MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 11, 2000

I. CALL TO ORDER AND ROLL CALL

The meeting of the Town Council was called to order at 9:35 a.m., on Tuesday, January 11, 2000, by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Finance Director Jane Skittone, Assistant Finance Director Cheryl Somers, Finance Accounting Supervisor Amy Woods, Fire-Rescue Chief Ken Elmore, Fire-Rescue Community Education Coordinator Mike Palmer, Human Resources Director William Crouse, Police Chief Frank Croft, Assistant Police Chief Michael Reiter, Planning, Zoning & Building Director Robert Moore, Assistant Building Official Harry Ackerman, Planner/Projects Coordinator Timothy Frank, Zoning Administrator Paul Castro, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Risk Coordinator Karen Temme, Town Engineer James Bowser, Town Nurse Marlene Dalauro, Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Jacqueline Albarran, Landmarks Preservation Commission - From 1998 to 1999

Mayor Ilyinsky presented a plaque to Ms. Albarran in recognition of her service on the Landmarks Preservation Commission.

B. Presentation to the Town by the American Heart Association of Six Automatic External Defibrillators

Mr. Keith Ennis, representing the American Heart Association, presented six automatic external debfibrillators for the use of the Town of Palm Beach. Fire-Rescue Chief Ken Elmore graciously accepted them, while Fire-Rescue Community Education Coordinator Mike Palmer gave a brief explanation regarding their use.

C. Presentation to the Town by Representative of the Government Finance Officers' Association for "Certificate of Achievement for Excellence in Financial Reporting" for Fiscal Year Ending September 30, 1998

Mr. David Miles, Director of Finance for the City of Greenacres, and past president of the Palm Beach County Chapter of the Florida Government Finance Officers' Association presented the 11th consecutive award, "Certificate of Achievement for Excellence in Financial Reporting," for the fiscal year ending September 30, 1998, to the Town of Palm Beach. The certificate was accepted by Finance Director Jane Skittone, Assistant Finance Director Cheryl Somers, and Accounting Supervisor Amy Woods.

IV. COMMENTS OF MAYOR PAUL R. ILYINSKY

There were none.

V. APPROVAL OF THE AGENDA

The following changes were made to the Agenda:

DEFER to a later time - Item XI.A. - Landmark Designation of 284 Monterey Road; Resolution No. 36-99 *(Deferred from December 14, 1999)* - per letter dated January 7, 2000, from Attorney Doyle Rogers.

Attorney Doyle Rogers requested deferral of the landmark designation of 284 Monterey Road, until the zoning study of the north end was completed, or three years, whichever is later, with the right to bring it up in between those times if necessary.

Town Attorney Randolph noted that ratification for the record would be needed regarding a waiver of the rule that the matter must be heard within a certain period of time.

Attorney Rogers commented that it had been included earlier in the Landmark hearing, and ratified that waiver of the rule that the matter must be heard within a certain period of time would be included in his request.

Town Attorney Randolph noted that the property would still be subject to the jurisdiction of the Landmark Commission during the period of time that the matter was being deferred.

Councilman Shaw moved approval of deferral of Item XI.A. to a later time; until the zoning study of the north end was completed, or three years, whichever was later, with the right to bring it up in between those times if necessary. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

DEFER to February 8, 2000 Town Council Meeting - Item XII.A.3. - Discussion of Establishing Severance Packages for department Heads by Amending Ordinance No. 18-99, Town Charter *(Referred to the Administrative and Personnel Committee on November 9, 1999 - Deferred from December 14, 1999)* - per recommendation of Town Manager.

President Pro-Tem Wyett moved deferral of Item XII.A. 3. to the February 8, 2000, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER to February 8, 2000 - Item XV.A.1. - Appeal of the Architectural Commission Decision of December 17, 1999, Regarding 8 Windsor Court by Mr. and Mrs. William Cooley - per letter dated December 21, 1999 from Attorney Ronald Kolins.

President Pro-Tem Wyett moved approval of deferral of Item XV.A.1. to the February 8, 2000, Town Council Meeting, with the provision that the presentation and discussion be limited to one hour. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

DEFER to February 8, 2000 - Item XV.C.2. - Variance No. 48-99 - Robert Crompton, 311 Pendleton Lane - per letter dated January 10, 2000 from Attorney Francis Lynch.

Councilman McLendon moved deferral of Item XV.C.2. to the February 8, 2000, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

MOVE to the beginning of "Development Reviews" - Item XV.C.10. -Variance No. 4-2000 - Pamela & Dean Lovett, 124 Clarke Avenue - per letter dated December 22, 1999, from Ms. Jacqueline Albarran.

Councilman Shaw move approval of moving Item XV.C.10. to the beginning of the "Development Review" section of the Agenda today. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER to February 8, 2000 - Item XV. C. 2. - Site Plan Review No. 17-99 With Special Exception and Variances, The Palm Beach Day School, Inc. - per request of staff in order to review the revised plans.

President Pro-Tem Wyett moved approval of deferral of Item XV.C.2. to the February 8, 2000, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

DEFER to February 8, 2000 - Items XII.A.4. and 5. - Discussion of the Sale of Water Meters to the City of West Palm Beach and Request for Assistance by Hartman & Associates in Following the Water Budget Process in the City of West Palm Beach - per request of staff.

President Pro-Tem Wyett moved deferral of Item XII.A. 4. to the February 8, 2000, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

President Pro-Tem Wyett moved deferral of Item XII. A. 5. to the February 8, 2000, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

DEFER to February 8, 2000 - Item XV.C.3. - Variance No. 49-99 - Claude & Melinda Trucks, 171 Dunbar Rd - per request of Attorney James Brindell.

President Pro-Tem Wyett moved deferral of Item XV.C.3. to the February 8, 2000, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

MOVE to "New Business - Major" - Item XV.C. 4. - Variance No. 2-2000 John & Maureen Donnell, 300 Parc Monceau

Councilman Shaw moved approval of moving Item XV.C.4. to "New Business - Major." The motion was seconded by Councilman McDonald. On roll call the motion carried 3/2, with Councilman Shaw, Councilman McDonald, and President Smith casting affirmative votes; President Pro-Tem Wyett and Councilman McLendon casting dissenting votes.

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

VI. COMMUNICATIONS FROM CITIZENS

There were no comments from citizens at this time.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF DECEMBER 14, 1999

VIII. APPROVAL OF CHECK REGISTERS FOR DECEMBER 1999

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF DECEMBER 17, 1999

X. OTHER

A. Request for Waiver of Recourse/Fiduciary Liability for General Employees and Public Safety Retirement Board of Trustees per Memorandum dated December 30, 1999, from Risk Coordinator Karen Temme

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

REGULAR AGENDA

XI. PUBLIC HEARINGS

A. Landmark Designation of 284 Monterey Road; Resolution No. 36-99 *(Deferred from December 14, 1999)*
- Request for Deferral per letter dated January 7, 2000, from Mr. Doyle Rogers

This matter was deferred earlier in the meeting, under Item V. Approval of the Agenda.

B. Landmark Designation of 120 Casa Bendita; Resolution No. 1-00

1. Consideration of Appeal of the Landmarks Preservation Commission of December 15, 1999, Regarding 120 Casa Bendita by Mr. and Mrs. Leonard Davis

Town Clerk Pollitt administered the oath to all those who would be speaking to the following issues, and confirmed proof of publication.

Timothy Frank, Planner/Projects Coordinator, reported that the Landmarks Preservation Commission had studied the property at 120 Casa Bendita and found that it met the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day explained that this item had been brought before the Landmarks Preservation Commission on December 5, 1999, and there had been a vote of 5/2 to recommend approval to the Town Council for the landmarking of the property. Since that time the property owner, who objected to designation, had forwarded a proposal to Town staff. Mrs. Day reported that the property was originally designed in 1921 by Addison Mizner. The Phipps Estate was demolished in the 1960's and the objects and landscape features that were left on the property were all that was left of the once grand estate. She presented a diagram made when the house was still standing, exhibiting the horse trough wall and garden, as well as a current picture of the wall. Mrs. Day stated that, although the original estate was gone, the remainder was a reminder of what once was one of the greatest estates in the Town of Palm Beach, and that it did meet the criteria of the Landmark Ordinance; there was precedence in the Town, as when El Mirasol was demolished the gateway to that estate was saved and was currently a landmark of the Town.

