TOWN OF PALM BEACH

Office of The Town Clerk

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

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled Town Council meeting was called to order by President William Brooks at 9:30 a.m. on February 11, 2003, in the Town Council Chambers. Upon roll call, the following Elected Officials were found to be in attendance:

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

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

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Town Attorney John C. Randolph
Police Chief Michael S. Reiter
Public Works Director Albert P. Dusey
Assistant Public Works Director Paul Brazil
Director of Planning, Zoning & Building Robert L. Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Chief Code Compliance Officer Brian K. House
Finance Director Jane Skittone
Assistant Finance Director Cheryl Somers
Fire-Rescue Chief Kent Koelz
Fire-Rescue EMS Captain Charles E. Price
Dock Master Jon Luscomb

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation, and President Brooks led the pledge of allegiance.

III. PRESENTATIONS

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

Officer Burroughs was not present at the meeting.

IV. SWEARING IN OF NEWLY ELECTED OFFICIALS – The Honorable Edward Fine, Chief Judge, 15th Judicial Circuit, Palm Beach County

Judge Fine administered the oaths of office to Mayor Lesly Smith, Councilman Samuel McLendon, and Councilman Allen Wyett all for two year terms.

V. ORGANIZATIONAL ITEMS

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

Mayor Smith, as presiding officer, requested the members of the Town Council to mark ballots for the election of the Town Council President.

Mayor Smith announced William J. Brooks was re-elected Town Council President.

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

President Brooks called for the election of the Town Council President Pro-Tem by marking ballots supplied previously.

President Brooks announced Councilman Norman Goldblum was re-elected Town Council President Pro-Tem.

VI. COMMENTS OF MAYOR LESLY S. SMITH

I trust that the re-election of my colleagues and myself without opposition reflects citizens' confidence in Town government – and I look forward to continuing the teamwork that has become a hallmark of this Council.

We have two items on our agenda that are really within the purview of the Florida State Legislature, but express our support for issues of urgent concern to residents of Palm

Beach. The first is a resolution strongly urging the Legislature to fully fund the Department of Environmental Protection's beach erosion control project priority list – to the tune of $30 million for fiscal year 2003-2004. For several years now, we have explored options for controlling erosion, and we have made significant headway on several segments of our beaches. At this point, it would be disastrous for us – and other shorefront cities – to have the State cut back on funds that were obligated. So I hope that residents will endorse the Council's resolution by individually writing State Senator Atwater and State Representative Domino on this issue.

We are going to hear more background in a few minutes, but the other issue that comes under State jurisdiction is the question of enabling hospitals such as Good Samaritan and St. Mary's to perform angioplasties without being licensed for open heart surgery. As our population ages – and believe me, we are not alone in Florida – access to emergency angioplasty becomes a matter of life or death for our residents. We will hear today from experts from both hospitals, plus Dr. Harry Phillips from Duke University. I trust the result will be support for this needed change in Florida law.

We are approving the calendar for our fiscal year 2004 budget this morning, which reminds us of our responsibility to continue watching our dollars – and also how proud we are of ending this last fiscal year with a healthy surplus. We are scheduling our usual budget hearings for spring, and I hope we can count on active citizen participation as we continue to make budget decisions in a tight economy. Finally, we are looking today at a proposed emergency ordinance for dealing with our feral cat problem – which, if passed, would be effective immediately. The ordinance takes a humane but firm approach in permitting feeding and maintenance of feral cat colonies, but only as permitted and authorized by the Town. This is a thorny problem and ours is likely not the perfect solution, but it is a good first step.

VII. APPROVAL OF AGENDA

President Brooks announced the Town Council would recess at 11:45 a.m. to attend the Town of Palm Beach United Way Community Chest Luncheon and reconvene at 1:30 p.m.

President Brooks continued that Item B.1. under 'New Business', regarding the resolution dealing with Good Sam and St. Mary's hospitals will be heard at a time certain of 10:30 a.m.

The following changes were made to the Agenda:

DEFER Item XI.B.2. Appeal; of Administrative Decision Which Denied Permission for a Property Owner to Sell Beach Access Through a Nonconforming Narrow Strip of Land in the R-AA Zoning District to Neighboring Property Owners to the March 11, 2003, Town Council meeting;

Councilman McLendon made a motion to defer Item XI.B.2 to the March 11, 2003, Town Council meeting. The motion was seconded by Councilman McDonald and carried 5-0 on roll call.

DEFER Item XIV.B.1.a.(1) Site Plan Review No. 15-2002 with Special Exception, Variances & Flood Elevations to the April 8, 2003, Town Council meeting;

Councilman Wyett made a motion to defer Items XIV.B.1. and XIV.B.1.a.(2) to the April 8, 2003, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

DEFER Item XIV.B.1.a.(2) Appeal of an Administrative Decision Regarding Special Exception 15-2002 (230 Royal Palm Way) to the April 8, 2003, Town Council meeting;

This item was deferred in the preceding motion.

DEFER Item XIV.B.1.b. Variance No. 1-2003, 452 Worth Avenue, to the March 11, 2003, Town Council meeting;

Councilman Wyett made a motion to defer Item XIV.B.1.b., Variance No. 1-2003, to the March 11, 2003, Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

DEFER Item XIV.B.2.a. Variance No. 2-2003, 1424 South Ocean Boulevard, to the March 11, 2003, Town Council meeting.

Councilman Wyett made a motion to defer Item XIV.B.2.a., Variance No. 2-2003, to the March 11, 2003, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

Councilman McDonald made a motion to approve the Regular Agenda as amended. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

VIII. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Dr. Sanford Kuvin, 149 E. Inlet Drive:

Three months ago at the November 12th Town Council meeting I expressed concern about what I considered to be a resurgent epidemic of lethal yellowing in Palm Beach, and on November 17th, I authored an article which appeared in the *Palm Beach Daily News* advising residents that lethal yellowing had returned to Palm Beach with a vengeance, and that the Town needed a program to prevent and treat this disease now before it got out of control.

Recent objective scientific testing by a University of Florida lethal yellowing expert has revealed incontrovertible evidence that there is indeed a lethal

yellowing problem resurgent in the Town. This disclosure became apparent in a letter dated February 5th written to Mr. Al Dusey from Dr. Nigel Harrison, the Town's lethal yellowing consultant.

Unfortunately, for months, Town Management and the Council have chosen to minimize the lethal yellowing problem by a combination of disinformation and inaction.

For example, a *Memorandum* from Al Dusey was sent to Peter Elwell dated November 26th, along with a press release copy of the same *Memorandum* to the *Palm Beach Daily News* which ran a front page story about Mr. Dusey's lethal yellowing views on December 7th of last year. In the *Memorandum* Mr. Dusey wrote that:

> "The annual loss rate from Malayan and Maypan Coconut Palms in the Town's system is a little over 1% from all causes."
>
> "There was no indication of a problem with lethal yellowing in our Malayan or Maypan Coconut Palm population and our research confirmed that there is no reason for concern."

Mr. Dusey investigated my complaint of lethal yellowing on my own property, and concluded "lethal yellowing is not the problem" (on Kuvin's property).

On December 2nd, I contacted Dr. Harrison and invited him to inspect the trees on my property that Mr. Dusey had cited in his memorandum as not being infected with lethal yellowing. On January 21st, Dr. Harrison arrived on my property with his technician, and the results obtained by DNA testing were positive for lethal yellowing in all four symptomatic trees tested. These results provided irrefutable verification of my previous assertions before the Council on November 12th that the Town is indeed in the midst of a renewed epidemic of lethal yellowing, and these scientific results clearly discredit Mr. Dusey's previously published opinions.

My own observations of lethal yellowing in the Town were also confirmed by two local commercial tree firms that treat disease. In addition, Dr. Harrison recently published a current survey of lethal yellowing at the Fort Lauderdale Agricultural Research Station recording losses of 74% in Malayan and 80% in Maypan coconut palm trees. The Jamaican Coconut Board is currently reporting a major epidemic of lethal yellowing in Malayan and Maypan coconut palms. Jamaica is our only certified cocoanut palm nut supplier. In addition, epidemics of lethal yellowing are currently being recorded throughout the Caribbean, Africa and South East Asia.

Jupiter Inlet Colony, a town north of Palm Beach, recently published in its *Newsletter* that lethal yellowing is rampant and diseased trees must be removed

promptly to prevent its spread. Palm Beach long ago gave up injecting Malayan or Maypan palm trees on Town or private property and has no inspection procedure to diagnose infected highly contagious diseased trees on private property. Jupiter Island, another nearby community, has a long-standing program of injecting all 9000 of its palm trees with the loss of only 2 trees over the past year. Obviously the question must be asked of the Town Council as to why can't our town pursue a similarly aggressive program like that on Jupiter Island to protect and save this town's coconut palms?

The scientific evidence is now in confirming the re-emergence of lethal yellowing in our town, but unfortunately there appears to be no Town Management or Town Council will or mechanism to be more proactive in dealing with this issue, even though the Town Council has known about it for months. The spread of this disease will continue in ever expanding numbers the longer the Town Council delays, and since the name Palm Beach is synonymous with the importance of these trees, the Town Council should be doing everything it can to protect our namesake. By the continued non-action of the Council, the palms will be taken out of Palm Beach and we will clearly be on our way to looking no different than New Jersey. Bad Town politics cannot overcome good science.

Dr. Sten Lilja, 1330 N. Ocean Boulevard:

I have followed the shocking revelations that Dr. Kuvin has brought to light over the past 3 months and the inaction of the Town during that time, while the house is on fire. I myself have lost all my 27 Jamaica Tall palms, as well as 5 or 6 Malayans and from the looks of it, there are more that will succumb.

This state of affairs is the more reprehensible as the Town happens to have a scientist of Dr. Kuvin's caliber and stature and has still neglected to act to protect the interests of the property owners. It is not my intent to bash Mr. Dusey here. Frankly, he is just a part of the problem. It is more serious that this Council and the Town Manager have failed to supervise and listen to warnings about this potentially catastrophic scenario.

WHO decided to cancel the tetracycline inoculation program that property owners relied upon and they paid for? To me, it is outrageous that the Town, reportedly, is still inoculating Town-owned Jamaica Tall palms, while leaving private property owners without protection and, thereby, subject to certain destruction of their palm trees.

At this time, I request that the Town take an inventory of all palms located in the Town of Palm Beach, then institute an immediate reliable testing of all palms for lethal yellowing, institute immediate emergency treatment (per Dr. Harrison) of infected and suspect trees and create a record of all palms that were lost since the inoculation program was abandoned. A record must be established of where palms were lost due to that abandonment and how many are now infected and

likely to die, all due to the Town's negligence. Delay is not acceptable! The Town must then come up with a plan for replacement.

Remember that the property owners trusted the Town in that mandatory Plan.

Joel Martino, 109 Ocean Terrace:

Simply just starting a best efforts inoculation program for lethal yellowing is not good enough. I suggest that a plan and a strategy be developed for the management of the lethal yellowing problem.

