TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 14, 2003

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled Town Council Meeting was called to order by President William Brooks at 9:30 a.m. on January 14, 2003, in the Town Council Chambers. Upon roll call, the following Elected Officials were found to be in attendance:

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

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

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Town Attorney John Randolph
Attorney John McCracken
Police Chief Michael Reiter
Police Support Services Major Gary Sallenbach
Police Sergeant George Frick
Police Detective Tom Melnichok
Director of Planning, Zoning & Building Robert L. Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Public Works Director Al Dusey
Public Works Assistant Director Paul Brazil
Human Resource Director William Crouse
Finance Director Jane Skittone
Firefighter John Cuomo
Town Clerk Mary A. Pollitt

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. None.

IV. COMMENTS OF MAYOR LESLY S. SMITH

THIS IS THE FIRST MEETING OF THE NEW YEAR, AND I THINK IT IS IMPORTANT TO SET THE SCENE FOR THE CHALLENGES AHEAD. I WANT TO EXPRESS MY GRATITUDE TO THE PEOPLE OF PALM BEACH, WHO DEMONSTRATED THEIR CONFIDENCE IN THIS LEADERSHIP TEAM AT THE TOWN CAUCUS LAST WEEK. IT IS AN HONOR TO SERVE AS MAYOR FOR ANOTHER TERM. I LOOK FORWARD TO A CONTINUED EXCELLENT WORKING RELATIONSHIP WITH MY COLLEAGUES ON THE TOWN COUNCIL, AND WITH A STAFF OF WHICH WE ARE ESPECIALLY PROUD.

I WOULD SET THREE THEMES FOR THE WORK AHEAD OF US THIS YEAR. FIRST, FISCAL RESPONSIBILITY – AN OLD SAW, A CLICHÉ, A STAPLE OF ALL POLITICIANS' RHETORIC, BUT NONETHELESS CRITICAL TO OUR TOWN'S FUTURE. THE WORLD'S ECONOMIC AND FOREIGN POLICY DEBATES AFFECT US AS SURELY AS OUR DELIBERATIONS ABOUT ROAD REPAIR AND RENOVATION, SO A CAUTION LIGHT REMAINS APPROPRIATE FOR PALM BEACH AS WE MONITOR EXPENDITURES AND BUDGET FOR OUR FUTURE.

HOWEVER, SINCE OUR DILIGENCE LAST YEAR RESULTED IN A TWO MILLION DOLLAR BUDGET SURPLUS, I ONCE AGAIN URGE THE COUNCIL TO APPROVE A ONE PER CENT PAY INCREASE FOR TOWN EMPLOYEES, TO BE PAID OUT OF THE SURPLUS. IF WE MAKE THIS INCREASE RETROACTIVE TO JANUARY 1ST, IT WILL COST US ONLY ABOUT $168,974. IF WE PUT THIS INTO EFFECT FEBRUARY 1, 2003, THE COST WILL BE $150,199 OR IF WE ADOPT THIS FOR THE LAST SIX MONTHS OF OUR BUDGET STARTING APRIL 1ST, 2003, THE COST WOULD BE $112,650. I BELIEVE THIS IS AN INVESTMENT WE MUST MAKE IN THE HUMAN CAPITAL THAT SUPPORTS OUR TOWN WITH SUCH COMPETENCE AND LOYALTY AND REQUEST THAT YOU PUT THIS ON THE AGENDA FOR DISCUSSION.

SECOND, WE HAVE TALKED A LOT ABOUT LONG-TERM PLANNING AND THIS YEAR, OUR STRATEGIC PLAN COMES TO FRUITION. COMMUNITY FORUMS ARE OPPORTUNITIES FOR CITIZEN INPUT AND ARE SCHEDULED THE END OF THIS WEEK ON THURSDAY, AT 2:30 AT THE BREAKERS HOTEL; FRIDAY

AT 2:30 AT THE FOUR SEASONS; AND SATURDAY MORNING AT 10:00 AT THE COLONY HOTEL. I CANNOT EMPHASIZE TOO MUCH HOW IMPORTANT IT IS THAT THIS PLAN BE A COLLABORATIVE PRODUCT, AND ONE THAT CALLS FOR ACTION AS WELL AS POLICY.

THIRD, THE COMPLEXITIES OF THE CHALLENGES FACING US CALL FOR AN EXTRAORDINARY BRAND OF LEADERSHIP AND INNOVATIVE - EVEN DARING - DECISIONMAKING. IT IS MY HOPE THAT THIS YEAR FINDS US WILLING TO TACKLE THE REALLY DIFFICULT PROBLEMS WITH IDEAS AND TANGIBLE SOLUTIONS – EVEN IF JUST THE FIRST STEPS.

SO, HAPPY NEW YEAR TO ALL OF US.

