5 million does not include any money for unforeseen events. She recommended limiting beach renourishment to the traditional boundary of Phipps Ocean Park and the basic Mid-Town beaches.

Arthur Davis, 340 Garden Road, addressed the issue of the drainage situation in the alley between Eden and Garden Road. He said the flooding receded slowly, and he saw in the paper that the project to correct the flooding was slated for the fiscal year 2002. He noted that all of the property owners signed a petition to begin the project as expeditiously as possible, preferably before FY2002.

Claudia Brandner, 315 Garden Road, spoke regarding the drainage issue on Garden Road. She requested that the work be done quickly and expressed concern about insurance coverage on the properties. She said that beginning in fiscal year 2002 is too late.

Leslie Shaw, 318 Seaspray, reported the Town's water shortage (watering) schedule is in conflict with the County's schedule. (He passed out a schedule showing the differences.)

Neal Fisher, Root Trail, said, speaking to the issue of feral cats, that civilization is judged by the way its animals are treated, and it is important to look at both sides of the issue in attempting to resolve it. He expressed concern regarding Councilman Goldblum's activities with attempts to stop the feeding of feral cats, and suggested anyone pre-disposed to a decision should recuse themselves from the decision making process.

William Cooley, 231 Tradewind Drive, said it was difficult to be critical of the beach renourishment project without seeming to be critical of the individual Council Members and Mayor.

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He requested that his comments not be taken personally. Mr. Cooley said he believed the Town Council received bad advice, and as a result, the Town is faced with a mess that is also known as the beach renourishment plan. He requested the Town Council take a step back and take a new look at the entire plan. He said the wrong people are paying for the plan; the taxpayers of Palm Beach did not cause the problem and yet are being asked to fix it. The federal government, the Port of Palm Beach, and the State of Florida are the responsible parties. The plan is misconceived—it is too large and does too much damage to the near shore environment—and the long-range effect of the erosion control line will have a negative impact on the quality of life in Palm Beach. The short term effect of the ECL will be the Council's participation of taking valuable property rights from ocean front property owners. Mr. Cooley said the financing scheme is wrong, and the \$23 million in bonds that just had to be sold last year at 5.36% because the rates were going up would now be priced at 4.36%. He said the Town is paying millions of dollars too much in interest.

Mr. Cooley said that the consultants will probably be advising the Town to re-issue the bonds because of the lower interest rates. He said if it is done, the experts should not be paid twice for giving bad advice. He said one of the basic rules for public financing is to match the life of the bonds with the life of the project, and eleven year bonds were sold for a project with a life of eight years. Taxing inland property owners for sand that is on the beach was, in his opinion, wrong. He suggested taxing districts.

Mr. Cooley questioned the erosion control line resolution that will be heard later in the meeting and a Town staff member's ability to give away the Town's right to seek legislative change to bad law. He said the beach renourishment program is a mess, and there will be 120 hearings and on-going disputes and no sand where it is needed. He said it was time to step back, take another look at the entire project, get a community consensus on beach renourishment, and proceed with haste to renourish areas that are in dire need and spread the cost of that renourishment in an equitable manner.

X. APPROVED AGENDA

- A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING 2000-2001 ZONING HEARING MINUTES OF JANUARY 3, 2001.
- B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF JANUARY 4, 2001.
- C. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF JANUARY 9, 2001.

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- D. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF JANUARY 16, 2001.
- E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JANUARY 24, 2001.
- F. APPROVAL OF CHECK REGISTERS FOR JANUARY 2001.
- G. OTHER
 - 1. Consideration of Staff Recommendation to Award the Contract for the Classification and Compensation Study for All Full-Time Positions to WMS Management Consultants of King of Prussia, Pennsylvania in the Amount of \$53,725 With Said Funding to Come From the FY 2001 General Fund Contingency. William C. Crouse, Director of Human Resources.
 - 2. Consideration of Dune Re-vegetation Plan for 101 Seaspray Avenue. Brian House, Chief Code Compliance Officer.
 - 3. Status Report Regarding the Town Beach Restoration Project. Albert P. Dusey, Director of Public Works. *(Deferred Pending Final Issuance of Permits)*.
 - 4. Approval of Town Manager Designation of Thomas G. Bradford, Assistant Town Manager, as Acting Town Manager Pursuant to Section 4.03 of the Town Charter. Peter B. Elwell, Town Manager.

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

XI. COMMITTEE REPORTS

- A. Ordinances, Rules and Standards
 - 1. January 30, 2001 Committee Report.

REPORT OF THE ORDINANCES, RULES, AND STANDARDS

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COMMITTEE HELD ON JANUARY 30, 2001

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:30 a.m. by Chairman William J. Brooks. On roll call, Committee Chairman William J. Brooks and Committee Member Norman P. Goldblum were found to be in attendance. Other Elected Officials present for all or part of the meeting were: Mayor Lesly Smith; Town Council President Pro-Tem Samuel C. McLendon; and Town Councilman Allen S. Wyett. Also attending the meeting for all or part were: Acting Town Manager Thomas G. Bradford; Town Attorney John C. Randolph; Public Works Director Al Dusey; Public Works Facilities Maintenance Manager Joe Ugi; Assistant Police Chief Michael Reiter; Assistant to the Town Manager David Jakubiak; Director of Planning, Zoning & Building Robert Moore; Assistant Director of Planning, Zoning & Building Veronica Close; Chief Code Compliance Officer Brian House; and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved on the motion of Mr. Goldblum and the second of Mr. Brooks.

III. REVIEW OF HISTORIC/SPECIMEN TREES ORDINANCE TO IMPROVE TREE PROTECTION PROVISIONS

Acting Town Manager Bradford said the Town Council had directed the Historic Specimen Tree Ordinance be reviewed in an effort to strengthen the ordinance in light of the recent decimation to some of the trees in Town. He stated that according to the Town's ordinances regarding the historic and specimen trees, the details of the management of the program are delegated to the Department of Public Works. Specifically, Joe Ugi of that department manages the program on a daily basis. Mr. Bradford said he requested that Mr. Ugi prepare a memorandum on the subject.

Mr. Ugi reported he had contacted the Planning, Zoning and Building Department and discussed the issue and outlined the following four issues that

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were discussed with the Building Department:

1. Program the list of historic/specimen trees into the property records in the Town computer system so that when a property control number is called up for permitting purposes, properties that contain an historic/specimen tree are flagged to show this information.
2. Any person applying for a building permit on property that contains an historic/specimen tree should be made to sign an acknowledgment of this fact.
3. If a historic/specimen tree is indicated in the property records, the Planning, Zoning, and Building Department can require that the tree's drip line location be shown on the site plan in relation to the proposed building prior to building permits being issued.
4. Permits will only be issued if a plan is devised to properly protect the historic/specimen tree from construction activities. If the tree is damaged because the proper precautions have not been taken as stated in the permit, the job will be red-tagged and all work will stop until corrective action is taken.

Mr. Ugi suggested the following penalties that could be considered as changes or additions to the Code of Ordinances:

- II Anyone found guilty of damaging or destroying a historic/specimen tree without written permission from the Town Council shall be required to replace the tree with two trees, size and kind as determined by the Town Manager in conjunction with his designee. One of the two replacement trees is to be planted in the same location as the damaged or destroyed tree after the damaged or destroyed tree and its root system have been removed. The second replacement tree will be planted at a location to be determined by the Town, on the same property.
- II Failure to replace the tree shall result in a daily fine pursuant to Section 1-14 of \$500 per day for each day the violation continues.

Mr. Ugi added that he thought the offender should be allowed twenty days to remove the damaged tree and plant a new tree. He clarified that these suggestions would apply to any permit for demolition or construction.

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Mr. Brooks noted that Mr. Ugi incorporated the suggestions of the Garden Club as outlined in a letter from its President, Nancy Murray.

Mayor Smith suggested a representative from the Garden Club, in conjunction with the Town Manager and his designee, be included in the selection of a replacement tree.

After discussion, THE COMMITTEE RECOMMENDED TO ACCEPT MR. UGI'S RECOMMENDATIONS WITH THE CHANGES AS NOTED BY MAYOR SMITH.

Town Attorney Randolph commented the suggested penalty is in the general penalty section of the Code of Ordinances and a change in the ordinance would not be necessary to include that provision as it currently is in effect. He said the \$500/day fine would not be automatic but would be based on a citation given for each day the violation occurs. It would go to the County Court and it would be within the discretion of the Court to determine if the \$500 penalty would be assessed. He suggested another way to handle this would be to have the Code Enforcement Board assess a \$250/day fine for first offenses and a \$500/day fine for subsequent offenses. He suggested that could be incorporated into the recommendation.

Mayor Smith responded her position was that anyone who is building a multi-million dollar house would not be affected by a \$250 per day fine; they would rather tear the tree down and pay the fine. She said it makes no sense to wait - to send it to Code Enforcement which could take months - and questioned why the fine of \$500/day could not be put into the ordinance.

Attorney Randolph replied that the Code of Ordinances currently stipulates that anyone who violates a Town ordinance is subject to a fine of up to \$500/day or 60 days in jail or both within the discretion of the Court. He said there are two mechanisms to fine people within the Town. One was the citation of the offender and send them to County Court, whereupon the County Court would use its discretion as to the amount of fine or to send the case to the Code Enforcement Board. Mr. Randolph said he thought the Code Enforcement Board would be more effective as far as a daily fine was concerned. Otherwise, separate citations would have to be issued each time the Town would go to Court. He suggested the Town have the ability to cite offenders before the County Court with a \$500/day penalty but to also have the ability to go to the Code Enforcement Board. Mr. Randolph said the way this ordinance is being tightened up is not necessarily through the fine system but by requiring the offender to plant the replacement tree in the exact location where the other tree

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was originally resulting in little incentive for someone to take down a specimen tree if they have to replace it with another specimen tree at the same location.

Mr. Brooks and Mr. Goldblum agreed that Attorney Randolph's suggestions would be part of their recommendation to the Town Council.

IV. DISCUSSION CONCERNING FERAL CAT ISSUE

Mr. Brooks said this issue was a continuation of the December 4th Ordinances, Rules & Standards Committee meeting.

Town Clerk Pollitt swore in all those participants who would be speaking at this meeting.

Mr. Brooks said the purpose of the meeting was to try to come up with an ordinance that would be reasonable in light of the existing facts and the information derived from this meeting. He said, as a further clarification of the issue, Miss Bradley who is the Executive Director of Palm Beach Cat Rescue appeared before Judge Schwartz on December 8th in Palm Beach County Court, and he issued a ruling on January 22nd whereby Miss Bradley is enjoined from feeding the feral cats on Everglade and Atlantic Avenues. Palm Beach Cat Rescue through its Counsel is appealing this order. Additionally, Palm Beach Cat Rescue will be back in County Court scheduled for February 5th as the defendant against Palm Beach County Animal Control.

Mr. Brooks acknowledged the receipt of the Palm Beach Cat Rescue memorandum from Attorney Diane Sands.

The following people spoke regarding the issue of Feral Cats:

Allen Mason, 1485 Via Manana, reported that he was involved with Palm Beach Cat Rescue for the past five years having trapped a family (mother, father, kittens) and getting them spayed and neutered. He said he has fed and watched them for five years and the program has worked very successfully. Mr. Mason said he presented petitions from his neighbors who approve of the program and the cat colony is maintained within a one block area.

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Danny Miller, Director of Golf and Grounds for the Breakers, 1 S. County Road, said his office is located in the First Union Bank Building at 40 Cocoanut Row. Mr. Miller stated the Breakers loves animals – the foxes, parrots and the cats– but it is unacceptable for people to come on private property and set out plastic dishes of food and not clean it up. He said an employee at 40 Cocoanut Row complained about the amount of food left in front of cars and in the teller lanes at the bank and cats jumping and scratching cars. Mr. Miller said he did not have a problem with the cats but placing messy food out is unacceptable.

Carl Henry, Palm Beach County Health Department, 901 Evernia Street, W. Palm Beach, said the subject of colonization of feral cats is a controversial and highly emotional issue. He said his purpose was to look at the issue strictly from the public health viewpoint. The risk of disease transmission from cats to people is generally low when these animals are routinely cared for. Free roaming cats pose a continuing concern to the health of the community. Some of the diseases carried by cats included cat scratch disease, rabies, ringworms, and hookworms. The epidemiology of these diseases show that children are among the highest risk. Free roaming cats can be vaccinated against rabies and given de-worming medications, but this does not address the problem with the ongoing need to provide them with health care nor does it address the disease that can be transmitted to people. If a person were bitten, a cat would have to be caught and quarantined for a ten day period even if it had been previously vaccinated, and if the cat were not found, the person would have to undergo rabies treatment. Mr. Henry said that in the past ten years in Florida, cats were reported to have rabies more than dogs. He said that well-meaning people can derive considerable pleasure feeding the cats. Ideally, cats should have regular veterinary care and be maintained inside. Allowing unowned cats to roam the streets is not in the best interest of the community. A feral cat colony, in and among itself, is not a public health threat or sanitary nuisance; however, the potential does exist. The key is proper care and management of the colony. Mr. Henry said the existence of a cat exposed to rabies or having communicable diseases transmissible to humans, an accumulation of fecal matter without proper disposal, or an accumulation of food putrifying or providing an attraction for nuisances can result in a public health threat or sanitary nuisance. He referred to Florida Statutes, Chapter 381 or Chapter 386.

Mr. Brooks stated that Palm Beach Cat Rescue had stated in its documents that a conservative estimate of 1500 feral cats existed on the island. He asked Mr. Henry if that number of feral cats would exacerbate the health problem?

Mr. Henry replied that the number itself would not pose a problem as long as

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they are cared for, but there is always a risk for those cats to come in contact with wild life.

Dr. Brad Ochstein, Owner of Island Animal Hospital, 314 Royal Palm Way, said he was the primary veterinarian for Palm Beach Cat Rescue for the last five or six years. He said he brought all of the records for Palm Beach Cat Rescue with him to allay the rumors that Palm Beach Cat Rescue was not making a concerted effort to have an effective spay and neuter program. He said that the cats were numbered, starting in 1995 (Later in the meeting Catherine Bradley said the records started in 1997), and the current number he has seen is 580. He said some of the cats are repeats as they come in for medical treatment in addition to sterilization. Dr. Ochstein said he agreed with Mr. Henry from the Health Department about the risks; however, he submitted that, for the most part, these same risks exist for the other wildlife on the island with some specific disease entities that do not. He pointed out that the other forms of wildlife are not cared for – vaccinated for rabies, examined on a routine basis - and that is one of the benefits of the existing protocol that has been in existence for five or six years. He noted that this program allows caretakers to evaluate the health of the animals on a daily basis when feeding. The animal in question is then trapped and brought to the animal hospital, and the same cannot be said for the other wild life on the island.

Dr. Ochstein said he wanted to make the point that this issue is not "an us versus them" situation. It is a Town problem, because the cats were on the island long before Catherine Bradley lived in Palm Beach. He said her organization is the only one that has addressed the problem to this point, and he was happy that the Town wanted to take part and do something. He said he hoped that the groups could find some middle ground, and while he supported Palm Beach Cat Rescue and their spay/neuter/release program as the only reasonable type of solution to this problem, he recognized there were private property issues and details that need to be worked out. He noted this plan has had volunteers, virtually no funding, and one veterinarian. Most towns that do this have a vast array of volunteer help, several veterinary clinics in the area, and city, county, or state funding. He said that there is room for improvement in the operation, i.e. cleanup crews, types of feeding dishes, types of food, moving feeding stations to a limited degree. Everyone should be coming together to try to find a reasonable solution to this problem.

