TOWN OF PALM BEACH
Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 9, 2001

I. CALL TO ORDER AND ROLL CALL

The regular meeting of the Town Council was called to order at 9:30 a.m. on Tuesday, January 9, 2001, in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance:

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

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

Acting Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Finance Director Jane Skittone
Finance Accounting Clerk Donna Bragel
Acting Fire-Rescue Chief Kent Koelz
Human Resources Director William Crouse
Information Systems Manager Spencer Wilson
Police Chief Frank Croft
Assistant Police Chief Michael Reiter
Public Works Director Al Dusey
Planning, Zoning & Building Director Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Zoning Administrator Paul Castro
Planner/Projects Coordinator Timothy Frank
Town Engineer James Bowser
Town Clerk Mary Pollitt

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President McDonald led the Pledge of Allegiance.

III. PRESENTATIONS

A. None.

IV. COMMENTS OF MAYOR LESLY S. SMITH

The comments of the Mayor were as follows:

Since this is the first Town Council meeting of my first full term as your Mayor, I want to thank all of you for what I hope is a vote of confidence, and not simply a reaction to the November ballot difficulties.

I also congratulate Council members McLendon and Wyett on their re-election without opposition and, once more, anticipate a year of the good natured give and take that constitutes teamwork.

One of the issues we must address this year is that of long-range planning. The Town has always accomplished its long-range planning through coordination of public input and the budget process, but the time has come for a more formal approach. I commented at last week's Zoning Commission meeting that the Zoning Commission is the appropriate venue for long-range planning, and suggested that they call a special meeting for this purpose. I hope the Town Council will pursue this, especially in the wake of recent controversies over issues such as stricter enforcement of landmarked tree preservation – which I endorsed last month.

The issue that continues to be at the top of our list, every month, is beach restoration. I am meeting this week with Congressman Clay Shaw and Mr. Dusey to get the sand transfer plant back on track. All of us are disappointed with the Army Corps of Engineer's handling of this, but I believe Congressman Shaw will approach the task with new vigor and we can get it moving.

On broader shore protection issues, I met informally just before Christmas with the Director of the Port of Palm Beach, Anthony Taormina. You will recall that on behalf of the Town, I have spoken out strongly against a restaurant and other commercial expansion on Peanut Island. The County Commission will be addressing these issues again in a few weeks when we have a Peanut Island workshop on

January 23rd. I understand there is near-unanimous opposition to the proposal. That controversy, however, raised additional questions about just what the Port of Palm Beach is planning, and how their plans will affect residents of Palm Beach. Mr. Taormina described the new passenger terminal, which appears attractive. He also told me that there are no plans to expand freighter activity, and that they are seeking only one or two high-level cruise lines for a very limited number of annual days in port. I will stay on top of this, and he assured me that the Port would be communicating with residents in the north end of Palm Beach who may be disturbed by any increased activity. Two new Port Commissioners were installed this year, and I suggested that after the full new Commission has met and established policy priorities, a presentation be scheduled before the Palm Beach Town Council. I am very pleased to have established this dialogue, because –as I have said repeatedly – we are at the mercy of multiple levels of government and outside agencies unless we build solid working relationships.

Brief comments on some of the items on today's agenda:

On the Public Works front, I certainly believe that we must accelerate the capital improvements to our drainage system in areas that, because of recent flooding, have earned "emergency status." Mr. Dusey and I have met with some of the homeowners on Brazilian and Mr. Dusey has some good ideas about how to help. Let's give him the go-ahead to implement them.

I am in agreement that our Public Works Department needs additional help on the beach projects, but I would suggest that we defer this decision to Peter Elwell, who will be on board as Town Manager February 12th. We have hired Mr. Elwell because of his familiarity with the day-to-day workings of the town, and I think we should have his highly skilled input on this question. Peter was past President of the Beaches & Shores Council.

On the issue of reverse osmosis for potable water, in case of emergency, I want to point out that this was one of the points of agreement when I negotiated the water contract with former West Palm Beach Mayor Nancy Graham. Mayor Daves has assured me repeatedly that he will honor this agreement so there is no reason that this element should be controversial. However, we should know the cost before proceeding.

They tell me that construction on South County Road is coming along and will be completed at the end of the month. Of course, they didn't tell me what month . . . or what year!

Finally, in my tradition of ending on a happy note, I am delighted that we have made a decision about the County Road Park on the Boynton Landscape property. The plan selected is beautiful and in keeping with its surroundings. I applaud all of the proposers for their creativity and thank them for their interest and enthusiasm. I also want to thank Murray Goodman once again for donating the property, which adds considerably to the beauty and utility of that area.

V. APPROVAL OF THE AGENDA

The following changes were made to the Agenda:

DEFER to the February 13, 2001 Town Council Meeting, Item X.B. 7. - Consideration of Request for Town to Accept Root Trail Right-of-Way as Public for Roadway and Other Purposes.

Councilman Wyett moved deferral of Item X.B.7. to the February 13, 2001, Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

DEFER to - Item X. B. 5. - Discussion of Anti-Mooring Ordinance for Water Bodies Within the Town's Jurisdiction.

Councilman Wyett moved deferral to an indefinite time of Item X. B. 5. He explained that he would like to allow time for the Town Attorney to prepare suggestions. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

DEFER to February 13, 2001, Item XIV. B. 3. f. - Special Exception No. 4-2001 with Variance, 221 Worth Avenue.

President Pro-Tem McLendon moved deferral of Item XIV. B. 3. F. to the February 13, 2001, Town Council Meeting, so that additional time could be given to resolve the parking issue involved with this request. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Councilman Brooks moved approval of the Agenda as amended. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Mr. Eric Gilbertson, 151 Chilian stated Palm Beach residents were being forced out of their homes with higher taxes.

Mr. Les Evans representing the Royal Poinciana Association expressed concern about the FDOT project scheduled for Royal Poinciana Way next summer and appealed to the Town to apply pressure on the DOT to complete the job in a timely manner.

Ms. Stephanie Bojokles, owner of the Royal Poinciana Tropicana Fruit Shop, endorsed Mr. Evans' comments.

The following individuals cited their individual problems with recent flooding in the north end:

Will Wright on behalf of Mr. McCloskey (Coral Lane/Kawama Lane);

Reinhard Brandner, Eden Road;

Carolyn Marston, Sanford Avenue;

Neil Elliott, 222 Miraflores;

Clarie Madsen, Miraflores;

Maurie Wolf, Sanford Avenue;

Shawn Mullinex, 264 Country Club Road;

Henry Wexner, Fairview Road;

Holland Sayre, Fairview Road;

Christa Ryan, 230 Miraflores;

David Barton, Jamaica Lane;

Mr. Harry Horwich, 2860 S. Ocean Blvd., provided a hand out for the Council regarding changing the pick up times for yard trash removal, and remarked that he would like to speak to this issue at the next Ordinances, Rules & Standards Committee meeting.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 9, 2001

VII. APPROVED AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF DECEMBER 12, 2000.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON DECEMBER 19, 2000.

C. APPROVAL OF CHECK REGISTERS FOR DECEMBER 2000.

D. OTHER

1. Approval of Town Manager (Acting) Designation of Robert L. Moore, Director of Planning, Zoning & Building, as Acting Town Manager from December 23, 2000 through February 11, 2001 Pursuant to Section 4.03 of the Town Charter. Thomas G. Bradford, Acting Town Manager.

2. Recommendation on Town Feral Cat Colonies from Diane Sands, Esq., Palm Beach Cat Rescue, Inc., and Catherine Bradley of Palm Beach Cat Rescue, Inc. **(Pursuant to Town Council Action at its December 12, 2000 Town Council Meeting, These Written Recommendations are to be Referred to the Next Meeting of the Ordinance, Rules and Standards Committee for Further Study).**

3. Consideration of Request to Department of Environmental Protection to Reconsider Designating Reach 8 as Critically Eroded. Albert P. Dusey, Director of Public Works.

4. Reappointment of James McCartney Wearn to the Town of Palm Beach General Employees Retirement Board of Trustees. William C. Crouse, Director of Human Resources.

5. Update on the Proposed Florida Department of Transportation Project on Royal Poinciana Way Phasing Plan. *(Request for Deferral per Memorandum, Dated December 29, 2000, from James M. Bowser, Town Engineer, to the February 13, 2001 Town Council Meeting).*

The Approved Agenda was approved through motion of President Pro-Tem McLendon, seconded by Councilman Goldblum. On roll call the motion carried unanimously.
(At a later time during the meeting, Item D.2. of the "Approved Agenda," was re-opened by proposal of Councilman Brooks - discussion as follows:)

Councilman Brooks requested that an item from the "Approved Agenda" be revisited – Item D. 2. Recommendation on Town Feral Cat Colonies; he explained that the attorneys for Ms. Bradley had been unable to respond on a timely basis to the letter from Acting Town Manager Bradford wherein he had requested proposals to deal with the feral cat colonies by December 29th. He noted that they had responded as of this morning, and that a County Court Judge had ruled against Ms. Bradley in court yesterday, and had given her attorneys ten days to respond. He requested that the Town Council refer this matter back to the Ordinances, Rules & Standards (ORS) Committee. An ORS meeting was scheduled for Tuesday, January 30, 2001 at 9:30 a.m. in the Town Council Chambers.

Mayor Smith also suggested that the historic tree ordinance be considered at the ORS meeting.

VIII. COMMITTEE REPORTS

A. Public Works Committee.

1. December 14, 2000 Committee Report.

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REPORT OF THE PUBLIC WORKS COMMITTEE MEETING HELD ON DECEMBER 14, 2000

I CALL TO ORDER AND ROLL CALL

Chairman Allen Wyett called the meeting of the Public Works Committee to order at 10:00 a.m. on December 14, 2000, in the Town Council Chambers. On roll call the following Committee members were found to be in attendance: Chairman Allen Wyett, Committee Member Samuel McLendon. Town Staff in attendance for the meeting were: Acting Town Manager Thomas Bradford, Public Works Director Al Dusey, Town Engineer James Bowser, Town Attorney John Randolph, Finance Director Jane Skittone, Police Chief Frank Croft, Fire-Rescue Chief Vincent Elmore, Assistant Fire-Rescue Chief Kent Koelz, Director of Planning, Zoning & Building Robert Moore, and Deputy Town Clerk Susan Eichhorn.

II APPROVAL OF AGENDA

The Agenda was approved with the following amendments:

1. Yard Trash Regulations would be added to the Agenda for discussion, under Item IV. Any Other Matters.

2. The Town Hall needs study discussion would be primarily with concern to the proposed new Fire Station.

III REVIEW OF TOWN HALL NEEDS STUDY ALTERNATIVES

Fire-Rescue Chief Elmore reported that the 1927 Fire Station was in need of replacement, and recommended to the Committee that the Beaumont Lot be utilized for the building of a new fire station. He explained that the new station would provide adequate space for vehicle maintenance facilities for the Police Department as well as a physical fitness area for Town employees; in addition the space now occupied by the Fire Department could then be utilized for other Town Hall space needs. He recommended that the station include a third story, which would be used for storage space, and also for an emergency operations center. He noted that he believed that a great deal of the expenditures for an emergency operations center could be retrieved through grant funding; either through State or County FEMA monies.

Chief Elmore explained that currently there was not enough space for the fire trucks to egress from the doors (approximately 2-3" of clearance was available), and that the drivers could not see pedestrians until they were actually out on the sidewalk, which was a hazardous situation. In addition, the new emergency medical vehicles that would meet State requirements, would not fit into the current space. The Beaumont Lot would also be available for some parking spaces as well.

Director of Planning, Zoning & Building Robert Moore noted that a variance would be required for a three story fire station, however, governmental entities could waive zoning requirements for government buildings, if so desired.

Town Attorney Randolph advised that the zoning requirements could be waived by the government for is own buildings, however, the Town Council would need to determine what course would be followed. In the past the Town Council had chosen not to accept a waiver, and to proceed with the variance application process.

After discussion, **THE COMMITTEE RECOMMENDED that the Town Council follow its customary procedures for variance application for a third story on the proposed new Fire Station.**

Discussion took place concerning available staff parking places, and Mr. Moore pointed out that zoning regulations would require a certain number of spaces per square foot, and a creative system of parking was already being used in both the Australian and Beaumont parking lots. A parking plan would be submitted at a later date.

In response to the query of Committee Member McLendon, Acting Town Manager Bradford reported that the appraisal for 150 Australian had been $850,000.

Police Chief Croft addressed the space needs of the Police Department, explaining that proposed expansion plans would include additional office space, meeting space, and storage space; vehicle maintenance and the fitness area would not be included in the expansion plans for the Police Department itself, however, those facilities would be shared with the Fire Department in the new Fire Station building. In response to Committee Member McLendon, Chief Croft advised that the sharing of storage space or meeting room space with the Fire Department would not be appropriate.

Discussion took place regarding converting the current gymnasium space in the Police Department to another use, which was not a part of the current expansion plan; additional funding would be needed for the conversion of that space.

After discussion, **THE COMMITTEE RECOMMENDED to the Town Council that selection and development of a new Fire Station be implemented on the Beaumont Lot, including Town Hall renovations afterwards, with funding to be determined by the Town Council.**

Acting Town Manager Thomas Bradford commented that various alternatives were available for financing/funding of the project, and he and Finance Director Skittone would provide information regarding financing at the next Town Council meeting (January 9, 2000). In response to Chairman Wyett, he noted that he and Ms. Skittone would recommend that the undesignated fund balance of the Capital Improvement Fund be utilized for the $1 million authorized for the drainage program at the Town Council Meeting on December 12, 2000.

Discussion regarding the storm drainage system took place, with Mr. Michael McCloskey addressing the Committee regarding flooding at his residence at 202 Coral Lane. He suggested that an independent engineer be engaged to assess the overall drainage system to provide an audit/appraisal of the system.

Public Works Director Dusey commented that it would be worthwhile to conduct such an evaluation on one of the systems, and suggested the D-4 system be assessed to confirm standards and anticipated development. He explained that the original design had anticipated a certain level of development, however the system was not intended to provide all of the drainage for huge rainstorms. He indicated that he would provide cost estimates for the evaluation of the drainage system. He noted that Coral Lane did need drainage improvements.

Discussion took place regarding the South Florida Water Management District (SFWMD) criteria for permitting water to be drained into Lake Worth, and obtaining extra pumps for the pump stations to be used when the regular pumps were not in working order. Chairman Wyett requested that Mr. Dusey provide cost estimates for the extra pumps. Mr. Dusey replied that would be included in the whole package that would be put together; the budget would need to be amended, with two ordinance readings, before the funding would be available.

Acting Town Manager suggested that an emergency ordinance could cut down on the time needed for the adoption process, and Mr. Dusey could proceed with the consultants in the meantime.

The COMMITTEE RECOMMENDED that the Town Council take the necessary steps, including possible emergency ordinances, to resolve improvements to the Town drainage system; that the Public Works Department be empowered to investigate all methods to alleviate flooding in the Town of Palm Beach, and to submit a comprehensive cost estimate of same.

At this time, Director of Planning, Zoning & Building Robert Moore commented that the Building Department would require additional space; rental space had been budgeted for that purpose. After discussion, it was determined that Mr. Moore and Public Works Director Dusey would work with the Town Manager to determine a solution to the space needs of the Building Department while the new Fire Station was being built, and to come back with a recommendation.

The COMMITTEE RECOMMENDED that the Town Council approve that Mr. Moore, Mr Dusey and the Town Manager work towards a solution to the space needs of the Building Department and come back with a recommendation.

IV. ANY OTHER MATTERS

A. Discussion of Yard Trash Regulations

Chairman Wyett commented that yard trash had been waiting to be picked up before the recent extraordinary rainstorm, and drainage/sewage problems had occurred in the Town.

Public Works Director Al Dusey commented that containerizing clippings had been considered in order to address the problem, and there were several options available, including an automatic one-armed truck system, or a plastic bag system – the annual cost of disposal was estimated at $700,000.

After discussion, **THE COMMITTEE RECOMMENDED to the Town Council that the trash pick up schedule be changed to be four routes, Tuesday through Friday, during the winter months (November to May) and that Monday be scheduled as the bulk pick up day during the winter months (November to May).**

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 9, 2001

V. ADJOURNMENT

The meeting was adjourned at 11:34 a.m.

Allen S. Wyett, Chairman

Samuel C. McLendon, Committee Member

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Discussion took place regarding the report of the Public Works Committee:

Public Works Committee Chairman Allen Wyett reported that the Committee had met to discuss the plans for the proposed new fire station, and the Committee had recommended that the fire station be built on the Beaumont Lot; that the station include a third story, which would require a variance. He noted that it was recommended that the normal variance procedure be followed in this case, however, the Town Council could determine the appropriate manner to be used.

Director of Planning, Zoning & Building Robert Moore commented that the normal variance procedure could be followed, or the Town Council could waive that procedure, as the structure would be a government building.

Mr. Wyett explained that the proposed third floor would be used for an emergency operations center, among other things, and the Fire Chief had indicated that substantial funds could be retrieved under grants through State/County FEMA monies.

Mr. Wyett reported that it had also been recommended that a substantial gymnasium be included in the fire station, to be used by the Fire and Police Departments, as well as all Town employees. He explained that would free some space in the Police Department, which could then be used for other purposes.

Mr. Wyett reported that funding of the new fire station would be discussed via a report from Acting Town Manager Bradford.

Mr. Wyett reported that the Committee had recommended that the Town Council take the necessary steps, including possible emergency ordinances, to resolve improvements to the Town drainage system; that the Public Works Department be empowered to investigate all methods to alleviate flooding in the Town of Palm beach, and to submit a comprehensive cost estimate of same.

Mr. Wyett reported that the Committee had recommended that the Town Council approve the preparation of a report by Planning, Zoning & Building Director Moore, Public Works Director Dusey, and the Town Manager that would address a solution to the space needs of the Building Department, while the new fire station was being built.

Mr. Wyett reported that the Committee recommended to the Town Council that the trash pick-up schedule be changed to four routes, Tuesday through Friday, during the winter months (November to May), and that Monday be scheduled as the bulk pick-up day during the winter months (November to May).

Councilman Goldblum moved acceptance of the report of the Public Works Committee. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Councilman Brooks moved approval of the recommendation of the Public Works Committee to have the Public Works Department submit a plan for a new fire station on the Beaumont Lot, for approval by the Town Council, including a third floor, and cost estimates. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Councilman Brooks moved approval of authorization for Mr. Moore, Mr. Dusey, and the Town Manager to work towards a solution to the space needs of the Building Department and make recommendations to the Town Council. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Mr. Moore explained that the question regarding space needs for the Building Department was whether more space could be obtained on-site or off-site. He suggested that a staff report be submitted in March, with plans to obtain more space.

After discussion of the recommendation of the Committee to change the trash pick-up schedule, it was determined that this issue would be further studied, and added to the Agenda of the February 13, 2000, Town Council meeting.

Acting Town Manager Thomas Bradford reported that, based on the request of the Public Works Committee, staff had utilized financial advisors to study the issue to determine whether cash (pay as you go) or borrowing would be more feasible in the building of a new fire station. He stated that Saloman, Smith, Barney, Mr. Michael Hole, had furnished a report reviewing the merits of the debt and cash alternatives; based upon existing factors today, the actual costs would be approximately 5% higher to pay as you go. He noted that it had been made clear that the factors were changing daily.

Councilman McLendon suggested that the first station structure be handled as a funded project, so that those who use it would help pay for it.

Councilman Goldblum noted that there was very little difference between a bank loan and a bond, and he suggested that the bank loan would give more flexibility.

President McDonald suggested that discussion take place at the time that a proposal was submitted regarding costs.

Mr. Wyett concluded the report of the Public Works Committee

Acting Town Manager Bradford commented that a professional services agreement and a resolution authorizing funding would be presented at the February 13, 2000, Town Council Meeting.

Mr. Wyett clarified that the new fire station structure would be appropriate for the existing historic zone.

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IX. PUBLIC HEARINGS

A. Landmark Designation of 163 Seminole Avenue, Resolution No. 59-00.

Town Clerk Pollitt verified proof of publication, and administered the oath to all those who would be testifying.

Planner/Projects Coordinator Timothy Frank reported that the property met the necessary criteria of the ordinance for landmarking. He explained that this property had been discussed at the September meeting, and he had been requested to re-write the description so that the front portion of the property, namely the front door, would be designated. He reported that Dr. Rose, owner of the property was present. He read the new legal description of the property into the record as follows:

Mr. Frank read the legal description of the landmarked property into the record:
"Oceanpark, H.W. Robbins Addition, east 25' of lot 20, and lots 21-24 inclusive; block 2; only the original front door of the Addison Mizner (designed in 1921) portion of the structure is designated. This area is the south facade of the west wing, which includes the original door, related iron work, quoins, structural system, and other related original materials. All other portions of the property are exempt from the landmark designation and are exempt from review by the Landmarks Preservation Commission.

President Pro-Tem McLendon moved acceptance of the Designation Report. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution No. 59-00 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 IV 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 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

President Pro-Tem McLendon moved approval of Resolution No. 59-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

B. Landmark Designation of 250 Sanford Avenue, Resolution No. 1-01.

Town Clerk Pollitt verified proof of publication.

Planner/Projects Coordinator Timothy Frank reported that the property met the necessary criteria of the ordinance for landmarking.

Historic Preservation Consultant Jane Day reported that the house at 250 Sanford Avenue was a good example of a Monterey style of architecture; the house was built in 1940, designed by Marion Sims Wyeth. She explained that the land had originally been part of Los Incas, purchased by E.B. Walton, and platted as the Walton Addition – this house was one of the first two houses on the street.

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

In response to the question of Councilman Wyett, Ms. Day responded that quite a number of Monterey style houses had been designated in the Town of Palm Beach. Mr. Wyett commented that the style was not terribly original, and it seemed that everyone who wanted to repair a house wanted to have it designated to save tax money – he maintained that the tax base was being attacked, and expressed concern that the preservation of homes was being abused in that respect.

Mrs. Day responded that the Landmarks Preservation Commission was very discerning, and the property did meet the criteria as set forth in the ordinance, and the Landmarks Preservation Commission had voted unanimously to send this forward to the Town Council.

Town Attorney Randolph read Resolution No. 1-01 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 IV 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 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Councilman Brooks moved approval of Resolution No. 1-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

X. REGULAR AGENDA

A. Old Business

1. Status Report Regarding the Town Beach Restoration Project. Albert P. Dusey, Director of Public Works.

Because of the technical nature of the discussion this portion of the minutes is transcribed verbatim:

DUSEY: We have some good news this month on our beach projects. Phipps Ocean Park project – we have received an Intent to Issue Notice from DEP, which is a milestone. It means if the Intent is unchallenged, the permit will be issued probably by the end of this month. Mid Town, we're told we should be on the schedule for a similar notice in early February - - actually a permit in early February – the notice in early February; the permit during February. The erosion control line issues have been resolved and we're moving forward with that. We have sent proposals regarding Reaches 2 and 5 to DEP staff for their review. This is for the feasibility study to get us into the permitting process more quickly. We've also received the funding authorizations for those projects. That's the status of the beaches.

WYETT: Mr. Dusey, what are we doing about Reach 8, relative to the meeting at the Citizens Committee last week?

DUSEY: There was a suggestion made, I guess by Mr. Wyett, during the Citizens Association meeting to look at the last 3,000 feet, which is designated as critically eroded, and is in very bad condition, and see if there is some way to get into an emergency permitting situation there. On the surface it sounded like a really good idea, but I thought about it, quite honestly, and I think where that would lead would be to a permit to place rock out in front of the seawall if we could prove that the seawall was, in fact, in jeopardy of failing. I don't think that's the way the Town wants to head. I don't think we can get an emergency permit for sand.

WYETT: What are we going to tell the residents living in this 3,000 foot area, whose seawall is under attack, and are very concerned if we have to wait two more years to get sand; in a serious storm their property would be very badly damaged.

DUSEY: If the Mayor and Town Council would like us to pursue a conventional permit on the accelerated schedule we would try to do that, but I don't think we're going to get a sand permit on an emergency basis. The other problem that's inherent with that area is that there is near shore rock outcroppings that are of some value, that will make the permitting process more difficult. Also, there is expectation that we'll be attempting to construct a terminal groin to throttle the erosion to the south. That's not an easy thing to get through a permitting process on an emergency basis. It's in very bad condition. It's badly eroded. It has a seawall system that is under attack.

MCLENDON: The groin would go at the Town line?

DUSEY: Thereabouts. And of course it would be used to throttle sand, not to block sand, because we can't do that. It's a little bit of complicated area; again, we are certainly willing to do anything that the Mayor and Town Council wants us to try.

McLENDON: How fast would the Phipps Park sand move southerly do you think, and I know it depends on Mother Nature, but will that give any relief to that section?

