

**MINUTES OF SPECIAL LOCAL PLANNING AGENCY AND
TOWN COUNCIL MEETING HELD ON FEBRUARY 3, 1997 AT 5:01 P.M.**

SPECIAL LOCAL PLANNING AGENCY MEETING:

I. CALL TO ORDER AND ROLL CALL

The Special Local Planning Agency Meeting was called to order by President Smith at 5:01 P.M. on Monday, February 3, 1997. The roll was called with the following Elected Officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Director of Building, Planning and Zoning Robert Moore, Planning/Project Coordinator Timothy Frank, Zoning Administrator Paul Castro, Town Consultant William Brisson, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. President Smith led the Pledge of Allegiance.

III. PROOF OF PUBLICATION

Town Clerk confirmed Proof of Publication.

IV. APPROVAL OF AGENDA

Mr. Wyett made a motion to approve the Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

Mrs. Smith announced that staff would speak first, followed by Council discussion, and then public comments.

**VI. ADOPTION OF THE SUPPORT DOCUMENTS OF THE TOWN'S UPDATED COMPREHENSIVE PLAN
- RESOLUTION NO. 10-97**

Town Attorney John Randolph read Resolution 10-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE "SUPPORTING DOCUMENTS" TO THE TOWN UPDATED COMPREHENSIVE PLAN.

Mr. McLendon expressed concern over the fact that design as quoted by West Palm Beach was expected to begin in 1990--he had difficulty believing that nothing had been done on the plan of West Palm Beach.

Consultant Brisson explained that the City of West Palm Beach had not changed their Comprehensive Plan as of yet, and the quote given by them had to stand. The support documents could be updated in the future without having to re-adopt the Comprehensive Plan.

Mr. McLendon mentioned that a line under Lake Worth to the Palm Beach County Line was referred to, which did not actually exist.

Mr. Brisson replied that the word "existing" had been taken out, with the reference mentioning only a line under Lake Worth.

Mr. McLendon stated that he did not believe some of his comments regarding the Sand Transfer Plant had been addressed.

Mr. Brisson responded that he had looked at every comment, made some notes, and had made every change that he knew could be done simply, and the other issues had been included in the Plan done in 1995 with the Evaluation and Appraisal Report (EAR); there were some problems with changing data and cut off times, since a change in one element may affect something in another element--these changes may not be caught in each instance.

Mr. McLendon agreed that there had to be a cut off time, however, he did not agree that 1994 data should have been used as opposed to 1995 data.

Mr. Wyett made a motion to approve adoption of the support documents of the Town's updated Comprehensive Plan - Resolution No. 10-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VII. ADOPTION OF THE UPDATE OF THE TOWN'S COMPREHENSIVE PLAN - RESOLUTION NO. 11-97

Town Attorney John Randolph read Resolution 11-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AND TRANSMITTING THE PROPOSED AMENDMENTS TO THE COMPREHENSIVE PLAN OF THE TOWN OF PALM BEACH.

Director of Building, Planning & Zoning Robert Moore stated that there had been two items that were not reviewed by the Town Council prior to the meeting--both items had been reviewed by the Zoning Commission. The first item was Goals and Objectives for the Preservation Plan. Historic Preservation Consultant, Mrs. Jane Day was present to speak to that. The second item was the Transportation Element.

Mrs. Jane Day stated that the goals and objectives were being added to what was previously included in the Comprehensive Plan. Two years ago the Town had adopted a Comprehensive Preservation Plan for historic preservation within the Town. The goals and objectives define numbers and specifics that would be done within the next few years within that program. At the present time there were 928 properties eligible for designation by means of age. A survey of properties would be updated through a State grant.

Mr. Wyett made a motion to approve the adoption of the update of the Town's Comprehensive Plan - Resolution N. 11-97; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Traffic Engineer Phil Tokisch of Frederic R. Harris, addressed the Town Council stating that the transportation element of the Comprehensive Plan was consistent with past plans in that the Town did not anticipate major roadway capacity improvements in the Town, so future transportation improvements would continue to be of an operational and safety nature. Peak season traffic volumes were fairly consistent from year to year. Southern Blvd. was identified as operating at level of service "F"; other roads were at level of service "D" or better than "D." The element recognized that traffic on the Town roads may be affected by development in neighboring communities, and language included three changes which had come forward from the Zoning Commission:

The first one was addition of language on page II-5, under "Existing System Deficiencies". The last sentence currently read "Given the fact that there is very little vacant land available, there does not appear to be further potential for substantial increases in traffic volumes throughout the Town." Recommendation was to strike the last three words of the sentence to then read as follows: "Given the fact that there is very little vacant land available, there does not appear to be further potential for substantial increases in traffic volumes generated by new development, although traffic may increase in the Town as surrounding areas develop, or re-develop to higher intensity."

Mr. Shaw commented that the word "may" should be changed to "will" in order to be a stronger statement.

Mr. Moore replied that the word "will likely" may be more acceptable.

All members agreed with that change. The sentence would now read: "Given the fact that there is very little vacant land available, there does not appear to be further potential for substantial increases in traffic volumes generated by new development, although traffic will likely increase in the Town as surrounding areas develop, or re-develop to higher intensity."