Responding to questions from Mr. Goldblum, Dr. Ochstein said a cat can have two or three litters of kittens per year with an average of four kittens per litter. He said his numbering system did not actually begin until 1997 with

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microchipping beginning two years after the program began. Dr. Ochstein said the spay/neuter numbers are not as high as everyone would like to see them because of very little funding, not enough trapping help, taking time to address concerns and legal issues, and Island Animal Hospital cannot provide the amount of service as an animal shelter whose sole purpose is to spay and neuter can do.

Mayor Smith asked Dr. Ochstein what his solution would be for the problem in a perfect world?

Dr. Ochstein said trying to remove all cats from the Island of Palm Beach is not a realistic goal and trying to do that in the face of public outcry is completely unrealistic. He said what has worked in other cities and countries is a protocol of trapping, neutering, releasing, maintaining and monitoring these colonies to protect the public health and hopefully doing so with the support of private property owners. He said the perfect world is a compromise between all involved parties and recognizing that the cats will exist and the population and impact on the community can be controlled.

Mayor Smith asked what the cost for the program would be?

Dr. Ochstein said he had not put together costs, but that would be dependent upon how involved and how intense the program would be. He said he charged Palm Beach Cat Rescue \$35 or \$45 for a neuter or spay which includes the rabies vaccine and other inoculations with other procedures done at or below cost.

Polly Reed, 231 Chilian, said she did not own a cat and was not a member of Palm Beach Cat Rescue. She said she lived at this address for four years and many cats were on her property when she first moved there. She contacted Catherine Bradley and was convinced that the kittens should be trapped as soon as they were born and to have them spayed or neutered. Mrs. Reed said she thought Chilian Avenue now had a stable cat colony. She said she objected strenuously to the placement of food in plastic containers, and Catherine is now feeding them in a different place with great success.

Eric N. Gilbertson, 151 Chilian, said cats are wonderful and keep the rats and mice at bay. He said the good will the cats give to a community is something special, and as noted by Mr. Henry, cats are not a health hazard. He said he had not noticed any odors and the cat food containers were well managed. He suggested placing the food under bushes so the birds could not find the food.

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Dr. Dale Porcher, Veterinarian in West Palm Beach, said Catherine Bradley and Palm Beach Cat Rescue are not the enemy. People who abandon unneutered and unsplayed pets are truly the enemy. He said he was a good friend and colleague of Dr. Brad Ochstein although they do not agree on all of the issues.

Dr. Porcher said he wanted to address three issues, and he is one of the veterinarians for Ocean Impact Foundation which basically provided veterinary care for injured wildlife in Palm Beach County. He said his points of contention were:

1. Cats are hunters and will hunt for sport resulting in a destruction of native wildlife, and Palm Beach is an island with a very delicate ecosystem because it is isolated from the mainland.
2. Leaving food in the open increases contact between cats and native wildlife with possible exposure to rabies.
3. A public health issue regarding cats transmitting toxo-plasmosis, a protozoa organism that cats shed in the feces. Cats also can pass round worms through defecation.
4. Cats are a domesticated species and making cats wild animals is not necessary nor right. Animals deserve a loving and safe home.

Dr. Porcher said he believed feral cats should be trapped, tested, vaccinated, and neutered and priority one is to find that animal, if possible, a loving home. He suggested a shelter with enclosed colonies. He said he spays or neuters two cats per week for Palm Beach Cat Rescue. He said he would be willing to spay and neuter kittens who could be adopted to good and loving homes.

Responding to questions from Mr. Brooks, Dr. Porcher said it has been fairly well documented that the average life span of a feral cat is between 3 and 7 years whereas a cat in a home where it is protected could live between 10 and 18 years of age. He said he would argue the fact that trap/neuter/spay programs are working anywhere, because uneducated people are chronically dumping non-spayed, non-neutered cats into the colony and nowhere are the numbers reducing.

Mr. Brooks noted that the songbirds have disappeared from the Preservation Park across from Town Hall and have been replaced by crows.

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Mayor Smith observed that Dr. Porcher's solution to the problem would be euthanasia of the feral cats.

Dr. Porcher said he did not say that because it is an emotional issue with everyone.

Arnold Hoffman, 150 Bradley Place, the Biltmore, said he did not have statistics but had a few facts. He defined the word "feral" in the dictionary and it means wild. He said that what the wild cats mean to many who live in the Biltmore is: defecation on the walkways; urination in the garages; unusable ground floor patios – they sleep there at night and chew up the chairs; jump into open cars and rip seats up; resulting in the possibility of Biltmore residents having to sell their units. Mr. Hoffman said these are wild animals and the answer is to remove them permanently from the island. Neutering and putting them back is not the answer. He said the County can dispose of these cats in many ways - it has discretion. He suggested the Town should employ its own trapper(s) and deliver the trapped cats to some organization that will end their lives painlessly. He said it was common to thin out wild herds and animals are used for experimentation, and humans kill animals for food. He advocated removal of the animals and end their lives painlessly. Mr. Hoffman said the false sentimentality of a small minority does not justify making the lives of the vast majority miserable.

Robert Spiegel, Operator of the Royal Poinciana Plaza, said the Plaza has a cat problem as a result of the feeding of cats by Palm Beach Cat Rescue. He said his problems are the food trays that are left and odors related to the cats. Mr. Spiegel said he did not have a solution to the problem but would like to see the cats removed as he has a business to run.

Mr. Brooks asked Mr. Spiegel if the Police Department had been of any help to him?

Mr. Spiegel responded that nothing has worked, but he requested that Catherine Bradley or the people working with her stay off the private property.

Nicole Rattinger, 227 Park Avenue, spoke on her activities working with homeless or injured dogs, cats, or birds and stated she has never been attacked by a cat. She said she did not think it was possible or humane to eliminate the feral cats. Ms. Rattinger said she supports taking care of the animals because of the example it sets for her three daughters, one of whom wants to become a veterinarian. She said trapping and spaying animals is not a problem, but it

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would be a problem if that is not done.

Wendy Victor, Via Tortuga, said she has an extra piece of land adjacent to her property and her property backs into a twelve acre property. She reported she sets a trap that captures raccoons, opossums, foxes, and feral cats. She said the wildest are the feral cats, and they are the only ones who will not eat food in the trap. She asked the Council to treat the feral cats as wild animals, ban the feeding of them, and continue to support the trapping and neutering of the existing population. She spoke about the balance of nature and noted the cats kill the big green salamanders but don't eat them.

Morris Saffer, 130 Everglade, said he has lived at the address for one year and he and his wife were confronted with the problem of an unusable back garden made unusable by feral cats. He said he met with Catherine and the Doctor and, at that time, he volunteered to trap and neuter to try to help with the issue. He said, in his opinion, there was no cooperation in getting rid of the cats. He said his wife could not go into the garden when she was pregnant, and his 2 ½ year old son cannot use the garden because of fecal droppings. Mr. Saffer said the situation is beyond humane solutions and unless the Town takes an active role in solving the problem, the average individual cannot solve the problem within the existing laws and hysteria. He suggested moving all of the feral cats onto the properties owned by Palm Beach Cat Rescue supporters and let them live with the problem.

Alix Hufty Anlyan, 160 - 154 Atlantic Avenue, said she is a very happy colony owner and recounted the improvements in the past four years regarding the colony that she supports. She said all the cats are well, and she receives great pleasure from feeding them although they are named, she has never been able to touch them. Mrs. Anlyan said her husband, Dr. Anlyan, was the Chancellor of Duke Medical Center from 1965 to 1998. He also was chairman of the World Health Organization and told the story of a malarial epidemic on an island where sprays were used to eradicate mosquitoes. The spray killed the mosquitoes, the lizards, and the cats in the food chain. The rats were left and took over the island, and the solution was to repopulate the island with cats establishing a natural balance.

Mrs. Anlyan said she was one of the people who talked to Mr. Spiegel at Royal Poinciana Plaza. She said in 1976, the calculation was 14,000 feral cats on Palm Beach island. She recounted seeing large numbers of feral cats on Worth Avenue, Golfview Road, Chilian, and other streets in the middle of town. She noted that this has been improved. Mrs. Anlyan reported that approximately

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400 cats existed in the Royal Poinciana Plaza area in 1976, and presently there are less than 40 cats because of the feeding, spay/neuter program that she has been involved with for the last fourteen years. She said the reported 1,500 cats on the island could have been greatly increased if not for the efforts in the intervening years. She noted that feeding is the way that feral cats can be trapped for immunizations and health care. Mrs. Anlyan said she would be proud of her town if it continued in a visionary and humane way with the feral cats to reach a humane solution.

Mark Robson, Regional Director for the Fish & Wildlife Conservation Commission, Regional Office in West Palm Beach, said this was not an easy issue and agreed with Dr. Porcher's comments regarding native populations of wildlife. He said a number of studies have been done throughout the world on the impact feral cats can have on wildlife, primarily on small animal populations and birds. He said that Palm Beach is not a natural setting and used to be a sub-tropical barrier island of hardwood hammocks and low cabbage palms. This has been completely changed by development and the human impact. Part of that change includes the introduction of non-native species of wildlife. He noted that migratory songbirds are protected by State and Federal laws and these barrier islands serve almost as magnets. Studies indicate that feral cats consume as low as five or six animals, including birds, to as many as one thousand. These numbers vary greatly, and it is hard to put numbers on it. He said this was a concern when the maintenance of a number of feral cat colonies is determined. Mr. Robson said it has been determined that some of the most important impacts to native beach mice populations have been as a result of development along the beaches including the introduction of feral cats.

Mr. Brooks referred to a October 31, 2000, letter signed by Robert L. Edwards, Director of Division of Law Enforcement, that stated "no permits have or will be issued for the release of cats in Florida. At this time we have not taken an adversarial position with the Counties on this program." Mr. Brooks said the statement referred to a species of animal not indigenous to the State is a violation of Florida Statute 372.265 and requested Mr. Robson address this subject.

Mr. Robson replied that is a State Rule of the Florida Fish & Wildlife Commission based on Statute which prohibits the release of non-native or exotic species into the wild in an effort to control the balance between non-native and native populations of wildlife. He said the rule is designed to address caymans and species like that. The Fish & Wildlife Commission does not control domestic animals such as dogs and cats. He said a position has not been taken on the

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issue of feral cats, and that would be a complex issue.

John Grosskopf, Manager of the Palm Beach Towers, reported that over the years the Palm Beach Towers incurred thousands of dollars worth of damage by the feral cats including cars, pool furniture, pool decks, trucks, and vehicles. Mr. Grosskopf said two employees have been scratched by the cats, and cats have been removed due to mange. He noted that four litters of cats were born on the property last year and questioned what cats were being neutered because the cat population is growing. He asked that the laws be enforced: no feeding of feral cats or wild animals; and trapped animals not be released back onto the property; fines imposed for littering of dishes.

Mr. Grosskopf questioned the issuance of permits to raise money for illegal practices, i.e. illegal funding for feeding feral cats.

Responding to Mr. Brooks' question regarding a n existing ordinance prohibiting the feeding of feral cats, Attorney Randolph responded the Town did not have an ordinance specifically related to that issue, but there is an ordinance related to nuisances. He said the Town would not enforce the County ordinance related to feeding of feral cats.

Attorney Randolph explained the Town does not investigate the purpose of any charitable event for anyone.

Larry Taube, Attorney, 1818 South Australian Ave., West Palm Beach, said he represented Palm Beach Cat Rescue and Humane Society. He said he has done this work for slightly over one year and mostly on a pro bono basis and has discovered there is a much larger issue than just feeding the cats. He pointed out that all of the views by all of the well meaning individuals expressed at this meeting have already been said in many communities throughout the country and the world. He said his group's frustration is that in the end, like it or not, the only practical means of addressing the problem is through the trap, neuter, and release program. The other solutions have been advocated, attempted, and failed. Trap and kill has not succeeded anywhere it has been tried. The problem has been ignored and that is why the community is where it is today.

Mr. Taube said cats are different from foxes who are native wildlife and will take care of themselves. Cats are not completely wild and not completely domestic. Humans brought cats to the island and have some obligation to address the problem. To simply ignore the problem and allow them to starve or allow them to be killed through the natural forces of nature is abstaining from

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responsibility. He said the State of Florida, the Legislature, and the County have recognized this position in somewhat of a passive way, and he said he was not aware of any city ordinance that stated it was against the law to feed feral cats. County Ordinance 98.22 speaks to it specifically. He pointed out that State Legislative Chapter 823 states the Legislature has determined the uncontrolled breeding of dogs and cats in the State results in a geometric growth and the counties can individually address the problem.

Mr. Taube said that County Ordinance 98.22, subsection 8, specifically provides that a person such as Catherine Bradley can register as a feral cat caretaker and that person has an obligation to identify a colony, trap and neuter the individuals in that colony, identify them, care for them medically, and if they cannot be adopted as most feral cats cannot, to feed them on a daily basis, everyday including holidays and weekends. He clarified that Catherine Bradley has only two ways to feed those animals by putting the food in dishes or not in dishes. That is the only meaningful way she can monitor and control that population in order to further the overall goal of eventually maintaining the population. He said the misconception is that Palm Beach Cat Rescue is attempting to preserve the population or seeking to promote it. Palm Beach Cat Rescue is trying to find a humane and meaningful way of controlling the population to allow it to come back to a natural level through attrition.

Mr. Taube concluded that he agreed with the comments from Mr. Robson, and it struck him as somewhat useless to talk about the native, non-native, and the balance of nature on the island of Palm Beach, because since Mr. Flagler developed the island and all of the inhabitants who followed, the island has been remade and it does not resemble anything of what it looked like 100 years ago. Because the feral cats were introduced by the inhabitants and a different ecosystem emerged, Palm Beach Cat Rescue feels it has a responsibility to do something about it in a humane kind of way.

Mr. Goldblum asked Mr. Taube about the issue of Palm Beach Cat Rescue responding to a request from the Committee to supply a list of colonies, locations, number of cats in each colony, number neutered and number to be neutered in each colony, and the program.

Mr. Taube replied Palm Beach Cat Rescue has registered each of the colonies they care for, attached to the registration form is a map specifically identifies where the colony is located and attached to that map is a note that identifies individuals in each colony. Additionally, Palm Beach Cat Rescue is required to register annually and that has been done.

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Mr. Taube said he understood the request was to provide some recommendations for the Town and that was submitted by letter.

Mr. Brooks asked Mr. Taube what his answers would be to the question of private property rights?

Mr. Taube said the group has to respect private property concerns, but Palm Beach Cat Rescue would like to work with those individuals. He noted that in the only occasion he was aware of, less than thirty days passed when Palm Beach Cat Rescue was notified the program did not work and the group was not allowed on the property. Mr. Taube said the group needed to work out the logistic details with property owners.

Mr. Brooks said the property owner does not have an obligation to work with an organization that he or she feels injurious to their property.

John Blades, Flagler Museum, One Whitehall Way, said this was an emotional issue, but wanted to keep his comments confined to the facts. He said he looked at the articles of incorporation for Palm Beach Cat Rescue, and the articles filed with the State in 1996 mentions only "educational activities" regarding spay and neutering, and no mention is made of feral cat colonies, feeding or maintaining. He said the Florida Department of Health, Florida Fish and Game, and the American Society for Prevention of Cruelty to Animals are against maintaining feral cat colonies. He said National Wildlife Magazine summarized the studies that showed the impact on the native population of animals.

Mr. Blades noted that Palm Beach had ordinances making it a bird sanctuary. He cited ordinances dealing with the ownership of animals, rodent harborages, and the issue of private property rights. He said the County Ordinance for feral cats has real problems, and the County is trying to address those problems. Regardless of the merits of the program, any individual private property owner must have the right to not have feral cat colonies maintained on their property against their will.

Mr. Blades said there were other options, and one was Loving Acres Animal Sanctuary that deals with the problem that created a compound for unwanted feral cats. It is located in Live Oak, Florida, and another one, Wildcat Village, is located in Utah. He summarized that using basic information regarding the number of female feral cats, the number of litters, the breeding age, and the average life span shows that it is essentially impossible to limit the cat

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population through capture, spay, and release. If the program worked, this meeting would not be necessary. He compared feeding feral cats to feeding the homeless in Palm Beach and questioned why cats should be fed when human beings are not? Mr. Blades said any new ordinance the Town would consider has to take into account the facts that Palm Beach is a bird sanctuary; the Town has ordinances against rodent harborage; and private property owners have rights not to have feral cat colonies.

July Schraft, 325 Crescent Drive, said she was a former seventeen year board member of the Animal Rescue League and was a sometime feeder of feral cats in the neighborhood. She said she understood spaying and neutering and overpopulation of all animals. This is a time, worldwide, when the subject of animal welfare and animal rights are more recognized than ever before and identified several species that have drawn attention. She said that Catherine Bradley epitomizes the growing awareness of animal rights and welfare. She has relentlessly devoted herself to this task and she deserves the support and encouragement rather than criticism and harassment. If the Town cannot support her efforts, she should at least be allowed to continue with what she does so effectively to promote spaying and neutering and to continue increasing awareness of the problem here.

Mrs. Cathleen McFarlane-Ross, Worth Avenue, said she totally agreed with the comments given by Alix Hufty and Judy Schraft, and said the curly tailed chameleons and lizards are not out this time of year because it is too cold but they will be out in thousands in about a month. She said cats to not bother the lizards, and she feeds feral cats on her property every day. She noted that healthy birds are hard to catch by cats.

Catherine Bradley, 165 Root Trail, said her lawyer had said it was all right for her to speak today. She noted that if the lawyers and vets wondered what they were getting into when they volunteered to help, she has often wondered the same thing.

Miss Bradley said she had always had the impression from the Breakers' employees that it was alright to feed cats on the Breakers property. She said food is not left in front of the tellers at the Bank on Cocoanut Row but is left behind the teller and she offered to do anything possible to keep the area clean. She said she and her volunteers are on the road 10½ hours per day and they find very little food left after the foxes, raccoons and other wildlife do eat it too.

Miss Bradley said the number of cats reported treated and microchipped by Dr.

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Ochstein began in 1997, and that number was 500 to 600. Several hundred cats were done from 1995 to 1997. More cats were done in the early years, because the cats receive additional medical attention now and making sure that they are healthy. Miss Bradley stated pollution killed birds more than any other wildlife, and cats were introduced into this environment almost 500 years ago.

Miss Bradley noted that some domestic cats do not receive as good medical attention as do the feral cats. Also, domestic cats are killed in shelters every day by the thousands, by the millions throughout the world. Finding homes for feral cats are almost impossible when homes cannot be found for healthy domestic cats. She said that Royal Poinciana Plaza does not have 100 cats but closer to 40 with most of them being spayed and neutered. She said that no dishes are left in the Royal Poinciana Plaza anymore because her group has been told not to do it. She mentioned she was the one who helped remove cats from roofs and walls in Royal Poinciana Plaza. She said Mr. Saffer on Everglade Avenue did grant Palm Beach Cat Rescue a very short time to take care of the situation, and she met with Mr. and Mrs. Saffer before they bought the house and explained the feral cat situation. Miss Bradley said she would work with them and asked for several months to have the cats spayed and neutered.

Miss Bradley said numerous cats were present on Everglade Avenue with one resident who lived next door to Mr. Goldblum asking for help with the cats. She said she had spayed and neutered close to 40 cats on Everglade Avenue in the past one and one-half years. Forty kittens were removed from Everglade Avenue this past summer. She noted that she attempted to work with the residents including Mr. Goldblum, but he was not interested. She said she has trouble "getting her foot in the door" with people who oppose or do not understand the program. She said she was begging the Town and its residents to sit down and deal with this issue in the only humane way possible.

Miss Bradley said the Palm Beach Police called her once to remove kittens from the top of a trash heap at the Flagler Museum, but those were the days when she worked with the Palm Beach Police Department. She said that in August, 1995, she spayed and neutered the last 17 of 28 cats that resided at the Flagler Museum. It was done in a two week period by Dr. Ochstein. No kittens have been born at the Flagler Museum since August 1995. She said she did not know where the increase at the Flagler Museum comes from.

Miss Bradley said all of the cats on Everglade Avenue with the exception of five have been spayed and neutered, but since she is not allowed on the street or on the property the five remaining cats will recreate the problem as it has been

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in the past. She said she does not understand the problem with the Flagler Museum and the Palm Beach Towers. Palm Beach Towers will not let her on the property to spay and neuter. The Flagler Director tried to have the State license for Palm Beach Cat Rescue revoked.

Miss Bradley said the Hemingway Museum in Key West has sixty cats on one acre. She noted the Flagler Museum has eight acres with eight cats since 1995. The Hemingway Museum stated they had no problems with the cats.

Responding to Mr. Brooks question regarding the number of feral cats ten years ago, Miss Bradley said she had no clue.

Larry Mehlman, 270 Ridgeview Drive, said he wanted to submit some observations: Palm Beach has a loss of songbirds and songbirds were lost throughout the United States because of development, pollution, pesticides and the concurrent loss of insects, and hunters in the path of migration. He said he thought feral cats would be far down on this list and if cats were euthanized, a re-emergence of song birds should not be expected. He recalled birds disappearing from the Phipps site due to development

Mr. Mehlman said a neighbor in his area trapped raccoons and foxes and within one year they virtually disappeared on his street. He said he lived in Palm Beach for forty-nine years and it was not the cats who are destroying everything; but all the other things including people who set out traps who regard anything larger than a mouse as a "problem".

Mr. Mehlman reported he checked rabies records and in the forty-nine years of keeping records, no fatalities were reported. In the United States, 30 fatalities, largely from bats, were reported in 22 years. He noted that often rabies is used as a scare tactic to decimate groups of animals.

Mr. Mehlman said the former director of the Flagler Museum did not have a problem with the cats and even fed them. He said the population of feral cats was stable and even declining, and if Palm Beach Cat Rescue were given a chance, there services could be expanded. He said he felt that showing compassion for animals is not a requirement for a lack of compassion for people.

(The Committee made no recommendation, but the following is a verbatim transcript of Mr. Brooks' closing summarizing remarks:)

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"Here's where we are at, gang. Obviously, as has been said, this is an issue that can provoke strong feelings, and I think at the outset I would like to say to the members of Palm Beach Cat Rescue that you are very altruistic, caring people. You're not cold hearted. You are not lacking in the proper caring feelings. I want to say this: There is no simple, quick answer to this problem. If there was a simple, quick answer, it would be simply and quickly wrong. Okay? Also, I would like to acknowledge receipt of the petitions that Miss Bradley and her colleagues have accumulated over the past ... and there is a substantial number of them. But here's my problem. If you recall when we were in college, and looking at most of you that was a few years ago, with the exception of me, in Greek mythology we had the story of Sisyphus when Sisyphus was pushing that rock up the hill. Just when he would get to the top, the rock would come back down, and he would try again. I think we have evidence this morning, despite the very moving testimony of Mr. Mehlman, that the population is not stable, is not decreasing. *Off ortsiori*, it is increasing. It is increasing for a number of reasons. Dr. Ochstein simply cannot, as he admitted in his own testimony take care of all the animals that would need to be spayed and neutered.

"Our conversation has raised many good questions this morning. We've talked about the balance of nature. We've talked about which wild animal is less prone to have rabies than others..on and on it goes. But here's my problem, as a representative of the Town. I asked Mr. Taube. He did not address property rights, and property rights are important. His statement that well they would like to engage the property owners in conversation misses a point. The property rights owner takes precedence over no matter how caring and how good an organization is. The Palm Beach Cat Rescue has not addressed the concerns. As a matter of fact, the Court has ruled against them, as regards Atlantic and Everglade, precisely because of the petition the plaintiffs who live on that street or at least some of them. So that causes a problem. Should we have a feral cat colony on the island? Yes, I think there is if we are talking about the balance of nature. I don't see a problem with the feral cat colony, except, EXCEPT, Mr. Hoffman had testified earlier this morning about the need to thin the herd. We have seen what happened with the gray wolf. We now see that because of environmental and humane and animal rights, the gray wolf is making an appearance. We have seen it with the coyote, especially in the northeast. Whereas, the trapping of coyotes was halted, now we're reaching the stage where they may have to reinstitute it.

"We talk about TNR and Catherine, I thank you for the video, and I had seen it before, and I have read the materials from the Allies of Alley Cats out of New

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Jersey, the Trap, Neuter, and Release. Yeah, there is value to that, but I think where we are down to now is the whole question of feeding. This is the problem. This is what's really been undergirding, sometimes extremely visibly, other times just playing at the surface like a subterranean support for a problem. This is what is causing the problem. I am not sure yet...I have to talk to the Council...what this Committee or my colleague, Mr. Goldblum, wants to recommend that we submit to the Council as an ordinance. I know that February 5th, Miss Bradley is back in Court on another legal matter. In an attempt to work out a compromise, and certainly we do not want to recommend euthanasia, I realize that citizen who mentioned that this morning has first amendment rights, but that is not...I'm an animal lover. I have two wonderful animals, and we don't want to talk about that. But I think we do have to talk about something that reflects the natural thinning of a population. So maybe we could talk about trap, neuter and release but maybe we could talk about not feeding the animals. The problem comes..where are you going to feed them? I see you shaking your heads. Again, I've asked for some help from the organization, but to arbitrarily say, 'It's our way or the highway' let me kindly, but firmly and resolutely inform you that it is not going to fly. We have the obligation to take care of property rights owners. Now, you can sugar coat that. If you want to do it on your own private property, that is your business. But, to go on private property..there is a picture here of Miss Bradley on private property. Okay? This is what we are faced with, and again there is no simple solution. I will say to you this, quoting Albert Einstein, who was far more cognitive and cerebral than maybe visceral and emotional, but he said 'until mankind extends the warmth of human kindness to all living creatures, we will not have a very happy world'. I firmly believe that, but I'm telling you we must be respectful of property rights. Where I'm leaning right now, excuse me, Miss Bradley,...where we are right now is the fact that we don't want to promiscuously and arbitrarily do harm to any animal. At the same time, we have a problem, and the solution to the problem...God knows I don't have all the answers...will come to this Committee which in turn will have it checked with Council and submitted to the Town Council. That's our first council, and I've heard all kinds of things this morning, but no one from Palm Beach Cat Rescue has addressed the question of property rights. If you look at how the courts have ruled in the past ten years, whether it's the Burt Harris Act or the 1983 Civil Act, you will see that property rights owners...I don't want to say they have total rights but they have rights, they pay taxes...and that's where we are at. So, I'll take a motion for adjournment."

Mr. Goldblum made a motion to adjourn the meeting, seconded by Mr. Brooks.

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V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The Committee meeting was adjourned at 11:45 a.m.

William J. Brooks, Chairman

Norman P. Goldblum, Committee
Member

Councilman Brooks reported that the ORS Committee acknowledged the input of the Garden Club in the selection of replacement historic/specimen trees and moved approval of the Town Council accepting the recommendation of the ORS Committee to accept the recommendations of Facility Maintenance Division Manager Joe Ugi regarding historic/specimen trees as follows:

1. Program the list of historic/specimen trees into the property records in the Town computer system so that when a property control number is called up for permitting purposes, properties that contain an historic/specimen tree are flagged to show this information.
2. Any person applying for a building permit on property that contains an historic/specimen tree should be made to sign an acknowledgment of this fact.
3. If a historic/specimen tree is indicated in the property records, the Planning, Zoning, and Building Department can require that the tree's drip line location be shown on the site plan in relation to the proposed building prior to building permits being

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issued.

4. Permits will only be issued if a plan is devised to properly protect the historic/specimen tree from construction activities. If the tree is damaged because the proper precautions have not been taken as stated in the permit, the job will be red-tagged and all work will stop until corrective action is taken.

Mr. Ugi suggested the following penalties that could be considered as changes or additions to the Code of Ordinances:

1. Anyone found guilty of damaging or destroying a historic/specimen tree without written permission from the Town Council shall be required to replace the tree with two trees, size and kind as determined by the Town Manager in conjunction with his designee. One of the two replacement trees is to be planted in the same location as the damaged or destroyed tree after the damaged or destroyed tree and its root system have been removed. The second replacement tree will be planted at a location to be determined by the Town, on the same property.
2. Failure to replace the tree shall result in a daily fine pursuant to Section 1-14 of \$500 per day for each day the violation continues.

Mr. Ugi added that he thought the offender should be allowed twenty days to remove the damaged tree and plant a new tree. He clarified that these suggestions would apply to any permit for demolition or construction.

Mr. Brooks noted that Mr. Ugi incorporated the suggestions of the Garden Club as outlined in a letter from its President, Nancy Murray.

Mayor Smith suggested a representative from the Garden Club, in conjunction with the Town Manager and his designee, be included in the selection of a replacement tree.

After discussion, THE COMMITTEE RECOMMENDED TO ACCEPT MR. UGI'S RECOMMENDATIONS WITH THE CHANGES AS NOTED BY MAYOR SMITH.

The motion of Councilman Brooks was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Councilman Brooks continued with the report of the ORS Committee, pertaining to the feral cat issue. He thanked the many citizens who had contributed recommendations and concerns on the problem, and there was no quick or easy solution to the situation. He noted that there were three main issues: the population of the feral cats was increasing; the trap/neuter/release program, which was generally recognized by experts in the field as the best policy for handling feral cat situations;

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the rights of private property owners. He recommended that the Town Council entertain a resolution that would eventually ban the feeding of feral cats, except on private property. He explained that the resolution would be based on a 120 day grace period, beginning the first full month following the adoption of the resolution. During the grace period, the members of the Palm Beach Cat Rescue would have the opportunity to trap more feral cats to move to private property; additionally it may be necessary that some of the neutered cats be moved to another location. In addition, Councilman Brooks recommended that a monthly report be given to the Town Council encompassing how many animals were trapped, how many needed to be neutered or spayed, and how many traps Palm Beach Cat Rescue actually had. He suggested that a knowledgeable representative of the Palm Beach Cat Rescue organization, such as Attorney Dick Weinstein give the report.

Councilman Goldblum commented that he had seen what a feral cat colony could do on the street where he resided; the children across the street from him could not play in the backyard because of the feral cats; the yard itself had to be torn up and replaced. He stated that there were many people on his street, and other streets that wanted action. He agreed with the proposal of Councilman Brooks, and noted that he had offered to help raise money to help start a shelter west of West Palm Beach, in the Everglades.

Councilman Wyett commented that to have a Town without feral cats would invite other major problems. He suggested that some locations on public property in Town be designated for cat feeding, however, private property owners had the right to reject feeding of the cats on their property.

Mayor Smith commented that the most disturbing issue to her was when the question of poisoning the cats had come up; it had happened several years ago, and she found it unacceptable that anyone would poison a helpless animal.

Public comments were now taken.

Ms. Carolyn Marston, 248 Sanford Avenue, commented that the cats had been all over her property, and there were about 20 cats that harassed her, with one in particular causing her problems. She stated that the rights of the homeowners were primary, and she was willing to help in any way she could to get the cats to a sanctuary where they could be taken care of and fed.

Ms. Bess Pouncey, Chilian Avenue, commented that she had trapped nine cats herself, and had taken them to Dr. Ochstein for neutering and spaying; she now fed them on her own property, although she did have a neighbor who objected, and had trespassed on her property. She pointed out that her experience with the cats had been wonderful. She stated that it was obvious that Mr. Goldblum was prejudiced against Catherine Bradley.

Councilman Brooks thanked Ms. Pouncey for her concern, and stated that if there were more people like her there would be a solution available to the cat problem. He respectfully requested that Ms. Pouncey desist from the argumentum ad hominem as regards any Town Council members who

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were speaking.

Ms. Catherine Bradley, 165 Root Trail, commented that she was sorry that Mr. Goldblum was being picked on this morning, and corrected the record that it was Mr. Goldblum who had suggested to her that the cats be taken to a sanctuary, and that she had asked him who would be paying for it, and he had replied - - we would. She stated that she had also asked him who would maintain it, and he had replied - - we would; she then had asked him who would remove the cats, and he had replied - - animal control. She stated that it was impractical and impossible to remove all of the cats.

Ms. Bradley continued speaking, stating that she respected private property rights; the Flagler Museum maintained that her group was maintaining a colony of cats on their property, and she stated that the cats had never been fed on the museum property; the cats were there long before she had come onto the scene. She stated that she would work with anyone regarding private property rights, and that she did not agree with the solution of Councilman Brooks.

Councilman Brooks replied that Ms. Bradley was saying that it was her way or the highway, and that would not work. He stated that he was recommending that the Town Council consider a 120 day grace period, with a monthly report being given to the Town Council.

Ms. Bradley replied that she had not been given the time to present full data on the feral cats, and that the case situation was not increasing, and that would be proven.

Ms. Connie Gasque, 167 Root Trail, commented that she lived next door to Ms. Bradley, and that the Catholic Church had very generously paved Root Trail, free of charge to the homeowners. The first thing that happened was that Ms. Bradley immediately put cat food right onto the new pavement that had not yet dried, and the colony of birds that was flocking to the street was becoming a nuisance. She suggested that there had to be an equitable solution.

Mr. Eric Gilberston commented that snowbirds should restrain themselves from feeding stray cats, because it then became an acute burden for year round residents to take up the slack; he also cited the black crow problem as a result of the cat food being left out.

Ms. Susan Lee, Pendleton Avenue, commented that money was an issue in this situation, and urged that the Town Council help Palm Beach Cat Rescue with funding.

Mayor Smith asked what funds would be used for?

Ms. Lee suggested that the funds could be given to Dr. Ochstein to pay for the neutering, etc.

Councilman Goldblum clarified the record, stating that he had subpoenaed by the court on the animal control district to appear at the recent lawsuit concerning Catherine Bradley.

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Mayor Smith commented that the question of adoption of feral colonies should be investigated, as well as the program in the information submitted by Mr. Weinstein, and she suggested that Councilman Brooks allow a month for a better solution to the problem. She stated that she was a cat and dog owner, and at one point had a litter of kittens born in her garage, and still had three of them.

Councilman Brooks agreed that the issue would be deferred for a month.

Councilman Goldblum moved deferral of the feral cat issue for a period of one month, for discussion at the March Town Council meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

XII. PUBLIC HEARINGS

A. Landmarks Designation of 230 Pendleton Avenue, Resolution No. 15-01.

Town Clerk Pollitt verified proof of publication, and administered the oath to all those who would be testifying.

Planner/Project Coordinator Tim Frank verified that the property at 230 Pendleton Avenue had been reviewed by the Landmark Commission and had been found to meet the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day reported that the house at 230 Pendleton Avenue had been designed in 1938 by Gustav Maass in the neoclassical style. She noted that there were only two other houses by Gustav Maass that he had done individually that were designated.

President Pro-Tem McLendon moved that the designation report be made part of the record. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Town Clerk Pollitt read Resolution No. 15-01 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF
THE TOWN OF PALM BEACH, PALM BEACH COUNTY,
FLORIDA, RATIFYING AND CONFIRMING THE
DETERMINATION OF THE LANDMARKS PRESERVATION

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COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

President Pro-Tem McLendon moved approval of Resolution No. 15-01. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

B. Landmark Designation of 444 North Lake Way, Resolution No. 9-01.

Planner/Projects Coordinator Tim Frank reported that at this time there was no property age requirement in the Town ordinances, or in the National Register of Historic Places for consideration of a landmark. A property was required to meet only the stated criteria; only as a tradition had the Landmarks Preservation Commission adhered to a 50-year standard. The house in question was less than 50 years old. He noted that amid controversy, a John Volk designed house, under 50 years old, on South Ocean Blvd., known as the Pagoda House, had been demolished in the recent past. At that time, staff had been directed by the Town Council to review properties in the Town of Palm Beach that were not 50 years old, but did meet the criteria of the Town ordinance. After research, staff had found eight such properties; the Landmark Preservation Commission had voted to advance "LaRonda" (444 North Lake Way) for consideration because of its outstanding quality of construction, materials, and design. It was the only one of the eight properties that was advanced.

Mr. Frank reported that the Landmarks Preservation Commission had found that the subject property met the criteria for landmarking in the Town of Palm Beach: Criterion C - embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship; Criterion D - is representative of the notable work of a master builder, designer, or architect, whose individual ability has been recognized or who influenced his age. He stated that John Volk had created in LaRonda a work of art that had local significance, and was an important study item of national and international prominence. He stated that LaRonda met the criteria and intent of the

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Landmarks Preservation Ordinance He introduced expert witnesses who would be assisting with the presentation: Dr. Peter Magyar, founding Chair and Dean of the School of Architecture at Florida Atlantic University; Dr. Sandra Norman, Chair of the History Department of Florida Atlantic University; Ms. Debra Nichols, registered architect, serving as President of the Palm Beach Chapter of the American Institute of Architects; Mr. Mack Ritchey, former Mayor, and project engineer of LaRonda.

Historic Preservation Consultant Jane Day exhibited a floor plan of the subject property, as well as slides of the property from 1973. She commented that never, in the nine years that she had worked as the landmark preservation consultant in the Town of Palm Beach, had she had the privilege to present a residence as important as the one at 444 North Lake Way. She reported that the structure was called LaRonda because of its spherical shape; it had been called a virtual sculpture; it was a free form plan for living, using the most advanced technology of its day, the finest materials available, and the full integration of its site. The house was unique in South Florida; there would never be another one like it; the importance of LaRonda was international in that it fit well within the realm of other masterpieces of modernism. Town records show that the building permit was issued by the Town of Palm Beach on September 30, 1969; John L. Volk was the architect for the project, and Ritchey and Crocker were the engineers. Ingress and egress were always difficult problems for an architect looking for originality, and Volk constructed a 90 foot diameter driveway, 25 feet wide, as an exterior art gallery, with interchangeable paintings. The entrance to the house was to the east, an intimate theater with 30 seats was to the west; double glass doors led to an oval entry and up a grand stairway to the main living area; an 18 foot glass wall separated the hallway from a stepped sculpture garden and reflecting pool. Mrs. Day further explained details of the house, summarizing that LaRonda was designed by John L. Volk; the house was modern in design, and important within the context of that movement; LaRonda was a collaboration in the avant garde tradition by both the Akstons and John Volk, and was the best Palm Beach had to offer in the style, which should be designated as a landmark. Mrs. Day summarized the history of landmarking in the Town of Palm Beach.

Dr. Sandra Norman addressed the Town Council, stating that she would send her curriculum vitae to be included with the record, and that she was Chair of the History Department at Florida Atlantic University, but was speaking as a preservationist, and as past president of the Society for Industrial Archeology in support of LaRonda. She maintained that the house was one that should be studied as a technological/engineering wonder, and John Volk had worked very closely with the owners of the house to create something that they wanted. She urged the Town Council to designate the house as a landmark, and add it to the magnificent collection the Town of Palm Beach had preserved.

Dr. Peter Magyar addressed the Town Council, stating that the design of the house was an original product of John Volk; the house was designed so that it could be used for flexible functions; the house was dignified in all of its movements; it was unique for its form/structure, unity of structure, space and materials. He urged support of the landmarking of the house.

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Attorney Frank Chopin, trustee of the Preservation Foundation of Palm Beach, commented that staff had done an extraordinary job in the researching of the house; there was no doubt that the house was unique, however, landmarks should be considered in the context of time. He maintained that a significant passage of time must be allowed for an appropriate judgment to be made with respect to whether a particular property should be landmarked; a 50 year time period had been considered appropriate by the Preservation Foundation, and it was being suggested that the former tradition of considering homes for landmarking at the conclusion of 50 years be formalized as an established threshold.

Ms. Sari Wilkey, member Landmark Preservation Commission, commented that she had recommended the house to be landmarked because it was unique, and that she did not believe the 50 year limit was important, but rather the quality of a structure.

Architect Gene Pandula, Chairman Landmark Preservation Commission, commented that the Town of Palm Beach had a Landmarks Preservation Ordinance since 1979 to preserve irreplaceable resources, whether they be 30 years old or 50 years old. He stated that there were approximately 250 designated structures in the Town currently, and he sensed that the focus of the Landmarks Preservation Commission would be towards reviewing and granting certificates of appropriateness for changes in buildings that were already designated, as the stragglers were brought in for landmarking. He stated that LaRonda was very important, was an irreplaceable resource, and it would be a mistake not to landmark it at this time. He pointed out examples of buildings throughout the world of various architectural styles/concepts that were tremendous works of architecture, such as the Sidney Opera House. He stated that LaRonda referenced the best of architecture around the world, and to give up on it because it was 20 years too young would be foolish.

Arhcitect Lindley Hoffman, member of the Architectural Commission and former member of the Landmarks Preservation Commission, commented that the Town had been enriched by having LaRonda.

Mrs. Jane Volk addressed the Town Council, commenting that her late husband, John Volk had been the architect of LaRonda, and she had been closely associated with his work throughout their lives together. She stated that in the recent Landmarks Preservation Commission meeting, Mrs. Marcus, owner of the property, had made a slanderous attack on Mr. Volk, saying that he did not design the building. She stated that the callous indifference to environmental values were now the subject of widespread apprehension – air, water, animal species, and landmarks and worthy buildings should not be regarded as freely exploitable for extreme profit gain. They should be seen as delicate and finite resources, which were indispensable to the well being of the community – knowledgeable political commitment was needed to make the concept of environmental accountability more than just a slogan - the word “preservation” more than just a dance. She stated that knowledge and commitment were needed. She added that the National Register of Historic Places did not require 50 years as a criterion.

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Ms. Laurie Volk addressed the Town Council, stating that LaRonda was representative of the work of John Volk; she presented photographs to indicate the lengthy time that John Volk had been an innovator in the Town.

President McDonald requested that Ms. Volk focus on the significance of LaRonda, not other houses in the area.

Ms. Volk replied that, historically, public comment was taken after the two sides of an issue had been presented; the Town had given its presentation, and she was now speaking to what would be presented by Attorney Kolins.

President McDonald suggested that Ms. Volk speak after Attorney Kolins made his presentation.

Mr. Pandula commented that the Landmarks Preservation Commission had made their deliberations solely on the merits of the property as a piece of architecture; it did not matter what a realtor thought, or how many bedrooms were noted on the drawings, or if the walls were round – what did matter was the integrity of the piece of architecture. He cited the Supreme Court decision of 1978 – the Pennsylvania Railroad Company vs. the City of New York, specifically regarding the decision of the Grand Central Terminal and the taking/financial issue; the decision was that landmark ordinances were valid; that there were certain functions that government must perform, otherwise things would not move forward; that the financial issue of taking was triggered to the highest and best use of the property not changing, and there being a fair and reasonable return on investment, not as they said, the exploitation for the highest amount of profit. He submitted that the landmark designation of the LaRonda property would not be changing its highest and best use as a single family residence in the R-B Zoning District, and that there was no financial taking.

(Note: the following portion of the discussion concerning the landmarking of 444 Northlake Way was held after the luncheon recess)

Attorney Ron Kolins addressed the Town Council, calling upon Dr. Norman, who had earlier testified in the designation of 444 North Lake Way.

Historic Preservation Consultant Jane Day reported that Dr. Norman and Dr. Magyar had returned to Florida Atlantic University for other commitments; they had appeared pro bono earlier in the meeting because they believed so strongly in the designation hearings; in addition, it had not been known at the outset that the discussion would continue after the luncheon recess.

Attorney Kolins then moved that the testimony of Dr. Norman and Dr. Magyar be stricken from the record.

Town Attorney Randolph advised that the witnesses should have been advised to remain for

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cross examination, however, he did not believe that it would require their testimony to be stricken, and if a petition for writ of certiorari was filed, Attorney Kolins would have the opportunity to raise the issue in his petition and a court could then decide, rather than having the Town Council decide.

Attorney Kolins requested that the Town Council realize that whatever points had been made by the witnesses would remain suspect without the opportunity for him to cross examine them.

Attorney Kolins then questioned Historic Preservation Consultant Jane Day in regard to the designation of LaRonda. In response to his question concerning when LaRonda was first brought up for consideration of a designation by the Landmarks Preservation Commission, Ms. Day replied that it had been approximately two years ago, with a motion made by Mrs. Wilkey. She explained that Mrs. Marcus had been given a number of extensions regarding the hearing at her request during those two years. She acknowledged that she had prepared the landmark designation report, and believed that LaRonda fulfilled criteria C and D of the Landmark Preservation Commission. She explained her statement – “leaps into modernism” was saying that the architecture in the Town of Palm Beach leapt into the modern movement with the house, and the statement the house made. She acknowledged that there were other modern houses in the Town as well, although she had not studied all of them and did not know how many pre-dated LaRonda. In response to questioning she explained that she had initially been inside LaRonda because she had been writing a book about John Volk and Mrs. Marcus had shown her through the house; she noted that she had also looked at 154 pages of drawings at the Volk archives, and saw the photographs that she had shown this morning that had also been published in Palm Beach Life in 1973; she had all of the information necessary to write the designation report; nothing Mrs. Marcus had told her the day she had shown the house was entered into that report; some of the pictures she had taken that day were included in the designation report. She responded that the interior of a home did bear on the architecture, how it functioned and what it did, and was integral to consideration for landmarking. She explained that sometimes staff was at a disadvantage in not seeing the interior of houses, and it was always more valuable when property owners invited staff inside; interiors had been incorporated into many reports that she had written since 1992. She responded that she understood that the ordinance did not provide for that. She responded that she did understand that LaRonda was a nonconforming structure, and that if it was eliminated or significantly modified the nonconformities could go away.

Attorney Kolins then questioned Mr. Gene Pandula regarding lawsuits on takings, asking him if subsequent cases had modified the holding in the Pennsylvania Railroad 1978 case he had mentioned earlier? Mr. Pandula agreed that was true. He responded that, although he was not a lawyer, he understood that a rationale of the Burt Harris Act was to create a mechanism whereby people could get compensated for partial takings of their property in response to cases like the Pennsylvania Railroad case, which would compensate only for a complete taking. He responded that he agreed that a monetary impact from landmarking had no bearing on whether a property should be landmarked. Mr. Kolins continued with his line of questioning concerning the purpose of landmarking and concluded his questioning of Mr. Pandula.

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Attorney Kolins began his presentation, stating that he was representing the owner of the property, the Estate of Zuita Akston, and Mrs. Betty Marcus. He advised that unlike most of the landmark cases that came before the Town Council, this property owner opposed the landmarking of the property, and that he would show by competent evidence that landmarking the property would substantially reduce the value of the property, which was contrary to the purpose of landmarking – namely, to stabilize or improve the value of property. He advised that the Town Code provided an oversight function of the Town Council over each and every landmarking recommendation of the Landmarks Preservation Commission, obviously, because the writers of the Code foresaw that the decisions were important enough to require an oversight, and there would be occasions where disagreement occurred. He maintained that the two criteria that were the rationale for landmarking were not met, and that if the property was landmarked it would substantially devalue the property. He submitted a booklet of exhibits for the record :

- A. Palm Beach Landmarking Criteria
- B. Resumes of Akston Witnesses (Diane Jenkins; Raphael Portuondo)
- C. Affidavit of Betty Marcus
- D. Aerial View of Scarab Bettle
- E. Mr. Akston's Collection (partial) of Circular Buildings and Shapes
- F. Affidavit of Edith Levin
- G. Christie's Article Featuring Pierre Delbee of House of Jansen
- H. English Translation of Christie's Article
- I. Architectural Digest Article Featuring Works and "Signatures" of Delbee
- J. Architectural Digest Article Featuring Delbee-Jansen bringing French Style to the World
- K. Photograph of the Artist signature (Swimming Pool)
- L. Photograph of the Artist Signature (Marble Floor)
- M. Photographs of Gates
- N. Photographs of the Working Model of La Ronda with Pierre Delbee
- O. Letter from John Volk to Pierre Delbee Confirming Contractual Relationship
- P. Photographs of John Volk Houses in Palm Beach
- Q. Affidavits from Realtors
- R. Copy of the Property Appraiser's Office Card Regarding 444 North Lake Way

Attorney Kolins requested that the entire record of the proceedings of the Landmark Preservation Commission (November 15, 2000) be incorporated into the record.

Attorney Kolins advised that there were some points of agreement in that the house was unique/unusual; Mr. John Volk had an important role in the creation and development of the house. He maintained that there had been a great deal of misunderstanding and unnecessary hard feeling between the loved ones of Mr. Volk and his side of the aisle. He stated that he would explain that Mr. Volk was not the only participant in the design evolution of the house, but would never derogate anything that he did; he was not present to say anything bad about John Volk, hoping that would

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dispel the contentiousness about Mr. Volk personally as that was not the intention. He also acknowledged that John Volk signed the construction drawings, and was the architect of record, however, that did not mean that he had designed the house, but that he had a role in the house, and was an outstanding architect.

Attorney Kolins commented that the house was 27 years old, as opposed to the traditional standard of 50 years or more. He requested that his witness, Architect Raphael Portuondo address the Town Council.

Architect Raphael Portuondo addressed the Town Council, stating that at the end of the day, he wished his wife was as strong willed as Mrs. Volk and her daughter-in-law, as in his view it was a testament to them. He advised that he had researched LaRonda and had been under the assumption that it was a Volk house; then he was introduced to the owners and Delbee, and he had done some research on Delbee and "round" houses. He noted that he had found that the round house was not a typical form found in Volk or Delbee; that Mr. Akston had been an art connoisseur, and the design of the house was actually brought to Mr. Volk. He stated that the more he looked at the architecture the more he felt that it was not Delbee, it was not Volk, and it was not Akston, but actually a collaboration of the three. He explained that indigenous materials had not been used, and the Akstons themselves had been very involved with the design.

Attorney Kolins clarified that the record before the Landmarks Preservation Commission made by the Town suggested that LaRonda had been built out of marble because it was easier maintenance – nothing could be further from the truth; the house had been built out of marble because it was a much more sculpture-like material.

Ms. Day commented that she believed an architectural collaboration strengthened the designation, and asked Mr. Portuondo if he had seen any plans, sketches, or drawings that Mr. Delbee had prepared for the house?

Mr. Portuondo replied that the house was not a one-person design, and that he had seen only the model prepared for the house.

Attorney Kolins exhibited the designation criteria as stated in the Town Code; he referred to the particular exhibits that pertained to the testimony of Mr. Portuondo.

Mrs. Betty Marcus, 208 Sandpiper, addressed the Town Council, stating that she was present to represent her mother's estate, and as an advocate to protect 444 North Lake Way. She stated that LaRonda was totally unique, and was more like a sculpture, which had been designed by Pierre Delbee, a renowned designer from Paris, with input from the Akstons, John Volk, who did the construction plans, and Bob Gottfried, who was the builder. During the time the house was being designed she noted that she had spoken with her mother regularly, and kept abreast of all matters concerning the design; LaRonda had been conceived as a result of extensive travel and collection

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of ideas by the Akstons, and it was definitely a Delbee design, with inputs by the Akstons. She explained that the house had originally been planned to be built in Spain, however, the plans later changed to Palm Beach; Delbee refused to travel to Palm Beach, but continued to work on the project from Europe. Delbee strongly suggested that a well respected and well connected architect be hired, and Bob Gottfried was chosen to be the builder, requesting that he recommend an architect; Gottfried suggested John Volk. Mr. Akston then met with Volk, told him that the plans and spherical concept of the house were already set, and that working drawings of their plans would be needed to fit their design into their lot. Volk had been engaged with the understanding that he would keep in touch with Delbee, and get his approval for any changes. When Volk agreed to all of the rules, the papers, sketches, and notes were turned over to him, however, the concept for the house was that of Delbee and the Akstons. She urged that the property not be landmarked.

Real Estate Appraiser Diana Jenkins addressed the Town Council, stating that in August of 1997 she had been asked by the Preservation Commission to do a report on the impact of landmarking on property values in Palm Beach, because at that point they were getting tremendous resistance from property owners to landmark properties. She stated that it was very interesting to learn, over looking at sales through the 1990-1997 time period, that many properties benefitted in value from landmarking; people felt there was a certain prestige to it; there were some tax advantages; the study also made it very clear that the time that landmarking would create a detrimental impact was with certain property values and certain property types, and LaRonda clearly fit into that category. Once a property was over a certain value, landmarking became a detrimental impact; it was clear that when people were spending anything in the upper range of values they wanted the freedom and the ability to make their own decisions, many of which were to keep the property, to keep the house and maintain it exactly as it was. She explained that her recent research and property analysis of LaRonda to determine what landmarking would do to the property value indicated that there would definitely be a negative impact to the value.

Mr. Frank noted that Ms. Jenkins had stated for the record that she had been asked by the Preservation Commission to study the question and to do a report, however, he did not believe the Preservation Commission had asked her for anything. He stated that he believed she had been working for the Preservation Foundation, which was a totally different entity. He stated that he did not want this audience to think that the Town of Palm Beach had sponsored or endorsed her study.

Ms. Jenkins responded that Mr. Frank was correct; she had done the study for the Preservation Foundation of Palm Beach.

Town Attorney Randolph established for the record that Attorney Kolins had included affidavits of Edith Levin and Larry Moens, and that they were not present today.

Mrs. Jane Volk addressed the Town Council, stating that the model for the house that she remembered had been made in Ft. Lauderdale. She noted that her husband, John Volk, had total respect for the tastes and whims of his clients; he believed that a knowledgeable client with definite

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ideas inspired an architect's best work. She commented that she had lived in Palm Beach for 54 years and had not ever met or seen Mr. Delbee; she had been a frequent guest at the Akston house as well.

Mrs. Laurie Volk addressed the Town Council, stating that in an article in Palm Beach Life of 1973 there were several quotes by Volk, but more importantly there had been many names used in association with the particular house, and not one mention had been made of Mr. Delbee. She read from a document wherein Volk himself discussed the Akston residence. She urged that the house at 444 North Lake Way be landmarked.

Mayor Smith suggested that the documents being read from by Jane Volk and Laurie Volk be entered into the record.

Attorney Kolins commented that the article referred to by Ms. Laurie Volk did not reference Mr. Delbee because it was local; he maintained that there was an attempt for Architectural Digest to do an article about the house, and when Mrs. Marcus insisted that Delbee be included, Mr. Volk refused to have the article printed. In addition, he pointed out that the landmarking criteria referred to the notable work of a master builder, designer, or architect, and thus, it would make no difference whether Mr. Delbee was an architect or a designer. He maintained that the house was not representative of the type of work done by John Volk.

President Pro-Tem McLendon moved that the designation report be made part of the record. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

At this time, President McDonald called for ex-parte communication.

Ex-parte communication was declared by Councilman Brooks with Timothy Frank, Attorney Kolins, and that he had walked the property and gone into the house; President Pro-Tem McLendon declared that he had discussed the issue with Timothy Frank, Attorney Kolins, and had walked the property; Councilman Goldblum declared that he had spoken with Mrs. Marcus; Councilman Wyett declared that he had spoken with Attorney Kolins, Mr. Pandula, a number of real estate agents, and a number of people interested in purchasing the house.

Town Attorney Randolph advised that any decision of the Town Council should be based upon the criteria set forth in the ordinance, and be based upon substantial, competent evidence. He advised that due process required that cross examination be allowed, and it was unfortunate that the two witnesses (Dr. Magyar and Dr. Norman) were not available for that; in addition, affidavits had been presented that did not allow the opportunity for cross examination as well. He suggested that a decision should be based on the witnesses that were available for testimony and cross examination, and substantial and competent evidence.

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Town Attorney Randolph read Resolution No. 9-01 by title:

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

Councilman Brooks moved denial of the landmarking of 444 North Lake Way. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

*****The Town Council Meeting of February 13, 2001,
was adjourned for the luncheon recess at 12:30 p.m.*****

*****The Town Council Meeting of February 13, 2001,
was reconvened at 2:00 p.m.*****

Continuation of discussion regarding Item XII. B. Landmark Designation of 444 Northlake Way, Resolution No. 9-01 took place immediately following the luncheon recess, and is so noted and included under Item XII..B.

XIII. REGULAR AGENDA

A. Old Business

1. Status Report Regarding Progress of Florida Department of Transportation South County Road Project. Eric Pedrone, FDOT.

Town Engineer Bowser reported that the FDOT was working on final touch ups, and

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expected that the final asphalt should be down within ten days.

2. Status Report on U.S. Army Corps of Engineers Activities Toward Upgrade of Lake Worth Inlet Sand Transfer Plant and Other Activities Providing for Accretion of Sand on Town Beaches. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey reported that the Sand Transfer Plant was on the same schedule that it had been. He suggested that the report on its status be done on a quarterly basis, since work was very slow moving; if anything of great importance happened, he would so advise.

Mayor Smith suggested that a status report be given at the May Town Council meeting.

3. Update on the Proposed Florida Department of Transportation Project on Royal Poinciana Way and Associated Phasing Plan. James M. Bowser, Town Engineer. *(Deferred from January 9, 2001 Town Council Meeting)*

Town Engineer James Bowser reported that staff was continuing to work with the Royal Poinciana Way Association and Florida Department of Transportation (FDOT) on the Royal Poinciana Way project.

Ms. Perla Medina Kinney, FDOT, reported that because of attempting to accommodate all of the requests for amenities that the Town and the business owners had made, the project was running late, and the earliest that the job could go out for bid was going to be May 4, 2001. Assuming that there were no problems with that, and the bid was awarded, the very earliest that construction could begin was in June 2001. She proposed that the contract be awarded in May, as planned, in order to encumber the funds, however, construction be deferred until April 2002 (the day after Easter).

Mayor Smith expressed concern that Royal Poinciana Way would be under construction at the same time that Royal Palm Way was reduced to one lane, and two out of the three major entrances to the Town would be under construction at the same time.

Mr. Bowser replied that the FDOT was trying to move forward with the first phase of Royal Palm Way, which was the 400 block; he had discussed the issue of both roadways being under construction at the same time with Mr. Borello, and a satisfactory conclusion had not yet been

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reached. He indicated he would pursue the phasing of the projects with FDOT, so that only one project was underway at a time; he would give a status report at the next Town Council meeting.

Councilman Wyett commented that the Town Council could not allow both roadways to be under construction simultaneously, even in the summer season.

Ms. Kinney commented that the project would be let and awarded in May, and at that point there could be no further changes made.

In response to Councilman Wyett concerning re-engineering the project to come right down the median in-between the two roadways on Royal Poinciana Way, Town Engineer Bowser replied that the existing utilities in the median of the road had been considered in the original design, and getting close to the Royal Palms with heavy construction was something that FDOT had tried to avoid. Ms. Kinney added that the funding may be affected, and the entire project would have to be re-designed as well; the original problems would begin to surface again.

4. Status Report on Electronic Agenda Format and Means to Advise the Public as to Town Council Agenda Progress on the Town Web Site During Meetings. Spencer D. Wilson, Information Systems Manager.

Town Manager Peter Elwell reported that staff was prepared to produce the agenda in an electronic format within the next several months; the posting of the live agenda on the Town website had been very successful.

B. New Business

1. Setting of Town Council Workshop Meeting on FY 2001-2002 Budget and Mayor and Town Council Goals and Objectives.

The Town Council Workshop Meeting was scheduled for Thursday, March 29, 2001, at 9:30 a.m. in the Town Council Chambers.

Town Manager Elwell suggested that staff prepare a list of proposed objectives/priorities for the upcoming fiscal year that could be reviewed by the Town Council; any additional items that the Town Council wished to add could be submitted and added to the ultimate aggregate list, which

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would be provided well in advance to the meeting. He explained that the purpose of the meeting would be to identify items that would require an increase in funding and forecasting of costs for new pursuits, so that a prioritization process could be established as to what would occur in the next budget year.

2. Report and Recommendations on Alternative Yard Waste (Trash) Collection Day(s) With the Goal of Reducing Potential for Storm Drainage Inlet and Piping Obstructions Associated With the Same. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey referred to his memorandum of January 31, 2001, reporting that changes for the collection of yard trash were detailed in an attached schedule; it was the intent to provide handouts to every resident in advance, to contact yard trash service people to give them notice. He recommended that, if approved, the schedule change be implemented in November 2001.

After discussion, it was determined that notifications to residents would be sent out prior to Easter, so that arrangements could be made by residents before they leave for the season.

Mr. Leslie Shaw commented that many properties in Town did not have facilities to store any amount of yard trash, and requested that the Town Council determine some requirements that could be applied to properties for storage of yard trash, as well as consider a containerized system for various properties/areas.

Councilman Goldblum moved adoption of the report of Public Works Dusey in regard to recommendations on yard trash. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

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3. Review of Five (5) Year Capital Improvement Program for Drainage. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey reported that staff had met with South Florida Water Management District (SFWMD) and he now believed there was room for improving the level of service through additional pump capacity for rain storms that exceeded the norm. Staff had reviewed the entire drainage system to determine what improvements had been made to the system and what improvements were needed. A priority list had been determined with approximately 30 projects that would benefit the level of service if the pipe systems were improved; pump capacity would need to be increased. The first year would include those projects that would benefit with or without a pump station improvement; the second year would concentrate on pump improvements. Pump improvements would need to be addressed before a major pipe replacement program could be implemented. The D-4 system was currently undergoing a drainage audit.

Councilman Wyett complimented Mr. Dusey on his work on the drainage system problem, however, he commented he did not believe that Mr. Dusey had fully understood the intent of the Council and the demand of the people – they wanted to spend the money, and it was not limited to \$1 million. He stated that when the total amount of money was determined, he believed the Council would spend the money. He noted that Eden Road had submitted a petition signed by all of the residents, and they wanted the work to commence as soon as possible.

Mr. Dusey responded the work could begin immediately if funding was provided – survey work and engineering would be needed, and then a contract could be initiated. He indicated that the FY 2002 program of pump capacity increases would address streets that had experienced flooding, such as Eden Road, Regents Park Road, and the Phipps Plaza connector.