I AM ALWAYS PLEASED TO INCLUDE GOOD NEWS IN MY REMARKS, AND THIS MORNING IS NO EXCEPTION. FIRST, CONGRATULATIONS ARE IN ORDER TO THE TOWN'S BEACH PATROL, WHICH HAS BEEN FOUND IN COMPLIANCE WITH ALL THE RECOMMENDED GUIDELINES FOR OPEN WATER LIFEGUARDING AND HAS BEEN ISSUED LIFEGUARD AGENCY CERTIFICATION EFFECTIVE THROUGH NOVEMBER 2005. TO EARN THIS CERTIFICATION, OUR BEACH PATROL MEMBERS HAD TO MEET STRICT STANDARDS IN AREAS SUCH AS EXPERIENCE AND EDUCATION AS WELL AS SWIMMING ABILITY, TRAINING, EQUIPMENT, HEALTH AND FITNESS, FIRST AID AND CPR CERTIFICATION. WE HAVE ASSISTANT SUPERVISORS JOHN OSBORNE AND MARK HASSELL WITH US THIS MORNING, AS WELL AS SOME OTHER MEMBERS OF OUR LIFEGUARD TEAM. WE ARE PROUD OF YOU, AND DEEPLY GRATEFUL FOR YOUR COMMITMENT TO BEACH SAFETY.

SECOND, POLICE CHIEF REITER HAS AWARDED A LEVEL 2 COMMENDATION TO OFFICERS THOMAS MELNICHOK AND SCOTT DUQUETTE FOR THE EXCELLENT SAFETY AWARENESS TRAINING PROGRAM THEY DEVELOPED FOR CIVILIAN EMPLOYEES OF THE PALM BEACH POLICE DEPARTMENT. THE COURSE WAS SO WELL RECEIVED THAT THEY ARE PLANNING TO OFFER IT TO OTHER TOWN DEPARTMENTS, AS WELL. CONGRATULATIONS, OFFICERS, FOR CREATIVITY AND COMMITMENT BEYOND THE CALL OF DUTY.

NOW TO THE FIRST AGENDA OF A YEAR THAT I HOPE WILL BE PEACEFUL AND PROSPEROUS FOR OUR TOWN AND FOR OUR WORLD.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

DEFER item VIII.E.1. from the Consent Agenda, Resolution No. 84-02, to the February 11, 2003, Town Council meeting;

Councilman McLendon moved approval of the deferral of Resolution No. 84-02 to the February 11, 2003 Town Council meeting agenda. The motion was seconded by Councilman McDonald, and carried unanimously on roll call.

DEFER item XII.B.2.a. Variance No. 1-2003, 452 Worth Avenue, to the February 11, 2003, Town Council meeting;

Councilman Wyett moved approval of the deferral of Variance No. 1-2003 to the February 11, 2003, Town Council meeting agenda. The motion was seconded by President Pro-Tem Goldb~~erg~~lum, and carried unanimously on roll call.

WITHDRAW item XII.B.2.c.Special Exception No. 2-2003, 361 S. County Road;

Councilman Wyett moved approval of withdrawal of Item XII.B.2.c. Special Exception No. 2-2003, 361 S. County Road. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

ADD item IX.B. New Business 9. Consideration of Exploring the Possibility of Placing Wires Underground in the Town;

Councilman McDonald moved approval of adding item IX.B. New Business 9. Consideration of Exploring the Possibility of Placing Wires Underground in the Town, for possible referral to the Public Safety Committee. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

ADD item IX.B. New Business 10, Consideration of Approving Councilman Wyett's Trip to Tallahassee, Including Expenses, to Lobby for Local Hospital Improvements;

President Pro-Tem Goldblum moved approval of the addition of item IX.B. New Business 10, - Consideration of Approving Councilman Wyett's Trip to Tallahassee, Including Expenses, to Lobby for Local Hospital Improvements. The motion was seconded by Councilman McDonald and carried unanimously on roll call.

ADD to the February 11, 2003, Town Council Agenda, Discussion of the Issue of a 1% Employee Raise for FY2003.

President Pro-Tem Goldblum moved approval of adding the following to the February 11, 2003, Town Council Agenda: Discussion of the Issue of a 1% Employee Raise for FY2003. The motion was seconded by Councilman Wyett and carried unanimously on roll call.

President Pro-Tem Goldblum moved approval of the Agenda, as amended. The motion was seconded by Councilman McDonald and carried unanimously on roll call.

VI. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Eric Gilbertson, 151 Chilian, spoke on the issues of the crosswalks in Town and his previous participation in Town Caucuses and Elections.

Joel Martino, 109 Ocean Terrace, said former Zoning Commission Alternate Member Martin Klein supported the work of the Zoning Commission and requested a public discussion be held regarding Mr. Klein's removal from the Zoning Commission.

Mr. Ed Kassatly, representing the Worth Avenue merchants, requested financial help from the Town regarding Worth Avenue beautification, sidewalk repair, signage, and lighting.

VII. PUBLIC HEARINGS

A. Resolution No. 01-03 A Resolution of the Town Council, Town Of Palm Beach, Palm Beach County, Florida, Electing to Use the Uniform Method of Collecting Non-Ad Valorem Assessments Levied Within the Incorporated Area of the Town for Solid Waste Collection Services Provided to Commercial Properties, Certain Governmental Properties, Multi-Family Residential Properties, Exclusively Used for Rental Purposes, and Any Other Properties Currently Being Billed for Solid Waste Collection Services Provided By The Town Of Palm Beach.
[Jane Skittone, Director of Finance]

President Brooks requested any comments from the public. There were none.

Town Manager Elwell summarized that the Town was converting from sending out bills for solid waste collection to an assessment process, where the equivalent amount of the bill would be put on the annual tax assessment. The process would be financially and administratively more efficient.