Attorney James Brindell, on behalf of Mr. and Mrs. Davis, stated that there was objection to the proposed landmarking in its current format, and Mr. and Mrs. Davis were prepared to show that the garden and plant material currently in place was not the original plant material, and had been revised by Mr. and Mrs. Davis in the '70's; there was nothing outstanding about the arrangement of the landscaped spaces, and there was no merit to landmarking from the landscape architecture point of view. He noted that Architect Gene Lawrence was very familiar with the architecture at the Phipps Estate, and was prepared to testify that the architecture of the porticos presented was not reflective of similar elements that were in the Phipps Estate, and although they were a remnant of an accessory structure, it did not show the flavor of the former estate. Mr. Brindell explained that there was originally a continuum of space from the horse trough wall going east through an 80' long rectangular pool with a grassy area around it, and that space had now been totally disrupted. There was now a house on the east side of the garden wall, the portico had been blocked, and the pool was gone, replaced by a much more modern reflecting pool. The whole space was bisected by a driveway, which was now the main entrance for the Davis home. Mr. Brindell explained that there were two lots on the property in question, and the area proposed for landmarking was composed of Lot 7 (eastern lot of 14,541 sq. ft.) and Lot 8 (western lot of 25,039 sq. ft.). The only dimension that Lot 7 failed to meet in terms of the R-B area requirements was in width; it was only 95' wide, and 5' more would make it a conforming lot in terms of length, depth and area. If desired, 5' of Lot 8 could be sold to Lot 7 and the two lots would be totally conforming. He explained that if the landmarking was approved, and the garden area was landmarked, Lot 7 would be rendered as unbuildable, and would burden the property in terms of value. He pointed out that here had been a lengthy hearing on this matter before the Landmarks Preservation Commission.

Councilman McLendon moved acceptance of the Landmarks Designation Report. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Attorney Brindell proposed the following settlement:

> Mr. and Mrs Davis would not object to the designation of the horse trough wall itself, which was at the west end of Lot 8. Consideration had been given to allow that wall to be moved to a public space, however, it had been discovered that prior owners had placed a deed restriction on the horse trough wall

in favor of the property immediately to the west, so it could not now be moved without that property owner's position. The porticos and fountain were the objects of real interest.

If the present owners or any future owners of Lot 7 wanted to remove all or a portion of the porticos or the garden fountain, the Town would be given three months notice, and the right to remove that within those three months at its expense, and if the Town failed to do that within that time or within a negotiated period of time, the features could be demolished or otherwise relocated, and the owner of Lot 7 would also be permitted to close up the archways in any or all of the porticos. Lot 7 could also be augmented with land from Lot 8 to make Lot 7 a conforming lot. Nothing else on Lot 7 and Lot 8, except for the horse trough wall, would be landmarked now, or in the future, as to those elements, and the Landmark Preservation Commission would have jurisdiction over development on Lot 8; the Architectural Commission would have jurisdiction over development on Lot 7.

Mr. Brindell explained that the above proposals protected the elements, and gave an opportunity for anyone wanting to do something with them in the future to make them available to the public.

Mrs. Polly Earl, speaking for the Preservation Foundation, commented that the Preservation Foundation and the Garden Club would be speaking today with one voice.

Mrs. Nancy Murray, President of the Garden Club, commented that she had done research for a book published by the Garden Club, and had reviewed the old glass slides of Casa Bendita, and noted that the pictures of the garden were exquisite. She commented that she thought it would be wonderful if the arches and the other architectural designs could be incorporated into a public space. She noted that the Garden Club would make every effort to be part of a community coalition to bring them to a public space.

Mrs. Day commented that she had reviewed the proposal of Attorney Brindell, and believed that it was a good compromise, and thanked Mr. and Mrs. Davis for allowing access to the property in preparation for the landmarking process.

President Pro-Tem Wyett moved that Resolution No. 6-00 be accepted and approved, with the conditions as outlined by Attorney Brindell, in designating that part of the property only, under Section 54-161 of the Town of Palm Beach Code of Ordinances, and the Landmark Preservation Ordinance No. 2-84. The motion was seconded by Councilman Shaw.

Councilman McDonald moved to amend the motion of approval to state Resolution No. 1-00, rather than 6-00, as stated by the maker of the motion.

Councilman Shaw agreed with the amendment. He noted that he had discussed the issue with Attorney Brindell and Mr. Davis in an attempt to resolve the landmarking of the property.

Mrs. Earl suggested that at such time the compromise would come into effect, the Town would be dealing with potential participants who may have a much less concerned point of view, and that there be a much larger time frame to allow the town to remove the portico or fountain, suggesting that it be six to nine months.

Councilman Wyett amended the motion to include the time period of six months [If the present owners or any future owners of Lot 7 wanted to remove all or a portion of the porticos or the garden fountain, the Town would be given three months notice, and the right to remove that within ~~those three~~ six months at its expense, and if the Town failed to do that within that time or within a negotiated period of time, the features could be demolished or otherwise relocated, and the owner of Lot 7 would also be permitted to close up the archways in any or all of the porticos.] The amendment was approved by the seconder of the motion, Councilman Shaw.

Councilman McDonald suggested that the expense of moving the porticos or the garden fountain become the obligation of the owner of the property at the time.

Councilman Wyett amended the motion to include the suggestion of Councilman McDonald. On roll call the motion carried unanimously.

Mr. Davis addressed the Town Council, thanking them for their attention to the landmarking project, and stating that he felt very strongly about the issue.

C. Landmark Designation of 216 Pendleton Avenue; Resolution No. 2-00

1. Resolution No. 6-00 - Authorization for Ad Valorem Tax Exemption for 216 Pendleton Avenue

Planner/Projects Coordinator Tim Frank reported that proof of proper notice had been received, and that the property at 216 Pendleton Avenue had been reviewed by the Landmarks Preservation Commission, who found that it

met the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day reported that 216 Pendleton Avenue was designed in 1936 by Gustav Maass, and was a Monterey style building. Mrs. Day noted that renovations on the property had been completed, and that this was a tax abatement project, which would be confirmed by Resolution 6-00.

President Pro-Tem Wyett moved acceptance of the designation report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

President Pro-Tem Wyett moved approval of Resolution 2-00 designating the property at 216 Pendleton Avenue as a landmark of the Town of Palm Beach, on the basis that it met the criteria in Section 54-161 of the Town of Palm Beach Code, and the Landmarks Preservation Ordinance No. 2-84. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution No. 2-00 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE NO. 2-84.

Councilman Shaw moved approval of Resolution 6-00, concerning the tax abatement. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

XII. OLD BUSINESS

A. Other

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

Ms. Gail McKenna, Project Director, PCL Constructors, responded to the question of President Smith concerning why the temporary bridge could not become the permanent bridge, and stated that her company was not the contractor for the new structure, which would go out for competitive bid this year. She noted that she understood that the requirements for the new bridge had to do with the approach to and from the Town of Palm Beach, and the view that would result; in addition, the temporary bridge was not particularly aesthetically pleasing, since it was a temporary structure.

Ms. McKenna noted that there had been recent traffic disruptions, and she proposed that the subcontractor be allowed to do the balance of his work during night time hours, mainly paving work from 7:00 p.m. to morning hours of 2:00 or 3:00 a.m., so as not to disrupt traffic.

Councilman Shaw moved approval of night time hours of 7:00 p.m. to 12:00 midnight on two nights in order for the subcontractor to do the balance of paving work. The motion was seconded by President Pro-Tem Wyett. On roll call the motion 4/0, as Councilman McDonald had temporarily left the room.

In response to the query of Councilman Shaw regarding the opening of four lanes on the bridge, Ms. McKenna explained that the machinist would have his portion of the work done by the end of the week, and that they would like to work through the weekend, possibly doing a Sunday float-in for the bascule leaf, if that was acceptable to the Town Council. She estimated that four lanes would be finished by the first part of February.

