TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE TOWN COUNCIL MEETING HELD NOVEMBER 12, 2002

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order by Town Council President William J. Brooks at 9:30 a.m. On roll call the following Elected Officials were found to be present:

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 part of the meeting were:

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Town Attorney John Randolph
Police Major Gary Sallenbach
Director of Planning, Zoning & Building Robert L. Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Chief Code Compliance Officer Brian House
Public Works Director Al Dusey
Town Engineer James Bowser
Human Resource Director William Crouse
Finance Director Jane Skittone
Fire-Rescue Chief Kent Koelz
Town Clerk Mary A. Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. None.

IV. COMMENTS OF MAYOR LESLY S. SMITH

Before we start, I would like to recognize newly elected Congressman Mark Foley. Mark, come on – stand up. *(applause)*

Some congratulations are in order today – first to our new State Senator Jeff Atwater, whom many Palm Beachers worked hard to elect. We are confident Jeff will continue to represent Palm Beach honorably, and we look forward to working with him.

Second – but equally great news – our own Police Chief, Michael Reiter, has been selected by the Palm Beach County Criminal Justice Commission's Law Enforcement Planning Council to chair one of four subcommittees of the anti-terrorism law enforcement operations committee. In plain English, this means Chief Reiter will head a team of law enforcement agencies to create an operational plan to combat terrorism. This is an exceptional honor, and demonstrates that we are not the only ones who recognize and appreciate Chief Reiter's leadership qualities.

I want to address a handful of things on the agenda. on the subject of decreasing speed limits on side streets, I know Council members received the same memo I did from Sten Lilja, which was extremely informative –and I thank him for taking the time to make the calculations. if all of us stopped to focus on the fact that the difference between a speed limit of 30 miles per hour and 20 miles per hour would add only 9 seconds to travel time on a typical side street, I think we would agree that traffic safety is well worth the minor inconvenience. I hope the Council will devise a pilot plan costing very little that measures the result of lower limits, and makes sure that strong enforcement is part of the program.

There has been some controversy about Fire-Rescue transport to various area hospitals. Just to add my two-cents worth, as a matter of policy, we should preserve the patient's right to choose to which hospital he or she wants to be taken. In an emergency, obviously, the closest hospital would be the facility of choice – but otherwise, it should be the patient's decision.

We have a request on today's agenda for still more concessions on the Clark property. I am adamantly opposed to any further exceptions and variances. In researching the history, I find we have jumped through hoop after hoop after hoop – and this is an extremely dangerous precedent. I have said this before: we cannot continue to talk the talk without walking the walk. I know that Council members – and most residents – do not want two-story mega-mansions lining our A-1-A beachfront. If we truly believe this,

we have to say "no" once and for all, and stick to it. We cannot continue to govern by variance and exception.

We have some very good news that I hope will change the Council's decision on compensation increases for our very capable and loyal Town staff. It looks like – thanks to our commitment to fiscal responsibility - the Town has ended up with a two million dollar surplus this year. You will recall that the Council voted staff a pay increase of only one percent, based on projected budget constraints. In view of this new information, I would hope and recommend that the Council review their decision and consider raising the increase to at least two per cent. We ask a lot –and get a lot – from our employees, and they deserve to be compensated accordingly.

The holidays seem to sneak up on us faster and faster every year. Before the next council meeting, we will be putting up our annual holiday displays. Mark your calendar for two dates: the Christmas tree and Menorah lighting on Monday, December 2 on Royal Poinciana Way, and the Christmas tree and Menorah lighting on Worth Avenue, Tuesday, December 3. I look forward to sharing the joy of the holidays with all of you and hope to see you at the lighting ceremonies.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

President Brook requested all backup materials for any Town Council meeting be submitted before the day of the meeting as the amount of late materials submitted prior to this meeting was onerous for the members of the Town Council.

Town Manager Elwell responded, lately, a much greater volume of materials have been submitted late. He said the traditional policy of the Town Council has been to make sure the public knows that what is received by Thursday (before the following Tuesday meeting) and is copied into the backup books will have been reviewed before the meeting. He added that anything received after that date may not be read or considered by the Mayor and Town Council at the Tuesday Town Council meeting.

ADD Item XII. Development Reviews A. Time Extensions 2. Request for Extension For Work Construction Period, 320 Worth Avenue.

Motion made by President Pro-Tem Goldblum to add the item to the agenda as item XII.A.2. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

WITHDRAW Item XII. Development Reviews B. 1.a. Variance No. 20-2002;

Motion made by Councilman Wyett to withdraw Variance No. 20-2002. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

DEFER Item XII. Development Reviews B.2.b. Variance No. 41-2002 to the December 10th Town Council meeting;

Motion made by Councilman Wyett to defer Variance No. 41-2002 to the December 10th Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

DEFER Item XII Development Reviews B.2.e. Special Exception No. 21-2002 with Site Plan Review and Variance.

Motion made by Councilman Wyett to defer Special Exception No. 21-2002 to the December 10th Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

President Pro-Tem Goldblum made a motion to approve the revised agenda. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

VI. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Dr. Sten Lilja, 1330 N. Ocean Boulevard, said the first stage of the approved coastal management plan would commence around January 1st, and in the absence of information to the contrary, monies from the Town's share of the cost would be derived ultimately from ad valorem taxation. He continued that based upon prior precedence, half of the Town's cost of the plan must be derived from special assessment upon those properties which are especially benefited, and at least 89 such properties could be assessed with liens, if necessary, against the properties. He requested such special assessments be applied to prevent inland properties, which would not benefit from the plan, from being burdened to subsidize those properties which do benefit.

Frances Coniglio (student), 1139 N. Ocean Boulevard, requested the Mayor and Town Council help the students to retain the beautiful park and the open fields at the Town's only recreation center. Miss Coniglio said the park is used by everyone to play, compete in games and practices, as well as compete in after school activities.

Dr. Sanford Kuvin, 149 E. Inlet Drive, commented on the lethal yellowing disease, noting that 95% of the palm trees in S. Florida have succumbed to the disease, and the Malayan Palms

that were planted as replacements are no longer disease resistant. Dr. Kuvin urged the Council to give renewed attention to the affected Malayan Palms.

Missi Agnello, resident of Bermuda Lane, urged the Town Council to reject the current proposal for the modernization of Palm Beach Public due to the affect the project will have on the green space shared between the Rec Center, Palm Beach Public, and Palm Beach Day School. She said, as a parent and a member of the Seaview Tennis Team, she was at the Recreation Center four or five days a week at a variety of different times and confirmed the use of the green space for all the programs provided by the Rec Center as well as recess and P.E. classes for Palm Beach Public School and Palm Beach Day School. Mrs. Agnello said she was disappointed and unimpressed by the efforts of the Palm Beach County School Board to answer the concerns of the citizens, and at the latest School Board meeting, the head of construction stated the project could be done during the years 2004-2005 with no problems. Also, Mrs. Agnello said Mrs. Garrison stated the State would not allow the use of the west campus building; however, at the meeting, it was stated the School Board voted not to use the west campus, and the campus should be part of the project.

Gail Coniglio, 1139 N. Ocean Boulevard, Chairman Seaview Advisory Board, said the proposed Palm Beach Public School expansion and the resulting drastic reduction in open green space is the most important issue the Board has considered. Mrs. Coniglio stated she requested models of the School Board plan for eight months including active dialogue on the partnership of the joint property use between the School Board and the Town of Palm Beach. Mrs. Coniglio said, following the directive from President Pro-Tem Goldblum and Landmarks Chairman Pandula, she attempted to meet with the Palm Beach County School Board staff and architects to incorporate the hopes and concerns of the Seaview Advisory Board in the proposed plan. She continued that the same problems persist: loss of the regulation baseball field; total loss/use of the basketball court; dangerous and unsightly fencing; and reduction in use that borders on a scheduling impossibility. She requested the Town Council maintain the 80 year good neighbor policy of the Palm Beach Public School and the Town of Palm Beach to allow open green space that promotes sharing, playing and healthy life styles to protect the future fun for all of the children. Mrs. Coniglio said the Town's Comprehensive Plan's primary goal is to maintain the unique beauty and the small town quality of life indigenous to Palm Beach, and the preservation of open space is the second most important consideration listed following only beach restoration. She requested the Town Council to maintain the extraordinary beauty of Palm Beach, as stated in the mission statement.

Lina Balasco, 136 Woodbridge Road, said Palm Beach Public should remain, and everyone was forgetting the property on the west side of Cocoanut Row. She continued the projected school concentrates the campus on the east side of Cocoanut Row which is very small, and keeping the west side as part of the campus, would solve the problems of green space, parking, and the gymnasium. Mrs. Balasco said this is not an issue about the children anymore, building the best facility for the children, but the issue is money. She asked the Council to help the parents and interested parties to preserve the school for the children.

Julie Reveley, resident representing over 300 people, stated she was opposed to the loss of green space and the sale of the west building and urged the Town Attorney to review the deed that was sold to the school. She said his office did not have documents for review, but her search produced a copy of one deed regarding the school and two 'swifties' have gone by the School Board, to lift a green space restriction and also a usage for children's education. She suggested those issues should be investigated, and the actual deed should be found.

Mrs. Reveley questioned if the Interlocal agreement allowed the Town to terminate the agreement and have sufficient green space for the school? She continued that Mrs. Garrison (from the School Board) has gone on record stating the children do not need physical education or the green space, and those issues need to be considered for the future of the children. Mrs. Reveley reported Mrs. Garrison's office sent information stating it would be possible to have a crossing bridge over Cocoanut Row.

Mrs. Reveley asked Town Attorney Randolph if the west building were sold, how many more taxes would the residents of Palm Beach have to pay? She said Town Resident Katie Pressly had passed a similar petition around regarding the green space issue in 1981, and former Councilman Robert Grace was searching for information regarding that issue. She said her last issue was the cafeteria projected to be built on Seaview which was not a workable location.

President Brooks requested information/answers to some of the stated questions at this meeting be provided by staff in preparation for the November 20th Town Council meeting.

Mayor Smith suggested consideration be given to relinquishing the parking lot, with perhaps twenty spaces, on the east side of the baseball field to allow additional green space for retention of the ball fields.

Town Manager Elwell said the staff will provide answers, as fully and completely as possible, prior to the meeting in a backup package for review before the November 20th meeting.

Christa Ryan, 230 Miraflores, said another idea for compromise was to relocate Palm Beach Public School to property in West Palm Beach, and five acres north of the Town-owned property on Quadrille was for sale a few months ago.

VII. CONSENT AGENDA

A. APPROVAL OF MAYOR AND TOWN COUNCIL, LANDMARKS PRESERVATION COMMISSION, AND RECREATION ADVISORY COMMISSION WORKSHOP MINUTES FOR THE MEETING ON SEPTEMBER 17, 2002.

B. APPROVAL OF MAYOR AND TOWN COUNCIL AND LANDMARKS PRESERVATION COMMISSION MINUTES FOR THE JOINT MEETING ON SEPTEMBER 23, 2002.

C. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON OCTOBER 8, 2002.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON OCTOBER 23, 2002.

E. OTHER

1. Approval of Proposed Communications with the U.S. Postal Service Regarding Federal Express Box Relocation.
[Thomas G. Bradford, Assistant Town Manager]

2. Staff Update on Proposed Initiation of Foreclosure – 1496 North Lake Way, Code Enforcement Board Case Number 02-1396.
[Robert L. Moore, Director of Planning, Zoning & Building]

Motion made by Councilman Wyett to approve the consent agenda. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

VIII. REGULAR AGENDA

A. Old Business

1. Staff Update on Feral Cats. [Peter B. Elwell, Town Manager]

Town Manager Elwell, referring to his November 7th memorandum to the Mayor and Town Council, summarized as follows:

"As we look to the future, in an attempt to achieve the dual goals of (1) providing for the welfare of the cats while (2) protecting public health and eliminating the imposition of the nuisance which was created by the maintenance of cat colonies at locations where such activity was unwelcome, I recommend the following:

A 90 day hiatus of the Town's trapping program, effective immediately. This hiatus would be subject to the following conditions:

a) that the Town receive continued cooperation in planning for the trap/neuter/relocate program, and

b) that we experience no return to the large scale feeding which previously was occurring in defiance of the Town's ordinance.

