TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON NOVEMBER 12, 2003

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled meeting of the Town Council was called to order at 9:30 a.m. on Wednesday, November 12, 2003, in the Town Council Chambers by Town Council President William J. Brooks. Upon roll call the following Elected Officials were found to be in attendance:

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

Also attending for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John Randolph
Fire-Rescue Chief Kent Koelz
Police Chief Michael Reiter
Police Sgt. George Frick
Police Sgt. Christine Gregory
Director of Planning, Zoning & Building Robert Moore
Assistant Director of Planning, Zoning, & Building Veronica Close
Zoning Administrator Paul Castro
Planning Administrator Tim Frank
Public Works Director Al Dusey
Public Works Assistant Director Paul Brazil
Town Engineer James Bowser
Public Works Facility Maintenance Division Manager Joe Ugi

Coastal Management Coordinator Sandy Tate
Finance Director Jane Skittone
Human Resources Director William Crouse
Town Clerk Mary A. Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Mary A. Pollitt. The Pledge of Allegiance was led by President Brooks.

III. PRESENTATIONS

A. Recognition of Christine Gregory, Police Sergeant Upon Her Retirement from the Town of Palm Beach After 21 Years of Service.

Mayor Smith recognized Sgt. Gregory's 21 years of service. Sgt. Gregory received a Bulova Quartz Watch honoring her years of service.

IV. COMMENTS OF MAYOR LESLY S. SMITH

I have a couple of comments this morning related to business on our agenda. First, we are continuing discussion and strategies to prevent deterioration of landmarked structures, and while I know this is a delicate balance between public and private responsibilities, I want to emphasize that the maintenance of landmarks is essential to the legacy of our Town. Our primary purpose in discussing the problem of deteriorating landmarks is to protect the Town against significant expenditures and protect neighbors against eyesores. Our counsel, Mr. Randolph, has offered several suggestions that have been pursued in other localities. We are exploring one of the suggestions that owners of landmarked properties be required to post a bond for alterations and improvements. This is a very complex issue, but there are alternatives to posting a bond, and, I believe, they should be considered seriously. Our object here is not to burden the owners of landmarked property who already have numerous hoops through which to jump because of their historic status. I hope that we will have significant input on this topic from property owners, members of the Historical Society, and the Preservation Foundation of Palm Beach. We welcome all suggestions that will protect us without unduly penalizing the responsible owners .

Secondly, while there will be discussion today by the Council on what is fondly known as 'my dog park', and I can say at this time that many citizens brought the idea to me which is the reason I pursued it, and why we will be discussing it today, and we have some preliminary plans to look at. I want to make it clear that nothing has been finalized. Comments from nearby property owners and other citizens are more than welcome, and certainly their concerns will be considered fairly. I do hope, however, that those who have already voiced objections without seeing the plans or reviewing proposed rules will keep an open mind and, if the Council decides to proceed, will work with us to design a park that is both functional, beautiful, and safe.

Third, once again Mr. Dusey will be updating us on the South Jetty sand tightening project by the Army Corps of Engineers at the Lake Worth Inlet. I have had some conversations this week that I hope will facilitate this project as well as permitting for our other projects.

We have gotten through another hurricane season unscathed, but we all know we need to finish our shore protection program in order to minimize future risks.

As my last remark, we seem to be dealing recently with many, many controversial issues, and discussions are becoming more and more heated, but not everything is about politics. Some things are about decency and civility. We ought to be able to tell the difference.

Thank you.

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

ADD Item VIII.B.2., Request for Extension of Time in the Sale of the Town's Pike Road Property;

Motion made by Councilman McLendon, seconded by President Pro-Tem Goldblum, to add Item VIII.B.2. to the agenda. On roll call the motion carried unanimously.

ADD Item VIII.B.3, Proposed Inclusion of Town-owned Properties in a Designated Brownfield Area Within the City of West Palm Beach;

Motion made by Councilman McLendon, seconded by President Pro-Tem Goldblum, to add Item VIII.B.3. to the agenda. On roll call the motion carried unanimously.

DEFER Item XI.C.1.a., Variance #42-2003, 615 North Lake Trail, to the December 9, 2003, Town Council meeting;

Motion made by Councilman McLendon, seconded by President Pro-Tem Goldblum, to defer Item XI.C.1.a., Variance #42-2003, to the December 9, 2003, Town Council meeting. On roll call the motion carried unanimously.

DEFER Item XI.C.1.b., Special Exception #22-2003 with Site Plan Review, 165 Bradley Place, to the January 13, 2004, Town Council meeting;

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum, to defer Item XI.C.1.b., Special Exception #22-2003, to the January 13, 2004, Town Council meeting. On roll call the motion carried unanimously.

DEFER Item XI.C.2.g., Site Plan Review #8-2003 with Special Exceptions and Variances, 237-243 Worth Avenue, to the December 9, 2003, Town Council meeting.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum, to defer Item XI.C.2.g., Site Plan Review #8-2003 with Special Exceptions and Variances, to the December 9, 2003, Town Council meeting. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Dr. Sten Lilja, 1330 North Ocean Boulevard, suggested that the Town follow up on the actions taken by the Town Council that would implement speed limits on Town streets; he suggested that the transverse streets have a lower speed limit than the rest of the streets.

Town Manager Elwell commented that the speed limit on the side streets in Town had been reduced; the speed limits on the north/south streets have generally remained the same. There were certain locations in Town where staff had an informed opinion that a speed limit ought to be set differently than as described in statutes and in traffic studies. The general intent of the Town Council had been achieved in that an overall Town-wide speed limit had been reduced.

President Brooks commented that Dr. Lilja's point was well taken; while the ordinance had been enacted, the adherence by motorists had been shoddy at best, especially on the side streets, and especially with parents taking the children to school in the morning.

Public Works Director Al Dusey reported that soon after the enactment of the ordinance, staff had done some posting on the state highway system, which caused the state highway officials some concern. Staff was currently attempting to obtain permission to post some signs. Staff had received the recommendations of the traffic study, and would now be doing a final posting in accordance with the study recommendations. The 25 mph Town-wide speed limit had been posted. He noted that staff had no control over the state highway system; the Town roads needed to be converted to the proper posting.

Dr. Lilja commented that he had not seen the 25 mph signs posted on the side streets.

Mr. Elwell replied that there would not be a 25 mph speed limit sign on every side street, because of aesthetic implications; there would be posting of the Town-wide speed limit at the entrance to the Town, with a declaration that the speed limit was 25 mph unless otherwise posted.

President Pro-Tem Goldblum commented that for about one week there had been a speed radar trailer along the North Ocean Blvd. area between Sunrise and Wells, which had become a race track for everyone with a high speed sports car; he noted that it was dangerous because people were crossing from the street to their homes.

Police Chief Reiter commented that the posted sign controlled the speed limit; staff was a little behind in changing some of the signs because they had recently received some final information on a review of the earlier traffic report. He explained that the speed radar trailers could also collect statistics from which to decide how to approach any problem. He noted that Thanksgiving week would bring a launch of an education and enforcement campaign for the season to include all of the new changes for speed limits. He expected that most of the signs would be in place at that time, with the possible exception of those at the bridge, which would require the permission of the Florida Department of Transportation.

Rosemary Ritter, new Palm Beach resident, complimented the Mayor and Town Council, on the services provided by the Town.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF OCTOBER 14, 2003.

B. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING, CLOSED DOOR SESSION OF OCTOBER 14, 2003.

C. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING OF OCTOBER 16, 2003.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF OCTOBER 22, 2003.

E. RESOLUTIONS

1. RESOLUTION NO. 61-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Cable Television Service Agreement and License Between Adelphia Cablevision of West Palm Beach IV, L.L.C. d\b\a Adelphia Cable Communications and the Town for Cable Television Service at the Town Docks Property, and Authorizing the Town Manager to Execute the Cable Television Service Agreement and License on Behalf of the Town.
[Thomas G. Bradford, Assistant Town Manager]

2. RESOLUTION NO. 62-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, in Support of Continued Beach Management Funding of $30 Million Annually from Documentary Stamp Tax Revenues.
[Albert P. Dusey, Director of Public Works]

3. RESOLUTION NO. 63-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting the Vantagecare Retirement Health Savings Program (The "Plan"); Directing That the Assets of the Plan Be Held in Trust for the Exclusive Benefit of the Plan Participants and Their Beneficiaries; Authorizing the Town Manager to Execute the Declaration of Trust of the Town of Palm Beach Integral Part Trust; Designating the Town Manager, or His Designee, as the Coordinator and Contact for the Plan and Authorizing the Town Manager on Behalf of the Town to Execute All Documents Necessary to Effect and Perpetuate the Plan and to

Approve Future Changes to the Plan as May Be Allowed by Law.
[William C. Crouse, Human Resources Director]

4. RESOLUTION NO. 64-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Laro Service Systems, Inc., for Town of Palm Beach Janitorial Services, Sealed Bid Number 2003-09.
[Albert P. Dusey, Director of Public Works]

5. RESOLUTION NO. 65-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Town of Palm Beach Police Department Local Law Enforcement Block Grant Program Application to the Florida Department of Law Enforcement and Authorizing the Mayor to Execute the Same on Behalf of the Town.
[Michael S. Reiter, Chief of Police]

6. RESOLUTION NO. 66-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the First Amendment to Rooftop Lease Agreement Between the Town and Nextel South Corporation, d/b/a Nextel Communications and Authorizing the Mayor to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Assistant Town Manager]

F. OTHER

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

2. Approval of Town Employee and Retiree Medical Insurance Premiums for 2004. [Peter B. Elwell, Town Manager]

3. Request to Form Selection Committee- Consultants' Competitive Negotiation Act- Sewer Pump Station.
[Albert P. Dusey, Director of Public Works]

Councilman Wyett moved approval of the Consent Agenda, as presented. The

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

VIII. REGULAR AGENDA

A. Old Business

1. Continued Discussion of Town Strategies for Preventing/ Addressing "Deterioration by Neglect" of Landmark Structures. [John C. Randolph, Town Attorney]

Town Attorney Randolph referred to his letter, dated November 4, 2003, to the Mayor and Town Council in regard to Town strategies for preventing/addressing "deterioration by neglect" of landmark structures. He explained that the issue had evolved as a result of problems encountered by the Town in regard to the matter of deterioration by neglect at a particular property in Town. He stated that the concerns seemed to be that the Town seemed not to be able to deal with the property as quickly as it should, in order to eliminate the blight that such a property may cause for the Town and for a neighborhood. He reviewed the pros and cons of posting a bond in regard to alterations or improvements relating to designated landmark properties as a devise to protect the Town.

Director of Planning, Zoning & Building Robert Moore advised that staff had checked with various communities in regard to a bond being used in a landmark program, and none of them required a bond for alteration or improvement of landmark properties. He advised that he had requested that Jane Day, Preservation Consultant, contact each of the communities to explore the issue. He reviewed the procedure that the Town had followed with two landmark properties in question. He noted that after Ms. Day received the results of her inquiries, staff would evaluate any other system that had been implemented by other communities.