Councilman Shaw made a motion to allow the contractors to move as quickly and efficiently as possible, with Sunday of the upcoming weekend included. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

2. Telecommunications Issues:

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

Assistant to the Town Manager David Jakubiak noted that Attorney Nicholas Miller, of Miller & Van Eaton, would be available via conference call for discussion today. He reported that staff had met with Comcast to discuss the re-build of the cable system, with hopes of completing a Franchise Agreement. Comcast had been requested to submit a proposal relating to the financing of an institutional network, and another meeting was scheduled for that purpose.

b. Property Valuation of Town Public Rights-of-Way for Use by Various Telecommunications Providers

Mr. Jakubiak referred to his memorandum dated January 6, 2000, regarding establishing some valuation of the Town public rights-of-way. He noted that there were three alternatives outlined for placing a value, with pros and cons to each alternative; once a value was placed on the rights-of-way, the Town would be in a position to enter into agreements with companies seeking the use of Town public rights-of-way. He explained the three alternatives presented:

1) Establish a fee using the value of the property actually physically occupied by the facility derived from the appraised value of the abutting property. Currently, this fee is estimated by the town Public Works Department to be $9.00 per linear foot.

1) Identify the historical costs relating to the right-of-way occupancy.

2) Utilize Palm Beach County Ordinance which imposes an annual fee on local service providers of 1% of the providers gross revenues, and a minimal $500.00 per linear mile fee on any cable, fiber optic, or other pathway that makes physical use of the rights-of-way.

Town Attorney Randolph commented that, regarding Alternative 2, there was a possibility of litigation from the telecommunications industry, however, it would be more strongly supported than Alternative 1 in the event of litigation; the easiest way would be Alternative 3, which would not be challenged, however, the compensation would not be equal to that received under the other alternatives.

Councilman Shaw commented that he would be interested in seeing the potential income the Town would derive from public rights-of-way fees.

Mr. Jakubiak replied that the compensations were different, depending on the company; a wireless company may fall into the public service tax category; if it was a wireline company, there would be a mileage charge, and lease costs of fiber.

President Pro-Tem Wyett commented that he was concerned with the installation of any more wire above ground, as he believed the biggest offender was Comcast with its low slung lines, that were often just a few feet above the heads of residents. He suggested that any new wiring proposals have the requirement that they be hidden, and antennas disguised.

Attorney Nicholas Miller was contacted via conference call. He commented that Channel Asset Corporation had proposed an undersea cable onto the beach, across the Town, and into West Palm Beach; the question was what to charge them for the use of Clarke Avenue. Currently, Florida State law said that unless you can prove that you have costs in excess of $500 per mile, all that can be charged such a company would be $500 per mile. The linear footage in this case would be 5,000 feet. If a cost study justified a $9.00 per linear foot charge, that one contract would be generating $5,000 x $9.00, or $45,000 on an annual basis. If a cost study was not done, the Town would have to live with the $500 per mile charge. He suggested that the Town may have an opportunity to take advantage of the market as it develops, however, if anything more than $500 per mile per year was charged, it would likely be objected to by telecommunication companies, depending upon how quickly the company wanted to have their system in place versus how much time they could spend defending the principle that they would not pay more than $500.

President Smith expressed concern with the Clarke Avenue being used for construction purposes again, since residents on that street had spent years being inconvenienced with re-paving.

In response to Attorney Randolph, Public Works Director Dusey stated that the Dearborn study had been extremely comprehensive, and the Public Works Department would not be prepared to complete a similar study, although they would be able to define costs of construction, maintenance, and related road-way system costs.

Attorney Miller commented that it was a fundamental accounting function to accumulate and categorize costs related to a right-of-way costs accumulation report, and there would be the need for someone who could write the report explaining the allocation methodology used; Town staff would need to determine if it could accomplish such a study on their own, or use an outside consultant. He noted that some conclusions would have to be reached within one-two months in that regard. He agreed that he would provide some other studies, other than the Dearborn study, for the review of staff.

President Pro-Tem Wyett moved deferral of the issue until the February 8, 2000, Town Council meeting, at which time staff could provide more information. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

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

This item was deferred to the February 8, 2000, Town Council Meeting, earlier in the meeting under Item V. "Approval of the Agenda."

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

This item was deferred to the February 8, 2000, Town Council Meeting, earlier in the meeting under Item V. "Approval of the Agenda."

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

This item was deferred to the February 8, 2000, Town Council Meeting, earlier in the meeting under Item V. "Approval of the Agenda."

6. Report by Digby Bridges, Marsh & Associates, P.A., Regarding Town Hall Needs Analysis - Request for Additional Appropriation to Complete Review for the February 17, 2000, 9:30 AM Special Town Council Meeting

Town Engineer James Bowser reported that staff had met with Mark Marsh and discussed completion of the Town Hall Needs Analysis, considering the Mobil Station property as an additional item. He explained that the staff of Public Works would be doing the bulk of the work in putting together alternatives for the Town Council to consider at the Special Town Council Meeting to be held on February 17, 2000, and an additional $5,000 was being requested for the assistance of Mr. Marsh, as well as his attendance at the Special Town Council Meeting.

Councilman Shaw moved approval of the appropriation of $5,000 from the General Fund Contingency per the request of Town Engineer Bowser. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

7. Potential Litigation Against the Federal Government Regarding Lake Worth Inlet *(Deferred from December 14, 1999)* - **This item will be heard at time certain of 3:30 p.m.**

Town Attorney Randolph noted that the Town Council had authorized an expenditure of up to $35,000 for a law firm to provide the Town with a complete analysis of what would be involved in pursuing a lawsuit against the federal government in regard to the loss of sand on the beachfront properties within the Town. Attorney Stouck, of Spriggs and Hollingsworth, made a presentation in this regard, and he had subsequently provided a letter, dated January 4, 2000, outlining what he would propose being included within a memorandum of law. The Town Council had requested that contact be made with the law firm that had been involved in the Applegate Case (Gray, Harris, and Robinson) and Mr. Randolph advised that he had spoken with Jack Kirschenbaum of that firm in regard to whether they would have an interest in making a presentation in front of the Town Council, and perhaps, pursuing the matter. They indicated that they would be interested, and Attorney Gordon "Stumpy" Harris was in attendance today, along with Jack Kirschenbaum, in order to make a presentation to the Town Council. Mr. Randolph noted that he had advised Attorney Stouck, who was also present today.

Attorney Harris addressed the Town Council, advising that he did a great deal of complex litigation, specifically eminent domain matters. He referred to the Applegate Case, which took place in Cape Canaveral, and which his firm had handled. He exhibited photographs of the area and explained the facts of the case and what had occurred during litigation. He advised that he believed there were many similarities with the situation in Palm Beach, and he suggested that he be provided with all available documents in this regard, and that it may be necessary to retain some experts in coastal engineering as well. He stated that he believed that he could put together an evaluation/assessment of the situation, and make recommendations to the Town Council as to the courses of action that could be followed. He noted that the Army Corps of Engineers would be difficult to deal with, and that they had tested his willingness to stay in the fight during the Applegate hearings.

In response to President Pro-Tem Wyett, Attorney Harris responded that the Erosion Control Line (ECL) was a double-sided situation, and if title passed to the State, riparian rights would go with it; however, it may be possible to have an assignment of rights. He advised that issue would have to be evaluated.

In response to Councilman McDonald, Attorney Harris replied that the attorney fees in the Applegate Case had been undetermined as yet, as the fees would be awarded pursuant to the inverse condemnation, however, he stated that there was in excess of $1,600,000 in time, and the agreement with the client had been on a total contingency basis. He noted that in order to succeed, it would be very likely that the Town would need to retain some coastal engineers to do a very detailed study, which would not come cheaply.

In response to President Pro-Tem Wyett, Attorney Harris estimated that a lawsuit could be filed within 90-120 days, and then the court process would begin, which was not in his control.

Councilman McDonald suggested that the selection of an attorney to possibly deal with the initial memorandum of law be determined on Friday, January 14, 2000, at the Special Town Council meeting, as that may influence how quickly a beach renourishment program would be started.

President Smith noted that Attorney Stouck had already submitted a letter detailing what he would do, and suggested that Attorney Harris also submit a letter prior to the meeting on January 14, 2000, before a decision could be made.

Attorney Harris responded that he could furnish a letter detailing the scope of work within the bounds of the $35,000 (how he would suggest proceeding on the matter), prior to the meeting. Subsequently, the Town would receive a report from whomever it decided to hire, outlining and assessing what should be done.