The second change was on page II-15, under "Policy 4.1," in the last sentence language had been added to enable the Town to analyze the impact of changes from the Master Plan of West Palm Beach, which read: "As part of this notification, the town will request sufficient information and opportunity to review the proposed downtown Master Plan and analyze and comment on the potential impacts prior to adoption by the City.

Mr. Shaw again pointed out that the word "may" should be substituted for a more appropriate word in the first sentence under "Policy 4.1."

Mr. Moore suggested that the words "most likely" would be substituted, which was agreed to by all Council members.

The third change was on page II-16, under "Policy 4.3," the last sentence was added, which began with "The proposed development referred to..."

Mr. Wyett made a motion to approve the Transportation Element of the Comprehensive Plan; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Wyett made a motion to approve the entire Resolution 11-97 with the minor changes incorporated; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VII. ANY OTHER ITEMS

There were none.

IX. ADJOURNMENT

The Special Local Planning Agency portion of the meeting was adjourned at 5:35 P.M. per motion of Mr. McLendon; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

TOWN COUNCIL MEETING:

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order by President Smith at 5:35 P.M. on Monday, February 3, 1997. The roll was called with the following Elected Officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Director of Building, Planning and Zoning Robert Moore, Planning/Project Coordinator Timothy Frank, Zoning Administrator Paul Castro, Town Consultant William Brisson, and Town Clerk Mary Pollitt.

II. PROOF OF PUBLICATION

Town Clerk Pollitt confirmed Proof of Publication.

III. APPROVAL OF AGENDA

Town Manager Doney reported that the Mayor and Town Council had received a letter dated January 31, 1997 from Mayor Graham of the City of West Palm Beach advising of a scheduled public meeting of the City Commission on February 10, 1997 at 11:00 A.M. in the City Commission Chambers. He suggested that this be discussed under Item IX. ANY OTHER ITEMS.

Mr. Wyett made a motion to add discussion of the letter of Mayor Graham regarding the public meeting on February 10, 1997 under Item IX. ANY OTHER ITEMS of the Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

IV. ADOPTION OF THE SUPPORT DOCUMENTS OF THE TOWN'S UPDATED COMPREHENSIVE PLAN - RESOLUTION NO. 10-97

Town Attorney John Randolph read Resolution 10-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE "SUPPORTING DOCUMENTS" TO THE TOWN UPDATED COMPREHENSIVE PLAN.

Mr. Wyett made a motion to approve Resolution 10-97; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

V. ADOPTION OF THE UPDATE OF THE TOWN'S COMPREHENSIVE PLAN - RESOLUTION NO. 11-97

Town Attorney John Randolph read Resolution 11-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AND TRANSMITTING THE PROPOSED AMENDMENTS TO THE COMPREHENSIVE PLAN OF THE TOWN OF PALM BEACH.

Mr. Wyett made a motion to approve Resolution 11-97 as recommended and amended by the Local Planning Agency; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

VI. ADOPTION OF AMENDMENTS TO THE BREAKERS PLANNED UNIT DEVELOPMENT - RESOLUTION NO. 1-97

Town Attorney John Randolph read Resolution 1-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RELATING TO THE APPLICATION OF THE FLAGLER SYSTEM, INC., FOR MODIFICATION OF THE TENTATIVE APPROVAL FOR A PLANNED UNIT DEVELOPMENT; AMENDING RESOLUTION NO. 17-90.

Zoning Administrator Paul Castro stated that staff had been contacted by the attorney for the Breakers, and had made three minor modifications to the Resolution as follows:

Page 1, the sixth "Whereas" clause: last line- "s" added to word modification, to read: "...the application for tentative approval of the modifications of the Planned Unit Development; and..."

Page 3, Modification 2: Tennis Court Lighting: first line currently read: "The applicant may provide state of the art lighting for the five westernmost tennis court within..."; would now be changed to read: "The applicant may provide lighting for the five westernmost tennis court..."

Page 3, Modification 3: Additional Retail Space: currently read: "The applicant may convert space on the first floor into retail square footage, resulting in a total not to exceed 8,200 square feet of retail space; provided, however, that no individual shop shall exceed 2,000 square feet of gross leasable area."; would now be changed to read: "The applicant may convert space on the first floor into retail square footage, resulting in a total of 8,200 square feet existing and proposed retail space; provided, however, that no individual shop shall exceed a total 2,000 square feet of gross leasable area."

Mrs. Smith questioned why the Breakers was given until 10:00 P.M. to keep their lights on, when it was 9:00 P.M. for the rest of the Town?

Mr. Castro explained that was in the existing Resolution that had been approved by the Town Council in 1990, and that was not a change that was contemplated by the Breakers in terms of asking for the extensions in the time frame to look at the Breakers P.U.D.

Mr. Wyett stated that it could be a basis for other operations of similar nature to ask for the same 10:00 P.M. time.

Attorney James Brindell, on behalf of The Breakers, addressed the Town Council, stating that this was a P.U.D. and conditions were tailored for it; in addition, there was a lot of land surrounding the lights on the tennis courts that belonged to The Breakers and the lights could not be seen off property. It was not a change that had been discussed.

