

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON AUGUST 13, 2002

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled Town Council Meeting of August 13, 2002, was called to order by President William J. Brooks at 9:30 a.m. in the Town Council Chambers. On roll call the following elected officials were found to be in attendance:

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

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

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Town Attorney John Randolph
Finance Director Jane Skittone
Fire-Rescue Chief Kent Koelz
Police Chief Michael Reiter
Human Resources Director William Crouse
Information Systems Manager Spencer Wilson
Public Works Director Al Dusey
Town Engineer James Bowser
Director of Planning, Zoning & Building Robert Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Planning Administrator Timothy Frank
Chief Code Compliance Officer Brian House

REGULAR TOWN COUNCIL MTG. 8-13-02

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Purchasing Agent Charlie Boggs
Recreation Director Russ Bitzer
Town Clerk Mary Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. None.

IV. COMMENTS OF MAYOR LESLY S. SMITH

Before I get to today's agenda, there are a couple of events I want to point out because, in both cases, the participants did us proud. First, congratulations to Crime Watch and our fine police department for braving wind, rain and—in this case—hail to hold the National Night Out Against Crime. Despite being pelted with hailstones, more than 300 people gathered for this event—and I know we will have even more next year. So put this on your August, 2003 calendar.

Second, our police department hosted for four days a national accreditation team, whose task was to examine the department's compliance with all national standards of policing and recommend continued accreditation. Our police department has been accredited since 1989. I was pleased to speak before the accrediting team, and I am confident we earned high marks again this year. On Monday we had a special meeting to consider locating a third emergency medical unit at the north fire station. Palm Beach prides itself on providing residents with optimum health and safety services, and in this case, cost is a considerable factor—especially in this economy. However, I am

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hoping that the initial proposal passed yesterday will save many lives.

Our next Council meeting, September 10, is Primary Election Day in Florida—and for some elected offices, this is the date when final decisions will be made. This year, for the first time, there will be no runoff elections two weeks later. Instead of requiring the winner to get a majority – or 50% plus one – of the vote, the candidate who gets a simple plurality wins. This means that in some crowded races, a couple of thousand votes may be all it takes to get elected. I suggest that this handful of votes should be OUR votes. We often complain that because we are a small town, our choices are overridden by the sheer numbers of voters countywide or district wide. This is our chance to prove otherwise – I urge all of you to vote in person September 10 or to request an absentee ballot through the Supervisor of Elections' office.

In addition to nominating Democrat and Republican candidates for Congress, Governor and the Legislature, the September election will elect outright our entire School Board minus one. Five incumbents are opposed for reelection and one seat is open. You will recall that voters in 2000 approved single-member district voting for School Board, and this is the year it takes effect. That means that instead of voting for all seven seats, Palm Beach will be voting for only one. This is a tremendous opportunity to make our vote count, so I hope everyone will look at the candidates carefully and make sure to get to the polls or vote absentee. Right now, the makeup of the School Board may have an even greater impact on our financial future than Congress or Governor.

Turning to today's agenda, I have a major concern and a minor concern. The Council will vote on Resolution No. 53-02, which authorizes a billing system for the Palm Beach Fire-Rescue department to charge for EMS transport of patients to area hospitals. I must repeat my fear that in these perilous economic times, someone will decide not to call an ambulance, and the resulting cost of human life will be far greater than the cost to the Town of underwriting emergency ambulance service. I ask the Council to weight the balance with care – and if the resolution does pass, to view it as a test to see what the consequences really are and hear a report on the service next May.

A less life-threatening but nonetheless important preservation and planning issue is the request for variance at 223 Pendleton Avenue, which would split a large conforming lot into two smaller non-conforming lots. In my view, the request violates both the spirit and the letter of our current standards and I

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would hope the Council remains steadfast in mandating only one house on this property.

A reminder that the day after our next Council meeting is September 11, and Palm Beach plans to join the nation in commemorating the tragedy. Everyone is welcome for what will be most certainly a somber event, yet also a celebration of the triumph of the American spirit.

V. APPROVAL OF THE AGENDA

The Agenda was approved with the following amendments:

ADD Ordinance No. 20-02 as Item XII. B. 4.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum to add Ordinance No. 20-02, (rescinding Division 4, Development and/or Major Remodeling Community Service Fee) to the agenda. On roll call the motion carried unanimously.

DEFER Ordinance No. 15-02 and Ordinance No. 16-02 to the September Town Council Agenda.

Motion made by Councilman Wyett, seconded by Councilman McLendon, to defer Ordinances Nos. 15-02 and 16-02 to the September 10, 2002, Town Council Agenda. On roll call the motion carried unanimously.

DEFER Variance 20-2002 (Frederick R. Adler and Catherine G. Adler, 1520 South Ocean Blvd.) to the September 10, 2002, Town Council Agenda.

Councilman McDonald moved deferral of Variance 20-2002 to the September 10, 2002, Town Council Agenda. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

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DEFER Variance No. 30-2002 (Paul an Lori B. Lapidus, 223 Pendleton Ave.) To the September 10, 2002, Town Council Agenda.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Wyett to defer Variance No. 30-2002 to the September 10, 2002, Town Council Agenda.

WITHDRAW Item XIV. C. 3. Other (Request from Dale R. Hedrick, Hedrick Brothers Construction Company for waiver from Section 4-199 of the Town Code.

Motion made by President Pro-Tem Goldblum, seconded by Councilman McLendon to withdraw Item XIV. C. 3. From the August Agenda. On roll call the motion carried unanimously.

MOVE Item VIII.. F. Other (Report on Estimated Cost Savings from Eliminating Residential Garbage Collection on Holidays) to the Regular Agenda, Item X. B. 6.

Councilman Wyett moved approval of moving Item VIII. F. Other to the Regular Agenda, as Item X. B. 6. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Councilman Wyett moved approval of the Agenda, as amended. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

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VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE
(Another Opportunity for Communications From Citizens Will be Offered Immediately After the Lunch Break)

There were no comments from citizens.

VII. PUBLIC HEARINGS

- A. Request from Black Tie Limousines for Issuance of Additional Certificates of Public Use and Necessity Per Section 130-67 of the Town's Code of Ordinances. *(Deferred from Town Council Meeting on May 14, 2002.)*

Ex-parte communication was declared by Councilman McLendon with Mr. Hammon of Carey Limousine, relating to discussion of discouraging additional certificates; by President Brooks via telephone with Mr. Hammon of Carey Limousine for discussion of the request from Black Tie Limousines, related to additional certificates; by Councilman McDonald via a meeting with Mr. Hammon of Carey Limousine regarding who held the present medallions, if there were medallions for sale, and at what price.

Attorney Steven Sloane Newburgh, representing the applicant, Dav-El Transportation, addressed the Town Council, stating that the applicant had requested an increase in the number of certificates of public use and necessity at the May 14, 2002, Town Council Meeting. At that time the applicant had requested 47 permits; since that time the request had been amended to request five permits. The applicant wanted to ensure the minimum number of permits so that Dav-El could again commence operating at the Four Seasons Hotel. He referred to the report from traffic experts, Zook, Moore and Associates, Inc.(ZMA), which had been furnished to the Town Council. A representative of ZMA was present today to respond to any questions. Attorney Newburgh noted that discussion of the requirements for the permits had taken place at the last Town Council meeting, noting that there were only four companies in Palm Beach owning the current 50 permits. He cited Section 120-67 of the Town Code, and maintained that the applicant had fulfilled the requirements listed.

In response to Councilman McDonald Attorney Newburgh explained that the very fact that the Four Seasons asked Dav-El to enter into a contract, and it was a matter of record that the contract existed; it was the very reason why litigation had commenced on the issue.

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Councilman McDonald requested the basis of need of limousine service?

Attorney Newburgh replied that he believed it was more of a quality of service issue, and that the need could be measured by the demand, which was the Four Seasons Hotel requesting the services of Dav-El with an exclusive contract to take care of its customers. He stated that the very reason for coming before the Town Council was to try to combat an anti-competitive situation with the number of permits allowed for limousines. He explained that quality was something that had set Dav-El apart; letters of recommendation had been circulated; documentary proof or numeric evidence of an additional need of permits beyond 50 would be very difficult to introduce, because it would almost be as indiscriminate as the number "50" itself. The very fact that the Four Seasons entered into contract with Dav-El should be more than sufficient to show need; it was the marketplace itself. He maintained that the very reason for the ordinance was becoming a commercial/economic vehicle for people to profit at the expense of others. There was no intent to obtain the permits and then sell them.

Councilman Wyett commented that he could not see any public demand that was not being serviced, and that the quality of the current limousine services was fine.

Attorney Newburgh responded that the ordinance had been enacted by the Town Council for the purpose of permitting one applicant to come before the Council and request additional permits; anyone who wanted to petition for additional permits could so under Section 130.67 of the Town Code. He maintained that public demand for taxi cab and limousine services was proven in and of itself by the very fact that there was a company who wanted to do business with a hotel that wanted its business on behalf of its patrons. When a limousine was physically on the private property of the hotel, the hotel was better able to provide the service – it was easier for the person in the hotel to simply come downstairs where the limousine was in place, as opposed to waiting for the limousine to arrive. This was nothing more than an attempt to compete with the other limousine companies in Town, and to be able to provide a special service at a hotel.

President Pro-Tem Goldblum agreed with Councilman Wyett that the Town was being serviced with good limousine services; if the permits were increased, every limousine service in the Town should be able to apply for the additional number of permits.

Mayor Smith asked Attorney Newburgh if Dav-El had been asked by the Four Seasons to replace the present limousine service they were using, which was Carey Limousines?

Attorney Newburgh replied that Dav-El could not get back into a situation with the

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Four Seasons where the limousines were being parked in the designated parking spot without having a permit. The Town would not allow that.

Mr. Salombrino addressed the Town Council, stating that Town staff had indicated that a permit was required in order to maintain the existing contract with the Four Seasons. Dav-El had voluntarily told the Four Seasons that they would step aside until the issue could be resolved. It was his belief that if the correct permit could be obtained, Dav-El could renegotiate with the hotel. He had recommended that another limousine company be employed, because Dav-El was technically in violation, based upon having the one vehicle with the permit on the stand. The Four Seasons had assured that at the time Dav-El did receive a permit they would be able to go back and renegotiate with them. He noted that Dav-El had been at the hotel for approximately 12 months.

Mr. Salombrino commented that, in his experience around the United States, this was the only market that had a restricted number of permits; in most markets there was an open, competitive nature.

Attorney Randolph advised that under Section 130-67 of the Town Code, a procedure is provided whereby a particular applicant may ask for additional permits. He cautioned that any additional permits issues would not be opened to anyone – the process today would consider only whether the applicant in question should receive additional permits.

Mr. John Campignello, Park Limousine Service, addressed the Town Council, stating that Boca Raton had a permit limit and had never gone over it. He noted that when he started with Park Limousine service in 1979 they had seven permits; now they had 19 permits. They had purchased 12 additional permits over the years. He stated that Carey Limousine had no permits in 1979, and now had 14 permits that they had acquired; Klassey Coach had also paid for permits from people who had gone out of the business; the Breakers Hotel decided to go into their own limousine business, and had acquired and paid for 12 permits. He stated that if people requesting additional permits now got permits free from a determination by the Town Council, that would devalue all of the permits. He stated that Black Tie was a very good company, and that in time they could probably find permits from any of the current companies.

In response to President Brooks, Mr. Campignello stated that his limousine service had never had to turn down a request or been unable to lay off a request to a competitor.

Mr. Rob Hammon, Carey Limousine, addressed the Town Council, referring to Section 130-63 of the Town Code, wherein it was stated that the Town Council had determined that the maximum number of permits necessary to provide for the public

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convenience and necessity in the Town was 50. He stated that Carey Limousine had operated in the Town of Palm Beach for 20 years, and there had never been more than 50 permits in the Town. He stated that other municipalities in Florida also regulated the limousine industry in order to protect the residents and visitors. He compared Palm Beach to Boca Raton, maintaining that Boca Raton had not issued additional permits in 50 years – the population was approximately 75,000 – there were 66 permits, which was one permit per 1,100 people; Dade County also regulated the issuance of permits - 110 permits with over 2,000,000 population - which was one permit per 20,000 people; Broward County also regulated the issuance of permits – 331 permits with 1,600,000 people, which was one permit per 5,000 people; the Town of Palm Beach had 50 permits and approximately 10,000 people, which was one permit for every 200 people. He stated that there were no complaints for lack of service, or poor service. He stated that the Dav-El contract had expired with Four Seasons, and that they had not voluntarily left.

Mr. Jesse Newman addressed the Town Council, stating that Carey Limousine and Park Limousine had been tremendous community citizens, supporting many charities, and belonging to the community with a love of Palm Beach.

Attorney Newburgh responded that his client would put up \$2.00 for every \$1.00 contributed to charity by the other limousine companies, however there was not currently the opportunity to do that. He stated that the fact that the other limousine companies had come in to protest demonstrated that they wanted to maintain a monopolization of the services.

Mr. Salombrino commented that no one had offered to sell permits to him, and that the Town was very clear on who had the permits. He stated that he refuted the statistics given regarding Dade County by Mr. Hammon. He stated that he did not have any knowledge of Boca Raton or Broward County.

President Pro-Tem Goldblum moved that the Town Council deny the request to issue additional limousine permits. Councilman McDonald seconded the motion, noting that the applicant had met criteria nos. 3 and 4 of Section 130.67 of the Town Code, however, had not met criteria nos. 1 and 2. President Pro-Tem Goldblum accepted those findings in the motion made to deny issuing any additional permits.

Councilman McLendon commented that he did not believe that the Town Council that had imposed the ordinance had any intention of creating a bidding process for limousine permits, and that perhaps the Town should have made the certificates returnable to the Town for re-issuance to others, rather than have a bidding process for them.

On roll call the motion to deny the issuance of additional limousine permits

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carried 4/1, with Councilman McLendon casting a dissenting vote.

VIII. CONSENT AGENDA

- A. APPROVAL OF FINANCE AND TAXATION COMMITTEE REPORT FOR THE MEETING ON JULY 8, 2002.
- B. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON JULY 9, 2002.
- C. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON JULY 9, 2002.
- D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JULY 14, 2002.
- E. APPROVAL OF CHECK REGISTERS FOR JULY 2002.
- F. OTHER
 - 1. *(This item was removed from the Consent Agenda and added to the Regular Agenda, as Item X. B.6.)*
Report on Estimated Cost Savings from Eliminating Residential Garbage Collection on Holidays.
[Albert P. Dusey, Director of Public Works]

The Consent Agenda, as amended, was approved through motion of Councilman Wyett, seconded by Councilman McLendon. On roll call the motion carried unanimously.

IX. COMMITTEE REPORTS

A. Administrative and Personnel Committee Meeting on July 23, 2002.

The report of the Administrative and Personnel Committee of July 23, 2002, is included in its entirety below:

**REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE
HEARING HELD ON JULY 23, 2002 - JEFFREY MOORE, FIREFIGHTER**

I. CALL TO ORDER

Chairman Jack McDonald called the Committee meeting to order at 9:33 a.m.

Chairman McDonald and Committee Member William Brooks were present at the meeting. Also present were: Town Attorney John C. Randolph; Fire-Rescue Chief Kent W. Koelz; Assistant Director of Human Resources Carla Kneipp; Attorney I. Jeffrey Pheterson representing the Administrative and Personnel Committee; Firefighter/EMT Jeffrey Moore; Attorney Matthew J. Mierzwa, Jr. representing Mr. Moore; Firefighter/Paramedic Liz Nowacki; and Town Clerk Mary Pollitt.

II. HEARING ON APPEAL OF JEFFREY MOORE, FIREFIGHTER

Chairman McDonald announced the purpose of the Administrative and Personnel Committee was to sit as an appeal and review committee for matters which have been appealed from the Grievance Resolution Board regarding Firefighter/EMT Jeffrey Moore. He said the Committee would not hear any new evidence or new witnesses and each side will have fifteen minutes to make an oral argument on why the order of the Grievance Resolution Board should be reversed or affirmed. After questions, the Committee would deliberate on a decision.

The following is a verbatim transcription of Attorney Mierzwa's and Attorney Randolph's comments and other comments during that portion of the meeting.

Attorney Mierzwa:

There are really two things you need to know: one is that on July 30, 2001, Chief Koelz issued the memo to Jeff Moore saying that he needed a certificate of inability

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to work by reason of illness. In other words, he needed to have a doctor's note anytime he was out or else he was not going to get paid for sick time, and on November 14, Jeff Moore was at work and he had viral problems or he had problems in his household with everybody being sick, including himself. He could not get to see a doctor, and I believe it is common knowledge that unless you call your normal health carrier and ask to see the doctor that day that, in all likelihood, you will not be able to see the doctor.

Jeff Moore was told he would have to wait two weeks to get an appointment for flu, and he came to work. He came to work, and his Captain, Wayne Lindros, was his officer, and they discussed the fact that he was working while he was ill. Really, Captain Lindros told him he really should be going home, and Acting Assistant Chief Dash came into the scene. The situation was explained to Acting Chief Dash who basically concluded that he should go home to take care of himself and his family. According to Mr. Moore, he explained the prior July order from the Chief. The Acting Assistant Chief Dash said, 'Well, we'll take care of that. Just go home. You need to take care of yourself and your family.'

Just going back to my original point of procedure, one of the problems was there were no rules governing that Grievance Board Meeting either, and what they did was they called Acting Chief Dash who was home or something—mowing his lawn—and asked him questions over a speaker phone about what happened—over events that happened six to eight months previously, without even a chance to think about it. He was coming in from mowing his lawn and whatever he said led to the conclusions of the Board.

Wayne Lindros, who was there at the same thing, the Board didn't bother calling him, who would have substantiated Firefighter Moore's version of what happened, but he wasn't called. He can tell you today what happened.

In any event, that's the two incidents. We have a July memo, and we have a November incidents.

Factually, about Jeff Moore—Jeff Moore was hired in April of 1994. No. 1 – in seven or eight years now, he has never been disciplined. No. 2 – everyone of his evaluations is satisfactory or above satisfactory, and prior to the memo of July 30, 2001, he was never counseled about sick leave usage. So, if you want to take it from an employee's point of view, this came out of nowhere—the July 30 memo from the Chief came out of nowhere.

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Basically, he has to provide a certificate of inability to work by reason of illness from a licensed doctor of medicine anytime he uses sick leave. I ask you to use your wisdom and your common sense interpreting that. That is the most ridiculous thing I have ever heard. The man cannot ever use sick leave without seeing a licensed physician.

First of all, if you just, for example, if you just think about an employee who wakes up with a 100 (degree) fever, unable to come to work. Most fire departments do not want you there, because they don't want you to bring in your bacteria and flu—they would rather have you stay home, rather than spread it around. It is my belief, and in the case in November, he could not get to a doctor. All he can do is go to the Emergency Room. Think of the order. The order is: you need to go to the Emergency Room to ever use sick leave. It's ridiculous, and you need to use some common sense here about the nature of this order, and it is still in effect a year later.

The second thing is – remember you can use sick leave to take care of your family. Well Jeff Moore has a handicapped wife who takes care of his children. Do you want to hear how ridiculous this order is? If Jeff Moore's handicapped wife, for instance, has menstrual problems, and can't take care of the kids, and he has to take care of them for two hours, he's AWOL. He can't use sick leave, unless he takes his wife into the doctor to substantiate menstrual cramps, an inability to take care of children. He can't use his time without a doctor—whether he's taking care of himself, his children, his wife. The order is absurd, ridiculous, use your common sense on this order.

Now, but the order was issued, July 30th. One: he was never counseled about sick leave—before this Draconian memo—he was never counseled about sick leave use. Never. Two: He never exceeded sick leave accruals. He never exceeded his accruals at any time. Well, if you get accruals and you use them within the system and you've never used time you didn't have, why are you giving them that time if you issue this kind of order when they use it? Never counseled. Never exceeded accruals. At the time of the order, he had time to use. Three. Four. No one had ever been subject to this memo, that we understand, in the history of the Fire Department. Five. Even Mr. Crouse said in an earlier proceeding, there were six employees who used more sick leave during the time frame that resulted in this. Six employees in the Fire Department used more time than Jeff used, and they weren't subjected to this. In fact, Mr. Crouse said, 'Why didn't you look at comparisons?' Why did they put Jeff on this Draconian policy when six people had used more time than him and weren't subject to the same thing? And that was a document introduced into evidence at the Grievance Board which is one of the facts that you don't have, but this was

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introduced, and I'll be happy to provide it if you want. Six people used more time than Jeff during the time period in question and weren't placed under this Draconian policy.

(Inaudible)

So this was produced from a computer printout of sick leave usage for the time period that they accused Jeff Moore of being abusive. Six people used more time than him, and they weren't being abusive. Sort of scratch your head on that one. Why did they put Jeff Moore on this and not those other six people? Makes no sense does it?

So we have in July: 1. Never counseled about sick leave 2. Never exceeded his accruals 3. He had accrued time 4. No one had ever been subjected to the rule 5. Other people had worse records than he did and not subjected to this rule.

By the way, the hearing below the facts that you have don't mention any of that which is why without the tapes or having us present that evidence, it's not in front of you. That's all part of the record below, but you don't have any of that. Those are all facts developed below. Those five points—none of them are referenced in the Grievance Board Order.

One of the arguments used, was that, by—I don't know—Mr. Randolph, but by an attorney who said, 'You can't challenge that order, because it was in July, and you can't challenge it in November of 2001.' So a technical argument was used and said, 'You can't challenge this order.' It's a legal argument. You waived it. You can't challenge this. Now, if I was present and I asked you, now, 'Well, that's not true, because it's well accepted in the labor relations setting that you can grieve an order when it adversely affects you.'

The first time this order adversely affected Jeff Moore was when he was denied his time. That's a legal argument that two lawyers can argue about, and a third party can make a decision, and if Mr. Pheterson was sitting as an arbitrator could probably say, 'Sometimes it goes one way, sometimes it goes the other way.'

Unfortunately, Jeff Moore was not represented by Counsel, but none of those findings I just went through, those five points, were in the order that you are looking at, and I am saying they should have been considered. Even if there is some kind of time barred issue, I think that you should be looking at that in your capacity as an appellate body even if your capacity here isn't an appellate body. You should be

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looking at the order itself to determine if that order makes sense for the employees of the Town of Palm Beach in the facts of this case.

Now, with respect to what happened in November, what happened in November I have already explained, briefly, the testimony was that Jeff Moore came to work sick, because he couldn't get a doctor's appointment. He was actually sent home by the Acting Assistant Chief with full knowledge of the order that he had to get a doctor's note.

What you are getting here is a rule and regulation that tells firefighters how to deal with conflicting orders, because in some sense there is. He's got an order from the Chief saying no sick time. He's got an order from the Chief saying no sick time without no tickie--no laundry--you don't get a doctor's thing--you don't get any sick time, and he's got an order from the Acting Chief, basically saying, 'We don't want you here. Go home and take care of yourself and your family.'

Well, here, this is out of the Department's Rules & Regulations on conflicting orders, and it says the employee shall make known to the officer issuing the last order that a conflict exists. Jeff Moore spoke to Acting Assistant Chief Dash and his captain, Wayne Lindros, about the issue. It was discussed. The response that the Town gave in the proceedings below on this issue was that this relates to fire ground orders. Well, look right above it. 'Annual Physical Exam'--above that--reporting for duty. These are not fire ground issues. They are conflicting orders. There is no limitation of this to fire ground issues. It says conflicting orders. There was a conflicting order. The Chief's and the Acting Assistant Chief's.

Jeff Moore was under the belief that he could go home, and he would be compensated for sick leave without having to see a doctor, and in fact he couldn't see a doctor unless he went to the Emergency Room which I don't know if this is in evidence, but he still has no direction as of this day, a year later, how he is supposed to comply with this. If he has a hundred and two (degree) fever and he can't get to see his doctor, where is he supposed to go? We would like some clarification. Is he supposed to go to the Emergency Room? What is he supposed to do? I don't know. When his wife is sick. If his child has a sprained ankle, what is he supposed to do? Are we supposed to drive up insurance costs? Is that how we are penalizing him? To force him to go to the Emergency Room every time anybody in his family is sick?

Well, he couldn't see a doctor, and in fact someone suggested two weeks later that he go see a doctor then. I would imagine if he did that, how are you going to

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convince a doctor to write that you were sick two weeks ago? This doesn't make any sense.

The last point I want to give you – and then there was another document here that was introduced–this relates to the November 14th issue, and it's his pay stub. Remember the incident happened November 14th. He was under the understanding that he was clear to go home without having to go to the doctor, because it was clear to everybody involved he couldn't see a doctor unless he went to the Emergency Room. Well, you'll see the pay period is ending 11/23, up in the upper left hand corner. That would cover 11/14. I don't know but I'm assuming that they get their pay checks a couple of or at least one or two days after the pay period. Well, it wasn't until the day before or the day of receiving this pay check that he was called by the Assistant Chief and asked whether he had a doctor's note for the sick time, and he said 'no'. He didn't know anything was going on with this issue, and the Assistant Chief told him he wouldn't get paid. So, the first time it was ever conveyed to him that he wouldn't be paid his sick time was the day of or the day before he received this check. At that point, I don't know how he would have got a doctor's note.

Also note, that on the same pay stub, same upper left box, he has 68 hours of sick time. In other words, he's got accrued time he can use. In other words, he's not out of time. He's got time he can use. So, he not only didn't know there was a problem, but he had the time that could have been corrected–that could have been deducted and used for sick time. In the end, he loses pay on sick time for not getting a doctor's note.

There's one more thing to remember about what happened in the Fire Station November 14th. Captain Lindros and Acting (Assistant) Chief Dash are both paramedics of twenty years or so, and they were sending him home sick, but the Town deducted the money because he then did not proceed, at his own cost, to a private physician or an emergency room to get another opinion that he was sick. I can argue the technical legal mumble jumbo which I am sure Mr. Randolph can do, but practically speaking, just look at what happened here and use your wisdom and common sense. We have an Assistant Acting Chief and a Captain with almost forty years of paramedic experience sending this guy home to take care of himself and his family, and the Town denying him sick leave for that because he did not proceed to the doctor. Where are we living? Think about it. Forget the legal. I can argue legal–no prior notice, no counseling of sick leave, he had the time, no one has ever been subjected to this, he was unequally subjected to this–I can make all the legal mumble jumbo arguments, but use your wisdom and common sense and say in these

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circumstances with Acting Assistant Chief Dash and Captain Lindros with more than forty years of paramedic experience, sending a firefighter home to take care of him and his family, and then denying him pay because he didn't stop off at the emergency room or his private physician to get another opinion. That doesn't make any sense. You can rule legally, or you can rule with common sense, and I guess that's it. I thank you for your courtesy in listening to my argument and rantings. I hope you will take care of your firefighter/medic of eight years here.

Chairman McDonald:

Thank you, Mr. Mierzwa. Do you have any questions of Mr. Mierzwa, Mr. Brooks?

Committee Member Brooks:

And Matt, I don't know if you know this, the rules and regulations 324.93 revised on 2-09-00 which looks to be Chapter 4, Roman Numeral IV, page 2, Liz just brought them up to us—is there anything prior to or succeeding this page that would address the question of sick leave and what is required?

Attorney Mierzwa:

I can't personally answer this, but I am told 'no'. This is a department—it deals with all issues.

Chairman McDonald:

Mr. Mierzwa, I have a few questions.

One is you stated Mr. Moore had never sought any clarification of the order that was issued by Chief Koelz, and I am wondering why he never asked for clarification of that order that required him to go to a doctor in order to be paid for sick leave until actually it was to be enforced. Why he never sought any clarification—in other words—'Chief, does it seem practical or reasonable that I have to go to a doctor to be certified sick before I can use my sick leave until it actually happened?'

Attorney Mierzwa:

Well, that's what it said. I mean, it says he's gotta get a doctor's excuse. My understanding below—there are two reasons. One is from his, well, he can tell you, but from what I understand what happened—he testified below—which is in the tapes—no. 1—he felt that he could grieve this at the time that it was used against him—that he would be harmed by it...

Chairman McDonald:

I have confused you. What I am wondering—when the Chief issued the order saying

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you have to go do this, and in his mind he probably felt this doesn't seem practical or how am I going to practically do this, but he never raised the issue at that time. He waited until actually the order was being enforced against him on a specific occasion before he raised the issue. It doesn't seem practical.

Attorney Mierzwa:

I don't know. When I asked Jeff that related question, and he said that this says until further notice, and he understood that it wasn't an indefinite order. That it wasn't going to be in effect forever. It's still in effect now. I don't – I would assume that if I had been contacted or some attorney had been contacted at the time, they probably would have told him to grieve it, protected, to make sure he was protected, but we're dealing with a firefighter employee given an order by a chief.

Chairman McDonald:

Thank you. All right. Mr. Randolph?

Attorney Randolph:

First, as a procedural matter so Mr. Mierzwa knows, I also was just provided a copy of these documents this morning, and I did not know until I came here, the process that was going to be involved; whether we would be involved in a de novo hearing or whether we were going to be making arguments. Also, in regard to my presence at the last hearing, a statement was made earlier that I apologized for being here but I didn't leave. If you read my closing statement, I said I feel like I should almost apologize for being here so that you know. I think this all really deals with fairness, and whether or not the employee has been treated fairly, both in regard to the hearing and in regard to the discipline.

Mr. Crouse had advised me, prior to the hearing, because I was going to be representing Chief Koelz and because he understood that Mr. Moore was having representation, that he did not think it was necessary to have an attorney present for the Board. So the Board did not have an attorney present, and if there was any confusion in that regard, I believe it was because Mr. Crouse told the Board members that they would not have an attorney present to represent them. And this is what Mr. Crouse told me—because he told me that Mr. Moore was going to have representation that he would like me to come to represent Chief Koelz. So, that's why I was there, and I don't think any apologies are really necessary, but because of the allegations that were being made at the hearing, I began my closing argument by saying 'I feel like I should almost apologize for being here.'

I believe this is a matter of common sense, and it is also a matter of fairness, and I

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believe that is why you are here to make sure that fairness is applied and that common sense is applied. In that regard, I would like to indicate that this isn't simply a matter of Mr. Moore not getting a doctor's note. This is more than that. This is a matter of not following a directive of the Chief which was a directive which was perfectly clear and which was determined as early as July 30, 2001. I think that notice of July 30, 2001, is very important because of the substance of it and finding that 17 out of 34 occasions of sick leave use, you have had an additional shift off, either prior to or after sick leave. These occasions have been adjacent to an annual leave day, a swap day, or a Kelly day. Leading the Chief and John Deiorio, who had accumulated this information which indicated that he had used 772 hours of sick leave, to believe that he was abusing the Town's sick leave policy, and he gave him clear notice of that. He gave Mr. Moore clear notice of that, and Mr. Moore signed the notice on July 30, 2001.

He indicated at the hearing below that, well, in signing it that didn't mean he agreed with it, and I argued below that, well, Mr. Moore, you don't have to agree with it. This was your Chief indicating that he felt that you abused sick leave and telling you that he was not going to take any disciplinary action against you now for having abused sick leave, but that he was giving you fair warning that if you abused sick leave in the future, you're gonna have a problem. So, here's what I would like you to do in order to assure the Department and yourself that we're gonna be on the right track in the future, and I'm going to institute a policy that is in your Employee Personnel Manual which by the way, Mr. Moore said, 'I never got', but which we showed below he had signed for when he was employed of having received the Employee Personnel Manual, and it says at Section 5-5.4, 'a certificate of inability to work by reason of illness from a licensed doctor of medicine, examination by the Town physician, or other physician designated by the Town Manager and such other evidence of illness and inability to work as the department head and the Town Manager may deem necessary, may be required - may be required- as evidence of the illness before compensation for the period of illness is allowed.' It was there in the Personnel Manual. Individuals who had the Personnel Manual and read it had the understanding that that's something that could be done, but even if they didn't receive the Personnel Manual, and even if they didn't have an understanding that that could be done, Mr. Moore was clearly advised in the letter of July 30th that could be done, and that the Chief, because the Chief is the one who is responsible for the safety of the department and the safety of the residents of the Town, was instituting a measure that he felt was for the benefit of Mr. Moore and the benefit of the Town and for the benefit of the Town residents.

Although Mr. Moore said he didn't agree with it, Mr. Moore is not the one who sets

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policy and standards in the Town of Palm Beach. It's the Chief of the department who has the responsibility for the residents of this town. So, this is not a situation where a person is being punished for simply going home sick to take care of himself and being docked eighteen hours leave. It's a situation where he has not followed, and I am not going to use the word 'flaunt', because I don't think this is a situation where Mr. Moore deliberately flaunted the department heads. I don't think there was any intent by Mr. Moore to do anything wrong here, and this is not an issue of doing anything wrong. It is an issue of the Chief being able to enforce directives that he gives.

Now, I would also like to indicate, and I suppose this is a legal argument, but I think it is more than a legal argument as has been, I think, hinted at by the question that was raised by Mr. McDonald. That is, if he felt that the facts of this July 30th letter were wrong. Number 1, he had the legal ability to grieve that at the time, and he did not.

But Number 2, he had the ability to go to the Chief and to his supervisor and say, 'Wait a minute. What's this all about? I think this is wrong. I don't believe you should implement this because so and so has more than I do' or whatever excuse he wanted to give or whatever reason that he wanted to give at the time, he could have, but that wasn't done. So, we had a situation where he needed to take time off, and Mr. Mierzwa has indicated that – how ridiculous that is, because if his wife was sick, he couldn't have gone home and taken care of his wife? Well, the answer is 'yes, he could have' and he would not have been docked for that, because he had additional family leave time, and he could have gone home and done that. As a matter of fact in one of the letters—I think it was the letter from John Deiorio in which he states on November 26, 2001, to confirm that your sick leave was not family sick leave, because he was entitled to family sick leave, and he said, 'you stated it was not'. So, if it was not, then it was sick leave for him, and then he said, 'I contacted you on November 27th, 2001', listen to this, giving him another chance before he docked him to get the note from the physician that was required by the July memo, 'and I contacted you on November 27th to request a note from a physician as you are required to provide for each subsequent sick leave use, and you stated you did not have one.'

Well, I think it has been pointed out, isn't it kind of ridiculous to think that the person that's sick can go out and get an excuse from a doctor because he is really only going to be able to get that excuse if can go in and show the doctor that he is sick, and if he's sick he can't go into the doctor!

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I don't believe that. I believe that if you have a treating family physician, that physician will give you a note if he believes you have been ill on a particular date, and I would also like to point out that the Town policy that was attached to the letter that was written to Jeff Moore from Kent Koelz on July 30th indicated that the certificate of inability to work could come from a licensed doctor of medicine, examination by the Town physician, or other physician designated by the Town Manager. All he had to do was go into the Town physician. We have a Town physician here, and he could have explained what had happened in that regard, and he did not.

The next issue that came up and really caused some confusion and consternation at the hearing below was in regard to Captain Dash. Captain Dash was not here in the audience, but it came to pass that from the testimony of Mr. Moore, he indicated that Captain Dash said it was okay to go home—go home and we'll take care of everything. So, that sounded like that maybe Captain Dash said, 'Don't worry about that memo of July from the Chief. Just go ahead and I'll take care of it.'

I think the Board members, the Grievance Resolution Board members, had some concern with that, because if that was the case, then maybe Mr. Moore had a point that if he had been excused to go and relied upon that, why should he be docked for taking sick leave? So, we were fortunate enough to have found Captain Dash, who testified, after having been sworn, and who testified that, 'Yes, he was sick, and I told him to go home, but I did not tell him that he could ignore a directive that came down from our Chief in July which said that he had to have this doctor's certification in the event he was sick in the future.'

So, I think it was important for you, not only to consider that letter of July 30th and the seriousness of the amount of sick leave that had been taken, both as to hours and to when, tacked on to holidays and such, to see why the Chief had to do something about what he considered an abusive sick leave. It didn't matter, quite frankly, if Jeff Moore thought it was an abuse of sick leave. It matters from the people who run that department and are responsible for it and are responsible for the safety of the residents of this Town to determine whether it was an abuse of sick leave, and he made that determination. That determination wasn't grieved. That determination wasn't even argued about, and then Jeff Moore go out sick. He was given an opportunity to come up with a doctor's excuse before he was docked, because again, as a matter of fairness, the department wanted to give him notice of his responsibility to do this, so they said, 'Jeff, first of all, tell me, was this family leave? If this was family leave and not sick leave, then you have not abused a directive.' He said, 'No, it wasn't', and to his credit he was being very honest and straight forward with his

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department heads and with the Chief. I suppose he could have lied and said, 'Yeah, it was family leave', and he wouldn't be where he is today. But, he said, 'No, it wasn't family leave.' So, then the next thing is well if it was sick leave, you remember the letter you got in July? Yes. Well I am going to give you an opportunity to get a doctor's certification, prior to my having to take action to dock your pay. That never came.

So, that's where we are today, and, again, it is a matter of fairness. It's a matter of common sense, and it's a matter of maintaining order within the department and determining who has the ability to maintain that order and that belongs to this man right here, and it's his responsibility, and he had a responsibility to fulfil after having given clear notice of what Mr. Moore's responsibilities were, but Mr. Moore did not carry out his responsibilities, and as a result, unfortunately, he was docked in pay, but I suggest to you in applying common sense and in understanding the facts as they came out below that the decision of the Chief must be sustained. And I thank you, and the Chief is here to answer any questions that you might have.

Chairman McDonald:

Thank you, Mr. Randolph. Mr. Brooks, any questions of Mr. Randolph?

Committee Member Brooks:

No, I don't at this time.

Chairman McDonald:

Mr. Randolph, I have a question. Given that Mr. Moore is number seven on the sick leave list, and there are six people above him who had more hours of sick leave than he did, was the difference in situations merely the fact of when he took the sick leave as opposed to the other six people?

Attorney Randolph:

I would like the Chief to explain that, because he can explain the — he can answer both the question that was raised as to whether or not he took more accrued sick leave than he was entitled to, and he can answer the question as to how that sick leave related to other people in the department.

Chairman McDonald:

Chief Koelz, what I am primarily interested in here, is I just want to see if the policy was being applied fairly and equally, and there are six people who had more sick leave than he did. So was he singled out because of when he took it, or did some of these other people also take their sick leave in the same manner in terms of weekends

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or holidays and so forth?

Chief Koelz:

The people who are above Jeff Moore's name on the list--what I did is went through the list to see how people used their time. All of the people above his were out for extended leaves because of an illness or injury or something like that--everything from pregnancy to a back injury. Many of these people have retired now due to some of those illnesses. So, I extracted anything that would be out of it to give Mr. Moore the benefit of the doubt that if he had some kind of an illness or injury that I didn't know about, I wanted to be sure that I wasn't singling him out for something that would be extensive.

Attorney Randolph:

How about the question that was asked about the manner in which he took sick leave and tagged it on to Kelly days and holidays?

Chief Koelz:

What flagged Mr. Moore's situation to me was that he had taken five days in just a little over three months, and I thought that was a little excessive, so I asked Assistant Chief Deiorio to go ahead and pull the record. When we pulled the record and looked at his sick time use, I think it was 17 out of 34 occasions, he was linking it with another day--either a vacation day or a swap day--either before or after those days. That raised a flag also. That appeared to me that he might be inappropriately using his time off.

Attorney Mierzwa:

By the way, I have to object to this. Are you taking testimony now? Because that's not fair. He's asking questions and this proceeding is not fair, because you are asking him a question now. The fact of the matter is that Mr. Crouse will come and tell you he did no investigation. You ask him about the other six people. The answer is he did no investigation of the other six people. That is the answer. All this stuff is nonsense, because he never did any investigation other than Mr. Moore.

Chairman McDonald:

Mr. Mierzwa, just like when you were finished, we asked you some questions. They are finished. We are asking them some questions. You'll have a chance to make some comments.

Attorney Mierzwa:

You didn't ask Mr. Moore questions. You're taking evidence now. That's why I

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wanted to know if this was an appellate proceeding or de novo; then you allowed Mr. Randolph to ask questions. Is this a full blown hearing or is it an appellate proceeding?

Chairman McDonald:

I think Mr. Randolph asked the question, because he couldn't answer the question I asked him. You were able to answer the questions I asked you.

Okay, I lost my train of thought there, Mr. Mierzwa, because I had one more question.

Chief Koelz:

Mr. McDonald, may I point out one other important fact? After this July 30th memo that I issued Jeff Moore, there was a day in there where he needed some time off to attend a son or a wife or something at the hospital. He brought a note back at that time. The next occasion after that when he was sent home, he didn't bring the note. We allowed ample time after that as well.

Chairman McDonald:

All right. My other question was, Chief Koelz, I am wondering from a practical standpoint how this was part of your July 30th order, how from a practical standpoint, you could require someone to get a, or expect someone to get a note from the doctor two or three days or a week after they have been sick. Is that something that commonly people do?

Chief Koelz:

With my experience with my own personal doctor and with my family and my children, I call the doctor; if the doctor cannot see me, they'll write me a prescription, or they will give me some indication, take 2 aspirins and call me back in the morning, or whatever; if I needed a note from my doctor, I would get that. Under 554, it says a licensed physician which is also in our Town Clinic. Anyone of our Town employees can go to the Town clinic and explain what happened to them—that they have, you know, this or that—the doctor can examine them, and I would accept that note as well. Now, I don't know how long he was sick after that. I'm not saying that he wasn't sick. I believe he probably was sick, or these other two gentlemen would not have allowed him to go home that day. I think it is practical to get a note from the doctor with today's technology—FAX it or whatever it takes-- that the person called me and said they were sick and their family was sick and I did nothing—this was my direction to come in tomorrow if you don't feel better or I can't see you for two weeks—that seems like a long time to me that a doctor wouldn't see someone if

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they were sick without given some other direction and the doctor knowing about it.

Chairman McDonald:

Okay. Mr. Mierzwa, do you want to make some follow up comments?

Attorney Mierzwa:

Just a couple: Number one is they keep telling you about the Town physician. There's no evidence there was any Town physician on duty that day. He doesn't work every day. In fact, the evidence is that he wasn't on duty. So, they are telling you about the Town physician, it's a bunch of nonsense. He wasn't on duty—couldn't see the Town physician. Besides, being sent home by the Acting Assistant Chief, why would he stop and see the Town physician who wasn't there anyway?

The second thing is this applies—family leave is sick leave. So you have to see the doctor under the Chief's order in either case. The other thing is they keep referencing over and over again this Town personnel manual. Well, the Chief—what it says in there—the Chief's order says what he has to do—he has to see a doctor for any use of family leave period. Why even consult the manual? The Chief's order is telling him what to do. You're doing this. Why would he consult the Town manual and try to look for some exceptions to the Chief's order?

The other thing is that it is undisputed that he didn't get the manual. In fact, what they signed for is a personnel booklet from which the Town manual wasn't present. In fact, employees sign for the book. The Town manual is being revised and wasn't in. Half the employees don't have it. In fact, we're talking about evidence subsequent to the case, the Chief re-issued the manual and said insert it in your booklet. The problem here is that—let me just summarize—the issue of the Town physician—there's no evidence there was a Town physician on duty. 2. He has to get this doctor, whether it is for him or his family, but what I objected to, and I apologize when I interrupted, was that you asked the Chief 'what about these other people?' That was the question. Well, the Chief commented about that as he knows it now. The fact is that the Chief didn't look at any of those other six people – period. The document that you have was produced by Jeff Moore at the hearing. The Chief did no investigation regarding anyone else, so when you asked the Chief 'what about these other six people?', the straightforward answer is 'I didn't look at anybody else other than Jeff Moore. I did no investigation on anybody else.' That's the correct answer to your question. He did no investigation of anybody else. Jeff Moore was singled out. He's the only one, and it's only at this point in time, when we gave them this list, that the Chief is coming up with explanations after the fact. He is telling you what he knows now, not what he knew when he gave the order to Jeff Moore.

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Remember, the question was 'what about these other six people?' He told you about Jeff Moore. He didn't tell you about the other six people, because he didn't do an investigation and compare him to anyone else.

The other thing is—the last thing on these hours. These hours look like a lot. You need to remember a couple of things: Number one is that firefighters work 24 hour shifts, so when you are out a shift, it's 24 hours, and I believe if you actually average those hours, he's missing four shifts a year—on an average. That's four days out. It looks like a lot, but they are shifts. They are not eight hours. They are 24 hours. On average, he's missing four per year. Four days in his is not an eight hour day, it is a 24 hour day. The hours look like a lot, but he is actually missing four days of work in a year. It looks like a lot of hours but it is four days.

The other thing is—that is not only for him, but it is for taking care of his family as well. During the same time period, if you go through the sheets that were introduced below, numerous time was related to family leave. If you go down, there is a document below in this exhibit that has many of these instances as family leave—where he took care of his family, his wife and his toddlers.

Anyway, thanks for your time.

Chairman McDonald:

Mr. Brooks, any comments?

Mr. Brooks:

Are we going to have a summation or a motion?

Chairman McDonald:

I was going to allow Mr. Moore, if it was agreeable with you, Mr. Brooks, I was going to allow Mr. Moore five minutes to make some comments, if he would like to.

Firefighter Moore:

I'm Jeffrey Moore, Firefighter/EMT for the Town of Palm Beach.

Basically, the reason I sat out there shaking my head is because a lot of the information that we are going over is not really what I think is important. What I think is important is that I took a directive from my Acting Assistant Chief Dash and my officer, Captain Lindros, at the time, and I was under the impression that everything was fine. I went home that day. I took care of business, thought nothing of it until November 27th when I received a call from Chief Deiorio. This was on the

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14th that I had the incident, and I thought everything was fine. On the 27th I received a call from Chief Deiorio on my cell phone, and he said that—he asked me for a note, and I expressed to him that I don't have a note. He says, 'You don't have a note. Okay.' I said, 'What's okay?', and he said, 'You're not getting paid.' That's two weeks after the situation. Paycheck is already in the mail, and I already was getting docked eighteen hours. That's when I started the grievance procedure. The other reason I didn't grieve, I hear people saying, 'Why didn't you grieve originally?' is because at the bottom of that findings of Chief Koelz, it says 'until further notice.'

I thought if it rains outside I could ride through the storm, and it might just go by. Until further notice might be two months, might be a month, might be five months. Not feeling that was really impressionable on me at the time, or not knowing that I would not be able to get into my physician, I let it ride.

And the other thing that really hurts me is the fact, and this might not be relevant—it is a little relevant to me—is that Chief Koelz says that he did investigation on everyone else, and we know he didn't, but the other thing is he said he was not aware of any family situations I am in, when in reality the department volunteered a unit to take my child to Miami—I won't go into that—but he's aware that—they sent flowers and everything, and I don't think that he is going to sit up there and say, 'I am taking sick and linking it'.

The other thing with the linking thing is he asked me in the office the day that we sat down with this thing, and I told him straight up, right in front of him, he and Deiorio and my officer, that I do not link. I said, 'If you get the impression that I am linking, I am telling you, as a man right now, I am not linking.' I do not link. I don't mean it to be that way. We found out through further investigation that 33% of the days are going to link together anyway, so it's not likely that because of our Kelly day or because of our cycle, the way that we work, is every third week, I get a Kelly day or there might be a weekend next to a day that I work – I only work two or three days a week. There is a real good chance there is going to be a weekend on one side or the other or a Kelly day on one side or the other. It's not it's a possibility for me to sit down and say, 'Okay, let's see if I could link these.'

So, I told him right then and there and tried to stop that whole issue of the linking, that I am not linking. I expressed it clearly two or three times at the meeting, that I was not linking. I expressed it at the other meeting; that I admit that I am not linking. If you think that I am linking, which Mr. Randolph continued to bring up four or five times when I shook my head, because I already expressed to him that you may think

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I'm linking; you could throw stones. I'm telling you I am not linking. So, that somewhat perturbs me.

The other thing is that I don't quite understand the setting here because I'm one side and, I guess, Chief Koelz is on the other side with his notes, and I don't quite understand--this is just a personal issue that we might address in the future--I don't understand why me being the low-end firefighter, not represented by the Town but work for the Town, is sitting out in the audience. I think this water over here was probably set up for us, and I just don't see that it is right. I try to queue myself on the right thing, and I am trying to do the right thing here, and I think it is pretty one-sided, seems to me.

All I've got to say is that I am not a linker. My family does come first, and I thought I was cleared that day by what Assistant Chief Dash said, and I don't think it was right, and he brought up the fact that I did bring a note in before. I did bring a note in before. I went home, I was allowed to go home when my son cut his head open, and went home, went to the emergency room, and when I came back to work from the emergency room, I brought a note to show that I went to the emergency room. It was a respect thing to my officer for letting me go to do that.

This situation, I thought I was clear. That is why there was no note. I thought I was clear--until after the situation was already docked from my pay, and if he wants to keep me under this realm for the rest of my career, then so be it, but I think that under this particular situation that I am talking about here, I'm getting docked for pay that I thought I wasn't gonna have a problem with. To me, it's a big mess that I could have handled by talking with the Chief about it, instead of automatically -- bam--we've docked your pay, sorry about your luck.

One more thing--this is a pride thing or whatever--if you look at the time we are dealing with--this is right before Christmas, and I know this is an emotional thing, but that money means a lot. I pay my mortgage out of my paycheck. I don't have extra, and for me to get surprised--Bam-- you're gone. It's not right, and that's all I have to say.

Chairman McDonald:

I am going to have to take the responsibility for your sitting down there instead of up here. In fact, Mr. Randolph asked if you could sit up here, and because I have a crick to my right, I didn't want to be looking over this way, so I'm looking this way. It's better for me. That's my responsibility, and there is no maliciousness attached to it.

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Mr. Brooks, any comments or recommendations?

Mr. Brooks:

Yes. First comment I would like to make is that I wish we weren't here, but nevertheless we are here.

I think, you know, unfortunately sometimes perception is reality having worked in television for too many years, I have succumbed to that illogical position.

Secondly, let's look just a little bit at logic, and Jeff I appreciate your cadence to nuance to denial of the linking, but reality is, that in business, you always look at a Monday/Friday pattern for absentees—sometimes it is quite justified—other times, perhaps, there is a pattern, and departmental heads have to be responsible for that, so the 17 out of 34 occasions obviously caught my attention. I was sensitive to your counselor that we're really sort of the fourth district court of appeals and we are not hearing a de novo hearing, so I didn't want to dwell on that.

The other thing that really kind of hits me between the eyes is the length of time between July 30th and November 14th—not a lot of time. Now, having said that, let me also say, we should always try to be humane and I know you to be a good fellow and a sincere lad, the Chief has a responsibility as Mr. Randolph eloquently stated it. So, where I am, I certainly appreciate the comments made on your part, by you personally, and by your counselor, and I am of a mind where I really want to be respectful to the Chief—but is there any way we can cut the baby? Part of it, Jeff, to be honest is all human beings must take personal responsibility, and I apologize for saying that to you. You, obviously, have to stay in great shape and follow directives and I am sensitive to that, but the acronym TPR is a disappearing commodity in the world today. You know, it is not global warming that we should be afraid of, but global whining, and I am not directing that at you. I'm talking in general where you get some cockamamy excuses—that maggot of a lawyer who is suing the strip club because the guy in the wheel chair can't get a lap dance—it just kind of says to you, 'What kind of a world are we living in?'

So, I would respectfully suggest that there is the responsibility on the part of the employee to at least—in a global sense—understand the instructions in the manual that came or didn't come, and often times in life we get down to a 'he said' 'she said' 'they said' and we get all of this sort of confusion, where I think if we just take a humane approach to this situation, that you are well aware of, you're a firefighter, you know the chain of command, you know that lives depend upon the chain of command being followed, you know that team work and consideration for your mates

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is paramount in order to save lives.

I guess what I am saying before we vote, Mr. Chairman, Mr. McDonald, is I certainly appreciate the Chief's position, and I appreciate the areas that have been raised, both by Mr. Moore and on his behalf by his counselor.

Chairman McDonald:
Thank you, Mr. Brooks.

So, Mr. Moore, I will make some of my comments, and then we'll get a response from their side to see if there is any kind of compromise that can be worked out or whether the Committee needs to vote.

I think it is extremely important that you need to object or define something at the time it is issued, and I think that this July 30th order that you really needed to get clarification of that order at that time, and I see your going along with it as not being—I see it as being a fatal mistake in this particular set of facts. I also find—I have some problems with the Chief's order in the sense that I think it's—it's just so difficult, so subjective in the sense to be able to send someone out and expect them to get a doctor's permission for that day or certainly having their family come in and getting permission, so I have—if this came again on the same set of facts, I would have some problems with it in terms of the Chief writing such a subjective or sort of open-ended order, but I don't have any reservation at all that the Chief has the authority to do this, and I would support that, and say that the fatal flaw was that you didn't grieve this order at the time, because that is really what you needed to do. Based on those comments and Mr. Brooks, then we'll go this way and see if they want to offer a compromise or if they want to stand pat on their position as they have argued it.

Attorney Pheterson:

May I suggest another alternative which might be whether, in light of the comments of the Board at this point, whether we should take a short recess and let the parties discuss things perhaps out of the presence of the Board.

Chairman McDonald:
Mr. Mierzwa, is that all right with you?

Attorney Mierzwa:
Yes.

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Chairman McDonald:

That acceptable? All right. Then the Board will take a ten minute recess and we'll be back here at 5 after 11.

Chairman McDonald:

All right. The Administrative and Personnel Committee back on the record please.

Has there been any- who should I speak to first here? Toss the coin?

Attorney:

Unfortunately, we can say it together, and unfortunately we have not come to an agreement, and that we will leave this decision with you.

Chairman McDonald:

All right. Thank you Mr. Randolph and Mr. Mierzwa.

Mr Brooks?

Mr. Brooks:

Gentlemen, were you close?

Attorney Randolph:

I guess it depends on how you were looking at it.

Attorney Pheterson:

Just so the record of this hearing is clear, the formal exhibits which would be marked as Town's exhibit 1 which is the packet with the top cover which is the agenda of this meeting and the documents that were provided to the Board members and counsel for both sides; employee exhibit 1-there are four employee exhibits-the first is the collection of grievance materials provided by Mr. Mierzwa as employee exhibit number 1; employee exhibit number 2 would be the sick leave list at the top it states a date range of 04/04/94 to 07/30/01 as employee exhibit 2; employee exhibit 3 is the one page document which contains section 4-9, conflicting orders of the rules and regulations of Fire Department; and employee exhibit 4 is the single page of payroll information for Jeffrey Moore for the payroll period ending 11/23/2001. Those are the only exhibits in the record at this hearing.

Attorney Randolph:

Before you deliberate, may I consult with my client? You don't need to recess, but if I could consult with my client for a minute.

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Chairman McDonald;

All right. Let me ask Mr. Mierzwa if all those exhibits are—

Attorney Mierzwa:

Thank you. He did a good job.

Chairman McDonald:

All right. So we'll accept all of those. Are they in, Mrs. Pollitt?

Town Clerk Pollitt:

Yes.

Chairman McDonald:

Mr. Randolph? All right, thank you.

Mr. Brooks, do you have any suggestions? I mean recommendations or motions?

Mr. Brooks:

Yes. I would like to make a motion. Following my statements of a few moments ago, I do believe that there is an element of taking personal responsibility here. I also believe that there is an element of ambiguity here. So, consequently, I think, to uphold the position of the Fire Chief and to respect the right of Firefighter Jeffrey Moore to grieve and appeal that decision, I would like to make the recommendation, sir, that we do not dock him 18 hours, but maybe if he could consider a docking of 4 hours, and that way I think we preserve the right of the Chief and respect the office of the Chief, especially as it is the highest authority in the Fire-Rescue Department. That would be my feeling, sir.

Chairman McDonald:

All right. I will second that. Mrs. Pollitt?

Roll call:

Mr. Brooks yes

Mr. McDonald yes

Chairman McDonald:

That is our decision, gentlemen. Do you know what it is?

Attorney Mierzwa:

Yes, I think I understand that. My understanding of the procedure is that you submit

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that to the full Council?

Chairman McDonald:
That's correct.

End of verbatim transcript.

Attorney Pheterson said he would prepare a written order that will memorialize the decision of the Board.

III. ADJOURNMENT

The meeting was adjourned at 11:10 a.m.

Jack McDonald, Committee Chairman

William J. Brooks, Committee
Member

End of Report

Councilman McDonald reported that the Administrative and Personnel Committee had met on July 23, 2002, to consider an appeal by Firefighter Jeffrey Moore of the discipline, withholding eighteen (18) hours of pay, that had been issued by Fire-Rescue Chief Koelz. He reported that after exhaustive hearings, the Administrative and Personnel Committee had recommended reduction of the discipline from eighteen (18) hours to four (4) hours, based on the ambiguity in the particular facts of the situation that had occurred.

President Pro-Tem Goldblum moved approval of the recommendation of the Administrative and Personnel Committee to recommend reduction of the disciplinary action of Firefighter Jeffrey Moore from eighteen (18) hours of pay withheld to four (4) hours of pay withheld. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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B. Administrative and Personnel Committee Meeting on August 6, 2002.

The report of the Administrative and Personnel Committee of August 6, 2002, is included in its entirety below:

**REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE
MEETING
HELD ON AUGUST 6, 2002**

I. CALL TO ORDER

The meeting of the Administrative and Personnel Committee was called to order at 10:03 a.m. on August 6, 2002, in the Town Council Chambers. Upon roll call, the following Committee Members were found to be in attendance: Chairman Jack McDonald, Committee Member William J. Brooks. Also in attendance were Town Attorney John Randolph, Public Works Director Al Dusey, Public Works Services Division Manager Lloyd McCoy, Public Works Sanitation Supervisor Tony Higgins, Public Works Trash Supervisor Robert Kennedy, Human Resources Analyst Thomas Smith, and Deputy Town Clerk Susan Eichhorn.

II. HEARING ON GRIEVANCE APPEAL - GUY O. EDMOND

Chairman McDonald acknowledged Mr. Guy O. Edmond, and requested a brief summary of what had taken place, resulting in the recommendation to terminate his employment with the Town of Palm Beach. Chairman McDonald explained that he had received a transcript of the Grievance Resolution Board Hearing on May 20, 2002, however, some portions of the recordings had been inaudible on the recordings.

Mr. Edmond stated that he had spent a Thursday night in jail, until the following Friday morning. His wife had called work and spoken to someone. Monday, when he reported to work, reported with release papers from the Palm Beach County Jail; he was instructed that he had to go to court on Monday. He was instructed to sign two release forms. On Tuesday, he came back to work and it was normal. Wednesday, it was normal. On Wednesday afternoon, he was asked to see Mr. Dusey by Mr. Higgins. He went to the

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conference room with Mr. Dusey. When Mr. Dusey came he had a dismissal paper in his hand. (Mr. Edmond held up a copy of a memorandum that he had received from Mr. Dusey).

Mr. Edmond explained that the reason he was appealing was because there was no key evidence – he referred to the Request for Leave form that he held up and said that it did not have his signature. He said that he was appealing the Order of Termination because there was some doubt as to what had happened. He stated that he believed he should have his job back and he was fighting for his job. He said the Order took place because they went back in history – whenever he had made a mistake he paid the price there was to pay for it. He stated that he was condemned because of what had happened in the past.

Mr. Dusey reported that Sanitation Supervisor Higgins had given Mr. Edmond vacation time for the Monday when he had to go to court. Mr. Higgins had wondered whether Mr. Edmond had been sick on Friday, March 29, 2002, when a woman called in and reported that Mr. Edmond was sick. Mr. Higgins did some checking, and found out that Mr. Edmond had been in jail. At the hearing conducted at the time of termination, at the time of discipline, Mr. Edmond was specifically asked why he took sick leave for a day when he was in jail. Mr. Dusey explained that, quite honestly, there were occasions when employees might get arrested either properly or improperly, and a request for vacation was honored in those instances. At the hearing on the day of termination, Mr. Edmond said that, in fact, he was embarrassed that he had been arrested. He was told that he should not have done that; he should have told the truth. He, in fact, said that he was embarrassed that he had been arrested, and he asked for sick leave to basically cover that.

Mr. Dusey stated that the disciplinary record was probably worse than any others in the department. Mr. Edmond had been a bit of a problem employee during his tenure with the Town. Progressive discipline is used, and problems are attempted to be corrected to try to salvage employees, as they are an important resource. At least half of the disciplinary actions had occurred under a different supervisor than Mr. Higgins; the former supervisor, Jim Santagate, had retired. Mr. Dusey stated that Mr. Edmond's record had built up to the date of November 14, 2001, when he was suspended for one day for overall unsatisfactory work performance. That was the result of having a lot of different infractions, so much so that the basic performance standards were not being met. At that point, the employee is told that all of the infractions must stop, and if another incident happened the employee would likely be subject to termination. This was stated in a memorandum to Mr. Edmond, dated November 14, 2001. Mr. Edmond then had an incident regarding safe driving several months later, and received a written reprimand, for which he could have been terminated at that point. Mr. Dusey stated that falsifying a sick leave document, as noted in the Personnel Manual, was a very serious incident. Mr. Edmond had been given the opportunity to explain at the hearing, and his whole explanation had been that he was embarrassed that he was in

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jail. The employee was not performing adequately, and then committed a very serious offense. At that point Mr. Edmond was terminated.

Mr. Dusey noted that Sanitation Supervisor Higgins, Division Manager Lloyd McCoy, had both been present when Mr. Edmond was terminated, and both were present today.

Chairman McDonald asked who had called in for Mr. Edmond on Friday morning?

Mr. Dusey replied that it was a female, who Mr. Edmond said was his wife. She called him in sick for Friday, and had spoken with Trash Supervisor Kennedy.

Chairman McDonald asked if Mr. Edmond had then confirmed that he had been sick on Monday?

Mr. Dusey stated that the testimony of Mr. Higgins had been that Mr. Edmond came in and was asked if he had been sick, and he had replied "yes," and he also indicated that he had to go to court.

Chairman McDonald referred to the paperwork that Mr. Dusey had distributed, and noted that there was a one page list on the top covering all of the corrective actions taken since March 24, 1997. He asked Mr. Edmond if the list was accurate?

Mr. Edmond replied in the affirmative, and said that he had paid a heavy price for everything that had occurred over the years; that he would be the first to admit when he had messed up. He stated that on the occasion being discussed, he did not call and he did not instruct Mr. Higgins that he was sick. He had showed him that he was in jail, and that he had to go to court that day.

Chairman McDonald clarified that the list was accurate, and that all of the incidents had occurred, and that Mr. Edmond had received either written reprimands or oral counseling on all of the occasions.

Mr. Edmond replied affirmatively.

Committee Member Brooks commented that in less than a year prior to the termination, Mr. Edmond had received three written reprimands, two oral counseling sessions, and a one-day suspension. He moved that the decision for termination of the Grievance Resolution Board be upheld.

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Chairman McDonald seconded the motion, noting that 22 incidents had taken place prior to the termination. He wished Mr. Edmond the best.

On roll call the motion to uphold the decision for termination of Mr. Guy O. Edmond, made by the Grievance Resolution Board, carried unanimously.

Chairman McDonald explained that the recommendation of the Administration and Personnel Committee would be presented to the full Town Council on Tuesday, August 13, 2002.

III. ADJOURNMENT

The meeting of the Administrative and Personnel Committee of August 6, 2002, was adjourned at 10:29 a.m.

Jack McDonald
Chairman

William J. Brooks
Committee Member

End of Report

Councilman McDonald reported that the Administrative and Personnel Committee had met on August 6, 2002, regarding the appeal of Guy O. Edmond, Equipment Operator I, Public Works Department, who had been terminated by Public Works Director Al Dusey. He commented that Mr. Edmond had very articulately defended his actions, however, during the hearing it had been discovered that there had been twenty-two (22) incidents of disciplinary action over the past few years. Based on that, the committee had upheld the recommendation of Public Works Director Dusey to terminate Mr. Edmond.

Councilman Wyett moved approval of the recommendation of the Administrative and Personnel Committee to uphold the termination of Guy O. Edmond, Equipment Operator I. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

X. REGULAR AGENDA

A. Old Business

1. Continued Review of Options for Addressing Town Facility Needs.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum of August 8, 2002, providing information regarding the continued options for addressing Town facility needs. He reported that based on the current estimated valuation of the property, and the consideration of other factors and logistics, a purchase price in the range of \$2,000,000 had been indicated. He requested authorization to either engage in formal negotiations for the purchase of the property, or alternatively, to authorize a conceptual design for a planning, Zoning & Building Department facility on the existing neighboring Town owned parcel.

After discussion, Councilman McLendon moved approval of authorizing Town Manager Elwell to enter into formal negotiations for the purchase of the Florida Crystals property at the northeast corner of Dixie Highway and Quadrille Boulevard in West Palm Beach. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 3/2, with Councilman McLendon, President Pro-Tem Goldblum, and President Brooks casting affirmative votes; Councilman McDonald and Councilman Wyett casting dissenting votes.

2. Proposed Increase of Charitable Solicitation Permit Fees.
[Mary A. Pollitt, Town Clerk]

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Town Clerk Pollitt referred to her memorandum of August 1, 2002, regarding the fees for charitable solicitation permits. She reviewed the information contained therein, noting the estimated revenue from raising the permit fees. She noted that Town Attorney Randolph had pointed out that the costs of the permit fees must be justified as being related to the actual issuance of the permit.

Councilman McDonald moved deferral of discussion of the proposed increase of charitable solicitation permit fees until the actual costs per department of processing the permit could be determined. The motion was seconded by President Pro-Tem Goldblum.

Town Manager Elwell commented that this issue had come up as a result of the budgeting process as a manner of raising some additional revenue; it was becoming clear today that there was some sentiment that this was not the appropriate area within which to try to raise additional revenue, and that it should be tied very directly to administrative costs. He suggested that, rather than defer the issue, staff revise the ordinance if there was a justification for any increase in fees, based on the actual costs of issuing the permit.

Councilman McDonald amended the motion to defer the discussion of the proposed increase of charitable solicitation permit fees to a motion to direct staff to review the actual costs of issuing the permit to determine if an increase in fees was appropriate, with staff returning to report at the September 10, 2002, Town Council Meeting. The seconder of the motion was in agreement. On roll call the motion carried unanimously.

B. New Business

1. Florida Department of Transportation Projects.
 - a. Request for Approval of Around-the Clock Working Hours for a Portion of the Construction of the Royal Park Bridge.

Florida Department of Transportation (FDOT) Project Manager Clara Scott addressed the Town Council, requesting continuation of around-the-clock working hours until October 15, 2002, for the drilled shaft work on the Royal Park Bridge. She explained that late in June there had been several meetings with the contractor regarding the construction schedule, and the difficulties accomplishing the work during the normal work

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hours. She agreed that approval of the request today would be contingent upon the conditions outlined by Town Manager Elwell via his letter to her, dated July 12, 2002.

Councilman McDonald moved approval of the request of the FDOT for around-the-clock working hours for a portion of the construction of the Royal Park Bridge. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Pro-Tem Goldblum had temporarily left the room.

In response to Mayor Smith, Ms. Scott stated that she was hopeful that the work would be finished by late September, however, additional time had been requested because of the uncertainty of the soil conditions and the unpredictability of the situation. Mayor Smith commented that the work must be completed by November 1, 2002, as seasonal residents would be returning by that time.

- b. Schedule for Completion of Phase I Improvements on Royal Palm Way (Including Potential Request for Extended Working Hours on Weekends).

Florida Department of Transportation (FDOT) Project Manager Clara Scott addressed the Town Council explaining that a water main had been covered in conflict with the structure that was in the plans. The City of West Palm Beach had now agreed to build a conflict structure; that effort would take an extra twelve (12) days at the intersection of Coconut Row and Royal Palm Way; the intersection would be closed beginning on August 21, 2002, work to continue for five (5) days when there would be a single northbound lane on Coconut Row; after that BellSouth would do two days of work, when there would be two-way traffic on Coconut Row; the remaining work would continue through the weekend of September 1, 2002. She explained that the intention was to provide the least disruption during school hours, and to complete the work in the least amount of time. She presented a printed schedule of the work plan.

Councilman Wyett moved approval of the schedule presented for completion of Phase I Improvements on Royal Palm Way. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

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2. Consideration of Potential Actions Regarding the Maintenance of Feral Cat Colonies in the Town of Palm Beach.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum of August 8, 2002, regarding feral cats and the recent rabies alert in Palm Beach County. He explained that staff had researched the ability of the Town to take certain actions above and beyond simply the continued enforcement of the Palm Beach County ordinance. He noted that staff believed the public health concern was sufficient to provide the Town Council with the option of requesting Palm Beach County to do trapping of feral cats, which may not necessarily reduce the cat population, but may incidentally reduce the cat population; the intent was to ensure that those cats which are maintained in Palm Beach were healthy cats, and not posing a public health risk through rabies or otherwise. He explained that there were potentially other actions that the Town might initiate that would be beyond what had been done to date, and based on enforcement of the County ordinance, based on Town Attorney Randolph's interpretation of the existing Town ordinances.

Town Attorney Randolph advised that it was his opinion that the current ordinance, which prohibits the maintenance of undomesticated animals in the Town would pre-empt the County ordinance as it related to the establishment of feral cat colonies within the Town. He stated that it was his belief, after review of the Town ordinance, that the establishment of feral cat colonies was prohibited. He recommended that the County be so advised by letter if it was decided that the Town wished to enforce its ordinance.

Ms. Connie Gasque addressed the Town Council, stating that she lived next to Catherine Bradley, and had gone to Animal and Control to attend a meeting last Monday; it seemed that the Town had the power not to allow feral cat colonies to exist. She presented some photographs of her neighborhood area, indicating cat food on the streets and the accompanying birds that were also attracted. She noted that Ms. Bradley's association could bring in as many cats as they wanted into the Town, as long as they were spayed and neutered.

Attorney Maura Ziska, on behalf of two clients, the Curtis family of 710 S. Ocean Blvd., and the Berman family of 130 Banyan, explained that a cat colony was registered next door to them, and she had written a letter of objection to Animal Care and Control, and was told that the Town of Palm Beach did not have an ordinance, so the County ordinance was followed. The County ordinance basically allowed that certain rules be followed, registration fees paid, cats vaccinated, and that cat colonies could then be established. She explained that approximately 37 feral cat colonies had been applied for, and estimated that there were approximately 700-900 stray cats in Palm Beach currently.

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On behalf of her clients, she objected to having the cat colony next door to them. She urged the Town Council to take action to prevent feral cat colonies in Palm Beach.

Attorney John Bannister, on behalf of Taja Realty Trust, owners of four parcels of property on S. Ocean Blvd., between Everglade Ave. and Seminole, and advised that the parcel at 120 Everglade contained about 40-50 cats on the property. He maintained that it was a health hazard, and the feeding of the cats was a trespassing on the property. He noted that he also had a client who was an animal activist; she had advised that if the cats could be trapped, she had found someone west of Town who could provide for the cats. He stated that the current condition could not continue to exist.

Mr. Don Kino, Sanford Avenue, commented that he had been notified last week of the establishment of a feral cat colony next door to his residence. He stated that the cats slept on his outdoor furniture, and that he was allergic to cats and therefore could not use his outdoor furniture; the cats defecated on the lawn; he would not feel comfortable with his children using the back yard with the possibility of a rabid cat infecting them. He implored the Town Council to stop the feral cat colonies.

Attorney Frank Chopin, on behalf of the Preservation Foundation, commented that there was another Town ordinance, which had been forced in the past, which prohibited people from feeding and caring for more than ten (10) domestic animals. He noted that the Preservation Foundation maintained Pans Garden, and there had been a feral cat colony living on the property; the birds had been eaten by the cats; odors had been complained about. He also noted that notice had been issued of the intent to establish a feral cat colony in the 300 block of Peruvian Avenue, and maintained that could not be done, because the County ordinance required a specific property and owner consent. He explained that over 2,000 school children visited Pans Garden each year, and the situation of having a child bitten could arise. He suggested that the current laws must be enforced.

Attorney Ron Kolins commented that if the Town chose not to enforce its own ordinance, it would jeopardize the effectiveness of the ordinance henceforth in any situation.

Mr. John Blades, Flagler Museum, requested the Town Council to enforce the current laws. He stated that the State Health Department had written the Flagler Museum a letter indicating that feral cat colonies were not a good idea.

Town Manager Elwell clarified that enforcement actions that would take place to enforce the Town ordinance would be code enforcement type proceedings; the enforcement actions currently being taken were enforcing the County ordinance, and the matter would

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be resolved in County Courts. He noted that it would take time to enforce the Town ordinance to effectively reduce the impacts of the cat colonies; the enforcement area in combination with the trapping effort would provide long term benefits to the Town.

Town Attorney Randolph advised that the Town advise the County immediately that the Town ordinance prohibited feral cat colonies in the Town, so that they would be aware of it when processing the registrations for feral cat colonies. He noted that there were other ordinances on the books that had been applied, relating to feeding of cats on the public-rights-of-way; there was some problem in enforcement, because the officer must see the act occurring.

Police Chief Michael Reiter commented enforcement of Town ordinances was a shared responsibility of the Police Department and the Planning, Building & Zoning Department, however, the Police Department was responsible for enforcing all State laws and County ordinances that would apply. The Police Department had enforced violations of the law that prohibited nuisances injurious to health – that would be any condition that was capable of breeding insects which were capable of transmitting diseases to humans. The State Attorney's office had declined to prosecute that, and that office had ultimate discretion in that area. The Police Department had also applied other State laws, including trespassing. Currently there were approximately forty (40) enforcement actions of State law for trespassing and for feeding of feral cats without registration that were awaiting hearing at the end of the month. The Police Department had applied every mechanism within the law for enforcement of the situation. Chief Reiter advised that, according to the advise of Town Attorney Randolph, he would instruct the Police Department to enforce the Town ordinance as discussed today. He noted that regardless of the direction given today, the situation would not simply change immediately; the courts and other boards that deal with the situation had not been sympathetic to enforcement to date; enforcement would not resolve the problem. Ultimately, the enforcement actions would end up with the Code Enforcement Board for final disposition. He explained that when an officer saw a person feeding a cat, the officer identified the individual and issued a notice to appear for violation of the County ordinance; there were currently 22 registered feral cat colonies in the Town as of today, and since those had been registered the feeding violations had not been enforced. There would be hearings at the end of the month and ultimately a judge would make a decision of whether there would be some penalties.

Town Manager Elwell commented that the cats that would be trapped through the County program would be able to be reclaimed if the proper fees were paid, and if the cats proved to be healthy.

Councilman Wyett moved approval of authorization of \$1,100 for the

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purchase of 20 traps; the funds to be appropriated from the General Fund Contingency. The motion was seconded by President Pro-Tem Goldblum, who added that the help of State and Federal agencies should be investigated, and that the Police Chief give a first notice about feral cat feeding, and a second notice to arrest. Councilman Wyett agreed with the additions to the motion. (See amended motion below).

Town Manager Elwell advised that staff would communicate to Animal Care and Control that the Town ordinance had been clearly interpreted to indicate that the maintenance of feral cat colonies was not allowed in the Town, and therefore, the County would need to notify the people who had obtained permission for colonies that they were no longer permitted to maintain cat colonies within the Town.

Town Attorney Randolph advised that the Town ordinance, as it was currently on the books, even prior to today, made it illegal for people to maintain feral cat colonies within the Town; therefore, to maintain feral cat colonies within the Town was illegal, not just from today forward, but previously as well. He recommended that the Town simply advise the County of the Town ordinance in this regard, and that those who are involved in the maintenance of feral cat colonies be advised of the Town ordinance, prior to going forward with enforcement. He cautioned against incorporation conditions in the motion that the Town enforce the ordinance, and make arrests for violations, because that was something that would be handled by law enforcement personnel.

Councilman Wyett amended the previously made motion to approve funding for \$1,100 for the purchase of twenty (20) traps; funding to be appropriated from the General Fund Contingency; and deleting the additional conditions relating to the involvement of State and Federal agencies, and notices for arrest. President Pro-Tem Goldblum agreed as the seconder of the motion. On roll call the motion carried unanimously.

Town Manager Elwell agreed that the Town would receive a copy of all letters sent from the County to those maintaining feral cat colonies.

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3. Discussion Relative to the Town Requiring Installation of Moisture Sensor Equipment to Regulate Irrigation Systems for all Properties.
[Robert L. Moore, Director of Planning, Zoning & Building]

Director of Planning, Zoning & Building Robert Moore reported that discussion had taken place at the last Town Council meeting regarding equipment that would automatically turn off irrigation systems during rain. He explained that staff had researched the issue, and through memorandum dated August 5, 2002, to Town Manager Elwell, had identified two types of automatic sprinkler systems: hydraulic and electrical. Most newer systems were electrical, and adding a moisture sensor to them was estimated at a \$250.00 cost; hydraulic functioning systems at a \$500.00 cost. He noted that inquiry had found that no other jurisdictions in the area had mandated retrofitting the older systems. All new construction, replacement, or major remodeling required moisture sensor controlled automatic sprinkler systems. Staff recommended a three year compliance deadline and that the permit fee be waived.

Councilman McDonald moved approval of requiring the installation of moisture sensors on all automatic sprinkler systems, with the permit fee waived, and with a three year compliance deadline. The motion was seconded by Councilman Wyett.

Councilman Wyett suggested that the permit fee be waived for a one year period only.

President Pro-Tem Goldblum suggested that an educational pamphlet be distributed with the individual property owner costs savings for having moisture sensor equipment.

Mr. Moore replied that water saving pamphlets were already available, and that it would be very difficult to estimate exact cost savings to an individual property owner.

Mayor Smith suggested that all of the civic organizations be notified so that the condominium buildings would be aware of the situation.

Mr. Jerry Frank, of The Citizens' Association of Palm Beach, Inc., commented that the costs may be greater than that estimated, because many of the systems, particularly in the condominiums, had six or eight areas where the water came from as an originating source; therefore, six or eight sensor devices would be needed

Town Manager Elwell explained that a prior action of the Town Council, several months ago, had directed that a water conservation educational program be issued when

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residents returned seasonally, and the moisture sensor information would be included in that program.

Councilman McDonald amended the motion to approve the requirement of the installation of moisture sensors on all automatic sprinkler systems, with the permit fee waived UNTIL JANUARY 1, 2003, and with a three year compliance deadline. The amended motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Brooks had temporarily left the room.

Town Attorney Randolph advised that the requirement for moisture sensor equipment on automatic sprinkler systems would be presented in the form of an Ordinance for approval by the Town Council.

4. Proposed Revisions to Storm Drainage Ordinance 15-01.
[Robert L. Moore, Director of Planning, Zoning & Building]

Director of Planning, Zoning & Building Robert Moore reported that the recommended revisions to the storm drainage ordinance would strengthen the ordinance and make it more effective.

Councilman McDonald suggested that No. 6 of the proposed recommendations - "Add a requirement to sod/irrigate or to commence construction with 30 days of completion of demolition," be amended to read: "Add a requirement to **apply for a building permit or** sod/irrigate within **15 days** of completion or demolition. (If the applicant had not applied for a building permit, he would be required to sod/irrigate within 15 days).

After discussion, Councilman Wyett moved approval of the list of fourteen (14) proposed changes to Ordinance No. 15-01, as amended, as submitted by Mr. Moore in his memorandum of August 2, 2002. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. Recreation Advisory Commission Appointment.
[Russ Bitzer, Director of Recreation]

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After casting ballots, the Town Council appointed Michael Spaziani as a regular member of the Recreation Advisory commission and Bill Bone as an Alternate Member.

6. *(This item removed from the Consent Agenda and added to the Regular Agenda)*
Report on Estimated cost Savings from Eliminating Residential Garbage Collection on Holidays.

In response to Councilman McDonald, Public Works Dusey stated that the report concerned estimated cost savings from eliminating residential garbage collection on Veteran's Day or New Years Day; the only Town holiday that the sanitation workers would work was the day after Thanksgiving.

Councilman Wyett moved approval of the recommendation of Public Works Director Dusey to eliminate residential garbage collection on Veteran's Day and New Years Day for a cost savings of approximately \$1,600. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

XI. RESOLUTIONS

- A. Resolution No. 48-02 Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Marina Fund - Dock Replacement Reserve Policy and a Revenue Shortfall Plan; Amending the Reserve for Catastrophic Exposures/Emergencies -Self-Insurance - Risk Fund Policy; Establishing an Effective Date. [Jane Skittone, Director of Finance]

Town Attorney Randolph read Resolution No. 48-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 48-02. The motion was seconded by President Pro-Tem Norman Goldblum. On roll call the motion carried

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unanimously.

- B. Resolution No. 49-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing New Dock Rates for Annual, Seasonal, and Winter Transient Leases. [Jonathan B. Luscomb, Dock Master]

Town Attorney Randolph read Resolution No. 49-02 by title, as printed above.

Mayor Smith, on behalf of former Mayor Ilyinsky, suggested that there be a separate dock rate for residents, as opposed to non-residents, which was the same consideration that was given to Town golf course members and tennis court members.

After discussion, it was determined that it was not possible to differentiate between rates for residents and non-residents as a result of the submerged land lease, and the fact that funding had been accepted from the State for dredging and expansion, with that contract prohibiting differential rates as well.

After further discussion, Councilman Wyett moved approval of Resolution No. 49 - 02 with the direction that staff explore differential rates for dock parking. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

- C. Resolution No. 50-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Increased Fee for Photo Identification Cards and Fingerprint Cards, Establishing an Effective Date. [Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Resolution No. 50-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 50-02. The motion was seconded by President Pro-Tem Goldblum, and carried unanimously on roll call.

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- D. Resolution No. 51-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute an Agreement for Mutual Aid Between Palm Beach County and the Town of Palm Beach for Fire-Rescue Services. [Kent W. Koelz, Director of Fire-Rescue]

Town Attorney Randolph read Resolution No. 51-02 by title, as printed above:

President Pro-Tem Goldblum moved approval of Resolution No. 51-02. The motion was seconded by Councilman Wyett, and carried unanimously on roll call.

- E. Resolution No. 52-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute an Agreement for Mutual Aid Between the City of West Palm Beach and the Town of Palm Beach for Fire-Rescue Services.[Kent W. Koelz, Director of Fire-Rescue]

Town Attorney Randolph read Resolution No. 52-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 52-02. The motion was seconded by President Pro-Tem Goldblum, and carried unanimously on roll call.

- F. Resolution No. 53-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Establishment of a Billing System for the Palm Beach Fire-Rescue Department to Charge for Emergency Medical Services Transports of Patients to Area Hospitals; Establishing a Fee Schedule of \$340.00 for ALS 1 Transports, \$450.00 for ALS 2 Transports, \$300.00 for BLS Transports and \$7.00 per Mile for Mileage; Providing an Effective Date.
[Kent W. Koelz, Director of Fire-Rescue]

Town Attorney Randolph read Resolution No.53-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 53-02. President Pro-

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Tem Goldblum seconded the motion with the condition that the Fire-Rescue Department provide an update report in six months breaking down the charges for Medicare, insurance and self-pay.

Mayor Smith commented that she was opposed to the fee, and that the service had historically been provided at no charge – if one person decided not to call because of the charge it was not worth the fee being charged. She noted that the Town of Palm Beach was perhaps the only town in Palm Beach County that had four emergency vehicles donated by grateful citizens.

In response to Councilman McDonald, Fire-Rescue Chief Koelz responded that the reimbursement under Medicare was 80% of a set fee; the fee set in the Resolution was based on fees based upon Palm Beach County fees as well as other municipalities in Palm Beach County.

On roll call the motion carried unanimously.

- G. Resolution No. 54-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Expressing its Approval of the Proposed Florida Department of Transportation SR A1A Resurfacing Project, to Include the Proposed Modifications, with Conditions; Providing an Effective Date and for Other Purposes.
[Thomas G. Bradford, Assistant Town Manager]

Town Attorney Randolph read Resolution No. 54-02 by title, as printed above.

President Pro-Tem Goldblum moved approval of Resolution No. 54-02. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

- H. Resolution No. 55-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Refunds for Community Services Fees Paid to the Town from May 1999 to the Present

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Date; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Resolution No. 55-02 by title, as printed above.

President Pro-Tem Goldblum moved approval of Resolution No. 55-02. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

- I. Resolution No. 56-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to West Construction Inc., for the Town Park at South County Road and Peruvian Avenue Project. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 56-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 56-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

- J. Resolution No. 57-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Ferguson Water Works, Inc. for the Lake Way Water Main Material Purchase.[Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 57-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 57-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

- K. Resolution No. 58-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Department of Public Works, Engineering Division, Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach at

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Appendix C, Public Works Right-of-Way Permit Fee Schedule; Providing an Effective Date. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 58-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No 58-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

- L. Resolution No. 59-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute a Right-of-Entry Agreement Between the Town of Palm Beach and the South Florida Water Management District. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 59-02 by title, as printed above.

Councilman Wyett moved approval of Resolution No. 59-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

XII. ORDINANCES

A. Second Reading

1. Ordinance No. 13-02 An Ordinance of the Town Council of the Town of Palm Beach, Florida, Regulating the Use of Public Rights-of-Way for Communications Sections 116-1 Through 116-50 and 116-86 Through 116-91 of the Code of Ordinances to the Extent of Any Conflict; Amending Sections 116-3, 116-4(b), and 116-86 of the Code of Ordinances to Provide for Continued Town Authority to the Extent Consistent with Federal and State Law; Creating Sections 116-92 Through 116-110 of the Code of Ordinances; Providing for Intent and Purpose; Providing for Definitions; Providing for Registration and Application for Placing or

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Maintaining Communications Facilities in Public Rights-of-Way; Providing for Grant of Authority to Place and Maintain Communications Facilities in Public Rights-of-Way; Providing for Transfer, Sale or Assignment of Communications Facilities in Public Rights-of-Way; Providing for Placement or Maintenance of a Communications Facility in Public Rights-of-Way; Providing for Suspension of Permits to Construct, Maintain and Occupy Public Rights-of-Way; Providing for Appeals; Providing for Conditional Use of Public Rights-of-Way; Providing for Involuntary Termination of Registration; Providing for Existing Communications Facilities in Public Rights-of-Way; Providing for Insurance; Providing for Indemnification; Providing for Performance/Payment Bonds; Providing for Security Fund; Providing for Enforcement Remedies; Providing for Abandonment of a Communications Facility; Providing for Force Majeure; Providing for Reservation of Rights and Remedies; Providing for Codification; Providing for Conflicts; Providing for Severability; Providing for Effective Date. (*Deferred From July 9, 2002, Town Council Meeting.*) [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 13-02 by title, as printed above.

Councilman Wyett moved approval of Ordinance No. 13-02, on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

2. Ordinance No. 15-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118 of the Code of Ordinances Relating to Traffic and Vehicles; Providing a New Article V Entitled Valet Parking Regulations; Providing Regulations Pertaining to Motor Vehicle Valet Service; Defining Terms; Requiring a Permit as a Condition to Providing Valet Service; Setting Forth Standards for the Review of Permit Applications; Requiring a Written Agreement for Use of Private Property to Store Motor Vehicles; Providing for Progressive Fines for Violation of this Ordinance; Setting Forth a Permit Revocation Procedure; Providing for Severability; Providing for

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Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]
(Staff recommends deferral to the September 10, 2002, Town Council Meeting)

Ordinance No. 15-02 was deferred, under Item V. Approval of the Agenda, at the request of staff.

3. Ordinance No. 16-02 An Ordinance of the Town Council of the Town of Palm Beach, Florida, Amending Chapter 18 Building and Building Regulations, at Article III, Architectural Review, Division 2 Architectural Commission, Section 18-166 so as to Require that One Member of the Architectural Commission to be a Landscape Architect if Available; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]
(Staff recommends deferral to the September 10, 2002, Town Council Meeting)

Ordinance No. 16-02 was deferred, under Item V. Approval of the Agenda, at the request of staff.

B. First Reading

1. Ordinance No. 17-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 1, General Provisions, of the Town Code of Ordinances at Section 1-15, Relating to Court Costs Assessed for Law Enforcement Education and Training, Amending Chapter 2, Administration, Relating to Approval of Bills, Standing Committees, Notice of Special Meetings, Record of Votes, Officers Specified, Compensation and Bond Requirements, Suspension, Removal of Employees, Contract for Medical Care of Employees,

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Deputy Clerks, General Duties, General Duties of Director of Finance, Designation of Town Depositories, Adoption of Budget of Expenditures,; 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. 17-02 by title, as printed above.

After discussion, Councilman Wyett moved approval of Ordinance no. 17-02, on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

2. Ordinance No. 18-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 38, Emergency Services, Article II, Alarm Systems, at Section 38-32 to Include a New Definition of Direct Connect Alarm Systems; at Section 38-35, Item (a) Relating to Service Charge for Excessive False Alarms; at Section 38-62, Item (b) to Include an Application Fee for Direct Connect Alarm Systems; at Section 38-92, Relating to Information Required; at Section 38-93, Relating to General Alarm User Requirements; at Section 38-94 Relating to Telephone Devices Prohibited; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Ordinance No. 18-02 by title, as printed above.

Councilman Wyett moved approval of Ordinance No. 18-02, on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

3. Ordinance No. 19-02 An Ordinance of the Town Council of the Town of Palm Beach, Florida, Amending Chapter 2 Administration, at Article VI Finance, Division 5 Contracts and Purchases, Section 2-566, so as to Provide For a New Sealed Bid Threshold of

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\$100,000.00 for Town Construction Projects and for Certain Construction Related Purchases, and a Sealed Bid Threshold of \$50,000.00 for all Vehicles Purchased by the Town; Continuing the Existing Sealed Bid Threshold of \$25,000.00 for all Other Purchases; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Assistant Town Manager]

Town Attorney Randolph read Ordinance No. 19-02 by title, as printed above.

Councilman Wyett moved approval of Ordinance No. 19-02, on first reading. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

- 4 Ordinance No. 20-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, rescinding Division 4, Development and/or Major Remodeling Community Service Fee Sections 18-111 Through 18-114, of Article II, Chapter 18, of the Town Code of Ordinances; Providing for Severability; Providing for Repeal of Ordinances in Conflict; providing for Codification; Providing an Effective Date

Councilman Wyett moved approval of Ordinance No. 20-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

XIII. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

Councilman Wyett requested that the final Town Council agenda include page numbers.

President Pro-Tem Goldblum requested an update on the progress being made for the traffic/parking plan for the north end, which had been discussed at the last Town Council meeting in lieu of a moratorium on building in the north end of the Town.

Town Manager Elwell responded that as the plan was refined, policy decisions would be requested from the Town Council as needed. Staff hoped to have a tentative plan

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in place by the end of the month, and planned on presenting it to the Town Council, as well as meeting with the community to inform the public and receive input and feedback.

Former Mayor Marix expressed concern regarding the construction work taking place on North Ocean Blvd.

Town Manager Elwell responded that staff would continue to work with both the City of West Palm Beach and the Florida Department of Transportation regarding communication with residents, as well as the utility companies, in order to give as much advance notice as possible to the residents. On the projects where staff had direct control, communications were being given directly to the residents in the specific area.

Mayor Smith suggested that notices regarding construction be included on the Town website.

Director of Planning, Zoning & Building Moore commented that staff was currently meeting to develop several different scenarios to manage traffic during construction planned along North Lake Way, and had prioritized access to residential property for public safety vehicles. Staff would be advising contractors that permit could be subject to a 30-45 day interruption in the validity of permits.

President Pro-Tem Goldblum suggested that the Shiny Sheet street map be used to outline detours and road closings in order to inform residents of the Town.

Town Manager Elwell responded that staff would investigate the use of the map.

XIV. DEVELOPMENT REVIEWS

Town Clerk Pollitt administered the oath to all those who would be addressing the Development Review matters.

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A. Appeals

1. Appeal of an Administrative Decision Declaring Eljan Lane to be a Street. [Maura A. Ziska, Esq.]

Ex-parte communication was declared by Councilman McLendon with Attorney Maura Ziska, to discuss the merits of the application; by President Pro-Tem Goldblum with Attorney Ziska, to discuss the merits of the application; by President Brooks with Attorney Ziska, concerning the status of Eljan Lane as a street, not an alley; by Councilman Wyett with Attorney Ziska with Attorney Ziska, concerning the status of Eljan Lane as a street not an alley.

Zoning Administrator Paul Castro reported that the appeal of an administrative decision declaring Eljan Lane to be a street had transpired over an application for a variance on the property of Howard Gittis, when he had requested a street side yard variance of 20' where a 35' minimum was required. Attorney Ziska had requested an interpretation of the Town Code as it related to Eljan Lane; her proposal was that Eljan Lane was not a street, but an alley, and that it did not provide primary access to properties on Eljan Lane. The Director of Planning, Zoning & Building had determined that Eljan Lane was a street, and Attorney Ziska was appealing that decision today. Mr. Castro stated that staff recommendation was to uphold the determination that Eljan Lane was a street; he explained that Eljan Lane had a street sign and did provide primary access to the neighbor to the east, and was considered a road or a street on the GIS system and Town Atlas.

Attorney Maura Ziska addressed the Town Council, distributing photographs, and stating that she had concluded that the Building Department interpretation of Eljan Lane as a street was erroneous; if it was construed as an alley and not as a street, there would be no need for the variance. She pointed out that the circumstances surrounding the property that it would affect must be considered – 200 Via Palma and 190 Via Palma were the two residences in question. Via Palma was a private road, and privately owned to the middle of Eljan Lane; both houses in question fronted Via Palma; both had Via Palma addresses. Eljan Lane serviced only the garage areas, was only 20' wide, and a deed restriction on 200 Via Palma prevented access from Algoma, therefore, the only access to 200 Via Palma was through Via Palma. She noted that there was precedence for construing Eljan Lane as an alley and not as a street, such as Laurian Lane. She read the definition of a street and an alley from the Town Zoning Code, and maintained that Eljan Lane could not be construed as a street.

Zoning Administrator Castro commented that staff had concluded that Eljan Lane

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was a street, because the definition of alley was for a facility that affords ONLY a secondary means of access to abutting property, and not intended for general traffic circulation. He maintained that Eljan Lane WAS intended for general traffic circulation and was not the secondary means of access to the property to the east. He noted that there were many side streets that were secondary means of access that were still considered streets and not alleys.

Mayor Smith commented that Laurian Lane was the access to the garages on the north side of Garden Road; Eljan Lane had been used as a street for years.

Mr. Howard Gittis, owner of 200 Via Palma, stated that the reason Eljan Lane, was paved was that he had paved it; it had not been paved before that time; he noted that his garage was on Eljan Lane, an the garage of 190 Via Palma. None of the neighboring property owners had expressed any objection to the construction of the awning requested.

After further discussion, President Pro-Tem Goldblum moved approval of acceptance of Eljan Lane as an alley, NOT a street, which would eliminate the need for Variance Request No. 16-2002. The motion was seconded by Councilman Wyett. On roll call the motion carried 3/2, with President Pro-Tem Goldblum, Councilman Wyett, and Councilman McLendon casting affirmative votes; Councilman McDonald and President Brooks casting dissenting votes.

B. Time Extensions

1. None.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. VARIANCE NO. 16-2002 The application of Howard Gittis relative to property described as lengthy metes and bounds legal description (on file); commonly known as 200 Via Palma; located in the R-A Zoning District. To allow construction of a carport awning with (i) a rear yard setback

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of 6' in lieu of the 15' maximum required in the R-A Zoning District; and (ii) a street side yard setback of 20' in lieu of the 35' required in the R-A Zoning District for corner lots.

(Deferred From May 14, June 11, and July 9, 2002, Town Council Meetings.)

Attorney Maura Ziska withdrew Variance No. 16-2002 from the Agenda, as a result of the ruling regarding Eljan Lane. *(See above).*

- b. VARIANCE NO. 20-2002 The application of Frederick R. Adler and Catherine G. Adler relative to property described as lengthy Metes and Bounds legal description on file; commonly known as 1520 South Ocean Boulevard; located in the R-A Zoning District. To allow two (2) variances for the enclosure of an existing deck, which is partially a second story and partially a third story, for construction of an addition for staff quarters. The first variance is a request to increase the building non-conforming 3rd floor element and the second variance is a request to provide a side yard setback at 10.91' in lieu of the 15' minimum required. *(Deferred From June 11 and July 9, 2002, Town Council Meetings.)* **(Request for Deferral to September 10, 2002, Town Council Meeting per Letter Dated July 29, 2002, From G.E. Young, P.A.)**

Variance No. 20-2002 was deferred earlier in the meeting, under Item V. Approval of the Agenda.

- c. VARIANCE NO. 23-2002 The application of Diane G. Holmes relative to property described as Lot 44, Revised Plat

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of Jungle Point; commonly known as 328 El Vedado Road; located in the R-A Zoning District. To allow construction of a one story addition consisting of 150 square feet with a side yard setback of 10' in lieu of the 15' required in the R-A Zoning District. (*Deferred From July 9, 2002, Town Council Meeting.*)

Attorney Maura Ziska addressed the Town Council, presenting an architectural rendering of the property in question, and recalling that Variance No. 23-2002 had been presented last month, and at that time the Town Council moved deferral for one month, to allow the applicant to study what portion of the house was originally John Volk designed, and what portion was an addition by Architect Jeff Smith; in addition, the applicant had agreed to trade back 300 sq. ft. of space for the 150 sq. ft. addition. She explained that architects had calculated that the addition accounted for less than 15% of the total residence. She explained that the hardships were the nonconforming lot, the irregular shape, the fact that this was a landmarked residence, and that the variance request was very minor.

Zoning Administrator Paul Castro commented that staff questioned the hardship, as the house was fairly large in size.

Attorney Ziska explained that the hardship ran with the land, the lot was nonconforming, the lay of the land was extremely irregular, the residence was landmarked, and the Zoning Code had changed since the original construction of the residence; the addition matched the existing building line.

After further discussion, Councilman McLendon moved approval of Variance No. 23-2002, citing the hardship as the nature of the property, with the condition that the service driveway be removed. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion failed 2/3, with Councilman McLendon, and President Pro-Tem Goldblum casting affirmative votes; Councilman McDonald, Councilman Wyett, and President Brooks casting dissenting votes.

- d. MODIFIED SPECIAL EXCEPTION NO.10-2002 WITH SITE PLAN REVIEW AND VARIANCES The application of New Bradley House LTD, George Levin - 111 Bradley Place and John C. Whelton - 285 and 255 Sunrise Avenue

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and 165 Bradley Place relative to property described as the east 10 feet of Lot 30 and all of Lots 31-37, inclusive, of "Map of Floral Park," and Lots 17 through 20 and northerly 40.35 feet of southerly 50 feet of westerly 0.04 feet of Lot 21 of Floral Park Addition No. 1 Lots 46 through 55 Sunrise Avenue addition No. 2 and Lots 35 through 37, Bungalow Park addition. (Off-site shared parking at Wachovia Bank located within the property at 285 and 255 Sunrise Avenue and 165 Bradley Place); located in the C-TS Zoning District. Special exception to allow operation of a commercial establishment (restaurant) in excess of 2,000 square feet of gross leasable area, provide 28 outdoor, open air seats as part of the restaurant use request (a relocation of permitted indoor seats outside); provide 30 off-site shared supplemental parking spaces located within 500 feet of the proposed restaurant at the Wachovia Bank parking lot located at 245 Royal Poinciana Way; eliminate the requirement for 24 required off-street parking spaces; to allow a front yard setback of 3.60 feet in lieu of the code required 18.50 feet for a variance of 14.90 feet, allow a side yard setback of 7.12 feet in lieu of the code required 18.50 feet for a variance of 11.38 feet, allow a floor area of 34,771 square feet in lieu of the maximum allowed floor area of 15,000 square feet for a variance of 19,771 square feet; allow a building projection (ventilation duct) to project into the required rear yard setback to the property line for a 0.0 foot setback in lieu of the required rear setback of 23.6 feet for a variance of 23.6 feet; allow lot coverage of 42.4% in lieu of 41.05 % existing and 35% maximum allowed; and Site Plan approval for a proposed commercial establishment (restaurant) over 2,000 square feet to replace an enclosed awning with permanent structure, said space being 271 square feet. The Modification is a change in the proposed location for off-site, off-street supplemental shared parking from the Fidelity Federal parking lot to the Wachovia Bank located within the property at 285 and 255 Sunrise Avenue and 165 Bradley Place. *(Deferred From July 9, 2002, Town Council Meeting.)*

Ex-parte communications were declared by Councilman McLendon, via meeting

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with Attorney Ron Kolins; by President Pro-Tem Goldblum via meeting with Attorney Kolins, and with the owner of the property; by President Brooks via meeting with Attorney Kolins, Attorney Frank Lynch, Mr. Sumner Kaye, regarding the with plan, as well as a conversation with Ms. Adams; by Councilman Wyett via conversation with Lowry Bell and Attorney Kolins; by Councilman McDonald via a conversation with Attorney Kolins, and Ms. Adams.

Attorney Kolins addressed the Town Council, on behalf of the applicant, stating that a Chinese Bradley restaurant was being proposed for placement in The Bradley House hotel at the location previously occupied by the E.R. Bradley Saloon. He explained that he represented The Bradley House, George Levin; Attorney Frank Lynch represented directly the applicant for the restaurant; Attorney Sumner Kaye represented Simon Fireman, an investor in the restaurant; Jerry Wentzel, of DKS Associates was the traffic consultant, and Jeff Pang was the operator of the proposed restaurant. He pointed out that expressions of support for the proposal included: 197 letters of support, a petition of support signed by 58 people; the owner of Royal Poinciana South apartment building, the Publix Supermarket; a group of people in support of the project were present in the audience as well.

Attorney Kolins presented an architectural rendering of the proposal, maintaining that the restaurant would be an upscale restaurant, and would represent an investment of approximately \$1.5 million; it would not be a nightclub or drinking establishment that would attract the types of problems that residents in the neighborhood had suffered with previously. The only music used would be quiet, piano music inside the restaurant. There would be 106 seats, 28 of which would be in the courtyard of The Bradley House Hotel; the entrance would be on the north and the west elevation would be redesigned. He explained that the hotel had already begun a substantial renovation to make it a first class place, and there was a synergy between it and the proposed restaurant. He stressed that a great majority of the variance request was because the grandfathering aspect of the previous business had lapsed. There were only two items that were not currently present, in terms of variances and special exceptions: enclose the patio that was heretofore covered by an awning at Bradley's facing on Sunset, and a vent for the exhaust system. Many improvements would be made to the building, such as new plumbing, updated electrical, etc.

Attorney Kolins explained how the issues of traffic/parking and odors would be addressed, and presented the following items for the record:

- The list of 196 letters of support
- The petition signed by 58 people
- The letter from Publix Supermarket, dated July 23, 2002

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The traffic report

Letter from the representative of Wachovia

Letter from a representative of Mr. Abrams regarding the parking lots.

Application Booklet

Zoning Administrator Castro commented that staff had met with representatives of the applicant on several occasions; staff concerns revolved around four separate issues: noise, odor, traffic, and parking. He stated that he believed that the applicant had addressed the odor issue with the state of the art equipment that was being proposed. Regarding noise, staff did not support outdoor seating, as there had been problems in the area in the past; noise was a legitimate concern for staff; staff believed that the applicant should come back later, if approved, after operating for several months to allow staff to consider outdoor seating; staff also believed that if outdoor seating was allowed that the restaurant keep the French doors coming in and out of the restaurant closed at all times and possibly look at a double entry feature to the front entry to the hotel so that there would be two sets of doors before the restaurant setting. Staff was very concerned about traffic circulation and parking during peak season, peak hours; there was a limited amount of on-street and off-street parking in the area; he noted that the two locations for parking, as well as the ten parking places in the hotel, pointed out by Attorney Kolins had not been formally requested through staff, nor had that use of the locations been advertised. Staff was assuming that, in the near future, the parking lot where the restaurant was planning on parking was going to be utilized for some other use. The hotel parking did not include enough parking for the property at this time.

President Pro-Tem Goldblum requested that cars would not be parked in the Wachovia parking east of the west side of the Mildred Hoit shop

Councilman Wyett pointed out that there were letters of opposition to the proposed restaurant as well, and that there were many other locations in Town that were vacant and would support a restaurant.

In response to Councilman McDonald, Attorney Kolins explained that the restaurant itself encompassed approximately 2,000 sq. ft., and the remainder was the kitchen/storage area.

Attorney Sumner Kaye commented that the parking agreement with Mr. Abraham was for a two year period.

General Manager of the Palm Beach Biltmore, Richard Brooks, commented that he had been requested to speak for the Biltmore administration, and that the administration had

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no objection to the restaurant, because an agreement had been reached as contained in a letter from the representatives of the restaurant, detailing the valet parking operation and the emissions cleaning system. He requested that the letter be incorporated in the official record. He explained that the entire Board of Directors had not been able to convene in order to vote on this issue, however, the President and Secretary of the Association had requested that he appear before the Town Council today. He explained that there had been an Executive Committee meeting, and they had appointed the Secretary to review the proposed restaurant project and then make recommendations.

In response to Councilman McDonald, Attorney Kolins stated that the hardship was that the property was already existing in its configuration, and it would be impossible to operate anything in the space without the approval of the status quo. He maintained that enclosure of the glass space that was planned, as well as the state of the art ventilation system. He produced a tentative menu of the restaurant.

Attorney Frank Lynch commented that in anticipation of the opening of this restaurant, Mr. Fireman had sent Mr. Pang to the far east to find new and different recipes for the restaurant.

Mr. Jeff Pang, owner of the Shangri-La restaurant, commented that he had also owned a restaurant in Scottsdale, Arizona, and had worked in Chinese restaurants in California.

Zoning Administrator Castro stated that if the restaurant wanted to use the lunch time parking lots as they had designated today, it would be necessary to re-advertise, and a special exception for off-site parking would be required. In addition, staff requested that the Police Department and traffic consultant for the Town be heard.

Mr. Scotch Peloso, resident, commented that he would like some assurances that restaurant staff members would be parking only in the Wachovia parking lot.

In response to President Brooks, Attorney Kolins suggested that the restaurant be allowed to operate for a period of three months from opening, and if there were problems with the outside dining at that time, it would be moved inside.

Police Chief Reiter addressed the Town Council, stating that there were concerns with the valet parking operation – the location on Bradley Park was far better than on the north side of the building; there were concerns with parking in the area; there were concerns with the noise potentially generated from the outside dining. He recognized that the applicant had worked to alleviate some of the concerns.

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Councilman Wyett expressed concern regarding the Town serving aspects, as well as parking of restaurant employees.

Director of Planning, Zoning & Building Robert Moore commented that the use of a particular property was not being taken away; this was a nonconforming use that had expired; the restaurant/bar/nightclub location had expired and it was very rare that the Town had the opportunity to take a second look at a nonconforming use in a location and make a decision as to whether to reinstate it. He noted that the entire special exception revolved around the Town serving aspect.

Attorney Kolins responded that the property had been vacant for several years, and there had been many proposals for the use of the property, all for its use as a bar. The property was not appropriate for residential; no one was interested in using it for retail; the only use for the space, other than a bar, was for a restaurant, and he maintained if this use was not allowed the entire community would suffer. He stated that the applicant was willing to go through the process to re-advertise as a result of the requested luncheon parking; he agreed that a condition of approval would be that no employees would park in designated areas. He stated that the applicant was convinced that the style and price of the restaurant would assure that it was Town serving.

Ms. Gilda Beane, 248 Park Avenue, commented that the hours of operation of the restaurant must be discussed, and the use of the parking must be clarified.

Attorney Kolins responded that the parking spaces at Wachovia would be used by only the restaurant; an 11:30 p.m. closing time was being requested.

Ms. Toby Drucker commented that she was a guest in Palm Beach quite often, and that she believed the restaurant and hotel would represent what Palm Beach wanted to preserve.

Mr. Gareth Klotz, American Consulting Engineers, representing the Town of Palm as a consulting traffic engineer, addressed the Town Council stating that he had reviewed the DKS Report, and one of the biggest problems that he saw was the peak season traffic. He noted that he had interviewed managers at existing establishments on Royal Poinciana Way, and the existing restaurants today averaged 75 spaces during lunch and evening hours, outside of peak season. The managers had indicated that there was no parking available, and it was a fight for parking spaces during peak season. He suggested that the traffic analysis be postponed until peak season began; eliminating four spaces on Bradley for valet parking would leave only four parking spaces on Bradley, and traffic may back up at the traffic signal at Bradley and Royal Poinciana. Another concern was the parking lot at the

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hotel, where ten parking spaces would be utilized for restaurant staff parking, which may be a problem in peak season.

Councilman Wyett moved denial of Modified Special Exception No. 10-2002 with Site Plan Review and Variances. The motion failed for lack of a second.

After discussion, President Pro-Tem Goldblum moved approval of Modified Special Exception No. 10-2002 with Site Plan Review and Variances, with the following conditions:

- ▶ **no serving of lunch until the restaurant was proven successful,**
- ▶ **elimination of outside dining,**
- ▶ **a double door entry**
- ▶ **the enclosure of the present open patio on the north side,**
- ▶ **the inclusion of an odor control system,**
- ▶ **no staff parking on the street,**
- ▶ **no more than six delivery trucks per week,**
- ▶ **no parking east of the Mildred Hoit building,**
- ▶ **an off-site tri-party parking agreement between the owner of the parking lot of Wachovia, the Town, and the applicant, to be recorded in the Palm Beach County records,**
- ▶ **that the Town traffic consultant do another analysis on the level of service in November or December,**
- ▶ **the last order to be taken at 11:30 p.m.**
- ▶ **no music with the exception of piano playing,**
- ▶ **no parking in the north section of the Wachovia parking lot,**
- ▶ **applicant to return within six months to document the Town serving status.**

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

Zoning Administrator Castro clarified that the applicant would need to file a new application in order to request outdoor seating or modify the special exception; staff recommended a six month period after the restaurant was opened.

2. New Business

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- a. VARIANCE NO. 28-2002 The application of Alfonso Fanjul Jr. relative to property described as Lots 7, 7A, 8 and 8A of Stotesbury Park; commonly known as 359 North Lake Way; located in the R-B Zoning District. To allow construction of pilings 158 feet from land in lieu of the 150 feet maximum.

Attorney Frank Chopin, on behalf of the applicant, addressed the Town Council, stating that the applicant was requesting to move mooring pilings 8' out from the maximum 150' allowed per Code. He stated that the situation was caused by the depth of the water, the existing dock, and the size of the beam of the boat.

President Pro-Tem Goldblum moved approval of Variance No. 28-2002. The motion was seconded by Councilman McLendon, and carried 3/0 on roll call, as Councilman McDonald and Councilman Wyett had temporarily left the room.

- b. VARIANCE NO. 29-2002 The application of T.W. Jr. and Deborah C. Maschmeyer relative to property described as Lot 7, Boulevard Estates; commonly known as 153 Kings Road; located in the R-A Zoning District. To allow construction of a new two-car garage with a front yard setback of 32' in lieu of the 35' setback, and with a side yard setback of 10' on the east side in lieu of the 15' required by code, and with a maximum lot coverage of 30.4% in lieu of the 25% maximum lot coverage allowed by code.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the garage had been redesigned in accord with FEMA regulations; the hardship was the undersized lot.

President Pro-Tem Goldblum moved approval of Variance No. 29-2002. The motion was seconded by Councilman Wyett, and on roll call carried unanimously.

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- c. VARIANCE NO. 30-2002 The application of Paul and Lori B. Lapidus relative to property described as the West ½ of Lot 3, all of Lots 4 and 5, and the East ½ of Lot 6, Block 1, Reverie; commonly known as 223 Pendleton Avenue; located in the R-B Zoning District. A variance request to split a large conforming lot into two smaller non-conforming lots. The variances are to create a 7,776 square foot lot (east) in lieu of the 10,000 square foot minimum required; a variance on said lot be 70 feet wide in lieu of the 100 foot minimum required; and variances for the west lot as follow: Variance request for a 9,284 square foot lot in lieu of the 10,000 square foot minimum required; variance for a lot width of 83.58' in lieu of the 100' width minimum required; variance request for a side yard setback of 14.89' from the new east property line in lieu of the 15' side setback required for a two-story structure; variance for a maximum lot coverage of 30.6% in lieu of the 30% maximum allowed in the R-B District; and, a variance request for a cubic content ratio of 4.37 in lieu of the maximum of 4.07 allowed on this lot.

Variance No. 30-2002 was deferred to the September 10, 2002, Town Council meeting, earlier in the meeting.

- d. VARIANCE NO. 31-2002 The application of James and Jane Buffett relative to property described as Lots 7, 8, 21, 22, and 23, Singer Addition to Palm Beach; commonly known as 540 South Ocean Boulevard; located in the R-A Zoning District. To allow an increase of wall height along the east property line from 4.3' to a wall height ranging from 8.1' to 8.3' above the crown of the road, in lieu of the 6' maximum allowed by code.

Ex-parte communication was declared by Councilman McLendon with Attorney Ziska; by President Pro-Tem Goldblum with Attorney Ziska; by President Brooks with

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Attorney Ziska.

Attorney Maura Ziska , on behalf of the applicant, addressed the Town Council, stating that the increase in wall height was being requested for security reasons, and that the house sat approximately 7' higher than the crown of the road, causing noise to flow over the wall into the main living area. She explained that the existing 9' hedge would sight screen the wall; the applicant had also agreed to curb the straight angled wall at South Ocean Blvd. and Via Marina, which would improve a very dangerous traffic condition.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments, as stated on the Application Review Sheet: Comprehensive Plan: sight screen wall, if approved; Building Department: hardship should be addressed -- if approved wall should be sight screened behind hedge; Town Manager: if approved, sight screen behind hedge.

President Pro-Tem Goldblum moved approval of Variance No. 31-2002, with the condition that there would always be a hedge screen. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

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

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President Brooks reported that the applicant had requested deferral of Special Exception 11-2002 with Site Plan Review for one month.

Councilman Wyett moved approval of deferral of Special Exception 11-2002 with Site Plan Review to the September 10, 2002, Town Council meeting. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Councilman McDonald commented that it was an injustice to members of the public who had been present to follow the Town Council Agenda in the morning, and who had returned in the afternoon, not knowing that Special Exception 11-2002 had been deferred.

President Brooks apologized for the inconvenience.

- f. SPECIAL EXCEPTION NO. 12-2002 The application of Howard Gittis relative to property described as lengthy Metes and Bounds description on file; commonly known as 200 Via Palma; located in the R-A Zoning District. To allow for two driveway gates to be set back 3'1" from the street pavement in lieu of the 18' minimum required for a property located on a dead-end street.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the house was the last house on Via Palma, and there were no driveways across the street that would inhabit traffic flow, or create an unsafe condition.

Department of Planning, Zoning & Building Robert Moore reported that staff had no objections to the request.

Councilman Wyett moved approval of Special Exception No. 12-2002. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

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- g. SITE PLAN REVIEW NO. 8-2002 The application of Raymond and Maria Floyd relative to property described as Lot 1 and 1A, East Shore Terrace; commonly known as 322 Plantation Road; located in the R-B Zoning District. To allow for a modification to previously approved Site Plan Review #3-2002 to add a sub-basement to an approved two-story home, under the outline of the first floor foyer area, for wine cellar/storage use. Site Plan Review is required because the platted lot on which the home is to be constructed is 84.7' wide in lieu of the 100 foot minimum

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

Attorney Frank Chopin, on behalf of the applicant, addressed the Town Council, stating that the applicant sought approval of a modification of a previously approved site plan for the home that they planned to build at 322 Plantation. He presented the site plan that had been approved in March, which had been modified to include a sub-basement. He stated that he had been informed several days ago that Attorney Kolins would represent Mr. and Mrs. Jerome Fisher neighboring property owners in objection to the request. Attorney Chopin stated that the Fishers had entered into an agreement with the applicant to support the site plan that had been approved. He maintained that the objection that excavating coral rock would damage the Fisher property had no merit. He explained that a structural engineer had evaluated the subject, and had determined that there would be no adverse impact on the neighboring property; he submitted the letter from the engineer for the record.

Zoning Administrator Paul Castro reported that staff had considered the proposal, and understood that the architects had contacted the Department of Community Affairs (DCA) who handled FEMA requirements, and had provided a determination that the sub-basement could be built below 6' NGVD, provided no portion of the house itself was within the A-7 flood zone. Staff had no objections to the application at this time.

Attorney Ron Kolins, on behalf of Mr. and Mrs. Jerome Fisher, addressed the Town Council, stating that the support of the site plan was not withdrawn, however, the plan containing a sub-basement had not been presented to his clients at the time of the original site plan. He explained that his clients did not object to the sub-basement per se; there was concern regarding the potential ramifications of the drilling work necessary

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on the coral rock foundation in the area. He explained that his clients were presently out of the country, and had requested an engineering analysis; if there was no problem there would be no objection. He stated that he had just received the letter from the structural engineer retained by Attorney Chopin, and had not had the opportunity to present it to Mr. and Mrs. Fisher; in addition, he indicated that there was no assurance in the letter that there would be no negative ramifications of the drilling for the sub-basement. He stated that his client did not object to the sub-basement per se, however, the request for a deferral had been made so that a formal structural engineering analysis could be completed before the construction occurred.

In response to President Brooks, Attorney Chopin explained that the purpose of the sub-basement was for storage; he explained that the applicant had agreed to reduce the size of the house in order to satisfy the Fishers, and the architects had designed the sub-basement in order to create a storage area. He maintained that there was not a requirement that an applicant requesting site plan approval must gather evidence to disprove a negative. He requested that the applicant not be put to the expense and inconvenience of having to do so.

Councilman Wyett moved approval of Site Plan Review No. 8-2002, with the condition that the appropriate drills be used, not jackhammers. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

- h. FLOOD VARIANCE NO. 1-2002 The application of David J. Canepari and Diane Ellwood Canepari relative to property described as Lot 51, Mockingbird Trail Tract, together with an undivided 1/26th interest in Lots 41A and 42A; commonly known as 260 Nightingale Trail; located in the R-B Zoning District. To allow for renovations and additions which exceed 50% of the market value to an existing one story single family residence with a finished floor elevation of 7.26' NGVD in lieu of the 7.5' NGVD required.

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

Mr. David Canepari, owner of 260 Nightingale Trail, addressed the Town

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Council, stated that the home had been purchased in 1998 with a commitment towards its restoration and expansion. He explained that the components of the existing house were failing – none of the windows could be opened, and there was no natural ventilation; the three bathrooms had been plagued with escalating plumbing problems and needed updating. An architect had been hired to design a one story addition in the rear, and Architectural Commission (ARCOM) approval had been obtained earlier this year. The construction work had been undertaken based upon an elevation certificate provided at purchase, certifying that the floor elevation was 7.4'. The elevation was found to be in error, and the actual floor elevation was 7.26', almost 3" below the required 7.5'. The 8' ceilings and low door openings made it unfeasible to raise the floor by 3". The proposed renovations included a complete refurbishing of the exterior; the kitchen and bath would be replaced, new flooring would be added, new light fixtures, new plumbing, new air conditioning – all would be brought up to Town Code.

Zoning Administrator Paul Castro commented that staff requested two conditions of approval: that the applicant enter into a Hold Harmless Agreement with the Town, so that if there was a flood the Town would not be held liable; that the applicant provide 2" inches of drainage as required by Code.

Mr. Canepari agreed to accept the conditions of approval.

President Pro-Tem Goldblum moved approval of Flood Variance No. 1-2002, with the conditions that the applicant enter into a Hold Harmless Agreement with the Town of Palm Beach, and that the applicant provide 2" of drainage as required by Code. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett had left the meeting.

3. Other

- a. Request From Dale R. Hedrick, of Hedrick Brothers Construction Company for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project. (First Union National Bank - 255 South County Road) [Robert L. Moore, Director of Planning, Zoning & Building]

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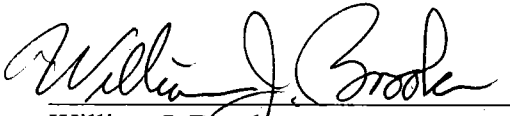
This item was withdrawn from the Agenda, earlier in the meeting.

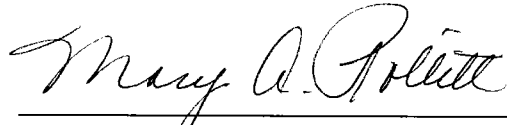
XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

There being no further business, the regular Town Council Meeting of August 13, 2002, was adjourned at 5:55 p.m.


William J. Brooks
Town Council President


Mary A. Pollitt
Town Clerk