Mayor Smith suggested that input be requested from the Preservation Foundation, and the Historical Society of Palm Beach, and that all information be gathered for presentation to the Town Council at the February Town Council meeting.

President Pro-Tem Goldblum moved deferral of the issue until the February 2004 Town Council meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. Proposal for Dog Park in Lakeside Park.
[Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that he was submitting a preliminary design for a dog park in Lakeside Park, as requested at the last Town Council meeting. He described the dimensions of the dog park, and the associated facilities. The cost estimate for the dog park was $50,000. He noted that a letter had been received from Park Place Condominium at 269 S. Lake Drive, and staff had reviewed their comments and questions:

1. Who will maintain the park?

   Response: The Town of Palm Beach

2. Does the Town payroll have adequate funds to provide an attendant?

   Response: There was no intention of having an attendant.

3. Will there be specific hours?

   Response: The proposal is dawn to dusk.

4. Dog walkers seem to prefer early morning and dusk, which may mean overtime for an attendant.

   Response: There was not a proposal for an attendant.

5. Has consideration been given to the survival of the grass and trees?

Response: Yes, Mr. Ugi had visited a county park in Delray, and the intent was to use the same type of grass, St. Augustine.

6. Who will clean the park - spray disinfectant so that the accumulated urine does not become toxic, as well as pick up the dog litter, which is bound to smell in 90 degree heat with 100% humidity?

   Response: The individuals who pick up after their dogs. Containers in the park will be serviced five days a week. There was no intention to disinfect the park, as staff did not believe there was a need for that. Maintenance of the grass, etc. was planned on a weekly basis.

7. Who will ensure the dog park is used only by Town Residents?

   Response: No one. It is an open park, like all Town parks, and is not restricted just to residents.

8. How will the Town handle additional traffic?

   Response: Staff did not anticipate traffic generation with this type of facility. Staff did acknowledge that at certain times of the year there may be some parking problems, however, without any experience there was no way to know the activity that may be generated by the dog park.

9. What remedies are offered when the barking exceeds the allowable decibel level?

   Response: Code Enforcement will be relied upon. If there is a problem with a barking dog, the dog and owner would probably be asked not to come to the park again. There were proposed rules that would control aggressive dogs and other situations.

10. Who will mediate in the case of dog fights?

    Response: The dog owner is responsible for the dog at all times. Aggressive dogs will be banned over time.

11. What is to stop someone from putting a dog or dogs in the park and going jogging, walking, or sitting on the seawall, without attending to the dog(s)?

    Response: Other than the rules, staff believed that peer pressure would have some effect. Also, complaints from the public may occur, which staff would respond to. The Police Department could be called at any time for any particular problem that was occurring.

Town Manager Elwell addressed the question of liability and insurance coverage, and noted that the Town's insurance carrier had advised that no additional insurance would be required, and that the Town was covered for the facility under its existing coverage; there would be no additional cost. He explained that the Town, of course, would incur some additional liability anytime any type of facility was offered to the public. One issue for consideration by the Town Council was the potential risk of offering the facility to the public; the additional liability the Town would incur would be limited by the State Statutes, and also in the same manner as liability is limited on unguarded beaches, for example, where clear signage is posted.

In response to Councilman McDonald, Mr. Dusey replied that he did not believe that a traffic study was necessary, as there would not be a significant difference in traffic; he advised that staff would speak with other municipalities that had dog parks in regard to traffic generation. He explained that he did not see the necessity for a full time attendant, after checking with similar facilities in other areas. He noted that he agreed that the parking at the marina had never been sufficient, and staff had tried to make it as efficient as possible.

In response to President Pro-Tem Goldblum in regard to his concern with the nearby marina parking, Mr. Dusey replied that when the marina was expanded, additional parking spaces were provided; there were no covered meters on Lake Drive, as that could not be legally done.

Town Manager Elwell commented that there had been a time when meters were physically covered; the practice had been discontinued. In certain locations in Town now, permits could be purchased on a quarterly basis that allowed parking in a metered space without having to feed the meter.

Police Chief Reiter responded to the concern of President Pro-Tem Goldblum regarding the possibility of adding meters to the east side of Lake Drive. He explained that in peak season, there were no spaces available on Lake Drive; off season there were frequently spaces available, however, when all of the boat slips were taken there were never spaces available; occasionally, there were not even spaces available in that area for those with permits. He explained that analyzation of adding parking meters on the east side of the street had not been completed.

In response to President Pro-Tem Goldblum, Town Attorney Randolph advised that the greenspace amendment required a referendum if the Town was going to either dispose of property, or if property was improved by placing structures thereon. The Town Charter referred to above ground structures which diminish open greenspace. The Town would need to examine whether or not there were any structures proposed to be placed in the dog park which would diminish open greenspace. He stated that he had spoken with the Building Department regarding the plan that was proposed, and they had indicated they did not consider the perimeter sidewalks to be structures, nor was a perimeter fence considered a structure. He explained that he had indicated to Mr. Elwell previously that it seemed that the dog park was not being used for anything other than for greenspace, but that it would be greenspace that would be opened to the public. He noted that he had also indicated that someone could raise the issue that fences and sidewalks would be considered structures that would diminish open greenspace.

Councilman Wyett commented that the recommendation for a dog park had merit, however, it also raised a number of questions; he noted that he had eleven letters from residents– one in favor, ten opposed. He expressed concerns with the traffic situation during the season, the fence restricting the use of open space, the costs to maintain the park, and the lack of a full time attendant.

Mr. Dusey replied that the costs of maintenance would not be significant, as staff maintained the area anyway; he advised that he had not been requested to consider any other location for the dog park.

The following members of the public addressed the Town Council in favor of the dog park:

Mr. Stuart Schulman
Mrs. Patty Graebner
Mrs. Rebecca Williams
Mrs. Cathleen McFarlane Ross

The following members of the public addressed the Town Council in opposition to the dog park:

Mr. Douglas Williamson
Mrs. Barabara Scofield (Noted that the presidents, representing the boards, of all of the major buildings facing S. Lake had sent letters very strongly opposing the creation of a dog park on S. Lake. She requested that the letters be recorded in the Town Council minutes).
Mr. Robert Smith, on behalf of the apartment building at 315 S. Lake, presenting a resolution

from the Board of Directors.

Former Mayor Yvellene deMarcellus Marix spoke in opposition to the location of the dog park, noting that the greenspace should remain open. She also noted that there were many irresponsible dog owners; also, dog owners on the other side of the bridge would want to take advantage of the dog park. She suggested more research on the subject, stating that the idea of a dog park was a good idea, but not in the proposed location.

President Pro-Tem Goldblum moved deferral of the dog park issue so that other locations could be researched that would be of less impact to nearby residents, and offer enough parking. The motion was seconded by Councilman McLendon.

Councilman McDonald suggested that since Mr. Dusey was presenting a report on all Town-owned properties next month, the dog park might be re-visited at that time.

Mayor Smith commented that she was glad to see the public comment this morning, and that the Town Council looked forward to hearing from residents on many other issues, such as the $49 million budget. She stated that she believed that it was a good decision to look for other locations of the dog park, and that she looked forward to seeing residents come back to Town Council meetings to comment on other issues of importance to the Town of Palm Beach.

President Brooks commented that he owned a large dog, and supported a dog park. After listening to the public comments today, he stated that he believed that further examination was needed. He thanked the public for their comments, as well as his colleagues on the Town Council, and Town staff.

On roll call the motion to defer the dog park issue to the December 9, 2003, Town Council meeting carried unanimously.

Town Manager Elwell clarified that the dog park was still conceptual at this point, and that he understood that next month the broader issue of Town-owned parcels would also include discussion regarding a location for the dog park, with no definitive decision being made at that time regarding a dog park.

3. Lake Worth Inlet - South Jetty Sand Tightening by the United States Army Corps of Engineers.
[Albert P. Dusey, Director of Public Works]

Town Manager Peter Elwell referred to the memorandum dated November 4, 2003, included in the back-up material for the meeting, in regard to the south jetty sand tightening project. He noted that the project had gone very well and acknowledged the professionalism of Dave Fenton of Jay Cashman, Inc., and his team. He stated that Cashman had been first class all the way, and had gone to great lengths to make the barge deliveries possible. He thanked Dave Fenton and the Jay Cashman company for their cooperation. Mr. Elwell recommended that the Town Council authorize that he have the ability to grant Jay Cashman, Inc., on a limited basis, to bring in the rock by truck, on only those occasions when rough weather would require it.

President Pro-Tem Goldblum moved approval of authorization being granted to Town Manager Elwell to authorize Jay Cashman, Inc., on a limited basis, to bring in the rock by truck whenever needed. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

B. New Business

1. Proposed Retention of Smith and Ballard, P.A., to Represent the Town in Tallahassee on the Emergency Angioplasty and Other Issues. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum dated November 7, 2003, included in the back-up for today's meeting. He summarized the information regarding the work done to date by Smith & Ballard on behalf of the Town, and recommended that the Town Council authorize the retention of Smith & Ballard, at a fee of $40,000 annually, in accordance with Mr. Ballard's letter of proposal dated November 6, 2003.

Councilman Wyett moved approval of the retention of Smith and Ballard, P.A.,

to represent the town in Tallahassee on the emergency angioplasty issue, and on other legislative and executive branch issues during the next year. The motion was seconded by Councilman McLendon.

Councilman McDonald requested further information on the additional issues that Smith & Ballard may be handling.

Mr. Elwell advised that the windstorm insurance issue was of great importance to residents, and Smith & Ballard could provide assistance in that regard; beach funding was also an issue of concern, as was the erosion control line issue. There was also a variety of transportation issues; the Florida League of Cities also had an agenda of broad statewide municipal issues.

Councilman McDonald suggested that the retainer letter list the issues of concern.

Town Manager Elwell advised that the issues would be listed in the retainer letter, requesting the assistance of Smith and Ballard on each of them.

Mayor Smith commented that she also would like to be very specific in the objectives that the Town would like Smith and Ballard to pursue; she noted that she would like to see the emergency angioplasty issue passed this year

President Brooks complimented Mr. Elwell for negotiating such an agreement with Smith & Ballard, a very prestigious lobbying firm, well-connected with the power structure in Tallahassee.

On roll call the motion carried unimously.

2. Request for Extension of Time in the Sale of the Town's Pike Road Property. [Peter B. Elwell, Town Manager]

Town Manager Elwell advised that when the Town Council approved the contract for the sale of the Pike Road property, there had been a very specific time line of 30 days for the inspection period, and then up to 60 days between the end of that inspection period and the closing date. During the inspection period an environmental assessment of the property had been done, and there were some issues that had arisen from that which necessitated some additional time. There was no expectation at this time that there was any threat to the ultimate transaction. He noted that there were very limited circumstances in the contract that would allow the buyer to cancel; the only way that the buyer could cancel was if the issues ultimately prevented the development of the property to its highest and best use, and that was not expected. In order to move the project forward, 45 additional days were being requested to clarify the issues

Councilman Wyett moved approval of authorizing Town Manager Elwell to allow the buyer 45 additional days for the inspection period regarding the sale of the Town's Pike Road property. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Proposed Inclusion of Town-owned Properties in a Designated Brownfield Area Within the City of West Palm Beach [John C. Randolph, Town Attorney]

Town Attorney John Randolph advised that the Town had received a notice from the City of West Palm Beach in the consideration of a Brownfield area in the City of West Palm Beach. A meeting of property owners, one of which was the Town of Palm Beach, had been held to discuss the advantages of being contained within such a designated area. He advised that he and Town Engineer Bowser had attended the meeting and the City would be holding a public hearing on November 24th, to consider a resolution to designate the Brownfield area, and unless the Town opted out, it would be included within that particular area. There would also be the opportunity after that meeting to contact the City and advise them of any other properties that the Town would like to have contained within such a site. The site presently contained within the Brownfield area was the Town property west of Dixie, which was located in an area where pollutants had been identified. The purpose of naming a Brownfield site was to attempt to redevelop the area where properties were either polluted, or perceived to be polluted. The fact that properties were located within a designated area did not mean that the property was polluted, but only that it may be polluted or perceived to be polluted.

The advantages of being located within such a site were the incentives that would be granted under the Florida Statutes for properties located within such a site. The incentives included liability protection, liability protection for lenders who may loan monies on the properties, tax increment financing, reduction of certain requirements related to occupational licenses, grant programs, zoning incentives to reduce review requirements for redevelopment, flexibility of parking standards, one stop permitting, etc. He recommended that the Town not opt out of the Brownfield area, and that the Town property on the west side of Dixie be included within the Brownfield area. If no action was taken today, the property would be included in the Brownfield area. The action that the Town Council would have to take today was in regard to the Town property on the east side of Dixie, if the Town Council would like to direct staff to explore that property being included within a Brownfield site.

President Pro-Tem Goldblum moved approval of the inclusion of Town-owned properties, to include Town-owned properties east of Dixie, in a designated Brownfield area. The motion was seconded by Councilman McLendon.

President Brooks suggested that a current appraisal be done on the Town property involved.

On roll call the motion carried unanimously.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 18-03 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 Statutes, Amending the Future Land Use Element to Clarify the Range of Uses That Are Appropriate in Each of the Future Land Use Categories, Including the Role and Appropriateness of Planned Unit Developments in the Various Land

Use Categories. Modifying the Comprehensive Plan to Include Certain Uses Which Are Listed as Permitted Special Exception Uses in the Town's Zoning Code Which Are Not Directly Addressed in the Comprehensive Plan; Amending the Comprehensive Plan to Extend out Planning Timetables for Capital Improvements and Public Works Projects Projected for the Town's Shoreline Protection Program; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date. [Timothy Frank, Planning Administrator]

Town Attorney Randolph read Ordinance No. 18-03 by title as printed above.

Councilman Wyett moved approval of Ordinance No. 18-03 on second reading. The motion was seconded by Presient Pro-Tem Goldblum. On roll call the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 4-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Duty Disability; Amending Section 82-122 to Restate the Same to Eliminate the Five-Year Limit to Minimum Duty Disability Pensions for Public Safety Officers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for a Retroactive Effective Date of January 1, 2003.
[John B. McCracken, Esq.] *Deferred from the January 14, 2003, Town Council Meeting.*

(The Town Council approved the first reading of Ordinance No. 4-03 without the underlined sentence as shown above).

Town Manager Elwell recommended that Ordinances Nos. 4-03, 5-03, 6-03 and 7-03 be viewed as a group, unless the Town Council decided, after discussion, to move forward with a first reading on them. He explained that he believed the ordinances contained appropriate amendments to the Town's retirement system, and that they would be of little or no long term cost to the Town, while providing enhanced benefits to the employees. The ordinances had been deferred because of the downturn in investments. Now that the market was doing better, there was not enough hard data to indicate what the actuarial impact was going to be and how much had been recovered from what was lost during the two-three years of downturn in the market. He suggested that it would be prudent to approve the enhancements when the Town was making money, rather than when the market was down, so that short term costs to the taxpayers were precluded. He recommended that the Town Council wait, and receive an actuarial report, and consider moving forward during the budget considerations next year; he recommended deferral of the first reading of the ordinances to the regular monthly Town Council meeting of July 2004.

Sgt. George Frick, Chairman, Public Safety Pension Board commented that the Pension Board had always prided itself on not forwarding benefits for approval unless a thorough review had been done and the recommendations were time appropriate. He explained that the actuary had indicated that there was no impact on the fund on the part of the Town. For many years the Town had a positive effect, and when the market turned, it was not the goal of the Pension Board to take advantage of it in any way. The ordinances in consideration today had been bundled, because they were no cost and because there were several ordinances; some of the benefits had now been on hold for 2-2 ½ years. He stated that some of the issues were time-sensitive; officers that could purchase a benefit may leave or retire before they could do so; the disability pension enhancement could also affect someone. He stated that he respected Mr. Elwell's opinion, however, he urged the Town Council to approve the ordinances in question today.

Mr. Elwell replied that the long term applications of the ordinances in question were of little or no cost to the Town; the difficulty was that the actuaries were looking at a thirty year costing of a benefit, making the assumption that the assets of the fund will grow at least 8% per year. When the funds were not growing by that amount, and in recent years the assets had been losing, rather than growing, the burden would then fall to the taxpayers. The greatest challenge faced in the budget cycle six months ago was the $1.7 million increase in the funding of the retirement program. He noted that his recommendation to defer was no indication of anything lacking commitment to the welfare of employees – the improvements were appropriate and ought to be made when it was ensured that they were being done in a fiscally responsible manner. In addition, earlier on the agenda, he had recommended a new benefit for all employees – the health care retirement savings fund that will provide an opportunity for employees to put away money in a tax exempt manner that would help address medical care during an employee's retirement life cycle. In addition to that, there had been a premium decision that was made regarding the funding of the Town subsidy for the retirees medical premiums for this coming year. Both of those actions had reiterated the Town Council's commitment to the well being of the employees.

Mr. Elwell further explained that there was not a long term cost – the actuarial analyses indicated that over a 30 year period it was reasonable to expect that the Town would have no costs in the case of three of the ordinances, and little or nothing in the case of the fourth, however, those actuarial analyses assumed an 8% rate of growth in the assets of the fund annually. In the short term there would be costs to the Town.

Mr. Frick commented that the actuary said that, over 30 years, the assets would make 8%; more money would have to be expended by the Town if 8% was not made annually. In the years that the assets made 10%, the Town would put in less money.

In response to Mayor Smith, Mr. Frick replied that not passing Ordinance No. 4-03 may be detrimental to some drop members, who would no longer be eligible for the benefits described therein, as they would drop this year and no longer be in the system.

Human Resources Director William Crouse noted that if Ordinance No.7-03 was passed the way it was set up, anyone within that time period would have the option to purchase the time; anyone who had been employed during the time period would have the option to buy the benefit.

Mr. Frick replied that once an employee left the Town, the employee had to do something with the drop money, and if the employee could not partake of the benefits in the ordinance today, the money would have to be put into some other vehicle, and the option would be lost.

Mr. Elwell asked Sgt. Frick why the opportunity to enhance the benefit through purchase would be lost?

Sgt. Frick responded that people may decide to move money someplace else; when patrolmen leave after 25 years they would not be going to wait for something that may or may not be there.

In response to Mayor Smith, Mr. Elwell replied that the difference in deferring for eight months would be that an actuarial report would be provided in the spring that would tell the Town Council the actual impact to the funds, and to the Town's funding of the funds based on the fact that the markets have recovered.

In response to President Pro-Tem Goldblum, Finance Director Skittone reported that the recent quarterly reports had indicated that both funds were showing 17% returns as of September 30, 2003.

In response to President Brooks, Mr. Elwell replied that the ordinances did not have a retroactive effective date.

Councilman McDonald moved approval of Ordinance No. 4-03 (without the underlined sentence: Providing for a Retroactive Effective Date of January 1, 2003.) and Ordinance No. 7-03 on first reading. The motion was seconded by President Pro-Tem Goldblum. Discussion then took place and there was no vote on the motion.

Mr. Elwell stated that performance of the market and the other cost aspects of the fund would need to be distilled into an actuarial report determining the funding requirement for the Town. He noted that between now and when the ordinances had second reading, staff would need to explore the potential modification of the ordinances, because they were written to affect both police and fire-rescue employees at this time; further negotiations may be required with the fire-rescue union representation – staff would explore the issue and report back to the Town Council at the December meeting.

Town Attorney Randolph read Ordinance No. 4-03 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 Duty Disability; Amending Section 82-122, to Restate the Same to Eliminate the Five-Year Limit to Minimum Duty Disability Pensions for Public Safety Officers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; providing an Effective Date.

Councilman Wyett moved approval of Ordinance No. 4-03 on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

In response to Mayor Smith concerning the applicability of this ordinance to the General Employees Retirement Board for consideration, Mr. Elwell replied that the General Employees Retirement Board had considered three of the four ordinances approximately one year ago, and the Board had determined to wait and make a request to approve the benefit in this manner in the future, once there was return health in the market and greater earnings in the fund. He explained that the General Employees Retirement Board was scheduled for a meeting in a few days, and it was reasonable to request that these ordinances come forward now and be considered on the same timetable as these two ordinances being acted upon today, with consideration next summer of the other matters.

2. ORDINANCE NO. 5-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Pensions for Surviving Spouses of Deceased Retirees; Amending Section 82-147(b) to Make it Retrospective Under Certain Conditions; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John B. McCracken, Esq.] *Deferred from the January 14, 2003, Town Council Meeting.*

President Pro-Tem Goldblum moved deferral of Ordinance No. 5-03 to the July 2004 regularly scheduled Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

3. ORDINANCE NO. 6-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Adding Section 82-73 to Accept Prior Service with Other Municipal, County, or State Governments or Districts Provided the Member Contributes the Sum that Would Have Been Contributed to the Retirement Plan; Addition Section 82-54(d) to Allow Purchase of Service Credit by Members of all Benefit Groups; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John B. McCracken, Esq.] *Deferred from the January 14, 2003, Town Council Meeting.*

President Pro-Tem Goldblum moved deferral of Ordinance No. 6-03 to the July 2004 regularly scheduled Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

4. <u>ORDINANCE NO. 7-03</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing Certain Benefit Options Under Chapter 82 of the Code of Ordinances to Benefit Group Firefighters and Benefit Group Police Officers Who are DROP Participants in the Retirements System; Providing an Option to Such DROP Participants Under Section 82-64, Code of Ordinances, to Elect, as of September 30, 2002, to Purchase an Increased Multiplier for Calculation of the Amounts of Pensions Under Section 82-59; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John B. McCracken, Esq.] *Deferred from the January 14, 2003, Town Council Meeting.*

Town Attorney Randolph read Ordinance No. 7-03 by title:

An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing Certain Benefit Options Under Chapter 82 of the Code of Ordinances to Benefit Group Firefighters and Benefit Group Police Officers Who are DROP Participants in the Retirements System; Providing an Option to Such DROP Participants Under Section 82-64, Code of Ordinances, to Elect, as of September 30, 2002, to Purchase an Increased Multiplier for Calculation of the Amounts of Pensions Under Section 82-59; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Town Manager Elwell noted that the effective date of this ordinance would provide an opportunity to purchase prior credit time.

Councilman Wyett moved approval of Ordinance No. 7-03 on first reading. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. ORDINANCE NO. 19-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 66, Article IV, Division 5, Section 66-311 of the Town Code of Ordinances; Providing for Removal of Prohibited Invasive Non-native Vegetation; Providing for Prohibited Plants; Providing for Exemptions; Providing for Future Removal Requirements; Providing for Protection of Natural Areas and Incentives; Providing for Enforcement; Providing 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. 19-03 by title:

An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 66, Article IV, Division 5, Section 66-311 of the Town Code of Ordinances; Providing for Removal of Prohibited Invasive Non-native Vegetation; Providing for Prohibited Plants; Providing for Exemptions; Providing for Future Removal Requirements; Providing for Protection of Natural Areas and Incentives; Providing for Enforcement; Providing Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Town Manager Elwell explained that Palm Beach County had adopted a comparable ordinance that had a timetable similar to the one set forth in Ordinance No. 19-03. Staff had recommended that the Town opt out of the countywide ordinance, and adopt its own ordinance, that was more restrictive, so that local enforcement could be provided. Staff believed that it was in the best interest of Town residents that anyone that does not voluntarily take the steps to comply with the ordinance would deal with Town employees in the enforcement of the ordinance, rather than dealing with County employees.

In response to Councilman McDonald regarding Australian Pines, along A-1-A, across from Phipps Park, Public Works Director Al Dusey reported that the County had been asked to remove them; they had agreed to do that, and then re-plant the Australian Pines with a different species.

Councilman Wyett moved approval of Ordinance No. 19-03 on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Town Manager Elwell announced the distribution of the FY2003 budget packets; the updated long term financial plan; and the Finance Department's achievement as a recipient of the GFOA award.

President Pro-Tem Goldblum requested that the information regarding the homestead exemption available to taxpayers be publicized. He also requested that the budget documents/packet could be improved by printing on recycled paper.

Councilman McLendon noted a Public Works meeting should be scheduled. *Town Manager Elwell responded that the meeting would be scheduled through his office.*

Mayor Smith explained that over the past few weeks she had received several phone calls regarding the donation of a nativity scene to the Town of Palm Beach. She explained that additional research would be done, and the Florida League of Cities would be contacted to determine the policies practiced by other communities.

XI. DEVELOPMENT REVIEWS

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

Development Review matters.

A. Appeals

1. NONE.

B. Time Extensions

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

(A verbatim transcript of the discussion follows)

Brindell: I'm here on behalf of Rafferty Lending. Doug Barnes, again, is here from Rafferty. He came down from New York. I want to sort of bring you up to date on where we left off last month and where we are this month, and then, if you have some specific questions for Doug he will certainly be happy to answer them.

You may recall that the meeting last month was October 14th. Rafferty had filed a foreclosure action here in Palm Beach County. An order of foreclosure had been entered. The sale was scheduled for two days later on the 16th. On the afternoon of the 15th, the title holder, SLM Palm Beach, filed bankruptcy in federal court in New York. That immediately stayed the foreclosure proceeding. It also put the asset of SLM, which was the property, into the control of the court and out of Rafferty's control, and out of SLM's control, absent some authority from the bankruptcy judge. I informed Mr. Moore and Mr. Randolph when I learned of this – what the situation was – we obviously had a couple of outstanding issues there: One was the renewal of the letter of credit that you asked for at the last meeting. Also, there were a couple of excavations, the pool and the basement, which needed to be filled in. The torn screen needed to be taken down. Then there were clean-up issues which had to do with sodding and irrigation. I had a couple of conversations with Bob and with Rafferty's bankruptcy counsel, and his bankruptcy counsel talked to SLM's bankruptcy counsel. The bottom line is they came up with a stipulation to present to the court without a hearing, that would allow these safety issues to be taken care of immediately. Immediately being a relative term of course. Which is filling in the pool, filling in the basement, and taking the torn screen down. Last Thursday, the bankruptcy judge approved that stipulation, and under that stipulation it authorizes the letter of credit, which Rafferty did renew, even after the bankruptcy was filed, they went ahead and renewed that – to draw on that letter of credit to complete those safety related issues. I believe Mr. Randolph had conversations with the counsel for both of the bankruptcy participants, and their signatory on the stipulation. So, where we are now is that Rafferty is authorized to go forward, pursuant to your willingness to draw on the letter of credit, and have the contractor, Marion, continue forward to satisfy those safety concerns. I was put in the position of having to withdraw as counsel to both of them, but because we have these pending matters here; that is, the completion of the demolition, the outstanding code enforcement issue, and then the ARCOM and the administrative appeal standing out here, they allowed me to go forward and continue to represent Rafferty in these matters with respect to those issues. So, that was part of the stipulation that the court also approved, but that's my limited role here with respect to these parties. So, Doug is here if you want to ask him some questions, but I believe he has already directed, or asked, Marion to proceed forward to get those items done.

McDonald: So, when do you think they will be completed?

Barnes: The work is supposed to begin on Monday, and they anticipate a week – may take a few extra days, but a week is the estimate I've been given. I always like to say it may take a little bit longer, because it usually does.

McDonald: Thank you. How would you feel about also the Town asking you if you would agree to a stipulation to go ahead and do the sodding and irrigation?

Barnes: I have no objection to that. My only concern is where we'd be giving SLM, who filed the bankruptcy, an opportunity to delay the bankruptcy further. My goal and my plan is to get relief from stay, to move forward with the foreclosure sale, and move forward with the entire project.

McDonald: Have you filed a motion for relief from the stay?

Barnes: No, we wanted to get this motion to take care of the health and safety issues done first, so as not to muddy the waters with the relief from stay motion. We plan on filing that the end of this week – the relief from stay.

McDonald: Okay, because the judge signed the order on the stipulation on November 6th, so you're going to file your motion at the end of this week or next week?

Barnes: Hopefully at the end of this week. That's the plan. What I'd like to do is get relief from stay before anything else, and then at that point we can address the sodding and the removal of the parking lot and those items.

McDonald: Do you anticipate that they're going to object to the motion?

Barnes: For relief from stay? I know they will. The reason they filed bankruptcy was to delay.

McDonald: All right. What do you think your chances of prevailing on that motion are?

Barnes: The bankruptcy counsel feels it's very good.

McDonald: And would the judge make a decision when the motion is heard, or is it something that is delayed and heard –

Barnes: It's going to take as long as – you know, depending on the judge's calendar and how many trials he has – it could take a month - it's really up to him.

McDonald: **I'd like to have them come back next month, because you would have filed your motion for vacating the stay by then, and you would probably have an answer by then, because I am recommending to the Council that if you don't prevail in that motion that they proceed with a motion or a stipulation, whatever applies, for the irrigation and sodding.**

Barnes: I think that makes sense.

McDonald: **All right. So, that's what I would suggest.**

Brooks: I would just like to add that for Mr. McDonald's request, we are entering into our "dry period" and unsodded land there, with that slight hill – those neighbors, again, will be putting up with aggravation from this perennial problem. So, I would join Mr. McDonald in requesting that we try and get –

which is standard, as you know, in the Town for any "ordinary" type of demolition.

Barnes: If it wasn't for the bankruptcy, these items would be taken care of already, so as soon as we can get in there, we'll take care of them.

Brooks: Anything else? Do you need a motion for time extension?

Brindell: Well, I also want to ask — do you need something from them that directs or authorizes Rafferty to draw on that letter of credit through your authorization, since the letter of credit is for your benefit – it's not something that they can just do something with, as I understand it.

Randolph: I understand that we've got the authority to do that, but –

Brindell: I'm just asking – I want to make sure that you have whatever you need to let us get that done.

Randolph: I suppose it would be beneficial to have a motion to authorize Rafferty, after staff approval, to draw against the letter of credit, to accomplish those public safety items.

Moore: The letter of credit is for in excess of $140,000.

McDonald: **So moved - wait – how long was this renewed for, after the bankruptcy was filed?**

Moore: Three months – until January 31st.

McDonald: After the bankruptcy was filed?

Brindell: Well, it was all happening simultaneously.

McDonald: So, it's 90 days from what date?

Barnes: It's until January 31st.

McDonald: **I move approval of –**

Wyett: **Second.**

Town Clerk Pollitt calls roll, and motion is unanimously approved.

Brooks: Now, do they need a motion for time extension?

Elwell: **The time extension will hold over, but you need to defer them – I was just going to make sure that the motion did include deferral until next month. As long as your motion just now included the deferral until next month, I think you're all set.**

Ed Dicker: My name is Ed Dicker. I represent Tres Vidas Homeowners Association, nearby property owners. They've been very involved over the years with respect to this project. Mr. Tony O-----, who is a board member, had hoped to be here today, and could not, and asked me to be present representing the association. The association board wanted me to pass on to you their deep concern over the condition of the property – not only the safety issues, and according to board members and residents, this area has been used recently by homeless individuals, for illegal drug use, and is creating a great concern with respect to the residents. They would urge the Town, as you are in the process of doing, to address the safety issues certainly; also, the aesthetic issues are of concern, whether it's with respect to planting sod, and whatever other measures can be taken, and if the bankruptcy is tying this up, the association would be asking the Town to step in to see what work could be done by the Town if the bankruptcy stay is not lifted to where the actual property owners, or other interested parties, are unable to do so. They're looking, the residents, and the board, and the association as a whole, are looking to the Town to step in and fill in the missing pieces if the other parties are unable to. The residents do appreciate addressing the safety issues, the filling in of the pool, the removal of the screen, etc., but based on the passage of time, the association would be looking to see more than that, although, again, that's important. But, they would be looking to see more than that as soon as possible, and that's what they wanted me to present to the board today.

Brooks:- Let me go to counsel. Skip, can we do that if this is tied up in bankruptcy? Would we be trespassing?

Randolph: Not at this particular time – I don't think we have the ability to do that. I think we have to get the bankruptcy cleared up.

McDonald: Mr. Dicker, what we tried to do today was, and I was ready to actually suggest to the Town that we hire a bankruptcy counsel, and file a motion in the New York Bankruptcy Court, to ask the judge to let us do that. But because they filed a motion for relief, I think we should let them have a chance of winning that motion, because that would be the fastest way. And, then, if they don't get that, then next month perhaps we could proceed with my suggestion. But, I don't know of any faster way, and I don't think the Town can do anything on that property while it's in bankruptcy.

Goldblum: The only thing that I would like is for Mr. Elwell to talk with Chief Reiter to see if you can keep a closer eye on that property to keep the derelicts out, and the prostitutes out, and the drug dealing out.

Elwell: We'll keep a closer eye on the property.

Smith: We can't go in and take that screen down? I think if that screen were to let loose now – it's all in shreds and it would be a public safety thing if it blew over.

Barnes: The screen is coming down within the next week, starting Monday.

Brooks: Thank you Ed, and we are very sensitive go the good people at Tres Vidas, and I know Tony, and they've been great people and it's unfair what they've been putting up with.

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end of transcript
tape 2

2. 455 North County Road- Status Report.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Mrs. Wendy Victor addressed the Town Council, stating that on Saturday she had received notification of proposed re-zoning for the property at 455 North County Road; that there would be a public hearing before the Town Council on December 1, 2003, for the property to go from R-AA to R-A zoning. She noted that the entire property was landmarked, and that a proposed lot split had been brought up by the Landmarks Commission at its September meeting, whereupon she had inquired information from Director of Planning, Zoning & Building, Robert Moore, who had assured that, to the best of his knowledge, the owner would not be going to try a lot split. She explained that it was not just the house that was landmarked, but the entire property, and it did not seem appropriate to have a public hearing for re-zoning, if they would have to come to the Landmarks Commission to de-landmark the property. She noted that she had requested input from Mr. Pandula and Mrs. Polly Earl from the Preservation Foundation. She stated that it seemed that it would be contrary to the Comprehensive Plan and the Strategic Plan if the landmarking ordinance was overlooked and the greenspace around large houses was split to cash out on properties.

Town Attorney Randolph replied that staff did not know at this time what was going to happen in regard to the re-zoning, however, even if the property was re-zoned from R-AA to R-A, thereby allowing for smaller lots, that would not take the jurisdiction of the matter away from the Landmarks Commission, which had designated not only the house, but the entire property. Even if the property was re-zoned, the property owner would still have to come before the Landmarks Commission to obtain a determination as to whether or not a portion of that property would be released from the landmark designation.

Mrs. Victor responded that it seemed a slight waste of the time of the public to come to a public hearing, and then be told that it should go to the Landmarks Commission first if the lots would be split. In the meantime, of course, there was clearing of shrubbery, etc., that had already happened, and the Landmarks Commission had not been given a proposed landscaping plan.

Director of Planning, Zoning & Building Robert Moore advised that all property owners within 1,000 ft. had received notification. He explained that the public hearing scheduled for December 1st, was in front of the Zoning Commission, not the Town Council, and the Zoning Commission will then make its recommendations. He noted that staff had told the property owner to clear the property as it had become overgrown. He explained that all Town Council members had been sent notices in this regard as well.

Further discussion of this matter would take place after the luncheon recess.

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

The regularly scheduled meeting of the Town Council for Wednesday, November 12, 2003, was reconvened at 2:00 p.m.

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Discussion continued regarding 455 North County Road:

Attorney Frank Lynch, on behalf of the property owner, addressed the Town Council, explaining that the site had been cleared, no trespassing signs had been posted, and the construction site had been cleaned up and secured. Some environmental and structural reports were expected at the end of the week, and there was a meeting planned at the site to go over those reports on Monday. There were some potential issues that may have to be addressed before moving forward, because of the structure being exposed so long. Safety rails were being installed on the stairs and balconies. The permits had been signed over to the contractor, and it was expected that the property would be closed in with temporary doors by the end of February 2004.

Mr. Moore advised that staff had met with the contractor; he explained that staff had addressed the application for re-zoning earlier in the meeting as a result of an inquiry from Mrs. Wendy Victor. He requested information from Attorney Lynch regarding any modifications to the application that may be planned.

Attorney Lynch responded that the applicant intended to go forward with the re-zoning application; the plan was to request to re-zone the property from R-AA to R-A, with the intent to carve off a 30,000 sq. ft. lot adjacent to North County Road in lieu of the plan that had been submitted earlier.

Mr. Moore advised that the previous approval that was sought was for four R-B lots, and Mr. Lynch was now advising that the application would be modified to be one R-A lot, which would be 10,000 sq. ft. over the minimum of what would be necessary for an R-A lot. The Landmarks Commission would have advisory input with regard to this matter, and perhaps, based upon Town Attorney Randolph's final decision, actual jurisdiction over the issue of the re-zoning of the property; the Town Council, of course, would have the final authority.

Mr. Moore thanked the representatives of the applicant for the efforts in trying to get the property under control. The permits had been assigned, and staff had requested that the applicant's representatives appear in front of the Landmarks Commission to discuss the progress of going forward. He suggested that Mr. Lynch appear before the Town Council at its March meeting to update on the process; if staff found that progress had stopped for any reason, the "demolition by deterioration" issue would be re-opened.

In response to President Brooks, Mr. Moore explained that the application for re-zoning had been placed before the Zoning Commission, and would be heard December 1st or 2nd, 2003. That application would be for a recommendation to the Town Council by the Zoning Commission. There may be an interim step that the matter be placed before the Landmarks Commission as well, to receive their input before the Town Council reviewed the application for action during the first week of January workshops.

Councilman Wyett observed that re-zoning of the property may be contrary to the Comprehensive Plan.

Mr. Moore replied that there was a provision in the Comprehensive Plan that addressed density, however, the Town also had a subdivision ordinance as well, which would permit subdivision of property. In this case, the applicant was asking for a re-zoning on the property, and the Comprehensive plan would be one of the issues that was discussed at the Zoning Commission hearings. He explained that the property was transition zoned between R-AA, R-A, and R-B. The applicant's application was for R-B, which would give them four lots.

Attorney Lynch commented that he believed going to R-A was a better transition than going all the way to R-B, and that he would take all staff comments into consideration in the application.

The discussion of this item then concluded.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE #42-2003 The application of Richard Paul Richman and Ellen S. Richman relative to property described as Lots 2 and 2A, East Shore Addition; commonly known as 615 North Lake Trail; located in the R-B Zoning District. Variance to permit construction of residence using a point of measurement only on western portion of subject property abutting North Lake Trail of 13.8' feet NGVD in lieu of 7.5 feet NGVD maximum permitted (for purposes of determining maximum height and cubic content ratio.) *Deferred from the October 14, 2003, Town Council Meeting.*

The Town Council deferred Variance #42-2003 to the December 9, 2003, Town Council meeting earlier in this meeting, under Item V. Approval of the Agenda.

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

The Town Council deferred Special Exception #22-2003 with Site Plan Review to the January 13, 2004, Town Council meeting earlier in this meeting, under Item V.

Approval of Agenda.

c. SPECIAL EXCEPTION #28-2003 WITH SITE PLAN REVIEW AND VARIANCES The application of Karen M. True relative to property described as the West 18.23 feet of Lot 15, all of Lots 16 and 17, less the West 10 feet of said Lot 17, Block 3, Ocean Park, H.W. Robbins Addition to Palm Beach, Florida; commonly known as 176 Seminole Avenue; located in the R-B Zoning District. Special Exception and Site Plan Review to allow the construction of a two story, single-family residence on a non-conforming unplatted lot that is 89 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District; variance for a street side yard setback of 25 feet for a two story portion of the residence in lieu of the 30 feet minimum required for a street side yard setback in the R-B Zoning District; and, variance to allow the construction of a new swimming pool in the street side yard with a 10 foot setback in lieu of the 15 foot minimum required. *Deferred from the October 14, 2003, Town Council Meeting to ARCOM for Recommendation on the Size, Mass, and Site Plan.*

Ex-parte communications were declared by Councilman McLendon with Attorney Maura Ziska; by Councilman Wyett with Attorney Ziska, by President Pro-Tem Goldblum with Attorney Ziska, and by President Brooks with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, recalling that the applicant had appeared before the Town Council last month, and at that time the applicant had been directed to appear before the Architectural Commission (ARCOM) for their feedback and input regarding the site plan. She explained that ARCOM had been favorable to the project, and had one comment with regard to landscaping along the east property line. The applicant had revised the plan accordingly, and had since met with the neighboring property owner who had expressed concern regarding the landscaping. He had accepted the revised landscaping plan. She explained that the hardship for the application was that the lot was nonconforming, and was a corner lot as well, with two front side yard setbacks.

Zoning Administrator Paul Castro advised that the plans in front of the Town Council today reflected the recommended modifications of ARCOM.

Councilman Wyett moved approval of Special Exception #28-2003. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

2. New Business

a. VARIANCE #43-2003 The application of Deborah C. Maschmeyer relative to property described as lengthy legal description on file; commonly known as 180 Canterbury Lane; located in the R-B Zoning District. A variance to allow construction of 7.66 feet high wall along the west street property line of the lot, in lieu of the 6 foot high maximum above the crown of the road permitted by code; and, variance for street side setback of 1 foot without a hedge in lieu of the 3 foot setback with hedge required by code.

Ex-parte communication was declared by Councilman McLendon via telephone with Attorney James Brindell; by President Pro-Tem Goldblum with Attorney Brindell; by President Brooks via telephone with Attorney Brindell, relative to the application.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the west property line of the property in question bordered County Rd. at a curve, under a canopy tree condition. Traffic numbers indicated that there were approximately 10,000 trips by the property on a daily basis; the house was close to the road. He provided photographs of the property in question for the review of the Town Council, pointing out the dimensions of the current wall.

Architect Jacquie Albarran addressed the Town Council, providing an architectural rendering of the proposed construction. She noted that she had taken photographs for a five-minute time period, and in that time the Fire-Rescue Station had stopped all of the traffic; there had been big trucks and equipment going by every few seconds.

Attorney Brindell noted that there was also no sidewalk on the applicant's side of the street. He also noted that sound studies had been conducted on the property, and measurements reached 85 dB A, and as much as 75 dB A, 50' from the centerline of the northbound lane. Those levels exceeded the highway noise standards for a road of this type with a speed limit of 35 mph or less. He explained that every 3 dB A increase in noise level results in a doubling of the sound as heard by human beings, and it is not a linear projection.

Mr. Brindell said the 7'8" wall will produce about twice the sound reduction of a 6' wall, and moving the wall back will reduce the noise attenuation. He requested the variance be granted for the 7'8" wall with the hardship being the excessive amount of noise that occurs on the four lane roadway, not a neighborhood street, with the house being close to the roadway.

Mr. Brindell stated the second variance request was to place the wall one foot from the property line as opposed to the three feet required, and the landscaping plan showed plantings in front of the wall.

Ms. Albarran commented that Planning Administrator Tim Frank indicated a staff (ARCOM) approval for the wall would be forthcoming.

Zoning Administrator Castro added that most walls are staff approvals, although Mr. Frank's written comment was that it did not appear to meet the criteria for granting a variance. He continued that no special conditions or circumstances existed that are not unusual to any other property that fronts on County Road, North or South Ocean, North Lake Way, or Cocoanut where noise relates to the traffic. He added that this noise problem exists in many locations, and the Code requirement is a maximum of 6 ft. with 3 ft. off the property line to allow planting of an adequate hedge, not in the right-of-way. Mr. Castro said the department questioned the hardship and the application did not meet the criteria for granting a variance.

Mr. Brindell reiterated that a noise study was submitted with the application verifying the findings previously mentioned, and this road was busier than some of the roads mentioned by Mr. Castro. He said justification existed relating to the hardship.

Councilman McDonald said he did not see a hardship for the request, and obviously the buyer understood the problems with the site before purchasing the property, taking those problems under consideration before calculating the purchase price. He added the property was not dissimilar to other properties in the neighborhood nor was sound a reason to justify a variance. He said other solutions, including Architect Albarran's redesigns, were available for the perceived problems.

Mr. Brindell responded other variances for walls were granted in the past related to noise conditions of adjacent properties as well as security needs.

President Pro-Tem Goldblum suggested that the wall be 6', with 7' hedges and move the wall 3' feet inward on the property line.

Attorney Brindell replied that vegetation did not help that much with sound/noise. He noted that the noise expert had done an analysis that even if there was an 8' wall and it was moved back a foot, it made a significant difference in noise.

Mr. Luis Levi, acoustical consultant for the Maschmeyer project, addressed the Town Council and explained that the effect of hedges/vegetation as a noise barrier was negligible. He explained that if a 6' wall was built 3' from the property line, instead of having a 10 decibel noise reduction, it would be approximately 6 decibels. The optimum wall in this instance would be a 7' 8" wall on the footprint of the existing wall; that would reduce the decibel level by 10 decibels.

Councilman Wyett commented that he lived on a busy street and had a very thick hedge, which handled any noise problems from traffic. He maintained that it would be difficult for anyone in the Town to not hear some sort of neighborhood noise.

In response to Councilman McDonald, Attorney Brindell advised that the hardship was the noise issue, and that the location was a very busy area of Town.

Director of Planning, Zoning & Building Robert Moore commented that when the applicants had purchased the property, they had been made aware that variances for new construction on this property would be out of the question.

President Pro-Tem Goldblum moved approval of a wall at 6', instead of a 7'8" wall, with landscaping in front, with the hardship being the placement of the existing wall (as re-stated in the comments of Mr. Moore below). Councilman McLendon seconded the motion.

Mr. Moore commented that the wall currently existed in that location, and the applicant was asking to add to an existing wall that had been grandfathered, in order to have no more than the minimum that would be permitted if he had moved it 3' back; the applicant would still be able to plant the landscape in order to add softness to the wall. He reiterated that he did not believe there was a hardship in this case at all.

On roll call the motion carried 3/2, with President Pro-Tem Goldblum, Councilman McLendon and President Brooks casting affirmative votes; Councilman McDonald and Councilman Wyett casting dissenting votes.

b. VARIANCE #44-2003 The application of Hector Cortes relative to property described as Lot 10, Block 7, Royal Park Addition; commonly known as 212 Australian Avenue; located in the R-B Zoning District. A variance to allow a side yard and rear yard garden wall to be constructed at a height of 10 feet in lieu of the 7 foot maximum permitted by code.

Ex-parte communication was declared by Councilman McLendon via a telephone conversation with Attorney Peter Broberg; by President Pro-Tem Goldblum via telephone with Attorney Broberg; by Councilman Wyett with Attorney Broberg; by President Brooks via telephone with Attorney Broberg in regard to the application.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, exhibiting a drawing of the property in question. He noted that the property was adjacent to a commercial building; there was an alley in the back of the commercial building for deliveries, etc. There were also many cars going through the alley. The applicant was requesting a garden wall at 10' in lieu of the 7' maximum permitted, on the east side of the building – along the west side of the building at 7'. He explained that the hardship was the proximity of the property to the commercial building. The owner of the property had owned the property for 30 years, and had an ongoing problem with the noise, odor, etc. The property was 1' lower than the commercial property, and the wall would be beneficial for the property owner.

Director of Planning, Zoning & Building, Robert Moore, commented that the applicant had regularly addressed the issue throughout the years. He noted that the restaurant facility that had been offensive in the past was not in business at the moment; he also noted that a condition of operation for the next restaurant owner would be that the alley would be blocked by chain, and that the area would not be used by employees for breaks. He also noted that Mr. Cortes had experienced a great deal of anguish being right next to a commercial building, and the east side and south side of the wall was worthy of consideration; there was absolutely no reason to consider a 10' wall on the west side of the property.

Zoning Administrator Paul Castro added that the comments from other departments were as follows: the wall should be moved in 2 ½' from the rear of the property in order to avoid utility easement; Comprehensive Plan: does not meet the criterial for granting of a variance - would grant special conditions not enjoyed by others; Building Department: no hardship on west side; south and east side should be lower than 10', and questioned the hardship.

Mayor Smith commented that perhaps a lower wall would be more appropriate in order to give the applicant some relief from the proximity to a commercial building.

Councilman Wyett moved approval of a wall at 8' on the south and east, and 7' on the west side of the property. The motion was seconded by Councilman McLendon.

Mr. Moore noted that 7' on the west side was by right.

On roll call the motion carried unanimously.

c. <u>SPECIAL EXCEPTION #25-2003 WITH VARIANCE</u> The application of Palm Beach Park Center 1 through 6, LLC and Northern Trust Bank relative to property described as Lots 52, 53, North 100 feet of Lot 54 and all of Lot 61, Block C, Royal Park Addition to Palm Beach; commonly known as 440 Royal Palm Way; located in the C-OPI Zoning District. Special exception to allow relocation of 1,384 square feet of the approved community room and the addition of 1,117 square feet of trust offices to Northern Trust's existing banking facility; and, variance of one parking space for addition of trust offices.

Ex-parte communication was declared by President Brooks with Mr. Paseoco; by Councilman McDonald via a telephone conversation with Mr. Paseoco several months ago, probably before the application was even filed.

Attorney Greg Kino, on behalf of Northern Trust Bank, addressed the Town Council, stating that the area of work was in the northeast corner of the building at Northern Trust Bank. He displayed a graphic rendering of the property in question. He explained that the bank wished to renovate the community room and replace it with trust offices.

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

President Brooks thanked Northern Trust for the services it had provided to the Town.

Councilman Wyett moved approval of Special Exception #25-2003 with Variance. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

d. SPECIAL EXCEPTION #26-2003 WITH SITE PLAN REVIEW & VARIANCE The application of 11 Via Vizcaya, LLC relative to property described as Lot 10, Via Vizcaya; commonly known as 10 Via Vizcaya; located in the R-A Zoning District. Variance requested to allow two houses to be demolished creating proposed vacant land to be severed, ultimately to build a new house on each property. Neither proposed lot would separately meet minimum lot, yard, and area requirements. In addition, a special exception and site plan approval is requested to construct a single family house on an unplatted, non-conforming lot with a width of 108.02 feet in lieu of the 125 foot minimum required in the R-A Zoning District.

Ex-parte communication was declared by Councilman McLendon with Attorney Ron Kolins; he had also met with him at the three sites in question; by Councilman Wyett via telephone with the developer of the property; by President Pro-Tem Goldblum with Attorney Kolins, and also by reviewing all three sites; by Councilman McDonald with Mr. Malesky regarding the merits of the application; by President Brooks with Attorney Kolins, Architect Janssen, Mr. Simmons and Mr. Malesky and that he had met with Mr. Malesky on all three sites.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, introducing the following: Donald, Steven and Bruce Malesky, the seller and the present owner of the property, Marjorie Meek, with her attorney, the landscape architect, civil engineer, and architect. He stated that there were three cases involving the property today, and that the most unusual thing about the applications today was the circumstance relating to Mrs. Meek – that three properties in the same neighborhood were being presented at the same time. He presented a graphic rendering of the property in question. He stated that lots #10 and #11 would need a special exception, in addition to needing a site plan approval; lot #13 would need site plan review. All of the lots in Via Vizcaya were platted lots, however, in 1973 the Town Council asked the owner of the lots to enlarge lot #11 – the way that was done was that 2' of lot #10 was made part of lot #11, pursuant to a unity of title that remained in effect today. He noted that staff was taking the position that because of the change in those two lots, due to that unity of title, they could no longer be considered platted lots, and must be considered as unplatted lots – hence the need for the special exception as well as site plan review for those two lots.

Attorney Kolins advised that in all three cases, the reason for either site plan review, or both special exception AND site plan review, was because to some extent each lot was a little bit lacking in either square footage or minimum dimension for the minimum sizes for the zoning district in which the lots reside - R-A Zoning District. He advised that he would explain the property information on each particular lot as the discussion progressed.

Attorney Kolins began with lot #10, exhibiting a rendering of the proposed house. He explained that it was important to understand that no variances were needed on lot #10 – all setbacks were met, height was within Code, and every requirement was met or exceeded in terms of lot coverage, greenspace, landscaping, and hardscaping. The only variance required was allowing the current two houses to be demolished, creating proposed vacant land to be severed, ultimately to build a new house on each property; neither proposed lot would separately meet minimum lot, yard, and area requirements.

Architect Roger Janssen, Dailey Janssen Architects, addressed the Town Council, explaining the site plan presented. The proposed footprint for the new structure was 6,352 sq. ft., whereas the footprint of the existing house was 4,286 sq. ft., which was 22%of the lot.

Attorney Kolins noted that the applicant was allowed to have lot coverage at 25%; the house would be two-story, as were the majority of the houses on Via Vizcaya. The lot had approximately 29,000 sq. ft., and the minimum required in the R-A Zoning District was 20,000 sq. ft. For measurement purposes, the applicant was required to measure the property after taking out a right-of-way easement, even though there was no likelihood that the property would ever be used for right-of-way. When that was done, the figure for the size of the lot was 27,732 sq. ft. The one deficiency in the lot was that the Code, in the R-A District, required lot width of a minimum of 125'; the lot measured 108'2".

Attorney Kolins requested that public comment be heard after each lot was reviewed.

Zoning Administrator Paul Castro commented that it was requested that both current houses on lots #10 and #11 be torn down at the same time. When doing so, since it was under single ownership, the Code specifically stated that the properties could not be split off into two separate lots, and make two nonconforming lots when they were now conforming as one; that was the purpose of the variance request – both houses would be torn down, the lots would then be vacant, and it was proposed to build two houses on the lots which were now under single ownership, with the proposal to split the lots off under separate ownership at some point in time. All lot, yard and bulk requirements were met, however, the lot was oddly configured, and the front lot width was based on the building setback line, which was a deficiency at that location. The variance was simply to split the lots and develop them as two single family homes under separate ownership in the future.

In response to Councilman McDonald, Mr. Castro explained that there was a unity of title that the Town Council required in 1973, however, the applicant was proposing to keep that unity of title in place, which would give 2' of lot #10 to lot #11. The applicant wanted to maintain that unity of title.

In response to Mayor Smith, Mr. Castro explained that if the applicant took the two houses down at separate times, that would eliminate one of the variances. There were two other separate issues: the seawall height, and the site visibility triangle at the driveway curbcuts.

Attorney Kolins commented that he did not believe there was the slightest problem taking down the two houses at separate times at separate intervals. If that would cure the need for the variance, the applicant would be happy to do that.

In response to Councilman Wyett, Attorney Kolins explained that the properties were separate already – in 1973 lots #10 and #11 were platted lots next to each other; pursuant to that, 2' of lot #10 was made part of lot #11.

In response to President Brooks, Architect Janssen advised that the existing total square footage of the existing house was 4,886 sq..ft; the proposed house would be 8,400 sq. ft.

Town Engineer James Bowser requested clarification of the easement/right-of-way on the property.

Architect Janssen replied that there was a 30' road right-of-way in the front.

Town Engineer Bowser replied that the right-of-way could always be used by any utility, and the Town would certainly not want to give any of that away. He also pointed out that he believed there may be a drainage line between the two lots, and he requested that a survey indicating all of the easements be provided.

Attorney Kolins responded that he was not asking to do anything with the right-of-way easement – he was merely pointing out that the size of the lots was altered by the right-of-way easement – the applicant was not asking that the Town give up the easements, and would not be building over them.

Civil Engineer Mark Smiley responded that he had visited the site and opened up the manhole situated between lots #10 and #11, and did not notice any pipes going between the two properties. He had also gone to the rear of the lots and did not view any seawall outfalls. He had then backtracked to see where the lines went, and they did indeed travel towards the west side of the property – he stated that he did not believe that there was a line that ran between the two lots.

Town Engineer Bowser responded that there were drainage problems in the subdivision, and the problem was finding an adequate easement to get out for some piping. That was why he had brought up the question as to whether there were easements adjacent to the properties where they were going to be adequately sized, and the possibility of the Town using them in the future.

In response to Mr. Moore, Town Engineer Bowser replied that it would be very beneficial for the subdivision if there was an easement for a drainage line down to the lake through the property.

Attorney Kolins stated that he was authorized by his client to state that he would be pleased to do so. Additionally, the applicant would commit, as between lots #10 and #11, not to demolish the second until the first lot was under roof and substantially completed on the exterior. The one house would be left until the new one was almost finished.

Councilman Wyett expressed concern regarding the construction of the houses at separate times, as construction would be ongoing for approximately five years.

Attorney Kolins responded that all three lots were of a size where all construction trucks, etc., would be off the street. The preference of the applicant was to construct either lot #10 or #11, one or the other, together with lot #13 at the same time, and then when that was finished, the third remaining house would be built. He stated that he believed that would have less impact on the neighborhood.

Responding to questions from Mayor Smith regarding the drainage easement affecting the 3 lots, Town Engineer Jim Bowser responded limitations would apply to the level of service that would be designed but would greatly improve the drainage. He noted a 5 foot wide utility easement existed between lots #10 and #11 presently going down the middle of the lot #10 driveway following the lot lines to the intracoastal and that a 10 inch pipe was shown on the drawings; however, the civil engineer talked with water resources and that pipe may now be non-existent.

Mr. Bowser said easements are usually requested to be wider than 5 feet and the melaleuca hedge would have to be removed to install piping.

Councilman Wyett suggested the developer put pipe in from the lake to the road as part of the construction project with the Town, at its option, pick up the pipe at the street level to drain the rest of the area at the appropriate time.

Mr. Kolins replied that on behalf of his client, on the assumption that the applications were granted, his client would install and pay for the pipe being discussed.

Mr. Moore stated he understood that any enlargement of the easement and installation of any pipe from the lake to the street would be on a voluntary basis by the owner of the group of properties, and would not be a condition of any type of approval. He added that only 2 properties were being discussed at this time, and lot #13 would have to stand on its own merits.

Mr. Kolins responded he was including all 3 properties, and his proposal was if the 3 applications were approved plus the unclogging of the drain as discussed.

Mr. Brooks clarified that Mr. Kolins was asking for approval for all 3 projects, and the Town Council was considering the projects one at a time.

Mr. Goldblum requested that the Public Works Department clean out the clogged drain now to see if it would work and see what is needed going forward.

Mr. Moore said the clogged drain was on private property.

Mr. Bowser explained that if the drawing were correct, the 10 inch clay pipe would not give the property drainage relief and suggested the pipe needed to be 24 or 30 inches from the subdivision.

Mr. Kolins reiterated the developer has drainage plans for all 3 lots but agreed to put in the pipe, and the manhole is on lot number 1 and the owners of lot number 1 would have to authorize Public Works employees to do the work Mr. Goldblum suggested.

Mr. Brooks asked for public comment on lot #10.

Mr. Kolins added if his client did put a pipe in as previously offered, a DEP permit may be necessary and requested if a permit is required, it would be helpful if the Town applied for the permit.

Mr. Moore said the Town has either been a co-applicant or the applicant if necessary in the past (Mr. Bowser agreed) to apply for a DEP permit.

The Town Council moved to the discussion of lot #11.

The motion approving Special Exception #26-2003 was made under Site Plan Review #7-2003.

e. <u>SPECIAL EXCEPTION #27-2003 WITH SITE PLAN REVIEW</u> The application of 11 Via Vizcaya, LLC relative to property described as Lot 11, Via Vizcaya together with an additional parcel as described in the file; commonly known as 11 Via Vizcaya; located in the R-A Zoning District. Special exception and site plan approval to construct a single family house on an unplatted, non-conforming lot with an existing lot width of 109.5 feet in lieu of the 125 foot minimum required and an existing lot area of 19,721.48 square feet in lieu of the 20,000 square foot minimum required in the R-A Zoning District.

Mr. Kolins explained lot #11 is insufficient in required square footage because of the right-of-way although, including the right-of-way, the square footage is in excess of 21,000 sq. ft. but is approximately 275 sq. ft. short without the right-of-way inclusion. He continued the lot width is also deficient by approximately 15.5 ft. although the lot dimensions exceed or meet the lot, yard, and bulk requirements in the Code.

Architect Roger Janssen said the existing 5,166 sq. ft. one-story structure is non-conforming regarding setbacks, while the new 7,290 sq. ft. under air conditioning with a grand total of 8,654.9 sq. ft. would be conforming.

Mr. Kolins reiterated the proposed plan reduces the lot coverage from the present structure and will conform with Code requirements; the present non-conforming setbacks will be changed to conform; and the height will be 3.5 ft. lower than the height allowed by the Code. He added that his client would agree to build on either lot #10 or #11 first with only one house being demolished at one time.

Councilman Wyett replied that offer may not be to the best interest of the neighbors resulting in three years of building in the neighborhood. He suggested the two houses be built simultaneously with the third house constructed after the first two are completed.

Mr. Brooks said that Mr. Wyett made a good point and suggested the neighbors' remarks be considered regarding the issue.

Mr. Kolins said the developer stated a maximum of 15 months would be needed to build on lots #13 and either of #10 or #11 at one time (2 houses) with the third house hidden off the road.

Mr. Castro noted that the landscape plan showed some landscaping on the five foot easement, and that area needs to remain free and clear for all the residents in the subdivision. He added that 2 inches of water retention on each lot is required; work would be necessary with staff in the Public Works Department on the site visibility triangle for the driveway curb cuts; and there would be a need to provide a five foot high sea wall for high tides in the area.

Mayor Smith questioned the easement to the Lake.

Mr. Kolins explained the five foot easement existed between lots #11 and #12 with 2.5 ft. on each lot and is completely grown over with vegetation making the easement impassable.

Mr. Moore said although the easement is inaccessible, the plat shows it as a trail to the lake, and he recommended the developer of the property clear the easement to make it accessible for everyone in the subdivision.

Mr. Kolins said his client would clear the part that is on his property .

Ames Bennett, architect, said he had interest from two parties who were interested in lot #13 during the past year, and in the process he discovered the plats were plotted in 1936 with a notation on the plot plan of 'Lake Trail' leading to the Lake. He added that the Town Code required a setback from Lake Trail and questioned if that issue had been addressed by Mr. Kolins.

Mr. Bennett questioned if the two proposed residences were identical?

Architect Roger Janssen replied the floor plans were similar, but they were not alike architecturally.

Mr. Bennett also questioned if the ancillary building was tied to the main structure with a unity of title?

Attorney Peter Broberg, representing Mickey Van Gerbig, questioned if two contiguous properties are owned by the same person, would that property become one lot, not by unity of title, but later could not be sold off if they were non-conforming?

Mr. Castro responded the Code stated if there was a piece of property with a vacant piece of property next to it, the owner could not sever himself from that vacant piece of property in order to develop the property.

Mr. Broberg questioned if that was not the situation in this case.

Mr. Castro replied a house existed on both properties, and staff discussed the issue with the Town Attorney relating to the situation on King's Road where the residence straddled both properties, and this was different because two single family homes exist on two separate lots that happen to be owned by the same person.

Mr. Broberg continued that he had not seen the unity of title but did not know how that could occur without a quit claim deed, and property could not be carved out from one property and given to another without a quit claim deed going with it. He questioned if two non-conforming lots existed, owned by the same owner, with two residences on them could be divided?

Mr. Castro replied that is why the applicant was requesting a variance in this case because these two properties, together, were conforming although there were houses on both lots, and if both houses were demolished on one lot, one lot could not be split from the other because vacant property taken together with the other lot would be conforming to the Code. He continued if one home were demolished on one lot, then one new home could be built in its place.

Mr. Moore asked Mr. Broberg if he knew if Mr. Van Gerbig's wall was on the trail to the Lake?

Mr. Van Gerbig said he and Mrs. Meeks have split the cost several times clearing the easement to the Lake, and presently both his and Mrs. Meeks sea walls come together at the end of the easement. He said the trail has never been used although it was cleared several times.

Mr. Van Gerbig continued that his wall is against the easement but not in the easement.

Mr. Wyett asked Mr. Van Gerbig if he objected to the developer cleaning 2.5 ft. of his easement when he was working to clear the land?

Mr. Van Gerbig responded he would take care of the easement himself, or he could reimburse the developer if necessary.

Responding to questions from Mr. McDonald, Mr. Van Gerbig said his seawall was built first, before Mrs. Meek's seawall..

Mr. McDonald said he was disappointed with the Code Enforcement effort to keep this right-of-way clear. He requested Mr. Moore notify the Code Enforcement officer to clear this situation up.

Mr. Kolins suggested this easement may be more trouble than it is worth since no one has used it for many years, and abandonment may be the proper course of action.

Architect Ames Bennett said he thought the 'Lake Trail' mentioned in the Code applies to this property, and that issue was not addressed by Mr. Kolins. He added the plat was filed as a public record in 1935 with the 'Lake Trail' notation.

Mr. Moore responded that one can name anything that one wishes, anything on a plat, as long as the Town accepts it, and in this part of Town there is no Lake Trail. He continued that Lake Trail runs north and south from Worth Avenue to the Inlet Dock, omitting the area around the Sailfish Club. He added that no bike trail or lake trail is located in the Via Vizcaya area that runs north/south, and the easement runs east and west, and the Zoning Code is quite specific regarding the issues raised by Mr. Bennett.

Mr. Castro said the language is specific in Section 134-1699, Structures and Signs along Lake Trail, stating, "No structure or working height is measured on the Lake Trail side of the structure from the top of the structure to the crown of the existing paving of the Lake Trail directly opposite of such point of measurement shall be erected or constructed along the easterly side of Lake Trail within 25 feet of the easterly right-of-way line of said Lake Trail as the same is now laid out, established and used, except as provided below:" He added that section addresses no structures east of Lake Trail, and this property is south of Lake Trail and is not part of Lake Trail.

