TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2004

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled meeting of the Town Council was called to order at 9:30 a.m. on Tuesday, January 13, 2004, in the Town Council Chambers by Town Council President William J. Brooks. 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 to the Town Manager Sarah Hannah
Town Attorney John Randolph
Fire-Rescue Chief Kent Koelz
Assistant Fire-Rescue Chief John Deiorio
Police Chief Michael Reiter
Director of Planning, Zoning & Building Robert Moore
Assistant Director of Planning, Zoning, & Building Veronica Close
Planning Administrator Tim Frank
Zoning Administrator Paul Castro
Public Works Director Al Dusey
Public Works Assistant Director Paul Brazil
Town Engineer James Bowser
Finance Director Jane Skittone
Assistant Human Resources Director Carla Kneipp

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480 • (561) 838-5416
Fax No. (561) 838-5417

Risk Administrator Karen Temme
Historic Preservation Consultant Jane Day
Town Clerk Mary A. Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the Invocation. President Brooks led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Wayne Stevens, Police Sergeant Upon His Retirement from the Town of Palm Beach After 25 Years and 2 Months of Service.

Mayor Smith read a proclamation recognizing Sergeant Stevens' years of service and presented him with a ring.

B. Recognition of W. Michael Sharpe, Master Mechanic/Vehicle Maintenance Upon His Retirement from the Town of Palm Beach After 23 Years and 8 Months of Service.

Mayor Smith read a proclamation recognizing Mr. Sharpe's years of service and presented him with a watch.

C. Recognition of James Sorrentino, Fire Rescue Lieutenant Paramedic Upon His Retirement from the Town of Palm Beach After 21 Years of Service.

Mayor Smith recognized Lieutenant Sorrentino's years of service and presented him with a pocket watch.

IV. COMMENTS OF MAYOR LESLY S. SMITH

Mayor Smith announced that the flags in Town were flying at half-staff, as Police Mechanic Angel Arce was killed in a motorcycle accident on his way to work yesterday, January 12, 2004. He was 55 years old, and had been with the Town for 15 ½ years, and left a wife Yvonne, and four sons. She requested that those in attendance rise and join her in a moment of silence.

The Mayor then began her comments:

I AM VERY DISTRESSED BOTH PERSONALLY AND AS MAYOR OVER THE CONTROVERSY SURROUNDING THE REQUEST TO PLACE A CRECHE ALONGSIDE THE MENORAH AND THE CHRISTMAS TREE THAT FORMED THE CORE OF THE TOWN'S HOLIDAY CELEBRATIONS. I AM DISTURBED BY THE SUBSTANCE OF THIS CONTROVERSY - AND I WILL COMMENT ON THAT - BUT I AM PERHAPS MORE UPSET BY THE TONE OF THE ARGUMENT: IT IS THE NASTY "US VERSUS THEM, THE DRAW A LINE IN THE SAND" DEMANDS AND THE IMPLICATIONS - MANY OF THEM NOT SO SUBTLE - THAT THOSE OF US WHO SIT BEFORE YOU TODAY ARE BIGOTS.

THE PALM BEACH TOWN COUNCIL IS BOUND BY THE LAW OF THE LAND - THE CONSTITUTION OF THE UNITED STATES, AND THE DECISIONS OF THE U.S. SUPREME COURT. COUNCIL MEMBERS TAKE AN OATH OF OFFICE, WHICH BINDS THEM TO FAITHFULLY DISCHARGE THEIR DUTIES IN COMPLIANCE WITH THE LAW. YOU WOULD NOT EXPECT US TO DO OTHERWISE. RELIGIOUS HOLIDAY SYMBOLS ARE NOT PERMITTED ON TOWN PROPERTY. THE SUPREME COURT HAS RULED THAT A CHRISTMAS TREE STANDING SIDE BY SIDE WITH A MENORAH CONSTITUTES A "SECULAR" AND NOT A RELIGIOUS HOLIDAY SYMBOL. THE SAME WOULD NOT BE TRUE IF A CRECHE WERE ADDED TO THE MIX. THUS, BY PERMITTING THE CHRISTMAS TREE AND THE MENORAH – BUT ONLY THE CHRISTMAS TREE AND THE MENORAH, THE TOWN WAS ABLE TO HONOR THE RELIGIOUS CELEBRATIONS OF CHRISTIANS AND JEWS WHO LIVE AS ONE COMMUNITY IN PALM BEACH...MANY OF US WOULD LIKE TO SEE THE TOWN DO MORE. BASED ON THE LEGAL ADVICE WE RECEIVED, HOWEVER, WE COULD NOT DO SO.

THE WORD "SECULAR" IS THE OBJECT OF CONSIDERABLE CONFUSION THESE DAYS. THERE ARE MANY IN THE WORLD WHO WOULD HAVE US BELIEVE THAT "SECULAR" MEANS GODLESS - THE ABSENCE OF RELIGION - AND THAT AMERICA IS A GODLESS COUNTRY. NOTHING COULD BE FURTHER FROM THE TRUTH. AS WE KNOW, "SECULAR" MEANS NOT THE ABSENCE OF RELIGION, BUT RESPECT AND TOLERANCE FOR ALL RELIGIONS, IN WHATEVER

FORMS THEIR FAITHFUL CHOOSE TO WORSHIP. "SECULAR" IS INCLUSIVE, NOT EXCLUSIVE.

THE FACT THAT A POLICY OR DECISION IS LEGAL DOES NOT MEAN THAT IT IS ETHICAL OR MORAL OR THAT IT IS UNETHICAL OR IMMORAL, FOR THAT MATTER. AND HERE IS WHERE I FAULT ALL OF US. BOTH SIDES. IF WE MUST CHOOSE SIDES. WE HAVE WORKED SO HARD IN PALM BEACH TO EMBRACE OUR DIFFERENCES AND BUILD A SINGLE COMMUNITY, ONE BUILT ON RESPECT AND CONSENSUS. THIS WAS NOT EASY TO ACHIEVE. IT TOOK BOTH CONVICTION AND NEGOTIATION; TALKING AND LISTENING; GIVING A LITTLE TO GET A LITTLE; AND ULTIMATELY, COMPROMISE THAT SERVED THE GREATEST GOOD.

SADLY, PROBABLY BECAUSE OF THE SHORTNESS OF TIME, WE DID NOT FOLLOW THIS HEALTHY PROCESS TO RESOLVE THE ISSUE OF THE HOLIDAY SYMBOLS. SO I ASK TODAY THAT THE TOWN COUNCIL, ALONG WITH ADVOCATES AND OPPONENTS OF THE CRECHE, AGREE TO SOME FORM OF MEDIATION - WITHOUT LAWYERS, WITHOUT LAWSUITS OR THREATS OF LAWSUITS; JUST THE GOOD CITIZENS OF PALM BEACH SITTING DOWN AT THE TABLE TO FIND A WORKABLE SOLUTION TO A PROBLEM THAT IMPACTS ALL OF US. A PROBLEM WHICH WILL RECUR ANNUALLY UNLESS WE PROVE THAT PEOPLE OF GOOD WILL CAN FIND WORKABLE SOLUTIONS TO EVEN THE MOST DIFFICULT OF PROBLEMS.

I ALSO HAVE A GRAVE CONCERN ABOUT THE TENOR OF THE UPCOMING TOWN COUNCIL ELECTIONS. I AM THE FIRST TO SAY THAT CONTESTED ELECTIONS ARE HEALTHY. THEY GIVE US AN OPPORTUNITY TO DISCUSS AND DEBATE CONTROVERSIAL ISSUES AND COMPARE RELEVANT EXPERIENCES AND IDEAS. THE NOTION OF VOTING FOR SOMEONE SOLELY ON THE BASIS OF HIS OR HER POSITION ON A SINGLE ISSUE - WHETHER IT IS THE CRECHE ISSUE OR ANY OTHER SINGLE ISSUE IS SHORT SIGHTED. THERE ARE TOO MANY SIGNIFICANT ISSUES AND PROBLEMS WHICH CONFRONT THE TOWN AND ITS PEOPLE. WE NEED TO ATTRACT TO THE COUNCIL MEN AND WOMEN BEST ABLE TO CONFRONT THESE ISSUES. IT IS INCUMBENT ON US TO LISTEN AND LEARN WHAT CANDIDATES THINK AND WHAT THEY WILL DO TO SOLVE PROBLEMS. CHARACTER AND INTEGRITY ARE IMPORTANT, BUT NO RELIGION HAS A MONOPOLY ON THESE QUALITIES.