Continue enforcement of applicable laws and regulations, including the Town's ordinance which prohibits the maintenance of wild animals.

Continue the development of the cat sanctuary and trap/neuter/relocate program through the following steps:

a) identify a suitable host parcel of land,

b) prepare a conceptual plan for the management of the sanctuary site and the trap/neuter/release program,

c) identify potential sources of funding for implementation of this solution

The goal of this program will be to reduce the feral cat population to eliminate unwelcome feeding and nuisance impacts of the cats, but not to completely eliminate the feral cat population in the Town."

Town Manager Elwell reported that an individual in the Town came forward who is actively looking for a piece of land that might be suitable for creating a cat sanctuary at substantial personal cost plus two organizations, which already own land that may be suitable for sanctuaries, are interested in having further dialogue with the Town.

President Brooks quoted Beth Pouncey's comments, from her October 8th memorandum, which reinforces what the Council is attempting to do: 'By pulling together a team of residents, vets, the local humane society, Palm Beach Cat Rescue, law enforcement, public officials, fund raisers, and grantsmanship experts, (I) feel that we can have maximum impact on the number of cats by embracing a policy of trap/neuter/release, known as TNR, while at the same time, effecting a public policy that is both safe and humane.'

President Brooks requested Town Manager Elwell to set a public work-shop that would encompass the points outlined by Mrs. Pouncey. He added this problem did not start overnight and will not be solved overnight.

Connie Gasque, 167 Root Trail, asked if the Town Council was rescinding their law and allowing some feeding? She said there shouldn't be any feeding.

President Brooks clarified that the Town was rescinding trapping only.

Ms. Gasque confirmed that this change would not allow persons to trespass and feed again.

Gertrude Maxwell, Sav-A-Pet, said it was a miracle what had happened and what was going to happen, and no one would blame the Town of Palm Beach as a town that did not care. She quoted: "When we lose the sight of the importance of one life, if we do not show sensitivity and compassion towards one human or animal, we could lose sight of the importance of all life."

Mrs. Maxwell said Maury Swee, Chairman of the Board for the Tenth Life Sanctuary, Inc., for sick, feral, unwanted cats, is one person who could run a sanctuary although there are others and it should be open for everyone to choose.

Gilda Beane, 248 Park Avenue, said four new cats were on Park Avenue, and she understood they could not be trapped. She suggested coming up with another plan until the sanctuary is ready.

Mary Beth McManus, West Palm Beach, Member of the PBC Animal Care and Control Advisory Board, Chairperson of the Ordinance Review Committee, President and Founder of Florida All-Breed Rescue Alliance, said a group has come forward who is willing to be responsible for the cats, and this is the only way to stabilize and reduce cat colonies and population. She said she was encouraged the Town is going to schedule a workshop and cited examples of other areas that effectively have controlled cat populations.

Alan Mason, 1485 Manana Way, said he welcomed the workshop program, and he and his wife cared for five cats who stay primarily on their property. He added the 'feral' cats go in his car to the veterinarian, without cages, and are very well behaved.

Mr. Mason expressed concerns regarding Mr. Elwell's memorandum—one was how are the cats going to be fed when trapping stops for the 90 day period?

Mr. Elwell responded that he had sought advice from people with expertise in animal health regarding the potential implications if the trapping were stopped and a return to wide spread feeding was not allowed. He said the advice received was that not feeding the cats would not likely cause any starvation among healthy cats; however, the situation should be monitored very carefully because that would not be an acceptable outcome during this period when the energies are geared toward something that is very positive and humane for the long term.

Mr. Elwell continued that it is not responsible public policy to declare that ordinances will not be enforced, and the Town could return to the problem situation encountered previously. He said the middle ground that is appropriate is that the Town should enforce the ordinances during the no-trapping period while the plan is developed, but monitor very carefully to note if any cats are suffering from this, and that the issue would be addressed through some coordinated effort that would not be a return to the previous violations of the law.

Mr. Elwell added, addressing Mrs. Beane's concerns, that property owners may continue to trap if there are problems on private property; however, the Town, as a good faith gesture, will cease trapping.

Maury Swee, President and Chairman of the Board for Tenth Life Sanctuary, 22238 S.W. 62nd Avenue, Boca Raton, confirmed his group had some property that could possibly be used for the relocation phase of the feral cats. He suggested, with his experience of five years of dealing with feral cats, that the Town's proposal of not feeding them, based on what PBC Animal Care and Control suggested, is wrong. He continued that when the cats have been fed continuously, regularly with prepared cat food, the cats lose their instincts and their ability to hunt and find their own food. He said they come back at each feeding time and wait for their food. He proposed that the feeders, who have been feeding but perhaps not in the nuisance areas, continue to feed the cats during this time. Mr. Swee said the cats, now being hungry, will leave the areas that they are used to and seek other food sources which will make trapping that much more difficult over a period of time. Mr. Swee said he always advises that people feed at the same time with the same food for a period of several weeks before trapping starts. He offered to attend any workshops.

Beth Pouncey, Chilian Avenue, thanked the Council and Town Manager Elwell for their cooperation. Mrs. Pouncy said she was concerned about the six weeks that have passed with trapping being done and the ninety days with no trapping being done resulting in a net of 38 cats that were destroyed by PBC Animal Care and Control. She continued that without trapping continuing, 60 to 90 additional cats would be produced, and the trap/neuter/release policy should be going on at all times. She concurred with Mr. Swee that the feeding should continue, and not feeding the cats was inhumane and would defeat the purpose in the end. She noted that Mrs. Beane's citing of four new cats proves that cats scatter when they are not fed.

Mayor Smith asked if the cats were not being fed during the past six weeks the Town was doing the trapping?

Mrs. Pouncey responded the cats were not fed since sometime in September. She said she is looking for a very aggressive program, including use of the Town-owned traps, and a very humane solution must be reached, reducing 100 cat colonies to 30 if that is the correct number.

Mrs. Pouncey requested information on the number of calls the Town has received in the last six weeks from the entire island regarding feral cats?

Councilman Wyett questioned the number of 40 cats resulting in the noticeable reduction of cats as described by Mrs. Pouncey.

Mrs. Pouncey responded that private property owners have also trapped and removed cats.

President Brooks responded the Town had to balance the rights of the humane solution to a problem with the rights of private property tax payers.

Mrs. Pouncey said many people have done a lot of work to attempt to mediate this problem.

President Pro-Tem Goldblum said he had driven down three streets in his neighborhood and saw two to three cats on each street which was acceptable.

President Pro-Tem Goldblum made a motion to accept the recommendations proposed in Town Manager Elwell's November 7th memorandum *(as quoted on page 7 of these minutes).* The motion was seconded by Councilman McLendon and carried 4-1 on roll call with Councilman Wyett casting a negative vote.

Councilman Wyett explained he appreciated the suggestions made in regard to solving the problem; however, until he sees an agreement with the cat feeders, he saw no reason to suspend the present trapping program.

2. Staff Report Regarding Proposed Reduction of Speed Limits on Residential Side Streets.
[Albert P. Dusey, Director of Public Works]

Public Works Director Dusey said the initial report was directed at studying every individual residential street in Palm Beach which was the safest method of doing the study; however, last week, after studying State law, the direction was to look at representative streets. He proposed studying 56 streets in lieu of the 155 streets proposed earlier at a reduced cost of $50,600 for the study. Mr. Dusey said that study would look at the entire Town with a reduced speed posted at the Town's entry ways and enforcement throughout the Town.

Mr. Dusey continued that if the Council had concerns about specific streets, those streets could be studied at substantially reduced costs with postings on those specific streets to reduce speed limits.

Councilman Wyett questioned why 56 streets were necessary in the study, and could not 20 or 30 streets be studied?

Mr. Dusey replied the number had to be representative, and the proposal was from the Town's consulting engineer who could answer any questions. He added a study, correctly done, provides the required support for any tickets issued that are challenged by the offenders.

President Pro-Tem Goldblum said he thought enforcement was the problem, not the actual speed limit. He suggested procuring additional speed signs and enforce the existing law.

Mr. Dusey said he agreed with the enforcement statement; however, the current State statute provides for 35 mph on all Town streets unless otherwise posted.

Mayor Smith asked Major Sallenbach how many speeding tickets are issued on the side streets in the Town, and can not the Town of Palm Beach limit the speed limits on the basis of a public safety issue? She asked Dr. Lilja how long it took to conduct his survey?

Major Sallenbach responded a large number of tickets were not issued on the side streets in the Town. He added traffic MPU personnel were placed on the side streets when complaints are registered, and a large volume of complaints are not received for the side streets. Major Sallenbach explained that State law does not allow citations to be written unless there is a five mile per hour threshold over the speed limit; otherwise, written warnings are issued.

Mayor Smith asked Town Attorney Randolph if the English system using cameras and the offenders receiving tickets in the mail was legal in this country?

Attorney Randolph replied other municipalities throughout the country have initiated that procedure.

Councilman McLendon questioned the fact that revised speed limits could be posted only on streets that were studied?

Mr. Dusey responded that streets similar in nature, in the same geographical area, have the same type of parking, and the same geometry can be part of a study where one street represents all of the streets.

Councilman Wyett said the Town does not have enough policemen or cars to enforce a reduced speed limit on the side streets. He said he would be happy to reduce the speed levels; however, this will not solve the problem.

President Brooks suggested the middle and north east/west streets be subject to the reduced speed limits.

Councilman Wyett suggested the item be brought back to the December 10th Town Council meeting with a study with a reduced number of streets.

President Pro-Tem Goldblum said he would like to see an aggressive police action in a month or two on the north/south streets, including one or two of the east/west streets, and see what happens when the word gets around that the police are ticketing speeders.

Mayor Smith asked if signs declaring 'children are present' could be installed on certain streets as a first step toward reducing the number of speeders?

Mr. Dusey responded that if the requests for 'children' signs are approved by the Police Department, the Public Works Department installs signs but he urged that the 'children' signs not be overused so as to not create indifference to the signs.

Mr. Elwell said the staff can act upon the sign issue and the use of the trailer in different locations to indicate speed to a driver who is not paying attention to speed limits. He added that he expected to have the price of a reduced study at the December 10th Town Council meeting.

Alan Mason, Manana Lane, said his one block long street attracts speeders and requested his street be considered in the study.

3. Staff Update Regarding Proposed Relocation of the Planning, Zoning & Building Department to the West Side of the Flagler Memorial Bridge. [Peter B. Elwell, Town Manager]

Town Manager Elwell, referring to his memorandum to the Mayor and Town Council dated November 7, 2002, said he was not able to reach an agreement with Florida Crystals regarding the possible Town purchase of the existing building adjacent to the Town owned property between Olive Avenue and Dixie Highway. He continued that he thought it was time for the Town to move forward and take some action toward constructing the necessary space and relocating the Planning, Zoning & Building Department, and his recommendation was to authorize staff to proceed with an expenditure of an amount not to exceed $10,000 to have a conceptual site plan prepared for the property the Town does own immediately west of the Flagler Memorial Bridge.

Councilman Wyett said he had trouble with spending a large sum of money building a structure off the island to house the Building Department. He continued that the initial concept was, when the Town decided to build a new Fire-Rescue station, to pick up enough space in Town Hall to accommodate expansion of the departments. He added there is enough space in Town Hall to accomplish that.

Councilman Wyett said, in his discussion with Town Manager Elwell, that the proposed relocation of PZ&B was projected on needs in five or ten years. He said if the Town's budget is considered and the $2 million surplus for FY2002 which is almost a result of 'mirrors' including a new condominium worth $600,000 in fees that came in a day before the end of the fiscal year; and a deferral of $1 million in Public Work expenditures which has to be spent in some early future period of time. He added that the recession is not ending; individuals in the business world have already discounted 2003; property values are not rising which has always 'saved' the budget by providing increased revenues without increasing tax rates; and a tremendous number of new costs will be included in the next budget—one of which is the interest payment on the beach bonds plus the Fire-Rescue Department.

Councilman Wyett said he did not want to raise taxes, and a great many of the Town residents live on fixed incomes and a great part of that fixed income is interest income, and interest rates are dropping with 1% today compared to 4 or 5% a couple of years ago. Councilman Wyett said the Town must conserve money until the present economic climate reverses, and he could not, in good conscience, spend money on items that could be avoided.

Councilman McDonald said he read Town Manager Elwell's memorandum and understood the 'pros' of relocating the Building Department to West Palm Beach but did not see any written material regarding the 'cons' and asked if there were any reasons for the Building Department to remain on the island?

Town Manager Elwell responded that cost was the only reason in his opinion, and operationally there would be advantages for relocation. He said that for long term planning purposes, there was no doubt, and he would like to speak to Councilman Wyett's comments regarding the difference between capital investment and increased operating expenditures. He continued the advantages included relieving the traffic and parking issues and the long term space needs were the major emphasis for his recommendation.

Town Manager Elwell continued that future budgets will require belt tightening, but when decisions are made regarding the infrastructure of the Town and investing in the necessary work space for the staff, it is important to look, not just at the current climate which is very difficult, but at the longer term perspective of the Town's well being and the ability to invest in the facilities for the long haul. He added this could be done affordably if wise decisions are made regarding the scale of the projects, and recommended approval of the request for a conceptual study.

Councilman McDonald said, obviously, the population is not increasing nor is the amount of land. He questioned the need for greater space needs for governmental activities.

Town Manager Elwell replied he did not anticipate any particular need, but over time, operations of the Town change; some scale back while others expand and new ones are added. He said an analysis was done that is still very nearly accurate today stating what the Town needs to do to accommodate current needs without providing any opportunities for future needs, and it is reasonable to expect future needs although none are projected at this moment.

Councilman McDonald confirmed that although Information Services has increased, Public Works has decreased balancing the departments out. He said his concern was that staff was not increasing, and since the population is not increasing, no apparent need is indicated to increase staff to satisfy the needs of the residents. He said a cafeteria/lunch room is needed and suggested the third floor of the new Fire-Rescue station could be used for that purpose in addition to an Emergency Center.

President Brooks requested the three year old study regarding space needs be re-distributed to the Mayor and Town Council.

PZ&B Director Robert Moore said several 'downsides' exist for moving his department off island, and they are: 1) the employees themselves; 2) inconvenience for residents of Palm Beach: 3) issuance of Occupational Licenses (suggestion: Finance take over the issuance of Occupational Licenses). Mr. Moore said his department's budget is totally self-sufficient, i.e. paid for by the contractors and people who use the services. Mr. Moore said, at some point, Building Department funds will not be able to be used to adjust tax base. He said, with those issues in mind, his department personnel wants additional space.

President Pro-Tem Goldblum said he agreed with Mr. Moore's remarks and hated to see taxpayers pay for a building, especially in this financial climate, but he had forgotten that the department's revenues are in excess of the amount that would be needed to substantially pay for what the Town is doing. He said if the Building Department moves off island, it will alleviate

the traffic problems, and although he does not want to spend the money at this time, it is needed and the Council should go forward with it.

Councilman Wyett suggested an alternative: the Preservation Society's building across County Road which could be purchased or leased very reasonably. He continued, regarding the revenue collected by the Building Department, that the Town does not allocate costs to the Building Department properly, because no allocations are made for the value of their space and the associated applicable costs. He said this is a bookkeeping problem that could be applied to all departments.

Councilman Wyett said if a building were constructed in W. Palm Beach, funds would have to be expended from surplus funds or the Town would have to borrow the money. He added that if the money were borrowed, interest costs would be accrued, and if the funds were taken from surplus, the Town's income would be reduced. He continued that government growth should be controlled, and many traffic trips would be made between Town Hall and a Building Department in W. Palm Beach, thus not eliminating 100% the traffic concerns regarding the department.

Mayor Smith pointed out that the residents and the businesses in Palm Beach are paying the revenues in the Building Department. She said she agreed with Councilman Wyett that the financial climate is bad, and consideration should be given to providing the space in Town Hall before an investment is made in a new building. She added that, although $2 million is in the budget for that expansion, employees would rather have salary increases than a fancy new Building Department building in W. Palm Beach. Mayor Smith said the W. Palm Beach property is a very valuable assest to the Town and the property might be used for a larger structure than the PZ&B building. She asked if anyone considered using any of the property on the west side of Dixie where the old Public Works building is located?

Town Manager Elwell responded a large parcel of land is there to accommodate building, but it would require, in terms of traffic convenience, that people would have to cross Dixie each time.

Mayor Smith said, in light of the possible $2 - $2.5 million expense for a new building, other options should be considered such as expansion in Town Hall after the Fire-Rescue station is completed.

Councilman McDonald asked Mr. Moore if PZ&B would have enough excess revenue funds to pay for the new building that would be built?

Mr. Moore replied that previously the department could have paid for a building in one year, but now he projected it would take five years with surplus money, over and above, what it would cost to run the department. He said he agreed with the Mayor's remarks regarding the taxpayers actually paying the costs of his department.

Councilman McDonald asked with the loss of Community Service Fees forever, would the Building Department run that much of a surplus over the actual operating expenses?

Mr. Moore replied his FY2002 budget had approximately $2 million worth of expenses and approximately $3 million in revenue without the Community Service Fees.

Leslie Evans, 214 Brazilian, said if the Building Department moves, it will relieve the parking in the area.

Responding to President Brooks' question regarding the new Fire-Rescue Station contract, Town Manager Elwell responded a bid award will be before the Town Council in February or March as the specifications are being finalized prior to being put out for bid. He added that construction is expected to begin in the spring, a month or two after the bid award.

President Brooks said he thought the consensus of the Council was that this is not the best time to build a new building, and, as the Mayor pointed out, the Town owns a very valuable piece of property on Quadrille, and, as Councilman Wyett pointed out, perhaps the Council should wait for a while before unloading such a valuable piece of property. He requested Town Manager Elwell re-issue the space study, after which something definitive can be worked out for Planning, Zoning and Building.

Councilman McLendon said he was sorry the negotiations with Florida Crystal did not work out, and he was in favor of going ahead with the study.

President Pro-Tem Goldblum asked what was happening with the Pike Road property?

Town Manager Elwell responded it was being remarketed because the second buyer cancelled the contract. He said it is a property that will be purchased and will only increase in value sitting next to the Turnpike intersection at Southern Boulevard.

Town Manager Elwell mentioned that although he heard the wishes of the Town Council regarding the current economic conditions, the flip side of that was the current issue of low interest rates that are as low as anyone could imagine them being. He continued that the interest rate that could be captured to do significant capital work, with a borrowing commitment that would be made within the next six months, is probably going to be very favorable and the lowest seen in many years.

Councilman McLendon said he heard a presentation made by the Palm Beach County Fire Chief at a meeting last Thursday, and they are looking for a site for a training facility in the Pike Road area. He suggested it might be worth a telephone call.

Councilman Wyett said that one of his objections to building in West Palm Beach is the fact that the property is very valuable, and land is becoming very expensive in West Palm Beach. He continued that land is too valuable to have a small building of 8,000 to 10,000 sq. ft. on a piece of land that size. He said he could foresee during this decade that the land would be worth between $5 and $10 million, and if the decision was made to build in West Palm Beach, the Mayor's suggestion to build on a site farther to the west would make more sense.

Councilman Wyett said if the Building Department Revenue is so great, the Town owes it to the taxpayers who ultimately pay the fees, to reduce the fees or have the Building Department pay for parking used by visitors to the department. He suggested strongly that costs should be reallocated to reflect the true costs of running the Building Department.

President Brooks said no motion would be necessary to conclude the discussion with Mr. Elwell providing the three year old space study.

Town Manager Elwell said the study would be provided with updated staff information regarding proceeding with the matter to accommodate the department's needs.

4. Update Regarding Planned Removal of Exotic Vegetation at the Ibis Isle Entrance. [Albert P. Dusey, Director of Public Works]

Public Works Director Dusey said the estimate to remove the exotics, at Town cost, was approximately $30,000, but he contacted a representative from FDOT regarding the removal as part of their future plans. He continued that FDOT's response was favorable and that issue should go in a positive direction, but it will take some time to work that out.

Councilman McDonald suggested that Mr. Dusey continue his negotiations with FDOT and let them take care of the exotics.

B. New Business

1. Request by Ballast Nedam Construction, Inc., for Closure of the Westbound Lanes of the Temporary Royal Park Bridge for 2 Instances of Each Week to Facilitate Construction of the New Royal Park Bridge. [Foppery van deer Wall, Project Manager]

Mr. van deer Wall said the request was not for lane closures during the daytime for the holiday season; however, the request was for a single lane closing, as has been done previously during the daytime, during the nighttime. He continued that they had hoped to complete the second mega pour for the footer of the bascule bridge before the season starts, but that had not been accomplished. He said his company needs one more two lane closure for a twenty-four hour concrete pour.

Public Works Director Dusey said he had not reviewed this request since it was submitted late.

Mr. van deer Wall explained the request was for December 14th to be completely sure it can be accomplished in one shot.

Mr. Dusey responded he is concerned about this project, in addition to other projects, and the impact they have on Town traffic. He offered to explore alternatives with the contractor, and suggested pours may be accomplished from the ends of the bridge.

Mayor Smith said the request to close the bridge from 8:00 p.m. is too early, and certainly there cannot be any closings between the Tuesday before Thanksgiving and the Monday afterwards; actually, the closings should not be over any weekend. She cited recent traffic congestion during the periods of closures that have caused long delays and traffic jams in Town. She suggested working with Public Works Director Dusey to work out a schedule the Town could live with.

Town Manager Elwell said Mr. Dusey and Mr. van deer Wall could work out a schedule as on-going communications occur all the time to work out the traffic problems with the new bridge construction. He said it was not sufficient, in terms of adhering to the Town's own ordinances and the right-of-way manual, to indicate that this request would be at the Public Works Director's discretion. He continued that the appropriate direction to staff would be to keep it as limited as possible and work in every possible way that this be done from the water rather than from the bridge, but to allow some of it to occur, if it is determined that it is necessary, with a conditional approval to the request, but direct staff to keep it on as limited a basis as possible.

Councilman McLendon made a motion for conditional approval of the request with the condition the Public Works Director work with Ballast Nedam Construction to devise a better schedule.

John McCracken, Town Resident, said those residents who live in the center of Town found this past weekend to be unbelievable. He said the population of Palm Beach expands on the weekends, and to close the bridge on a weekend is a mistake.

Councilman McLendon withdrew his motion.

Town Manager Elwell said he was hearing that the Town Council did not wish these lanes to be closed during the season on any regular basis, and other ways should be found to accomplish the concrete pour. He continued, if that were the case, then the request could be denied.

Councilman Wyett made a motion to deny the request.

The motion died for lack of a second.

Councilman Wyett made a motion to approve the request with all pours done between 12:00 a.m. and 6:00 a.m. with the balance of the pours pumped from the west side of the bridge with no weekends or holidays or blocking of the bridge. Councilman Wyett said the Christmas holiday should run from December 15th to January 5th. **The motion was seconded by Councilman McLendon and carried 3-0 as President Brooks and Councilman McDonald were out of the room.**

As requested by Mr. Dusey, Town Manager Elwell summarized the action: approved what was requested with a change in hours from 12:00 a.m. to 6:00 a.m. with other arrangements being made for other pours.

Town Manager Elwell said the second part of Ballast Needam's request was to have complete closure for the mega pour either on December 7th or December 14th.

Mr. Moore said the pour could be done from Flagler Drive using the right hand lane, currently used for employee parking, as the staging area for the mega pour requiring a line of concrete trucks. He said his recommendation was not to grant a closure of lanes on the middle bridge when the pour can be accomplished from the West Palm Beach side.

Mayor Smith said she withdrew her idea of bridge lane closures during the week as the traffic congestion would be just as bad as the weekend traffic. Mayor Smith noted that one weekend requested for the bridge closure was December 7th, the weekend of the Boat Parade.

Mr. van deer Wall said, during one pour, two lanes of the bridge were closed with traffic, east and west bound, shifting over to one side of the bridge. He offered to do that again.

Town Manager Elwell agreed that was how it was handled the last time; however, the fact remains that now it is in the midst of the season, not the summertime.

President Brooks made a motion to approve the request to close down two lanes on one side of the bridge with east/west traffic continuing on the remaining two lanes. The motion was seconded by Councilman McLendon.

Mr. Dusey said that required temporary traffic control on the east bound side is terribly disruptive and undoing it is terribly disruptive. Mr. Dusey said he would not recommend that alternative.

President Brooks requested Mr. Dusey meet with Mr. van deer Wall and return to the November 20th Special Town Council meeting with a suggestion.

No action was taken on the previous motion.

2. Proposed Florida Department of Transportation's Design Options for the State Road AIA Project.
[Albert P. Dusey, Director of Public Works]

Mr. Dusey explained that the Department of Transportation's Design Engineer requested policy direction regarding lighting and the maintenance responsibility for the improved park across from Phipps Ocean Park.

He continued that with respect to lighting, there are three distinct sections in that corridor; the first is from Lake Worth Road and Sloan's Curve. He said Public Works believes the lighting in that location is very good and suggested nothing be done. He said the second section is between Sloan's Curve and Widener's Curve; the Town lighting is not uniform and this is an opportunity to have uniform lighting that will have to be adapted to turtle issues.

Mayor Smith said uniform, turtle-friendly lighting should be installed between Sloan's Curve and Widener's Curve, and this might be an opportunity to bury the power lines in that area.

Mr. Dusey said he would investigate that area, but he thought the lines were buried in that area.

Motion made by President Pro-Tem Goldblum to approve the three suggestions put forth by Mr. Dusey:

1. **Between Lake Worth Road and Sloan's Curve. The existing lighting is very good and doesn't need to be changed.**

2. **Between Sloan's Curve and Widener's Curve – DOT should be asked to install a lighting system providing more uniform levels of lighting. In this area, however the lighting needs to be "turtle friendly" and an innovative lighting system will be needed.**

3. **Between Widener's Curve and Southern Boulevard – an improved lighting system should be installed to provide more uniform lighting.**

The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

Town Manager Elwell clarified that the above motion included Mr. Dusey's recommendation that the Town Council accept the maintenance responsibility for the landscaping improvements across from Phipps Ocean Park.

a. Lake Worth Road to Southern Boulevard.

See above.

b. Southern Boulevard to Royal Palm Way.

Mr. Dusey explained that this FDOT project is scheduled for 2006, and the suggestion is to request that FDOT conceptually review the plans proposed by the Town's architect regarding the Town Hall Historic District with the narrowing of the lanes to one lane to provide medians and areas for the development of arcades. He asked that the Town not be committed to anything

but just requesting the implications on an engineering basis. He said it would be expected that FDOT would consider any negative impacts to traffic capacity as well as potential benefits to pedestrians and all other considerations that surface during the design.

Mr. Dusey said sidewalks and curbs would normally be replaced, and, responding to questions from Mayor Smith, he said he would explore the issue of where sidewalks end between Southern Boulevard and Royal Palm Way with the possibility of extending sidewalks in areas where there are none.

Councilman Wyett questioned the incorporation of traffic lights into the request, because lights will be needed with the construction of the new Fire-Rescue station. He mentioned that the reduction in lanes from four to two could result in traffic slow downs, and the issue of the Town's taking control of South County Road to Royal Palm Way should be addressed to see if the idea is practical.

Mr. Dusey said the idea of switching two corridors—South County Road and South Ocean Boulevard—was based primarily upon the Town's gaining control of the South County Road corridor so the Town could do what they wanted with it, but this is a situation where the Town could perhaps have FDOT make the changes the Town wants at FDOT's cost.

Councilman McLendon said he objected to reducing a lane in each direction on South County Road, and he thought it would create chaos.

President Pro Tem Goldblum said he thought a bottle neck would be created at the intersections with lane reduction.

President Pro-Tem Goldblum made a motion to explore these concepts without committing the Town to the outcome; it is expected that FDOT would consider any negative impacts to traffic capacity as well as potential benefits to pedestrians and all other considerations that surface during the design.

The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

3. Request by Royal Poinciana Association for Town to Install Decorative Red Bows in the Median on Royal Poinciana Way.
[Amy E. Shaughnessy, President, Royal Poinciana Association]

Ms. Amy Shaughnessy presented the bows that are proposed to be installed on the trees in the median of Royal Poinciana Way for the holiday period while the holiday tree is up.

Town Manager Elwell asked if the bows would be on both sides of the median?

Ms. Shaughnessy replied the idea was to decorate the trees closest to the shops, but trees could be decorated on both sides if the Town Council so desired.

President Pro-Tem Goldblum made a motion to approve the installation of the decorative red bows with the condition both sides of the street are done so the street is balanced. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

4. Sea Turtle Protection.
[Samuel C. McLendon, Town Council Member]

Councilman McLendon explained that only 1% of the hatchlings live to adulthood, and his plan was to improve that percentage. He proposed removing the hatchlings from an incubator, a three foot rectangular box with shelves that have ¾ inch holes, one for each egg. He continued that when the turtles hatch in this incubator after 30 – 50 days, a dull light at each of the shelves would attract the hatchlings who would then drop through 4" x 8" opening directly into the water, and the key would be the location of the incubator just below low tide level. He said a concrete slab would support the incubator just east of low tide with adjustable pvc pipe, and the temperature of the incubator would be controlled by pumping sea water with a small centrifugal or peristaltic pump, and 120 volt service would be required from the existing Town facility next to the groins.

Councilman McLendon suggested Public Works could modify the plans, if necessary, and the incubator size could be changed. He said nesting occurs between the middle of April to the middle of August, and if an incubator was used in lieu of the nests, the Town would not have to worry about the nests for two less months. He requested the Town Council refer this item to the Public Works Department for further consideration.

Councilman McLendon made a motion to refer the issue of the Sea Turtle protection to the Public Works Department. The motion was seconded by Councilman McDonald and carried 5-0 on roll call.

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The Town Council meeting of November 12, 2002, was adjourned for the luncheon recess at 12:30 p.m.

The Town Council meeting of November 12, 2002, was reconvened at 2:15 p.m.

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5. Hospital Issues:

a. Fire-Rescue Transport Protocols vis-à-vis Palm Beach Gardens Medical Center and JFK Hospital.
[Allen S. Wyett, Town Council Member]

b. Good Samaritan Medical Center.
[Allen S. Wyett, Town Council Member]

Councilman Wyett reported that the Palm Beach Fire-Rescue Department would no longer transport patients to Palm Beach Gardens Medical Center, unless requested by the patient. He explained that the open heart surgery infection rate had been a problem at the hospital. He reported that he had been working with both Good Samaritan Hospital and St. Mary's Hospital regarding adding an angioplasty unit, and to support an action of the legislature to allow a certificate of need and separate open heart surgery from angioplasty; he requested the support of the Town Council in this regard He explained that currently Good Samaritan and St. Mary's provided no service of any consequence with heart attacks and strokes. He stated that they were not serving the community and did not deserve support until their practices were changed.

IX. RESOLUTIONS

A. Resolution No. 76-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Settlement Authority Policy, Providing an Effective Date.
[Karen Temme, Risk Manager]

Town Attorney Randolph read Resolution No. 76-02 by title.

Councilman McDonald moved approval of Resolution No. 76-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

B. Resolution No. 77-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing Commercial Solid Waste Collection Fees To Become Effective January 1, 2003.
[Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 77-02 by title.

Councilman McDonald moved approval of Resolution No. 77-02. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

C. Resolution No. 78-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Granting of a Twenty-Five Foot Non-Exclusive Easement on Town Owned Property West of SRA1A and Just North of Phipps Ocean Park to Florida Power and Light Company and Authorizing the Town Manager to Execute an Agreement between Florida Power and Light and the Town of Palm Beach as a Condition of the Granting of the Non-Exclusive Easement.
[Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 78-02 by title:

Mr. Rod Macon, Florida Power & Light, addressed the Town Council, stating that originally, FP& L was going to be required to pay for the easement, however, it had been suggested that in lieu of a cash payment, an arrangement could be made through agreement. He explained that Town staff and FP & L had agreed that a ten year time frame was appropriate.

After discussion, Councilman McDonald moved approval of Resolution 78-02. with a 15-year time frame (rather than the ten year time frame stated in Section 3 of Resolution 78-02)regarding the obligation of FP & L to bury a portion of an existing aerial pole line that conflicts with future expansion of the Town's Phipps Ocean Park Tennis Facility upon Town request.. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

D. Resolution No. 79-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Revised Statement of Investment Policy Including a Revised Asset Allocation Policy for the Public Safety Board of Trustees of the Town of Palm Beach Retirement System Pursuant to Section 82-95(B) of the Code of Ordinances of the Town of Palm Beach and Providing an Effective Date.
[William C. Crouse, Director of Human Resources]

This item was heard out of order, after Item VIII. B. New Business 3.

John McCracken, Attorney for the Public Safety Board of Trustees, said the Public Safety Board of Trustees is charged by the Town's ordinance to annually review the investment policy which is utilized to manage the funds of the retirement plan for firefighters and police officers of

the Town. He said the Board has done that and presented a proposed resolution to the Board, Resolution No. 79-02, which he read by title.

Mr. McCracken said the significant change is a change in the asset allocation to be utilized by the Public Safety Board of Trustees and to become involved in the investment in what is described as alternative assets, being directional hedge and absolute return hedge funds. He explained that the Board has never invested in assets such as this in the past, and it is a significant change in the direction that the Board of Trustees of the Public Safety Board is asking for.

John Prime of Prime, Buchholz, consultants to the Board, said the 60% maximum equity exposure has been maintained but an element of alternative assets at a 10% allocation; allocating 5% to what is called a directional hedge and the other is an absolute return. He explained that the reason for the recommendation is to provide for better management of risk, and the characteristics of these two components within the structure tend to provide an equity like return consistent with the objectives of the overall fund profile while providing that return for considerably less volatility as measured by the standard deviation. Mr. Prime said, not only will it enhance the objective of providing the necessary actuarial return, but it will serve to protect the assets in two out of three market scenarios—both flat and down markets. He added that this is a segment of portfolio structures that many institutional investors have used.

Mayor Smith asked if the restriction, 'there shall be no short selling' is still valid?

Mr. Prime responded that it means no short selling without the prior approval of the Board. He said the long/short hedge strategies do include selling stocks short.

Mr. Prime, responding to questions regarding the management of the account, said the managers will be expanded from four managers to probably eight managers, but that issue will be handled with the Public Safety Board on December 5th. He added there will be one manager who employs the strategy the Council is concerned with, and that will include no more than 5% of the fund assets.

Councilman Wyett asked if any review had been done regarding Investment Objectives on page 164 and the ability to maintain an expected return of 8% with the underlying inflation assumption of 5% which means a real return of 3% over inflation? He asked if that were real in terms of, not only this current year, but next year?

Mr. Prime replied that, obviously, the answer to that is 'no', but the return assumption is a long term assumption and is built by the actuarial profile of the fund. He continued that typically an 8% nominal rate of return or 3% real rate of return would be a very conservative objective. He said during 2001-2002, it was impossible, unless investments were all in bonds, to meet those return objectives, but the allocation structure should easily provide an 8% rate of return on a nominal basis going forward.

President Brooks asked Mr. Prime if his firm had represented municipalities similar to Palm Beach?

Mr. Prime responded his firm represented approximately half a dozen currently including in Palm Beach County, the Jewish Federation, the Community Foundation, and the Flagler Museum.

Mr. McCracken said the 5% hedge fund, with a long/short strategy, is actually a fund of funds with a fund manager who has a number of funds within his funds.

Motion made by President Pro-Tem Goldblum to approve Resolution No. 79-02. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

E. Resolution No. 80-02 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]

Town Attorney Randolph read Resolution No. 80-02 by title.

Councilman McDonald moved approval of Resolution No. 80-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

X. ORDINANCES

A. Second Reading

1. Ordinance No. 21-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Various Chapters of the Town Code Relating to Stormwater Management, as Follows: Chapter 18, Buildings and Building Regulations, to Amend Requirements for Site Plans, Floor Elevations, Retaining Walls and Demolition; Chapter 30, Consistency and Concurrency Management System, to Amend Levels of Service and Management Procedures; Chapter 66, Natural Resource Protection, to Amend Requirements of Landscaping Plans and Standards; Chapter 86, Planning, to Amend Definitions, Exemptions, Standards, Plans, Compliance, and Add Threshold Requirements; Providing for

Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date. [Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 21-02 by title.

Councilman McDonald moved approval of Ordinance No. 21-02, on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

2. Ordinance No. 25-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 66, Natural Resource Protection at Section 66-286, to Add Additional Requirements for Moisture Sensing Devices; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 25-02 by title.

Councilman Wyett moved approval of Ordinance No. 25-02, on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

3. Ordinance No. 26-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 42, Environment at Section 42-199, to Amend Hours of Construction Work; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 26-02 by title.

Councilman Wyett moved approval of Ordinance No. 26-02, on second reading. The motion was seconded by Councilman McDonald and carried unanimously on roll call.

4. Ordinance No. 27-02 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 78, Article III, of the Town Code of Ordinances Relating to Charitable Solicitations; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for an Effective Date. [Mary A. Pollitt, Town Clerk]

Town Attorney Randolph read Ordinance No. 27-02 by title.

Councilman Wyett moved approval of Ordinance No. 27-02, on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

B. First Reading

1. None.

XI. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

Regarding deadlines for backup materials submitted before Town Council meetings, President Brooks requested a 5:00 p.m. Friday cutoff for submission of any materials by the public. Councilman McDonald wanted to keep the system as it is currently. Town Manager Elwell proposed, after hearing the comments of the Council, to provide language addressing the situation at the November 20th Special Town Council meeting.

Councilman Wyett requested the issue of the Palm Beach Public School be revisited and urged the Council not to rush the project, concentrating on the needs of the children and the recreational open space.

XII. DEVELOPMENT REVIEWS

A. Time Extensions

1. Status Report of Construction and Construction Traffic Management at 1500 South Ocean Boulevard.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Director of Planning, Zoning & Building Robert Moore referred to his memorandum of October 30, 2002, to Town Manager Elwell, describing the current status of the Clark residence project at 1500 South Ocean Blvd., as required under a time extension that had been granted.

Attorney Timothy Hanlon, on behalf of the applicant, addressed the Town Council, stating that the project was going very well; he produced photographs of the property.

Architect Mark Marsh reviewed the photographs with the Town Council, noting that the completion schedule was scheduled for October 2003.

2. Request for Extension of Work Construction Period at 323 Worth Avenue

Director of Planning, Zoning & Building Robert Moore advised that this project had been given some administrative time to finish the project, and they had been unable to do so. The applicant was now requesting an extension of construction.

Attorney Peter Broberg, on behalf of the applicant, East Coast Jewelry, explained that all the work would be interior work, and the project would be finished by November 22, 2002. He requested an extension of construction hours.

Mr. Moore added the following conditions of approval:

Deliveries before 10:00 a.m.
Objectionable noise would require the project to be shut down
Work hours until 8:00 p.m.
No parking on Worth Avenue

Councilman Wyett moved approval of the extension of construction hours for East Coast Jewelry, 323 Worth Avenue, with the conditions as stated above. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE NO. 20-2002 The application of Frederick R. Adler and Catherine G. Adler relative to property described as lengthy Metes and Bounds legal description on file; commonly known as 1520 South Ocean Boulevard; located in the R-A Zoning District. To allow two (2) variances for the enclosure of an existing deck, which is partially a second story and partially a third story, for construction of an addition for staff quarters. The first variance is a request to increase the building non-conforming 3rd floor element and the second variance is a request to provide a side yard setback at 10.91' in lieu of the 15' minimum required. *(Deferred From June 11, July 9, August 13, and October 8, 2002, Town Council Meetings.)*

Variance No. 20-2002 was withdrawn earlier in the meeting.

b. VARIANCE NO. 36-2002 The application of Gail Trinka relative to property described as the north ½ of a parcel of land in Section 14, Township 44 South, Range 43 East; commonly known as 2300 South Ocean Boulevard; located in the R-C Zoning District. To allow a 11.7 ft. x 13.8 ft. canvas awning to remain requiring a variance for a side set back of 1 ft. in lieu of the 10 ft. minimum required, and a variance for a rear set back of 8.2 ft. in lieu of the 15 ft. minimum required. To allow a 29.2 ft. x 12.3 ft. canvas awning to remain requiring a variance for a side yard setback of 1 ft. in lieu of the 10 ft. minimum required.
(Deferred From October 8, 2002, Town Council Meeting.)

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Peter Broberg, and review of the site; by President Pro-Tem Goldblum via a conversation with Attorney Broberg; by President Brooks via a conversation with Attorney Broberg; by Councilman McDonald via a conversation with Ms. Trinka to discuss his opposition to the variance request.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that an awning company had installed two awnings on the property in question approximately five years ago. He explained that a permit had not been pulled at that time, and the applicant had then purchased the property in 2001, whereupon an awning company recovered the awnings, with a permit pulled. Now, the Code Enforcement advised that the awnings were in violation of the side yard and rear yard setbacks and a variance must be requested. He maintained that the awnings could not be seen by the public, and abutted the Harbor House parking lot; he produced two letters from residents of the Harbor House with no objection to the request, as well as photographs of the property in question.

Director of Planning, Zoning & Building Robert Moore provided the following staff comments: Comprehensive Plan: does not appear to meet the criteria for granting of a hardship; Building Department: demonstrate hardship. He advised that in the past, similar cases had been handled in the following manner: if an error made either by the Town, or another error, such as a surveyor's error, the Town Council had historically not granted such variances.

Mr. Stuart Shulman, 2280 S. Ocean Blvd., commented that the applicant had beautifully improved the property with the awning.

Councilman McDonald commented that every time the Building Department made a mistake, it did not necessarily mean that the Town Council must ratify it.

Attorney Broberg responded that the Town had an opportunity when the applicant had the awning recovered to deny the request, however, the permit had then been granted. He maintained that the hardship ran with the land, and the applicant had not created the structure as it was; the size of the property.

Mr. Moore commented that only the east awning had been permitted for recovering.

After further discussion, Councilman Wyett moved approval of Variance No. 36-2002, with the condition that hedges would be grown to cover the east and west awnings. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/1, with Councilman McDonald casting a dissenting vote.

c. SPECIAL EXCEPTION NO. 11-2002 WITH SITE PLAN REVIEW The application of 2875 Development Group, LLC relative to property described as lengthy Metes and Bounds legal description on file; commonly known as 2875 South Ocean Boulevard; located in the C-TS Zoning District. To allow for modification of the existing Special Exception #25-80, by amending a condition of approval, which permitted only office and professional services on the first floor. The request is to allow other C-TS uses in addition to the office and professional services on the first floor. Also requesting Site Plan Review to convert approximately 1,983 square feet of existing gross floor area on the first floor into gross leasable floor area by converting existing common space into existing tenant spaces. *(Deferred From August 13, 2002, Town Council Meeting.)*

Ex-parte communication was declared by Councilman McLendon via a conversation with Mr. Evans, by President Pro-Tem Goldblum via a conversation with Mr. Evans; by President Brooks via a conversation with Mr. Evans in regard to the property; by Councilman Wyett via a

conversation with Mr. Evans in regard to the property; by Councilman McDonald via conversations with many adjacent property owners in regard to the merits of the application.

Mr. Les Evans addressed the Town Council, on behalf of 2875 Development Group, addressed the Town Council, providing a history of the building. He explained that he had met with the Citizens' Association and input from the community had been gathered in order to determine what was desired in the area; various options had been investigated. He stated that his goal for use of the area was to minimize people coming from the Lake Worth area and attempting to meet the desires of citizens in the area, meeting all concerns.

Zoning Administrator Paul Castro provided the following staff comments: the site plan was in compliance with all zoning code requirements, however, in 1980, when the building was originally built, the Town Council had decided not to proceed with a building moratorium in that area of Town, and approved a much larger building to replace the smaller bank building, with the condition that the larger building contain only offices represented by the applicant, and that it remain as an office building; if there was any change it would be required to come back to the Town Council for consideration of removal of the condition. He explained that the applicant was before the Town Council today to request elimination of that condition, and staff had concerns about the elimination of the condition because of the adjacent residential areas and area traffic. Staff was also concerned with the other components, other than pharmaceutical, related to a Walgreen's or Eckerd Drug Store.

Councilman McDonald expressed concern regarding the Town serving aspect of the proposal.

Mayor Smith commented that she was opposed to having a drug store in the location; past Town Councils had been very firm in their desire to keep the building as a business use in a residential area.

In response to Councilman McDonald regarding the special exception criteria, Mr. Evans replied that the standards had been addressed in the application.

Ms. Ann Growney, 2860 S. Ocean Blvd., commented that traffic was already a problem in the area.

Attorney Garrett, on behalf of Palm Worth Court, 2850 S. Ocean Blvd., addressed the Town Council, distributing a hand out, commenting that the residents were absolutely against any retail exception in the location in question.

Mr. John Morris, Secretary LaPalma Condominium, commented that this item had been deferred too many times, and suggested that a decision be made.

Councilman Wyett commented that only a national drug store chain would be able to sustain a business in the area, since many residents were not year round residents. He stated that it was a decision of the Town Council as to whether it was important to provide a drug store service to the residents.

Director of Planning, Zoning & Building Robert Moore commented that staff had advised the applicant that he was seeking a reversal of the procedure – he was requesting the removal of a development agreement that was placed on the property 22 years ago.

After further discussion and comments, President Pro-Tem Goldblum moved denial of the reversal of restrictions on the previous development agreement.

The motion was seconded by Councilman McDonald for discussion.

Councilman Wyett suggested that the applicant withdraw the application and return with a more comprehensive plan in the future.

On roll call the motion to deny the removal of the C-TS Zoning carried 4/1, with Councilman Wyett casting a dissenting vote.

Mr. Evans requested withdrawal of the site plan review.

Councilman Wyett moved approval of withdrawal of the site plan review portion of the request. The motion was seconded by Councilman McLendon, and carried 3/0, as President Pro-Tem Goldblum and Councilman McDonald had temporarily left the room.

d. SITE PLAN REVIEW NO. 9-2002 The application of CSC Brazilian, L.P. a Delaware limited partnership (Adam Schlesinger) relative to property described as all of Lots 17 through 40 inclusive, Block 3 and all of Lot 41, Block G, Revised map of Royal Park Addition, less a portion of Lots 17, 18, & 19, Block 3, Revised map of Royal Park Addition; commonly known as 301 Australian Avenue; located in the R-C Zoning District. Requesting site plan approval for expansion of an existing nonconforming hotel in existence over 15 years. To include building additions for construction of new units (net reduction of units overall), circulation areas, elevator, outside dining with awning, storage shed, and cooler at the main hotel site; a valet parking layout at the off-site parking lot on Hibiscus Avenue; a variance to allow hotel square footage of 85,973 square feet in lieu of the existing 82,518 square feet of hotel use; a variance to allow the hotel square footage to increase to 4,713 square feet in lieu of the existing 908 square feet of hotel use that currently exists across Australian Avenue to the south in the "Ohio House" which has been used for Brazilian Court workers' quarters in the past; a variance to allow lot coverage of 55% in lieu of the maximum of 30% and 51% existing; a variance to allow a zero foot setback in lieu of the

required 23'6" side setback (building height) required for a proposed 30 square foot storage shed to replace 2-30 square foot existing non-conforming storage shed structures; a variance to allow a 15'7" setback in lieu of the required 23'6" side setback (building height) for the construction of a cooler and dumpster shed within the existing loading area; a variance to allow a reduction in required off-street parking of 7 spaces excluding additional 14 proposed valet spaces to be stacked in the lot east of the Hotel; a variance to allow valet only parallel parking in existing parking areas and a reduction in isle width to 8' in lieu of the required 25' for valet parking only; and, a variance to allow valet only parallel parked automobiles to block another automobile requiring an automobile to be moved to allow another to be taken from the property. *(The portion of the application for the banquet facility seating and outdoor seating was deferred to the November 12, 2002, Town Council meeting to reconsider the on-street parking and traffic circulation issues related to that seating)*

Ex-parte communication was declared by Councilman McLendon via a telephone conversation with Attorney Brindell; by President Pro-Tem Goldblum via a telephone conversation with Attorney Brindell; by President Brooks via a telephone conversation with Attorney Brindell.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the applicant was back before the Town Council to discuss the parking and how it would be managed. He proposed that there were approximately 13 proposed parking related items, and he would initially address the items that the applicant agreed with:

The basic allocation of dining seats would be 168 for regular dining areas, and 130 seats between the two banquet facilities for a total of 298 seats. The applicant agreed that the dining seats could be augmented up to 194 out of the 298 if the banquet facilities were not being used. The applicant agreed that the seats that would be in the patio area would have to come out of the dining seats – therefore, it was either the 168 or up to the 194, dispersed between inside and outside. The applicant agreed that when both the banquet facilities and the regular dining area were in use, the hotel would be required to provide a special duty Town police officer, paid for by the hotel, to direct traffic and assist with the parking until the events are over and the patrons are gone. The applicant agreed that the hotel would have a valet parking permit, pursuant to ordinance. The applicant agreed that if the Police Department received valid complaints from residents, that the parking operation was interfering with the reasonable use of the streets, the Police Chief could then require a additional special duty Town Police Officer, to be hired by the hotel, for further parking and traffic assistance, and may require that the valet operation be modified in some way to mitigate the complaint. The applicant agreed that the hotel would coordinate the scheduling of a special duty Police Officer sufficiently in advance of the event

requiring such Police Officer, so that the Police Department can ensure the availability of that officer. The applicant had proposed to park 30 employee vehicles off-Island during the season, and that bumper decals would be applied, or some system worked out with the Police Chief, to ensure that those people who were parking off-Island were not sneaking back on the Island and parking on the street, during their time of work at the hotel.

Attorney Brindell proposed that there should not be a distinction between the regular dining seats and the banquet areas – the applicant believed that the seating should number 298, distributed between banquet and normal dining.

Zoning Administrator Paul Castro advised that the comments made by Attorney Brindell were based upon a meeting between the applicant and staff, and were generated by the original comments sent to them by staff after that meeting. He advised that the operation of the banquet facilities, the dining room, and the conference facility across the street had been discussed, and the reason why there was a distinction between the two banquet facilities and the dining room was that there was the capability to stagger the time the banquets appeared, however, in the dining room, there were usually two seatings. Staff had considered that the hotel would have the opportunity to schedule a banquet before the first seating, and one between the first and second seating, so people would not all be coming to the hotel at the same time. That was the reasoning behind only allowing 194 seats for the dining room when neither one of the banquet facilities were operating; the 194 seats would give them some flexibility, since the original approval was for 168 seats, with 41 outside. He explained that after speaking with the consultants, and review of staff, it was believed that there would be a traffic and circulation problem related to the increased function area and the popularity of the hotel in the residential area. The conditions set by staff were in the hopes of mitigating the issues, however, staff still believed there would be a traffic circulation and on street parking problem in the area.

Attorney Brindell commented that during the season the hotel intended to have reservations only. He stated that the hotel had been extremely popular in 1995, and there had also been 130 hotel rooms at that time – there had not been a serious problem then, and the hotel had a history that had worked well. The applicant had agreed to a condition that required action to mitigate any traffic problems. The valet service permit ordinance also required mitigation.

Attorney Brindell addressed the request by staff that the hotel submit a banquet facility schedule on a monthly basis during the season. He commented that it was a business record, and he did not think it was right to ask the hotel to be the only one in Town required to submit its banquet facilities schedule (that is, who it's clients were) that would then become a public record. The applicant would already be required to make advance arrangements with the Police Department.

Director of Planning, Zoning & Building Moore advised that there were Declaration of Use Agreements in place with other people that did require them to advise staff in advance of large parties or groups so that all Town agencies could prepare for them.

Zoning Administrator Castro commented that staff was not looking for specific names, just numbers.

Mayor Smith suggested that there be a banquet entrance on the north side of the building., on Brazilian Avenue.

Attorney Brindell suggested that a reasonable period in advance be worked out for notification of banquets to be held – without necessarily latching on to the 30-days suggested by staff.

Mr. Moore responded that language be added – "or as close to thereof," and Attorney Brindell replied that the applicant and staff would work with staff in regard to the specific language.

Attorney Brindell addressed the off-Island parking of employees during the season. Staff had suggested that the off-Island location be limited to a time distance of 15-minutes from the hotel. The site that the applicant had proposed was between 15-18 minutes away, according to maps.

Mr. Moore commented that he lived in the same area, and noted that it took more than 15 -18 minutes to drive to the Town of Palm Beach Brazilian Court, and respectfully disagreed with Mr. Brindell. He suggested that the applicant find parking within 15 easily transportable minutes.

Attorney Brindell commented that the traffic consultant had actually driven the proposed location several times, and had verified the number of minutes.

In response to Councilman Wyett, the hotel General Manager, advised that there were approximately 30-32 employees after 6:00 p.m.

Councilman Wyett expressed objection to off-Island parking of employees, suggesting that there was available off-site parking on Island for employees.

President Pro-Tem Goldblum suggested that both a sticker for the employee car and submission of the employee license number be required.

Attorney Brindell agreed with the suggestion.

Mr. Moore suggested that the applicant be required to return to the Town Council if there was any problem with the off-Island parking. He explained that staff would present the Declaration of Use Agreement to the Town Council for review, with all conditions required.

Attorney Brindell addressed the requirement proposed by staff that there be an additional on-Island parking place identified, if the situation demanded it. He stated that the valet parking ordinance would give the Police Chief power to require the applicant to mitigate any negative impacts caused by the parking situation.

Mr. Castro commented that there was limited on street and off street parking in the area, and something of the caliber of the hotel would normally need 220 off street parking spaces to cover it; the applicant had 70. When all of the on street parking was taken during the season, the valets would not have spaces to park cars; staff had determined that the applicant would need to have a location to place cars when the on street parking and the parking lot was full.

Attorney Brindell responded that there were 180 parking spaces on the street within one block of the hotel, that were accessible after 6:00 p.m. He suggested that, at the worst situation, the hotel would need 59 on street spaces – that would be with the banquet and restaurant rooms all full at the same time. He suggested that the off site parking location was an unreasonable requirement.

Mr. Abe Gosman addressed the Town Council, stating that the hotel had historically been in business for years, and there had not been that many complaints. He explained that this was not a new venture, and there was not an expansion of what had been in place.

Mr. Moore commented that staff proposed additional on Island parking because staff was aware of a problem at the Peruvian lot at this time. He suggested that the Declaration of Use Agreement include language that would require that the applicant return with an alternate location if parking became a problem.

Attorney Brindell agreed with Mr. Moore.

Attorney Brindell addressed the Ohio House portion of the property. He noted that the five parking spaces at the Ohio House were staying in place. Staff had suggested that the use of the conference facility at the Ohio House be precluded after 5:00 p.m. each day. He noted that the applicant had agreed that there would be no meals served there, and suggested that there would be no problem with using the facility after 5:00 p.m.

Mr. Castro advised that the meal serving was not a problem – it was the parking and traffic circulation problem that was the concern of staff.

Mr. Moore agreed that if the applicant came with a plan for off site parking, there would not be a problem with the use of the Ohio House being used until 8:00 p.m.

Attorney Brindell addressed the lanai suites, noting that he had spoken with Town Engineer Bowser regarding the easement with a sewer line and a gas line. He explained that the applicant would like to get the lines out from underneath the building completely; he suggested that the applicant come back to the Town Council with an engineering solution acceptable to the Public Works Department.

Councilman Wyett moved approval of the conditions as discussed today, with deferral of the lanai suites to the December 14, 2002, Town Council Meeting. Councilman McLendon seconded the motion. On roll call the motion carried unanimously.

2. New Business

a. VARIANCE NO. 40-2002 The application of James and Susan Collins relative to property described as the east 10 feet of Lot 29, all of Lot 30 and the west 15 feet of Lot 31, Block 8, Plat of Revised Map of Royal Park Addition; commonly known as 125 Chilean Avenue; located in the R-B Zoning District. To allow construction of an addition to a one story house with a 6.4 foot side setback, in lieu of the 12.5 foot minimum required.

Ex-parte communication was declared by Councilman McLendon via a meeting on site with Attorney Paine and the homeowner; by President Pro-Tem Goldblum

Jim Paine, Attorney representing the applicants, said they were seeking a side yard setback variance of 6.4 ft. in lieu of the 12.5 ft. required. He explained this was a classic in-fill type of variance, filling in an existing courtyard.

Zoning Administrator Paul Castro said he questioned the hardship and the reason for requesting the height they are asking for which is taller than the existing structure.

Mr. Paine explained the height request was to provide for clear story windows which will provide light into the space which is next to very large roof overhangs, and the plan is matching an existing architectural detail over the entry.

Motion made by President Pro-Tem Goldblum to approve Variance No. 40-2002. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

b. VARIANCE NO. 41-2002 The application of Dudley L. Moore Jr. and Margaret B. Moore relative to property described as Lots 16 and 17, Supplementary Plat of El Bravo Park; commonly known as 220 El Bravo Way; located in the R-A Zoning District. To allow construction of a first and second floor addition to the main residence requiring a rear yard setback of 12.64 feet in lieu of the 15 foot minimum required. **(Staff Recommends Deferral so the Applicant Can Provide Legal Notice to Adjacent Property Owners.)**

This item was deferred earlier in the meeting.

c. VARIANCE NO. 42-2002 The application of Peter K. Coleman relative to property described as Lot 2, less the west 12 feet and the south 10 feet thereof, and the west 22 feet of Lot 1, less the south 10 feet thereof, of Roots Subdivision; commonly known as 125 Root Trail; located in the R-C Zoning District. To allow increasing the height of the rear wing of this non-conforming house, with a rear yard setback of 2 feet in lieu of the 15 foot minimum required. The improvement would increase the exterior height of the back flat-roofed portion of the house by 7.0 feet.

Exparte communications were not declared by anyone.

Attorney James Brindell, representing the applicant, said the existing rear yard setback is 2 feet 2 inches with an existing wall that is 3 ft. 2 inches inside the north property line. He presented photographs showing that one inside room in the residence is 6 feet 3 inches tall inside with the remaining portion of the room angling up to approximately 8 feet at one point. He explained the setback variance is necessary to add a gabled roof to allow height.

Mr. Moore said staff had no objections.

President Pro-Tem Goldblum made a motion to approve Variance No. 42-2002. The motion was seconded by Councilman McLendon and carried 4-0 as Councilman Wyett was out of the room.

d. VARIANCE NO. 43-2002 The application of Benno and Elayne Hurwitz relative to property described as Lot 29, Sea Isle Estates; commonly known as 137 East Inlet Drive; located in theR-B Zoning District. To allow construction of a cabana and installation of a handicap elevator which will increase the cubic content ratio from the existing 4.97 to 5.62 in lieu of the 3.98 maximum allowed in the R-B Zoning District.

Exparte communications were declared by President Pro-Tem Goldblum and President Brooks with Maura Ziska.

Attorney Maura Ziska, representing the applicants, explained this project was before the Town Council approximately one year ago with requests for cubic content ratio of 5.14 and later reduced the size of the cabana to allow an elevator to be placed in the front of the house due to the physical condition of Mr. Hurwitz. She said an error was made in calculations on the original request and this is a renewed request for the correct calculation. She said the hardship is additional property that cannot be used in the CCR calculations, and the house sits on a dune and is approximately 4 – 5 feet above the crown of the road.

Mr. Moore confirmed that the applicants do own considerable property to the Town's bulkhead line with the people of the subdivision owning past the bulkhead line to the water edge. He said that portion of the hardship, in his opinion, does not exist; however, Ms. Ziska's statement regarding the crown of the road is correct.

Ms. Ziska reported Mr. Hurwitz does pay taxes on the property in question.

Gene Pandula, Architect, said the size of the cabana is 9 feet by 21 feet or 189 square feet, and it contains a minimum bathroom, a closet, and a wet bar.

After discussion, **Councilman McDonald made a motion to approve Variance No. 43-2002. President Pro-Tem Goldblum seconded the motion and it carried 4-0 on roll call as Councilman Wyett was out of the room.**

e. SPECIAL EXCEPTION NO. 21-2002 WITH SITE PLAN REVIEW AND VARIANCE The application of James H. Clark, Trustee of the James H. Clark and Nancy Rutter Clark Revocable Living Trust relative to property described as 1500 South Ocean Boulevard; commonly known as 1500 South Ocean Boulevard; located in the Beach Area Zoning District. Special exception and site plan approval to construct a single story beach cabana exceeding 500 square feet; variance to construct a single story beach cabana that is approximately 86' wide in lieu of the 45' maximum permitted; variance to permit a single story beach cabana containing 1,789 square feet of enclosed cabana and 724 square feet of covered patio, totaling 2,513 square feet in lieu of 2,000 square feet maximum permitted; and variance to permit a service drive on the property where such drive is prohibited for purposes of allowing for the monitoring, maintaining and improvement of the sea wall and accompanying sea wall improvements for the subject property and the neighbor's property immediately north, as required by the Florida Department of Environmental Protection. **(Staff Recommends Deferral so the Applicant can Provide Adequate Legal Notice.)**

This item was deferred earlier in the meeting.

f. SPECIAL EXCEPTION NO. 22-2002 The application of Jane B. Holzer relative to property described as Royal Park Addition, Lots 48 to 51 inclusive, Block 15; commonly known as 247 Worth Avenue; located in the C-WA Zoning District. Special Exception requested to enable the applicant to utilize three rooms in the east half of the second floor of the existing commercial building on the north side of this property for a workout studio with personal training, including yoga and Pilates. This use will occupy up to 611 square feet, and will be physically separated from the west half of the second floor. This is a use which is not specifically enumerated under permitted uses in Section 134-1157, but having traffic, patronage, and intensity of use characteristics similar to those uses cited therein.

Exparte communications were declared by President Brooks and President Pro-Tem Goldblum with Attorney James Brindell.

Mr. Brindell said his request was for a workout studio including a personal trainer, yoga and Pilates, and this was required because this is a use not specifically enumerated under permitted usages in the Code.

Mr. Castro said the staff believes the use is similar in character, etc. to other uses permitted.

President Pro-Tem Goldblum made a motion to approve Special Exception No. 22-2002 with the condition a Town-serving document be supplied to the Town. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

g. SPECIAL EXCEPTION NO. 23-2002 The application of 125 Worth Avenue Limited Partnership relative to property described as Royal Park Addition, Lots 38 to 48 inclusive, Block 16; commonly known as 125 Worth Avenue; located in the C-WA Zoning District. Special Exception to allow new Town-serving tenant bank (Colonial Bank) to occupy the same 12,396 square feet that the current, Town-serving tenant bank (Palm Beach National Bank and Trust) occupies.

Exparte communications were declared by Councilman McLendon, President Pro-Tem Goldblum, and President Brooks with Attorney Ron Kolins.

Attorney Ron Kolins explained that Colonial Bank has acquired Palm Beach National, and the use and the property will remain as it is. He said the only reason for the request is that a new occupational license is required when a new company operates the bank. He added that

Palm Beach National has been Town-serving for many years, and Colonial Bank will comply with that requirement.

Motion made by President Pro-Tem Goldblum to approve Special Exception No. 23-200 with the condition the Town serving requirement be satisfied. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

h. SPECIAL EXCEPTION NO. 24-2002 WITH VARIANCE The application of Pems Partnership Ltd. relative to property described as all of Lot 9, and the West one-half of Lot 10, and all of Lot 34, Royal Park Addition, Block F, and all of Lot 28, Block H, Revised map of Royal Park Addition to Palm Beach; commonly known as 180 Royal Palm Way; located in the C-TS Zoning District. Special Exception for a town-serving commercial establishment, a real estate brokerage (McCann Coyner Clarke Real Estate, Inc.) to occupy existing 6, 105 square feet of gross leasable area on the first floor, previously occupied by a bank; and variance to allow a real estate brokerage office on the first floor with frontage on and entrance directly onto a sidewalk fronting a roadway.

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

Attorney Ron Kolins said a special exception is required because the real estate company would be moving from its present location on Peruvian to the proposed new location located at the southeast corner of County and Royal Palm. He continued the size of the space is approximately 6,000 square feet, and since it is over 2,000 square feet a special exception is required. He said the office has been in the Town and Town-serving for many years.

Mr. Kolins also requested a variance because of a provision in the Code that requires an office in the C-TS zoning district may not have a door that directly accesses a sidewalk, and the building in question has two doors, one on Royal Palm Way and one on South County that access sidewalks. He said the hardship for the variance is the pre-existing access/condition of the building.

Mr. Moore said this location does not lend itself to strolling, retail shopping, and there are other offices in this area. He added the Building Department thought it would be a hardship to force them to go into strolling retail in this particular location.

Councilman Wyett made a motion to approve Special Exception No. 24-2002 with Variance. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

i. SPECIAL EXCEPTION NO. 25-2002 The application of Daniel A. Hanley TR (contact: Marty List) relative to property described as Poinciana Park 3rd Addition, North 65.82 feet of Lots 758, 760, 762 and 764; commonly known as 230 South County Road; located in the C-TS Zoning District. Special Exception to allow a 2,253 square feet first floor office space for another financial brokerage use to replace existing 1,982 square feet of office use (Quick and Reilly Brokerage) being vacated by Quick & Reilly Brokerage, a similar financial brokerage use.

Exparte communications were declared by President Pro-Tem Goldblum and President Brooks with Attorney Jim Brindell.

Attorney James Brindell, representing the applicant, said the space was previously occupied by Quick & Reilly, and presently Westminster Financial who has been in Town for several years proposes to move into the space. He explained the space contains 2,253 square feet or 271 square feet more than Quick & Reilly because it includes an additional bathroom in a circulation area. He said no exterior changes other than signage will be made with all access points remaining the same, and a Town-serving statement has been provided.

Mr. Moore announced he had no objections.

Motion made by Mr. Wyett to approve Special Exception No. 25-2002. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

j. SPECIAL EXCEPTION NO. 26-2002 The application of Three Seventy Five South relative to property described as Royal Park Addition, Lots 1 to 4 inclusive (less road right of way), Block 9 and Royal Park Addition, West 22 feet of Lot 66 & Lots 67 to 69 inclusive, Block 9; commonly known as 375 South County Road; located in the C-TS Zoning District. Special Exception to allow a new Town-serving restaurant (Savanna's P.B.) to occupy the same 5, 590 square feet, 150-seat restaurant (100 seats indoors/50 seats outdoors); Special Exception to allow the new Town-serving restaurant to continue outdoor seating (50 seats) in conjunction with a restaurant, previously approved for prior restaurant; and Special Exception to allow 28 off-site, required parking spaces at the Apollo parking lot, previously approved for prior restaurant.

Exparte communications were declared by Councilman McLendon, President Brooks, and President Pro-Tem Goldblum with Attorney Ron Kolins.

Attorney Ron Kolins, representing the owner and operator of Savanna's, stated the operation would be unchanged from previous tenants, and the approved size of the restaurant with the same number of seats would remain the same. Mr. Kolins requested three special exceptions: 1) Town-serving; 2) outdoor seating—same as previously used, 50 outside; 3) necessary spaces for the off-street parking.

Mr. Kolins said the conditions from the previous restaurants go back as far as 1981, and his clients would abide by those conditions.

Zoning Administrator Paul Castro said the following conditions should be part of any approval: no dinner orders should be placed in the outside dining area after 10:00 p.m.; the applicant shall return to the Town Council six months after the restaurant opens for business to consider whether the applicant has met all previous and new conditions of approval placed upon them by the Town Council; if it is determined that the outside dining area is negatively impacting the surrounding area, the Town Council can eliminate any or all of the outside dining on the south side of the building; the applicant shall enter into a parking agreement, acceptable to Town, for 22 required parking spaces at the Apollo Parking lot; be advised that this agreement must comply and be acceptable to the Town prior to the operation of the restaurant; in addition, all conditions of approval from Special Exception 14-94, 16-95, and SE 40-97 that were relevant be approved – those include no dinners shall be ordered after midnight; last call at the bar will be 1:00 a.m., only the windows along S. County Road at the southwest corner of Peruvian may be open—this specifically excludes the windows on the portion of the restaurant that was expanded by the approval of Special Exception 16-95 and the windows in the bar area along Peruvian Avenue, the restaurant may open for breakfast after 7:30 a.m. and all windows in the restaurant must be closed for breakfast during serving hours.

Mr. Castro added conditions were put in place when Jo's Restaurant went in, requiring use of deodorized dumpster cleaners at all times; to clean and sweep out the dumpsters on a steady basis; no live music shall be allowed other than a piano or quartet music; all garbage, including glass, shall be stored in the restaurant after 6:00 p.m. and not placed in the dumpster area until after 8:00 a.m. the next morning; kitchen air scrubbers shall be cleaned on a weekly basis; the kitchen door at the back of the restaurant shall remain closed after 6:00 p.m. and shall not be reopened until after 8:00 a.m.

Mr. Kolins said his client would abide by those rules; however, he requested to have valet parking during the lunch hour which was one of the previous restrictions.

Mayor Smith said she agreed that the restaurant should have valet parking at lunch. Mayor questioned if any complaints were received from the neighbors when the space was occupied by previous restaurants? She responded that she knew the answer was 'no'.

Mr. Kolins said the restaurant planned to open November 25th.