President Pro-Tem Goldblum moved approval of Resolution No. 01-03. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

VIII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON NOVEMBER 12, 2002.

B. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON DECEMBER 10, 2002.

C. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON DECEMBER 10, 2002.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON DECEMBER 20, 2002.

E. RESOLUTIONS

1. Resolution No. 84-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Dockage Agreement, Rules Regulations for Said Dockage Agreement, a Transient Dockage Agreement and Rules and Regulations for Said Transient Dockage Agreement all in Association with the Administration of the Town Docks and Directing the Town Manager and his Designees to Enforce the Same. [Thomas G. Bradford, Assistant Town Manager] *(Deferred From December 10, 2002, Town Council meeting)* **(Staff requests an additional deferral to the February 11, 2003, Town Council meeting)**

Resolution No. 84-02 was deferred to the February 11th Town Council agenda earlier in this meeting.

2. Resolution No. 02-03 Authorizing and Directing the Town Manager to Execute a Five Year Beach Cleaning Agreement with the Citizen's Association of Palm Beach, Inc.
   [Albert P. Dusey, Director of Public Works]

F. OTHER

1. Approval of Investment Advisory Committee's Request to Defer the Presentation of the Town's Investment Plan to the March 11, 2003, Town Council Meeting. [Jane Skittone, Director of Finance]

2. Designation of Selection Committee in Accordance with the Consultants' Competitive Negotiation Act.
   [Albert P. Dusey, Director of Public Works]

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

IX. REGULAR AGENDA

A. Old Business

1. Request for Approval of Contract to Sell the Pike Road Property.
   [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to the memorandum from him to the Mayor and Town Council, dated January 10, 2003, in regard to the Pike Road property matter, wherein he made the recommendation that the Town Council authorize him to execute the contract, on behalf of the Town, for the sale of the property to Passive Income Partners.

Councilman Wyett commented that he believed the broker's commission could be reduced.

Town Manager Elwell explained the details of the contract.

Resident Joel Martino suggested that the purchaser be requested to provide a non-refundable deposit, in order to ensure that there was a commitment.

Councilman McDonald moved approval of authorizing Town Manager Elwell to execute the sales contract on the Pike Road property. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

B. New Business

1. Appeal of Administrative Decisions Which Denied Permission to Construct Walls Within Town Right-of-Way. (101 Dunbar Road and 260 North Ocean Blvd.) [Wade Byrd, Esq.]

Attorney Wade Byrd, on behalf of 101 Dunbar Road, Inc., addressed the Town Council, presenting photographs of the property in question. He explained that the Town-owned right of way in front of the two properties was essentially a trash dump, and the two property owners were willing to sign the usual covenants with the Town, for the opportunity to provide landscaping and a thirty foot retaining wall in front of their respective properties.

Public Works Director Al Dusey advised that the area in question at Dunbar was a beach access and had some dune vegetation on it; there was right-of-way in excess of the Town needs at the moment. The property to the south at 260 No. Ocean Blvd. was different in that the right-of-way was circular, however, the street was built straight – therefore, almost the entire property on the east side of Ocean Blvd. was in the right-of-way; on the west side of Ocean Blvd., part of the street was actually constructed on private property. He explained that the property was now property of the residents of the Town.

Attorney Byrd advised that he would work with staff regarding landscaping on the property; the retaining wall was being proposed as a safety feature, and the applicant would pay for landscaping; the public would have the same right to the right-of-way that they had currently.

Town Manager Elwell commented that an alternative would be for the Town to abandon the property, receive some compensation, and allow the property to become privately owned property, with the wall constructed according to code regulations.

Resident Connie Gasque commented in objection to the proposed wall, as it would limit public access to the beach.

Attorney Byrd responded that the wall would not obstruct access to the beach at all, as the property east of the right-of-way was private property; there was private ownership between the seawall and the Town right-of-way in both locations.

The property owner at 101 Dunbar commented that there was excessive ongoing parking in the right-of-way; there were currently only three properties from Wells Road downward to the condominiums that did not have walls.

Town Attorney Randolph advised that a precedent could be established in the event that the right of the public to the right-of-way was usurped.

Councilman McDonald moved approval of the granting of the appeal, with the modification that only landscaping would be allowed (no walls) once the renourishment project was finished. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. Appeal of an Administrative Decision Which Denied Permission to Close the Public Sidewalk and On-Street Parking for Hydroblasting and Painting of 332 South County Road.
   [Andrew Roddy]

Councilman Wyett moved deferral of this item to the end of the agenda today. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

At a later time in the Agenda, Mr. Andrew Roddy addressed the Town Council, stating that he was restoring an apartment building located at 332 South County Road, and in order to do so he would need to remove all of the coatings on the building via hydroblasting. The sidewalk would need to be closed off for eight to ten days in order to accomplish the work. He requested approval of the right-of-way permit, which had been denied by the Public Works Department and Town Manager.

Town Manager Elwell advised that denial of the request had been recommended, because of the non-emergency nature of the work – the issue was a timing issue, not a necessity issue, and staff recommended that the project wait until May. He noted that there was a Code Enforcement issue regarding the property.

Councilman McLendon moved denial of the appeal by Robert Andrew Roddy regarding the closure of the public sidewalk and on-street parking for hydroblasting and painting of 332 South County Road. The motion was seconded by Councilman McDonald, and carried unanimously.