Mr. Wyett replied that he understood the point, however, there was at least one other operation in Town that was commercial and had isolated tennis courts, and the Town must be consistent.

Mrs. Smith stated that she did not feel there was any discrimination between properties as The Breakers had an existing 10:00 P.M. time existing and in place since 1990.

Mr. Shaw questioned the increase of green space.

Mr. Brindell responded that he understood that The Breakers would include that in the planning process, but he was not prepared to change the language now without having gone through that process, although it was on the agenda.

Mr. McLendon questioned Item a. on page 5, concerning closing Pine Walk and eliminating the signal at County Road.

Mr. Moore replied that these items would be on the table for discussion next year during the planning process, and at that point it could be discussed.

Mr. Wyett made a motion to approve Resolution 1-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VII. FIRST READING OR ORDINANCE NO. 1-97, ZONING AMENDMENTS MODIFICATIONS AND ADDITIONS:

Town Attorney John Randolph read Ordinance 1-97:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; BY AMENDING SECTION 4.20, LOT, YARD AND BULK REGULATION, SUCH THAT WHEN DEVELOPMENT IN THE R-B DISTRICT INVOLVES A PROPERTY, THE DIMENSION OF WHICH EQUAL OR EXCEED THE MINIMUM FOR LESSER INTENSE DISTRICT, THE LOT, YARD AND BULK REGULATIONS OF THE MOST RESTRICTIVE DISTRICT SHALL APPLY; BY AMENDING SECTION 5.36(b), GARDEN WALLS AND FENCES, TO CLARIFY SETBACKS FOR GATES AND ALSO PROVIDE A SEPARATE SETBACK PROVISION FOR GATES LOCATED ON DEAD-END OR CUL-DE-SAC STREETS; BY AMENDING SCHEDULE B. AND SECTION 6.21, TO ALLOW BROKERAGE AND TRUST COMPANIES AS A PERMITTED USE IN THE C-OPI ZONING DISTRICT AND BY AMENDING THE SCHEDULE OF OFF-STREET PARKING REQUIREMENTS TO SPECIFICALLY PROVIDE THE SAME REQUIRED PARKING FOR BROKER AND TRUST COMPANIES AS OFFICE, PROFESSIONAL AND BUSINESS SERVICES; BY AMENDING SECTION 5.48II.A., TO REQUIRE ARCHITECTURAL COMMISSION REVIEW OF A PROPOSED SINGLE-FAMILY HOME IN THE R-B DISTRICT AFTER A SPECIAL EXCEPTION FOR

A HEIGHT EXEMPTION IS APPROVED BY THE TOWN COUNCIL RATHER THAN VICE VERSA; BY AMENDING SECTION 5.51(b)(1), TO PROVIDE THE SAME SETBACK REQUIREMENTS FOR PARTIALLY ENCLOSED ACCESSORY STRUCTURES THAT CURRENTLY EXIST FOR ENCLOSED ACCESSORY STRUCTURES; BY AMENDING SECTION 6.15, TENNIS[,] SHUFFLEBOARD AND RACQUET BALL COURT, TO PROVIDE REGULATIONS FOR ALLOWING MINIMAL, STATE OF THE ART TENNIS COURT, SHUFFLEBOARD AND CROQUET COURT LIGHTING AS A SPECIAL EXCEPTION WITH SITE PLAN REVIEW; SECTION 6.21, OFF-STREET PARKING, BY ADDING A NEW PROVISION ALLOWING OFF-SITE SHARED PARKING IN THE C-OPI, C-TS, AND C-WA ZONING DISTRICTS; BY AMENDING SECTION 6.21(F), *Utilization of yards.*, TO REQUIRE SINGLE-FAMILY AND TWO-FAMILY DWELLINGS UNITS TO PROVIDE THE TWO REQUIRED PARKING SPACES PER UNIT IN A GARAGE; BY AMENDING SECTION 6.33, SIGNS IN COMMERCIAL DISTRICT, (a) *Size of Sign*, (c) *Location* and (d) *Height of Signs*, TO CLARIFY THE AMOUNT OF SIGN AREA AND ITS LOCATION ON A BUILDING IN THE COMMERCIAL ZONING DISTRICTS; BY AMENDING SECTION 5.47(a)(1)&(2) TO CLARIFY THE MAXIMUM DIMENSION OF BEACH HOUSES IN THE BEACH AREA ZONING DISTRICT; BY AMENDING SECTION 9.40, FILING FEE, TO CLARIFY FEES FOR ALL ZONING APPLICATIONS AND INCREASE CURRENT FEES FOR PROCESSING ALL DEVELOPMENT REVIEW APPLICATIONS; AMEND SECTION 9.62(a) REVIEW BY BUILDING OFFICIAL, and 10.41(b) HEARING PROCEDURE, TO CLARIFY WHEN APPLICATIONS ARE REQUIRED TO BE SUBMITTED; WHO WILL BE NOTIFIED; WHO WILL PROVIDE PROPERTY OWNER INFORMATION; AND, TO PROVIDE A WIDER AREA OF PROPERTY OWNER NOTIFICATION FOR REZONING OR LAND USE CHANGE APPLICATIONS THAT ARE DEEMED TO ADD MORE DENSITY OR INTENSITY; PROVIDING A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREOF; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. McLendon asked at what point the lot width was determined.