Councilman Wyett moved that the Town Council authorize immediate construction on streets that were pipe situations and not involved with the pump situation. The motion died for lack of a second.

In response to President McDonald, Mr. Dusey explained that the projects, by fiscal year, were a compilation of 30 streets in priority order; FY 2002 and FY 2003 monies would address the problem quickly – streets such as Jamaica had the right size pipe, but the pump station was overwhelmed during excessive storms.

Mayor Smith asked if it would be physically possible to do all of the projects listed in one year?

Mr. Dusey responded that would not be possible, as survey work, design work, and contracts would require extensive administration. He explained that FY 2002 and FY 2003 could be accelerated in order to get pump improvements and the projects listed for FY 2002; year round work hours would be helpful.

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President Pro-Tem McLendon expressed concern with the design criteria and the attainment of the necessary level of service for drainage.

Mr. Dusey responded that the level of service he was seeking was to keep water out of the homes of residents; if a level of service of 4.6 inches per hour was adopted, SFWMD would most likely not permit it. Emergency permits would allow operation of emergency stations, which would be helpful.

Town Manager Elwell commented that a more detailed description of the auxiliary/emergency system would be required ; staff would also need time to study financing of an accelerated program as proposed today. He suggested that action be deferred until the next Town Council meeting so that the Town Council could be presented with details on the auxiliary/emergency system, and a financing plan.

President Pro-Tem McLendon noted the urgency of the drainage/piping problem on Eden Road, and moved approval of the allocation of funding in the amount of \$254,000, to come from the contingency fund, for repairs on Eden Road. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Mr. David Barton, 264 Jamaica, commented that Palm Beach should be a leader and not a contributor to the pollution of Lake Worth, and that storm water should not be drained into Lake Worth. He suggested that a representative of SFWMD be available to add to the discussion of drainage, and that there should be a basis for acceptable levels of service – a public survey could be made to determine the extent of the drainage problem. He urged that the drainage problem be approached comprehensively; he maintained that specifics should be provided as to the level of disruption and property damage; details should be provided regarding rehabilitation of the pump stations. He stated that all of the problems had happened because the Town had been overbuilt, and the taxpayers should be protected who lived in Town now, rather than bringing more people into the Town. He remarked that the drainage report raised more questions than it answered.

Councilman Brooks moved deferral of the remainder of the drainage issues until the March 13, 2001 Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote, noting that he was of the opinion that the issue should be considered at the earliest possible time.

4. Consideration of Code Enforcement Board Appointments. Robert L. Moore, Director of Planning, Zoning & Building.

After casting ballots, the Town Council appointed Richard Allison as a regular member of

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the Code Enforcement Board, and M. S. "Bud" Rukeyser as an alternate member of the Code Enforcement Board.

5. Consideration of Zoning Commission Appointments. Robert L. Moore, Director of Planning, Zoning & Building.

After casting ballots, the Town Council appointed James Bertles and Peter Broberg as regular members of the Zoning Commission; Joanna Frost Golino as an alternate member of the Zoning Commission.

6. Discussion on Creation of Strategic Planning Board. William J. Brooks, Town Councilman.

- a. Resolution No. 16-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Creating a Strategic Planning Board.

Councilman Brooks commented that strategic planning was a systematic process conceptualizing and creating a desirable future for the Town, and was distinct from long range planning, which was the extrapolation of the current operational trend. He noted that the Town had instituted its first long range planning in 1929, which had last been updated in 1976; the long range plan handled such issues as zoning, and infrastructure. The strategic plan was more conceptualized; what the Town Council and citizens wanted to see the Town look like in 5-10 years. He pointed out that historically the members of such a committee should number 5-7, beyond the Mayor and Town Manager. Eventually, the strategic plan and the long range plan would be interlocked. He recommended that the Mayor chair the Strategic Planning Board, and that she appoint the board members.

Mayor Smith commented that it was her opinion that the membership should not be limited, and that the time frame should be opened so that progress reports could be furnished by the Board.

Councilman Wyett commented that once the Board was established, it should report back to the Town Council as to the scope of the project; he stated that he believed the Board should have a sunset date; in addition, funding requests should be made clear.

President McDonald commented that he had discussed the Strategic Planning Board with Mr. Bradford, and he requested that Mr. Bradford elaborate on his research in this regard.

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Assistant Town Manager Thomas Bradford explained that in his research he had referred to textbooks which had pointed out that in order for strategic planning to be successful the decision makers of the organization (the Mayor and Town Council) would need to be active participants in the process.

Councilman Brooks agreed, and also recommended that the mission statement be approved by the Town Council, and that the chairperson of the board report to the Town Council on a timely basis.

Mayor Smith asked if the Mayor and Town Council would be involved as the Strategic Planning Board, or would they automatically all be members?

Mr. Bradford replied that would not necessarily be the case; through regular reporting and integration with the Town Council and the Mayor, there would be close oversight of the process.

Mayor Smith commented that her initial thought had been that neither the Mayor nor the members of the Town Council should be members of the Board in order to give the Board more of an opportunity to speak freely, rather than in front of the elected officials.

Town Attorney Randolph read Resolution No. 16-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
PALM BEACH, PALM BEACH COUNTY, FLORIDA, CREATING
A STRATEGIC PLANNING BOARD.

Councilman Brooks moved approval of Resolution No. 16-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

7. Adoption of Investment Policy per New Requirement of F.S. 218.415. Jane Skittone, Director of Finance.
 - a. Resolution No. 23-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Investment Policy.

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Finance Director Jane Skittone referred to her memorandum of February 5, 2001 containing the revised investment policy of the Town of Palm Beach, and offered to respond to any questions.

Town Attorney Randolph read Resolution No. 23-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
PALMBEACH, PALMBEACH COUNTY, FLORIDA, ADOPTING
THE TOWN OF PALM BEACH INVESTMENT POLICY.

Councilman Brooks moved approval of Resolution No. 23-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

8. Performance Review of First Union Capital Management Group. Julie Tilson, CFA.

Ms. Julie Tilson, Associate Director, Evergreen Institutional Asset Management, addressed the Town Council, stating that she would review the FY 2000 performance, and the outlook for FY 2001, then opening the discussion for questions.

Ms. Tilson reported that, relative to FY 2000 performance, in the last quarter of 1999, the Federal Reserve increased Fed Funds by 75 basis points, and the year 2000 was started with a neutral stance from Fed Fund Policy. That quickly changed into an inflationary environment, and the Federal Reserve increased Fed Funds by 100 basis points. The average maturity of the Town of Palm Beach portfolio was generally nine months to one year, and it could not participate in the rising rate environment as quickly as a money market fund. She explained that was part of the reason for a lagging performance in the year 2000.

Ms. Tilson reported that the environment had changed in FY 2001; the Federal Reserve was now on an easing motion, and had already cut funds by 100 basis points. The benefit to the Town of Palm Beach portfolio was that a money market type of fund would automatically reset to lower interest rates, whereas a portfolio with a longer term nature would be able to enjoy the higher yields for a longer period of time. As of December 2000, the Town portfolio had outperformed SBOA by approximately \$5,000-6,000, and as of the end of January that figure was \$11,000.

In response to Mayor Smith, Ms. Tilson explained that interest rates had risen very dramatically and quickly in the year 2000, and the only way to participate in a rising rate environment was to either liquidate the current portfolio, and reinvest at higher yields; or put new money into the account to raise the average yield of the portfolio. She pointed out that the account

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should have a longer term perspective; generally the standard in the market place was to measure performance of a money manager on a total return basis, and performance had outperformed the market. A long term account must be viewed over interest rate cycles, and from the inception of the portfolio.

Town Manager Elwell suggested that consideration be given to the feature of having two separate means of investment in the future, commenting that there was significant staff time and effort required in order to keep maintaining this particular program. He advised that he believed there was good reason for consideration of shifting all of the funds over to SBOA; an exit strategy would be necessary if that route was chosen, and he recommend that staff monitor the fund, and come back in several months with recommendations for an exit strategy.

9. New Central Fire Station and Town Hall Renovation Project.

- a. Review of Construction Cost Estimates. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey reported that the revised updated estimate to build a new fire station on the Beaumont Lot was \$2.9 million and to renovate Town Hall was \$1,170,000, for a total of \$4,070,000. Preliminary design of the fire station would require an allocation of \$38,500.

Councilman Wyett suggested that details be provided of costs to enlarge the third floor of the fire station beyond only housing the emergency facilities; in addition he suggested that a decision be deferred until after the March 29, 2000 budget workshop.

- b. Resolution No. 22-01 - A Resolution of the Town Council of the Town of Palm Beach, Florida, Approving an Architectural Services Contract Proposal with Digby, Bridges, Marsh & Associates in the Amount of \$38,500 for the Preliminary Design of the New Central Fire Station, Approving Necessary Funding From the Capital Improvement Fund Contingency and Authorizing the Town Engineer

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to Execute the Same on Behalf of the Town. Albert P. Dusey,
Director of Public Works.

Town Attorney Randolph read Resolution No. 22-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
PALM BEACH, PALM BEACH COUNTY, FLORIDA,
APPROVING THE ARCHITECTURAL SERVICES PROPOSAL
OF DIGBY, BRIDGES, MARSH & ASSOCIATES IN THE
AMOUNT OF \$38,500 FOR THE PRELIMINARY DESIGN OF
THE NEW CENTRAL FIRE-RESCUE STATION, APPROVING
NECESSARY FUNDING FROM THE CAPITAL IMPROVEMENT
FUND CONTINGENCY AND AUTHORIZING THE TOWN
ENGINEER TO EXECUTE THE SAME ON BEHALF OF THE
TOWN.

President Pro-Tem McLendon moved approval of Resolution No. 22-01. The motion was seconded by Councilman Brooks.

Mayor Smith questioned the relocation of the Building Department. Mr. Dusey explained that the plan was to move them into the old Finance area and possibly into the Town Clerk's office.

Mayor Smith commented that she had noted that there were changes included in the plan for the Town Council Chambers, and that she saw no reason to change it.

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

- c. Resolution No. 13-01 - A Resolution of the Town Council of the Town of Palm Beach, Florida, Declaring the Town's Official Intent to Seek Reimbursement for Certain Capital Expenditures Made or to be Made with Respect to the Relocation, Acquisition, Construction and Equipping of a New Fire Rescue Facility, and Renovation of Portions of Town Hall From the Proceeds of its Not to Exceed \$5,500,000 Principal Amount of Bonds and Providing for an Effective Date. Jane Skittone, Director of Finance.

Town Attorney Randolph read Resolution No. 13-01 by title:

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A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DECLARING THE TOWNS'S OFFICIAL INTENT TO SEEK REIMBURSEMENT FOR CERTAIN CAPITAL EXPENDITURES MADE OR TO BE MADE WITH RESPECT TO THE RELOCATION, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A NEW FIRE RESCUE FACILITY, AND RENOVATION OF PORTIONS OF TOWN HALL FROM THE PROCEEDS OF ITS NOT TO EXCEED \$5,500,000 PRINCIPAL AMOUNT OF BONDS AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Brooks moved approval of Resolution No. 13-01. The motion was seconded by Councilman Goldblum.

In response to Mayor Smith, Assistant Town Manager Bradford explained that the resolution was not providing the funds, but was merely a requirement for financing with tax exempt financing, whether it be a bond or bank financing in the future. The resolution needed to be adopted at this time in order to reserve the ability to allow the preliminary design costs of \$38,500, to be reimbursed by financing in the future.

On roll call the motion carried unanimously.

- d. Financing Report - Bond vs. Bank Financing. Michael G. Hole, Director of Public Finance, Salomon Smith Barney.

This item was not heard, as Mr. Hole was no longer available at this time.

- 10. Consideration of Sealed Bid Award No. 2001-04, D-12 Storm Water Collection System, Phase I, to Florida Blacktop, Inc., for the Low Base Bid of \$2,623,826.16. James M. Bowser, Town Engineer.
 - a. Resolution No. 8-01 - A Resolution of the Town Council of Town of Palm Beach, Florida, Awarding a Contract to Florida Blacktop, Inc.

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for Construction of the D-12 Stormwater Collection System - Phase I Improvements. James M. Bowser, Town Engineer.

Town Engineer James Bowser reported that bids had been received for the storm water collection system, and the award was contingent upon agreements between BellSouth and the City of West Palm Beach. He explained that, if for some reason, the agreements were not signed the project could be pursued by deleting the items pertaining to them, and returning to the Town Council with an amended resolution. He noted that both entities had indicated that they would proceed with signing the agreements.

Town Attorney Randolph read Resolution No. 8-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
PALM BEACH, PALM BEACH COUNTY, FLORIDA,
AWARDING A CONTRACT TO FLORIDA BLACKTOP, INC.,
FOR CONSTRUCTION OF THE D-12 STORMWATER
COLLECTION SYSTEM - PHASE I IMPROVEMENTS.

Councilman Brooks moved approval of Resolution No. 8-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

In response to Councilman Goldblum regarding the situation with South Florida Water Management District and level of water in The Breakers pond, Mr. Bowser explained that they had come to an agreement on lowering the lake level so that the level of service on County Road can be improved.

- b. Resolution No. 17-01 - A Resolution of the Town Council of the Town of Palm Beach, Florida, Authorizing the Execution of a Joint Participation Agreement Between Bellsouth Corporation and the Town of Palm Beach for Certain Improvements on Bradley Place From Royal Poinciana Way to Wells Road for the D-12 Stormwater Pump Station and Collection System - Phase I Project. James M. Bowser, Town Engineer.

Town Attorney Randolph read Resolution No. 17-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
PALM BEACH, PALM BEACH COUNTY, FLORIDA,
AUTHORIZING THE EXECUTION OF A JOINT
PARTICIPATION AGREEMENT BETWEEN BELL SOUTH

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CORPORATION AND THE TOWN OF PALM BEACH FOR CERTAIN IMPROVEMENTS ON BRADLEY PLACE FROM ROYAL POINCIANA WAY TO WELLS ROAD FOR THE D-12 STORMWATER PUMP STATION AND COLLECTION SYSTEM - PHASE I PROJECT.

Councilman Goldblum moved approval of Resolution No. 17-01. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

- c. Resolution No. 21-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of an Interlocal Agreement Between the City of West Palm Beach and the Town of Palm Beach for Payment of Certain Water Main Improvements Within the Work Area in Connection with the D-12 Stormwater Collection System - Phase I Project. James M. Bowser, Town Engineer.

Town Attorney Randolph read Resolution No. 21-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN TH CITY OF WEST PALM BEACH AND THE TOWN OF PALM BEACH FOR PAYMENT OF CERTAIN WATER MAIN IMPROVEMENTS WITHIN THE WORK AREA IN CONNECTION WITH THE D-12 STORMWATER COLLECTION SYSTEM - PHASE I PROJECT.

Councilman Wyett moved approval of Resolution No. 21-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

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11. Proposed Audit of BellSouth Franchise Fees and Public Service Tax Payments to the Town for the Calendar Year 1999, in the Amount Not to Exceed \$15,000, with Said Funds to be Provided From the General Fund Contingency. David F. Jakubiak, Assistant to the Town Manager.

Assistant to the Town Manager David Jakubiak referred to the memorandum from himself and Finance Director Skittone dated February 7, 2001, outlining the reasoning for conducting an audit of BellSouth franchise fees and public service tax payments. He explained that a new communications tax law had gone into effect, which potentially could remove auditing authority from a municipality as of 2002; the current statute restricts the ability of a municipality to go back only three years; the communications tax law would base all future revenue payments on 1999 data. Town revenue figures indicated that there was an inexplicable decrease in franchise fees from BellSouth in the 1999 year. He recommended that authorization be given to proceed with an audit.

Mr. Sid Poe, representing BellSouth, addressed the Town Council, commenting that he had been in contact with the BellSouth tax office in Atlanta, Ga., and information was being prepared regarding the issue as presented by Mr. Jakubiak. He suggested that the response be considered prior to engaging in setting aside dollars for an audit.

Councilman Wyett moved deferral of the proposal to audit BellSouth until the March 13, 2001, Town Council meeting. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

XIV. RESOLUTIONS

- A. Resolution No. 12-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Urging the Palm Beach County Legislative Delegation to Approve of and Seek Florida Legislature Passage of Legislation Which Will Exempt Properties Downward from Inlet or Navigation Channel Maintenance Dredging Projects from the Requirement to Create an Erosion Control Line in Order to Avoid a Usurpation of the Property Rights of Affected Oceanfront Property Owners. Thomas G. Bradford, Assistant Town Manager.

Town Attorney Randolph advised that Resolution 12-01 had been prepared pursuant to

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direction from the Town Council. An exhibit was included which proposed a change in the legislation, which would be taken to the local Legislative Delegation. In anticipation of whatever action the Town Council would take today, he noted that he had scheduled the matter to be heard by the local Legislative Delegation on Friday, February 16, 2001, at the delegation meeting to be held in Wellington, FL. He assured the Town Council that it had the right to amend the legislation, and reminded all that a meeting had been held with the Florida Department of Environmental Protection (FDEP) to attempt to negotiate a location for the ECL (erosion control line) which would be satisfactory to the Town. Attorneys in Tallahassee had been engaged to indicate to FDEP that the Town was prepared to go forward with an amendment to the legislation if it was needed, and if successful negotiations did not take place. After negotiations of placement of the ECL at 100' had taken place, the Town Council had approved moving forward with that placement.

Mr. William Cooley commented that he did not believe it was right to negotiate with Tallahassee over a 100' ECL because the Town Council was giving away valuable property rights that belonged to ocean front property owners. He stated that on September 12, 2000, Resolution No. 43-00 was passed, which was an agreement between the Town of Palm Beach and FDEP; the agreement defined the project life as 5-years, which would exempt the project from the drafting of an ECL. He expressed concern that the agreement would override the need for an ECL; he maintained that the battle should be continued to keep the ECL from being formed.

Councilman Goldblum moved denial of approval of Resolution No. 12-01. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

- B. Resolution No. 14-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Excluding Certain Already Designated Historic or Specimen Trees and Redefining Property Descriptions of Other Historic or Specimen Trees Located on Properties Within the Town of Palm Beach; Providing for the Recording of Said De-designations and Property Redefinitions Against the Land Upon Which the Tree or Trees Are Located; Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County, Florida. Albert P. Dusey, Director of Public Works.

Town Attorney Randolph read Resolution No. 14-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
PALM BEACH, PALM BEACH COUNTY, FLORIDA,

MINUTES OF THE TOWN COUNCIL MEETING HELD ON FEBRUARY 13, 2001

EXCLUDING CERTAIN ALREADY DESIGNATED HISTORIC OR SPECIMEN TREES AND REDEFINING PROPERTY DESCRIPTIONS OF OTHER HISTORIC OR SPECIMEN TREES LOCATED ON PROPERTIES WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR THE RECORDING OF SAID DESIGNATIONS AND PROPERTY RE-DEFINITIONS AGAINST THE LAND UPON WHICH THE TREE OR TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Councilman Brooks moved approval of Resolution No. 14-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Mayor Smith expressed concern regarding the timeliness of the Town Council hearing and acting upon the recommendations of the Ordinances, Rules & Standards (ORS) Committee. She questioned why they could not be brought to the Town Council in draft form at the time that the Ordinances, Rules & Standards (ORS) Committee recommended them, so that there would not be a month delay. She explained that some of the specimen trees were recently being lost, and the ordinance regarding specimen trees would not be in place for the upcoming building season. She suggested that the Building Department be alerted of the requirements in the new specimen tree ordinance, so that when new building plans came in the trees would be protected.

Town Manager Elwell explained that under normal procedure, after the ORS Committee makes a recommendation, the full Town Council had the opportunity to agree before proceeding to finalizing the recommendation.

- C. Resolution No. 20-01 - A Resolution of the Town of Palm Beach, Palm Beach County, Florida, Adopting the Unified Local Mitigation Strategy for the Town of Palm Beach Authorizing the Town Manager to Execute the Same on Behalf of the Town; and Providing for an Effective Date Karen Temme, Risk Coordinator.

Town Attorney Randolph read Resolution No. 20-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALMBEACH, PALMBEACH COUNTY, FLORIDA, ADOPTING THE UNIFIED LOCAL MITIGATION STRATEGY FOR THE TOWN OF PALM BEACH AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

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Councilman Brooks moved approval of Resolution No. 20-01. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

XV. ORDINANCES

A. Second Reading

1. None.

B. First Reading

1. None.

XVI. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman Brooks thanked the Police Department for the fines they put on the violators who did not observe watering schedules. He requested the Council President change the Landmarks Ordinance to include a fifty year age requirement for the structure before any property is considered for landmarking. (President McDonald said this would be referred to the Ordinances, Rules, and Standards Committee.)

Councilman Wyett thanked the residents of Palm Beach for electing him to a fourth term. He said he swore to uphold the Constitution of the United States when he took the oath of office, and the Council trampled on first amendment rights at this meeting of Mrs. and Mrs. Volk. He said the Council forgot it was a sitting council and respect is owed to each and every member of the community who wishes to appear before it. He said the Volks were owed an apology, and the Council should decide among its members to service the principle for which the Council was elected. He said if this is too much to ask, individuals should consider, when his term is up, if he should serve another term. He said each Council member is a caring individual, and he assumed this would not reoccur.

Councilman Goldblum said Palm Beach residents have a problem with their hospitals and no one knows how it will be settled. He said this is the only town in Palm Beach County that does not charge for ambulance service, and it might be the only town up and down the east coast of the

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United States that does not charge for service. He said he requested that Mr. Bradford supply him with figures regarding projected income, costs, and how insurance payments, Medicare, etc. would be handled. He said he recalled former Fire-Rescue Chief Elmore stated it would cost over \$1 million for ambulance equipment and employees if changes were made with the Good Sam and St. Mary's Hospitals.

Mayor Smith said she would use the first Mayor's veto if charges for ambulance service were approved by the Town Council.

XVII. DEVELOPMENT REVIEWS

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

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. SITE PLAN REVIEW NO. 1-2001 The application of Baltic Estate, Inc. relative to property described as Lot 13, Plat of Boulevard Estates; commonly known as 160 Kings Road in the R-A Zoning District. To allow construction of a single-family residence on a previously platted, non-conforming lot 100 feet in width in lieu of the 125 feet minimum required and 14,300 square feet in area in lieu of 20,000 square feet minimum required. (*Deferred from January 9,*

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2001 Town Council Meeting)

Town Attorney Randolph reminded the members of the Town Council that ex-parte communication should include the general subject of the communication.

Ex-parte communication was declared by Councilman Brooks, who spoke with Mr. Maschmeyer and Mr. Vegosen and Attorney Kino regarding the application; by Councilman Goldblum, speaking to Mr. Vegosen and Attorney Kino regarding the existence of one house on the land and the replacement with two houses; by Councilman Wyett via telephone with Attorney Kolins, and Mr. Vegosen relative to the subject, and with several residents with their concerns regarding the property.

Town Attorney Randolph advised that this application had been deferred in order to allow him an opportunity to review the legal issues that had been raised by some of the property owners relating to the issue as to whether the platted lot could be built upon. He advised that he had reviewed the issue; another zoning attorney had also reviewed the issue through the Building Department, and had not yet provided a final opinion. He advised that he had discussed the review of legal issues with Attorney Kino.

Attorney Greg Kino, on behalf of the applicant, addressed the Town Council, stating that Baltic Estate, Inc., was the owner of Lot 13, 160 Kings Road. He explained that from early on in the process Mr. Vegosen had discussed the purchase of Lot 13 with Director of Planning, Zoning & Building Robert Moore; lot 13 was a non-conforming, platted lot, separate and apart from Lot 14 – they were under one ownership at that time. He stated that Attorney Randolph had indicated that it was appropriate to get another outside legal opinion, and regardless of what that may be, he believed that there was a factual case of estoppel – the applicant should not be subjected to a new interpretation by the legal staff. The long term interpretation of the code had been relied upon by the purchaser of the lot before the house was torn down and before applying for a site plan.

President McDonald replied that the Town Council was aware of the history of the application; Attorney Kino had decided to proceed on the application today, rather than taking a deferral to wait for the legal decision, which he had the right to do.

Attorney Kino provided a packet of information regarding the application, pointing out the applicable Sections of the Town Code. Sections 134-127 and 134-843(a).

Attorney Greg Young objected to the packet being handed out at this time, as he maintained that he had been denied the option of handing in a packet at a meeting in the past. He apologized for the interruption of Attorney Kino.

Attorney Kino noted that all of these materials were part of the record which had previously

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been submitted, noting that the applicable Sections of the Town Code had been discussed with Mr. Moore prior to the acquisition of the parcel, and the applicant had believed the proper process had been followed for submittal of site plan approval for a non-conforming platted lot. He explained that the code provided that a single family structure may be constructed on any existing non-conforming lot; the lot was platted in 1947, well before the 1974 Ordinance. The first non-conformity was created in 1970, when a change was made from 10,000 sq. ft. minimum to 20,000 sq. ft. minimum for the R-A Zoning District. The second criteria was that the lot must be the minimum area of dimension required for building lots in the R-A Zoning District – the lot in question was 14,300 sq.ft., and the minimum was 20,000 sq. ft. Site plan review was required for platted lots; in addition, all new construction must comply with all other provisions of the scheduled lot, yard and bulk requirements; the owner of the lot did not own any other adjacent lot; even if that were so, the adjacent lots, if combined with the lot in question, would not make a conforming lot.

Attorney Kino stated that he believed the applicant had the right to pursue the site plan process, and that the conditions of the zoning code were met and the applicant was entitled to a single family dwelling. He pointed out that he had suggested a meeting with those objecting to the application, and one property owner, Mr. Weissman had appeared. There was no objection to the design; the sole objection had seemed to be that there were two homes rather than one home; a compromise could not be reached. The applicant had also offered to landscape Lot 14, so that Mr. Maschmeyer would not have to look at a vacant lot.

President McDonald noted that there were some legal issues that would need to be resolved before the Town Council could make a decision on the application; he had hoped that the application would be deferred pending a determination of the legal issues, and it was the decision of Attorney Kino not to do that, however, it did put the Town Council in an extremely difficult position.

Attorney Kino responded that whatever legal opinion resulted would not bind the applicant, based upon the interpretation of the last ten years of the code.

Town Attorney Randolph advised that there were two issues being considered: the interpretation of the ordinance, and under what circumstances the Town Council would be estopped from allowing the applicant to go forward on the basis of their interpretation because of some representation that they may have received from the Building Department.

Councilman Wyett moved deferral of Site Plan Review No. 1-2001 until the legal issues were resolved and the Town Council could make a proper decision.

Attorney Ron Kolins objected to a deferral on the basis that the Town was not estopped, or could not enforce the code; the Town had received consistent information from staff regarding the code interpretation, and the Town would be estopped from imposing that interpretation because over a number of years the code had been interpreted in a manner which was consistent with the position of his client. He stated that he did not see any reason for waiting for a legal opinion, which at worst

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would require the Town to find for his client under the estoppel argument.

Town Attorney Randolph advised that the Town Council could make a decision today without having the legal opinions in hand, as regardless of what legal opinion was received in regard to the application of the ordinance, the matter relating to equitable estoppel was really one of fairness. The legal opinion would say, at worst for the applicant, that there was no equitable estoppel and that the Town was not required to move forward on the basis of any representations that staff may have made. The Town Council could still now consider the matter of fairness and the factual circumstances of this case, and what advice the applicant had received from the Building Department. A determination could be made as to whether or not the Town Council wished to go forward under the circumstances. The Town Council would merely be advised as to whether there was equitable estoppel, and would still have the opportunity to determine the element of fairness in regard to this application.

Director of Planning, Zoning & Building Robert Moore commented that the interpretation that had been presented was the interpretation of the Building Department and had been for many years. Attorney Randolph had been authorized to seek advice on this matter, since there was an honest difference of opinion between Town Attorney Randolph and staff. He stated that he stood behind the advice that had been given – that if a platted lot was under a single ownership and was a non-conforming lot it must stand for a site plan review.

Attorney Young, on behalf of Mr. and Mrs. Troy Maschmeyer and Mr. and Mrs. Morris Weissman, objected to the application, stating that the code provision, Section 134-843(b) spoke for itself. However, he maintained that site plan review did not solely involve discussions with the Town Building Department – it involved the approval of the Town Council; therefore estoppel could not be based on an oral opinion from Mr. Moore; the positions of Mr. and Mrs. Maschmeyer and Mr. and Mrs. Weissman were unique to this matter.

Town Attorney Randolph urged caution regarding any action of the Town Council acting on the issue of equitable estoppel, as it may set a precedent for anyone in the future making the same presentation. He advised that if the Town Council was not prepared to make a decision today, a deferral could be entertained.

Attorney Kino implored the Town Council to obtain the legal opinions in a timely manner, in order to avoid any further deferrals of this matter.

The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/1, with President Pro-Tem McLendon casting a dissenting vote.

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- b. VARIANCE NO. 1-2001 The application of William B. Jr. and Eliza S. Meyer. relative to property described as Lot 39, Mockingbird Trail Tract together with any interest in and to portions of Lots 41A and 42A; commonly known as 205 Nightingale Trail, located in the R-B Zoning District. To allow a 120 degree angle of vision in lieu of 116 degrees required for a one story addition. *(Deferred from January 9, 2001 Town Council Meeting)*

Ex-parte communication was declared by Councilman Brooks via walking the property with the architect, Ms. Albarran; by President Pro-Tem McLendon via visiting the site with Architect Albarran; by President McDonald via a telephone conversation with Architect Albarran, and visiting the site; by Councilman Goldblum via telephone with Architect Albarran; by Councilman Wyett via visiting the site and discussion of the merits of the application with Architect Albarran.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the variance request was for the purpose of expansion by a few hundred square feet, without creating a second floor. He provided three letters of support from neighboring property owners. He noted that the applicant had been deferred at the January Town Council meeting as Ms. Albarran had been asked to review the plans to determine if the request could be reduced; the house was on a corner so that it was pushed towards the northeast quadrant of the property, and the backyard was a confined space area.

Architect Albarran addressed the Town Council, explaining the changes that had been made, and exhibiting graphic material to indicate the present placement of the expansion area, which included approximately 10 sq. ft. of variance area.

Director of Planning, Zoning & Building Robert Moore commented that the concerns of staff had been addressed, and the variance was now minimal.

Councilman Goldblum moved approval of Variance No. 1-2001, with the hardship being the angle of vision on a corner lot. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

- c. SPECIAL EXCEPTION NO. 4-2001 with Variance The application of Love Realty relative to property described as Lots 34 to 37, Block 15, Plat of Royal Park Addition; commonly known as 221 Worth

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Avenue located in the C-WA Zoning District. To allow the increase in the number of seats from 151 to 183 seats, and a variance from the requirement to provide 11 additional off street parking spaces associated with the proposed increased seating. (*Deferred from January 9, 2001 Town Council Meeting*) **(Request for withdrawal per letter dated, February 9, 2001, from James R. Brindell).**

This item was withdrawn under Item V. Approval of the Agenda.

2. New Business - Minor

- a. None.

3. New Business - Major

- a. SITE PLAN REVIEW NO. 3-2001 The application of Seminole South Inc. (President - Scott Granet) relative to property described as Lot 1, List Addition No. 1; commonly known as 201 List Road; located in the R-B Zoning District. A request for Site Plan approval to construct a two-story, single family residence on a non-conforming lot that is 96.5' in width in lieu of the 100 foot minimum required.

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Ziska concerning the site plan.

Attorney Maura Ziska addressed the Town Council, on behalf of the applicant, stating that the property in question was on a non-conforming lot; the proposed residence would be conforming in all aspects. She displayed exhibits indicating the present condition of the property. She advised that she had resolved the second story window issue with the neighboring property owner, Mr. Klein.

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Director of Planning, Zoning & Building Robert Moore gave the following staff comments:
Town Engineer: driveway openings are too large on the ocean side, and must be reduced in size or eliminated.

Attorney Ziska responded that she had resolved the issue with Town Engineer Bowser.

Attorney Ron Kolins, on behalf of Mr. Klein, the neighbor to the south, addressed the Town Council, and advised that both parties had agreed to a specific condition with the following language included in any approval of Site Plan No. 3-2001: "approval is conditioned upon the applicant providing landscaping to fully site screen a view from the second story windows of the applicant's residence to the backyard pool and patio area of the neighbor to the south, if the owner of the property to the south, 1060 S. County Rd., determines that there is a view from the applicant's second story windows to his pool and patio area."

Mayor Smith commented that the amount of hardscape included in the plan was excessive, because of drainage and flooding problems, and she would not want the plans going to the Architectural Commission (ARCOM) with the approval of the Town Council for that amount of hardscape. She suggested that ARCOM would have the ability to reduce the amount of hardscape shown on the drawing presented today; reducing the hardscape from 54% to 44%.

Councilman Brooks moved approval of Site Plan 3-2001, with two conditions:

1. **Approval is conditioned upon the applicant providing landscaping to fully site screen a view from the second story windows of the applicant's residence to the backyard pool and patio area of the neighbor to the south, if the owner of the property to the south, 1060 S. County Rd., determines that there is a view from the applicant's second story windows to his pool and patio area.**
2. **There will be a reduction of hardscape from 54% to 44%.**

The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as President McDonald had temporarily left the room.

- b. VARIANCE NO. 3-2001 The application of Alan H. Miller and Harriet L. Miller relative to property described as Lot 12 and East 40.14 feet of Lot 13, Supplementary Plat of El Bravo Park; commonly known as 261 El Bravo Way; located in the R-A Zoning District. A Variance request to allow construction of an 8.5 feet high wall on the side and rear property lines in lieu of the 7 feet maximum allowed.

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Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that two neighbors had raised issues regarding the application: 1) The Everglades Club - requesting the wall behind the property be higher; 2) The neighbors to the east - Mr. and Mrs. Woodward - requesting additional buffering for their pool/patio area. Attorney Brindell advised that if the wall was raised another 1 ½' it would provide additional buffering; the hardship was the adjacency of the property to the golf course, and the adjacency of the Woodward pool/patio area next to the driveway back up area.

Director of Planning, Zoning and Building Robert Moore stated that there were no staff objections.

Councilman Wyett moved approval of Variance No. 3-2001, citing the hardship as a public safety issue. The motion was seconded by Councilman Goldblum. On roll call the motion carried 3/0, as President McDonald and Councilman Brooks had temporarily left the room.

- c. VARIANCE NO. 4-2001 The application of T.A.J.A. Realty Trust relative to property described as Lot 34, Block 2, Ocean Park, H.W. Robbins Addition to Palm Beach, and the North 117 feet of the south 283.25 feet of Lot 1, Block 6, Ocean Park, H.W. Robbins Addition to Palm Beach, and Lots 32 and 33, Block 2, Ocean Park, H.W. Robbins Addition to Palm Beach, commonly known as 206 North Ocean Boulevard (south ½); located in the R-B Zoning District. A Variance request to allow a point of measurement for the height of a house at an elevation of 17.97' NGVD in lieu of 15.21' NGVD for a variance of 2.76' for a two story house.

Ex-parte communication was declared by Councilman Goldblum with Mr. Pappas regarding the merits of the application; by Councilman Wyett with Mr. Pappas regarding the merits of the application.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, noting that

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there were actually two applications since there were two parcels of property involved; one on Seminole and one on Everglades (Applications 4-2001 and 5-2001); both concerned the same issue, which was that the Florida Department of Environmental Protection must be satisfied with the elevation of the bottom of the grade beam. The variance was driven by the FDEP requirement.

Director of Planning, Zoning & Building Robert Moore commented that the hardship ran with the land and the requirement of the FDEP to set their minimum grade beam, and staff had no objection. He noted that this issue may be considered in the upcoming zoning matters, as an item that could be handled by staff administratively.

Councilman Brooks moved that Variances No. 4-2001 and 5-2001 be combined, and moved approval of Variance No. 4-2001 and Variance No. 5-2001, with the hardship running with the land and the requirement of the FDEP. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

- d. VARIANCE NO. 5-2001 The application of T.A.J.A. Realty Trust relative to property described as Lot 1, Block 2, Ocean Park, H.W. Robbins Addition to Palm Beach, and the South 166.75 feet of the North 285 feet of Lot 1, Block 6, Ocean Park, H.W. Robbins Addition to Palm Beach, commonly known as 206 North Ocean Boulevard (north ½); located in the R-B Zoning District. A Variance request to allow a point of measurement for the height of a two story house at an elevation of 17.97' NGVD in lieu of 15.76' NGVD for a variance of 2.21' for a two story house.

Ex-parte communication was declared by Councilman Goldblum with Mr. Pappas regarding the merits of the application; by Councilman Wyett with Mr. Pappas regarding the merits of the application.

Councilman Brooks moved that Variances No. 4-2001 and 5-2001 be combined, and moved approval of Variance No. 4-2001 and Variance No. 5-2001, with the hardship running with the land and the requirement of the FDEP. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

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- e. VARIANCE NO. 6-2001 The application of Charles F. Rahla (225 Chilean Avenue) and John R. & Poonsri Pierce, Trustees (229 Chilean Avenue) relative to property described as Royal Park Addition, Block 7, Lots 27 & 28, and Lots 29 & 30; commonly known as 225 & 229 Chilean Avenue; located in the R-C Zoning District. A Variance request to allow construction of a two-family structure on four platted lots totaling 12,500 square feet of area in lieu of the 13,333 minimum square feet required.

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

Attorney Ron Kolins, on behalf of the applicants, addressed the Town Council, stating that four lots would be combined into one large lot in the R-C District. Presently there were structures on those properties which comprised 12 residential units in old cottage type houses. The proposal was to replace those units with two units in a duplex format, which was displayed as a front elevation exhibit. He noted that Mr. Peter Reed, the neighboring property owner to the west, had been present to voice his support of the project, however, he could no longer remain at the meeting and had requested that his support be voiced through Mr. Kolins.

Attorney Kolins advised that the Town would benefit from the granting of the variance request through the following:

1. There would be a substantial reduction in density.
2. There would be a commensurate reduction in parking requirements.
3. There would be a commensurate reduction of traffic on the street.
4. The present structures were 2' below the flood plain, and the new structures would meet the current requirements.

Attorney Kolins noted that the existing structures were nonconforming in a variety of ways. The proposed project would require no variances, and no nonconformities at all, with the exception of the lot size.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan:

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lot could be developed as a single family home; Public Works: landscape material and wall in rear utility easement will have to come out; driveways must be 6' off the side property lines.

Councilman Brooks moved approval of Variance No. 6-2001, with the hardship running with the land. The motion was seconded by Councilman Goldblum.

In response to Councilman Goldblum regarding movement of the driveways, Architect Gene Pandula explained that the driveway could be narrowed.

Director of Planning, Zoning & Building Robert Moore pointed out that the flooding and retention design will have to be addressed to the satisfaction of the Public Works Department. He noted that discussion would take place at the Zoning Commission meeting regarding increasing the amount of retention from the first one inch or the post run-off to a figure somewhat higher in order to address the flooding issue.

In response to Mayor Smith, Attorney Kolins estimated that there would be at least four structures coming down in order to build one building; the Town requirements for landscaped area were 35%, and the project was at 38.27%.

On roll call the motion carried unanimously.

- f. VARIANCE NO. 7-2001 The application of 101 El Vedado, LLC, Leonard Adler, Resident Agent, relative to property with a lengthy legal description on file in the Planning, Zoning & Building Department; commonly known as 101 El Vedado Road; located in the R-A Zoning District. A Variance request to allow a corner lot point of measurement for the height of a two story house at an elevation of 19.67' NGVD in lieu of the 15.58' NGVD maximum allowed.

Ex-parte communication was declared by President Pro-Tem McLendon via telephone with Attorney Broberg regarding the merits of the application.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that approval had been received from the Florida Department of Environmental Protection (FDEP) for structural elevation of 16.9" or higher, with pilings, 8" floor slab, and 3" flooring, the total elevation would be 19.8', which was the minimum variance that could be requested.

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Director of Planning, Zoning & Building Robert Moore commented that staff had no objections to the request.

Councilman Wyett moved approval of Variance No. 7-2001, with the hardship being the FDEP requirement and the lay of the land.

Mayor Smith commented that the original house that had been on the property was a Fatio house and that she was very concerned about the somewhat rapid demolition; she suggested that some of the builders look at the older houses before knocking them down and re-building.

The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

- g. SITE PLAN REVIEW NO. 2-2001 WITH VARIANCE The application of the Rehabilitation Center for Children and Adults, Inc. relative to property described as South 70' of lot 42, North 88' of Lot 42 and Lot 43, Block D, Royal Park Addition; commonly known as 300 Royal Palm Way; located in the C-OPI Zoning District. Request to allow modification of a site plan to construct a 1,612 square foot awning over the existing play area, and to allow the existing lot coverage to be increased from 37.67% to 42.17% in lieu of the 25% allowed for a three-story building and awning combined.

Ex-parte communication was declared by Councilman Brooks via telephone with Attorney Brindell, and that he had also walked the site; by President Pro-Tem McLendon via telephone with Attorney Brindell, and that he had also walked the site.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the awning over the play area would provide shade for the children with physical challenges who were attending the program at the Rehabilitation Center.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objections to the application. He commented that the applicant should consider an awning of hard construction so that the application would not come back at a later date.

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Councilman Wyett moved approval of Site Plan Review No. 2-2001 with variance, finding the hardship was the fact that the children needed shade, and it had been necessary to remove the tree that had previously been in place, which had provided shade. The motion was seconded by President Pro-Tem McLendon.

Mayor Smith suggested that the applicant should not have to appear before the Architectural Commission (ARCOM) since the awning area could not be seen from any street.

Mr. Moore agreed that the applicant would not have to appear before ARCOM.

On roll call the motion carried unanimously.

- 4. Other
 - a. None.

C. APPEALS

- 1. Appeal of Administrative Decision to Not Allow Cart Properties, Inc., Arturo Burigato, President, to be Considered for Site Plan Review for a Single-Family House, Making the House on Queens Lane Nonconforming.
 - a. SITE PLAN REVIEW NO. 4-2001 The application of Cart Properties Inc., Arturo Burigato, President, relative to property described as Lot 34, El Encanto Plat 2; commonly known as Lot 34 Colonial Lane and 272 Queens Lane; located in the R-B Zoning District. A request for Site Plan approval to construct a two-story, single family home on a non-conforming platted lot 94' deep in lieu of the 100' minimum required and 9,400 square feet in area in lieu of the 10,000 square feet minimum required. **(TO BE CONSIDERED IF APPEAL IS UPHOLD)**

Ex-parte communication was declared by President Pro-Tem McLendon via telephone with Attorney Broberg to discuss the application.

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Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the appeal was of an administrative decision by Zoning Administrator Castro that the site plan had not been brought forward with proper timing, because the seller of the property made the property nonconforming by selling off the lot at the south border of the property. He displayed a drawing of the property in question. He noted that the properties had been connected at one point in time, however, Mr. Burigato had purchased the lot in question in July 2000, and received a title policy and a deed. He explained that the applicant had no idea that the seller had made the property nonconforming and believed that he was entitled to construct a single family structure on the lot through Section 134-894(b). He advised that Mr. Castro had indicated that the seller had made the lot nonconforming and the applicant could not move forward with the site plan process.

Director of Planning, Zoning & Building Robert Moore advised that the lots were abutting each other, and the seller of the property had come to the Building Department and had been advised that they could not sell off the lot and render the principal structure on Queens Lane nonconforming. The owner of the property elected to sell, and the applicant had then purchased the lot. He explained that the position of the Building Department was that the seller should have come to the Town and sought a variance in order to sell the piece of property, since by selling the property in question it would render the rear yard nonconforming.

Zoning Administrator Paul Castro advised that he had met with Mrs. Stambaugh (the owner of the property) approximately two years ago, and he recollected that the conversation related to the rear setback, and the two lots. He maintained that he had told her that if the house was conforming the lots could be split based on the previous determination of staff that nonconforming lots could be split off, provided there was nothing on the vacant piece of property, and it was not making the house nonconforming. He advised that the other issue that had come to light recently was the creation of a nonconforming situation as it related to the lot sizes, when the lot had been conforming at one time. During his discussion with Mrs. Stambaugh, he maintained that he had told her that if the house was conforming, Lot 34 could be sold separately, however, at this time staff would recommend that this item be deferred in order to consider the determination of a professional consultant.

Mr. Moore recommended deferral until the consultant could consider the matter along with the Kings Road matter (Site Plan Review No. 1-2001).

Councilman Wyett moved deferral of Site Plan Review No. 4-2001. The motion was seconded by Councilman Goldblum.

Attorney Broberg advised that the applicant was not in the same position as the Kings Road applicant, and noted that the Town Ordinance (Section 134-145) required that when an appeal was deferred because the Town Council determined that additional professional advice was necessary, the expense of obtaining such additional professional advice was to be borne by the appellant.

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Mr. Moore advised that the Town had requested the advice prior to this deferral, and the Town was paying the fee; the applicant would not be charged the fee.

In response to Mayor Smith, Mr. Moore advised that a 15' setback would be needed on the property of Mrs. Stambaugh, and then there would be no issue of appeal in this case. The new lot would still require site plan review because the lot was 6' short in depth.

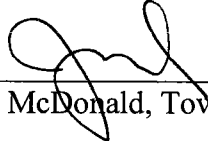
On roll call the motion carried unanimously.

XVIII. ANY OTHER MATTERS

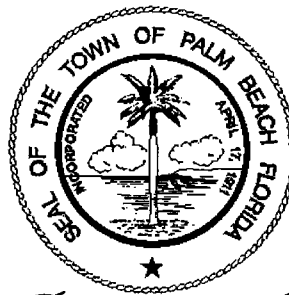
There were none.

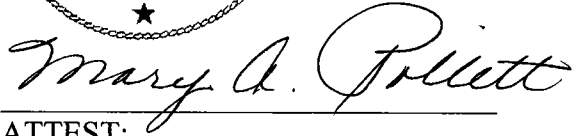
XIX ADJOURNMENT

The meeting was adjourned at 6:58 p.m.



Jack McDonald, Town Council President





ATTEST:
Mary A. Pollitt, Town Clerk