3. Request for Permission to Utilize Town Right-of-Way to Provide Lighting of Palm Trees at the Corner of Hibiscus Avenue and Peruvian Avenue.
   [Peter S. Broberg, Esq.]

Councilman Wyett moved deferral of this item to the end of the agenda today. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

At the end of the Agenda, Attorney Peter Broberg, on behalf of the owner of the property, Mr. Burton Handelsman, addressed the Town Council, requesting appeal of an administrative decision by Public Works Department Director Al Dusey. The trees in question had been approved by the Town Council in March 2002, however, the applicant was now requesting that the trees be lighted. Attorney Broberg explained that Mr. Dusey had indicated that the recorded agreement between Mr. Handelsman and the Town of Palm Beach did not contain provision for tree lighting, and his memorandum of March 7, 2002, with terms and conditions for the tree locations included the condition that no lighting would be allowed. The applicant was now requesting that he be permitted to light the trees.

Town Manager Elwell noted that this issue had been included on the Approved Agenda of the March 12, 2002 Town Council Meeting. The March 7, 2002 memorandum from Public Works Director Dusey in this regard listed the recommended conditions of approval; the fact that the item was approved as part of the Approved Agenda, without it being pulled off to be included on the Regular Agenda, and without changing it in any way, was the declaration that the recommended conditions would be imposed.

Public Works Director Al Dusey referred to his concerns regarding putting private utilities in the public right-of-way; he noted that past Town Councils had turned down requests for lighting of individual properties.

Mr. Kassatly, of the Worth Avenue Associatin, advised that the lights on the trees on Worth Avenue were currently maintained, and installed by the Worth Avenue Association. He commented that the Worth Avenue Association would have no objection to the lighting on Hibiscus, and would consider it a street improvement.

Town Attorney Randolph advised that a hold harmless agreement requiring insurance would address the Town liability.

President Pro-Tem Goldblum moved approval of the lighting at the corner of Hibiscus Avenue and Peruvian Avenue, with the condition that a hold harmless agreement be included; Mr. Handelsman would guarantee maintenance in perpetuity; the Town Attorney would determine the appropriate amount of insurance necessary. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

4. Discussion Regarding Proposed Emergency Water Supply.
[Norman P. Goldblum, Town Council President Pro-Tem]

President Pro-Tem Goldblum commented that he had reviewed the draft report of the Strategic Planning Board, and had found it thorough and challenging. One of the subjects discussed had been the supply of emergency potable water, and he suggested that an emergency alternate means of obtaining water be investigated. He explained that presently there were three reverse osmosis plants. He recommended that the option be studied regarding how development of an emergency water supply.

Town Manager Elwell explained that assistance would be needed from Town consultants in this regard, and the first appropriate step would be to obtain a proposal from Engineer Hartman regarding exactly what information could be provided and the costs that would be necessary.

After discussion, President Pro-Tem Goldblum moved approval of obtaining a proposal from consulting Engineer Hartman regarding the scope of work for investigating the feasibility of establishing an emergency water supply system. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

5. Review of the Direct Connect Alarm System.
[Jack McDonald, Town Councilman]

Councilman McDonald commented that the direct connect alarm system program had not been fully utilized by subscribers, and he suggested that further consideration be given to the discussion of the program.

Police Chief Reiter addressed the Town Council, stating that initially, he had believed that the $1000 annual fee had been acceptable to participants. He noted that the only other community studied in Florida that had such a program was Coral Gables, and a fee was not charged by them. He recommended that consideration be given to the reduction or elimination of the fees.

Mr. Edward Kassatly, President Worth Avenue Association thanked the Town Council for the added police protection on Worth Avenue. He stated that it was believed that the $1000 fee was high, however, the direct connect alarm system was fantastic. He suggested a reduction in the fee, to perhaps $500, or on a scale according to size of store -- $300 for stores of 1,500 sq. ft. and under, and $500 for stores over 1,500 sq. ft. He suggested that a representative from the Police Department speak at the next open meeting of the Worth Avenue Association to discuss the system.

After discussion, Councilman McDonald moved approval of a sliding fee schedule for the fees for the direct connect alarm system. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

In response to Councilman McDonald, Police Chief Reiter advised that the current ordinance authorized the Police Chief to provide residential subscribers with the service, and that idea was currently being examined.

6. Request for Authorization to Utilize the Town's Parking and Traffic Consultant in the Review of Applications for Valet Parking Permits. [Michael S. Reiter, Chief of Police]

Police Chief Reiter advised that the traffic management plans, which were a requirement of the valet parking ordinance, were highly technical in nature and beyond the scope of personnel in the Police Department. He expressed concern with a marked increase in the use of hotels, restaurants, etc., with the opening of the new convention center, and requested that funding be provided from the General Fund Contingency in the amount of $6,324.00, so that a traffic engineer could review the valet parking applications and accompanying traffic management plans.

Mayor Smith expressed concern regarding valet parking in residential areas, as large parties with a great number of vehicles caused traffic jams and limited access of streets to emergency vehicles. She suggested that residents submit a traffic plan to the Police Department before holding large parties with large numbers of vehicles.