In the plan, there should be specific programs for public communication, scientific baseline studies and evaluations, ongoing monitoring procedures, clear goals, and provisions for updating the plan based on future input and results.

Palm trees are a critical natural resource in our town. There should be a documented plan to manage and reserve this natural resource just as there should be a documented plan to preserve all of our other natural resources like the near shore marine eco systems and our beaches.

I'd like to note that for many years we let the Sand Transfer Plant operations lapse, and now it appears that we have let the lethal yellowing operations lapse. A piece meal approach to managing the lethal yellowing where several parties are performing different tasks without overall coordination and reporting is not appropriate. There needs to be a clear structure of responsibility to the managers and a process for critical review.

An unstructured approach using sporadic efforts from various agencies, consultants, and staff is not the proper way to manage any natural resource. That approach leads to unexpected failures and dissatisfaction among the stake holders of the natural resources, and the stake holders in this case are all the people in the Town.

That is exactly the haphazard approach that got us here today. I suggest that a small over-sight committee be immediately established, including some residents as well as staff, charged to quickly review the situation, develop a plan for managing the problem. This committee should not be sun-setted without a definite statement made by the Town Council that lethal yellowing is no longer a potential threat.

Chris Kellogg, President Palm Beach Tree Society:

NOBODY TOLD ME!

That there is a Palm Tree epidemic going on that is killing more than 80% of the Malayan and Maypan Palms. I lost 11 Malayan Palms in the past two years that I bought from the Preservation Society to replace the 19 Tall Jamaicans I lost in

1990 and 1991. My Aunt lost 5 palms in the last two years. I was told these Malayans were resistant to Lethal Yellowing and that not to be concerned the Town had an inoculation program to protect the palm trees.
NOBODY TOLD ME!
That the Town of Palm Beach has steadily REDUCED its inoculations of Jamaican Tall Palms and now my last Jamaican Tall Palm is dying.
NOBODY TOLD ME!
Dr. Sanford Kuvin, a tropical disease and infectious disease expert told the Town Council about this epidemic in November and the Palm Beach Daily News covered the startling story.
FINALLY SOMEBODY TOLD ME!
And I immediately began my own inoculation program to save my remaining palm trees.
FINALLY SOMEONE TOLD ME!
Time now that we are alerted to the epidemic to get the Town Council to act at once as this disease will kill 80% of our palms. Tell the council to fund the same program run by the same organization that does this for the 9000 palms in Jupiter. Jupiter only lost 2 palms last year. The Town managed program has failed for many reasons it cannot be fixed. Don't accept long explanations or more excuses just adopt the program that did work for the Town before it decided to start cutting corners – cutting costs.

Finally – Council has a duty to protect Town assets...Jupiter values its trees at replacement costs of $3,000 per tree. $3,000 times 9,000 trees = $27 MILLION DOLLARS.
Jupiter spends $100,000 a year to protect 27 million. We are Palm Beach with a great deal more at risk. It would be irresponsible to not act now...

NOW THAT WE KNOW!

President Brooks requested the Town Manager incorporate the observations and suggestions from Drs. Kuvin and Lilja and Mr. Martino and Mr. Kellogg to allow the Council and the Mayor to have the backup materials for the March Town Council meeting.

Town Manager Elwell said a full report will be given at the March 11th meeting.

Eric Nord Gilbertson, 151 Chilian Avenue, spoke regarding the issues of groins – he proposed extending the groins out from the Mid-Town Beach – , feral cats, and crosswalk signs.

Frank Chopin, Attorney for Helen Abel and other residents on Brazilian Avenue, said his issue was the property recently developed at 420 Royal Palm Way. He questioned the issuance of a certificate of occupancy without the required landscaping being installed which was part of the original approval.

Mr. Chopin, referring to a booklet handed out to members of the Town Council containing copies of letters and plans approved by the Town, said the applicant at 420 Royal Palm Way was required to install adequate landscaping at the rear of the property to totally screen the building form the town house in the rear. He continued that the Architectural Commission required that a ficus hedge be planted with palm trees of a sufficient height to cover and block the façade of the building in the rear.

Mr. Chopin said he was told that landscaping cannot be planted, because a drainage area was built not in accordance with the plans, and there is no room to plant landscaping at this time. He added that Town Staff apparently has altered the landscaping requirements that disallowed the condition that site screening be installed. He continued that Mr. Moore, after consultation, directed the ficus hedge be installed; although nothing has been done about the absence of the Eureka palms.

Mr. Chopin questioned the issuance of the certificate of occupancy by the Building Department to allow the building to operate when the people who are entitled to the screening, as required by the Town Council, do not have that screening. Mr. Chopin said he did not think involving the Town Council at this point would be political as he knows the staff would rather handle this situation administratively.

President Brooks commented that he was under the impression that this was to be handled administratively, although Mr. Chopin's presentation was informative, the issue should be handled administratively first before presentation to the Town Council.

Town Manager Elwell concurred with those comments and said the Building Department Staff is aggressively following up on Mr. Chopin's concerns, and the Town Council will be advised of the closure of the matter.

Responding to Mayor Smith's question regarding the length of time necessary to resolve the situation, Mr. Moore said the Town Attorney is involved in the resolution and the final conclusion should be forthcoming within the next thirty days. Mr. Moore pointed out that the certificate of occupancy was a conditional c.o. involving no health, welfare, and safety of the occupants of the building and one of the conditions of the certificate of occupancy was the resolution of the landscaping issue. He added a $30,000 bond was posted to insure the landscaping issue would be addressed.

Mayor Smith said the project came before the Town Council several times, and the Council's concerns were not to move the people into the building but the protection of the residents in the townhouses on Brazilian Avenue. She continued that it was obvious from the photographs presented that the landscaping was not in place, and it was not acceptable to have this matter drag on for a couple of

months going before four or five different boards while the residents are being damaged in the townhouses. She requested the Town Council hear at the March 11th meeting what the disposition of the matter was.

Councilman Wyett reiterated that he was very insistent on the screening issue when this matter came before the Town Council. He said it was his opinion that the owner of the property is in defiance of the Town Council; however, he accepted the fact that this could be handled on an administrative level promptly, and if it is not handled promptly, the Town Council should act immediately.

Ron Kolins, Attorney for the owner, Mark Haisfield, of 420 Royal Palm Way, registered his strong objection to the blatant misuse of the 'Comments by Citizens' process to raise an issue to the Town Council in a format that allows only one side of the story. He continued that the comments of Mayor Smith and Councilman Wyett speak volumes about how that process has been misused, because they have expressed opinions without an appropriate type of hearing where both sides of the dispute can be fully heard.

He re-stated that it was inappropriate for Mr. Chopin to make this kind of a case without notice, without an opportunity for the other side to make a presentation to the Town Council, and, in effect, being allowed to 'poison the well' so should there be additional information at the March 11th meeting, some Town Council members may have decided to deny his client's rights. He added that his client has another side to the story, and his client is doing what is required of him, and he urged the Mayor and Town Council to keep an open mind regarding the issue.

President Brooks explained that Mr. Chopin requested the issue be on the agenda but was told it was an administrative matter, and he availed himself of the option, as a citizen, to speak at that time period. He urged Mr. Kolins, Mr. Chopin, and the staff to move expeditiously to provide a happy solution to the matter by March 11th.

IX. CONSENT AGENDA

A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON JANUARY 6, 2003.

B. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON JANUARY 14, 2003.

C. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON JANUARY 21, 2003.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JANUARY 22, 2003.

E. RESOLUTIONS

1. Resolution No. 4-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Pertaining to the Town Docks Approving a Dockage Agreement, Rules Regulations for Said Dockage Agreement, a Transient Dockage Agreement, Rules and Regulations for Said Transient Dockage Agreement and Authorizing the Town Manager to Make Changes to the Dockage Agreements Deemed to be in the Best Interests of the Town Docks and Directing the Town Manager and His Designees to Enforce the Same.
[Thomas G. Bradford, Assistant Town Manager] *(Deferred From December 10, 2002 and January 14, 2003 Town Council meetings)*

2. Resolution No. 5-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Sovereignty Submerged Lands Lease Renewal, BOT Lease No. 502830686, Between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the Town of Palm Beach for the Town Docks and Authorizing the Mayor to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Assistant Town Manager]

3. Resolution No. 6-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Sovereignty Submerged Lands Lease Renewal, BOT Lease No. 500026426, Between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the Town of Palm Beach for the Inlet Dock and Authorizing the Mayor to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Assistant Town Manager]

4. Resolution No. 7-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Strongly Urging the Florida Legislature to Fully Fund the Department of Environmental Protection's Beach Erosion Control Project Priority List for Fiscal Year 03-04 for $30 million as Provided for in Chapters 161 and 201, Florida Statutes. [Peter B. Elwell, Town Manager]

F. OTHER

1. Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 2002. [Mark Veil, CPA, Caler, Donten, Levine, Drucker, Porter & Veil, P.A.]

   a. Acknowledgment of Receipt of Report.

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

2. Approval of FY 2004 Budget Calendar.
[Jane Skittone, Director of Finance]

3. Approval of November Town Council Meeting Being Held on Wednesday, November 12, 2003.

4. Conditional Approval of Request from Raj Rangaswamy, Sr. Project Engineer, URS Construction Services, for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project on Royal Palm Way. (Cocoanut Row to County Road)
[Albert P. Dusey, Director of Public Works]

Councilman McDonald clarified that under F. OTHER – 4. Extension Agreement fromURS Construction Services for a Waiver From Section 42-199 to complete a planned construction project on Royal Palm Way should include staff's recommendation in any approval.

Town Manager Elwell confirmed that any approval would include staff's recommendation.

Councilman McDonald made a motion to approve the Consent Agenda, including the staff's recommendation in 4. Extension Agreement. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

X. COMMITTEE REPORTS

A. PUBLIC SAFETY COMMITTEE

1. Review of the Committee's Recommendations From its Meeting on January 21, 2003.

REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING HELD ON JANUARY 21, 2003

I. CALL TO ORDER AND ROLL CALL

Chairman Norman Goldblum called the meeting of the Safety Committee to order at 10:00 a.m. on January 21, 2003, in the Town Council chambers. Chairman Goldblum and Committee Member Samuel McLendon were found to be in attendance. Other Elected Officials present were: Mayor Lesly S. Smith and Town Council President William Brooks. Also attending the meeting were: Town Manager Peter B. Elwell, Town Attorney John C. Randolph, Police Chief Michael Reiter, Public Works Director Albert Dusey, Assistant Public Works Director Paul Brazil, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. Chairman Goldblum led the pledge of allegiance.

III. APPROVAL OF AGENDA

The agenda was approved on the motion of Mr. McLendon and seconded by Mr. Goldblum.