SO, IN CONCLUSION, I HOPE THAT BY WORKING TOGETHER WE CONFRONT AND RESOLVE AN ISSUE THAT DIVIDES US...BEFORE WE DESTROY ALL THE POSITIVES WE HAVE ACHIEVED THROUGH HARD WORK AND COMPROMISE. IT IS NOT ONLY OUR REPUTATION WHICH IS AT STAKE, BUT THE VERY FABRIC OF OUR COMMUNITY – THE VERY FABRIC OF THE TOWN OF PALM BEACH, THE WONDERFUL TOWN THAT I AM PROUD TO CALL HOME.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

ADD Item VIII. Regular Agenda. A. Old Business, Item 3. - Sale of Pike Road Property. He explained that Town Manager Elwell would be addressing the situation.

DEFER Item C.1. Old Business (a) - Site Plan Review #7-2003, to the February 10, 2003, Town Council meeting.

Motion made by Councilman McLendon, seconded by President Pro-Tem Goldblum to defer Item C.1. Old Business (a) - Site Plan Review #7-2003, to the February 10, 2003, Town Council meeting. On roll call the motion carried unanimously.

DEFER Item C. 1. Old Business (b) - Special Exception #22-2003, to the February 10, 2003, Town Council meeting.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum, to defer Item C. 1. Old Business (b) - Special Exception #22-2003, to the February 10, 2003, Town Council meeting. On roll call the motion carried unanimously.

DEFER Item C. 2. New Business (e) - Site Plan Review #1-2004, to the February 10, 2004, Town Council meeting.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum, to defer Item C. 2. New Business (e) - Site Plan Review #1-2004, to the February 10, 2004, Town Council meeting. On roll call the motion carried unanimously.

DEFER Item C. 2. New Business (f) - Site Plan Review #2-2004, to the February 10, 2004, Town Council meeting.

Motion made by President Pro-Tem Goldblum, seconded by Councilman McLendon, to defer Item C. 2. New Business (f) - Site Plan Review #2-2004, to the February 10, 2004, Town Council meeting. On roll call the motion carried unanimously.

ADD Item VIII.A.3., Old Business, Request for Extension of Inspection Period on Pike Road Property Through February 17, 2004.

Motion made by Councilman Wyett, seconded by Councilman McLendon to approve the Agenda as amended. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Eric N. Gilbertson, 151 Chilian Avenue, complimented the Mayor, Town Council, and the Town Manager regarding the decision made by the State Department of Agriculture relating to the Citrus Canker boundaries.

Connie Gasque, 167 Root Trail, wanted to know where the renourished beach had gone and requested a refund of her tax dollars.

Michael Caciopoli, 3250 S. Ocean Blvd., suggested the nativity scene issue should be revisited to determine if it is a proper function of the government.

Michael Stein, 227 Via Tortuga, read a statement urging the parties involved in the issue of displaying the nativity scene to resolve their differences as long as the differences are free of the religious dogma and passion that allows no room for rational discussion based on tolerance of different views.

Rachel Moran, 250 Bradley Place, said the Mayor and Town Council are responsible for discharging duties as sworn members of the Council and the issue is not just about the placement of the nativity scene but the failure to discharge those duties and opened up the appearance of what has been occurring or failing to occur as Council representatives.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF DECEMBER 9, 2003.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING OF DECEMBER 19, 2003.

C. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF DECEMBER 23, 2003.

D. RESOLUTIONS

1. RESOLUTION NO. 3-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions." [Timothy Frank, Planning Administrator]

2. RESOLUTION NO. 4-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad

Valorem Tax Exemptions for the Property Hereinafter Described and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions." [Timothy Frank, Planning Administrator]

3. RESOLUTION NO. 5-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Timothy Frank, Planning Administrator]

E. OTHER

1. Authorization to Have First and Second Reading of Proposed Zoning Ordinance, and Ordinances on Proposed Comprehensive Plan Future Land Use Map Changes and Rezonings Prior to 5:01 p.m.
[Robert L. Moore, Director of Planning, Zoning, and Building]

2. Authorization for Funding for Town Council Chambers Audio Improvements. [Thomas G. Bradford, Assistant Town Manager]

3. Acceptance of Proposed Revisions to the Palm Beach County League of Cities By-laws and Articles of Incorporation.
[Thomas G. Bradford, Assistant Town Manager]

Motion made by Councilman McLendon, seconded by Councilman Wyett, to approve the Consent Agenda. On roll call the motion carried unanimously.

VIII. REGULAR AGENDA

A. Old Business

1. FDOT Widening Project Update by FDOT Officials. Presentation of Landscape Plan. [Donovan Pessoa, Project Manager] **Request for Deferral to the February 10, 2004, Town Council Meeting, Per Memorandum Dated January 5, 2004, from Albert Dusey, Director of Public Works.**

This item was deferred earlier in the meeting.

2. Proposed Revision to Sec. 134-1637 Intersection Vision. [Robert L. Moore, Director of Planning, Zoning, and Building] *Deferred From the December 9, 2003, Town Council Meeting.*

Director of Planning, Zoning & Building Robert Moore advised that, based on his memorandum of December 29, 2003, an increase in the site visibility at residential intersections should be considered, as well as requiring the retroactive implementation of the intersection vision requirement in all residential intersections in the Town. He recommended re-defining what the safety angle of vision would be at an intersection, and also whether there would be a retroactive implementation requirement. He recommended that the item go to the Planning and Zoning Commission for their consideration.

Councilman Wyett commented that this was a major safety issue, and that he would like the Planning and Zoning Commission to meet immediately to consider the issue.

Mr. Moore advised that there was a Planning and Zoning Commission scheduled for

January 15, 2004, and that the issue could be added to the agenda for that meeting.

After discussion, the Town Council directed that the issue be added to the agenda for the Planning and Zoning Commission scheduled for January 15, 2004.

3. Sale of Pike Road Property

Town Manager Elwell advised that the Environmental Assessment Report, phase 1 and 2 was now in, and there were some issues that needed to be addressed. The report had been received by the buyer last Friday, and further analyzation was needed. He recommended that an extension of the inspection period be granted through February 17, 2004, so that staff could address the issue and come back with a recommendation at the February 10, 2004, Town Council meeting.

President Pro-Tem Goldblum moved approval of an extension of the inspection period in regard to the sale of the Pike Road property, through February 17, 2004, so that staff could address the Environmental Assessment Report and recommend action to the Town Council. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

B. New Business

1. Further Consideration of Town Holiday Displays.
[John C. Randolph, Town Attorney]

President Brooks commented that, in light of the continued great interest in this matter, and the unfortunate manner in which it was dividing the Town, he believed it was appropriate, even necessary, for the Town Council to promptly give further consideration to the future of Town holiday displays. He stated the following: "Whether or not we take definitive action today, it is clear that we need to establish a policy well in advance of next season. The statement recently published by the Palm Beach Fellowship of Christians and Jews, and the letters we have received this past week from the Royal Poinciana Association, the Goodman Company, and the American Civil Liberty Unions are relevant to this discussion, as are the numerous opinions and suggestions that we have received from many citizens, including the public comment heard this morning." He stated that he believed it was incumbent upon us to look further at the issue, with the intent of establishing a policy, which is both legally defensible and equally as important as a catalyst to healing and goodwill in our community.

Councilman Wyett commented that he believed it was very important to restore the tranquility and goodwill that the Town had enjoyed for many years. It was not the intention of this Council to divide, but to keep the unity. In that endeavor, he recommended that for the next year all religious symbols, including the Menorah, be located at Bradley Park; that it was continued to have, as was the tradition, the Christmas trees standing alone, and that people of all faiths be invited to erect whatever they thought appropriate at Bradley Park. To enable that, if necessary, it should be studied how Bradley Park should be prepared to receive these religious symbols so that they receive their proper place and are visible to the public.

President Pro-Tem Goldblum commented that he was deeply troubled with what was going on in the Town, and that the best solution would be to accept Mr. Wyett's motion. Mr. Wyett agreed that his comments were made as a motion. Mr. Goldblum then seconded the motion, remarking that a study would be continued as to what else could be done to harmonize the Town.

President Brooks pointed out that the Royal Poinciana Association had asked that their display, which had been located on state property – the median on Royal Poinciana Way, – be moved to Bradley Park also.

Councilman Wyett incorporated into his motion that the Royal Poinciana Association display be moved to Bradley Park, as well as having the Menorahs returned to Mr. Evans, so that they were no longer Town property. President Pro-Tem Goldblum seconded the motion as amended.

The following members of the public spoke:

Mr. Walter Ross, 456 Worth Avenue, commented that he had attended the Palm

Beach Synagogue discussion last night with Attorney Nathan Lewin, who had argued a relevant case in 1989. Having listened to that he maintained that there could have been a Nativity Scene in Royal Poinciana, and secondly, if the Menorahs were taken down, there may be further lawsuits next year to get one placed next to the Christmas Tree.

Town Attorney Randolph commented that Attorney Lewin had an opinion that each of the holiday displays was looked at in its context, to make a determination as to whether or not it was the establishment of religion. He (Attorney Lewin) had then concluded, without citing a particular case, that it was his opinion that if a Menorah, and a Christmas Tree, and a Nativity Scene were placed in a way that it would be interpreted as not an endorsement of religion, but as a secular celebration of the holiday season, that it could be held to be constitutional. Attorney Randolph stated that he did not hear Mr. Lewin say that he would be suing the Town of Palm Beach in the event that it took down the Menorahs, but still placed a Christmas Tree. Attorney Randolph recognized that any decision made in this regard was not bullet proof, as had been seen with the various interpretations of the courts to date. Whatever was decided today simply had to be based upon the best information available, and the decisions of the court. Whatever was done could very possibly be subject to attack.

Mrs. Gail Coniglio, 1139 North Ocean Blvd., commented that she was proud of the Mayor and the Town Council in their service and dedication to the Town. She stated that there were hundreds of issues and concerns pertinent to the Town that they had diligently addressed. She stated that she personally concurred that any decision made should err on the side of the law.

Mr. Michael Stein remarked that it was well known that the Jewish community was not monolithic on any issue; if there were two Synagogues in Town, that would mean about 14 opinions – so, one could not take the meeting last night at the Synagogue with Attorney Lewin as representative of Jewish opinion in the Town. He noted that he had occasion to speak with the Rabbi at Temple Emanuel, and he totally and completely disagreed, and that he had spoken with many of his co-religionists on the issue over the past several days and the vast majority of them disagreed with Attorney Lewin. Mr. Stein maintained that, from the Jewish point of view, and he was sure that his orthodox friends would disagree, the Menorah was a religious symbol, and that he believed that most also agreed that the Christmas Tree, in the basically Christian society, was a commercial/secular symbol of a holiday. He stated that he thought it was entirely wrong to relate the Menorah to the Christmas Tree on religious grounds.

Mr. Jack Thompson, 237 Seabreeze Avenue, Chairman of the Fellowship of Christians and Jews, commented that their meeting on Monday had reaffirmed their statement as it appeared in the Palm Beach Daily News. He stated that Bradley Park was endorsed because it had the potential to achieve that which everyone argues for their particular cause. He explained that Bradley Park was constitutional; it had been a traditional/designated public forum; it was equitable, and it could be done in a manner exactly the way everyone hopes, which would be inclusive and mutually respectful. He stated that the Fellowship was willing to work with the Town, or to work independently, to do just what the Mayor called for, which was to create a public forum where all parties could be heard, and possibly make a recommendation to the Town for an action that could be taken in the future to achieve the very goals that everyone was after.

Mr. Jim Zisson, 1600 North Ocean Blvd., commented that the whole argument was sad, as everyone had their own particular religious beliefs, and that many communities did not have such an argument, because they did not have a Town sanctioned display of religious symbol, past a Christmas Tree. He stated that traditionally, as he understood it, the Menorah was in place because there were some people from out of Town, in North Palm Beach, that made it a legal issue. He stated that there was an attempt by some people to try to out-God and out-church the Town Council and the Town, using this as a divisive issue. He stated that the business of the Town Council, from his point of view, was the business of government in the Town.

Councilman Wyett commented that the Menorah that existed and was put up by an outside group was imposed upon the Town. He stated that he was on the Town Council at the time, and the Council had opposed any Menorah being erected in the Town, and that he had been most vocal in opposing such a Menorah. Federal Court had told the Town that under the First Amendment entitlement the Town had to allow the Menorah, which now stood every year for approximately eight days just to the east of the north bridge. He explained that was why he had recommended that everything be put at Bradley Park.

On roll call the motion of Councilman Wyett, seconded by President Pro-Tem Goldblum carried unanimously.

2. Security of the Water Supply System. [Michael S. Reiter, Chief of Police and Ken Reardon, Utilities Director for the City of West Palm Beach]

Mr. Ken Reardon, Director of Public Utilities for the City of West Palm Beach, addressed the Town Council, reporting that there had not been any security issues with the water system, and the Vulnerability Assessment had been finished; the City was now required to provide an emergency response plan to the Environmental Protection Agency (EPA) within six months. He explained that the City had formed a Homeland Security Task Force, which met on a monthly basis to discuss security issues throughout the City and the water supply system. On January 28, 2004, his staff and some of the police staff were going to Atlanta for a vulnerability training program put on by the EPA. He stated that he was working very closely with Police Chief Reiter.

Police Chief Reiter reported that he had been working with Mr. Reardon, and had made a number of recommendations and suggestions concerning improving the security of the water system as it related to the Town. He stated that he was confident that the City would act appropriately in the protection of the water supply.

Mayor Smith commented that she was aware of some of the security measures that had been taken, and she could assure the Town that the Utilities Department for the City of West Palm Beach was working with all of the police forces and sheriff department, and that the water source was safe, and would continue to be so.

Councilman McLendon commented that he hoped the deliberations included the attempt to develop an instrument that would detect very small amounts of poisonous chemicals in the water supply with a minute-by-minute determination.

3. Appeal of Town Manager's Denial of Special Event Permit Sought by the Worth Avenue Association for the Concours on Worth Avenue Event Proposed to be Held on April 24, 2004, to Benefit the Community Foundation of Palm Beach and Martin Counties. [James Brindell, Esq.]

Attorney James Brindell addressed the Town Council, stating that a letter had been submitted requesting a deferral of this item to the February 10, 2004, Town Council meeting. He noted that there had been several discussions with the Town Manager and others involved in the issue, and other formats and adjustments to the plan were being considered.

Town Manager Elwell recommended that the deferral request be granted. He explained that there were certain areas of discretion within the Town Code, where a determination needs to be made that an event could be held without having undue negative impacts upon the Town. There were also certain areas that were requirements of the ordinance, where an applicant must meet certain requirements in order to be eligible to receive a special events permit, and the item in question had been denied as a result of failing to meet three such requirements. The applicant had made it quite clear that they intended to modify their application in the manner necessary to comply with the Town ordinance, and it would then become a discretionary decision as to whether or not it was appropriate to issue the permit, and it would then be appropriate to hear the appeal.

Councilman Wyett moved approval of deferral, to the February 10, 2004, Town Council meeting, of the appeal of the Town Manager's denial of a special event permit sought by the Worth Avenue Association for the Concours on Worth Avenue event proposed for April 24, 2004. The motion was seconded by President Pro-Tem Goldblum, and carried unanimously on roll call.

4. Florida Department of Transportation- Royal Poinciana Way Improvements – Decorative Sign Posts - Highway Maintenance Memorandum of Agreement Amendment.
[Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that the Florida Department of Transportation (FDOT) had agreed to install decorative sign posts along Royal Poinciana Way, however, FDOT wanted the Town to agree to maintain them. He recommended that a Memorandum of Agreement with FDOT be executed by the Town, and that the agreement be approved contingent upon the Royal Poinciana Way Association agreeing to maintain the posts. It was estimated that an annual cost was approximately $4,000 for the maintenance of the decorative posts.

Mr. Leslie Shaw, representing the Board of the Royal Poinciana Way Association, addressed the Town Council, stating that he understood that the maintenance program would not kick in for 2-3 years, and that the Town generally requested funding up front, rather than billing after the fact. He proposed that, upon completion of the project, the Royal Poinciana Way Association provide the Town with $2,000, which would then be held by the Town for future repairs/replacements as needed, and the amount could be incremented by $1,000 during the second year, and then to the full $4,000 thereafter. He explained that when the project started, concrete and aluminum poles were proposed, and through a lot of work and cooperation of FDOT, the decorative poles were agreed upon, probably to the tune of $100,000 in funding, to bring their project to a level that was appreciated and expected in Palm Beach.

Town Manager Elwell responded that the proposal of the Royal Poinciana Way Association was acceptable, and was commonly done with items that were being maintained with private funding sources. He explained that Town staff would follow up on any damage to a pole, so that the responsible party could pay for any repairs.

President Pro-Tem Goldblum moved approval of authorization of the Mayor to sign the Memorandum of Agreement Amendment with the Florida Department of Transportation (FDOT), and approval of the proposal of the Royal Poinciana Way Association. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. Creation of Employee Service Recognition Program to be Funded by The Fortin Foundation of Florida, Inc.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum dated January 7, 2004, regarding the creation of an Employee Service Recognition program, funded by The Fortin Foundation of Florida, Inc. He recommended that the Town Council authorize staff to establish an

Employee Service Recognition Program utilizing funds donated by the Fortin Foundation of Florida, Inc.; the $93,000 necessary to start the program, as well as the commitment to approximately $15,000 per year that would be necessary to maintain the program. He stated that this was an important effort to build the Town team, and recognize long and dedicated service to the Town.

President Pro-Tem Goldblum thanked the Mayor and her mother for donating the funding.

Mayor Smith commented that when employees leave the Town it was often after 20 years of service, and it was very important to sponsor the program to show the appreciation to the employees that work so hard for the Town of Palm Beach.

President Pro-Tem Goldblum moved approval of authorization for staff to establish an Employee Service Recognition Program utilizing funds donated by The Fortin Foundation of Florida, Inc. The motion was seconded by Councilman McLendon, and carried unanimously on roll call.

6. Ad Hoc Investment Advisory Committee Recommendation for Town Council to Appoint a Standing Investment Advisory Committee. [Jane Skittone, Director of Finance]

Finance Director Jane Skittone reported that at the December 15, 2003 meeting of the Investment Advisory Committee, the opinion of the Committee was that a permanent Investment Advisory Committee would be beneficial to the Town, and the Committee recommended that the issue be brought before the Town Council. She explained that it had been a very rewarding and helpful experience for her and the Town to have the knowledge and experience of the Committee to assist in the development of an investment plan. The Town surplus funds currently totaled approximately $100,000,000, and it was important that funds of this size were managed properly. If approved today, an ordinance would be drafted for the February Town Council meeting.

President Pro-Tem Norman Goldblum moved approval of a permanent

Investment Advisory Committee. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

7. Appointment of Resident Members on the Town of Palm Beach Public Safety Retirement Board of Trustees.
[William C. Crouse, Director of Human Resources]

Councilman Wyett commented that he did not believe there was enough time for Council members to review resumes of applicants for boards/commissions, and suggested that a system be used where there was more time allowed for this purpose.

Town Manager Elwell advised that the standard practice was now to have applications ready for review approximately one month ahead of time.

After casting ballots, the Town Council re-appointed to the Public Safety retirement Board of Trustees:

Richard Krock
Frazier Wellmeir

President Brooks thanked the nine other citizens who had expressed an interest.

8. Review of Speed Limits on Town North/South Roadways. [Jack McDonald, Town Council Member and Allen S. Wyett, Town Council Member]

Councilman McDonald advised that he had received many comments on the speed limit issue, which led him to believe that perhaps the issue should be re-visited by the Town

Council. He stated that he had originally thought that the speed limits did not affect the north/south arteries in the Town, however, obviously it had.

President Brooks commented that his interest was to protect the east/west residential streets that, in many cases, had children on them. It was his understanding that an engineering study was necessary, however, it had never been his intention to change the north/south artery speed limits.

Town Manager Elwell advised that the Police Department was very active in the education effort that was the precursor to active enforcement of the new speed limits, and in so doing had observed conditions that were actually unsafe, based upon people's reactions to the significantly lower limits on several areas of north/south roads. In response to that, staff had taken action administratively, which was permissible under the Code. In the area of North Ocean Blvd. and North County Road, from the inlet to Royal Poinciana Way, the speed limit was now restored to 30 mph, and the area of South Ocean Blvd. from Gulfstream to South County Road had also been restored to 30 mph. He explained that the question today was whether the Town Council had any other specific areas of concern.

Councilman McDonald replied that he wanted to take the Town back to where it was before, regarding the north/south arteries.

Town Manager Elwell replied that the administrative changes were in accordance with what had been recommended by Police Chief Reiter, based upon the engineering study, the observations in the field, and the fullness of his review.

Police Chief Reiter reported that there would be consistent 30 mph speed limits in the north end from Royal Poinciana Way all the way north. In the past there were areas in that location where speed limits were higher and lower. He stated that it was an improvement, in his opinion, over what had previously been in place.

Councilman Wyett suggested that the speed limits in the areas being discussed should be increased to 35 mph, as it was an open two lane road that was almost as wide as a four lane road, and traffic was being slowed on busy days.

Chief Reiter replied that there would be near the same conditions as previously had been in place, with the exception of a few places that had been 35 mph. He explained that there were site triangle issues that were of concern, and even though the roadway was wide, there were bicycle path lanes in-between the main roadway and the intersecting east/west streets, and there had been a significant number of accidents and concerns in that area. He stated that he believed that 30 mph was appropriate.

Dr. Sten Lilja commented that the speed limit was something that was close to his heart; he had suggested several times that the speed limit on North Ocean Blvd., where he lived, was dangerous, since the roadway was a narrow two-lane road at that point. He explained that the traffic was going by his property within ten feet, blasting by at up to 50-60 mph, and it was frightening to go out on his property. He stated that it was the Council's responsibility to protect his physical safety and his property. He stated that the 30 mph speed limit was proper if it was being obeyed. He stated that this was a special community, with an ambiance that should be preserved.

Mr. Dick Kleid, 2660 South Ocean Blvd., questioned whether the signs had been removed along the north/south corridor, which posted a minimum speed limit.

Police Chief Reiter replied that was a state road, and the signs had been removed by the Florida Department of Transportation.

Town Manager Elwell clarified that the Town must be cautious on not setting speed limits based on consensus discussion, but rather on actual observations of engineering studies and the Police Department. He explained that the State default speed limit was 30 mph, and to raise it above 30 mph would require a further study with a demonstration that it was actually appropriate and safer to do that, because the Statute was very clear that a speed limit in excess of the State default speed limit cannot be done without such a study. In the absence of any specific direction from the Town Council, staff would continue to generally monitor the speed limit changes.

Police Chief Reiter indicated that he would follow up with the Florida Department of Transportation regarding the posting of minimal speed limits.

9. Discussion of Interior Noise Standards.
[Jack McDonald, Town Council Member]

Councilman McDonald advised that he had recently heard a speaker from the Deaf Service Society speak about interior noise, and thought it was important enough to have the Town Council consider the issue.

Paul A. Brown, M. D., addressed the Town Council, providing his credentials, and distributing a handout entitled "Noise and Your Hearing," and a unit that could be used to test indoor noise. He proceeded to speak concerning factual information regarding the issue. He responded to questions from the Town Council.

Discussion took place regarding leaf blowers, and Director of Planning, Zoning & Building Robert Moore advised that the issue was planned to be sent to the Ordinances, Rules & Standards Committee.

Councilman McDonald moved approval of a staff review of the noise issue, with recommendations to the Town Council including the review of construction procedures by the Planning, Zoning & Building Department. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

10. Review of Insurance Requirements for Valet Parking Companies.
[Jack McDonald, Town Council Member]

Councilman McDonald requested information concerning insurance coverage for valet parking in the Town.

Town Attorney Randolph advised that the Town had recently adopted valet parking standards, which included insurance coverage in the commercial areas; there were no like regulations in the residential areas.

Councilman McDonald replied that the residents must be concerned about the issue; if a problem occurred and the valet company had no coverage in residential areas, it may be a problem.

Councilman Wyett suggested that valet parkers wear some sort of visible/reflective clothing/uniform for safety factors, so that they could be seen at night in traffic.

Mr. Nick Leone, operator of a valet service in Town, commented that the Town of Palm Beach was named as an additional insured on their insurance policy for permanent locations, and that he would be willing to get involved in insuring the Town for the private parties that made use of his valet service as well. He stated that the uniforms currently worn did not have any reflective material on them, and he agreed to speak with the uniform company to determine what could be done.

Town Manager Elwell commented that the operations at restaurants and other commercial locations were permanent and ongoing, as opposed to private parties, where it would be every now and then that someone would secure the services of a valet company. He stated that it may be difficult to devise a way to monitor and enforce the same types of requirements applied to commercial valet operators to valet services for private parties.

Councilman McDonald moved referral to staff of the review of insurance requirements for valet parking companies, to return to the Town Council at the March 9, 2004, Town Council meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

IX. ORDINANCES

A. Second Reading

1. 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, Except Members in Bargaining Units; Providing for Severability; Providing for Repeal of Ordinances in Conflict;

Providing for Codification; Providing an Effective Date. [John B. McCracken, Esq.]

Town Attorney Randolph read Ordinance No. 4-03 by title as printed above: (second reading).

Councilman Wyett noted that he had met with representatives of the Fire Union on this issue, and some had felt they had been discriminated against because the bargaining unit had been left out. He stated that he had explained that they had been left out because it could not be offered to them because of the Town's bargaining position with them, and nothing could be offered unless it had bargained.

Councilman McLendon moved approval of Ordinance No. 4-03 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. 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 Public Safety Officers Who Are Drop Participants in the Retirement System, Except Members of Bargaining Units; 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.]

Town Attorney Randolph read Ordinance No. 7-03 by title as printed above: (second reading)

President Pro-Tem Goldblum moved approval of Ordinance No. 7-03 on second reading. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

B. First Reading

1. NONE

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

XI. DEVELOPMENT REVIEWS

At this time, Town Clerk Pollitt administered the oath to all those who would be providing testimony in the following matters.

A. Appeals

1. NONE

B. Time Extensions

1. Site Plan Review #8-2001, the Sea Lord Hotel Property. [James R. Brindell, Esq.] *Deferred From the June 10, 2003, August 12, 2003, September 9, 2003, October 14, 2003, November 12, 2003, and December 9, 2003, Town Council Meetings.*

Attorney James Brindell, on behalf of Rafferty Funding, reported on the status of the Sea Lord Hotel property. He explained that the stay was lifted in the bankruptcy proceedings on January 7, 2004, and local foreclosure action was planned to be re-set this week. The parking lot had been removed, the irrigation was being installed, the sod would be delivered today, there would then be a general clean up. It was expected that the work would be completed this week.

Councilman McLendon moved approval of deferring Site Plan Review #8-2001 to the February 10, 2004, Town Council meeting for review at that time. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. <u>SITE PLAN REVIEW #7-2003 WITH VARIANCES</u> The application of 11 Via Vizcaya, LLC relative to property described as Lot 13, Via Vizcaya; commonly known as 13 Via Vizcaya; located in the R-A Zoning District. Site plan approval to construct a single family house on a platted, non-conforming lot with an existing lot area of 15, 987 square feet in lieu of the 20,000 square foot minimum required, and with a lot depth of 130.8 feet in lieu of the 150 feet minimum required in the R-A Zoning District; variance request for a street side setback of 15 feet on the south side of the property in lieu of the 35 feet minimum required; and, request for a building height plan variance with a setback of 39.2 feet in lieu of the 47 feet minimum required. *Deferred from the December 9, 2003, Town Council Meeting.*

This item was deferred to the February 10, 2004, Town Council meeting.

b. <u>SPECIAL EXCEPTION #22-2003 WITH SITE PLAN REVIEW</u> The application of Palm Beach County Bank relative to property described as Lots 46 through 55 inclusive, Sunrise Avenue Addition No.2, and Lots 35, 36 and 37, Bungalow Park Addition; commonly known as 165 Bradley Place, 255 Sunrise Avenue, and 285 Sunrise Avenue; located in the C-TS Zoning District. Special exception to allow two bank drive-thru stalls for the existing building on the northwest portion of site; and Site Plan Review for a bank with two new drive-thru stalls, parking reconfiguration and modifications to on-site traffic circulation. *Deferred from the October 14, 2003, and November 12, 2003, Town Council Meeting.*

This item was deferred to the February 10, 2004, Town Council meeting.

2. New Business

a. SPECIAL EXCEPTION #1-2004 The application of Tara Pearl relative to property described as Palm Beach Hotel Condominium Units 23 through 26; commonly known as 235 Sunrise Avenue, Suite C23-26; located in the C-TS Zoning District. To allow the operation of a 3,099 gross leasable sq. ft. health and fitness studio ("Trainer's Gym"). Since the proposed space is in excess of 2,000 sq. ft. of gross leasable area, the new tenant is required to obtain Town Council approval and a finding that the proposed use is town serving.

Ex-parte communication was declared by Councilman McLendon with Attorney Maura Ziska, and one of the owners; by President Pro-Tem Goldblum with Attorney Ziska; by Councilman Wyett via telephone with Attorney Ziska; by President Brooks via telephone with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the gym was previously located on Brazilian Avenue and was now in the process of moving into the current space on Sunrise Avenue. The Town serving issue had been addressed in a letter submitted by their accountant, stating that 95% of the clients at Trainer's Gym are Town persons.

Zoning Administrator Paul Castro commented that concerns had been raised by the neighbors regarding the televisions for the training room, as well as the aerobics classes and music.

Mr. Gregory Marks, co-owner of the gym, advised that there was one small 20" flat screen television for use by clients; aerobics were not offered at the gym, and there was no loud music. There was a very calm, professional atmosphere in the gym at all times. He welcomed the neighboring residents to come to the gym, and noted that he was planning on attending a condominium meeting to introduce himself to everyone. He explained that the clients were not invited to use the pool, however, the Heart of Palm Hotel was used for a water aerobics class, as it suited their clientele as well. The people at the Palm Beach Hotel were interested in offering the same thing at some point.

Councilman Wyett commented that it was not appropriate procedure for applicants to move in and then come to seek permission; he stated that he did not want to see this set a precedent for such actions, and did not want to see this happen again – he directed his comments to the Building Department.. He expressed concern with parking on the street.

Director of Planning, Zoning & Building Robert Moore clarified that he had told the applicants they could move, however, it would be under their own peril, although there had not been an occupational license issued – they had been told that they could move in, so that they could relocate their equipment when their lease was up in their old space. He clarified that it was not the applicant's fault; it had been his decision.

Councilman McLendon moved approval of Special Exception #1-2004. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously. On roll call the motion carried unanimously.

b. SPECIAL EXCEPTION #2-2004 The application of 223 Sunset LLC relative to property described as Floral Park Lots 188 & 189; commonly known as 223 Sunset Avenue, Suite 223; located in the C-TS Zoning District. To allow the operation of 2,392 gross leasable sq. ft. on the second floor for an investment advisory firm ("PDP Capital LLC"). Since the proposed space is in excess of 2,000 sq. ft. of gross leasable area, the new tenant is required to obtain Town Council approval and a finding that the proposed use is town serving. **Request for Deferral to the February 10, 2004, Town Council Meeting Per Letter Dated December 31, 2003, from James R. Brindell.**

Ex-parte communication was declared by Councilman McLendon via telephone with Attorney Maura Ziska; by President Pro-Tem Goldblum with Attorney Ziska; by

Councilman Wyett via telephone with Attorney Ziska; by President Brooks via telephone with Attorney Ziska in regard to the application.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the Town serving requirement had been met; PDP Capital was a permitted use in the CTS Zoning District and would be compatible with the surrounding neighborhood.

Planning, Zoning & Building Director Robert Moore advised that there was no objection from staff.

Councilman McLendon moved approval of Special Exception #2-2004. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Pro-Tem Goldblum had temporarily left the room.

c. SPECIAL EXCEPTION #3-2004 WITH SITE PLAN REVIEW MODIFICATION AND VARIANCES The application of Coco Palm Beach, LLC and New Bradley House, LLD relative to property described as the East 10 feet of Lot 30 and all of Lots 31-37 inclusive, of "Map of Floral Park"; commonly known as 290 Sunset Avenue; located in the C-TS Zoning District. To relocate the dumpster and place odor suppression equipment for the kitchen hood ventilation system at ground level to the rear of the parking lot on the southeast side of the subject property. Variances requested to delete one (1) required off street parking space located at the southeast side of the subject property; and, locate the ductwork for the kitchen hood ventilation system on the south side of the subject property at a height of 14 feet 6 inches above ground level with a zero (0) setback in lieu of ten (10) feet minimum rear yard setback required.

i. Request of Coco Palm Beach, LLC and New Bradley House, LLD Contractor to Keep Construction Barrier on Sidewalk Through January 30, 2004.

Mr. Frank Stellino, general contractor of the Coco Palm Beach project, addressed the Town Council, stating that he had spoken with Attorney Lynch, who did not think it was relevant to be present, due to the fact that the application had been submitted a month ago.

Town Manager Elwell clarified that Mr. Stallino was present to address item (i), which was separate from the Special Exception request.

(This item was continued after the luncheon recess and is included on audio tapes #2 and #3 of the Town Council meeting of January 13, 2004).

Attorney Frank Lynch, on behalf of Coco Palm Beach, LLC, addressed the Town Council, recalling that when the restaurant was originally approved, a requirement had been the installation of a piece of equipment called a "smog hog." At the time the assumption was that the equipment would go on the roof and plans had been submitted to the Building Department indicating that. Since that time, it had been determined that, because of the weight, it would be better to place the equipment in the parking lot to the east of the hotel. In doing so, it would need to be enclosed by a structure 11" high that would completely eliminate the view from the street; it was also intended to provide landscaping in front of the wall. The weight of the equipment, as well as service maintenance were reasons for the placement in the parking lot. He explained that by placing the equipment in the parking lot, one parking space would be lost for the hotel; arrangements were being made to replace that parking space in the Biltmore Galleria lot, where the rest of the parking was located. He stated that the structure complied with all setback requirements.

Zoning Administrator Paul Castro commented that the equipment in question was fairly large, and the Landmarks Commission had met with the applicants, with the thought that the equipment on the roof would take away from the architecture of the building and the landmark status of the property. He stated that staff questioned the hardship. Originally the equipment was to be placed on the top of the roof with the duct work going straight up to the roof – there was a question as to whether that duct work would be truly on the property of the applicant, or whether it may overhang the neighboring property to the south. There was not a survey clearly identifying that. There was also a letter of complaint that had come in yesterday from the Island Animal Hospital, questioning the odors that might be created and the noise created by this large piece of equipment fairly close to their property.

Councilman Wyett commented that parking had been an issue when the restaurant had originally been considered, and the applicant was now coming back requesting an additional compromise. He noted that the equipment in question was usually located on the roof, and Chinese restaurants gave off many food odors, and he questioned whether equipment on the ground level would make the odors more obvious than if the equipment was on the roof.

Attorney Lynch responded that the equipment was used in many restaurants, and he had specifications from the manufacturer that indicated that the equipment would eliminate the odors. The placement of the equipment was being considered purely from a safety issue of putting the large amount of weight on the roof, versus putting it in the parking lot. This was not a cost savings situation.

Director of Planning, Zoning & Building Robert Moore commented that the applicant had provided enough information regarding the variance, however, the applicant would need to address whether the weight of the equipment was or was not a safety issue. He also noted that there prevailing breezes from the southeast that would be blowing across the roof, and there were multi-family structures located to the northwest of the building, which would be in direct line with the area involved with the cleaning and scrubbing of the associated smells of the restaurant.

Architect Giacomelli advised that the equipment was state of the art; the opinion of the Landmarks Commission had been considered, among other factors. He stated that it was not a safety issue at this point, however, it may be a safety factor in the future.

Attorney Ron Kolins commented that he represented the Bradley House, and he was not part of the group presenting this case, and was speaking as a member of the public. He recalled that the restaurant was approved two years ago, and the reason why it had not yet opened was because the construction process had encountered one problem or another, and it had taken an extraordinarily long time. He stated that the fact that there was no elevator to get materials up and down was a hardship, as well as the lay of the land. He recalled that two years ago it had been discussed that the "smog hog" had been kind of an extra and had been done to make some of the neighbors feel absolutely comfortable. He stated that he hoped that the problem of installing and maintaining the equipment would not be exacerbated by putting the equipment on the roof.

Councilman McLendon moved deferral to the February 10, 2004, Town Council

meeting, of Special Exception #3-2004, so that the parking could be reviewed, as well as a chimney study for the "smog hog" equipment. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

Attorney Frank Lynch now addressed the request of Coco Palm Beach, LLC and New Bradley House, LLD Contractor to keep the green construction barrier on the sidewalk through January 30, 2004.

Councilman Wyett moved approval of allowing the contractor to keep the green construction barrier on the sidewalk through January 30, 2004. The motion was seconded by President Pro-Tem Goldblum.

Town Manager Elwell clarified that it was an unusual circumstance to grant such a request in the season, and staff had reluctantly recommended it, only because of the facade of the building being immediately adjacent to the sidewalk that was used by the public. He noted that the usual permit fees would apply.

Councilman Wyett incorporated the comments of Mr. Elwell into his motion, as did the seconder of the motion. On roll call the motion carried unanimously.

Mr. Sumner Kaye, representing Simon Fireman, addressed the Town Council, stating that the Biltmore residents were looking forward to the Chinese food. He stated that he was an investor, and the only reason that the "smog hog" was being requested to be moved to the parking lot was because of the sensitivity to the area and the residents of the Biltmore, who had been very supportive.

d. SPECIAL EXCEPTION #4-2004 WITH SITE PLAN REVIEW The application of Primavera Way, LLC and Ellen Shapiro Jaffe and Robert M. Jaffe, as Co-Trustees of the

Sylvan Trust u/a/d April 11, 2002 relative to property described as lengthy legal description on file; commonly known as 447 Primavera Avenue; located in the R-A Zoning District. To allow the construction of a two story, single family residence on a non-conforming unplatted lot that is 137 feet in depth in lieu of the 150 foot minimum required in the R-A Zoning District.

Ex-parte communication was declared by Councilman McLendon with Attorney Ziska; by President Pro-Tem Goldblum with Attorney Ziska; by Councilman Wyett via telephone conversation with Attorney Ziska; by President Brooks via telephone with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the exact same plan and design had been before the Town Council two years ago, and was approved. The applicant was now requesting approval again, because the property was non-conforming in depth. All lot, yard and area requirements for site plan review had been met. The owner had agreed, in accordance with staff comments, to raise the seawall to 5' NGVD, and the survey had been revised to show easements of record; the landscape trimmings would be put in the proper place.

Director of Planning, Zoning & Building Moore commented that a survey showing all surveys of record was required before a building permit could be issued; the vegetation waste pick-up area would need to be identified.

Councilman Wyett commented that the house crowded the lot to the east, and the one to the north. He stated that he did not think the house was well sited, was not a good addition to the streetscape, and that the house should be re-designed.

Attorney Ziska stated that the reason the house was set back was for privacy and to be able to save the Banyan Trees and to utilize the yard area on the lake.

Director of Planning, Zoning & Building Robert Moore commented that because it was a site plan review, the Town Council could negotiate with the applicant as far as arranging the house on that piece of property.

Architect Lynn McCall provided an architectural elevation and noted the dimensions of the house and pool. She noted that she would be happy to relocate the pool.

Zoning Administrator Paul Castro commented that the building height plane requirement was a 2' setback for every 1' in building height, which would require a 50' front setback, which needed to be addressed by the applicant. He recommended deferral so that staff could meet with the applicant.

Councilman Wyett moved deferral of Special Exception #4-2004 to the February 10, 2004, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

e. SITE PLAN REVIEW #1-2004, WITH SPECIAL EXCEPTION AND VARIANCES The application of Heart of Palm Beach, LLC relative to property described as all of Lots 31, 32 and 33, Block F, Royal Park Addition; commonly known as 160 Royal Palm Way; located in the C-B Zoning District. Site Plan approval for a modified site plan for the Heart of Palm Beach Hotel including a partial third floor addition on the east building to add 6,984 square feet for 7 rooms and a corridor, and a basement parking garage of 8,237 square feet under the existing surface parking lot, raising the surface parking lot in the back, for a net gain of 17 off-street parking spaces. These seven additional hotel units will allow the hotel to provide a few suites which it currently lacks. A special exception is also requested to expand the previously approved hotel special exception. Variance to allow a partial third story addition to the existing hotel in the C-B Zoning District, where only two stories are allowed; variance allowing the expansion of a non-conforming building or structure by completing the proposed changes and extending the overall length of the third floor of the building to 264 feet in lieu of the 150 feet allowed; variance to allow 63.33 hotel rooms per Palm Beach acre in lieu of the 58.67 existing and the maximum 26 hotel rooms per Palm Beach acre allowed by adding 7 additional rooms on the third floor of the east part of the building; variance to allow a building height of 34.92 feet from zero datum in lieu of the 25 foot maximum height allowed for a two-story building for the east building addition; and, a variance to allow an overall building height of 36.0 feet from zero datum in lieu of the 30 foot maximum overall height allowed for a two-story building for the east building addition.

This item was deferred.

f. <u>SITE PLAN REVIEW #2-2004 WITH VARIANCES</u> The application of Ajit Asrani TR, Ajit Asrani Trust relative to property described as Lot 5 and the west 85 feet of Lot 6, Block E, Royal Park Addition; commonly known as 215 Brazilian Avenue; located in the R-C Zoning District. Site Plan approval for a modification to the site plan of The Plaza Inn, to expand the building area by constructing a 4-story addition on the east side (without increasing the number of rooms) and renovate the hotel, to add a 90-seat function room in addition to relocating the existing bar and 44-seat dining room. Also requesting to add an exercise room, business center, new laundry and storage areas, new kitchen, and management office. The application requests to reconfigure the site plan by relocating and redesigning the swimming pool and associated deck, and reconfiguring the off-street parking lot; increasing parking spaces from 24 to 36 plus 6 valet spaces. Variances are requested to expand a non-conforming use by adding a 90-seat function room; tear down and rebuild more than 50% of a non-conforming building; expand a non-conforming building by adding a four-story addition on the east side of the property (The ground floor of the addition will be 4,221 square feet, and the total square footage of the addition will be 18,049 square feet); a front setback of 25 feet in lieu of the 37.58 feet required because of the building height; a side (east) setback of 10 feet in lieu of the 37.58 feet required because of the building height; a rear setback of 5 feet in lieu of the 30 feet required by code; a building height of 37.58 feet from zero datum in lieu of the maximum 23.5 feet allowed by code for a two-story building; a 4-story building in lieu of the maximum 2-story building allowed by code; an overall building height of 41.58 feet from zero datum in lieu of the 26.5 feet maximum allowed by code; a lot coverage of 34.7% in lieu of the maximum 30% allowed by code; landscaped open space of 21.1 % in lieu of the minimum code requirement of 35%; variance to allow valet only parallel parking in existing parking areas and a reduction in aisle width to 16 feet in lieu of the required 25 feet for valet parking; to allow valet only parallel parked automobiles to block another automobile requiring one automobile to be moved to allow another to be driven from the property; and, to have no loading spaces in lieu of the minimum of 2 loading spaces required by code.

This item was deferred.

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The luncheon recess was taken at 12:15 p.m.

The regular Town Council meeting of January 13, 2004,
was reconvened at 2:05 p.m.

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g. SITE PLAN REVIEW #4-2004 WITH SPECIAL EXCEPTION The application of Amici Partnership and Three Seventy Five South County Associates relative to property described as Royal Park Addition, Lots 1 to 4 inclusive (less road right-of-way), Block 9 and Royal Park Addition, West 22 feet of Lot 66 and Lots 67 to 69 inclusive, Block 9; commonly known as 375 South County Road; located in the C-TS Zoning District. Site Plan review to add a 1,177 square foot awning addition and a 96 square foot marquee along Peruvian Avenue for a new proposed restaurant use. Special Exception to modify a previously approved special exception by adding a wood burning stove in the kitchen. The existing Savanna's P.B.'s name and operation is changing to Amici. Both Savanna's P.B. and Amici are under the same ownership and operation. The indoor and outdoor seating is not proposed to change, and the applicant is proposing to assign the existing off-site parking agreement from Savanna's P. B. to Amici.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that a special exception was required because the property was in the Town-serving zoning district, and the space was over 2,000 sq. ft. The current restaurant in that location, Savanna's, had that special exception, however, the change of the name to Amici required a new occupational license, which triggered the need for a new special exception. The site plan review was triggered by the fact that the applicant was planning on extending the awning out in front of the restaurant by 4'. This would allow pedestrians the opportunity to walk under that section of the sidewalk during rain. The marquis, or the entranceway of the restaurant was proposed to be extended out toward the curb, to a point authorized by Code. He exhibited a graphic representation of the proposal, explaining the specifics to the Town Council.

President Brooks noted that there was a letter of opposition to the project.

Attorney Kolins replied that the gentleman who had written the letter was present today to address the issue, and that the applicant had worked with him to resolve any issues.

Zoning Administrator Paul Castro commented that the Fire Department stated that they wanted the building fire sprinklered throughout, and the fire alarm system brought up to Code. The Town Engineer had recommended against the structure in the right of way – the plan had indicated loss of parking adjacent to the awning on Peruvian Avenue. The Building Department stated that the applicant must meet the previous conditions of approval, and the parking agreement acceptable to the Town; demonstrate mitigation of any nuisance created by the wood burning stove, and that appropriate equipment be used to deal with the fumes/odors; the applicant should agree to previous conditions, one of which was to come back six months after approval, or the moving in of Amici, to demonstrate that they had met all previous existing conditions of approval, which included the trash being disposed of, and taken out appropriately. Some of the other conditions were: not opening the windows on the east side of the restaurant itself, allowing breakfast and lunch, no outdoor music or lighting.

Mr. Golson of the Everglades Plaza Condominium, stated that there was no problem with the awning, but did feel that there may be a problem with noise of loading, unloading, and removing garbage through Chilean Avenue, right beneath the condominium building. He noted that Savannah had been opened only during the season, and Amici would be opened all year, and the problems were likely to be exacerbated during the summer. After discussing the situation with Mr. Ciminelli, there had been agreement that there would be every effort to have the loading and unloading go either to Peruvian or to South County. He urged the use of a different method of loading, unloading, and removing the garbage. He also noted that there were often large delivery trucks on Chilian, making deliveries to the liquor store on Peruvian and County. The trucks were often on the north side of Chilian and another one on the south side of Chilian, and often the unloading blocked the driveway as well as blocked the fire hydrant.

In response to the suggestion of Mayor Smith to have the garbage picked up from South County Rd., Mr. Castro advised that several years ago, when Jo's originally came in for restaurant approval, they were supposed to work with the Public Works Department to find an alternate location for the re-cycling bins for all of their bottles, as well as their dumpster locations. They had worked out the current positioning of the dumpsters.

Attorney Kolins responded that neither of the two issues raised by Mr. Golson – the bottles and the emptying of trash, as well as the location for delivery trucks had changed because the restaurant was going from Savannah's to Amici. The applicant wanted to be a good neighbor and had assured Mr. Golson that he would work with everyone to resolve any issues.

Mr. Castro read the all of the previous conditions of approval that would apply:

Demonstrate to the Police Department satisfaction that mid-day and evening customer parking accommodations will not cause traffic congestion in the immediate area.

Provide a nuisance free method of storage, handling and disposal of solid waste material.

Valet parking may be provided for evening and dinner customers only.

Kitchen exhaust system shall be equipped with filters, commonly referred to as "scrubbers," to remove all obnoxious fumes and odors.

Total restaurant parking requirement determined by the final plan, in excess of 22 spaces must be provided by applicant in an off-site location

Applicant must provide verification for Town-serving status on an annual basis and concurrent with Occupational License renewal. Additionally, applicant must provide the Town a copy of the parking lease for the off-site spaces.

To compensate for the building square footage added as a result of enclosing the courtyard, an equivalent amount of square footage shall be removed from the existing mezzanine within the proposed restaurant space.