Police Chief Reiter noted that the existing ordinance did not address residential valet parking, and generally the private party traffic was handled on an ad hoc basis.

Town Attorney Randolph advised that the current laws did not include residential elements, and suggested that the matter be continued to be dealt with on an ad hoc basis, as opposed to drafting an ordinance related to the private use of valets in residential zones.

After discussion, Councilman Wyett moved approval of funding in the amount of $6,324.00 for the traffic engineering services in regard to the traffic management plans submitted for the valet parking permits. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

7. General Employees Retirement Board of Trustees Appointments.
[William C. Crouse, Director of Human Resources]

After casting ballots, the Town Council appointed James McC.Wearn as a member of the General Employees Retirement Board of Trustees.

8. Code Enforcement Board Appointments.
[Robert L. Moore, Director of Planning, Zoning, and Building]

After casting ballots, the Town Council appointed Timothy Hoffman as a regular/full member of the Code Enforcement Board, and Hugh C. Davis, III, and Thomas M. Youchak as alternate members of the Code Enforcement Board.

9. Consideration of Possibly Placing Utilities (wiring) Underground in the Town of Palm Beach

Councilman Wyett commented that the Civic Association had done some research on underground wiring in the Town, and suggested that they present their findings in a public meeting. He noted that the entire island would not have to be placed with underground wiring all at once, or even in a one year time frame; his concern was for north/south and east/west access roads; the project was a long term project. He urged that the Town Council authorize a committee to look into the underground wiring issue.

Mayor Smith requested that Town Manager Elwell distribute the information gathered by the Strategic Planning Board in this regard, before referring the matter to the Public Works Committee. After reviewing the information, the Town Council could then discuss the matter.

Town Manager Elwell indicated that he would distribute the materials, and the Town Council could determine when the matter would be discussed.

10. Consideration of Approving Councilman Wyett's trip to Tallahassee, including Expenses, to Lobby for Changes in Local Hospitals.

Councilman Wyett requested airfare reimbursement for a trip to Tallahassee to lobby for changes in local hospitals.

President Pro-Tem Norman Goldblum moved approval of expenses for Councilman Wyett to travel to Tallahassee to lobby for changes in local hospitals. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett abstained from voting.

X. ORDINANCES

A. Second Reading

1. None.

B. First Reading

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

Attorney John McCracken addressed the Town Council, reading the title of Ordinance No. 2-03 into the record. He explained that both the General Retirement Board and Public Safety Retirement Board were unanimous in requesting that the Town Council approve the ordinance. He explained that the provisions would outsource the drop program to a third party administrator; establish a plan whereby the drop participants would have self-directed accounts, choosing their own investments (to that extent it would free the retirement system of its present obligation of paying 8% per annum to drop participants); enables the boards to choose the third party administrators who handle the program. He explained that the General Retirement Board had already elected to have ICMA, which provides other cafeteria products to employees. The Public Safety Retirement Board was having a hearing next week, to hear from four providers, including ICMA, to decide which provider they would use.

Councilman McLendon moved approval of Ordinance No. 2-03, on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

2. Ordinance No. 3-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Benefit Group Firefighter and Benefit Group Police Officer in the Retirement System; Adding Section 82-74 to Establish Share Accounts for Certain Moneys Received from Florida Statutes Chapter 175 and 185 Tax Revenues; Providing for Rollovers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John B. McCracken, Esq.]

Sergeant George Frick, Chairman of the Public Safety Retirement Board addressed the Town Council, stating that the Retirement Board spent a great deal of time and money reviewing any possible changes to the retirement system, considering the impacts not only on the fund, but on the Town and members as well. The Retirement Board considered the economic climate before any changes were forward to the Town Council. The changes for consideration today had been reviewed in the same, diligent manner; actuaries had determined that there would be no cost to the town in the ordinances presented today; there was also no cost to the benefit whatsoever, or the cost would be borne by the individual. Sergeant Frick explained further details of the finances related to the retirement system. He noted that if the ordinances for consideration today were deferred indefinitely, there would be some employees and retirees negatively affected. He urged, on behalf of the Public Safety Retirement system and two-hundred retirees and active plan members, approval of the ordinances as provided today.

Town Manager Elwell commented that Ordinance No. 3-03 created shared accounts, and there was a baseline that would need to be agreed upon before it would be appropriate for adoption. He stated that he expected that the statistical baseline could be identified before the March 11, 2003, Town Council Meeting, and he recommended that action on Ordinance No. 3-03 be postponed until the March 11, 2003, Town Council Meeting.

President Pro-tem Goldblum moved deferral of Ordinance No. 3-03 to the March 11, 2003, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Ordinance No. 4-03 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code Of Ordinances Relating to Duty Disability; Amending Section 82-122 to Restate the Same to Eliminate the Five-Year Limit to Minimum Duty Disability Pensions for Public Safety Officers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John B. McCracken, Esq.]

Attorney John McCracken explained that Ordinance No. 4-03 related to duty disability retirement benefits. There were no additional costs to the Town in this regard.

Town Manager Elwell referred to his memorandum to the Town Council, dated January 10, 2003, recommending that Ordinances No. 4-03, 5-03, 6-03, and 7-03 be deferred indefinitely because although they were actuarially sound, given the assumption of an 8% return, however, the fund was not currently making 8%, and was, in fact, losing money, and there would be some potential costs to the Town.

