TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 14, 2002

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled Town Council Meeting of May 14, 2002, was called to order by President William Brooks at 9:30 a.m. in the Town Council Chambers. On roll call the following elected officials were found to be in attendance:

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

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

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Dock Master Jon Luscomb
Finance Director Jane Skittone
Finance Accounting Clerk/DP 1 Donna Bragel
Fire-Rescue Chief Kent Koelz
Police Chief Michael Reiter
Assistant Beach Patrol Supervisor Mark Hassell
Human Resources Director William Crouse
Human Resources Secretary II Nancy Boyer
Public Works Director Al Dusey
Town Engineer James Bowser
Director of Planning, Zoning & Building Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Planning Administrator Timothy Frank

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Zoning Administrator Paul Castro
Recreation Director Russ Bitzer
Town Clerk Mary Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President Brooks led the Pledge of Allegiance.

III. PRESENTATIONS

A. Presentation by the Garden Club of Palm Beach Honoring the Town's Police Department, Fire-Rescue Department, and Beach Patrol.

Garden Club Members Meredith Newton, and Heather Henry presented framed certificates of recognition to Police Chief Michael Reiter, Fire-Rescue Chief Kent Koelz, and Assistant Beach Patrol Supervisor Mark Hassell on behalf of the Garden Club of Palm Beach.

B. Presentation of 2002 Town of Palm Beach College Scholarship to Shannon Mahler by Mayor Lesly S. Smith - Program Sponsored by the Palm Beach Civic Association and the Citizens' Association of Palm Beach.

Mayor Lesly Smith and representatives from the Palm Beach Civic Association and The Citizens' Association of Palm Beach, Inc., presented Shannon Mahler with the 2002 Town of Palm Beach College Scholarship.

C. Recognition of Jacqueline Albarran, Landmarks Preservation Commission, From 1991 Through 2002.

Mayor Lesly Smith presented Ms. Albarran with a plaque recognizing her years of service to the Town of Palm Beach.

D. Recognition of Scott Sloane, Code Enforcement Board, From 1999 Through 2002.

Mr. Sloane was not present. The plaque of recognition of his years of service on the Code Enforcement would be mailed to him.

E. Recognition of David Thomas, III, Code Enforcement Board, From 1996 Through 2002.

Mayor Smith recognized Mr. David Thomas, III for his years of service on the Code Enforcement Board.

F. Clean Marina Award From the Department of Environmental Protection to the Town Docks in Recognition of the Town's Commitment to Protecting and Preserving the Aquatic Ecosystems. [Maury Kolchakian, DEP, and Jon Luscomb, Dock Master]

Representatives from the Florida Department of Environmental Protection (FDEP) presented an award to Dock Master Jon Luscomb, and recognized the efforts of the Town of Palm Beach to protect and preserve the aquatic ecosystems.

IV. COMMENTS OF MAYOR LESLY S. SMITH

I want to add my special thanks to Jacqueline Albarran, Scott Sloane and David Thomas for their many years of service to the Town. They have hung in with us through many controversial issues and difficult decisions - and we'll miss them.

As to the Erosion Control Line - We have received a letter from Mike Sole, the Director of the Bureau of Beaches and Coastal Systems at the Florida Department of Environmental Protection, confirming that the State Statutes require what the Town's elected officials and staff have represented previously: namely, that the establishment of an ECL is required for <u>any</u>

beach restoration project constructed in the state of Florida. This requirement is not dependent upon the application for state funding assistance or any other local decision. Beach restoration is essential for the protection of public and private property throughout the Town. Therefore, we must establish erosion control lines as we proceed with our projects.

As to the question of whether establishing erosion control lines will negatively change the character of the town, the ECL itself cannot. The ECL simply identifies the boundary between public and private property at the location where it exists today: the pre-construction mean high water line. We have stated repeatedly that the Town has no intention to create parking facilities, add bathrooms, provide commercial zoning, or do anything else to change the character of the Town's privately owned beach areas.

Areas used by the public today will be able to be used by the public after the ECL is established and the projects are constructed. I was disappointed that the DEP reversed its prior decision to allow the ECL to be established seaward of the mean high water line, because that would have provided an extra measure of private property rights to oceanfront owners throughout the Town, that extra buffer would have been a plus, it is not a necessity.

We are discussing several items today related to our joint meeting with the West Palm Beach City Commission.

The City of West Palm Beach asked if Palm Beach would contribute $10,000 toward the fireworks associated with the Fourth on Flagler event - a celebration that, admittedly, many Palm Beachers enjoy from our side of the water. However, at a time when money is tight and we are examining our budgets carefully, I think it would be inappropriate to contribute tax dollars to another City for an event of this kind. We have a history of private generosity in Palm Beach, and I would hope that several organizations and individual donors might step up and contribute.

Two follow-up points that came out of this meeting relate to collaborating on efforts that benefit both West Palm Beach and our Town. One is consideration of joint lobbying - which I have encouraged among coastal cities on issues that affect all of us. In the case of West Palm Beach, I would think that joint lobbying <u>might</u> be cost-effective and persuasive in <u>some</u> areas of common interest, but there are certainly some points on which we disagree. So I believe this should be a case-by-case collaboration.

The other area of consideration is cost sharing of the regional traffic/signalization study to enhance traffic flow - for which the engineering firm of Kimley-Horn and Associates has been retained. I have mixed feelings about this. On the one hand, signalization on the West Palm Beach side - especially at the bridges - has a dramatic effect on our traffic patterns. On the other hand, this is a study that relates to the City of West Palm Beach and its traffic policy, so I am wondering if we ought not leave it to them. I will be eager to hear what the council has to say about this issue.

I am very supportive of Ms. Skittone's changes to the qualifications for the Investor Advisory Committee, but I want to emphasize again how important I believe it is that committee members have no conflicts of interest - that they have no business relationship with the Town and no interest in any financial firm and are at the same time, qualified through having a strong financial background.

Finally, Jack McDonald is going to review for us the impact of redistricting upon the Town's representation at higher levels of government. I have to say that for me, personally, the redistricting was a disappointment because at the State Senate level, Palm Beach represents a few pearls in the middle of a strand that stretches from the north part of Palm Beach County to the southern end of Broward County. I would prefer to have a Senator who represents the distinct interests and needs of our area. In the County Commission redistricting, we remain split in half - Commissioner Karen Marcus represents the north end of the island, and Commissioner Addie Greene represents the south half. Again, I feel that this divides our power and deprives us of one Commissioner who is uniquely ours. Perhaps the lesson we need to learn from all this is about political clout - Palm Beach residents provide a lot of the funding for political campaigns, but when it comes to decisions like this, our voices don't count for much. I hope we can work on this in the future.

V. APPROVAL OF THE AGENDA

The following change was made to the Agenda:

WITHDRAW from the Regular Agenda, Item B.4. - Review of Impact of Decennial Redistricting Upon the Town Representation at Higher Levels of Government.

Motion made by Councilman McDonald, seconded by Councilman Wyett to withdraw Item X.B.4. from the Agenda. On roll call the motion carried unanimously.

The Agenda was approved, as amended, through motion of President Pro-Tem Goldblum, seconded by Councilman McLendon. On roll call the motion carried unanimously.

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

Mr. William Cooley, 231 Tradewind, referring to his letters to Mayor Smith and her correspondence with Dr. Devereaux, questioned the authority of Dr. Devereaux regarding the erosion control line (ECL) on projects that were completed in less than ten years. *(Later in the meeting, under Town Council Comments, Councilman McDonald stated that he thought the comments of Mr. Cooley were logical and should be considered).*

Ms. Charlotte Gilbertson and Mr. Eric Gilbertson, 151 Chilian, spoke in tandem regarding the following issues: budget shortfalls, millage rates, high taxes, beach renourishment, and beach groins.

VII. PUBLIC HEARINGS

A. Landmark Designation of 222 El Brillo Way, Resolution No. 33-02.

Planning Administrator Timothy Frank reported that the Landmarks Preservation Commission had found that the subject property, 222 El Brillo Way, met the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day addressed the Town Council, stating that the property at 222 El Brillo Way had been brought forward by the owner, Ms. Kathleen W. Hammer. The house was a Mediterranean Revival style, designed in 1928 by E.B. Walton. She exhibited slides of the property, noting that the sliding windows on the addition would be removed and the area would be turned back into an open terrace, as originally designed; the plans had already been approved by the Landmarks Preservation Commission.

Councilman McLendon moved acceptance of the designation report. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution 33-02 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 IV 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 IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Councilman McLendon moved approval of Resolution No. 33-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously, with Councilman McDonald remarking that his approval was contingent upon the loggia being restored to its original condition.

B. Proposed Relocation of Historic and Specimen Trees at The Breakers. [Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that a request from the Director of Golf and Grounds at The Breakers Hotel, Dan Miller, had been received requesting the relocation of two specimen trees – a Spindle Palm and a Canary Island Date Palm. The request for the relocation of the Canary Island Date Palm had been withdrawn. He reported that the relocation plan had met with the approval of staff.

Councilman Wyett moved approval of the relocation of the Spindle Palm at The Breakers Hotel. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

C. Request from Black Tie Limousines for Issuance of Additional Certificates of Public Use and Necessity per Section 130-67 of the Town's Code of Ordinances.

Town Attorney Randolph advised that the Town Code allowed applicants to seek permits over and above the 50 that were now provided by the Code; the Code provided that the Town Council may determine to increase the number of permits based upon the factors that were set forth in the Code. He explained that a notice had been placed in the newspaper, and notices were sent to other holders of permits and certificates of public convenience so that there would be the opportunity to be present and submit any comments.

Attorney Steven Newburgh, Rutherford, Mulhall & Wargo, on behalf of Dav-El Transportation/Black Tie Limousines, addressed the Town Council, advising that the appropriate application had been submitted under the requirements of Town Code 130-67. He explained that the application had come about because Dav-El had been called by other limousine companies to pick up some of the calls that they had been unable to meet. He stated that Dav-El/Black Tie Limousines was the largest privately held company in the U.S. for private limousine services. He explained that the number of permits currently available (50) had been kept within four companies for quite some time. He distributed brochure packages regarding Dav-El Transportation, including four letters of recommendations from various companies and individuals.

Mr. Scott Solombrino, CEO Dav-El Transportation, addressed the Town Council, stating that he had been in the chauffeur/transportation business since 1978, and operated companies throughout the U.S., Europe and the far east. There were many monitoring factors used to qualify chauffeurs before they were hired. He explained that Dav-El had purchased Black Tie Limousines.

In response to Councilman McDonald, Attorney Newburgh explained that Dav-El had a contract with the Four Seasons Hotel, and at that location there was one reserved spot where a limousine from Dav-El would wait for the person to come out of the hotel; the Town code enforcement staff had indicated to the Four Seasons Hotel that it could not do business with Dav-El, unless a certificate of public use and necessity was obtained. Thus, the company was now before the Town Council to comply with the Code; the company had been unable to service the Four Seasons as a result of the stand issue; currently the concierge at the hotel would choose to call a company that had a car standing, for the convenience of the customer of the hotel.