Mr. Moore replied that the width of the lot would be measured at the setback line.

Mr. McLendon asked why the sliding scale did not start with the first dimension of 150'?

Mr. Brisson explained that there had been some gaps that were causing people to have setbacks which caused disparities in how properties were treated, so the measurements were typically set at the zoning district levels--the 150' took the R-A level, and it was not until 160' that a disparity in treatment of properties was seen.

Robert Wood, Chairman of the Zoning Commission stated that the Ordinance was in the form that had been approved by the Zoning Commission and the Town Council.

Mr. Wyett made a motion to approve Ordinance 1-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VIII. FIRST READING OF ORDINANCE NO. 2-97, WIRELESS TELECOMMUNICATION TOWER AND ANTENNA REQUIREMENTS

Town Attorney John Randolph read Ordinance 2-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; BY AMENDING APPENDIX A, ZONING, BY ADDING A NEW PROVISION ENTITLED, "WIRELESS TELECOMMUNICATION TOWERS AND ANTENNAS"; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING FOR PERMITTED USES, ACCESSORY USES, AND SPECIAL EXCEPTION USES; PROVIDING FOR PERMITS AND LEASE AGREEMENTS; PROVIDING A PENALTY FOR A VIOLATION HEREOF; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph advised that he had received information from Mr. Miller, who believed that a statement should be added to the definition of antenna that was currently in the Ordinance--on page 2, in addition to what was already in place for the definition of "antenna."

Mr. Randolph stated that the above ordinance had been drafted to deal with the subject of towers and antennas, since there was not an ordinance in place as of yet. This was a specific area of Federal regulation, and the Federal Government had indicated that towers could not be prohibited throughout the Town, but that they could be regulated. The purpose of this Ordinance was to regulate the construction of towers and antennas in the Town of Palm Beach. The first section set forth the reasons for having the Ordinance in place. The definition section was self explanatory. The section on page 4 set forth general requirements for all towers and antennas throughout the Town, whether those antennas were in a permitted area or in a commercial district where a Special Exception would be required. After the general requirements there were two areas described in the Ordinance where antennas could be placed. One was a permitted use area, which described the fact that antennas or towers may be permitted uses on Town owned property. The next section, on page 6, was the Special Exception Use Section, which provided that antennas and towers could be erected as Special Exception structures within the commercial districts of the Town. There was no provision for the erection of towers and antennas within the residential sections, except for the permitted uses which were allowed on Town owned properties. The intent of the Special Exception section was to provide additional

criteria over and above the general criteria for the placement of these towers so as to be specific as to the manner in which these towers could be placed. The deletions and included in the document were as a result of changes made by the Zoning Commission. In addition, the Zoning Commission had asked that several concerns be passed on to the Town Council. Mr. Castro would discuss the Ordinance in more detail.

Mr. Castro stated that he would go through the proposed changes made by the Zoning Commission and by staff, and then go through the specific Zoning Commission concerns.

He explained that the Ordinance was formatted in add/delete format in order to show specific changes in language from the Ordinance that was presented to the Zoning Commission on January 29, 1997. The changes were as follows:

In Section 1 - language would be added "as hereby amended" by adding a new Section 6.27.

Definitions (1): under the first item "Alternative tower structure" the word "light poles was stricken.

Definitions (2): under the second item "Antenna" language was added to more narrowly define how the town would identify antennas. "Antenna means any exterior device designed of stealth technology and use for transmitting and receiving, mounted on a tower, alternative tower structure, building or structure, and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals." Adding as part of that definition the sentence provided by Miller & Van Eaton.

Definitions - add definition for "engineer" to ensure that it was a Florida registered and licensed engineer to provide data for review of telecommunications towers and antennas, to read as follows:

"Engineer means a registered engineer, licensed in the State of Florida, to provide any information of an engineering nature, whether civil, electrical, or mechanical."

Definitions - "stealth technology", to read as follows: "stealth technology means a method that would hide or conceal an antenna, supporting electrical or mechanical equipment, or any other support structure so as the appearance would not be in conflict with the size, color, architecture of the building, or structure in which it is located or attached."

Definition (8) - "Tower": clarification that a tower means a ground mounted structure.

Item (B) Applicability: Item 2: the words "and 7" were stricken, because that section specifically dealt with the measurement and tower setbacks and was not pertinent.

Item (c) General Requirements. (1): language changed to read as follows: "Antennas and towers shall be (strike: considered an essential service as either) a permitted use on Town owned property or a special exception use in the Town's commercial zoning districts.

Mr. McLendon asked what would happen to existing antennas that would have to be replaced?

Mr. Castro replied that there was another section that would relate to nonconforming antennas and towers.

Item © General Requirements (2): The last sentence in the paragraph was stricken because the information was public and available to anyone.

Item © General Requirements (3) and (4) and throughout the next several pages, language was added "to include antennas" so that it did not state only towers but would also relate to antennas.

Item © General Requirements (5): In the first sentence the language "or exceed" was stricken, and the word "antennas" was added -- "All towers or antennas must meet..."

Item © General Requirements (7): Language changed as follows: "Measurement of tower setbacks and separation distances shall be calculated and applied in relation to all adjacent facilities, whether located inside or outside the boundaries of the Town of Palm Beach."

Item © General Requirements (8): The language would now read: "Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

Item © General Requirements (11): Item 11 was stricken.

Item © General Requirements (12): Item 12 then became Item 11, and was changed to read: "So as to lessen proliferation the Town of Palm Beach encourages the users of towers and antennas to submit a single application for approval of multiple users on a single site. Applications for approval of multiple user sites shall be given priority in the review process."

Item (E) Special Exception Uses (2) Towers (a): Throughout Item (a) - I - XI, changes were made to include antennas and also to change the language under item (a) to be consistent with the zoning ordinance: "applicants for special exceptions", rather than "special use permits."

Item (E) Special Exception Uses (2) Towers (a) (vi): the word "stealth technology" was added at the end of the sentence.

Item (E) Special Exception Uses (2) Towers (a) (viii): Language changed to read: "A notarized statement by the applicant's engineer..."

Item (E) Special Exception Uses (2) (b): The following language would be stricken: "although the Town Council may waive or reduce the burden on the applicant of one or more of these criteria if the Town Council concludes that the goals of this ordinance are better served thereby:"

Item (E) Special Exception Uses (2) (c): Addition of language to read: (second sentence) "No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town Council that no reasonable alternative technology exists that can accommodate the applicant's proposed antenna."

Item (E) Special Exception Uses (2) (d) Substitution of language to read: "The following setback requirements shall apply to all towers for which a Special Exception is required. (And then provisions are given after that). On that specific section there had been several modifications, and after more research on the matter in terms of what was being proposed and how it was going to affect the Town of Palm Beach new language had been created. Table 1 had also been struck, which deals with separation between neighboring structures--the thought had been that providing a 110% setback, which would be 110% of the height of the tower from adjoining property, would basically provide enough separation that would insure that if a structure was to fall it would not hit other structures on other properties.

Item (E) Special Exception Uses (2) (d) (I): language changed to read: "Towers must be set back a distance equal to at least one hundred ten percent (110%) of the height of the tower from any adjoining commercially zoned property line."

Item (E) Special Exception Uses (2) (d) (ii): Language changed to read: "Towers must be set back a distance equal to at least 130% of the height of the tower from any adjoining residentially zoned property line."

Item (E) Special Exception Uses (2) (e): Language under item (I) was struck because Table I was being proposed to be struck, as well as the language that provided for a reduced separation that could be approved by the Town Council being also struck, the feeling being that an applicant could apply for a variance from the separation and setback requirements if so needed.

The new Table 1- pg. 12, would be the separations from towers from other towers, and that deals with the separation between two towers.

Under "Buildings or Other Equipment Storage" - pg. 14 (1) (b) - the percentage in the last line would be changed to 10%, which was consistent with other sections of the Zoning Ordinance--to read, "...shall not occupy more than fifteen (15) percent of the roof area.

Under "Buildings or Other Equipment Storage" - pg. 14 - Item (2) - Antennas Mounted on Utility Poles or Light Poles: Language changed so as to prohibit antennas from being mounted on utility or light poles, based on discussion with the Zoning Commission.

Under "Buildings or Other Equipment Storage: - pg. 14 - (2) (4) - Modification of Building Size Requirements was struck in order to be consistent with the language of the Town Council able to modify the specific requirements in Item (E) to encourage collocation.

Item (F) - "Removal of Abandoned Antennas and Towers" - pg. 14, and Item (G) "Nonconforming Uses: - changed to be consistent with the Zoning Ordinance, related to two years, rather than 12 months in terms of abandonment of antennas, and under Nonconforming Uses (3) the last portion of it was struck so that any rebuilding of a damaged or destroyed tower would have to meet the Zoning Ordinance today.

Attorney James Brindell, on behalf of AT & T Wireless addressed the Town Council, stating that Jim Randall, the Site Acquisition Manager for AT & T was also present to answer any questions, along with Ted Miller, Senior Planner with Cypress Real Estate Services, Inc., who worked with AT & T on locating sites. Mr. Brindell offered some comments:

The most significant keystone issue was the limitation of prohibition of any of the towers or antennas (irrespective of the form of them) being located in any residential district. He urged the Town to look carefully at the exclusion of antennas and towers, particularly antennas from any residential district in order to take advantage of some of the logical locations.

He referred to page 2, the definition of antenna, commenting that the phrase "alternative tower structure" was redundant because the definition of tower included alternative tower structures by definition.

He noted that as he understood it, all antennas were required to be of stealth technology (that you can't see them at all or hardly see them), and believed that was too restrictive

The ordinance had two slightly different versions of the definition of stealth technology--he recommended that it be struck out on page 4 (3)(c) and use it on page 3 (9), striking the last two lines, everything after "so as" and put in the phrase used in (3) (c).

Page 4 - it was stated that antennas and towers were permitted uses on Town owned property or a Special Exception use in commercial zoning. The distinction between commercial property and residential must be refined in order to not preclude those logical places that are residential nature.

Regarding the Inventory of Existing Sites, Ted Miller had observed that the Town would be in a better position to keep track of the tower sites permitted rather than individual companies.

Under 3(a) - Aesthetics, Mr. Brindell said that he did not know what "neutral" color was, and suggested eliminating that word.

Under (E) Special Exception Uses (1)(a) - page 6, Mr. Brindell suggested that the language "shall be allowed" should be changed to "shall be required," and that residential sites should also be addressed.

On (E) Special Exception Uses (2) Towers (a) (vi), Mr. Brindell suggested that the language "non-climbable" be eliminated.

On (E) Special Exception Uses (2) Towers (a) (x) regarding suitability of the use of existing towers, etc., Mr. Brindell suggested that alternative technology really did not have an accurate definition, as technology would constantly be updated and different people would look at it from a different point of view, and he was not sure that would be a very useful debate in the context of an individual exception application.

He referred to Table 1, separation requirements, commenting that it seemed a little excessive. Mr. Brindell expressed concern about how many sites really qualified with those requirements. In addition, if stealth technology or an alternative tower structure was used, what was the need for so much separation? There may be some instances where it would be better to have towers closer together, where they would not meet separation requirements. He urged that be looked at carefully.

On page 13, under (E) Buildings or Other Equipment Storage (a), the cabinet structure size was given, and if structural integrity was the issue it would be better left to certification by a registered P.E. to make that determination.

On page 14, the prohibition against mounting anything on utility or light poles was mentioned. Mr. Brindell stated that he was not sure that was a very good idea, since antennas could be very small and used instead of towers. Technology was rapidly advancing and the ordinance would have to be amended if the poles were eliminated as potential sites.

Mr. Brindell urged that the Ordinance be adjusted to reflect his comments and suggestions.

Mr. Shaw stated that he believed antennas and towers were very separate issues and did not think that they should be tied together. He stated that some very early presentations made to the Council indicated that there was technology that would allow the use of light poles as a means of mounting antennas, and to prohibit them would go against the whole concept of devising a system that was least obtrusive to the Town. He also expressed concern about the rigid line being drawn between Town owned property and other property, suggesting that the Town needed to be treated in the same manner as anyone else in the Town as far as the use of the property. He stated that stealth technology seemed to refer more to the technological side rather than the aesthetic side, and site screening should be called what it is. On page 3, item x, he suggested that the word "non-broadcast" be added in order to redefine that the Town was not involved in a broadcast environment or commercial radio or television; just to make sure that the word "radio" would define what was intended as a two-way communication radio rather than a broadcast radio or television system. Regarding the requirement that towers be ground mounted, he suggested that towers could be mounted on buildings as long as there were height limitations.

Mr. Castro explained that the antennas would be allowed to be on the buildings, but there was a difference with towers.

Mr. Shaw replied that an antenna may have to be on a 10' tower, as it may not be possible to mount the antenna purely on the side of the building, and the structure that the antenna array is mounted on is called a tower.

Mr. Shaw continued: on page 5, he stated that he was surprised that the word "exceed" would be deleted, as it regarded a form of standard, and he would never want to see something designed that must only meet it. On page 6, (E) (1)(a) some of the R-D1 & 2 properties in Town may be better places to consider. On page 10, he also questioned the concept of 110% and 130% distance requirements, as the antennas would be designed in such a way that they would be annually inspected and certification would be given that they were safe and properly maintained.

Assistant to the Town Manager, Dave Jakubiak, addressed the utility pole issue, saying that when one thinks of an antenna and a tower one also had to think of what that antenna would attach to, and there would be equipment attached to the antennas. He stated that he thought it would be a good idea to restrict utility poles. The microwave technology should be emphasized as it would not require underground wires or conduits from the location of the site to the BellSouth junction box.

Mr. Moore stated that utility poles were in the Town right-of-way, and there were franchises with the utility companies. The aspect of the permitted use on Town-owned property had been studied with the idea of the Town having as much control as possible. Staff had developed the ordinance as a policy issue addressing the Town-owned properties as permitted uses. He noted that it would have to be decided if facilities could be located in the RD-1 and RD-2 zoning districts, which were predominately located south of Sloan's Curve, in the central portion of Town, and as far north as the Biltmore Apartment area across from Publix. He did not recommend it, due to the fact that a section in the ordinance addressed commercial and quasi-commercial nature of use. It was a policy issue that would have to be determined by the Town Council.

Mr. Wyett concurred with Mr. Moore, stating that he would want the Town to be in as much control as legally possible, as well as the Town having the right of permitted use without having to go through Special Exception and protecting the Town from a proliferation of towers.

Jim Randall, AT & T Wireless Services, addressed the Town Council stating that AT & T was making sure that they were not precluded from any properties. As far as Town jurisdiction, monitoring, and controlling that would still be within its rights as Special Exceptions. AT & T was currently not using microwave dishes as a standard, typically using wire line installation or fiber optics because of reliability and the ability to bury lines. He noted that the size of cabinets mounted on utility poles would change with new technology.