IV. CONSIDERATION OF POTENTIAL TOWN REGULATION OF MOTORIZED SCOOTERS

Police Chief Reiter said the youth in Palm Beach use a variety of forms of transportation including motorized skate boards, gopeds, and the question was if there should be some kind of regulation for those.

Town Manager Elwell added the issue was discussed by the Strategic Planning Board and some recommendations were coming forward regarding motorcycle and scooter safety, but, since it was a tactical and operational question, the issue was submitted to the Town Council instead.

Mr. McLendon commented that he had problems with the noise levels of motorcycles, comparing them with leaf and trash blowers.

Mr. Goldblum said the issues to be discussed were the motorized skate boards and mopeds. He requested comments from the Chief of Police.

Chief Reiter responded that motorized skate boards are prohibited from operating on public roads by State Statutes. Additionally, if persons chose to operate motorized skate boards in violation of State Statutes, they would be required to have not only a driver's license but a motorcycle endorsement on the driver's license. He said a Town ordinance prohibits the operation of that entire class of vehicles from the sidewalks, sidewalk areas, and the bicycle path, and private property is the only area not regulated. He clarified that a combination of State Statutes and Town ordinances prohibit operation of gopeds and

motorized skateboards on, not only the public roads, but the bicycle trail, sidewalks, and sidewalk areas.

Mr. McLendon questioned if the issue was a matter of enforcement?

Chief Reiter replied that the motorized skateboards called gopeds are rarely seen in Town by the Police officers. He added that if the gopeds are seen by officers, the laws would be enforced, and many of the riders do not realize these are illegal on the streets in Palm Beach. He said, currently, it is not an enforcement problem but an issue, and the department had not received any complaints regarding gopeds.

Mr. Goldblum asked William Cooley, member of the Strategic Planning Board, if he had any comments on the skateboards?

William Cooley, 8 Windsor Court, said he thought the Town should review the Segway, the motorized two wheeled device, that will be on sale publically in March. He questioned if the Segways were covered under any Town ordinance?

Mr. Goldblum said that issue may have to be considered; however, currently the Town did not need additional ordinances for the skateboards.

Chief Reiter reported the Segway issue has been addressed by the Florida Legislature, and they are not considered motor vehicles in the State of Florida. He said if no ordinances exist prohibiting their operation, they could be driven on sidewalks, and, in his opinion, they could be operated on the streets of the Town by State Statute; however, the Town has an ordinance that prohibits the use of skateboards, motorized scooters, or anything of the like on the sidewalks.

At the request of Mr. Goldblum, Attorney Randolph said he would investigate the issue of the use of Segways in the Town.

Regarding the issue of mopeds, Chief Reiter responded different vehicles are covered by at least three classifications–motorized bicycles that cannot reach a speed greater than 20 mph and those can be ridden any place a bicycle can be ridden; mopeds that have pedals but also have motors which are a separate category; and the scooters (brand name Vespa) that are classified for the most part as motor vehicles with some smaller versions in a separate class. He said the Vespa types require a driver's license with a motorcycle endorsement.

Mr. Goldblum summarized that no additional ordinances are needed for the enforcement of those types, especially on the bike trail.

Town Manager Elwell said one of the concerns expressed by the Strategic Planning Board related to the removal of the helmet law passed by the State Legislature with the Town imposing a helmet law of its own, which it cannot do. He noted that since the

Vespa type scooters are considered to be in the motorcycle classification, the Town could not require helmets for those riders.

Attorney Randolph said the Town cannot pass any kind of legislation that would be in conflict with the State Statutes, and he quoted that even the State Statutes, as well as the Town ordinances, provide that no person shall drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area. He added that is covered by the State Statutes, but the Statutes give specific powers to local authorities, and one of those allows the Town to prohibit or regulate the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic. He said that would be the specific section that the Town should look at if the Town wanted additional regulations over the State Statutes.

Mr. Cooley commented that on Saturday and Sunday mornings, large numbers of bicyclists spread across both lanes resulting in the slow down of traffic in back of them. He questioned if any ordinance or law required them to ride single file?

Attorney Randolph responded the State Statute specifically addressed bicycle regulations and sets forth the rules for operations on the roads.

Chief Reiter added that bicycle riders have to follow the same rules of the road that motor vehicle drivers are required to do, and he was not aware if there are any restrictions requiring the number of riders that can ride abreast in the same lane of traffic. He said that a maximum of two motorcycles can ride abreast on a public road.

Attorney Randolph said the State Statutes stated 'any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right hand curb or edge of the roadway, except under the following conditions...' Mr. Randolph said he did not review all of the conditions; however, it was his opinion that bicyclists could not take up an entire lane of traffic if they are traveling at less than the normal speed of traffic.

Mr. Goldblum requested the police officers look out for the bicycle clubs riding in Palm Beach on the weekends.

Chief Reiter said his department had exercised enforcement procedures in the past, and the most effective method was to contact the clubs' headquarters explaining some of the existing hazards in Town. He said Palm Beach is attractive to the clubs because of its beauty and low speed limits; however, the clubs need to be advised of the hazards and construction in Palm Beach that impede their routes.

Town Manager Elwell summarized the previous discussion: adequate regulations exist for all items discussed with the possible exception of the Segway; all other items will be subject to enforcement with no further action necessary; and **Attorney Randolph will research the issue of the Segway as it relates to the current Town ordinances and provide an update for the next monthly Town Council meeting.**

V. CONSIDERATION OF PEDESTRIAN SAFETY AND LIGHTED CROSSWALKS

Town Manager Elwell reported that Mr. and Mrs. Small sent a letter to the Town expressing interest in lights that are embedded in the asphalt in a crosswalk, similar to the reflectors, but are actually electric lights. He continued that sensors are placed at the crosswalk site and as a pedestrian passes through the sensor, walking into the crosswalk, lights are turned on that are embedded in the pavement. This is an alert to drivers, especially at night and during bad weather, and it would add to the pedestrian safety initiative that has been undertaken by the Police Department, and the signs that DOT has allowed the Town to place in the roadways. Mr. Elwell said the plan is worth consideration; although, initially, the technology was thought to be too expensive, and when the cost is reduced, the plan could be applied in the Town.

Mr. Dusey reported the installation of a project like this that was done in Jupiter was $20,000 to $25,000 per crosswalk.

Mr. Goldblum questioned if traffic lights could achieve the same result?

Mr. Dusey responded the cost would be substantially more since traffic signals cost more, and a traffic signal would not normally be considered for these applications.

Mr. Elwell said a pilot project could be incorporated with the building of the new Fire-Rescue station on the corner of South County Road and Australian, but the decision was made to delay the pilot project because of the cost of the installation.

Mr. Goldblum said he favored the idea of having a pedestrian signal at the corner of Worth Avenue and South County Road and any other location that signals were needed.

Chief Reiter said the Police Department has considered that location from the law enforcement perspective, and the plans are to receive input from the engineering perspective. He added that no State permission is required for that location.

After discussion, **THE COMMITTEE RECOMMENDED THE TOWN COUNCIL CONSIDER APPROPRIATING THE FUNDS NECESSARY TO INCORPORATE A DEMONSTRATION PROJECT OF THE LIGHTED CROSSWALK AT THE INTERSECTION OF SOUTH COUNTY ROAD AND AUSTRALIAN AVENUE.**

VI. ANY OTHER MATTERS

There were no other matters considered.

VII. ADJOURNMENT

The meeting was adjourned at 10:31 a.m.

End of Public Works Committee Report.

President Pro-Tem Goldblum reported that after the Committee heard Police Chief Reiter's report regarding scooters and Segways, the Committee took no action as the present ordinances cover the uses in Town. He continued that the issue of the lighted crosswalks for pedestrians was referred to the entire Town Council for consideration of the required proposed funding for a trial crosswalk to determine if they would be effective in the Town.

Responding to President Pro-Tem Goldblum's question regarding motorized wheel chairs, Police Chief Reiter replied he was not aware of how the State Statutes addressed the issue or was he aware of any Town ordinances that addressed wheel chairs or motorized handicapped scooters.

President Pro-Tem Goldblum said he wanted to make sure that if the Town regulated Segways that the laws did not apply to motorized wheel chairs.

Town Manager Elwell suggested it would be appropriate if the segways were to be considered to refer the issue back to the Public Works Committee. He added if the Town Council wished to accelerate the lighted crosswalk issue and wished to have one constructed before the end of the fiscal year, monies could be appropriated from the contingency fund; however, a budget meeting was planned at the end of March, and if the Town Council wished to conceptually endorse the idea, the staff could present this at the March meeting in context of the next fiscal year budget.

Councilman McLendon said he agreed with Police Chief Reiter that a better place for a lighted crosswalk might be at the intersection of Brazilian and County Road.

President Brooks said this matter would be considered at the time of the budget overview meeting in March.

Mr. Elwell said if anyone wanted to see a lighted crosswalk in Jupiter, the location was north of the pier, along A1A; north of Juno Beach.

Councilman McDonald made a motion to accept the report of the Public Works Committee. The motion was seconded by Mr. Wyett and carried 5-0 on roll call.

XI. REGULAR AGENDA

A. Old Business

This item was heard after Item B.1 under New Business.

1. Staff Update on Proposed Initiation of Foreclosure – 1496 North Lake Way, Code Enforcement Board Case Number 02-1396.
[Robert L. Moore, Director of Planning, Zoning & Building]

Mr. Moore reported his Department had several meetings with Attorney Greg Kino and the contractor. He continued that the project has passed several inspections and is moving forward; however, the final agreement regarding the type of bond and the Town's control of the bond has not been reached. He said the schedule presented to the Building Department stated the project will be finished by April 7th, the day before the April Town Council meeting.

Attorney Greg Kino reported the dumpsters have been relocated to the side street to allow for the work on the driveway and landscaping in the front of the property. He continued the roof is progressing well, and the blue cover is being removed. He said the project will be finished on time, and he has talked to the neighbors, some who support the project and one who does not.

Attorney Randolph said Mr. Kino's client may have trouble producing a bond in the amount of 135% of the cost of the project. Mr. Randolph said a possible alternative would be to enter into an agreement which would allow the Town to lien the property in the amount of the improvements in the event the Town had a need to go in and finish the improvements. He advised that this would give the Town the protection needed as long as the agreement provided the Town would be first in time and right with the lien.

David Levitt, 1480 Via Manana, said he lives two houses away from the subject property, and the eyesore has affected his property values. He requested the Town continue to watch this project. He mentioned the port-o-let on North Lake Way, five feet from the road, that has been there for years, and the project has gone on too long.

President Brooks responded that the wheels of justice turn too slowly for the good of desires, but the Town Council is very aware of the residents' frustration.

No Town Council Action was taken on this item.

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

Mr. Moore reported the owners are close to demolishing the rest of the out structures, a garage and swimming pool.

Attorney Ray Royce, representing the owner, reported the cabana and garage buildings will be demolished after a discussion took place with Chief Code Compliance Officer House, the owner, and (Mr. Royce) took place regarding various alternatives of repairing the buildings vs. demolition. Mr. Royce said the demolition delay was in part due to the relocation of the materials that were being stored in the buildings that were part of the original renovation to the house before the fire.

Mr. Royce stated Fredrico & Company, a demolition company, has been retained, and an approval for a permit is awaiting a plumber's letter confirming the water and sewer are not hooked up. He added the permit is expected within a week.

The Town Council took no action on this item.

3. Proposed Feral Cat Management Program.
[Peter B. Elwell, Town Manager]

   a. Ordinance No. 9-03 **(This is an emergency Ordinance which may be adopted on a single reading at the February 11th Town Council meeting, to be effective immediately upon adoption.)** Amending the Code of Ordinances of the Town of Palm Beach at Chapter 10, Animals, Section 10-9, So as to Allow for the Feeding and Maintenance of Feral Cat Colonies Permitted and Authorized by the Town; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
   [John C. Randolph, Town Attorney]

Town Manager Elwell reviewed the project based on the Town's concern regarding rabies last summer and other related activities that led to the Town Council granting a hiatus to the Town's prior efforts to control the problem. He continued that, based on the proceedings at the November Town Council meeting, a proposal was to be developed to be presented at a meeting no later than February 2003.

Mr. Elwell said the key elements of the program are that the problem did not appear over night and will not be resolved overnight; time is needed to reduce, humanely, the feral cat population; and the goal of the program is not immediate reduction of population but immediate action to control negative impacts of how the activity was occurring before, eliminate some

of those impacts, and create a process by which the community can work together in moving forward which, in time, will lead to the reduction of the feral cat population. He continued the challenge is to maintain feral cat colonies in a way that does not create a nuisance for anyone in the community, and that will become easier over time as the population is reduced.

Mr. Elwell said the most important element of the proposal that has been put forth by Ms. Beth Pouncey on behalf of a 501(c)(3) that is in the process of being organized, is that it is a cooperative effort – between the Town and the private individuals who are participating.

Mr. Elwell said the Town oversight is not anticipated to be a hands-on roll, but that will be handled by a group of volunteers with very few part-time employees to be hired by the 501(c)(3), but the Town's part is to insure the communication that is important to the program and any policy considerations would be effectively submitted to the Mayor and Town Council.

Mr. Elwell, alluding to the issue of funding, said over time private funding may become the sole source; however, at the outset, the plan is to have 50/50 funding between the Town and private donations.

Beth Pouncey said the program is a commitment to reducing the over population of the feral cat numbers on the island. She continued the program has been researched and consists of stabilization of the cat population over time; the elimination of complaint behavior by a humane solution which is acceptable to community sensibilities; the use of a spay mobile; and a program for inoculations.

Town Attorney Randolph read Ordinance No. 9-03 by title:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 10, ANIMALS, SECTION 10-9, SO AS TO ALLOW FOR THE FEEDING AND MAINTENANCE OF FERAL CAT COLONIES PERMITTED AND AUTHORIZED BY THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Attorney Randolph said this was an emergency ordinance that can be approved on first reading and pointed out under Section 10-9, the change to the current Code which prohibits the keeping, possessing and maintaining of wild animals within the Town: "this provision shall not preclude the feeding and maintaining of feral cat colonies permitted and authorized by the Town of Palm Beach as part of an authorized program, specifically designated by the Town Council for the control and regulation of feral cats within the Town."

Mr. Elwell clarified that Palm Beach County Animal Care and Control is an important element in terms of the cooperation and partnership in this program, and the County has assured the Town, based on this modification, that any applications they receive for registration of feral cat colonies through the County process, will have a pre-requisite that the registration will have to be accompanied by a letter from the Town indicating the colony is part of this program.

President Pro-Tem Goldblum made a motion to approve Emergency Ordinance No. 9-03. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

Town Manager Elwell requested, in order to implement the intent of that Ordinance, to explicitly approve actions 2 through 5 in his February 6th memorandum as follows:

2) Approve Ms. Pouncey's proposal, in concept, recognizing that it will be refined as it is implemented;

3) Authorize the transfer of $20,000 from the General Fund Contingency as the Town's financial contribution for start up funding of this program. Those funds, together with the $9,430 which remains unspent from the $10,000 which was allocated for feral cat management in the FY2003 budget, will provide sufficient Town funding for the remainder of FY2003 (50% of 7 months of a program estimated to cost $100,000 annually);

4) Authorize Town staff to receive private donations for this program until the 501(c)(3) organization has officially been established;

5) Authorize the Town staff to retain temporary part-time employees (a program coordinator and two feeders) until the 501(c)(3) organization has officially been established.

Motion made by Councilman Wyett to approve items 2 through 5 in Mr. Elwell's memorandum. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

4. Proposed Supplemental 1% General Pay Increase for Town Employees. [Lesly S. Smith, Mayor]

Mayor Smith said a one percent increase is a small price to pay for the loyalty and excellence of the Town staff. She said she would like to see the Town Council pass this.

Responding to a question from President Brooks regarding comparison of ranges between the Town and other municipalities, Mr. Elwell said the Town is in the top quartile of public employers in Palm Beach County; although the position has slipped from where it was but not below the established standard set by the Town Council.

Councilman McLendon said he was ready to make a motion to approve the 1% increase, retroactive to October 1, 2002.

President Pro-Tem questioned if the salary figures presented in the backup materials reflected merit increases?

Mr. Elwell replied that the numbers were strictly cost of living numbers; some municipal employers have merit increases while others have step programs and that is comparing apples to oranges.

Responding to a question from Councilman Wyett regarding when the raise would go into effect, Councilman McLendon clarified that his motion included the raises being retroactive to October 1, 2002, which would cost approximately $225,000.

Councilman McDonald seconded the motion.

Councilman Wyett said he would like to see it effective April 1, 2003.

President Pro-Tem Goldblum responded he would like to see a compromise of February 1, 2003.

Mayor Smith said the compromise would actually be January 1, 2003.

Councilman McLendon said he would not have preferred to amend his motion to January 1st but he would.

President Pro-Tem Goldblum said he would second that.

Councilman McDonald said he had not amended his second to the motion, and since the Town is not on a calendar year, he questioned the difference between October 1st and January 1st. He said he understood the difference

in terms of dollars, and he was not going to amend his second to Councilman McLendon's original motion.

Councilman McLendon suggested the roll be called to see if October 1st would pass.

On roll call, the motion carried 5-0 on roll call.

B. New Business

The following item was heard out of order at 10:25 a.m. following the Public Safety Committee report.

1. Consideration of an Official Town Position Regarding Modification of State Certificate of Need Regulations and Establishment of More Comprehensive Heart and Stroke Services at Good Samaritan Medical Center and/or St. Mary's Medical Center. [Allen S. Wyett, Town Councilman]

   a. Overview by Councilman Wyett.

      Councilman Wyett said Dr. Harry R. Phillips, III, will present the latest in medical care as related to angioplasty and will explore the changes to the Certificate of Need legislation currently being considered by the Florida Legislature that would allow Good Sam and St. Mary's to offer emergency angioplasty on an emergency basis.

   b. Presentation by Dr. Harry R. Phillips, III, Professor of Cardiology, Duke University Medical Center.

      Dr. Phillips said he has a true vested interest in the area of angioplasty for treatment of heart attacks, and he was the principle investigator in a large, international trial that looked at the outcomes of angioplasty vs. clot buster medications.

      Dr. Phillips explained, with the use of a power point presentation, that a heart attack in medical terms is a myocardial infarction, and the definition is sudden damage to the heart muscle due to the lack of blood supply; this usually occurs when one of the coronary arteries that takes blood to the heart muscle becomes blocked due to rupture of anthroscorotic plaque with a blood clot forming.

      Dr. Phillips said, basically, two treatments are available for the problem, and the goal is to re-establish the blood flow. The

traditional therapy has been thrombolitic therapy or the clot buster medication, but these cannot be used on all patients and can cause bleeding which, at times, can be life threatening. Dr. Phillips said a better solution is primary percutaneous coronary intervention or PCI that includes not only a balloon but a stent and has provided better outcomes, reduction in mortalities, and better safety profiles. He continued that the problem with this treatment is that it is not universally available.

Dr. Phillips said it is a proven fact that expeditious treatment of a heart attack is tremendously important. He explained the coronary stent is very important because the stent literally repairs the problem; allowing the medical profession to achieve higher predictable results when fixing blood vessels with catheters. Dr. Phillips said the likelihood of needing to do emergency by-pass operations in the situation where a patient is undergoing angioplasty is about 1 in 300 patients—in sharp contrast to balloons alone in previous eras.

Dr. Phillips reported that a significant difference can be shown, even at hospitals with no cardiac surgery, between angioplasty and clot buster therapy in favor of angioplasty, and these kinds of randomized data are helpful in assuring the communities performing primary PCI is the right thing to do.

Dr. Phillips summarized the requirements for the Saunders legislation were that more than 36 cases of primary angioplasty be performed annually at an institution; have an existing proven plan for a transfer to a surgical facility in case of a failed angioplasty; the PCI should be performed rapidly with the ideal balloon inflation being performed within 90 minutes of the patient reaching the hospital; and have skilled operators at the institutions who regularly perform at least 75 angioplasties. He explained that was the short version of a longer document, and encouraging the Legislature with Councilman Wyett's petition is exactly the right course to take.

Dr. Phillips said the commitment on behalf of Good Samaritan Hospital to provide the angioplasty services as soon as the legislation passes is a strong and positive step; but to make a program like this successful, the volume requirements are significant to meet the guidelines or approximately three angioplasties a month.

Dr. Phillips recapped that the goal and treatment of acute miocardiac infarction is to restore blood flow as rapidly as possible; primary PCI provides the best outcomes and broadest applicability

for treatment of acute MI; coronary stents have reduced the need for surgical backup of primary PCI procedures; available data suggests that primary PCI can be performed safely by experienced operators and support staff at hospitals without on-site surgical backup; the ACCHA guidelines give limited support to primary PCI, but they specify strict criteria for case selection, operator experience, and institutional infrastructure. He concluded that a successful program will require broad support from the community, the community as well as the hospital physicians.

c. Mark H. Bryan, CEO, Good Samaritan Medical Center.

Mr. Bryan said under current Florida CON regulations, a hospital must be licensed for open heart services in order to perform PCI, and Good Sam has a very active cardiac cath lab with all the equipment, supplies, technology, and the trained staff. He added the hospital has excellent invasive and non-invasive cardiologists on staff to handle all of the emergencies. Transfer agreements are in place with Palm Beach Gardens and JFK, and transfers can be made usually with 45 minutes or less. Emergency angioplasties are performed in limited situations where the life of the patient is in danger, and the patient cannot be transferred.

Mr. Bryan summarized that Good Sam and Tenet South Florida Health System fully support the FHA task force recommendation to allow emergency PCI in hospitals with an established cardiac cath lab but without an open heart program.

d. Peter Marmerstein, CEO, St. Mary's Medical Center.