Mr. Moore said that if the section of the Code contemplated Mr. Bennett's assertion, it would have said east, north, *and* south, 'no structure shall be 25 feet closer to the trail', and he could not find Mr. Bennett's interpretation to be correct.

The Town Council moved forward to discuss lot #13, 11 Via Vizcaya..

The motion to approve Special Exception #27-2003 was made under Site Plan Review #7-2003.

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

Mr. Kolins said he realized that lot #13 was the subject of most of the concerns expressed by neighbors and other concerned parties. He said lot #13 contained 21,397.24 square feet; however, it is an extraordinarily, uniquely shaped lot with the road extending around all but the rear of lot #13 resulting in 35 ft. setback requirements for three sides leaving a very small building envelope to work with. He explained the two requested variances are for a 15 ft. south side setback where a proposed side loading garage would be located, and the second variance was for the building height plane that required two feet of setback for each one foot of height to the bottom of the eave of the roof which would total 47 ft. He requested a setback of 39.2 feet or a difference of 7.8 ft., and this was necessary because the intent was to leave as much space as possible in the rear as the neighbor's house was close to the rear lot line.

Architect Roger Janssen said the requested variances will enhance the streetscape of the development, and the building configuration in both footprint and massing is such that the massing would be alleviated by designing up to the setback line with the two story portion of the structure; however the massing up to the rear lot line would put a very large two story volume to the neighbor. He continued that the swimming pool would have to be built in the west yard if that design was followed with a six foot concrete wall around the perimeter of a portion of the property with a hedge creating a tunnel effect.

He said the decision was to step the building back, away from the yard, with only a 22 foot two story portion against the rear setback with the bulk being 30 feet from the property line. He added the entire western portion of the property will be maintained as open landscaped area to the street.

Mr. Kolins, referring to the letters of objection, said the proposed residence will be four feet lower than allowed by Code and the rest of the objections were either misunderstandings or would be dealt with in a satisfactory way. He added that with the exception of the 15 foot setback request on the south, the proposal meets all the other Code requirements, and the height is consistent with the other residences in the neighborhood.

Zoning Administrator Castro said this lot was unique as it is oddly configured and limits the building footprint and where it can be located. He said the applicant demonstrated that the building is being stepped away from the rear of the property, the house is much larger than the neighbor to the east which is a one story home built fairly close to the rear property line. He continued that from staff's standpoint, it is impossible to locate the swimming pool in the front yard setback.

Director of Planning, Zoning & Building Robert Moore said this was truly one of the greatest examples of a hardship with the uniqueness of the 'u' shaped property on three different sides. He added the neighbor's house to the east is considerably smaller, and the developer has been sensitive to the issue of the smaller home; however, eventually a larger home will be built on that site. Mr. Moore said he believed the effective height of the larger house, by granting the variance to that height plane setback, could be addressed by eliminating the pool and setting the house further back or lower the height of the house and a hardship has not been demonstrated on that issue.

Mr. Kolins responded that many places in Town have one story houses next to two story houses and changes will be made in many of these older homes as the present needs are met. He said a house in the estate section should not be built without a swimming pool and could not be marketed as such.

President Pro-Tem Goldblum commented that the air conditioning units were too close to the property line.

Zoning Administrator Castro responded the units met Code requirements.

Councilman Wyett said the house was much too large for the lot; although the house itself was beautiful, it did not fit. He said the shape of the lot does not justify 'shoe-horning' an oversized house onto the lot. He continued that at this point, he would vote 'no' and suggested the applicant consider a deferral and reduce the size of the house.

Mr. Kolins said he found it difficult to understand an argument that said the house was too big for the lot when all the Code requirements were met with the exception of the requested variance for the garage which was small.

Mayor Smith questioned if the Town Council would not vote on the three houses individually although they were reviewed together? She also asked if the architect had any suggestions for reducing the size of the house which would eliminate the variance on the south side?

President Brooks responded the vote would be taken separately.

Marjorie Meek, owner of the three lots, said the facts are that the government was owed $4 million for the death taxes on this property from her late Mother's estate, and the property was assessed by the government at a higher price than the market price for the lots. She continued that she had to borrow the $4 million, $3 million from a bank and mortgage another $1 million on the property. Mrs. Meek said she would not profit substantially and was only trying to pay the bills. She added that she would not prefer to move but has been put in a position that she has to move. Mrs. Meek said Mr. Malesky and the architect worked very hard to create something that is compatible with the Palm Beach style.

President Brooks suggested the Town Council vote on lots #10 and #11 and then come back to #13 and requested a motion on lot #10.

President Pro-Tem Goldblum made a motion to allow the needed variances on lot #10. The motion was seconded by Mr. McLendon.

Mr. Wyett asked the maker of the motion to amend the approval to include the pipe as discussed and the restoration of the easement.

President Pro-Tem Goldblum agreed to accept Mr. Wyett's recommendation.

Attorney Randolph said the issue included a special exception, a site plan review and a variance and all of those needed to be included.

President Pro-Tem Goldblum accepted Mr. Randolph's clarification in the motion.

Mr. Moore said the special exception and site plan review are all that is needed with Mr. Kolins agreement to demolish only one house at a time, and if that is still the agreement, that is all that is needed at this time.

Mr. Wyett said no discussion took place regarding the demolition of one house at a time, because the neighbors might want both houses to be demolished at one time.

Mr. Kolins said his client, in terms of financing and marketability, said it was not feasible or possible for him to build on lots #10 and #11 simultaneously, and the reality is to build on lot #10 or lot #11 and then on lot #13 after the other two are finished.

Mr. Moore said Mr. Kolins should withdraw the variance request.

Mr. Kolins replied that on the assumption the variance was not needed because the two houses will be demolished separately, that was correct.

Mr. Moore said the same situation existed for lot #11 where a special exception with site plan review would be voted on with the withdrawal of the variance. He added the conditions Mr. Kolins volunteered would cover the improvements on both lots #10 and #11 regarding an additional 5 feet of easement with a pipe that would be satisfactory with the Town making application to ease the drainage problem to the lake; retention of the first 2 inches of water; and that they will clean up the Lake Trail easement as they volunteered to do from the street to the lake. He continued that if Mr. Van Gerbig's wall encroaches on the easement, his department will follow up on that.

Mr. Kolins responded his client will do that when lot #11 is developed.

Councilman McDonald said the maker of the motion did not indicate that it meets the requirements for a special exception and suggested that any on-street parking should be prohibited during construction of the projects as being a condition of the permits or it could not meet the special exception requirements.

President Pro-Tem Goldblum said he would add that to the motion.

Mr. Randolph said, in addition to cleaning out the easement, he assumed the easement should be continuously maintained to allow it to remain open continuously.

Mr. Kolins replied that he thought it was unfair for his client to bear the burden of maintaining the easement.

President Brooks said it was preferable to have his client do it than to have to receive fines from the Code Enforcement Officer.

Mr. Kolins suggested the easement could be maintained by the both owners of the easement.

Mayor Smith added that Mr. Van Gerbig had offered to maintain his half.

President Brooks called the question.

On roll call, the motion to approve Site Plan Review #26-2003 with conditions carried unanimously, 5-0.

President Brooks said he understood that a variance was not needed for Site Plan Review #27-2003.

Mr. Moore confirmed that a variance was not required for Site Plan Review #27-2003; however, the same conditions as required for Site Plan Review #26-2003 should apply to this project.

Mr. Castro said the conditions for this project related to parking, cleaning and maintaining the easement, providing 2 inch storm water retention, providing a minimum 5 ft. NGVD seawall, and having clear site visibility on the driveways.

Mr. Kolins said the easement issues relate to this lot and not lot #10 as cited previously in the lot #10 approval.

Councilman Wyett made a motion to approve Site Plan Review #27-2003 with the conditions discussed. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

Mr. Kolins said he thought his client needed to address some of the stated concerns of the Mayor and Town Council and requested a deferral for lot #13.

Councilman Wyett made a motion to defer Site Plan Review #7-2003 with Variances to the December 9, 2003, Town Council meeting. Councilman McLendon seconded the motion which carried 5-0 on roll call.

Attorney Randolph commented on the approvals of the Special Exceptions and the Site Plan Review on lots #10 and #11. He said many times the architects come before the Architectural Commission and advise the Commission that the Town has approved the site plan and that, therefore, the Architectural Commission does not have anything to say about the design of the house. He wanted to make sure that the intent of the Town Council was not to take away from the Architectural Commission any design improvements they would make to the house.

President Brooks said, on the contrary, the Council was attempting to assign more responsibility to ARCOM.

g. SITE PLAN REVIEW #8-2003 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of 237-243 Worth Avenue Partnership (Michael A. Fruchtman, Treasurer) and Armani relative to property described as Lots 44, 45, 46 and 47, Block 15, Royal Park Addition to Palm Beach; commonly known as 237-243 Worth Avenue; located in the C-WA Zoning District. To allow a ground floor expansion of a retail space on the north and northeast sides of the current location requiring site plan review, special exceptions and variances. Request to modify a previously approved special exception to have 4,950 (gross) square feet when a maximum of 2,000 square feet is allowed. Site plan review to construct an additional 1,241 square feet (gross) to allow for alterations, storage, shipping/receiving, restrooms, and offices, and to expand the showrooms into the previously used space. (The store currently has 3,709 square feet.). Variance from the code provision that requires off-street parking which is not on the same lot as the principal use or structure to be within 500 feet of the premises. It is requested that 6 required off-street code parking spaces be located approximately 3000 feet from the premises at 440/450 Royal Palm Way. Variance from the code provision that requires off-street parking which is not on the same lot as the principal use or structure to be located within the same zoning district as the principal use it is designed to serve. The 6 required off-street parking spaces would be located in the C-OPI zoning district. Special exception to establish required off-street parking facilities for commercial uses on a lot other than the same lot as the principal use or structure. **Request for Deferral Per Letter Dated November 6, 2003, from James R. Brindell.**

The Town Council deferred Site Plan Review #8-2003 with Special Exceptions and Variances to the December 9, 2003, Town Council meeting earlier in this meeting.

3. Other

a. Brazilian Court Hotel Request to Block Sidewalk During Winter Season. [Shakman Construction Company]

No one was present to represent the Brazilian Court Hotel.

President Brooks requested a motion to deny the request.

President Pro-Tem Goldblum made a motion to deny the request to block the sidewalk. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

b. Request for Declaration of Zoning in Progress to Become Effective December 10, 2003.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Zoning Administrator Castro said the effective date should be November 14, 2003.

President Pro-Tem Goldblum made a motion to approve the request for Declaration of Zoning In Progress effective November 14, 2003. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business, the regular meeting of the Town Council of November 12, 2003, was adjourned at 5:05 p.m.

William J. Brooks
Town Council President

Mary A. Pollitt
Town Clerk