Councilman McDonald suggested that the proof be submitted that there were currently not enough permits to provide the services to the public.

Attorney Newburgh replied that he had documentary proof with him, which were copies of trip requests received from another company that currently held a permit in the Town.

Town Attorney Randolph explained that there had been a contract between the Four Seasons Hotel and Black Tie Limousines, which had a provision in it whereby the concierge would call for the limousine service. The Town took the position that was not allowed under the governing ordinance; thus the hotel was considered an agent, rather than an individual simply calling for a limousine. For the type of arrangement that had existed in the contract, the Town was taking the position that a permit would be necessary.

Mr. Jack Campagnuolo, Park Limousine Service, addressed the Town Council, stating that Park Limousine had approximately 40 cars for the past ten years, however, there were only 19 permits in the Town of Palm Beach. Property had been purchased in West Palm Beach in order to keep the cars there, with only the permitted cars being kept in Palm Beach on Sunrise Avenue. Approximately a year and one-half ago, The Breakers had decided to go into their own limousine business, and had purchased permits from different companies. He stated that everything would be devaluated if more permits were issued; he stated that he had been in the business for 23 years and had 19 permits, ten of which he had purchased from people that had retired or gone out of business. He suggested that issuing an additional 27 permits would open up the limousine service to many more companies. He stated that the Four Seasons had a contract with a permitted company, and that he found it difficult to understand why the Four Seasons would have an additional contract with someone else.

In response to President Brooks, Mr. Campagnuolo estimated that The Breakers had paid approximately $20,000 per permit.

Mr. John Kritchet, Palm Beach Tours and Transportation, addressed the Town Council, expressed concern with the opportunity for other limousine/transportation companies that may want to contract with hotels in the Town of Palm Beach.

Mr. John Campagnuolo, Jr., Park Limousine, addressed the Town Council expressing concern regarding the price undercutting issue.

Attorney Newburgh commented that the Four Seasons, or any establishment, had the right to select who it would do business with; they had the right to enter into a contract and establish guidelines. He maintained that there was now a closed market for the sale of permits; he had advised his client to go to the Town Council to request permits, rather than bargain with someone else for a limited number of permits.

Mr. Solombrino commented that there were no permit "medallion" type fees for limousines in New York City, or any other major city, other than the regular licensing annual fees of approximately $800; this was the first time he had encountered a different set of rules, and he was trying to accomplish compliance with the Town rules.

Councilman Wyett commented that the streets in New York City were choked with limousines, that traffic was a concern in Palm Beach, and that it would be remiss to issue additional limousine permits while the traffic problem existed.

Attorney Newburgh maintained that the limousines would be kept in West Palm Beach, except for perhaps one vehicle at the Four Seasons, and that the limousines would not be in Palm Beach unless they were called.

Police Chief Michael Reiter recalled that there had been limousine stands years ago on Worth Avenue, and there had been a concern regarding additional congestion. He stated that he did not see that the present issue would cause a dramatic increase in traffic congestion, however, any number of additional vehicles on the roads would be of concern. He stated that it was his feeling that the reason there was a cap in place was the fact that there had been public limousine stands throughout the Town.

Mr. Steve Hall, with Klassy Coach Limousines commented that his attorney had approached the Town Council in 1997 regarding an increase in the number of permits, and the request had been declined. He stated that he believed that Black Tie Limousines had been instructed to cease and desist operations, however, they had continued to operate.

Mr. Rob Hanlon, Karey Limousine of Florida, commented that all of the companies that were now licensed had to pay for their permits, and that his company had tried to apply for permits in the past and were always turned down. He stated that business was dramatically down for all limousine companies, and to bring more permits in would affect existing companies. He stated that there was no continuing contract with Dav-El/Black Tie Limousines at the Four Seasons, as the contract was awarded to Karey Limousine.

Mr. Douglas McGuire commented that he had been a resident of Palm Beach County since 1985, and he had enjoyed coming to Palm Beach; he commented that the way the Town was governed was exemplary, and that it was fair and reasonable to say that there was sufficient limousine service at this time.

Councilman Wyett moved deferral of the request from Dav-El Transportation/Black Tie Limousines request to a time in the future after the Strategic Planning Board submitted its report with recommendations for parking/traffic.

Town Attorney Randolph suggested that a time certain be set, so that the applicant would know when they could come back, and provide any further information requested.

Councilman Wyett amended the motion to defer the request from Dav-El Transportation/Black Tie Limousines to the August Town Council Meeting. The motion was seconded by President Pro-Tem Goldblum.

In response to Mayor Smith, Mr. Solombrino stated that the contract with the Four Seasons was cancelled because of code enforcement issues; he maintained that he would have the opportunity to re-bid for the contract if the correct permits were in place.

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

Councilman Wyett requested that the liability insurance requirements be reviewed. Town Manger Elwell advised that staff would provide recommendations regarding appropriate limits.

VIII. CONSENT AGENDA

A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF

MARCH 25, 2002.

B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF APRIL 9, 2002.

C. APPROVAL OF JOINT MEETING MINUTES OF APRIL 19, 2002, WITH THE CITY OF WEST PALM BEACH AND THE TOWN OF PALM BEACH.

D. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF APRIL 22, 2002.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON APRIL 24, 2002.

F. APPROVAL OF CHECK REGISTERS FOR APRIL 2002.

G. OTHER

1. Approval of Allocation of FY 2003 Drug Control and System Improvement Funds to Palm Beach County.
[Michael S. Reiter, Chief of Police]

2. Waiver of Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances For the Bradley Place Stormwater Collection System Construction Project.
[Albert P. Dusey, Director of Public Works]

3. Appointment of Coastal Management Coordinator Sandra Tate to Represent the Town on the Palm Beach Countywide Beaches & Shores Council. [Peter B. Elwell, Town Manager]

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

IX. COMMITTEE REPORTS

A. Ordinance, Rules and Standards Committee Meeting on April 25, 2002.

The complete Ordinances, Rules and Standards Committee meeting report of April 25, 2002 is printed below:

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING HELD ON APRIL 25, 2002

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards Committee was called to order at 10:02 a.m. on Thursday, April 25, 2002. On roll call Committee Chairman Allen Wyett and Committee Member Jack McDonald were found to be in attendance. Other Elected Officials present for all or a portion of the meeting were: Town Council President William Brooks, and Town Council President Pro-Tem Norman Goldblum. Also in attendance were: Town Attorney John Randolph, Town Manager Peter Elwell, Director of Planning, Zoning & Building Robert Moore, Assistant Director of Planning, Zoning & Building Veronica Close, Planning Administrator Timothy Frank, Historic Preservation Consultant Jane Day, Police Chief Michael Reiter, and Deputy Town Clerk Susan Eichhorn.

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance took place.

III. APPROVAL OF AGENDA

Chairman Wyett moved approval of the Agenda. The motion was seconded by Committee Member McDonald and carried unanimously on roll call.

IV. PROCEDURES FOR CONSIDERING APPLICATIONS FOR PROPERTY TAX ABATEMENT FOR RESTORATION OF HISTORIC LANDMARK PROPERTIES

Historic Preservation Consultant Jane Day addressed the Committee, explaining that a representative from the Property Appraiser's office has offered to meet with Town staff to help to better understand the determined values for tax abatement. She explained that staff had initiated procedural changes in 2001 to revise the tax abatement application and procedures, and she had included the most current information on the procedures and written protocol of the Tax Abatement Program in the back-up material for the meeting today. She noted that as the Tax Abatement Program had matured in the Town of Palm Beach, problems had been identified, and procedures had been implemented to avoid the possibility of exploitation of the system. Staff would continue to carefully monitor all applications and recommended that no new action be taken at this time. After further discussion concerning the standards of the Department of the Interior, and the general procedure followed regarding tax abatement projects in the Town of Palm Beach, **THE COMMITTEE RECOMMENDED THAT NO ACTION BE TAKEN AND THAT STAFF PROCEED WITH THE RECOMMENDED PROCEDURES AS ESTABLISHED BY TOWN STAFF FOR CONSIDERING APPLICATIONS FOR PROPERTY TAX ABATEMENT FOR RESTORATION OF HISTORIC LANDMARK PROPERTIES.**

Mrs. Polly Earl, Executive Director of the Preservation Foundation, congratulated the Town and the staff for establishing guidelines that would clarify the tax abatement procedure. She provided the most recent figures of yearly tax abatement, totaling $52,356, based upon information received from staff and reviewed by professional accountants. She also recommended a strict interpretation for tax abatements for additions to landmarked homes, and that the procedural changes suggested by staff be adopted.

Mrs. Wendy Victor commented that clarification of having the tax abatement program clarified was valuable to homeowners using the tax abatement program, and that it was important to retain the historic nature of the Town.

V. PROCEDURES FOR REGULATING CONSTRUCTION TRAFFIC AND PARKING

Director of Planning, Building & Zoning Robert Moore reported that the Town Council had indicated the need for further information regarding construction traffic and parking, in addition to that provided in his memorandum of April 2, 2002.

Town Attorney Randolph referred to the construction parking issue included in the back up material for today's meeting, noting that the issue had come forward for two reasons: the concerns of the Public Works Department regarding the scope of the regulations, and because of complaints from contractors and owners of the manner in which the construction parking program was administered. He reviewed the revisions in the draft resolution presented in regard to construction parking: Staff had recommended that it was desirable to control all traffic at construction sites during the period that a permit was open and prior to a certificate of occupancy being granted – the language had been expanded to say that all vehicles belonging to personnel on, or visiting, a construction site from the date of the issuance of permit to the issuance of the certificate of occupancy would be regulated. A methodology allowing additional permits for street parking for a three week period prior to the issuance of a certificate of occupancy was also being presented for discussion today; the suggestion was being made that ten additional permits be issued for the three week period prior to the issuance of the certificate of occupancy. In addition, complaints had been received from contractors and others regarding the lack of a means of appeal for violations of right-of-way parking, and a section had been added to the which would allow for an appeal to the Town Council.

Town Council President Brooks commented that he was in favor of strict adherence to construction parking, noting that the parking problem was exacerbated on the east/west streets.

Town Council President Pro-Tem Goldblum suggested that permits be issued by the Building Department for a certain length of time for construction vehicles, so that the Police Department could identify vehicles being parked as a result of construction projects.

Town Attorney Randolph responded that provision was covered in the Right-of-Way Manual.

Town Manager Elwell explained that staff would be returning to the Town Council with a revised staff report concerning the procedures for regulating construction traffic and parking, however some additional guidance regarding the specifics was necessary.

Mr. McDonald advised that the objective was always to keep the traffic flow moving as best as possible; other subjects that should be addressed were specific guidelines concerning such things as whether trucks could back into the project, or pull in front first, and the flagmen issue.