In response to Mayor Smith, Attorney McCracken explained that the board had directed him to bring the ordinances to the Town Council for consideration.

Sergeant Frick explained that currently the disability retirement was 60%, which would then covert to a normal retirement when the disabled person reached the appropriate years of service. He explained that someone on disability would be getting 60% of their salary for injured – line of duty, and after reaching age fifty, would go to 32.5% of their salary and be taxed. Ordinance No. 4-03 would keep that 60% duty or non-duty disability going even after the normal retirement age was reached, so that the person would not be taxed and would not have a reduction. He explained that in this scenario some people would not even see an increase – if the employee had worked 20 years, he/she would be entitled to 65% of salary; those people would stay at 60%, but not be taxed.

Attorney McCracken added that there may be additional costs to the Town only in the situation where the case of a public safety officer who would start employment with the Town later in life, and then became duty disability retirement.

Town Manager Elwell commented that he agreed completely that the requests within the ordinances were reasonable, however, he suggested that the time was not appropriate because of the downturn in the market. He explained that although the actuarial analysis was certainly correct, in that over the long term there would not be costs to the Town, there could be costs in the short term. He noted that the drop program had been proposed in 1999 as being cost neutral to the Town, however, it has had a substantial impact because of the downturn in the market. He suggested that Ordinance No. 4-03, 5-03, 6-03, and 7-03 be deferred.

President Pro-Tem Goldblum moved approval of deferring Ordinances No. 4-03, 5-03, 6-03, and 7-03 until November 2003 for discussion by the Town Council. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Firefighter John Cuomo addressed the Town Council, stating that he was a trustee on the Pension Board for the Fire-Rescue Department. He expressed gratitude on behalf of the Fire-Rescue Department and himself for the continued commitment of the Town to provide excellent pension benefits for the employees of the Fire Department, and to give thanks for the recommendation of the three Town residents who sat on the Public Safety Pension Board, and brought with them good financial knowledge and experience.

4. Ordinance No. 5-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Pensions for Surviving Spouses of Deceased Retirants; Amending Section 82-147(b) to Make it Retrospective Under Certain Conditions; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John B. McCracken, Esq.]

President Pro-Tem Goldblum moved approval of deferring Ordinances No. 4-03, 5-03, 6-03, and 7-03 until November 2003 for discussion by the Town Council. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. Ordinance No. 6-03 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Adding Section 82-73 to Accept Prior Service with Other Municipal, County, or State Governments or Districts

Provided the Member Contributes the Sum that Would Have Been Contributed to the Retirement Plan; Adding Section 82-54(d) to Allow Purchase of Service Credit by Members of all Benefit Groups; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John B. McCracken, Esq.]

President Pro-Tem Goldblum moved approval of deferring Ordinances No. 4-03, 5-03, 6-03, and 7-03 until November 2003 for discussion by the Town Council. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

6. Ordinance No. 7-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing Certain Benefit Options Under Chapter 82 of the Code of Ordinances to Benefit Group Firefighters and Benefit Group Police Officers Who Are DROP Participants in the Retirement System; Providing an Option to Such DROP Participants Under Section 82-64, Code of Ordinances, to Elect, as of September 30, 2002, to Purchase an Increased Multiplier for Calculation of the Amounts of Pensions Under Section 82-59; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing an Effective Date. [John B. McCracken, Esq.]

President Pro-Tem Goldblum moved approval of deferring Ordinances No. 4-03, 5-03, 6-03, and 7-03 until November 2003 for discussion by the Town Council. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XI. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

Town Manager Elwell reported that the beach renourishment project is underway; the dredge is in Town and the sand pumping will begin in a day or two.

There were no other comments.

XII. DEVELOPMENT REVIEWS

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

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. SITE PLAN REVIEW NO. 9-2002 The application of CSC Brazilian, L.P. a Delaware limited partnership (Adam Schlesinger) relative to property described as all of Lots 17 through 40 inclusive, Block 3 and all of Lot 41, Block G, Revised map of Royal Park Addition, less a portion of Lots 17, 18, & 19, Block 3, Revised map of Royal Park Addition; commonly known as 301 Australian Avenue; located in the R-C Zoning District. Requesting site plan approval for expansion of an existing nonconforming hotel in existence over 15 years. To include building additions for construction of new units (net reduction of units overall), circulation areas, elevator, outside dining with awning, storage shed, and cooler at the main hotel site; a valet parking layout at the off-site parking lot on Hibiscus Avenue; a variance to allow hotel square footage of 85,973 square feet in lieu of the existing 82,518 square feet of hotel use; a variance to allow the hotel square footage to increase to 4,713 square feet in lieu of the existing 908 square feet of hotel use that currently exists across Australian Avenue to the south in the "Ohio House" which has been used for Brazilian Court workers' quarters in the past; a variance to allow lot coverage of 55% in lieu of the maximum of 30% and 51% existing; a variance to allow a zero foot setback in lieu of the required 23'6" side setback (building height) required for a proposed 30 square foot storage shed to replace 2-30 square foot existing non-conforming storage shed structures; a variance to allow a 15'7" setback in lieu of the required 23'6" side setback (building height) for the construction of a cooler and dumpster shed within the existing loading area; a variance to allow a reduction in required off-street parking of 7 spaces excluding additional 14 proposed valet spaces to be stacked in the lot east of the Hotel; a variance to allow valet only parallel parking in existing parking areas and a reduction in isle width to 8' in lieu of the required 25' for valet parking only; and, a variance to allow valet only parallel parked automobiles to block another automobile requiring an automobile to be moved to allow another to be taken from the property. *(Action on the Lanai Suites was deferred to the January 14, 2003, Town Council meeting)*