Mr. Marmerstein said St. Mary's employs a similarly trained staff and trained physicians as does Good Sam, and the hospital, if the legislation is approved, will start providing the services immediately upon the approval by the State.

Councilman Wyett thanked the Civic Association for making it possible for Dr. Phillips to visit Palm Beach from Durham, North Carolina. He thanked Dr. Phillips for the thoroughness of his presentation.

Dr. Sanford Kuvin, 109 E. Inlet Drive, commented on the Seacourt Study, and noted the transport time for residents in the Town to a medical facility. He asked if there will be guidelines to determine who will be best served by receiving acute emergency care at Good Samaritan as opposed to those that would be better served,

under rare circumstances, to go immediately to a hospital who can perform coronary by-pass surgery or other forms of interventional surgery?

Dr. Phillips responded that he believed that primary PCI would be the best option for a heart attack, and in a perfect world, it would be terrific to have cardiac surgery on stand-by in every location; however, it is not practical. If a patient is in a situation requiring cardiac surgery and that patient is in a hospital where that is performed, at times, just assembling the cardiac operating team can take as much time as the transport time. Dr. Phillips added that situation does not happen that often as a true emergency or particularly as a complication of an intervention procedure.

e. Resolution No. 8-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Supporting a Change in Florida Law by Adoption of SB 460, or Similar Legislation, to Enable Emergency Angioplasty to be Performed at Good Samaritan Medical Center and St. Mary's Medical Center and All Hospitals Within Areas Where a Clear Problem Exists in Access to Needed Cardiac Services at Those Hospitals Having a Certified Catheterization Laboratory Meeting the Standards Set Forth by the American Medical Association.

Councilman Wyett said a substitute resolution, 8-03, was revised before the meeting, and the previous resolution referred to Senate Bill 460 which calls for open heart surgery throughout Districts 1, 6, and 9, but a more conservative approach was taken with the substitution favoring angioplasty to be available at the hospitals that have the proper facilities and properly qualified staff.

Attorney Randolph read the revised Resolution No. 8-03 by title:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA SUPPORTING A CHANGE IN FLORIDA LAW BY ADOPTION OF SENATE DRAFT BILL NO. 37-696-03 SPONSORED BY SENATOR BURT L. SAUNDERS, OR A COMPARABLE BILL INCORPORATING THE SUBSTANCE OF PROPOSED SUBSECTION 3(s) OF THE DRAFT LEGISLATION CONTAINED IN THE FINAL REPORT OF THE 2001-2002 FLORIDA CON WORKSHOP WHICH WOULD ADD A NEW SUBSECTION TO SECTION 408.036(3) OF THE

FLORIDA STATUTES EXEMPTING "PERCUTANEOUS CORONARY INTERVENTION" FROM THE CERTIFICATE-OF-NEED APPLICATION PROCESS OF THE FLORIDA HEALTH FACILITY AND SERVICES DEVELOPMENT ACT AT HOSPITALS SUCH AS GOOD SAMARITAN MEDICAL CENTER AND ST. MARY'S MEDICAL CENTER THAT DO NOT HAVE ON-SITE OPEN-HEART SURGERY PROGRAMS.

Councilman Wyett commented that this resolution address the State Senate legislation and a similar resolution could be prepared for the legislation in the House.

President Brooks said he understood a companion bill was in the House, and the Speaker of the House is supporting this legislation.

Town Manager Elwell clarified the resolution does say "or comparable legislation, incorporating the same provisions".

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

2. Appeal of Administrative Decision Which Denied Permission for a Property Owner to Sell Beach Access Through a Nonconforming Narrow Strip of Land in the R-AA Zoning District to Neighboring Property Owners. [Wade Byrd, Esq.] **(Request for Deferral to the March 11, 2003, Town Council Meeting per Letter Dated February 10, 2003 from Wade R. Byrd, Esq.)**

This item was deferred earlier in the meeting.

3. Appeal of Penalties Assessed Pursuant to Section 102-105 of the Town Code of Ordinances for Commercial Garbage Collection Services Provided to The Breakers, Alex Gilmurray, Chief Financial Officer. [Albert P. Dusey, Director of Public Works]

Councilman McDonald made a motion to grant the request, based on Public Work Director Dusey's memorandum. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

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

The Town Council appointed Richard Kleid, Harrison Robertson, and Joanna Frost-Golino as regular members; and Nancy Murray, Elizabeth S. Murphy, and Susan Markin as alternate members.

* * * * * * * * * * * * * *

The Town Council recessed for lunch at11:45 a.m. to reconvene at 1:30 p.m.

* * * * * * * * * * * *

XII. ORDINANCES

A. Second Reading

1. Ordinance No. 2-03 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to the Retirement System; Amending Section 82-64 to Provide a Self-Directed Investment Method for Drop Participants Entering the DROP After January 1, 2003; Providing for DROP Participants who Entered the DROP Before January 1, 2003, Including Providing an Optional Self-Directed Investment Method for Such Drop Participants; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for a Retroactive Effective Date of January 1, 2003. [John B. McCracken, Esq.]

Town Attorney Randolph read Ordinance No. 2-03 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF ORDINACES RELATING TO THE RETIRMENT SYSTEM; AMENDING SECTION 82-64 TO PROVIDE A SELF-DIRECTED INVESTMENT METHOD FOR DROP PARTICIPANTS WHO ENTERED THE DROP AFTER JANUARY 1, 2003; PROVIDING FOR DROP PARTICIPANTS WHO ENTERED THE DROP BEFORE JANUARY 1, 2003, INCLUDING PROVIDING AN OPTIONAL SELF-DIRECTED INVESTMENT METHOD FOR SUCH DROP PARTICIPANTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCE IN CONFLICT; PROVIDING FOR

CODIFICAITON; PROVIDING FOR A RETROACTIVE EFFECTIVE DATE OF JANUARY 1, 2003.

Councilman McLendon questioned if the passing of this ordinance would precipitate additional action later in the year?

Town Manager Elwell responded the purpose of placing the DROP programs with a third party administrator from the Town's perspective is that it reduces the Town's financial liability for the program and makes the variability of the rate of return subject to market influences rather than Town action. He continued that the advantage to the employees is the flexibility to take more or less risk with their investments under this program and be able to manage their own money.

President Pro-Tem Goldblum made a motion to approve the second reading of Ordinance No. 2-03. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

B. First Reading

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

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 18-02, AMENDING CHAPTER 38, EMERGENCY SERVICES, ARTICLE II, ALARM SYSTEMS, AT SECTION 38-62, ITEM (B) APPLICATIONS, FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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

XIII. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

President Pro-Tem Goldblum said three residents complained about the lethal yellowing in palm trees, and the Town is not doing anything about it. He requested that Town Manager Elwell explain what the Town does so the matter is clear.

Mr. Elwell responded a full written report will be forthcoming prior to the March Town Council meeting with a full discussion at the meeting. He continued that the tone of the comments earlier in this meeting was from the perspective that the Town has not done anything about the problem, and the Town doesn't seem to care about this. He said the Town has a long history of addressing the problem of lethal yellowing and still has an inoculation policy for Jamaican talls on Town owned land; however, that program has been scaled back over time based on decisions that were made, but the re-emergence of the lethal yellowing problem caught the experts by surprise. He recalled at the December Town Council meeting, the Town Council directed the staff to consult with Dr. Harrison, obtain additional information and return to the Town Council for consideration of additional actions. He referred to Dr. Harrison's letter, received last week, apologizing for the delay in replying to the Town and added that much greater detail will be presented at the March meeting.

Councilman McDonald commented on the derelict condition of the former Sea Lord property and requested this item be on the March 11, 2003, Town Council meeting agenda for discussion. He said he thought the developer was given too much leeway at the meeting where he asked for an extension, and he would like to see the Council 'toughen up' at the March meeting when the issue is dealt with.

President Brooks asked Mr. Moore to verify if the applicant requested six or nine months for an extension.

Mr. Moore responded the developer was given an extension until June 2003. Mr. Moore said the Building Department is encouraging the demolition of the structure.

Mayor Smith requested the Garden Club's comments be included in the lethal yellowing report at the March Town Council meeting as they were present at the December meeting. She continued that the Garden Club was one of the original movers in the 1970's along with Betty Bryant who was then President to investigate the lethal yellowing problem, and the Garden Club also researched the intrusion into the Malayans which were thought to be disease resistant which was why the Town planted them and the Preservation Foundation sponsored and sold them in the Town.

Councilman Wyett stated he was in favor of a lethal yellowing inoculation program and questioned if the Town would have a program to protect the private trees.

Mr. Elwell said the staff would provide a full report, running the gamut of options from something as broad as Jupiter Island's program with inoculation of all public and private palm trees to something more limited with an extensive education effort with the private residents.

Councilman Wyett said a misimpression was given earlier in the meeting regarding who could attend sessions in Tallahassee representing the Town. He said Senator Atwater's invitation was plural, not singular, and, if the Town Attorney agrees, more than one person from the Town could go and speak regarding the medical situations discussed earlier in this meeting. He requested the Town Council authorize anyone else to attend who wished to.

Town Manager Elwell responded the Mayor does not need authorization to attend, because the Charter authorizes the Mayor to take actions on inter-governmental relations on behalf of the Town, but any of the other Council members who would like to have expenses paid would need authorization by the Town Council.

President Pro-Tem Goldblum said in response to Councilman Wyett, the Town does have a program on lethal yellowing for private homes if a resident calls Public Works.

Mr. Elwell responded Public Works will give advice, but they will not inoculate the trees as that service would need to be funded.

Mayor Smith explained that the Town scaled back the inoculations of private trees, and the budget was reduced because it was thought the lethal yellowing was under control and Public Works would continue with the Town trees as needed, but instead of inoculating them three times a year, the trees were inoculated once a year because they felt the danger was over. She continued it was thought the private residents could take care of their own trees, but this did not turn out to be true, because the palm trees used to under plant the Jamaicans with, turned out to be susceptible to lethal yellowing which was not known by anyone.

President Brooks requested Town Manager Elwell may want to inform the press who was present to hear the remarks in the morning but were not present to hear the responses just given.

XIV. DEVELOPMENT REVIEWS

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

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

1. Old Business

a. SITE PLAN REVIEW NO. 15-2002 WITH SPECIAL EXCEPTION, VARIANCES & FLOOD VARIANCE

(1) The application of F.J.K. Properties, Inc., and F.J.K. Properties III, Inc. - Frederick R.Keitel, President relative to property described as Lot 39, Block E of Revised Map of Royal Park Addition to Palm Beach for the four-story building to be rebuilt and Lot 40, Block E to include the adjacent building that shares parking pursuant to a Declaration of Covenants and Restrictions; commonly known as 230 Royal Palm Way; located in the C-OPI Zoning District. Requesting Site Plan Review with Special Exception and Variances to demolish and rebuild a four-story office building with no increase in the total floor area or gross leasable area to be constructed substantially within the same building footprint as the existing building; variance to allow a 4.5 ft. front setback in lieu of the 21 foot minimum required; variance to allow a zero (0.0') side setback on the east and west property line in lieu of the 21 ft. minimum required; variance to rebuild four stories in lieu of the three-story maximum allowed by special exception; variance for a maximum height of 44.17 ft. (as measured from the floor) in lieu of the 35 ft. maximum allowed in the C-OPI zoning district; variance to add an additional four feet of height increasing the total height to 48.17 ft in lieu of the 40 ft. maximum allowed.; variance to have 28.55% lot coverage in lieu of the maximum lot coverage of 25% allowed; variance to have 11.39% landscape open space in lieu of the 30% minimum required and to provide 5% front landscape open space in lieu of the 35% minimum required; variance to provide air conditioning units 8 ft. above the roof in lieu of the 3 ft. maximum allowed; variance to provide 36 off-street parking spaces in lieu of the 61 spaces required; and, a flood variance to maintain the existing first floor elevation at 4.8 ft. NGVD in lieu of the 7.5 ft. NGVD minimum requirement.
(Deferred From December 10, 2002, Town Council meeting) **(Request for Deferral to the April 8, 2003, Town Council Meeting per Letter Dated February 4, 2003 from Raymond W. Royce, Esq.)**

This item was deferred to the April 8th meeting

(2) Appeal of an Administrative Decision Regarding Site Plan Review 15-2002 (230 Royal Palm Way). [Raymond W. Royce, Esq., Holland & Knight, LLP. *(Deferred From December 10, 2002, Town Council meeting)* **(Request for Deferral to the April 8, 2003, Town Council Meeting per Letter Dated February 4, 2003 from Raymond W. Royce, Esq.)**

This item was deferred to the April 8th meeting.

b. VARIANCE NO. 1-2003 The application of Michael F. Price relative to property described as a part of Block 20, Royal Park Addition as described in lengthy legal description on file; commonly known as 452 Worth Avenue; located in the R-B Zoning District. To allow the replacement of driveway gates in a front yard with a setback of 6 inches in lieu of the 18 feet required. *(Deferred From January 14, 2003 Town Council meeting)* **(Request for Deferral to the March 11, 2003, Town Council Meeting per Letter Dated January 29, 2003, from Maura A. Ziska, Esq.)**

This item was deferred to the March 11th meeting.

2. New Business

a. VARIANCE NO. 2-2003 The application of John Moran relative to property described as the North 7.5 feet of Lot 40, Lots 41, 42, 43 and 44 of Ocean Vista; commonly known as1424 South Ocean Boulevard; located in the R-AA Zoning District. To allow construction of a 450 square foot one story cabana with a side yard setback of 12.5 feet in lieu of the 30 feet required in the R-AA Zoning District.
(Request for Deferral to the March 11, 2003, Town Council Meeting per Letter Dated January 31, 2003, from Maura A. Ziska, Esq.)

This item was deferred to the March 11th meeting.

b. VARIANCE NO. 3-2003 The application of Howard J. Kessler and Patricia M. Kessler relative to property described as the West 94.60 feet of Lot 7 as measured along the South line thereof and all of Lot 8, Casa Bendita, and Lot 7 and Tract A, Chateaux Enchante; commonly known as 120 Casa Bendita; located in the R-B Zoning

District. To allow construction of a one story, 225 square foot orchid house with two side yard setbacks of 15 feet in lieu of the 30 feet required for a property with a lot size of 186,979 square feet in the R-B Zoning District.

Ex-parte communication was declared by Councilman McLendon, President Pro-Tem Goldblum, President Brooks, and Councilman Wyett with Attorney Maura Ziska.

Attorney Maura Ziska explained the variance request at 120 Casa Bendita is for an orchid house to be located on the southwest corner of the property on parcel A. She said the property consists of parcels A and B in the R-B Zoning District, and a variance is necessary because the Zoning Code states an accessory structure cannot be built on a parcel without a main structure, and an orchid house is considered an accessory structure. She continued that Parcel A, consisting of 40,000 sq. ft., requires side yard setbacks of 15 ft. and due to the lack of a main residence on Parcel A, the owners will execute a unity of title with Parcel B, resulting in 147,000 sq. ft. of property, subject to R-AA zoning with a minimum of 30 ft. side yard setbacks. She stated that is the hardship for the property.

Mr. Castro said the site is beautiful and the location for the proposed orchid house cannot be seen by any of the neighboring property owners. He continued if the orchid house was located in an area other than what is proposed, it would impact the landmarked fountain area or the winding drive that enters the property. He said Ms. Ziska should address the hardship issue.

Councilman Wyett made a motion to approve Variance No. 3-2003.

Ms. Ziska explained the orchid house is 10 ft. high with the pitch of the roof going to approximately 12 ft.

President Pro-Tem Goldblum seconded the motion.

Mr. Castro said the orchid house would have to meet the required wind load for hurricane winds.

Councilman McDonald asked for the finding of hardship. Councilman Wyett responded the hardship is that the party is forced to create a Unity of Title resulting in R-A zoning requirements.

On roll call, the motion carried 5-0.

c. VARIANCE NO. 4-2003 The application of 220 North Ocean Partners, LLC relative to property described as Lot 2, together with Beach Lot 2, Parangon; commonly known as 220 North Ocean Boulevard; located in the R-B Zoning District. To allow construction of a balcony to extend 3' into the street side yard in lieu of the 2' allowed by code; for the balcony to extend 5' into the rear yard in lieu of the 2' allowed by code; variance for additions which will result in a CCR of 5.46 in lieu of the existing CCR of 5.2 and the 3.97 maximum allowed; and, a variance for additions which will result in a lot coverage of 31.4% in lieu of the 30.4% existing and the 30% maximum allowed by code.

Ex-parte communications were declared by President Pro-Tem Goldblum with his next door neighbor; President Brooks and Councilman Wyett spoke to Attorney James Brindell.

Attorney Brindell, introducing Architect Jacquie Albarran, presented a series of photographs explaining the visibility of the proposed project to the neighboring properties. He said the project includes expanding the eastern balcony over the garage, enclosing the recessed porch on the west side, extending the cover over the terrace in the middle of the house, eliminating one of the curb cuts on Everglade, and removing an existing outside stair on the north side of the house which would increase the landscaped open space from 35.4% to 40%. He added the open space is currently non-conforming and the changes will make it conforming.

Architect Jacquie Albarran explained her clients want to increase the green space; enclose a small existing terrace; expand a balcony by supporting it on the existing structure (as suggested by Department of Environmental Protection officials because it is east of the Coastal Construction Line); and add a pergola which requires a lot coverage variance for 1/3 of it as that part exceeds the allowed requirement for lot coverage.

Mr. Brindell recapped the project stating that three variances were needed; one for a 1 ft. side yard variance on the east; a rear yard 3 ft. variance; a cubic content ratio variance of 5.46 in lieu of the existing 5.2 (current Code is 3.97); and a 1.4% increase in lot coverage or 31.4% in lieu of 30% maximum to accommodate the enclosures. He noted the non-conforming landscape coverage requirement will be brought into conformance if these variances are approved.

Mr. Castro, under staff comments, said the house far exceeds the size of a house that could be built currently. He cited the cubic volume increase and questioned the hardship.

Mr. Brindell said the hardship involved the Code which treats the balcony as a second floor when in reality, it is not a second floor, the garage is underground. He said the point of the second floor setback requirement is satisfied by the existing design of the house and the house is penalized because a portion of the garage is underneath the house. He cited the enclosures including the terrace which poses a safety hazard with the steps as they exist.

Councilman Wyett said he had trouble finding a hardship, and thought it might set a precedent.

Mr. Brindell responded that the hardscape is not increasing.

Ms. Albarran added that eight of the neighboring houses have CCR's that are 5.0+, and this house is not different from them.

President Pro-Tem Goldblum made a motion to approve Variance No. 4-2003 with the hardship as explained by Attorney Brindell.

Councilman McDonald questioned the reason for the hardship.

Attorney Brindell responded the issue is the second floor which is really a one story over a garage. He added if the garage were filled up with dirt, no variance for the balcony would be needed.

Councilman Wyett noted that if the garage were filled in, the house would not be legal (without a garage).

Councilman McLendon seconded the motion. On roll call, the motion carried 3-2 with President Pro-Tem Goldblum, Councilman McLendon, and President Brooks casting affirmative votes. Councilmen McDonald and Wyett cast negative votes.

d. VARIANCE NO. 5-2003 The application of Robert L. and Susan S. Burch relative to property described as Lot 20, Block H, Royal Park Addition; commonly known as 124 Brazilian Avenue; located in the R-B Zoning District. To allow enclosure of a second-story pergola on the east side and the construction of a new 2-car garage on the west side requiring variances for a side yard setback of 7.3

feet in lieu of 15 feet minimum as required by code for the second story, and a side yard setback of 3.5 feet in lieu of 12.5 feet minimum as required by code for the one story garage.

Ex parte communications were declared by Councilman McLendon and Councilman Wyett with Attorney Brindell.

Attorney Brindell explained the 1926 house is located next to a five story condominium and the proposal is to enclose a second story pergola adjacent to the condominium garage exit; construct a new one story two car garage in the driveway; increase the landscape open space from 43.3% to 46% or approximately 1,027 sq. ft.; and letters from neighbors supporting the project, particularly the garage addition, were received.

Architect Jacquie Albarran said the existing pergola could never be used, as it is, next to the garage, and the master bedroom adjoins the pergola. Ms. Albarran continued that the unusable existing garage is not used because of an enormous banyan tree that does not allow a car to back out of the garage. She noted the hardscape in front of the house would be diminished, and the proposed two car garage would be approximately 88 ft. from the street.

Mr. Castro said the staff questioned the hardship, and the requested setback is only 3.5 ft. whereas the Code requires 12.5 ft. He concurred the existing garage is not usable for automobiles. Mr. Castro also questioned the hardship for the enclosure of the pergola.

Ms. Albarran pointed out the house is under lot coverage and cubic content requirements, and the landscaping coverage will be increased.

Mr. Brindell distributed a setback study for Australian, Peruvian, and Brazilian streets showing 49 properties in the ocean blocks.

Ms. Albarran explained the red numbered properties, shown on the study, properties had from 1 ft. to 5 ft. setbacks, and there were a number of them.

Mayor Smith commented that the Council should consider how the houses in this neighborhood could be adapted to the newer times, but a one car garage would be preferable to a two car garage.

After discussion regarding the pergola and the two car garage, the Council separated the two issues and **President Pro-Tem Goldblum made a motion to approve the pergola enclosure**

only. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

Councilman McDonald moved denial of the two car garage. The motion was seconded by Councilman McLendon and carried 4-1 on roll call with Councilman Wyett casting a negative vote.