Police Chief Reiter discussed the issues of flagmen, delivery trucks, and construction vehicles, noting that the Police Department staff supervising construction traffic was aware that the primary purpose was to keep traffic moving.

AFTER DISCUSSION, THE COMMITTEE TOOK NO ACTION ON THE CONSTRUCTION TRAFFIC ISSUE, AND WOULD AWAIT THE STAFF REPORT TO THE TOWN COUNCIL.

AFTER DISCUSSION OF CONSTRUCTION PARKING, THE COMMITTEE RECOMMENDED THAT THE RECOMMENDATIONS OF TOWN ATTORNEY RANDOLPH BE INCORPORATED INTO THE ORDINANCE, TO INCLUDE A PARKING PERMIT BEING PROVIDED TO THE OWNER OF THE PROJECT, AND A CAP OF 15 PARKING PERMITS FOR A LIMITED PERIOD OF TIME PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY FOR CONSTRUCTION VEHICLES THAT COULD NOT BE ACCOMMODATED ON SITE. THE FINES WOULD REMAIN AT $75.00 PER DAY FOR THE FIRST PARKING VIOLATION, AND $150 FOR THE SECOND PARKING VIOLATION.

VI. VALET PARKING

Town Attorney Randolph distributed the valet parking ordinance that had been drafted the last time the valet parking issue had come up; the problem with adoption of the ordinance had been with the State of Florida, because the Town was not allowed to regulate valet parking on State roads. He suggested that the draft ordinance be reviewed for purposes of future consideration. Such an ordinance would be applicable only to those restaurants that were not on the State road right-of-way, however, it may cause unequal enforcement.

Police Chief Reiter suggested that a certain number of valet parkers be provided by ratio to the number of customers; perhaps the regulation could be attached to occupational licenses or special exceptions that were granted.

Town Attorney Randolph advised that such a condition could be attached to special exceptions, however, it could not be attached to an occupational license.

AFTER DISCUSSION, THE COMMITTEE RECOMMENDED THAT THE DRAFT VALET PARKING ORDINANCE BE MODIFIED TO INCLUDE REGULATIONS REQUIRING A RATIO OF VALET PARKERS TO SEATING SPACES, APPLICABLE ONLY TO THOSE RESTAURANTS NOT ON THE STATE OF FLORIDA RIGHT-OF-WAY.

Town Manager Elwell clarified that the Town Council would have the opportunity to review the recommendations at the May Town Council Meeting, with a formal ordinance being presented at the June Town Council Meeting.

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

The Ordinances, Rules and Standards Committee was adjourned at 11:55 a.m.

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Allen S. Wyett, Chairman

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Jack McDonald, Committee Member

*****End of ORS report****

Chairman Allen Wyett read the recommendations of the ORS Committee into the record:

The ORS Committee recommended that no action be taken and that staff proceed with the recommended procedures as established by Town staff for considering applications for property tax abatement for restoration of historic landmark properties.

Director of Planning, Zoning and Building Moore explained the recommended procedures established by Town staff for considering applications for property tax abatement for restoration of historic landmark properties.

Councilman Wyett moved approval of the recommendation of the ORS Committee that no action be taken and that staff proceed with the recommended procedures as established by Town staff for considering applications for property tax abatement for restoration of historic landmark properties. Councilman McLendon seconded the motion. On roll call the motion carried unanimously.

Councilman Wyett reported that the ORS Committee had taken no action on the construction traffic issue, and would await the staff report to the Town Council.

Councilman Wyett reported that after discussion of construction parking the ORS Committee recommended that the recommendations of Town Attorney Randolph be incorporated into the ordinance, to include a parking permit being provided to the owner of the project, and a cap of 15 parking permits for a limited period of time prior to the issuance of the certificate of occupancy for construction vehicles that could not be accommodated on site. The fines would remain at $75.00 per day for the first parking violation, and $150.00 for the second parking violation.

Town Manager Elwell clarified that construction parking had been discussed at the ORS meeting in terms of an ordinance, however, the Right-of-Way Manual is adopted and amended by resolution; the Town Attorney had prepared an appropriate resolution for action by the Town Council today.

Mayor Smith commented that she believed that 15 parking permits were too many and would clog residential streets.

Town Manager Elwell clarified that the number of parking permits throughout the bulk of the project would be three, plus one additional permit for the owner; the 15 parking permits were proposed for the last three weeks prior to the issuance of the certificate of occupancy, at the discretion of the Public Works Director.

Former Mayor Marix commented that allowing on-site construction vehicles on private homes on main streets was a major public safety matter. She suggested that there be better enforcement of on-site parking for limited permits for limited times that could be carefully supervised.

Town Manager Elwell advised that the current regulations intended to keep construction parking on construction sites, other than very limited exceptions; one exception was at the very end of the job, when the site was sodded and more sub-contractors were on-site to do finish work. He stated that the Town was actually very aggressive with enforcement of construction parking, although it could be very difficult to determine who was parking for construction projects and who was parking for some other purpose. The ORS Committee had heard some testimony complaining about the vigorous enforcement of construction parking.

Director of Public Works Al Dusey reported that enforcement was aggressive; all parking must be on-site, and workers must car-pool or be bussed in; after that was accomplished there were up to three spaces allowed for street parking, with the exception of the close out period near the end of the project.

Director of Planning, Zoning & Building Robert Moore advised that near the end of projects, when the landscaping was installed, etc., there was no place for construction workers to park; they would then apply to Public Works to request additional relief at the end of the job. A larger job would need more construction workers, and the idea of increasing the cap had been to give the Public Works Director discretion relating to the size of the job. The 15 cap figure had been considered, rather than a lower figure, as there was a provision in the ordinance that would allow an appeal to the Town Council if there was a need for more construction vehicles than the cap allowed.

Councilman Wyett moved acceptance of the recommendation of the ORS Committee recommending that the recommendations of Town Attorney Randolph be incorporated into the ordinance, to include a parking permit being provided to the owner of the project, and a cap of 15 parking permits for a limited period of time prior to the issuance of the certificate of occupancy for construction vehicles that could not be accommodated on site. The fines would remain at $75.00 per day for the first parking violation, and $150 for the second parking violation. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Councilman Wyett reported that after discussion of the valet parking situation in Town, the ORS Committee recommended that the draft Valet Parking Ordinance be modified to include regulations requiring a ratio of valet parkers to seating spaces, applicable only to those restaurants not on the State of Florida Right-of-Way. He clarified that the ORS Committee found that the major reason for valet problems was that there were not enough valet parkers. Typically the average restaurant of 150 seats had two valet parkers which was not enough to handle the work. In addition, there was currently no incentive to add additional parkers, and the ORS Committee had suggested that the Police Department specify a specific ratio. The ORS Committee also discussed a rules and regulations pamphlet that would be published and distributed to each valet parker as they were hired, so that they would be aware of the proper procedures. Proper supervision of the valet parking activity had also been discussed, with associated fines or revocation of the valet parking.

Councilman Wyett moved acceptance of the recommendation of the ORS Committee recommendation that the draft Valet Parking Ordinance (22-95) be modified to include regulations requiring a ratio of valet parkers to seating spaces, applicable only to those restaurants not on the State of Florida Right-of-Way. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Councilman Wyett incorporated into his motion direction that the ordinance would include a provision regarding a rules and regulations publication that would be distributed to the valet parkers; a first reading of the ordinance would take place at the June 11, 2002, Town Council Meeting.

Police Chief Reiter advised that a rules and regulations publication was under development currently as part of the Police Department education program.

X. REGULAR AGENDA

A. Old Business

1. Coordination of Proposed Town Storm Drainage Plans and City of West Palm Beach Water Main Replacement Projects.

a. Overall Coordination.
[Albert P. Dusey, Director of Public Works]

Town Manager Elwell reported that some additional questions had arisen during the Special Town Council Meeting held on April 29, 2002, regarding drainage, and he clarified that the five projects that would be coordinated between the City of West Palm Beach and the Town of Palm Beach would include four projects that either would or may be constructed by the City and the Town jointly after the five year deadline established in the Water Agreement with the City of West Palm Beach for the completion of the $18 million capital improvement program. The fifth project was the North Lake Way combined project. He noted that the Town was obligated to authorize, via written letter, the delay beyond the five year deadline for the four projects; the letter would be carefully worded to state the expectation of the parties to continue to coordinate the projects and complete them by some date certain. Staffs were working together on re-scheduling on how the work would fall together between the City program and the Town program. The final schedule would not be available until a final determination was made, sometime later this summer, regarding the Town drainage work.

In response to Councilman McLendon, Mr. Elwell explained that the R & R (Road Restoration) funds would be available to augment the projects; it was also available, subject to Town Council approval, for capital improvements to the system that would be above and beyond the $18 million program the City was undertaking.

Town Manager Elwell explained that estimates had been received from the engineers regarding the additional analysis on the drainage project; an analysis of the five foot, five and one-half foot, and six foot thresholds was estimated at $33,192.00. The goal of that exercise would be to provide a drainage system that would prevent all of the homes at or above each of those thresholds from being flooded in a hundred year storm. That analysis would give the Town Council the information necessary to ultimately make a level of service decision on the project. An analysis of street flooding, with the goal of street flooding not exceeding 12" at any time during any storm was estimated at $28,960.00; staff was recommending that not be done at this time because the analysis would provide information that would certainly lead to an indication of greater than the $40 million dollar initial project price tag, rather than any reduction in that price tag because in order to keep the water level from getting above 12", a lower tolerance for flooding would be needed. It was the intent to develop an operational plan for the service of flooded streets by emergency vehicles; staff would look at how emergency vehicles could be retrofitted to allow them to pass through deeper standing water, and other contingency plans.

Councilman Wyett moved approval of the request for $33,192.00 for the drainage analysis of the five foot, five and one-half foot, and six foot thresholds.

Town Manager Elwell advised that a motion was not necessary; the intent was to expend the $33,192.00 necessary for the three threshold analysis, and no further analysis of street flooding at this time. The Town Council agreed with the recommendations of staff.

b. Financing for Town Share of Coordinated Project on North Lake Way Between Mediterranean Road and Orange Grove Road. [Jane Skittone, Director of Finance]

Finance Director Jane Skittone addressed the Town Council, referring to her memorandum of May 7, 2002, regarding the financing of the North Lake Way project. The initial design costs would be expended from the previously appropriated funds for drainage, and the $3.9 million would be included in the FY2003 budget. A decision for the funding source could be made at that time.

B. New Business

1. Request by Former Town Manager Robert J. Doney for an Adjustment to his Average Final Compensation and Non-Duty Disability Retirement Pension.

Former Town Manager Robert J. Doney addressed the Town Council, stating that he had provided a summary to the Mayor and Town Council regarding his May 3, 2002, letter. He explained that during the period of August 1998 to August 2000 the matter of establishing a performance evaluation system for him was before the Town Council on at least eight occasions; the matter had been deferred, and deferred, and deferred. He requested that special consideration be given to his request, as it would affect his average final compensation, and retirement pay, as exhibited on the fact sheet provided. He referred to Item I. of the fact sheet: "Unfortunately, the Town Council did not initiate actions to act on a performance (incentive) increase when it was on the noted Council meeting agendas and I did not request that the Town Council consider and act upon my request at an earlier Council meeting. However, I had regularly placed Town service ahead of myself and I had relied in good faith on the Town Council to eventually act on an incentive increase for me. When multiple sclerosis suddenly ended my long professional career since February 1974 for the Town, I believe my unrated professional performance for the Town has earned this Town Council consideration and the action on my request is fair and reasonable."

Mr. Doney referred to Item E. of the fact sheet: "According to the Town's Actuary and Finance Department's calculations and the Town's Retirement Ordinance, my average final compensation was based upon my comp-ratio of 111.57% (maximum 118%), according to my base salary of $114,209 and my base salary for FY 1999 of $110,883." He noted that he had prepared the attached Exhibit A, detailing his average final compensation figures, after confirming the accuracy with Personnel Director Crouse. He explained that he did not want to advance anything for consideration by the Mayor and Town Council until he had first advanced it to staff, and had spoken with the Town Attorney.

Mr. Doney explained that one issue that had been raised was one of legal precedence in what was being considered in his request; he maintained that there was not a legal precedent, and he requested that any questions be directed to Town Attorney Randolph. He stated that his professional employment agreement was dated December 16, 1987, and that he was the only Town employee with a professional employment agreement with the Town Council. He referred to Item G. of the fact sheet: "Based upon my telephone conversation with Town Attorney Randolph, I understand my request, as detailed in my May 14, 2001 letter, is a policy issue, which can be acted upon by the Town Council. As I also verbally advised the Mayor and Town Council at the April 9, 2002 Council meeting, I am no longer using legal assistance to pursue my request."

Mr. Doney stated that what he was asking for was fair, equitable, good faith treatment in his request as detailed in Item J of the fact sheet: "Based upon the foregoing information and my professional performance for the Town of Palm Beach, I believe my request is fair and reasonable and I respectfully request the Town Council act upon the following today: approve my final compensation be retroactively increased from 111.57% to 118% for the fiscal years 1999 and 2000 (pursuant to the attached Exhibit A) and that same be approved without interest in the one-time amount of $14,261. As a related issue, my pension would increase by approximately $337 per month." He stated that it was important to note that he did not have an incentive increase since November 9, 1993.

Councilman McLendon stated that he appreciated everything Mr. Doney had done for the Town, and that it was unfortunate that he was in the receipt of only one incentive increase in November 1993. He stated that Mr. Doney had not even put himself in for the annual cost of living that everyone else received, and that all of the Council members had assumed that he was part of that package. He stated that modifying the present procedures may be dangerous for future reference, and whatever considerations may be made today may be better in a lump sum, rather than an adjustment to the pension plan.

Councilman Wyett recalled that he had pointed out that Mr. Doney was remiss in not giving himself wage increases, and that Mr. Doney had almost been dragged into taking a salary increase.

Mayor Smith noted that at the time in question, the Town Council did not do evaluations; Mr. Doney did not want one, and the Town Council did not want to do one – public evaluations were not done at that time. She stated that the Town Council sitting at the time did not know that Mr. Doney had not included himself in the 3% increase in 1993. She asked Mr. Doney how he came up with the figure of $14,261, and why the information had not been submitted when he was negotiating his pension at the time of his retirement?

Mr. Doney replied that at the time he had retired and left Town employment in August 2000 he had talked with Mr. Crouse, but did not even think about his average final compensation and his pension at that time. He stated that his doctor had told him that he needed to retire in June 2000.

Mayor Smith commented that when Mr. Doney had to resign because of health reasons everyone was stunned and felt very badly. She stated that Mr. Doney had discussed his pension and retirement with Mr. Crouse in the following months, and she questioned why the $14,261 figure had not come up at that time?

Mr. Doney replied that after he had left Town employment in June 2000, he had met with Mr. Crouse regarding his pension; he had not been in a position to discuss his performance incentive evaluations that had not been addressed; he just accepted the 111.57% comp ratio that he left with in 2000; it had not occurred to him that he needed to do something for himself. He stated that the $14,261 had been calculated by Mr. Crouse to be the figure for a one-time only retroactive increase to his pension to bring him to a 118% comp ratio for the last two years of service; the total for those two years was $14,261. He stated that Mr. Crouse had indicated that the $14,261 was a one-time increase figure, at the discretion of the Town Council, based upon being the only employee with a professional employment agreement. He stated that he was at fault for not pushing his own issue to the Town Council.

Councilman Wyett commented that Mr. Doney was assuming that the sitting Council at the time would have granted him an increase in pay to bring him to the 118% comp-ratio; this Council was not capable of trying to determine what the previous Council would have done. He stated that he found it difficult trying to decide retroactively what may have been done at the time, and that there were precedent problems that could arise with other technicalities.

Councilman McDonald commented that the responsibility for the performance evaluation was a shared responsibility of both the Town Council and Mr. Doney. He stated that he knew there was a period of time when Mr. Doney, Mr. Elwell, and Mr. Bradford had each filled both the position as Town Manager and Assistant Town Manager, and that Mr. Elwell had received additional compensation for having done that. He stated that he was receptive to something similar in the case of Mr. Doney, however, he was not in favor of a recalculation of the pension compensation.

Councilman McLendon commented that he agreed with the comments of Councilman McDonald.

Mayor Smith commented that Mr. Doney had not pushed for an evaluation and the Town Council had not wanted to do one; the idea of a public hearing on the behavior of an employee was not appealing, and the Town Council made no secret of that. She stated that she was opposed to recalculating the pension, and that a lump sum payment in appreciation of what Mr. Doney had done for the Town would be appropriate.

Councilman McDonald moved approval of a one time lump sum of $15,000 to Mr. Doney for the additional responsibilities he assumed during the period that the Town did not have an Assistant Town Manager, contingent upon a release being signed by Mr. Doney. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Mr. Doney expressed his appreciation, and stated that he would sign a release prepared by Town Attorney Randolph.

2. Florida Department of Transportation Request to Tie Into D-14 Storm Water Pump Station. [Joe Borello, P.E., FDOT]

Public Works Director Al Dusey reviewed the history of the D-14 Stormwater Pump Station, and reported that it was the recommendation of staff that the Florida Department of Transportation (FDOT) be allowed to tie into the D-14 pump station. They would pay their proportional share of the station and the pump system through a participation agreement.

President Pro-Tem Goldblum moved approval of the recommendation of staff to allow FDOT to tie into the D-14 pump station, with the signing of a Joint Project Agreement (JPA). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Manager Elwell clarified that approval would be contingent upon the following conditions, as enumerated in the memorandum provided by Mr. Dusey, dated May 7, 2002:

1. That FDOT and the Town shall work together to request that South Florida Water Management District (SFWMD) increase the permitted pump capacity of the D-14 Stormwater Pump Station.

2. That authorization to discharge shall be conditioned upon the preparation and signing of a JPA, and payment from FDOT to the Town will be a pro-rated share of cost for the Town to construct the D-14 Stormwater Pump Station. The pro-rata cost shall be based upon the permitted 196 CFS to the allowable discharge of 74.8 DFS or 38.2%. The pro rata costs shall include the cost to

provide and install a fourth pump which serves in a back-up position.

3. Should there be an increase in the permitted capacity, a corresponding increase in flow shall be approved from Royal Palm Way. FDOT shall be responsible to modify the discharge weir if they so desire.

3. Follow-Up Actions From the Joint Meeting of the City of West Palm Beach Elected Officials and the Town of Palm Beach Elected Officials on April 19, 2002.

The following memorandum was provided to the Mayor and Town Council in the back-up information for the meeting today:

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Follow-up Actions From the Joint Meeting of the City of West Palm Beach Elected Officials and the Town of Palm Beach Elected Officials on April 19, 2002

Date: May 9, 2002

In furtherance of the above referenced meeting, there are four items on the agenda for your consideration at the May 14th Town Council meeting. One of those items relates to Councilman Wyett's communications with West Palm Beach Mayor Joel Daves and our area hospitals regarding angioplasty and stroke unit availability; Mr. Wyett will provide a verbal update on that matter at our May 14th meeting. The other three items are addressed in this memorandum.

a Consideration of request for $10,000 contribution for fireworks associated with the Fourth on Flagler Event
Attached is a letter dated May 1, 2002, from Mat Forrest, Events Supervisor, City of West Palm Beach, to me, with which Mr. Forrest enclosed an "Offsite Sponsorship

Agreement" for the above referenced event. If the Town Council authorizes the requested $10,000 contribution, I will execute the Offsite Sponsorship Agreement and coordinate any other necessary follow-up actions by the Town.

b Consideration of participating in joint lobbying efforts

The April 19th joint meeting was very constructive, both for the tangible cooperative action it produced and for the general tone of cooperation which characterized the communication on both sides of the table. I believe that we will have much opportunity to work together with City officials on issues of mutual concern. Nevertheless, there are times when the interests of the City and the interests of the Town diverge. The context of the request for joint lobbying efforts was a proposal that the Town and the City would share the cost of a lobbyist who would provide general representation to both municipalities. I believe that a more appropriate approach to joint lobbying would be to seize the opportunity to share representation and reduce costs on a case-by-case basis. This will allow us to address issues of mutual concern in the most efficient and coordinated manner while avoiding a conflict of interest for our professional representative(s) on those occasions when the interests of our two municipalities are divergent.

c. Consideration of sharing the cost of Kimley-Horn and Associates, Inc., for the regional traffic/signalization study to enhance traffic flow

Similar to item "b" above, there are some traffic flow issues on which the City and the Town have shared interests, but there are other traffic flow issues on which we may differ. Therefore, especially since the Town has on April 9, 2002, awarded a five-year continuing services contract for traffic and parking engineering services to Schimpeler Mirson/American Consulting Engineers, PLC, I believe it is appropriate for the Town and the City to conduct our traffic analyses separately. We can, of course, use our separately generated traffic analyses as the basis for cooperative follow-up action(s) on transportation issues of mutual concern.

If you have any questions or require any additional information regarding these matters prior to our May 14th Town Council meeting, please contact me at your convenience.

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a. Consideration of Request for $10,000 Contribution for Fireworks Associated with the Fourth on Flagler Event. [Peter B. Elwell, Town Manager]

Councilman Wyett moved approval of item a. - request for $10,000 contribution for fireworks associated with the Fourth on Flagler Event. The motion was seconded by Councilman McLendon.

Mayor Smith noted that there was a budget crunch currently, and suggested that the request be reconsidered at the June Town Council Meeting in order to determine whether there would be donations for funding of the fireworks.

Councilman Wyett withdrew the motion of approval, as did the seconder of the motion.

Councilman Wyett then made a motion to appropriate $5,000, contingent upon receiving a matching $5,000 from donors. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/2, with Councilman Wyett, Councilman McLendon, and President Brooks casting affirmative votes; President Pro-Tem Goldblum and Councilman McDonald casting dissenting votes.

President Brooks requested that donations be considered by the civic associations in the Town.

b. Consideration of Participating in Joint Lobbying Efforts. [Peter B. Elwell, Town Manager]

Councilman McDonald moved approval of the recommendations of Mr. Elwell as noted in item b. of the memorandum of May 9, 2002 *(as provided above)*. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

c. Consideration of Sharing the Cost of Kimley-Horn & Associates, Inc., for the Regional Traffic/Signalization Study to Enhance Traffic Flow.
[Peter B. Elwell, Town Manager]

Town Manager Elwell noted that Mayor Smith and Mayor Daves had co-signed a letter to Palm Beach County regarding the synchronization of lights on Okeechobee Blvd., as well as a separate letter to the Coast Guard regarding bridge openings. The recommendation was that the two municipalities pool efforts in the future in only those situations where there was a common interest, and that there be no sharing of costs of the Kimley-Horn and Associates, Inc. study for the regional traffic/signalization study to enhance traffic flow, since the Town had a five-year continuing services contract in place with Schimpeler Mirson/American Consulting Engineers, PLC.

d. Joint Effort for Certificate of Necessity for Angioplasty and Stroke Unit at Good Samaritan Medical Center and/or St. Mary's Medical Center. [Allen Wyett, Town Councilman]

Councilman Wyett reported that a meeting had been held at Good Samaritan Medical Center, and concern had been expressed regarding the necessity for local angioplasty units. It was discussed that chances for recovery were excellent if angioplasty services could be provided within one to two hours of a heart attack. He also noted that an EKG, which the paramedic vehicles were equipped with in Town, would not indicate a heart attack in the back of the heart; only blood tests could show that. He reported that he had made a recommendation that a petition be made to get angioplasty at hospitals that want it, and discussions would take place with the appropriate hospital representatives. Another meeting would be scheduled as soon as more information could be gathered. He noted that Good Samaritan was already equipped and therefore the costs to set it up would not be incurred.

Councilman Wyett reported that discussion took place regarding advisory boards for both hospitals, and both hospitals indicated that they were in the final stages of putting them in place. He had suggested that the Mayor or a member of the Town Council be included on the advisory boards. He also noted that he had contacted Representative Jeff Atwater, who had agreed to introduce the subject at the next legislative session; he noted that it would take community effort to get such legislation into effect.

President Brooks commented that the Mayor was ombudsman for the Town of Palm

Beach, and would be the prime choice for membership on the advisory board; if she could not do it, then Councilman Wyett would be an appropriate representative. Mayor Smith deferred to Mr. Wyett.

Dr. Hastings commented that the standard of care was angioplasty, and anything below that was below the standard of care, and the suggestion had been made that private enterprise would support the angioplasty unit if Tenet would not support the angioplasty unit. He complimented Mr. Wyett on his efforts.

4. Review of Impact of Decennial Redistricting Upon the Town's Representation at Higher Levels of Government.
[Jack McDonald, Town Council Member]

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

5. Consideration of Advantages/Disadvantages of the Town Purchasing Cable Television Infrastructure from Adelphia.
[David F. Jakubiak, Assistant to the Town Manager]

Assistant to the Town Manager David Jakubiak reported that he had prepared a report explaining the pros and cons of municipal ownership of the existing cable system. The intention had been to provide as much information as possible that the Town Council would need to make a decision regarding a transfer of the cable system. He noted that the franchise contained language indicating that the Town Council would give final approval to any transfer that would take place. He explained that he knew of a consultant that would be capable of advising the Town regarding purchase of the cable system, if the Town Council so desired.

President Brooks commented that either Adelphia would or would not sell the franchise in Palm Beach. He explained that it was his contention that Adelphia would not sell the franchise, as he believed that Adelphia wanted Palm Beach, Manalapan, Ocean Ridge, and Jupiter Island to try to leverage up the costs. He maintained that the costs to the Town for buying the system would be approximately $24 million, as Adelphia had 8,242 subscribers in Palm Beach, 30% of which were bulk, and at $4,000 (which he believed

Adelphia would require) per subscriber the costs would be approximately $24 million – if the Town did own the system, there would be multi-associated costs for operation, maintenance and programming. He noted that he did not think the Town should pay for a consultant to advise the Town.

Mr. Chuck Blaine, Adelphia Cable, addressed the Town Council, stating that he did not have much information available at the local level, and that Adelphia Cable was still showing solid revenue and cash flow growth within the company.

******The luncheon recess was taken at 12:35 p.m.*******

******The Town Council meeting of May 14, 2002, was reconvened at 2:05 p.m.******

6. Review of Town Policy Regarding Required Setback from Adjacent Property Lines for Docks Constructed in the Waters of Lake Worth.

[Peter B. Elwell, Town Manager]

(Please see discussion in this regard, that took place under Zoning Study Items, at the end of the minutes).

Town Manager Elwell referred to his memorandum of May 7, 2002, as included below:

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Review of Town Policy Regarding Required Setback From Adjacent Property Lines

For Docks Constructed In the Waters of Lake Worth

Date: May 7, 2002

At the May 14th Town Council meeting, I will seek policy clarification regarding the above referenced matter, specifically as it relates to a difference between the setback requirements of the Town as compared with those set forth in the Florida Administrative Code and enforced by the Florida Department of Environmental Protection (FDEP). The Town Code requires that docks, pilings, and related structures be setback a minimum of 10 feet from the adjacent property line (as it is extended for the purpose of riparian rights into Lake Worth). The State regulations require that such structures be setback a minimum of 25 feet from the riparian rights line, with the exception of marginal docks which require a minimum setback of only 10 feet.

Whenever a property owner proposes to construct a dock or related structure which would violate the setbacks set forth in the Florida Administrative Code, FDEP will accept a setback waiver form signed by adjacent property owners if such property owners do not object to the structure being constructed less than 25 feet from the riparian rights line. The Town has recently received a setback waiver form related to the dock proposed to be constructed at 1157 North Lake Way, which is proposed to be setback 20 feet from the riparian rights line which that property shares with the adjacent access to the Lake Trail. Since the Town is the "owner" of the Lake Trail access, we need to make a determination whether or not to sign the setback waiver form.

If the Town Council reiterates that you believe that 10 feet is the appropriate setback for such structures, I will execute the setback waiver form since the 20 foot proposed setback would exceed the Town's requirements. However, before taking such action, I wanted to be sure that this is in fact the Town Council's intent and that I should process this and all future requests in the same manner. In the alternative, if you believe that the Town's requirements should be consistent with those set forth in the Florida Administrative Code, then I will not execute the setback waiver form for 1157 North Lake Way. Instead, I will provide an ordinance for your consideration at the June 11th Town Council meeting to modify the Town's setback requirements to be consistent with those set forth in the Florida Administrative Code.

If you have any questions or require any additional information regarding this matter prior to the May 14th Town Council meeting, please contact me at your convenience.

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After discussion, President Pro-Tem Goldblum moved approval of the Town Code adhering to the State regulations requiring that docks, pilings, and related structures be setback a minimum of 25 feet from the riparian rights line, with the exception of marginal docks which require a minimum setback of only 10 feet. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

7. Improvement of Construction Contracting and Project Management--Infrastructure Replacement Decision Making on Major Roadways. [Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that from time to time situations came along where there was a question of replacing aging infrastructure while major roadway construction was underway in the same area. He explained that the industry-wide approach to determining actual useful life was to wait until there were signs of deterioration, and during any replacement process, a determination could be made as to whether the actual useful life could be extended.

After discussion, President Pro-Tem Goldblum moved approval of the Town staff recommendation to continue with the industry-wide approach, with staff determining the extent of the actual useful life of the infrastructure in question. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

8. Potential Salary Adjustment for Town Manager Peter B. Elwell Based Upon His Annual Performance Evaluation. [Peter B. Elwell, Town Manager]

Councilman McDonald asked what the primary determinant was for the salary range of the Town Manager, whether it was size, etc?

Personnel Director Crouse responded that it should be the same as any other Town employee; that is, that a salary and benefit package be offered that would attract and retain the caliber of employee, regardless of size.

Councilman McDonald requested that Town Manager Elwell provide the ratings that had been received from all members of the Town Council.

Town Manager Elwell confirmed that the ratings ranged from scores of mainly fours and fives, as well as some threes. He explained that the person who had rated more threes had expressed to him that three meant above average performance; the remainder of the ratings were mainly fours, and several fives, indicating satisfaction with performance.

Councilman McDonald recommended that Town Manager Elwell be given a 5.625% salary increase. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

9. Adoption of Annual Performance Goals for Town Manager Peter B. Elwell for 2002-2003. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to the four performance goals that he had proposed for 2002-2003, which he had provided to the Town Council. He recommended approval of the goals, which were as follows:

Goal 1:
Submit a Proposed FY2003 Budget as Close to Level Funded from FY2002 as Non-Discretionary Expenditure Increases Permit

Goal 2:
Continue Implementation of Town's Coastal Protection Plan

Goal 3:
Make Substantial Progress on Major Construction Projects

Goal 4:
Continue to Emphasize Customer Service as an Organizational Priority

Councilman Wyett suggested the following inclusion to Goal 1, which related to the submission of the FY2003 budget: in the event that there were continued budget difficulties that the Town Manager be prepared to explain how operating/capital costs could be cut to avoid tax increases.

Town Manager Elwell replied that he would be prepared to work with the Town Council to identify things that could be cut from the budget, however, the Town Council had established Town wide goals for this year, and decided not to reduce the budget in terms of reducing services. He requested direction as to whether the suggestion should be added to the list of objectives under Goal 1.

President Brooks commented that objective no. 5, under Goal 1 already included the suggestion of Councilman Wyett, and that more discussion in this regard would take place at the time of the budget hearings.

Councilman McLendon moved approval of the adoption of annual performance goals for Town Manager Peter B. Elwell for 2002-2003. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

10. Investment Advisory Committee Appointments.
[Jane Skittone, Director of Finance]

Finance Director Jane Skittone referred to her memorandum dated May 8, 2002, regarding the Investment Advisory Committee Appointments, noting that staff had not received three applications meeting the qualifications for the Investment Advisory Committee membership. She requested that consideration be given to eliminating some of the restrictions so that re-advertisement for applicants could take place, with a revised resolution being presented in June. The following items were those which the Town Council could chose to eliminate:

1. Eliminate the necessity of being a registered voter.

2. Eliminate the summer meeting requirement.

3. Eliminate the restriction of the applicant not being currently involved in providing banking, insurance, cash management or brokerage services. If this restriction is eliminated, we recommend adding that the Town will not do business directly or indirectly with the applicant's employer or business while they are serving on the committee or for at least one year after the committee is disbanded.

Town Manager Elwell advised that the reason for proposing eliminating the requirement that applicants be registered voters, which was unusual for the Town in the formation of committees, was explicitly because the Investment Advisory Committee was a small committee requiring very specialized expertise, established on an ad hoc basis.

Councilman McLendon moved approval of eliminating condition no. 1 for those applying to the Investment Advisory Committee. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Town Manager Elwell clarified that it was the intention of the Town Council regarding no. 3 – that an applicant could not be involved in providing banking, insurance, cash management or brokerage services at all anywhere at this time.

Councilman McLendon moved approval of eliminating condition no. 2 for those applying to the Investment Advisory Committee. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Councilman Wyett moved approval of eliminating no. 3 for those applying to the Investment Advisory Committee, as long as the applicants did not do business with the Town of Palm Beach. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Town Manager Elwell clarified that the requirement no. 3. included the recommendation that the applicants not do business with the Town of Palm Beach, for at least one year after the committee is disbanded.

11. Recreation Advisory Commission Appointments.
[Russ Bitzer, Director of Recreation]

After casting ballots, President Brooks announced that the Town Council had appointed Gail Coniglio as a regular member, Arthur Gross as a regular member, Milissa Agnello as a regular member; Allen Shore was appointed as an alternate member.

At a later point in the meeting, Town Manager Elwell noted that a re-balloting process would need to take place regarding the appointments to the Recreation Advisory Commission Appointments, as there had been some confusion with the ballots already cast.

Mayor Smith stated that she believed that it had been the intention of the Town Council to re-appoint all three current regular members, and the current alternate member.

President Goldblum moved approval of the re-appointment of the three current regular members of the Recreation Advisory Commission (Gail Coniglio, Arthur Gross, and Allen Shore), and the re-appointment of the current alternate member (Milissa Agnello). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XI. RESOLUTIONS

At this time, Town Manager Elwell introduced Sandra Tate, Coastal Management Coordinator.

A. Resolution No. 31-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Amendment #1 to a Previously Approved Grant Agreement, DEP Contract No. 00PB1, Between the State of Florida Department of Environmental Protection and the Town of Palm Beach Under the Florida Beach Erosion Control Program for the Project Known as the Palm Beach Island Beach Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the

Town. [Sandra Tate, Coastal Management Coordinator]

Town Attorney Randolph read Resolution No. 31-02 by title:

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Amendment #1 to a Previously Approved Grant Agreement, DEP Contract No. 00PB1, Between the State of Florida Department of Environmental Protection and the Town of Palm Beach Under the Florida Beach Erosion Control Program for the Project Known as the Palm Beach Island Beach Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town

Councilman Wyett moved approval of Resolution No. 31-02. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

B. Resolution No. 32-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Amendment #2 to a Previously Approved Grant Agreement, DEP Contract No. 97PB5, Between the State of Florida Department of Environmental Protection and the Town of Palm Beach Under the Florida Beach Erosion Control Program for the Project Known as the Palm Beach Island Beach Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town.
[Sandra Tate, Coastal Management Coordinator]

Town Attorney Randolph read Resolution No. 32-02 by title:

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Amendment #2 to a Previously Approved Grant Agreement, DEP Contract No. 97PB5, Between the State of Florida Department of Environmental Protection and the Town of Palm Beach Under the Florida Beach Erosion Control Program for the Project Known as the Palm Beach Island Beach Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town

Councilman Wyett moved approval of Resolution No. 32-03. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

C. Resolution No. 34-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing and Directing the Mayor to Execute the Second Extension of the 1994 Interlocal Agreement Between the Town of Palm Beach and Palm Beach County for the Operation and Maintenance of the Sand Bypassing Plant at Lake Worth Inlet. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 34-02 by title:

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing and Directing the Mayor to Execute the Second Extension of the 1994 Interlocal Agreement Between the Town of Palm Beach and Palm Beach County for the Operation and Maintenance of the Sand Bypassing Plant at Lake Worth Inlet

Councilman Wyett moved approval of Resolution No. 34-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Town Manager Elwell advised that a meeting had been held with representatives of the Port of Palm Beach and Palm Beach County, regarding the long term local sponsorship of the new sand transfer plant operation and maintenance. The County was beginning to draft such an agreement, and further meetings would be held in this regard.

D. Resolution No. 35-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Republic Construction and Development Corporation for the Town Hall Window Replacement Project, Sealed Bid 2002-11.

[Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 35-02 by title:

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Republic Construction and Development Corporation for the Town Hall Window Replacement Project, Sealed Bid 2002-11.

Councilman Wyett moved approval of Resolution No. 35-02. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

E. Resolution No. 36-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to L.C.I. Construction of South Florida, Inc. for the Phipps Ocean Park Tennis Pro Shop, Sealed Bid 2002-10. [Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 36-02 by title:

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to L.C.I. Construction of South Florida, Inc. for the Phipps Ocean Park Tennis Pro Shop, Sealed Bid 2002-10.

Councilman Wyett moved approval of Resolution No. 36-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

F. Resolution No. 37-02 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Annual Funding Application to the State Department of Environmental Protection, Florida

Beach Erosion Control Program.
[Albert P. Dusey, Director of Public Works]

Town Attorney Randolph read Resolution No. 37-02 by title:

A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Annual Funding Application to the State Department of Environmental Protection, Florida Beach Erosion Control Program.

Councilman Wyett moved approval of Resolution No. 37-02. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

XII. ORDINANCES

A. Second Reading

1. None.

B. First Reading

1. Ordinance No. 12-02 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Ordinance No. 5-02 so as to Amend Chapter 18 of the Town Code of Ordinances, Buildings and Building Regulations, at Article II, Administration; at Sections 18-87 and 18-88; Providing for Severability; Providing for Repeal of Ordinances in Conflict;

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

Town Attorney Randolph read Ordinance No. 12-02 by title:

An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Ordinance No. 5-02 so as to Amend Chapter 18 of the Town Code of Ordinances, Buildings and Building Regulations, at Article II, Administration; at Sections 18-87 and 18-88; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date

Councilman Wyett moved approval of Ordinance No. 12-02 on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

XIII. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

Councilman Wyett commented that if the Town were to add limousine permits above the current permit cap, everyone should have the right to bid for the permits. If these permits are worth $20,000 on the open market, perhaps the Town should be making the $200,000 or $300,000 that 10 or 15 additional permits would generate. *(Town Staff and the Town Attorney will provide information regarding limo permits in writing to determine if consideration should be given to the issue at a future meeting.)*

Councilman Wyett commented on the voting procedure used for appointing Commission members.

Councilman McDonald concurred with Councilman Wyett's comments regarding Commission appointments.

Councilman McDonald said he thought comments made by William Cooley earlier in the meeting were logical and requested that staff determine if his comments were correct or incorrect.

Councilman McDonald added that he saw a television program where photo radar was used at crosswalks to control speeding violators. He suggested the Police Department look into this.

Town Manager Elwell reported the update on the Better Place Software Program will be available in the next one to two weeks.

Town Manager Elwell said he and Tom Bradford met with Florida Crystals once and will continue to meet with them. He said he expects to have a recommendation ready for the June 11th Town Council meeting regarding proposed office space for the Planning, Zoning & Building Department.

XIV. DEVELOPMENT REVIEWS

Town Clerk Pollitt administered the oath to all those who would be speaking regarding the Development Review items.

A. Time Extensions

1. VARIANCE NO. 28-2001 AND SITE PLAN REVIEW NO. 8-2001 with VARIANCES 2305, 2315, AND SOUTH OCEAN BOULEVARD, THE SEA LORD PROPERTY Request For One (1) Year Time Extension to Undertake the Town Council Approval of Variance No. 28-2001 and Site Plan Review with Variance No. 2-2001. [Eugene Lawrence, The Lawrence Group Architects]

Zoning Administrator Castro explained that the applicant was requesting a one-year time extension frm the original approvals for the special exception, site plan review, and variances for the property containing the old Sea Lord Hotel, and the single family home next to it, 2305, 2315 South Ocean Blvd., for development as a condominium.

Attorney James Brindell, on behalf of SLM Palm Beach Associates, Ltd., explained that closings on the properties were forthcoming, two lenders were poised to fund the project pending the outcome of the extension request.

Mr. Dwight Bowler, President SLM Palm Beach Associates, Ltd., addressed the Town Council, stating that the closing date had been September 15, 2001, and it had taken five months to put the project back together again after the events of September 11th.

After discussion, Councilman McDonald moved that a six-month time extension be granted to the applicant. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE NO. 9-2002 The application of David W. Frisbie, Trustee relative to property described as Lot A and Southwesterly 10 feet of Lot 46, Revised Plat of Lake Front Addition to Boca Ratone Company's Inlet Subdivision; commonly known as 1000 Indian Road; located in the R-B Zoning District. To allow installation of five (5) mooring piles appurtenant to an existing dock that will be fifty-five (55) feet from the bulkhead in lieu of the six (6) foot maximum allowed. **Deferred from April 9, 2002, Town Council Meeting.**

Ex-parte communication was declared by President Pro-Tem Goldblum with

Attorney Deziel; by Councilman McLendon with Attorney Deziel; by Councilman Wyett with Attorney Deziel.

Attorney Robert Deziel, on behalf of the applicant, addressed the Town Council, stating that they were requesting five (5) mooring piles to be placed as an addition to the existing dock which extended 23' into the inlet. The piles would be placed an additional 30' further out for a total of approximately 53'. The hardship was the shallow water at the bulkhead making the six foot code requirement prohibitive. The piles were needed for safety and to stabilize a boat at the dock.

A graphic presentation was made by Attorney Deziel to explain the need for the mooring piles.

Building Director Robert Moore stated that the Comprehensive Plan comments were that the request seems to be excessive and does not appear to meet the criteria for granting of a hardship for a variance. He commented that the Building Department wanted the hardship to be addressed and felt that Mr. Deziel had done that. Mr. Moore stated that there were no comments from any other departments.

Council President Brooks asked Mr. Goldblum if there were any safety requirements needed to be added. Mr. Goldblum felt none were necessary because it was in shallow water. He did request the placement of reflective tape 360 degrees around the outboard pilings. Mr. Deziel agreed.

President Pro-Tem Goldblum moved approval of Variance No. 9-2002. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with Councilman McDonald casting a dissenting vote.

2. New Business

a. VARIANCE NO. 14-2002 The application of Kane K. Baker relative to property described as Lot 13 less the east 5.00' for street right of way, together with all of Lot 13-A, Alto Lido; commonly known as 1246 North Lake Way; located in the R-B Zoning District. To allow construction of a two-story addition onto an existing single family home, requiring a variance to provide an 11 foot side yard setback in lieu of the 15 foot setback required by code, and a variance to provide for a total cubic content ratio of 4.04 in lieu of the maximum cubic content ratio of 3.96 allowed by code, and a variance to allow relocation of an existing 17 foot high (at its highest point) garden wall in a side yard setback in lieu of the maximum 7' height allowed by code.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that similar variances had been sought previously, with two being granted after the applicant had agreed to remove a proposed staircase. He explained that the existing finished floor elevation of the house in question was at 10.6'; a 12' walkway separated the lot from the neighbor to the north. He presented photographs of the existing hedge and the 12' walkway, as well as a letter of no objection from the neighbor. He noted that the project had been approved in November 2000, and the applicant had failed to request an extension in the appropriate amount of time. The purpose had been to add a family room downstairs and a bedroom upstairs in an infill portion of the property. Construction bids had been obtained and Architect Albarran was prepared to file the building permit application. The current proposal was identical to what was approved by the Town Council in November 2000. He noted that the request was for a CCR of 4.04, not the 4.25 CCR that was incorrectly stated on the application.

Director of Planning, Building and Zoning Robert Moore provided the staff comments as reported on the Application Review Sheet: Comprehensive Plan: does not appear to meet criteria for granting a variance; 17' wall seems excessive - if relocated it should conform to code; Town Engineer: would like to establish a sight triangle around the corner; Building Department: no hardship with the relocated wall - it should conform; Town Manager: questions the hardship.

In response to President Brooks, Attorney Brindell replied that the green space was 42.7%.

After further discussion of the percentage of green space, Mr. Moore commented that the architect had signed and sealed the plans and they were taken at face value; if the project came in for permit, the green space would be recalculated and checked at that point.

Attorney Brindell advised that there were three hardships: the lot was substandard, only 74' wide; the existing location of the house on the lot; the difference between the actual finished floor elevation of 10.6', versus the street elevation of 4.78'; ordinarily a 7.5' elevation would be minimum, however, in this case 3.1' of that was underground.

Mr. Moore advised that the two inch water retention was a requirement. He noted that staff was considering a regulation that would allow staff the right to enter the property to have an engineer certify the two inch water retention system. He stated that he believed that Councilman McDonald had suggested that the applicant agree that the system be maintained and certified, with staff having the right to enter the property to ensure that the system was conforming to regulation.

Councilman Wyett moved approval of Variance No. 14-2002, with the following conditions: retain first two inches of water, install gutters with a French drain or cistern, sight triangle as established by the Town Engineer, and maintenance agreement that water retention levels will be maintained. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 3/2, with Councilman Wyett, President Pro-Tem Goldblum, and Councilman McLendon casting affirmative votes; Councilman McDonald and President Brooks casting dissenting votes.

b. VARIANCE NO. 15-2002 The application of John J. Coleman and Edward F. Hines Jr. as Trustees of the Goodrich Florida Realty Trust II U/A/D April 20, 2001 relative to property described as Lot 7, Casa Apava; commonly known as 1341 South Ocean Boulevard; located in the R-AA Zoning District. To allow construction of side yard walls, measuring 7' to 15'6" (south wall) and 7' to 14' (north wall) in lieu of the 7' maximum allowed.

Ex-parte communication was declared by Councilman McLendon with Attorney Greg Young, by President Brooks with Attorney Young.

Attorney Greg Young, on behalf of the applicant, addressed the Town Council, stating that discussions had been taking place with neighbors on the north and south sides in connection with the variance request. As a result of those discussions, the applicant was requesting an amendment to the application that would revise the application.

President Pro-Tem Goldblum moved deferral of Variance No. 15-2002 to the June 11, 2002, Town Council meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Attorney Julie Sellers, representing the Picowers, neighboring property owners, addressed the Town Council, requesting that the applicant be allowed to present the application today in order to allow construction to take place during the summer. She noted that the modifications would reduce the amount of variances that were being requested.

President Brooks explained that procedures were in place, and that the Building Department had not been presented with the revised application to this date.

c. VARIANCE NO. 16-2002 The application of Howard Gittis relative to property described as lengthy metes and bounds legal description (on file); commonly known as 200 Via Palma; located in the R–A Zoning District. To allow construction of a carport awning with (i) a rear yard setback of 6' in lieu of the 15' maximum required in the R-A Zoning District; and (ii) a street side yard setback of 20' in lieu of the 35' required in the R-A Zoning District for corner lots.

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

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, providing an architectural rendering of the property in question. She explained that the residence currently had a two-car garage which did not meet the needs of the family, and a carport awning was being requested, which would protect two additional cars. The hardship ran with the land; the unique circumstance of the property, which was bordered by three roads and Lake Worth, imposed very severe zoning requirements for the property. There was also a deed restriction prohibiting access along Algoma Road. The configuration of the house prohibited placing the setback along the other streets. The proposed awning would not have an effect on drainage.

Zoning Administrator Paul Castro provided the staff comments as set forth in the Application Review Sheet: Comprehensive Plan: does not appear to meet criteria for granting of a variance; Building Department: hardship needs to be addressed.

Councilman Wyett moved approval of Variance No. 16-2002. The motion died for lack of a second.

President Smith commented that the property was large enough to find another solution for parking the cars.

President Pro-Tem Goldblum moved denial of Variance No. 16-2002. The motion was seconded by Councilman McLendon.

After discussion, President Pro-Tem Goldblum modified the motion to defer Variance No. 16-2002 to the June 11, 2002, Town Council meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

d. VARIANCE NO. 17-2002 The application of Michael and Paul Schulhof relative to property described as Lot 9 of Allard Subdivision; commonly known as 660 North Lake Way; located in the R-B Zoning District. To allow an existing side yard setback of 10' in lieu of the 12.5' required to change the address of the house from 660 North Lake Way to 301 Via Linda.

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

Town Attorney Randolph reminded the Town Council that in addition to announcing the people with whom communication had taken place, the subject of the conversation was also to be announced.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the applicant was requesting a change in address from 660 North Lake Way to 301 Via Linda. The residence had been built in 1958, and since its construction the zoning code had changed to make it a nonconforming lot. Approximately ten years ago the previous owner had changed the address from 301 Via Linda to 660 North Lake Way. The front door fronted Via Linda. The hardship ran with the land, and was the location/orientation and configuration of the existing residence.

Zoning Administrator Paul Castro commented that the applicant was not asking for any additions or expansions to the existing house, and relief was needed because of the side yard setback. The only change related to changing the address would be to the property line to the north and its orientation to the house.

Councilman McDonald questioned why this application would not need a special exception, rather than a variance, as there was no structural or physical change to the property at all, and the applicant must prove a hardship.

Zoning Administrator Castro commented that any change to a property address that would make the house nonconforming or more nonconforming required a variance. In this case, rearranging the address influenced the side yard setback. He suggested that the hardship lay with the land and the existence of the structure.

Director of Planning, Zoning and Building Robert Moore explained that the applicant was trying to return the address to where it should be, because the orientation used was the orientation of the front door. A special exception request would have to include the forgiveness of any nonconformity that the request might make, and a variance would then be needed anyway.

Councilman McLendon suggested that the request could be approved without a variance.

Town Attorney Randolph advised that the Town Code had a provision which indicated that the address has to be the front yard. The Building Department had always taken the position that the address has to be located where the front of the house is oriented, and if the front of the house was oriented towards Via Linda, then that was where the address would be.

Mr. Moore explained that somehow, at some point in time, that address had been changed from Via Linda to North Lake Way, and there was no record remaining of why or how it was changed. By changing the address back to Via Linda, a nonconformity was being created in the rear yard.

President Pro-Tem Goldblum expressed concern that the applicant also owned the house in back of them, and he did not want the two properties to eventually be joined without the consideration of the Town Council.

Zoning Administrator Castro commented that the address was not an issue to redevelopment of the property because the applicant could do a unity of title redevelopment whether they have two addresses or not; it was the preference of the owner to have the Via Linda address, however, it did make the house more nonconforming to the Code.

After further discussion, Councilman McDonald moved approval of Variance No. 17-2002, with the condition that approval would only run with the current owner, and if the owner changed, the matter would come back to the Town Council for re-consideration; the Code required the address to be what the applicant was requesting, and this would simply correct what was apparently a mistake in the Building Department. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

4. Other

a. Heart of Palm Beach Hotel - Site Plan Review No. 21-2001 with Special Exceptions and Variances Regarding Valet Parking. [James R. Brindell, Esq.]

Town Attorney James Brindell, on behalf of the Heart of Palm Beach Hotel, addressed the Town Council, requesting clarification of the condition letter that had been sent by Zoning Administrator Castro following the approval of the request for a new function room for the hotel at the March 12, 2002, Town Council meeting. He recalled that he had made a distinction between hotel guests and guests coming to a function who were not staying at the hotel with regard to the valet operation and the need for a police officer. He noted that the Town parking consultant had stated that valet operations should begin well in advance of an event in order to avoid blocked parking of the hotel guests and the retrieval of guest vehicles. He had clearly made a distinction between people who were staying at the hotel, and people who were coming to the function room from outside of the hotel.

Attorney Brindell requested that staff be authorized to issue the approval letter with the correction that the limit on breakfast/lunch functions and all of the valet operations relate to non-hotel room guests.

President Brooks questioned why this request had not been handled administratively?

Zoning Administrator Paul Castro explained that he had contacted the maker of the motion, because it was unclear in the motion and in the minutes that there was a distinction between hotel guests and non-hotel room guests.

President Pro-Tem Goldblum moved approval of the request of the applicant that a corrected letter of conditions be submitted by the Building Department for approval of the request made by the Heart of Palm Beach Hotel (Site Plan Review No. 21-2001 with Special Exceptions and Variances) on March 12, 2002. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

b. Request From Ron Constantine, Vice President, Citibank, for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project Commencing May 4, 2002. (400 Royal Palm Way). [Ron Constantine, Vice President, Citibank]

Architect Ames Bennett addressed the Town Council, requesting permission for a waiver from Section 42-199 of the Town Code, to work on Sundays 8:00 to 6:00 p.m.

beginning on May 4, 2002, allowing the job to be completed in approximately four consecutive weekends.

Director of Planning, Zoning & Building Robert Moore commented that this work was in the commercial district, inside, and the construction company owner was a long-time, very capable contractor. He recommended that the request be approved, predicated on the fact that they would not disturb anyone; if they did the right to work would have to be given up.

President Pro-Tem Goldblum moved approval of a waiver of work hours for construction at 400 Royal Palm Way; work to be allowed on Sundays 8:00 to 6:00 p.m., beginning on May 4, 2002, not to exceed four consecutive weekends, with any noise complaints causing cancellation of the approval. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

c. Request From Donald Gilman, Executive Director, The Everglades Club, for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project. (356 Worth Avenue)
[Donald C. Gilman, Executive Director, The Everglades Club]

Mr. Donald Gilman, Executive Director of the Everglades Club, addressed the Town Council, requesting a waiver of construction hours for construction of the golf course at the Everglades Club with work to begin at 7:00 a.m. to 6:00 p.m.

Director of Planning, Zoning & Building Robert Moore commented that he had discussed the issue with Mr. Gilman, and recommended that work begin at 8:00 a.m. to 8:00 p.m.

President Pro-Tem Goldblum moved approval of a waiver of construction hours to be from 8:00 a.m. to 8:00 p.m. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

d. Appeal of Town Council Architectural Commission Decision Regarding an Application Made by NLR Trust on a Decision Rendered by the Commission on April 24, 2002. [L. Frank Chopin and Jacqueline S. Miller, Attorneys at Law]

Ex-parte communication was declared by President Brooks, via walking the property, and talking with the construction manager.

Attorney Frank Chopin, on behalf of Mr. and Mrs. Brian Mulroney, addressed the Town Council, explaining that the property at 271 Plantation had originally applied for remodeling of the property, including an addition, remodeling and partial demolition; that had been approved, however, the applicant had not received the notice for no fault of anyone other than themselves, and the whole house was torn down, and work was started all over again without any permission, consents or notices. When the applicant found out the situation, the matter had gone back to the Architectural Commission (ARCOM) and the applicant took the position that a re-notice was necessary, and ARCOM had suggested that the parties involved work it out. The applicant had now been able to do that. An agreement had been made that the window on the east side of the property in a closet would be removed; the property would be landscaped; there was an obligation to maintain the landscaping in perpetuity, which would run with the land.

Mr. John Schuler, Chairman of the Architectural Commission, stated that ARCOM had suggested that the two parties come to an agreement at the meeting held on February 27, 2002.

Town Attorney Randolph commented that the agreement had been worked out by the property owners without consideration of ARCOM, and if changes were made in the plans which ARCOM had not seen, the opportunity should be available for them to look at the new plans. If what was being done was not in conflict with anything that had been previously approved by ARCOM, then the matter could be approved today; or the agreement could be approved and the decision of ARCOM be sustained, amending their decision based upon the agreement.

Director of Planning, Zoning, and Building Robert Moore commented that the only physical change to the house was the elimination of the one window on the east facade, and the plans would not need to return to ARCOM.

Mayor Smith noted that the entire process had gone wrong – a very small remodel and addition turned into the demolition of the house. She maintained that the brand new house should have come back to ARCOM and been re-advertised as a new project, and suggested that the Building Department review the procedures in such situations in the future.

Zoning Administrator Castro commented that at the time that it was determined that the house had been demolished, staff had made a determination that the only changes to the original plans had been approved by ARCOM; the only variance requested was on the west side of the house; the rest of the house was going to be built exactly as approved by ARCOM. He noted that in the future such issues would be brought back to ARCOM and/or the Town Council.

Mayor Smith commented that a variance had been received for the house that was in place; if the house had been a brand new house the applicant might not have received that variance.

Mr. Schuler commented that established procedures need to be followed; from time to time applicants change what they are doing, and then want ARCOM approval after the fact, which was of concern to him. He stated that procedures must be followed.

Councilman Wyett moved approval of sustaining the decision of ARCOM, subject to the agreement between the parties. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

e. Definition of "Architect" for ARCOM Appointments.
[John C. Randolph, Town Attorney]

Town Attorney Randolph referred to his correspondence of May 6, 2002, regarding the definition of an architect in the Town Code, as it related to membership of the Architectural Commission (ARCOM). He advised that it was his opinion that the Commission, as presently constituted, did not meet the requirement of the Town Code that two registered architects be on the Architectural Commission; a registered architect and a landscape architect were treated differently under State law. He stated that, if the Town Council agreed with his opinion, in order to allow a landscape architect to fit the category of an architect, the ordinance would need to be amended; or the board would have to be re-constituted with only registered architects in membership.

Director of Planning, Zoning and Building Robert Moore advised that it had been the Town's policy, up to this point, to treat the landscape architect as a registered architect. He advised that, from the staff standpoint, it was vital to have the expertise of a landscape architect.

Councilman Wyett commented that in the past, ARCOM had consisted of two registered architects and one landscape architect within its membership; he maintained that the Commission could be re-constituted by promoting Mr. Zukov to a voting position, and demoting the last person given the voting position.

Town Attorney Randolph advised that one of the sitting members could be requested to absence themselves, so that Mr. Zukov would sit as a voting member.

Mayor Smith suggested that Mr. Moore speak to ARCOM members and report back to the Town Council at the June 11, 2002, Town Council Meeting.

After further discussion, it was agreed that two registered architects and one landscape architect, whenever possible, would constitute the membership of ARCOM.

Councilman Wyett requested that the ballot for voting on applicants to ARCOM include information regarding the constitution of the board so that the Town Council would know who met the current requirement.

f. School Concurrency Plan to be Implemented as Part of an Overall C ountywide Implementation System.
[Robert L. Moore, Director of Planning, Zoning & Building]

Councilman Wyett moved approval of the school concurrency plan to be implemented as part of an overall Countywide implementation system. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

g. Consideration of the Tentative List of Zoning Study Items and Calendar for 2002-2003 Zoning Season, Zoning Commission Report, and Recommendations Concerning Proposed Zoning Items.
[Paul Castro, Zoning Administrator]

Zoning Administrator Paul Castro reported requested direction from the Town Council regarding the following zoning study items:

<u>Proposed 02-03 Study Items:</u>

1. Study the creation of an historic zoning district for Seaspray, Seaview and Seabreeze Avenues, Dunbar and Clarke Avenue.

The Town Council came to consensus that Item 1. would be brought back for review after receipt of an analagous ordinance from the Garden District of New Orleans; determination was made that only the "Sea" streets would be included in such a study.

2. Study the point of measurement requirements for lots in the R-AA and R-A zoning district.

The Town Council came to consensus that Item 2. would remain on the study list as recommended by staff.

3. Study the air conditioning, swimming pool and generator equipment requirements.

The Town Council came to consensus that Item 3. would remain on the study list as recommended by staff.

4. Study an amendment providing for the Zoning Commission to review and act upon applications for variances and special exceptions, with the right to appeal the decision before the Town Council.

The Town Council came to consensus that item 4. would not be included on the list of study items.

5. Study the process by which change is guided in the Zoning Ordinance and to examine the tools in place in the Code to guide growth and be more sensitive to existing conditions in the Town. This is to include investigating such factors as the possibility of waiver provisions; changes to variance or special exception criteria; greater authority for the staff to grant relief when variation from the regulations is considered "diminimus;" bonus zoning, and associative zoning.

The Town Council came to consensus that item 5. would not be included on the list of study items.

6. Study the land development fees and propose appropriate increases where merited.

The Town Council came to consensus that item 6. would remain on the study list as recommended by staff.

7. Study a better, more permanent, method than berm to retain water on properties undergoing new construction or major renovation.

The Town Council came to consensus that Item 7. would remain on the study list temporarily.

Zoning Administrator Paul Castro explained that the site plan criteria in the Town Code was fairly general, and there were other sections of the Code, other than zoning, that could be amended to provide specific regulations relating to the technical aspects of drainage systems.

Town Manager Elwell clarified that the technical aspects of drainage systems would be addressed through the non-zoning portion of the Town Code, and that it would not only address the berm question, but a variety of issues related to the retention of water on private property so as to protect the neighbors and the public drainage system.

Director of Planning, Zoning and Building Robert Moore noted that he had not been present at the Zoning Meeting, and would like to reserve the right to discuss the issue at a later date, as he believed there was further information to be gathered. He suggested that the item be left on the list of Zoning Study Items temporarily.

8. Study the north end to ascertain what that portion of the Town would look like if it were developed/redeveloped to the maximum now allowed without variances under the present zoning regulations.

Councilman Wyett commented that approximately $90,000 had been spent for a report several seasons ago regarding the north end, and urged that the Town Council not get involved again; the north end was substantially built out.

Mayor Smith commented that she did not believe that the Town had either the money or the time to undertake this; she strongly urged that the issue not be considered at this time.

Director of Planning, Zoning and Building Moore commented that there would also be a problem determining what type of architecture should be built on the properties in the north end.

The Town Council came to consensus that item no. 8 of the list of Zoning Study Items would be eliminated from the list.

Item 9. Study a provision that would allow greater height for side walls, as measured from the highest part of the property, when there is significant variance betw4een the elevations of adjoining properties.

Mayor Smith commented that walls had always been considered on a case by case basis, and that custom should continue, as there were varying circumstances with each property.

After discussion, it was determined by the Town Council that Item 9 would be eliminated from the list of Zoning Study Items.

Town Manager Elwell commented regarding the question of riparian rights - property lines extending out into Lake Worth as relating to docks. He noted that although he had advised that he would return with an ordinance next month that would affect that change, the change would have to be included in the zoning ordinance, and would need to be done through the zoning process. He explained that he had received direction as to how to handle the issue with Town properties being consistent with the FDEP guidelines; however, if the standard would be employed on private properties, it would need to be done through the zoning process to be included with the Town Code.

After discussion, it was determined by the Town Council that the issue may return to the Town Council, or may be included in the Bulkhead, Groin, and Pierhead ordinance; it may stay on the zoning study list for next session depending upon further review.

Zoning Administrator Castro commented that he believed the issue would be addressed in the Bulkhead, Groins, and Pierhead ordinance, and that he would confer with the Town Attorney regarding that.

Comprehensive Plan Amendments recommended by staff:

1. Review Future Land Use and Zoning to identify and eliminate inconsistencies, as appropriate.

It was determined by the Town Council that Item No. 1 would be acceptable as recommended by staff.

2. Update the Town's Unified Land Development Code.

Zoning Administrator Castro explained that this was an optional item. The Town Council determined that this item could be put on a wait list.

3. Update the Matrix of annual Goals, Objectives and Policies contained in the Comprehensive Plan.

The Town Council determined that Item No. 3 would be acceptable as recommended by staff.

4. Update the Capital Improvements Element with the current adopted Capital Improvement Plan.

The Town Council determined that Item No. 4 would be acceptable as recommended by staff.

5. Study and make recommendations with regard to Concurrency.

The Town Council determined that Item 5 would not be included.

6. Review all actions of the Town Council related to Goals, Objectives and Policies to ensure that they are reflected in the Comp Plan.

The Town Council determined that Item 6. would be acceptable as recommended by staff.

7. Convert the maps in the Comp Plan to digitized format.

The Town Council determined that Item 7. would not be included.

8. Incorporate revised storm drainage Levels of Service into the Comprehensive Plan.

The Town Council determined that Item 8. would be acceptable as recommended by staff.

9. Review and clarify the range of uses that are appropriate in each of the Future Land Use Categories, including the role and appropriateness of Planned Unit Developments in the various land use categories.

The Town Council determined that Item 9. would not be included.

10. Review the write-ups in the Supporting Documentation of the Plan for each of the eight physical Planning Areas and confirm the future desired character of each. Emphasis should be given to the areas zoned R-B, particularly in the north end, including the possibility of historic overlay districts where appropriate.

The Town Council determined that Item 10. Would be acceptable as recommended by staff, with the intention that staff would try to include it this year; if not, it would be included the following year.

XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

There being no further business, the Town Council Meeting of May 14, 2002, was adjourned at 5:46 p.m.

William J. Brooks
Town Council President

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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