Ex-parte communication was declared by President Brooks, President Pro-Tem Goldblum, Councilmen McLendon and Wyett with Attorney James Brindell.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that he was reporting back to the Town Council regarding the lanai suites issue (three suites to be constructed on the south side of the pool). A utility line easement ran under the entire hotel from east to west with a gas line and sewer line; the modifications to the Declaration of Use Agreement would be discussed, as well as an extension request.

Director of Planning, Zoning & Building Robert Moore advised that staff had no objection to the lanai suites; conceptual issues could be worked out with staff, pending approval.

President Pro-Tem Goldblum moved approval of the lanai suites, contingent upon the pending agreement between Engineer Tom McCarthy, Town Engineer Jim Bowser, and Public Works Director Al Dusey. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Attorney Brindell referred to the Declaration of Use Agreement, number one on page three, concerning the Ohio House:

Mr. Moore advised that the concern was that the Ohio House was in a residential neighborhood, and any activity after a certain period of time in the evening could be objectionable to residents, whether they be hotel guests or not. He noted that agreement could not be reached on a time limit, and the Town Council input was needed. Other than that, staff was in agreement with the Declaration of Use Agreement.

President Pro-Tem Goldblum moved approval of the use of the Ohio House for meetings of hotel guests and non-hotel guests until 10:00 p.m. The motion was

seconded by Councilman McLendon, carrying 4/1, as Councilman Wyett cast a dissenting vote.

Attorney Brindell commented on the other changes in the Declaration of Use Agreement:

Page 2:	added reference to the December 10, 2002 hearing.
Page 3:	added reference to the December 10, 2002 hearing.
Page 3:	added language at end of Item No. 1 referring to traffic problems.
Page 4:	Item 6. – hold trash pursuant to approved site plan, and until the next day of trash pick-up.
Page 4:	Item 7(b) – corrected number to be 75
Page 4:	Item 8. – added language concerning determination of Chief of Police regarding parking.
Page 4:	Item 11 – deleted word "*valid.*"
Page 4:	Item 11 – add word "*regularly*" scheduled Council meeting.
Page 5:	Article V – took out reference to memorandum – added provision that Declaration of Use Agreement would be referenced in condominium documents.
Page 5:	Article VI – added provision regarding sale of a commercial element (Councilman McDonald suggested that the language include sale "and/or lease," which was accepted by Attorney Brindell).

Councilman Allen Wyett moved approval of the Declaration of Use Agreement, as amended. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

b. VARIANCE NO. 46-2002 The application of Michael Small and Ann Small relative to property described as Lot 17 Sea Isle Estates; commonly known as 156 East Inlet Drive; located in the R-B Zoning District. To allow construction of a one story addition with a street side yard setback of 15.1' in lieu of the 25' required in the R-B Zoning District; to allow construction of a porte cochere with a front yard setback of 7.58' in lieu of the 25' required in the R-B Zoning District; and, to allow construction of a porte cochere with an angle of vision of 105° in lieu of the 102° required in the R-B Zoning District. (*Action on the Porte Cochere was deferred to the January 14, 2003, Town Council meeting)*

Ex-parte communication was declared by Councilman McLendon with Attorney Maura Ziska, and by President Brooks with Attorney Ziska. *(Councilman Wyett did not return to the Town Council meeting after the luncheon recess).*

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the applicant had obtained permission for the addition at a previous Town Council meeting, and at that time the Town Council requested that the porte cochere be redesigned to reduce the width. She explained that the porte cochere had been redesigned to a width of 12 ft.

Zoning Administrator Paul Castro requested that the hardship be addressed.

Attorney Ziska advised that the hardship was that the property was a corner lot, and was subject to two 25 ft. setbacks; it was a one story existing house, and rather than building a second story and displacing the family for construction, the request was reasonable.

President Pro-Tem Goldblum moved approval of Variance No. 46-2002, as modified. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett was no longer in attendance at the meeting.

2. New Business

a. VARIANCE NO. 1-2003 The application of Michael F. Price relative to property described as a part of Block 20, Royal Park Addition as described in lengthy legal description on file; commonly known as 452 Worth Avenue; located in the R-B Zoning District. To allow the replacement of driveway gates in a front yard with a setback of 6 inches in lieu of the 18 feet required.

The Town Council deferred Variance No. 1-2003 earlier in this meeting.

b. SPECIAL EXCEPTION NO. 1-2003 The application of Sunset PB Limited Partnership successor by merger to the Edward W. Cook Revoc 2001 Trust relative to property described as Lots 184 through 189, inclusive, Floral Park; commonly known as 223 Sunset Avenue, Suites 100 & 110 (Royal Palm Travel); located in the C-TS Zoning District. To allow an existing travel agency (Royal Palm Travel), which requires a new occupational license, to operate in 2,600 square feet on the first floor in the C-TS Zoning District. **(Request for Deferral to**

the February 11, 2003, Town Council Meeting per Letter Dated January 8, 2003, from Maura A. Ziska, Esq.)

