TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE TOWN COUNCIL MEETING HELD ON OCTOBER 1, 2004

This meeting was originally scheduled for September 14, 2004, and was re-scheduled due to Hurricanes Frances & Jeanne

This is Town Manager Peter Elwell. I'm in the Town Council Chambers at 9:20 in the morning on Tuesday, September 14, 2004, with Town Clerk Mary Pollitt. This was the time at which the regular monthly Town Council Meeting would have begun, but the continued recovery from Hurricane Frances and its impact upon the Town of Palm Beach and our entire region, has caused the postponement of our regular monthly Town Council Meeting for September 2004 from September 14th to September 27th. We have publicized that through the local media. It has been printed in both local newspapers, The Palm Beach Daily News and The Palm Beach Post. We have also distributed that information through the Town's rumor control telephone line during the hurricane recovery process. Apparently the public announcements of this rescheduled Town Council Meeting have been successful because the room is empty with the exception of Mary and myself. There are no members of the public present.

We will be preceding this evening at 5:01 p.m. with the first Public Hearing on the Town's proposed FY 2005 budget. The second Public Hearing is scheduled for September 23rd at 5:01 p.m. that will be for final adoption of the FY2005 budget, and the regular monthly Town Council Meeting for September 2004 will be held in these Town Council Chambers, barring any other unforseen circumstances, but currently scheduled to be held on Monday, September 27th at 9:30 a.m. here in these Town Council chambers on the second floor of Town Hall.

This will conclude the announcement about the rescheduling of the September 10th Council Meeting. The tape will continue when the meeting actually begins on September 27th, and will continue as normal, with the recording of the entire Town Council meeting of that day.

This meeting was originally scheduled for September 14, 2004, and was re-scheduled for September 27, 2004, due to Hurricane Frances but rescheduled to October 1, 2004, because of Hurricane Jeanne

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MINUTES FROM THE TOWN COUNCIL MEETING
HELD ON OCTOBER 1, 2004 *(originally scheduled for September 14, 2004)*

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting of Friday, October 1, 2004, was called to order by President Allen Wyett at 9:30 a.m. in the Town Council Chambers. On roll call Councilman Goldblum was absent from the meeting. All the following elected officials were in attendance:

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

Others in attendance for all or part of the meeting were:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John Randolph
Finance Director Jane Skittone
Police Chief Michael S. Reiter
Assistant Chief Fire-Rescue Andrew Cox
Human Resources Director William Crouse
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Public Works Director Paul Brazil
Town Engineer James Bowser
Recreation Director Russell Bitzer
Risk Manager Karen Temme
Purchasing Agent Charles W. Boggs III
Town Clerk Mary A. Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of John J. DeIorio, Acting Fire-Rescue Chief Upon His Retirement from the Town of Palm Beach After 20 Years and 1 Month of Service.

John DeIorio was not able to be present, and would appear at the next Town Council Meeting.

IV. COMMENTS OF MAYOR LESLY S. SMITH

Isn't it amazing how all of the issues we normally deal with - new ordinances, variances, special exceptions – all pale in the face of the life-or-death issues brought on by hurricanes . . . and how much more important electricity and hot water seem than whatever we can buy on Worth Avenue. When we talk about "history" in Palm Beach, we are normally talking about historic preservation and the legacy of our past…..not about making history, by having four hurricanes hit our state in one season….two of them barely missing a direct hit on our little island.

But we survived Frances and Jeanne. We had no fatalities in fact, we did better than survive - despite the property damage and personal discomfort -thanks to the emergency preparation plans we had. On the bright side, I guess we could say the hurricanes were a test - some "wets run" rather than a "dry run" - of our preparedness, and - with few exceptions - we passed with flying colors. Most important - thanks to the most dedicated staff any town could have - we were able to keep residents safe, clean up debris and get things moving again in record time.

The list of people to thank for their extraordinary service is a long one, but I must single out the department heads whose staffs were our hurricane heroes. Police Chief Michael Reiter and acting Fire Chief Andrew Cox were the leaders of our public safety team, and we could not have survived without their expertise and quick action, nor the long term planning and training to prepare them to take charge so effectively. Similarly, Finance Director Jane Skittone's staff handled our emergency phone lines courteously and efficiently in grueling 12-hour shifts. So many friends and neighbors told me they could not have managed without the calm, friendly voice on the other end of the phone line. Of course, Bob Moore's department managed inspections and emergency permits in record time to facilitate emergency cleanup and repairs. Public Works, under the direction of Paul Brazil, more than lived up to its name in helping get our streets cleaned from debris and most important our pump stations running so we avoided sewage spills so prevalent in other communities. In addition they had our public facilities up and working in record time. And, of course, our tireless Town manager, Peter Elwell, kept everything running like clockwork. And finally the tireless volunteers "the VIPs" who worked for breakfast, lunch, and dinner and worked the rumor control line after Jeanne, our heartfelt thanks.

If I had time to name every single town employee individually, I would, because every single one of them demonstrated initiative, dedication, and team work far beyond what could be expected in the worst of circumstances. We owe them a huge debt of gratitude. We always say they are the real heart and soul of our town, and they proved it in the last couple of weeks dealing with Frances and Jeanne. Peter Elwell is recommending a bonus for the employees for the hard work and dedication performed during these two storms. It is an idea I heartedly endorse, as I am sure the Council will too.

I also must thank publicly the local radio stations that kept us informed as we huddled in the dark with no telephone, unable to tune into television or boot up the computer. This is just one example of the tremendous spirit of community that was brought out by our hurricane experience.

For the record, this was indeed a costly visit by mother nature. Our preliminary calculations indicate an estimated 2.1 million dollars in damage, and an additional 3.1 million expended for cleanup and initial repairs for hurricane Frances. This is only an early estimate of the cost, which will surely go up as we repair and replace equipment. For example, generators failed in some of our public buildings, and we need to buy new ones so we can rely on them in future emergencies. Peter Elwell is presenting this morning an emergency ordinance amending the Town budget, but we are also eligible for Federal and State funding for our recovery effort. You can be assured that we are pursuing every possible option for help in defraying these expenses.

There are a handful of issues we must address that are only indirectly related to the hurricane, but are nonetheless urgent. The first is our continued battle with the Army Corps of engineers, which has escalated with the Corps' decision not to let us use the sand they will be dredging out of the inlet as a result of the hurricanes. The impact of these storms on our coastal environment has been substantial, and all of the beach towns have lost the tons of sand that were replenished during expensive beach restoration efforts. For the Corps of Engineers to simply dump into the ocean the sand they are dredging out of the inlet, summarily dismissing our request that it be stored in our borrow area by the inlet for use on our Midtown Beach or others is shortsighted at best. Coupled with the Corps' refusal to grant us a permit for Phipps, it is the height of arrogance, as well. I urge the Town to file suit to stop the corps from dumping the removed sand, and to use every weapon at our disposal to cut through this web of political high-handedness and bureaucratic stupidity.

Second, we need to revisit the issue of burying power lines in Palm Beach, and Tom Bradford will be discussing this later this morning. Given the superior performance of underground utilities during these storms, I believe that Florida Power and Light was less than candid in their advice to us when we were discussing the costs and feasibility. It is unconscionable that we should be without power for more than a week - even longer in the north end. Downed power lines represent a major danger, and take time and considerable money to repair. I have already written a scathing letter to FPL - as has every elected official in the County - and I urge the Council to revisit the issue of underground utilities.

Third, we have recently been informed by the School Board that inspections of the original public school building indicate that it should be condemned and torn down rather than preserved as part of the new school construction project. You know how strongly I feel about historic preservation, and this building, especially, is an important piece of our history. However, with the destruction of two hurricanes fresh in my mind, I understand that safety trumps sentiment, and I support the School Board's offer to build a replica of the original building as part of the new school.

I ask all of you to say a prayer for Simone Goldblum who was operated on Wednesday with a brain tumor. The prognosis is good and we wish her a speedy recovery. I look forward to seeing her smiling face in the not too distant future.

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFER from the Consent Agenda, Item D. Resolution No. 40-04 [Lease Agreement Between the Town and Nextel South Corporation] to the Town Council meeting wherein Nextel's variance request will be considered.

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer Item D. Resolution No. 40-04 to the Town Council Meeting Agenda wherein Nextel's variance request will be considered. On roll call the motion carried 4/0. Councilman Goldblum was absent.

WITHDRAW Item XI. C. 1.a. - Variance #12-2004, 220 North Ocean Partners LLC, 220 North Ocean Blvd.

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon, to withdraw Item XI C. 1.a. Variance #12-2004. On roll call the motion carried 4/0. Councilman Goldblum was absent.

DEFER Item XI. C. 1.b. - Variance #19-2004, Frederick R. Adler and Catherine G. Adler, 1520 South Ocean Blvd., to the October 12, 2004, Town Council Meeting Agenda.

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer Item XI C. 1.b. Variance #19-2004 to the October 12, 2004, Town Council Meeting Agenda. On roll call the motion carried 4/0. Councilman Goldblum was absent.

DEFER Item XI. C. 1.c. - Variance #20-2004, 171 Royal Poinciana, LLC, Lynn Min, to the October 12, 2004, Town Council Meeting Agenda.

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon, to defer Item XI C. 1.c. Variance #20-2004 to the October 12, 2004, Town Council Meeting Agenda. On roll call the motion carried 4/0. Councilman Goldblum was absent.

DEFER Item XI. C. 2.g. - Special Exception #25-2004, Worth Avenue Associates, Ltd., 150 Worth Avenue, Suite 136, to the October 12, 2004, Town Council Meeting Agenda.

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer Item XI C. 2.g. Special Exception #25-2004 to the October 12, 2004, Town Council Meeting Agenda. On roll call the motion carried 4/0. Councilman Goldblum was absent.

MOVE Item VII. D. 5. - Resolution No. 46-04 [Approving the Revision of the Settlement Authority Policy] to the Regular Agenda as Item VIII.C. 8.

Motion made by Councilman McDonald, seconded by Councilman Brooks, to move Item VII. D. 5. Resolution No. 46-04 to the Regular Agenda as Item VIII. C. 8. On roll call the motion carried 4/0. Councilman Goldblum was absent.

MOVE Item VII. E. 7. [Approval of Annual Renewal of General Liability, Property Workers' Compensation, Automobile Insurance Coverages and Claims Management Services for FY 2005[to the Regular Agendas as Item VIII. C. 9.

Motion made by Councilman McDonald, seconded by Councilman Brooks, to move Item VII. E. 7. Approval of Annual Renewal of General Liability, Property Workers' Compensation, automobile Insurance Coverages and Claims Management Services for FY 2005 to the Regular Agenda as Item VIII. C. 9. On roll call the motion carried 4/0. Councilman Goldblum was absent.

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon to

approve the Agenda as amended. On roll call the motion carried 4/0. Councilman Goldblum was absent.

President Wyett announced that there would be a 2:00 p.m. certain. He advised that the School Board would make a presentation regarding the 1921 landmarked portion of the public school.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Attorney James Brindell announced that Royal Poinciana Plaza owner Sidney Spiegel would hold public meetings on October 18th, November 15th, and November 30th at the Colony Hotel starting at 9:00 a.m. regarding proposed redevelopment of the property. He advised that newspaper notices would be published in the Shiny Sheet for each of these meetings and every property owner within one thousand feet would receive notification by mail as well as members of the Planning and Zoning Commission, Landmarks Preservation Commission and ARCOM. He said that there has also been communication with the Civic Association and Preservation Foundation.

Mr. Brindell suggested placing a copy of the notice on the Town's website and stated that he spoke with Veronica Close regarding same. He advised that a copy of the notice would be forwarded to her for that purpose and acknowledged that Ms. Close's suggestion to him to hold these public input planning meetings due to the importance of this property was thought to be a good idea by his client.

President Wyett recommended that the October 18th meeting should be moved to early December in order to get more people to attend.

Mr. Brindell replied that they wanted to hold these input sessions prior to their presentation before the Planning and Zoning Commission to obtain as much input as possible in an informal setting. He advised that he would discuss Mr. Wyett's suggestion with Mr. Spiegel.

Harold Nectow, 2780 South Ocean Boulevard, spoke on the need for immediate beach renourishment for the south end condominiums and thanked the Mayor and Peter Elwell on their efforts in this regard. He advised that two meetings were held with Congressman Shaw and at the second meeting, Congressman Shaw said he would get back to the Mayor, and he has not done that. Mr. Nectow said that the Congressman should be called to task for his lack of response to the requests.

Madelyn Greenberg, President of the 3360 South Ocean Boulevard Condominium Association, said the erosion of the beach dunes, in the south end, created an emergency situation.

She advised that there were safety, environmental as well as financial concerns due to the loss of the dunes.

President Pro-Tem McLendon stated that the situation was quite severe after reviewing photographs of the dunes presented by Ms. Greenberg.

Councilman McDonald asked when the pictures were taken, if it was after Frances or Jeanne?

Ms. Greenberg said they were taken after both and that some parts of the dune were worse after Jeanne.

Ted Wagner, President of the 3400 South Ocean Boulevard Condominium (Atriums), spoke regarding the loss of beaches and suggested a seawall should be constructed there. He advised that this was a serious public safety issue.

Mr. Nectow wanted to know if they should go directly to Washington, D.C. concerning renourishment of the Town beaches as he was told, by some very knowledgeable people, that was the way to go?

Mayor Smith wanted to know who they would go to in Washington? She advised Mr. Nectow that they have tried talking to people in Washington, and those people stated they don't have jurisdiction; and the Town should go through its Congressman. She said that she was very disappointed with Congressman Shaw for not getting back to her as promised at their meeting of July 29th.

Mr. Nectow said that there must be someone in Washington the Town could approach since this was a major issue especially since the last two storms.

Town Manager Peter Elwell responded that it was important to keep the critical emergency the Town currently is faced with separate from the long term beach restoration program the Town has been going through for the past several years and plans to continue with in the future.

Mr. Elwell agreed with the comments made this morning stating that this was a public safety issue. He said that beach restoration in the Town has always been a public safety matter and not a matter of aesthetics or recreation. He continued that the Town, in order to do the urgent work that needs to be done immediately, still has to coordinate with the State and Federal governments, but the type of permits which usually take years to obtain will not be required.

Mr. Elwell advised that the Town received verbal approval to do emergency revetment work on Old Ocean Boulevard where the roadway was compromised in the first storm. He stated that during the second storm, Public Works saved three homes behind that roadway by placing boulders there to protect them. He stated that the Town can take those kinds of emergency measures rapidly without the long term permitting.

Mr. Elwell said that the Town was in an appeal process with the Corps of Engineers regarding the long term permitting for the Phipps project. He stated that a letter writing campaign or phone calls to the right people in Washington would not be effective since the Town is currently in litigation regarding that particular permit.

Mr. Elwell continued that there are other projects which are part of the overall program, and the Town is working with every conceivable person who may have some influence over the process. He stated that it was a very difficult situation because the climate at the Corps of Engineers has turned 180 degrees during the last five and ten years. He explained that the Federal government, in the past, would just give a cursory look at the permits allowing the applicable State and local governments control, and presently the Federal government makes it very difficult to obt ain permits and advised that others are experiencing this as well as the the Town.

Mr. Nectow asked Mr. Elwell what the time frame for the appeal was?

Mr. Elwell responded that it would go on for the remainder of this year and possibly into the early part of next year. He restated that this appeal was for the Phipps Ocean Park permit and discussed the emergency measures the Town would take due to the critical erosion and loss of dunes. He advised that if these emergency measures are not taken and any kind of storm event as experienced in September occurs, there could be substantial property damage.

Councilman Brooks asked if the emergency work that was currently needed, required approval from the Army Corps of Engineers?

Director of Public Works Paul Brazil stated that he was told the Town could go through FEMA using Post, Buckley, Shue, and Jernigan to expedite this process. He advised that the Town was likely to deal with just the Department of Environmental Protection (DEP) for this dune restoration project avoiding the Army Corps issues, if possible.

Councilman Brooks applauded Mr. Brazil for his efforts and stated that the Town should be proactive in light of the public safety issue.

Mr. Elwell stated that as Hurricane Jeanne approached, the Town realized that something extraordinary had to take place on Old South Ocean Boulevard so the three homes would not be lost, and Mr. Brazil and the Public Works staff made it happen in two nights and a day by talking to the right people.

Councilman Brooks suggested that the same aggressive approach be taken from 3200 south due to the critical situation of the dunes and mentioned the frustration the Mayor and Council members experienced with the Army Corps of Engineers, stating that it has been exceptionally difficult and the Corps was useless.

Councilman McLendon stated that in order for the Port Authority to move their ships in and out of the harbor, the harbor had to be dredged, and the Corps unilaterally made the decision to dump the sand in the ocean. He continued that this had been done without asking if the Town or the navigation district would be willing to pay the cost difference since they did not have more money in their budget. He advised that the Inlet is pretty filled in needing only about ten feet more of dredging and the plan was to put the sand in the ocean and that was ridiculous, and he hoped the Town sued them and did so soon.

Mayor Smith asked what the criteria was for establishing an emergency? She used the condos in the south end as an example, asking if they were jeopardized, would it be possible for them to go for revetment permits until a long term resolution was found?

Mr. Brazil said that it was his belief the emergency had already been declared and he would look into the Mayor's suggestion.

Mr. Elwell confirmed that an emergency had been declared.

Mayor Smith stated that the Town now knows, from conversations with the Corps over the last four weeks, resentment exists for the Town of Palm Beach. She advised that the Corps has put road blocks up in the Town's way which includes the sand in the Inlet, and if the Town takes the necessary action, prior to any cooperation from the Corps, it would greatly assist the condominium owners.

Mr. Brazil, responding to Mayor Smith, stated that they checked one end of the island to the other. He advised that FEMA has been approached regarding assistance in the restoration process and all of that is proceeding.

Richard Kleid, 2660 South Ocean Boulevard, President of Beach Point Condominium, stated that he walked the beach from the Lake Worth pier through Sloan's Curve and attested to the damage that occurred particularly to the sand dunes. He referred to a quote by Paden Woodruff, Environmental Administrator at the Bureau of Beaches and Coastal Systems of the Florida Department of Environmental Protection, in a September 21st article in the New York Times that predated Hurricane Jeanne. He reported that Mr. Woodruff said that his agency has already assisted in recovery plans for Hurricane Charley and planned the to do the same for Hurricanes Frances and Ivan. He suggested that perhaps Mr. Woodruff could be another contact for the Town.

Mr. Elwell explained that the Town has worked with Mr. Woodruff for ten to fifteen years, and Mr. Woodruff was currently involved with Town projects. He added that the State Department of Environmental Protection has been positive and has facilitated the Town in moving forward with its project, and did issue a permit for the Phipps beach restoration project in early 2001. He advised that Mr. Woodruff and the staff at DEP have been extremely cooperative in making things happen at the local level when situations like this happen, however the road block has been with the Corps of Engineers.

Brian House, representing Love Management Group, Love Realty Group and owner Burton Handelsman who lives at 250 Worth Avenue, requested that the Town Council consider extending the dates allowed for construction on Worth Avenue during the season. He advised that the properties have suffered excessive amounts of roof damage from the two hurricanes.

Leslie R. Evans, 257 Sandpiper, addressed the issues of power loss in the north end of Town. He advised that he was without electricity at his house; with the first hurricane he was out for thirteen days and currently it has been a week. He stated there were no FPL crews to be found when he went to look for one. He explained a transformer behind his home was blown out four times; this transformer serves three houses, and he was unable to get a crew out to fix same. He thanked Tom Bradford, who had visited his street to check out this problem, after 5:00 p.m.

Mr. Evans reading certain addresses on Royal Palm Way and on South County Road, stated that these were empty stores and the condition of many of them was disgraceful. He also cited parking problems in Town and suggested building parking garages.

Greg Batten, Batten Construction Company, requested that the Town Council at next month's meeting consider extending the November 1st deadline allowed for construction because of the hurricanes impact on the availability of materials and manpower as well.

Jerry Frank complimented the Town on the progress of the clean up after the hurricanes; encouraged the exploration of underground wiring; and suggested the wires along Royal Poinciana Way should be placed underground since it was used as an evacuation route. He discussed the opportunity the Town would have on A1A in 2005 to place wires underground since FPL will be doing reconstruction and resurfacing work on a three mile stretch there. He said the cost would be between $300,000 to $500,000 and recommended the three utilities, cable, electric and telephone be brought together as soon as possible to determine the best way to have those lines buried at the time the resurfacing work was done.

President Wyett reported that he had an accidental meeting with Congressman Shaw in Town Hall after the first hurricane and that Congressman Shaw came through with his staff and his wife. He stated that he took that opportunity to stress the Town's suffering in the condominium areas and relayed that the Town was disappointed in the lack of help and lack of responsiveness to the Town.

Mr. Wyett said he reminded Congressman Shaw that the Mayor was still waiting to hear from him He added that as a lifelong Republican, he intended to vote for President Bush but would not vote for Congressman Shaw. He continued that the clearest measure to Representative Shaw was to not send him back to Congress.

Mayor Smith advised that it was unfortunate that Congressman Shaw did not have an opponent.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF AUGUST 10, 2004.

B. APPROVAL OF TOWN COUNCIL MEETING BUDGET HEARING MINUTES FOR THE MEETING OF SEPTEMBER 14, 2004, 5:01 P.M.

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING OF AUGUST 25, 2004.

D. RESOLUTIONS

1. RESOLUTION NO. 40-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Lease Agreement Between the Town and Nextel South, Corporation for Use of the North Fire Station Property 300 North County Road, and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Deferred *Deferred from the August 10, 2004, Town Council Meeting.* [Thomas G. Bradford, Assistant Town Manager] **Staff Recommends Deferral to the Town Council Meeting Wherein Nextel's Variance Request Will be Considered.**

2. RESOLUTION NO. 41-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting the Revised Unified

Palm Beach County Local Mitigation Strategy Plan; Providing an Effective Date; and for Other Purposes.
[Karen Temme, Risk Manager]

3. RESOLUTION NO. 44-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the per Hour Fee for Special Assignments of the Police Department and the Fire-Rescue Department.
[Jane Skittone, Director of Finance]

4. RESOLUTION NO. 45-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Contractual Service Specialists Agreement Between the Town of Palm Beach and Randall L. Wolff, M.D., as Medical Director and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Andrew Cox, Acting Fire-Rescue Chief]

5. RESOLUTION NO. 46-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Revision of the Settlement Authority Policy, Providing an Effective Date.
[Karen Temme, Risk Manager]

Moved to:
Item VIII.C.8.

6. RESOLUTION NO. 47-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Concession Agreement for the Palm Beach Municipal Golf Course Between the Town of Palm Beach and the Golf Pro and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Russell E. Bitzer, Director of Recreation]

7. RESOLUTION NO. 48-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Concession Agreement for the Palm Beach Municipal Tennis Courts Between the Town of Palm Beach and the Tennis Pro and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Russell E. Bitzer, Director of Recreation]

8. RESOLUTION NO. 49-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Agreement for Medical Services Between the Town of Palm Beach and Mohan Persaud, M.

D., P.A., as the Town Physician and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[William C. Crouse, Director of Human Resources]

9. RESOLUTION NO. 50-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Designating Town Depositories for Fiscal Year 2005, Pursuant to Section 2-517 of the Town Code of Ordinances and Designating Parties to Sign Checks or Warrants on Behalf of the Town Pursuant to Section 2-36 of the Town Code of Ordinances.
[Jane Skittone, Director of Finance]

10. RESOLUTION NO 55-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Florida Detroit Diesel-Allison for the Purchase of the Clarendon Avenue (D-17) Storm Water Pump Station Generator, Sealed Bid No. 2004-09.
[H. Paul Brazil, Director of Public Works]

E. OTHER

1. Authorization for an Expenditure from the Forfeiture Trust Fund. [Michael S. Reiter, Chief of Police]

2. Authorization to Extend the Street Sweeping Contract for Fiscal Year 2004/2005. [H. Paul Brazil, Director of Public Works]

3. Authorization to Extend the Contract for Lethal Yellowing Inoculations. [H. Paul Brazil, Director of Public Works]

4. Authorization to Extend Turf Maintenance Service Contract for Fiscal Year 2004-2005. [H. Paul Brazil, Director of Public Works]

5. Authorization to Extend the Hedge Trimming Service Contract for Fiscal Year 2004/2005. [H. Paul Brazil, Director of Public Works]

6. Authorization to Extend the Contract for Compacted Garbage.
[H. Paul Brazil, Director of Public Works]

7. Approval of Annual Renewal of General Liability, Property, Workers' Compensation, Automobile Insurance Coverages and Claims Management

Moved to: Services for FY 2005.
Item VIII.C.9. [Karen Temme, Risk Manager]

8. Authorization to Implement New Annual Bonus Policy.
[William C. Crouse, Director of Human Resources]

9. Authorization of Funding from General Fund Contingency for Four Winds Investigation Panel.
[Sarah E. Hannah, Assistant to the Town Manager]

10. Appointment of Mini-PERC Blue Ribbon Panel.
[William C. Crouse, Director of Human Resources]

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon, to approve the Consent Agenda as amended. On roll call the motion carried 4/0. Councilman Goldblum was absent.

VIII. REGULAR AGENDA

A. Update on Recovery from Hurricane Frances.
[Peter B. Elwell, Town Manager]

The following is a verbatim transcript.

Town Manager Peter Elwell:

Thank you Mr. President. I'm going to address two quick beach related issues because of the discussion we have had here this morning, and then I'm going to abbreviate my overall report in light of the time. I've had some things I'd like to have described to you, some of what went on during the storm, but I think you're aware of much of that; and perhaps, another day there would be an opportunity to recognize some of the other particular things that have happened. Particularly, the Mayor covered very thoroughly, I think, the variety of activities that the Town was involved with, and we've heard from some of the residents as well about that this morning. So, I am going to move a little more quickly through than I had planned, so we get you into the rest of the business of the meeting.

I think it is important to pause here though to mention two things; and on the beaches, I want to stress yet again, that the emergency work is already underway; that we are talking to the people we need to be talking to. We're planning for the method of how to put sand and perhaps rocks or other things in the right places where they will provide the protection discussed here this morning. What is necessary to do just as fast as we can possibly do it. FEMA is in that communication link there, and it is our expectation that much of that not only can be done quickly but also without a substantial cost to the Town. Much of that will be, work that will be covered through the Federal reimbursement processes for disasters of this type. So, we want to give you the positive news on that. Yes, it is a dire situation. We are well aware of that as Mr. Brazil pointed out. We've done an entire Town beachfront survey. We know where the most critical areas are. They are throughout the Town. One of these areas certainly is that extreme south end of the – but there are other areas that need immediate attention, and they are getting that immediate attention, and I can't stress that enough. We are all on the same page about that. The comments you've heard are well taken by the residents. I just want to make sure that everyone understands that the staff doesn't need to be motivated to now go forth and try to do something about it but that work is already under way.

The other thing, and I owe each of you an apology for this. I was looking for an opportunity to jump into this conversation of the last half hour or so and didn't find the right opportunity to do it. So, I want to offer a clarification now. The comments that have been made about the meeting that you had, Mayor, back at the end of July or the first of August and lack of follow-up to that meeting are accurate to my knowledge – with the way it has been restated this morning, I know that it continues to be true as far as the big project and some disappointment we've had as far as the help we've asked for and not received. We have, as late as a half hour or less before this meeting, received somewhat more positive news. We were going to be addressing that. We will address it when we get to the Inlet dredging item that's on this agenda; and that's why I had not an opportunity to say anything to you prior to now. It was news that Paul received just before this meeting and shared with me, literally, as we were gaveling open the meeting. Nothing we can take to the bank. We'll discuss it more thoroughly when we get to that item. I think we still may be in a position where we need to file suit for an injunction to prevent what's happening at the inlet from happening; but the Corps of Engineers has indicated, with some substance to it, not just we'll do our best that they are hustling to try to get through an environmental process that may take a few more days; but nevertheless, would be extremely fast by Corps standards to work the compromise that the Town has proposed. We will need to discuss that with you so you know where that stands and whether you have any faith in that coming to completion or whether you feel we must authorize filing suit today, but I think it is only fair to acknowledge that the Corps has indeed responded to our call of urgency on this matter and that Congressman Shaw's office, this past week, has been following up with the Corps about that and has been following back up with us. So, on this particular instance, in this emergency situation, we have asked for help from two parties that we desperately need that help from and have received some positive response.

Mayor Smith:

Who in the Corps did you speak to, Paul, because initially when this whole thing started Peter and I did talk to the Colonel himself who happened to answer the phone by a fluke not knowing it was us; and he was actually, really quite helpful and said yes he'd get back to us and he'd look into the situation; and we were optimistic. I think this was, what, the day before Frances or after Frances; and then, of course, when we got the reply from the Corps two or three days later, it was 180 degree turn. So who did you speak to, Paul?

Director of Public Works Paul Brazil:

We are dealing with Tim Murphy who is actually managing this project and has managed these projects for years.

Mayor Smith:

He's the one who's managing our - the replacement of the sand transfer plant and has been managing that for seven years saying the plans are in the pipeline. So Tim's not what I would call a fast mover.

Peter Elwell:

That's right, and we don't have a commitment from them that we can bank on at this point. What we do have is some substantive action that's been taken with the environmental agencies to move this forward, in a manner that quite frankly, the communication of three to five days ago had indicated to us that they thought it was impossible, and now they've actually done it but it's not complete yet. We'll address that in fifteen or twenty minutes when we get to that item. But I just – I hadn't found a moment to interject that. I thought it was important that you know that as early as possible in this meeting before we have further conversations about the Corps of Engineers and the Congressman. Okay.

On the overall storm recovery perspective, first I want to acknowledge that Mr. Brooks, wrote a memorandum of August 19th asking that this matter be placed on the agenda based on simply what we had seen on the west coast related to Hurricane Charley. Mr. McDonald had, almost simultaneously, had asked, that knowing that we had deployed some Police Department resources over to assist with the folks on the west coast after Hurricane Charley, that we have some discussion at the September monthly Town Council Meeting about what we had learned from that experience and how it might apply to our planning here in Town. So, we indeed were preparing to do that when it all became very real for us, and I wanted just to let you know that I know you each have a copy of that memorandum from Mr. Brooks and some of that already feathered with some of the planning we had done in Town. The manner in which we had manned the checkpoints and provided public information is pretty consistent with what's in there, and we found that it worked quite well in Frances and even much better than that in Jeanne. We learned a lot ourselves from Hurricane Frances, and we were able to tweak both, some of the field operations, and particularly, our public communication efforts in dealing with Jeanne; and we feel, and from the feedback that we have had from the community so far, I believe that the community agrees, that we've already, our learning curve has been steep, but it's there, we've learned, we've acted based on what we've learned about, and that process has gone along quite smoothly, and in many cases, similarly to how it was described in Mr. Brooks' memorandum.

Overall, the security of the community has been maintained despite the fact that much of the community was in darkness for a total of most of the month of September, actually. That's been done in a manner that has allowed the maximum freedom of movement throughout the Town both to residents and to others, when it's been possible for the Police Department to pull back to the road location, they have done that. They have maintained the safety and security of the residents in the dark areas as well facilitating the restoration of normal activities in Town to the greatest degree possible. We've had consistent compliments on the professionalism of how those checkpoints have been handled. So, while those police officers on the front end are telling people, 'no you may not come in', have had a hard job to do, they've been doing it in a manner that even some of the people that have been turned away have expressed their appreciation for how well that part of this has been handled.

And debris removal of course has been enormous. Public Works Department between Frances and Jeanne and the contractors that they were supervising and continue to supervise did a terrific job. There is still much more out there. We didn't get as much additional debris out of Jeanne as we had feared, but there is additional debris; and there is still much yet to be cleaned up from Frances. So, that process is ongoing and will be ongoing for the next several weeks.

The restoration of facilities has also been prompt about what we have found; of course, as it was described by, I think, Brian House on behalf of the Worth Avenue structures that private people certainly will be finding this as well in the private homes, in the private businesses. We have found it in the Town facilities already that some of these damages take a little while to show up. You get out what's obvious first. You address those things as you see new things emerge as issues either because of dampness or otherwise. You address those issues, and we have a lot of that. We will be talking about the damage, the magnitude of the damage here in a moment. You all know from the memorandum, we provided you yesterday, we were talking about that for the decision making you need to make and for the public here, in a few moments, but very significant damages to public property in Town, and we will be in the restoration process with that for many months.

The medical and physical support and emotional support, too, that has been provided by the Fire-Rescue Department has been exemplary. Particularly, after Jeanne, the stepping up of the social service side of this and reaching out to some of the neediest residents in the community. The ones that are either older or less physically able in getting the assistance that they need in addition to providing the normal responses.

The administrative departments in any variety of ways have stepped outside their normal roles to provide anything and everything that's been needed logistically to keep the field operations moving forward effectively.

Communication we did learn after Jeanne. We felt, after Frances, I apologize that we had some additional work we needed to do in that regard, that the field operations and the recovery from Frances had been very effective and probably about as quick as we could have reasonably expected; but we haven't adequately conveyed day by day and step by step the evolution of that to the community, and we needed to do that not only so folks were aware of what their Town government was doing for them, but even more important, what they could do for themselves and how they could access certain of the services; how they could get ice for instance or how they could get information about FEMA resources or other things that they might need as part of their own personal recovery. How they could obtain help from repair contractors. We were able more quickly after Jeanne than after Frances to allow the repair contractors and the landscapers to come onto the island and do the work that needed to be done on private property, to address that, and the damage assessment and the facilitation of the repairs on the private property that PZ&B has done.

So, across the board, everyone has been asked to do things that are outside the normal scope of their duties. Everybody has been asked to work extra long hours and just address the needs as they emerge, and to a person, the more than 400 Town employees have arisen to that occasion; and I appreciate the Mayor's comments earlier and the comments of others and acknowledging, recognizing that service.

As we move forward from here the highest priorities, of course, are to restore those areas that have been damaged by these storms and to continue to facilitate the private property restoration work that needs to go on. I'll be talking more explicitly about that as it relates to the public facilities here in a minute. We also will be revising our plan because nothing teaches us lessons like experience, that's for sure, and having these two storms immediately back to back, we've had our learning curve from the first storm to the second storm. We've learned some additional things in the second storm, and we will be applying those to revisions in our storm plans so that the next time, which hopefully won't be anytime soon, we will be able to employ a plan that reflects the lessons that we have learned from these experiences.

Power, of course, was the issue and continues to be the issue for those residents who are not yet restored to power after Jeanne, and we have some issues with Town generators that are not going to be simple or inexpensive to address, but they need to be addressed. We will be working through a planning process to upgrade the level of service from our generator system so that we can, indeed, function even more effectively, in the future, in response to these events. Looking at that, as well as, how we can work with FPL to enhance the feeds to our public facilities to make sure that our public facilities are powered as completely as possible so that we can operate from these facilities and lead the community back to normalcy in future events.

I want to thank each of you, because as we were going through this, and it literally was the entire month of September that we were in our final preparations for Frances on September 1st we sit here on October 1st coming out of the process but still not complete in our recovery from Jeanne, we had literally only two or three days in between the two storms when we had any kind of normal functioning of Town offices. They are basic services that have been provided throughout. Your support for the Town staff and the information that you brought, you are an active participant, each of you were active participants, in this and the information you brought to us. In many cases, residents were reaching out to you rather than to the hurricane hotline or to particular staff offices. You kept us informed of things that we hadn't yet learned about. You gave us some additional perspective on things we had learned about, but you had learned about them differently and every step of the way. Not withstanding your salaries being absolutely nothing, you're commitment, and I think people need to know that, that your commitment as elected officials also was such that you rose above and beyond anything anybody could reasonably have expected of you, not a penny involved but just your desire to serve the community and make sure we recovered as quickly as we could; and you did that and you helped us do our job better, and I want to thank you for that.

President Pro-Tem McLendon:
Some people think we're stupid Peter.

(Laughter and applause.)

Mr. McDonald:
Any recommendations?

Mayor Smith:
Yeah, right.

Peter Elwell:
That takes a Charter change but maybe we will get to that. If I could, I would, Mr. McDonald.

President Wyett:
I thought you were going to recommend us for a promotion to a larger town.

Mayor Smith:
To get us out of Town.

Peter Elwell:
That's up to you. I did have other things I wanted to share. Some particular vignettes about what individuals did, but I think we'll save that for another day. You've got the overall report. You

knew much of this already. You've lived through it yourselves. I just want to add my gratitude and expression on behalf of the Town staff to the volunteers; to particularly those VIP volunteers who, you know, everyday, in many different ways, contributed to this recovery effort as well - manning the hurricane hotline. That was something, a lesson learned from the first one, too. It was actually much – it was very helpful to not only free up staff resources, but also to the actual residents who were calling, who were concerned, who needed to be both provided accurate information and soothed, in terms of the raw nerves that develop in these kinds of situations. The ability of those folks to talk to a fellow resident in the second storm. The first time we manned it with Town employees who did a beautiful job, but they were Town employees. There was not as direct of a community connection as the second time when it was to VIPs volunteers, residents of this Town, who were answering that hurricane hotline for twelve hours a day, and not only providing accurate information to the residents, but also a resident to resident perspective of how we were all coping with it and getting through it and that was terrifically helpful. The VIPs people, also in a number of different ways, related to feeding of Town employees and a variety of other support functions, staffing the relief center here in this room; and we set that up for a couple of days that didn't get as big a response as we would have hoped for, but we think with promoting it more in the pre storm period next time, gearing it up immediately afterwards, that could also be an important resource for the residents when they go on for days without power. All of that, the VIPs people just can't be thanked thoroughly enough for what they also did on a purely voluntary basis and a number of private, corporate entities who have provided terrific assistance to us; and again, in another setting and appropriate manner, we will provide the complete thank you to all of them.

Mayor Smith:

Maybe, Peter, what you could do, is take your, all of your remarks in toto which you're not giving us today and put it into the minutes that Mary's preparing so they will be available to everybody to see; because they were wonderful corporate sponsors that donated and feed the Town employees throughout this period. There was water and ice and breakfast, lunch and dinner as they worked tirelessly through the Town. The interesting thing about the VIPs manning the second line, the first time when the girls from Finance Department were manning the phones, the residents were yelling and screaming at them, and really in a lot of cases, being very abusive. The second time when they were yelling and screaming and suddenly learned that this was somebody they knew on the other end of the phone, the demeanor changes one hundred percent. They said how sweet of you to be working. So, it was interesting some of the names of the people that were being abusive that were written down by the volunteers. Very interesting. Go ahead.

Peter Elwell:

I would like to recommend, at this point, that you consider the bonus that I have recommended for the Town employees to receive. You have a memorandum from me dated September 23rd that was the recommendation of the methodology to be employed of how the bonus would be awarded, and make sure that it was fairly representative of the work that was required, and the days that had been worked, during the storm emergency, by the variety of employees from all the different field operations and right up through the department directors that did provide that extraordinary service. I've supplemented that yesterday to add three days of storm emergency from Hurricane Jeanne from last Saturday, Sunday and Monday. The total cost of awarding this, there would be between three hundred, approximately three hundred and fifty employees that would be participating in this; and the total cost of providing that to those employees for the two different storm events, in toto, would be approximately $525,000.00. We have total impact from the storm - will be addressing this in more detail in just a moment of -- from the two storms estimated currently, at approximately nine million dollars. You know, from this, I want to stress, for those that are listening, we do expect that approximately 70% of that, perhaps in excess of 70% of that, will be reimbursed to the Town either through insurance claims or by FEMA, through the Federal Disaster Relief. So, in the end, when we've accounted for everything, the outer pocket costs to the Town will be substantially lower but still substantial nonetheless. But the current magnitude of the impact of the storm for costs and repair of damages is estimated to be in excess of nine million dollars. This particular bonus, I think, is critically important to demonstrate the recognition and gratitude for this extraordinary service that not only has been performed by the employees, but during a time when they themselves had suffered the same misfortune as the people of this community, and the employees consistently left those situations behind at home, are tending to them less quickly then they would otherwise, have been able to because of the long hours and good work they have been doing here. So, this particular item is almost certainly not reimbursable through FEMA, but I think it's the right thing for us, as an employer, to do; and I recommend that you authorize the expenditure of approximately $525,000.00 for this purpose.

Councilman Brooks:

I would like to recommend. as per Mr. Elwell's memo of September 23rd that the Council award this bonus; but with one exception, Mr. Elwell, I would also like you included. I know, in your memo, you say excluding me ,but I would like you in it also. Thank you.

Councilman McDonald:

I'm in favor of the amount that's being recommended, but as I mentioned this to Peter before, is that sometimes, especially as you get older, the time becomes just as or more valuable than money; and I was hoping you could also offer the employees the option of additional time off or time in lieu of being paid outright as an option. Somebody could take a month, you know, I just wanted to give them something extra. I mean it's one thing to be able to write a check and hand it to them and that's done. It's easier for you, but I mean in terms of rewarding employees, would some of them prefer to have additional time away from the job as opposed to just a check. That was my...

Councilman Brooks:

Wouldn't that be a wash Mr. Elwell dollar wise?

Mr. Elwell:

Dollar wise it would. It's a good point, but, and there's actually something else that we didn't have an opportunity to talk about in this context that I would like to, actually, it's two things related to leave time. One is that the Town has leave policies that are generous and competitive with other municipalities so for the most part while there are exceptions to this, for the most part, employees have leave balances that are significant; not that they're able to take the time needed now, but they may need additional time related to this particular emergency, in tending to their own needs, as things calm down; but they will be given the opportunity to do that certainly, and we did ask around among employees in the development of this policy about pay versus leave. In the past, there have been occasions were it was a much more isolated situation of only a day or two when an additional day off or two days off was granted rather than pay. In this instance, because of the magnitude of the circumstances, and the fact that folks have situations that they're going to need some additional financial where with all to address, in terms of repairing their own homes, we thought this was the preferred way to go. We are doing something too that I haven't had the opportunity to advise any of you of. So let me advise you of it now, and again, apologize to you that some of this is a bit, more on the fly than usual. So, sorry that you didn't know this until you're sitting here on the dias, but I've made a decision that's more an administrative operational decision that doesn't require you're endorsement, but to allow the caps for the accrual of leave to be released only for the next six months. But what that will do, will allow employees who otherwise would have lost leave because they are not able to take it right now, quite frankly, and for the next several weeks, it's going to be difficult for employees to take time off because of what still needs to be done; and there was a concern expressed to me that some of the employees who particularly, those who have been around awhile and accrue larger amounts of leave during the year, maybe bumping up against the total caps of what they can accrue. For the next six months, we are going to allow those caps to be lifted completely. People will accrue whatever they are entitled to and then we'll have that opportunity, during that six months, perhaps, to take one of those extended breathers, Mr. McDonald, and get that restorative benefit of that. As of next April 1st, we'll return to the Town system in accordance with all our normal policies, and those caps will apply to everybody in the normal way.

Mayor Smith:

All right.

Councilman McDonald:

You never told me that Peter.

Peter Elwell:

No I never did. I apologize.

Mayor Smith:

You didn't tell me either.

President Wyett:
We all know that we live in a very special Town and this is a tremendous opportunity to tell our Town employees that we appreciate them and their help in making this a very special Town to live in and I very much endorse this and I ask for a motion to approve and as part of that motion...

Councilman Brooks:
I already made it, Mr. Wyett.

President Wyett:
I'm sorry but I have to follow through with your motion and ask that we add a $10,000.00 bonus to Peter to be incorporated in your motion.

Peter Elwell:
May I speak to that? I appreciate very much that you may choose to include me, and if the others agree with Mr. Brooks' sentiment, I'll thank you for that. My family has sacrificed as everyone else's families have sacrificed in order for me to provide my service to the Town, but I wouldn't want to be included in this in any other, in any way different than the methodology that's being applied to all other Town employees. So, I, if you choose to include me, I prefer that you do it that way.

Councilman McDonald:
That's correct. I'd withdraw your motion Mr. Wyett.

Councilman Brooks:
That's a very wise observation.

President Wyett:
I withdraw that motion and ask that you be included the same way as all other employees.

Mayor Smith:
Who seconded?

Mr. Brooks:
Who seconded my motion?

President McLendon:
I did, I think.

Mayor Smith:
Okay.

End of verbatim transcript.

Councilman Brooks made a motion to approve the hurricane bonus as per Mr. Elwell's memo of September 23rd with the exception that Mr. Elwell is to be included in this bonus using the same methodology applied to every Town employee. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0. Councilman Goldblum was absent.

1. Emergency Ordinance

    a. ORDINANCE NO. 25-04 An Emergency Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2003, Providing an Effective Date.
    [Jane Skittone, Director of Finance]

Councilman McDonald made a motion to approve Ordinance No. 25-05. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0. Councilman Brooks was temporarily out of the room; Councilman Goldblum was absent.

Mr. Elwell stated, for the record, that since this was an emergency ordinance adopted by the Town Council, there was just one reading.

2. Authorization to Expend Funds from the Town's Reserve for Catastrophic Exposures/Emergencies.
[Jane Skittone, Director of Finance]

Jane Skittone, Director of Finance, requested that Town Council approve the Town's ability to expend funds from the reserve for catastrophic exposures/emergencies. She reviewed the preliminary cost estimates to Town infrastructure. She advised these costs would, in all probability, go up a request would most likely be made to Council for fiscal year FY 2005 to ask that the risk budget be amended to cover these funds.

Councilman Jack McDonald made a motion for authorization to expend funds from the Town's reserve for catastrophic exposures/emergencies. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0. Councilman Brooks was temporarily out of the room; Councilman Goldblum was absent.

B. Old Business

1. Continued Consideration of Potential Project(s) to Bury Overhead Utility Lines. [Thomas G. Bradford, Assistant Town Manager]

   a. Townwide Program

   b. Royal Poinciana Way Demonstration Project

Tom Bradford, Assistant Town Manager, stated that the FPL workers could not be faulted due to the shortcomings of FPL company policies. He reported that after meeting with Les Evans, he found four crews working in the evening after 5:00 p.m., and the first crew he stopped was exhausted as they had been working non-stop for many days in accordance with the policies of FPL.

Mr. Bradford advised, that due to the hurricanes, there had been almost no communication since mid-August with the Town's contacts at FPL, and that a recent e-mail he had received from his contact, advised that FPL was still in an emergency storm mode, and it might be mid-October before a regular routine is established.

Mr. Bradford stated the important point was that the Town was coming up on a deadline on Royal Poinciana Way, and the Town had to notify FPL by October 13th whether the Town accepts or rejects FPL's binding cost estimates to bury lines on Royal Poinciana Way. He continued that Ned Barnes at the Civic Association provided information from their consultant relative to the Royal Poinciana Way project. He explained that he has been unable to review this information fully and requested that these issues be deferred to the October 12th Town Council Meeting where he does plan to present a recommendation to the Town Council on that day in regard to Royal Poinciana Way.

Councilman McDonald moved deferral of the continued consideration of potential projects to bury overhead utility lines to the regular Town Council meeting scheduled for October 12, 2004. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0. Councilman Brooks was temporarily out of the room; Councilman Goldblum was absent.

2. Request to Abate the Four Winds Appeal Pending Before the Town Council Until the Four Winds Investigative Panel Completes its Investigation. [Maura Ziska, Esq.]

Attorney Maura Ziska, on behalf of the property owner of the Four Winds, stated that she had forwarded a letter to the Town Manager requesting an abatement of the appeal that was to be heard at a special hearing set for October 11th. She said that it would be better for the Town Council to have the panel's recommendation before they ruled on the appeal.