DUSEY: Over time I believe it will. We're told that sand moves about a mile a year, so you'd have a mass of sand moving down, given the right weather conditions, and it's probably several miles I guess to get down to the end, so probably a couple of years – a year and a half, two years – assuming that it will make it to that location too – there's a lot of things that happen in between that we don't control.

McDONALD: What's your recommendation regarding these 3,000 feet, Mr. Dusey, for right now?

DUSEY: I don't believe we can get a permit to do the project with Reach 7. I don't think we can. Not for sand, and if we're about to place rock, then I don't think we ought to pursue that either, because that's really a private property issue. The Town did a similar project at Mid-Town, where we had a chance of a seawall failing. We placed, I think it was about $600,000 worth of rock out in front of the wall, to stop it from failing, but again, that becomes a personal/private property issue, not a Town issue, I believe.

WYETT: At the Citizens meeting Jeff Atwater, our new representative in Tallahassee, informed us he was getting State officials and County officials to come down and make a new inspection. Was that correct?

DUSEY: Correct.

WYETT: Has that been done yet?

DUSEY: We need the authorization of the Town Council to –

SMITH: We have the letter, which was in the book, Mr. Wyett.

WYETT: Right. That's the approved agenda.

SMITH: But, this is a letter that I think we can soup up a bit, Mr. Dusey. I thought we'd do a little softening to Dr. Devereaux to get them to come down quicker

WYETT: If Dr. Devereaux comes down and sees how bad this 3,000 feet is, do you think that would change the situation and help these people out?

DUSEY: I think it would be an opportunity to discuss with DEP the options that might be available to the Town for that area particularly, and I think we would do that as a matter of course.

WYETT: I mean I recognize that there is a difference in this 3,000 feet being private property than the Town beach, which we had an emergency action about five years ago, because the seawall was about to go. But the net result is the same. I would hate to be sitting here sometime in the next two years should a disaster hit, and the seawall go, and the condominiums be damaged, and see 500, 600, 700 residents show up here and tell us how bad we've been about not protecting them.

McDONALD: Why don't we revisit this issue after the inspection has been made?

SMITH: Perhaps we can authorize the letter to go, and I'll give it to you Mr Dusey, what I think, and then we'll follow up with a phone call to Dr. Devereaux asking him to set up a specific appointment with he and the staff and whatever it takes to get them going.

GOLDBLUM: I suggest the Citizens Association get involved with it too.

SMITH: Well, let's get Dr. Devereaux before we get hundreds of people meeting with him. Let's get him to come down here first, and then we'll get the various groups involved.

McDONALD: All right. Thank you, Mr. Dusey. Dr. Kuvin?

KUVIN: Good morning. My name is Sanford Kuvin. I listened to Mr. Dusey's comments, and I would take issue with his optimism on the status of the Mid-Town, Phipps Park, and particularly the ECL. My question is directed at Mr. Randolph. Back in, I believe it was June of last year, a meeting was held with the Deputy Secretary, Mr. Green, concerning moving the ECL further eastward, and I believe Mayor Smith, at that time you joined in the comment that ideally you felt it should be placed way out in the ocean. It's my understanding that Mr. Dusey has supported the concept of this ECL, which is now set at 100 feet from the dune line, and my question to Mr. Randolph is that isn't it true, Mr. Randolph, that the 1970 Beach and Shore Preservation Act, namely Florida Statute 161, calls for the State, once it has authorized the beach restoration renourishment project, which we already have authorized, to set the ECL, the erosion control line, to establish where the land it will continue to own begins. Therefore, my question to you is that isn't it true that adoption of this ECL as put forward under current thinking, as mentioned by Mr. Dusey, co-mixed with the Town's acceptance of partial State funding for beach restoration, now puts the Town in the position of having the State having the ability to convert private beach front lands into public beaches, with public access, public toilets, public parking interspersed along the entire 12 mile length of the Town, is that true or not true?

RANDOLPH: I'm not sure how to characterize that question, but it's certainly a leading one. No, I don't believe that you can make that kind of a general statement. I think that the – I don't believe you paraphrased the Statute – you were reading it, I think –

KUVIN: I was reading the Statute, yes.

RANDOLPH: And I think that you're reading of the Statute is correct, but I don't think that it's going to provide the opportunity for the State to come in and put rest room facilities, and that sort of thing. I don't think that's the intention.

KUVIN: What is your reasoning?

RANDOLPH: My reasoning is that in our discussions with the State, we were led to believe that that is not something that's going to occur. We felt that the 100 feet that was negotiated with the State was the very best that we were going to be able to get from the State, and we quite frankly felt that was a good compromise.

KUVIN: Well, isn't it also true, though, that the precedent in Cocoa Beach, was that the ECL was established much further eastward because it was demonstrated that the inlet was partly responsible for the erosion. Now, there is incontrovertible proof in this Town that the Lake Worth Inlet is responsible for a significant amount of erosion, and again, I would put it back to you, why hasn't that argument seen success, and if it hasn't seen success, why is the 100 feet, which is literally a stone's throw, not been challenged, because once it's adopted it will be permanent, and according to the regulations, and according to the State Statute, it's my understanding, and others, of much higher legal opinion than mine, that after the first initial – that this was a one time only effort by the State, and you know that's a correct quote, to not do anything during the first beach restoration, where they're providing partial monies, but after that, when the second restoration comes, they do have the right, and that's been explained from this podium, to put in easements, parking, toilets, etc. Now, if you're saying that just is not so, and –

RANDOLPH: No, I'm not saying – I'm saying that the representations we received from the State in regard to this project, was that there wasn't going to be anything like that done.

KUVIN: Well, you did say that. When you say representations, do you mean a verbal "don't worry," or do you mean something in writing?

RANDOLPH: The information that Mr. Dusey has from his discussions with the State has indicated that –I'm not talking about future projects. I don't know what's going to happen in regard to future projects, but in regard to this particular project, that's not going to happen.

KUVIN: Mr. Randolph, isn't that the issue at hand, what is going to happen to future projects? Beach restoration –

RANDOLPH: I don't know if that's the issue at hand. I don't know if you want.

KUVIN: This is a permanent ECL.

McDONALD: Dr. Kuvin, I know both of you would like to speak at the same time. If you have a question, ask him the question, and if Mr. Randolph has the answer, he'll do his best. What's your question?

KUVIN: The question is –

RANDOLPH: I'm picking up a lot of questions, one of which relates to the Cape case. And, you know, we spent an awful lot of time talking about what happened in that case and whether or not it would be feasible or expeditious for the Town to engage in similar litigation. And, indeed the Town can engage in similar litigation, and we've had those discussions in the past. And if it's the desire of the Council that we do that, and try to get something better than has been negotiated through Mr. Dusey and through the Mayor and through myself in going to Tallahassee, the Council can do that. I think what you're stating is the same thing as you've stated in the past, and that is that you do not feel that this particular agreement is a fair agreement for the Town, and that you would rather see the Town take its chances and go to litigation and try to get the ECL set at a point that you feel is more fair to the Town. And that's a policy decision on the Town's part, and if it wishes to pursue that, it can. It's discussed it in the past. It's chosen to attempt to resolve this in another way, and that's the path down which we're traveling at this point.

KUVIN: I thank you for that answer and in reference to that, I'm not suggesting that litigation go forward in terms of damages; that's a separate issue.

McDONALD: Well, he has answered your question. He did answer your question. You may not like the answer, but he answered it.

KUVIN: Well, I just want to clarify that one point, and that is that my point is directed only to the ECL, and that litigation, I feel, should go forward obviously, because this is a one time permanent impact forever on this Town.

McDONALD: Thank you, Dr. Kuvin. Anyone else to speak to this issue? All right, I think Dr. Lilja was first, then Mr. Gilbertson, then Mr. Cooley. Please don't repeat anything that has already been said.

LILJA: My name is Sten Lilja. That has not been repeated. I did not intend to speak here in the first place, but as you know, I have a hang up that I want the facts stated as the facts are, and what I heard here from Mr. Randolph was that there was nothing in writing that specifies that access, toilets, or whatever, parking, was not mandatory. I recommend that you read a direct letter signed by Dr. Devereaux, and I believe it is in June, that specifies that not only is the local authority, that means the Town, responsible to maintain what has been created by the initial restoration, it now becomes a renourishment, for ten years, and it also specifies that for that second effort of renourishment, the rules for access, parking and toilets, will be in effect, and I want to have that thing very clear, and don't get around that.

McDONALD: All right. Thank you. Mr. Gilbertson?

GILBERTSON: Just a slight bit of history.

McDONALD: No history, Mr. Gilbertson. Do you have a question for us?

GILBERTSON: Yes, I have a question, and I have to build it up slightly, if you don't mind. The thing is in the middle '80's I said don't tear out the jetties – they tore it out because seven years no beach in Palm Beach. Then we had the jetties put in. Finally we got the sand. Now we talk about sand on the Mid-Town beach. Two or three times a year, Mother Nature, from the north, brings in swells and we have sand. Millions of dollars worth of sand. And of course down toward Jungle Point, the jetties are eroded, so the sand doesn't stay there. Now you're talking about Clarendon, I mean the area down there in South Palm Beach. The jetties are all gone, and you look a little further down, where the jetties are in place a little bit the sand is coming up. We need jetties first. You're insane. Now, what really gripes me, back in the '80's, six million dollars was wasted, and nobody was fired.

McDONALD: Thank you, Mr. Gilbertson. Mr. Cooley?

GILBERTSON: Oh, I just want to say this. I'm sorry. This is a hunk out of Jungle Point there. The wall is gone, and it's going fast. A major storm – there'd be no wall.

McDONALD: Would you please give that to Mr. Bowser on the way down, Mr. Gilbertson. Mr. Cooley, please.

COOLEY: William Cooley, Tradewind Drive. I agree with Dr. Kuvin regarding the setting of the ECL at 100 feet, particularly when you plan on expanding the beach by 300-400 feet. I think the character of Palm Beach would be changed forever with the addition of 200-300 feet of public beach. Litigation is one way to go, but I think there is an easier way while the legislature is freshly in session. That is, we have a new State representative here, and I would suggest that this Council pass a resolution, or adopt a resolution, asking our legislative delegation to propose an amendment to the current Statute that would exempt, in clear language, towns that are down drift from these cuts that caused this beach erosion, from setting an ECL. There's language similar, and it skirts the issue, and the exemption doesn't hold if the restoration project is longer than 10 years, but I think with some very fine tuning to that ordinance – because the apparent intent of the legislature was to exempt down drift communities from setting an ECL. What's happened is the bureaucrats in Tallahassee say well, we won't approve a 9-year issue, it has to be a 10-year issue, therefore, beating the intent of the legislature. I think very fine tuning of that existing law would exempt Palm Beach from setting an ECL and avoid the necessity of a lawsuit, and plus it would not change the character of Palm Beach by creating what is in effect a public beach.

McDONALD: I think that's an excellent idea, Mr. Cooley. Is there a motion by someone?

WYETT: **I'll make that motion.**

McLENDON: **Second.**

McDONALD: All right. And what we're going to do is we're going to have a resolution crafted by Mr. Bradford, and signed by the Mayor – would that be the direction of the Council? All right. Mrs. Pollitt?

RANDOLPH: Well, you know, if I may, we can do that. That's one of the things that we approached DEP with; that we were intent on doing, if we were not able to get an agreement from them. We feel that in light of our representation to them, that we would go forward with that proposal, that we were able to extract that agreement that we received, so I don't know what effect your proposal might have on the agreement that has already been made, but I just wanted to let you know about that.

McDONALD: All right.

WYETT: I understand your position, Mr. Randolph, but we would be petitioning to the State Legislature to clarify their intent. I think we have the right to go beyond that. We're respecting the agreement, but if the Legislature would like to clarify its intent that would be wonderful. But, I do want to make a statement – in Reach 1, you have more sand than we know what to do with. In Reach 2, the Town does not allow to put very much sand there, because of the hard bottom. I don't believe, and I'll get confirmation from Mr. Dusey, that we're going out very far with the sand, because we'd be covering hard bottom. Reach 2 is one of the areas in Town that is probably getting the least amount of sand, and so it will not be going out 200-300 feet, unless Mr. Dusey says otherwise.

McDONALD: Mr. Wyett, can we just keep this to the resolution, if you want us to pass the resolution?

WYETT: Yes.

SMITH: I have not actually seen in writing the agreement on the establishment of the ECL line. So, what are we making a resolution on, because we have not accepted the agreement yet, nor have we seen it. It's the two permits that are coming in that are not – or the one that's in is for Mid-Town, and the second one is for Phipps Ocean Park is anticipated, but we have seen nothing in writing, so I think until we see something in writing, and we know what we're dealing with, it would be premature to pass a resolution, and perhaps send a letter that's in controversy to what we've already said, Mr. Randolph. That's my thought at the moment.