Mayor Smith confirmed that the applicant would return to the May 2003 Town Council meeting to review compliance with the conditions.

Mr. Castro confirmed that he was not aware of any previous complaints regarding the outside dining other than the letter of objection to outdoor seating received at this meeting.

Councilman McDonald verified that the lunch valet parking will be in the garage to the east of the restaurant.

Councilman Wyett said he would like to add a restriction that no night time outside tables would seat more than six customers.

Mr. Kolins responded he would not voluntarily agree to that; however, the Town Council could impose that requirement.

Motion by President Pro-Tem Goldblum to approve Special Exception No. 26-2002 with the conditions as outlined by Zoning Administrator Castro and the approval of valet parking during the lunch period. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

k. SITE PLAN REVIEW NO. 13-2002 WITH SPECIAL EXCEPTION AND VARIANCES The application of the Preservation Foundation of Palm Beach Inc. relative to property described as Lots 33, 34, and 35, Block 11, Revised Map of Royal Park Addition; commonly known as 311 Peruvian Avenue; located in the C-TS Zoning District. Applicant requests site plan approval for construction of a new 6,676 square foot, two story building with twelve (12) off-street parking spaces and associated drive aisle; Special Exception approval to build a two-story, nonprofit cultural center building with 6,646 square feet gross leasable area (GLA) in lieu of 2,000 GLA square feet maximum permitted; variance to eliminate the required screening hedge and/or wall on the rear and side property lines adjacent to the parking lot and to permit zero rear property line set back for the parking lot in lieu of four feet required by code; variance of four feet to permit an apron of the two way parking lot driveway with a width of 21 feet in lieu of 25 feet required by code, and a one foot variance for the width of the balance of the driveway; variance of one foot eight inches to permit a sign located at 16 feet 8 inches above first floor finish in lieu of the 15 feet maximum permitted by code; variance to eliminate the required loading berth for this proposed building; variance to eliminate the required curb next to required interior

landscaping area along side yard drive aisle servicing the parking lot; variance to permit a two foot set back for the side yard for the driving aisle into the parking lot in lieu of four foot required by code; and, a variance to permit 8.5% of the parking and drive aisle to be devoted to screening and interior landscaping in lieu of the 15% minimum required by code and to permit 4.3% of interior landscaping in lieu of 10% minimum required by code.

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

Attorney Frank Chopin, Trustee of the Preservation Foundation, requested approval for a Site Plan Review, a Special Exception, and a Variance.

Mr. Chopin said he wanted to correct the gross leasable area of the property which is actually 3,723 square feet, not 6,646 square feet. He explained the calculations were incorrectly figured initially.

Mr. Chopin said this request is not as lengthy as it would first appear, and the property contains 34,375 square feet with the footprint of the new building at 2,851 square feet or 12% lot coverage. He said the Preservation Foundation owns the property with a unity of title to Pan's Garden.

He continued that the Foundation has adequate required parking and the use of the building will not adversely affect the traffic in the area; the site will be screened on all sides; drainage will be provided for; the proposed building is consistent with the height and quality of buildings in the surrounding area; and all of the setback requirements are met within Code.

Mr. Chopin said a Special Exception is required because of the size of the building, and the requirements are that the type of property be permitted in the C-TS Zoning District, and the Foundation is a non-profit cultural center which is allowed as one of the special exceptions. The building use will protect and serve the Town's interest, and it is Town-Serving and that is its only purpose.

Mr. Chopin said the plan, as designed by Architect Jeff Smith, meets all of the open space requirements; consistent with the Comprehensive Plan; adequate parking; adequate ingress and egress; no signage or exterior lighting will increase the amount of glare; no traffic safety problems; no economic impact compatible with other properties; and adequate utilities for the site.

Mr. Chopin outlined all of the Town-serving projects the Preservation Foundation has accomplished over the years.

Mr. Chopin explained the request for variances, utilizing a colored map. He said the variances included a request to not landscape the property because of an existing wall with landscaping in place; although it belongs to the neighbor to the north, the Preservation

Foundation will maintain the landscaping. He continued that one request is to have permission to move the wheel stops in the parking places to2.5 feet from the property line in lieu of the 4 feet required. He said another part of the variance request is for the west side of the property and permission to not place a curb for separation from the landscaped area and the parking spot itself. He summarized that the reason for all of these requests is to prevent encroachment onto Pan's Garden.

Mr. Chopin said the expectation is that the driveway should be 25 feet wide with a Public Works requirement for a 6 foot curb cut. He said nothing in Section 134-23 of the Code states the width of the driveway or aisle has to be 25 feet wide, but the Code describes three situations. Mr. Chopin said his request is to have a driveway that is 21 feet wide at the curb and widens to 24 feet as it goes into the property. He stated his hardship ran with the land.

Mr. Chopin requested the name on the building be at a height of 16.8 feet above the finished floor rather than the 15 feet allowed. He also requested relief from the requirement to have a loading berth, because it was not needed. Additionally, he asked for relief from the 15% landscape requirement in the parking and drive area and from the 10% landscape requirement in the parking and drive aisle, excluding the screening areas. He said the intent is to create this new building in a park setting.

Mr. Castro commented that narrowing the drive aisle will make it difficult for anyone to get in and out. He agreed that Mr. Chopin made a good argument regarding the landscaping issues, and he questioned the viability of the hardship explanations.

Responding to questions from Councilman McDonald, Mr. Chopin said completion of the building is planned before next season.

After discussion, **Councilman Wyett made a motion to approve Site Plan Review No. 13-2002 with Special Exception and Variances with the condition a unity of title with Pan's Garden be executed. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.**

3. Other

a. Proposed Plan for Mitigation of Loading Dock Area at the Bath and Tennis Club – 1170 South Ocean Boulevard. [Robert L. Moore, Director of Planning, Zoning, and Building]

Ex-parte communications were declared by Councilman McLendon, President Pro-Tem Goldblum, and President Brooks with Attorney Maura Ziska and Floyd Wideman. Councilman McDonald visited the Club with John Schuler and Mr. Doug Egam.

Director of Planning, Zoning & Building Bob Moore said the Town Council granted a variance in October for the repair or reconstruction of an existing wall on South Ocean Boulevard, and operation of the loading zone and the overhead power lines were discussed at that meeting. He said the eventual outcome was that a motion of approval of the wall was made with a request for the Bath & Tennis to return to discuss the mitigation of the problems of the loading dock.

Maura Ziska said Mr. Moore's statement was correct in his summation of last month's actions. She said that Ken Brower developed a landscape plan for the loading area.

Architect Ken Brower explained the first plan was for the existing loading dock, and the overlays projected the following: 1) resurfacing the loading dock area with pavers; 2) a ficus or seagrape hedge with two breaks for gates with access to the loading dock and other rooms; 3) firescape covered with wood with a replaced railing; and 4) new decorative light fixtures. He said these changes would completely screen the loading dock area.

Mr. Moore questioned if the proposed hedge would be against the building?

Mr. Brower responded it was slightly out from the building; it stays close to the building and is not close to the road.

Ray Royce, Attorney representing Mar-a-Lago Club, outlined a number of questions regarding the appearance of the Bath & Tennis Club's loading dock area. He said a loading dock has no proper place on South Ocean Boulevard, and this is the worst possible location from an esthetic standpoint because the loading dock is located at one of the three major entrances to the Town of Palm Beach. Mr. Royce said the loading dock should be completely located within the walls of the Bath & Tennis Club, and the Club has several acres and the ability to relocate the dock within the walls with all deliveries made inside the walls.

Mr. Royce said the Town Council should set a firm deadline for the complete removal of the loading dock, and the measures taken by the Bath & Tennis Club are minimal and should be considered as interim steps, temporary steps, appending the complete relocation of the loading dock.

Mr. Royce outlined seven steps that should be taken: 1) the existing wall running along the right-of-way line should be extended with a gate or opening rather than the long loading area; 2) the extended pull-off area east of the 70 foot loading dock should be eliminated; 3) issue of three separate openings in the hedge—although the hedge is not in the correct place; 4) the loading platform has two separate approaches; 5) the stairway should be relocated; 6) the stairway should be enclosed if it is not relocated; 7) the power lines should be relocated and possibly buried.

Mr. Royce requested the Town Council consider his steps and have the Bath & Tennis Club return with a plan to address the problems.

Mr. Moore said there was a huge difference between the drawing he looked at prior to the meeting and the one that was presented at this meeting.

Mr. Brower said the delivery trucks would not go behind the proposed hedging, as Mr. Moore thought, because the lane is not wide enough.

Mr. Moore said the submitted plan was not what he anticipated, led to believe, or what he had advised the Council about.

President Brooks said he was never under the impression that the delivery trucks would be east of the hedge. He ascertained that President Pro-Tem Goldblum and Councilman McLendon were under the same impression.

Mr. Brower said if wood were not allowed to cover the existing stairway, then stucco or a similar material would be used.

Attorney Ziska, responding to Mr. Royce's comments, said the Bath & Tennis Club is seventy years old, and if they were requesting an approval for a new club, the situation would be different. She mentioned that it is a landmarked building, and, at this time, the Club is not willing to relocate its loading dock area because of the configuration of the inside of the Club.

President Pro-Tem Goldblum said he had a list of 100 vendors for Bath & Tennis and 11 vendors on the list need to use that loading dock on a regular basis, more than twice a week. The others on the list do not have to use the loading dock which should be used strictly for kitchen use.

John Schuler, Director and Officer of the Bath & Tennis Club, said Mr. Egam, the Manager, should answer the questions posed by Mayor Smith and President Pro-Tem Goldblum.

Douglas Egam, General Manager Bath & Tennis Club, said they tried to put the hedge by the road but the large trucks could not navigate in the space.

Mayor Smith asked if the parties needed more time to work out answers to some of the questions posed at this meeting.

Councilman McDonald said he was disappointed that the Bath & Tennis Club concentrated on the fact that the loading dock was not part of the approval of the variance at the October meeting to replace the deteriorating wall. He said he would encourage Ms. Ziska to return to the December meeting with a plan that puts the hedge along the road and eliminates the stairwell.

Ms. Ziska said the hedge could be restudied and the stairwell could be looked at.

Mr. Egam agreed that they will return to the December meeting.

President Brooks asked that the parties meet with Mr. Moore and the item be placed on the beginning of the Development Review Matters on the December 10th agenda.

b. Request for Waiver of Zoning in Progress for the Setback of Dolphin Piles and a Boat Lift on an Existing Dock to be Located at 1181 North Lake Way.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Ex-parte communications were not declared by anyone.

Attorney Ron Kolins requested a waiver from the Town's requirement for a 25 ft. setback, Zoning in Progress, for docks. He continued that his client was not aware of that pending requirement and had ordered a boat with a width or a beam that is wider than his present boat lift can handle, and he needs to widen that boat lift by 3.5 ft. Mr. Kolins said he wanted to make clear that the existing boat lift is already non-conforming; 8.5 or 9 feet from the neighboring property line at its farthest point, and the request is to widen it be 3.5 feet.

Mr. Kolins presented three photographs showing the existing boat lift, the same thing from a slightly different angle but the boat dock next door is visible, and the view from the pilings belonging to the next door neighbor. He said, on one of the photographs, the existing boat lift is outlined in black and the proposed boat lift with the addition is outlined in red.

Mr. Kolins said the next door neighbor had no objection.

President Pro-Tem Goldblum said the request would cause accidents, and he could not, in good conscience, grant this. After working with the measurements of the property, Mr. Goldblum said the applicant could construct on his own property an adequate structure.

Motion made by President Pro-Tem Goldblum to deny the request for waiver of Zoning in Progress. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

XIII. ANY OTHER MATTERS

There were no other matters.

XIV. ADJOURNMENT

The meeting was adjourned at 7:00 p.m.

William J. Brooks, President

Mary A. Pollitt, Town Clerk