Councilman McDonald said he agreed and recommended that the Town Council abate the appeal until the panel was completed.

Councilman McDonald made a motion to approve the request to abate the Four Winds Appeal pending before the Town Council until the Four Winds Investigative Panel completes its investigation. Councilman Brooks seconded the motion. On roll call the motion carried 4/0. Councilman Goldblum was absent.

C. New Business

1. Royal Poinciana Way Construction Project Update.
[FDOT and Weekley Construction]

Director of Public Works Paul Brazil advised that the Florida Department of Transportation (FDOT) and Weekly Asphalt were asked to be present today to update the Town on the progress of the Royal Poinciana Way Construction Project as well as the impact the recent storms had on this project.

Rob Cables, Florida Department of Transportation Project Administrator, stated that the representative from Weekley Asphalt could not be present today because he was attending to hurricane recovery issues. Mr. Cables advised that he was told this would not take away from the efforts of the Town's project. He gave an update on the delays the project suffered from the hurricanes but stated that by the end of next week the drainage work should be completed and then real aggressive work such as paving and sidewalk replacement would be done weekly. He requested leniency on some of the contract requirements from the Town as far as limits on sidewalk removal per section and hours of operation.

Mr. Cables advised that Weekley wanted to pursue the bonus situation. He stated that the only excuse for a no excuse bonus was a hurricane and there were two. He explained that due to the hurricanes, the bonus would be extended until at least the end of October, and they see no problem of being done by Thanksgiving.

President Pro-Tem McLendon stated that it was his understanding that the project had a design basis of trying to get it done in segments and there was no evidence that was being accomplished. He questioned the status.

Mr. Cables replied that the problem he faced, from a project administration standpoint, was that there were conflicting notes in the plan with the biggest note on the traffic control plan stating that the contractor had the authority to work out of phase as deemed necessary.

Town Manager Elwell said the explanation for that was that the Royal Poinciana Association asked for that change because they were impacted more than they had hoped. He said the Association asked for that flexibility because if one part of the job was not moving along as planned, they didn't want the phasing requirement to prevent some other part from being effectively addressed. He advised that this did not happen due to any negligence on the part of DOT or the contractors but was intentionally done to be helpful to the Town and was requested by the Association.

Mr. Elwell requested that Town Council authorize both he and Paul Brazil the ability to grant some flexibility from the Town's normal restrictions in order to do the catch up work in the field created by the two storms. He continued that it would allow the work to continue as rapidly as possible on Royal Poinciana Way so the project could be completed by Thanksgiving, barring any unforseen events.

Councilman Jack McDonald made a motion to authorize staff to allow flexible construction hours to expedite the work schedule with work to be completed by Thanksgiving. The motion was seconded President Pro-Tem McLendon. On roll call the motion carried 4/0. Councilman Goldblum was absent from the meeting.

2. Emergency Dredging of Lake Worth Inlet.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell explained that the Town had learned from the contractor hired by the Corps of Engineers to do the emergency dreding that Hurricane Frances had caused serious shoaling in the Inlet. He explained there was no public comment needed for a permit from the State because it was an emergency permit and the Town learned on September 15th that the dredge would be arriving shortly thereafter.

Mr. Elwell reviewed the communication the Town had with Colonel Carpenter regarding the emergency dredging of 250,000 cubic yards of sand stating that the sand was to be dredged out of the Inlet and dumped in an inshore location. He explained it could not be done as an emergency and pipelined onto the beach because of the mobilization that would be involved. He stated that the Town understood that and also understood that it was turtle season. He said the best thing for the Town would have been to put it on the north end beaches.

Mr. Elwell explained the dredging process and the Corps' science did not agree with the Town's. He continued that the Town does not believe the Corps can get close enough to shore to put the sand in a place that will be beneficial to the Town and the Town objected very strenuously to the dredging and informed the Corps that the Town might have to resort to litigation to prevent them from doing this because it would be so harmful to the beaches of the Town.

Mr. Elwell stated that initially the Colonel was responsive to the Town and its proposal, and the Town did not just complain but proposed the solution of placing the material into the borrow area for which a permit already existed. He explained that at that location the dredge could work more efficiently and safely allowing the Town to get to that material for any future pipeline operations.

Mr. Elwell continued that the Corps of Engineers, after some give and take about this process, stated that an environmental permitting process had to be undertaken, under Federal law, and that it would be very time consuming making it impossible to apply to the emergency dredging but it could possibly be used as a solution for future dredging. He stated that the Town thought it was unacceptable and relayed that to the Corps.

Mr. Elwell reported that the Corps was aware that the Town was preparing a lawsuit and was trying to get the Corps to expedite the National Environmental Protection ACT (NEPA) process since the Town already had a permit for the borrow area.

Mr. Elwell stated that the report they received this morning was that the only agency currently needing to sign off was the National Marine Fishery Service but the Corps did not provide the time frame for them to do so. He continued that they have worked in an expedited manner receiving approvals from several other environmental agencies at the Federal level, and that was the good news but the bad news was that the dredging operation had begun, and sand was being dumped in the near shore area. He said that the dredging will take place over several weeks and advised that if the approval is not received shortly, enough sand will be lost causing irreparable harm to the Town.

Mr. Elwell stated that the decision the Town Council needed to make today was whether or not the Town should file for an injunction to stop the work that was occurring while continuing to make the effort on the technical and communication side of this.

President Pro-Tem McLendon questioned the Corps permit for this dredging project.

Mr. Elwell explained that a permit was held for near shore disposal only for emergency purposes and it has expired. He stated that the Corps applied for a new one which was going through the normal regulatory process. He continued that the State has issued an emergency permit because it was consistent with the prior permit that was in place. He reported that there was no prior permit allowing the sand to be placed into our borrow area and that the Town's permits only allow sand to be taken out of there.

Town Attorney John Randolph stated that subject to the Town Council's approval a complaint for declaratory and injunctive relief against the Army Corps of Engineers was prepared and ready for filing. He continued it would be filed as early as Monday in the Federal District Court for the Southern District of Florida although the court house is still closed because of the hurricane, and that was why it would not be filed this afternoon. He explained that the complaint alleges all of the facts as stated by Mr. Elwell and more.

Mr. Randolph said that it was interesting to look at the permit issued because it states that no more sand can be taken from the inlet than was necessary as a result of Hurricane Frances, but also allows up to 225,000 cubic yards of sand to be taken out. He advised that the Town was not diminishing the emergency the Corps was facing, but the Town's beaches have suffered irreparable harm as a result of the hurricanes, and the Town was facing an emergency. He advised that the purpose of the complaint was to have the Court declare that the Corps should only take out that amount of sand necessary to deal with the emergency rather than attempting to do a maintenance dredging. He explained that under a maintenance dredging permit the Corps was required to place the sand on the beaches or at a place in the near shore that was accessible to the Town, and the Corps did not complete a normal maintenance dredging in 2003, and now under the auspices of an emergency permit, the Town thought the Corps was doing more than needs to be done for the emergency. He stated that it seemed the Corps was making it a maintenance dredging as opposed to just an emergency dredging, and the Town was asking to be allowed to file this in an attempt to have the Corps declare that more sand than was needed for an emergency was being taken out of the Inlet or even sand that was needed for the emergency be placed in a position that would accommodate the Town's beaches.

Councilman Brooks made a motion to approve the filing of a Declaratory Judgement to allow the placement of dredged sand in a borrow site so that it would be accessible for the Town's Beaches in the future. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0. Councilman Goldblum was absent from the meeting.

Town Manager Elwell advised that the Town would continue to work administratively to try and get the NEPA process finished and get a firm commitment from the Corps that this compromise can be implemented. He stated that if that does not occur by Monday, October 4, when the courthouse opens then the suit will be filed and the two processes will continue simultaneously.

3. Review Fire Safety Matter at 2875 South Ocean Boulevard.

[Jack McDonald, Town Council Member]

Councilman McDonald stated that he had this item placed on the agenda because he had observed a dangerous situation at this location and thought this situation might exist at other buildings in Town. He advised that Acting Fire-Rescue Chief Andrew Cox concurred with him via a memo and had the owner make the correction as well as correct this at other locations.

Acting Fire-Rescue Chief Andrew Cox stated that a lot of people do these installations without Fire-Rescue approval. He said that permits are issued through the Planning, Zoning and Building Department. He stated that applicants could be required to coordinate with the Town's Fire Prevention Bureau when applying for such a permit advising them that they had to work within the Life Safety Code adopted by the Town. He reported that a lot of people doing small installations or renovations contract with a private contractor or their own maintenance manager and the Fire-Rescue Department was not aware until the annual fire inspection was done. He advised that the purpose of annual fire inspections was to discover such violations.

Responding to Councilman McDonald, Mr. Elwell stated that permits would be pulled for something that has the type of electrical system referred to here. He explained that it was his opinion that there may be some hazardous things from a fire safety point of view that do not require permits and slip by, but at the time of annual inspections, those situations would be uncovered.

Councilman McDonald explained that he was in the building at 2875 South Ocean Boulevard when the power went out, and he found himself locked inside the building unable to exit when he went downstairs. He stated that if there was ever a fire and people tried to exit, they would be unable to do so, and if this was happening in other properties, steps need to be taken to prevent locked doors from the inside.

Chief Cox agreed and advised that when a permit is applied for, the Town has control over the situation.

Councilman McDonald asked Veronica Close if a permit was required for installation of electronic doors and was a permit applied for at 2875 South Ocean Boulevard?

Ms. Close responded she would have to check on that.

Councilman McDonald stated that if this occurred again, he wanted to insure that the installation requires a permit, then this would happen only if no permit were issued..

Mayor Smith suggested that a letter should be written to the condominiums on the South end telling them about this problem and advising them that the Fire-Rescue Department would be conducting inspections to check that all emergency doors are manually operated.

Chief Cox stated that they could certainly write to all condominium managers and work with the maintenance staff of each condo. He advised that there was a company fire inspection program with the firefighters He explained that these were not State certified fire inspectors with a high degree of technical expertise, but they were State certified firefighters and paramedics. He continued that currently the best way to handle this was to enforce the permit process and the Fire Department would do every thing that they could.

Mayor Smith suggested that the Mr. Cox write the letter and perhaps the Civic Association would speak to all their condominiums to make sure that they comply and if brought to their attention it might solve the problem right away.

Councilman Brooks congratulated Mr. McDonald for bringing this matter to the Council's attention. He gave as an example the Cocoanut Grove fire that occurred on November 28, 1948, which killed 498 people because exit doors did not open out. He advised that since that time, doors must open out. He continued that it could be a disaster, and they should move ahead with full speed.

4. Construction Schedule for Completion of the D-3 Stormwater Pump Station at Tangier Avenue.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil advised that the Town was currently working on the D-3 Pump Station which includes wet well construction at the west end of Tangier Avenue. He said that the project experienced delays early on due to siting alternatives and the need to come up with a plan acceptable to the residents in that area that would still meet the Town's needs plus an additional month was lost due to the storms. He continued that the original plan was to have the construction completed during the month of November 2004 and currently the completion would be sometime in January 2005 due to the delays taking the project through the season.

Mr. Brazil advised that, alternatively, the Town Council could choose to defer the remaining construction until the 2005 construction season. He said that if this option was selected, the Town would have the site secured, close any open excavations and partial site restoration would be completed with the costs to defer the project estimated at approximately $10,000 for the contractor to secure the site, demobilize and come back, and the budget allowed for this contingency. He advised that if the project were to continue into 2005, three residents, Mr. Ross at 231 Tangier, Mrs. Pitt at 320 Tangier and Mrs. Ford at 315 Tangier, would be directly impacted. He reported that these residents have been notified in writing and apologized because he had not had the opportunity to contact them personally although he had planned to do so. He said he does not know if they object to this project. He stated that he briefly spoke to Mr. Ross, in between the two storms, who was not aware at that time the Town Council would consider the alternative of buttoning up the site.

Mayor Smith stated, that in all fairness to the residents, they had received very short notice although two residents were in attendance. She said that it was not fair for these residents to go through Thanksgiving, Christmas and New Years with that type of construction and the noisy generator as it was an intolerable situation, and the Town Council should agree to button up the site and continue construction in the Spring when things might be better. She added that the residents questioned what the deep hole at the site was.

Pauline Pitt, 320 Tangier, stated that she agreed with the Mayor that it would be a good idea to button up the site before Thanksgiving and then reopen for completion, if possible, in the Spring. She said she was concerned about the big hole and would like an explanation of what that was about.

Mr. Brazil explained that the excavation referred to was an encased hole which the pumps physically go in and all work would be below grade.

Ms. Pitt stated that she was on the south side where the hole was and has a huge tree that was on its side. She asked if she could use the Town's crane to put it back up since the crane is sitting right there? She asked if she could rent it?

Mr. Brazil advised that the crane was owned by an independent contractor and not by the Town. He suggested putting the two parties in touch to discuss the issue.

Ms. Pitt thanked him and then restated that she would like to have the site buttoned up before Thanksgiving, starting up again the Spring.

Renate Franco of 309 Tangier stated that she agreed and requested that the site be buttoned up until spring..

Mr. Brazil informed the Council that the contractor advised he would not suffer financially if they buttoned up the site as there was other work for him to do.

President Wyett asked if the third resident was present?

Mayor Smith informed him that Mr. Ross was unaware of the situation.

Councilman Brooks stated that two out of three carries the day.

Mr. Brazil restated that he did speak with Mr. Ross earlier, but at that time Mr. Ross was not made aware that he would have the alternative to comment on. He stated that Mr. Ross was not thrilled with the idea of the Town working through the holiday season.

Mayor Smith stated that she was sure he would go along with the other residents to have the site buttoned up for the holidays and winter season.

Town Manager Elwell explained that, as mentioned in Mr. Brazil's memorandum, a delay in the completion of this pump station would mean a delay in the improvement of the level of service for the D-4 Basin. He continued that it was fortunate that the dry time of year was approaching, because if it was early in the rainy season and the D-3 Station had not been completed and there was a serious rainfall and water could not be pumped out, buttoning up the project could be a problem. He stated that he just wanted the Town Council to be aware of the pros and cons, but there was nothing wrong with proceeding to button up this project.

Councilman Brooks stated that following the arrival of Hurricane Jeanne there was a considerable amount of water on Miraflores but Tangier was dry.

Mr. Brazil explained that Miraflores is physically lower; however, Tangier was just the placement of this pump station but was not the limit of the area that would be improved.

Councilman Brooks asked if it would also help with Miraflores or would that be a different basin?

Mr. Brazil responded that was the reason for this being built.

Mr. Elwell stated that was the point he was trying to make. He continued that because the pipes would be coming in from a variety of streets nearby into the D-3 Station, those streets that currently flood in a heavy rainfall event would be better protected once this project was completed. He advised that the project would be delayed for some months if it was decided to button up the project.

President Wyett stated that it was his understanding that the three residents present would be impacted by the noise and construction, but their homes would not flood. He said that flooding would occur on adjacent streets.

Mr. Elwell stated that was the dilemma.

President Wyett asked if there was a compromise point where construction could be suspended during the weeks of Thanksgiving and Christmas? He said that then this project could be completed earlier avoiding the spring flooding problems.

After discussion, Mr. Brazil said work could be suspended for an extended period of time, but the Town would not be able to provide the site restoration and the construction site in front of the houses would remain.

Councilman Brooks made a motion to stop construction on Tangier Avenue this Fall and resume construction in the Spring of 2005. The motion was seconded by President Pro-Tem McLendon. Councilman McDonald was temporarily out of the room. On roll call the motion carried 3/0. Councilman Goldblum was absent from the meeting.

5. Appointments to the Building Board of Adjustments and Appeals. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building]

After casting ballots, the Town Council appointed Jack C. Cassidy, Jr. to the Building Board of Adjustments and Appeals.

6. Appointments to the Firefighter Retirement Board of Trustees. [William C. Crouse, Director of Human Resources]

After casting ballots, the Town Council appointed Richard Krock to the Firefighter Retirement Board of Trustees. Mr. Crouse stated that there was a tie between Peter Geisler and Raymond Snow.

The Town Council appointed James McCartney Wearn and Raymond Snow to the Police Officer Retirement Board. Mr. Crouse said there was no tie for that one and questioned how the Town Council wanted to proceed?

President Wyett suggested that since Mr. Snow was appointed to the Police Officer Retirement Board of Trustees, he could not be appointed to the Firefighter Retirement Board of Trustees. He stated that Mr. Geisler would then be appointed to the Firefighter Retirement Board.

Councilman Brooks made a motion to appoint Richard Krock and Peter Geisler to the Firefighter Retirement Board of Trustees. The motion was seconded by President Pro-Tem McLendon.

President Wyett restated that because Mr. Snow was appointed to both Boards, he could not serve on two Boards, he would accept his appointment to the Police Board and Mr. Geisler would be appointed to the Firefighter Retirement Board.

On roll call the motion was carried 3/0. Councilman McDonald was temporarily out of the room. Councilman Goldblum was absent from the meeting.

7. Appointments to the Police Officer Retirement Board of Trustees. [William C. Crouse, Director of Human Resources]

Councilman Brooks made a motion to appoint Richard Krock and Peter Geisler to the Firefighter Retirment Board of Trustees. The motion was seconded by President Pro-Tem McLendon. On roll call the motion was carried 3/0. Councilman McDonald was absent; Councilman Goldblum was absent.

8. RESOLUTION NO. 46-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Revision of the Settlement Authority Policy, Providing an Effective Date. [Karen Temme, Risk Manager]

President Wyett read Resolution No. 46-04 by title as printed above.

Councilman McDonald stated that he pulled this from the consent agenda because he needed more information before he could make a decision. He asked how many instances and how many meetings there were?

Discussion ensued regarding the number of attorney/client meetings due to insurance settlements. Mr. Elwell stated that this item could be deferred for a month so that all pertinent information could be obtained.

Councilman McDonald stated that if seventy-five of the meetings could be eliminated than a vote should be taken but eliminating just one meeting would not make a difference.

Mr. Elwell stated that they would not have made this recommendation if it was insignificant in terms of the workload and efficiency of the process. He said that he did not have the exact answer to Mr. McDonald's question but would get it and place this item on the agenda October 12th.

Councilman Brooks moved to defer Resolution No. 46-04 to the October 12, 2004 Town Council Meeting. President Pro-Tem McLendon seconded the motion. On roll call the motion carried 4/0. Councilman Goldblum was absent.

9. Approval of Annual Renewal of General Liability, Property, Workers' Compensation, Automobile Insurance Coverages and Claims Management Services for FY 2005. [Karen Temme, Risk Manager]

Councilman McDonald stated that he had this item pulled from the consent agenda because it was five percent of the total budget and thought more explanation or discussion was needed. He continued if the rest of the Town Council did not agree then he would make a motion to approve it. He questioned if there were recommendations from the Town's experience during the recent storm in terms of the Town's coverage or should it stay the same?

Risk Manager Karen Temme stated that the fixed costs of the insurance were a little over one million, and if the variable costs were counted in, it would be almost two million dollars. She advised that they are within budget and actually below budget with enough fund available.

Councilman McDonald asked if anything occurred during the hurricanes to change the amount of the insurance?

Ms. Temme replied there were not.

Town Manager Elwell explained that last year substantial changes were made in the manner of obtaining this insurance and the coverages that were provided. He explained that was the reason this item has been viewed as routine.

Councilman Brooks added that had been done with substantial savings.

Mr. Elwell stated that due to those changes last year, it repositioned the Town, through the efforts of Mr. Bradford and Ms. Temme, to simply renew this year.

Councilman McDonald made a motion to approve the Annual Renewal of General Liability, Property, Workers' Compensation, Automobile Insurance Coverages and Claims Management Services for FY 2005. Councilman Brooks seconded the motion. On roll call the motion carried 4/0. Councilman Goldblum was absent from the meeting.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 18-04 An Ordinance of the Town Council of the Town

of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 2, Article IV, Boards and Commissions, Division 2, Planning and Zoning Commission, Section 2-328(a); at Chapter 2, Article VI Finance, Division 6, Investment Advisory Committee, Section 2-567(b); at Chapter 18, Buildings and Building Regulations, Article III, Architectural Review, Division 2, Architectural Commission, Section 18-169, Removal of Members; at Chapter 54, Historical Preservation, Article II, Landmarks Preservation Commission, Section 54-38(a); at Chapter 74. Parks and Recreation, Section 74-1(d) so as to Include Religious Holidays as an Excused Absence; Amending Chapter 2, Administration, at Article V, Code Enforcement, Division 2, Code Enforcement Board, Section 2-402(b), So as to Provide for Excused Absences; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 18-04 by title as printed above.

Councilman Brooks made a motion to adopt Ordinance No. 18-04 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0: Councilman Goldblum was absent from the meeting.

2. ORDINANCE NO. 20-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's General Fund Budget Adopted for the Fiscal Year Commencing October 1, 2003, Providing an Effective Date. [Jane Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 20-04 by title as printed above.

Councilman Brooks made a motion to adopt Ordinance No. 20-04 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0: Councilman Goldblum was absent.

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Luncheon Recess taken at 11:45 a.m.

The Town Council Meeting reconvened at 1:00 p.m.

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Councilman McDonald was not in attendance after the lunch recess.

3. ORDINANCE NO. 21-04 An Ordinance of the Town of Palm Beach, Palm Beach County, Florida, Amending and Restating Chapter 82, Division 2, Retirement System, of the Code of Ordinances; Eliminating the Public Safety Board of Trustees and Establishing the Firefighter Board of Trustees and the Police Officer Board of Trustees; Providing Both the Firefighter Board of Trustees and the Police Officer Board of Trustees the Responsibilities, Authority and Powers of the Public Safety Board of Trustees as to Benefit Group Firefighter and Benefit Group Police Officer, Respectively; Restructuring Chapter 82 and Re-numbering the Sections Thereof to Provide Separate Subdivisions for Benefit Group Firefighter, Benefit Group Police Officer, and Benefit Group General Employee and Lifeguard, as Well as for the Separate Boards of Trustees for Each Such Benefit Group; Eliminating And/or Updating Outdated Provisions; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; and Providing for an Effective Date.
[William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Ordinance No. 21-04 by title as printed above.

Councilman Brooks made a motion to adopt Ordinance No. 21-04 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0: Councilman McDonald and Councilman Goldblum were absent.

B. First Reading

1. ORDINANCE NO. 23-04 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. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance 23-04 by title as printed above.

Mayor Smith stated that it was her understanding that construction work could not take place on Saturdays.

Mr. Elwell responded that he did not think that was the case. He stated that it was his understanding that what was being proposed was the same as has been implemented on a season to season basis as a trial over the last three seasons.

Mayor Smith responded that she thought, at one point, there was no construction work on Saturday or just in the morning. She stated that the residents were entitled to have, at the very least, a day and a half without construction.

Mrs. Close reported that the ordinance currently allows for construction on Saturdays; however, construction was not allowed on Sundays or on legal holidays.

Mayor Smith stated that there was a lot of construction taking place, and the residents deserve to enjoy the weekend without construction. She advised that she did not object to the ordinance but thought it could be amended so that construction would take place from 8:00 a.m. to 1:00 p.m. on Saturdays.

Councilman Brooks and President Wyett suggested it should be 9:00 a.m. to 1:00 p.m.

Mayor Smith stated it might be better to discuss this when there is a full Town Council.

President Wyett stated that it should be 9:00 a.m. on Saturday to give everyone a chance to sleep later. He suggested working past 1:00 p.m. to compensate for starting later.

Town Attorney Randolph asked if the Town Council wanted to adopt this ordinance and then at a later time consider an amendment?

Mayor Smith and Councilman Brooks both responded positively to Mr. Randolph's question.

Councilman Brooks made a motion to approve the first reading of Ordinance No. 23-04 provided this matter is reconsidered another time regarding Saturday work hours. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

2. ORDINANCE NO. 24-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Chapter 118, Traffic and

Vehicles, at Article III, Parking, Stopping and Standing, Section 118-89, Parking of Trucks, Commercial Vehicles Limited; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read Ordinance No. 24-04 by title as printed above.

Mayor Smith questioned if the vehicles currently on the streets due to the emergencies caused by the hurricanes would be affected by this Ordinance?

Mr. Randolph explained this Ordinance was for first reading and would not go into effect until the November Town Council Meeting.

President Wyett wanted to know if limousines that park in Town with motors running fall into this category under another?

Mr. Randolph limousines would fall under one of the exemptions perhaps loading and unloading.

Mr. Elwell stated it would be commercial vehicles that stop temporarily.

President Wyett stated that he noticed there were a lot of limousines parked with their motors running at yellow and even red lines with the driver in the car and sometimes outside the car for a long period of time. He asked Police Chief Reiter if the Town had any provisions to cover that?

Police Chief Mike Reiter stated that there are provisions in the State Statutes to cover that, but standing and stopping were addressed rather than parking. He continued that technically it was not considered parking if someone was inside the vehicle, and it has stopped for the purpose of picking up passengers, and the Police Department tries to use a common sense approach. He said that if the vehicle needs to be moved for an emergency and a driver was there, it could be moved. He advised that while technically they may be in violation of the State Statutes, and this might not specifically be addressed in the ordinances, the Police Department tries to use whatever discretion is appropriate for the circumstances.

President Wyett expressed concern over seeing limousines on Worth Avenue sitting for two or three hours with the motor running emitting exhaust fumes.

Chief Reiter explained that he has been told that the cars were kept running to keep them cold for passengers reentering the vehicles. He stated that since the issue was not addressed directly in the statutes, it would be a matter for potential legislation for Town ordinances.

President Wyett stated that in other cities it was prohibited. He said that this matter could be discussed another time.

Councilman Brooks made a motion to approve the first reading of Ordinance No. 24-04. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0. Councilman McDonald and Councilman Goldblum were absent.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Brooks requested Mayor Smith write a letter to the State Chief Financial Officer/Insurance Commissioner Tom Gallagher supporting his attempt to do away with the filing of double or triple deductibles for homeowners insurance claims related to two or three hurricane incidents.

Councilman Brooks stated that wind insurance costs the residents a tremendous amount of money. He said that it appeared that the payout, with the automatic two percent deductible not covering landscaping, netting or screening, was a very expensive premium to pay. He stated it was something for the Town Council to consider.

President Wyett stated that he was sympathetic because he was victim of exactly what Mr. Brooks had commented on. He advised that insurance companies over the last several years have shifted many of the costs from themselves to either the State or to the homeowner, and what would occur was an increase in premiums.

Councilman Brooks restated that the Town Council should be supportive of Mr. Gallagher and careful not to drive insurance companies out of the State.

Mayor Smith stated she would write to Mr. Gallagher.

President Wyett thanked the entire Town Staff for their efforts regarding the hurricanes and coordination of tasks regarding recovery activities.

XI. DEVELOPMENT REVIEWS

A. Appeals

1. None

B. Time Extensions

1. Brazilian Court Hotel. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building] *Deferred from the July, 13, 2004, and August 10, 2004, Town Council Meetings.*

Assistant Director of Planning, Zoning and Building Veronica Close advised that a request had been made by the Brazilian Court Hotel for time extensions. She stated that Mr. Brindell would make the presentation. She explained that he has worked with Town staff, and the staff has worked very diligently within a very short time frame to come up with an agreement. She continued that staff does not object to these conditions but ultimately it will be the Town Council's decision.

Ex-parte communication was declared by President Pro-Tem McLendon via a phone call with Mr. Brindell; Councilman Brooks via a phone call with Mr. Brindell..

Attorney James Brindell, on behalf of the applicant, addressed the Town Council stating that there has been discussion with Town staff regarding a request for a time extension to complete construction work at the hotel. He reported that the hotel was a very old landmark building which was basically a stucco frame building, and work has been proceeding as expeditiously as possible with difficulty. He requested a time extension.

Mr. Brindell said that an appeal was presently before the Building Board of Adjustments regarding the calculation of twenty-seven months in the Town Ordinance but would be dispensed with if they were granted the time extension.

Mr. Brindell stated that he appreciated Town staff trying to work out reasonable conditions with the Brazilian Court in order to complete the project. He explained that what they were trying to achieve was some relief from the normal amount of construction during the period of January 22nd to May 1st and the approach now being taken that was very important for the continued viability of this historic structure would put this landmark on a much firmer ground than if they had used the condo/hotel approach.

Mr. Brindell passed out for discussion the list of conditions that had been worked out with Town Staff. He reviewed the list as follows:

a. The parking lot shall be completed by October 31, 2004.

b. No work shall be done on the Lanai Suites and the pool during the period of January 22, 2005 to May 1, 2005 (the 'Reduced Work Period') but permits for that work shall continue to be processed so that work on those areas can begin as soon as the Reduced Work Period ends.

c. No deliveries hall occur before 11:30 a.m. during the Reduced Work Period.

d. Work on Ohio House may proceed during the Reduced Work Period.

e. Work on Quad 3, located in the northwest corner of the hotel proper, may proceed, once permits are issued during the Reduced Work Period, but all of the demolition work on Quad 3 shall be completed to the start of the Reduced Work Period on January 23, 2005. The permit application for the demolition and reconstruction in Quad 3 shall be filed with the Town by October 15, 2004, along with a fee for expedited review. The Town shall review said application expeditiously. The developer shall regularly instruct its contractors that the windows on the west side of Quad 3 shall remain closed during the Reduced Work Period. Should the Town receive complaints about noise from construction work in Quad 3 during the Reduced work Period, it shall have the authority, after evaluating the validity of the complaint, to stop all work in Quad 3 for the remainder of the Reduced Work Period.

f. Extended work hours, except on Sundays and holidays, are granted from 8:00 a.m. to 6:30 p.m. until December 1, 2005, provided however, that from December 1 to May 1 only quiet work shall be performed between 8:00 a.m. and 9:00 a.m.

g. All construction shall be completed by December 1, 2005 and in conformance with the Town's noise regulations.

He stated that these were reasonable conditions which allowed the project to proceed forward to completion and would provide relief during the season in terms of potential impacts. He advised that Town staff thought these were acceptable conditions and requested the approval by the Town Council. He reiterated that there would be no appeal to the Building Board of Adjustments and Appeals, if these conditions were approved.

Assistant Director of Building, Zoning and Planning Veronica Close advised that staff did meet with the applicant. She stated that they had concerns regarding noise and some other issues but after reviewing the schedule and adding enough caveats, they had no objections and would accept it if the Town Council approved it.

Councilman Brooks thanked Mr. Brindell and his client for working closely with staff. He asked if Mr. Brindell would agree to cutting out some time from Christmas Eve to January 2nd?

Mr. Brindell agreed to that condition.

President Wyett requested elimination of the Thanksgiving period.

Councilman Brooks made a motion to approve the above requests with the additional conditions that no work be conducted from Christmas Eve to January 2nd, and the Thursday and Friday of Thanksgiving week.

President Wyett referred to Mayor Smith's earlier comments and requested they add the condition that work should not start before 9:00 a.m. on Saturdays.

Councilman Brooks amended the motion to include the condition that all work shall begin at 9:00 a.m. on Saturdays. President Pro-Tem McLendon seconded the motion. On roll call the motion carried 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

2. **TIME CERTAIN- 2:00 P.M.** Palm Beach Public School. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building]

This project was heard at a time certain, 2:00 p.m., after Item i. Site Plan Review #12-2004 with Variances.

a. Proposed Plan of Action Regarding Structural Issues in the 1921 Portion.

Kris Garrison reported the School Board was able to negotiate a lease for the West Campus that appears to be a win/win situation for the community, the School District, Palm Beach educational institutions, and the Society of the Four Arts as well as fulfilling the objects laid out by the Town Council. She continued the School Board's intent was to preserve the 1921 building on the eastern portion of the campus, but after the building was vacated with selective demolition done to evaluate the structural integrity of the building. She said the evaluation process revealed extensive structural problems including problems with the foundation that was located in muck areas and not suitable for supporting a foundation; some of the pilings were as short as four feet which are not sufficient to support a structure of that size; water intrusion was found in the grade beam assemblies with rusted metal reinforcements; the walls were found to not be properly reinforced; and the roof was properly supported. Ms. Garrison said an evaluation was done to determine what could be done to preserve the building, and the entire structure would have to be rebuilt with the exception of the exterior stucco walls. Based on the evaluation, the Building Official recommended condemnation of the structure.

Ms. Garrison said she was seeking support from the Town Council to rebuild the structure on its existing footprint utilizing best efforts to replicate the architectural elements of the existing building. She suggested interior plaques would commemorate the original location of the school.

Project Coordinator Timothy M. Frank said the report speaks for itself.

Assistant Director of Planning, Zoning and Building Veronica Close said the staff recommended the Town Council approve the request of the School District with the extension of working hours requested with the exception of Saturdays, Sundays, and holidays to help with the tight construction schedule.

Mr. Frank said he thought the staff recommendation was to have the Town Council hear the project and not the approval of the project. Mrs. Close agreed.

Eugene Pandula, Architect, Chairman of the Landmarks Preservation Commission, said the project was worked on for several months going from demolition to relocation to progressively better solutions for renovation of the project and the outcome clearly showed the intention of the Landmarks Commission. He said the request is unfortunate but this is a situation that often occurs during renovations of a building of this age, and unless the public has an awareness of forming a new philosophy on this issue, the public will be confronted as long as the current inventory of historic properties in Palm Beach is worked on.

Mr. Pandula said he thought Ray Manning's memorandum from Song Associates was well written, and the potential solutions are accurate. He continued that, unfortunately, the solution is not good for historic preservation; it does not meet any standards or guidelines; and the word 'replicate' probably accurately describes the intention of the project; however, no where in the Secretary of Interior Standards is 'replication' an effective tool of methodology. He stated this action would be tantamount to demolishing the building; it does not follow the processes of reconstruction which replace materials in like-kind to the greatest extent possible as this would be a completely newly constructed building using sequences, methods, and materials of construction that are not part of the campus. Mr. Pandula said if the decision is made to demolish the structure, there should be no illusions that the Town is practicing historic preservation as this is replication providing the feeling that the building was rebuilt to the mass and scale of the building that was there, but that is replication not good historic preservation.

Mr. Pandula said this was mostly a financial issue as the technology is available to rebuild this building although the public entity does not have available funds nor does the Town's Landmarks

Commission have a discretionary fund for granting funds; no sister organization in the Town has a revolving fund that could contribute; and finances are part of the real world that need to be dealt with. He suggested an excruciatingly narrow rationale be drafted for granting this solely based on financial purposes. He added the building on the West Campus has the same construction technology and could face similar issues at some point in time when there is a new owner or when the building is retrofitted.

Mr. Pandula concluded that some thinking has to be done regarding the matter, and it should not be done lightly.

Mayor Smith inquired if the Landmarks Commission requested a structural study before actions are voted on for any of the structures?

Mr. Pandula responded that had not been required; however, if someone applies for demolition under the criteria of economic hardship, then the applicant has a structural evaluation with the Town conducting a parallel separate investigation to confirm or not.

President Wyett asked Ms. Garrison what dollar amount the School Board was spending, above and beyond, if the 1921 building was not there?

Ms. Garrison replied the School Board approved a budget increase for the project of approximately $1 million above the previous budget for the project.

President Wyett said he was concerned about the taxpayer dollars being spent and questioned if there was a less expensive of preserving the facade?

Ms. Garrison said that was the first thing the architect considered when the structural problems were revealed, and the cost for that was an additional $1 million. She said the recommended approach by the School's Building Official and the analytical team was the correct action not only from a financial standpoint but from a consideration of safety and community interests.

Mayor Smith acknowledged Gail Coniglio and her family from Cuciana del Arte and E. R. Bradleys, who fed the Town's employees breakfast, lunch, and dinner for many, many days during Hurricanes Frances and Jeanne. Mayor Smith stated her appreciation for those services.

Mrs. Gail Coniglio, 1139 N. Ocean, Chairwoman of the Seaview Recreation Advisory Commission, said she understood the School Board's position; however, this problem is occurring after two years of dialogue. She said she was saddened by the massive size of the school and so much green space has been lost and requested the Town supervise the project to ensure no additional losses occur.

Councilman Brooks questioned the safety of the existing building as determined by the architects.

Thomas Kastner, Vice-President Song & Associates, Senior Project Manager for this project, said the safety was the first duty of the architects, and the building is considered unsafe and to make it safe is the issue Ms. Garrison has presented succinctly.

Maya Gaillard, Preservation Foundation, read a prepared statement on behalf of the Preservation Foundation:

> "The Preservation Foundation is here today to urge that the Town Council take action to prevent demolition of the 1921 Palm Beach Public School, an important landmarked building in the community's architectural history. Allowing the School District to proceed with demolition would send a message that replication of a landmark is synonymous with restoration. That, in our Town, it is okay to raze a landmark so long as it is rebuilt to simulate its original form.
>
> Simulation is not historic preservation. Simulation devalues stewardship of the historic architecture that distinguishes Palm Beach from other communities. A stewardship that our historic preservation ordinance requires the Town to uphold. It is indefensible that the School District waited until August of 2004 to make public the findings of its architect who is not a structural engineer, that the historic building could not support the approved structural changes. Why, over the course of two years, did the district not disclose that discovery while the new facilities plans unfolded and site preparation was under way.
>
> How could the district allow classes to be held in a building so extensively damaged that they have now deemed it irreparable? It is disingenuous for the district to claim that inspections had to be held off until the students had vacated the building. There has been ample time and opportunity for an evaluation. Why didn't the inspections take place during last summer's vacation? Or on any weekend since October of 2002 when it first came before the Town.
>
> We believe the School District has been an irresponsible custodian of the historic building. We hope the Town Council will consider every option to prevent the destruction of yet another Palm Beach landmark. Instead of accepting as gospel the opinion of the School District's architectural firm, we urge the Town to commission an independent survey of the building by a licensed, structural engineer who specializes in the preservation of historic properties. Such a study would be the right thing to do for the building and the right thing to do for the community, and it should be undertaken immediately.

The over-arching concern in this debate, however, is that the community may be losing its perspective on its relationship between its character and its historic architecture. We believe it is central to the Town Council's governance to preserve and protect the community's character – to insure that property owners are not given the green light to raze a landmark because it is old and tired, in need of repair, and too much of a nuisance to fix.

If decisive action is not taken, the die will be cast for a Palm Beach that will look very different a generation from now. The Preservation Foundation does not believe that is what our elected leaders or the voters who elect them have in mind."

Councilman Brooks asked Mr. Kastner how long it took to reach the conclusions stated in the August 26th letter to Ms. Garrison?

Mr. Kastner responded the process started as soon as the contractor was allowed on the campus which was in June 2004, and the process took approximately six weeks as various problems were revealed. He said he agreed that replication is not restoration; however, a structural engineer working for Song & Associates examined the foundation through to the roof and an independent engineer from the School Board did another evaluation. He said, based on that evaluation, the project was recommended to be condemned.

Councilman Brooks said Ms. Gaillard mentioned the Town could hire a structural engineer to look at the situation which would take approximately 6 weeks, and there may not be a delay as the contractor can continue working on the new portion.

Ms. Garrison replied Sandra Plyor, the professional in charge of overseeing construction from the District's standpoint, said an independent engineering firm from the rotating, continuing contract reviewed the project along with the Song & Associate Engineer. She stated her concern for the project schedule, because the schedule is behind due to problems with FP&L, the hurricanes, and the time required to evaluate the 1921 portion of the building.

Maya Gaillard, Preservation Foundation, stressed the importance of distinguishing between a structural engineer and a structural engineer who specializes in the preservation of historic properties, because it is a discipline unto itself that should be factored into the considerations.

Mrs. Close said the first time this project went to Landmarks, it went on a voluntary basis on behalf of the school board as the school board is not bound to go before the Landmarks Preservation Commission.

Mr. Castro pointed out that the School Board is not bound by the Town's building codes either, and prior to this meeting the School Board's building official met with Robert Moore and

Harry Ackerman outlining their position as it related to the structural integrity of the building or the lack thereof. He continued, that based on those discussions, staff agreed with them as related to the building's demise and associated problems, and staff agreed that the building is unsound at this point in time with the cost to preserve the building being very substantial.

Mayor Smith replied the Town Council is not interested in the economic hardships but questioned if the Landmarks Commission had seen any plans since the engineer determined it was unsound?

Jane Day, Consultant to the Landmarks Commission, reported the Commission did not meet in September because of Hurricane Frances, however, many of the Landmarks Commissioners were present in the audience at this meeting.

Mayor Smith asked Ms. Day if she knew Mr. Moore had met with the School Board officials and agreed that the building was unsafe and should be condemned?

Mrs. Day replied she did not know that.

Ann Blades, 402 Seabreeze, Vice Chairman of the Landmarks Commission said she lived almost next door to the school and has visited the site. Ms. Blades questioned if the building were unsafe how the children could have attended school there all those years? She also questioned what was going to be built on top of the structure that requires it to be demolished and was the structure examined before or after the rest of the buildings were demolished? She stated the structure was brutally handled.

President Wyett, comparing the School project to the Clarke house at 1500 South Ocean Blvd., said everyone was happy with the finished result at the Clarke house with replaced materials on the landmarked house. He continued that another set of experts may agree with either side, but that will create problems of rising costs, delays, and in the final analysis, the School Board has the right to do what they want to do. He added the Town needs to review all landmarking procedures as a result of the School issue, the Clarke house, and the Four Winds. Mr. Wyett said he did not think the Town was in a position to oppose what is a very reasonable recommendation from the School Board.

Mr. Castro said the Town did not do its own analysis nor did staff visit the property and confirm the data and analysis that was done by Mr. Hogarth as well as the consulting engineers. He continued that, from his understanding, Mr. Moore agreed to the what the analysis was and how they conducted it, but no independent confirmation of the result was done.

Mr. Wyett said that should have been done prior to this meeting as it was know for at least a month.

Assistant Building Official Harry Ackerman said he met with Tom Hogarth, the Architect, and several others where a presentation was made related to the findings of the School Board. He continued, that if what the School Board is saying is true, something definitely needs to be done. He added that the construction of the period would indicate that the findings were probably accurate.

Landmarks Chairman Eugene Pandula said if the School Board's report is accurate, because most buildings of this vintage have similar circumstances, and the building is in dire need of repair, the question becomes how to handle it? He continued that under good historic preservation practice, reconstruction is an accepted methodology using like materials to the smallest extent possible replicating details or removing them from the building and reapplying them is good preservation practice. He noted that, in this case, a hollow tile building will be demolished and replaced with a concrete block building; wood roof framing will be replaced with metal trusses; wood floor joists will be replaced with a concrete floor; the windows and exterior stucco will be removed; and this project will be a replication not preservation. He explained that preservation is a legitimate, recognized method of accomplishing historic preservation projects and the other, the one that is being proposed, is not.

Mr. Pandula said that Building Codes in general, in the State of Florida, make no leeway, give no special credit, to a landmarked building, and this has been an issue with preservationists for years. He continued that simply meeting the intent and spirit of a building code with a historic building creates significant, substantial loss of the fabric of the buildings, and that is a reality although many groups and agencies are studying this, and the Town is not dealing with issue alone.

Mr. Pandula said the Division of Historical Resources in the State of Florida wrote a position paper in 1992 that was presented to the Florida State Legislature in an attempt to convince them to adopt a Florida State Historic Building Code for the stated purpose of the loss of the fabric of historic buildings through meeting current code requirements. He said he did not know what happened to that request. He added, that as professionals, no choices are available – the building has to comply with the code or it does not comply with the code–and a lot of this is out of the realm of control for all parties presently. He offered that the best possible solution to the problem would be a cash solution where the project could be finished correctly.

Gail Coniglio said the Town was generous with the School Board regarding the parking issue.

Mayor Smith said the new structure will not be a landmark, and the question is whether a little piece of the building should be preserved, but that will have to be decided by the three parties.

Councilman Brooks recapped that the School Board has few options other than following the code which is a sensible course considering the safety of children but said he would recommend having the Landmarks Commission and the Preservation Foundation reviewing the project between this meeting and October 12th in an attempt to tighten up the situation including projecting costs for maintaining the building according to the current code.

President Pro-Tem McLendon questioned what the main problem was –the lack of sufficient foundations or is the so-called basement wall deficient?

The School Board representative, explaining the process the Board followed, said the underlying dirt was unsuitable for foundation systems; the underground pilings were as short as four feet; water infiltrated into the concrete causing it to break away from the grade beams; the wall supports are crumbling; the walls are not reinforced; wood floors have been destroyed by various wood destroying organisms; the roof wood trusses have been compromised; and no part of the building does not or require either replacement or remediation.

He continued that on other parts of the campus where the school building was demolished the soil has been replaced with select fill and has been compacted. He concluded that everything would be required to make the 1921 portion safe and compliant and $3.5 million is not out of the question to do the work.

Mayor Smith said she thought it would not be money well spent to obtain another report regarding the 1921 building and requested the Town, the Landmarks Commission, and the Preservation Foundation try to creatively think before the next Town Council meeting how to provide an additional $2 - $2.5 million to save the building, if it is worth saving. She said she did not think there was any other answer to the problem and requested an additional ten days unitl the October 12, 2004, Town Council meeting.

President Wyett responded that he thought the Town, after incurring hurricane costs, did not have $2.5 million to put into the school structure. He added the structure is not too visible from the main streets and while it would be nice to preserve the 1921 portion in its original state, but the next best thing would be a replication.

Councilman Brooks said he would like to have the next eleven days to consider options on the building.

President Pro-Tem McLendon said he would like to have four Town Council members making the decision.

President Wyett said the item will be heard at the October 12, 2004, Town Council meeting at 10:00 a.m. (Time certain).

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE #12-2004 The application of 220 North Ocean Partners LLC by Joanne Barkett Conway relative to property described as Lot 2, together with Beach Lot 2, Parangon; commonly known as 220 North Ocean Boulevard; located in the R-B Zoning District. To allow construction of a driveway gate with a 12.5 foot setback from the edge of pavement in lieu of the 18 foot minimum required. *Deferred from the May 11, 2004, Town Council Meeting.*

Variance #12-2004 was withdrawn earlier in the meeting.

b. VARIANCE #19-2004 The application of Frederick R. Adler and Catherine G. Adler relative to property described as lengthy legal description on file; commonly known as 1520 South Ocean Boulevard; located in the R-A Zoning District. To allow 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 to increase the building non-conforming 3rd floor element and the second is to provide a side yard setback of 10.91 ft. in lieu of the 15 ft. minimum required. *Deferred from the August 10, 2004, Town Council Meeting.*

Variance #19-2004 was deferred to the October 12, 2004 Town Council meeting earlier in the meeting.

c. VARIANCE #20-2004 The application of 171 Royal Poinciana, LLC, Lynn Min, Member relative to property described as Lot 7, Floral Park Add. No.2; commonly known as 171 Royal Poinciana Way (a.k.a. Main Street); located in the R-C Zoning District. To allow the renovation and addition to an existing non-conforming building. Variances requested are as follows: to build new single family home on a platted lot that has a width of 25 ft. in lieu of the 75 ft minimum; to have a lot area of 2,500 sq. ft. in lieu of 10,000 sq. ft. minimum required; to provide a front setback of 7.1 ft. in lieu of 25 ft. minimum required; to provide east and west side yard setbacks of 2.5 ft. in lieu of 10 ft. minimum required; to provide lot coverage of 59% in lieu of 35 % maximum allowed; to provide landscape open space of 22% in lieu of the 35% minimum required; to provide landscape open space of 12% in front yard in lieu of 35% minimum required; to build a swimming pool with a 3 foot side yard setback on the east and west in lieu of 10 ft. minimum required; to build a pool with a 3.66 ft. rear yard setback on the north in lieu of 10 ft. minimum required; and, to have 4 dormer window openings in the roof above the maximum building height which opens into habitable space where no windows are allowed in the roof into habitable space. *Deferred from the August 10, 2004, Town Council Meeting.* **Per Letter from Lynn Min Received September 1, 2004, Request for Deferral to the October 14, 2004, Town Council Meeting.**

Variance #20-2004 was deferred to the October 12, 2004 Town Council meeting earlier in the meeting.