Ex-parte communication was not declared by any member of the Town Council. *(Councilman Wyett did not return to the Town Council meeting after the luncheon recess).*

Mr. Leslie Shaw, Royal Palm Travel, addressed the Town Council, stating that Royal Palm Travel had occupied office space at 223 Sunset Avenue for approximately 14 years. The Town Council had granted an increase in space from the permitted square footage to slightly over 2,000 sq. ft. in 1996. He presented an architectural drawing indicating the original size of the office and the expanded size. He explained that, due to the sale of the corporation, it was required by the Town that the special exception granted in 1996 be reviewed, and re-application made. He stated that all requirements had been met, and the appropriate Town-serving documentation was available.

Director of Planning, Zoning & Building Robert Moore advised that the applicant had complied with all aspects of the ordinance, and staff had no objection.

President Pro-Tem Goldblum moved approval of Special Exception No. 1-2003.The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

c. SPECIAL EXCEPTION NO. 2-2003 The application of CBRS Realty, Ltd. relative to property described as Lots 6 & 7, Block 8, Royal Park Addition; commonly known as 361 South County Road, Suite G; located in the C-TS Zoning District. Special Exception to locate a 247 sq. ft. real estate office space on the first floor that has no frontage or entrance directly onto a sidewalk fronting a roadway. **(Request for Withdrawal per Memorandum Dated January 8, 2003, from Paul W. Castro, Zoning Administrator)**

Special Exception No. 2-2003 was withdrawn earlier in this meeting.

3. Other

a. Request James R. Brindell, Esq., for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project. (Brazilian Court Hotel)
[Robert L. Moore, Director of Planning, Zoning Building]

(This item was heard out of order, and was addressed earlier in the Agenda)

Attorney Brindell requested the ability to work Monday through Saturday, no Sundays or holidays, 7:30 a.m. to 6:30 p.m.; Sundays from 9:00 a.m. to 5:00 p.m., on the construction project at the Brazilian Court Hotel. He explained that it was hoped to have the work finished by April 2003.

Mrs. Wendy Victor commented that the jackhammers were going from 8:00 a.m. until 6:00 p.m. at the project; recent guests for a family wedding had experienced difficulty with noise; she requested that the extension of work hours be denied, and that the extent of demolition be examined by Town staff.

Mr. Adam Schlesinger, CSC Brazilian, commented that the Building Department had done an effective job of making sure that there was compliance with Town rules; he offered to have the general contractor come in to explain what equipment was being used.

Planning, Zoning & Building Director Robert Moore noted that there had been one complaint regarding a jackhammer that was operating, and the applicant was advised that a compressor powered jackhammer could not be used. He explained that the staff recommendation was for interior work only from 8:00 a.m. to 9:00 a.m., as well as from 5:00 p.m. to 6:00 p.m.; Sundays and holidays not to be permitted for work.

Councilman Wyett objected to the request.

Attorney Brindell clarified that the applicant was requesting the hours of 7:30 a.m. to 6:30 p.m., Monday through Saturday, with the understanding that between 7:30 a.m. and 8:00 a.m. workmen would arrive and set up; break down/departure time would be from 6:00 p.m. to 6:30 p.m.; the actual work would occur between 8:00 a.m. and 6:00 p.m., with the caveat that between 8:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 6:00 p.m., work would be limited to interior work.

Mr. Moore responded that the applicant was then requesting only one-half hour in the morning and one-half hour in the afternoon beyond the scope of normal allowed work hours, and that staff would have no objection to that extra time requested.

President Pro-Tem Goldblum moved approval of the request for extension of work hours: Monday through Saturday from 7:30 a.m. to 6:30 p.m., with the conditions as described by Attorney Brindell, with the condition that reconsideration

would take place if there were any complaints from residents. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/2, with President Pro-Tem Goldblum, Councilman McLendon, and Councilman McDonald casting affirmative votes; Councilman Wyett and President Brooks casting dissenting votes.

b. Request for Authorization to Have First and Second Readings of a Proposed Zoning Ordinance and Comprehensive Plan Amendment Prior to 5:01 p.m.
[Paul Castro, Zoning Administrator]

Zoning Administrator Paul Castro requested that the meeting date for the first and second readings of the proposed Zoning Ordinance (Ordinance 1-03) be moved to 9:30 a.m. on Wednesday, February 19, 2003, and 9:30 a.m. on Wednesday, March 5, 2003. He explained that the Comprehensive Plan amendments would be following a different track, and would not be at the same meeting time, as the Town Council would consider them sitting as the Local Planning Authority. He also explained that in order to change the time of the readings, a super majority approval (4/0) would be needed.

President Pro-Tem Goldblum moved approval of the change in time from 5:01 p.m. to 9:30 a.m. on February 19, 2003, and March 5, 2003, for the first and second readings of the proposed Zoning Ordinance (Ordinance No. 1-03). The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett was no longer in attendance at the meeting.

XIII. ANY OTHER MATTERS

There were no other matters.

XIV. ADJOURNMENT

The meeting was adjourned at 2.25 p.m.

Mary A. Pollitt
Town Clerk

William J. Brooks
Town Council President