Six months after the issuance of Certificate of Occupancy for the new space, applicant shall be required to come back before the Town Council to consider whether the restaurant has met all previous and new conditions of approval placed on the operation of the restaurant. Please note that if all of these conditions have not been satisfactorily met, the new portion of the restaurant may be required to be vacated

Mr. Castro explained the following condition related to an addition that was added. In addition to providing Town serving documentation for the restaurant at the time of renewal of the occupational license every year, the applicant shall also submit new Town serving documentation six months after the certificate of occupancy for the new space.

All french doors for the new 600 sq. ft. portion of the restaurant shall remain closed at all times. In addition, no other outside doors shall be allowed.

There shall be no gates allowed at the entry to the via as proposed on the plan.

No loud music, other than a piano, shall be allowed.

All garbage including glass shall be stored in the restaurant after 6:00 p.m., and not placed in the dumpster area until after 8:00 a.m. the next morning.

The kitchen air filters (scrubbers) for the restaurant shall be cleaned on a weekly basis.

The kitchen door at the back of the restaurant shall remain closed after 6:00 p.m. and not opened until after 8:00 a.m.

Mr. Handlesman agreed to install some type of covering for the three arches on the west portion of the parking garage, which arches abut the Evergldes Plaza Condominium property.

Jo's Restaurant will obtain updated receptacles for storage of liquid waste (oil).

Efforts will be made to move the recycling receptacles from their present location, to be addressed by the Public Works Department.

Jo's agrees to use a deodorized dumpster cleaner at all times to clean their dumpsters and to sweep out the dumpster on a steady basis.

Mr. Handlesman agrees that a two-sided trellis will be installed and maintained around the fan on the roof.

Mr. Handlesman agrees that the light on the tower will be reduced and changed to yellow in order to reduce the bright light which apparently affected several residents at Everglades Plaza.

Pursuant to Special Exception #40-97:

All previous conditions under Special Exception 14-94 and 16-95 shall be met by the applicant.

No dinners shall be ordered after midnight. Last call at the bar is 1:00 a.m.

Only the windows along South County Road and the southwest corner of Peruvian Avenue may be opened. This specifically excludes the windows on the portion of the restaurant that was expanded by the approval of Special Exception 16-95, and the windows in the bar area along Peruvian Avenue.

The restaurant may be open for breakfast after 7:30 a.m., and all windows in the restaurant must be closed for the breakfast serving hours.

The applicant shall come back to the Town Council six months after opening the doors, to consider whether the applicant has met all previous and new conditions of approval.

Under Special Exception 15-99:

All previous conditions under Special Exceptions 14-94, 16-95, and 40-97 shall be met by the applicant.

The dinner hours were changed to relate that no dinner orders shall be placed in the outside dining area after 10:00 p.m.

The applicant shall come back to the Town Council six months after the restaurant opens to determine whether the applicant has met all previous and new conditions of approval placed on the operation of the restaurant. If it is determined that the outside dining area is negatively impacting the surrounding area, the Town Council can eliminate any or all of the outside dining on the south side of the building.

The applicant shall enter into a parking agreement for the 22 parking spaces at the Apollo parking lot, which is acceptable to the Town.

Under Special Exception 24-2001:

No dinner orders shall be placed in the outside dining area after 10:00 p.m.

The applicant shall come back to the Town Council six months after opening to be sure that all previous and existing conditions were met.

The applicant shall enter into a parking agreement acceptable to the Town for the 22 required parking spaces off site at the Apollo parking lot.

Under Special Exception 26-2002:

All conditions of approval for Special Exceptions 14-94, 16-95, 40-97, 15-99, 24-2001, and 26-2002 shall be met by the applicant.

No dinner order shall be placed in the outside dining area after 10:00 p.m.

No dinner shall be ordered after 12:00 midnight.

Last call for the bar at 1:00 a.m.

Only the windows along South County Road and the southwest corner of Peruvian Avenue may be opened. (This specifically excludes the windows on the portion of the restaurant that was expanded by the approval of Special Exception 16-95, and the windows in the bar area along Peruvian Avenue).

Breakfast may be allowed after 7:30 a.m., and all windows in the restaurant shall be closed for breakfast serving hours.

Valet parking shall be allowed; however, the applicant must obtain a valet parking permit from the Police Department.

The applicant shall come back to the Town Council six months after opening to consider whether the applicant has met all previous and new conditions of approval. If it is determined that the outside dining area is negatively impacting the surrounding area, the Town Council can eliminate any or all of the outside dining on the south side of the building.

Prior to the issuance of an occupational license, the applicant shall enter into a parking agreement acceptable to the Town for the 22 required parking spaces at the Apollo parking lot.

Director of Planning, Zoning & Building Robert Moore advised that when/if any conditions had not been met, the Building Department had been contacted, and the Building Department saw to it that the conditions were enforced. There had been very few operations with the operation of Savannah's Restaurant.

Attorney Kolins advised that there was a lengthy yellow curbing area adjacent to the restaurant on South County Road, which was in part a bus stop. He suggested that perhaps a portion of that could be used for delivery trucks to park. Another thought was that there was an area right in front of the restaurant on Peruvian, where there were two metered parking spaces, and perhaps that area could be allowed to be a loading zone until 12:00 noon, one hour parking from 12:00 to 6:00 p.m., and then used by the valet from 6:00 p.m. onward.

Mr. Golson replied that there had been several restaurants since he had lived in the condominium, and the current restaurant was the best operation, however, the twelve month operation would make more of a garbage problem. He suggested that the garbage be moved out to Peruvian, so that the noise would be diminished.

Town Manager Elwell suggested that the loading/unloading issues be studied, with the Police Department determining the final outcome.

Mr. Moore advised that there were some service issues that the Building Department and the Public Works Department would like to address and review.

President Pro-Tem Goldblum moved approval of Site Plan Review #4-2004, with the understanding that the conditions discussed today would be incorporated in the approval. Staff would come back to the Town Council with an agreement at the March 9, 2004 Town Council meeting The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Other

a. Request for Waiver from Noise and Hours of Construction Work Ordinances – 470 South Ocean Boulevard. [Ron Kolins]

Attorney Ron Kolins addressed the Town Council, on behalf of the applicant, stating that approval for work to be done at 470 South Ocean Blvd. had been given several months ago, however, demolition was required before construction started. He noted the two sections of the Code which would be pertinent to the request today. He withdraw the request for extended hours of operation (Section 42-199), and requested approval for the waiver from Section 42-198 (operation of certain machinery during winter, Sundays and legal holidays). He explained that the Town had been provided a letter from Thomas B. Cushing Demolition with the demolition plan. The work would not require the closure of any Town streets, nor would it interfere with traffic in the Town. A flag person would be provided to watch out for pedestrians in the area. There was no use from any direction that would be negatively impacted, with the exception of the resident to the west, Mr. Robert Wood, who had written a letter of support for the project.

Director of Planning, Zoning & Building Robert Moore advised that the staff recommendations were as follows: Contractor must follow the demolition plan on the letter dated December 19, 2003 from Thomas B. Cushing Demolition. The demolition traffic plan dated January 12, 2004, also must be followed. The contractor must conform to all other required conditions of the Public Works Department, Fire-Rescue, Police, Planning, Zoning & Building. There would be no work allowed on Sundays or legal holidays. No heavy equipment, other than construction related noise, permitted from 9:00 a.m. Work would begin no later than 8:00 a.m., and cease at 5:00 p.m. Demolition would be completed no later than February 9, 2004.

Councilman Wyett recommended that there be no construction equipment or trucks allowed to be parked on South Ocean Boulevard, so as not to impede any traffic in that area. He also recommended the exclusion of work on Saturdays, and then extend the end date for demolition by four days.

President Pro-Tem Goldblum moved approval of the request for waiver of Section 42-198 (operation of certain machinery during winter, Sundays and legal holidays) with the conditions that there be no construction equipment or trucks parked on South Ocean Boulevard during demolition, and that there by no work on Saturdays, Sundays, or legal holidays. The end date for demolition would be February 13, 2004. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business, the regular Town Council meeting of January 13, 2004, was adjourned at 3:30 p.m.

William J. Brooks
Town Council President

Mary A. Pollitt
Town Clerk