8. Lake Worth Inlet Sand Transfer Plant Issues:

a. United States Army Corps of Engineers' Study to Evaluate Alternative Plans

Public Works Director Al Dusey reported that the U.S. Army Corps of Engineers had sent out a notice regarding a feasibility study with a number of options and alternatives for improving the Sand Transfer Plant. He recommended that the Town endorse whatever alternative the U.S. Army Corps of Engineers determined was best, and that the Town encourage the operation of the Sand Transfer Plant at 100% federal cost. He explained that the Corps of Engineers had pointed out that they believed they could tie it into maintenance of the channel, and could maintain and operate the Sand Transfer Plant in perpetuity at their cost. He noted that he had asked that they accelerate the design and construction, in order to have the Plant operational by October 2002. Mr. Dusey indicated that, with the approval of the Town Attorney, the Corps of Engineers would be requested to include a process of mitigation for damages caused by the Lake Worth Inlet in the feasibility study.

President Pro-Tem Wyett moved approval of authorization for Mr. Dusey to contact the U.S. Army Corps of Engineers to include the four points outlined in the memorandum of Mr. Dusey, dated December 29, 1999, as follows:

1. **The Town endorse whatever alternative the Corps determines best transfers to Town beaches the annual amount of sand the Town should be receiving through the normal littoral flow.**

2. **The Town endorse the continued operation and maintenance of the Sand Transfer Plant at 100% Federal cost.**

3. **The Town requests that the Corps accelerate its study, design, and construction process to have an improved plant fully operational no later than October 2002.**

4. **With the approval of the Town Attorney, the Town requests that the Corps include in the study process a mitigation plan to improve all Town beaches at Federal cost due to damages caused by the Lake Worth Inlet.**

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

b. Proposal to Expedite the United States Army Corps of Engineers' Design Phase by Contracting Lobbying Services of Applied Technology & Management and Rees Engineering & Environmental Services

Public Works Director Dusey reported that he had submitted a copy of a proposal that was given to the Port of Palm Beach by Applied Technology and Management (ATM) and REES Engineering and Environmental Services to expedite projects being completed by the U.S. Army Corps of Engineers. Since The Executive Director of the Port of Palm Beach, Ed Opel, had unexpectedly resigned from his position with the Port, he suggested that the Town of Palm Beach consider obtaining a similar proposal from ATM and REES for the Town to pursue, independent of the Port and Palm Beach County, (since he expected that the proposal to the Port of Palm Beach would now be put on a back burner) to represent the Town on its behalf with the projects being completed by the Corps of Engineers for the Lake Worth Inlet Sand Transfer Plant, basically to ensure that the Corps of Engineers stuck with the project. The estimate for such a proposal was $25,000.

President Smith explained that the issue at hand was consideration of a proposal given to Mr. Opel of the Port of Palm Beach, detailing the effort of ATM and REES to expedite the design of the Lake Worth Inlet Sand Transfer Plant, with the not to exceed cost of $25,000; whether the Town Council would consider having a similar proposal made for the Town to pursue.

Mr. Dusey explained that staff was requesting approval to obtain a proposal from the two firms (ATM and REES) to the Town of Palm Beach outlining the tasks that would be necessary to ensure optimum, expeditious results for the Town in regard to the work being completed by the Army Corps of Engineers at the Lake Worth Inlet Sand Transfer Plant.

Councilman McLendon moved approval of authorizing ATM and REES to prepare a similar proposal for the Town of Palm Beach, as that proposal prepared for the Port of Palm Beach/Town of Palm Beach/Palm Beach County, for a lobbying effort to expedite projects being completed by the U.S. Army Corps of Engineers in regard to the Lake Worth Inlet Sand Transfer Plant. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

9. Code Enforcement Board Issues Regarding Maintenance of Property, Cleanliness of Construction Sites, and Hurricane Preparation Plans for Construction Sites per Councilman McDonald *(Deferred from December 14, 1999)*

Chief Code Compliance Officer Brian House commented that he understood that it was a concern of Councilman McDonald that it took quite some time to get property matters to the Code Enforcement Board. He noted that it could take 90 days to get it to the Code Enforcement Board because of difficulties in obtaining the correct mailing addresses, necessitating (according to State Statute) advertising it for four weeks in the newspaper, then setting a Code Enforcement Board hearing and advertising that for four weeks, then holding the hearing and giving the owner a legitimate amount of time to comply with the Town requirements. He stated that he did not have any suggestions as to how to expedite the process and still comply with State Statutes.

Councilman McDonald commented that he had questioned whether the Town could change its ordinances to allow the Town to complete any necessary work on the property, and then be able to bill the owner, rather than have to wait to go through the Code Enforcement Board procedure.

Town Attorney Randolph advised that if the Town had a specific statute forbidding something, a certified notice could be given to the property owner that they were in violation of the Code. The property owner would have to have an opportunity for a hearing, but that hearing would not have to be in front of the Code Enforcement Board. In the event they did not have a defense, the Town could then order that the work be done within a limited period of time, and that if it was not done, the Town could do the work, and lien the property.

In response to Councilman McDonald, Mr. Randolph advised that if certified notice was not possible, a provision would have to be inserted in the ordinance, whereby the Town would publish notice for a certain reasonable length of time of a hearing before the Town Council. The length of time involved for the entire process would approximate 45 days.

Councilman Shaw made a motion to refer the Code Enforcement Board issues to the Ordinances, Rules and Standards (ORS) Committee. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

10. Constitutional Issues Relating to Criminal Background Checks for Employees *(Deferred from December 14, 1999)*

Town Attorney Randolph suggested that it would be premature to take any action on the constitutional issues relating to criminal background checks for employees unless or until there was some State or Federal legislation which could be considered, and then supported or rejected by the Town.

Councilman McDonald moved that this item be tabled. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

11. Status Report of the Pike Road Development Order from Palm Beach County by Zoning Administrator Castro

Zoning Administrator Paul Castro recalled that the Town Council had directed that a time extension be requested on the re-zoning of Pike Road. He reported that the Board of County Commissioners gave the Town a two-year time extension on the concurrency reservation, which was the reservation of development rights to construct a 40,000 square foot warehouse on the property. He noted that although the Town had no intention of constructing a warehouse, a development plan had been required when the original re-zoning had been done in 1996. He explained that in order for the Town to maintain that concurrency reservation, the Board of County Commissioners would have to be approached again in two years to request another extension. He requested direction regarding selling or keeping the property.

Councilman McDonald moved that the Town keep the property on Pike Road. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/1, with President Pro-Tem Wyett casting a dissenting vote.

12. Proposed Settlement of Rochelle Faltz vs. Town of Palm Beach, Case No. CL 95-8908 AG

Town Attorney Randolph reported that the plaintiff had asked to settle this case for $8,500. He noted that the plaintiff had an offer of judgment in for $12,500, which would mean that in the event a trial is held and the plaintiff would receive a jury verdict (which was 25% greater than $12,500), the Town would be responsible for any of the plaintiff attorney fees which had been incurred since the date of the offer of judgment. He explained that the Town had made an offer of judgment of $4,999; if the town was successful in obtaining a jury verdict of $0 - to an amount 25% less than $4,999, the plaintiff would have to pay the Town attorney fees. He indicated that he believed that the liability of the Town was negligible, as this was a matter of a lady that was roller blading down an incline on the bike trail, and fell; she maintained that there should have been a warning that the bike trail was turning, and that there had been a sign there, however the bushes had overgrown the sign.

Councilman McDonald moved that the Town proceed to trial in the case of Rochelle Faltz v. Town of Palm Beach. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

******The luncheon recess was taken at 1:00 p.m.******

****** The Town Council Meeting of January 11, 2000 was reconvened at 2:15 p.m.******

XIII. NEW BUSINESS

A. Resolutions

1. Resolution No.4-00 - Interlocal Agreement with Palm Beach County to Execute a Lake Worth Lagoon Partnership Grant Application for the Par 3 Golf Course Habitat Restoration

Town Engineer James Bowser reported that the Town had applied for a grant to plant mangroves at the Par 3 Golf Course under the Lake Worth Lagoon Restoration Program; Palm Beach County had come back with an agreement being presented today. Several changes had been requested by the Town, and Palm Beach County had accommodated on all items except the funding – there had been a misunderstanding between staffs – if the Town spent the full $440,000 it would receive the $200,000 grant promised. He requested authorization to have the Mayor sign the Interlocal Agreement.

