MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 13, 2000

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order at 9:30 a.m. on Tuesday, June 13, 2000, by President Jack McDonald. On roll call, the following Elected Officials were found to be in attendance. Mayor Lesly Smith; President Jack McDonald; President Pro-Tem Sam McLendon; Councilman William Brooks; Councilman Norman Goldblum; and Councilman Allen Wyett. Also in attendance for all or part of the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Public Works Director Al Dusey, Assistant Town Manager Tom Bradford; Assistant to the Town Manager David Jakubiak; Assistant Finance Director Cheryl Somers; Assistant Fire-Rescue Chief Kent Koelz; Assistant Police Chief Michael Reiter; Human Resources Director William Crouse; Information Systems Manager Spencer Wilson; Town Engineer Jim Bowser; Planning, Zoning & Building Director Robert Moore; Assistant Planning, Zoning & Building Director Veronica Close; Zoning Administrator Paul Castro; Chief Code Compliance Officer Brian House; Risk Manager Karen Temme; Recreation Director Russell Bitzer; Deputy Town Clerk Susan Eichhorn; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Sally Gingras, Architectural Commission, From 1995 Through 2000
(Request for Deferral per Letter Dated, June 7, 2000, from Sally Gingras, to be deferred to the November 14, 2000 Town Council Meeting)

This item was deferred to the November 14, 2000, Town Council meeting.

B. Recognition of Michael Eterginio, Public Works Inspector, Public Works Department - Ten Years and Three Months

Mr. Eterginio was not present at the meeting.

IV. COMMENTS OF MAYOR LESLY S. SMITH

The following is a verbatim transcript of the Mayor's comments:

Before I make my comments, I want to say that while it is unseasonably warm for Christmas, we have received a delightful holiday gift and I want to acknowledge it publicly. Our friend, "Giorgio's" on Worth Avenue has donated to the Town a new Christmas tree for our December festivities. Would you come up to the dais, Mr. Sharaubim. As Mayor, on behalf of the Town Council, the staff and all of the residents of Palm Beach, thank you for making such a generous offer. We are pleased to accept and hope you will join us at the tree-lighting ceremony in six months. Thank you.

I know everyone will remember the date for the Town's Annual Fourth of July Party. Everybody come, friends, parents, grandparents, to Bradley Park, and we look forward to seeing you there.

Hurricane season has started and the hurricane preparedness book is available for you to pick up at the Town Manager's office. I hope that we will be spared this summer from a hurricane, but be assured that the Town is prepared.

As far as the "monster mansion" ordinances that I obtained from Santa Monica and San Jose, California that I referred to last month, copies are in the Building Department, and are available to anyone who is interested.

Now, some comments on decisions before us today and projects that are coming up in the next few weeks.

I initiated a competition for landscape design for our new park on the Boynton Landscape property and entries are due soon. As I said when I announced the project, I am hoping we will receive some stunning, outside-the-box proposals from small as well as large landscape design firms. This is a tiny park but it has the potential to be a jewel in our crown of lovely green in-town retreats.

There has been some speculation about the Town paying to bury utility lines. Estimates are in the millions of dollars, which I could not in good conscience support without a mandate from residents. If the Council wishes to pursue underground lines, I suggest we put it to referendum and let the people decide whether they want to pay.

Today we have before us a request from MGM to film in Palm Beach a star-studded movie with the working title, "The Breakers." One element of the proposal involves halting traffic for several hours, which Mr. Randolph tells us is contrary to the Town's code and I believe we should refuse permission. Another element calls for setting tables along Worth Avenue as if there were a sidewalk café, which is contrary to our previous decisions in similar cases and, in my view, a dangerous precedent to set. I certainly do not object to filming that falls within our guidelines, but I urge the Council to think of residents first as they consider these requests.

Mr. Doney has recommended to the Council that we build a new central fire station to maintain maximum flexibility over the next 30 years or so. This appears to be especially critical in light of the proposed temporary closing of Good Samaritan, which would require an additional ambulance for Fire-Rescue because of the longer distance. Mr. Doney has recommended that we build on the Gray's Mobil station site, which I am on record as opposing because I believe the $3.5 million price tag is outrageous. I respect Mr. Doney's judgment in recommending a new station rather than renovation, but I urge the Council to get accurate, current costs for all our options before making a decision.

I would like to report that I have been in communication with Congressman Clay Shaw in regard to this matter. Congressman Shaw has indicated his interest in intervening with the hope of averting litigation between the Town and the Army Corp of Engineers. I am planning to meet with Congressman Shaw to further explore this matter and certainly it would be to the Town's advantage if we could find a solution to this problem short of litigation. It is my recommendation, therefore, that the Town Council defer from today's agenda the matter relating to pursuing litigation against the Corp in order to allow me the opportunity to meet with Congressman Shaw. I am not suggesting that we abandon the thought of litigation, but that we simply put it on hold until we can determine whether a better solution can be found.

On another erosion issue – the infamous Erosion Control Line – Mr. Randolph, Mr Dusey and I met with officials from the State Department of Environmental protection in Tallahassee and we continue to negotiate what I believe will be a favorable outcome. I would defer reporting on the details until we actually have a concrete offer in writing from the State of Florida...but beachfront homeowners and shore protection advocates asked us to move quickly, and we are doing that. I appreciate your patience with this and perhaps will have results next week.

Now I want to report to the Council the results of meetings on an issue that remains of great concern to our residents.

We have all read of the recent proposal to consolidate St. Mary's Hospital and Good Samaritan Hospital on the Good Samaritan campus. This recommendation to the Intracoastal Health Foundation Board seems to have been presented as a fait accompli without the benefit of the public which is the direct beneficiary of the services of each of these hospitals. Despite the lip service that has been paid by the outside consultants and the Intracoastal board to involving the public, this latest revelation appears to be just another step in a pattern of arrogance and irresponsibility which has characterized the leadership in the Intracoastal Health Foundation for the past several months.

The most recent proposal for consolidation has many problems which appear not to have been considered by the Cambio Group in its ultimate recommendation. It is time for the public to become involved not only with its input, but in the decision making process to keep both St. Mary's and Good Samaritan Hospitals open.

I am a member of a community coalition of the Economic Council of Palm Beach County to study the information and reports which led to the ultimate recommendation to consolidate St. Mary's Hospital on the Good Samaritan Hospital campus. We have received a small portion of the information that has been requested. Additional information is being provided to the Attorney General's Office and when that is available we will have an opportunity to study these materials and determine for ourselves why, in a relatively short period of time, two profitable hospitals are now reportedly losing approximately two and one half million dollars per month.

I had previously announced that if it took litigation to keep St. Mary's and Good Samaritan Hospitals open, I would pursue that remedy. I am still of the belief that if we do not receive the cooperation of the directors of the Intracoastal Health Foundation in finding a solution to keep both hospitals open, litigation should be pursued. I have had conversations in this regard with others, including Palm Beach County Commissioner Carol Roberts, who has indicated that she intends to propose to her Commission that Palm Beach County join with the Town and others in a lawsuit. I request that all responsible members of this community involve themselves in the effort to keep both of these vitally needed hospitals open to the public (so as to afford the opportunity for quality care for the indigent and for all residents of the community). Save our hospitals!

V. APPROVAL OF THE AGENDA

The following changes were made to the Agenda:

DEFER Item XI., Consideration of Report Regarding Litigation with Army Corps of Engineers - Jerry Stouck, Spriggs & Hollingsworth to the July 11, 2000, Town Council meeting;

Councilman Wyett moved deferral of Item XI (Consideration of Report Regarding Litigation with Army Corps of Engineers - Jerry Stouck, Spriggs & Hollingsworth) to the July 11, 2000, Town Council meeting. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

ADD Item XV.A.1., Resolution No. 24-00 - Extending the Term of the Cable Television Franchise of Comcast Cablevision of West Palm Beach, Inc.;

Councilman Goldblum moved the addition of Item XV.A.1. (Resolution No. 24-00 - Extending the Term of the Cable Television Franchise of Comcast Cablevision of West Palm Beach, Inc.) to the June 13, 2000, Agenda. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

DEFER Item XVII.B.1, Variance No. 6-2000 - Edwin L. Ecclestone, Jr. , 190 S. Ocean Blvd; located in the R-B Zoning District. To allow construction of an awning providing no side yard setbacks on the north or south in lieu of 10' required and providing a 3' rear yard setback in lieu of 10' required, to the July 11, 2000, Town Council meeting;

Councilman Brooks moved deferral of Item XVII.B.1. (Variance No. 6-2000 - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd., located in the R-B Zoning District) to the July 11, 2000, Town Council meeting. The motion was seconded by Councilman Wyett, and on roll call carried unanimously.

WITHDRAW Item XVII. B.4., Special Exception No. 10-2000 - Thomas Campaniello, 240 S. County Rd; lengthy legal description on file; located in the C-TS zoning district. To allow a 2,201 sq. ft. retail occupancy in lieu of a 2,000 sq. ft. maximum allowed;

Councilman Wyett moved withdrawal of Item XVII. B. 4. (Special Exception No. 10-2000 - Thomas Campaniello, 240 S. County Rd.) from the June 13, 2000, Agenda. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

RELOCATE Item XVII.B.5., Site Plan Review No. 6-2000 - The application of Samuel & Louise Edelman relative to property described as Lots 14, 14A & S15' of Lots 15 & 15A, Alto Lido; commonly known as 1255 N. Lake Way located in the R-B zoning district. To allow construction of a residence on a lot width of 89.11' in lieu of 100' minimum required, to Item XVII.B.15;

Councilman Brooks moved that Item XVII.B. 5. (Site Plan Review No. 6-2000 - Samuel & Louise Edelman, 1255 N. Lake Way) be relocated to Item XVII. B. 15 on the June 13, 2000, Agenda. The motion was seconded by Councilman Goldblum, and on roll call carried unanimously.

DEFER Items XVII. B.13 and XVII B.14, Special Exceptions Numbered 11-2000 and 12-2000, to a time certain of 2:15 p.m. on the agenda;

Councilman Wyett moved deferral of Items XVII. B. 13 and XVII. B. 14. (Special Exception No. 11-2000, Bank of America, 396 Royal Palm Way, and Special Exception 12-2000 (Bank of America, 140 N. County Rd.) to a time certain of 2:15 p.m. on the June 13, 2000, Agenda. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

DEFER Item XVII. C.2., Special Exception No. 21-99 - Nikiforos Stoupas, to the May 8, 2001, Town Council meeting;

Councilman Brooks moved deferral of Item XVII.C.2. (Special Exception No. 21-99 - Nikiforos Stoupas, 101 N. County Road) to the May 8, 2001, Town Council meeting. The motion was seconded by Councilman Goldblum, and on roll call carried unanimously.

REVERSE THE ORDER of Item XVII.C.3 (Catherine F. Bradley, 255 Park Avenue - Proposed Initiation of Foreclosure) on page 8 of the agenda;

Councilman Wyett moved approval of the reversal in order of Item XVII. C. 3. (Catherine F. Bradley, 255 Park Avenue - Proposed Initiation of Foreclosure) with Item XVII. C. 4. (Royal Palm Way Water Main Installation Request). The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

REVERSE THE ORDER of Item XVII. C.4. (Royal Palm Way Water Main Installation Request) on page 8 of the agenda;

Councilman Brooks moved approval of the reversal in order of Item XVII. C.4. (Royal Palm Way Water Main Installation Request) with Item XVII. C.3. (Catherine F. Bradley, 255 Park Avenue - Proposed Initiation of Foreclosure). The motion was seconded by Councilman Goldblum, and on roll call carried unanimously.

ADD Item XV.E. Other 5. - Consideration of FY2001 Budget Cuts.

Councilman Wyett moved approval of the addition of Item XV. E. Other 5. (Consideration of FY2001 Budget Cuts) to the June 13, 2000, Agenda. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Dr. Sten Lilja, 1330 N. Ocean Boulevard, spoke on issues related to the establishment of an erosion control line.

Mrs. Nancy Douthit, 330 Cocoanut, commented on issues related to nourishing only the two public beaches-Midtown and Phipps Ocean Park.

Les Evans, Board Member of the Royal Poinciana Business Group, mentioned that a meeting will be held at 8:00 a.m. on June 14th at 251 Sunrise Avenue and a D.O.T. representative will be present to discuss the road construction on Royal Poinciana Boulevard with the possibility of narrowing the median and adding the area to the street side in front of the merchants with greenery planted in that space.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF MAY 9, 2000

VIII. APPROVAL OF CHECK REGISTERS FOR MAY, 2000

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF MAY 24, 2000

X. OTHER

A. Request to Purchase Replacement Mobile Intensive Care Unit (MICU) from Donation of $130,000 from Mark T. Maxwell

B. Royal Poinciana Theatre, by Mr. Phil D. O'Connell, Jr., for an Additional One Year Extension of Lease Agreement to Continue Wednesday Matinee Program Through the 2000/2001 Season

C. Authorization for the Town Council President to execute Florida Department of Environmental Protection(FDEP), Contract No. 97-PB-5 Lake Worth Inlet Management Plan Implementation

D. Florida League of Cities Annual Conference, August 10 through 12, 2000, in Ft. Lauderdale, Florida

E. Software Needs Analysis Report - Memorandum by Finance Director Skittone, dated 6/1/00

Councilman Wyett moved approval of the Approved Agenda. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

REGULAR AGENDA

XI. CONSIDERATION OF REPORT REGARDING LITIGATION WITH ARMY CORPS OF ENGINEERS - Jerry Stouck, Spriggs & Hollingsworth

A. Erosion Control Line Issues - Update

Mr. Randolph reported a meeting was held with the representatives of the State in Tallahassee with President Smith, Public Works Director Dusey and himself attending. He added the three of them were encouraged by that meeting and a subsequent follow-up meeting was attended by Mr. Dusey and the attorney representing the Town in Tallahassee. That meeting was held last week with encouraging results but Mr. Randolph was reluctant to report anything further. He said additional information should be available within the next week or two.

XII. COMMITTEE REPORTS

A. Public Works Committee Report

1. May 10, 2000 Committee Report

REPORT OF THE PUBLIC WORKS COMMITTEE HELD ON MAY 10, 2000

I. CALL TO ORDER AND ROLL CALL

Chairman Allen Wyett called the meeting of the Public Works Committee to order at 2:03 p.m. on Wednesday, May 10, 2000, in the Town Council Chambers.

On roll call, Chairman Wyett and Committee Member Sam McLendon were present. Attending for all or part of the meeting were: Town Manager Robert J. Doney; Public Works Director Albert P. Dusey; Town Engineer James Bowser; Assistant Police Chief Michael Reiter; Assistant Town Manager Tom Bradford; Assistant to the Town Manager David Jakubiak; Fire-Rescue Chief Ken Elmore; and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as written.

III. UNDERGROUND UTILITY LINES (FLORIDA POWER & LIGHT, BELLSOUTH, AND COMCAST) IN SEVERAL LOCATIONS WITHIN THE TOWN OF PALM BEACH PER MEMORANDUM DATED MARCH 23, 2000, FROM COUNCILMAN WYETT

Chairman Wyett announced the Committee was meeting to discuss the practicality and desirability of putting the Town's utility wires, including electric, telephone, cable, underground on a basis of north and south. Mr. Wyett said while he recognized the fact the Town may not be able to have all the wires underground, he would like to see the key wires go underground and look at the east/west wires at some future time. He suggested underground wires may be a better security feature during storms.

Representatives from the utility companies attending the meeting were:

Larry Mayernik -	BellSouth
Sid Poe -	BellSouth
Leonard Maxwell -	Comcast Cable
Bill Hartigan -	Florida Power & Light
Rod Macon -	Florida Power & Light

Rod Macon referred to a letter he wrote to Mr. Dusey, dated March 21, 1997, *(copy attached)* which addressed the issues of converting overhead FPL facilities to underground. He said the statements in that letter are true today, and nothing has changed measurably; although overhead wires could be converted to underground, and it is a very expensive proposition.

Mr. Macon said underground facilities do have problems of their own; although a new underground system that would replace an aging overhead system would provide better reliability. An underground system is a mechanical system that will have failures from time to time as it ages. He noted that with underground facilities, duration of interruption is typically longer than with overhead wires. It is harder to find a problem when it cannot be seen, and repairing any problem typically takes longer. Following a hurricane or a wet storm with flooding, the underground areas are the last to be restored. FPL repairmen cannot work when there is standing water.

Mr. Macon said FPL always wants to put underground facilities on private property and not in public rights-of-way, and it is a requirement when converting overhead systems to underground that the Town would be required to provide private property easements. He said while overhead lines are put in public rights-of-way, usually at the very edge, those lines are much easier to move, and an underground facility cannot be moved. Generally, underground facilities that have to be moved are abandoned and rebuilt in total. Responding to a question from Mr. Dusey, Mr. Macon said if the Town signed a statement indicating if relocation within the right-of-way was required the Town would pay for it, rights-of-ways would be considered for underground lines.

Mr. Macon said a reasonable amount of separation would have to be maintained if utility lines were in the same trench as water lines. Mr. Macon mentioned that switching cabinets would have to be installed underground every time another overhead portion was tied into the underground lines. The switching cabinets are 9 ft. x 9 ft. x 5.5 ft. tall and require operating clearances on two sides or 8 ft. to the front and to the rear and 4 ft. to either side.

Mr. Macon, referring to his March 1997 letter, said the ballpark figure for a stretch from El Dorado Lane to North Woods Road on North County Road, north to south, was estimated to be $500,000 per 1/3 mile. He said any reasonably similar 1/3 mile section would be estimated at the same $500,000.

Etonella Christlieb, 200 Everglade Avenue, addressed the Committee. Mrs. Christlieb said the cost of the project was relative to the increasing price of real estate in Palm Beach, and, although the project is expensive, the longer the Town waits to do it, the more expensive the project will be. She suggested a referendum should go to the residents of Palm Beach.

Mr. Dusey established with Mr. Macon that the order of magnitude would be $1.5 million per mile plus or minus 25% with the Town paying the price of the installation of the conduit.

Sid Poe, BellSouth, referred to correspondence with the Town in August and September, 1999. Mr. Poe said BellSouth's position remains the same under the regulations of the Florida Public Service Commission.

Larry Mayernick, BellSouth, declined to provide an estimate for going underground because of the varied types of services provided to Palm Beach customers, but indicated the range could be $700,000 to $1.4 million per mile to go underground. He mentioned that BellSouth and FPL had a joint use agreement similar to a joint ownership, but cable companies rent from the pole owner.

Leonard Maxwell, Comcast, said approximately 60% of Comcast's lines are existing aerial lines with the majority of the lines being underground in the south end. He suggested one contractor should install all three companies' lines underground if that were approved, and Comcast would need access to FPL transformers for power supplies.

Mr. Maxwell said an approximate estimate for Comcast to go underground would cost between $600,000 and $700,000 per mile.

Rod Macon, FPL, said engineering and design costs would be approximately 10% of any ball park figures. Mr. Macon said if the Town wants to move forward with this project on a long term basis, the project will have to be tried out somewhere to allow everyone to understand every thing that is involved. He continued that if the Town will define clearly the section that is to be done, FPL can study that area and return to the Town with a fairly good ball park estimate for that pilot section.

The Committee made no recommendations, but after discussion, the Committee and the utilities agreed to look at a ball park figure for a pilot program to include the area as identified in a line sketch from the Town Engineer showing the north/south pole lines from the Palm Beach Country Club south to Temple Emanu-El.

Town Engineer Bowser said his line sketch could be presented with the Committee Report at the June 13th Town Council meeting for the Council's consideration of the area(s) to be addressed.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 3:35 p.m.

PUBLIC WORKS COMMITTEE

____
Allen Wyett, Chairman

____
Sam McLendon, Member

Councilman Wyett summarized the report of the Public Works Committee held on May 10, 2000, stating that the Committee had made no recommendations, and after discussion the Committee and the public utility representatives had agreed to look at a ballpark figure for a pilot program to include the area as identified in a line sketch from the Town Engineer showing the north/south pole lines from Palm Beach Country Club to Temple Emanu-El.

President Pro-Tem McLendon explained that the Committee had chosen a section between the Palm Beach Country Club to Temple Emanu-El for a cost study.

Town Engineer Bowser commented that he did not have any costs to date; the idea was that a section would be chosen, and the utility companies would provide a more detailed engineering design, and then proposals would be obtained from them.

Councilman Wyett explained that the recommendation of the Committee was to present this idea to the Town Council – for a trial area to be studied. He made a motion to accept the trial area for a cost study. The motion died for lack of a second.

Councilman Goldblum commented that, after hearing preliminary cost estimated, he believed that the project should be dropped at this time.

Mayor Smith commented that the costs seemed prohibitive at this time.

President McDonald commented that the Public Works Committee Report indicated burying utility lines in the Town would be too costly, and no further discussion would take place on the issue.

2. May 23, 2000 Committee Report

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING HELD ON MAY 23, 2000

I. CALL TO ORDER AND ROLL CALL

Chairman Allen Wyett called to order the meeting of the Public Works Committee at 10:00 a.m. on Tuesday, May 23, 2000, in the Town Council Chambers. On roll call, Chairman Wyett and Committee Member Sam McLendon were present. Town Council President Jack McDonald also attended the meeting. Also attending for all or part of the meeting were: Town Manager Robert Doney; Assistant Town Manager Tom Bradford, Fire-Rescue Chief Ken Elmore; Assistant Fire-Rescue Chief Kent Koelz; Director of Public Works Al Dusey; Town Engineer Jim Bowser; Police Chief Frank Croft; Planning, Zoning & Building Director Bob Moore; Human Resources Analyst Carla Kneipp; Risk Coordinator Karen Temme; and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as written.

III. TOWN HALL NEEDS STUDY

A. CONSIDERATION OF TOWN HALL NEEDS STUDY ALTERNATIVES

Public Works Director Al Dusey referred to his memorandum dated March 30, 2000, which was presented at the April 11th Town Council meeting including the issues of parking requirements and alternatives and available leased space from Love Realty. He said his memorandum dated February 18th summarized alternatives and the costs of the alternatives. After the Town Council meeting, Mr. Dusey said he believed two options were under consideration by the Mayor and Town Council: 1. Build a fire station on the Beaumont Parking Lot - renovating Town Hall, providing additional parking by acquiring and improving 150 Australian Avenue; and 2. Build a Planning, Zoning & Building Department on the Beaumont Parking Lot - renovating Town Hall and provide additional parking.

Fire-Rescue Chief Ken Elmore identified existing problems with the current facility include garage space built in 1927 for vehicles that were much smaller than existing equipment. He cited safety issues that occur when the fire trucks exit the Central Fire Station, and the most desirable exit access location would be the Gray gas station property, although a building on the Beaumont lot could be set back far enough to provide a turning radius for exiting the property. Chief Elmore said EMS services have been added since the station was built and this requires additional vehicle space and storage for supplies.

Planning, Zoning, and Building Director Robert Moore said his department had only 47% of the space that normally would be allocated to a department of its size, and he was looking at other arrangements for space in addition to long range planning. Mr. Moore reported that he was in negotiations with Burton Handeslman, owner of the property at 375 County Road, to lease 8,000 square feet of space and had not received a dollar amount for that space after initial negotiations were completed. Mr. Moore said his department has planned during the last two years for the space level necessary to maintain the current and future needs for inspectors and clerical support staff.

Police Chief Frank Croft said the Police Department has a significant problem with vehicle maintenance because the garage is located in West Palm Beach, and the logistics involved with transporting police cars back and forth is not cost effective from a time and transportation standpoint. He said any new Fire-Rescue building should include a place for a mechanic to work on Police vehicles. Additionally, more room is needed for a training room, storage, and other Police activities. Chief Croft said the plan is to add 3,000 square feet to the first floor of the existing Police Station and that was part of the original design fourteen years ago. The cost was estimated to be approximately $280,000 and is included in the presentation before the Finance & Taxation Committee meeting to be held on May 31st.

Mr. Dusey responded a garage for Police maintenance was included in construction plans for the Beaumont lot regardless if the Fire-Rescue Department or Planning, Zoning & Building Department was in the building.

Burton Handelsman explained his position regarding the leasing of approximately 8,000 square feet of office space to the Town at 375 South County Road, and said he planned to accommodate the Town's needs within reason. Fifteen parking spaces are included with the potentially leased space. He mentioned that the second floor of 350 South County Road would also be available for leasing to the Town.

Mr. Wyett said he understood from a private investor that the Gray gas station property had a bad environmental report related to contamination problems. Mr. Wyett said he thought a copy of that report could be obtained from the private investor who had been interested in purchasing the property.

Mr. Dusey said he understood the first offer from owners of the gas station property was an opening price, but the Town Council rejected that site as an alternative but it could be reopened if the Town Council chose to do that. He said although the location was ideal for surface parking and functioning of the Fire-Rescue Department, the price discouraged further participation by the Town.

Mr. Wyett said his first premise was to examine the needs of the Fire Department to determine if that were the first priority, and the needs of the Building Department could be met utilizing several locations.

Assistant Chief Kent Koelz said the Fire-Rescue Department considered the gas station as the preferred site for a new structure to meet their needs.

Mr. Bowser reported he thought the gas station's value was approximately $2.5 million, but that amount did not take into consideration any environmental assessment.

After discussion, **THE COMMITTEE RECOMMENDED THAT STAFF INCLUDING THE POLICE DEPARTMENT, THE FIRE-RESCUE DEPARTMENT, THE BUILDING DEPARTMENT, THE PUBLIC WORKS DEPARTMENT, AND THE TOWN MANAGER MEET TO RECOMMEND THE BEST COURSE OF ACTION BASED ON THE INFORMATION DISCUSSED AT THIS MEETING AND CONSIDERING LONG TERM AND SHORT TERM NEEDS OF ALL DEPARTMENTS.**

Mr. Dusey said staff would meet before June 13th to attempt to arrive at a consensus for a course of action.

Mr. Handelsman said he heard several issues raised at this meeting and the top floor of 375 S. County Road could be made into a condominium owned by the Town thus saving the taxes and reducing the rental costs by more than one third. Mr. Handeslman said there are ways to enter into a lease arrangement with the Town, giving the Town the option to purchase the condo unit at a later date with perhaps five years to make that decision.

Mr. Wyett suggested the Building Department contact Les Evans for a copy of the environmental study that was prepared for the Gray's Mobil Station property.

Mr. Wyett suggested the following questions be addressed by the Staff prior to the June 13th Town Council meeting:

1. If the Town rents the space at 375 S. County and renovates Town Hall, would that provide a large enough gym to allow use by the Police Department?

2. Would Town Hall renovation provide enough storage space for the Fire-Rescue Department?

3. Would Town Hall renovation provide space for an additional emergency vehicle in the expansion of the Fire-Rescue Department?

4. Would the Police Department's concern for vehicle maintenance be addressed with Town Hall renovation?

Mr. Wyett suggested the establishment of an Enterprise type fund, allocation of revenue, for the construction of a new building or major remodeling in the FY2001 budget.

B. REVIEW OF APPRAISAL OF 150 AUSTRALIAN AVENUE AND DETERMINE ACTIONS, IF ANY

Mr. Wyett expressed his disappointment after reviewing the appraisal for 150 Australian Avenue and considered it faulty as it did not compare prices of like items. He said when he compared like properties in the report, his figure was in the range of $40 per square foot for the 150 Australian Avenue property.

Mr. Dusey responded he would ask the appraiser to justify the choices of property used in the appraisal report. Town Engineer Bowser reported the appraised value at the County Property Appraiser's office was in the range of $450,000 to $475,000 which was usually 80 - 85% of the actual value.

Mr. Moore reported that all of the buildings on the lot are landmarked, and that is an impediment to buying that property and demolishing all of the buildings.

Mr. Bowser said only twenty parking spaces would be allowed on the property without variances being granted, and that was a correction over the number of spaces originally presented to the Town Council.

THE COMMITTEE RECOMMENDED THE APPRAISAL BE REVIEWED TO DETERMINE IF THE APPRAISAL WAS ACCURATE OR IF THE AMOUNT SHOULD BE LESS.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 11:50 a.m.

Allen Wyett, Chairman

Sam McLendon, Member

Prepared by:
Mary A. Pollitt
Town Clerk

a. Staff Recommendation Regarding Town Hall Needs Analysis

Councilman Wyett summarized that each Town department had reported on future needs, and after discussion, the Committee had recommended that the staff include the Police Department, Fire-Rescue Department, Building Department, Public Works Department, and Town Manager to meet to recommend the best cause of action, based on information discussed.

Town Manager Doney referred to his memorandum dated June 9, 2000, explaining that two staff meetings had been held in this regard; the issues were very complex and involved. He offered the following:

1. Because it would appear that the Fire-Rescue Department was most likely to experience unforeseeable changes in need over the next 30 years, constructing a new Fire-Rescue Station would provide the most flexibility to meet those needs. Renovating Town Hall for Fire-Rescue would met existing defined needs, but would provide less flexibility in the future.

2. It was recommended that the Mayor and Town Council re-visit the possibility of constructing a Fire-Rescue Station on the Gray's Mobil site for the following reasons:

   It was operationally superior to the Beaumont Lot

   It did not eliminate the 51 parking spaces on the Beaumont Lot, which elimination would create additional parking problems. Based on estimates, the 51 parking spaces were worth approximately $1.5-$2.5 million. With the purchase of Gray's Mobile site, the Town would also gain 12 parking spaces.

3. Continue to investigate temporary relocation of Town Hall departmental functions.

Mr. Doney explained that if the Mayor and Town Council approved the recommendations, the following authorizations would be required to move forward:

1. The allocation from the General Fund Contingency of $4,000 to have two appraisals prepared for the Gray's Mobile site, in accordance with the requirements of State law.

2. An allocation from the General Fund Contingency of $5,000 for an environmental assessment of the Gray's Mobile site.

Public Works Director Al Dusey explained that staff had received a copy of a letter from an environmental agency (Florida Environmental Engineering, Inc.) who had knowledge of the condition of the Gray's Mobile site, that indicated that contamination was fairly minor, however, he recommended that the Town rely on its own environmental assessment to ensure that all was clear.

Former Mayor Yvellene deMarcellus Marix commented that long term needs for the Town should be evaluated fully, and she suggested that the Town needed more than the one remaining gas station/garage that would be in Town, should Gray's Mobile be sold to the Town. She maintained that it would affect the traffic patterns, and the public safety of residents trying to go over the bridge to the hospital. She commented that she believed staff parking could be largely solved if car pooling was utilized, and that perhaps parking across the bridge could be considered for staff not needing vehicles during the day; in addition, she mentioned that smaller fire-rescue equipment should be considered as well.

Assistant Fire-Rescue Chief Koelz commented that the size of equipment had been discussed before, and there were standards of equipment that must be carried, and sizes kept growing. He explained that the Town was buying stock models of equipment, and he was not aware of any companies that were lessening the size of fire trucks; the equipment of the Town was at the minimum. Chief Koelz also noted that there was not a heavy fire load in the Town of Palm Beach, and the Fire-Rescue Department was a combination department – both medical and fire service were run off of the fire engines and medical units. He explained that many factors contributed to wearing the vehicles out, and they would only last to a point, which had been reached – the 15 year replacement term on the vehicles had been reached.

Councilman Goldblum suggested that the Beaumont Lot proposal be re-examined, so that Gray's Mobile station could be preserved.

Councilman Brooks commented that a report had already been completed on the Beaumont Lot.

Councilman Brooks moved approval of the recommendations and authorizations presented by Town Manager Doney (see above). The motion was seconded by President Pro-Tem McLendon.

In response to the suggestion of Councilman Wyett to include the Beaumont Lot in the running, Councilman Brooks refused acceptance of the amendment to the motion.

Mayor Smith commented that according to the tax figures, Gray's Mobile Station was appraised at $1,859,500, and the price that was being discussed was $3.5 million; she stated that there were other possibilities, other than the Gray's Mobile site, and that all of the Town interest should not be directed towards the Gray's Mobile site as a Town facility.

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

Public Works Director Dusey advised that the appraisals would determine the fair market value, and an environmental clean up would have to be factored in; it was the intent of staff to do the appraisal and environmental assessment at the same time in order to provide the necessary information to the Town Council as to whether to proceed.

B. Ordinances, Rules, and Standards Committee

1. May 11, 2000 Committee Report

REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE HELD ON MAY 11,2000

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 10:00 a.m. by Chairman William J. Brooks. On roll call, Committee Chairman Brooks and Committee Member Norman P. Goldblum were found to be in attendance. Other Elected Officials present were: Town Council President Jack McDonald and Town Council President-Pro-Tem Sam McLendon. Also attending for all or part of the meeting were: Town Manager Robert J. Doney; Assistant Town Manager Thomas Bradford; Town Attorney John C. Randolph; Fire-Rescue Chief Vincent K. Elmore; Public Works Director Albert P. Dusey; Assistant Police Chief Michael Reiter; Recreation Director Russell Bitzer; Director of Planning, Zoning & Building Robert L. Moore; Assistant Director of Planning, Zoning & Building Veronica Close; Zoning Administrator Paul Castro; Planner/Projects Coordinator Timothy M. Frank; Chief Code Compliance Officer Brian House; and Town Clerk Mary A. Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as written.

III. CODE ENFORCEMENT BOARD ISSUES REGARDING MAINTENANCE OF PROPERTY, CLEANLINESS OF CONSTRUCTION SITES, AND HURRICANE PREPARATION PLANS FOR CONSTRUCTION SITES

PZ&B Director Moore explained that the reason this was before the ORS Committee was at the request of the Town Council to review the current regulations regarding construction sites. He said there are two problems: the cleanliness issue and the hurricane preparation plans for construction sites.

Mr. Moore said that the Town's Code of Ordinances has provisions that allow policing of the sites to keep them "in good working order". He continued that OSHA also has regulations that are not enforced by the Town but by inspectors who work for the federal government.

Mr. Moore said, regarding the cleanliness issue, the general requirement is to have a dumpster placed on the site for collection of debris from the site. The dumpsters are emptied when full. Mr. Moore said the problem is really a policing issue rather than a need for additional regulations. He noted that currently construction site cleanups are handled on a complaint basis from a neighboring property owner, but he thought the only way to increase any policing action would be to hire additional manpower.

Mr. Brooks said his concern was during the hurricane season when or if the island were to be evacuated and how would the problem be handled?

Mr. Moore responded the Building Department had problems with the debris in dumpsters, roofing materials on the roofs, and stacks of materials such as plywood. He added trailers could be a problem in some cases. Mr. Moore said his department had telephone numbers for all of the construction companies who would be working on the island. The building inspectors and the Police Department notify all of the contractors to shut down the jobs.

Responding to Mr. Goldblum's question regarding site screening of job sites and/or dumpsters, Mr. Moore replied some residential job sites do have 4 ft. high fences and all commercial sites have to be site screened. He said the site screening of portable restrooms could be handled administratively and would not require ordinance changes.

Attorney Randolph questioned if the intention of the agenda item was broader than discussed. He said there was concern that properties in the Town that were not maintained properly take too long to go before the Code Enforcement Board and there are questions as to what, if anything, the Town can do about those properties.

Chief Code Compliance Officer Brian House stated the ordinance allows the violator to have fifteen days to comply with the ordinance, Section 42.91. An additional fifteen days is allowed to contest the violation before the Town Council.

Mr. House said after reviewing the ordinance, he is going to request that the Code Enforcement Board, after finding a violator guilty, not only order the violator to comply then but in the future for repeat violations.

Mr. Randolph clarified these types of orders, for abatement, do not have to go before the Code Enforcement Board except in the event to impose a fine, and Mr. House can order the work to be completed. In the event the work is not completed, the Town can do the work and lien the property. Mr. Randolph said he may need to look at the ordinance and "beef" it up in regard to the process required to go before the Town Council, because it does not state exactly how many days they have before it goes to the Town Council; although he thought the authority was there presently. Mr. Randolph cited the present ordinance: "Any person, subject to an order under this division, who shall refuse to correct the offending condition within 15 days if ordered to do so by the Town Council or within 15 days from the Director of Planning & Zoning, shall be guilty of a violation. In such event, it shall be the duty of the Director to cause the condition to be corrected at the cost of the owner, occupant, or agent."

Mr. House suggested posting the property in lieu of or in addition to sending a certified letter by mail.

Attorney Randolph said he did not think the problem was with the time an issue takes to go to the Code Enforcement Board, and the problem was using the section of the Code to enable the Town to do the work and lien the property without having to take 60 - 90 days to go before the Code Enforcement Board. Responding to questions regarding the notification of violations to property owners, Mr. Randolph replied if the ordinance reads: "notice will be given to the owner of record in the Palm Beach County Courthouse", the Town would be protected. He said the property could be noticed in addition to mailing notification.

Chairman Brooks requested, and Mr. Moore agreed, that a listing of the hours of construction allowed in Palm Beach be mailed to property owners when any ARCOM or Zoning notices are mailed to property owners within a 200 ft. radius of a project.

After discussion, **THE COMMITTEE RECOMMENDED THE TOWN ATTORNEY REVIEW THE SECTION IN THE ORDINANCE THAT WOULD ALLOW PROBLEMS TO BE CORRECTED, ALLOW THE VIOLATOR THE DUE PROCESS THEY ARE ENTITLED TO BEFORE THE TOWN COUNCIL, AND ALLOW THE TOWN TO DO THE WORK AND THEN LIEN THE PROPERTY.**

IV. PROPOSED AMENDMENTS TO THE ARCHITECTURAL COMMISSION ORDINANCE NO. 5-00

Attorney Randolph explained that he drafted Ordinance No. 5-00 that was prepared as a result of discussions relating to getting the Architectural Commission out of the size business. He said the Town's zoning ordinance was amended to be more specific regarding this item, and the Town Council then gave the direction to consider amending the Architectural Commission ordinance once the issue was taken care of by the zoning ordinance.

Mr. Moore said he thought it would be easier if the Architectural Commission were relieved of the burden of judging size and having to make comparisons within 200 feet.

Mr. Goldblum said he would like to hear the report of the experts, hired by the Town to analyze the R-B zoning district, before any decisions were made.

Mr. Brooks clarified that the proceedings from this meeting will not materially impact on the R-B zoning report to be made by the consultant before November, 2000.

John Schuler, Chairman of the Architectural Commission, said the Town needs to maintain a strong Code to ensure that Palm Beach does not suffer the same fate as have other communities to the south of Palm Beach. He said the recently revised zoning scale for the R-B district specifies the allowed size and does not allow for any change on behalf of the Architectural Commission; thus that problem is virtually solved.

Mr. Schuler said he thought the Code should be left intact, as it is written, because it works well with other zoning districts of the Town. He suggested some changes could be made to further define provisions of the Code.

He proposed changing the Code: Section - 205 (a)(6) as follows:

The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:

a. Cubical contents. (Taken care of by the sliding scale.)
b. Gross floor area.
c. Height of building or height of roof.
d. Other significant design features such as appropriate materials harmonious to the neighborhood or quality of architectural design.

adding the following:

e. Architectural compatibility in the neighborhood.
f. Arrangement of the structure components relative to the architecture of the house.
g. The appearance of mass from any perspective.
h. Diversity of design is complimentary with size and massing of adjacent properties.
i. Promote design features that will avoid the appearance of mass through improper proportions.
j. Approve design elements that protect the privacy of the neighboring properties.

Mr. Schuler summarized that the authority of the Commission has worked, and the function of the Commission insures quality and good architecture. This is important to maintain the desirability and popularity of Palm Beach.

Attorney Randolph said he understood Mr. Schuler's presentation to be in line with Ordinance No. 5-00 as proposed except that he added criteria.

William Cooley said he found the Architectural Commission ordinance and the process somewhat confusing. He suggested that one document be handed out to a potential home builder or someone improving his home that included all of the instructions and all of the limitations – including both Zoning and ARCOM. Mr. Cooley said his suggestions were intended to strengthen the ordinance, not weaken it. He mentioned that he presented the existing ordinance to other law firms whose opinions were that the present ordinance could be attacked successfully in a court of law.

Mr. Cooley referred to Ordinance No. 5, Sect. 18-205.(a)(6) - b. Other Significant design features such as materials or quality of architectural design. He said without a comma after "such", the word "such" becomes operative and limits the other significant design features "such as materials or quality of architecture" to two choices. The Architectural Commission uses that particular item to criticize many architectural features and, in theory, they cannot. He suggested to toughen up the ordinance, the wording be changed to "... other significant design features (colon, comma, or semi-colon) including but not limited to materials or quality of architectural design".

After discussion, **THE COMMITTEE RECOMMENDED THE TOWN ATTORNEY REDRAFT ORDINANCE NO. 5-00 TO CONSIDER SUGGESTIONS MADE BY MR. SCHULER.**

Mr. Moore said several suggestions were made by Councilman Wyett:

A. Diversity of design
B. Avoid the appearance of excessive mass
C. Protect privacy of neighboring property
D. Promote authentic design
E. Use appropriate material
F. Avoid box like and pill box design
G. Utilize side or rear loading garage and storage areas
H. Avoid harsh or glaring colors
I. Use xeriscape landscape principles
J. Utilize water saving irrigation systems

Mr. Moore requested that the staff be able to consider these when redrafting the ordinance. Chairman Brooks agreed that those suggestions should be reviewed by staff.

V. TOWN BOARDS AND COMMISSION:

A. CONFLICTS OF INTEREST ISSUES

Attorney Randolph said he had addressed this at length in a previous memorandum and thought the issue was taken care of. He said he submitted a memorandum in which he indicated that, on the Architectural Commission, based upon Ethics Commissions' opinions that he reviewed, that because the Town's ordinance requires two architects as commissioners and because almost every project in Town has to go before the Architectural Commission, that the Ethics Commission in previous opinions has ruled that it is indeed appropriate for a person who is an architect on a commission to represent clients before that board. He said the general rule was that, not only should such a professional declare a conflict of interest and not vote, but that particular professional should not be engaged in representing clients or take on business which would require that individual to go before the board. He said he thought there was a particular exemption for that on the Architectural Commission.

Mr. Randolph said the Town Council expressed a concern that a similar exemption should apply to the Landmarks Commission, because of the importance of having architects on the Landmarks Commission. He said the Town Council requested him to write an opinion to the Ethics Commission to determine if that same exemption could apply to the Landmarks Commission.

William Cooley said he had hired the law firm of Carlton Fields to review three years of minutes and agendas from the Architectural Commission and the Landmarks Commission to produce a matrix of votes and conflicts of interest. Mr. Cooley said his lawyers found the report listing the resulting conflicts from the two commissions not only excessive but in conflict with the State law that said no public officer or employee shall have or hold any employment or contractual relationship in any business entity which is subject to the regulation or doing business with the commission upon which that person sits.

Mr. Cooley continued that his lawyers sent a letter to Town Attorney Randolph stating that the Town ordinance was more permissive than the State statute which it is not allowed to be. He cited State statute 112.326 that permits local governments to create more stringent restrictions but not to loosen them up. Mr. Cooley concluded that architects on the Landmarks Commission are great, and the Town Council has the authority, presently, to appoint them, but he did not think that by changing the local ordinance that an architect can be re-appointed to that commission and continue to have 10, 11, or 15 conflicts per year and still comply with the State law. Mr. Cooley suggested the Town consider tightening up the conflict of interest ordinance to allow the occasional conflict but to prohibit people from using the public office to further their businesses and to make a living from volunteer work.

Attorney Randolph replied he was not sure that Town codes need to be amended to comport with State statutes, and the Town has provisions in the codes that provide if excessive conflicts of interest arise during any one calendar year, the commission member shall be subject to removal from the commission by the Town Council or in the event of excessive conflicts of interest during any one term, a commission member may not be reappointed to a successive term. Mr. Randolph said that excessive conflicts of interests were defined as ten or more conflicts in any one calendar year, and that may or may not be excessive under the State statute. The Ethics Commission would have to look at it and make a determination if that were excessive. He added the number of conflicts of interests was amended from ten to five. Mr. Randolph concluded he was asked to get a ruling from the Ethics Commission regarding whether or not an architect on the Landmarks Commission could do business before the board, and he did not know how the Ethics Commission would rule on that issue.

B. VOTING PROCEDURES FOR COMMISSIONS

Mr. Brooks recalled this issue was discussed at the Town Council meeting and the motion died for lack of a second. He said the item should have been removed from this agenda.

After a brief discussion, **THE COMMITTEE RECOMMENDED THE VOTING PROCEDURES NOT BE CHANGED AND CONTINUE AS DIRECTED BY THE TOWN COUNCIL.**

VI. SOUTH OCEAN BOULEVARD ISSUES - TRAFFIC PROBLEMS RELATING TO CONSTRUCTION PROJECTS - *(Deferred from May 9, 2000, Town Council Meeting)*

Attorney Randolph said he thought an ordinance could be drafted addressing the flagmen issue which would require a permit through the Police Department to use flagmen. He said Mr. Dusey indicated that was too restrictive an opinion and that opinion would be considered when he drafted an ordinance related to the use of flagmen.

Assistant Police Chief Mike Reiter said he thought the main issue was the flagmen that were hired by construction sites work towards the best interest of the construction sites, stopping the traffic at 5:00 p.m. to allow all of their employees to leave and facilitating the traffic on and off the construction sites during the day. This traffic control is most often contrary to the interests of the motoring public.

Assistant Chief Reiter said he did not think the Town could supply enough police officers to be utilized to control construction traffic. He questioned the legalities of permitting flagmen and referred to Attorney Randolph's opinion that it may not be as it may be a power than cannot be delegated. He asked what the permitting would accomplish?

Attorney Randolph responded he understood that because of an existing lack of control in that area, that anyone directing traffic in the roadway should be required to go to the Police Department to receive a permit. The Police Department would then know where all the activity was taking place, and there would be better control over the situation than exists presently. The issue of delegation will be investigated.

Assistant Chief Reiter replied the department was aware of the areas where construction caused traffic problems and he thought it would be unnecessary to devise a permitting system to advise the Police Department of the flagmen.

Al Dusey said the Town has a system for permitting presently and that was the right-of-way manual that was authorized by Town Council by ordinance and is amended from time to time by resolution. He said that controls traffic related to street construction when confined to the rights-of-way. Mr. Dusey said construction sites have abused the privilege of having flagmen and have utilized them for their own purposes disregarding traffic needs.

Mr. Moore said the Town has required construction sites have flagmen and the privilege has been abused. He said there are four current construction projects on South Ocean Boulevard that would require flagmen, and not every job needs a flagman.

Mr. Brooks summed up the remarks by saying that regulations are in place that will control situations, and it is the 2 or 3% that abuse the practice.

Mr. Moore said if all the parties agreed, the present practice could continue. and if there were abuses, an off duty police officer would be required.

After the committee discussed the possible certification of flagmen for construction sites, **THE COMMITTEE MADE NO MOTION BUT ATTORNEY RANDOLPH WILL FOLLOW UP ON THE ISSUE REGARDING THE DELEGATION OF TRAFFIC CONTROL TO FLAGMEN.**

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

The meeting was adjourned at 12 noon.

____
William J. Brooks, Committee Chairman

____
Norman P. Goldblum, Committee Member

Councilman Brooks reported that the Committee had recommended that the Town Attorney review the section in the Code Enforcement Ordinance that would allow problems to be corrected, allow the violator the due process they were entitled to before the Town Council, and allow the Town to do the work and then lien the property.

President Pro-Tem McLendon moved approval of the recommendation of the Ordinances, Rules, and Standards (ORS) Committee that the Town Attorney review the section in the Code Enforcement Ordinance that would allow problems to be corrected, allow the violator the due process they were entitled to before the Town Council, and allow the Town to do the work and then lien the property. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Councilman Brooks reported that the Committee had recommended that the Town Attorney redraft Ordinance No. 5-00 to consider the suggestions made by Architectural Commission Chairman John Schuler at the Ordinances, Rules, and Standards (ORS) Committee meeting held on May 11, 2000. *(Please see report of the ORS Committee, with suggestions of John Schuler in their entirety above).*

Councilman Goldblum moved approval of the recommendation of the ORS Committee to authorize Town Attorney Randolph to redraft Ordinance No. 5-00 to consider the suggestions made by Architectural Commission Chairman John

Schuler. The motion was seconded by President Pro-Tem McLendon.

In response to Mayor Smith, Councilman Brooks advised that the most important change had been the ability to concentrate not on size, but the architectural compatibility with the street (suggestions A-J), and the use of xeriscape landscape principles.

In response to Mayor Smith, Director of Planning, Zoning & Building Robert Moore advised that the xeriscape requirements were in another section of the Town Code of Ordinances, requiring water saving devices.

Mayor Smith commented that she questioned how the privacy of neighbors would be protected by ARCOM, as proposed in the suggestions made at the ORS meeting; if every neighbor demanded that the design of a house be changed to protect their privacy, she questioned if ARCOM was in a legal position to do that?

Town Attorney Randolph advised that suggestion had not been included in the draft ordinance that was before the Town Council today; the recommendation had been simply that the ordinance be amended to include the suggestions made by Mr. Schuler, and if that was voted upon at this time, the amendments to the Ordinance itself could be discussed when Ordinance 5-00 appeared on the Agenda today.

On roll call the motion to approve the recommendation of the Ordinances, Rules & Standards (ORS) Committee to consider the suggestions made by Architectural Commission Chairman John Schuler at the Ordinances, Rules, and Standards (ORS) Committee meeting held on May 11, 2000 carried unanimously.

Councilman Brooks addressed the issue of the voting procedures for commissions, as discussed at the Ordinances, Rules & Standards (ORS) Committee meeting, and reported that the status of voting procedures had not changed, per discussion at a Town Council meeting, and this item had been pulled from the Agenda of the Committee meeting.

Councilman Brooks reported that discussion had taken place at the Ordinance, Rules & Standards (ORS) Committee that the Town Attorney would follow up on the issue regarding the use of flagmen to control traffic at construction sites to be considered at the July 11, 2000, Town Council meeting.

Town Attorney Randolph advised that he had investigated the issue of the use of flagmen at construction sites, and an ordinance could be adopted regulating the conduct of flagmen in the public rights-of-way, and he recommended that such an ordinance be drafted.

Councilman Brooks moved approval of authorizing Town Attorney Randolph to draft an ordinance regulating the conduct of flagmen in the public rights-of-way to be presented at the July 11, 2000 Town Council meeting. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

XIII. PUBLIC HEARINGS

A. Landmark Designation of 325 Chilian Avenue, Resolution 20-00 - *(Deferred from May 9, 2000 Town Council Meeting)*

Town Clerk Pollitt verified proof of publication, and administered the oath to all those speaking in this regard.

Historic Preservation Consultant Jane Day presented the landmark designation report, with the recommendation that the property met the necessary criteria of the Town of Palm Beach Ordinance No. 2-84.

President Pro-Tem McLendon moved approval of the report and presentation made by Ms. Day. The motion was seconded by Councilman Brooks and on roll call carried unanimously.

The owner of the property, Mr. Josh Mendelsohn, commented that he was in favor of landmarking the property.

President Pro-Tem McLendon moved approval of Resolution 20-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution No. 20-00 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS

CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

XIV. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 7-00 – Amendment to the Landmarks Preservation Commission

Town Attorney Randolph read Ordinance No. 7-00 by title (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 8-99, SO AS TO AMEND CHAPTER 54 OF THE TOWN CODE OF ORDINANCES HISTORICAL PRESERVATION, AT ARTICLE II, LANDMARKS PRESERVATION COMMISSION, AT SECTION 54-36 RELATING TO APPOINTMENT, QUALIFICATIONS, TERMS, COMPENSATION, FILLING VACANCIES AND REAPPOINTMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

In response to Councilman Wyett, Attorney Randolph advised that there was no question that the ordinance was consistent with State regulations, however, the question remained whether or not those architects, as members of the Landmarks Commission, would be able to conduct business related to landmarks in the Town, and still serve on the Commission. He explained that as soon as Ordinance No. 7-00 was adopted, he would submit a letter to the Ethics Commission and request an opinion in that regard.

Director of Planning, Zoning & Building Robert Moore commented that this ordinance would confirm that the requirements of the State, on the Local Certified Government Contract, would be met; that architects would be on the Commission, and if the Ethics Commission submitted an opinion that the architects could not practice, then the Town would have to find architects that did not practice in front of the Landmarks Preservation Commission. He strongly urged that the ordinance be passed, to ensure that architects were on the Landmarks Preservation Commission.

Councilman Brooks moved approval of Ordinance No. 7-00 on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

2. Ordinance No. 8-00 – Commercial Loading and Unloading Operations, Certain Times Prohibited for Locations in or Adjacent to Residentially Zoned Areas

Town Attorney Randolph read Ordinance No. 8-00 by title (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 42 ENVIRONMENT, ARTICLE V, NOISE, DIVISION 1 GENERALLY, SECTION 42-197 SPECIFIC ACTS PROHIBITED, SO AS TO INCLUDE A NEW ITEM (11) TITLED COMMERCIAL LOADING AND UNLOADING OPERATIONS, CERTAIN TIMES PROHIBITED FOR LOCATIONS IN OR ADJACENT TO RESIDENTIALLY ZONED AREAS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 8-00 on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Town Attorney Randolph clarified that the ordinance read included the times that prohibited commercial loading and unloading, which were between the hours of 8:00 p.m. and 8:00 a.m.

3. Ordinance No. 9-00 – Time Limitations for Dumping Garbage or Recyclable Materials in Commercial Districts Adjoining Residential Districts

Town Attorney Randolph read Ordinance No. 9-00 by title (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH

COUNTY, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AT CHAPTER 102 SOLID WASTE, ARTICLE I IN GENERAL, IS HEREBY AMENDED TO INCLUDE A NEW SECTION 102-8 TITLED TIME LIMITATIONS FOR DUMPING GARAGE OR RECYCLABLE MATERIALS IN COMMERCIAL DISTRICTS ADJOINING RESIDENTIAL ZONING DISTRICTS; PROHIBITING THE DUMPING OR TRANSFER OF GARBAGE OR RECYCLABLE MATERIALS INTO OUTSIDE CONTAINERS BETWEEN THE HOURS OF 8:00 P.M. AND 8:00 A.M.; RENUMBERING FORMER SECTION 102-8 APPEALS TO SECTION 102-9; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 9-00 on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

4. Ordinance No. 10-00 – To Include Section 102.8, Entitled Time Limitations for Dumping Garbage or Recyclable Materials in Commercial Districts Adjoining Residential Districts; to Include Section 102.73, Entitled Cleanliness of Container Storage Areas; and to Amend the Fines for Section 42-197, Entitled Specific Acts Prohibited, in the Citation Fine Schedule Set Forth in Section 2-439

Town Attorney Randolph read Ordinance 10-00 (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AT CHAPTER 2 ADMINISTRATION, ARTICLE V CODE ENFORCEMENT, DIVISION 3 PROCEDURE, SECTION 2-439 CITATION FINE SCHEDULE, SO AS TO INCLUDE WITHIN THE CITATION FINE SCHEDULE SECTION 102-73 OF THE TOWN CODE OF ORDINANCES, PROVIDING FOR PENALTIES FOR FIRST, SECOND, THIRD AND FOURTH OFFENSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No.10-00 on second reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Other

1. Royal Park Bridge Status Report by Public Works Director Dusey, including Resolution No. 23-00

Director of Public Works Al Dusey recalled that the site plan at the bridge head had been approved at the April 11, 2000 Town Council Meeting, and the purpose of Resolution No. 23-00 was to formalize that approval.

Town Attorney Randolph read Resolution No. 23-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH FLORIDA, APPROVING LANDSCAPE IMPROVEMENTS TO LAKESIDE PARK BY THE FLORIDA DEPARTMENT OF TRANSPORTATION.

Councilman Brooks moved approval of Resolution No. 23-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Ms. Polly Earl, Director of the Preservation Foundation, commented that a public meeting had been held to discuss the layout of the plans, with some discussion taking place with the Florida Department of Transportation (FDOT) representatives concerning the arrangement of the parking around the Town utility building in that location. At that time the FDOT had expressed the opinion that the Town Council had definitively approved the layout, and Mr. Wyett had expressed that the Town Council had given approval in general, but that there was always the possibility of improvement in the details. Ms. Earl explained that the matter had gone to the Landmarks Preservation Commission and FDOT was coming back in July with further information; she suggested that the definitive details be left up to the Landmarks Commission.

Mr. Dusey commented that the parking lot location had been negotiated with property owners across the street, and was on the lake in back of the facility; he suggested that there was not a lot of room for relocation at this time, and he expressed concern with the landscaping, as compared to the layout of the parking lot.

Ms. Earl commented that a question had arisen regarding the placement of the parking lot, and that it might be possible to add more landscaping to make the area next to the Lake Trail more attractive for people using it, with some of the parking shifted to the south, screening it from the apartment building.

Mayor Smith suggested that the resolution be deferred until the final details had been approved by the Landmarks Commission.

Mr. Joe Borello, FDOT Project Manager for Royal Park Bridge, advised that the resolution could not be delayed, as it was written in such a way that some of the issues being discussed would be evolving, however, the configuration of the parking in relation to the building must be formalized in order for the FDOT to finish the plans. In addition, he noted that a determination was needed from the Federal Highway Administration that the Town was in agreement before the FDOT moved forward, so that the project would be kept eligible for Federal funds. He explained that the details being discussed, such as additional landscaping, would be worked on with the Landmarks Commission, however, a statement was needed from the Town Council today; postponement of the resolution would hold the FDOT back from proceeding with some of the finer design details; postponement would delay the completion of the plans; if they were not submitted to the Federal Highway Administration within the next 30 days, the consultant could not be given direction to continue preparation of the plans, because it could jeopardize the Federal funding on the project. He further explained that because this was a park, it required additional paper work and approvals from the Federal Highway Administration.

Town Attorney Randolph suggested an amendment to Resolution No. 23-00, which would simply say that the proposed subsequent modifications approved by the Town of Palm Beach would be hereby approved, so as to leave some flexibility.

Mr. Borello agreed that would be suitable.

Councilman Brooks amended the motion to approve Resolution No. 23-00 to include the statement that the proposed subsequent modifications approved by the town of Palm Beach would be hereby approved. The seconder of the motion, President Pro-Tem McLendon, accepted the amended motion to approve. On roll call the motion carried unanimously.

After a short break, President McDonald advised that clarification was needed on the motion to approve Resolution 23-00.

Mr. Borello clarified that the amendment to Resolution No. 23-00, as made by Councilman Brooks, addressed the idea that the modifications that would be brought back would be more of a landscaping nature, and not in the nature of the layout of the site.

Councilman Brooks moved approval of the reconsideration of Resolution No. 23-00. The motion was seconded by President Pro-Tem McLendon. A roll call was not taken.

Town Attorney Randolph read the proposed amendment to Resolution No. 23-00: "The proposed site plan, with any subsequent modifications to landscaping, as may be approved by the Town, as attached hereto."

Councilman Brooks moved approval of the amendment to Resolution No. 23-00 as proposed by Town Attorney Randolph. The motion was seconded by President Pro-Tem McLendon.

Councilman Brooks withdrew the motion of approval with amendment of Resolution No. 23-00.

Councilman Wyett commented that the site could use some rather minor, but important, modifications from the point of view of the long term beautification of the Town.

President McDonald suggested that staff and Ms. Earl meet to discuss the issue and bring it back before the Town Council at a later point in the meeting.

Mr. Dusey noted that the U.S. Coast Guard had given the Town notice that they were requesting information about the Town's feelings concerning the new bridge structure being built, and he suggested that the Town Council authorize either the Mayor or the Town Council President to write to the U.S. Coast Guard, indicating that the proposed four lane bridge was essential for the health, safety and welfare of Town residents, and that the proposed height and width was adequate to meet navigational needs.

Councilman Wyett moved approval of authorizing the Mayor or the Town Council President to write to the U.S. Coast Guard, indicating that the proposed four lane bridge was essential for the health, safety and welfare of Town residents, and that the proposed height and width was adequate to meet navigational needs. The motion was seconded by Councilman Goldblum, and on roll call carried unanimously.

Mayor Smith recommended that the letter be written by the Town Council President.

At a later time in the meeting, Mr. Borello reported that he had discussed the bridge design with Mrs. Earl, and there was a fundamental difference between them regarding the interpretation of what direction the FDOT had been given in March when site plan approval had been granted. He requested that changes to the site plan be limited to minor items, and not a total re-design, if there were any issues as the plans went through the finishing design process and the Landmarks Preservation Commission.

Ms. Polly Earl commented that if the Town Council approved every part of the site plan for the bridge area, all that would be left to the discretion of the Landmarks Commission was what tree to plant where. She noted that she was concerned about a large hedge, which would shut off a large part of the bike path along the viewscape, and suggested that someone take a special look at the details of the site plan on behalf of all of the people who use the bike trail and the nearby area. She suggested that the details be left to the discretion of the Landmarks Commission.

President McDonald suggested that the resolution include the language that the Town Council approved all of the major aspects of the plan, leaving some room to maneuver.

Town Attorney Randolph suggested that the language read: *the proposed site plan, with any minor modifications subsequently approved by the Town Council.*

Mr. Borello agreed, stating that he did not anticipate any problem; minor changes and details would be worked out with the

Landmarks Commission.

In response to Ms. Earl, Mr. Borello responded that if the parking lot was shifted to the south, the visibility of the condominium association across the street would be affected; reshaping of the lot as far as making some minor adjustments to it would be possible, but not physically moving it to the other side of the building. He indicated that if the Landmarks Commission had a real issue with what was presented, a basic fundamental difference, he would be glad to come back with minor adjustments, however, he did not want to open up a total re-design of the project.

Councilman Goldblum moved approval of Resolution No. 23-00, with the modification that approval was for the major aspects of the site plan for Lakeside Park, with minor modifications to be subsequently approved by the Town Council. Councilman Brooks seconded the motion. On roll call the motion carried unanimously.

XV. NEW BUSINESS

A. Resolutions

1. Resolution No. 24-00 - Extending the Term of the Cable Television Franchise of Comcast Cablevision of West Palm Beach, Inc.

Town Attorney Randolph read Resolution No. 24-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, EXTENDING THE TERM OF THE CABLE TELEVISION FRANCHISE OF COMCAST CABLEVISION OF WEST PALM BEACH, INC.

Town Attorney Randolph noted that the franchise would be extended to August 8, 2000, so as to continue with the finalization of negotiations.

Councilman Wyett moved approval of Resolution 24-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

B. Ordinances (First Reading)

1. Ordinance No. 5-00 - Amendment to Chapter 18, Buildings and Building Regulations, of the Town Code of Ordinances at Article III, Architectural Review, Amending Section 18-205 Relating to Criteria for Building Permit, at Item (a)(6)

Town Attorney Randolph read Ordinance No. 5-00 by title (first reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, BUILDINGS AND BUILDING REGULATIONS, OF THE TOWN CODE OF ORDINANCES AT ARTICLE III, ARCHITECTURAL REVIEW, AMENDING SECTION 18-205 RELATING TO CRITERIA FOR BUILDING PERMIT, AT ITEM (a)(6), PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 5-00 on first reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Councilman Wyett commented that he understood the concern of Mayor Smith, as expressed earlier, concerning how the privacy of neighbors would be protected by ARCOM, as proposed in the suggestions made at the ORS meeting held on May 11, 2000, and discussed earlier in the Agenda today.

President McDonald commented that if a neighbor put in a second story addition with windows overlooking a neighboring pool, for example, architects needed to take that into consideration, and that was how he saw that clause working.

Mayor Smith questioned the legality of ARCOM directing architectural changes because of a privacy issue, and commented that to put it into the ordinance may create a legal nightmare, since any neighbor could complain in this regard.

President McDonald commented that he understood that it was just one of the items to be considered, and not a requirement of the ordinance.

Town Attorney Randolph advised that the manner in which the privacy issue was addressed by ARCOM would determine how it was handled. He read the opening paragraph of Ordinance 5-00: "The proposed building or structure is not excessively dissimilar in relation to any other structure existing within 200 feet in regard to one or more of the following features." He explained that the feature being discussed now concerned design elements that protect the privacy of neighboring property; that was the manner in which ARCOM should look at the feature – in regard to comparison to other buildings.

Mayor Smith replied that more innovative designs were being used by homeowners, and if the privacy issue was put into the ordinance it would make it extremely difficult for architects to design houses, and it would give the neighbors a tremendous amount of control.

Councilman Brooks explained that this was an instance where subjectivity was supreme; it had been his understanding that the feature in question had been concerning landscaping, in addition to the style of the house. He noted that if it was left out of the ordinance, it would raise a set of different problems.

Mayor Smith replied that design elements referred only to the building of a house, and did not encompass landscaping, and she suggested that the language could read: "design elements and landscaping that protect the privacy."

Director of Planning, Zoning & Building Robert Moore commented that ARCOM had been able to affect a compromise in most cases, and the Town Council would be the final authority in any appeal of a decision.

Councilman Goldblum commented that he had seen many privacy issues come before the Town Council, and that the feature in question would help prevent an issue from coming to the Town Council, and allow for compromise between two parties.

Town Attorney Randolph explained that someone would still be able to build a two-story house as provided in the zoning ordinance; however, in building that two story house, ARCOM would take into account the privacy of the neighboring property. He clarified that the language would remain as it originally was stated in the ordinance.

2. Ordinance No. 11-00 - Amendments to Chapter 2 of the Town Code of Ordinances pertaining to Administration. *(Deferred from May 9, 2000 Town Council Meeting)*

Town Attorney Randolph read Ordinance No. 11-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, OF THE TOWN CODE OF ORDINANCES AT ARTICLE III, OFFICERS AND EMPLOYEES, BY AMENDING AND DELETING SEVERAL SECTIONS CONTAINED THEREIN, AT ARTICLE VI, FINANCE, BY AMENDING CERTAIN SECTIONS CONTAINED THEREIN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Town Attorney Randolph advised that some discussion would be needed before a motion could be made.

The Town Council approved the first reading of Ordinance No. 11-00 with the following changes as outlined in Town Manager Doney's memorandum dated 6/6/00:

1. Eliminate Section 2-137

President Pro-Tem McLendon moved approval of the removal of Section 2-137 from Ordinance 11-00. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

2. Eliminate the words "good cause" in Section 2-140 of the draft ordinance (No. 11-00) *There would be no need for a motion in this regard, as Town Attorney Randolph had already deleted this in the ordinance presented at this meeting.*

Town Attorney Randolph advised that there was a question as to whether the severance provision needed to be included in the Town Code, however, Town Manager Doney had indicated that because the Town Council had included an administrative procedure relating thereto, there would be no need to continue with the reference to terminate for "good cause," which was included at Section 2-140 of the draft ordinance, and had been deleted in the final ordinance. He read that from Section 2-140: "The Town Manager shall have the authority to terminate the services of any appointive administrative officer of the Town (with the words good cause eliminated), subject only to the severance provisions approved and adopted by the Town Council."

3. Amend Section 4.04(a) to delete the Town Attorney as an officer and employee of the Town

Town Attorney Randolph questioned the Town Attorney remaining as an appointive administrative official of the Town, since the Town Attorney was really an outside consultant; he had therefore suggested that Section 4.04(a) be amended to delete the Town Attorney as an officer and employee of the Town.

Councilman Wyett moved approval of the deletion of the Town Attorney as an officer and employee of the Town in Section 4.04(a) of Ordinance 11-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

4. Eliminate the Town Engineer as an appointive official of the Town

Councilman Brooks moved approval of the elimination of the reference to the Town Engineer as an appointive official from the Town Code. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

5. Make no changes to Division 4 of Article III regarding the establishment of the position of Town Attorney.

Town Attorney Randolph advised that Town Manager Doney had recommended that Division 4 of Article III remain as the ordinance was currently written; there would be no need for Town Council action in this regard.

6. Rewrite Section 2-541 to conform with the Florida Statutes. The changes will be in the form of an ordinance presented for first reading at the July 11, 2000, Town Council meeting.

Town Attorney Randolph explained that it was suggested that the budget procedure reference, staring with Section 2-541, should be written to comply with the latest edition of the Florida Statutes pertaining to budget. He recommended that the ordinance could be passed today on first reading, subject to those minor amendments being made for the second reading at the next Town Council meeting.

President Pro-Tem McLendon moved approval of the re-writing of Section 2-541 and to be included in Ordinance 11-00 on first reading, subject to minor amendments. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

7. Amend Section 2-167 to make it clear that the Town Manager is authorized to fill any vacancy caused by the discharge or termination of the eight (8) Department Heads identified in Administrative Procedure No. 3-00-1, in addition to the power to fill any vacancy caused by absence of such administrative officials on the grounds that there is a distinction between the terms "absence", "discharge" and "termination".

Town Attorney Randolph explained that it was the suggestion of Town Manager Doney that Section 2-167 be amended to make it clear that the Town Manager was authorized to fill any vacancy caused by the discharge or termination of department heads; the current language indicated that the Town Manager had the power to fill any vacancy because of absence. Mr. Randolph recommended the inclusion of the words "discharge and/or termination."

President Pro-Tem McLendon moved approval of the inclusion of the words "discharge and/or termination" in Section 2-167 of Ordinance No. 11-00. The motion was seconded by Councilman Brooks, and on roll call carried unanimously.

President McLendon moved approval of Ordinance No. 11-00 on first reading. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

3. Ordinance No. 14-00 - Granting to Comcast Cablevision of West Palm Beach, Inc., a Non-Exclusive Franchise to Construct, Operate, and Maintain a Cable System in the Town and to Provide Cable Service in the Town of Palm Beach, Florida, Pursuant to the Terms of the Agreement

Town Attorney Randolph read Ordinance No. 14-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING TO COMCAST CABLEVISION OF WEST PALM BEACH, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE TOWN AND TO PROVIDE CABLE SERVICE IN THE TOWN OF PALM BEACH, FLORIDA, PURSUANT TO THE TERMS OF THE AGREEMENT ATTACHED HERETO; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 14-00 on first reading. The motion was seconded by President Pro-

Tem McLendon.

Councilman Wyett commented that he could not vote to approve the contract, as he believed that it was less than could be accomplished; 15 years was too long of a time period for such a contract. He urged that further negotiations take place.

President Pro-Tem McLendon commented that it was his understanding that the 15-year term of the contract was reasonable.

Councilman Brooks commented that there was absolutely no idea of what technological improvements would be forthcoming during the length of the contract; the language had been negotiated to include a good faith effort, which carried the potential for adjudication, and although he was sensitive to Councilman Wyett's comments, he believed them academic.

On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

4. Ordinance No. 15-00 - Amending Chapter 2, Administration, so as to Include a New Article VII Authorizing the Issuance of Subpoenas by the Town Manager or the Town Manager's Designee to Compel Attendance at Hearings Before Any of the Boards or Commissions of the Town

Town Attorney Randolph read Ordinance No. 15-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, SO AS TO INCLUDE A NEW ARTICLE VII, AUTHORIZING THE ISSUANCE OF SUBPOENAS BY THE TOWN MANAGER OR THE TOWN MANAGER'S DESIGNEE TO COMPEL ATTENDANCE AT HEARINGS BEFORE ANY OF THE BOARDS OR COMMISSIONS OF THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Goldblum moved approval of Ordinance No. 15-00 on first reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

C. Appointments

1. Architectural Commission - Balance of a Three Year Term to Expire March 1, 2001

The Town Council appointed Lindley Hoffman to fill the unexpired portion of the three year term.

D. Bid Award

1. Sealed Bid No.2000-05 Recreation Center Viewing/Storage Area Project - Resolution No. 22-00

Town Engineer James Bowser reported that the bid for the Recreation Center viewing/storage area was within budget, in the amount of $32,600, (the high was $45,000, and $50,000 had been budgeted for design and engineering) and he recommended approval.

President Pro-Tem McLendon moved approval of Resolution No. 22-00 (sealed bid No. 2000-05). The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution No. 22-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO CORAL TECH ASSOCIATES, INC., FOR THE RECREATION CENTER VIEWING/STORAGE AREA.

E. Other

1. Statue of Henry Morrison Flagler - Request by John Blades, Executive Director, Henry Morrison Flagler Museum

Mr. John Blades addressed the Town Council, advising that the location at the west end of the median at the corner of Cocoanut Row and Royal Poinciana had been designated and approved as the location for a statue of Henry Morrison Flagler. He explained that subsequently, the donor, the Public Works Director, and a representative from the Landmarks Preservation Commission had met to determine the appropriate size for the sculpture, and it was found that the approved location was not acceptable to the donor. He advised that the donor was now interested in the location of South County Road at the northernmost end of the median where the fountain currently sat, if that was acceptable to the Town Council and the Landmarks Preservation Commission. He noted that a mold had been made of a sculpture that was 6'4" tall, on a 4' granite base, sitting on a 3' set of stairs in St. Augustine, and that mold could be cast into a clay model, which could be scaled to an appropriate size for the location in the Town.

Ms. Lisa Small, President of the Greater South County Road Association, spoke in support of the placement of a statue of Henry Flagler on South County Road.

Mayor Smith commented that there was a lighting project that was going to start immediately in the fountain area, and the statue would most likely be part of the plan. She asked if it would be possible to add this item to the Landmarks Preservation Commission Agenda for the upcoming meeting?

Director of Planning, Zoning & Building Robert Moore replied that it would not be possible to add this issue to the June Landmarks Preservation Commission Agenda, however, it could be placed on the July Agenda. A Certificate of Appropriateness would need to be applied for, since the location was Town property, and Town staff must be authorized by the Town Council to apply for that.

Public Works Director Al Dusey advised that the lighting project could be modified to include placement of the statute, if so desired.

Ms. Polly Earl, Executive Director, Preservation Foundation, asked why the original location of the statute on Royal Poinciana Way, had been found unacceptable?

Mr. Blades explained that the donor had found that when the actual size photograph had been viewed in that location from different angles, it had become clear that it would not do, as there was interference from a light post, and scale had also become a problem.

Ms. Earl suggested that a scale model be presented before any approval was granted.

President McDonald agreed that he would like to see the scale and the elevation of the statue before approval.

Mr. Blades replied that he had intended to work with the Town and the Landmarks Preservation Commission to determine what would be appropriate.

Mayor Smith suggested that Mr. Blades present an elevation at the July 11, 2000, Town Council Meeting, which would be held before the July Landmarks Preservation Commission meeting.

Mr. Blades responded that actual life size photographs of the sculpture were available, and it could be placed in the fountain area, with another photograph taken of the entire area, which could then be presented to the Town Council.

President McDonald clarified that the placement of the statute of Henry Flagler would be placed on the agenda for the July 11, 2000, Town Council meeting; Mr. Blades would appear with elevation and photographs; it would also be placed on the Landmarks Preservation Commission agenda for its July meeting, and Town staff would apply for the Certificate of Appropriateness.

B. Proposed Landscape Design Competition Project for Boynton Landscape Property Project - Mayor Lesly Smith

Public Works Director Al Dusey reported that five letters of interest had been received regarding the Boynton Landscape Property; a preliminary outline had been prepared as to how the project would be approached.

Councilman Brooks moved approval of the Boynton Landscape Property landscape design competition project. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

C. Application for Commercial Motion Picture Filming Permit by MGM Studios at Various Commercial Zoning Districts Throughout Town in Accordance with Article IV of Chapter 22 of the Town Code of Ordinances

Deziel: I'm here today on behalf of our firm's client, MGM, and I'd like to introduce a couple of people that are with us today that came in for the hearing. We've got Clayton Townsend; Clayton is the producer of the movie that's now being labeled "The Breakers," and along with him is Sam Tedesco, and Sam is the location manager. I brought them along so they can answer any specific questions that you might have in connection with the application being presented today. What I'd like to do is just reference the materials that we're working off of, and then highlight a couple of issues that we think are prevalent in your consideration, and then ask you how we can help you to make a determination today. We're working off a memo from Mary Pollitt, the Town Clerk, dated May 31, and a memo from Robert Doney, dated June 6, a letter from our office to Mr. Doney also dated June 6, a meeting that Maura Ziska, also from my office, and I had with Assistant Police Chief Michael Reiter yesterday, and then a staff meeting that occurred with Maura Ziska and Sam Tedesco to go over some of the issues.

The first document I'd like to refer to is the memo from Robert Doney that highlights portions of the ordinance that Mr. Doney – it's actually from Chief Croft to Mr. Doney, and we addressed this in our meeting yesterday with Assistant Police Chief Reiter, and Mayor Smith had stated June 6, 2000. I will go through all of the items individually, and I think there's only one of them that we'd like to address specifically, and I'll have Mr. Townsend do that, and it involves deference to normal flow patterns for traffic, and we've modified the presentation we want to give you in response to some concerns that we've heard that the Council and staff have relative to the application as originally filed. But, after number five in Chief Croft's memo, the limitations to commercial districts, we agree to that requirement because it is part of the ordinance. The prohibition on the narrow streets and the requirement that all filming occur on 30 foot wide streets – we agree with that, as it is also a requirement. There was mention, and I didn't know if it was a requirement, but we've been able to make arrangements - - for your information, The Breaker's Hotel property, where much of the filming will occur, will serve as the main camp for the equipment for this project. In addition, Sam Tedesco has spoken with and made arrangements with the owners of the Apollo Lot behind Worth Avenue to make that what they would call a mini base camp, so we will be able to keep most of the equipment outside of the thoroughfare so that we can just use whatever they need to bring over from The Breakers, and it will be accommodated in an orderly fashion.

Comment number two, under that same paragraph refers to metered spots on Peruvian Avenue. What we would like the Council to consider, and we discussed yesterday with Assistant Chief Reiter, is allowing some meters on Peruvian Avenue, and if you know the location I'm talking about, it would be the east facade of Chanel, and the filming of Worth Avenue will occur around the corner toward the south facade of Worth Avenue and a little bit to the west. What we'd like to do is have the meters along Peruvian Avenue in front of the Chanel building bagged, and MGM would pay the meter fee for the full day, even though we don't contemplate the meters being used all day, we're hoping that kind of accommodation could be granted by the Council. We spoke with Chief Reiter about that, and we'll let him give you his opinion in our conversation.

The next item in that memo is a reference to the actual number of police officers that would be required to monitor the situation, so that the filming occurs in an orderly fashion, and yesterday in our meeting, Chief Reiter requested that between now and then that he uses his own discretion to make a determination as to the number of officers that are necessary; it will be paid for by MGM, and if on the day of filming any additional officers are required, that he would make that decision, and we've agreed to that. So, we're agreeable that Chief Reiter or Chief Croft would, at their discretion, determine whatever law enforcement officials they need for this event; that they would make that decision and just send MGM a bill, and MGM is agreeable in paying that invoice.

Item number four in that memo is the one that involved – the statement is that the event would require intermittent stoppage, closure for parked cars, moving cars, and pedestrians in the 300 block, and what I'd like to do is come back to that issue and try and resolve all of the issues except that one, and then have Mr. Townsend present that element of our application today, and the reason is, like I said before, we've made a modification in the way this filming will occur, in trying to accommodate some of the concerns we've heard out of this Council and staff.

Item number five involves specific street names and blocks to ensure that all filming will occur in commercially zoned areas and not occur in residentially zoned areas, and I believe that Ms. Ziska is working with Paul Castro on that, and that issue will be resolved. We totally agree that the filming is only requested for and will occur in commercial areas.

Item number six involves filming a scene outside of First National Bank. An issue that is involved in that request is outside our control, and that is the re-paving and the infrastructure effort that is currently being undertaken by the DOT and some other agencies. What we'd like to do is obtain approval to film in that location in the event the location is suitable for our needs and that the filming sequence and the procedures would be subject to your approval as discussed today, and as discussed with Chief Reiter, and with officers in place on that day. In the event we need an alternative location, we believe there will be another Town Council meeting between now and when that filming could occur, so if it does not occur at that location because DOT is behind schedule, or the location just doesn't accommodate the film scene, we would like the opportunity to come back for that one specific issue.

So, in summary of the nine issues addressed in Chief Croft's memo, we agree with all of them; we just want to address the traffic issue on Worth Avenue, and the way that issue is addressed will also apply to South County Road in front of the bank, or any other locations that you might grant permission. The memo from Mary Pollitt basically summarizes the fact that there was a staff meeting. We appreciate the fact that so many people on the Town's behalf attended that meeting.

Just in general on the application, we want to thank the Town. Many staff personnel have been involved in this application. The Town has given a lot of time, and we do appreciate that. And then the last thing I'm going to do is refer to a memo from our office, and without taking any more time, the memo, basically in writing, summarizes what I just said, verbally, relative to Chief Croft's memo. I'd also like to point out that our Town Attorney, John Randolph, has requested, which is I believe either part of the application, but even if it isn't, we agreed to the Hold Harmless and Indemnity Agreement, and I believe at one time the terms of that agreement may have been agreed to; we then had to turn it over to the MGM counsel so they could review it, and I still don't know today if Mr. Randolph has approved the form, but we would agree, and we've done this before on documents with him on many occasions, that we would agree that if we received approval today it would certainly be subject to Mr Randolph's final approval of whatever the Hold Harmless and Indemnity Agreement has to read, since we've entered into many of those documents on behalf of other clients and other applications, and we've never had a problem before. So, summarizing what we think the issues are today, at least in our own internal reading and reviewing the application, discussing it with our client, and meeting with staff, the allowing of meters on Peruvian Avenue to be bagged, and MGM paying the full meter fees for the full day. In addition, relative to the location being requested for the filming on Worth Avenue, there is a need for some spaces to be occupied by the production company's vehicles, and it's for the following reason: because the filming on Worth Avenue will take place over a period of time, there's a requirement in the film for there to be a consistency as to what vehicles are in what location, so that if they shoot the same scene an hour later, or two hours later, even though the filming itself is only about a 60-second spot, and they take a half an hour to an hour to set up, they just want the scene to reflect the same vehicles that have been there so the scenes are consistent, and the request there is that there would be six spaces either side of the location of the filming, which is the Mr. Sid location on Worth Avenue, and those spaces could be occupied on both the north and south side of Worth Avenue, and Mr. Townsend is also prepared to talk about that issue, because we do agree with you that Worth Avenue is a sensitive spot.

The other one is the police officers, and we don't believe there's an issue there. Whatever Chief Croft or Assistant Chief Reiter believe are necessary, we're going to go along with that.

Next there was the request that we make arrangements with the Apollo Lot, and we've done that.

Next is the South County Road location, and I believe that Mr. Townsend's conversation about how the filming activities will occur in general hopefully are satisfactory to you with respect to that location.

The Hold Harmless Agreement – it is either satisfactory now; I'm not sure about Mr. Randolph's opinion, but we certainly agree that it will be made satisfactory, in his opinion, prior to the filming.

And then lastly, we would hope that you would give us the opportunity, and maybe Mr. Doney would put us on the Agenda tentatively for the, I believe it's the July 11th Town Council Meeting in the event we need to come back or clarify or clean something up or modify something for filming to occur later that week.

That's the extent of our presentation. We believe we comply with the ordinance and to the extent that you have any questions related to our strict compliance, I'm happy to answer those questions if I'm capable, or we could have Mr. Tedesco or Mr. Townsend answer them.

Doney: I think appropriate would first to hear from Mary Pollitt to give an overview of some comments that she has, and then we hear from Assistant Chief Reiter, and then hear from Mr. Randolph, and I think we can piece it all together in that order and any other comments that you might have, or questions where I think we can answer them.

Pollitt: Well, I think Mr. Deziel has covered many of the memos I would have covered had I started with it, but we were satisfied that the application was submitted on time. It was a little early, which is outside the ordinance parameters, but that would only give us a few more days to look at it, so that was, I think, okay. The only thing that we would need if this goes forward we would need additional fees and some other things in that regard with our department, but that's the extent of where we are with this right now. It's really with the other departments.

Reiter: For the record, Mike Reiter, Assistant Chief of Police. Our greatest concern from the Police Department's viewpoint is the vehicular/pedestrian traffic in the area, as well as spectators that we would expect with onlookers that would come to watch the filming. It is certainly a question of whether or not that would be an interference to the normal flow patterns of both pedestrian and vehicular traffic. It would appear as though, as how the situation has been described to me – it would be. There would be times where we would have to stop vehicular traffic and pedestrians from walking down the sidewalk, and have officers there for crowd control in the event that there are a large number of spectators that arrive. It would then be a legal and a policy decision of whether or not you agree. But it appears as though we would have to stop pedestrian and vehicular traffic. There are a few other items; they're really policy matters of whether or not you want to allow MGM to take parking spaces on Peruvian Avenue and have us reserve them, we have the capability of doing that, should you direct us to do that. The same on Worth Avenue. We feel we can supply a sufficient number of police officers in the event that you do permit it to control it, but at the same time, in all likelihood, it would cause some disturbance to the vehicular and pedestrian traffic.

Wyett: Excuse me, I have one question. Would that require overtime, extra duty police or on duty?

Reiter: They'll be compensated based on the special assignment overtime, yes.

Doney: Next would be Mr. Randolph. I know he had provided a letter already about this issue, but if he has anything additional to add.

Randolph: I'm not sure you've heard enough from the applicant yet as to the manner in which they propose to film these scenes on Worth Avenue in front of the First National Bank. I think whatever they propose will be determinative of my opinion as to whether or not they are in violation of the code or not. The manner in which it was proposed at the staff meeting I felt was in violation of the code, because it did impede pedestrian and vehicular traffic, and therefore, would be in violation of the code. A matter that was not previously addressed at the staff meeting was in regard to the bagging of meters. I've heard that today for the first time. I suppose if the Town wants to allow that it can do so, but in doing so, if you keep in mind that it will be changing policy in that regard, because historically the Town did bag meters on a – actually we leased them to condominium units, and I indicated that I did not think that you ought to be leasing or reserving public spaces to private entities. I'm not sure that this is the same type of thing, but you should give consideration to that in this request as to whether or not you'll want to allow private entities to be reserving public spaces on that basis. And that's all I have on this point.

McDonald: Mr. Deziel. I think you need to proceed. We need more information on your scenes; where you're going to shoot; site specific locations.

Smith: The logistics of shooting the scenes.

Deziel: I'd like to reintroduce Clayton Townsend, who is the producer of the movie.

Townsend: I'm Clayton Townsend. I'm with MGM studios, and the executive producer on the film currently titled "The Breakers." I appreciate very much the opportunity to have applied for the permit to film here in Palm Beach and look forward to the opportunity to do so. As Mr. Deziel mentioned, originally we had applied for what was more or less the norm in our industry of curtailing pedestrian and vehicular traffic to ease the process of filming for our needs. As we've come along the process and heard the concerns of the Council and Town population, we've re-grouped and decided for our purposes that it would be best to try and fit in with your code, and film in a manner that wouldn't disrupt – that we wouldn't actively disrupt. There certainly would be an activity transpiring that to describe would probably best be put this way – on Worth Avenue there's a scene of two people walking down the street – would be Anne Bancroft and Sigourney Weaver, who play the part of two women who know each other, and they meet for the first time, walk down the street, and are seated at a sidewalk café, which we would like to simulate in front of Mr. Sid's restaurant. We really don't require any vehicular re-routing or stoppage, with the exception of ideally would be when the camera is actually rolling, which is all of one/two minutes at any particular time, usually about once or twice a half hour, which is equivalent to a traffic light. In terms of pedestrian traffic, we wouldn't try and stop any sort of pedestrians from coming or going in any of the shops, only, again, within the range of the actual line of sight of the camera for that one to two minute period. The concern of spectators I think can be answered in terms of I don't know – we certainly don't want to have large crowds of spectators in any one spot, and I don't foresee a problem in restricting access from our people and stopping any sort of traffic that would normally occur.
South County Road – it seems from everything I've heard this morning that the construction will be such that it won't be completed in time to allow us to film on South County Road, so I feel, rather than elaborate too much on that issue, it may be a moot point. We may try and come up with an alternative site that falls within commercial zoning that we would put before the Council at the next meeting, if that were permissible.

Smith: In the interest of getting a few of the specifics for the Council, in reading your application for the movie making, I counted up 25 trucks, and 15 sedans. Now, that is considerable traffic on the street. I know it would be parked. And now I'm going to move into Mr. Deziel's suggestion that they be parked on the east side of the Chanel Building. First of all, you couldn't get 40 vehicles on that area. That is also the approach to Worth Avenue where you are going to have people standing and you are going to have spectators, so I would think that area for the 25 trucks would be out. You're talking about down there in front of Mr. Sid's, setting up for the café – you're not going to put a table there as it said in the application. You would not be able to park on Worth Avenue, unless you're going to pay the parking tickets after an hour, that you would be getting. That is a precedent we could not set, because there are no meters there and we cannot block out two sides of the street there for this type of truck traffic. I mean, we just can't. But I think you would be able to find the major trucks room on the Apollo Lot if you are reserving and taking the Apollo Lot for the entire shoot. We know these things can take a long time. You say a minute or two, but sometimes it can take three days to shoot a minute that would be acceptable to you. So, how would you feel with that?

Deziel: If I could just respond, and maybe I wasn't clear when I gave our opening presentation, but the vast majority of those vehicles and the equipment that you're reading in the application – I'm sorry, the vast majority of that equipment and those vehicles will be located at The Breakers, on site at The Breakers. The predominant portion of the filming for this movie, and I failed to put this in perspective for you, will occur at The Breakers. How many days are at The Breakers, Clayton?

Townsend: There's two days at The Breakers. Mayor and Council, if I could. Normally, you're absolutely correct that the sort of circus of equipment would be vast, and as listed as I have here on the permit application. We – because of both the requirements of the filming and what the camera lens would see, as well as the concern of the parking spaces in the area, we would most definitely leave 90% of this equipment at The Breakers. We would only bring the camera, the sound recording devices, several small lights, and some ancillary equipment on trucks shuttled from The Breakers, and then dropped off at the shooting location, and then those pick up trucks, more or less, would drive around and park in the Apollo Lot, or if the space is provided, in front of Chanel.

Goldblum: If I understood you correctly you would occupy 24 parking places on Worth Avenue, is that correct? Six on each side on each side of the street, is that correct?

Townsend: That would be desired, yes.

Goldblum: How long would they be there?

Townsend: Approximately six hours.

Goldblum: Six hours. All right, now your shoot is one minute.

Townsend: When we're actually rolling the camera, those takes are about one minute in duration.

Goldblum: Forget that. I understand that. How long does it take you to set up for that shoot, and do we have to block traffic?

Townsend: No, we would not have to block traffic for the set up. We would not have to.

Goldblum: You would only have to block traffic for the one minute shoot, is that correct?

Townsend: Yes, sporadically throughout the day.

Goldblum: So, it would take five minutes to get the traffic through, then block it.

Townsend: That's right, and we would wait for the traffic to clear, until the police officers on site would let us know that it's all clear, and then we'd ask to stop it again for the moment.

Smith: I think, looking at the filming schedule, why did you not prefer shooting on Worth Avenue on Sunday, when there would be less traffic. You have the Saturday, the 8th of July, and the Monday, July 10th on Worth Avenue. Why not do it on Sunday?

Townsend: Two reasons. Normally our off day is Sunday. We're currently filming in Los Angeles. We've established our schedule, and our scheduled off day is Sunday. That could be changed, if necessary. I had thought, and perhaps mistakenly, that the weekend would be a busier shopping period, and that a Monday or a Tuesday would be a proper day, but if ultimately Worth Avenue is better filmed on a Saturday or a Sunday, we can do that.

McDonald: Any other comments? Mr. Deziel, do you have more, or do you want us to deal with the issues that are still open?

Deziel: If you would deal with the issues that are still open, Mr. McDonald, we would appreciate it.

McDonald: Do you want to start with the meters on Peruvian Avenue?

Deziel: Sure.

McDonald: All right. How's the Council's feeling on bagging the meters on Peruvian Avenue?

Goldblum: Can I ask one question? Would that only be on Sunday also, if you shot on Sunday?

Townsend: Yes.

McLendon: How many meters? How much distance?

Deziel: There's a driveway behind – what if we said that it would be from Worth Avenue to Peruvian – Mr. McLendon, the request would officially be from Worth Avenue to Peruvian on the east side of Hibiscus, west side.

McLendon: Well, I thought you were proposing it on Peruvian.

Goldblum: That's what I thought you said.

Deziel: Okay, I'm sorry. That's correct.

McDonald: You said meters on Peruvian, I thought.

Deziel: Correct.

Doney: Where, and how many?

Deziel: From Cocoanut to Hibiscus – you know, that's a block. How many are in there? Twelve – the request is for 12.

McDonald: That's on the south side of the street?

Deziel: Yes.

McDonald: All right, how's the Council feel about bagging 12 meters on the south side of Peruvian between Cocoanut and Hibiscus?

Smith: How does Bice feel about this? This is in front of them.

Deziel: If that were a requirement, we would go to Bice and I know we could get their approval. I'm just offering that – we would do it subject to their approval.

Goldblum: Would that be a morning shoot? Sunday morning?

Townsend: Yes. We'd begin in the morning, and it would take into the afternoon.

Goldblum: Because we're trying to block out the least traffic and the least number of people being around.

Deziel: Could I ask the Chief something? I don't believe that meters are required to be paid on Sunday, are they?

McDonald: Assistant Chief Reiter?

Reiter: I'm not completely sure, but you may be right.

Deziel: I'm not saying we're trying to get out of paying the money, but it could eliminate the issue.

Brooks: We have determined that the shoot will be on Sunday?

McDonald: It would need to be Sunday. They start in the morning, Mr. Brooks.

Smith: They'll take all day. Why can't you get all of the trucks and the equipment on the Apollo Lot. I do have a problem with bagging the meters and taking the parking spaces on the east side of Chanel. I do. I think it's setting a terrible precedent for anybody else who comes in with a party or an event, albeit not as exciting as your movie, that ask to have the meters bagged.

Townsend: May I ask a question? We would be more than willing to attempt to put everything in the Apollo Lot. Would the Council be objectionable if we did not fit everything in the lot and the spaces were available as a matter of course, if we were to take them as long as we adhere to the normal parking regulation?

McDonald: I don't think we can prevent them from parking on the street.

Smith: No, absolutely not, as long as they try for the Apollo Lot, because we do have to figure that the least detriment to the residents and visitors to the Town, because on Worth Avenue everyday is a weekend.

McDonald: Okay, so we've dealt with Peruvian Avenue now Mr. Deziel?

Deziel: Yes.

McDonald: Okay, so what's the next one?

Deziel: The next one I have is the Worth Avenue spaces of 12 on the north and 12 on the south.

McDonald: That's on either side of Mr. Sid? All right, what's the Council's feelings on this one?

Goldblum: If you shoot first thing in the morning. I don't know if the sun makes any difference, or where it is – none of the stores are opened on Sunday morning.

Townsend: I believe that there is a code stipulation that we don't start filming before 10:30 in the morning, I believe.

McDonald: Mr. Randolph?

Randolph: Yes, there is a provision in the code which talks about the time, and it is –

Deziel: We believe it's 10:00

Randolph: 10:00 to 4:00.

McDonald: 10:00 to 4:00; all right, it's 10:00.

Smith: And on Sunday, is it different hours on Sunday? No.

McDonald: All right, so what's the feelings of the Council on the spaces on Worth Avenue.

Smith: I don't think they even give parking tickets on Sunday.

Goldblum: I approve of it.

McLendon: I don't see a problem with it.

McDonald: Okay, that seems to be all right apparently. All right, what's next, Mr Deziel?

Doney: Mr. McDonald, what is the specific date again of the Sunday?

Deziel: Could the request be that it either be the 9th or the 16th, and we would let the Town know well in advance? Only because this change to Sunday may cause some complications, and they may have to shift to the following Sunday.

McDonald: That seems reasonable. How much advance notice are you going to give us?

Deziel: What would you like, Mr. McDonald?

Smith: Well, how much would the police like – I think that's more important.

McDonald: How would the police like, Assistant Chief Reiter?

Reiter: Well, I would actually like to know today, but a week would be fine.

McDonald: Okay, a minimum of a week Mr. Deziel.

Deziel: Okay, sure, that's okay. The next issue we have is the police officers. In other words, Chief Reiter would have the discretion to require throughout this whole scenario what is needed and when it's needed, and that MGM would pay for it. We don't believe it's an issue, because we've said yes.

McDonald: All right. I don't think it's an issue. What's next?

Deziel: The next issue was Apollo camp, but that now falls into Peruvian – that Apollo will serve as the main mini camp, and Peruvian would only be overflow from the Apollo.

McDonald: And you'll just park vehicles in front of the meters on Peruvian if the spaces are available, but we won't be taking any spaces out of commission on Peruvian, all right, next.

Deziel: Okay. Okay. Next is South County Road.

McDonald: I thought you were going to try to determine if you were even going to use that site, so that means you're not asking for that today, are you?

Deziel: Would it be permissible, Mr. McDonald, to defer – if we could take our application, with respect to that issue, and just move it over to next month, and then we'll get with Mr. Doney and staff and let you know well in advance exactly what's going to happen.

McDonald: That's fine with me, how about the rest of the Council.

Smith: Talk to Mr. Borello about DOT, right – he's right in the back of the room there.

McDonald: All right. Mr. Deziel, is that it?

Deziel: Okay. No, there's one – Mr. Randolph, the status of the Hold Harmless Agreement?

Randolph: I have the Amended Hold Harmless that you've sent, and there may be some minor amendments, but I don't see a problem with it.

McDonald: All right, so it would be contingent on you working out an acceptable indemnification agreement with the Town.

Deziel: Certainly. We believe that's it.

McDonald: All right, is there a motion to incorporate –

Goldblum: I'll make a motion to accept –

Brooks: I'll second it.

McDonald: All right. For discussion.

Wyett: Mr. McDonald, a question. What fees is the Town getting for this?

Doney: Mary?

Pollitt: There is a fee of $800 a day for each day of filming, so they've already paid $1,000 with the application; that has been paid. The $800 would be due for the one day that you approve; if you approve additional days, it would be $800 for each additional day.

Smith: You mean we don't charge them for the days they're shooting at The Breakers?

Pollitt: It's not part of this permit.

Townsend: We'd be happy to pay it if that clears up anything.

Wyett: Since the officers in the Police Department have to work overtime for this, I'd suggest you make a payment to the Police Benefit Association in Town.

McDonald: All right. Does that answer your question, Mr. Wyett?

Wyett: Yes.

Goldblum: I suggest we have a fund raiser for the premier in Town for our local charities.

McDonald: Is there a motion?

Brooks: Yes there is. Call the question, Mr. President.

McDonald: All right, Mrs. Pollitt.

Doney: Conditionally approved.

McDonald: Mrs. Pollitt.

(Town Clerk Pollitt calls roll - motion made by Councilman Goldblum, seconded by Councilman Brooks, which then carries unanimously).

Townsend: Thank you very much, ladies and gentlemen.

End of verbatim transcript.

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

The Town Council Meeting of June 13, 2000, was reconvened at 1:45 p.m.

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4. Proposed Settlement Agreement with City of West Palm Beach East Central Regional Sewage Treatment Facility

Town Engineer James Bowser addressed the Town Council, reporting that the City of West Palm Beach had agreed to return some disputed renewal and replacement monies to the Town of Palm Beach; the money in question had been retained by the City of West Palm Beach in 1992 when an interlocal agreement had been entered into by five entities sharing ownership in the East Central Regional Sewage Treatment Facility (ECR). The money had been retained from the Town's Renewal and Replacement fund at the ECR and was to pay for the purchase and installation of isolation valves on shared City and Town force mains, and to pay for the Town's share of the repair of the force main that broke in 1990. Staff now recommended the approval of an agreement with the City of West Palm Beach that would return $548,148 to the Town of Palm Beach, with the money being received in the General Fund, then transferred to the Capital Improvement Fund, at which time it would be placed in a reserve account that would be earmarked for maintenance and repair of the transmission facilities from the S-2 station all the way to the regional plant.

President Pro-Tem McLendon moved approval of the recommendation of staff to approve an agreement with the City of West Palm Beach that would return $548,148 to the Town of Palm Beach, with the monies to be received in the General Fund, then transferred to the Capital Improvement Fund, at which time the monies would be placed in a reserve account and earmarked for maintenance and repair of the transmission facilities from the S-2 station to the regional plant. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

5. Consideration of Discussion of Budget Cuts for the FY2001 Budget

Councilman Wyett commented that he had suggested that the Town Council direct the Town Manager to find substantial budget cuts to reduce the upcoming budget figure of $41 million. Councilman McLendon seconded the motion for discussion.

President McDonald commented that the procedure usually followed was that when an item was placed on the agenda the morning of a Town Council meeting it was discussed to see if it would be included on the agenda for the next month.

In response to President Pro-Tem McLendon, Town Manager Doney responded that he and staff had gone through the budget process and done the best job they could.

President McDonald noted that the budget report was on the agenda for July, and would be discussed at the Town Council Meeting next month.

Councilman Wyett explained that he did not see a procedure within the budget process that examined how the budget could be cut; he was requesting that the Town Manager provide an explanation of how he would cut the budget.

After further discussion, the Town Council took no action regarding the FY2001 Budget, as it had already been in place on the agenda for the July 11, 2000, Town Council Meeting.

XVI. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman Brooks commented that it had been very clear that the Finance & Taxation committee had submitted a tentative budget, and not something that was cast in stone.

President Pro-Tem McLendon commented on the issue of establishing a procedure for the recovery of the subsidies paid to Medicare and the federal government for charges for ambulance services in the Town. President McDonald noted that it could be submitted as an agenda item at least two weeks before the next Town Council Meeting.

Mayor Smith suggested any issue such as the ambulance issue should be discussed when more residents are in Town and suggested the November or December Town Council meeting.

Councilman Wyett commented the Emergency Medical Services (EMS) issue has been misunderstood in the past, and had been a very emotional issue. He suggested that it would be worthwhile to review, and with the Town's higher budget, the recovery amount for those services of approximately $325,000 could be included in the budget.

Councilman Goldblum commented on the changes that will be made at the Town of Palm Beach docks by Public Works Director Al Dusey and reported on at the July 11th Town Council meeting.

XVII. DEVELOPMENT REVIEWS

A. Time Extensions - None

B. Variances, Special Exceptions, and Site Plan Reviews

<u>Old Business - Major</u>

1. <u>VARIANCE NO. 6-2000</u> - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd.; located in the R-B Zoning District. To allow construction of an awning providing no side yard setbacks on the north or south in lieu of 10' required and providing a 3' rear yard setback in lieu of 10' required. *(Deferred from February 8, March 14, April 11, 2000, and May 9, 2000)* **(Request for Deferral per Letter Dated, June 9, 2000, from James R. Brindell, to be deferred to the July 11, 2000 Town Council Meeting)**

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

2. <u>VARIANCE NO. 17-2000</u> - Victoria B. Newhouse, 100 El Bravo Way; located in the R-B Zoning District. To allow construction of an addition providing an 8.5' sideyard setback in lieu of 12.5' required. *(Deferred from May 9, 2000)*

Zoning Administrator Paul Castro announced that the language for Variance No. 17-2000 in the Agenda for today's meeting was inadvertently misplaced. The actual application was for a point of measurement variance for the second story addition — to have a 17.6' NGVD point of measurement in lieu of the 14.6' maximum allowed in the R-A Zoning District. He explained that it had been advertised and noticed correctly, however, it appeared incorrectly in the Agenda.

Ex-parte communication was declared by Councilman Brooks via a conversation with Attorney Byrd, the first time the application had come before the Town Council.

Attorney Wade Byrd, representing South Ocean El Bravo, LLC, the owner of the property located at 100 El Bravo Way, addressed the Town Council. He explained that since the May 9, 2000, Town Council Meeting he had an opportunity to meet with the neighboring property owners to the north and to the south, and a satisfactory agreement had been reached with them. He presented an architectural rendering, explaining that an existing pool house would be removed, and replaced with a two-story structure, the first floor of which would be a living room, the second story a master bedroom. The lot was a corner lot and a ridge ran through the property. He explained that the hardship ran with the land – the grade of the land and the finished floor of the existing residence to be partially remodeled was substantially higher than the crown of the intersecting roads, which was the point of measurement used by the Town to determine the allowable buildable height in an R-A Zoning District. The high ridge also caused the finished floor to be higher, and the property was a corner lot, which caused the Town point of measurement to be artificially low. The height of the adjoining properties was equal to or higher than the property at 100 El Bravo.

Councilman Wyett moved approval, finding that the hardship ran with the land, with the artificial low point in the road itself, the corner lot and the fact that the house pre-existed current zoning. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

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At a later point in the meeting, Mayor Smith referred to Variance No. 17-2000, 100 El Bravo Way, noting that a motion had been made to approve it with the variances, before it was known that the project had already been approved without variances at the Architectural Commission (ARCOM). She asked if the applicant would now have to return to ARCOM with the new design?

Director of Planning, Zoning & Building Moore replied affirmatively; the applicant had re-designed the project so that a variance would not be needed for the additions, had worked out any differences with the neighbors, and they would now be required to go back to ARCOM for a new approval of what had been approved by the Town Council today.

Mayor Smith suggested that the Town Council should know in advance if a project was able to be designed and approved by ARCOM without variances, before having to vote on an application; she stated that since it could be done without variances, it set a terrible precedent to have the applicant back and forth, and using ARCOM as a sounding board for two presentations.

President McDonald agreed with the suggestion, stating that in the future, the Town Council should be told if a project had been to ARCOM beforehand, and had been approved.

Mr. Moore indicated that he would follow that direction in the future.

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3. <u>VARIANCE NO.18-2000</u> - Dreamlife Corp., 214 Dunbar Rd.; located in the R-B Zoning District. To allow installation of driveway gates, using the existing gateposts, which are located at a 14' setback in lieu of 18' required. (Deferred from May 9, 2000)

Ex-parte communication was declared by President Pro-Tem McLendon, who had met with Attorney Kolins on the site; by Councilman Brooks, who had spoken with Attorney Kolins prior to the last meeting; by Councilman Goldblum who had met Attorney Kolins on site; by Councilman Wyett who had spoken with Attorney Kolins.

Attorney Ron Kolins addressed the Town Council meeting, stating that he had presented the variance request No. 18-2000 to the Town Council last month, and it had been deferred to the present meeting. He recalled that Mr. and Mrs. Horowitz had purchased the house in its present configuration, with the posts fronting the street being fixed in place. Subsequently they had found a need for security and privacy purposes to install gates along the front of their semi-circular driveway, and hired a contractor to do that – the contractor turned out to be an unscrupulous contractor who obtained a permit under false pretenses; the gates had then been red-tagged by Town personnel. He displayed photographs of the site and gates in question, explaining that privacy and security were required by Mr. and Mrs. Horowitz, who were in town approximately five months of the year; the driveway was being used by the public when they were gone. He cited the hardships as the lay of the house and the posts on the land; the situation had not been created, but was inherited; if the posts had to be moved 4' further towards the house that would destroy the aesthetics of the property, which would in turn destroy the property value, the aesthetics of the house, and thus the enjoyment of the house. In addition, he noted that the angle that a driver would have to take to get out of the driveway was difficult under present circumstances, and if the posts were moved towards the house it would create an extremely difficult and dangerous driving situation to get in and out of that driveway. He also noted that no one on the street had objected to the application, and the gates were very attractive; a traffic study had indicated that there would be no safety hazard created by the gates.

Director of Planning, Building & Zoning Robert Moore reported that staff comments were as follows: Comprehensive Plan: a better design and configuration could be achieved that more closely meets the Code. Building Department: gates can be located further away from the street. Town Manager: concurs with staff remarks.

Councilman Wyett commented that he could not see a hardship.

Councilman Brooks commented that he realized there was concern about precedent being set in this instance, however, he pointed out that the applicant had been hoodwinked by an unscrupulous contractor, and he suggested that the variance could be granted in such a way that a precedent was not set.

President Pro-Tem McLendon commented that he was sympathetic to the application, and that the parking lane in the street made a big difference. He suggested that perhaps the ordinance should be reconsidered in such an instance.

Councilman Brooks moved approval of Variance No. 18-2000, finding that the hardship was as outlined by Attorney Kolins, and that he had also walked the property himself to verify that it would be difficult to move the gates. The motion was seconded by President Pro-Tem McLendon.

Mayor Smith commented that she commiserated with the applicant, however, she expressed concern with the hardship.

Attorney Kolins clarified that the lay of the house on the land, and the location of the enormous tree on the property created an on-the-ground situation that was not created by the applicant, which created a hardship and justified the variance request.

Councilman Goldblum commented that he did not see a hardship.

President Pro-Tem McLendon commented that he had visited the site, and believed that there was a hardship in that the appearance of the front view of the property would be destroyed.

Attorney Kolins commented that the aesthetic appearance of the entire street would be negatively affected.

Director of Planning, Zoning & Building Moore commented that the gate would not exceed the height of a fence that could be put in the same location; the object of the ordinance had been to allow the cars to get off of the street when entering a property so that they would not be a traffic hazard.

On roll call the motion to approve Variance No. 18-2000 carried 3/2; with Councilman Brooks, President Pro-Tem McLendon, and President McDonald casting affirmative votes; Councilman Goldblum and Councilman Wyett casting dissenting votes.

4. SPECIAL EXCEPTION NO. 10-2000 - Thomas Campaniello, 240 S. County Rd; lengthy legal description on file: located in the C-TS Zoning District. To allow a 2,201 sq.ft. retail occupancy in lieu of a 2,000 sq.ft. maximum allowed. *(Deferred from May 9, 2000)* **(Request for withdrawal Per Letter, Dated June 5, 2000, from Ms. Maura A. Ziska)**

This item was withdrawn from the Agenda, under Item V. Approval of the Agenda.

New Business - Minor

5. SITE PLAN REVIEW NO. 6-2000 The application of Samuel & Louise Edelman relative to property described as Lots 14, 14A & S15' of Lots 15 & 15A, Alto Lido; commonly known as 1255 N. Lake Way; located in the R-B Zoning District. To allow construction of a residence on a lot width of 89.11' in lieu of 100' minimum required. **(Robert Moore requests that this Item be relocated to Page 7 as Item 15)**

Attorney Peter Broberg, on behalf of Mr. and Mrs. Edelman, addressed the Town Council, stating that Architect Smith would explain the architectural renderings in detail. He noted that the application had been submitted to the Architectural Commission (ARCOM) for approval on April 1, 2000; subsequently the Director of Planning, Zoning & Building Moore had notified Architect Smith that the lot was deficient in width, and a variance would be needed, however, the demolition process could continue through ARCOM. Mr. Broberg explained that demolition had been approved, and the applicant had then been informed that the sliding scale would not have to be used, and the original Code would be applied.

Architect Smith reviewed the site plan, pointing out the details.

Director of Planning, Zoning & Building Robert Moore commented that there was no staff objection, as all zoning code requirements had been met.

Mayor Smith suggested that a driveway be designed that would close off the entrance to the bike trail.

Architect Smith replied that he could work with a single access point.

Councilman Wyett moved approval of Site Plan Review No. 6-2000, with the modification to the driveway to a single access point, and the entrance to the bike trail being closed off. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

6. SITE PLAN REVIEW NO. 7-2000 The application of PDP Partnership relative to property described as Lot 21, Bahama; commonly known as 208 Bahama Lane; located in the R-B Zoning District. To allow construction of a residence on a lot 90' deep in lieu of 100' minimum required.

Councilman Wyett moved approval of Site Plan Review No. 7-2000. The motion died for lack of a second.

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

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the Zoning Code provided that if the lot was platted, there was no longer a need for a variance if the lot was undersized; the property in question was such a case. He provided an exhibit of the property indicating the elevations.

Councilman Wyett moved approval of Site Plan Review No. 7-2000. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

New Business - Major

7. VARIANCE NO. 24-2000 The application of Damon & Elizabeth Mezzacappa relative to property commonly known as 1485 S. Ocean Blvd; lengthy legal description on file; located in the R-AA Zoning District. To allow construction of a frontyard wall at a height of 8' to 8.5' above the crown of the road in lieu of 6' maximum allowed.

Ex-parte communication was declared by Councilman Brooks with Attorney Ziska, as she outlined the presentation of Attorney Deziel; by President Pro-Tem McLendon who had spoken with Attorney Ziska, as she outlined the presentation of Attorney Deziel; by President McDonald with Attorney Ziska, via phone, regarding consideration of the hardship; by Councilman Goldblum who had spoken via phone with Attorney Ziska regarding the merits of the case, by Councilman Wyett who had spoken via phone with Attorney Ziska regarding the merits of the case.

Attorney Robert Deziel, representing Mr. and Mrs. Damon Mezzacappa, addressed the Town Council, requesting a variance from the 6' maximum allowed for a frontyard wall, as there were two hardships, and the variance request met all of the requirements of the Code. He explained that the frontyard height requirement was measured from the crown of the road, and the crown of the road at the residence in question varied 10' from one end to the other. He displayed a front elevation of the property, and explained that the hardship consisted of two elements: the severe grade differential from one side of the property to the other, and the configuration of the road as it directed traffic noise onto the property. He presented wall heights of neighboring properties for comparison purposes, indicating that several other properties in the immediate vicinity averaged within a few tenths of what the applicant was requesting today.

Director of Planning, Zoning & Building Moore gave the following staff comments: Police Department: hedge may be better suited; wall may be dangerous to traffic. Comprehensive Plan: does not appear to meet criteria for granting of a variance. Building Department: hardship should be demonstrated. Town Manager: agrees/concurs with comments made by staff.

Mr. Moore explained that Attorney Deziel had demonstrated a hardship with the lay of the land being the reason for the request. He noted that in the past, existing high walls had been used as consideration in applications from this area.

Mayor Smith commented that the height of the crown of the road allowed car headlights to shine over the top of the wall and into the house.

Assistant Police Chief Reiter commented that he had looked at the wall yesterday, and the comment concerning traffic danger had been as a result of a concern of a wall being struck by a vehicle, however, the resident also deserved protection as well. He offered that he did not feel the proposed wall would offer any more danger than the wall that was currently in place.

Councilman Wyett commented that he was concerned with a walled-in feeling in the Town, as many walls were now being allowed.

President Pro-Tem McLendon moved approval of Variance No. 24-2000, with the hardship being the elevation of the street and the point of measurement. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

8. VARIANCE NO. 25-2000 The application of Henry & Susan McIntosh relative to property described as E1/2 Lot 16 & all of unnumbered lot east of Lot 16, EG Pendleton Tr; commonly known as 124 Via Bethesda; located in the R-B Zoning District. To allow construction of a 2' height extension on a 4' wall which is set within the 3' required wall setback on the north side of the property, and to allow a vine in lieu of the required 3' high site-screening hedge; to allow said 6' wall within an intersection angle of vision, in lieu of 2.5' maximum allowed.

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Broberg via telephone.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, presenting an architectural drawing and photographs of the property in question. He explained that the hardship was that the wall had been built in 1928, long before the existence of zoning codes, and the applicant would be deprived of the benefits of the present code, which allowed 6' high walls. He pointed out that there were stop signs going both ways on the streets in question.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: does not appear to meet criteria for granting variance; other solutions meet the code without a variance. Building Department: demonstrate hardship. Town Manager: concur with staff comments. Mr. Moore explained that the property was on a very lightly traveled street; this was a very atypical application request.

Councilman Wyett moved approval of Variance No. 25-2000, with the vine in lieu of the hedge, finding that the hardship ran with the nature of the street, and the fact that the hardship regarding the walls existed because of the Zoning Code changes. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

9. VARIANCE NO. 26-2000 The application of Rena Rowan relative to property described commonly known as 200 Via Bellaria; lengthy legal description on file; located in the R-A Zoning District. To allow construction of a 28 sq.ft. addition, providing a 12' sideyard setback in lieu of 15' required and providing 27.6% lot coverage in lieu of 25% allowed. To allow said addition, and an emergency generator, providing 37.4% landscaped open space in lieu of 45% required.

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

Attorney James Brindell, on behalf of Mr. and Mrs. Vic Damone, addressed the Town Council, stating that three variances were being requested. The first had to do with the request to construct a small bathroom area of 4' x 7' for the gardening staff. He presented photographs of the property in question, noting that the sideyard setback did not meet the current Code requirements, and that the location of the proposed bathroom area was the logical place on the property. In addition, there was a request for a small increase in lot coverage, a corresponding small decrease in landscaped open space, and an auxiliary generator to service the house in the case of an emergency. He explained that the hardships related to the fact that the house was an older existing house; there was no other logical place to put the addition; and the percent of increases in lot coverage and reduction in landscaped open space were clearly de minimis.

Zoning Administrator Paul Castro gave the following staff comments: he had visited the site with representatives of the property owner, and the request seemed to be reasonable, and was de minimis in nature, as well as with the request for the generator.

In response to Councilman Goldblum, Attorney Brindell explained that the generator was a diesel generator, above ground with an enclosure, and EPA approved.

Councilman Wyett moved approval of Variance N. 26-2000, on the basis that the bathroom was really an in-fill on an older property. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

10. VARIANCE NO. 27-2000 The application of Laura Andre relative to property described as Lot 11 Vita Serena; commonly known as 181 Clarendon Ave (formerly known as 11 Lake Park or Vita Serena); located in the R-A

Zoning District. To allow construction of a second-story addition which will expand the nonconformity of the house with a front yard setback and building height plane of 21.4' in lieu of the 43.7' required, and an angle of vision of 134 degrees in lieu of 120 degrees allowed. To allow a pool pavilion structure with extended roof which will increase the lot coverage from 25.4% to 26.4% in lieu of 25% maximum allowed.

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

Attorney Maura Ziska, representing Laura Andre, addressed the Town Council, stating that the property in question was under contract for purchase by Ms. Andre. She explained that the house had been subject to flooding problems in the past, and the applicant planned on bringing the property up to today's living standards, and solve the flooding problems. She stated that the hardship was threefold: the residence was built in 1920 and was landmarked; the proposed additions were tasteful and matched the existing historic nature of the property; the setback requirements and zoning code had changed since the house was originally constructed, and the lot was very narrow.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: major alteration to a landmarked structure; variances sought do not appear to meet criteria for granting variance; no hardship. Town Engineer: raise bulkhead to 5' in the NGVD; raise side yard to 5' NGVD adjacent to the boat basin. Building Department: demonstrate hardship. Town Manager: concurs with staff comments.

In response to Mayor Smith, Ms. Ziska advised that the applicant was working with Town Engineer Bowser regarding what needed to be done, and the applicant would be undertaking the expense of restoration of the boat basin; the boat basin was privately owned between all of the residents on Clarendon, and all of the individual owners of the boat basin had been notified of the plans; the entire structure would be raised approximately 3', so that it would be at 7'.

Councilman Wyett asked how the work of the applicant would reduce the costs to the Town, since currently the flooding program, which serviced two houses, was costing the Town $560,000?

Town Engineer James Bowser advised that Clarendon Avenue was public, as well as was Lake Park Drive, and the alleyway, which was called Vita Serena. He explained that anything that the applicant would do to help the drainage would be a help to the Town, however, there would still be drainage to do, for the entire subdivision, not merely for two houses. The entire subdivision drained out onto Clarendon and Vita Serena, and the water then ran down to the bottom of the hill, and that was the responsibility of the Town – to take that water and dispose of it; because the street was so low, it was necessary to have a pump station in place. He explained that it was very preliminary at this point, and the Public Works Department had told the applicant that the project would not be pursued until it was guaranteed that the boat basin would be fixed. The pump station was slated to be underground in the intersection of Clarendon and Lake Park Drive; the consent of the property owners to bury the discharge pipes would be needed; perhaps an easement could be granted that would allow insertion of the discharge pipes for the pump station.

Councilman Brooks moved approval of Variance No. 27-2000, finding that the hardship was with the low lying land, and the narrow lot, with the condition that all commitments be formalized in writing. The motion was seconded by President Pro-Tem McLendon.

Mr. Moore noted that anything done to the boat basin required the agreement of everyone in that subdivision; in addition, he noted that there was a commitment from all of the south side of Clarendon Avenue in their subdivision deed agreements to pay their fair share of the restoration for drainage in that area.

Town Engineer James Bowers responded that had been something that was to be done only if an assessment was done for all of the residents in the subdivision.

On roll call the motion to approve Variance No. 27-2000, with conditions, carried unanimously.

11. <u>VARIANCE NO.28-2000</u> The application of Irving Bailey II relative to property described as W32.5' Lot 12 & Lot 13, Golf View; commonly known as 15 Golf Rd.; located in the R-A Zoning District. To allow construction of a 6' high wall with a 1' setback in lieu of 3' required, and to allow a vine to cover the wall in lieu of the 3' high hedge required. To allow construction of a swimming pool providing a 32.8' frontyard setback in lieu of 35' required.

Ex-parte communication was declared by Councilman Brooks with Mr. Young and Ms. Henderson; by Councilman Goldblum with Ms. Henderson concerning the variance requested; by President Pro-Tem McLendon with Ms. Henderson concerning the pros and cons of the project.

Attorney Greg Young, on behalf of Irving Bailey II, addressed the Town Council, stating that a division of property in the 1950's had resulted in the current lay out of the property at 15 Golf Road, which had become nonconforming to the east, west, and south. The applicant had purchased the property in April 2000, with plans for renovation of the property to restore it to its original beauty. He provided a survey of the property in question, indicating that the swimming pool was situated in the north corner of the patio, with very little room to maneuver around it, very little use of the terrace area was available, and it was currently not in keeping with the architecture of the original structure. The square footage of the property was 15,058 sq. ft., somewhat short of the 20,000 sq. ft. minimum square footage in the R-A District; the lot dimensions were also less than the minimum lot dimensions (107' side to side, rather than the 120' width, and it was 140' deep, rather than 150'). The owner intended to take up much of the hardscape inside the garden wall, and allow themselves the use of the landscaped area inside the garden wall; currently most of the property on the house side of the garden wall was hardscape, and the owner was seeking to obtain the use and enjoyment of the frontyard.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: show hardship on pool location; everything could be designed in a manner which does conform to our Code. Building Department: demonstrate the hardship. Town Manager: concurs with staff remarks.

In response to the question of Councilman Brooks, Attorney Young explained that the wall in the front was being moved because there was really no lawn or landscaping on the property side of the wall, and the applicant wished to have the use of a front yard without being visible from the street. He explained that the wall was approximately 10' away from the property line at this point; the applicant was technically allowed to move it within 3' of the property line, and the applicant was requesting a variance to move the wall to within 1' of the property line.

Mayor Smith commented that she had no problem with the moving of the swimming pool, and recalled that it had been installed in the early '80's; that part of the house had originally been built as the entertainment section, and the main section on the west side had been the ballroom for the house; the interior courtyard contained the original coquina, and she noted that she hoped it would be made available for salvage, rather than breaking it up. She asked if the wall would be moved 10-11' in order to give the applicant more room inside?

Attorney Young replied that it was proposed to move the wall approximately 10'; the applicant would be entitled to move the wall 7'.

Councilman Wyett moved approval of a portion of Variance No. 28-2000: approval of the dimensions of the pool, the hardship being the substandard size of the lot, and denial of the portion of the request concerning the wall. The motion was seconded by Councilman Goldblum.

Attorney Young commented that the coquina would be salvaged; it was the intent of the applicant to enhance and preserve the architectural status of the property. In addition he noted that even if the wall variance was not approved, the applicant would like to preserve the vining on the wall, rather than hedging.

On roll call the motion to approve the dimensions of the swimming pool, and to deny the construction of a 6' high wall with a 1' setback, carried 4/1, with President McDonald casting a dissenting vote.

In response to Attorney Young, Mr. Moore explained that the entire variance for the wall had been denied, including the request for the vine.

12. <u>SPECIAL EXCEPTION NO.16-98 WITH SITE PLAN REVIEW & VARIANCES - MANDATE REGARDING BRUNO VS. TOWN OF PALM BEACH CASE NO. AP 98-8994 AY</u> The application of New Technology Business S.A. relative to property described as N73.5' Lots 1 & 5, Mockingbird Trail Tract & S9.5' Lot 10, First Edition; commonly known as 1226 N. Lake Way; located in the R-B Zoning District. To allow construction of a new 2-story residence on a lot 83' wide in lieu of 100 minimum required; to allow the building height point of measurement to begin from 10' NGVD in lieu of 7.5' allowed; and, to allow a sideyard setback of 12.5' in lieu of 15' required. Additionally, a variance is requested to construct a 6' high wall along Lake Trail in lieu of 4' maximum allowed.

(A portion of the discussion relating to Special Exception No. 16-98 with Site Plan Review & Variances - Mandate regarding Bruno vs. Town of Palm Beach Case No. AP 98-8994AY has been transcribed as verbatim in order to clarify the motions made)

The following motions were made regarding Special Exception No. 16-98 with Site Plan Review & Variances - Mandate Regarding Bruno vs. Town of Palm Beach Case No. AP 98-8994 AY:

Councilman Goldblum moved approval of Special Exception No. 16-98 with the finding that the granting of the special exception would not be adverse to the public interest, and that it otherwise met the criteria set forth in section 134-229 of the Town Code. The motion was seconded by Councilman Wyett, and on roll call carried unanimously.

Councilman Brooks moved approval of the site plan portion of the request, making a finding that the approval would not adversely affect the public interest, certifying that the zoning requirements governing the use have been met, and that satisfactory provision had been made in regard to the criteria set forth in Section 134-329 of the Town Code.

Ex-parte communication was declared by Councilman Brooks with Mr. and Mrs. Zukov, concerning the fact that they were coming to the meeting today; by President Pro-Tem McLendon via a meeting with Attorney Kolins relating to the hearing today regarding the special exception, and many conversations with Mr. and Mrs. Zukov relating to the changes made in the design of the house; by President

McDonald via telephone with Mr Zukov, in which President McDonald explained that he did not usually meet on items that would be appearing before the Council, and no discussion took place; by Councilman Goldblum via conversations with Attorney Kolins, also looking at the house with Attorney Kolins, and with Mr. Zukov regarding the changes made to the house, the lack of a need for a variance; by Councilman Wyett via a meeting today during the luncheon recess with Attorney Kolins relative to the merits of the case; and unspecific discussions with Mr. and Mrs. Zukov during the past year.

President McDonald noted that there had been a request for an hour allotted to each side in this issue, however, that would not be possible

Town Attorney Randolph advised that Special Exception No. 16-98 was back before the Town Council as a result of a Petition for Writ of Certiorari having been filed in the Circuit court of the Fifteenth Judicial Circuit In And For Palm Beach County, Appellate Division (Civil) by Mr. and Mrs. Bruno. The matter had gone before the Circuit Court and an order was entered indicating that this matter should be remanded back to the Palm Beach Town Council, with directions to supplement the record with substantial, competent evidence that the criteria for granting a special exception was fulfilled. In addition the Town was to supplement the record with substantial, competent evidence that the applicant was faced with a unique hardship, and without the granting of the variances, it would have been virtually impossible to build on the lot in question; the Town should fully state the basis upon which such application would be granted.

Attorney Ron Kolins addressed the Town Council requesting that all prior proceedings related to this matter, and all Town files relating to this matter be incorporated into the record. He submitted a letter for the record indicating that Mr. and Mrs. Zukov, who had been the contract purchasers in 1998, were now the owners of the property. He explained that application No. 16-98 had originally been filed with the Town in 1998, seeking three things: a special exception, a site plan approval, and three variances (one for a wall height along N. Lake Way, one for a side setback variance relating to a portion of the house on one side, one for a point of measurement variance). He advised that the special exception and site plan approval were required because the lot was a non-conforming lot.

Attorney Kolins stated that during the course of the proceedings the request for the variance for the wall along N. Lake Trail was withdrawn, and the homeowners to the immediate north (Mr. and Mrs Bruno) had voiced various objections to the application; Mr. and Mrs. Zukov had then made various changes to the house in response to the objections, which Attorney Kolins explained in detail, including the fact that the house was built without utilizing the point of measurement variance; in addition, Ordinance 1-99 changed the side setback requirements in the R-B district so that side setback variance was also no longer needed. Attorney Kolins advised that he was formally withdrawing all requests for variances related to the property. He noted that construction was now almost finished, and circulated photographs of the house, and submitted them for the record. He explained that the applicant must now present substantial, competent evidence to the Town Council, with the hopes that the prior granting of Special Exception No. 16-98 could be affirmed.

Attorney Kolins then advised that he would present evidence that each and every relevant criteria had been met regarding Special Exception No. 16-98, and presented a number of witnesses, requesting Town staff input as well, during the hour and one-half questioning period that ensued. The witnesses called were: Town of Palm Beach Director of Planning, Zoning & Building Robert Moore, Urban Designer Henry Skowkowski, Real Estate Appraiser Diane Jenkens (her report was submitted as part of the record), Eric Adams, as a member of the Architectural Commission, and Earl Hollis, Real Estate Broker.

After the presentation, Town Attorney Randolph asked Attorney Kolins if he had, in his presentation today, provided substantial, competent evidence in regard to the criteria for site plan review as set forth in the Town Code?

Attorney Kolins replied that he had absolutely had, and submitted for the record the landscape and site plans, showing various dimensions, lot, yard and area criteria that must be met.

Town Attorney Randolph advised the Town Council that deliberations in regard to the matter must consider that in addition to determining that all of the criteria for special exception had been met, and that the project was not adverse to the public interest, a determination must also be made, under Section 134-329 that the criteria set forth in that section had been met, stating that "before any site plan shall be approved, approved with changes, or denied, the Town Council shall make a finding that the approval of the site plan will or will not adversely affect the public interest and certify that the specific zoning requirements governing the individual use have or have not been met, and that further, satisfactory provision and arrangement has or has not been made concerning the following matters where applicable." He explained that there were then 11 items, some of which were applicable, and some which were not.

Attorney Kolins explained that the court specifically remanded the special exception, and did not remand the site plan approval, and Mr. Skowkowski had testified that all lot, yard, and area requirements had been met.

Town Attorney Randolph agreed that the remand under the language of the decision made by the court simply referred to the special exception, however, in granting the special exception, the Town Council was required to give consideration to the criteria under the site plan review section. He suggested that those sections be addressed.

Attorney Kolins called the attention of Director of Planning, Zoning & Building Robert Moore to Section 134-329 of the zoning code relating to site plan approval, with 11 criteria.

Kolins: Is it not correct that you and your staff, those who work directly under your observation and control and direction would review each application for site plan approval in terms of these 11 criteria, is that right?

Moore: Yes sir. There is a section 134-327, under application, which precedes this review by the Town Council, lists a series of required documents to be submitted with the application. They number 1 through 14, and our staff, under my direction, would make the judgment as to which of these items that are listed, 1 through 14, would be required for the special exception that is being asked for.

Kolins: Okay. And is it not correct that if an application were deficient in one or more of these criteria it would not come before the Town Council until that deficiency were cured?

Moore: That is correct. We would not permit this application for special exception, and in this case, specifically the site plan review, to be forwarded to the Mayor and Town Council without first meeting what we believe would be the applicable items that would be required.

Kolins: And so, I assume that because this site plan review application came before and was considered before the Town Council in mid 1998, at the time you and your staff determined that all of these criteria were satisfied, is that right?

Moore: Yes sir.

Kolins: And has anything happened since then to cause the project to be violative of any of these criteria?

Moore: No sir.

Kolins: Mr. Moore, I'm going to – I don't know if this is against my better judgment or not – but in order to save time, and I know the Council is concerned about that, I'm going to ask you to take a minute – rather than my reading each of these, which are quite lengthy, some of them, to review carefully yourself, each of the 11 criteria in Section 134-329, and when you are finished reviewing each one, I'm going to ask you whether or not the application for Special Exception and Site Plan Approval satisfies each one of these.

Moore: Item 1 deals with sufficiency of ownership and statements and control of the property – we are satisfied those are correct.

Item 2 deals with intensity of use or purpose of proposed development in relation to adjacent nearby properties, and the effect thereon, provided, however, that nothing in this section shall be construed as granting the Town Council authority to reduce residential densities permitted by the use, regulations, in article 6 of this chapter, and we agree that this application does not do that, and it does meet the purpose of the section for the use and development of this property.

Item 3 is ingress and egress, and we believe that it has met all of the Town requirements in the utilities associated for the refuse collection as well. We believe they have met that.

Number 4 is location and relationship of off street parking, and on off street loading facilities; the internal traffic. This is more to deal with commercial usage, and would not be relevant to this particular application.

Item 5 is proposed screens and buffers reserved in internal and external harmony, and compatibility with uses inside and outside the property boundaries. We believe that the Council addressed that originally. I believe that the Architectural Commission would have addressed that additionally with their landscape plan approval.

Item 6 is manner of drainage on the property, which, in particular references the effect with the provisions for drainage of adjacent properties and consequences of such drainage on overall Town capacities. The town engineer reviews the plan for drainage prior to the issuance of building permits and in compliance with regulations of the South Florida Water Management District – the first one inch of water is required to be retained on the property, and the building permit would reflect any required either swale construction or retaining wall construction in order to achieve the height of the elevation for flood plan. In this case it was above the flood plain.

Item 7 is utilities with reference to hook in locations, availability and capacity for the uses projected. It does meet that criteria.

Number 8 is recreational facilities and open space with attention to size and location. This is generally for multi-family development, and not applicable here.

Number 9 - such other standards as may be imposed by this chapter for particular use or activity involved, and that would not be relevant to this application. That would be more relevant in a commercial or multi-family or use type special exception.

Number 10, height of commercial structures, is not relevant here.

Number 11 – there is a visible size and bulk; the purpose of development so arranged that it minimizes the visible bulk of the structure to drivers and pedestrians on abutting roadways. The point of reference between the center line of the abutting roadways with the intent being to maintain visual impact. This was dealing with multi-story buildings at the same relative level of intensity as a single story building, so this would not be relevant to this application.

Those are the 11 criteria that the Council must find, and we believe that the application addressed all of the relevant items in 1 through 11.

Kolins: Thank you, Mr. Moore. So, is it your testimony that as to both special exception and site plan that all of the requirements of the Code have now been satisfied?

Moore: That is my testimony, yes sir.

Kolins: Okay. Thank you very much, Mr. Moore. The only other thing, Mr. President, is your direction about the retention of these boards. I know Mr. Baird is here. Maybe we could reach some agreement. I've got site plan, the landscape plan, this exhibit utilized by Ms. Jenkins showing the single and one story houses along Northlake Way – all of which are introduced into evidence now, with your permission, and I simply want to know whether you want the Town staff to hold on to them, or me to hold on to them, or how you would be more comfortable handling that.

McDonald: Let's see what Mr. Baird is going to say, and then we can make a disposition, thank you.

Kolins: I think I'll stop here then, for the moment. Thank you.

Randolph: Before Mr. Baird speaks, if he is going to speak, in regard to this, may I ask Mr. Moore a question. It's been touched upon, but I'd like to have the record reflect on this. Have you examined in regard to this application, the current zoning codes and the plans relating to this property, and the property as built today, and in examining all of that, have you made a determination as the building official that there are indeed no variances required for the construction of this property?

Moore: That is correct. My staff and I both looked at this, and we do not feel any variances are required under today's zoning ordinance.

McDonald: All right is there anyone else to speak to this matter? If so, please jump up here, and let's proceed. Please identify yourself for the record.

Baird: Good afternoon. I'm Thomas J. Baird. I represent Mr. and Mrs. Bruno, and have represented them for the last almost three years now, since September of '98. I wanted to know if there was going to be permitted any cross examination of any of the witnesses.

McDonald: I would think so, yes.

Baird: Well I have good news for you. I have none. As to the boards, I have no objection to those being entered into evidence, or being moved on. As just kind of a point of reference, I think this whole proceeding has pointed out one fundamental flaw with the process that has gone on since September of 1998, and that's a lack of communication. Had I been contacted by Mr. Kolins and Mr. Randolph I would have been able to tell you that we were not coming here with the intention of objecting to a special exception – that we are not here with the intention of going back to court to object to a special exception. My remarks are going to be more pointed towards the process, as has occurred, and what I feel is really a process that has let the Bruno's down. Having litigated the case, having won the case, having vindicated their position that those variances were not necessary, it is somewhat disappointing to arrive here almost two years later, to find out that the code has changed, eliminating the need for one of those variances, not that the house could not have been designed earlier to eliminate the need for that two and one-half side yard setback variance. That certainly could have been accomplished by any architect with any skill, I think. And then to learn that Mr. Zukov apparently, at some point during the litigation, took it upon himself to design the house in terms of its height so that a point of measurement variance was not necessary. I think that proves the whole point of the original objection to the application, which is, of course the structure could have been designed to eliminate those variances, thereby eliminating the Brunos' objections, thereby eliminating the litigation, thereby eliminating the need for today's hearing. But, that did not occur. Consequently, you went through an hour or more of quasi-judicial discussion on an issue that really has become moot.

McDonald: I agree with your, Mr. Baird, if it makes you feel any better.

Baird: Well, I'm not here to feel better. I'm here to represent my client's interest, and to communicate to you their feelings about the process, as citizens of this town, and having felt that they've been let down by the process because of not only a lack of communication, but apparently a lack of willingness to try to address their concerns throughout the process. I want to point one other thing out with respect to the amendment of the code that eliminated this need for the variance – that amendment occurred in – first reading of that ordinance occurred in March of 1999 – that was before the Town even filed a response to our lawsuit, and therefore, if we had been advised that you had changed your code, and our lawsuit, with respect to the setbacks, had become moot, certainly I wouldn't have advised my client to continue to litigate a case that was moot. If we had been advised that the plans had changed to eliminate the need for the point of measurement variance, I wouldn't advise my client to continue to spend money on a case that they could not win because it was moot. But that didn't happen. From March of 1999, until April of 2000, it was well – let me back up – until March 31 of 2000, the eve before the oral argument of the case – from that time period we were still under the understanding that the variances were necessary, and that the issue was still a live controversy, as between us and the town, regarding the granting of those variances. If during that year period someone had said to us – look, they've changed their plans; they've eliminated the need for these variances; it's not necessary for you to continue the litigation – it would have been foolish to have continued the litigation. But, that didn't occur, and I think that's, at this point, really, all I have to say about this process and what's going on. I think it's an unfortunate end to the process to have vindicated your rights, only to have the finding that having done so, having stood on that principle, that during the process there was workings going on that eliminated the whole principle of the legal process in the first place.

McDonald: Mr. Baird, are you saying that you never spoke to opposing counsel all during this time, and if you did, they never indicated to you that the code had changed?

Baird: That's correct. I was never advised by opposing counsel until March 31, 2000, that the code had changed. I was not advised that there was even an ordinance considering this change. I requested a copy of that ordinance last week, and obtained a copy of it so that I could verify that, in fact, the code had changed, and that's when I learned that the code changed – first reading was in March, second reading was in April of 1999, and the code had changed as of – actually, the effective date was June 6, 1999, but as of June 6, I had no case, with respect to the setbacks. So, in closing, I would say this. Mr. Bruno certainly honors his commitments, and his original commitment was that he didn't object to a house being built on the lot next door. He did feel that it ought to comply with your laws. Now that it does comply with your laws, he certainly has no reason to continue to object to it, and with that, if you have any questions of me I'll be happy to address them, – otherwise, have a nice remainder of the afternoon.

McDonald: Thank you, Mr. Baird. Is there a motion?

Randolph: Let me just advise you in regard to the motion. That first, in regard to the special exception, if you're inclined to grant it, it should be based upon the finding that granting it will not adversely affect the public interest, and that it otherwise meets the criteria of section 134-227 of the town code.

McDonald: All right. Would anyone like to make a motion?

Brooks: Is it moot?

McDonald: No, it's not moot, no. Mr. Bruno, you can come up and address this if you want. We thought your attorney was speaking for you.

Bruno: My name is Al Bruno. I live at 1230 Northlake Way, and the only thing I have to say is I fault two people here. I don't fault the Zukovs, I feel sorry for them. They paid legal counsel, just as I did. Their attorney could have made us aware of it, and Mr. Randolph, I'm very ashamed of you. I think you could have done the same, and I think the town should look into it. You not only made me spend money twice – I pay taxes in this town, which in turn pays your salary. Mr. Zukov also does the same. I'm not very happy with the outcome – not the house, but I think you had a responsibility, both attorneys, to eliminate this a year ago. Thank you.

McDonald: Thank you, Mr. Bruno. Is there a motion? Would anyone like to make a motion?

Goldblum: I'll make the motion with the wording that Mr. Randolph has to add to it – you want to add to it, Skip?

Randolph: As I indicated, you should make a finding that the granting of the special exception will not be adverse to the public interest, and that it otherwise meets the criteria set forth in section 134-227 of the town code, excuse me, 229.

McDonald: 229?

Randolph: Wait a minute. 229. Well, the site plan is separate. I think we'll have two separate motions.

McDonald: All right. This will just be on the special exception. All right. Is there a second?

Wyett: Second.

McDonald: Mrs. Pollitt:

(Town Clerk Pollitt calls, and motion carries unanimously).

McDonald: Yes, can we have a motion on the site plan?

Randolph: And before any site plan can be approved, you shall make a finding that the approval will not adversely affect the public interest, certify that the zoning requirements governing the use have been met, and that satisfactory provision has been made in regard to those criteria set forth in section 134-329.

Brooks: I'll move that we – I'll make that motion that Mr. Randolph just enumerated.

Goldblum: Second.

McDonald: He finds it doesn't adversely the public interest, and it meets the requirements of 134-329. Mrs. Pollitt.

(Town Clerk Pollitt calls roll and motion carries unanimously.)

McDonald: The motion passes. Thank you.

Kolins: I'd like to thank you all. Mr. President, may I have just 30 seconds to conclude here. I know we're finished, but I'd like to – Before I consider myself too chastised, and before we all leave here with a bad taste in our mouth over this case, let me assure you, and since I've only got 20 seconds I'm not going into detail right now, but I made numerous attempts to try to meet, through their attorney, with the other side of this case to explain that why I didn't understand what their problem was; there were no further problems, etc., and I was rebuffed a number of times, so I don't want you to think that I'm an idiot and put my client through all of this expense and aggravation all of the time this house was going up so Mrs. Zukov could spend half the last year in tears, because I didn't make an effort to contact them, and bear in mind also that communication goes both ways. With that, I'll let it go, and I thank you for your vote.

Randolph: And also, let me add, and it was stated by Mr. Baird, that Mr. Baird was contacted prior to oral argument, and advised that the position of the Town is that there were no variances required for this, and he indicated that he would go forward with the oral argument at any rate.

McDonald: Thank you, Mr. Randolph.

End of verbatim transcript.

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13. SPECIAL EXCEPTION NO.11-2000 The application of Bank of America relative to property described as Lot 48, Royal Park Block D; commonly known as 396 Royal Palm Way; located in the C-OPI Zoning District. To allow a continuation of Town-serving approval under a corporate merger ownership change. *(Considered at a time certain of 2:15 p.m., pursuant to the request of Attorney James Wearn)*

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

Attorney James Wearn addressed the Town Council, stating that Special Exception Application No. 11-2000, and Special Exception Application No. 12-2000 involved a corporate merger of Bank of America with Nations Bank into Bank of America. The two locations were at 396 Royal Palm Way and 140 North County Road. The applicant recognized the need and condition for Town serving demonstration to be continued and was currently in the process of having its customers audited.

President Pro-Tem McLendon moved approval of Special Exception No. 11-2000 and Special Exception No. 12-2000. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

14. SPECIAL EXCEPTION NO.12-2000 The application of Bank of America relative to property described as Lots 87 & 88 less E10' R/W, Sunrise Ave. Add.; commonly known as 140 N. County Rd.; located in the C-TS Zoning District. To allow a continuation of Town-serving approval under a corporate merger ownership change. *(Considered at a time certain of 2:15 p.m., pursuant to the request of Attorney James Wearn).*

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

Attorney James Wearn addressed the Town Council, stating that Special Exception Application No. 11-2000, and Special Exception Application No. 12-2000 involved a corporate merger of Bank of American with Nations Bank into Bank of America. The two locations were at 396 Royal Palm Way and 140 North County Road. The applicant recognized the need and condition for Town serving demonstration to be continued and was currently in the process of having its customers audited.

President Pro-Tem McLendon moved approval of Special Exception No. 11-2000 and Special Exception No. 12-2000. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

C. OTHER

1. SPECIAL EXCEPTION 15-99 with Site Plan Review and Variance - Lucio's Restaurant, 375 South County Road. **(The Town Council approved Special Exception 15-99, on July 13, 1999, with the condition that the applicant return in six months after the restaurant has opened for business to demonstrate all of the conditions have been met)**

Attorney Peter Broberg, on behalf of the applicant, stated that Lucio's Restaurant had been in compliance with Special Exception No. 15-99 and all of the attached conditions.

In response to Mayor Smith, Assistant Police Chief Reiter reported that there had been no complaints from any neighboring property owners in regard to Lucio's Restaurant.

Director of Planning, Zoning & Building Robert Moore explained that because Lucio's Restaurant had been a new operator in the location, a test period had been required.

Councilman Wyett moved approval of Special Exception No. 15-99; that Lucio's Restaurant had effectively demonstrated that they had not been a nuisance to the neighborhood. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. SPECIAL EXCEPTION NO. 21-99 - Nikiforos Stoupas, 101 N. County Road; located in the C-TS & R-C Zoning District. To allow a nightclub use at the Casablanca Restaurant; said nightclub would include a dance floor and stage for live entertainment. To allow a total of 150 seats (an addition of 85), a modification to Special Exception approval 23-94. To allow required parking, 30 spaces, on the adjacent lot located in the R-C Zoning District. **(The Town Council approved Special Exception 21-99, on November 9, 1999, with the condition that the applicant return in six months to demonstrate all of the conditions have been met) (Request for Deferral Per Letter, Dated May 16, 2000, from James R. Brindell)**

This item was deferred under Item V. Approval of the Agenda.

3. Royal Palm Way Water Main Installation Request, by Foster Marine Contractors, Inc., for Extension of Work Hours

Town Engineer James Bowser addressed the Town Council, reporting that the Public Works Department had received a request for an extension of work hours from 7:00 a.m. to 7:00 p.m. from Foster Marine Contractors, Inc., who would begin the replacement of the water main on Royal Palm Way on Monday, June 19, 2000. He explained that they were unable, at this time, to secure Florida Power & Light (FPL) power, and would be using diesel power; there may be a problem with de-watering, and they were requesting a conditional time extension, with a proposed project schedule of work beginning on June 19, 2000, with a completion date of November 6, 2000.

Councilman Wyett moved approval of the conditional time extension of work hours by Foster Marine Contractors, Inc., from 7:00 a.m. to 7:00 p.m. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

4. Catherine F. Bradley, 255 Park Avenue – Proposed Initiation of Foreclosure (Code Enforcement Case No. 99-1089)

Town Attorney Randolph reported that the Code Enforcement Board had recommended that the Town foreclose on its lien on the property at 255 Park Avenue, and the Town Council could now make a determination as to whether to go forward with foreclosure. He noted that he had provided a letter indicating the various liens on the property, and the approximate value of the property.

Councilman Brooks noted that Ms. Bradley was not present, and that he was distressed to see that there was not an attorney present to represent her.

President Pro-Tem McLendon noted that Ms. Bradley had phoned him, requesting that an attorney be allowed to make a statement today; he had indicated to her that the attorney would only need to appear under the Agenda item "Communications From Citizens," and that he had been under the impression that would take place today.

Councilman Wyett moved deferral. The motion died for lack of a second.

President McDonald commented that he believed that the Town Council had a fiduciary duty to all citizens to make the situation better, and Ms. Bradley had been given ample and considerable opportunity to take action; he did not believe Ms. Bradley had any intent to make the property habitable, nor had the desire to do so.

In response to Mayor Smith, Town Attorney Randolph explained that the action that would take place with foreclosure would be to file a complaint; a response would be provided within 20 days; after the response the Town could begin discovery, if necessary, and the matter would be set for trial.

At this time, Ms. Catherine Bradley appeared before the Town Council, stating that she had understood, after the last Town Council meeting, that Town Attorney Randolph would contact her attorney to discuss the issue.

Town Attorney Randolph advised that he had researched the records in order to make a determination of the status of the matter, and had reported same to the Town Council; there were several mortgages and liens that were ahead of the Town in priority, however, there was still value remaining in the property. In the event that the Town went to foreclosure, the liens would have to be paid off in order to obtain the house.

President McDonald noted that the 1998 and 1999 real estate taxes had been sold, and at some point in the future the purchasers would be able to apply for a Clerk's Deed and actually take ownership of the property; he suggested that some type of action needed to be taken today.

Ms. Bradley stated that the property had been in the hands of an attorney for five years, and it was out of her hands; the issue was too complicated for her to clarify at this time. She stated that the house was not inhabitable.

Mr. Moore replied that the Code Enforcement Board had found that it was inhabitable for human occupancy currently, because of the animals staying there, the feces, and the general condition of the property.

Ms. Bradley replied that was not right, and that she had understood the windows had been the problem; there was a small colony of cats that had lived there for many years.

Mr. Moore commented that the principle use was for human occupancy, not animal occupancy, and the cats could come and go through broken windows.

Ms. Bradley replied that was not so; she stated that she believed the matter had been very badly handled by Code Enforcement, and the things she had read in the newspaper were off center, and an effort to discredit her. She stated that there was one kitchen door that had a cat door, and no other window or door on the property let a cat, or any animal, in and out.

Chief Code Compliance Officer Brian House, addressed the Town Council, stating that he had not said anything about cats; that had not been the thrust of the problem; the thrust of the problem was that there were windows opened, a door in the back with a hole in it, a door in another part of the building which had not been closed since he had started the Code Enforcement Board situation; there was a rotted part in the back of the building. He explained that Code Enforcement had never mentioned animals, it had mentioned the condition of the building itself.

Ms. Bradley asked what was rotting?

Mr. House replied that it was the back wall; he explained that he had two people there – the building inspector had looked at it and decided it was unfit for human habitation; he indicated that he had tried to discredit no one; that he had tried to do his job; that Ms. Bradley had never contacted him, and had refused to meet him at the property.

Ms. Bradley stated that she had contacted Mr. House, and he had not returned her call. She stated that she did not really understand the procedure that would permit Code Enforcement, or anyone else, to go on the property without permission and without notification. She stated that she had never had such notification. She explained that the north wall, referred to by Mr. House, had mildew, however, there was not even a crack on the wall.

President McDonald explained that the goal was to get the house in order and maintained.

Mayor Smith asked Ms. Bradley what she would like to see happen to the house?

Ms. Bradley replied that she wished that someone could have purchased it, however, it was a complicated issue, and it was through no fault of her own that she was in the current position; it was something to do with the mortgage company.

Mayor Smith asked Ms. Bradley if she would care if the Town condemned the property and it was demolished?

Ms. Bradley replied that she would not care, however, there were many people interested in buying it.

Mayor Smith commented that the newspaper may write a story about the unfortunate position of Ms. Bradley and perhaps a "white knight" would come to the rescue, and the matter would be resolved to the satisfaction of everyone.

In response to President Pro-Tem McLendon, Ms. Bradley stated that she had spoken to him regarding her attorney on another matter, not in regard to the foreclosure.

Councilman Goldblum moved approval of directing Town Attorney Randolph to contact the attorney of Ms. Bradley, also granting Town Attorney Randolph the authority to file foreclosure if he saw fit, with some conclusion of the matter made before the Town Council meeting to be held on July 11, 2000. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

XVIII. ANY OTHER MATTERS

There were none.

XIX. ADJOURNMENT

The meeting was adjourned at 5:36 p.m.

Mary A. Pollitt
Town Clerk