2. New Business

a. VARIANCE #22-2004 The application of Richard P. Richman and Ellen S. Richman relative to property described as Lots 2 and 2A, East Shore Addition; commonly known as 615 Crest Road; located in the R-B Zoning District. To allow construction of a portion of the residence containing a living room on the west side of the house with a width of approximately 32'8" having a height of 23.0 ft. in lieu of the maximum permitted height of 22.0 feet; and, to permit construction of a residence with cubic content ratio of 4.10 in lieu of the maximum permitted cubic content ratio of 3.81.

Town Attorney Randolph commented that there were only three Town Council members present to vote on these presentations. He said that a 3/5's vote is required in order to approve an application, and any application before the Council would have to have a unanimous vote of the Town Council members. He continued that when this occurs, the applicant has the option to proceed or they could postpone the item until it can be brought before a full Town Council, and he wanted the applicants to have this information before they began their presentations.

President Wyett asked if the applicant thought it was not going his way, could the item be deferred during the presentation?

Mr. Randolph stated it was better that they not test the winds and make a decision before starting their presentation, but it was at the discretion of the Town Council to allow it.

President Wyett asked what happens if it is a two to one vote?

Mayor Smith responded that it loses.

President Wyett polled the Town Council to see if they would allow an applicant to withdraw during their presentation.

President McLendon had no objection to the applicant being able to withdraw during the presentation.

Councilman Brooks was not in favor of testing the wind.

President Wyett agreed with Councilman Brooks. He stated they should either defer until next month or proceed without the option of deferring.

Attorney Tim Hanlon made the decision to defer Variance #22-2004 to the October 12, 2004, Town Council Meeting.

Councilman Brooks made a motion to defer Variance #22-2004 to the October 12, 2004, Town Council Meeting. President Pro-Tem McLendon seconded the motion. On roll call the motion carried 3/0. Councilman McDonald and Councilman Goldblum were absent.

b. VARIANCE #23-2004 The application of Dr. G. Alexander and Stephanie B. Carden relative to property described as Lot 6 Eden Properties; commonly known as 211 Garden Road; located in the R-B Zoning District. To allow construction of a partial second story addition on a one-story house which will have a 31.3% lot coverage in lieu of the 32.2% existing and the 30% allowed for a two-story house; and, a flood variance to do a major renovation and maintain the existing finished floor elevation of 7.3 feet NGVD in lieu of the 7.5 feet NGVD minimum finished floor elevation.

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

Attorney Brindell requested a deferral to the October 12, 2004 Town Council Meeting.

Councilman Brooks made a motion to defer Variance #23-2004 to the October 12, 2004, Town Council Meeting. President Pro-Tem McLendon seconded the motion. On roll call the motion carried 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

c. VARIANCE #24-2004 The application of Slope Trail, LLC, George Ford, Manager, relative to property described as Lot 120, Mark Rafalsky Tract; commonly known as 756 Slope Trail; located in the R-B Zoning District. To allow construction of a new two-story residence with a point of measurement of 19.5 feet NGVD in lieu of the 7.5 feet NGVD maximum allowed.

Ex parte: Councilman Brooks declared a very brief conversation with Attorney Maura Ziska relative to the application.

Attorney Maura Ziska stated the variance request was to allow a new two story residence to be constructed with a point of measurement of 18.5 feet NGVD in lieu of the 7. 5 feet NGVD maximum allowed. She explained the Architectural Commission reviewed the project and after that review the point of measurement request was lowered one foot, additionally, the Architectural Commission voted in favor of the project, in all aspects.

Ms. Ziska said the lot is approximately 19,125 sq. ft. and the current residence, to be demolished has a finished floor elevation of 18.32 feet. She explained the natural grade of the property slopes from 4.0 ft. NGVD on Slope Trail to 30 ft. NGVD at the west property line or a change in grade of approximately 26 ft. She continued that the house to the west has a finished floor elevation of 36.3 ft. and the house to the south has a finished floor elevation of 22.0 ft. both much higher than the finished floor elevation requested at this meeting. She noted that other than the point of measurement variance request, the proposed residence meets all of the R-B requirements with the tie beam height at 22.0 ft. and the overall height is 28.0 ft. or 4 ft. lower than the maximum allowed.

Ms. Ziska said the hardship ran with the land as the property is located along the limestone rock ridge and the existing house has a higher finished first floor than the crown of the road.

Architect Harold Smith, Smith & Moore Architects, said the two story Italian Renaissance house has 7885 sq. ft. with 51.9% landscaped open space; 27.8% lot coverage; and 3.9 cubic content ratio with the point of measurement variance. He noted the footprint of this house was similar to other homes in the neighborhood as related to size.

Mr. Castro said while a hardship does appear to exist related to the topography of the land, a trade off should be made with the height of the house and the excavation of the land itself and that was so noted by the Building Department along with the Comprehensive Plan comment that the application does not meet the conditions for granting a variance, and the house should be designed to conform with the existing topography.

Mr. Smith responded changes were made after the ARCOM request to reduce the height of the house, and the two story mass of the house is 65 ft. from the front property line.

President Pro-Tem McLendon made a motion to approve Variance No. 24-2004. The motion was seconded by Councilman Brooks and carried 3-0 on roll call as Councilmen Goldblum and McDonald were absent from the meeting.

d. VARIANCE #25-2004 The application of Robert Echele & Robert Gease relative to property described as Lot 16, Vita Serena; commonly known as 143 Clarendon Avenue; located in the R-A Zoning District. To allow the reconstruction of a two story garage guest house building on the northwest corner of the subject property on the same footprint with the west side yard setback of 5.875 feet in lieu of the required fifteen (15) foot setback.

Ex-parte communication was not declared by any Town Council members.

Attorney Reginald Stambaugh, on behalf of the applicant, stated he would proceed. He advised that the Architect, Lee Kvarnberg was present.

Mr. Stambaugh, as a citizen, thanked the Police and Fire-Rescue Departments stating they were perfect during the hurricanes.

Mr. Stambaugh explained the garage of the landmarked Fatio house, located on Clarendon, according to the engineer's report, needs to be demolished. He stated that the engineer's report, included with the application, indicates that the accessory structure which includes the garage and apartment above was in great disrepair with wood rot and termite damage. He said that the applicant would like to reconstruct utilizing the existing footprint; current materials; and the current codes with a new setback of 15 feet, but the setback to the west is less than current code setbacks.

Mr. Stambaugh stated that he was not aware of any letters opposing this application.

Architect Kvarnberg reported the two story garage had been built using 2x6s, lath and plaster; however, upon investigtion, it was discovered the materials were rotten to the ground, and the request is to rebuild the same building using the same footprint and the same materials. He explained the first step was passed last month at an informal review before the Landmarks Preservation Commission.

Zoning Administrator Paul Castro commented that there was no hardship. He continued that a letter from Thomas Rogers, PE was submitted stating that the structural integrity of the garage was damaged and recommending replacement of the structure. He continued that if the garage was rebuilt in the same footprint, the same configuration, and architecture it met the intent from a landmarking standpoint and that would make it somewhat of a hardship relative to maintaining th landmark status.

Mr. Castro, at the request of Mayor Smith, read the paragraph from Mr. Rogers letter which recommended the reconstruction of the structure. Mr. Castro stated for the record that it was not an apartment but a guest house.

Mayor Smith asked if they planned to use the existing foundation and same footprint to rebuild this and what materials would be used?

Mr. Kvarnberg stated the foundation and materials would be the same as had been used when the garage was constructed. He said they would use 2x6's with stucco and it would be the same structure.

Councilman Brooks stated that when a property is landmarked, the Town Council should be, as much as possible, supportive of the petition. He advised he would make the motion to approve this variance especially since it would be the same footprint and would replicate the existing garage as much as possible.

Councilman Brooks moved to approve Variance #25-2004. President Pro-Tem McLendon seconded the motion. On roll call the motion passed 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

e. <u>SPECIAL EXCEPTION #23-2004</u> The application of John L. Cohlan relative to property described as Lot 24A and the South 44.07 feet of Lot 25A, Bello Lido; commonly known as 1285 North Ocean Boulevard; located in the R-B Zoning District. To allow the owner of a residential property in the R-B district to own a beach area lot with an existing cabana approximately 650 feet away from his primary residence.

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

Attorney Peter Broberg, on behalf of the applicant, passed around visuals of the property, showing the new home built by Mr. Cohlan in the middle of the block on Kenlyn and explained that Mr. Cohlan acquired the property on the end of the street which has a beach house on it. He said his client was requesting the approval of adding the cabana to Mr. Cohlan's house in the middle of the block. He stated that they would execute a Unity of Title if required by the Town.

Zoning Administrator Paul Castro said the staff recommendation was to allow it with a Unity of Title as it is permitted by Code by Special Exception with the Unity of Title.

Councilman Brooks made a motion to approve Special Exception #23-2004 with the condition a Unity of Title be executed. President Pro-Tem McLendon seconded the motion. On roll call the motion passed 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

f. SPECIAL EXCEPTION #24-2004 The application of Chanel, Inc. relative to property described as Royal Park Addition southerly 33.79 feet of Lot 24 (less westerly 8.2 feet) and Lots 25 through 28 (less North 92.45 feet) & lots 29 through 32, Block 14; commonly known as 301 Worth Avenue; located in the C-WA Zoning District. To expand the jewelry store (Daniel Morris International) from 2,000 square feet to 2,815 square feet gross leasable area; and, site plan review as required.

Attorney James Brindell, on behalf of the applicant, stated that the request was for David Morris International to expand into 815 square feet of existing retail space on the first floor with the issue being the requirement for town serving. He advised that documentation had been provided to show that the expansion met the town serving requirements. Mr. Brindell said it was a very modest expansion and asked that the Town Council approve it.

Zoning Administrator Paul Castro requested that the condition of approval was that they provide adequate town serving documentation each year at the time of renewal for their occupational license.

President Pro-Tem McLendon made a motion to approve Special Exception #24-2004

with the condition that the applicant provides adequate town serving documentation each year at the time their occupational license is renewed. Councilman Brooks seconded the motion. On roll call the motion passed 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

g. SPECIAL EXCEPTION #25-2004 The application of Worth Avenue Associates, Ltd. relative to property described as lengthy legal description on file; commonly known as 150 Worth Avenue, Suite 136; located in the C-WA Zoning District. To allow an apparel and accessories business (a permitted use in the C-WA Worth Avenue district) which currently occupies 1,994 square feet of an existing gross leasable area of 3,425 square feet to expand into the remaining 1,431 square feet adjacent space which was closed off and not being used, thereby allowing the business to occupy the entire existing gross leasable area of 3,425 square feet as an exception to the maximum of 2,000 square feet gross leasable area in the C-WA Zoning District. **Request for Deferral to the October 12, 2004, Town Council Meeting per Letter Dated September 20, from Lisa S. Small, Esq.**

Special Exception #25-2004 was deferred to the October 12, 2004, Town Council meeting earlier in this meeting.

h. SPECIAL EXCEPTION #26-2004 WITH VARIANCE MODIFICATION The application of Risotto Realty, Inc., Daniel Ponton, President, relative to property described as Lots 32 & 33, Block 10, Royal Park Addition; commonly known as 215 Peruvian Avenue; located in the C-TS Zoning District. To allow modification of a private social dinner club use which is special exception use in the C-TS District, with no change in membership, to increase the allowable seating from 87 to 150 dining seats; to allow shared supplemental parking for the Club in the nighttime at 380 South County Road, commonly known as the Washington Mutual Bank building, the lot having 26 parking spaces; and, to modify a condition of approval of a previous variance (Variance 52-82) by increasing the seating that was allowed in the previous variance to 150 seats.

Attorney Peter Broberg, on behalf of the applicant, stated that the request was for a modification of Variance No. 52-82 which approved an awning over the center part of Club Colette. He said that one condition of approval in 1982 was that the seats in the building would not exceed eighty-seven and requested Town Council approval to increase the seats from eighty-seven to one hundred and fifty for the purpose of holding more events because eighty-seven seats limited the number of events that could be held. He stated that the seats were already there, but his client would like to have approval from the Town Council for them. Mr. Broberg presented a Smith Architects drawing showing that all the aisles and distances between seats met the Fire Safety Code.

Mr. Broberg stated an additional request was to approve a shared parking arrangement for the evenings only for twenty-one spaces located at the Washington Mutual building which was under common ownership with the Club Colette building. He said that to conform to the Code, he was requesting a Special Exception to allow shared parking in the evenings at that building and parking to accommodate any perceived increase in use at Club Colette would be available. He added that it was not a requirement for the approval of the modification of the variance asked for originally.

Zoning Administrator Paul Castro stated that staff did have concerns. He said the Police Department advised that in the afternoons there were on going problems during use; inadequate parking, traffic congestion, and inadequate valets. He continued that this occurred when the Club held charitable events in the afternoons where there was a tendency for stacking and double parking with traffic backing up several hundred yards while unloading passengers.

Mr. Castro said that documentation regarding the shared parking implementation was not provided and restated that the real problems were in the afternoons when there was a lot of traffic and the parking lots were full.

Mr. Castro stated that from a comprehensive planning standpoint, the applicant had a poor track record and approval should not be granted because it would aggravate the existing poor traffic and parking situations. He reported that staff was recommending a deferral in order to come up with a resolution to the parking issues that occur during the lunchtime periods during season.

Mr. Broberg mentioned that he personally would be the most affected along with Earl Hollis when the stacking occurs because his office is two buildings to the west. He said that stacking happens because events were held at a time certain. He cited one instance last winter when cars were backed up to the Peruvian lot but that did not happen often because valets move the cars as quickly as they can although everyone arrives at the same time. He stated that from a personal standpoint rarely was there a time that he was not able to get in and out of his building but would agree to a deferral if one was requested. He reiterated that these problems happen infrequently and then the parking is absorbed into the neighborhood.

Mayor Smith questioned the number of valets and stated the congestion usually occurs when the famous fashion shows are scheduled. She explained that cars are left unattended when the guests leave their cars and do not drive up to the valets resulting in as many as eight empty cars sitting there with their doors open.

Mr. Broberg said that generally Club Colette has one man there all the time who does valet in the evenings but the parking company has seven or eight people parking the cars.

Mayor Smith asked if it was possible to add more valets? She also requested that guests be told not to leave their cars unattended.

Mr. Broberg stated they would add as many valets as the Town Council requested, and guests could be advised when the invitations went out not to leave their cars unattended.

Mr. Castro said he would like to have valets restricted to one lane only, and valets would be allowed to only take cars in the outside lane closest to the Club itself and the sidewalk rather than allowing people to stop and get out of cars in the farthest lane.

Councilman Brooks agreed with the Mayor and Mr. Castro and suggested a restriction to one lane as well as requiring drivers to remain with respected vehicles until the valets get to them.

Mr. Castro said he had a request from the Fire Department to have the entire building fire sprinkled since it is not completely sprinkled.

Mr. Broberg asked if they could do this next year when season was over sometime either in March, April or May? He explained that the road has to be excavated to get to the water main.

After discussion regarding the the road excavation, Mr. Broberg stated he would look into it and report back to the Town Council.

Councilman Brooks made a motion to approve Special Exception #26-2004 with the following conditions:

1. **Restrict valets to one lane only.**

2. **Drivers are to remain with the cars until the valet parkers can take the cars;**

3. **Hire additional valet parkers;**

4. **The building at 215 Peruvian Avenue must be fire sprinkled before the end of May 2005.**

Discussion took place regarding the restriction of valets in one lane only and Councilman Brooks amended his motion removing that restriction.

Mr. Castro suggested a partial solution would be the hiring of special duty officers to handle traffic and parking for large events.

Mr. Broberg stated he would be amenable to that condition.

Councilman Brooks amended his motion as follows:

1. **Drivers are to remain with the cars until the valet parkers can take the cars;**

2. **Hire additional valet parkers;**

3. **The building at 215 Peruvian Avenue must be fire sprinkled before the end of May 2005;**

4. **Hire Special Duty Officers to handle traffic and parking for large events.**

President Pro-Tem McLendon seconded the motion. On roll call the motion carried 3/0. Councilman McDonald and Councilman Goldblum were absent from the meeting.

i. SITE PLAN REVIEW #12-2004 WITH VARIANCES The application of Il Lugano Condominium Association Inc. relative to property described as Lots 20, 21, 22, 23, and 24, Block 4, Ocean Park H.W. Robbins Additions to Palm Beach; commonly known as 300 Seminole Avenue; located in the R-D (2) Zoning District. Site Plan Review to permit installation of awning over existing parking at rear (south) side of multi-family property; variance to permit installation of awning at rear (south) side of property to cover existing parking spaces within 2 feet of rear yard setback in lieu of 30 feet minimum required; and, variance to allow said installation with a lot coverage of 32.17% in lieu of the 31.14% existing and the 22%, plus 3% for awning, lot coverage maximum allowed.

Attorney Frank Chopin asked if any of the Council members would request he take a deferral of this case.

Councilman Brooks said he would respectfully request Mr. Chopin take a deferral.

Councilman Brooks made a motion to defer Site Plan Review #12-2004 with Variances to the October 12, 2004, Town Council meeting. The motion was seconded by President Pro-Tem McLendon and carried 3-0 on roll call as Councilmen Goldblum and McDonald were absent from the meeting.

3. Other

a. Request for Extended Construction Work Hours- 375 South County Road. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building]

Attorney Ron Kolins said his client requested to work from 7:00 a.m. to 7:00 p.m. in an attempt to finish the work allowing them to open as early in the season as possible. He said he had a letter from the Everglades Plaza Condominium Association stating the Board had no objections to the request by the restaurant to allow construction work between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, provided the work does not extent past November 30, 2004. Mr. Kolins noted that only six out of the twenty-two units in the building had residents this time of the year.

Assistant Building Director Veronica Close said the staff's suggestions were to allow work from 8:00 a.m. to 8:00 p.m., Monday through Saturday.

President Wyett said that 7:00 a.m. is much too early and preferred work start at 9:00 a.m. on Saturday.

Mrs. Close said additional recommendations included: if any noise complaints were received between the hours of 6:00 p.m. and 8:00 p.m. might be cause for the work to be stopped assuming validation; indoor work only be conducted between the hours of 6:00 and 8:00 p.m.; a site supervisor be on the jobsite at all times during the extended work hours; notification be given to all of the neighbors within a 200 ft. radius; no work allowed on Sundays or legal holidays; and extended work hour approval would expire on December 1, 2004.

Mr. Kolins responded that his client was willing to have extended hours Monday through Friday with Saturday having the normal, allowed construction hours although construction workers like to start early and leave earlier. Mr. Kolins requested to be allowed to work on the entrance way, the marquee and awning, on South County Road between the hours of 6:00 p.m. and 8:00 p.m.

Mayor Smith said Mr. Kolins' applicant could start the canopy project in the a.m. and work on it all day rather than starting at 5:00 p.m. as it was a waste of time to discuss the issue.

Councilman Brooks made a motion to approve the request as presented by Attorney Kolins with the outlined conditions, Monday through Friday, 8:00 a.m. to 8:00 p.m., Saturday, 9:00 a.m. to 6:00 p.m., with 6:00 p.m. to 8:00 p.m. indoor work only Monday through Friday. If any complaints are received, work must stop. The motion was seconded by President Pro-Tem McLendon and carried 3-0 on roll call as Councilmen Goldblum and McDonald were absent from the meeting.

b. Request for Extended Construction Work Hours- 101 North County Road. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building]

Attorney Maura Ziska stated the Town Council previously granted extended construction hours that will expire September 15th, and the project is not complete as of this date due to hurricanes and other delays. She requested additional construction hours to October 30th.

Assistant Director Veronica Close said staff would recommend a 7:00 a.m. starting time, because of the Royal Poinciana Way road construction occurring at the same time.

Zoning Administrator Paul Castro pointed out that the neighboring property is unoccupied.

Ms. Close said the staff would add the following conditions: work would stop if noise complaints are received; a site supervisor must be at the job site during the extended work hour periods; no paper allowed in the windows; hedges must be maintained that encroach on the sidewalk; no work allowed on Sundays or legal holidays; and extended work hours expire after October 30th.

President Wyett suggested the work hours should be extended until November 20th due to the amount of work to be finished on the project.

Councilman Brooks made a motion to approve the request for extended construction work hours as requested (work to begin at 7:00 a.m.) to expire November 20th. The motion was seconded by President Pro-Tem McLendon and carried 3-0 on roll call as Councilman Goldblum and McDonald were absent from the meeting.

c. Request by Malasky Homes for Clarification of Condition of Approval for the Construction of the Second House on the Lake at 11 Via Vizcaya. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building]

Attorney Ron Kolins stated the applicant is requesting two items: clarification of an issue and to request aid for the neighbors on Via Vizcaya during the construction on the three Via Vizcaya lots. He noted that Via Vizcaya is a narrow, one-way street, and Mr. Malasky is presently constructing houses on lots 10 and 13, with the present problems related to vehicles, parking, etc.

Mr. Kolins requested Town Council approval to demolish the house on lot 11 allowing the lot to be used for vehicle parking, equipment, and construction materials which will benefit the people who live on the street. He continued some confusion exists regarding the time frame when construction can begin on lot 11, and the proposal is to allow construction on lot 11 on or any time after April 15th. Mr. Kolins said the entire project would be completed as soon as possible after that benefitting everyone. He cited lack of cooperation and impatience on behalf of some of the residents on Via Vizcaya with a need for greater tolerance by everyone on the site.

Zoning Administrator Paul Castro recalled previous discussions before the Town Council related to this project with representations made initially by Mr. Kolins not to start construction on lot 11 until the roof was on the first house and later the variance to build on lot 11 was withdrawn based on the fact that construction on lot 11 would not commence until lot 10 was completed. He noted that staff indicated that three houses under construction at the same time would severely impact the neighborhood., and one of the conditions of the initial approval was that no construction vehicles would be parked on the street. He added the staff considered the intent of the Town Council's discussion during the approval process and placed the condition that construction on lot 11 could not commence until the certificate of occupancy was issued for lot 10 reasoning that the interior work relies significant manpower resulting in many cars parked on the street or the site.

Mr. Castro said the staff also recommended that no construction laden vehicles be parked on the street.

Monnie Donnelly, 4 Via Vizcaya, said she resented the implication (by Mr. Kolins) that the neighbors were reporting nonsense things every ten minutes, and since the project began, no on-site supervisor has been present. She reported no underground lines were marked when a back hoe cut the gas and water lines; construction workers drive the wrong way on the street; trucks block driveways; construction materials were delivered before Hurricane Jeanne that were scattered during the hurricane; confusion exists between the Town's employees trying to control the situation; and an on-site supervisor should be present during construction to supervise the workers.

Mrs.McHugh, 14 Via Vizcaya, reported her telephone line was cut and numerous water leaks have resulted from the contractor's activities; noting that she had been under a boil water order four different times. Mrs. McHugh presented photographs of the trucks in the street blocking driveways.

Mrs. Donnelly added the situation has become a public safety issue.

Mrs. McHugh said the property was not secured before the hurricanes and caused materials and debris to be strewn around the neighborhood.

Mrs. Donnelly requested the Town Council not allow the demolition of the residence at 11 Via Vizcaya before the completion of the other projects as the situation was out of control presently.

Responding to President Wyett's question regarding supervision of the job, Mr. Kolins said Neil Kaplan is the supervisor for the projects, and he is on the job full time and the job is well supervised by a full time, highly skilled, highly qualified supervisor.

Mrs. Donnelly responded no on-site supervisor is ever on the job.

Mrs. McHugh stated the understanding was with the neighbors at the beginning that two houses would be under construction; no. 10 would have its certificate of occupancy prior to doing anything with no. 11.

Assistant Director Veronica Close said that the department does visit every construction site before any hurricane advising them to close down and secure materials; however, no follow up visits are made to confirm those actions were taken.

Mrs. Close added the Building Department requested the developer to have a foreman on the site at all times and recommended that be a condition imposed by the Town Council. She said the Building Department also recommended a special detail (police officers) be hired when deliveries are made due to the many problems.

Assistant Building Official Harry Ackerman said the site has had many problems including the inappropriate use of the one-way street; although the demolition of the residence would allow additional parking for the short-term, increased congestion would be caused when new construction would begin; and on-site supervisors are present approximately half the time during his visits.

Mrs. Donnelley said the neighbors were requesting to have someone take control of the project immediately and not allow the demolition of a third house or start new construction.

Councilman Brooks said the answer lies with the developer as this is a very slip shod job, and the neighbors have legitimate concerns. He asked what the developer was going to do to solve the existing problems?

Mr. Kolins responded that when the residents of a community get up and voice a complaint, for some reason, it is accepted as gospel. He said this is really about the objection of the property from the get go and now that it is approved, they are not making it any easier. He continued his client is not lilly white but neither is the situation as it has been portrayed to the Town Council, and on occasion, some of the trucks have come in the wrong way, because they can't get in the right way due to Mrs. Donnelley's maid, who drives a truck, parking in front of the house not allowing room for the trucks to get by.

Mr. Kolins continued that the full time supervisor is not on-site 100% of the time because he has to do paper work and things like that, and he drives to the company office ten minutes away. He said the site does not have electricity allowing him to do that work at the site; however, the plan is to have him on site more than he is presently.

Mr. Kolins explained underground lines were cut, affecting the neighbors, that were expected to be in easements; however, they were not. He noted his client had installed a sewer in the street, benefitting the neighbors, and the explanation for the Rinker delivery before the hurricane was that the Police had let them through. He continued that battening down the hatches was done before the hurricanes; however, the materials floated away from the property because of the high water conditions.

Mr. Kolins suggested demolishing the house on lot 11 which would help the situation by providing additional room off the street; having the on-site supervisor spend more time on the site; and returning to the Town Council on or about April 15th to determine the starting date for construction on lot 11. He added that staff made an assumption that an agreement was reached to construct the third house after one of the others was under roof, and that point was not reached.

Responding to a question from Councilman Brooks regarding how many cars were parked on lot 13 which totals about 21,000 sq. ft., Mr. Kolins replied some vehicles are parked there; however, construction is taking place there.

Councilman Brooks said he would vote against the demolition on lot 11.

President Wyett said he did not want to hear this case until the first two houses are completed with co's. He offered to pass the gavel and make a motion.

Mayor Smith said she wanted to resolve the case for the sake of the neighbors, and the neighbors seemed to have been imposed on. She continued the Malaskys knew the configuration of Via Vizcaya when they bought the property, and the area would be difficult for construction. Mayor

Smith asked Mr. Ackerman if a supervisor could be on-site?

Mr. Ackerman replied lot 13 has room for any truck to unload, and it was misrepresented that the Police Department allowed a delivery on September 11th; however, Police checkpoints were dismantled early on September 11th.

Mrs. Donnelley said Lot 11 is under utilized as hardly anyone parks there.

Mayor Smith questioned why the on-site supervisor could not occupy the house on lot 11?

Mr. Kolins responded the electricity had been cut off.

Bruce Malasky replied FP&L had no transformer to service lot 11, because the power feed for lot 11 came off the pole that is on the street immediately to the south, running under lot 10, and was abandoned when the subterranean storm drains for the storm water relief on the street.

Mr. Ackerman said temporary power could be established for lot 11 as FP&L allows temporary service as large as requested on any of the lots. He suggested the temporary service from lot 10 could feed the office for lot 11.

Mr. Malasky responded the house on lot 11 had no windows to allow the supervisor to view the construction.

Mr. Kolins said his client would contact FP&L again for temporary power with a supervisor on site on lot 11.

Mr. Malasky requested the house on lot 11 be demolished; install a construction trailer; store additional materials on the site; and park cars on the site.

Councilman Brooks said the operation was shoddy with no construction trailer on site, and suggested the demolition be denied on lot 11; put a construction trailer on site; obtain a temporary power hook-up; bus in as many employees (of the sub-contractors) as possible; and when the supervisor is present in the construction trailer, a special detail be hired to unload trucks. He said the Town Council should not waste additional time on this request. He said he would make that as a motion. He repeated the motion: **No knocking down lot 11; putting up as soon as possible the construction trailer; try to have people bused in to the work site; when the trucks are expected, the Palm Beach Police are called for the special detail officers before the trucks arrive.**

President Pro-Tem McLendon said he could see no need for the construction trailer, because they could use the empty house; make it available - one or the other.

President Pro-Tem McLendon seconded the motion.

Mrs. Close added that the Building Department would prefer the house be used as it frees up more parking.

Mayor Smith verified with Code Compliance Office Rob Walton that two police reports had been filed in the past month.

President Wyett said he would like to add the condition that no one violate the one way street unless a police officer has given explicit permission.

Mr. Kolins said he would like to withdraw the request to demolish lot 11 and withdraw any dates, certain or otherwise, about constructing lot 11, and having withdrawn those requests, his client will take to heart the Council's comments and try to take care of things better. He stated the Council had nothing to vote on, because nothing was before the Council.

Councilman Brooks said the Council was not going to go through this again and requested the question be called.

President Wyett said the question will be called and the withdrawal was not accepted by the rule that was set up earlier in the day.

On roll call, the motion carried 3-0 with Councilman Brooks, President Pro-Tem McLendon, and President Wyett casting affirmative votes. Councilmen Goldblum and McDonald were absent from the meeting.

President Wyett told Mr. Kolins he did not want to see Mr. Kolins representing his client at a Council meeting until the two houses have certificates of occupancy.

Mayor Smith requested the neighbors write down the complaints for the Town Council as the Council was not aware of the situation until this meeting.

d. Status Report on Compliance with Conditions of Approval for Special Exception #7-2004. [Paul Castro, Zoning Administrator]

Zoning Administrator Paul Castro reported that Cucina del Arte has abided by the occupancy loads, and Fire-Rescue personnel have been on the property during the peak times on the weekends. He noted a couple of incidents occurred that were not under management's control that were corrected, and only one noise complaint was received over the six month period.

Councilman Brooks made a motion to approve the Status Report. President Pro-Tem McLendon seconded the motion. The motion carried 3-0 on roll call with Councilman Brooks, President Pro-Tem McLendon, and President Wyett casting affirmative votes. Councilmen Goldblum and McDonald were absent from the meeting.

e. Final Approval of the List of Zoning Study Items for the 2004-2005 Zoning Season. [Paul Castro, Zoning Administrator]

Zoning Administrator Paul Castro reported two property owners, Royal Poinciana Plaza and the Breakers, filed applications to be put on the 2004-2005 Zoning Season list.

Mrs. Close mentioned the staff would like to split the zoning season this year into two tracks to spread out the work for the Commission and the staff, thereby having additional time for everyone.

President Wyett noted the Royal Poinciana Plaza issue is an enormous request and will take a great deal of time for everyone to study.

President Pro-Tem McLendon made a motion to add the two applications to the 2004-2005 Zoning Season List of Study Items. The motion was seconded by Councilman Brooks and carried 3-0 on roll call with Councilmen Goldblum and McDonald absent from the meeting.

XII. ANY OTHER MATTERS

There were no other matters.

XIII. ADJOURNMENT

The meeting was adjourned at 4:57 p.m.

Allen S. Wyett, Town Council President

Mary A. Pollitt, Town Clerk