TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING
HELD ON NOVEMBER 13, 2001

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled meeting of the Town Council was called to order on Tuesday, November 13, 2001, at 9:30 a.m. 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:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Chief Code Compliance Officer Brian House
Code Compliance Officer Rob Walton
Finance Director Jane Skittone
Fire-Rescue Chief Kent Koelz
Fire-Rescue Captain Bruce Dash
Assistant Human Resources Director Carla Kneipp
Information Systems Manager Spencer Wilson
Police Chief Michael Reiter
Police Major Michael Mason

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Public Works Director Al Dusey
Planning, Zoning & Building Director Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Zoning Administrator Paul Castro
Recreation Director Russ Bitzer
Town Engineer James Bowser
Town Clerk Mary Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President McDonald read the following speech given by Arizona Senator John McCain after which everyone recited the Pledge of Allegiance:

> "As you may know, I spent five and one half years as a prisoner of war during the Vietnam War. In the early years of our imprisonment, the NVA kept us in solitary confinement of two or three to a cell. In 1971 the NVA moved us from these conditions of isolation into large rooms with as many as 30 to 40 men to a room. This was, as you can imagine, a wonderful change and was a direct result of the efforts of millions of Americans on behalf of a few hundred POWs 10,000 miles from home.
>
> "One of the men who moved into my room was a yong man named Mike Christian. Mike came from a small town near Selma, Alabama. He didn't wear a pari of shoes until he was 13 years old. At 17, he enlisted in the U. S. Navy. He later earned a commission by going to Officer Training School. Then he became a Naval Flight Officer and was shot down and captured in 1967. Mike had a keen and deep appreciation of the opportunities this country, and our military, provide for people who want to work and want to succeed.
>
> "As part of the change in treatment, the Vietnamese allowed some prisoners to receive packages from home. In some of these packages were handkerchiefs, scarves and other items of clothing. Mike got himself a bamboo needle. Over a period of a couple of months, he created an American flag and sewed it on the inside of his shirt.

Every afternoon, before we had a bowl of soup, we would hang Mike's shirt on the wall of the cell and say the Pledge of Allegiance.

"I know the Pledge of Allegiance may not seem the most important part of our day now, but I can assure you that in that stark cell, it was indeed the most important and meaningful event. One day the Vietnamese searched our cell, as they did periodically, and discovered Mike's shirt with the flag sewn inside, and removed it. That evening they returned, opened the door of the cell, and for the benefit of all of us, beat Mike Christian severely for the next couple of hours. Then, they opened the door of the cell and threw him in.

"We cleaned him up as well as we could. The cell in which we lived had a concrete slab in the middle on which we slept. Four naked light bulbs hung in each corner of the room. As said, we tried to clean up Mike as well as we could. After the excitement died down, I looked in the corner of the room, and sitting there beneath that dim light bulb with a piece of red cloth, another shirt and his bamboo needle, was my friend, Mike Christian. He was sitting there with his eyes almost shut from the beating he had received, making another American flag.

"He was not making the flag because it made Mike Christian feel better. He was making the flag because he knew how important it was to us to be able to pledge our allegiance to our flag and country. So the next time you say the Pledge of Allegiance, you must never forget the sacrifice and courage that thousands of Americans have made to build our nation and promote freedom around the world. You must remember our duty, our honor, and our country."

III. PRESENTATIONS

A. Retirement of Michael Palmer, Firefighter-Paramedic.

Mayor Smith recognized Michael Palmer for his years of service, and presented an engraved ring to him.

B. Statement Regarding Town Security. [Michael S. Reiter, Chief of Police]

Police Chief Reiter reported that the Police Department had operational initiatives and contingency plans in place to address both present concerns and future possibilities. Efforts had been made in coordination with the Town elected officials, the Town Manager, other Town departments, and numerous Federal, State, County, and other local governmental entities. The department was engaged in an ongoing threat analysis. Reasonable and prudent preparations to reduce the threat exposure of Palm Beach were being implemented.

IV. COMMENTS OF MAYOR LESLY S. SMITH

I especially commend Chief Reiter for not only taking the lead on town security, but for explaining it clearly and succinctly. There is no question that we all have the jitters - especially in the wake of yesterday's American Airlines crash in New York and the chemical scare at the West Palm Beach Flea Market. I want everyone in Palm Beach to know that the Town is prepared, that we have done everything we can to anticipate emergencies, and that if something should happen, this is where people can turn for help and information.

On our agenda today are a couple of requests from Chief Reiter to support our law enforcement operations, and I am sure the Council will approve them.

I also want to publicly thank one Palm Beach resident who has done much to reassure the public about anthrax. Dr. Sanford Kuvin has been a knowledgeable resource and the voice of reason in his media appearances -- and we are proud to count him as one of our own.

There are one or two more controversial items before us today. Mr. Dusey, our Director of Public Works, will be giving us an update on the erosion control line controversy with the State of Florida, and on the supplemental environmental impact statement that has been requested before we can proceed on the Phipps Ocean Park project. On the erosion control line question, there is no question that we had an agreement with the State, directly from Kirby Green - I was there. But the State's new position appears to be inflexible. If that is the case, we have no choice but to proceed. We're between a rock and a hard place - perhaps more accurately, between the devil and the deep blue sea. This last storm has so seriously eroded our shoreline that the possibility of losing oceanfront buildings could become a reality. I encourage the Council to proceed with the Midtown and Phipps projects;

while these are going on, we can continue our negotiations with the State and with the Army Corps of Engineers for compensation for the inlets that are causing our major problems. The decision is a tough one, but we cannot abandon our beaches.

I am opposed to any extension for construction hours. I believe the residents of the Town come first. However, if the Council does decide to go ahead with the construction extension or the request for Il Lugano, that it be with the strictest conditions and stiff penalties for noncompliance.

This is our first meeting of the season, so I want to welcome back those of you who have been away. I hope to see all of you - seasonal and year 'round - at one of this week's Strategic Planning Board Town meetings. They are Thursday at 3:30 p.m. at the Four Seasons, Friday at 3:30 at The Breakers and Saturday morning at 10 a.m. at the Colony.

I would like to remind everyone we will be lighting the holiday trees on Monday, November 26 at Royal Poinciana Way at 6:00pm. And on Tuesday, November 27th on Worth Avenue.

V. APPROVAL OF THE AGENDA

The following changes were made to the Agenda:

CHANGE Item VII.D. Other 5. to read: "Approval of Stipulation for Dismissal and Settlement Agreement Regarding Picower vs. Town of Palm Beach," rather than "Approval of Stipulation for Dismissal Regarding Picower vs. Town of Palm Beach."

CHANGE Item XIII. Development Reviews A. New Business to become XIII. Development Reviews A. Old Business.

DEFER Item XIII. Development Reviews C. Other 1. - Appeal for The Breakers Hotel Tax Abatement Application to the February 12, 2002 Town Council Meeting.

Councilman Brooks moved approval of deferral of Item XIII. Development Reviews C. Other 1. to the February 12, 2002 Town Council Meeting. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Mr. Leslie Evans, resident and property owner, expressed concerns regarding the proposed renovation of Gray's Mobil, and the Town-owned lot on the corner of S. County Road and Peruvian. He suggested the entire lot be used for green space or a public park without the parking; although parking is a problem in the Town.

Mr. Evans also suggested a master plan be developed for the Town Square area with input gathered from the property owners.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES

1. SPECIAL TOWN COUNCIL MEETING- (ZONING) HELD ON OCTOBER 8, 2001, AT 1:00 P.M.

2. REGULAR MONTHLY TOWN COUNCIL MEETING HELD ON OCTOBER 9, 2001, AT 9:30 A.M.

3. LOCAL PLANNING AGENCY MEETING AND SPECIAL TOWN COUNCIL MEETING HELD ON OCTOBER 9, 2001, AT 5:01 P.M.

4. SPECIAL TOWN COUNCIL MEETING HELD ON NOVEMBER 2, 2001, AT 11:30 A.M.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON OCTOBER 24, 2001.

C. APPROVAL OF CHECK REGISTERS FOR OCTOBER 2001.

D. OTHER

1. Appropriation of Funds From the Law Enforcement Trust Fund. [Michael S. Reiter, Chief of Police]

2. Approval of Letter of Support for the Establishment of an Interoperable Radio System for All Municipal Law Enforcement Agencies in Palm Beach County. [Michael S. Reiter, Chief of Police]

3. Approval of Town Comments Regarding Proposed Off Shore Fiber Optic Cable Corridors. [Albert P. Dusey, Director of Public Works]

4. Approval of Nextel Rooftop Lease Agreement. [David F. Jakubiak, Assistant to the Town Manager]

5. Approval of Stipulation for Dismissal Regarding Picower vs. Town of Palm Beach. [John C. Randolph, Town Attorney]

The Consent Agenda was approved through motion of Councilman Wyett, seconded by Councilman Brooks, carrying unanimously on roll call.

VIII. COMMITTEE REPORTS

A. PUBLIC WORKS COMMITTEE MEETING OF OCTOBER 29, 2001.
[William J. Brooks, Chairman]

REPORT FROM THE PUBLIC WORKS COMMITTEE MEETING HELD ON OCTOBER 29, 2001

I. CALL TO ORDER AND ROLL CALL

Chairman William Brooks called the Public Works Committee meeting to order at 11:30 a.m. in the Town Council chambers. Public Works Committee members William Brooks and Sam McLendon attended the meeting. Councilman Allen Wyett and Norman Goldblum were also in attendance. Also attending the meeting were: Town Manager Peter Elwell; Town Attorney John Randolph; Public Works Director Al Dusey; Public Works Service Division Manager Lloyd McCoy; Public Works Trash Supervisor Robert Kennedy; and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as presented.

III. CONSIDERATION OF AMENDING SECTION 102-45 OF THE TOWN'S CODE OF ORDINANCES TO PROHIBIT PLACEMENT OF TRASH IN FDOT RIGHT-OF-WAY

Town Attorney Randolph said the Florida Department of Transportation requested the Town amend its ordinance so as to prohibit the placement of yard trash within the paved portion of F. D.O.T. right-of-way within the Town. He noted that the Town Council instructed the Town Attorney to draft an amended ordinance and requested that the Public Works Director send out a notice to Town residents advising them of the Council's actions and requesting their cooperation.

Attorney Randolph said a draft ordinance was before the Public Works Committee for recommendation to the Town Council which specifically provides in paragraph (9) of Section 102-45: These provisions shall not apply to the paved portion of the Florida Department of Transportation right-of-way within the Town, where the placement of trash is specifically prohibited.

THE COMMITTEE RECOMMENDED APPROVAL OF THE DRAFT ORDINANCE AS PRESENTED BY ATTORNEY RANDOLPH.

Chairman Brooks commented on Paragraph (2) of Section 102-45 regarding the phrase "three days prior to the scheduled day of collection" and questioned the possibility of shortening that time frame for placing trash on the streets.

IV. DISCUSSION OF FDOT RESTRICTIONS ON USE OF STATE ROAD A1A FOR YARD TRASH PLACEMENT AND COLLECTION

After discussing issues related to the FDOT restrictions on use of State Road A1A for yard trash placement and further discussion of Public Works Director Dusey's detailed report of the affected properties from 1960 South Ocean Boulevard to 146 Gulfstream Road, it was determined that Staff will implement the necessary restrictions for the Department of Transportation's right-of-way.

After hearing input from the Public Works Committee members, Councilman Wyett, Councilman Goldblum, Staff, and the public regarding the issues and problems of yard trash collection, the Committee suggested the non-DOT broader policy questions relating to yard trash collection be considered by the Mayor and Town Council at the December 11, 2001, Town Council meeting.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 12:17 p.m.

PUBLIC WORKS COMMITTEE:

William J. Brooks, Chairman	Samuel C. McLendon, Member

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As Chairman of the Public Works Committee Meeting, Councilman Brooks reported that the meeting of the Public Works Committee, conducted on October 29, 2001, had resulted in the recommendation of approval of the draft ordinance prepared by Town Attorney Randolph, amending section 102-45 of the Town Code of Ordinances to prohibit placement of trash in the Florida Department of Transportation (FDOT) right-of-ways. He explained that the amendment would bring the Town into compliance with the FDOT regulations regarding the placement of trash in the FDOT right-of-ways.

Councilman Brooks noted that the Public Works Committee had also recommended a full hearing of yard trash issues/concerns, at the December 11, 2001, Town Council Meeting, with back-up material provided by staff in advance of the meeting.

Councilman Wyett moved acceptance of the report of the October 29, 2001 Public Works Committee. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

IX. REGULAR AGENDA

A. Old Business

1. Drainage Project Status Reports. [James M. Bowser, Town Engineer]

a. General Update.

Town Engineer James Bowser referred to the memorandum dated November 2, 2001, that had been provided in the back-up material, offering to respond to any questions.

Councilman McLendon expressed some reservations concerning the Clarendon pump station, and requested a staff memorandum justifying the cost effectiveness of the pump station as opposed to changing the grade of each of the two adjacent streets.

Councilman Goldblum commented regarding the noise of the pump running 24-hours per day on Everglade Avenue, suggesting that it be moved.

Town Engineer Bowser replied that the wet well was in place, the new seawall had been built, and the discharge pipes had been extended to a junction box. He explained that when the pipes from the junction box into the pump station were installed, the contractor would backfill and then turn the pumps off, within a time period of three weeks. He noted that there has been a coordination problem concerning when the pipe to the wet well could be closed off; the contractor would actually have to construct a plug in the72-inch pipe so that the wet well could be isolated from the water that now ended in the collection system. He agreed that he would request information from the contractor regarding the possibility of some methodology to deaden the sound in the meantime.

b. Update on D-12 Collection System - Bradley Place.

Town Engineer Bowser reported that the contractor had made some good progress on the D-12 project; all electrical conduits were in place; road clean-up was in progress; the contractor was moving in to being preparing the road base, with paving expected to be completed within the next few days. Final grading was being done in the area between Seminole and Oleander; all utility work was completed in that area; road rock was being installed on Oleander; the water mains in each of the two intersections on Oleander had been repaired. The contractor was still on schedule to have the work completed by December 4, 2001.

Town Manager Elwell commented that a report would be received from staff within the next month regarding specific steps that would be recommended for the Bradley Place project.

Mr. Richard Britt, General Manager L'Ermitage, commented that he had appeared before the Town Council in September with concerns regarding the drainage projects. He emphasized that there was a need to communicate with residents, and that he had requested a schedule of construction events from staff in September; as of today he noted that he had received one fax communication, dated September 29, 2001, concerning the curbs between Everglade and Atlantic Avenue.

Town Engineer Bowser responded that staff had spoken directly with Mr. Britt regularly on pertinent items; he noted that Mr. Britt and his staff had been very helpful and cooperative during the drainage project, and that he would provide him with a written report by the end of today.

Town Manager Elwell noted that the work on the wet well would continue past the December 4th deadline, however, would not continue through the season; the work that would continue well into the New Year would be related to the power station, which would not be as intrusive as the wet well work and road work that had been done during the summer.

Mr. Sirow, President of the Board of L'ermitage of Palm Beach Condominium Association, commented that the people in the building had been living under horrible conditions – in the last two weeks there had been four water main breaks, and there had not been water available for use in the building. He suggested that more people work on the project so that it could be completed sooner.

Mr. Royal Victor, 208 Via Tortuga, commented that there was an irony with the recent receipt of tax bills, and the chaotic state of part of the Town. He suggested that communications to residents be improved, as much of the frustration felt by the residents was the result of not knowing what was taking place. He requested information on when the bike trail would be back in use.

2. Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town - Status of Sea Lord Hotel Solid Waste Accounts. [John C. Randolph, Town Attorney] **Deferred from October 9, 2001, Town Council Meeting**

Town Attorney Randolph referred to the seven letters included in the back-up material regarding the monies owed to the Town by the Sea Lord Hotel, noting that the last letter had been written to the attorney for the property owner. He explained that the accounts due were two solid waste accounts, one in excess of $6,000, and the other in excess of $24,000. He requested the approval of the Town Council to allow going forward to file an action in court, since the collection efforts by letter had not been successful.

Director of Planning, Zoning & Building Robert Moore, and Chief Code Compliance Officer Brian House responded to questions regarding the current ownership, issues regarding condemnation, and code enforcement violations.

Councilman Wyett moved approval of commencing with legal action in regard to the unpaid fines and fees owed to the Town by the Sea Lord Hotel. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

President McDonald commented that prompt action must be taken by staff before real estate closings take place on properties with outstanding fines/fees due to the Town.

Town Attorney Randolph advised that staff was in the process of addressing a method of handling such matters.

Mayor Smith urged a stronger, quicker method of action be taken to conclude fines owed to the Town on properties that continued to violate Town regulations; she noted that legal fees had continued to climb as the Sea Lord property owners continued to violate regulations and continued to come before the Code Enforcement Board.

Chief Code Compliance Officer Brian House replied that he would request that the Code Enforcement Board order the property owners to come into compliance within 48-hours of the Code Enforcement Board hearing on Thursday, November 15, 2001, and that the work continue until complete. He explained that he could not ask for a fine until the following Code Enforcement hearing, because non-compliance of the order would then allow a fine to begin at that point. He explained that there were two separate violations, and he would request a fine of $500 per day per violation, until the owner came into compliance.

3. Staff Report Regarding Feral Cats. [Peter B. Elwell, Town Manager]
Deferred from May 8, 2001, Town Council Meeting

Town Manager Peter Elwell referred to his memorandum, dated November 8, 2001, in reference to feral cats. He explained that the Palm Beach County ordinance regulating animal care had recently changed, and staff was recommending that the Town Council monitor the situation, not taking any local regulatory action until the impact of the County ordinance changes became more clear. Additionally, Town staff planned to obtain regularly updated lists of registered feral cat colonies from Palm Beach County, enabling the Police Department to monitor the situation, and coordinate with the enforcement of the County Animal Care and Control Ordinance. He noted that staff was attempting to strike a balance between the continued feeding of the feral cats and the adherence to regulations, since there were residents with both pro and con concerns.

In response to Councilman Goldblum, Town Manager Elwell advised that a news release could be issued regarding the changes in the County ordinance and any remedies available for those finding the feeding of feral cats objectionable. He agreed that an update would be provided to the Town Council at the January Town Council meeting regarding the status of the feral cat issue.

Councilman Brooks recalled that there had been little response to his letter of March 15, 2001, to Attorney Weinstein of Palm Beach Cat Rescue; he opined that the history of Palm Beach Cat Rescue had been one of continuous stalling.

Town Manager Elwell noted that Attorney Weinstein had provided a proposal regarding the involvement of the Town in the feral cat issue, each Council member had been provided a copy of the proposal. He explained that Palm Beach County Animal Care and Control was the governmental agency with jurisdiction over the feral cats; if the Town Council determined that the Town should be actively involved in the trap/neuter/release program, or in some other regulatory aspect, staff would follow that direction.

In response to Councilman Wyett, Town Manager Elwell advised that Palm Beach County Animal Care and Control would provide the application forms to permit cat feeding on private property; he noted that staff would contact the agency to arrange having the applications available for residents locally. Councilman Wyett suggested that it may be necessary for the Town to take an proactive role in the feral cat issue.

Councilman Brooks commented that he did not believe the Town should have any role in the feral cat issue, with the exception of enforcing existing Town rules and regulations, such as trespassing, and littering.

Councilman Goldblum moved approval of the recommendation of staff to

monitor the feral cat situation, while cooperating with Palm Beach County and the Division of Animal Care and Control agency; staff to report back to the Town Council at the January 8, 2002, Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

4. Recreation Advisory Commission Appointment. [Russell E. Bitzer, Director of Recreation] **Deferred from October 9, 2001, Town Council Meeting**

After casting ballots, the Town Council appointed Allen Shore as a regular member of the Recreation Advisory Commission, and Melissa Agnello as an alternate member, Mr. Shore had been an alternate member, and would be filling the unexpired term of Mr. Stanley Silken.

B. New Business

1. Zoning Commission Appointment. [Robert L. Moore, Director of Planning, Zoning & Building]

After casting ballots, the Town Council appointed Harrison M. Robertson as a regular member of the Zoning Commission, to fill the vacancy created by the resignation of Rodney B. Fink, and Nancy M. Murray as an alternate member of the Zoning Commission.

2. Better Place Software Demonstration. [Spencer D. Wilson, Information Systems Manager]

Town Manager Peter Elwell commented that the Better Place Software was made available to municipalities throughout Florida by the Florida League of Cities. He explained that President McDonald had seen a demonstration of the software last summer, and it would now be implemented by the Town of Palm Beach. The software would provide communication between Town staff and residents; it would be placed on the Town website to afford residents the electronic availability of making requests for information that may normally be made by phone, letter, or a personal visit. The ability to track inquiries and communicate inter-departmentally was an added advantage of the new technology.

Information Systems Manager Spencer Wilson provided a brief demonstration of The Better Place software program.

President Pro-Tem McLendon expressed concern regarding responses to anonymous requests. After discussion, Councilman Goldblum made a motion to direct staff <u>not</u> to respond to any anonymous requests made on The Better Place software. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

X. RESOLUTIONS

A. <u>Resolution No. 86-01</u> - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing Commercial Solid Waste Collection Fees to Become Effective January 1, 2002. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 86-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING COMMERCIAL SOLID WASTE COLLECTION FEES TO BECOME

EFFECTIVE JANUARY 1, 2002.

Councilman Wyett moved approval of Resolution No. 86-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Brooks had temporarily left the room.

B. Resolution No. 87-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County Florida, Authorizing the Mayor to Execute a Memorandum of Understanding Between the South Florida Water Management District and the Town of Palm Beach to Operate Internal Emergency Pumps. [James M. Bowser, Town Engineer]

Town Attorney Randolph read Resolution No. 87-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND THE TOWN OF PALM BEACH TO OPERATE INTERNAL EMERGENCY PUMPS.

Councilman Wyett moved approval of Resolution No. 87-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as Councilman Brooks had temporarily left the room.

C. Resolution No. 88-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Rescinding Resolution No. 68-01 and Approving the Renewal of the Agreement for Medical Services Between the Town of Palm Beach and M. Michael Hanna, D.O., P.A., as the Town Physician and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Resolution No. 88-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING RESOLUTION NO. 68-01 AND APPROVING THE RENEWAL OF THE AGREEMENT FOR MEDICAL SERVICES BETWEEN THE TOWN OF PALM BEACH AND M. MICHAEL HANNA, D.O., P.A., AS THE TOWN PHYSICIAN AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

Councilman Wyett moved approval of Resolution No. 88-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Brooks had temporarily left the room.

XI. ORDINANCES

A. Second Reading

1. Ordinance No. 22- 01-An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 42, Environment, to Amend Hours of Construction Work; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date. [Robert L. Moore, Director of Planning, Zoning & Building]

Town Attorney Randolph read Ordinance No. 22-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 42, ENVIRONMENT, AT SECTION 42-199, TO AMEND HOURS OF

CONSTRUCTION WORK; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREOF; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

Councilman Wyett moved approval of Ordinance No. 22-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Ordinance No. 23-01- An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Benefit Group Police Officer in the Retirement System; Amending Section 82-57(b)(2) To Provide for Normal Retirement of Police Officers with Twenty (20) Years of Service; Amending Section 82-59(c)(3) to Increase Multipliers of Credited Service Applicable to Average Final Compensation for Specified Years of Credited Service of Police Officers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Ordinance No. 23-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES RELATING TO BENEFIT GROUP POLICE OFFICER IN THE RETIREMENT SYSTEM; AMENDING SECTION 82-57(B)(2) TO PROVIDE FOR NORMAL RETIREMENT OF POLICE OFFICERS WITH TWENTY (20) YEARS OF SERVICE; AMENDING SECTION 82-59(C)(3) TO INCREASE MULTIPLIERS OF CREDITED SERVICE APPLICABLE TO AVERAGE FINAL COMPENSATION FOR SPECIFIED YEARS OF CREDITED SERVICE OF POLICE OFFICERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 23-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

3. Ordinance No. 24-01- An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Benefit Group Firefighter in the Retirement System; Amending Section 82-57(b)(2) to Provide for Normal Retirement of Firefighters with Twenty (20) Years of Service; Amending Section 82-59(c)(3) to Increase Multipliers of Credited Service Applicable to Average Final Compensation for Specified Years of Credited Service of Firefighters; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Ordinance No. 24-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES RELATING TO BENEFIT GROUP POLICE OFFICER IN THE RETIREMENT SYSTEM; AMENDING SECTION 82-57(B)(2) TO PROVIDE FOR NORMAL RETIREMENT OF POLICE OFFICERS WITH TWENTY (20) YEARS OF SERVICE; AMENDING SECTION 82-59(C)(3) TO INCREASE MULTIPLIERS OF CREDITED SERVICE APPLICABLE TO AVERAGE FINAL COMPENSATION FOR SPECIFIED YEARS OF CREDITED SERVICE OF POLICE OFFICERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance No. 24-01. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

B. First Reading

1. Ordinance No. 21-01 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Adopted Town of Palm Beach Comprehensive Plan, Pursuant to Chapter 163, Florida Statues, and Chapters 9J-5 and 9J-11, Florida Administrative Code, Amending Text Within the Capital Improvements Element; Providing for Policies Related to a New Public School Facility Element (PSFE) According to an Interlocal Agreement Between the Town of Palm Beach, Palm Beach County, and Palm Beach County School District; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date. [Robert L. Moore, Director of Planning Zoning & Building]

Town Attorney Randolph read Ordinance No. 21-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE ADOPTED TOWN OF PALM BEACH COMPREHENSIVE PLAN, PURSUANT TO CHAPTER 163, FLORIDA STATUES, AND CHAPTERS 9J-5 AND 9J-11, FLORIDA ADMINISTRATIVE CODE, AMENDING TEXT WITHIN THE CAPITAL IMPROVEMENTS ELEMENT; PROVIDING FOR POLICIES RELATED TO A NEW PUBLIC SCHOOL FACILITY ELEMENT (PSFE) ACCORDING TO AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PALM BEACH, PALM BEACH COUNTY, AND PALM BEACH COUNTY SCHOOL DISTRICT; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREOF; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance No. 21-01. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

2. Ordinance No. 28-01 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 122, Utilities, at Section 122-78 Restrictions, Amending Section 122-78 (4) to Change the Days Irrigation Is Permitted at Odd and Even Numbered Addresses; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Ordinance No. 28-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 122, UTILITIES, AT SECTION 122-78 RESTRICTIONS, AMENDING SECTION 122-78 (4) TO CHANGE THE DAYS IRRIGATION IS PERMITTED AT ODD AND EVEN NUMBERED ADDRESSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance No. 28-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

3. Ordinance No. 31-01 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 102, Solid Waste, Section 102-45, Relating to Curbside Placement and Collection of Trash; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 31-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 102, SOLID WASTE, SECTION 102-45, RELATING TO CURBSIDE PLACEMENT AND COLLECTION OF TRASH; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks commented regarding Section 102-45, sub-section 2, relating to a three-day prior to collection placement of trash; he expressed concern with collection during the rainy season.

Town Manager Elwell advised that item would be addressed beginning with considerations to be discussed at the December Town Council meeting.

Councilman Wyett moved approval of Ordinance No. 31-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

President McDonald acknowledged Town Attorney Randolph's election as President of the Municipal Lawyers Association of Florida.

President McDonald requested a meeting be scheduled to include Town Manager Elwell, Police Chief Reiter, Planning, Zoning & Building Director Moore, the Sydell Miller site manager, and himself to discuss the stoppage of traffic on South Ocean Boulevard on Sunday, November 11th by a member of the Miller security detail in front of the Miller property which is a violation of the last Town Council approval granted for the project.

XIII. DEVELOPMENT REVIEWS

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

A. New Business - Minor

1. SITE PLAN REVIEW NO. 17-2001 WITH SPECIAL EXCEPTION The application of Gray Mobil, Inc. Richard Gray, President relative to property described as The east 129.2 feet of Lots 1, 2, and 3 and all Lots 4 and 5, Block G, Royal park Addition to the Town of Palm Beach; commonly known as 340 South County Road; located in the C-TS Zoning District. To allow construction of a 1,052 square foot addition to Gray's Mobil which will contain retail, office, restrooms, and storage (in the attic), and Special Exception required to increase the retail space of the service station, expanding the total square footage from 2,269 square feet to 3,321 square feet. **Deferred from October 9, 2001, Town Council Meeting.**

Ex-parte communication was declared by Councilman Wyett via a telephone call from Attorney Brindell, relative to the merits of the application.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the applicant wished to add 804 sq. ft. to the building. He noted that it had been indicated at the last meeting that it was desirable to retain the site as a gas station, and the proposed expansion would relate to the retail component inside of the gas station. He mentioned that a similar approval had been granted to the gas station in 1996, but for reasons that were unrelated to the approval process, the 1300 sq. ft. approved in 1996 was not built. He explained that, since the last meeting in October, the applicant had met with Mark Marsh, the Town consultant on the historic district study, who had recommended that the gas station buildings be made more compatible with the historic district, and that those issues should ultimately be addressed by the Landmarks Preservation Commission. He noted that the architect, Ames Bennett, had made substantial changes to the plan since that time, and would present them today.

Architect Ames Bennett provided site photographs, and site plan relating to the property in question, explaining the revised exterior, the elimination of the proposed second floor attic space, relocation of the area of expansion adding a small office to the west side of the building. He noted there had been a reduction of 248 sq. ft. in the total additional square footage request. An additional gas pump would be added under the existing south canopy, and the landscaped open space would be increased by 193 sq. ft., for a total increase over the existing landscaped open space to 427 sq. ft.

Zoning Administrator Paul Castro commented that staff was concerned with the landscaping, as it was believed that the landscaping could be improved both on the northeast and southeast corners; the landscaping on the two parking spaces on the northeast corner would need to be expanded further to the south so that the cars would be protected from incoming traffic.

In response to the suggestion of Councilman Goldblum that the bays be entered from the west side of the building, Architect Bennett explained that entering from the west side would not provide enough room for cars to maneuver. Attorney Brindell added that Australian Avenue on the south side of the gas station was a one-way street going east, and currently the system of having cars pull in from that side and go into the service part of the station had worked well.

Mr. Castro noted that the parking shown in the rear of the building was supplementary parking, however, it was very tight; the applicant would also need to assure the Building Department that the handicapped parking met all ADA requirements; if the work being done exceeded 50%, the Public Works Department would require that the site would have to be re-designed to meet the storm drainage requirements. He also noted that there remained one objection from a neighbor.

Councilman Brooks commented that he had reviewed the letter from the objecting neighbor, and while he admired the zeal of the attorney representing the client, he found the letter flawed, as it was guilty of begging the question. He explained that he saw no merit to the letter, as no proof was offered for any of the statements.

Councilman Wyett suggested that there be a rear entry to the gas station, maintaining that there was plenty of room to have cars enter from the back of the building, that the landscaping could also be improved, and the building could be designed to fit more appropriately with the historic district.

Councilman Wyett moved deferral of Site Plan Review No. 17-2001, to the December 11, 2001 Town Council meeting, to allow the applicant to review the plan to

design a rear entry to the loading bays, and to come up with a better plan, in accordance with his comments. The motion was seconded by Councilman Goldblum.

Mayor Smith suggested that two of the northernmost loading bays open to the rear, that the size of the curb cuts be reduced so that cars could more easily get to the back of the building; she noted that would also allow for more parking in the front area.

Architect Bennett replied that he had discussed the layout with the owner, taking into consideration the working conditions, the ventilation, etc., and the owner had rejected emphatically a back entranceway, as there was not enough land.

Mayor Smith suggested that perhaps something could be considered to give the bay entrance a more appealing look, with more landscaping and more detailing.

On roll call, after further discussion, the motion to defer Site Plan Review No. 17-2001 to the December 11, 2001, Town Council meeting, carried 3/2, with Councilman Wyett, Councilman Goldblum, and President McDonald casting consenting votes; President Pro-Tem McLendon and Councilman Brooks casting dissenting votes.

2. SITE PLAN REVIEW NO. 18-2001 The application of Daniel M. Lerner and Elaine G. Lerner relative to property described as Lot 13, El Encanto Addition; commonly known as 1157 North lake Way; located in the R-B Zoning District. To allow construction of a new one-story single family home on a nonconforming platted lot with a width of 85 feet in lieu of the 100 feet required. **Deferred from October 9, 2001, Town Council Meeting.**

Ex-parte communication was declared by Councilman Goldblum with Attorney Ron Kolins, by President Pro-Tem McLendon with Attorney Kolins, and by Councilman Wyett with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, recalling that Site Plan Review No. 18-2001 had been deferred last month, for two reasons: to give Town staff time to solicit the opinion of the Police Chief as to the safety implications of the proposal; and to give the Town the opportunity to have its own traffic consultant review the traffic report that the consultant for the applicant had prepared. He noted that he had received the report from the Town traffic consultant approximately one hour ago, via fax. He requested that the record of the October 9, 2001 hearing be incorporated into the record today.

Attorney Kolins further explained that a public easement was a public right-of-way, and every element of the public had a right to use a public right-of-way under normal circumstances. The home that the applicant was proposing was on the northeast corner of the intersection of Northlake Way and El Pueblo, and the easement to the Lake Trail on the east side of El Pueblo. Photographs were displayed of all of the access easements to Lake Trail between the streets of Jamaica and Merrain and Onondoga. All of the easements, with the exception of two, were either too narrow for vehicular traffic, or vehicles were precluded from being on them by bollards placed right in front of the easement. The only two where that was not true were those on the north end of Merrain, and at El Pueblo; these were the only easements where one would deal with the type of issue currently being discussed, i.e., homes that would have garages or driveways which may want to utilize the easement to get in and out of their driveways. He called Architect Glen Harris as a witness.

Architect Glen Harris referred to the exhibited site plan, explaining the present location of the driveways on the property in question; the proposal was to eliminate the front loop drive fronting on North Lake Way, that now exited onto El Pueblo, leaving the only entry drive to the site from the access area to the garage. He exhibited the landscape plan, pointing out the elements of the landscape plan which related to utilizing the garage off of the access easement and related the line of sight implications.

Attorney Kolins distributed a drawing/survey, noting that he would number the exhibits in conjunction with staff when the hearing was concluded.

Architect Harris referred to the survey, indicating the existing paved areas relative to the site, representative of what was currently in place; in addition, he indicated the proposed entrance to the garage driveway. He testified that the asphalt area, indicated on the survey presented, was shown in its proper location on the site.

Attorney Kolins submitted a photograph of the asphalt area located internally on the property; the area was an existing drive that was shown on the survey and was currently existing on the site. He introduced into evidence the following items: the site plan, the landscape plan, and the survey as presented.

President McDonald noted that the survey presented was not a valid survey, as it did not include a signature or raised seal.

Architect Harris produced a rendering of the proposed house for the review of the Town Council.

Attorney Kolins advised that the property to the south of the property in question had driveways for at least three automobiles facing the easement onto Lake Trail. Historically those driveways had been used for automobiles to access the parking locations. He presented photographs of the area in question. He submitted photographs of the easement on the property opposite Merrain, which had the same kind of access to parking areas and a garage area via the easement. Therefore, the two easements that were wide enough for cars were presently being utilized actively by automobiles and parking locations. He introduced into the record a copy of a transmission from Town Engineer Bowser to Zoning Administrator Paul Castro, in which the garage and driveway access, as proposed, was approved. He introduced Traffic Engineer Fred Schwartz, of Kimley-Horn & Associates, who had prepared a traffic report regarding the property in question, and he submitted same for the record.

Traffic Engineer Fred Schwartz explained that he was asked to evaluate the site plan in question, with special attention to the traffic access/circulation on the site, and the safety involved with pulling into and out of the garages shown on the site plan. He advised that it was his professional opinion that the plan was safe, and one that would work well, while remaining safe to both vehicles and pedestrians in the area: the side loading garage was the best orientation for the garage on the site, as it eliminated the need to back directly onto North Lake Way; the side loading garage on the south side would need to be accessed from the Lake Trail easement in order to have enough turning radius for a vehicle to enter the garage – the property was too narrow to be able to do that, except by using that easement; the pedestrian exposure of vehicular access on the Lake Trail easement was minimal – traffic counts on the weekend had found no activity on the easement.

In response to Attorney Kolins, Traffic Engineer Schwartz replied that he considered a front loading garage, which would require vehicles backing up to a heavily traveled street, more of a hazard because of the increased exposure to vehicles; he agreed that the hazard would be compounded by backing out of the garage and having to cross the sidewalk before getting onto the street; he agreed that there was no difference in safety with backing out into a right-of-way from a driveway, as opposed to an automobile backing from the garage into the right-of-way.

Attorney Kolins summarized that it was the position of the applicant that the configuration presented today was not unsafe, and was probably safer than alternatives; since the same kind of use was already being made of the easements by automobiles it would not be appropriate to deny the applicant the ability to do so. He introduced a letter, dated November 13, 2001, from Laura Oregero, Records Manager of the Police Department of the Town of Palm Beach, who had researched the record of any accidents involving pedestrians and automobiles on the Lake Trail easements, and there were none. He explained that it was his understanding that staff had taken the position that it would be allowed to retain the existing parking/driveway area off of the easement, however, there was not support for having the driveway and a garage slightly further to the east, as proposed. He noted that Traffic Engineer Schwartz had indicated that there was no safety difference in either situation. He suggested a compromise – to allow having the garage and driveway as proposed, with the elimination of the existing driveway.

Director of Planning, Zoning & Building Robert Moore questioned Traffic Engineer Schwartz regarding the safety of backing over a sidewalk and then the street, versus backing directly onto a street.

Traffic Engineer Schwartz replied that he had advised that it would be less safe with the sidewalk, because of the pedestrian exposure. He agreed that there was no sidewalk on North Lake Way.

Mr. Moore questioned Traffic Engineer Schwartz regarding backing a vehicle out of a front loading garage onto North Lake Way.

Traffic Engineer Schwartz replied that he had advised that the front loading garage backing onto North Lake Way was a safety problem because of the potential exposure to vehicles on North Lake Way, as well as the fact that the vehicle would be backing out with limited sight distance. He advised that he had not been asked to consider the option of garages loading from the north, and did not know if there was adequate geometry to accommodate a north loading garage, and what impact that would have on the rest of the house.

Mr. Moore introduced Traffic Engineer Jose Rodriguez, of Keith and Schnars, P.A., to provide a review of the site on behalf of the Town.

Traffic Engineer Jose Rodriguez gave a brief summary of his qualifications, advising of his findings in his review of the report of Traffic Engineer Schwartz: there was concern regarding the sign prohibiting vehicular access along Lake Trail itself, placed immediately west of the existing driveway of the property in question; there was also a "no parking anytime" sign in place. He further explained details of the report, noting that there were three issues not addressed in the Kimley-Horn report: first, whereas vehicles entering the garage would have adequate turning radius via the Trail access, vehicles backing out of the garage would need to maneuver on the same Trail access but toward the west at least 10 to 20 feet in order to align with the intersection. Secondly, a safe sight distance had not been considered. Drivers backing out of the garage would require a clean line of sight to avoid striking pedestrians using the Trail access. Third, the existing sign, located at the entrance of the Trail access, seemed to imply that vehicular operations on the Trail access were also prohibited. Vehicular access to designated pedestrian and/or bicycle facilities should be avoided, except for maintenance and emergency vehicles.

Attorney Kolins clarified that there was nothing in the report of Traffic Engineer Rodriguez that took issue with the report of Traffic Engineer Schwartz, which was agreed with by Traffic Engineer Rodriguez. After further discussion regarding the "no vehicular traffic" sign in place on the Trail access in relation to the proposed driveway, Traffic Engineer Rodriguez agreed that sign would be to the west of the new driveway east of the existing driveway – if both the driveway to the front of the house and the driveway to the garage were further towards the street, east of the sign.

Mr. Moore asked Traffic Engineer Rodriguez which scenario would be the safest: vehicles backing out onto Lake Trail, vehicles backing out onto Northlake Way, or vehicles backing out to the north, where there wold be no crossing of any of the public right-of-way?

Traffic Engineer Rodriguez replied that he could not respond, as there were too many assumptions to be made.

Police Major Michael Mason reported that the Police Department objected to the proposal specific to the garage access and backing onto the Trail, as there was a hazard presented, and it was not in the interest of public safety.

In response to Councilman Brooks, Major Mason replied that there were many residents who backed vehicles out of their driveways onto a roadway.

Councilman Wyett clarified that there had historically been a bollard in place on the street to prevent vehicles, however, the last time the area had been paved there had been no provision for replacement. He stated that it should be re-installed.

In response to Attorney Kolins, Major Mason advised that the conclusion of the report of the Police Department in this matter had been based upon the personal evaluation by Police Chief Reiter of the proposal.

Attorney Kolins moved that the testimony of Police Major Mason be stricken, as it was not based on his own knowledge, was based on hearsay, and that he had no understanding of the basis of the opinion he had reported on today.

Town Attorney Randolph advised that formal rules of evidence were not followed in these matters, however, rules of due process were followed, and the Town Council could make a determination to accept the evidence as provided; as long as any decision made was not based solely on hearsay, then hearsay testimony was acceptable.

Attorney Kolins maintained that he was being denied the right to cross-examine the person whose opinion was being given.

President McDonald agreed with Attorney Kolins, and recommended that the testimony of Police Major Mason be stricken from the record.

Director of Planning, Building & Zoning Robert Moore suggested that the written report of Police Chief Reiter be read into the record, similar to the report of Town Engineer Bowser that had been read into the record earlier.

Attorney Kolins objected to the report of Police Chief Reiter being read into the record, explaining that Town Engineer Bowser was present today, and had there been any cross-examination required he was present to respond, whereas Police Chief Reiter was not available today for cross-examination.

President McDonald stated that the statement of Police Chief Reiter would speak for itself.

Mr. Moore read the statement of Police Chief Reiter into the record, dated November 9, 2001, to Assistant Director of Planning, Zoning & Building Veronica Close:

"Please make sure that all interested parties are aware that after my consideration of the applicant's proposal for 1157 Northlake Way, I must advise that any motor vehicle use of an access way which leads to a bicycle or walking path presents a hazard and is not in the interest of public safety. The Lake Trail access in question connects Northlake Way to the Lake Trail, where motor vehicles are prohibited. The nature of the access way would not normally result in the expectation that a motor vehicle would be present there. Any pedestrian or bicycle rider who encounters a motor vehicle along Lake Trail access could be surprised in doing so, and would be at risk. The applicant's plan requires vehicles using the south driveway to back out onto the access road, and turn around. This presents an even greater hazard for which I cannot recommend approval."

President McDonald stated that the statement of Police Chief Reiter would be allowed in for the record, and that the objection of Attorney Kolins would be noted for the record.

Attorney Kolins stated that a citizen was not required to re-design a proposed home, or how property was to be used, unless it was proven that the way it would be used was unsafe; he maintained that had not been proven today. He stated that he believed that he had been precluded from asking questions of Police Chief Reiter.

Councilman Goldblum commented that the country was in the state of war currently, and that the Chief of Police had many duties; he suggested that this matter be deferred until the Police Chief could appear at the meeting.

Mr. Moore commented that the remainder of the site plan must also be evaluated. He noted that properties where the situation existed with vehicles backing out across and into the right-of-way were not desirable situations, and that staff was obligated to state its opinion to the Town Council. He noted that staff did believe that there was an appropriate alternative for the applicant regarding the driveway/traffic access area in this case.

Attorney Kolins advised that there was nothing about the site plan that would require any variances.

Architect Glen Harris proceeded to present the remainder of the site plan, referring to the dock area.

In response to a question concerning the dock area, Attorney Kolins advised that he did not have material available that showed the docks, and he suggested that the site plan review be processed without the dock area; if any work was currently being done on the dock it would be stopped immediately, and the applicant would come back to get approval for the dock. He requested that Architect Harris address the drainage aspects of the plan.

Architect Glen Harris advised that he had the plan that was submitted, and architectural boards indicating the drainage, and to his knowledge it had been designed by a civil engineer, and there were no problems with the drainage. He indicated that the drainage was 2", as required.

Mr. Floyd Wideman, resident, and a member of the Architectural Commission (ARCOM), commented that ARCOM had fought to not have street facing garages, that side-loading garages were desired; as well as garages not facing public right-of ways; if the current site plan was approved by the Town Council as presented, with entry out onto the Lake Trail access, he questioned how ARCOM could regulate the placement of garage entries. He stated that it was his personal view that street-loading garages should be strongly opposed.

Mayor Smith commented that she expected to encounter front loading garages, with cars backing out across the sidewalk for the older homes in Town; however, when walking down the Lake Trail access, she would not expect to have a car backing out. She suggested that the situation of having a car backing out in the area in question should be avoided.

Town Attorney Randolph advised that a motion should be based upon the evidence that had been heard, not solely on hearsay evidence. If, for instance, there would be a motion not to approve the site plan, it would have to be based upon evidence that was heard other than the letter that was read into the record from Police Chief Reiter.

Architect Harris commented that a north entry garage on the site would require a vehicle having to back out onto North Lake Way, if there was even one other car parked in the loop.

Councilman Wyett commented that was a misrepresentation, because an architect was capable of determining how to move a house back five or ten feet to avoid the problem.

Councilman Brooks moved approval of Site plan Review No. 18-2001. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/2, with Councilman Brooks, President McLendon, and President McDonald casting assenting votes; Councilman Goldblum and Councilman Wyett casting dissenting votes.

Mayor Smith commented that approval was a terrible mistake in setting a terrible precedent for new construction in Town; the lives of those walking the Lake Trail would be in jeopardy.

***********The luncheon recess was taken at 12:30 p.m.***********

The Town Council Meeting of November 13, 2001, was reconvened at 2:10 p.m.

B. New Business - Major

1. VARIANCE NO. 53-2001 The application of Andre and Agnes Varga relative to property described as Lot 54, Primavera Estates (Middle Section); commonly known as 219 Clarke Avenue; located in the R-B Zoning District. To allow construction of an extension to the existing attached garage and a second floor addition on the back of the house above said garage which will result in a cubic content ratio of 5.475 in lieu of the 4.495 existing and the maximum 4.5 cubic content ratio permitted.

Director of Planning, Zoning & Building Robert Moore suggested that Variance No. 53-2001 be deferred to the December 11, 2001, Town Council Meeting.

President Pro-Tem McLendon moved approval of deferral of Variance No. 53-2001, to the December 11, 2001, Town Council Meeting. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

2. VARIANCE NO. 54-2001 The application of 455 North County Road, Inc, William D. Elias, President relative to property described as (lengthy metes and bounds legal description on file); commonly known as 455 North County Road; located in the R-AA Zoning District. Requesting a variance from the non-conforming section of the Code to allow for the demolition and reconstruction of a non-conforming land marked house which would exceed 50% of its existing cubic footage.

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

Attorney Wade Byrd, on behalf of the applicant, addressed the Town Council, presenting photographs of the property in question, requesting that a variance to allow for the removal of a volume above fifty percent be granted. He explained that the condition of the property had been found to be far more deteriorated than had been anticipated, and the granting of the variance would facilitate construction economy and efficiency. He stated that the hardship was the fact that the house was a landmarked structure and reconstruction was of a non-conforming structure; the literal interpretation of the ordinance would deprive the applicant of the rights commonly enjoyed by other parties, inasmuch as it would create an unnecessary and undue hardship, not only as far as time of construction, but also as far as cost of construction.

Councilman Goldblum moved approval of Variance No. 54-2001. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

3. <u>SPECIAL EXCEPTION NO. 24-2001</u> The application of Jeffery Epstein relative to property described as Supplementary Plat of El Bravo Park, west 24.30 feet of Lot 39 and Lot 40 and the part of filled submerged land as in OR4266, Page 1926 and adjacent to Lot 40; commonly known as 358 El Brillo Way; located in the R-A Zoning District. To allow a second kitchen in the enclosed accessory building, otherwise known as staff quarters, in accordance with the provisions of 134-841 (b) (5)

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

Attorney Michael Johnson, on behalf of the applicant, addressed the Town Council, stating that the property in question contained a main residence, with a new staff quarters building being constructed in the southeast portion of the property. The applicant was requesting a second kitchen in the staff quarters, to be used by the owner, guests, or staff.

Zoning Administrator Paul Castro commented that the Standard Kitchen Agreement would be required, and staff recommended approval.

President Pro-Tem McLendon moved approval of Special Exception No. 24-2001. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

4. SPECIAL EXCEPTION NO. 25-2001 WITH SITE PLAN REVIEW AND VARIANCE The application of Maryanne Barry, as Trustee relative to property described as the East 50 feet of Lot 15 and the West 75 feet of Lot 16, of Bingham-Copp Tract, commonly known as 160 Woodbridge Road, located in the R-A Zoning District. To allow construction of a single family structure on two portions of existing platted lots creating one unplatted non-conforming lot 135 feet deep in lieu of the 150 foot minimum required and 16,875 square feet in area in lieu of the 20,000 square foot minimum required, and a variance request to construct a two-story house with a building height plane setback of 41.33 feet in lieu of the minimum 45.3 feet required (Code allows 24.67 feet height at proposed location; the request is 22.83 feet in height).

Ex-parte communication was declared by President McDonald via a telephone conversation with Attorney Ray Royce regarding the application in question; by Councilman Wyett via a conversation with Attorney Royce regarding the application in question; by President Pro-Tem McLendon via a telephone conversation with Attorney Royce regarding the application in question.

Attorney Ray Royce, on behalf of the applicant, explained that the applicant had purchased an existing home at 160 Woodbridge Road; the property consisted of parts of various lots, with 125' of street frontage. The property was nonconforming in that the platted lots were only 135' in depth, whereas the R-A Zoning District required such lots to be 150'. The applicant desired to demolish the existing home, and construct a new home, which would cure a number of the nonconformities in the present house. The lack of depth in the lot created a problem with the setback. The hardship was that if the house was pushed any further back, the backyard would become essentially unusable; in addition there would be no room for a swimming pool.

Architect Eugene Lawrence presented an architectural rendering of the property in question, noting the existing buildings, and rear cabanas, with the proposed construction indicated as well. He explained that there were currently seven existing nonconformities, all of which would be corrected, with the exception of one.

Zoning Administrator Paul Castro commented that the Town Council would need to determine whether the depth of the lot was enough of a hardship, as it related to the site; that would be the only nonconformance if the site plan was approved.

Director of Planning, Zoning & Building Robert Moore commented that in similar cases, the location of the variance being requested had been considered, as well as whether an unfair advantage would be given to the applicant, versus other homes in the immediate vicinity.

Councilman Goldblum moved approval of Special Exception No.. 25-2001, finding that the hardship was the depth of the lot. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

C. Other

1. Appeal for the Breakers Hotel Tax Abatement Application. [James R. Brindell, Esq.] **Deferred from October 9, 2001, Town Council Meeting** *(Request for Deferral to February 2002 per Letter of November 2, 2001 from James R. Brindell, Esq.)*

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

2. Mar-a-Lago Request for Extension of Construction Schedule to Complete Cabanas. [Raymond W. Royce, Esq.]

Attorney Ray Royce, on behalf of Mar-a-Lago, addressed the Town Council, stating that Mr. Wes Blackman would be presenting the details of the request. He clarified that the application requested consideration for two things: a continuation of construction of the cabanas, and the ability to speed up the commencement date of the pavilion building, by virtue of the fact that the Royal Park Bridge was now being delayed. The second item would require an amendment to the Special Exception, and therefore could not be heard today.

Attorney Royce recalled that the approval of the cabanas had contained a number of conditions, one of which was a limitation on doing work during the season. It also had specifically provided that the Mar-a-Lago Club could come to the Town Council at any time to seek approvals for work in sub-paragraph V. of the conditions in the Amendment of the Declaration of Use Agreement relating to the cabanas. Attorney Royce further explained that the reason for extension was so that the beach front facilities would be opened as soon as possible so that club members could use and enjoy the cabanas and pool as soon as possible; completion of the construction would also benefit the Town in an aesthetic manner, as the buildings would remain unfinished unless the extension was granted. He noted that the conditions in 1999, when the restrictions had been placed, were entirely different from the current conditions – the Town Council had then been concerned with the Royal Park Bridge failure, and the idea that a great deal of heavy construction traffic would be shunted from the Royal Park Bridge to the Southern Boulevard Bridge, which could create heavy delays in areas of construction. He explained that the temporary Royal Park Bridge was now in place, and there had been no significant shift of traffic to the Southern Boulevard Bridge. He also noted that there was an underground tunnel that had been utilized in the construction of the cabanas, alleviating the need for traffic crossing the road.

Mr. Wes Blackman, Director of Projects, Mar-a-Lago Club, addressed the Town Council, presenting site exhibits and photographs of the property in question, reviewing the orientation of the buildings on the property on the east side of South Ocean Blvd., and the construction milestones thus far accomplished. He noted that some complications of the project had been the 140 mph wind requirement and the coastal construction regulations. He explained that there was very little remaining construction in terms of heavier work, and as a courtesy to neighboring property owners he would be willing to install landscaping between the north and the south buildings between the properties to the north and south, as partial completed landscaping prior to December.

In response to Councilman Goldblum, Mr. Blackman replied that the permanent tile roof would be completed in December, if permission was given.

Mr. Blackman referred to two exhibits listing the items yet to be completed, which included construction of ramp and stairs to the beach. He explained that the turtle nesting season ended November 1, 2001; sand was removed on the lower edge of the beach soon afterwards, and the ramp and stairs would then be constructed. That could not be completed by November 30th, however, it would need to be completed prior to March 1, 2002 as that was the resumption of the turtle nesting season.

Councilman McLendon expressed concern with objections from citizens; he also expressed concern that there may have been time when construction was not pursued to the extent that it could have, resulting in some delays.

Mr. Blackman responded that the progressive pictures indicated that a lot of work went on that many people were not aware of – at times construction workers were not seen, however, they were entering through the underground tunnel, and there was a wall along the west side of the property on South Ocean Blvd., which blocked the view of workers.

Councilman McLendon commented that the workers had not been very cautious with the use of their "boom boxes," especially noticeable at the Bath & Tennis Club.

Attorney Royce responded that he had not been aware of that problem, however it would be addressed.

In response to Councilman Brooks, Attorney Royce replied that, in general, workers had been using the underground tunnel.

Councilman Brooks suggested that a construction time line be provided.

Attorney Royce responded that items one through eighteen listed on the exhibited board were essentially interior items and would normally be done during the season. The outside items which were to be completed were indicated on the second exhibit board. He advised that many of the inside items could be accomplished during the season.

Attorney Royce commented that finishing the roof, putting in some landscaping, and the interior work could probably be accomplished during the next four or five months, and most of the work would be interior work. There would not be a traffic problem nor would there be any other kind of a problem for the neighbors.

Councilman Goldblum commented that he could understand interior work, however, he could not go along with landscaping.

Attorney Royce replied that would be fine; the interior work could be finished, with the landscaping put in later.

Councilman Wyett commented that the presentation today was somewhat in conflict with the notice of November 7, 2001, from Mr. Moore to Mr. Elwell, in which work would be limited to interior only, except for landscaping. He asserted that heavy equipment would have to come in to complete the items listed, necessitating the use of heavy trucks, etc., and the intention of the Town Council had been to avoid traffic problems; the needs of Mar-a-Lago must be weighed with the needs of the people traveling north and south. He commented that he had great reservations about approval of the extension of construction.

Attorney Royce replied that there had not been a traffic problem related to the construction; the Police Department had never once complained of a traffic problem.

Mr. Blackman explained that the first board listed interior items; the projects listed on the second board were to be accomplished emerging from the season.

Attorney Royce reminded the Town Council that during this same period of time the Clark house had been under construction, the Miller house had been under construction, both without the benefit of an underground tunnel; workers had been going back and forth, and heavy outside work had been done. Both of the houses were located off of a two-lane section of South Ocean Blvd., and Mar-a-Lago had a three lane section of South Ocean Blvd. He suggested that at least the interior work be approved so that the Club could be opened in the summer.

Director of Planning, Zoning & Building Robert Moore commented that staff had written a memorandum on November 7, 2001, after reviewing the request of the applicant. Essentially, the memorandum suggested that work should be limited to the interior, except for landscaping; no access for service and delivery vehicles from South Ocean Blvd.; deliveries should continue to occur from the west property to the east property through the tunnel, except for the landscaping. It was suggested that work be suspended during the Hanukkah, Christmas and New Year holidays. He noted that it was essentially the same type of recommendation that had been made for other projects that had requested extended work hours beyond the normal work hours.

Police Major Michael Mason reported that there had been no additional traffic problems in the Mar-a-Lago area, based upon the construction that had been ongoing. The construction company had been very cooperative, and when there were major pours, or large vehicles, there were police officers stationed to handle traffic.

In response to Mayor Smith, Mr. Blackman advised that the pouring of chimneys may entail having police officers stationed, as well as any installation landscaping and the stucco; on milestones one-eighteen. He advised that the delivery of windows and doors may also entail having police officers in place. He anticipated that milestones 1-18 would be completed between December 1st and April 1st.

President McDonald now offered the public the opportunity to comment:

The following people addressed the Town Council in favor of the continuance of the cabana construction:

Ms. Angie McNamara, resident on Kings Road, spoke in favor of continuing the construction, as the site was an eyesore as it stood; in addition, residents of Kings Road who were Mar-a-Lago members would have use of the beach.

Ms. Chris Carlie, Mar-a-Lago member, favored continuance of construction, maintaining that the Palm Beach restrictions were impossible, and the realtors were worried about selling real estate. She suggested that Mar-a-Lago would bring people into Palm Beach.

Mr. Bill Matheson, Town resident, commented that he was a member of Mar-a-Lago, and that the project should not be left unfinished for any period of time for safety reasons, and that the turtle season/environmental restrictions had interfered with construction.

Mrs. Laurie Bernstein, speaking on behalf of herself and her parents, stated that the cabana construction had not interfered with traffic; she urged that the construction continue so that the beach could be used.

Mr. Richard Bernstein, 235 Sanford Ave., stated that Mar-a-Lago had tried to be a good neighbor to the Bath & Tennis Club, and urged that the construction be allowed to continue; he stated that club members would like to enjoy the use of the beach.

Mrs. Robin Bernstein, 235 Sanford Ave., stated that Mar-a-Lago was an historic landmark, and Donald Trump had done an absolutely incredible job of making sure that everything was perfect. She urged that the construction be allowed to continue.

Mr. Howard Reed, commented that he had spent the summer on the beaches for the past several years, and that he was grateful to the Mayor, the members of the Town Council, and Town staff, who all did so much hard work to maintain such a beautiful place. He urged that everyone work together to reconcile the relatively minor differences, and that Mrs. Post, who had built the jewel of Palm Beach, be honored. He urged that the construction project be allowed to be completed.

Mr. Alan Lebow, resident, commented that the Mar-a-Lago Club was unlike any other place on earth, and suggested that it be allowed to continue being the greatest club in the world.

Councilman Brooks noted that the responsibility of the Town Council was to the entire Town.

Mayor Smith commented that some of the reasons that people came to Palm Beach was because of the strict regulations, the beauty, and the Mar-a-Lago Club.

The following people addressed the Town Council in opposition to the continuance of the cabana construction:

Douglas Egam, General Manager, Bath & Tennis Club - he requested that the Town Council consider the Bath & Tennis Club members privacy and the right to peaceful enjoyment of the facilities. He stated that the letter of agreement between the Town and Mar-a-Lago, dated September 12, 2000, stated that phase II of the construction should be completed by December 2001.

Attorney Peter Breton, on behalf of Aileen Massey, 1125 S. Ocean Blvd., stated that Mrs. Massey joined the Bath & Tennis Club in objecting to the request. He maintained that the conditions placed on Mar-a-Lago were not intended exclusively for traffic, but also to mitigate the effects of the construction on the neighboring property owners, and that the justification to suit the convenience of club members was not sufficient. He requested that if Mar-a-Lago was allowed to continue with construction beyond December 1st, that they be limited to interior construction only. He maintained that there was a great deal of work remaining on the cabanas, and that all of the windows and doors would remain opened until the air conditioning system was in place, which was usually one of the last things to be put into place; consequently all of the noise from equipment would escape to the exterior and impact the neighboring property owners.

Mrs. Wendy Victor, Town resident, commented that the Town ordinances protected the citizens; she urged the Town Council to follow the rules in place.

Councilman Goldblum commented that a house being built across the street from his home had no restrictions on building, and could build all winter long; he maintained that the Mar-a-Lago cabana work would not interfere with anyone as far as noise or sound was concerned; in addition, portable air conditioners were required to be used until a certificate of occupancy was received. He asked if a finished roof could be completed on the cabanas by December?

Mr. Blackman replied that he was sure something could be worked out.

Mayor Smith asked if work would cease between December 15th until after the New Year?

Mr. Blackman replied that he had not anticipated that number of days, however work would cease on the major holidays.

Councilman Wyett moved approval of the following:

Construction to continue at the Mar-a-Lago Club with regular construction hours from now until December 8, 2001, with the exception of the Thanksgiving holidays (to include Thursday, Friday) with a status report being given the following Tuesday, December 11, 2001, at the Town Council Meeting. The motion was seconded by Councilman Brooks.

Attorney Royce noted that the tar portion of the roof would need to set for a period of time before the shingles were installed. He explained that work would go as far and as fast as possible, however, he wanted it understood that all of the shingles may not be on at the time of the status report on December 11, 2001.

On roll call the motion, as stated above, carried unanimously.

3. Il Lugano Request for Modified Hours of Construction Work. [James R. Brindell, Esq.]

Attorney James Brindell, on behalf of Il Lugano, addressed the Town Council, requesting a modification of certain days of construction – he requested that work be allowed to take place on December 20, 21, 22, 26, 27, 28, and 29th. He explained that the building was currently essentially closed in, and the remaining work was primarily interior work.

Councilman Goldblum suggested that the workers put their cars in an appropriate place.

Mr. Mike Vanderpool, Project Manager, Weitz Company, commented that parking had been a problem, and lately the Bradley Place project had interfered with it. He explained that there was a parking lot in West Palm Beach that was currently being utilized, and the majority of the workers were bused into Palm Beach. He offered that the few workers that currently parked on Seminole could be bused as well.

Director of Planning, Zoning & Building Robert Moore commented that it was the recommendation of staff that work should be limited to interior only, except for the landscaping; no delivery vehicles on subject site during those days; work would not begin until 9:00 a.m. on those subject days; upon reasonable verified complaint of construction noise on the site, a loss of the privilege granted would occur.

In response to Councilman Brooks, Attorney Brindell agreed that the date of December 26th could be dropped from the request; in addition, there would be no delivery trucks allowed on the days requested – all materials would be brought on site before those days; all workers would be bused into Palm Beach.

Attorney Maura Ziska, representing the Parc Regent Condominium, advised that the board members of the Parc Regent objected to all of the days requested in the modification of construction days.

Councilman Wyett moved denial of the request. The motion was seconded by President Pro-Tem McLendon.

Attorney Brindell suggested that only the days of December 21, 2001, and December 22, 2001 be allowed.

Attorney Ziska advised that there was no objection to December 21st and 22nd.

Councilman Wyett modified the motion to approve only the days of December 20, 2001, December 21, 2001, and December 22, 2001 for the continuance of work. President Pro-Tem McLendon agreed to second that modification. On roll call the motion carried unanimously.

4. Donnell vs Town of Palm Beach: Advice from Town Attorney Regarding Request for Re-Hearing of Zoning Variance Application. [John C. Randolph, Town Attorney]

Town Attorney Randolph advised that there had been a request for a 7' wall on the property of Mrs. Donnell, which had been denied. Subsequent to the denial, the attorneys representing Mrs. Donnell had requested a re-hearing by the Town Council, based upon affidavits filed indicating that some of the statements made by Director of Planning, Zoning and Building Moore may not have been totally accurate. He noted that he had advised that there was not a procedure in place for re-hearing for such reasons, and therefore the petition for re-hearing had been denied. Subsequently, a lawsuit had been filed for a Petition for Writ of Certiorari for denial of a wall, and a Petition for Writ of Certiorari for denial of the re-hearing. He recommended that a re-hearing be granted, so as to afford the applicant the opportunity to present whatever information they had relating to the alleged misinformation by Mr. Moore, as well as giving Mr. Moore the opportunity to explain his statements and offer any other evidence he may have in that regard.

President Pro-Tem McLendon moved approval of a re-hearing of Variance No. 38-2001, 300 Parc Monceau. The motion was seconded by Councilman Wyett.

In response to Mayor Smith, Town Attorney Randolph explained that the request for re-hearing had been denied because of the precedent that it may have set; in this particular case, since a lawsuit had been filed, he advised that this may be a way to resolve the issue. Also, he suggested that perhaps the ordinances should be amended in the future to have a provision to grant a re-hearing under certain limited circumstances.

Mayor Smith commented that we live in a litigious society, where people file lawsuits twenty-four hours a day, and that a Pandora's box would be opened.

Town Attorney Randolph replied that he believed the re-hearing would put the Town in a much better position regarding the litigation.

Councilman Brooks commented that a precedent may be set.

Town Attorney Randolph explained that it was the determination of the Town Council as to whether to grant the re-hearing or not; it had already been denied, and a lawsuit had been filed. That did not mean that any time someone was denied a request, and then decided to file a lawsuit that the Town Council would necessarily do the same thing, but in this particular case he advised that the Town would be in a much better position in regard to the litigation at hand.

On roll call the motion to approve a re-hearing of Variance No. 38-2001 carried 4/1, with Councilman Brooks casting a dissenting vote.

5. Declaration of Zoning in Progress. [Robert L. Moore, Director of Planning, Zoning & Building]

Director of Planning, Zoning & Building Robert Moore requested that Zoning In Progress be declared, as the zoning items to be considered this year were to be published, exclusive of the R-B District. He explained that anyone wishing to file an application may do so, either complying with the more restrictive requirements, or waiting until the season was over.

President Pro-Tem McLendon moved approval of the declaration of Zoning In Progress. The motion was seconded by Councilman Goldblum.

Councilman Wyett asked how the Zoning In Progress would affect the re-zoning of the Royal Poinciana Plaza?

Mr. Moore replied that there was already an application in for that; therefore, the Zoning In Progress would not affect it.

On roll call the motion to approve declaration of Zoning In Progress carried unanimously.

Mr. Moore announced that the Zoning Hearings would begin at 9:30 a.m., rather than at 9:00 a.m.

6. Staff Proposal Regarding Construction Completion Schedule Deadlines. [Robert L. Moore, Director of Planning, Zoning & Building]

Director of Planning, Zoning & Building Robert Moore advised that, in light of the Miller case, it had been brought to the attention of staff that there were ongoing problems with construction and completion of larger homes. In addition, there had been meetings conducted with representatives of the Clark house, which had not been completed within 27 months. After meetings held with contractors, architects, attorneys and staff, a memorandum had been provided to the Town Manager, dated October 26, 2001, with recommendations pertaining to completion of construction. An amendment was being proposed to the Town Code of Ordinances regarding the building code, for homes of 25,000 square feet or larger, which would have a first reading next month. He requested permission to add to the ordinance amendment the ability for the Building Official to extend the time frame for six additional months for non-landmarked projects; if the applicant failed to finish in that six-month period, the matter could be brought to the Town Council for further discussion. For landmarked homes, it was being recommended that construction could extend an additional six months, on top of the first six months.

Councilman Wyett expressed concern with the Town Council giving up its prerogatives to review exceptional, unusual homes, no matter what size, one by one.

Mr. Moore replied that there had been no problem with the smaller homes.

Town Attorney Randolph advised that the language of the proposed amendment to the ordinance would not preclude an applicant from requesting the additional time at the outset of the application; if there was then a problem with the completion date, the applicant would then come directly to the Town Council.

President Pro-Tem McLendon moved approval of the recommendations of staff. The motion was seconded by Councilman Brooks. On roll call, the motion failed 2/3, with President Pro-Tem McLendon, and Councilman Brooks casting assenting votes; Councilman Goldblum, Councilman Wyett, and President McDonald casting dissenting votes.

Councilman Wyett suggested that the code be amended to reflect that if an applicant could not complete construction within the 27-month period, that within three to six months before completion of the project, the applicant could request an extension, to be approved by the Town Council, with that being the only extension they could obtain.

After further discussion, Town Attorney Randolph agreed that he would return to the Town Council with an ordinance along the lines as recommended by Councilman Wyett.

Town Manager Peter Elwell clarified that there was an additional portion of the ordinance amendment which dealt with creating a separate category for very large homes, as a new category, with a 33 month construction period for very large, Category IV homes, over 25,000 square feet.

After further discussion, it was determined that the fourth category, Category IV, would not be included in the amendment to the ordinance; that the square footage would not be an element of consideration for granting an extension of construction time.

XIV. ANY OTHER MATTERS

Town Attorney Randolph advised that a check had been received in the amount of $35,049.64 in regard to the Sand Pillow matter.

XV. ADJOURNMENT

There being no further business, the Town Council Meeting of November 13, 2001, was adjourned at 4:15 p.m.

Jack McDonald
Town Council President

Mary A. Pollitt
Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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