President Pro-Tem Wyett moved approval of authorization for the Mayor to sign the Interlocal Agreement with Palm Beach County to execute a Lake worth Lagoon Partnership Grant Application for the Par 3 Golf Course Habitat Restoration. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution No. 4-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY FOR THE PAR 3 GOLF COURSE HABITAT RESTORATION PROJECT UNDER THE LAKE WORTH LAGOON PARTNERSHIP GRANT PROGRAM.

2. Resolution No. 5-00 - Authorizing Town Manager to Enter Into a Purchase Agreement with L'Ermitage Condominium for D-12 Storm Water Pump Station

Town Engineer James Bowser requested authorization to purchase an additional 675 sq. ft. of property at the appraised price of $50 per square foot for an amount of $33,750. He explained that there had been some misunderstanding regarding the final site planning on a 10' setback, and because of the building overhangs and doorways on the sides, there were 5' side yard setbacks required.

President Smith suggested that the overhangs be eliminated, or the building re-designed for a more cost effective project.

President Pro-Tem Wyett moved deferral of Resolution No. 5-00, to the February 8, 2000, Town Council meeting, in order to give Town staff time to negotiate the price or request a variance. The motion was seconded by Councilman McDonald.

Director of Planning, Zoning & Building Robert Moore commented that there was both a zoning issue and a building code issue. There would be a variance required for the setback issue, and the Building Board of Adjustments and Appeals would evaluate any building code variation. He indicated that staff could consider all alternatives and report back at the February Town Council meeting.

On roll call the motion carried unanimously.

B. Other

1. Palm Beach County Local Mitigation Strategy Plan

a. Authorize Town Manager to Execute Interlocal Agreement with Palm Beach County

b. Approve the Unified Local Mitigation Strategy Plan

c. Appoint Members and Alternates to the Local Mitigation Strategy Plan Steering Committee

d. Appropriate Expenditure of the Remaining Funds for the Local Mitigation Strategy Program

Zoning Administrator Paul Castro explained that the Town of Palm Beach had been given $40,000 from the Department of Community Affairs to prepare and implement a local mitigation strategy plan. The Town chose to join with 30 other municipalities and Palm Beach County to implement a more comprehensive plan for all of Palm Beach County. He explained that the steering committee that was appointed had now asked the Town Council to enter into a new interlocal agreement, within which a committee would be created (a local mitigation strategy evaluation panel) to evaluate a draft list of priority projects. In addition, they were asking the Town to be governed by those instructions for evaluation of those hazard mitigation projects as described in the local mitigation strategy, and by the project prioritization methodology as described in the plan, both for existing and future projects. They were also asking to appoint a new member and alternate; Mr. Castro advised that the recommendation was to appoint Fire-Rescue Chief Elmore as the representative, and Risk Manager Karen Temme as the alternate. He also requested that the Town Council approve the unified local mitigation strategy plan that was prepared by the joint pane, and recommended to the Town Council that the residual funds left over from the $40,000 be returned to the Town for use on its own projects.

Councilman McDonald moved approval of the Interlocal Agreement and the Unified Local Mitigation Strategy, approval of Fire-Rescue Chief Elmore as the representative and Risk Manager Karen Temme as the alternate, and approval of requesting a refund of the remaining funds to the Town. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. First Union Capital Management Group and State Board of Administration Investments

Finance Director Jane Skittone reported that representatives of First Union Capital Management Group were present to discuss the current investment environment affecting the investment performance of the Town, and to recommend alternatives to improve the performance of the investments of Town funds.

Ms. Julie Tilson, Assistant Vice President & Portfolio Manager, First Union National Bank, stated that she had met with Town staff to review the investment performance of the investment portfolio of the Town relative to the State Board of Administration (SBA), and also to discuss the current interest rate environment. She reviewed the portfolio of the Town, explaining that she had recommended an investment strategy to take advantage of the current interest rate environment. There were several options available, which included receiving new money into the portfolio and investing the new money at a higher yield bringing the average yield of the portfolio up, with the ability to take maturities and re-invest those at higher yields; selling lower yielding securities and re-investing in higher yielding securities. She explained the following: that performance was reported on a monthly basis, a fiscal year basis, and a since inception basis. The since inception basis went over various market cycles, whereas the monthly basis usually dominated one particular rate environment or one market environment. Over the various market cycles, First Union had proven that they could outperform the SBA. The added advantage that First Union had, that the SBA did not have, was that First Union had the history of the portfolio and knew the cash flow needs of the Town; the cash flow needs of the SBA were unknown; a participant in the SBA could withdraw their money at any time, and if First Union had the ability to invest further out on the yield curve, generally the yield curve was upward sloping, so advantage could be taken of higher yields.

In response to the query of President Smith concerning competitive bid proposals, Mr. Gerald O'Leary, of first Union National Bank, stated that it was his understanding that the former Finance Director of the Town had been handling the project.

Councilman Shaw noted that a proposal had been requested when discussions had taken place with the former Finance Director of the Town, and moved deferral to the February 8, 2000, Town Council meeting, in order to allow First Union to come back to the Town Council next month with a proposal, giving the Town Council ample time (one week) to review it prior to the meeting. He also requested that First Union re-cast the investment strategy had they followed the policy recommended in the proposal that had been intended for presentation under the plans made with the former Finance Director of the Town. The motion was seconded by Councilman McLendon.

Town Manager Doney suggested that the written proposal be furnished to the Town by January 29, 2000 and that First Union provide a draft investment policy revision so that it could then be provided to Town Attorney Randolph for review and approval of legal form and sufficiency.

The maker of the motion, Councilman Shaw, and the seconder of the motion, Councilman McLendon, accepted the suggestions of Mr. Doney as amendments to the motion. On roll call the motion carried unanimously.

XIV. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald commented that he had brought up the issue of traffic on South Ocean Blvd. last month, and would like an update if possible.

Police Chief Croft commented that the Police Department had done a survey since the last Town Council meeting, and noted that

there were approximately ten different major construction sites in the area of South Ocean Blvd. between Southern Blvd. and Widener's Curve, requiring the use of equipment and workers. He expressed concern with flagmen, and indicated that he would discuss the issue with Town staff, which would likely entail sending it to the Ordinances, Rules, and Standards (ORS) Committee, and reporting back on the entire issue at the next Town Council meeting.

President Smith suggested that this item be scheduled next month as an Agenda item, to include a memorandum from staff to the Town Council on appropriate recommendations to be discussed at the ORS Committee meeting.

Councilman Wyett commended the Town Council for its greater time efficiency.

Councilman Shaw commented that residents had commented that they had received parking tickets while attending Town Council meetings, and suggested that some method be devised for passes for those attending the meetings.

Councilman McLendon commented that he was concerned with the elimination of school impact fees, according to a recent article in the Palm Beach Post, indicating that he did not want to see ad valorem taxes in Palm Beach affected.

C. DEVELOPMENT REVIEWS

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

A. Appeals

1. Appeal of Architectural Commission's Decision of December 17, 1999, Regarding 8 Windsor Court by Mr. and Mrs. William Cooley - **Request for Deferral to February 8, 2000, per letter dated December 21, 1999, from Mr. Ronald K. Kolins**

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

B. Time Extensions - None

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

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

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

2. VARIANCE NO. 48-99 - Robert Crompton, 311 Pendleton Lane; located in the R-B Zoning District. To allow expansion of a non-conforming residence by the construction of a two-story addition providing a 10' side yard setback in lieu of 15' required and providing a building height of 23'10" in lieu of 22' maximum allowed. *(Deferred from December 14, 1999)* - **Request for Deferral to February 8, 2000, per letter dated January 10, 2000, from Mr. Francis X. J. Lynch**

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

3. VARIANCE NO. 49-99 - Claude & Melinda Trucks, 171 Dunbar Rd.; located in the R-B Zoning District. To allow construction of a swimming pool providing a 4' side yard setback, in lieu of 10' required. *(Deferred from December 14, 1999)*

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

New Business - Minor

4. VARIANCE NO. 2-2000 - John & Maureen Donnell, 300 Parc Monceau; located in the R-A Zoning District. To allow construction of an elevator shaft in south side yard providing a 2.76' setback in lieu of 15' required. To allow expansion of a nonconforming 3-story building by allowing said elevator shaft to also be at a 3-story height, in lieu of two story maximum allowed and allowing the 25.8' height in lieu of 25' maximum allowed.