McLENDON: I think we're out in Limbo here. Mr. Randolph presented here, as I understand it, a concern that the negotiations would be seen by DEP as a non-supporting decision. But, since we have nothing in writing, I don't see why we shouldn't proceed with this resolution to get particular action.

SMITH: But is not the ECL agreement coming, along with these two permits – something for us to look at?

RANDOLPH: I think Mr. Dusey can comment on that.

DUSEY: The ECL agreement has been verbalized, and is being processed based on those verbal commitments made on both sides, and I believe that DEP is going to be supporting our proposed resolution of this through the process. I don't think you're going to see anything in writing because I don't see a purpose in that.

SMITH: I thought they had to have the public hearings on this, Mr. Dusey. And we're still taking about the question of asking DEP to approve funding for some of these projects, so where are you going with all these little elements? I'm not sure where you're going with this now, because we do not have the permits for Reaches 2, 5, and 9. We're still trying to get the permits from DEP for them, so we have no idea of where in effect the line would be at this time.

McDONALD: That's correct.

McLENDON: Well, I think we have an idea, based on the verbal agreement.

DUSEY: Well, Reach 2 may not get us there, because we may not have a 100 foot berm in Reach 2. The 100 feet is not a given, it's a design berm, and in most sections, it's 10 feet wide.

SMITH: And let's say that I did meet, and that Mr. Bradford – I can't remember, were you there -- when I met with Representative Atwater here, and we were here for about an hour and a half, and that's when we got the information from Mr. Dusey for Representative Atwater to take the action he did to assist us with the lower reaches in Tallahassee, and that' what started – that was about six weeks ago, so I think before we start moving in different directions with eight wheels, he's working to help us on one thing. We can contact him and work with him again, but let's find out exactly what we want, and what will be accomplished by the actions that you might take today with a resolution. I'm not sure.

COOLEY: Madam Mayor, if, as I understand it, if nothing is done, the ECL is drawn – it's a function of a survey line – the berm, or the high water, and then everything that's filled forward becomes "public." There is a provision in the existing State law that says an ECL doesn't have to be drawn (paraphrasing) doesn't have to be drawn if it's down drift of a man made cut, and if the restoration project is less than 10 years. That's in the law, so what the Town of Palm Beach applied for was a restoration project, and I believe we asked for something less than 10 years, but the bureaucrats said oh no, we won't approve that – it has to be more than 10 years. If you're negotiating to set the line out 100 feet, and I believe the statement has been made, well, there have been verbal commitments made, but I don't think there's been a formal Council action on it, it would seem, and we ran into this problem last year, because we started talking about getting Palm Beach exempted at the tail end of the Legislative Session, and the general discussion was oh, there isn't enough time to do it. So, what we have now is the beginning of the Session, and what I would strongly recommend – my two cent worth – is that you adopt a resolution requesting that the Legislature amend the law – that our delegation represent us in amending the law –

that all down drift communities be exempted from drafting an ECL. That's all, and if that piece of legislation passes, all the rest of it doesn't matter. There will be no ECL for us down drift.

McDONALD: Thank you Mr. Cooley. Any additional Council comments before we call the question?

McLENDON: What's the question right now?

McDONALD: **There's a motion on the floor to approve a resolution asking our State Legislature to change the language of the Statute.**

WYETT: I don't see any harm in asking Mr. Atwater to take this issue to the Legislature. It's a long procedure. It has to be proposed. It has to go through Committees and, as Mr. Cooley pointed out, last time we got caught asking on the tail end, and the tail end of anything in the State Legislature gets very little attention. I think if we start the ball rolling you can't lose, and you're not insulting anybody, you're basically asking for a clean clarification of the Legislature's intent.

Town Clerk Pollitt calls roll and motion carries unanimously.

McDONALD: **Motion passes 5/0.**

KUVIN: Mr. McDonald, may I just –

McDONALD: We're finished with this item, Dr. Kuvin, unless it's an emergency.

KUVIN: It's not an emergency, but I think it's a common courtesy. You saw me standing here, and you knew I wanted to speak. You let Mr. Cooley speak. You let others speak.

McDONALD: Well, we've dealt with this item on the agenda.

KUVIN: I don't think you've dealt with it to my satisfaction.

McDONALD: Well, that may be true, Dr. Kuvin, and there are some other items on the agenda.

KUVIN: Why are you being so disingenuous and so rude?

McDONALD: Well, that's a difficult question to answer.

KUVIN: No, it could be very easy.

McDONALD: Well, do you have something of an emergency nature?

KUVIN: Yes, I do.

McDONALD: Okay, go ahead.

KUVIN: Namely, that if Mr. Dusey said that it was the Council's and the DEP's unanimity of opinion that this ECL be established at 100 feet. If the Council is now taking steps to disavow itself from that position, then shouldn't it suggest to the DEP that you have a right to change your mind and that you've seen, shall we say, the error of your ways, and that you would like to change your mind about this and re-open it up for negotiation, legislative action, or other venues.

McDONALD: All right. Thank you, Dr. Kuvin.

End of verbatim transcript

2. Status Report Regarding Progress of Florida Department of Transportation South County Road Project. Eric Pedrone, FDOT.

Town Engineer James Bowser reported that Mr. Pedrone of the Florida Department of Transportation (FDOT) was not available today, however, the contractor was present to give an update on the construction project on South County Road.

Mr. Bob Shafer, with Ranger Construction, addressed the Town Council, reporting that the project was on schedule for completion during the first week of February.

Councilman Brooks commented that work was not allowed from the dates of December 26th through January 2nd, noting that there had been four different deadlines for completion of work to date, and urged that work be completed in a timely manner.

Councilman Goldblum commented that the drainage in the area was not sufficient.

Councilman Wyett commented that there were barriers on the west side of the street, with parking allowed on the street, and questioned the reasoning behind that.

Mr. Shafer responded that there were concrete islands that needed to be constructed, and man holes that needed adjustment, although parking was allowed to accommodate people in the best way possible.

Councilman Goldblum asked Public Works Director Dusey if an answer had been received from the South Florida Water Management District (SFWMD) concerning drainage problems in The Breakers area?

Mr. Dusey responded that the letter had been written to the FDOT, indicating that the drainage problems must be resolved in that area, however, a reply had not yet been received.

Town Engineer Bowser indicated that he would follow up with the FDOT in that regard.

3. Status Report on U.S. Army Corps of Engineers Activities Toward Upgrade of Lake Worth Inlet Sand Transfer Plant and Other Activities Providing for Accretion of Sand on Town Beaches. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey reported that the Sand Transfer Plant was on schedule for the feasibility study to be completed in four months. Peanut Island sand was intended to come to the Town beaches, and was an ongoing process that was being monitored closely by staff. A meeting would be held with Mayor Smith and Congressman Shaw to determine how to get the Army Corps of Engineers more involved in the Town project. The study of the Lake Worth Inlet had been completed, which was a three year study, cost-shared by the State of Florida, and which would define how much sand was coming across the inlet. The findings indicated that 202,000 cubic yards was a more accurate figure than the 170,000 cubic yards. As soon as the study went through the review process, staff would expect to receive that sand on an annual basis. Mr. Dusey reported that the Army Corps of Engineers had initiated its annual inlet dredging project, placing sand within the first 3,000 feet south of the south jetty.

In response to the query of Councilman Wyett concerning the dumping location of the sand dredged, Mr. Dusey replied that there was currently a permit to place sand in the first 3,000 feet, or Mid-Town; by agreement they could not move any sand from the north end until that was filled. He noted that his goal was to get Reach 2 permitted, and to have the Corps place more sand there. He also noted that the extended piping was part of the Corps feasibility study of the improvements to the Sand Transfer Plant.

Mayor Smith commented that there were objections to the extension of piping from some of the property owners.

B. New Business

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 9, 2001

1. Consideration of Proposal to Install Computer Terminals at the Town Council Dias. Spencer D. Wilson, Information Systems Manager.

Information Systems Manager Spencer Wilson addressed the Town Council, referring to his memorandum of December 26, 2000, reporting that there would be two phases to installing computer terminals for the Town Council. The first step would involve creating the Agenda Books into an electronic format – he noted that about 75% of the book was already in an electronic format. Once that process was in place, the creation of the Agenda Books would be less time consuming. The second phase would be to install computers for each person; Mr. Wilson submitted several options for such installation.

Councilman Wyett commented that he supported the use of computers for the Town Council, as it would allow the agenda to be available to everyone for viewing. He moved approval of the recommendation of Information Systems Manager Wilson to convert the Agenda books to an electronic format. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

In response to President McDonald, Mr. Wilson replied that there was a system where anyone could track the Agenda, however, it would require a staff member to follow the meeting and be responsible for making changes as the Agenda was moved forward.

President McDonald requested that Mr. Wilson and Town Clerk Pollitt discuss the issue and come back with a recommendation at the next Town Council meeting.

Councilman Goldblum moved approval of Information Systems Manager Wilson and Town Clerk Pollitt discussing the issue of tracking the Agenda in order to determine a recommendation to be made at the next Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Report on Town Ability to Augment Potable Water Supply with Reverse-Osmosis Treatment Plant During Water Shortages. Albert P. Dusey, Director of Public Works.

Director of Public Works Al Dusey reported that he had provided a memorandum to Acting Town Manager Bradford, dated December 28, 2000, attaching a portion of the water franchise agreement with West Palm Beach, indicating the circumstances under which a reverse osmosis facility could be operated. He explained that such a facility could only be used when the city of West Palm Beach could not supply the Town with water needed for irrigation purposes.

Councilman Wyett commented that he did not want to spend any money, nor build anything, but did want to be prepared – if a long term drought required water restrictions, and then the Town began to look into reverse osmosis, it could be a year or more before a treatment plant could be in place. He recommended that, in preparation for the necessity of a reverse osmosis plant, a plant location be determined, and that a calculation be made of the amount of water that would be needed. He explained that if the use of a reverse osmosis treatment plant ever became necessary, the plans could then be easily put into place.

In response to Councilman Goldblum, Mr. Gerald Goldsmith explained that the Palm Beach Country Club had drilled a well of 1300-1400 feet, with an almost unlimited supply of water from the Florida Aquifer; a 500,000 gallon reverse osmosis plant had been installed, with a total cost of approximately $1,300,000; chlorination would require additional equipment. He estimated that the cost to produce the water was approximately $.30 per 1,000 gallons; chlorination would add another five cents to ten cents a gallon to purify the water.

Mayor Smith commented that the location of an R-O plant was agreed to in the negotiations for the water franchise agreement (Par 3 Golf Course), and the agreement stated: that the City shall have the right to approve the connection of the Town R-O facility to the water distribution system, which approval shall not be unreasonably withheld; the City shall pay the Town for the amount of the Town R-O, with a Town R-O facility rate formula in the agreement; also, it was stated that a Town R-O facility shall be used only during emergency drought conditions, as declared by South Florida Water Management District (SFWMD).

Councilman Wyett commented that accurate/expert studies had not been done for a supplementary system, and urged that some advance planning take place in this regard in order to be prepared for a long term drought.

President Pro-Tem McLendon suggested that the amount of water capacity and usage that the three country clubs in Town had should be worth a lot of consideration by the SFWMD, which should be pursued before authorizing any wells operated by the Town.

Mr. Goldsmith commented that there was a provision that under certain conditions, the Palm Beach Country Club could be helpful in an emergency situation to the residents of the north end.

Mayor Smith noted that there was a great deal of discussion had taken place during the negotiations for the agreement regarding the location of an R-O facility, and the Par 3 Golf Course had been chosen because of concern for citizens of the south end of Town, as the Country Club had considered the needs of the north end; the site had been chosen in coordination with the SFWMD, and the City of West Palm Beach.

Councilman Wyett moved approval of adoption of a preparedness plan for an R-O facility in the case of a severe drought. The motion died for lack of a second.

There was no further action taken regarding this item.

3. Discussion Regarding Additional Staff Support for the Department of Public Works, to Ensure Necessary Manpower for Timely Implementation of the Town's Adopted Coastal Management Plan.

President McDonald commented that he had not anticipated the hiring of an engineer when he had requested that this item be included on the Agenda, however, he had been considering additional administrative support.

Public Works Director Al Dusey stated that, in order to be helpful to the Town, a Coastal Engineer would be necessary.

President Pro-Tem McLendon commented that the Shore Protection Board had originally recommended a "beach chief," which he had opposed. He noted that he no problem with hiring an underling with some training in coastal management, who would do other things as well, and that he was not interested in setting up another entire sub-department with additional personnel.

Mr. Dusey responded that a coastal engineer would be an underling, as it was a position lower than his position.

Acting Town Manager Bradford commented that the Human Resources Department had studied the position, and based upon their review it had been determined that there would be sufficient work for a coastal engineer, however, he cautioned that coastal engineers were in very high demand, and an alternative would be to allow the use of the consulting coastal engineers in a greater capacity.

Mr. Dusey commented that he would have to consider that very closely.

Councilman Wyett suggested that outside consulting firms be used, and that a new position not be created.

Mayor Smith commented that she believed it would be important for Mr. Bradford to discuss this issue with Mr. Elwell and Mr. Dusey, to determine what would best fulfill the need. She suggested that it could be deferred until the March Town Council meeting.

4. Discussion Regarding Coordination, Communication, and Problem Resolution for FDOT and Other Municipal Public Works Projects in the Town.

President McDonald commented that he had requested the inclusion of this item on the Agenda, and basically wanted to have the Public Works Department consider the issue over the next several months to determine if there was a better way to handle the projects in Town. He suggested that there could be a better method of control by the Town, and a procedure for residents to be able to resolve concerns in this regard.

Mr. Jerry Frank, 2784 South Ocean Blvd., commented that Mr. Dusey was frequently asked to handle many different projects, and suggested that there be some re-distribution of responsibilities on some of the major projects going on in the Town. He stated that he did not know how any one person could handle all of the items sufficiently.

In response to President McDonald regarding a procedure for citizens to follow when there was a problem with the contractor completing the project, Mr. Dusey replied that if a contractor damaged a citizen's property it would become a civil manner between the contractor and the property owner; usually the property owner contacted the Public Works Department to obtain the name and number of the contractor. He suggested that anyone receiving a complaint refer it to the Public Works Department so that the name and number of the property party can be obtained.

Mayor Smith commented that it seemed as though major emergencies occur after 5:00 p.m. on Friday, and before 9:00 a.m. on Monday, and when the Public Works Department was contacted during those times there was a recording on the phone. She suggested that it may be possible to set up an emergency number for Public Works where an actual person could be contacted, for what people perceived were emergencies that would not necessitate a 911 call.

Mr. Dusey replied that emergencies were referred to a non-911 number in the Police Department, and the Police Department did a wonderful job assessing the problem and contacting the correct people in the Public Works Department.

Mayor Smith suggested that the number be better publicized, and that a more personal service number could be instituted.

President McDonald suggested that Mr. Dusey study the problem and come back with suggestions in four-five months.

5. Discussion of Anti-Mooring Ordinance for Water Bodies Within the Town's Jurisdiction. John C. Randolph, Town Attorney.

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

6. Appeal of Application of Town Policy Contained in "Standards Applicable to Rights-of-Way and Easements Within the Town of Palm Beach" (Right-of-Way Manual) Relative to Director of Public Works Denial of Right-of-Way Permit for the Relocation of Encantada, a House to be Located on 101 Seaspray Avenue. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey reported that the appeal was in regard to a decision that he had made concerning an application for a permit to close South Ocean Blvd. for three fairly short periods of time to move three sections of home on to 101 Seaspray Avenue. He explained that Town rules and regulations did not permit the closings, and he did not feel he had an opportunity to approve it because of the nature of the street. He stated that he believed the appeal to be quite reasonable.

Attorney Ray Royce, on behalf of the applicant, addressed the Town Council, stating that a number of neighbors were present to speak to the appeal, and submitting building plans, dune crossing plans, Department of Environmental (DEP) approvals, insurance, etc. for the record. He explained that Attorney Kino and he had been working with Town staff in this regard, and conditional approval had been given, with permission being requested today from the Town Council to cross Ocean Blvd. He noted that timing was critical, as the State of Florida turtle season would start on March 1st, and it would therefore be impossible to off-load the house at that time. He stated that the house was an Addison Mizner, and was one of his last great works in Florida. He explained that the ordinance indicated that major roadways could not be blocked for work to be done, and in a technical sense, no work was being done – the applicant simply wished to cross the roadway.

Attorney Greg Kino addressed the Town Council, stating that the application had been highly scrutinized by DEP, who had approved the crossing of the dune; Town staff and the Police Department had given input on the traffic routing plan; conditions regarding right-of-way crossing would be agreed to, as well as cash bonds, removal, revegetation, etc. He requested a limited closure of South Ocean Blvd., from 1-3 hours, as well as Seaspray Avenue for 3-4 hours, on three occasions, approximately one week apart, as each section of the house moved across the road.

Mr. Eric Holley, President of Aslan Inc., Environmental Consultants and Planners, described the deployment of the three sections of the house from the beachhead to the road.

In response to Councilman Goldblum regarding the weight load at any one time, Mr. Burdett, the house mover, explained that the tire loading capacity was 42,000 per axle.

Public Works Director Dusey commented that the actual wheel loading was important, not the axle loading, and it had been his experience that the moving companies were very good at moving and distributing loads; he stated that he did not expect any damage.

Mr. Holley commented that the South Ocean Blvd. crossing would take approximately one hour; Seaspray Avenue would take several hours; the most easterly two homes on Seaspray would be blocked. He explained that the vegetation involved would be replaced with approximately ten times what was currently in place.

Councilman Brooks asked if the 16 conditions outlined in the letter of Acting Town Manager Bradford, and dated December 27, 2000 had been met?

Attorney Kino responded that they either had been or would be met before any relocation would take place. Some of them would be done as part of the move, however all would be met, as well as entering into an easement agreement with the owners of the three "sea" streets.

President McDonald clarified that the easement would remain in effect, if approval was granted today, even though the project somehow failed to be completed

Attorney Kino replied that the easement was tied to the action of the Town Council today; if approval was granted, and the applicant decided not to move forward, the easement was in place.

Attorney Randolph advised that it had been his position that because of the nature of the project he had recommended that the liability insurance be increased to $5 million, with a $10 million aggregate.

Attorney Kino agreed that the $5/$10 million insurance liability would be acceptable.

Councilman Wyett asked what the options of the Town would be, should difficulties be encountered in the course of moving, and the house sat on the street beyond the time expected?

Attorney Kino responded that had been addressed by staff, and there was a demolition estimate that would be submitted to staff for their approval, and a cash bond in the amount of 135% of that would be in place to cover any such contingency.

Councilman Wyett suggested that there would need to be some agreement regarding at what point the project would be abandoned.

President Pro-Tem McLendon moved approval of the application, subject to the conditions required by Town staff. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

7. Consideration of Request for Town to Accept Root Trail Right-of-Way as Public for Roadway and Other Purposes. T.J. Fisher, 173 Root Trail.

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

8. Review of Proposed Capital Improvement Program for Drainage Improvements. Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey referred to his memorandum to Acting Town Manager Bradford, dated December 28, 2000, regarding drainage improvement projects, and the suggested implementation of the funds approved to jump start the drainage program. He noted that the Smith and Gillespie Engineering Long Range Public Works Plan had been prepared in the late '70's, and had been the basis for the drainage improvements in the Town; ninety per cent of that system had been implemented, with the last big section to be completed this summer. Mr. Dusey explained that the Town's adopted level of service for a pump station system was for a storm that would occur once per year for a one hour period, based on historical averages; the Town's adopted level of service for the gravity system, where it could be implemented, was at a three year frequency for a one hour duration, which was 2.7 inches per hour. He noted that beyond that, the Town had adopted two criteria – the pumps must be capable of handling the peak flow associated with a one year frequency storm of one hour duration, and the pumps must be able to remove, within one hour, the excess runoff produced during a five year frequency storm, one hour duration. He explained that this was a very high standard, however, would not take care of ALL drainage events – recent events had exceeded the capabilities and had caused many drainage problems.

Mr. Dusey defined the suggested improvements for the first $1,000,000 appropriated: an audit and investigation of the D-14 drainage basin; (he explained that a consultant estimate of $15,000 had been obtained for a review of that system); buy an extra storm water pump so that when one was down there would be a replacement pump. Mr. Dusey noted that another project was the 100 block of Atlantic Avenue, where substantial flooding had occurred – the pipes were currently undersized and would need to be replaced; Coral Lane had experienced substantial problems, and the pipes in that area would need to be replaced; old pipes in other areas of Town would need to be replaced, with the goal to connect all of the pipes to the new station that would be constructed on Bradley.

In response to Mayor Smith, Mr. Dusey explained that some of the problems on Miraflores were from yard trash, not only drainage, and that the audit and investigation would determine any problems in that area.

President Pro-Tem McLendon commented that he did not want to approve any particular project until he knew what design criteria was going into the storm water needs.

Mr. Dusey replied that would delay the work for at least one year; he explained that establishing criteria would involve community debate, cost estimates, etc.

Mrs. Wendy Victor, 208 Via Tortuga requested that the Town Council keep a close eye on the plan to deepen the channel at the inlet; she stated that she understood that when a storm occurred a lot of water came into the inlet, causing severe flooding. She urged that the expansion plans of the Port of Palm Beach be taken into consideration.

Mr. Rinehard Brandner, Eden Road, commented that he had lived on Eden Road for 15 years, and had never had flooding until this year, when there were three floods. He stated that the pipes in the alley were broken and he wanted them repaired this year. He pointed out that he was losing his homeowners insurance, and had lost two cars in the last flooding. He urged the Town Council to take action.

Mr. Michael McCloskey, Coral Lane, commented that the problem was the level of service of the drainage system, which had been designed in 1976. He suggested that the entire level of service be reviewed; the Smith and Gillespie study should be re-done in order to alleviate the drainage problems in the long term. He asked when the FY 2001 drainage program would be completed?

Mr. Dusey replied that some of the work would be done this summer, however, he could not commit to that before he had approval, and could get contractors on board. He pointed out that such work had always been done in the summer months, to avoid seasonal work.

Mayor Smith commented that the Town Council could decide that work could be done in the seasonal months.

Mr. David Barton, 216 Jamaica Lane, commented that a map should be included with any presentation concerning drainage projects, indicating the areas experiencing difficulty. He maintained that Palm Beach overbuilding had caused unanticipated problems.

In response to Councilman Wyett, Mr. Dusey responded that the Eden Road repairs were planned for year two of the drainage project. The cost estimate was $360,000.

Councilman Wyett commented that money was not the problem; planning and construction was the problem. He suggested that the Town Council approve winter construction in areas where residents wished to have it.

Councilman Wyett moved approval that construction take place during the winter months, if 75% of the residents made such a request. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Mayor Smith commented that building projects on the streets at the same time that drainage projects were being implemented would make the street totally impassable, except for foot traffic, and coordination would need to take place between the Public Works Department and the Building Department. She noted that part of the problem was the fact that two huge houses had been built on Eden Road, and the level of the land had been raised; she suggested that the retention policy be reviewed as well as the new construction sites, which were not containing enough rain water.

Councilman Wyett suggested that a list be prepared of streets that are being deferred only because of lack of funds.

President McDonald suggested that Mr. Dusey supplement his proposal submitted today, with streets, and cost estimates.

Mr. Dusey replied that he would do his best to provide same at the next Town Council meeting.

Mayor Smith noted that there would be projects that had been scheduled for next year that would now be deferred.

Councilman Wyett approved the proposal and appropriation made by Mr. Dusey today, of $1,000,000 to jump start the drainage program. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

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The Town Council Meeting of January 9, 2001,
was adjourned for the luncheon recess at 12:20 p.m.

*******The Town Council Meeting of January 9, 2001, was reconvened at 2:00 p.m.********

9. Discussion Regarding Two Available Limousine/Taxi Cab Permits. Jane Skittone, Director of Finance and John C. Randolph, Town Attorney.

Town Attorney John Randolph reported that two of the fifty limousine/taxi cab permits allocated under Town ordinance were now available, as a result of those two permits not being renewed. As there was no procedure for the reallocation of the permits, and because there had been an interest shown in the permits by a number of people, staff had suggested that a random selection process be instituted, with advertising that the two permits were available and that there would be a drawing for selection. After the drawing, a permit application would be submitted for approval.

Attorney Randolph noted that Attorney Ron Kolins had suggested that his client was entitled to the permits because of a procedure that had happened several years earlier, where his client had given up two permits. Mr. Randolph explained that he had reviewed the minutes of the meeting involved, and did not believe there was any real condition put into place at that time, and that if the permits had been given up, it had not been directed by the Town. Mr. Randolph pointed out that Attorney Kolins had also suggested that if the permits were not given to his client, that the Town do a Request for Proposal (RFP), call for qualified respondents, review the qualifications, and then issue the two permits.

Attorney Randolph requested direction from the Town Council concerning the appropriate procedure. He explained that there was an ordinance governing the limousine/taxi permits, and there was some concern from deviating from that with an RFP, where the Town would select the entity who could obtain the permits, as opposed to a blind draw.

Attorney Ron Kolins, representing Park Limousine, addressed the Town Council, stating that the 50 allowed permits were included in the Town Code, and that cap could be changed through process by the Town Council, if so desired. He explained that in 1991 the Town Council had heard items concerning limousine/taxi cab permits, and that his client had voluntarily given up two permits in order to help retain the 50 cap. He noted that there were currently 48 permits, with two permits remaining. He suggested that equity would dictate that the two permits should go to Park Limousine, as they had given them up to help the Town, although there had been no guarantee at that time that they would get the permits back. In addition, Mr. Kolins suggested that if Park Limousine did not get the permits back, an RFP process should be implemented. He maintained that the RFP process would be preferable, as it would give every applicant the opportunity to argue their case. He maintained that the standards in the Code were not objective, requiring a judgment by the Town Council as to the fitness of the applicant.

Town Attorney Randolph noted that many people had expressed interest in the permits, and there was some concern with returning the permits to Park Limousine; in regard to the RFP, he maintained that the Town would then use its discretion in determining who favorably met the criteria, as opposed to the language in the ordinance.

Councilman Wyett suggested that the permits be returned to Park Limousine.

Councilman Goldlblum referred to the minutes of 1992, and suggested that the permits should be returned to Park Limousine.

In response to Councilman Brooks, Mr. John Campagnuolo, Park Limousine, stated that The Breakers had paid approximately $15,000 per permit; he explained that he had purchased permits for $2,000-$3,000 in the course of the 23 years he had been in operation. He suggested that the fair market value today would be approximately $5,000.

Councilman Brooks moved approval of returning the two medallions (permits) to Mr. Campagnuolo (Park Limousine). The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.

10. Discussion Regarding the Zoning Commission's Long-Range Planning Activities.

Director of Planning, Zoning & Building Robert Moore reported that Section 2.33, Powers and Duties required that the Zoning Commission act in an advisory capacity to the Town Council in all matters related to municipal planning and development; the Commission would follow the concepts and contents of the Town Comprehensive Plan, land use plan, in all planning, zoning and development related deliberations and decisions; the Commission would also have such powers and duties as may be described by the Ordinance. Mr. Moore indicated that staff was prepared to call the Zoning Commission into session regarding drainage issues, a moratorium, and all development issues at hand. He estimated that the session would be held in mid-February, so that there would be some advice available from the Zoning Commission available thereafter.

Councilman Wyett commented that the language regarding land use was open to interpretation, as all long term planning was very complex, involving drainage, sewage, water, etc., and suggested that type of long term planning belonged with the Town Council. He suggested that special meetings of the Town Council could be held in the form of Long Term Planning Open Workshops to accomplish the purpose.

Councilman Brooks commented that he had submitted a request to include discussion of a Long Range Strategic Planning to update the 1997 Planning on the April Town Council Agenda, however, he noted that he did see value to a review of the drainage system as a separate issue.

Councilman Wyett replied that the drainage system was out of the expertise of the Zoning Commission, and something that should be handled by the Town Council, who heard all concerns of residents.

Councilman Goldblum moved approval of the Zoning Commission meeting sometime in February, as proposed by Director of Planning, Zoning & Building Robert Moore. The motion was seconded by Councilman Brooks.

Mr. David Barton, 216 Jamaica, commented that the Zoning Commission had not addressed the issues for which it was responsible, and that the people chosen for the commission had limited experience, and far broader expertise was needed.

Mr. Bill Guttman commented that there were two distinct types of planning at issue; long range planning in the land use area; strategic planning was also required – he suggested an ad hoc strategic planning group, composed of experience people could add value to the community in terms of assuring that the values and visions of Palm Beach would endure into the future. He pointed out that a strategic planning group would have been useful with such things as the water contract; five years advance notice had been given of the expiration of the contract, however, attention had not been given at the time to what was going on in West Palm Beach and the economic importance of the sale of water.

Councilman Goldblum withdrew the motion of approval.

Mr. Moore commented that the water contract would not have come under the authority of the Zoning Commission – issues such as shore protection, drainage, traffic, future land use were all elements of the Comprehensive Plan.

CouncilmanWyett commented that the Zoning Commission had not taken advantage of the expertise and years of experience available in the Town; he noted that it had taken the Shore Protection Board three years to make a recommendation on a complex situation, and that he did not feel the Zoning Commission should handle this type of thing.

Mr. Moore responded that the elements of the Comprehensive Plan were required to be reviewed by the Zoning Commission; the drainage problems and consideration of a possible moratorium were issues that should be reviewed by the Zoning Commission in order to advise the Town Council.

Mayor Smith commented that the Town Council was responsible for notifying the Zoning

Commission of what needs should be addressed, and that the Zoning Commission had therefore not been derelict in their duties. She suggested that the overall picture be considered before the Town Council took any action, as well as the fact that a Town Manager would be coming on board in February, and he had been very much a part of the history of the Town for the past 12 years. She suggested that the sitting Zoning Commission be given requests for input on some of these matters in order to get matters underway, and that experts address the Town Council and give the background and facts needed to make decisions to form a long range plan.

Councilman Brooks moved approval of referring this issue to the Zoning Commission so that recommendations could be given to the Town Council at the appropriate time.

Councilman Goldblum suggested that a long range planning commission be formed.

Councilman Brooks elaborated on his motion, explaining that a distinction must be made between a strategic plan and a long range plan; he suggested that the Zoning Commission be utilized to present recommendations to the Town Council. He explained that the citizens groups, and the Town Council could then determine a course of strategic planning.

Councilman Wyett seconded the motion of Councilman Brooks, with the amendment that the Zoning Commission pay particular attention to moratorium, and drainage problems – without getting into planning a drainage system. He explained that the drainage problem would be addressed by the Public Works Department, and that the expertise of the Zoning Commission should remain in areas that they had been involved with on a continual basis.

Mayor Smith clarified that Mr. Moore would be identifying the guidelines for the subject matter to be discussed at the meetings.

On roll call the motion carried unanimously.

Mr. Moore indicated that he would contact the members of the Zoning Commission to schedule the meeting.

XI. RESOLUTIONS

A. Resolution No. 2-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor, Town Council President, Acting Town Manager, and Chief of Police to Execute the Palm Beach County Law Enforcement Agencies Combined Operational Assistance and Voluntary Cooperation Mutual Aid Agreement. Frank C. Croft, Chief of Police.

Town Attorney Randolph read Resolution No. 2-01 by title

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF

PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE PALM BEACH COUNTY LAW ENFORCEMENT AGENCIES COMBINED OPERATIONAL ASSISTANCE AND VOLUNTARY COOPERATION MUTUAL AID AGREEMENT, AND AUTHORIZING THE MAYOR, TOWN COUNCIL PRESIDENT, ACTING TOWN MANAGER, AND CHIEF OF POLICE TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

Councilman Brooks moved approval of Resolution No. 2-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Resolution No. 3-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Portion of a Five Foot Utility Easement on Property Commonly Known as 1420 North Ocean Boulevard, Palm Beach, Florida. James M. Bowser, Town Engineer.

Town Attorney Randolph read Resolution No. 3-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF A FIVE FOOT UTILITY EASEMENT ON PROPERTY COMMONLY KNOWN AS 1420 NORTH OCEAN BOULEVARD, PALM BEACH, FLORIDA.

Councilman Brooks moved approval of Resolution No. 3-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

C. Resolution No. 4-01 - (209 Seaspray Avenue) 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 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." Jane Day, Preservation Consultant.

Town Attorney Randolph read Resolution No. 4-01 by title:

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 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."

Councilman Brooks moved approval of Resolution No. 4-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

D. Resolution No. 5-01 - (220 El Bravo Way) 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 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." Jane Day, Preservation Consultant.

Town Attorney Randolph read Resolution No. 5-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH, FLORIDA, AUTHORIZING AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED AND STATING THAT 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."

President Pro-Tem McLendon moved approval of Resolution No. 5-01. The motion was seconded by Councilman Goldblum.

Councilman Wyett suggested that in the future the total dollar of the exemption be listed.

Director of Planning, Zoning & Building Robert Moore responded that the Tax Assessor made that determination, and the amount would not be known until that time.

On roll call the motion carried unanimously.

E. Resolution No. 6-01 - (324 Brazilian Avenue) 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 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." Jane Day, Preservation Consultant.

Town Attorney Randolph read Resolution No. 6-01 by title:

> 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 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."

Councilman Brooks moved approval of Resolution No. 6-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

F. Resolution Number 7-01 - A Resolution of the Town Council of the Town of Palm

Beach, Palm Beach County, Florida, Awarding a Contract to Murray Logan Construction Company in the Amount of $1,970,000 for Construction of the D-12 Stormwater Pump Station Improvements. James M. Bowser, Town Engineer.

Town Attorney Randolph read Resolution No. 7-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO MURRAY LOGAN CONSTRUCTION COMPANY FOR CONSTRUCTION OF THE D-12 STORMWATER PUMP STATION IMPROVEMENTS.

Councilman Brooks moved approval of Resolution No. 7-01. The motion was seconded by Councilman Wyett.

President Pro-Tem McLendon suggested that a higher capacity be negotiated before signing of the contract.

Public Works Director Dusey responded that the station had a spot for a fourth pump; there was not yet a permit for that pump, which could be installed after the fact without difficulty. The contract was not needed in order to install the pump; the pump could be installed independently from the contract.

On roll call the motion carried unanimously.

XII. ORDINANCES

A. Second Reading

1. Ordinance No. 26-00 - Amending Chapter 82 of the Code of Ordinances Relating to the Retirement System at Section 82-52 to Add a Definition; to Add Section 82-72 Providing for Payment of Supplemental Pension Distributions to Public Safety Retirants; to Amend Section 82-95(C) to Increase to Sixty Percent (60%) the Percentage of Assets Which May be Invested In Common Stock by the Public Safety Board of Trustees. William C. Crouse, Director of Human Resources.

Town Attorney Randolph read Ordinance No. 26-00 by title: (second reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES RELATING TO THE RETIREMENT SYSTEM AT SECTION 82-52 TO ADD A DEFINITION; TO ADD SECTION 82-72 PROVIDING FOR PAYMENT OF SUPPLEMENTAL PENSION DISTRIBUTIONS TO PUBLIC SAFETY RETIRANTS; TO AMEND SECTION 82-95(C) TO INCREASE TO SIXTY PERCENT (60%) THE PERCENTAGE OF ASSETS WHICH MAY BE INVESTED IN COMMON STOCK BY THE PUBLIC SAFETY BOARD OF TRUSTEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance No. 26-00, on second reading. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

B. First Reading

1. Ordinance No. 2-01 - Emergency Ordinance Providing for Amendments to the Town Budgets Adopted for the Fiscal Year Commencing October 1, 2000. Jane Skittone, Director of Finance.

Town Attorney read Ordinance No. 2-01 by title: (first reading)

AN EMERGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR AMENDMENTS TO THE TOWN BUDGETS ADOPTED FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2000; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 2-01 on first reading. The motion was seconded by Councilman Wyett.

Acting Town Manager Thomas Bradford explained that the ordinance was emergency in nature in order to enable the Town to have the financial resources to commence the drainage improvements.

On roll call the motion carried unanimously.

XIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

President McDonald endorsed Assistant Police Chief Michael Reiter for the position of Police Chief upon the retirement of Chief Frank Croft.

Councilman Wyett stated this would set a precedent as the Charter had been changed to allow the Town Manager to appoint department head positions, and it was wrong to deliver a formal message regarding the appointment, although the spirit of the recommendation was good.

Councilman Brooks commented that this was a recommendation only, and he had no problem with Assistant Town Manager Bradford relaying to Mr. Elwell that the appointment of Assistant Police Chief Reiter to the position should be considered.

Councilman Goldblum commented that he would like the Town Manager and the Assistant Town Manager to look into the feasibility of a monthly activity report similar to the Police Department and Fire-Rescue Department reports. Councilman Goldblum reiterated he would like to see a building moratorium in the areas where flooding occurred in the neighborhoods.

(Mr. Elwell would be furnished a copy of the minutes from this meeting noting the recommendation for an activity report from one council member.)

XIV. DEVELOPMENT REVIEWS

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE No. 57-2000 The application of Davidson Hotel

Partners, L.P. relative to property described as a parcel of land lying in Government Lot 2, Section 23, Township 44 South, Range 43 East, Palm Beach County, Florida; commonly known as 2842 South Ocean Boulevard, located in the R-D (2) Zoning District. To allow construction of a yard identification sign with a 5 feet front setback in lieu of the 10 feet minimum required. *(Deferred from December 12, 2000 Town Council Meeting)*

Planning Consultant Jeff Evans, representing the Davidson Hotel Partners, owners of the Palm Beach Hilton, 2842 South Ocean Blvd., addressed the Town Council, stating that a five foot variance was being requested in the front yard of the hotel for a monument/identification sign. He explained that the reasons for the request were that there was an unusually wide right-of-way in the area, and the configuration of the site.

Director of Planning, Zoning & Building Robert Moore explained that the right-of-way was a total of 100', or 50' either side of the centerline.

Mr. Evans explained that there was approximately a 34' swale from the edge of the pavement to the property line; there was currently a problem with identification of the hotel, as the current identification sign was on a wall parallel to A-1-A, and was difficult to find.

Mr. Moore gave the following staff comments: Comprehensive Plan: hardship seems self-imposed; applicant should re-design to conform to Code; Public Works: structure encroaches in the utility easement; Town Engineer: easement is for overhead utilities – no objection; Building Department: demonstrate hardship; the logo must be reduced to one square foot in size, and the address should be placed on the monument within the allowable square footage.

Mr. Evans stated that the hardship was that the wall parallel to A-1-A was at the 10' line; directly behind that was a drive, that also ran parallel to A-1-A – the necessity of the drive being and remaining in that location related to the dumpster at the south end of the driveway. He explained that the dumpster could not be relocated, as the trash hauler needed a straight driveway for access.

Councilman Brooks moved approval of Variance No. 57-2000. The motion was seconded by Councilman Goldblum.

Mr. Michael Alchacher, representing the Four Seasons Hotel, and Harry Gorstein, the General Manager, addressed the Town Council, stating that the Four Seasons Hotel was approximately 15' past the minimum requirement. Mr. Gorstein wished to relate that there was no problem with the new sign request from the Palm Beach Hilton, however, he wished to have consistency regarding the extra 5' being requested, as sign relocation was also something that may be considered by the Four Seasons Hotel.

Councilman Wyett commented that the area was mainly residential, and signage could make it more commercial, which he found a detriment to all of the condominiums in the area. He pointed out that there was no hardship, as a hardship must go with the land, and there could be no other use of the land.

Councilman Goldblum commented that it was difficult to see signs/addresses when driving on A-1-A.

On roll call the motion carried 3/2, with Councilman Wyett and President McDonald casting dissenting votes.

2. New Business - Minor

a. SITE PLAN REVIEW No. 1-2001 The application of Baltic Estate, Inc. relative to property described as Lot 13, Plat of Boulevard Estates; commonly known as 160 Kings Road in the R-A Zoning District. To allow construction of a single-family residence on a previously platted, non-conforming lot 100 feet in width in lieu of the 125 feet minimum required and 14,300 square feet in area in lieu of 20,000 square feet minimum required.

Ex-parte communication was declared by Councilman Brooks with Mr. Troy Maschmeyer; by Councilman Wyett with Mr. Maschmeyer.

Attorney Greg Kino, on behalf of Baltic Estate, Inc., addressed the Town Council, distributing a copy of the site plan, and stating that the lot was nonconforming, as were most of the lots on the street; all existing required setbacks of the R-A Zoning District would be met. He explained that the home would be approximately 6,500 sq. ft.; across the street there was a home of approximately 6,800 sq. ft., on a smaller lot; the home to the west was approximately 5,500 sq. ft. on a similarly sized lot.

Director of Planning, Zoning & Building Robert Moore stated that staff had reviewed the request; there was no comment from the Police Department, Fire Department, Comprehensive Plan, Public Works, Town Engineer, Building Department or Town Manager.

In response to Councilman Brooks, Mr. Dean Vegosen replied that this was not his former home, and that the home that was on the lot prior to his purchase of the property was a one-story home.

Mr. Troy Maschmeyer, 153 Kings Road, addressed the Town Council, stating that he was directly across the street from the proposed home, and that he objected to the proposal, as it would alter the character of the street, and there was no hardship. He referred to the section of the Town Code addressing non-conforming lots: ". . . further the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land were combined with a lot deficient in area. . ." and maintained that originally the two lots should have been combined, and he questioned what would now happen to the other lot. He stated that he understood that two separate corporations were set up at closing under different names, with some possible common ownership. He stated that developers should not be allowed to circumvent the Town Zoning Code, with the intention of profiting. He urged the Town Council to deny the request.

Mr. Morris Weissman, 122 Kings Road, addressed the Town Council, stating that the contract of sale for 160 Kings Road had been a single contract of sale, however, at closing two deeds were prepared, for two separate lots, both of which were non-conforming. He stated that the petitioner was not trying to replace an existing house, but was trying to put a new house on a lot that was 30% less than the existing zoning requirement. He pointed out that he understood that the owners of the two lots were sophisticated real estate developers in the Town. He maintained that there was no hardship. He maintained that if the application was granted today, there would soon be a second application for the second non-conforming lot. He suggested that more investigation was needed in this matter, and urged that the application be denied.

President McDonald pointed out that this was a Site Plan Review, and not a Variance request, and the standards were different – there was no hardship required in this case.

Mr. David Brown, 113 Kings Road, addressed the Town Council, stating that he was in agreement with his neighbors objecting to this application.

Ms. Irene Brownlowe, 145 Kings Road, addressed the Town Council, stating that she was in agreement with her neighbors objecting to this application.

Ms. Jody Weissman, 122 Kings Road, addressed the Town Council, stating that she and her husband had purchased their home approximately two years and eight months ago, which was the former Woolworth/Donahue Estate, and for the past two years had worked to restore the house. She explained that in the '50's a developer had purchased the Woolworth Estate and divided the estate into several houses to create Kings Road. She pointed out that several other owners were in the process of restoring their houses, and she maintained that the applicant wished to build a "spec" house on a non-conforming lot and then ask to build another house on the adjacent lot, thereby creating two houses on two non-conforming lots, where one house had existed. This would increase the density and adversely change the character of the street. She urged the Town Council to deny the application.

Attorney Kino responded that the applicant was not creating non-conforming lots; the lots existed, were platted, and there were no variances being requested. The applicant was asking for site plan approval on non-conforming lots, which was provided for in the Town Code. He noted that no one speaking against the application today had a conforming lot; one of the owners had a 10,800 sq. ft. home, 3 ½ stories tall, with a 25' front setback, which was non-conforming, and was much greater in size and impact than the proposed home. He pointed out that the applicant was not sub-dividing a larger parcel into two lots.

Mayor Smith commented that this was a perfect example of what the Zoning Commission and long range planning should be reviewing. She asked if consideration had been given to building one house on the lots?

Mr. Vegosen replied that he had not considered that, because there were two separate owners, and the two corporations did not have common shareholders. He noted that there was a single contract, which he had signed as trustee, on behalf of two separate clients, and that was why there was an assignment, prior to the closing, to two separate corporations. He explained that the other owner was not ready to go forward at this point.

Councilman Brooks suggested that this application be deferred until the other owner was ready to go forward, and both site plans could be considered together.

In response to President McDonald regarding the requirements for site plan review, Town Attorney Randolph advised that there were specific criteria related to site plan review. Zoning Administrator Castro advised that there were 14 requirements relating to the application itself, and an additional 11 items for review of the Town Council: sufficiency of statements on ownership and control of the subject property; sufficiency of conditions of ownership or control; use and permanent maintenance of common open space, common facilities, or common lands to ensure preservation of such lands and facilities for their intended purposes, and to ensure that such common facilities will not become a future liability to the Town; intensity of use and/or purpose of the proposed development in relationship to adjacent and nearby properties, and the effect thereon, provided, however, that nothing in this sub-section shall be construed as granting the Town Council the authority to reduce residential densities below that permitted by the use regulations in Article IV of this chapter; ingress and egress to the property and the proposed structure thereof; traffic flow; automotive and pedestrian safety; separation of automobile traffic; traffic flow and control; provision of services and servicing of utilities; fire, catastrophe, and emergency; location and relationship of off street parking and off street loading facilities; traffic patterns with the property with particular reference to automotive and pedestrian safety traffic flow and control; access in the case of fire or catastrophe; screening and landscaping; proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property boundaries; manner of drainage on the property, with particular reference to the effect of provisions for drainage on adjacent and nearby properties, and the consequences of such drainage on overall Town capacities; utilities, with reference to hook-up locations, and availability and capacity for the uses of the project; recreation facilities and open spaces; such other standards as may be imposed by this chapter for the particular use or activity involved; visible size and bulk - the proposed development should be so arranged that it minimizes the visible bulk of the structure to drivers and pedestrians on abutting roadways, the point of reference being the center line of the abutting roadways, with the intent being to maintain a visual impact of multi-story buildings at the same relative level of intensity as a single story building at the minimum required setback.

Councilman Wyett commented that the plans were incomplete; there was no air conditioning or pool showing on the plans, nor any indications of flooding issues, the intensity of use, traffic flow, sufficient screening, drainage, visibility and bulk of the two buildings. He

moved deferral of Site Plan Review No. 1-2001, to the February 13, 2001, Town Council meeting, to allow the applicant to meet with adjacent residents to come to some resolution, and to give residents the opportunity to obtain counsel, if so desired. The motion was seconded by Councilman Brooks.

Mr. Vegosen commented that if the Town Council found that the application had not met the requirements for site plan approval, he would accept the deferral. He explained that he would be happy to meet with neighbors, however, he did not hold out much hope that it would be successful, as the neighbors were not objecting to a particular aspect, and there did not seem to be any room for compromise. He stated that he understood that, under the terms of the ordinance, an applicant was entitled to have an approval, when there was compliance with the site plan review requirements.

Town Attorney Randolph advised that the Town Council would not need to determine today whether the site plan review requirements had been met, although there was some question as to whether they had been addressed satisfactorily, and the Town Council would prefer a deferral in order to address those matters.

President Pro-Tem McLendon expressed concern with the fact that the former home had straddled the two lots, and questioned the setting of a precedent in this issue.

Town Attorney Randolph advised that he would like to have the opportunity to discuss the issue with Town staff, as there were some concerns that had not yet been addressed to his satisfaction.

On roll call the motion to defer carried unanimously.

3. New Business - Major

a. VARIANCE No. 1-2001 The application of William B. Jr. and Eliza S. Meyer relative to property described as Lot 39, Mockingbird Trail Tract together with any interest in and to portions of Lots 41A and 42A; commonly known as 205 Nightingale Trail, located in the R-B Zoning District. To allow a 120 degree angle of vision in lieu of 116 degrees required for a one story addition.

Ex-parte communication was declared by Councilman Goldblum with Attorney James Brindell.

Attorney James Brindell, on behalf of Mr. and Mrs. Meyer, addressed the Town Council, stating that the house was on the corner of North Ocean Way and Nightingale Trail, which resulted in certain front setback requirements. The area of the variance being requested was 16 sq.ft. The total increase proposed was 968 sq. ft., in order to provide substantially improved living for the one-story house. He presented photographs of the area in question, indicating the tall landscaping on the property, and the angle of vision. Letters of support from adjacent neighbors were presented. Attorney Brindell advised that the hardship was the location of the house on the lot, which limited the area of expansion, and the existing configuration of the house itself; the corner lot forced the building lot, and the request was de minimis.

Ms. Jacquie Alberran, SKA Architects, addressed the Town Council, stating that there was a need for a laundry room and bedroom; she indicated the location of the building on photographs exhibited.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan: addition could be designed in a manner which would conform to Code, by pushing the addition further back, and pushing the rest of the house towards the pool area. Mr. Castro suggested that a permanent hedge on the west property line could be made a condition of approval, however, staff did believe that it could be designed to meet the Code requirements.

Councilman Wyett stated that he did not see a hardship, and that he agreed the project could be designed to meet the Code requirements.

Mayor Smith asked Ms. Alberran if a variance would be required if a second floor addition had been added instead?

Ms. Alberran replied negatively, however, the applicant had architectural concerns, as well as concern with acceptance by the neighbors.

Councilman Wyett moved denial of Variance No. 1-2001. The motion died for lack of a second.

