TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON JANUARY 11, 2005

I. CALL TO ORDER AND ROLL CALL

President Wyett called the regular Town Council Meeting to order at 9:30 a.m, on Tuesday, January 11, 2005, in the Town Council Chambers. On roll call, all Elected Officials were found to be in attendance:

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

Others in attendance for all or a portion of the meeting were:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John Randolph
Charlie Boggs - Purchasing Agent
James Bowser - Town Engineer
Russ Bitzer - Recreation Director
Paul Brazil - Public Works Director
Paul Castro - Zoning Administrator
Andrew Cox - Acting Fire-Rescue Chief
Rick Dytrych - Golf Pro
Tim Frank - Planning Administrator
Robert Moore - Director of Planning, Zoning & Building
Michael Reiter - Police Chief
Jane Skittone - Finance Director
Cheryl Somers - Assistant Finance Director
Spencer Wilson - Information Systems Manager
Mary Pollitt - Town Clerk

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5416 • Facsimile (561) 838-5417
E-mail: townclerk@townofpalmbeach.com • Website: www.townofpalmbeach.com

RECYCLED PAPER

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Hal Hutchins, Police Sergeant, Upon His Retirement from the Town of Palm Beach After 23 Years and 3 Months of Service.

Mayor Smith read a proclamation recognizing Sergeant Hutchins years of service and presented a ring to him.

B. Government Finance Officers Association (GFOA) Awards for Distinguished Budget Presentation Award, Certificate of Achievement for Excellence in Financial Reporting, and Award for Outstanding Achievement in Popular Annual Financial Reporting. [Linda Davidson, Representative of GFOA]

GFOA Representative Linda Davidson presented the three awards to Jane Skittone, Cheryl Somers, and Amy Wood.

IV. COMMENTS OF MAYOR LESLY S. SMITH

Since this is my last Town Council meeting as Mayor, I am taking this opportunity to make what we might call some concluding remarks. I have already exhausted the retrospective approach to my tenure, and I promise to leave the prospective approach - the vision, etcetera - to the new Mayor.

Instead, since both candidates for Mayor are here, I thought I might fashion a letter to them

with - if you will forgive me - some practical advice.

Dear Mr. Mayor, whomever it may be (but we know the last name will begin with "mac"):

My deepest congratulations on winning the confidence of Palm Beach voters and assuming the mantle of Mayor at a time when we face the challenges of a complex and unpredictable future. I hasten to remind you that the future has always been unpredictable and full of complex challenges, and I know that you have the experience and dedication to rise to the occasion.

Drawing upon my five years as Mayor, I pass along to you just a few words of practical advice.

First, make new friends . . . but keep the old.

That's a girl scout song, I think - not that I was a girl scout, with all that camping and cooking. But it makes a valid point. I hope you will continue my efforts to forge bonds with Municipal, County, State and Federal officials . . . new and old . . . because we're all in this together, and these are powerful alliances.

Second, however, remember that the ocean is more powerful than government agencies. Indeed, in recent Palm Beach history, the ocean appears to be more cooperative and better organized than the Army Corps of Engineers! Preservation and protection of our shoreline will always be a top priority. Think "sands of time" rather than a quick fix or a permanent solution.

Third, "qualified" is a subjective term when applied to members of our boards and commissions. I don't care if applicants are Manny, Moe and Jack or the cast of "West Wing," we must establish standards of knowledge and experience so that the Town is not left with egg on its face in situations like the Four Winds debacle. Think "rigorous" and "objective" rather than political cronies.

Fourth, growth doesn't really have an I.Q. When we refer to "smart growth," we're the ones who have to be smart. We have some big proposals on the table for a tiny, built-out Town - Poinciana Plaza, the gas station property, and likely several more. We also have new families moving in, building new houses and renovating old ones. If ever there was a time to develop strict, uniform planning and zoning standards, this is it. Think tough love; just say no.

Fifth, a sense of humor overcomes anger and frustration . . . even defeat. Most problems require several attempts, a trial and error approach. Try to chuckle at the missteps and find some

humor in our human foibles. Being Mayor is serious business, heaven knows, but that doesn't mean that the Mayor should take himself - or herself - too seriously.

Finally, a handful of things I have learned the hard way:

- you don't have to appear on television in a torrential rainstorm. Perhaps you will look more attractive than I did, but the drowned rat look is not Mayoral.
- when launching a major public project, remember to cut the ribbon. Otherwise, the media looks foolish calling it a ribbon-cutting.
- speaking of the media, here are some words that I find handy when surprised or stumped. They work for all occasions . . . "civility," "Legacy," "vision," and if all else fails, "indeed."

I am so grateful to the people of Palm Beach for giving me this once-in-a-lifetime opportunity to serve as their Mayor, and I am grateful, as well, to my colleagues on the Town Council for their cooperation and support. I am sure, Mr. McLendon or Mr. Mc Donald, that you will find the job equally rewarding and make your own place in our history.

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFER Item VII.F.2. Resolution No. 2-05 on the Consent Agenda to the February 15, 2005, Town Council meeting;

Motion made by Councilman Brooks, seconded by Councilman Goldblum, to defer Item VII. F.2. - Resolution no. 2-05, to the February 15, 2005, Town Council Agenda. On roll call the motion carried unanimously.

DELETE Item VIII.B.1. Scheduling of an Attorney/Client session immediately following this meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Goldblum, to delete Item VIII.B.1. from the Agenda. On roll call the motion carried unanimously.

WITHDRAW Item XI.C.2.e. Variance No. 5-2005, the application of Michael and Cheryl Minikes, 583 North Lake Way.

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon, to withdraw Item XI.C.2.e. - Variance No. 5-2005, from the Agenda. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Erik N. Gilbertson, 151 Chilean Ave., recognized the service of Mayor Smith; discussed the mayoral race between Councilmen McDonald and McLendon; and noted the retirement of Senator Robert Graham.

Maia Farish, Preservation Foundation of Palm Beach, publically thanked everyone who participated in and supported the opening ceremonies for the new building on Peruvian Avenue.

VII. CONSENT AGENDA

A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE ATTORNEY/CLIENT SESSION REGARDING MARQUES DE OLASO JAVIER DE OLASO CASTET, VS TOWN OF PALM BEACH ON NOVEMBER 9, 2004.

B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE ATTORNEY/CLIENT SESSION REGARDING DONNER, VS TOWN OF PALM BEACH ON NOVEMBER 9, 2004.

C. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE TOWN COUNCIL MEETING ON DECEMBER 14, 2004.

D. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE ATTORNEY/CLIENT SESSION REGARDING TOWN OF PALM BEACH, APPELLANT VS FLORIDA BLACKTOP, INC., ON DECEMBER 14, 2004.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON DECEMBER 17, 2004.

F. RESOLUTIONS

1. RESOLUTION NO. 1-05 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." [Robert L. Moore, Director of Planning, Zoning, and Building]

2. RESOLUTION NO. 2-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Two and One-half Foot Utility Easement on Lots 8 and 9, Block "A" in the Revised Map of Royal Park Addition on Property Commonly Known as 240 Cocoanut Row, Palm Beach Florida. [H. Paul Brazil, Director of Public Works]

Deferred

3. RESOLUTION NO. 5-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Recreation Department Fees to Compensate for the New Sales Tax Rate Increase. [Russell E. Bitzer, Director of Recreation]

4. RESOLUTION NO. 6-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Joint Participation Agreement Between the Florida Department of Transportation and the Town of Palm Beach for Construction and Planting of the Landscape Islands in the Medians of Royal Poinciana Way.

[H. Paul Brazil, Director of Public Works]

G. OTHER

1. Authorization to Have First and Second Reading of Proposed Zoning Ordinances and Adoption of Applicable Resolutions Prior to 5:01 p.m. [Robert L. Moore, Director of Planning, Zoning, and Building]

2. Authorization for Additional Funding Toward the Completion of the D-17 Stormwater Pump Station Clarendon Avenue. [H. Paul Brazil, Director of Public Works]

3. Authorization for Additional Funding From the Coastal Management Program Bond Proceeds Construction Fund to Complete the Emergency Berm Construction Project. [H. Paul Brazil, Director of Public Works]

4. Authorization for Funding of Application Fees for a Drainage Permit for Skees Road Landfill. [H. Paul Brazil, Director of Public Works]

Motion made by Councilman Brooks, seconded by Councilman Goldblum, to approve the Consent Agenda, as amended. On roll call the motion carried unanimously.

VIII. REGULAR AGENDA

A. Old Business

1. Recommendation to Hire an Attorney and an Accountant to Assist in the Development of a Potential Townwide Program to Bury Overhead Utility Lines. [Thomas G. Bradford, Assistant Town Manager]

Assistant Town Manager Bradford recommended the retention of Robert Scheffel Wright, of the law firm of Landers & Parsons in Tallahassee, Florida, to assist in the development of a potential Townwide program to bury overhead utility lines. Attorney Wright had been asked for a recommendation of an accountant if those services were needed, and he had recommended

accountant/CPA Michael J. Majoros, Jr., who was based out of Washington, D.C. Mr. Wright's hourly rate for government clients was $200 per hour; the rate of Mr. Majoros was $160 per hour. Mr. Bradford requested an allocation of $40,000 from the General Fund Contingency to utilize the services of Mr.Wright and Mr. Majoros. He noted that Florida Power & Light (FP & L) had responded to the depreciation question, however, staff found the answer to be unacceptable ---- FP & L had responded that the net book value of the system could not be given, except on a case by case basis. He explained that not knowing the total and complete cost of undergrounding made it difficult for municipalities to seek a bond referendum on the question.

Councilman Brooks moved approval of funding in the amount of $40,000, from the General Fund Contingency, in order to retain the services of Robert Scheffel Wright, Esq., and Michael J. Majoros, Jr., CPA. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Town Manager Elwell clarified that it was the intent of staff to develop a plan with Attorney Wright as to how to move forward, and to discuss the specifics with the Town Council at a future Town Council meeting.

2. Consolidation of Suggestions That Were Listed in the Four Winds Investigative Panel Report and Consideration of Scheduling a Workshop Regarding the Four Winds Investigative Panel Summary. [Sarah E. Hannah, Assistant to the Town Manager]

Assistant to the Town Manager Sarah Hannah reported that the Four Winds Panel had reported a list of their findings and recommendations to the Town Council at the December 14, 2004, Town Council Meeting. Staff had then requested to consolidate the list into a more manageable document, which now had been accomplished. Staff also recommended that the Landmarks Ordinance not be changed, because many of the policies contained therein allow flexibility to address specific situations. Ms. Hannah noted that the chairman of the Four Winds Panel had indicated that the main issue was that policy and responsibility was not clearly defined, and the breakdown of communication between the different parties involved in Four Winds may have resulted in the demolition of the landmarked house. She recommended a workshop for the Town Council to consider the consolidated list of findings and recommendations.

Councilman Goldblum moved approval of holding a workshop meeting *(to be scheduled after the February 15, 2005 Town Council meeting)* for consideration of the findings and recommendations of the Four Winds Panel. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Town Manager Elwell clarified that the workshop would be scheduled sometime after the February 15, 2005 re-scheduled regular Town Council meeting, in order to include the new Town Council members.

In response to President Pro-Tem McLendon, Town Attorney Randolph advised that the Town had been very successful in defending its position in regard to landmark approvals, for the law was very clear on sustaining the landmarking of a property, based upon public health, safety, and welfare, without having the owner's approval. He explained that from the standpoint of the somewhat newly enacted Bert Harris Act, there could be a potential claim filed, however, it must be kept in mind that the ordinance was enacted prior to the Bert Harris Act. Currently, it was a matter of policy of the Town Council that a landmark would not be accepted without the approval of the owner, but the ordinance itself did not require the approval of the owner.

B. New Business

1. Consideration of Scheduling an Attorney/Client Session Regarding Fred Mengoni vs Town of Palm Beach, Case No. CA 02-9872 AF, Fifteenth Judicial Circuit in and for Palm Beach County, Florida to Discuss This Matter Immediately Following this Regular Town Council Meeting in the Town Council Chambers, 360 South County Road, Palm Beach, Florida. Attorney/Client Session Attendees: Mayor Lesly S. Smith, Town Council Members Allen S. Wyett, Samuel C. McLendon, William J. Brooks, Norman P. Goldblum, Jack McDonald, Town Attorney John C. Randolph, Town Manager Peter B. Elwell, and Ley and Marsaa, Court Reporters. [John C. Randolph, Town Attorney]

This item was withdrawn earlier in this meeting.

2. Appeal of Administrative Decision of Public Works Director Paul Brazil Regarding a Driveway Drain at 201 Angler Avenue.
[Peter S. Broberg, Esq.]

Attorney Peter Broberg, on behalf of John and Margart Kaywell, 201 Angler Avenue, addressed the Town Council, stating that the issue was whether a trench drain was required in the replacement driveway. It had been determined by the Public Works Department that a trench drain was required. Attorney Broberg stated that he had explained that the ordinance exempted the drain, and received a response from Public Works Director Brazil eleven days later stating that the drain was required because of water quality issues. Attorney Broberg then noted that he had filed an appeal the following day. He then discussed the specifics of the appeal.

Public Works Director Brazil responded to the statements of Attorney Broberg, noting that the intent of staff was to retain as much storm water as possible on any given site in a consistent manner Town-wide. Water quality had always been an issue, and the best management practice was to assure that before storm water hit the intracoastal waterway everything had been done to get pollutants out of that water. He noted that many phone calls and conversations had taken place during the eleven day response period cited by Attorney Broberg.

Councilman Goldblum moved denial of the appeal of the administrative decision of Public Works director Paul Brazil regarding a driveway drain at 201 Angler Avenue. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Director of Planning, Zoning & Building Robert Moore clarified that in the future the Building Department would interpret a new driveway in the same manner that the Public Works Department does.

Town Manager Elwell clarified that the interpretation used by the Public Works Department had been the interpretation that they had uniformly applied. The replacement driveways had been determined by the Public Works Department to be a new driveway, and this requirement had been consistently imposed upon other property owners.

3. Consideration of Alternative Choices of Trees to be Placed at the East Approach of the Royal Park Bridge.
[H. Paul Brazil, Director of Public Works, and Jorge A. Sanchez, Representing the Garden Club of Palm Beach]

Public Works Department Paul Brazil reported that 30' wide canopy Green Buttonwood trees had been proposed for the new Royal Park Bridge landscaping. The Florida Department of Transportation (FDOT) had only two bidders respond, neither of which were able to find a tree with a canopy of 30' in diameter. The submittals had been reviewed by both the Public Works Department and the Garden Club, and were found to be unacceptable. He stated that Mr. George Sanchez, a member of the Garden Club was present to address an alternative plan for consideration.

Mr. Sanchez recommended that Kapok trees be used as a substitute for the Green Buttonwoods.

Councilman Brooks moved approval of the substitution of two Kapok trees as the substitution for the Green Buttonwoods. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Director of Planning, Zoning & Building Robert Moore noted that the landscape plan had been approved by the Landmarks Commission, and he suggested that FDOT or Mr. Sanchez attend the next Landmarks Commission meeting to advise them of the change in landscaping.

4. Joint Project Agreement with the Florida Department of Transportation (FDOT) Regarding Potential Upgrading of Street Lighting Fixtures Along State Road A1A Between Worth Avenue and the South Town Limits.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil reported that the Florida Department of Transportation (FDOT) would be doing extensive work on A-1-A in 2005, 2006, and 2007. This would give the Town the opportunity to upgrade the street lighting system. The Joint Project Agreements that had been referenced in the back-up material, would give FDOT the ability to complete the design and complete a cost estimate for a new lighting system from the south Town limits to Worth Avenue.

Separate sections would be done in separate years. Some of the existing lighting would remain because it was ornamental. One of the sections of lighting between Southern Blvd., and Widener's Curve would remain because of setback requirements. Also, the section from Sloan's Curve to Widener's Curve already had ornamental lighting. Staff was requesting permission to execute the Joint Project Agreement, and authorize FDOT to begin the design, and provide a cost estimate. There would not be a financial responsibility of the Town until staff brought back the cost estimate to determine if the Town Council wanted to proceed.

Mr. Denis Coleman, Everglades Island, suggested that there may be the possibility of piggy-backing underground installation on this project.

Mr. Brazil responded that because of the extent of the work, staff had not approached the piggy-backing of undergrounding. The first work that had been discussed regarding undergrounding in that area had been crossings on the roadway. He suggested that staff could explore the costs associated with that.

Town Manager Elwell clarified that the early planning had been done with the idea of doing as much coordination as possible with the road work and the undergrounding. Staff was very mindful of the desirability of doing projects together, although the window of opportunity was closing, because the undergrounding had not moved forward as fast as staff would have liked.

President Pro-Tem McLendon moved approval of staff obtaining a design and cost estimate from FDOT regarding the upgrading of street lighting fixtures along State Road A1A between Worth Avenue and the south Town limits. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/0, as Councilman Goldblum had temporarily left the room.

5. Recommendation to Award a Software Consulting Services Contract to Upgrade and Integrate Software Systems Throughout the Town. [Peter B. Elwell, Town Manager and Spencer D. Wilson, Information Systems Manager]

Town Manger Elwell advised that the specific goal of obtaining a consultant was to ensure that maximum integration and data sharing was accomplished throughout the Town.

Information Systems Manager Spencer Wilson commented that the plan was a multi-year

plan, and the correct steps were being taken to ensure that it was done correctly.

President Pro-Tem McLendon moved approval of the allocation from the General Fund Contingency of $60,000 to award a Software Consulting Services Contract to Dorsey-Pages LLC for Phases I and II, and an amount not to exceed $60,000 to cover Phase III for a total of $120,000. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

6. Recommendation to Reject All Bids and Consider Alternative Approaches to the Town Hall Renovation Project. [Peter B. Elwell, Town Manager and H. Paul Brazil, Director of Public Works]

Town Manager Elwell advised that the bids for the Town Hall Renovation Project had come in much higher than expected. Five alternative plans had been submitted to the Town Council as options for review and consideration, as noted in the memorandum dated December 29, 2004 from Public Works Director Paul Brazil. He suggested that alternative #3 be rejected, and that the remaining alternatives be explored.

After discussion, Councilman Brooks requested that an appraisal and cost analysis be conducted of the property owned by the Town, running from Olive to Dixie, and then the property owned by the Town facing Dixie up to the railroad tracks.

Councilman Brooks moved to reject all bids on the Town Hall Renovation project. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Mayor Smith suggested that the Florida Crystals Building be eliminated from consideration under Option #1; she also stated that she was not sure that the Town would want to involve itself in a joint venture, as proposed in Option #2.

Councilman McDonald suggested that perhaps buildings other than Florida Crystals could be considered.

Town Manager Elwell clarified that staff would do a full examination of the remaining alternatives, and bring back a recommendation to the Town Council within the next few months.

Councilman Brooks moved approval of the appropriation of an amount not to exceed $10,000, from the General Fund Contingency, for the purpose of having an appraisal on the substantial pieces of property owned by the Town. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 27-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 34, Elections, Section 34-119, Exempting Itself from the Provisions of Section 101.657, F.S. Specifically Related to Early Voting; Repealing All Ordinances or Parts of Ordinance in Conflict Herewith; and Providing for an Effective Date.
[Mary A. Pollitt, Town Clerk]

Councilman Brooks moved approval of Ordinance No. 27-04 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. ORDINANCE NO. 28-04 An Ordinance of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 46, Fire Prevention and Protection, Amending Article III, "Fire Prevention", of the Town of Palm Beach Code of Ordinances Adopting by Reference the Edition 2004 of the Florida Fire Prevention Code, the 2003 Edition of NFPA 1 and the 2003 Edition of the National Fire Protection Association Life Safety Code; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Herewith; Providing for Codification; and Providing for an Effective Date.
[Andrew Cox, Acting Fire-Rescue Chief]

Councilman Goldblum moved approval of Ordinance No. 28-04 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. First Reading (Revised 01/11/05)

1. ORDINANCE NO. 30-04 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 Police Officer in the Retirement System; Amending Section 82-115(C), effective October 1, 2004, to add a provision for a 3.25% multiplier of credited service applicable to average final compensation of Police Officers Employed on and after October 1, 2003; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Scott Bauer, Administrator, The Pension Resource Center, Inc.] *Deferred from the December 14, 2004, Town Council Meeting.*

Town Manager Peter Elwell explained that Ordinance No. 30-04 had been deferred at the last Town Council meeting in order to research this item further. He reported that it was brought back today with additional information.

Mr. Elwell thanked everyone that had a role in this, in particular Scott Bauer and George Frick. He stated that it was his first chance to work with Scott and that he appreciated the very professional and coordinated manner in which they were able to do that. He continued that the coordination between the advocates for this improvement in the police pension and the Town's administrative staff, in Town Hall, had been a model to build upon and continue, in the future, when working on such things. He stated that it was his fervent hope that when they began a month ago to consider this, they would be able to collaborate the way that they did, over this past month.

Mr. Elwell stated that the recommendation he was offering today comes in two parts. He advised that the first was to approve a request for an increase in the multiplier which had been modified from the initial request. He said that this recommendation was to increase the multiplier for those employees who had dropped and were not included in the benefit improvement in 2001 but have been working side by side with active police officers who had not dropped. He advised that it affects ten people, two who have retired fully from the Town and eight people who were to

retire soon. He continued that it would raise their multiplier to 3.25% equalizing their multiplier with the multiplier that had been received by or applied to the active police officers since 2001.

Mr. Elwell stated that the second recommendation was to defer consideration of the increase to a 4% multiplier for the active employees until the pay and benefit study was completed. He explained that the study was underway, and was expected to be completed by the end of February but certainly by March. He said it would be reviewed in the spring with action being taken during the spring and summer. He urged the Town Council, for the reasons set forth in his memo to them, to postpone that larger decision until it can be made in the full context.

Mr. Elwell discussed the highlights and recommendations in his memo to the Mayor and Town Council dated January 4, 2005. He reviewed the following items:

- Survey of Other Local Police Pension Plans and the Results
- Current Drop Status
- Decisions made by a Retiring DROP Employee
- 6% Savings Used in Cost Estimate Calculation
- Cost to the Town to Provide the Proposed 4% Multiplier
- Current Pension Funding Issues
- Funding/Fiscal Impact

President Wyett explained that if all the decisions retiring DROP employees had to make were irrevocable, they could put off the medical decision by staying in the Town Plan for several months until they want to make that decision.

Mr. Elwell stated that it was true that they could do that. He continued that if the multiplier was raised today to 3.25%, it would take away the uncertainty and improve the benefit to the same level that the other employees enjoy that they have been working with side by side. He explained it would make moot the question of irrevocability of decisions, because the benefit would have been improved and the magnitude of that improvement would be known.

George Frick, Chairman of the Police Pension Board, advised that he would review some of the items highlighted by Mr. Elwell. He stated that the 6% savings used in the cost estimate calculation for the 4% accrual was a huge part of the benefit, and it was the reason the Pension Board presented it to the Town Council in the first place. He said that he did believe the numbers provided by the actuary, but it was unfortunate that Mr. Elwell did not believe them. Sergeant Frick stated that Mr. Elwell looked at the historical data and that data could not be used in this case.

Sergeant Frick stated that there were several other issues. He discussed the equity issue and advised that he was for all employees. He said that the general employees of the Town of Palm Beach have the best pension available and their pension is consistent with that of the police officers. He reported that there was no other place that has a COLA adjustment on the pension for general employees. He stated that the 2% COLA was a Town wide benefit. He continued that the while the general employees were extremely well compensated, they in the Police Department were not in regard to pension.

Sergeant Frick stated that he had been told and had heard that this was only a pension issue, but there were other issues to be considered. He said that he represents the Pension Board and that there was a process to be used and discussed that process. He stated that Mr. Elwell has had more impact on benefit changes than he has had as President of the Pension Board. He advised that the officers have lost confidence in the Pension Board. He stated that the officers want a 4% accrual to help the DROP officers and that the 3.25% would give them about $4,000.00 a year more on average. He explained that anything they could do to help the DROP officers would be fine, but they were willing to contribute 3% more out of their pockets in order to give the DROP officers the same benefit that they would like themselves to have. He reported that doesn't happen and that was why there are Pension Boards.

Sergeant Frick advised that the 3% cost of living adjustment following retirement was inevitable for police officers in order to stay competitive. He stated that the one thing he and Mr. Elwell agree on was that the cost of a 3% COLA was more expensive than the 4% accrual before the Town Council today.

Sergeant Frick stated that the reason for being here today was to help the DROP by getting them where they want to be and not by giving them a 3.25%. He advised that they have used the process to get here and would like the Town Council to support that process, to support the Pension Board, to support all that they have done and move forward with the 4%.

Councilman Brooks thanked Sergeant Frick and Mr. Elwell for the tremendous amount of back up given to the Town Council. He explained his position to Sergeant Frick that he could not vote for the 4% today but was prepared to vote on the 3.25% to rectify the existing inequity. He continued that once the full benefits package was received, the issue would be revisited. He advised Sergeant Frick that was the only prudent and financially responsible approach the Town Council could take. He stated that it was not that they didn't wish to work with the Pension Board, but the Council has an obligation to its citizens to run the Town in a business, humane-like, fair way.

Councilman Brooks made a motion to approve the 3.25% retroactive to cover the

officers discussed at the December 14th meeting and today, and when the study comes in, the Town Council will revisit same. Councilman Goldblum seconded the approval of Ordinance No. 30-04 on first reading. On roll call the motion carried unanimously.

Town Manager Elwell clarified that Town Council would be voting on a replacement ordinance for the original ordinance that was in the backup this month and last month. He advised that John McCracken, Attorney to the Police Retirement Board, provided the revised Ordinance No. 30-04 today, and it would be read by title when ready to vote on it.

Mayor Smith requested that they clarify what the actual ordinance was.

Sargent Frick asked if 3.25% was approved today, would these officers be included in any additional benefits or was that the end for them?

Mr. Elwell stated that there was a moral obligation that not only he felt, but that the Council felt, from what he has heard in addressing this issue. He said he was completely committed to looking at the results of the study that would be available in a few months. He stated that the recommendation today before the Town Council carries forward the Pension Board's recommended effective date. He said that he didn't know why the Pension Board chose that date versus some other date but reported that he knew the date included the group of people directly affected by this benefit. He stated that he realized there were others affected, but you cannot go back and cover the entire period for everyone ever employed by the Town. He continued that cutoffs need to be identified, and in doing so, you need to be fair and prudent to determine where to make those cutoffs. He explained that he did not think there would be the same moral obligation to provide a retroactive benefit improvement to the group of ten people affected that may not be granted to the active officers sometime later this year.

Captain Galvin spoke in favor of the DROP people explaining that the DROP Program was new to the Town. He stated that these officers were forced into financial decisions. He reported that a person that goes into a DROP up north gets all of the benefits until the day they exit the job. He said that if benefits accrue during that time, they should be treated no differently then regular active employees. He stated that was the way they had to think as a Town and as a Council so there was not a two-tiered approach. He advised that it was getting bad in the Police Department because it was being said that the DROP officers were going out there and could be killed just like the active officers but weren't getting the same benefits. He asked that, in the future, DROP people get the added benefits and should be looked at no differently than the active officers.

Mayor Smith stated that she agreed with him and was sure that the Council agreed.

Scott Baur, Administrator of the Town of Palm Beach Police Officers Retirement System, thanked them. He stated that he did agree there was substantial agreement with Mr. Elwell and the Town regarding the facts presented in this case. He said that the Pension Board probably respectfully disagrees with the interpretation of those facts. He then asked Mr. Elwell to clarify a comment he had made. He asked that if this benefit was to be acted on today to repair or correct the equity between members of this plan, and if the 3.25% multiplier was granted to members of the DROP, would the Town have any future or moral obligation to those people? He continued that because the process took longer than the employment these people had in Town, would they not necessarily receive the 4% multiplier if that became a consideration in coming months?

Mr. Elwell stated that it was not a matter of the Town waiting anybody out. He said that Mr. Baur summarized the bottom line accurately. He advised that the inequity was being addressed, and they agreed with the point made that it was not right with regard to the DROP people who, for the past three plus years, have worked side by side with those who have received a differential benefit. He stated that the Town was correcting this, at the sole cost to the Town, without asking anyone to share it. He advised that the Town was doing so in order that anyone departing Town service in the next few months would do so with an equal benefit.

Mr. Elwell explained that he did not feel that, on a going forward basis, the same moral imperative exists. He talked about the study and the possibility of benefit improvements in the spring to the employees. He advised that from his perspective, there is a very clear difference between addressing an inequity that existed the past few years, doing that now, and doing it retroactively because it has existed for the past few years. He continued that the Town has taken action to correct it, fund it and make it happen, but it will be on a going forward basis for those who were employed by the Town and worked side by side with each other at that time.

Mr. Baur stated that Mr. Elwell's position created a new sense of urgency, in this process, that might not have been there before. He said that now something might be considered and not recommended for the DROP people since they have short and definite time frames of employment remaining. He stated that the process would play out past that time frame. He asked that the Town Council consider that point, in terms of, what kind of policy decision they would possibly set rather than the Town setting it with regard to these matters, and how they would consider the future benefit improvements. He continued that the Town Council had stated they did want their police officers to be number one on compensation and benefits, and it would be up to them to determine what that means and for whom. He wanted to know at what point of time and where do you create that line or that cut off regarding who receives it and who does not?

Councilman Brooks stated he would stand with his motion that the Town Council vote for

Ordinance 30-04. He said that he slightly disagreed with Mr. Elwell to the degree that when the full study was available, he would not state everything in it should be retroactive but also he would not say that it can't be made retroactive. He stated that the prudent and moral thing to do was to look at the numbers and to be as supportive and as considerate of the police officers who had given many fine years of service to this Town.

Mayor Smith asked Mr. Elwell if the group doing the benefits study, spoke to the Pension Board?

Mr. Frick stated that he has a meeting next week with someone on the topic.

Mr. Elwell responded that the meeting Mr. Frick has would be with Jonathon Meng who was doing the study. He continued that there has not been a presentation to the Pension Board because the study had just begun. He said there will be communication and every employee had been given the opportunity to personally participate in the study with the consultant.

Mayor Smith asked if there would be any reason that the benefits or changes coming from the study could not be made retroactive to the date picked of October 1, 2003. She asked why that date was picked?

Mr. Frick responded that was the date the 3.25% went into effect and when the inequity started. He continued that they wanted to try to include those officers.

Wendy Victor, 208 Via Tortuga, stated she thought two of the Town Council members had already made up their minds and was going to appeal to the other three. She reported that Mr. Wyett and Mr. McLendon were present when the police accreditation was held and heard from the citizens of the Town of Palm Beach that the number one reason they come to the Town was for the sense of safety and not the sunshine, warm weather or the beaches. She stated that what was being discussed was an amount of $530,000 to go to the 4%. She reported that she was horrified that the police force was not getting the kind of vote of confidence that they deserved and should get today, if given the 4% today. She addressed the Mayor, stating that as she was going out, and Mr. Wyett, as perhaps one of his last acts as Town Council President, they would take great pride in standing behind the police and do what the residents really want.

Attorney Randolph read Ordinance No. 30-04 by title, on first reading, as printed above.

Councilman Brooks moved approval of Ordinance No. 30-04, on first reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried 5/0.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Goldblum requested that time extensions should be granted to complete the work on the docks and bulkheads on the lake which were destroyed during the recent hurricanes. He stated that he was aware of the shortage of marine contractors but there needed to be a time frame of when they would be repaired. He requested a report from the Building Department on what was being done to get them repaired.

Planning, Zoning and Building Director Moore advised that permits have been issued, at this point, to repair existing docks and sea walls. He reported that a part of the problem was that the residents have not been able to get marine contractors to come in and do the work. He stated that under the basis of the emergency of the hurricanes, he requests that during the next six months, the Council authorize the rebuilding of the docks and bulkheads. He advised that at the end of those six months, they would report back to Council. He reported that this matter was urgent because the Florida Department of Environmental Protection (FDEP) might be pulling their approvals on the 15th of January.

President Wyett commented that as a victim who lost a dock and then receiving sky-high quotes because of the high demand of dock repairs, he did not believe that six months was enough time. He requested that the Council authorize one year instead of six months.

Councilman Brooks noted that it was good news that the Town would be reimbursed by FEMA and their insurance carriers. He advised that the Town was slightly under their goal for having twenty-five percent of the Town's budget in reserve. He noted the Town was at twenty-four percent with twelve million dollars. He said that if the Town was reimbursed at the conservative level of four million, it would put the Town up at thirty-two percent. He advised that it was critically important to maintain the Town's good rating from Moody's if the need should arise for other bonds. He stated that he wanted the citizens to be aware that, despite the hit the Town took during the hurricanes, it was in good financial shape.

Councilman Goldblum noted that the hedge height along Ocean Boulevard was 30" allowing for a view of the ocean for those walking or riding along that route. He advised that going along the lake on the Bike Trail there were instances of private owners, west of the Bike Trail, putting in high hedges. He stated that if this was allowed, it would make a corridor and would hide the Bike Trail. He said he would like to grandfather the zoning now to include west of the Bike Trail so that no hedge could be higher than 30".

Planning, Zoning and Building Director Robert Moore stated that item could be discussed at the Zoning Commission Meeting on January 27, 2005, because it would require an ordinance change. He advised that, if Mr. Randolph concurred, they could put it in as Zoning in Progress, study it and have it put through this season.

Councilman Goldblum suggested that they put it on as Zoning in Progress.

President Wyett said he agreed that the vistas of the lake should be maintained. He advised that from what he has observed, most of the vistas were maintained, but perhaps, Mr. Goldblum walked it more than he had. He asked if there was a reason, why the Town did not own that strip of land between the path and the lake?

Mr. Moore stated that certain locations are owned by the Town and other locations by the upland property owner to the east.

President Wyett asked if there was a procedure allowing residents to donate that piece of land to the Town?

Councilman Brooks asked if it could be placed on as Zoning in Progress?

Mayor Smith advised that it would have to be put on the agenda for discussion which could not be done today.

Attorney Randolph stated that it was a procedural matter but the Council certainly could. He advised that there is a policy where items are brought up at the meeting and then brought up for discussion, at a later time, in order to have an opportunity to think about it instead of acting on it too quickly.

Mayor Smith continued that it would have to be advertised so the public can speak to it.

Mr. Moore asked if they should put it on for next month?

Mayor Smith said she thought so.

Mr. Elwell advised that it wouldn't hold up the substantive consideration of the matter because it can still go to the Zoning Commission meetings this month. He stated that the official act of the Town Council declaring Zoning in Progress would be on the agenda in February.

President Wyett recognized the Mayor for her years of service, and remarked that he would miss sitting next to her after all these years. He said he would also like to thank Mayoral candidates Jack McDonald and Sam McLendon who will be on the February 8th ballot. He wished them luck. He also thanked Councilmen Denis Coleman and Richard Kleid who were nominated at the January 4th Caucus for attending the meeting in preparation for sitting here next month.

Mr. Moore wanted to have clarified the Town Council's position of relief for the docks and sea walls. He asked if it was for one year or for the six months originally suggested.

President Wyett stated he would like the one year.

XI. DEVELOPMENT REVIEWS

A. Appeals

NONE

B. Time Extensions

NONE

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE NO. 20-2004 The application of 171 Royal Poinciana, LLC, Lynn Min, Member relative to property described as Lot 7, Floral Park Add. No.2; commonly known as 171 Royal Poinciana Way; located in the R-C Zoning District. To demolish and build a new single family home on a non-conforming lot requiring the following variances: Variance to build new single family home on a platted lot that has a width of 25 ft. in lieu of 75 ft.; to build a new single family home on a platted lot with a lot area of 2,500 sq. ft. in lieu of 10,000 sq. ft. required; to provide a front setback of 5 ft. in lieu of 25 ft. minimum required and garage doors with a setback of 5 ft. in lieu of 18 ft. minimum required; to provide east side yard setback of 0 ft. in lieu of

10 ft. minimum required; to provide west side yard setback of 4.25 ft. in lieu of 10 ft. minimum required; to provide lot coverage of 60% in lieu of 35 % maximum allowed; to provide landscape open space of 28% in lieu of the 35% minimum required; to provide landscape open space of 0% in front yard in lieu of 35% minimum required where now none is existing; to build a swimming pool with a 3.8 foot east, west and rear yard setback in lieu of 10 ft. minimum required; and, to have 9 dormer window openings in the roof above the maximum building height which opens into habitable space. *Deferred from the August 10, 2004, October 1, 2004, October 12, 2004, November 19, 2004, and December 14, 2004, Town Council Meetings.*

Ex parte communication was declared by Councilman McLendon who had a brief conversation with the next door neighbor.

Attorney Peter Broberg, on behalf of the applicant, stated he was asking for a deferral. He advised that he had sent a letter yesterday making that request. He reported that the reason for the deferral was that the next door neighbor and his client have reached an agreement on the issues. He continued that they would put it in writing.

Councilman Brooks made a motion to defer Variance No. 20-2004 to the February 15, 2005, Town Council Meeting. President Pro-Tem McLendon seconded the motion. The motion carried 5/0 on roll call.

b. SITE PLAN REVIEW #15 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Jane B. Holzer and Peruvian Avenue Corporation, John A. Callahan, Director relative to property described as Royal Park Addition, Lots 48 to 51, Block 15; commonly known as 247 Worth Avenue; located in the C-WA Zoning District. This parcel currently consists of a one-story commercial building on the front portion and a two-story commercial building on the back portion. Total existing square footage is 10,829 square feet. Total square footage after the addition will be 12,585 square feet. The applicant wishes to add a partial second floor of 1,700 square feet onto the front building. The addition will serve as additional retail space for the new tenant (Hermes) at 245B Worth Avenue. The following approvals are requested: The existing buildings are nonconforming because there is a 35% lot coverage limit for the first floor of a two-story

building and the first floor already totals 68% and will increase slightly. As a result, a variance is requested to extend and enlarge this nonconformity. Special Exception requested because a permitted retail use (Hermes) will exceed 2,000 square feet after the expansion. Special Exception requested for the addition of a second floor with additional height. Variance is requested for lot coverage as the maximum lot coverage for the first floor of a two-story building is 35%, and this property's first floor lot coverage is already 68% and will increase to 68.4% after the addition of the elevator. Special Exception is requested to permit the establishment of required off-street parking for commercial uses in zoning districts differing from the district of the principal uses of structures as they are intended to serve. The 247 Worth Avenue building is in the C-WA district while the required parking for the proposed expansion (1,700 sq.ft. ÷ 200 = 8.5 = 9 spaces) will be provided in the Apollo parking lot, which is in the C-TS district. The Apollo parking lot abuts and has direct access to 247 Worth Avenue. *Deferred from the December 14, 2004, Town Council Meeting.*

Ex parte communications were declared by Councilman Brooks with Attorney Brindell via the telephone, and President Wyett with Mr. Lawrence regarding the merits of the application.

Attorney James Brindell, on behalf of the applicant, Jane B. Holzer, advised both Ms. Holzer and architect Gene Lawrence were present. He stated that the project was to allow the existing Hermes store to relocate slightly to the east and to expand slightly. He explained that they wanted to add a partial second floor of 1,700 square feet onto an existing one story element of a building complex that has a two story element in the back. He reported that in the Worth Avenue district, a second floor would be allowed as long as it did not exceed a coverage of 35% under the regulations of a special exception. He advised that this application does not exceed the 35%.

Mr. Brindell advised that the original proposal would have increased the first floor coverage by 0.4% or 5,100 square feet because an elevator had been proposed by Mr. Lawrence to be attached to the back of the building to serve the second floor. He reported that ARCOM requested that the elevator be placed inside the building, and it will be. He continued that eliminates the additional coverage on the first floor, and advised that due to this, the two requested variances are no longer needed.

Mr. Brindell reported that the required parking will be provided in the adjacent Apollo Parking Lot. He stated it would be nine spaces He said that there was a parking license agreement that had been executed between Ms. Holzer and the parking lot owner which will provided for Mr.

Randolph's signature upon approval of this matter.

Mr. Brindell advised the proposed building fits within the context of the existing scale of Worth Avenue and was allowable under the special exception criteria. He reported that there are three requests and one was for a special exception to authorize that the retail space exceed 2,000 square feet. He stated that the first floor would have 1,229 square feet, and the second floor would have an additiona1,700 for a total of 2,929 square feet. He reported that it was not a great amount of square feet over the 2,000 square feet limit. He said that the second request was for a special exception to allow for the second floor, as he discussed previously, and added that it would not have a negative impact on the block. He continued that the third request was for a special exception to authorize the parking license agreement for the offsite parking immediately to the northwest of the building.

Architect Gene Lawrence presented the site plan, along with photographs, to the Town Council, for review of the property in question and the surrounding property. He advised that there was a request from ARCOM of three conditions one of which was for more articulation in the facade. He advised they agreed with that. He continued that the elevator was to be moved inside, and that they would take the Worth Avenue Design Guidelines into consideration.

Councilman McDonald asked if this proposal originally had variances?

Mr. Brindell responded that it did, but that when the elevator was moved inside, the need for those variances was eliminated.

Councilman McDonald asked if the proposal now was just for three special exceptions?

Mr. Brindell responded affirmatively.

Zoning Administrator Paul Castro reported that ARCOM felt there were life safety issues related to this project, as Mr. Lawrence previously discussed. He advised that the Fire-Rescue Department requested that, if the project was approved, the entire building had to be sprinklered. He added that they were requesting that the Town would be provided Town serving each year, at the time of renewal of their Occupational License.

Director of Planning, Zoning and Building Robert Moore stated that two variances have been withdrawn, and it was determined they do not need them.

President Wyett asked how can Town Council could approve this since the facade in the

drawing was subject to ARCOM approval? He continued that it should be improved because currently it was very boxy. He thought that Mr. Lawrence could make a much better contribution to the street.

Mr. Lawrence advised that they are required to go back to ARCOM and submit a more detailed plan.

Mr. Moore reported that the advice from ARCOM was to move the elevator inside, conform to the Worth Avenue Guidelines but to also improve the design. He advised that ARCOM will have another look at it if it is approved.

Councilman McDonald moved approval of Site Plan Review #15-2004 with Special Exceptions (the variances were withdrawn as the elevator portion was moved inside the building) and find that the Special Exceptions request meet all the criteria of the Ordinance. Councilman Brooks seconded the motion. On roll call, the motion carried 5/0.

2. New Business

a. VARIANCE #1-2005 The application of Dana A. Hammond and J. P. Morgan Trust Co., Trustees relative to property described as lengthy legal description on file; commonly known as 395 North Lake Way; located in the R-B Zoning District. Variance to construct a graduated side wall and a retaining wall and fence combination facing the Lake Trail of 4.5 feet to 6.7 feet in height within 25 feet of Lake Trail in lieu of the 4 feet maximum allowed.

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

Attorney Frank Chopin, on behalf of the applicants, addressed Town Council, stating that the property in question was a home under construction which was almost completed. He advised that they were asking for two minimum variances in connection with the house. He stated that the first variance request was to allow the height of an already existing wall that runs east and west on both the north and south side of the property go from six inches to two feet in the height.

Mr. Chopin stated that the second was to allow for a variance from 2.4' to 2.7' to permit the insertion of a chain link fence inside a hedge above an existing wall along the Bike Trail.

Mr. Chopin presented a drawing which showed the elevation of the site wall running perpendicular to the Bike Trail on both the north and south side. He reviewed the dimensions and specifics of the wall explaining that it had already been built. He advised that it had been built in accordance with the plans and specifications submitted to the Town and stamped by the Town. Mr. Chopin advised that he does not blame the Town.

Zoning Administrator Paul Castro advised that he was not aware of this.

Mr. Chopin continued that it was not the Town's fault, but it was the architect's mistake, and he was present. Mr. Chopin stated that the design was a mistake and that it was built wrong. He said that the variance was being requested so it would not have to be demolished. He discussed the multiple reasons for requesting this variance.

Mr. Chopin passed an aerial photograph to the Town Council, showing the adjoining properties. He continued that with regard to the landscaping on the adjoining properties and the landscaping that would be put in on the subject property, the walls were not visible and would not be visible. He advised that from the mistake made, a beneficial effect was being created which was a partial barrier for both sound and intrusion not only to his client but to the people on the north and south. He stated that it does not cause anyone harm.

Mr. Chopin advised that to allow the erection of a wall higher than the four feet permitted in this twenty-five foot strip was consistent with variances granted, in the past for security reasons. He stated that the second variance was being requested for security reasons, and they were asking to be allowed to place a chain link fence above an existing wall inside a hedge. He referred to the aerial photograph stating that you can see the existing wall which was three feet instead of four feet and that this was allowed. He reported that the owners do not want to demolish the wall rebuilding it to four feet, but they would like put a four foot chain link fence inside of a hedge. He said this would give them security from intrusion from the Bike Trail. He advised that this variance has previously been granted by the Town Council on a number of instances to neighbors both immediately to the north and the south of this property. He reiterated that the chain link fence will not be visible from any point of view, not from the Bike Trail or anywhere else.

Discussion ensued regarding the actual size of the wall as written in the original application versus what was on the drawing. Mr. Chopin clarified for Town Council the size of the wall as written in the original application. He advised that he was only asking for a variance as it relates to the back or east 15' of the side setback.

Mr. Castro stated that Mr. Chopin did need a variance for the wall where it fronts the Bike Trail. He continued that he was a little confused by the aerial photograph because it shows a footer inside of the existing wall. He advised that it was his understanding that the wall had already been built.

Mr. Castro reported that staff questions the hardship since security was not a hardship. He stated that the code was for four feet from the Bike Trail. He said that if the Town Council was to consider allowing these higher walls, as a practice, the code needed to be revisited as it related to how much we want to allow along the trail, and if we want to make them step these walls back to put hedges in front of them.

Mr. Moore reviewed the history of this item. He mentioned that this had been looked at because there were so many requests and security was the reason that was given to staff and Town Council for consideration along the Bike Trail. He stated that the first twenty-five feet east of the Bike Trail was designed to be low so there was a vista there. He advised that some residents wanted additional security and a change was proposed that went to the Planning and Zoning Commission. He stated that the Commission believed that a change should be made, and it should go to six feet in that particular area. He reported that after much debate, this Council thought it was improper to change the ordinance and allow six feet because of the vista issue. He said they opted to look at this on a case by case basis which was being done. He continued that the Town Council's normal action was to approve the request if there had been no objection from the neighbors.

Mr. Moore said that this item could be studied again and sent back to the Planning and Zoning Commission, if the Town Council wanted that. He advised that these type of cases may be something that will be looked at more in the future as special exceptions rather than variances because a hardship was difficult to deal with

Mr. Wyett advised that almost all the property on the lake either have walls or very high hedges.

Mr. Chopin stated that they do, but the problem was with just having a hedge. He said that he has studied this and walked the Trail, and there were a number of houses that have fences, whether they are legal or not, inside those hedges. He explained that the problem with just having hedges was that you can go through the hedges, but a chain link fence imposes an impediment. He advised that there were problems in Town with people entering properties from the Bike Trail. He continued that the Town Council, in the past, has approved this because it does give that measure of protection.

Councilman Brooks stated that security was something the Town Council should be sensitive

to even if it is not considered a hardship.

Councilman Brooks made a motion to approve Variance No. 1-2005. The motion was seconded by Councilman Goldblum. On roll call, the motion carried 4/1: President Wyett, President Pro-Tem McLendon, Councilman Brooks, and Councilman Goldblum casting affirmative votes; Councilman McDonald casting a dissenting vote.

b. VARIANCE #2-2005 The application of Leigh Failing relative to property described as Lot 9, Supplementary plat of El Bravo Park; commonly known as 221 El Bravo Way; located in the R-A Zoning District. Variance to construct a two-story entry feature with bathroom on the second floor with a building height plane setback of 37.72 feet in lieu of 44 foot minimum setback required.

Ex-parte was declared by Councilman Goldblum with Mr. Brindell in regard to the second floor feature of the property and Councilman Brooks via telephone with Mr. Brindell.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council explaining that architect, Jacquie Albarran was working with the property owner on an existing house to renovate and update it rather than demolish it. He advised that Ms. Albarran was sensitive to the Town with regard to mass and scale. He said the objective was to create a new entry at the first level that has some identification to it and some actual prominence. He continued they were to slightly expand a bathroom in the master bedroom that was right above the new entry. He advised that currently the bathroom was not large. He stated as part of the expansion of the entrance and bathroom, it was important to end up with an architectural design that makes sense within the context of this house. He advised that the house has a lot of gables on it and it was the gable on top of this expansion that required the applicant to come before the Town Council today.

Mr. Brindell stated that the house including the proposed addition meets the front yard setback requirements, the building height requirements and the lot coverage requirements. He advised that the front yard height plane set back clips through part of the architectural feature of the gable. He reported that the purpose of the set back requirements including the height plane set back requirement was to have some control on the massing as it relates to the street. He continued that this requested variance for a building height plane set back for 37.72 feet does not violate those objectives. He stated the impact of this variance request was really minimal.

Jacquie Albarran, SKA Architects, addressed Town Council, exhibiting architectural drawings and pointing out that the house had no source of entry. She explained the changes she was recommending, and noted that they would still stay behind the set back that was required. She advised that it had gone to ARCOM where the Committee thought it had been made to look a lot better.

Ms. Albarran explained that the problem is with the very small gable that is above the angle. She stated that the architecture of the house was all gables, as was the house across the street, and the house next door, which was west of it. She advised that the house to the east did not have any problems because it had a different roof style. She stated that the two houses with the gables suffered from the same problem. She explained the problems the gable design creates for these houses and the reason for creating this entry.

Mr. Brindell explained that they cannot do anything about the location of the house and that the house does not violate the set back requirement, but in order to have an architectural feature there that makes sense, some protrusion is needed to make the differentiation. He continued that the very top of that was what gets clipped. He advised that it was a design issue that was related to the existing location of the house. He stated that without the variance they could not provide an appropriately proportioned gable or element that should be there as part of the house, considering it was the entrance. He continued that since the house was well back from the street, met the height requirements, met the setback requirements, and the other additions do meet the height plane requirement except for this one piece, it was a minimal request.

Zoning Administrator Paul Castro stated that the house was already very large, and from the standpoint of the comparisons to the neighboring homes, those homes as well as this one were built before the building height plane regulation was provided in the Town's Code. He stated no part of the structure can be within the building height plane with regard to the addition they are proposing. He advised that the staff does not see any hardship in the request.

Mr. Castro advised that ARCOM did not have any problem, and as stated by Ms. Albarran, the Committee did like the entry feature, and the way it provided architectural detail as it related to the entry of a home. He explained that technically from staff's standpoint, there was no hardship for the variance.

Councilman Brooks requested that Mr. Brindell state for the record what the hardship was.

Mr. Brindell stated that the hardship was the existing location of the house. He explained that in order to create an entry that was architecturally appropriate to a gabled house, you would need

a gable over the entry point. He said that it was a fundamental architectural concept.

Ms. Albarran stated that there was no entry at the moment.

Mr. Brindell explained that there had to be some amount of protrusion at the very peak for it to make sense architecturally. He continued that to apply that regulation, in this case, would be an unreasonable result. He advised that the purpose of the regulation was to keep mass from being too close to the street and that regulation was not being violated at all.

Councilman Brooks asked Ms. Albarran if the front door opens into a vestibule, where there was a staircase going to the second floor?

Ms. Albarran stated that was correct and it was on the inside.

Councilman Brooks continued that there was an entrance.

Ms. Albarran said that there was no architectural element that called attention to an entrance.

Councilman Brooks stated that if there was no hardship, how could the Council vote for it?

Ms. Albarran explained that they have done many of these gables before when creating a minimal need to have an entrance. She continued that they have previously been allowed to have these small type of gables because they were the minimal she could do to create that entrance. She advised that type of architecture has to have a gable and there was no other way to create entry in a gabled house.

President Wyett stated that the original architect designed the house the way it exists today.

Mr. Brindell stated that most houses, in Town, do change over time and that was part of the evolution of architecture in Town. He said that he thought Ms. Albarran had a plan that would have minimal impact but does significantly improve the house architecturally. He continued that this was achieved without tearing the house down.

Planning, Zoning and Building Director Moore stated that he did not think Mr. Brindell would want the Town Council to seriously consider that the owners would tear the entire house down, if they do not get this addition.

Mr. Brindell stated that he did not say that.

Mr. Moore explained that the specific portion of the zoning code that talks about the height plane was put into the code to address, in neighborhoods, the concept of the mass and its location to the street. He stated that this home sits considerably further back than other homes in the immediate area. He reported that the mass was not as important, on this particular application, than it would be if it was the closest house to the street. He stated that he thought the concept of this variance for a type of a roof was an architectural matter. He said it was a very difficult variance for the Council to find a hardship with. He said that he applauded ARCOM for thinking that a gable roof would be better than the hip roof because the rest of house was gable. He continued that there were homes that have a combination of gable and hip. He stated that if the Town Council was looking for a reason to approve this, the applicant already meets the intent of the ordinance because they were already set further back. He said that there is no hardship because they can build it with a hip.

Councilman Brooks made a motion to deny Variance No. 2-2005 because no hardship was found. The motion was seconded by Councilman Goldblum. On roll call, the motion carried 4/1: President Wyett, Councilman Brooks, Councilman Goldblum, and Councilman McDonald cast affirmative votes; President Pro-Tem McLendon cast a dissenting vote.

c. VARIANCE #3-2005 The application of John B.A. Haggin relative to property described as Lot 89, Plat No.2 Everglades Island; commonly known as 757 Island Drive; located in the R-B Zoning District. Variance to construct a dock and boat lift seventeen (17) feet west of the U.S. Pierhead Line in lieu of the six (6) foot maximum allowed.

Zoning Administrator Paul Castro stated that staff requested the deferral of this item because it has to be readvertised. He advised that it was not deferred earlier because of the lateness of the issue. He said that the applicant was not present today.

Councilman Brooks made a motion to defer Variance No. 3-2005 to the February 15, 2005, Town Council Meeting. President Pro-Tem McLendon seconded the motion. On roll call, the motion carried 5/0.

d. VARIANCE #4-2005 The application of Angela Oettingen-Spielberg relative to property described as Lot 28, Sea Isle Estates; commonly known as 143 East Inlet Drive; located in the R-B Zoning District. Variance to construct a

two-story addition which would increase the cubic content ratio from 5.27 to 5.48 in lieu of the 3.98 maximum allowed; and, variance for said addition to be constructed with a point of measurement of 13.45 feet NGVD in lieu of 9.42 feet NGVD required.

Ex-parte communication was declared by Councilman Goldblum with Attorney Jim Brindell regarding the increase of cubic space; and by Councilman Brooks with Attorney Brindell.

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, stating that there were two small additions proposed in the rear of the house that could not be seen from the street. He displayed photographs of the subject property. He explained that the hardship was the lay of the land.

Architect Jacquie Alberran addressed the Town Council explaining the specifics of the project.

Zoning Administrator Paul Castro provided staff comments: Staff concerns were related to the extension of the house extending over 3' to the east as it related to the hardship. He explained that when the house was originally built there was no point of measurement requirement in the Code and the house had just been built from grade up. Subsequently, the point of measurement had come into play and did impact the property, however, the applicant was asking for point of measurement and a CCR variance, and staff had difficulty with the extension back towards the swimming pool area, but not with the second floor enclosure.

Architect Alberran explained that all of the calculation measurements made were from the existing point of measurement, and were based on the Code.

Zoning Administrator Castro reiterated that staff had no objection to enclosing the second floor, however, the extension on the first floor would exceed the CCR calculations.

Director of Planning, Zoning & Building Robert Moore commented that if they were to go ahead and enclose the area where the awning was there was no objection, however, if they were going to enlarge the area, there was no hardship to enlarge the area any further to the east.

Councilman Brooks made a motion to allow the point of measurement request by the petitioner to enclose the balcony on the second floor, however, the first floor patio must stay as

is. The hardship being the slope of the land.

Mr. Castro explained that the applicant had been asking to extend the patio out 2'8", now there were not asking for that – they were asking for the 2' balcony overhang. The petitioner would still need the point of measurement for that balcony. The first floor would not be extended out, but the second floor would be cantilevered the 2' as allowed for a balcony.

The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

e. VARIANCE #5-2005 The application of Michael and Cheryl Minikes relative to property described as lengthy legal description on file; commonly known as 583 North Lake Way; located in the R-B Zoning District. Variance to allow an addition and partial demolition to the existing house which would create a cubic content ratio of 3.95 in lieu of the 3.88 maximum allowed and the 4.14 existing; to allow an angle of vision of 130 degrees in lieu of the 104 degrees maximum allowed and the 118 degrees existing; and, to allow lot coverage of 30.24% in lieu of the 30% maximum allowed and the 31.46% existing. **Request for Withdraw Per Letter Dated December 17, 2004, From Maura A. Ziska.**

Variance No. 5-2005 was withdrawn earlier in the meeting.

f. SPECIAL EXCEPTION #1-2005 The application of Hugo Boss relative to property described as lengthy legal description on file; located in the C-WA Zoning District. Special exception for a new retail store which will total 3,158 square feet in lieu of the maximum 2,000 square feet allowed by right which requires the applicant to be town-serving.

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, explaining the location of the property.

Zoning Administrator Paul Castro provided staff comments: when applicant renews

occupational license, demonstration of Town-serving status must be made.

Director of Planning, Zoning & Building Robert Moore noted that Mr. Meals, of the Winthrop House did phone staff this morning to advise that they had spoken with the Goodman Company, and had no issues with this particular special exception request.

In response to Councilman McDonald, Mr. Gus Scarpriate, Senior Vice President of the Goodman Company, replied that the escalator in the Esplanade had experienced ongoing problems, and that he was working closely with the contracted service company. At the current time, there was an electric circuit panel that needed replacement, and needed to be re-built, as a replacement could not be found. It was expected that the circuit panel would be re-built and installed next week.

Mr. Castro explained that the applicant must be able to demonstrate Town-serving status within six months; otherwise, they would lose the additional square footage.

Attorney Brindell advised that Hugo Boss was a very high end clothier, which was most attractive to Palm Beach residents. The Town-serving documentation would be provided when the business license was renewed.

Town Attorney Randolph advised that Town-serving documentation was a requirement of granting a special exception. If there was not an affidavit or marketing study, etc., then that requirement had not been met. He urged that assurance be made that the applicant had met that requirement.

Attorney Brindell explained that the store would not open until November. There was a business plan, and that could be produced.

Councilman Brooks moved deferral of Special Exception #1-2005 to the February 15, 2005, Town Council Meeting, so that the applicant could provide a market survey at that time. The motion was seconded by President Pro-Tem McLendon.

Mr. Spence Cavanaugh, Vice President of Retail, Hugo Boss, addressed the Town Council, stating that marketing studies had been done, in order to identify potential customers.

On roll call the motion carried unanimously.

g. SPECIAL EXCEPTION #2-2005 The application of Richard and Lynn DeMatteis relative to property described as Lots 29, 31, 33 and 35 of Poinciana Park; commonly known as 416 Seabreeze Avenue; located in the R-B Zoning District. Special exception to allow two sets of driveway gates to be set back 15 feet from the street pavement for a property located on a cul-de-sac in lieu of the 18 foot minimum required.

Ex-parte communications were declared by Councilman Goldblum with Attorney Maura Ziska regarding the gates; by President Pro-Tem McLendon via telephone conversation with Attorney Ziska; by Councilman Brooks via telephone with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that a traffic study had been prepared and it had been concluded that the proposed gates could operate safely, and not impede the health, safety, or welfare of the general public.

Zoning Administrator Paul Castro commented that the applicant had stated that they wanted manual gates to be locked when they were out of town, and opened continuously when they were in town, however, staff was concerned with that request. Both the police and fire rescue believed that the gates should be operated mechanically, with key pads and a knox box for entry into the property. Staff recommended that the gates be powered with a coded key pad and a knox box with automatic openers for the property owners when they come back into town.

Attorney Ziska stated that the applicant would agree with those staff comments.

Councilman Brooks moved approval of Special Exception #2-2005. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

h. SPECIAL EXCEPTION #3-2005 WITH VARIANCE The application of George Sharoubim relative to Lots 28-33, Block 15, Royal Park; commonly known as 410 South County Road; located in the C-WA Zoning District. Special exception to operate a new apparel store ("Giorgio's" located at 410 S. County Road) with 2,100 sq. ft. of gross leasable area. Since the proposed space is in excess of 2,000 sq. ft. of gross leasable area, the Applicant is

required to obtain Town Council approval and a finding that the proposed use is town serving. Variance to allow a second store with the same name ("Giorgio's" located at 410 S. County Road) to be approximately 300 feet from the Giorgios located at 230 Worth Avenue in lieu of the 1,500 feet minimum separation required.

Ex-parte communication was declared by Councilman Goldblum with Attorney Ziska; by President Pro-Tem McLendon with Attorney Ziska, by Councilman Brooks with Attorney Ziska, by Councilman McDonald via a conversation with George Sharoubim regarding the merits of the application.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council. She stated that Giorgio's had been in business in Palm Beach for over 16 years; the business was Town-serving. The store on County Road would sell different merchandise than the Worth Avenue store, as it would be off-season, or last season's merchandise and apparel coming from the store on Worth Avenue, so it would have different apparel. The hardship for allowing the same name is linked to the name recognition and reputation and good will that George Sharoubim had created for the store over the last 16 years. Continuity of the name would be essential for his successful business. Granting the variance would not be contrary to public interest, since the intent of the Code is so a retailer cannot monopolize Worth Avenue, which was not the case, since this was different from the original store.

Zoning Administrator Paul Castro commented that the existing Code said that no existing commercial use, which was subject to the 2,000 sq. ft. maximum gross leasable area of regulation, may occupy additional space within 1500 feet of the existing licensed business, which distance shall be measured along the public sidewalk, if new space to be occupied will increase the total gross leasable to more than 2,000 sq. ft. He explained that the existing Giorgio store was within 500 feet of the store the owner wishes to open on County Road, and as such, he would not be allowed to operate a store under the same name, based upon these regulations, which were intended to keep chain stores, and other type stores, from being too close together. Staff did not see a hardship with the variance request.

Councilman McDonald commented that, obviously, Giorgio's was a mom and pop operation, as opposed to a chain store, which was what the ordinance was trying to preclude.

Town Attorney Randolph advised that each application must be taken on its own merit, and make a determination as to whether or not there were distinguishing characteristics between them. In determining whether or not to grant a variance, consideration would have to be given to things such as pointed out by Councilman McDonald. He cautioned that it must be kept in mind that every time an application such as this was granted, it would be an opportunity for someone who was a chain store

to come in and attempt to do the same thing, and try to indicate that there was really no difference in what they were doing, and what this individual was doing; the difference was that a chain store would certainly appeal to national and regional audiences, whereas this particular applicant would not be doing that.

Attorney Ziska replied that if anyone else wanted to do the same thing, they would have to request Town Council approval, so there was a monitoring power for this type of situation. She stated that when the Code was originally implemented, it was to prevent shops adding and adding and take over the whole block. This application was distinctive because it was a mom and pop shop and George felt that it was essential to have his name connected with this store, because it was his reputation that had made him so successful.

Town Attorney Randolph advised that there had not been a way found to regulate chain stores on the basis of the fact that they were a chain store, however, a way had been found to deal with region serving types of businesses, and that had been done by virtue of the 2,000 sq. ft. parameters. He suggested that there may be some difficulty in the future if an applicant was turned down by saying that they were a chain store, as opposed to using the types of tools that were included in the ordinance to deal with region serving versus local serving. He advised that it would cause him concern if these kinds of applications were granted, and then differentiating for mom and pop type of operations.

Mayor Smith commented that she believed that Giorgio's was a local store, and that this was a point that had been brought up in the Strategic Plan – the protection of local merchants from the chain stores. She stated that perhaps the new store could be called Giorgio II, to differentiate it from the main store. She noted that this was the type of operation that the Town Council would want to look upon very favorably, because there was no one more Town serving than Giorgio. She urged that the local merchants be protected against the international chains.

Town Attorney Randolph advised that the reason the distance requirement had been put in the Code was to keep a chain store, or someone who met the 2,000 sq. ft. measurement, from opening up 2,000 sq. ft. here, and then opening up 2,000 sq. ft. down the street, etc., so as to get around the ordinance.

Director of Planning, Zoning & Building, Robert Moore advised that approval of similar locations had been done, for example the Wachovia Bank on Sunrise Avenue, where there was another Wachovia Bank in very near proximity. Both banks are Town-serving and were selling the same commodity, so a precedent has been set in one respect already. He suggested that if both Giorgio stores were Town-serving and both could submit the necessary documentation, that distinction could be drawn. He stated that staff had always advised that the name "Giorgio" could not be used within the

same location; if the Town Council found that a name, such as Giorgio II, would be acceptable, then it would be a circumvention. Either it should be or should not be approved as a separate store that would be within 1500 feet.

Councilman Brooks commented that, in his judgment, by granting the petition a local merchant would be hurt. The philosophical question was if it was a difference in kind or a difference in degree, and the answer was that it was a difference in degree. He stated that he was petrified of the legal precedent, and was not at all comfortable with anything light of the existing ordinance, and changing names was not something that would hold up in court. He suggested that perhaps George could find space in the Royal Poinciana Plaza.

Attorney Ziska stated that a precedent was Saks Fifth Avenue, and their Men's Store; also Trillion.

Councilman McDonald commented that he could not draw a distinction between Giorgio's and Saks Fifth Avenue, and did not know what would give Saks Fifth Avenue the right to expand within 1500 feet, and not Giorgio's.

Town Attorney Randolph advised that one condition of approval could be having the name different, such as Giorgio's II.

Mr. Moore commented that approvals had been granted in the past to accommodate something that staff believed would be Town-serving. This was not a new concept, of trying to put smaller stores together as one, and Saks was the perfect example in the Esplanade.

Attorney Ziska advised that the applicant could provide Town-serving documentation regarding the store on South County Road.

Councilman Goldblum moved approval of Special Exception #3-2005 with variance. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/1, with Councilman Goldblum, Councilman McDonald, President Pro-Tem McLendon, and President Wyett casting affirmative votes; Councilman Brooks casting a dissenting vote.

3. Other

There were none.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

The regular Town Council Meeting of January 11, 2005, was adjourned at 3:35 p.m.

Town Council President

Mary A. Pollitt
Town Clerk