In response to the question of Mayor Ilyinsky concerning the number of sites, Mr. Randall explained that initially it would be FCC

legal coverage, which could be several tall sites. He pointed out that Palm Beach was removed from the mainland, and if a hurricane occurred it must be understood that the people closest to tower sites would take preference due to signal strength.

Mrs. Smith asked how many towers or antennas would be needed to service the Town by a sole provider?

Mr. Randall replied that AT & T did not want to build towers, but did want to build some sites--he approximated that six to eight sites could provide service.

Mr. Wyett asked if cable connections should be required to be underground?

Mr. Moore replied that would be a valid decision to be included in the ordinance. He pointed out that the AT & T technology was not the new digital PSC type technology, which would require microwave dishes; Mr. Randall was not looking for towers for the type of technology to be used.

In response to Mr. Wyett, Mr. Randall explained that currently AT & T (not as a sole provider) would want 4-8 sites distributed throughout the island, which would then duplicate and split off as the usage went up. He stated that budget monies did not afford the possibility of installation for this year, although there was the possibility of restructuring the budget should the need arise. He noted that he had a signed lease on a private property within the Town.

Mr. Shaw stated that the primary function of the Council was to make sure that the technology that would be introduced into the Town could live in harmony with the aesthetics of the Town. He expressed that towers and antennas needed to be separated. The goal was to meet the compliance of the FCC and to meet the needs of residents.

Mr. Randall replied that AT & T was not in the tower building industry, but in the site building industry and there was a set criteria of how properties were located--existing structures were first looked for that could give the height needed. Local jurisdictions would also be contacted to see if public property would be available. Non-profit organizations then would be looked at for sites, and lastly, the public domain.

In response to Mr. Wyett, Mr. Moore explained that there would be no provision in residential districts under the ordinance for antennas or towers. He noted that the Council must decide whether the Town would be treated as the public, and whether the Town property should be put in the same category as private property.

Mayor Ilyinsky stated that he would recommend that the new ordinance be accepted the way it was written, as it could always be amended.

Mr. McDonald made a motion that the Town property should be a permitted use, rather than a Special Exception use; seconded by Mr. Wyett.

Mr. Wood stated that the Zoning Commission had reviewed the entire ordinance and the changes made so far by the Building Department incorporated most of the technical changes, and that from a workability, control, and protection standpoint the ordinance as drafted would allow the Town to provide the due amount of public safety and aesthetic control needed. He said that the Zoning Commission believed that the Town should treat itself in the same way as it treated its citizens. The issue seemed to be control of the revenue emanating from the towers. He noted that the Town could protect its residents by complying with a Special Exception provision just as well as it could if it required citizens to comply with a Special Exception provision. It would be much more difficult for a citizen to meet all of the requirements under the Special Exception than it would be for the Town. For example, within the ordinance the Town itself had a number of provisions where it would not have to comply with some of the provisions that a private party would, such as setbacks, separation, and placement of devices (including residential districts). He pointed out if the Town could place something in a residential district he did not understand the argument that a private citizen could not place something in a residential district because it was a quasi-commercial use. He emphasized that the key question was a policy decision revolving around the image that the Town wanted to project to its residents--did the Town want to be above its own laws or did the Town want to follow its own laws? He stated that he believed that the Town could have the same degree of control with regard to sites on its own property if it would allow the same hearing for a Special Exception required of citizens. The Zoning Commission believed that every citizen should have the same right to apply, make objections, be heard, and have the same due process rights with regard to sites as anyone else should--this was the key factor of concern. The secondary factor of concern was whether the devices should be allowed on some of the taller residential buildings. The only reason given by the Building Department was that having an antenna on the side of a building was a quasi-commercial enterprise. He stated that the Zoning Commission believed that to have a Zoning Ordinance to control the flow of funds into the Town was not appropriate.

Mr. Randolph addressed the issue contained in the motion in regard to the Town having a permitted use. He explained that it was a policy decision, and the Council had the legal right to grant the Town a permitted use. In fact, even if it were not in the ordinance, the status of the case law was such that a governmental entity could do what private citizens could not do. For example, the Town would not need to get a variance from its own code if it was seen that a setback was needed. The law was such that the Town would not be required to give itself a variance in that regard. The purpose of making Town-owned property a permitted use would be one of control, as there were a limited number of Town-owned sites in the Town of Palm Beach, and construction of towers and antennas was desired. The purpose of the ordinance was to have a finite number of permitted sites within the Town.

Mr. McLendon commented that he understood that a permitted use for the Town would fall in the category that staff would have the ability to approve such applications without coming before the Council.

Mr. Moore disagreed with Mr. McLendon. He stated that it would come before the Town Council under a public hearing.

Mr. Castro explained that the Town Council would have to approve a lease for the properties if a provider wanted to locate an antenna on a Town facility or build a tower. In addition, Architectural Commission approval would be needed prior to that.

MINUTES OF SPECIAL LOCAL PLANNING AGENCY & TOWN COUNCIL MEETING HELD ON FEBRUARY 3, 1997

On roll call, the motion to approve Town property as a permitted use carried 3/2, with Mr. McDonald, Mrs. Smith, and Mr. Wyett casting affirmative votes; Mr. McLendon and Mr. Shaw casting negative votes.

Mr. McDonald addressed the issue of allowing antennas or towers in residentially zoned areas, and stated that he was concerned with a 100' tower or antenna in the south end.

Mr. Jakubiak responded that the reason there would be a 100' tower in the south end was based on the study that was done by the two consulting firms hired by the Town, which determined that was an appropriate height. There was a wire line or microwave issue involved, and assuming that the Town would elect to use only municipal properties the microwave link would include a south end site at 100'. It was the belief of the consultants that coverage would be sufficient for the entire Town of Palm Beach for a long period of time. An important issue was the collocation of providers on individual sites. The Council would be left with some very difficult decisions in choosing sites and technology.

Mr. McLendon asked how the north three miles of Town would be served?

Mr. Jakubiak replied that according to the study a microwave link was feasible in the Town that would utilize the north, central and south sites.

Mr. Wyett expressed concern about the south end locations and the presence of a tower.

Mr. Jakubiak clarified that there were capacity limitations, and demand would dictate more sites eventually.

Mr. Brindell explained that as more and more people got cell phones the capacity of the antennas located off island serving the area would diminish.

Mr. Randall commended Mr. Doney and Mr. Jakubiak for their work on this issue. He noted that when the three municipal sites were tested they were tested for line of sight, just to see if the other sites could be seen, if there was a height availability, etc. Microwave would link to the main system. The Town already had wire line run underground through the roads connecting to the sites. The microwave links were what transfers the phone call from the antenna, to a site, through a computer, and either into a wire line or through the microwave to another site, which then would send it back down to the wire line--sooner or later it would get into the wire line system--it was just a matter of how it got there.

Mr. Jakubiak commented that the lines of BellSouth were a key element in the whole system, and there were expansion limitations with wire line as opposed to microwave. In addition there would be a loss of revenue in going with wire line, because the providers would pay a monthly fee to BellSouth to utilize those lines if the capacity was there to use those lines.

Mr. Moore addressed the comments of Mr. Woods, as the Zoning Commission had identified that it would be better to have antennas on top of tall buildings, than it would be to see one antenna. A list of concerns had been attached to the minutes, and extremely detailed minutes had been taken to reflect the conversations that had taken place in the meeting. Staff was attempting to put forward a starting point, and if there was going to be a new business in Town and a new way of doing business in Town it would be to the benefit of the Town to have all of the business on Town property, at least initially. To simply allow it in residential zones, even multi-family units, initially would be a mistake, as it would be hard to take it back. Mr. Moore expressed that revenue was a side issue. The zoning was what was being considered today, not the revenue.

Mrs. Smith asked if the ordinance was passed as was, and it was determined that a tower was needed in the south end would the Town then be in a position to say that it was not in the best interest of the residents, and then find candidates among the condominiums that would be willing to have an antenna on their facility for the revenue?

Mr. Randolph replied negatively--the ordinance would preclude the placement of antennas on the tops of the buildings in the south end. The ordinance could be changed next zoning season, after there had been a year to experiment.

Mr. Shaw expressed that if the Town went forward with the ordinance as it was written today, and did not permit residential and then realized that it was not a viable solution, what would happen when a supplier was told that an antenna could not be put up for a year because the ordinance needed to be re-worked? He believed it would be a mistake to put the Town in the position where nothing could be done for one year because the ordinance would have to be re-addressed in the zoning season.

Mr. Moore stated that the zoning season ran from November through April and there was provision to have two separate zoning seasons, so that would be the time the ordinance would be changed. He believed there was time to look at the locations in the future, and suggested that locations not be opened up to the residential districts until a need was proven.

Mr. Jakubiak explained that there was no preferred option regarding microwave or wire line systems.

Mr. Randolph asked Mr. Jakubiak if he was satisfied that the definition of the word "antenna" did allow for microwave transmission?

Mr. Jakubiak believed the definition of antenna would allow for that.

Mr. Wyett asked whether P.U.D.s should be permitted use under Special Exception

Mr. Moore replied that there were three P.U.D.s could be considered at the same time that the consideration of including residential structures was undertaken.

~~MINUTES OF SPECIAL LOCAL PLANNING AGENCY & TOWN COUNCIL MEETING HELD ON FEBRUARY 3, 1997~~

Mr. Wyett made a motion that Ordinance 2-97 be approved, as amended, subject to changes that would be presented at the 5:01 P.M. meeting on February 17, 1997. If those changes were substantive there would be a third reading; if not, the ordinance would be approved on the second reading; seconded by Mr. Shaw. On roll call, the motion carried 4/1 with Mr. McLendon casting a negative vote.

Mr. Moore stated that the changes would be made as soon as possible to revise the ordinance.

IX. ANY OTHER ITEMS

Mayor Ilyinsky explained that he had heard from Mayor Graham on January 31, 1997, and a meeting had been set up for February 10, 1997 in the City Commission Chambers.

Mr. McDonald made a motion to hold and attend a Special Town Council Meeting at the offices of the City of West Palm Beach on February 10, 1997 at 11:00 A.M.; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

X. ADJOURNMENT

The meeting was adjourned at 8:00 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn
3/6/97