Councilman Wyett made a motion to allow a one car garage. The motion was seconded by President Pro-Tem Goldblum.

Under discussion, Ms. Albarran said no setback variance would be needed for a one car garage.

The motion to allow a one car garage was withdrawn.

e. VARIANCE NO. 6-2003 The application of First Allied Jacksonville Corporation (Malcolm Glazer, President) relative to property described as the lengthy legal description on file; commonly known as 1200 South Ocean Boulevard; located in the R-AA Zoning District. To allow the relocation of the landmarked house to a more westerly location on the subject property requiring a side yard setback (south side) of 19.2 feet in lieu of the 30 feet minimum required by code.

Attorney Jim Brindell, representing the First Allied Jackson Association, requested a deferral of the item. He explained that his client met with the Landmarks Commission at their January 15th meeting in an informal session and received a number of comments relative to the proposed relocation vs. adaptive use of the property. He said the architects for the project are working with the client, and he said he thought it would be prudent to visit Landmarks, informally, one more time to explore the acceptable bounds of adaptive use which may not require a variance at all.

Councilman Wyett made a motion to defer this item to the March 11, 2003, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum.

Mr. Moore suggested the Town Council may want the applicant to receive advice from the Landmarks Commission before appearing before the Town Council.

Councilman Wyett and President Pro-Tem Goldblum incorporated Mr. Moore's suggestion in their motion.

On roll call the motion carried 5-0.

f. VARIANCE NO. 7-2003 The application of Edward Deseta on behalf of 1604 L.P., a Delaware limited partnership relative to property described as Lot 1, Dodge Estates; located in the R-B Zoning District. To allow construction of a wall 6.75 feet high in lieu of the 6 foot maximum allowed by code; construction of a wall which is located with no setback from the property line in lieu of the required three foot setback; and variance to construct a wall which is located with no setback from the rear property line in lieu of the required 2.5 foot setback allowed by code.

The Town Council approved Variance No. 7-2003 with conditions.

Ex parte communications were declared by Councilman McLendon, Councilman Wyett, and President Brooks with Attorney Ron Kolins.

Attorney Kolins explained the house fronts on Sandpiper although it has a North Ocean Boulevard address and the request is to extend an existing concrete wall. He noted that inserts in the existing wall were removed at some point.

Mr. Kolins said the requests were to build the wall slightly higher than Code allows and to build the wall along the property line as the existing wall is and not set the wall back as required by the Code. He continued the Town owns an 8 ft. piece of property between the wall and the road, satisfying the intent of the Code to have grass between the wall and the road.

Mr. Kolins introduced four letters of support from the neighbors for the variance request.

Mr. Kolins said an opening exists on the Ocean Boulevard elevation where it meets the alley, and his client would like to close that opening. He continued the purpose of the opening is to allow access to the Town's 6 ft. utility easement that runs east/west along the property line. Mr. Kolins reported that Mr. Dusey gave his permission to close the opening in the wall because no lines exist underground in the utility easement; however, the Town wants to retain the easement if utility lines were ever put underground. If

that time came, the owner would have to agree to take down the wall, and Mr. Kolins said he would agree to do that.

Additionally, Mr. Kolins explained the Code required landscape planting in front of the wall which would be on Town-owned property. He continued that Public Works Project Engineer Martin Gauthier authorized the planting of the required hedge materials on Town owned property.

Mr. Kolins said the hardships were the lay of the land which is considerably lower than the property across the street; the bus traffic on North Ocean Boulevard; and the wall is an existing condition.

President Brooks requested Mr. Kolins to explain the reason this job is 'red-tagged'.

Mr. Kolins replied the entire house is being renovated by Worth Builders, and the wall was partially constructed, not capped off, but the block was laid. He continued that a separate permit was needed for the wall, and that had not been obtained. Mr. Kolins said he told his client to stop immediately approximately two months ago, and subsequently the job was red-tagged by the Town.

Mr. Moore stated, under staff comments, that the project does not meet the Town's criteria for granting a variance; the Town Engineer recommended denial but if approved, he would recommend removing all landscaping from the right-of-way and easement capable of growing in excess of 30 inches; removal agreement would have to be signed for the utility easement; if the variance is granted, a hold harmless agreement would be required for the wall; remove any landscaping in the rear of the property under the same agreement; and remove landscaping in the site triangle at the corner.

Councilman Wyett said the hedge should be in front of the wall and requested the applicant to install sprinklers to maintain the hedge and to accept the responsibility to keep the lawn green on the Town land.

Mayor Smith said the wall has always been there and questioned if a variance would have been necessary to restore the wall?

Mr. Moore replied the wall could have been partially restored during one year with the remainder being restored the following year, but not all at one time.

Mr. Castro added the existing wall did not exceed 4 feet in height.

Mayor Smith said the entire area has walls and hedges with the owners maintaining the grassy areas close to the street.

Mr. Moore said the neighbor to the west requested no wall be constructed between the properties but hedging was okay.

Mr. Kolins said his client had no problem with that, and no wall would be constructed on the west.

Edward Deseta apologized to the Mayor and Town Council for the lack of obtaining a permit before reconstructing the wall. He said he thought approval was obtained, and it was not his intent to hurt or incriminate anyone.

Mr. Moore explained the existing pillars were approximately 5 feet high, and the height was increased before the job was red-tagged.

Mr. Kolins said the existing pillars and wall were poured concrete, and block was added to the pillars and walls to make them higher.

Councilman Wyett made a motion to approve the wall at a height of 6 feet; to allow the landscaping to be in Town property, sprinkled; and have Public Works determine the conditions regarding the closing of the entrance to the Town's easement.

Mr. Kolins argued the point of the 6 feet requirement, since the wall was reconstructed only 8 inches higher than that.

Mr. Moore suggested the applicant be allowed to keep the posts at the current height; remove one course of block (8 inches) between the columns; and pour a 4 inch cap on the wall which would make the finished wall 4 inches over the 6 feet.

Mr. Kolins replied if that was what the Council wanted, his client could live with that, but questioned if that accomplished anything meaningful.

Councilman Wyett's motion was seconded by President Pro-Tem Goldblum.

Mr. Castro requested the conditions staff requested regarding the site triangle visibility be included as part of the motion.

Attorney Randolph said the motion should be clarified that the wall is not 6 feet but 6 feet plus the cap.

Councilman Wyett, maker of the motion, said he accepted taking one block off and putting the cap on, not to exceed 6 inches.

President Brooks said the effect of the Council's action is to uphold the Codes of the Town, but it happened this applicant was caught working without a permit on the wall.

On roll call, the motion carried 5-0.

Later in the meeting, Mr. Moore requested the Council review the motion that was made.

Mr. Moore explained that the wall was measured incorrectly and the applicant had a modification to the original variance request which was a 6 inch cap, leaving the wall as is—it is 1 inch over the maximum height—for a total of 7 inches, including the cap, over the allowable limit.

Councilman Wyett made a motion to approve the new request to include the conditions made with the previous motion. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

g. SPECIAL EXCEPTION NO. 3-2003 WITH SITE PLAN REVIEW The application of The Everglades Club, Inc. relative to property described as lengthy legal description on file; commonly known as 356 Worth Avenue; located in the C-WA/R-A Zoning District. To allow the Everglades Club to supply 52 additional supplemental parking spaces.

No ex parte communications were declared by any Council member.

Rick Reikenis, East Bay Group representing the Everglades Club, stated his request was for a site plan approval with a special exception. He continued the request was for additional parking spaces between the existing parking lot that is used for employees, valet, members and guests, and the golf course driving range. He explained the golf course was recently reconstructed, providing some additional room for 50 or 52 parking spaces.

Mr. Castro said the applicant received permitting through the South Florida Water Management District. He said the staff requests an ADA handicapped space be provided as well as some landscape islands in the parking lot which will reduce the number of spaces.

Councilman McDonald made a motion to approve Special Exception No. 3-2003 with Site Plan Review. The motion was seconded President Pro-Tem Goldblum and carried 5-0 on roll call.

h. SPECIAL EXCEPTION NO. 4-2003 The application of Three Seventy-Five South (Burton Handelsman) relative to property described as Lots 1-4, Royal Park Addition, (less RD R/W) Block 9; commonly known as 375 South County Road; located in the C-TS Zoning District. To allow office space on the second floor with 4,650 square feet in lieu of the 2,000 square feet gross leasable area allowed by code.

Ex parte communications were declared by President Pro-Tem Goldblum with Attorney Broberg.

Peter Broberg, Attorney for the owner Burton Handelsman, identified the property as the second floor to the rear of Pastry Heaven. He explained that when the Town's zoning was changed a number of years ago requiring a certain number of off-street parking spaces for each new commercial building, this was the first building built after that. He continued that the second floor was one large space with three offices and the request is to reassemble the space to 4,650 sq. ft. which exceeds the 2,000 sq. ft. maximum.

Mr. Broberg said the building is presently required to provide 91 parking spaces with 65 on-site parking spaces and the rest, 28, provided by the Apollo lot. Mr. Broberg said the space will be used by Mr. Handelsman's law firm and will be Town-serving.

President Pro-Tem Goldblum made a motion to approve Special Exception No. 4-2003 with the condition proof of Town-serving be provided. The motion was seconded by Councilman McLendon and carried 4-1 on roll call with Councilman Wyett casting a negative vote.

i. SPECIAL EXCEPTION NO. 5-2003 WITH VARIANCE The application of E.R. Bradley's Saloon South, Inc. relative to

property described as Lots 1-3, Floral Park Addition No. 1; commonly known as 279 Royal Poinciana Way; located in the C-TS Zoning District. To allow 4 seats to be placed under the awning outside of Sprinkles Ice Cream Parlor; and a variance to allow 4 additional outside seats without requiring said seats to be transferred from inside.

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

Attorney Broberg said Sprinkles Ice Cream Parlor is requesting 4 chairs to be placed on the sidewalk in front of the Ice Cream Parlor. He continued this would be in addition to the 10 chairs they have, and other stores on Royal Poinciana Way have seats outside of their stores.

Mr. Broberg explained the reason for the request is the Code requires 1 parking space for every 3 chairs, and the request is to waive one parking space. He continued that many customers are not parking to go into the Ice Cream Parlor but are walking in from other locations, after dinner, etc.

Mr. Broberg said the patrons signed a petition with over 300 signatures of Palm Beach residents supporting the request for the outside seating. Additionally, the Palm Beach Biltmore endorsed the request.

Mr. Castro said the staff had no problem moving 4 of the seats outside but a bad precedent could be set by allowing 4 additional seats, without parking spaces, based on the occupancy of the indoor space. He added that many other restaurants would like to have 4 additional spaces over what they are allowed.

President Pro-Tem Goldblum suggested moving 4 of the approved existing seats outside based on demand thus avoiding setting a precedent.

Sprinkles owner, Donna Marks, said the reason she was asking for 4 seats outside was due to the excessive requests she received from her patrons who either work or live in Palm Beach and mostly walk to the store. She said taking 4 chairs from the inside and putting them outside will not help, and other restaurants on Royal Poinciana Way have seats inside and outside.

Mr. Castro responded that Chuck & Harolds and Testas were grandfathered, and the provision was put in the Code because there

was a perception outdoor seating was a problem associated with parking. He added the other restaurant on Royal Poinciana Way did move seats from the inside to the outside.

Councilman Wyett said the Town needs to help the small shop owner to make Palm Beach what it should be and urged the Town Council to approve the request.

Mayor Smith suggested approval might be given to try 4 seats with a table, and if there are any complaints regarding parking, have the applicant report to the Town Council in 6 months. She said she agreed support should be given to smaller owners who are working on a viable home town business.

Mr. Moore pointed out that the precedent that would be set if this was approved would be difficult to deal with for the restaurants that might apply. He offered consideration of the Town Council granting the outside seating with the 4 seats and deferring the variance request for a 6 month period to see what problems might arise in that particular area.

Responding to questions from Councilman McDonald, Ms. Marks replied the inside of the store is congested, and the seats would alleviate that condition. She added the customers have asked for the seats.

Councilman Wyett requested the issue of dividing restaurants and convenience operations that seat less than 10 people be placed on the Zoning Items Study List for next year.

Mr. Moore agreed that item would be added.

Councilman Wyett made a motion to approve granting of the 4 outside seats and deferring the variance request for a 6 month period to see if any problems arise. Councilman McLendon seconded the motion.

Attorney Randolph said if Mr. Moore said the variance could be deferred and allow the applicant to have the seating for a period of time until one could see if it worked, that could not be done. He continued the Town Council has to either grant the variance or not.

Mr. Moore said the special exception is for outside seating and the variance is for not having to move the 4 seats outside; therefore, the motion would be to allow them to move 4 seats outside and defer the variance portion to a time certain after a review of the situation.

He clarified the special exception approval is needed to allow the applicant to be able to move the 4 seats outside.

Councilman Wyett said that was not his motion, and his motion was to allow the 4 additional seats, subject to a 6 month review by the Town Council if it would be a problem.

President Brooks asked Councilman Wyett if he would accept, as part of the motion, to hear the results in June?

Councilman Wyett confirmed that would be fine.

Attorney Randolph clarified the motion is to grant the special exception and the variance, but the approval is conditional upon a review in June.

Councilman McDonald asked to hear the hardship.

Mr. Broberg replied the building has no off street parking to provide.

Mr. Moore stated the applicant will have to provide Town-serving documents at the June meeting.

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

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

Ex parte communications were declared by President Brooks, President Pro-Tem Goldblum, with Attorney Ron Kolins and Architect Jeff Smith. Councilman Wyett talked to neighbors regarding the pros and cons of the project.

Attorney Ron Kolins, representing the owners, said this project is more than a request for a variance or two, but represents an opportunity not only for his clients, but for the Town and for the neighborhood. He explained the project involves the restoration of a neglected residence to its original Dutch Colonial style.

Mr. Kolins said the request relates to a beach cabana that will be compatible to the main house.

Architect Jeffrey Smith explained the details of the existing home built in the 1920's but remodeled in the 1960's when the gable ends were removed and replaced with a balcony running the entire length of the house. He said the plan is to renovate the house to its historic grandeur.

Mr. Smith continued that the property on the east side of the road is approximately the same size as the piece the residence is located on, and the plan is to construct a larger than required beach house. He said the Code did not contemplate that beach houses would be built on properties the size of this one, 120' x 130'. Mr. Smith explained the design of the beach house reflected the style of the main house.

Mr. Smith reported the project has been approved by the State of Florida for construction of the beach house in the coastal construction area.

Mr. Smith added the road in front of the residence and beach house is basically 3 ft. higher than the floor of the beach house, minimizing the size of the beach house.

Mr. Kolins said part of the problem was that this property constituted an R-A or even an R-AA piece of property in the R-B district. He continued that the R-B district is basically designed for other areas of Town with smaller lots. Mr. Kolins said the hardship is the size of the lot and the anomaly of the location in the R-B district. He added the size of the beach lot, taken by itself, justifies a beach house of greater size than the 200 sq. ft. allowed in the Code. He said the beach house is also matched or styled to go with the main residence.

President Brooks said the Town Council received a petition from the Seaspray residents opposing the plans for the beach house.

Mr. Castro said the applicant is requesting a cabana that is 5 times the size of what the Code would allow for a beach area property next to the R-B district. He continued the staff did not understand the hardship as related to the size of the lot as well as the requested building height which is 10 ft. taller than allowed in the beach area zoning district.

Mr. Castro said the staff agrees to a special exception for a reasonable beach cabana as identified in the Code, because the intent of the beach area district is to provide an ocean vista along with a de minimus or small beach cabana that is accessory to the house.

President Brooks asked the citizens who were objecting to the project to give their views.

Al Church, 202 Seaspray, said he and two other residents circulated a petition containing 51 names of property owners. He said the petition requested the Special Exception and Variance not be granted as no hardship existed as stated in the Code; the proposed building is out of scale, character, and harmony with the neighborhood and beach area due to the proposed size; the applicant does not face an undue hardship as required in the Code; granting this request would confer a special privilege on the applicant compared to other property owners in the surrounding area; granting the variance would be injurious to the rights of the members of the Sea Streets Association; and granting this variance would be injurious to the beach area and residents of the surrounding neighborhood.

David Scaff, 159 Seaspray, said he was torn speaking on the issue of objecting to the beach house, because the new owners' plans to restore the house are fantastic. He continued that his opposition related to the size of the cabana, and he expressed concern regarding setting a precedent in the neighborhood. He said one other large piece of property remains in the neighborhood and he was concerned about the future of that property based on what would happen with this property.

Peter Broberg, Attorney representing Mr. and Mrs. Lowenstein, the neighbors directly to the south, said the design is very attractive, but it is just too big. He said the intent of the Zoning Ordinance is to leave a vista open for the enjoyment of the neighbors and the residents.

Mr. Broberg continued that the 'Sea' streets are presently under study for an overlay district by the Zoning Commission, and the construction of a large beach house in an area of homes on small lots with not much greenspace will be in conflict. He suggested the beach house should be built in proportion to the main residence and gave examples of other large houses with beach houses that are in proportion.

Mr. Broberg cited a Code requirement for special exceptions that states "the cabana shall not threaten public welfare", and the submitted petition signed by 50 people stated the beach house would affect their welfare. He continued the use should be compatible with adjoining development, and 1,000 sq. ft. (area) is not compatible with 200 sq. ft. allowed in the Code.

Mr. Broberg said his client supported a beach house that would be in compliance with the Code but the submitted design does not meet the special exception requirements. He added the variance request would impact the neighbors; it is not a minimum variance; it is not within the general intent of the Zoning regulations; and does not meet the hardship requirement.

Councilman McDonald said he could not imagine how the Council could approve a variance on this property because of the size of the structure nor could a hardship be stated to support the construction of the cabana.

Paul Lowenstein, 224 South Ocean Boulevard, said he wanted to reinforce the point regarding support of the restoration of the residence, but several properties south of his residence are currently for sale, and if this precedent is accepted, others may apply for similar variances to construct large beach houses. He said he was particularly concerned about the massive size of the proposed beach house.

Frank Chopin, Attorney, Trustee of the Preservation Foundation, said the Foundation understood the concerns of the neighbors; however, this project one of the best examples the Foundation has observed in the 20+ years that the Foundation has been involved with the preservation of properties in the Town where a private individual can restore a home that has stayed in a state of disrepair for 30 years. He continued that the Dutch Colonial design is unique, and a trade off is involved. Mr. Chopin said the variances should be considered in the context of the good and the bad.

Mr. Chopin said the reality of the situation is the property has 130 ft. of frontage and the width of the house is 20 ft., and the open vista will be 80% of the frontage with the ocean visible. He noted the neighbors have a 14 ft. hedge that obstructs the ocean vista.

Mr. Chopin concluded this is an opportunity that does not come along very often with a minimal cost to lost vistas with no impact on the 'Sea' streets, and the Foundation supports the efforts.

Mr. Kolins said the design intentionally has only 21 ft. running in a north/south direction, and is consistent with the Town's requirement for maintaining ocean vistas. He commented that if the project sets a precedent, then other properties should be considered that have larger than allowed by Code beach houses. He suggested that the Town Council's decision regarding this project sets no precedent at all because of the uniqueness of the design and property size. Mr. Kolins said it was unfair to his clients to not let them have a beach house larger that 10' x 20' when they are willing to restore the main house to its original design at the expense of losing some features it has now.

President Brooks said the request the Council is considering is for a beach house that is five times what the Code allows. President Brooks suggested Mr. Kolins might want to take a deferral to reconsider some aspects of the project.

Kevin McGovern, owner of the property, said he was not aware of the petition, and he would like to review the concerns of the neighbors. He said those concerns would be addressed to the extent of speaking and communicating with them. He added he was not in favor of restoring the house to the elegance that Mr. Smith and his wife suggested initially. Mr. McGovern continued that he is 110% behind the current project, and the reason to have the beach house at the size presented is that it needs to be consistent with the historic elegance of the house. He said he did not give directions to Mr. Smith regarding the size of the house.

Mr. McGovern said the beach house was situated to provide the least impact on the neighbors as possible. Mr. McGovern concluded he would work within the process as determined by the Town Council.

Mr. Kolins requested a deferral to take advantage of the opportunity to review the project.

President Pro-Tem Goldblum made a motion to defer the project to the March 11, 2003, Town Council meeting. The motion was seconded by Councilman McLendon.

Mayor Smith said the applicant should know what the major concerns are, and the neighbors are not objecting to the beach house. She continued that the most objectionable part is the height of the roof and suggested Plan "B" to make the beach house smaller and more compatible. Mayor Smith added the location is probably the best location for minimum impact on the neighborhood. She pointed out that the owners are undertaking an expensive renovation, and the neighbors signed the petition in the time that was available before this meeting and did not intend to surprise the owners with the petition.

Councilman Wyett urged the applicants to work with the neighbors and the architect to reduce the size of the beach house.

Councilman McDonald said he did not think it was the Town Council's place to design the project for the applicant and make binding comments regarding the project that will be re-heard by the Council.

On roll call, the motion to defer Special Exception No. 6-2003 with site plan review and variance to the March 11, 2003, Town Council meeting carried 5-0.

3. Other

   a. None.

XV. ANY OTHER MATTERS

Mr. Moore announced that on February 27th at 3:00 p.m. to 5:00 p.m. and again at 7:00 p.m. to 9:00 p.m. the issue of the R-B zoning district will be discussed at meetings open to the general public to be held in the Town Council chambers.

XVI. ADJOURNMENT

The meeting was adjourned at 5:30 p.m.

William J. Brooks, Town Council President

Mary A. Pollitt, Town Clerk