Councilman Brooks moved deferral of Variance No. 1-2001 to the February 13, 2001, Town Council meeting, in order to give the architect an opportunity to study the project. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

b. <u>VARIANCE No. 2-2001</u> The application of Linda A. Gary and Michael E. Belisle relative to property described as Lot 14, List Addition No.2, commonly known as 280 List Road, located in the R-B Zoning District. To allow construction of a second story addition with a 29.5 ft. front yard setback in lieu of 30 ft. required; to raise the height of the house which has a 21.9 ft. street rear yard setback in lieu of the 25 ft. required and an 11 ft. side yard setback in lieu of 12.5 ft. required; and, to raise the roof of the one story portion and add a second-story addition which will require the demolition of more than 50% by cubic volume of a non-conforming house contrary to Section 134-894 and 134-419(1).

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Kolins regarding the application; by Councilman Brooks via telephone with Attorney Kolins, by Councilman Goldblum with Attorney Kolins; by Councilman Wyett with Attorney Kolins and with Ms. Gary.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the house in question had been built in 1960, and was one house off of the corner of North Lake Way; the house was not very serviceable, and the applicants had anticipated renovating the house when they had purchased it. He pointed out that the applicants had large extended families and had many guests to accommodate, and needed more space for bedrooms. They wished to add a second story with three bedrooms and three baths, and to raise the tie beam one foot in order to have higher ceilings. He explained that the hardships were the configuration of the property as purchased, which did not leave them the ability to horizontally expand the house; the fact that the house both fronted and backed up to streets, with substantial setback requirements; the house was built in 1960 and was now a non-conforming structure under present Code requirements. He pointed out that if approval was given for the second story, the front setback requirement would become 30', and the applicant would be 6" shy of that; a variance from the 50% rule was being requested for convenience, economy, and to cause the least disruption to the neighborhood. He noted that neighboring property owners on the west and east had indicated support of the project, and he knew of no objections to the project.

Architect Bob Bell addressed the Town Council, explaining that the second floor addition was approximately 1097 sq. ft., situated in the middle of the house, rather than to one side or the other. He presented photographs of the existing residence, the house across the street, and other houses on the same road and behind the house of the applicant.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: hardship is self-imposed; Building Department: no hardship; Town Manager: no hardship. He explained that he had mis-read the application, and had understood that they were asking to increase the cubic content beyond what was allowable, however, the applicant was actually requesting a variance to be able to tear off the entire roof, add a second story, and raise the roof. He pointed out that remodeling of homes in the north end was encouraged, as long as they would not take additional land space.

In response to President McDonald regarding how many times a variance request had been approved to exceed the 50% rule, Mr. Moore responded that many had been approved in the past, as long as the height or side yard would not be increased beyond what would be permitted.

Councilman Wyett moved approval of Variance No. 2-2001, finding that the hardship was that the house was on two streets, and the setbacks were greater in that case. The motion was seconded by President Pro-Tem McLendon.

In response to President McDonald, regarding second story windows on the house overlooking the neighboring property, Architect Bell indicated that one half of the windows would be blocked by the roof structure itself, and the distance of the windows between the two homes would be at least 55' or more away.

In response to Mayor Smith, Architect Bell estimated that the project would take approximately 6-8 months, with the start date in the summer.

On roll call the motion carried unanimously.

c. SPECIAL EXCEPTION No. 1-2001 The application of Gerald and Darlene Jordan relative to property described as Lots 3,4,5,7 & 9, Poinciana Park (less certain portions of those lots), and Lots 301, 302, 306 & 308, Poinciana Park 2nd Addition and the two unnumbered parcels lying between the west line of Lake Trail and the waters of Lake Worth; commonly known as 203 South Lake Trail, located in the R-A Zoning District. To allow the renewal of a kitchen in the upstairs portion of a two-story garage guest house to a new owner (previously granted by Special Exception 23-95).

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

Attorney Ronald Witkowski, on behalf of Mr. and Mrs. Jordan, addressed the Town Council, stating that the applicants had purchased the property approximately two months ago, and when the title search had been done prior to closing, it was found that there had been a prior special exception granted in 1996, with respect to a kitchen facility contained in a detached accessory building.

Director of Planning, Zoning & Building Robert Moore commented that as long as the new owner was willing to enter into the standard kitchen agreement, there was no objection.

Councilman Wyett moved approval of Special Exception No. 1-2001. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as President Pro-Tem McLendon had temporarily left the room.

d. SPECIAL EXCEPTION No. 2-2001 The application of Worth Avenue Associates relative to property described as Lot 1 (less County Road r/w), Lots 2 through 6 (less building only) and Lot 7 through 24, Block 17, Plat of Royal Park Addition; commonly known as 150 Worth Avenue, located in the C-WA Zoning District To allow a new restaurant in the previous space of the former Le Bateau and Aquario Restaurants (previously approved by Special Exception #7-95, #31-96, #32-97, & #27-99) consisting of 151 seats (previously approved for 158 seats), and to allow outdoor seating for 14 seats of the proposed 151 seats.

Ex-parte communication was declared by Councilman Brooks with Attorney Brindell, by Councilman Goldblum with Attorney Brindell, and by Councilman Wyett with Attorney Brindell.

Attorney James Brindell, on behalf of the applicant, stated that Claudio Trevesand had formerly had a restaurant in the Esplanade, and wished to take over the current restaurant space, and would agree to the existing conditions that were on the current approval, which were that glass and garbage be stored inside from 7:00 p.m. to 8:00 a.m.; bar closing by 2:00 a.m.; dinner orders ceasing by 1:00 a.m.; nightclub license for one New Year's Eve event. The request today was for 14 of the 151 seats to be located outside, adjacent to the French doors.

Zoning Administrator Paul Castro commented that there had been three previous restaurants at the location; he expressed concern as to the hours for the requested outdoor seating, and there were no objections as long as the applicant adhered to all conditions that had previously been in place.

Attorney Brindell suggested that the outside seating be allowed until 10:00 p.m.

Councilman Wyett commented that he had received a letter from the building next door in objection to the application. He suggested that outside seating be limited to lunch and cocktails before 6:00 p.m., and strongly objected to outside seating at night; and that the hours of operation be modified. He noted that he had no objection to the nightclub license for a New Year's Eve event.

Attorney Brindell suggested that dinner orders cease at 11:00 p.m., and the bar close at 1:00 p.m.

Councilman Goldblum moved approval of Special Exception No. 2-2001, with the outside seating held until 10:00 p.m., dinner orders ceasing at 11:00 p.m., and the bar closing at 1:00 p.m. The motion was seconded by Councilman Brooks.

Director of Planning, Zoning & Building Robert Moore pointed out that the outside seating must meet fire and building code clearance between the outside rail, and the clearance area must be kept clear at all times.

Attorney Brindell replied that there was eight feet between the tables and the rail.

Councilman Wyett requested an amendment to the motion that the approval be provisional, pending any objections from the apartment next door.

Councilman Goldblum accepted the amendment to the motion, noting that the period of time would be through December 2001.

On roll call the motion carried unanimously.

Mr. Moore clarified that the applicant would automatically return to the Town Council in December 2001.

e. SPECIAL EXCEPTION No. 3-2001 The application of Patt Swan, Dan E. Swanson, President, relative to property described as Lot 108 and the North 74 feet of Lot 109, Palm Beach Estates; commonly known as 1960 South Ocean Boulevard, located in the R-AA Zoning District. To allow the construction of a second kitchen on the subject property in a guest house/pool pavilion pursuant to Section 134-791 (b) (5).

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

Mr. Michael Hickey, representing Dan Swanson, addressed the Town Council, stating that the building was located a distance away from the main house, and the building would be used as a pool/party house.

Director of Planning, Zoning & Building Robert Moore commented that normally the applicant would merely need to sign a standard kitchen removal agreement, however, in this particular case the applicant was the developer, not the owner. He suggested that the owner sign the agreement when the house was sold, so that the agreement would be between the purchaser of the property and the Town. He noted that a neighbor, Mr. Silverstein, was present to voice an objection. He also noted that he had attempted to contact the developer to advise him to withdraw the application until the property was sold so that the owner could sign the agreement when the house was sold.

Mr. Moore advised that the requirements of a special exception must be met, and the purchaser of the property would need to sign the agreement.

Councilman Goldblum moved approval of the installation of the two burner stove and refrigerator, without the need for a special exception. The motion was seconded by President Pro-Tem McLendon.

Mayor Smith expressed concern that this would set a precedent for all other developers, and there was no assurance that the house would not be sold to a corporation for use of entertaining, and she saw no reason for establishing a process to give kitchens to developers, rather than to owners of a single family residence.

Councilman Goldblum withdrew his motion, as did the seconder of the motion.

Councilman Brooks moved denial of Special Exception No. 3-2001. The motion was seconded by Councilman Goldblum.

Mr. Nathan Silverstein, owner of the property immediately to the south of the property in question, stated that he was very distressed when the last house had been torn down, and was delighted that Mr. Swanson was putting up the large house, however, he expressed objection to the "cabana house," which was a 4,300 sq. ft. two-story building that, by most standards, would be more than adequate as a full house. He suggested that it would look, feel, and good act as an additional house on the one lot. He stated that he was not objecting to the size of the main structure, but to the size of the cabana house.

On roll call the motion to deny Special exception No. 3-2001 carried unanimously.

Mr. Moore clarified that a new owner purchased the property within a year, the new owner could appear before the Town Council for the kitchen request.

President McDonald clarified that any objection to the request would be put forth in writing.

Mr. Silverstein stated that he agreed, as long as the letter was given the same recognition as someone appearing personally.

f. SPECIAL EXCEPTION No. 4-2001 with Variance The application of Love Realty relative to property described as Lots 34 to 37, Block 15, Plat of Royal Park Addition; commonly known as 221 Worth Avenue located in the C-WA Zoning District. To allow the increase in the number of seats from 151 to 183 seats, and a variance from the requirement to provide 11 additional off street parking spaces associated with the proposed increased seating.

This item was deferred to the February 13, 2001, Town Council meeting, under Item V. Approval of the Agenda.

g. SPECIAL EXCEPTION No. 5-2001 The application of Greencabb Inc. relative to property described as Lots 1, 1A, 5, 5A and North 5.2 feet of Lot 6, Plat of Corley Beach Estates; commonly known as 1676 South Ocean Boulevard, located in the R-A Zoning District. To allow six 21 ft. high lights with light shields for one existing tennis court, with lights to operate only within the hours of 9:00 a.m. to 9:00 p.m.

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

Attorney James Brindell, on behalf of owner, John Scarpa, addressed the Town Council, recalling that the applicant had been before the Town Council several months ago regarding renovations being done to the house. He pointed out that today the applicant was back for the purpose of requesting tennis court lights. He noted that there were letters of no objection from three adjacent neighbors, and there was one letter of objection from Mr. Grace, because the home was owned by a corporation. He explained that Mr. Scarpa had purchased all of Greencabb, Inc. He presented photographs of the property in question, indicating that there was a tremendous amount of landscaping around the property now, and in addition the required landscaping around each of the lights would be provided.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: the intensity should not exceed the one-half foot candle per off-site; fixtures should be shielded so that there was no direct light source; Building Department: lighting must be screened; lights not to exceed 21' in height; Town Manager: shielded lighting; no overspill into adjacent properties. He noted that the intent of Mr. Grace was that if there was a corporate owner that an individual be identified within that corporation.

Councilman Brooks moved approval of Special Exception No. 5-2001. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

4. Other

a. None.

XV. ANY OTHER MATTERS

Director of Planning, Zoning & Building Robert Moore provided a list of zoning study items for review of the Town Council that could be handled by Town staff. He explained that the items would continue to be developed, and would be brought forward to the Town Council in May for final determination.

Zoning Administrator Paul Castro requested direction concerning the acceptance of materials form applicants in preparation for Town Council meetings.

The Town Council determined that all material, including faxes, could be handed in anytime before 4:00 p.m. the Monday before the meeting.

Mayor Smith noted that when material was handed to members of the Town Council during the presentations in the meeting, it was not possible to stop and read it, and if the material was not in by 4:00 p.m. on the Monday before the Town Council meeting it would be too late.

XVI. ADJOURNMENT

The Town Council Meeting of January 9, 2001 was adjourned at 5:03 p.m.

Mary A. Pollitt

Mary A. Pollitt
Town Clerk

SEAL OF THE TOWN OF PALM BEACH FLORIDA
INCORPORATED APRIL 17, 1911

Prepared by:
Susan Eichhorn
Deputy Town Clerk