Ex-parte communication was declared by Councilman Shaw with Attorney Deziel, and by President Pro-Tem Wyett with Attorney Deziel.

Councilman Shaw apologized as he had made an error in requesting that the application be moved from "New Business - Minor," to "New Business - Major." He explained that he had confused it with another application.

President Pro-Tem Wyett moved approval of Variance No. 2-2000. The motion was seconded by Councilman Shaw.

Zoning Administrator Castro commented that the applicant had requested placement of an elevator on an existing non-conforming house (non-conforming related to the side yard setback, as well as having a third story and a tie beam height exceeding the maximum height). He explained that the hardship was that the applicant had not been able to demonstrate another location within the interior of the house in which to locate the elevator, and this was a minimal request of approximately a 24 sq. ft. structure.

President Pro-Tem Wyett incorporated the statements of Mr. Castro into his motion of approval. On roll call the motion carried unanimously.

5. VARIANCE NO. 5-2000 - Edwin & Beverly Robbins, 1 Lake Trail Circle; located in the R-B Zoning District. To allow construction of an addition providing a 12.6' side yard setback in lieu of 15' required.

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

Zoning Administrator Paul Castro commented that the roof system would be modified in order to put a second floor over the garage, and the hardship was that the building setback was 12.5' and the applicant was trying to minimize the impact on the neighboring property by putting the second floor within the existing roof system; staff had no objection.

President Pro-Tem Wyett moved approval of Variance No. 5-2000. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

New Business - Major

6. The Breakers Palm Beach, Inc.:

   a. Application by The Breakers proposing to amend the Breakers PUD by modifying and expanding hotel facilities by constructing a three level (one underground), 39,857 sq. ft. (31,000 sq. ft. air conditioning space) golf and tennis clubhouse. The clubhouse includes associated pro shop, lockers and restrooms, restaurant and lounge, office, cart and bag storage area, general maintenance spa, and associated parking. The subject clubhouse is proposed to be located on the west side of County Road in the vicinity of the existing tennis court facilities and driving range. *(Deferred from January 6, 2000, Special Town Council Meeting)*

   b. SITE PLAN REVIEW NO. 1-2000 with Special Exception - Breakers Palm Beach Inc., relative to property commonly known as The Breakers, 1 South County Rd.; located in the PUD-A Zoning District. To allow amendment of PUD Master Plan, relocating the golf club and creating a clubhouse and associated parking for the tennis court within a 31,692 sq.ft. building on the west side of South County Road.

Ex-parte communication was declared by Mayor Ilyinsky with Attorney Brindell.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that he would begin with the site plan portion of the request. He explained that a golf and tennis facility would be created and consolidated on the west side of the property in the area that was now occupied by the tennis facility. The number of tennis courts would be reduced from 15 to 10, there would be a 31,692 sq. ft. building included, a few covered terraces and porches, seating for 150 people in the dining room and on the terraces. He indicated that the applicant had agreed to move the building 15' more to the west than the previous plans had indicated, and that the entry lane would be left as one lane in part, and then spread out to two lanes a third of the way back, or whatever the engineers determined was logical. The location of the entrance was midway between Royal Poinciana/South County intersection and the main entrance to the hotel. The golf holes had been reordered so that people would now only have to cross South County two times instead of six times, which would be an

improvement in safety. Another 42 parking spaces would be provided on the east side around the clubhouse. In addition, the applicant had agreed that valet parking would be used during the season and when a major event was held a police officer would be hired to control traffic. Attorney Brindell incorporated the minutes of the last hearing on January 6, 2000, into this proceeding.

Director of Building, Planning & Zoning Robert Moore commented that subsequent to the last hearing, two letters were received expressing concern regarding this matter and the residents now wished to comment.

Mrs. Cynthia Tilney addressed the Town Council, stating that she was a resident at 259 Pendleton Avenue, overlooking The Breakers Golf Course. She stated that she had found The Breakers Hotel to be very uncooperative about taking care of the plantings that she could see from her house and all along Pendleton Ave. She noted that she had talked to both the grounds keeper and the person in charge of property/maintenance. She expressed concern regarding the placement of the reordering of the golf holes, as many of the golf balls came over the fence onto her property, which could be quite dangerous; in addition she commented that she believed that building the clubhouse was a great mistake and totally unnecessary, affecting both traffic and the green space.

Mr. Danny Miller, Director of Golf and Grounds for The Breakers Hotel, addressed the Town Council, stating that every time he receives a complaint it is addressed, and that trees had been trimmed. He explained that the trees were "volunteer" trees and naturally sprouted on their own. All of the borders had been addressed with the golf course renovation plans and there were plans in place to beautify every golf course border. He explained that the golf course hole near Mrs. Tilney was going to be positioned so that it took a turn away from the property border, and that they planned to clean up the borders when the golf course was being done. In addition, he noted that the view of the golf course would still be beautiful, and drainage would be improved as well.

Ms. Linda Olson, 239 Pendleton, addressed the Town Council, stating that she was speaking for David Roth, Paul Lapidus and the Tilneys as well. She stated that she loved The Breakers and the view, however, she was concerned with the placement of the golf hole and the golf balls because she had experienced damage from flying golf balls. She stated that she also was concerned with any blockage of the view, and the placement of the fairway.

In response to President Pro-Tem Wyett, Mr. Miller explained that The Breakers had invested a lot of money in the drainage system for the overall property; two years ago a lake was added, as well as piping to a drainage pump station. Drainage would be provided throughout all the fairways, all the greens and all the tees. As the water flowed to the lake system, going through the D-13 drainage system, it would pull water from the borders of the course.

Mr. Paul Leone, President of The Breakers, commented that the residents near the golf course on Pendleton Avenue would see a dramatic improvement to the property, drainage-wise, aesthetically, and from the standpoint of golf.

President Smith commented that this was an opportune time for Mrs. Tilney and Mrs. Olson to get exactly what they wanted as far as landscaping, and that Mr. Leone would stay in contact with Mrs. Tilney and Mrs. Olson to confer with them before the plans were finalized.

In response to Councilman Shaw, Mr. Miller advised that all the golf cart paths would now be on the inside of the hedge on County Road, and they would no longer be using the sidewalks.

Mr. Leone explained that the placement of the bunker and the tee near Pendleton was to aim away from the residential area, which was the reason the hole was designed in that manner.

Mr. Miller explained that the golf cart path would definitely be on the north side of the hole facing the residents of Pendleton Ave.

In response to the query of Mrs. Olson regarding property damage, Mr. Leone replied that legally the responsibility is that of the person who hit the golf ball, and the purchasers of property on golf courses know the risks when they purchase.

Attorney Brindell now addressed the remaining issues dealing with the site plan review. The waste transfer site on the property at Pine Walk: The Breakers would be willing to extend the current lease, for one dollar per year to December 31, 2019. He advised that The Breakers did not intend to sell this transfer site to the Town at this point, or enter into a 99-year lease at this point. The 24 residential units: The Breakers would like to be able to consider a way to relocate the 24 units from the transfer facility site on the property to some other development site in the PUD, with the right to have an increased height, in order to not have a decrease in the number of units. He explained that if the units were moved from the west to the east, the increase in height would be a necessity. He requested the opportunity to work with Town staff between now and the next Zoning Season to try to address the issue and resolve the relocation. Attorney Brindell requested that the start dates for the various development phases be extended out to December 31, 2019.

Attorney Brindell then addressed the issue of the transfer facility site itself, and presented photographs of the area in question; he noted that The Breakers would like a good buffer all the way around the facility, and would like the Town to thicken the existing vegetation to more fully screen the facility from the golf course; in addition he suggested that some sort of reasonable cost sharing be considered for the resurfacing of the road from the west end of Pine Walk to the facility.

President Smith suggested that the extension for the lease of Pine Walk be extended to 2025, rather than 2019.

Director of Planning, Zoning & Building Robert Moore suggested that all of the issues that were being negotiated be tied to the same date: the Pine Walk lease; the date of commencement on development; and hte green space agreement on the golf course. In addition, he noted that Attorney Brindell had indicated that the Breakers would be willing to negotiate with Town staff regarding the 24 units, and all of the units on the property, as to where they would be located, etc.

Attorney Brindell agreed that The Breakers would agree to extend all three dates to the year 2025.

Councilman Shaw made a motion to approve part "a" of the application presented today, The Breakers PUD, with the condition that the three issues would all be tied to the date of December 31, 2025; the Pine Walk lease, the commencement of development, and the green space agreement on the golf course. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Councilman McDonald moved approval of Site Plan No. 1-2000, incorporating all conditions agreed upon at the January 6, 2000, meeting, and the conditions discussed today, which were: moving the turn lane, moving the club house building 15' to the west, employing one of the Town police officers in the event of major events held at the golf club; valet parking during the season at the golf club, situating the golf cart path for the new hole seven along the north side of the hole; changing the little pathway along the south to landscaped grass, and determining a landscape plan that will be presented to the Architectural Commission . The motion was seconded by Councilman Shaw.

In response to Mr. Moore in regard to the concerns regarding the unsightliness of the Town transfer site, President Smith commented that Mr. Miller and Town Facility Maintenance Division Manager Joseph Ugi would address the issue.

On roll call the motion of approval of Site Plan No. 1-2000, made by Councilman McDonald, seconded by Councilman Shaw, carried unanimously.

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

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

Attorney Kent Huffman, representing Frederick & Lori Hutchinson, addressed the Town Council, stating that the property was presently a two-story, two unit, residential building; it had historically been rental property, and the Hutchinson's had recently acquired it and wished to convert the property into a single family residence. The challenge was that the second floor was accessed by an exterior stairway on the front of the building, and a variance would be needed. Mr. Huffman presented photographs of the property in question, as well as a proposed site plan. He noted that the 50' x 75' was unique, and was a condition that did not result from any action of the applicant, and granting the request would not give the applicant privileges that had not been afforded to others in the neighborhood. Every property on the street was already closer to the street than the proposed building; expansion in any direction would require a variance; the variance was minimal, and would allow enclosure of the exterior stairway, and downsizing from two units to one; granting of the variance would be in harmony with the rest of the neighborhood.

Zoning Administrator Castro gave the following staff comments: Comprehensive Plan: hardship needs to be addressed; Building Department: applicant needs to address the hardship; Town Manager: requested additional explanation for the justification of the hardship related to the variance request.

Attorney Huffman responded that the stairway was on the front of the house, and the neighbor immediate adjacent to the east, who had objected to the plans, suggested that the stairway be enclosed. The enclosed stairway on the front of the house was then designed, and there was no place for the applicant to go in order to downsize from two units to one unit.

Attorney Jeff Schaefer, representing the owner to the east, Dale and Helen Finfrock, as well as Park Equity Corporation, who owned a house on Park Avenue, and Seminole Equity Corporation and Dunwoody Equity Corporation who had residences on Oleander Avenue. He produced photographs taken of Oleander Ave., Park Ave., and Seminole, that showed approximately 20 houses that sat back approximately 25'. He maintained that if the Hutchinson's were allowed to have this variance the Town Council could be faced with 20 other homeowners asking for a similar variance; there were less onerous means for the applicant to add on to their home. He noted that parking would be affected, since the current proposal included doing away with the driveway.

Attorney Huffman responded that building on the west side of the property, away from Mr. and Mrs. Finfrock would eliminate off-street parking for two-three cars, so the driveway issue was not a problem. He noted that Mr. Finfrock had sought and received a variance just a few years ago in order to expand his own property.

Director of Planning, Zoning & Building Robert Moore pointed out that each variance was heard on its own merit.

Attorney Schaefer commented that he was not aware of any variances taking place with respect to the 25' setback since the ordinance had gone into effect. He noted that Mr. Finfrock had received a petition from nine adjoining land owners objecting to the addition on the front portion of the Hutchinson house, and he requested that it be made part of the record today. He maintained that there were less onerous means for them to expand, without extending the house out to the street. He maintained that the 15' extension being requested would increase the size of the home by 50% of its present size.

Attorney Huffman replied that there were only four homeowners involved in the petition objecting to the variance, as of the 11 objectors, four of them were Mr. Finfrock and one of them was his wife. He noted that the architect was not present at this time; the existing stairway at the front of the building was an architectural nightmare, and created a situation where something would have to be done

at the front of the house. He also noted that the applicant had met with Mr. Finfrock and had attempted to address his concerns.

After further discussion, Councilman Shaw moved deferral of Variance No. 53-99, to the February 8, 2000, Town Council meeting, in order give the applicant time to re-design the plans. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

8. VARIANCE NO. 1-2000 - The Mar-a-Lago Club, Inc., 1100 S. Ocean Blvd.; located in the R-A Zoning District. To allow construction of a 10' high wall in the front yard setback in lieu of 6' maximum allowed, and to allow a 7' to 10' high wall in the side yard and rear yard, in lieu of 7' maximum allowed.

Ex-parte communication was declared by President Pro-Tem Wyett with Mr. Blackman, and by Mayor Ilyinsky with Mrs. Massey.

Mr. Wes Blackman, Director of Projects at the Mar-A-Lago Club, addressed the Town Council, stating that the request today was in response to a condition of approval that was placed upon Mar-A-Lago after a review of the beach cabana and pool proposal; condition "d" discussed an existing wall on the north property line, which was actually on Mrs. Alyne Massey's property, and the need to maintain her privacy, and her desire that a new wall be constructed at a height of 10'. He presented an exhibit of the proposed wall, and noted that there was a letter dated December 22, 1999, from Attorney Kolins to Town Manager Doney regarding this matter, listing various conditions that Mrs. Massey would desire, all of which had been agreed to by the Mar-A-Lago Club.

Attorney Chuck Millar, of the law firm of Moyle, Flanigan, in the stead of Attorney Kolins, stated that Mr. Blackman had been very cooperative and the proposal was acceptable.

President Pro-Tem Wyett moved approval of Variance No. 1-2000. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/1, with Councilman McDonald casting a dissenting vote.

Zoning Administrator Paul Castro explained that the condition placed on the applicant was that they seek whatever relief was necessary to build or construct a wall that would lessen or mitigate the impact of the beach facilities on the property of Mrs. Massey.

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

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

Attorney Chuck Millar, of the law firm of Moyle Flanigan, in the stead of Attorney Kolins, addressed the Town Council, stating that the property was non-conforming in several aspects, however, during demolition of the property the entire roof had been removed, contrary to what the Palm Beach Code allowed. The explanation given by the contractor had been that once they got inside there was tremendous termite damage and both the floor joist and roof trusses were totally removed. The architect had explained that it was very difficult to replace the floor without removing the entire roof. Attorney Millar noted that what the Town Council had approved in September was exactly what was being built, the exact same footprint, and the exact same architecture. He explained that the entire roof, rather than 50% of the roof, was removed during the demolition, to simply replace the in-fill portion of the building, which was approximately 500 sq. ft.

Zoning Administrator Castro commented that the house was non-conforming in many aspects, and other than seeking relief through a variance, the only other alternative would be to demolish the house and build a conforming house. He explained that the lot was nonconforming, and it would be difficult to re-build at its current size. He requested further explanation on the hardship.

President Pro-Tem Wyett moved approval of Variance No. 3-2000, as there were often such problems with older houses, and the situation had not occurred through the fault of the owner or builder. The motion was seconded by Councilman McLendon.

Councilman Shaw disagreed, stating that he believed it was 100% the fault of the builder, and that the issue should be considered a code violation; if codes were broken, the solution was not to come before the Town Council and apologize; he maintained that there needed to be some system in place for such issues.

Director of Planning, Zoning & Building Robert Moore noted that the job had been red-tagged when it was discovered, and the builder had not been permitted to go forward. He explained that if it did go to the Code Enforcement Board, the applicant would have been asked to apply for a variance in order to come into compliance. There would be no penalty involved unless the builder began to work over the red-tag, which would be a Code Enforcement Board matter. He noted that the builder had been working in the Town for a long period of time, and that it is explained to all builders before they start that they need to be very careful about how they proceed. He stated that one way to address the issue would be for the Building Department to require a schedule of work on how builders intended to go forward.

President Smith asked if a construction bond could be required?

Mr. Moore replied affirmatively.

Councilman McDonald commented that he was reluctant to approve the project until the Town Council had set some guidelines on the procedure to be followed in these types of situation. He suggested deferral of Variance No. 3-2000, to the February 8, 2000, Town Council meeting, in order to allow staff time to determine recommendations on how to prevent these type of situations.

President Pro-Tem Wyett commented that the staff should look at strengthening or changing the rules, however, he did not recommend a 30-day delay, which was expensive to the builder. He suggested that this case should not be held hostage until the rules were strengthened.

On roll call the motion for approval of Variance No. 3-2000, made by President Pro-Tem Wyett, seconded by Councilman McLendon failed 2/3; with President Pro-Tem Wyett and Councilman McLendon casting affirmative votes; President Smith, Councilman McDonald and Councilman Shaw casting dissenting votes.

Councilman McDonald then moved deferral of Variance No. 3-2000, to the February 8, 2000, Town Council meeting, pending recommendations from the Building Department in this regard. The motion was seconded by Councilman Shaw.

President Pro-Tem Wyett commented that the Town Council had been pro-preservation, and older homes had peculiar problems, and he suggested that repairing damage was not the same as a "change order," and there should be some way of allowing improvement to older houses via change in the 50% requirement in the ordinance.

Mr. Moore suggested that the applicant be allowed to weather tight the building for another 30-days.

Councilman McDonald agreed to incorporating within his motion of deferral the condition that the applicant be allowed to weather tight the building for another 30-days. On roll call the motion carried unanimously.

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

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

Attorney James Brindell, on behalf of Pamela & Dean Lovett, addressed the Town Council, stating that the house at 124 Clarke Ave. had been built in 1926. He presented photographs of the property in question, pointing out that the lot was 70% larger in area than that required for R-B Zoning, and nothing being proposed would intrude into existing setbacks. He noted that there were letters of support from neighboring property owners.

Architect Jacquie Albarran, SKA Architects, displayed architectural renderings of the property in question, stating that there were four children in the family and they were in need of more space. She noted that the cubic content ration was already non-conforming, before the proposed construction would begin. She explained the proposed construction in detail.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: no hardship; does not meet criteria for granting variance; Public Works: no comment; Police Department: no comment; Fire Department: no comment; Town Engineer: no comment; Building Department: no hardship. Town Manager: requested additional information on justification for the variance. He asked the square footage of the existing house?

Attorney Brindell replied that the current house was approximately 6,500 square feet.

Mr. Dean Lovett addressed the Town Council, pointing out that the 6,500 square feet included the guest apartment over the garage, and the main house was approximately 5,300 square feet under air. He explained that the guest apartment above the garage was being used by a couple who cleaned the house and helped take care of the children.

Attorney Brindell explained that the hardship was the design of a 1926 house with a double volume room, and the excessive volume of the living area; the family was trying to make a beautiful 1926 home functional for a growing family.

President Pro-Tem Wyett moved deferral of this project to the February 8, 2000, Town Council meeting. He then withdrew the motion.

After further discussion, President Pro-Tem Wyett moved deferral of Variance No. 4-2000, to the February 8, 2000, Town Council meeting, to give the applicant and architect time to re-study the plans in order to reduce the size. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

11. SPECIAL EXCEPTION NO. 1-2000 with Variances - Smith Interior Design; 242 S. County Rd.; located in the C-TS Zoning District. To allow Smith Architectural Group to increase occupancy to 4,508 sq.ft. by adding a 1st floor 1200 sq.ft. interior design dept. within 1500' of its main office. Additionally, the design department's office entrance would front on South County Road.

Ex-parte communication was declared by President Pro-Tem Wyett with the applicant; by Councilman Shaw with Attorney Ziska, by Councilman McLendon with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the applicant was requesting special exception approval for Smith Interior Design, which was a sub-department of Smith Architectural Group. She explained that the building in question was a mixed-use building, and a variance was needed because the building where Smith Architectural Group was located had a corridor separating the building in question, and pursuant to the Code, unless a building was contiguous, a variance was required; the entrance was required on South County Road since the building was a mixed-use building, with some residential units, and it would be more of a showroom, with items for sale, etc.

Zoning Administrator Castro commented that staff believed the entrance should be from Phipps Plaza, as customers would have to park in Phipps Plaza to access the building.

Attorney Ziska responded that there was an entrance on South County Road, and there was metered parking on that street.

President Pro-Tem Wyett moved approval of Special Exception No. 1-2000. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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

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

Attorney Doyle Rogers, on behalf of the applicant, addressed the Town Council, stating that the applicant was requesting a modification to Special Exception No. 15-97 with Site Plan Review. He introduced Architect Mark Marsh, who presented an aerial photograph and site plan of the property in question.

Architect Marsh commented that there was a great deal of land available, and the applicant wished to construct two accessory buildings (a boat house and a pool pavilion). He explained that the property was located from the Ocean to Lake Worth, and was in excess of 1,500' deep by 150' wide. He advised that all requirements would be met for the buildings.

Attorney Rogers introduced a letter from Mr. George S. Mann, in support of the request of the applicant.

Zoning Administrator Paul Castro commented that he had conversed with the property owner directly abutting the Koch property (Mrs. Supper), who was concerned about the closeness of the two-story boat house to her property. He advised that the project did meet all the lot, yard and area requirements in the Code, and site plan review was required to ensure that the placement of these structures were such that the impact on the neighboring properties was lessened as much as possible. From the standpoint of staff, the boat house was an appropriate use for the property, however, the location was questionable.

In response to President Smith, Architect Marsh replied that he was attempting to preserve the view from the center of the home through the pool in locating the boat house. He stated that the proposed location was the most logical position, and that the lot had always been very heavily screened with vegetation, which would be increased by the applicant, and the boat house would be totally screened from the property of Mrs. Supper. He noted that the boat house was 15' from her property, and was 31' high.

President Smith commented that she believed the two-story house on a property that large, that was 15' from the neighboring property line, was too high; she stated that she would have no objection to a boat house that was one-story or further away from the neighbor.

Attorney Rogers commented that he had spoken with Mrs. Supper, whose main objection was that she was concerned that construction would begin before she left for the summer. He noted that he had assured her that construction would not begin until after May 15th; he was not aware of any objection to the size.

President Pro-Tem Wyett moved approval of the pool cabana and moved deferral of the boat house to the February 8, 2000, Town Council meeting in order to give the applicant time to contact the neighbor, Mrs. Supper, to inform her of the specific plans. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

D. OTHER

1. Modification of the Entrance Sign to Park Avenue Regarding Commercial Vehicles *(Deferred from December 14, 1999)*

Town Attorney Randolph reported that the Police Department had installed a sign at the entrance to Park Avenue in the past, which read "No Commercial Vehicles." That had, according to representatives of the Palm Beach Hotel, imposed a hardship on them; they contended that it was illegal because it was discriminatory application of the law. Mr. Randolph noted that citations issued in this regard had not been upheld by the court; in discussions with Attorney Royce and Attorney Kolins on behalf of their clients, agreement had been reached to install a less onerous sign, which would simply prohibit commercial deliveries from 7:00 p.m. to 8:00 a.m. Mr. Randolph suggested that the new sign read "No Commercial Deliveries From 7:00 p.m. to 8:00 a.m." That would give the Park Avenue residents relief from having deliveries made during those hours, and would not preclude commercial deliveries during the stated hours.

Councilman McDonald moved approval of the sign to be installed on Park Avenue, as suggested by Attorney Randolph ("No Commercial Deliveries From 7:00 p.m. to 8:00 a.m.") The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. Request for Waiver to Hours of Construction for 974 South Ocean Boulevard by Mr. William I. Koch

Attorney Doyle Rogers addressed the Town Council on behalf of Mr. Koch, stating that an extension of working hours was being requested: from 7:00 a.m. to 9:00 p.m. for interior work only. He presented a letter of support from an adjacent neighboring property owner, Mr. Don Bellasco. Attorney Rogers stated that all workers (with the exception of a few) would be bused to the site.

Director of Planning, Zoning & Building Robert Moore reported that the applicant had been extremely cooperative with construction hours, and staff had no objection to the extension of hours to 9:00 p.m. for the quiet work; he mentioned that they could go to 10:00 p.m. if desired, except on Sundays.

President Pro-Tem Wyett moved approval of the extension of hours of construction from 7:00 a.m. to 9:00 p.m. for interior work, as requested by the applicant. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 7:25 p.m.

_____
Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk