MINUTES OF THE TOWN COUNCIL MEETING HELD ON FEBRUARY 8, 2000

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order at 9:30 a.m. on Tuesday, February 8, 2000, by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Jane Skittone, Fire-Rescue Chief Vincent Elmore, Information Systems Manager Spencer Wilson, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Assistant Director Veronica Close, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Public Works Facility Maintenance Division Manger Joseph Ugi, Public Works Services Division Manager Lloyd McCoy, Recreation Director Russell Bitzer, Risk Coordinator Karen Temme, Town Engineer James Bowser, Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by Mayor Ilyinsky.

III. PRESENTATIONS

A. Recognition of Paul R. Ilyinsky, Mayor - From 1993 to 2000

President Smith presented a plaque to Mayor Ilyinsky in recognition of his years of service to the Town of Palm Beach. She commented that the Mayor was one of the outstanding personalities in the Town, and would be greatly missed. She invited him to attend all future Town Council Meetings.

Mayor Ilyinsky thanked everyone for their good wishes.

IV. COMMENTS OF MAYOR PAUL R. ILYINSKY

Mayor Ilyinsky thanked everyone for all of the good wishes he had received.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

DEFER Item XI.3 - Request for Town support for proposed Palm Tree Lighting Beautification Project on South County Road by The Greater South County Road Association, Inc. *(Deferred from October 12, 1999)* per recommendation dated January 28, 2000, from Public Works Director Dusey, to the March 14, 2000, Town Council Meeting Agenda.

President Pro-TemWyett moved deferral of Item XI..3. to the March 14, 2000, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER Item IX. 4 - Discussion of establishing severance packages for department heads by amending Ordinance No. 18-99, Town Charter *(Referred to the Administrative and Personnel Committee on November 9, 1999 - Deferred from December 14, 1999, and January 11, 2000)* to the March 14, 2000, Town Council Meeting Agenda.

Councilman Shaw moved approval of the deferral of Item IX.4 to the March 14, 2000, Town Council Meeting Agenda. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried

unanimously.

DEFER Item IX. 8. - Lake Worth Inlet Sand Transfer Plant Issues - proposal to expedite the United States Army Corps of Engineers' Design Phase by Contracting Lobbying Services of Applied Technology & Management and Rees Engineering & Environmental Services *(Deferred from January 11, 2000)* to the March 14, 2000, Town Council Meeting Agenda.

President Pro-Tem Wyett moved deferral of Item IX.8. to the March 14, 2000, Town Council Meeting Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER Item XII. C. 1. - Zoning Commission - Three member terms to expire February 2003, and three alternate member terms to expire February 2003, to the March 14, 2000, Town Council Meeting Agenda.

Councilman McLendon moved deferral of Item XII. C. 1. To the March 14, 200, Town Council Meeting Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

ADD - Item XII. D. Other 4. - Consideration of wind insurance rates, on page 5.

Councilman McDonald moved approval of adding Item XII.D. Other 4. - Consideration of wind insurance rates. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

ADD - Item XII. D. Other 5. - Opting out of sponsorship of Adopt-a-Highway Program, on page 5.

Councilman Shaw moved approval of adding Item XII. D. Other 5. - Consideration of opting out of sponsorship of Adopt-a-Highway Program. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

WITHDRAWN - Item XIV. A. 1. Appeal of Architectural Commission decision of September 22, 1999, regarding 226 Merrain Road by Mr J. Kenneth Brower *(Deferred from October 12, November 9, and December 14, 1999)* - request to withdraw per letter dated January 21, 2000, from Attorney Ronald Kolins.

President Pro-Tem Wyett moved approval of the withdrawal of Item XIV. A.1. from the Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER - Item XIV. C. 2. - Variance No. 48-99- Robert Crompton, 311 Pendleton Lane; located in the R-B Zoning District. To allow expansion of a non-conforming residence by the construction of a two-story addition providing a 10' side yard setback in lieu of 15' required and providing a building height of 23'10" in lieu of 22' maximum allowed. *(Deferred from December 14, 1999, and January 11, 2000).* Deferred to the March 14, 2000, Town Council Meeting Agenda.

President Pro-Tem Wyett moved deferral of Item XIV. C. 2. to the March 14, 2000, Town Council Meeting Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

WITHDRAWN - Item XIV. C. 3. - Variance No. 49-99 - Claude & Melinda Trucks, 171 Dunbar Rd; located in the R-B Zoning District. To allow construction of a swimming pool providing a 4' side yard setback, in lieu of 10' required *(Deferred from December 14, 1999, and January 11, 2000)* per letter dated February 2, 2000, from Attorney James Brindell. Deferred to the March 14, 2000, Town Council Meeting Agenda.

President Pro-Tem Wyett moved approval of the withdrawal of Item XIV. C.3. from the Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

WITHDRAWN - Item XIV. C. 4. - Variance No. 53-99 - Frederick & Lori Hutchinson, 223 Park Ave., located in the R-C Zoning District. To allow construction of an addition providing a 15' front yard setback in lieu of 25' required *(Deferred from January 11, 2000)* - per letter dated February 3, 2000, from Mr. Kent Huffman.

President Pro-Tem Wyett moved approval of the withdrawal of Item XIV.C.4. from the Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER - Item XIV. C. 9. - VARIANCE No. 9-2000 - David Koch, 150 S. Ocean Blvd.; located in the R-B Zoning District. To allow a modification to a previous Town Council Approval (Variance #52-98) which conditioned the approval upon a recorded deed restriction for a view easement for the property owner to the south. Mr. Koch proposes to eliminate this condition.

Councilman McLendon moved deferral of Item XIV. C.9. to the March 14, 2000, Town Council Meeting Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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

IV. COMMUNICATIONS FROM CITIZENS

Orator Woodward, resident of 251 El Bravo Way , said he had written a letter to the Mayor and Town Council dated February 4, 2000, regarding the flooding on Clarendon Avenue and requested that letter be studied. He said a meeting was scheduled with the Clarendon neighbors at 2:00 p.m. on Friday, February 11th, at his home on El Bravo. He invited any members of the Town Staff who wanted to come.

Marilyn Klion addressed the Town Council with the following comments:

"I wish to respectively direct your attention to certain conditions that exist on South Ocean Boulevard in the area north of 2773 and up to the Par 3 Golf Course. I submit this letter, because I believe that the Town of Palm Beach practices vigilance in matters of appearance and adherence. This letter will address five areas that deserve the attention of this Council.

1. Stash Stations - These are areas used by condominiums to store their cuttings and whatever they wish to keep off their manicured grounds. The enclosed photos, marked A, B, C, and D, are self-explanatory. Not only is this a dumping ground for the condominiums but it obviously attracts other refuse along the way.

A few years ago, the Mayor, Mr. House, Mr. Dusey, and others toured the area and offered the promise that they would give the matter their best attention. Nothing has really been done. We were advised about private property rights, a rather poor excuse to allow this rather disgusting condition to exist. No where else in Palm Beach can one find any similar space. In fact, all the buildings even south of the Lake Worth bridge are well landscaped on the west side of the boulevard. One has to wonder what civic pride allows their owners –or even the walkers– to escape what we must look at every day as we walk the bike path north. And where do they store their cuttings?

2. Pump Station – There is a building adjacent to 2505 S. Ocean Blvd. which I believe is some kind of a pumping station. I am not really sure who it belongs to. Please view photo E. The building is an eye sore. It is unpainted, rust stains run down the front, the screens are torn, the surrounding ground is unkempt. The photo speaks for itself. I also enclose two articles from the Palm Beach Daily News about disrepair of home nets fine, exterior walls to be reasonably free of cracks, painted, and in good repair. The second article deals with the Sealord.

3. For Sale Signs – It is my belief that any for sale sign must be small and in good taste. If this preposition is valid, then I call to your attention the following: White House on the Lake Apartments – the sign is 24 x 27 advertising monthly and seasonal rentals available; Palm Beach Resort Condominiums has a 12 x 24" sign advertising rentals available; neither is attractive or essential to a section of Palm Beach proper and may not be in compliance.

4. Sloan's Curve – I refer to the actual curve known as the start of Sloan's Curve. One turns right off South Ocean Boulevard, and it is a stark contrast from the preceding ride. Initially, a wall was erected to remove the unsightly conditions of undeveloped property. For a short time, the wall was painted, and there were even some plants placed there to make the so-called entry to this particular strip that was formerly known as an Association, South of Sloan's Curve, and rightfully this association now carries the nomenclature of the Citizens' Association, and thereby is enjoined, thankfully, to this Town of Palm Beach. It is not as attractive as the rest of this Town. It should not be allowed to be so unkempt and so neglected no matter who it belongs to. But the rules seem to be not what something is or isn't but rather where that something exists.

5. Area south of the Lake Worth Bridge – there is a lot in great disrepair–I believe it was formerly a tv station. I'm not even sure that this is part of our Town's maintenance or if it belongs to Palm Beach. In any instance, it is an eye sore.

One more addenda: opposite the Par 3 Golf Course, on the lake side, there is a garage area which is in good condition. Adjacent to this area, there is land that holds some cable or electric for Comcast TV. The grounds are unattended, unkempt, unplanted. Does this land belong to the Town of Palm Beach? Would such an unsightly area be allowed to exist along Royal Poinciana Way, along County Road between Bethesda Church or the Breakers? I do not feel that I am walking or living in Palm Beach.

I am appreciative of your giving me this time to bring the above matters to your attention. I live in the Town of Palm Beach as a permanent resident. I never cease to be proud of the beauty of this Town. All the flowers, the trees, the landscaping, a beach wall with a scalloped top, show great caring on the part of those in charge. The downtown area, all along Royal Palm Way and Royal Poinciana Way, reflect a tradition of excellence. I read the deliberations that the Zoning Committee and ARCOM engage in so that no commercial or residential deviations or distractions will be allowed to disturb the strict standards of the Town of Palm Beach.

Finally, I want to believe that the benign neglect of my area of Palm Beach, is an oversight. I want to believe that this Town will make no distinction between north, south, middle, residential, commercial--we are all one. These areas, as delineated in this letter truly deserve your attention and I thank all of you in advance for your kind and prompt consideration."

President Smith requested the letter be submitted to allow Mr. Bitzer, Mr. Dusey, Mr. Ugi, Mr. Moore, and the Code Enforcement Board to respond.

APPROVED AGENDA

V. APPROVAL OF MINUTES OF JANUARY 6, 11, 14, AND 18, 2000

VI. APPROVAL OF CHECK REGISTERS FOR JANUARY 2000

VII. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF JANUARY 26, 2000

VIII. OTHER

A. Request for Appropriation of Funds from the Palm Beach Police Department Law Enforcement Trust Fund to Purchase Technical Equipment, for Crime Prevention Programs, and Other Law Enforcement Purposes per Memorandum dated January 19, 2000, from Police Chief Croft

The "Approved Agenda" was approved through motion of President Pro-Tem Wyett, seconded by Councilman Shaw. On roll call the motion carried unanimously.

REGULAR AGENDA

IX. OLD BUSINESS

A. Other

1. Royal Park Bridge Status Report by Public Works Director Dusey

Public Works Director Al Dusey reported that the four lanes of the Royal Park Bridge opened on January 26, 2000, and there had been lane closures off and on since then, as the roadway surface was fine tuned.

Mr. David Rysinger, Landscape Architect, Kimley Horn & Assoc. addressed the Town Council, explaining that he was under contract to E. C. Driver to assist in the design of the open space at both ends of the bridge. He stated that he had met with Polly Earl and a group of concerned citizens over the last 90 days in order to get some ideas for the restoration of the area along the south base of the bridge. Mr. Rysinger explained that a very simple, clean landscape design was planned, with the centerpiece two very large specimen canopy trees, which would be relocated from other areas; the trees had not yet been identified. He suggested that, as part of the design solution, the parking area for the

utility building located at the base of the bridge be relocated to the south end of the building, with heavy landscaping and screening. He noted that the restoration/enhancement package had expanded beyond the Florida Department of Transportation (FDOT) right of way,

Mr. Mario Echagarrua, E. C. Driver & Assoc., addressed the Town Council, stating that the utility building was in a Town park, and the FDOT would need a request from the Town to go into the park, as there was a procedural process established requiring that the FDOT would not go into any parks. He explained that the FDOT would work with Mr. Dusey regarding the utility building parking area, and details of that nature.

Mr. Wayne Young, Manager of the South Lake Condominium, (which was located on the northeast corner of Brazilian Avenue and Lake Drive, with its northern most property line 100' south of Royal Palm Way) addressed the Town Council . He requested that he be apprised of any planning or development regarding the proposed landscaping so that any impacts to the South Lake Condominium could be considered.

President Smith commented that the residents on the second, third, fourth and fifth floors of the condominium must be considered as to what they would be looking down on, and the residents of the building would need to know that their concerns were being addressed before any final plans were made. She noted that it was the recommendation of Mr. Dusey that the Town Council review the landscaping, and then require FDOT to develop a functional site plan and meet with the members of the South Lake Condominium before it was finalized.

Mr. Echagarrua explained that in order to proceed to the development of a full set of plans, direction would be needed from the Town regarding the park area.

Mr. Joe Borello, FDOT, explained that he would not need a commitment from the Town today, however, he would need direction as to how to proceed; the plan would be a partnership between the FDOT and the Town.

Councilman Shaw moved conceptual approval to a plan that would involve going into the park area of the Town of Palm Beach. The motion was seconded by Councilman McDonald.

President Pro-Tem Wyett expressed concern regarding park benches in the area, as it may attract a nuisance, and was an isolated area.

Mr. Echagarrua commented that the preliminary plan had included the benches, however, this was not intended to be a final detailed plan; he anticipated that he would return to the Town Council at the March 14, 2000, Town Council Meeting with additional details.

On roll call the motion carried unanimously.

Town Manager Doney requested that all written back-up in this regard be provided by March 6, 2000, so that it could be distributed and reviewed.

President Smith commented that if the plans were not ready for review by March, the Town Council could review them at the April meeting.

Gail McKenna, Projects Manager, thanked everyone for their cooperation, noting that work should be finished and machinery demobilized by mid-February.

2. Telecommunications Issues:

A. Cable TV System Franchise Renewal Process with Comcast Cablevision of West Palm Beach, Inc. - Status Report by Assistant to the Town Manager Jakubiak

Assistant to the Town Manager David Jakubiak noted that Attorney Nick Miller was available via conference call. He stated that Comcast would be responding to the issues related to the Franchise Agreement sometime this week; Comcast had also notified staff that the form to transfer to Adelphia would most likely be received this month. Staff would meet, after reviewing the Comcast proposal, and he recommended that this item be brought forward to the next Town Council Meeting, or that a special workshop meeting be scheduled. There were two major issues requiring Town Council decisions: the upgrading of the system; and the establishment of the I-Net.

A Special Town Council Meeting on the cable television system franchise renewal process was scheduled for March 7, 2000, at 9:30 a.m. Attorney Miller agreed that he would be available at that time.

Mayor Ilyinsky commented that he would not be attending the airport meetings (CCAN) any longer, and they had historically been attended by the Mayor or the Council President, and Town Council approval would be needed to designate such.

Councilman McLendon moved approval of authorizing Mayor Elect Smith to attend the airport meetings (CCAN). The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

B. Property Valuation of Town Public Rights-of-Way *(Deferred from January 11, 2000)*

Assistant to the Town Manager David Jakubiak referred to his memorandum dated February 1, 2000, regarding the property valuation of Town public rights-of-way, and reported that, after discussion, staff had concurred that expert advice was required for a study, which was estimated at a cost of $25,000-$50,000.

Attorney Nick Miller, via conference call, commented that some telecommunication companies may not qualify under Federal and State law because of how they were doing business; if they did qualify, the limits under Federal and State law were arguable and that was why a study was needed, so that the cost permitted under Federal and State law could be used as the basis for negotiation. He advised that the costs of the study could be paid by the fees collected for the use of rights-of-way. He noted that if the study was not done, there would always be the chance of a claim that the Town Council had not been given a reasonable basis on which to identify the fees that would be charged; without the study there would be increased risks that any challenges would be more difficult to defend.

Councilman Shaw suggested that the Town Council could make a determination of fees to be charged per foot, and if there was then a challenge, the study could be done.

Attorney Miller advised that it would take several months to complete a study, and the results could be provided early enough to provide a basis for costs to be charged to users. He stated that he would not advise the potential situation where the Town was challenged without a study having been completed.

Councilman McDonald moved approval of a study by a financial consultant to develop a legally sufficient revenue mechanism, with a limit of for the costs of the study to be $48,000. The motion was seconded by Councilman McLendon. On roll call the motion failed 2/3; with Councilman McDonald and Councilman McLendon casting affirmative votes; Councilman Shaw, President Pro-Tem Wyett, and President Smith casting dissenting votes.

President Smith requested that Attorney Miller and Assistant to the Town Manager David Jakubiak supply the Town Council with a memorandum determining possible revenues generated, before the March 6, 2000, Special Town Council Meeting; it would then be added as an agenda item for the meeting on that date.

3. Request for Town Support for Proposed Palm Tree Lighting Beautification Project on South County Road by The Greater South County Road Association, Inc. *(Deferred from October 12, 1999)* - **Recommendation for Deferral to March 14, 2000, per memorandum dated January 28, 2000, from Public Works Director Dusey**

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

4. Discussion of Establishing Severance Packages for Department Heads by Amending Ordinance No. 18-99, Town Charter *(Referred to the Administrative and Personnel Committee on November 9, 1999 - Deferred from December 14, 1999, and January 11, 2000)*

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

5. Discussion of the Sale of Water Meters to the City of West Palm Beach *(Deferred from September 17, 1999, December 14, 1999, and January 11, 2000)*

Town Engineer James Bowser reported that the City of West Palm Beach had offered to purchase the water meters installed by the Town of Palm Beach to monitor water coming into the Town for $60,000. He recommended, if the Town Council accepted the offer, that permanent electrical services be installed where practical.

Councilman Shaw moved approval of the sale of water meters to the City of West Palm Beach in the amount of $60,000, with the condition that permanent electrical services be installed where practical. The motion

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

6. Request for Assistance by Hartman & Associates in Following the Water Budget Process in the City of West Palm Beach *(Deferred from December 14, 1999, and January 11, 2000)*

Public Works Director Al Dusey reported that a memorandum had been prepared, dated January 7, 2000, summarizing the recommendations/suggestions of Hartman & Associates, which basically stated that to review the City of West Palm Beach budget and to litigate things that were not acceptable to the Town would not have a high degree of success, as the standards that would have to be met would be very difficult to overcome.

Councilman McLendon commented that he basically concurred with the conclusions of Mr. Hartman, however, he expressed concern with administration and support, transfers to the general fund, and some other items, such as the multiple rate increases since the 1994 rate study, which affected all customers.

7. Coastal Management Issues:

a. Legal Issues Pertaining to Location of Erosion Control Line

Town Attorney Randolph reported that a memorandum, dated February 7, 2000, to Town Manager Doney. had been prepared by Attorney Clay Brooker of Jones, Foster, Johnston & Stubbs, P.A., addressing the effects of the establishment of the location of the Erosion Control Line (ECL). He summarized the findings:

The fixing of the ECL would indeed have an adverse effect on any lawsuit filed. It was believed that the Town should do all it can to convince the State not to fix an ECL in regard to the project, or in the event that it was required, that it be done so as easterly as possible, so as to have little adverse effect on a potential lawsuit filed by the Town. In addition to the fact that the ECL would have an adverse effect on any lawsuit filed by the Town, there were indeed problems that would be faced in a lawsuit which must be taken into account. Those issues would be addressed by a law firm selected by the Town Council, however any lawsuit involving an inverse condemnation suit should be entered into advisedly, as there were problems that were distinct from those in the Applegate Case.

Attorney Brooker explained that the Applegate Case was factually similar to the case in Palm Beach, however, the main difference was that the ECL had already been established in the Applegate Case. He advised that, in his opinion, there were several options: to file a condemnation suit against the Federal government, or the Town could go the State for help in paying for the renourishment projects, or the Town could chose to do neither. The decision of whether or not to go to the State should be weighed upon what kind of impact the ECL would have on a condemnation suit. The Applegate Case was very complex, and the memorandum would shed some light on the serious problems and hurdles to be faced in such a lawsuit. In addition, there was a statute of limitation problem – there was a limitation of six years during which suit could be filed, after determination that the damage or erosion had stabilized to the point where a claim had accrued. In the Applegate Case the court decided that the statute of limitations had not started running because the Army Corps of Engineers had continually promised them that a sand transfer plant would be built. The court reasoned that because those promises were continual and present at the time of that decision, the property owners did not know whether any sand would ever be transferred by the Corps, and the situation had therefore not stabilized, whereby the statute of limitations had not yet begun. In the Palm Beach case, a sand transfer plant was in operation, and the Corps would point out that the Town had known of the erosion for at least 40 years.

Attorney Randolph advised that the Town should establish its position with the State prior to filing a lawsuit – if the advice from the expert attorneys was to move forward with the filing of a lawsuit, it should be filed before the establishment of the ECL.

Attorney Brooker commented that such an inverse condemnation suit must prove that the Federal Government caused the erosion/loss of property. He noted that documents were available that stated that the Corps had admitted that up to 45% of the erosion was caused by the inlet, however, those same documents existed in the Applegate Case, and the Corps had submitted an affidavit from their chief beach expert that contested that, which would reduce any damages. In addition, in the Applegate decision there was discussion about what damages a current property owner could claim. The only damages each property owner could claim would be those damages occurring during that property owner's term of ownership.

b. Potential Litigation Against the Federal Government Regarding Lake Worth Inlet and Selection of Law Firm to Analyze Same *(Deferred from December 14, 1999, and January 11 and 14, 2000)*

Councilman McDonald moved approval of hiring a law firm to prepare a memorandum of law regarding a lawsuit against the Federal Government regarding the Lake Worth Inlet. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Councilman Shaw moved approval of hiring Attorney Jerry Stouck, of Spriggs & Hollingsworth, Washington, D.C., to prepare a memorandum of law regarding a lawsuit against the Federal Government regarding the Lake Worth Inlet. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

c. Status Report Detailing the Approved Coastal Management Plan Update

Public Works Director Al Dusey reported that he had summarized the actions of the Town Council in his memorandum dated January 25, 2000.

Dr. Sten Lilja commented that the memorandum of Mr. Dusey summarized the financial aspects of the beach restoration project, which the Town Council had approved, however, it should be analyzed from the taxpayers' point of view:

He maintained that the net cost to the Town for the non-funded portions of the project, i.e., part of Reach 7, plus all of reach 8 would amount to approximately $14 million out of the total $24,679,000 (page 3 of the Dusey memorandum).

In addition, he stated that the total projected actual cost to the Town of $24,679,000 was obfuscated as a $21,000,000 "cash flow." The $3,379,000 "in the bank" represented money which was being taken out of the pockets of the taxpayers, and should have been presented more clearly (page 4 of the Dusey memorandum).

To use the term "additional millage" to demonstrate cost, obfuscates the fact that the Town would expropriate those .22 and .118 millages associated with two retiring bonds, without clearly explaining to the taxpayers that those prior millage commitments would otherwise be returned to the taxpayers in the form of a tax cut.

In presenting the financing for and the taxpayers' burden for this plan, there had been no provision for other potentially high cost outlays during the next 10 years, such as those which triggered the previous bond issues, nor provision for miscalculations, etc.

The taxpayer had the right to demand that special assessment taxation be applied, based on the definition of "those especially benefitted," where there was no direct benefit for other taxpayers.

Based on Florida Statute Chapter 159, it was illegal to use ad valorem taxation to pay for a Revenue Bond.

When presenting the estimated $24,679,000 cost to the Town there was little or no provision made for potential effects of miscalculation of sand cost and sand quality, nor availability. The delay of the $551,000 sand search report was troubling and the cost or quality of available sand was still not known. A cost under-estimation, or the need for higher quality sand could increase the project costs to the Town.

Dr. Lilja urged that the Town Council re-visit this matter.

Mr. E. Llwyd Ecclestone, 190 S. Ocean Blvd., commented that when he purchased his property it had a beautiful beach that had just been filled, and within a year and one-half the sand had all disappeared. He explained that he had spoken with experts, and learned that there was strong opinion that if a northeast category 2 hurricane struck, the whole beach between his property and the Lauder property would be lost; in addition he had been told that two T-groins were needed between his property and the Lauder property. He noted that groins would have to be maintained, which was not done when groins were put in many years ago.

Dr. Sanford Kuvin addressed the Town Council. A verbatim transcript of his comments is provided below:

KUVIN: My brief question is really to Mr. Randolph, because it involves the legality of the issue of the revenue bond, and specifically Chapter 159 of the Florida Statutes, as you probably know, Mr. Randolph, is called the Revenue Bond Act. In this act the Florida Legislature set forth in detail the rules under which a government unit may issue revenue bonds. For example, such bonds "may never be deemed the debt of the municipality, or pledge of the faith and credit, nor holder of any such revenue bonds shall ever have the right to compel any exercise of the ad valorem taxing." If that is correct and true, then isn't the Council, in essence, breaking the law by voting for a revenue bond in this instance?

RANDOLPH: No, because we are not pledging the ad valorem taxes of the Town. We are pledging revenues of the Town.

KUVIN: But, as Dr. Lilja just mentioned, it is almost inconceivable that there would be revenue to support

the millions of dollars necessary for a bond issue of this magnitude.

RANDOLPH: Bond counsel has looked at that carefully, and is quite convinced that we are proceeding properly in regard to it, and that the revenue can back up the bonds.

KUVIN: You feel comfortable that a revenue, of minimum of $24,000,000 can –

RANDOLPH: We feel comfortable that we are not going to have to pledge the ad valorem taxes of the Town to support the bonds. If we had to pledge the ad valorem taxes, then we would have to go with a G.O. bond, but we are not having to do that.

KUVIN: In the course of proceeding, will you, in fact, have to guarantee that to proceed ahead with a revenue bond – that you will not invade ad valorem taxes?

RANDOLPH: The bond resolution that is ultimately passed by the Town will incorporate that language.

SMITH: All right. Thank you, Dr. Kuvin. Any further discussion on this? If not, then we'll move ahead. To the members of the public that are here, we will be breaking for lunch at approximately 12:15. Anything we're not done with at that time will start after lunch. We'll probably be out until maybe 2:00.

d. Relocation of Reach 1 sand into Reach 2.

DUSEY: If you may recall, members of Town Council discussed briefly, I believe at the January Town Council Meeting, the feasibility of moving some of the sand that has accumulated in Reach 1 into Reach 2, and whether or not that would be permittable, advisable, or whatever. I approached DEP after that meeting, the State Department of Environmental Protection, and not only did they say it could be done, they were actually in favor of it. They would like to see the sand moved as far south as possible to get it into a little stream, and they have experience with moving it with both a near shore dredge of some sort, and also earth movement equipment. Earth movement equipment is used down in Miami Beach, to take sand from the south, and move it back into hot spots. So, from a permitting standpoint, although you have to go through a lot of work to get there, it's certainly doable. In fact, the State indicated they would try to expedite those permits. There is a lot that has to happen, though, for us to get there. First we have to get the permit. You have to use coastal engineers and do surveys and look for off-shore hard bottoms, and those kinds of issues that are very important in Reach 2. We would need permission of any upland property owner that may be giving sand – allow us to take sand. I know of several, I think, that would do that willingly. They don't like their beach. They think it's too large. There may be others.

SMITH: There may be others that don't want to give their sand. They may be sitting in the room.

DUSEY: I'm sure there are others that would say absolutely not. We need their permission, if we are using earth movement equipment, to travel over private property to move sand to the south, and anyone that says no in that regard can kind of put a stop to the project. The dredging option is more flexible with respect to that issue. If you dredge you can lay pipe below mean high water and move sand that way. The State indicated that because it's sand from inlet dredging and from the transfer of sand, that an erosion control line would not be required – it's not a designed beach, it's just movement of sand to the south. I would expect that someone would challenge the permit, which gets us into a hearing, which is not overwhelming, it's just time consuming and somewhat expensive, and, of course, work almost has to be done in the winter season. I'm not sure they would allow us to do it any other time, which is the worst time, from a weather standpoint, to be dredging close to shore, because of turtle nesting, we have to do winter dredging. I'm not an advocate, but I think staff should explore possibilities and bring them before you for consideration. If you'd like us to pursue this, we can get a proposal from one of our coastal consultants that are on board, and we'll come back next month and tell you what it will cost. It's going to take a lot of effort to contact all those property owners and try to get some kind of resolution or approvals, or whatever it would take, if you're interested.

KUVIN: Firstly, before I respond to Mr. Dusey's suggestion, I've been a resident here, as you know, for 35 years, and Mayor Ilyinsky, we're going to sorely miss you. I want to thank you personally. I've had the privilege of appearing before this Council on several occasions over the past three and a half decades, and as a member of the public, and a resident, we will sorely miss you for your excellence. And, Madam President, we welcome you as an example of extraordinary excellence to the mayoralty seat, and it is not without remembrance that I remember your late husband, who filled that seat as well. You have, indeed, established your own clear identity as a paradigm of excellence, but it is noticeable to some of us who have been around for a while, that you're sitting beneath the picture of your late husband, and we welcome you as our new Mayor.

SMITH: Thank you, Dr. Kuvin.

KUVIN: Without losing character, though, I think it is regrettable that the other candidates for office are not here today to discuss these important issues.

Mr. Dusey has mentioned his plan – in addition to his plan, I should say, for now installing earth moving equipment, and the possibility of a dredge, to move sand from the north end further south. As a reminder, and again, I appeal to Mr. Randolph, it is my understanding that any sand at the north end, exclusive of the Army Corps disposal site, is owned by the property owners; therefore, to blade or earth move sand from one location, if there is an ocean front property owner involved, would be illegal. It would be the taking of property in the legalistic sense, and I await your response on that.

RANDOLPH: Well, that's why we would be speaking to the property owners to get their permission.

KUVIN: To take property.

RANDOLPH: Well, to get their permission to move sand.

SMITH: You'd have to give it to the Town, Dr. Kuvin.

KUVIN: Exactly, but I'm just – the lawyers like to use the term "taking of property." In Mr. Dusey's proposition, of course, is the often mentioned pipe extension, which is part of the plan that Mr. Dusey submitted, and he also indicated, – and this, of course, would be another by-passing of Reach 1 to go to Reach 2, and taking on what was mentioned earlier by the attorney about the inlet, which, in essence, by-passes the flow of sand, not allowing it to go further south,-- that would by-pass Reach 1 in order to go to Reach 2 if that pipe were just a pipe extending from the south jetty, 3,000 feet south. Mr. Dusey did mention that, of course, it would have to receive not only a State permit, but in the instance of the earth moving, the property owners' permission as well, in order to by-pass their own property and move it south. It would seem highly dubious that would occur. However, I mention this only to remind the Council that it has been uniformly agreed that the littoral flow of sand is primarily south, and that there is absolutely no evidence to even suggest that a multi-million dollar pipe, or the moving of sand by blading it, by earth moving it, is necessary. The pipe has never even been designed. It has never been tested anywhere in the world. It will cost millions of dollars; at least $2 million to produce, with the proposed multiple outlets, and even remote controls, which would put sand into the littoral flow, by-passing the current discharge outfall in favor of that method. There is also no coastal engineering, or any other evidence whatsoever, to suggest or indicate that extending the pipe will provide a better or a more cost efficient distribution of sand along the area to Reach 2, which the sand from Reach 1 is already reaching, than already provided by the existing outfall pipes, and with no risk at all to the unneeded expense, to the adverse impact or possible impact on the environment, although you say the DEP is all in favor of it, that has to be investigated; and let us not forget on to navigation, and navigational rights with a pipe of this magnitude or the potential depreciation of personal property values because of by-passing north end homes. Just to remind the Council, the sand efficiency of adequate amounts of sand being transferred from north of the north jetty to south of the south jetty has everything to do with sand demand by the Town of Palm Beach, estimated with a loss now of about 171,000 cubic yards annually. Those are the authenticated numbers published by Aubrey Consulting and ATM; that's the estimated loss of sand each year. It is the failure not of demand – it's the failure of supply of sand that is the problem, and has nothing to do with any outfall pipe or the moving of sand by blading it, by earth moving equipment – it is the failure of supply of sand north of the north jetty to the sand transfer plant. For example, in 1996, when the sand transfer plant was first rehabilitated and put back on line it is recorded that 190,000 cubic yards of sand was pumped with the rehabilitated sand transfer plant in full operation, which is about 20,000 cubic yards in excess of any net loss, (193,000-170,000). This large volume of excess sand was primarily available that first year because of the accumulated sand at the north jetty during the inactivity of the sand transfer plant between 1990 and 1996, but with the projected improvements, or the rebuilding of the sand transfer plant by the Army Corps, with all of the alternatives that they have suggested, it is patently including the potential (which by the way they didn't mention in their alternatives, but I did remind them of it, Mayor Ilyinsky, because you are aware of it) that groin which acts as a barrier sitting ten feet deep on Singer Island, preventing the flow of sand to the suction pipes of the sand transfer plant, but with the projected improvements, be they jet pumps or anything else, to the sand transfer plant, the volume of excess sand will obviously be far in excess of 20,000 cubic yards. That was proven to be capable with the existing sand transfer plant, given a supply for sand on this Island. So, by-passing the current outfall with the 2,600 pipe extension, or blading it down the street will cause, in my opinion, at least, a disruption to the shoreline's traditional steady state of replenishment at the south jetty, ever since the sand transfer plant was built in 1958. The current system of a more efficient sand transfer plant and an even better one that is on line, plus the dredged Army Corps sand put in the spoil area at the north end, and any pro-active renourishment of eroded areas on a demand basis, has and will work to maintain a steady shoreline. In December, in conclusion, in December of this year, Mr. James Duck, the Chief of Planning, as Mr. Dusey knows, of the Army Corps, sent the Town, the Council, and all ocean front property owners alternative suggestions regarding the potential for building a new sand transfer plant, and mentioning the potential extension of the pipe, but ONLY if warranted by research and investigation. An Army

Corps team came up to the north end, whom I met with – there were six members – and they agreed totally that the whole concept of the – they agree that the sand transfer plant should be rehabilitated and could do a better job, but they had no consensus of opinion, not even a dream of it, as to whether or not a pipe was warranted, until they finished their investigations. You're smiling, Mr. Dusey, maybe you have something smiling to tell me. Therefore, I suggest to you that until the necessary and preliminary Army Corps work that is currently planned, but not in progress, should await their preliminary recommendations before this plan is carried out.

McLENDON: Before you leave, Dr. Kuvin. Where is your property line in relation to your fence?

KUVIN: It's at the fence, basically, or nearabouts there. It's Army Corps land, as you know, that's government land.

McLENDON: I know north of you it is. East of you –

KUVIN: No, east, east of me.

McLENDON: No, I don't think so.

KUVIN: Oh, are you telling me I own more property than I think I do?

McLENDON: No, I'm saying that there is apparently a declaration on the property east of you, but there's still a few hundred feet, I believe, north of you, between you and the jetty, and then east of you, all that stuff is government property, but south of that is just an easement, as far as I understand it.

KUVIN: Oh, that's correct, oh sure, absolutely. Yes sir. Absolutely.

McLENDON: Well, I'd just like to mention that I think in the last, now four years, approximately, we have pumped half a million cubic yards approximately of sand, with the sand transfer plant. We spent a million plus, I guess, on renovating the plant. We've spent probably another million dollars to the County to operate. We spent two million dollars for that half million yards of sand sitting there on the north end, a small percentage of which has moved southerly. There have even been times when there was sand on the north side to supply the plant that the discharge pipe was being covered, and it couldn't be operated until the County got equipment in to move some sand away. And I guess I keep looking for a way to get some of that sand moving further south. I am a little distressed that you oppose any movement of sand from that vicinity, whether you own the sand or not.

KUVIN: I'm not opposed to it at all, but I think some of your comments, if I may respectfully say so, Mr. McLendon, are that you said that only a small amount of sand moved south. That is an absolutely incorrect statement – all of that sand moves south. Secondly, I've lived there 35 years – there has never, ever been an excess amount of accumulation of sand at that corner of the world. All of that sand moves south. We have had a renovated sand transfer plant, which is pumping double the amount it ever did before. Therefore, you're getting a sand pile there that you didn't have in previous years. But, anybody – the aerial photographs will show it, frankly, I don't have to tell it to you. But the fact is that the pipe has never been submerged. Every grain of sand has moved into the littoral flow south. Mr. Dusey thinks it will be more efficient to move it further south and therefore get it more into the littoral flow. There is, as I just said, there is no evidence to suggest that, and there is every evidence to suggest why there are strong negative reasons not to do it.

McLENDON: Well, just the curve or the shape of the sand beach as it approaches the south jetty sort of proves to me that, well whenever you get a southeast wind direction, you pile up sand there, and I see not much evidence that we've moved a lot of sand southerly from that point.

KUVIN: Since the inception of the sand transfer plant, any resident who is a beachfront owner along the property will tell you that there has been beach accretion of significant proportions ever since the sand transfer plant has been rehabilitated, "a", "b," it takes a mile a year for sand to move – that's the engineering guesstimate – for sand to move in the littoral flow, south. And if we're all patient, none of us will be around that long, but the fact is that sand does flow, it is flowing, and furthermore, the Army Corps is willing to expend the money and the time to do the necessary water tank experiments, die color study experiments to follow the course of sand, and thirdly put up a video camera to actually see sand being moved. They're in the course of doing that. They've expended the money for it, and if you'll give them the – I know that they're slow – but if you give them the chance to do it – the Town is not threatened by anything right now, other than a major storm.

SMITH: I think, Dr. Kuvin, I appreciate and thank you for your remarks. I think we may have exhausted this subject for the moment. I believe that you would be opposed to giving up any of your sand. Actually, Mr Randolph, if Dr. Kuvin gave his sand to the Town, would he get a tax deduction?

RANDOLPH: We might be able to work that out.

SMITH: Well, but, I mean, it's something to think about when you put a value on the sand, if a property owner is going to give it, they should get a tax deduction, so – but I think that with everything that is in the works right now, and the fact that I would anticipate several owners in the north objecting to this being done, we can revisit it at a later time.

End of verbatim transcript

e. Marina Fund Loan Refinancing Proposal as it Relates to the Comprehensive Coastal Management Plan Financing *(Deferred from January 14, 2000 Special Town Council Meeting)*

Finance Director Jane Skittone addressed the Town Council, referring to her memorandum dated January 28, 2000, outlining two proposals to re-finance the current outstanding marina loan. She explained that the current loan must be re-financed to release the utility taxes pledged against it, and to avoid issuing the new revenue bond as subordinate debt. The marina fund cash reserves were available to reduce the current outstanding balance of the marina loan from about $2.8 million to $1.3 million, and two options were available to re-finance the remaining balance of $1.3 million. The first option would be to add it to the revenue bond that was upcoming, and the second option was to re-finance the balance with reserves from the General Fund Undesignated Fund Balance. Town staff recommended option two, for the reasons outlined in the memorandum. This matter had been discussed with Michael Hole of Salomon Smith Barney, and Richard Miller of Edwards & Angell, who were both in agreement with option two.

Councilman McDonald moved approval of option two, as recommended by staff. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

f. Erosion Control Bullet List

Town Attorney Randolph advised that a bullet list of items, included in his letter of February 4, 2000, to the Town Manager, had been provided of items that should be incorporated within any correspondence with the Governor, the Cabinet, or representatives of the Florida Department of Environmental Protection (FDEP).

g. Request for Authorization to Attend the Palm Beach County Legislative Delegation Meeting on February 17, 2000, 12:00 - 3:00 P.M., at the Palm Beach Community College, North Campus

Councilman Shaw commented that the Erosion Control Line bullet list related to his request for authorization to go before the Palm Beach County Legislative Meeting on February 17, 2000. He suggested that the Town unite with other coastal communities and take advantage of the relationships with State Legislators. He explained that there were other issues that needed to be addressed as well. He stated that he would like to attend the meeting on behalf of the Town, and requested permission to ask Attorney Randolph or Public Works Director Dusey to work with the delegation and try to obtain the necessary support.

President Pro-Tem Wyett moved that this issue be deferred until the meeting scheduled for February 9, 2000. The motion died for lack of a second.

President Smith explained that there would not be any business items scheduled on the Agenda tomorrow, other than the swearing in and appointment of President and President Pro-Tem of the Town Council.

Public Works Director Al Dusey explained that staff had an ongoing dialogue with FDEP staff, and believed that a strong argument could be made that erosion control lines (ECL) were not necessary in certain circumstances. They have considered it on a legal perspective and were currently preparing a response; staff had found additional language in the law that may provide more argument on the ECL, and staff had considered it more productive to exhaust those remedies before approaching the local delegation.

President Smith suggested that an application be submitted to the local delegation with Mr. Dusey registered as the speaker for the Town, with the understanding that he may chose not to attend if it was not an appropriate choice at the time. She noted that any member of the public could also file the form to appear before the delegation.

Mr. Bill Guttman, Palm Beach Civic Association, suggested that constitutional issues should be considered in any lobbying effort, as well as in the inverse condemnation lawsuit.

8. Lake Worth Inlet Sand Transfer Plant Issues - Proposal to Expedite the United States Army Corps of Engineers' Design Phase by Contracting Lobbying Services of Applied Technology & Management and Rees Engineering & Environmental Services *(Deferred from January 11, 2000)* **- Recommendation for Deferral to March 14, 2000, per memorandum dated January 26, 2000, from Public Works Director Dusey**

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

9. D-12 Storm Water Pump Station Control Building Plan *(Deferred from January 11, 2000)*

Town Engineer James Bowser reported that, at the request of the Town Council, Town Staff had re-visited the design of the pump station control building, and with the assistance of Florida Power & Light (FPL) and knowing more exact specifications, the building could be made smaller, however, there was a requirement that the wall of the building be up against the property line, or a minimum of a 5' setback be established. The rear setback was also a problem, and staff was still in need of a 10' setback. He explained that staff could return next month with variance requests, or the 10' x 20' area could be purchased at a cost of $10,000. Staff was recommending that the property be purchased.

Councilman McDonald moved approval of the purchase of the property at a cost of $10,000. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution 5-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO A PURCHASE AGREEMENT TO BUY PROPERTY FROM L'HERMITAGE PALM BEACH CONDOMINIUM ASSOCIATION, INC. TO SITE THE D-12 STORM WATER PUMP STATION CONTROL BUILDING.

Councilman Shaw moved approval of Resolution 5-00. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with President Pro-Tem Wyett casting a dissenting vote.

10. First Union Capital Management Group and State Board of Administration Investments *(Deferred from January 11, 2000)*

Finance Director Jane Skittone reported that representatives from First Union were present today in order to discuss the investment strategy for the portfolio of the Town, and present proposed revisions to the Town Investment Policy.

Mr. Gary Austin, First Union/Investment Management Division, addressed the Town Council, stating that a proposal relative to the investment management relationship between First Union and the Town of Palm Beach had been presented to the Town Council. In the past three years First Union had outperformed, on a relative basis, the State Board of Administration (SBA), which tended to be a very standard benchmark to use for fixed income relative performance. As interest rates increased, the SBA pool had experienced some flexibility. He stated that he anticipated the continued ability to outperform the SBA, and were requesting some flexibility very similar to what the SBA pool offered, relative to the capabilities of eligible investment securities.

Councilman Shaw commented on Item IV. Delegation of Authority on page 2 of 4 of the Town of Palm Beach Investment Policy document, wherein it was indicated that the Assistant to the Town Manager, and the Accounting Supervisor were designated as authorized signers, and he stated that he did not believe either should be designated as authorized signers. He stated that he believed the authorized signers should be more on the management side.

Town Manager Doney explained that the Acting Town Manager would be authorized to sign in his absence, or the Assistant Town Manager, and the Assistant to the Town Manager as a back-up position. He stated that the Finance Director must countersign as well, and he did not see any problem with it; Town staff would property review each investment and report it to the Town Council.

Councilman Shaw replied that there was no question that the Assistant Town Manager was qualified to be able to review the program and make a determination, however, he did not believe the Assistant to the Town Manager would normally have those qualifications, nor did the Accounting Supervisor.

Councilman McDonald moved approval of authorizing the following as investment signatories: Town Manager, Assistant Town Manager, Acting Town Manager, Finance Director, Assistant Finance Director. The motion was seconded by Councilman Shaw.

Councilman Shaw asked if there was a difference in interpretation in Item V. Authorized Investments, on page 2 of 4, Item C. of the Town of Palm Beach Investment Policy document, wherein it stated "implied faith and credit of the U.S. Government," and "full faith..."

Mr. Austin replied that "full faith and credit" tended to be directed more towards treasury bills, notes, bonds; various government sponsored enterprises, such as Federal Home Loan Bank, Federal Farm Credit, carried an "implied."

Councilman Shaw requested that the word "full" be inserted, so that the language would read "implied full faith and credit of the U.S. Government..."

On roll call the motion carried 4/0, as President Smith was temporarily out of the room.
The Town Council directed that First Union would report back at the February 2001 Town Council Meeting.

XI. NEW BUSINESS

1. Resolutions

1. Resolution No. 9-00 - Opposing Amendment to Palm Beach County Ordinance on Local Option Tourist Development Act

Public Works Director Al Dusey reported that the Board of County Commissioners passed an ordinance that diverted some of the tourist development monies from beaches into other purposes relating to tourism. He suggested that the Town Council approve Resolution No. 9-00 objecting to that ordinance.

Town Attorney Randolph read Resolution No. 9-00 by title:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING AN AMENDMENT TO SECTION 17-116 OF THE CODE OF LAWS AND ORDINANCES RELATING TO PALM BEACH COUNTY GOVERNMENT, RELATING TO THE TOURIST DEVELOPMENT TAX, PURSUANT TO THE LOCAL OPTION TOURIST DEVELOPMENT ACT, TO EXPEND ADDITIONAL TOURIST DEVELOPMENT TAX REVENUES FOR PROMOTION OF PALM BEACH COUNTY AS A SPORTS DESTINATION.

Councilman McLendon moved approval of Resolution No. 9-00. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

2. Sealed Bids

1. Sealed Bid No. 2000-02 - Town Hall Generator Purchase

Town Engineer James Bowser reported that two bids had been received for the Town Hall Generator, and staff was recommending acceptance of the bid of C.J.'s Sales & Service for the base bid and alternate bid number three, for a total of $33,836.

Councilman McLendon moved approval of Sealed Bid No. 2000-02 in the amount of $33,836. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

3. Appointments

1. Zoning Commission - Three Member Terms to Expire February 2003, and Three Alternate Member Terms to Expire February 2003 - **Recommendation for Deferral to March 14, 2000, per memorandum dated February 4, 2000, from Planning, Zoning & Building Director Moore**

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

C. Other

1. South Ocean Boulevard Issue - Traffic Problems Relating to Construction Projects

Police Chief Croft, referred to his memorandum to Town Manager Doney, dated February 4, 2000, reporting that staff from the Public Works Department, the Building Department and the Police Department had met to discuss issues that impact traffic throughout

the Town. Some immediate steps had been taken to contact construction sites and point out the necessary steps to be taken, giving them ten days to comply.

Police Chief Croft commented that bridge closings greatly affected traffic, especially in the early morning hours between 8:00 a.m. and 9:00 a.m., and in the afternoons between 4:30 p.m. and 5:30 p.m. He suggested that efforts be continued with Federal authorities to limit the bridge openings.

President Pro-Tem Wyett moved approval of authorizing staff to draft a letter for the signature of the Mayor to the U.S. Coast Guard, requesting that the bridge openings be limited, especially during rush hour periods of 8:00 a.m. and 9:00 a.m. and between 4:30 p.m. and 5:30 p.m. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

The other items on the memorandum of Police Chief Croft, dated February 4, 2000, are specified below:

OFF-SITE PARKING ARRANGEMENTS:
Police Chief Croft was asked to report back on Item 2 (off-site parking arrangements) if there were any changes or problems.

CHANGE OF CONSTRUCTION HOURS:
This issue would require input from the Town Attorney and further discussion by staff.

RESTRICT PERIODS FOR CONSTRUCTION DELIVERY TRUCKS AND REGULAR DELIVERY TRUCKS:
This issue would require input from the Town Attorney and further discussion by staff.

FLAGMEN:
This issue would require input from the Town Attorney and further discussion by staff.

LIMIT/ELIMINATE BUILDING PERMITS IN SEASON:
This issue would require input from the Town Attorney and further discussion by staff.

DENIAL OF PERMITS ON STREETS WHERE A CONSTRUCTION SITE IS ALREADY PERMITTED:
This issue would require further input from the Town Attorney and further discussion by staff.

PARKING PERMITS:
This issue would require further input from the Town Attorney and further discussion by staff.

2. Request from Mr. E. Llwyd Ecclestone, 190 South Ocean Boulevard, to Construct a Seawall on Town Property Along South Ocean Boulevard at Clarke Avenue Beach

Public Works Director Al Dusey referred to his memorandum to Town Manager Doney, dated January 27, 2000, explaining the request from Mr. E. Llwyd Ecclestone to construct, at his expense, a portion of a seawall from his property north along the east side of S. Ocean Boulevard at Clarke Avenue Beach. He explained that he had requested that a coastal engineer review the request [Applied Technology and Management (ATM)], and they had expressed a concern that erosion would then be focused at the end of the seawall and cause additional problems. Based on that, Mr. Dusey suggested to Mr. Ecclestone that the wall not be built. Mr. Ecclestone had then requested an appearance before the Town Council.

Mr. E. Llwyd Ecclestone addressed the Town Council, stating that he had totally rebuilt the home at 190 S. Ocean Blvd., and had been through two hurricanes so far, and there could be serious problems protecting his home. He explained that there were several options available: the best solution would be to build a wall from his property to the Lauder property, about 650'. He stated that he was prepared to pay for his 75' portion of the wall, and was prepared to help the Town work on trying to get a wall built for the entire length.

Mr. Dave Decker, ATM, addressed the Town Council, and explained that the renourishment project was designed to handle a 15-year storm, or the equivalent of a category 2 hurricane.

Mr. Dusey explained that there would be no problem with the 75' seawall in regard to the proposed renourishment project, however, the problem would occur if and when the sand ever eroded back to that partial seawall, as there may be a problem at the end of the wall.

Mr. Decker explained that Mr. Ecclestone was asking for a higher level of protection than what was being proposed by the Town with beach restoration; it was his professional opinion that a continuous wall from one segment to the other would be necessary. He explained that if the wall was built 75' north, the problem would be moved 75' away, and it would not be appropriate to transfer the property problem from one parcel to the next.

Mr. Ecclestone commented that FDEP was telling him to come to the Town first, and the Town was telling him to go to FDEP first, and he requested direction.

Mr. Decker explained that the State would not take action on Mr. Ecclestone's application without a letter from the Town confirming support for his request.

Councilman Shaw moved approval of a staff review of the request of Mr. Ecclestone, incorporating that a letter would be drafted to the State by the Town in support of the seawall proposed by Mr. Ecclestone, which would be submitted to Town Attorney Randolph, Public Works Director Dusey, interested parties and adjacent property owners, before it was actually sent. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Manager Doney commented that such a letter should include the fact that the applicant was proceeding at his own sole expense, and that there be some indemnification of the Town.

In response to Councilman McLendon, who asked if it would be advantageous for the Town to consider putting a seawall across the beach property, Mr. Decker replied that his recommendation to the Town had been that if a higher level of protection was provided, it be done consistently across the entire opening.

Public Works Director Al Dusey asked why the Comprehensive Coastal Management Plan had not recommended a seawall at the location in question?

Mr. Decker replied that it had not, since the seawall would be an additional level of protection at additional cost, and the first recommendation to the Town had been that no wall was warranted in that location because the Town had made the commitment to place sand and maintain the beach there, which was the level of protection that had been agreed upon as the guidelines that the Town would follow; a seawall would be taking it to the next level.

President Smith clarified that a letter would be written in support of the seawall, staff would meet and discuss the issue, and when the plans were all brought together it would come back to the Town Council for consideration and a decision of whether to move ahead on any expenditure on the part of the Town.

Mr. Ecclestone indicated that he would talk to neighboring parties in the area concerning the seawall.

3. Proposed Settlement of Worker's Compensation Claim Regarding Kevin Reynolds vs. Town of Palm Beach

Karen Temme, Risk Coordinator, referred to her memorandum dated January 28, 2000 to Town Manager Doney recommending settlement in the amount of $90,000 in the Kevin Reynolds v. Town of Palm Beach worker's compensation claim.

Councilman McDonald moved approval of the settlement in the amount of $90,000 in the Kevin Reynolds v. Town of Palm Beach worker's compensation claim. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw had temporarily left the room.

4. Consideration of Wind Insurance Rates.

Councilman McDonald commented that he had passed out a copy of an editorial from the Palm Beach Post concerning wind insurance rates, and he requested that staff review the issue, and report with recommendations at the next Town Council Meeting.

President Pro-Tem Wyett moved approval of putting the issue of wind insurance rates on the Agenda for the March 14, 2000, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

5. Considering of Opting out of Sponsorship of Adopt-A- Highway Program.

Councilman Shaw commented that some time ago there had been an option to opt out of the Adopt-A-Highway Program; he maintained that the program may be great on the interstates, however, did not lend itself to the Town of Palm Beach. Councilman Shaw moved that the issue be added to the Agenda of the March 14, 2000, Town Council Meeting. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/1, with Councilman McDonald casting a dissenting vote.

XIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman Shaw thanked all those who had helped raise funds for the Park 3 Golf Tournament, which had been held on Saturday.

President Smith commented that five flowering trees had been planted and a plaque had been installed, donated by the members of the Town Council, in the Australian Docks area in honor of Mayor Ilyinsky and his years of service to the Town of Palm Beach.

President Pro-Tem Wyett thanked Mayor Ilyinsky for his service to the Town of Palm Beach.

XIV. DEVELOPMENT REVIEWS

Deputy Town Clerk Eichhorn administered the oath to all those who would be speaking to the following issues.

A. Appeals

1. Appeal of Architectural Commission's Decision of September 22, 1999, Regarding 226 Merrain Road by Mr. J. Kenneth Brower *(Deferred from October 12, November 9, and December 14, 1999)* - **Withdrawn per letter dated January 21, 2000, from Mr. Ronald K. Kolins**

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

2. Appeal of Architectural Commission's Decision of December 17, 1999, Regarding 8 Windsor Court by Mr. and Mrs. William Cooley *(Deferred from January 11, 2000)*

Ex-parte communication was declared by Councilman McDonald with Mr. Cooley to discuss the merits of the application; by President Pro-Tem Wyett with Mr. Cooley, and Attorney Kolins to discuss the merits of the application; by President Smith via phone conversation with Attorney Kolins discussing the merits of the application; by Mayor Ilyinsky with Attorney Kolins; by Councilman Shaw via phone with Attorney Kolins; and by Councilman McLendon with Attorney Kolins to discuss the plans.

Attorney Ron Kolins offered his best wishes to Mayor Ilyinsky, and wished him a great deal of happiness in his retirement.

Attorney Kolins, representing Mr. and Mrs. Cooley, addressed the Town Council, requesting that the following items be incorporated by reference into the proceedings today: Architectural Commission (ARCOM) hearings conducted in October, November, and December of 1999, with the exhibits included. In addition, he submitted Cooley Composite Exhibits A-I into evidence. He explained that the architecture had been praised by the members of ARCOM, yet conditions were imposed upon the applicant that were found unacceptable. He explained that the three buildings involved totaled approximately 11,000 sq. ft., and the lot was approximately 30,000 sq. ft. He then presented the unacceptable conditions that had been placed by ARCOM:

- Removal of porte cochere

  Mr. Kolins explained that this would allow the applicant to pull up to the house under a covered area to unload the car and then move on to the garage. It could hardly be seen from any angle on any surrounding street.

- Move main house ten feet south

  Mr. Kolins explained that removal of the porte cochere would require the main house to be moved ten feet to the south. The applicant was already well within all setbacks, and the applicant would be willing to keep the large hedge along the south property line, and the house was totally screened. There was no basis to require the house to be moved further south, which would disrupt the entire site plan.

- Move garage ten feet east

  The requirement had been made in order to give the house behind the applicant more space, however there was no house currently on the west side (although one had been approved) of the home, and the west property was also owned by Mr. and Mrs. Cooley. There would be no purpose in moving the garage ten feet to the east.

- Remove garage laundry room and corresponding portion of servants quarters

This condition was made so that the garage could be moved ten feet east, which served no purpose.

- Remove portion of trellis between garage and main house

  This condition was also made so that the garage could be moved ten feet east, which served no purpose.

- Move cabana ten feet south

  The cabana was a small building, and when moved to the south, it would disrupt the relationship of all the buildings.

- Have window in "morning room" in south wing of main house match the window in a bedroom in the north wing of the house

  The window was part of the design, and the south and north wings of the house differed in many respects; the same window design would not work on the north side of the house.

- Put HVAC compressors on north side (2) within enclosure and/or relocate

  The compressors were precisely where the law allowed them to be put.

Attorney Kolins summarized that the changes required by ARCOM substantially hurt the house, and detracted from the function of the house; there was no significant public benefit, and the applicant objected to them. He noted that the applicant had made approximately ten changes that had been recommended by ARCOM.

Director of Planning, Zoning & Building Robert Moore, advised that size had been debated quite extensively at the ARCOM meetings, and the problem with the property was that when it was sub-divided the Town had put some restrictions on it, and only four houses were allowed. Subsequently there had been a lot split, and the remaining portion was that of the applicant. He explained that ARCOM had felt a responsibility to neighboring properties (El Dorado on the north and Cherry Lane to the south) in that the property in question was a larger property and was producing a larger gross square footage structure than was existing in the neighborhood. He noted that there was some relief that could be granted, and cited the example of the sub-division of the Phipps Estate, where a similar situation had existed, where it was determined that it would be more appropriate to compare structures within the Phipps Estate, rather than using the normal structures within 200'; size thus no longer became the issue, and subsequently, ARCOM gave an approval with conditions, which the applicant found unacceptable.

President Pro-Tem Wyett commented that he believed that the applicant may deserve some relief, however the Town Council could not totally disregard some of the recommendations made by ARCOM.

Attorney Kolins replied that it was the duty of the Town Council to serve as the body to which appeals are considered; he maintained that the action of ARCOM in imposing the conditions upon the applicant was illegal, arbitrary, capricious, unconstitutional, and completely ignored the rights of private property owners.

Councilman McDonald commented that he believed it was the duty of the Town Council to listen to the applicant, and make their own decision, irrespective of what ARCOM had done.

Architect Rafael Portuondo, Portuondo Perotti Architects, Inc., addressed the Town Council, stating that the symmetry of the house was an issue that had been discussed, and he pointed out the establishment of symmetry within the main block of the house. He gave the opinion that ARCOM was looking at the centerline of the house as the front door, and anything happening on one side had to happen on the other side, which was an incorrect assumption. He explained that the centerline of the mass was the centerline of the house, and the beauty of the secondary wings was that they could differ from each other.

Mayor Ilyinsky commented that this was one of the better looking houses that had been built in the Town, that sat on a colossal lot. He stated that the house was beautifully designed, and he could not understand what the problem was with the house; and to deny the applicant the right to build the house was not appropriate.

President Smith commented that the house had been approved by ARCOM, and that approval could be upheld today with the elimination of the conditions that the applicant found unacceptable, if the Town Council so desired.

Councilman McLendon commented that he found no justification for the conditions, that he believed the house was beautiful, and he moved approval of the appeal; the hedges would stay in as part of the deed restriction, and the air conditioning units would be enclosed. The motion was seconded by Councilman Shaw.

Councilman Shaw clarified that the applicant must realize that there would be a tightening of construction requirements in the near future.

Attorney Kolins acknowledged that the applicant would become familiar with any change in the rules, and would work with staff in that regard.

On roll call the motion carried 4/1, with President Pro-Tem Wyett casting a dissenting vote.

B. Time Extensions - None

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. SITE PLAN REVIEW NO. 17-99 WITH SPECIAL EXCEPTION AND VARIANCES - The Palm Beach Day School, Inc., The Day School at 241 & 246 Seaview Avenue; located in the R-B Zoning District. To review the demolition of Cushman House for construction of a 15-space parking lot in lieu of previously approved 29 parking spaces which will remain green space. Variances requested are to provide a 10' front yard setback in lieu of 25' for required off-street parking, and to allow a 4' high hedge fronting the street along the parking lot on the south side of Seaview Avenue in lieu of 6' high hedge required. *(Deferred from September 17, 1999, November 9, 1999, December 14, 1999, and January 11, 2000)*

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

Attorney James Brindell, on behalf of the Palm Beach Day School, addressed the Town Council, stating that this was a continuation of a matter that started several months ago, which had to do with revisions to Site Plan No. 17-99, to settle an appeal of the earlier approvals. He exhibited an architectural drawing of the site plan for the Palm Beach Day School; originally there had been a very heavily landscaped parking lot, which had been given up as the result of settling a challenge; valet parking would be done in the area where three houses would be demolished, with space for 124 vehicles. An easement of 6' along the west play field had been given to provide for parallel parking. The only other area that could be used for parking was the Cushman building site, and the applicant had approached the Town Council for consideration of demolition. The neighbors in Phipps Plaza had objected to that and did not want parking in that area. The traffic engineer had then considered another option, which was the idea of establishing angled parking along the south side of the street, along the tennis courts, which could also be carried along by the public school, and would increase the parking spaces available. Mr. Brindell explained that at the last meeting, Town staff had asked for some time to talk to the other departments of the Town to discuss that option.

Zoning Administrator Paul Castro commented that staff had recommended that the on-street parking did not provide enough room between the tennis courts and the proposed parking; conflicting traffic movements with the parallel and angled parking may be a problem, and during peak morning/afternoon school hours, there may be a public safety issue related to children crossing the street, or people leaving the parking area. Staff recommended that the applicant and staff review the parking requirements for the Palm Beach Day School, and defer the application for one more month to consider alternative options.

President Pro-Tem Wyett moved deferral of Site Plan Review No. 17-99 to the March 14, 2000, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. VARIANCE NO. 48-99 - Robert Crompton, 311 Pendleton Lane; located in the R-B Zoning District. To allow expansion of a non-conforming residence by the construction of a two-story addition providing a 10' side yard setback in lieu of 15' required and providing a building height of 23'10" in lieu of 22' maximum allowed. *(Deferred from December 14, 1999, and January 11, 2000)* - **Request for Deferral to March 14, 2000, per letter dated February 7, 2000, from Mr. Francis X.J. Lynch**

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

3. VARIANCE NO. 49-99 - Claude & Melinda Trucks, 171 Dunbar Rd.; located in the R-B Zoning District. To allow construction of a swimming pool providing a 4' side yard setback, in lieu of 10' required. *(Deferred from December 14, 1999, and January 11, 2000)* - **Withdrawn per letter dated February 2, 2000, from Mr. James R. Brindell**

This item was withdrawn earlier in the Agenda, under Item V. "Approval of the Agenda."

4. VARIANCE NO. 53-99 - Frederick & Lori Hutchinson, 223 Park Ave.; located in the R-C Zoning District. To allow construction of an addition providing a 15' front yard setback in lieu of 25' required. *Deferred from January*

11, 2000) - **Withdrawn per letter dated February 3, 2000, from Mr. Kent Huffman**

This item was withdrawn earlier in the Agenda, under Item V. "Approval of the Agenda."

5. VARIANCE NO. 3-2000 - Donna Ward, 1564 S. Ocean Blvd; located in the R-A Zoning District. To allow the rebuilding of a non-conforming residence demolished in excess of 50% of the cubic volume of the structure. *(Deferred from January 11, 2000)*

Attorney Kolins addressed the Town Council, stating that unwittingly, more reconstruction of the house in question had been done than was allowed by Town Code.

Architect Pat Seagraves, SKA Architects, addressed the Town Council, stating that the house had been approved for a variance to build over an existing second floor, and the main reason for the variance was the small lot. He explained that during construction the contractor found that there was extensive termite damage and rot, and removed the floor joists and made the determination to put new joists up. The error was that it should have been done in a different manner, where not more than 50% of the cubic volume was exceeded.

Director of Planning, Zoning & Building Robert Moore commented that the reason the variance was back before the Town Council today was so that the contractor could explain the circumstances. He explained that it had been more expeditious for the contractor to proceed when he discovered the damage, rather than to come back and seek the appropriate approvals, and the representatives of the applicant could now explain the circumstances.

Attorney Kolins replied that it had never been the intention to do more than was allowed, and unwittingly, the contractor had proceeded, and should not have done so. The Town had been given a hold harmless letter once the mistake was discovered.

Mr. Moore explained that the proper variance would have been the variance that the applicant was now seeking, and for future cases such as this, staff could slow down the process, and would be discussing bonding procedures for construction projects in the near future, which would put a financial incentive in place, and could be made part of the Code.

Attorney Kolins commented that the Code may be counter-productive in this particular section.

Councilman Shaw moved approval of Variance No. 3-2000. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

6. VARIANCE NO. 4-2000 - Pamela & Dean Lovett, 124 Clarke Ave.; located in the R-B Zoning District. To allow construction of an addition providing a 5.6 cubic content ratio, in lieu of 4.9 existing and 4.5 maximum allowed. *(Deferred from January 11, 2000)*

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

Attorney James Brindell, on behalf of Pamela & Dean Lovett, read a letter from the Lovetts expressing their regrets that they were unable to attend the meeting today, and respectfully requesting that the Town Council exercise its good judgment in granting the revised variance request. Attorney Brindell noted that the applicant had been asked to further minimize the variance request, and the architect had adjusted the plan by lowering the CCR by .35.

Architect Jacquie Albarran explained that 407 sq. ft. had been removed from the plans.

President Pro-Tem Wyett moved approval of Variance No. 4-2000. The motion was seconded by Councilman McDonald.

Zoning Administrator Paul Castro commented that staff believed the applicant had reduced the variance requested, and the ceiling heights of the home added substantial cubic volume, and staff had no objection.

On roll call the motion carried unanimously.

7. SPECIAL EXCEPTION NO. 2-2000 with Site Plan Review - William Koch; 974 S. Ocean Blvd.; located in the R-A Zoning District. Applicant requests a modification to Special Exception #15-97 with Site Plan Review to allow construction of two accessory structures (boat house and a pool pavilion) on a lot four times larger than the

minimum lot size in the R-A Zoning District. *(Request for construction of boat house deferred from January 11, 2000)*

Ex-parte communication was declared by President Pro-Tem Wyett with Attorney Rogers.

Attorney Doyle Rogers addressed the Town Council, on behalf of the applicant, stating that the boat house request had been deferred in order for the applicant to contact the neighbor on the north, Mrs. Pat Supper, and discuss the size of the building and screening. Mrs. Supper had been contacted, and shown through the house; the boat house was reduced in height and the trees between her house and the boat house were high enough to screen the boat house; a number of trees had been re-planted in order to more fully screen the area.

Mr. Digby Bridges, of Bridges, Marsh & Carmo, Inc. addressed the Town Council, stating that he had met with Mrs. Supper to discuss the boat house, with her main objection being that she wanted it screened, and wanted the location of the black olive trees used in the screening changed. He noted that the vegetation had been thickened, the height of the boat house had been reduced by 2'6", and that Mrs. Supper was no longer concerned.

Councilman McDonald moved approval of Special Exception No. 2-2000. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

New Business - Minor

8. VARIANCE NO. 8-2000 - Edward J. Kelly Jr., 241 El Vedado Rd.; located in the R-A Zoning District. To allow construction of a covered entry providing a 14.33' side yard setback in lieu of 15' required.

Director of Planning, Zoning & Building Robert Moore reported that the home at 241 El Vedado Road was a landmarked home that was in need of having an entryway covered, that would require an 8" variance, and staff had no objection.

Councilman McLendon moved approval of Variance No. 8-2000. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

9. VARIANCE NO. 9-2000 - David Koch, 150 S. Ocean Blvd.; located in the R-B Zoning District. To allow a modification to a previous Town Council Approval (Variance #52-98) which conditioned the approval upon a recorded deed restriction for a view easement for the property owner to the south. Mr. Koch proposes to eliminate this condition. - **Request for Deferral to March 14, 2000, per letter dated February 7, 2000, from Ms. Maura A. Ziska**

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

10. VARIANCE NO. 10-2000 - Robert Fessler, 318 Arabian Rd.; located in the R-A Zoning District. To allow a variance from Sec. 62-75(h) to construct a dock 25.5' west of the U.S. Pierhead Line and Bulkhead Line in lieu of the marginal dock allowed at 6' west of said lines.

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

Attorney Dafney Weaver appeared to represent Robert Fessler.

Director of Planning, Zoning & Building Robert Moore reported that the variance was minor; the application was for a dock with a boat lift, and the applicant had Florida Department of Environmental Protection (FDEP) approval, and staff had no objection.

President Pro-Tem Wyett moved approval of Variance No. 10-2000. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

New Business - Major

11. VARIANCE NO. 6-2000 - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd.; located in the R-B Zoning District. To allow construction of an awning providing no side yard setbacks on the north or south in lieu of 10' required and providing a 3' rear yard setback in lieu of 10' required.

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

Attorney James Brindell, on behalf of Mr. and Mrs. Ecclestone, addressed the Town Council, stating that the house in question was built in 1926, and the proposal was to insert an awning , so that staff people could park out of the weather. A 10' setback requirement would render the area very small, and the hardship was that the most logical place for the cars to park, which was formerly covered with a building before the recent renovations, left a space that was not of use to provide a covered parking area.

Zoning Administrator Paul Castro commented that the applicant would need to demonstrate the hardship as it related to the land.

Attorney Brindell explained that the drawing submitted indicated that if the Code was applied, there would remain a small space without enough room to park the three staff cars.

Ms. Ann Connelly, 109 Seabreeze, addressed the Town Council, stating that she objected to the variance requested. She explained that the Ecclestone property contained three large brick courtyards enclosed by walls, and at least three garages and two driveways, which could handle quite a number of parked cars. She stated that she believed that Mr. Ecclestone was asking for something he did not need, and by putting up an awning he would make the neighborhood look like it was endorsing carports in the area; the area in question was not attached to the house and was separated by a stucco wall; Mr. Ecclestone had plenty of other space in which to cover a parking area if his concern was the exposure to the weather of his staff, which would not require a variance; any awning would create a safety problem for traffic; the Connelly bedroom windows overlooked the proposed awning.

Councilman Shaw moved deferral of Variance No. 6-2000, to the March 14, 2000, Town Council Meeting, in order to give the applicant time to discuss the proposal with the neighboring property owner. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

12. VARIANCE NO. 7-2000 - Howell Van Gerbig, Jr., 12 Via Vizcaya; located in the R-A Zoning District. To allow construction of a portico providing a front yard setback of 28' in lieu of 35' required, and to allow a covered patio addition, at a 30.1% lot coverage in lieu of 25% maximum allowed.

Ex-parte communication was declared by Mayor Ilyinsky with the applicant, and by President Smith with the applicant.

Attorney Peter Broberg, on behalf of Mr. Van Gerbig, addressed the Town Council, stating that the areas in question were presently awnings, and had been on the property for 25+ years; the lot was undersized, and the lot coverage would be reduced by the construction of a portico/patio in both of the spaces in question; the greenspace would be increased.

Director of Planning, Zoning and Building Robert Moore commented that staff requested that the hardship be addressed completely; in addition there was a letter of concern from a neighbor.

Attorney Broberg replied that the lot was undersized, and the house had been constructed at a time when the zoning code was different. He explained that the letter was the result of a dispute between neighbors.

Councilman Shaw requested that the application be amended by stating "replacement" rather than "new" covered portico and "new" covered patio addition. (Attorney Broberg made the change in the application at the meeting), and moved approval of Variance No. 7-2000. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

13. SPECIAL EXCEPTION NO. 3-2000 - Bethesda-by-the-Sea Church, commonly known as The Church Mouse, 374 S. County Rd.; located in the C-TS Zoning District. To allow occupancy increase from 3,502 sq.ft. to 4,332 sq.ft.

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

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

Attorney Peter Broberg addressed the Town Council, stating that he had submitted the Town-serving affidavit, showing 70-90% compliance.

Councilman McDonald moved approval of Special Exception No. 3-2000. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

14. SITE PLAN REVIEW NO. 2-2000 WITH VARIANCES - The Beattie Co. Inc., 234 Oleander Ave.; located in the R-C Zoning District. To allow modification to a multi-family dwelling. Variances requested: to allow construction of a swimming pool providing a front yard setback of 8' in lieu of 25' required, and to allow a staircase to be built thereby increasing the lot coverage from 34.05% to 35.54%, in lieu of 30% maximum allowed.

Ex-parte communication was declared by Councilman Shaw with Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the pool could not be put on the back or either side of the building, and it had been designed in the front of the building. He represented that the pool was not meant to be an area with wide decking, but would be for swimming purposes. He exhibited a photograph of the pool envisioned for the area.

Mr. Beattie explained the current situation of the property and the proposed swimming pool and staircase; he noted that he had recently acquired the property and was attempting to make it more attractive.

Zoning Administrator Paul Castro commented that the swimming pool would have a minimum 6' high wall around it, and there would be a required 3' high hedge in front of the wall; if the pool could be moved back several feet, the site would be more aesthetically pleasing, and the variance would be minimal.

After further discussion, Councilman McDonald moved approval of the swimming pool portion of the variance request of Site Plan No. 2-2000, with the condition that the pool be moved back 9', the planter would be taken out, and the variance requested for the front yard setback would thus be 17'; in addition grasscrete would be used in front. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Councilman Shaw moved approval of the staircase portion of the request, with the condition that it be 3' clear or whatever was required by the minimum code requirement. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

15. SITE PLAN REVIEW NO. 3-2000 WITH SPECIAL EXCEPTIONS & VARIANCES - Burt Handelsman, Owner, and George Sharoubim, Applicant, 230 Worth Ave.; located in the C-WA Zoning District. To allow construction of a 2nd story (4,300 sq.ft.). Special Exception requests: to allow a 8,600 sq.ft. retail use; to allow off-site required parking for 21 parking spaces (approx. 450' away); and, to allow construction of an arcade over the public sidewalk. Variance requests: to allow a 2nd story addition with a building coverage of 45.91% in lieu of 35% maximum permitted by the Worth Ave. Design Guidelines; and, to allow the elimination of 1 required off-street loading berth.

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

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the purpose of the various special exceptions, variances and site plan approvals would allow expansion of the store by the addition of a second floor, and the inclusion of an arcade over the street. He explained that the second floor would mirror the first floor in size, and exhibited a conceptual rendering of the proposed construction, without the arcade being shown, as that concept was still in process.

Zoning Administrator Paul Castro commented that the loading space was not feasible at this location; parking was available at the Apollo Lot, and the applicant had considered valet parking for his clientele as well. Staff had some concerns related to the compatibility of an arcade related to the pedestrian sidewalk, and its affect on other property owners in the location. He explained that this was one of the first two-story additions being proposed for the 200 block of Worth Avenue, and it would set a precedent that staff believed needed to be considered closely. He recommended that the arcade be brought back to the Town Council at a later date.

Attorney Kolins exhibited some photographs indicating second stories proximate to the store in question.

Mr. George Sharoubim addressed the Town Council, explaining that there was an alley in the back of the building, where stock rooms and tailoring facilities were located. He noted that there were several buildings on the first and second blocks of Worth Avenue with two or more stories.

Mr. Wayne Geyer, 8 Golfview Road, addressed the Town Council, stating that the alleys in the area were often blocked, paint and plaster was poured down sewers, and Town staff had been called regarding problems in the past.

Director of Planning, Zoning & Building Robert Moore explained that the location of the building in question was to the north, on the Worth Avenue side, and there were buildings in between the building, the alley, and the home of Mr. Geyer, and the buildings referred to by Mr. Geyer were not involved; all garbage would have to be put out through Worth Avenue. He explained that the building in question could not even be accessed through the alley, and problems may have resulted from other construction, but not from the applicant.

Attorney Kolins explained that a warehouse in West Palm Beach would be used for all deliveries of merchandise, and any trucks of any significant size would go to the warehouse; the only trucks that would be delivering to the store would be UPS, FedEx, and those delivering to anyone on the street. He requested that a valet parking spot be allowed in front of the store, so that they could then be taken to the Apollo Lot.

Mr. Moore commented that no other establishments on Worth Avenue had valet parking spots during the day.

Attorney Kolins replied that he would approach the Worth Avenue Association with the concept, and come back to the Town

Council with the results.

After further discussion, Councilman McDonald move deferral of the arcade portion of the request to the March 14, 2000, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Councilman McDonald then moved that the special exception be approved allowing 8,600 sq. ft. of retail use, and to allow off-site required parking for 21 parking spaces.

President Smith expressed concern with the proposed showroom windows on the second floor.

Attorney Kolins clarified that the drawings being shown were still in the conceptual stage, and the architect would consider the comments of President Smith in creating the final design. He offered to show final drawings to get further input. He also submitted a letter from an accountant, explaining that the applicant was Town serving.

Councilman Shaw suggested that the motion of approval made by Councilman McDonald include that the Worth Avenue Guidelines would be incorporate in the design of the building. He also noted that there was no address or phone number on the letter of the accountant, and Attorney Kolins offered that he would supply the information to Town staff.

Councilman McDonald clarified his motion of approval of the special exception request allowing 8,600 sq. ft. of retail use, incorporating the Worth Avenue Design Guidelines, and to allow off-site required parking for 21 parking spaces. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Councilman McDonald then moved approval of the variance request to allow the second story addition with the building coverage of 45.91% in lieu of 35% maximum permitted by the Worth Avenue Design Guidelines, because of the hardship imposed by the two story buildings to the rear, which severely encroached on the air space and other aspects of the lot in question. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Councilman Shaw moved approval to eliminated the one required off-street loading berth, as it was not needed, nor could it be used. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Mr. Moore clarified that the facade would come back to the Town Council for review. He requested that, due to the complexity of building a second story on an existing first story, the applicant be required, as a condition of general approval of the site plan, to meet with the Town departments to work out a schedule relating to the use of Worth Avenue during construction. That schedule would be brought back to the Town Council for final approval.

Councilman Shaw moved approval of the requirement that the applicant meet with Town staff to work out a schedule relating to the use of Worth Avenue during construction, with the understanding that any future changes in construction requirements would apply to the project. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

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Councilman Shaw commented that there seemed to be many zoning applications that were incomplete, and requested that the Town Council make a determination that the applications would be automatically deferred if modified plans are not in within eight days of the next meeting. He clarified that he was addressing items that had been deferred from one meeting to another predicated on a change; if those changes were not presented within eight days prior to the Town Council Meeting it would be an automatic deferral.

Mr. Moore replied that could be included in the letter that was sent to applicants regarding deferrals.

Councilman Shaw requested that his comments take the form of a motion. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as President Pro-Tem Wyett had left the meeting, and President Smith was temporarily out of the room.

D. OTHER

1. Proposed Modifications to the Town's "General Release and Hold Harmless Agreement" by Mr. and Mrs. Andrew Aiken as a Condition for Approved Flood Variance No. 2-99

Attorney Greg Young, of Edwards and Angell, addressed the Town Council, stating that a hold harmless agreement had been provided in connection with Flood Variance No. 2-99, granted at the Town Council Meeting of October 12, 1999. He explained that the Aikens had begun renovation of their property at 145 Seagate Rd., and a small portion of the renovation was included in an area where the finished floor elevation existed and was not to be changed at 7.10' above mean sea level. The majority of the construction was constructed at 7.5' above mean sea level, and at some point in time during the project, the Aikens became aware that a roof replacement

would be necessary, and that caused them to exceed 50% of the value of the improvements. The Town Council approved the Flood Insurance variance, subject to the Aikens delivery of a Hold Harmless Agreement. Zoning Administrator Paul Castro had provided the Hold Harmless Agreement in his letter dated October 28, 1999, and a current Hold Harmless Agreement had been provided within the past few days. He noted that in both agreements the Aikens had inserted proposed language. The Aikens had three objections:

The release extends to intentional or willful misconduct in the event the Town caused harm to their property.

The release that was proposed would extend not only to the improvements that were constructed and that were permitted to exist under 7.5' above mean sea level, but also those that were constructed over 7.5' mean sea level.

It seemed onerous that the Hold Harmless and release would continue to exist after the point in time when the variance became unnecessary. The Aikens were suggesting that a termination be put on the Hold Harmless at such time as the variance itself would no longer be necessary.

Town Attorney Randolph commented that the motion for approval had been subject to the applicant signing the standard Hold Harmless Agreement, and departure from that would need Town Council action. He stated that he had not yet reviewed the proposed agreement presented by Mr. Young, and had no objection to meeting with Mr. Young and perhaps coming up with another agreement, however, he suggested that a standard agreement should be used in all instances, rather than in just this case. He suggested that he and Mr. Moore and Mr. Castro review the agreement.

Councilman McDonald moved deferral of this issue until the March 14, 2000, Town Council Meeting. The motion was seconded by Councilman Shaw.

Attorney Young commented that the Aikens had been waiting for several months for a certificate of occupancy to be issues, and would like to proceed.

Director of Planning, Zoning & Building Robert Moore commented that the applicant may be able to sign the standard Hold Harmless Agreement, obtain the certificate of occupancy, and the Building Department could hold off on recording the agreement until such time as it was determined that another agreement could be substituted. He noted that no other person had objected to signing the agreement.

Attorney Young replied that he would discuss the issue with his client. He noted that the applicant had marked up and proposed another agreement nearly one month ago, however, the new agreement was given to them yesterday, and that was why staff had not had the opportunity to review it. He pointed out that the majority of the improvements that were performed were higher than the 7.5' above mean sea level.

Councilman Shaw added to the motion to defer, stating that the applicant would be able to sign the current Hold Harmless Agreement without any further Town Council action, and at the same time the modified agreement would be considered and resolved by staff. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

The meeting was adjourned at 6:52 p.m.

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Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk