MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 9, 2000

I. CALL TO ORDER AND ROLL CALL

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Robert Deziel, Architectural Commission, From 1996 to 2000, and as Alternate From 1995 to 1996

Mayor Smith presented a plaque to Robert Deziel in recognition of his years of service.

B. Recognition of Jeffery Smith, Landmarks Preservation Commission, From 1995 to 2000

Mayor Smith presented a plaque to Jeffery Smith in recognition of his years of service.

C. Recognition of Paul Rampell, Code Enforcement Board, From 1993 to 2000

Mayor Smith presented a plaque to Paul Rampell in recognition of his years of service.

D. Presentation of 2000 Town of Palm Beach College Scholarship to Chad Shields by Mayor Lesly S. Smith – Program Sponsored by the Palm Beach Civic Association and the Citizens' Association of Palm Beach

Mayor Smith presented a $3,000 check to Chad Shields who was chosen as the recipient of the 2000 Town of Palm Beach College Scholarship.

IV. COMMENTS OF MAYOR LESLY S. SMITH

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

I would like to announce Police Memorial Day is May 15th; this is a good time to recognize our outstanding police officers and National Public Works Week is May 21st to May 27th, our Public Works is one of the best in the country.

Several of our agenda items, however, require decisions that have considerable financial impact upon our residents and long-range implications...so I want to make sure that we consider all our options and points of view.

I must express – again – my grave concern about the cost of our shore preservation project. I have said repeatedly – as president of the Town Council and now as Mayor – that I support this project in concept. Our beaches are an essential part of our identity and protecting our shoreline is critical to our Town's future – there is no question. But despite advice from the best and the brightest in beach renourishment and finance, I am not convinced that we know what the bottom line is.

When the Town Council approved the proposed ten - year coastal protection program on December first, last year, it was on the basis of cost estimates of $24.5 million from the Town itself. Before the Council today is a proposal to fund the majority of that cost with the sale of $21 million in bonds. In the five months between our December vote and today's proposed action, however, a number of additional questions have been raised and, by some accounts, the Town's share of renourishing our entire shoreline, through Reach 8, could be as high as $72 million.

I would ask the Council to consider two crucial questions before voting on a bond sale for shore protection:

FIRST, are we confident that we have put a price tag on all the elements that go into a ten-year plan – including maintenance – and are we sure that price tag will hold? I do not have that confidence today and would urge the Council to delay voting until we know our projections are accurate. Hopefully today, we will have the answers to the questions raised in Mr. Cooley's letter.

SECOND, if the cost of this shore protection plan exceeds our cost estimates and exceeds the amount we authorize in bond sales, how would we make up the shortfall? There are only two options: reduce the scale of the project or ask our taxpayers for more money. I am not confident today that we have the answers to this question.

I do want to report that we ARE moving toward determining the State of Florida's involvement in our shore plan, including resolution of how and where the erosion control line will be determined. On May 17th, Mr. Randolph, Mr. Dusey and myself do have appointments with Governor Bush, with DEP officials and other appropriate agencies and I will be able to report to you next month on our progress.

I hope the Council will not act prematurely, mistaking movement for progress.

Another long-range planning issue on our plate is north-end zoning and I hope the Council will begin thinking creatively about its response to the study results we anticipate in the fall. As you know, the Town held a series of public forums and we have hired experts to synthesize residents' comments, design pattern books and make recommendations for a zoning approach that will preserve the unique character of beloved north end neighborhoods.

I have been talking publicly about reaching out to other towns, to other governments that deal with the issues we face – and it seems to me that in this case, especially, we are not the only municipality that finds its essential character challenged by the specter of Monster Mansions. I have already talked with officials in two California cities – San Jose and Santa Monica – with exemplary ordinances addressing neighborhood character and compatibility and I have copies of their ordinances. While I recognize that these are much larger cities, they – and others like them – offer us a model for banning unsightly big boxes and offering user-friendly guidelines in a system that works for everyone. Over the summer, I intend to continue my exploration so that, when we address this issue again in November, we will have the additional research we need to make informed decisions. My goal is to put into place planning and zoning ordinances that address not only today's concerns, but the long-term challenges of changing demographics and conflicting housing needs.

Finally, I repeat my support for the Boynton Landscaping property to be preserved as a park for Town residents and I will have an announcement later this week in that regard.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

DEFER Item XI.. PUBLIC HEARINGS A. Landmark Designation of 80 Middle Road, Resolution No. 19-00, to the July 11th Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer Item XI. A. (Landmark Designation of 80 Middle road, Resolution 19-00) to the July 11, 2000, Town Council Meeting. On roll call the motion carried unanimously.

DEFER Item XI. PUBLIC HEARINGS B. Landmark Designation of 325 Chilian Avenue, Resolution No. 20-00, to the June 13th Town Council meeting;

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon to defer Item XI. B. (Landmark Designation of 325 Chilian Avenue, Resolution 20-00) to the June 13, 2000, Town Council meeting. On roll call the motion carried unanimously.

DEFER Item XV. DEVELOPMENT REVIEWS B.1. Variance No. 6-2000 - Edwin L. Ecclestone, Jr., 190 South Ocean Boulevard to the June 13th Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer Item XV. B. 1. (Variance No. 6-2000) to the June 13, 2000, Town Council meeting. On roll call the motion carried unanimously.

WITHDRAW Item XV. DEVELOPMENT REVIEWS B. 2. Variance No. 11-2000 - Julie A. Heberlein, 200 South Ocean Boulevard.

Motion made by Councilman Brooks, seconded by Councilman Wyett, to withdraw Item XV.B.2. (Revised Variance No. 11-2000). On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Eric Gilbertson, 151 Chilian, addressed the Mayor and Town Council regarding increased property taxes.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF APRIL 11, AND 13, 2000

VIII. APPROVAL OF CHECK REGISTERS FOR APRIL 2000

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF APRIL 26, 2000

X. OTHER

A. Yvelyne de M. Marix Regarding Accident on April 6, 1999 – Release of Claim

B. Defer Agenda Item XIII. B. 5., Ordinance No. 11-00, Amendments to Chapter 2, Administration of Town Code of Ordinances to June 13, 2000, Council Meeting

Motion made by Councilman Goldblum, seconded by President McLendon, to approve the "Approved Agenda," with a correction to the April 11, 2000, Town Council Meeting minutes, on page 7, Item XI. A. to replace the words "President Pro-Tem Wyett, with "President Pro-Tem McLendon." On roll call the motion carried unanimously.

REGULAR AGENDA

XI. PUBLIC HEARINGS

A. Landmark Designation of 80 Middle Road, Resolution 19-00 - **(Request for Deferral to June 13, 2000, Council Meeting Per Fax Transmittal Dated May 8, 2000, From Mr. and Mrs. Dryer)**

Deferred earlier in the meeting, under Item V. Approval of the Agenda.

B. Landmark Designation of 325 Chilian Avenue, Resolution 20-00 - **(Request for Deferral to June 13, 2000, Council Meeting Per Letter Dated May 4, 2000, From Mr. James C. Paine, Jr.**

Deferred earlier in the meeting, under Item V. Approval of the Agenda.

C. Request for Abandonment of Portion of Utility Easement at 200 South Ocean Boulevard, Resolution No. 18-00

Town Engineer James Bowser reported that an application had been received to abandon a portion of a public utility easement at 200 South Ocean Boulevard. The utility companies had been contacted, and there had been no objections; 25 letters had been sent to adjacent property owners and 16 had been received with no objection; staff had no objections.

Town Attorney Randolph read Resolution No. 18-00 by title:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF A THREE FOOT UTILITY EASEMENT ON PROPERTY COMMONLY KNOWN AS 200 SOUTH OCEAN BOULEVARD, PALM BEACH, FLORIDA.

Councilman Wyett moved approval of Resolution No. 18-00. The motion was seconded by President Pro-Tem McLendon. On roll all the motion carried unanimously.

XII. OLD BUSINESS

A. Other

1. Royal Park Bridge Status Report by Public Works Director Dusey

Public Works Director Al Dusey reported that the Florida Department of Transportation (FDOT) had held a public meeting, with the proposed bridge structure displayed. A representative of the FDOT, Mr. Joe Borello, was present to provide further information.

Mr. Borello commented that he had been asked to return to the Town Council to present a rendering of the bridge structure from the westbound approach, and presented a computer generated rendering of that view. He explained that a presentation would be made to the Landmarks Preservation Commission on May 17, 2000, in order to obtain the certificate of appropriateness, and that he would continue to return to the Town Council on a regular basis with updates and final refinements to the plans.

Mr. Mario Echagarrua, E. C. Driver & Associates, presented a scaled view of what the proposed bridge would look like from the westbound approach.

Mr. Dusey explained that the firm of Kimley-Horn and Associates was doing the design work on Royal Palm Way from the bridge to Cocoanut Row, and would need direction regarding the installation of any additional lighting. He explained that the FDOT standards for lighting were substantially different from the Town standards, and the proposal from Kimley-Horn was to place additional lights, between each median light, on the outside of the roadway in the area between the sidewalk and curb. He recommended that the Mayor and Town Council direct staff to notify FDOT that the Town was satisfied with the existing lighting levels on Royal Palm Way.

Councilman Goldblum moved approval of the recommendation of staff to authorize staff to notify FDOT that the Town was satisfied with the existing lighting levels on Royal Palm Way and that additional lighting was not desired. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Telecommunications Issues:

a. Cable TV System Franchise Renewal Process with Comcast Cable Communications, Inc. - Status Report by Assistant to the Town Manager Jakubiak *(Deferred from April 11, 2000)*

Assistant to the Town Manager David Jakubiak reported that there were some issues delaying the conclusion of the franchise agreement, however, he hoped that agreement would be reached by the end of the week. He suggested that, based upon Attorney Miller's recommendations, the Town Council consider two alternatives in scheduling a meeting to consider the agreement: at the June Town Council Meeting or at a Special Town Council Meeting near the end of the month, with the condition that it would be canceled if an agreement had not been reached by that time.

Councilman Wyett requested that a copy of any proposed agreement be furnished at least two weeks before the meeting, and suggested that a most favored community clause be included, and that if the Town put in electric underground wires, that underground cable wiring be installed at the expense of the cable company.

Mr. Jakubiak commented that both of those issues were not in the agreement to date.

Councilman Goldblum made a motion to approve the inclusion of consideration of the franchise agreement at the regularly scheduled June Town Council Meeting. The motion was seconded by Councilman Wyett, however, after further conversation, it was withdrawn.

Councilman Brooks expressed reluctance to sign a 10-15 year term, since technology would increase exponentially. He suggested that there be windows, at intervals within the term of the contract, so that the Town and the provider could negotiate.

Mr. Jakubiak responded that all three issues brought up today had been discussed, and that he would bring these issues up again via conference call.

Councilman Brooks moved approval of holding a Special Town Council Meeting on Monday, June 12, 2000, at 1:30 p.m. in the Town Council Chambers. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

3. Request for Town Support for Proposed Palm Tree Lighting Beautification Project on South County Road by The Greater South County Road Association, Inc. *(Deferred from October 12, 1999, February 8, March 14, and April 11, 2000)*

Mr. Ken Brower reported that the most recent meeting with staff and consultants had concluded that the lighting beautification project would be more complex than originally anticipated; a much more aggressive planning process was being entered into, and a completed plan to light the trees on South County Road would be most likely submitted in the fall of 2000. He explained that all of the grant work would be done by the Greater South County Road Association, and requested that, when the grant was awarded, the Town receive the money on behalf of the Greater South County Road Association.

Councilman Wyett moved approval of the request from the Greater South County Road Association that the Town would receive the grant money on behalf of the Greater South County Road Association.

Mr. Brower explained that the issues related to maintenance of the lighting and payments for electricity were part of the planning process, and at some point an agreement would be most likely be made with the Town for perpetual maintenance.

The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

4. South Ocean Boulevard Issues - Traffic Problems Relating to Construction Projects - *(Deferred from April 11, 2000, Town Council Meeting)*

Town Attorney Randolph reported that the Town would have the authority to adopt an ordinance, so as to require that flagmen remain a function of the Police Department, and suggested that he be authorized to prepare such an ordinance, with a permitting scheme, which would require flagmen blocking traffic to obtain authority from the Police Department.

President Pro-Tem McLendon moved approval of referring the issue of traffic/flagmen in all areas of the Town to the Ordinances, Rules, and Standards Committee, to be discussed at the meeting scheduled for Thursday, May 11, 2000 at 10:00 a.m. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

5. Consideration of US Army Corp of Engineers Study to Widen/Deepen the Lake Worth Inlet

Public Works Director Al Dusey reported that notification had been received from the United States Army Corps of Engineers regarding a reconnaissance level study of the Lake Worth Inlet/Palm Beach Harbor, which included considerations to deepen and widen, as well as other issues. He advised that he had suggested some items of concern for the Town Council, and requested policy direction.

Councilman Goldblum suggested that any Town acceptance of widening/deepening the Inlet should be tied to firm dates on the Sand Transfer Plant operation; he also suggested that an injunction be obtained to stop any work on the Inlet unless firm dates were received regarding the Sand Transfer Plant.

Councilman Wyett commented that congressional funding was involved, and tying the two issues together could prove to be counterproductive.

President Pro-Tem McLendon requested the status of any property on the north end of Town that was currently underwater as a result of actions in the Inlet.

Mr. Dusey replied that he believed that much of the property had been submerged at the time of the platting.

Mrs. Nancy Douthit commented that the Inlet was the cause of the erosion, and widening/deepening it would compound the difficulties of the Town.

Mr. Dusey reviewed his recommendations to the Town Council:

1. Blasting not be permitted to deepen/widen the channel or turning basin.

2. An analysis be made of any proposed improvement on the impact on properties adjacent to the channel, including noise, erosion, flooding, property values, security, and all other quality of life issues the Town may wish to include.

3. An analysis be made on tidal impact on Lake Worth due to deepening/widening and the associated environmental, social and economic impacts.

4. An environmental impact statement be completed which includes the entirety of Lake Worth and the ocean environs along Palm Beach Island.

Mr. Dusey noted that, in the past, the Town had opposed projects that intensified the use of the Port of Palm Beach because of concerns of negative impact to residents along the channel entrance and at the north end on both the lake and ocean.

Councilman Wyett moved approval of objecting to any deepening/widening of the Lake Worth Inlet/Palm Beach Harbor, but in the event it were to happen anyway, the four issues above would be addressed by the United States Corps of Engineers. The motion was seconded by Councilman Goldblum.

Councilman Goldblum suggested that it should also be stated that the widening/deepening would preventing sand from drifting to the Town beaches as well.

Mayor Smith suggested that the plan of the United States Army Corps of Engineers regarding the Lake Worth Inlet be submitted to the Lake Worth Lagoon Committee, headed by Commissioner Warren Newell; a copy of the plan could be furnished to Mr. Walton, who also served on the Committee, so that he could pass it along.

Mr. Dusey responded that he was sure Palm Beach County was noticed, and the Committee should receive notice through them; he offered to check with the County.

Town Manager Doney commented that Commissioner Newell could be copied on any correspondence prepared by the Town. President McDonald confirmed that the letter would be signed by the Mayor.

Mr. Dusey referred to the comments of Councilman Goldblum regarding the completion of the Sand Transfer Plant study by the United States Army Corps of Engineers, and noted that embarking on another study at the same time seemed to be a point of objection for the Town.

Councilman Wyett incorporated the objection regarding the completion of the Sand Transfer Plant study into the motion approving the objections to the reconnaissance level study proposed by the United States Army Corps of Engineers at the Lake Worth Inlet/Palm Beach Harbor.

On roll call the motion carried unanimously.

6. Erosion Control Line Issues - Update by Town Attorney Randolph

Town Attorney Randolph reported that a meeting had been scheduled for May 17, 2000, with State representatives to discuss the erosion control line issue; the services of Ron LaFace, lobbyist, had been engaged, who would assist with this matter. He noted that he would submit a full report at the June 13, 2000, Town Council Meeting.

7. Lake Worth Inlet Sand Transfer Plant Issues - Proposal to Expedite the United States Army Corps of Engineers' Design Phase by Contracting Lobbying Services of Applied Technology & Management and Rees Engineering & Environmental Services - *(Deferred from March 14, 2000, Town Council Meeting)*

Public Works Director Al Dusey reported that the Port of Palm Beach had taken some very positive actions with lobbying efforts at the Federal level, and suggested that this item be deferred for several months to await further information.

Councilman Wyett moved deferral of a decision regarding lobbying services of Applied Technology & Management and Rees Engineering & Environmental Services until the July 11, 2000, Town Council meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Dr. Sanford Kuvin commented that he supported the objections to the deepening/widening of the Lake Worth Inlet, however, the affect of deepening/widening on erosion on the shores of Palm Beach was significant; there would thus be not only the problem of beach erosion, but erosion on the lake side of Palm Beach as well. In addition, he stated that there was a sand supply issue problem, which had been documented to be a significant problem on Palm Beach Shores. He explained that Palm Beach island was receiving increased sand, however, it was not getting increased supply from the shores of Palm Beach Shores, which was a political problem that must be addressed.

8. Review of Appraisal of 150 Australian Avenue and Determine Action, If Any – Town Hall Needs Analysis Study

Public Works Director Al Dusey reported that an appraisal had been obtained of the property at 150 Australian Avenue, and suggested that, since it was closely connected to the issues regarding the Town Hall Needs Analysis Study, it be sent to the Public Works Committee Meeting scheduled for May 23 at 10:00 a.m.

Councilman Wyett moved approval of sending the review of appraisal of 150 Australian Avenue to the Public Works Committee Meeting scheduled for May 23, 2000, at 10:00 a.m. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

XIII. NEW BUSINESS

1. Resolutions

1. Resolution No. 11-00 - Non-Ad Valorem Revenue Bond Authorization - *(Deferred from April 13, 2000, Special Town Council Meeting)*

Town Attorney Randolph read Resolution No. 11-00 by title:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT EXCEEDING $25,000,000 TOWN OF PALM BEACH, FLORIDA REVENUE BONDS, SERIES 2000 (BEACH RESTORATION PROJECT) FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF IMPROVING, RESTORING AND RENOURISHING OF BEACHES LOCATED IN THE TOWN OF PALM BEACH, FLORIDA; AUTHORIZING AND DIRECTING THE TOWN MANAGER OR THE FINANCE DIRECTOR TO "DEEM FINAL" THE PRELIMINARY OFFICIAL STATEMENT RELATING TO THE BONDS FOR PURPOSES OF RULE 15c2-12 OF THE SECURITIES AND EXCHANGE COMMISSION; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF THE PRELIMINARY OFFICIAL STATEMENT RELATING TO THE BONDS; AUTHORIZING AND DIRECTING THE TOWN MANAGER, THE FINANCE DIRECTOR AND OTHER PROPER OFFICIALS OF THE TOWN TO EXECUTE AND DELIVER ANY AND ALL DOCUMENTS AND INSTRUMENTS AND TO DO AND CAUSE TO BE DONE ANY AND ALL ACTS AND THINGS NECESSARY OR PROPER FOR CARRYING OUT THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

President Pro-Tem McLendon expressed concern that premature approval of a financial mechanism to complete the beach work would be an admission that the Town did not think it was the fault of the Federal Government.

Mayor Smith commented that Town Attorney Randolph, Attorney Jerry Stouck, Public Works Director Dusey, and she had met with Richard Bonner, the Deputy District Engineer for Project Management at the United States Army Corps of Engineers.

Town Attorney Randolph reported that the meeting had resulted from the letter of Mayor Smith to Colonel Miller, of the United States Army Corps of Engineers, and the Town had made its points very clearly, however, he expressed disappointment in the results of the meeting from the standpoint of what the Corps had offered substantively. He stated that the Town of Palm Beach was not really a priority from the standpoint of beach renourishment, in the eyes of the United States Army Corps of Engineers, and that the Sand Transfer Plant project was a long way from being complete – the study itself would not be complete for another 1-2 years, and when that was completed, it would be several more years before anything would be in place. He advised that negotiations with them would continue in attempting to get some relief for the Town of Palm Beach.

Mayor Smith commented that, even though the results of the meeting had not been as hoped, communications had been opened that had not been there previously; the meeting had lasted two and one-half hours with some heated rhetoric, and the Town had been invited back.

Councilman Goldblum suggested that a delegation be formed to contact Congressmen and Senators to see what could be accomplished.

In response to President Pro-Tem McLendon regarding his concerns relating to prejudicial feelings by the United States Army Corps of Engineers or the court systems relating to the possible Federal lawsuit, Town Attorney Randolph advised that he did not believe it would create a problem with the Corps of Engineers; it was anticipated that they would not consider the Town going forward with its beach restoration project as any kind of admission. In regard to the Federal Government, he advised that they would use any kind of defense available to them, and that the bond resolution had been modified to indicate that it was not an admission on the part of the Town, but that the Town was being forced to go forward, even though it believed it was the fault of the Federal Government. He suggested that the more important question would be the effect that the establishment of the erosion control line (ECL) would have in regard to the lawsuit, as there were serious issues of standing and damages that would be affected by a lawsuit. He advised that it was the opinion of Attorney Stouck that it would be detrimental to the proposed lawsuit to have the ECL established at the current mean high water mark, because it could possibly affect the standing and ultimate damage aspect; he advised that he did not recall the opinion of Attorney Stouck regarding the proposed lawsuit as far as the bond resolution was concerned.

Mr. William Guttman, 216 West Indies Drive, addressed the Town Council, commenting on the prospect of negotiating an agreement with the United States Army Corps of Engineers or the Federal Government to fund a shore protection plan in Palm Beach. He began with a brief analysis of the takings claim that was being considered against the Federal Government, basing his comments on the memorandum from Jones, Foster, Johnston & Stubbs, P.A., dated February 7, 2000. In that memorandum one defense discussed was the six year statute of limitations – the memorandum had indicated that the Army Corps of Engineers would maintain that a takings claim accrued more than six years ago and hence, a takings claim was time barred. He referred to page 6 of the memorandum, wherein it was stated that the Applegate court held that the statute of limitations did NOT bar the lawsuit, in part because of unfilled promises by the Army Corps of Engineers to build a sand transfer plant at the Cape Canaveral Inlet. That was not the case in Palm Beach, as emphasized in the memorandum, wherein it was indicated that winning on the statute of limitations point would be very difficult. Mr. Guttman maintained that the probability of success was 50/50.

Mr. Guttman then discussed the second defense as discussed in the memorandum: causation. Mr. Guttman quoted: "The causation question is problematic. Compensation is owed to landowners only if the government caused the property damage. Therefore, a primary issue would be whether, and to what extent, the Inlet caused the erosion." Mr. Guttman advised that, in his view, establishing causation would be a great challenge, once again quoting from the memorandum: "The Army Corps of Engineers will also emphasize natural erosion (from coastal storms and hurricanes)," as the main, if not definitive cause. Mr. Guttman noted that the State had already taken the position that erosion south of the Par 3 Golf Course was not due to the Inlet cut, and the Federal Government could be expected to take a similar position.

Mr. Guttman referred to the fact sheet attached to the memorandum, which noted that the U.S. Government had only been maintaining the Lake Worth Inlet since 1934, and he commented that, according to Al Dusey, the Lake Worth Inlet was first cut sometime after World War I, long before the Army Corps of Engineers widened the Inlet and took over its maintenance. He explained that in contrast in the Applegate case, the Army Corps of Engineers both cut and maintained that inlet; for those reasons, it would seem that the Town's chances of winning on the causation issue would be a great challenge. He urged that the benefit of doubt be given to the Town, and the probability of success be supposed as 50/50.

Mr. Guttman then discussed other defenses, some of which were set forth in the memorandum, such as the enormous difficulties of proving damages, the importance of getting beach front property owners to join as plaintiffs in a takings claim, and an equitable formula to share any recovery with non-beach front property owners. If the government successfully argued that beach front property owners south of the Par 3 Golf Course were barred because of causation issues, then the Town would have a very difficult process in reach an equitable arrangement with non-beach front property owners, as well as reaching an equitable arrangement with all condominium owners living on the ocean south of the Par 3 Golf Course.

Mr. Guttman addressed the negotiated settlement subject, and commented that there was no reason for the Army Corps of Engineers to settle if there was the prospect of setting a precedent for every coastal community up and down the Atlantic seaboard. He suggested that the Town did not have a track record in lobbying Congress, and submitted that the Town would have to put forth a major lobbying effort, which would take money and staff time. He pointed out that in addition to the litigation and lobbying costs, there would be lost opportunities costs.

Mr. Royal Victor, 208 Via Tortuga addressed the Town Council, commenting that he strongly believed that the primary issue regarding shore protection was not recreational, but was much more a question of residential security. He stated that the history of government involvement in these issues was regrettably on the side of waiting for a crises to become a disaster, then taking action. He strongly endorsed moving ahead with a program establishing a higher degree of security

Mr. Eric Gilbertson, 151 Chilian Avenue, addressed the Town Council, commenting that the sand would not protect upland structures, and beach front owners would have to pay for private beaches; he objected to paying for renourishment to private beaches.

He suggested that beach front property owners should get together and attempt to solve their concerns regarding beach erosion, and that none of the property owners whose property did not abut the ocean needed further taxation to pay for private beaches.

Mr. Gary Lickle addressed the Town Council, commenting that the Sand Transfer Plant was extremely important, however, it was not critical at this point, as the Sand Transfer Plant currently was supplying the requisite amount of sand. The improvements would include improved pumping, which would take advantage of supply when it was available, based upon storm conditions, which was a benefit that would be received from the Sand Transfer Plant. He maintained that he was opposed to a lawsuit with the Federal Government, and the State had already offered a 50% commitment for beach renourishment, which may be lost by pursuing a lawsuit. Even with a negotiated settlement, all that would be accomplished would be a shifting of the responsibility for the 50% from the State to the Federal Government. He stated that there was now so much distance between the time that the facts were reported, and the decisions that were being made, that people were forgetting all of the information in the Comprehensive Coastal Management Plan. He explained that there would be continued maintenance into the future on the beach renourishment plan, which would depend on storms and weather. With regard to the bonds, Mr. Lickle stated that his only concern was the rising interest rate market. He also noted that lobbying had not been successful in the past.

Attorney Kevin Hennessy, Lewis, Longman & Walker, on behalf of Beach Alert, Inc., addressed the Town Council, stating that the meeting with the United States Army Corps of Engineers had indicated that the Town was not a priority in its beach projects, and he noted that was very discouraging news, as the Town should be a priority; there had been acknowledgment that there was public fault for the beach conditions. He suggested that advice be received regarding the pursuance of a Federal lawsuit; pursuance of the lawsuit would completely change the dynamics with which the Town would be going forward, as the establishment of an ECL would significantly cripple the likelihood of success of the lawsuit. Mr. Hennessy suggested that the Florida Department of Environmental Protection (FDEP) should be contacted to see what they would do in terms of protecting private property rights in establishing an ECL. He noted that the Town Council had deferred a decision on the bonds in order to provide answers to certain questions, and it did not appear that the answers had been received. He recommended that the Town review the matter with its legal counsel, make a decision regarding the Federal lawsuit, and then meet with the Corps of Engineers and FDEP.

Dr. Sten Lilja addressed the Town Council, commenting that he heard a deception that must be addressed. He explained that the program being discussed today was only a four-year program – called the Approved Coastal Management Plan, for a total construction cost of $42 million, of which Palm Beach would pay an unknown amount, as State funding would not consist of 50%. In addition, since the last Town Council meeting, it had been discovered that there was a second part to the plan – a second part which was a big as the first one. The total construction costs were therefore $72 million; the first part would cost Palm Beach taxpayers approximately $39 million (not the $13 million that was touted earlier); the second part would cost at least an additional $36 million from the taxpayers.

Mr. William Cooley, 233 Tradewind Drive, addressed the Town Council, commenting on the remarks of Mr. Guttman and Mr. Lickle – he stated that he disagreed with their statements regarding the Corps of Engineers and the result of filing a Federal lawsuit. He noted that, in 1993, he had heard his advisors tell him that he could not win against the Corps of Engineers, that he did not have enough money to fight them, that they would string him out forever; however, he had sued them. He related that it took three years to get to court, but before going to court they had offered him everything he had asked for, because they did not want a court decision made that would then affect everyone similarly situated. He maintained that he did not believe that the Corps would allow the Palm Beach case to get to trial; the Town was basically asking for peanuts – a few million dollars per year in ongoing renourishment. He suggested that a lawsuit be filed as soon as possible.

Mr. Cooley complimented the Mayor and Town Council in its efforts in dealing with the Governor's office, the Corps of Engineers and legislators. He referred to several articles from the Palm Beach Daily News regarding beach renourishment and noted that he had listed 25 questions to Mr. Dusey in response to figures quoted in the newspapers. He explained that he had received a response from Mr. Dusey, which he believed was inadequate and did not address the questions; he had then requested a meeting with Mr. Dusey, and the suggestion had been made that he appear at this Town Council meeting to ask his questions.

Town Manager Doney commented that staff could respond to the questions of Mr. Cooley.

Mr. Cooley then proceeded to ask the 25 questions:

1. "Table 1" as attached hereto, was prepared by the Town and covers the period 1996-97 through 2005-06, i.e., the 10-year plan. This table, as presented to the Town Council and which formed the basis for the Council's approval, stated the cost of the ten year each renourishment program was to be $42,479,000. Is that correct?

   Dusey: Yes.

2. On December 1, 1999, the Town Council approved a ten-year coastal protection program on a 4 to 1 vote based on those figures. At that meeting it was represented that the Town's share of the cost of the improvements was to be $3.5 million in cash from reserves and $21 million from the sale of bonds, for a total of $24.5 million. Is that correct?

   Dusey: I believe so.

3. The $21 million bonding portion of the financing program approved in December has been increased to $25 million. Is that correct?

   Dusey: No. It wasn't a $21 million bond portion. The financing was approved in January, as stated in my letter, and I think the basis for that was in the attachment from Mike Hole. It's actually $23, 275,000, or something like that, was the proposed size of the bond.

McDonald: All right, maybe Mr. Hole should help with that, Mr. Cooley. Mr. Hole, maybe you can answer that, would you?

Cooley: I referred to December in the question.

Dusey: Yes. The financing plan wasn't approved in December; it was approved in January. It was different than what you saw in December. I'm not sure you were here for the January meeting.

Cooley: Oh, I was here.

McDonald: Repeat the question, Mr. Cooley:

Cooley: The $21 million bonding portion of the financing program approved in December has been increased to $25 million. Is that correct?

Michael Hole: That is incorrect. I'm going to go back to the number two question. The $21 million was one of two scenarios that was presented. Back at that time we were looking at a six-year repayment of the bond versus a ten-year repayment of the bond. The $21 million sizing was a result of the six-year payment, which was one of the two options we were looking at in December. I believe in January the Council adopted scenario two and directed us to proceed with that, which was the ten-year pay back, which was the term that was required to not require additional taxes from the Town above the revenue that was being released from the two defeasing bond issues. At that time the size increased to approximately $23,500,000, because, remember, this is a combined pay as you go, as well as bonding program, and the cash flow critical years are the first three, and to the extent that when the Council adopted the ten-year scenario, that required less taxes from the Town in those early cash flow years. It created about a $3 million deficit when the final draws in year three occur for the construction – that $3 million had to be covered from additional proceeds, and that's where the increase at that time occurred – it went from over $20 to just over $23 million. It was a result of the scenario that was adopted, and not the result of anything else.

Cooley: Okay. So, the answer is no. The additional $4 million being needed for additional interest payments because the maturity was lengthened from 6 years to 11 years, is that correct? And I think the answer is probably not only because it was increased from 6 to 11, but it was to keep the necessity of levying an ad valorem tax, which, if I remember right, would have triggered a referendum.

Hole: No sir. The additional $4 million – I think I just described why the size increase. It was not a result of the interest cost. It was the result of the cash flow dynamics of having less revenue – the Town's direction to us to use less revenue for a longer period of time. It was a cash flow issue that had to be covered.

Cooley: Less revenue for a longer period of time?

Hole: Less annual revenue for a longer period – for more years.

Cooley: Which means you'd need a lower debt service payment.

Hole: Correct, and we'd need longer time to repay the same amount of bonds.

Cooley: And the reason for that was if it had been a six-year, you wouldn't have been able to do it without a referendum.

Hole: The referendum has nothing to do with this.

Cooley: You wouldn't have been able to do it without levying additional ad valorem taxes, because there wouldn't be – the claim couldn't be made we didn't raise the taxes then – there wasn't sufficient millage coming in.

Hole: The reason that the ten-year – my recollection that the reason that the Council adopted the ten-year plan as opposed to the six was in an effort to not require revenue above what was going to be released from the defeasing bonds. It created a revenue neutral impact upon the taxpayers. If we had cut the payment to six years, we would have needed higher revenue to cover the debt service over the shorter period of time.

Cooley: And in order to get that additional revenue, it may have resulted in a tax increase?

Hole: It would have. The money being released as a result of outstanding bonds maturing would have been insufficient to make the payment on the shorter bond issue.

Cooley: And if it would have resulted in a tax increase, then they would have been faced – the Council would have been faced with a referendum?

Hole: No sir.

Cooley: All right. I'll skip number four, because you've just answered that.

4. (That $4 million in interest could have been saved if the bond maturity was 6 years instead of 10 years. Is that correct?)

5. The $42,479,000 expenditure outlined in Table 1 was represented as the work to be installed and completed in the ten-year plan.

Is that correct?

Dusey: Yes. That was answered in number one, I believe.

6. "Table 1A" as attached hereto, is made up of "Table 1" (which was prepared by the Town), plus a series of additional hand written figures that I have added to Table 1, which were taken from the application approved by Resolution No. 14-00. These additional cost figures represent additional costs of additional renourishment in the ten-year plan, as set forth in the application approved by Resolution 14-00. Is that correct?

Dusey: I believe they accurately represent the figures that were in the application to DEP. It does not represent an increased requirement on the Town.

Cooley: Let me try that again. If Table 1 represented the work to be installed and completed in the ten-year plan, and Table 1A, which shows the costs within the ten-year period, increased the $42 million by $39 million, is not that additional work? These additional costs figures represent additional cost of additional renourishment in the ten-year plan.

Dusey: Well, number one, there's two different periods in a ten-year plan – the one we are working with and approved plan is from 1997 to 2007; the application is always moving forward – DEP application is moving forward in a ten-year period is 2010, so there are two different ten-year periods for one. The application was formulated in the format that DEP requires in order to prioritize your projects and give you funding. They don't represent a commitment by the Town to spend anything.

Mayor Smith: Mr. Cooley, may I ask you a question?

Cooley: Yes ma'am.

Smith: The figures that you have written into Table 1A – additional amounts for year 2003 & 4 & 7. What are those figures? What are those numbers? I'm on Table 1A, that you wrote in.

Cooley: Unfortunately I left some of my file up in Maryland, but if you look at the application that was passed by 14-00, in the back of that there is a table of expenses – there is a table of costs and projects and the share that's the Town's share and a share that's estimated to be either the State or the Federal share. If you take those numbers out of there and lay them in the year in which that Table says they will be completed, then this is an overlay as a compilation of the two put together.

Smith: So these would be, in effect, what you would call maintenance figures for this part of the project?

Cooley: Each one has a – if somebody has 14-00 here. Resolution 14-00.

Smith: I think that's one of the questions. Where do these numbers come from?

Dusey: They come from the application, I believe, and they probably are accurately tabulated. They do not represent, however, a commitment by the Town for anything, number one, and number two, they represent what DEP needs to see in order to give us the money we're trying to get for the ten-year plan.

Smith: But what are they for? I mean, what is the additional –

Dusey: It's additional work that might be required in the future if the Town decides to proceed with it. But it's not committed by the Town to do anything, and I don't expect that it's going to be done, quite frankly. But DEP needs to see it in that format, in order to prioritize our project and get us the money. If I give it in a format that duplicates our ten-year plan, we won't get State funding, and the whole thing falls apart, so I have two choices: I can make it neat so people look at it and go, "Oh, I recognize that," or I can get the money for you. I chose to get the money for you.

Cooley: Getting the money is a laudable goal, and I do appreciate that. I guess my question was – well, let me just finish my questions here.

7. The additional costs set forth in that application totals $29,521,000. Is that correct?

Dusey: That may be, I didn't tabulate it. That may be correct, I didn't bother tabulating it; it wasn't extended by the Town.

8. Cooley: So the estimated total cost of the ten-year beach renourishment and maintenance program is therefore $72,000,000 before financing costs and fees, is that correct?

Dusey: It may be a correct number for the application, but I didn't tabulate that either.

9. Of the additional $29,521,000 in costs, the Town of Palm Beach is projected to pay $23,589,650. Is that correct?

Dusey: The numbers may be correct, but it's not a commitment by the Town.

10. The $25 million in bonds that the Town Council is being asked to approve in Resolutions 11-00 and 12-00, are scheduled to cover only a portion of the Town's share of the costs of the improvements to be made under the ten-year plan. Is that correct?

Dusey: If you're talking about the Town's approved ten-year plan, it's less than $25 million, I believe, the bond size is less than $25 million. Mr. Hole can speak to that.

Cooley: I think the bond resolution says up to $25 million, so I'll correct that.

Dusey: Yes. And I believe he also explained that it's a combination of bond and pay as you go to fund the project over the term.

Cooley: Okay, but the money from these bond proceeds is scheduled to cover only the portion of the Town's share of the costs of improvements to be made in the ten-year plan. I mean, it's for nothing longer? It's for within that ten years?

Dusey: I want to try to answer it correctly, and the words are very important, so I don't want to mis-state something. There is a Town approved ten-year plan that's different than the application for State DEP. So, if you're asking is that $24 million plus in bonds – Resolutions 11 and 12, cover only a portion of the Town's share, I believe that's correct.

11. There is no funding mechanism in place, nor has any public discussion occurred, regarding the source from which, or method by which, the Town of alm Beach will raise the additional $23,589,650 (the Town's share of the additional $29,521,000) needed to fund the additional costs in the ten-year beach renourishment project. Is that correct?

Dusey: That's correct, because it's not a commitment by the Town. It's an application. We don't know what's going to be needed ten years hence.

Doney: It will be visited on an annual budget-by-budget basis depending on what the then identified costs are.

Dusey: In the response to you, Mr. Cooley, it was explained that this project is being approached on an adaptive management basis, where we place the fill, we monitor it, and then we adjust the program ten years hence based on how it has reacted. You respond to those problem areas; you don't just come back and just throw sand in if it's not needed. It's an adaptive approach, which the Town Council has approved, and it's a ten-year plan.

Cooley: I understand that. I think the point of this whole thing is what the Town Council has approved as a ten-year plan doesn't appear to be the ten-year plan.

Dusey: It is a ten-year plan. What I need to put in an application to DEP is an effort to get State funding for that ten-year plan. It may not look the same. It may not have the same numbers in it that match the ten-year plan approved by the Town Council, but it's what I have to do to get the money.

Cooley: Okay. We can skip over number 12, which I think has been answered. Well, let's do number 12.

12. The Town of Palm Beach's share of the ten-year plan as first presented to the Town Council is $28,500,000 ($3.5 million cash and $25 million in bonds), I'll correct that standing here – up to $25 million in bonds -- plus approximately $10.5 million in interest and costs, or a total of approximately $39 million that the Town will be paying for the ten-year improvement plan that has been approved. Is that correct?

Dusey: I defer to Mike Hole please.

Hole: That is incorrect.

Cooley: Okay, what is correct?

Hole: The estimated interest costs over the ten-year payback is approximately $8 million – The interest portion of the debt is approximately $8 million, and in the context of that – in fact, it was one of my early – I think my first letter responding to your original letters a couple of months ago – was to remind the Council when you think about interest costs, and these are big numbers – $8 million — you have to remember that the Town doesn't have to borrow this money at all. The reason you borrow money is to level out the repayment, and therefore, avoid the spiking and the burden that that spiking and the significant tax increases that might occur in one particular year or the other. The Town has the means to pay as you go the entire project. One of the years – the year number three coming up has an $18 million requirement, with very little grant monies in the bank yet, because the grants are done on a reimbursement basis – on a tax base of $5 billion you could have a 3-4 mill spike for that one project in that one year. The reason, obviously, that is unattractive. That's what the bond issue does. The bond issue simply allows you to spread out the payments over time, so that you don't have any major hit in any one particular year. I also point out that the cost of this money, which translates into an interest cost dollar, is approximately 5 ½%. That 5½% is lower than what most individual tax payers can borrow at, and hopefully much lower than what individual portfolios have yielded over the past year or so, to the extent, that if that is a statement true, and presumably on a full pay as you go program, if you had a 3-4 mill spike in a particular year, presumably the taxpayers would have to either borrow money to make that extra tax payment, or liquidate existing investments. To the extent that this rate that the Town is borrowing at is lower than the rate than an individual could borrow at, or lower than what they're yielding in the portfolio that they would have to remove investments from to make this large spiked tax payment, the bond issue is less expensive. You're essentially borrowing, using your tax exempt status that an individual tax payer doesn't have, to borrow at a lower rate than they could borrow themselves, and keep them having to liquidate their investments at presumably higher yields. So on a net present value basis, while no one likes to pay $8 million in interest costs, I will tell you that the they would have to, by taking money out of their investments on a present value basis, the $8 million is much less expensive than the pay as you go alternative.

Cooley: I'm not questioning the wisdom of selling bonds, because I think municipal bonds are great tools for municipalities and they should use them. I was just trying to get to a dollar figure, and I believe you've corrected it, so it is – if you take $2½ million off my interest costs, because I ran that out at 6%, the answer is the total cost of this ten-year plan that has been approved is approximately $36½-37 million.

Hole: A portion of which is being repaid by grant monies when they're received after the fact on the reimbursement basis. I apologize for elaborating, but I have to make that point when the opportunity presents itself to me.

Cooley: Well, you're in the business. I don't disagree with that, and municipal bonds are great.

13. If the $23.589 million in recently presented additional costs is an additional financing obligation to the Town, the Town's obligation has been increased to $62.589 million, which would be the original $39, which is now $37.5, plus the $23 million. Is that correct? And I anticipate the answer as being no, because although the $23 million is laid out in the application, there is no commitment to do it.

Hole: That's correct.

14. Cooley: Okay. If the $23.589 million is needed for recently presented additional costs borrowed over 6% – well, if it's not needed, it won't be borrowed.
[Question No. 14: If the $23.589 million that is needed for the recently presented additional costs is borrowed at 6%, over 11 years, it will require an additional $10 million in interest costs that would bring the total obligation to the Town of Palm Beach for this 10-year beach project to $72.589 million ($39 million $23.589 million $10 million) Is that correct?]

15. Is the Town being obligated, or being obligated, to make the additional beach renourishment improvements that will cost the additional $23,589,000?

Dusey: No.

Cooley: Any portion of it?

Dusey: No.

16. In the recently presented additional costs for the ten-year beach renourishment plan, there is shown a Town of Palm Beach obligation for the year 2008-09 of $11,828,000 for Reaches 2, 3, & 4, and 7. At that time the coastal Protection Reserve Fund will contain zero dollars, and the Town will be paying about 8.5, really 8.4% of the entire General Fund Budget, or $3.125 million per year, which is now a little less because the interest rate is lower than I calculated, what would be the source of the additional $11.8 million?

Cooley: I think I know the answer. If the work items listed in the schedule are not going to be done, the $11 million won't be spent.

Dusey: That's correct. We don't know what's going to happen in 2008-09. We should have a new updated plan at that point, based on adaptive management, which will define what we need to do, and I can't guess at what that is at this point. In a traditional way, you'd normally plan for renourishments about eight year intervals, but we may not need that.

17. The minutes of the January 14, 2000 Town Council Meeting reflect Mr Dusey saying, "He noted that within the next 3-5 months the Town would be in the process of establishing the ECL on those projects (Reaches 3, 4, and 7), and the staff would need direction." Over three months has passed; exactly when does the ECL get established? What must be done to stop the ECL from being established?

Dusey: The ECL, as I stated in my letter, has been authorized to begin the process for mid-Town and Phipps. It's about a four month process, and in order to have it done in time to fill this November, you need to start about now. I don't think they've done the surveys yet, but they're awfully getting close to it.

Cooley: So the only areas that the ECL will be set on are the public beach.

Dusey: Well, mid-Town and Phipps. Yes sir. Half of mid-Town already has an ECL.

18. In Mr. Dusey's 3/27 letter to Mr Doney, he states that "Reach 8 is not currently eligible for State cost-sharing and therefore not shown in the application. This raises the question: Does that mean no work is planned on Reach 8 subsequent to 2002-03? If work is planned: what work? When? What is the cost? Wouldn't it be similar to the $9.074 additional work needed for Reach 2? If so, shouldn't this $9 million be shown as a Town obligation?

Cooley: I guess the broad question is what work is planned on Reach 8 that isn't shown?

Dusey: The Reach 8 is included in the originally approved plan. Its total cost is about $7 million, and it's 100% local funding.

Cooley: Somewhere in the engineer's report, it said that because of the grain size, that a portion of this will not survive the eight years and will need renourishment prior to the eight years. Is that –

Dusey: What it said is that the northern part of Reach 7 is based on modeling, and without any source of sand coming to it from the north, which may be a difficult problem there, that the northern portion of it will recede back to the existing conditions within an eight year period.

Cooley: And is the cost of renourishment shown in the original plan approved by the Council?

Dusey: There's no plan for renourishment at this point – there is no commitment to renourish at this point.

19. Has the final "Offshore Sand Search Investigation" report been received by the Town? If so, when?

Dusey: I believe the letter addressed that. I think it was in April.

20. How many cubic yards of .035 to .0395 mm mean grain size sand had been located in the borrow area?

Dusey: There's one borrow area off the south end that has larger grained sand in it. I'm not sure if it meets that criteria or not.

Cooley: I think that's the one that says there's 1,000,000 yards, and that figure is used throughout here as the million yards of this sand, however, if you read further into the report, it says that there is an outfall pipe running over that, and because of the setbacks and slope, this million yards can't be used, and I notice that correction has never been made in there. They always refer to the million yards of available .035 mm sand, and it really isn't a million yards.

Dusey: Our consultant in that particular project is recommending at the present time, we believe, to move into the other borrow area with the finer grain sands, and has done all of the modeling and projections based on the finer grain sand, including estimating. Part of the problem is the environmental considerations of using that borrow area are fairly restrictive, and we believe he's going to recommend going to the other borrow area.

Cooley: Okay, then that leads into the next question.

21. What is the overfill factor on the various projects that is recommended because of the necessity of using inferior grade 0.19 to 0.22 mm of sand?

Dusey: I tried to explain in the memo, the letter of response to you, that at mid-Town particularly, the consultant didn't use an overfill factor per se, that they instead used the grain size in the modeling, and defined the slope that the beach will take after equilibration. The consultant in the south end – I asked him that very particular question – he did not have concerns about using the other grain size as far as initial cost is concerned. It will affect slightly the performance at the north part of that project.

Cooley: And that's Coastal Tech?

Dusey: Yes sir.

Cooley: They say something totally different in their –

Dusey: They have an overfill factor of 3 or something, or whatever, in their application, and that's based on the projections of quantity that was used in the comprehensive coastal management plan. I queried them particularly on your question, and they came back and said they did not have concern about the grain size and its impact on the project.

Cooley: Even though the report says they do.

Dusey: Even though the report says that it affects performance.

Cooley: The report says the total project volume is limited to 1.5 million yards to stay within the project budget established under the assumptions contained in the conceptual plan. If they stay within the 1.5 million yards, use a lesser grain of sand, the beach disappears much sooner than had they designed it as originally projected.

Dusey: I can share with you their response to my inquiry regarding your inquiry, or I can read it if Council wants.

McDonald: I'd like you to share it – give it to Mr. Cooley.

Dusey: Okay.

22. What is the additional cost per year that will be incurred because of the "refining of borrow areas" that is necessitated by the predominance of inferior grade of sand?

Cooley: In the report they recommend refining of the areas, but they don't add in additional costs for that. They're still estimating $4.50 a cubic yard.

Dusey: The refining of borrow areas usually occurs by the engineer, not the contractor, and what the engineer does is look at the borings, and determine what parts of the borrow area are best sand, and delineates those for use by the contractor.

Cooley: Okay. I have had a different understanding of that. I thought when they actually mined it they selected different areas and actually sometimes removed some of the finer material to get to the thicker material.

Dusey: You can do that. But, the sand that's used initially, I don't think we need to get to that point.

23. If the cost of the renourishment project exceeds cost estimates, how will the financial shortfall be handled?
   A. An across-the-board reduction of the overall project.
   B. Deletion of certain reaches, if so, which ones.
   C. Request additional funding from the tax payers.

Dusey: That, of course, would be determined by the Mayor and Town Council at the time, if there is a problem. And, any one of those could occur, but I don't think Council would recommend deleting reaches.

24. Cooley: Okay, this one you did answer:
Why does the financial advisor use 6% as the interest rate for the bond issue (Resolution Nos. 11-00 and 12-00) when the 4/20/00 Bloomberg Index for 10-year, triple-A rated, tax exempt insured revenue bond is 5.17%, down from 5.20% on 3/23/00?

Cooley: I guess that is the upper limit that the bonds can be sold at without coming back for Town approval.

25. How much are the selling fees for the bond issue? Will the selling agents be taking a flat fee, or will they be taking down the bonds as principals and reselling them and keeping the spread? What other costs are involved in the bond issue? How much is the bond counsel being paid?

Cooley: I've heard two numbers here; the numbers that were contained in your response to me, and then I've heard, I think Mr. Lickle say $250,000 this morning, which is somewhat different than the numbers in the letter, but we won't sweat the small stuff.

Dusey: I think the letter tried to address your specific question on the selling fees.

Cooley: Okay, that's the end of the questions.

McDonald: Thank you, Mr. Cooley.

Cooley: Thank you very much.

Former Mayor Yvellene deMarcellus Marix, 157 North Ocean Blvd., commented that her nice house still bore the scars of the last drilling, or blowing up, or dynamiting that the Army Corps did. She implored the Town Council not to vote on a referendum, and to wait until the questions were really solved and clarified.

Dr. Sanford Kuvin commented that the Beach Alert Committee published a $75 million figure for the beach renourishment program in the Palm Beach Daily News; apparently the numbers were correct, however, it was a combination of committed and non-committed funds; in other words the arithmetic was correct, but the outcome was predicated on committed and non-committed funds. Dr. Kuvin asked the Mayor her opinion as to the concept of truth in government in the Council's actions of submitting, basically, two sets of books in the application – one for committed funds for a ten-year program, and yet a second ten-year program, which was submitted to the DEP with an entirely set of numbers?

Mayor Smith replied that she had not seen the advertisement that Dr. Kuvin referred to; the answer as to the two sets of figures discussed by Mr. Dusey this morning was given – that one set of figures was put in the application for State funding, and the second one she did not find associated with a truth in government statement on behalf of the Town Council. She stated that she believed that the Town Council only became aware of the two sets of figures this morning, when the questions were answered, which is what she had asked be addressed in her opening remarks -- that Mr. Cooley's questions be answered. She stated that she appreciated the time given by the Council, and the members of the public, and Mr. Cooley, in preparing his 25 questions, as it had clarified the questions for the Council and members of the public. She stated that she did not believe that the Council intentionally lied to the public, as far as truth in government, and as Mayor and ombudsman she had not lied to the public. She clarified that it had been mentioned over and over that the vote was 4/1; the reason she had voted against it, which she had stated frequently, was that she was in favor of a referendum on this very important issue, and that she was still in favor of a referendum.

Dr. Kuvin replied that there were many in support of a referendum, however, it was not a question of lying or not lying; he clarified that he was asking his question as a point of information, as a question for the ombudsman, and now that the Mayor and Town Council knew that there were two sets of figures, two applications for the same ten-year period.

Mayor Smith responded that she would review the two sets of figures and then would answer Dr. Kuvin, however, she emphasized that she did not believe that anyone cooked the books, so to speak, and came up with two different sets of books. She also stated that the meeting with the Army Corps of Engineers had come about because of the letter that she had written to Colonel Miller; they had waited to answer the letter until the last minute on Wednesday, informing her that a meeting could be held on 10:00 a.m. on Friday. She explained that the meeting was not satisfactory, and that the Army Corps had been stunned to see representatives of the Town; they had stated that there was a strong possibility that they would determine that the Sand Transfer Plant should not be operating, and did no good, and may be closed down, however, they would keep it running in the meantime, until they made a final decision.

At this time, Councilman Wyett moved approval of Resolution 11-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

2. Resolution No. 12-00 - Non-Ad Valorem Revenue Bond Series Resolution - *(Deferred from April 13, 2000, Special Town Council Meeting)*

Town Attorney Randolph read Resolution No. 12-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AMENDING AND SUPPLEMENTING TOWN RESOLUTION NO. 11-00, TO AUTHORIZE THE NEGOTIATED SALE OF TOWN OF PALM BEACH, FLORIDA, REVENUE BONDS SERIES 2000, SERIES BEACH RESTORATION PROJECT, APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING OF THE BONDS; AUTHORIZING THE TOWN MANAGER TO DEEM THE PRELIMINARY OFFICIAL STATEMENT AS FINAL FOR THE PURPOSES OF SEC RULE 15(c)2-12; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, REQUIRING COMPLIANCE WITHIN CERTAIN STATUTORY REQUIREMENTS; AUTHORIZING THE PURCHASE OF A BOND INSURANCE POLICY AND/OR RESERVE ACCOUNT CREDIT FACILITY; AUTHORIZING THE EXECUTION OF A COMMITMENT IN CONNECTION WITH THE BOND INSURANCE POLICY AND RESERVE ACCOUNT CREDIT FACILITY SURETY BOND; AUTHORIZING AND DIRECTING THE TOWN MANAGER AND FINANCE DIRECTOR TO DETERMINE CERTAIN OTHER DETAILS OF SAID BONDS WITHIN THE PARAMETERS SET FORTH HEREIN; AUTHORIZING THE PROPER OFFICIALS TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SAID BONDS; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Wyett moved approval of Resolution 12-00. The motion was seconded by Councilman Goldblum.

Councilman asked what the increased cost of interest to the Town was between this meeting and the last meeting, as well as interest rates and dollars over the term of the bond?

Mr. Hole replied that the rates had increased approximately one-quarter of one percent; it was approximately 5¼% last month and it was approximately 5½% now overall. That translated to approximately $500,000, which would be raised through the revenue being pledged over the next ten years.

In response to Mayor Smith, Mr. Hole explained that First Union had announced last week that the municipal securities arm would be exiting the municipal underwriting business; it was scheduled to occur on July 1, 2000. He noted that he had spoken with representatives of First Union yesterday regarding the Town Council Agenda; the policy issue to consider in this case was that Resolution 12-00 authorized the Mayor and Town Manager to execute an underwriting contract with Salomon Smith Barney and First Union; essentially it would authorize the Mayor to enter into a contract with a business unit that had announced it was exiting the business.

Bond Counsel, Richard Miller of Edwards & Angell, addressed the Town Council, suggesting that a motion be made deleting First Union from the resolution, if so desired, and all documents would be corrected accordingly.

Councilman Wyett made a second motion to delete all references to First Union from Resolution 12-00. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Regarding the first motion made by Councilman Wyett, approving Resolution 12-00, which was seconded by Councilman Goldblum: roll call was taken, and the motion carried unanimously.

3. Resolution No. 21-00 - Extending the Term of the Cable Television Franchise of Comcast Cablevision of West Palm Beach, Inc.

Councilman Goldblum moved approval of Resolution No. 21-00. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution No. 21-00 by title:

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

B. Ordinances (First Reading)

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

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

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

Councilman Brooks moved approval of Ordinance No. 7-00 on first reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

In response to Mayor Smith, Town Attorney Randolph explained that the Landmarks Ordinance would stand up in court, however, the question was one of whether Landmark Commissioners who were architects would also be able to conduct business within the Town as architects and still sit on the commission. He noted that his opinions given thus far had indicated that they could not; he explained that in adopting Ordinance No. 7-00, it would clarify that architects would be required on the commission. The next step would be to write a letter to the Ethics Commission and set forth the facts and request an opinion that would allow architects to sit on the Landmarks Commission and allow them to present projects before the Commission.

Mayor Smith replied that it was her belief that it was very important that architects sit on the Landmarks Commission; Palm Beach architects possessed a history of the Town, and a legacy, and it was important to have people associated with the local landscape speaking to the boards, rather than out of town people who had no interest, no concern, and no passion for the Town of Palm Beach.

Mr. William Cooley commented that it had been his understanding that the Landmarks Ordinance would be referred to the Ordinances, Rules & Standards (ORS) Committee, and that he hoped a public debate would take place at the second reading of the ordinance.

Ms. Polly Earl, Director of the Preservation Foundation, commented that it had been her understanding that it was most important for Palm Beach to have its own architects, from Palm Beach, practicing in Palm Beach, on the Landmarks Commission in order to maintain the legal credibility of the Commission. She urged that Mr. Roy Hunt, who had authored the Landmarks Ordinance, be contacted for supporting information.

******The luncheon recess was taken at 12:40 p.m.******

*********The Town Council Meeting of May 9, 2000, was reconvened at 2:05 p.m.********

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

Town Attorney Randolph read Ordinance No. 8-00 by title:

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

Councilman Brooks moved approval of Ordinance No. 8-00 on first reading. The motion was seconded by Councilman Goldblum.

Attorney Ron Kolins commented that he represented various clients on Park Avenue, who had problems related to the issues addressed in this and several subsequent ordinances. He explained that he had not had an opportunity to fully review these ordinances, however, he requested that the Town Council consider the time provisions contained in the ordinances, which he believed were excessively broad, however, he was assured that the time provisions had already been changed.

On roll call the motion carried unanimously.

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

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

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

Councilman Brooks moved approval of Ordinance 9-00 on first reading. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

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

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

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

Councilman Goldblum moved approval of Ordinance No. 10-00 on first reading. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

5. Ordinance No. 11-00 – Amendments to Chapter 2, Administration of Town Code of Ordinances

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

C. Other

1. Discussion of Current Issues Related to Intracoastal Health Systems

Councilman Brooks suggested that a resolution or statement be prepared to be signed by Mayor Smith to Intracoastal Health Systems, relaying the sentiments of the Town Council.

Mayor Smith commented that she would be happy to sign a resolution drafted by the Town Attorney, which could be sent today. She noted that the anticipated closing of Good Samaritan was a public safety issue, as this was the hospital where residents of the Town were taken, and 15 minutes would be added to the transportation of patients.

Fire-Rescue Chief Ken Elmore commented that last year 1,213 patients were transported; 880 had gone to Good Samaritan Hospital, which averaged a 10-minute transportation period; 43% of the south end residents were transported to Good Samaritan at their request. He explained that if Good Samaritan was closed it would have a substantial impact on the level of emergency medical services. He noted that 50 lives had been saved in 1999 through the efforts of the Fire-Rescue Department.

Councilman Brooks commented that both hospitals were needed, especially with the historical important of St. Mary's in serving God's poor, as well as being the trauma center. He pointed out that the citizens of Palm Beach had most philanthropically supported both hospitals.

Councilman Brooks moved approval of the preparation of a document to be signed by Mayor Smith in support of both hospitals remaining in operation. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

2. Offer to Purchase Town-Owned Property Located at the Northwest Corner of Quadrille Avenue (Formerly Loftin Street) and North Olive Avenue in the City of West Palm Beach by Mr. William W. Branch

Councilman Wyett moved that the offer to purchase Town-owned property located at the Northwest corner of quadrille Avenue not be accepted. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

President McDonald suggested that information regarding any offers to purchase Town property be provided to each Council member, and if any one member desired to add the item to the Agenda it would be added; otherwise, it would not be included as an Agenda item. The entire Town Council was in agreement, and President McDonald declared it as Town policy in this regard henceforth.

Town Manager Doney clarified that any item added to the Agenda must be submitted at least two Fridays before any Town Council meeting in order to be included on the Agenda.

3. Town Hall Space Needs Study – Set Date and Time for a Public Works Committee Meeting

A meeting was set for Tuesday, May 23rd, at 10:00 a.m.

XIV. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman Brooks commented that he had received requests for a status report on the Sealord building, that was in terrible disrepair, and asked for staff comments.

Director of Planning, Zoning & Building Robert Moore replied that three items would be taking place regarding the Sealord:

1. Mr. House would report on Code Enforcement action;
2. An abandoned vehicle on the property would be removed 5/9/2000 by the management of the Palm Beach Hawaiian which also owned the Sealord;
3. The Planning, Zoning & Building Department had issued an order to demolish the structure on the property, and a meeting had been scheduled in this regard with the owners, and their attorney on May 10, 2000, at 2:00 p.m. to discuss the issue.

Mayor Smith requested that Mr. Moore submit a summary of the events relating to the history of the Sealord to Councilman Brooks, to be included within the minutes from this meeting. *(Please see history below, as provided by the Planning, Zoning & Building Department).*

Chief Code Compliance Officer Brian House reported that the original Code Enforcement Board action against the Sealord would be considered at the May 18th Code Enforcement Board meeting, with the request for permission to foreclose on the property for the outstanding fines.

Mr. Moore added that his department will be requesting that a bond for the amount of the repairs would accompany any permit request for the amount of the repairs.

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History of Code Enforcement Board Case 99-1073
Sand Pillow Properties, Inc., 2315 South Ocean Blvd.

1. Approximately, May 1st, a courtesy verbal notice of violation was given to Gerry Carrol, Manager of the Sea Lord. No work occurred.

2. On May 12, 1999, notification was sent to Sand Pillow informing them that all exterior elevations were in need of repair, noting cracks and peeling paint. Permit must be obtained and work must begin within 15 days of receipt of notice. Certified mail not delivered by post office

3. On June 17th a Notice of Hearing certified letter was sent to Sand Pillow for a Hearing on 7/15/99. The matter was placed on the 7/15/99 Code Enforcement Board Agenda to be set for Hearing. The June 17th notice to Sand Pillow was also not delivered by post office.

4. A second attempt letter dated June 22, 1999 of the May 12th notification, also was not delivered by the post office.

5. On July 15th the Code Enforcement Board (CEB) postponed action (due to lack of legal service) to the August 19th CEB meeting.

6. On July 22, 1999 a hand-delivery was made to Gerry Carrol, Manager of the Sea Lord.

7. On July 29th we received a letter from Chriss Michalopoulos, Regional Operations, Grand Hotels & Resorts International, stating that work would begin in early August.

5. On August 19th the CEB found the Hotel guilty of non-compliance and ordered them to begin repairs within 15 days. (No fine). The post office delivered this certified notification on 9/2/99.

6. More than 15 days later but before the next CEB Hearing date in Sept., they began work. (They power-washed the building and work stopped)

7. On October 21st the CEB imposed a $250 a day fine to begin on Sept. 2nd, to accrue until compliance is "made" (obtained). The post office delivered the 11/3/99 certified notification on 11/15/99.

8. On October 27th two permits were issued. They removed the windows and door on the east side of the building in preparation to remodel. All work stopped.

(A check for $21,150 for above permits came back NSF. The permits were frozen on 12/17/99)

9. On February 2, 2000 process began to file a lien on the property. The CEB Orders of 8/26/99 and 11/3/99 were Recorded at Palm Beach County on 2/8/00.

10. Immediately after the May 18, 2000 CEB Hearing, foreclosure will begin unless the Town Council decides not to begin the procedure.

11. Met with Ken Scherer, Attorney, and Frank Bragone, Florida Restoration Team, on May 10, 2000, to advise the contractor of the Town's requirements. Plans will be prepared and a letter of credit for 135% of the contract price will be given to the Town.

12. On May 18, 2000, the Town's Code Enforcement Board met to consider a foreclosure action. The Board ordered Sand Pillow Properties to pay $10,000 of the fine to the Town by no later than June 1, 2000, to obtain the required permits to begin construction work within 30 days and to supply the Town with a letter of credit for 135% of the cost of the required construction work. Failure to comply with the order will automatically cause foreclosure to begin after Town Council approval.

BKH/wz

Notes:
At all times during the above activity, contact was maintained with the President of Sand Pillow and with the Attorney for the Corp. who both indicated work would begin immediately.

The fine continued to run.

At that time a Town procedure had been held that the Town would act after a 90 day fine period had lapsed before filing a lien.

In January, the CEB moved to file a lien.

On March 21st and 22nd painting work on the building was performed; however, the work was not complete and the fine has continued to run. As of this morning (3/24/00), Brian House was advised by the Corp. Attorney that a contract for purchase was delivered to the Corporation and that a decision, whether to accept purchase offer, would be made the first of next week.

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Councilman Goldblum commented that several letters had been received regarding the feral cats in Town, and that there were a very large number of them on his street. He suggested that there be some way of not having them. He noted that Mrs. Bradley, with an assistant, fed the cats twice a day, and that it was a health hazard.

Councilman Wyett announced he would not be present for the September 12th meeting and the Finance meetings scheduled for September 7th and 20th.

President McDonald stated three members would be missing for the September 20th meeting and questioned if a quorum could be raised by phone?

Attorney Randolph responded that a three member quorum must be assembled in the Town Council Chambers, but others could attend by phone.

Town Manager Doney suggested setting dates at the July Town Council meeting with the information available at that time to meet the TRIM requirements.

Councilman Wyett stated he was aware of the confidential nature of the Town Attorney's reports regarding lawsuits, however, he did not understand how the Council could vote to sue or not to sue without opening up the reasons for such action to the public. He requested, with the Town Council's permission, that the Town Attorney determine what parts of the report regarding the potential Federal lawsuit and the Lake Worth Inlet were confidential and needed to remain confidential and what parts could be made public. Mr. Wyett reminded all that Attorney Stouck had not been hired by the Town Council to be the permanent counsel for the Town in this regard; he was merely doing the preliminary investigation.

Responding to the request of President McDonald to explain the confidentiality of Attorney Stouck's report, Attorney Randolph replied the draftsman had believed that the full report was of a confidential nature, and that it would be very difficult to extract portions of it in an attempt to make any sense out of it in context.

Councilman Wyett stated that the public had a right to know why the Town may spend between $2 and $5 million, if so approved by the Town Council, for a lawsuit that the Town Council may or may not win. Mr. Wyett said the Town Council needed some ability to be able to discuss the issue up front.

Attorney Randolph asked if the Town Council wanted some sort of subsequent report that could be discussed openly?

Mayor Smith asked Attorney Randolph if there was anything the Town Council could discuss about the lawsuit in a Town Council meeting where the public would have input on the basis of current information?

Attorney Randolph responded the Town Council could discuss the pros and cons of filing a lawsuit and that could be a public discussion.

Mayor Smith suggested putting the item on the June meeting with public discussion/input.

Attorney Randolph replied that he would check on the status of legislation regarding holding closed door sessions regarding threatened litigation.

President McDonald confirmed that the issue would be added to the June 13, 2000, agenda after Mr. Randolph substantiated the results of current legislation regarding closed door sessions regarding to threatened litigation.

XV. DEVELOPMENT REVIEWS

At this time Town Clerk administered the oath to all those who would be addressing the Development Review issues.

A. Time Extensions - None

B. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. VARIANCE NO. 6-2000 - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd.; located in the R-B Zoning District. To allow construction of an awning providing no side yard setbacks on the north or south in lieu of 10' required and providing a 3' rear yard setback in lieu of 10' required. *(Deferred from February 8, March 14, and April 11, 2000)* **(Request for Deferral to June 13, 2000, Per Letter Dated April 27, 2000, From Mr. James R. Brindell)**

   This item was deferred to the June 13th Town Council meeting earlier in this meeting.

2. REVISED VARIANCE NO. 11-2000 - Julie A. Heberlein (Reveley), 200 S. Ocean Blvd.; located in the R-B Zoning District. To allow construction of additions at a 27.15% lot coverage in lieu of 25% maximum allowed, and to allow a 5.044 cubic content ratio in lieu of 4.5 maximum allowed. *(Deferred from March 14, and April 11, 2000)* **(Request for Withdrawal Pursuant to Letter Dated May 2, 2000, From Mr. James R. Brindell)**

   This item was withdrawn earlier in the meeting.

3. VARIANCE NO.13-2000 - Steven Allen, 169 Root Trail; located in the R-C Zoning District. To allow construction of a new roof system thereby demolishing more than 50% of the cubic volume of this nonconforming single family residence. The new roof increases the height in the nonconforming setbacks which are 1.1' from the east property line and 1.3' from the west property line, where 10' are currently required, and 2' from the rear property line where 15' is required. Applicant proposes to add a front entry cover providing a front yard setback of 19.4' in lieu of 25' required. - *(Deferred From April 11, 2000, Town Council Meeting)*

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

Architect Eugene Fagan addressed the Town Council, stating that he was both the architect for the project and a neighbor. He stated that some changes had been made since the presentation last month: the roof had been lowered; all of the cubic content was in the attic. He explained that the purpose of adding the roof was to improve the look of the street back to its historical context. He displayed photographs of the neighborhood, indicating that the proposed roof would not block the view of any neighbor.

Director of Planning, Zoning & Building Robert Moore commented that the project had been submitted to the Architectural Commission as a minor project, and still would need the variances being requested. He explained that staff continued to question the hardship involved; staff believed that only the minimum roof height (3') should be granted, if so desired by the Town Council, to accommodate the air handling equipment. He advised Mr. Fagan that the minimum roof pitch for wood shake in the Town of Palm Beach was 3½ and 12, not 6 and 12.

Mr. Werner Nordhoff, 171 Root Trail, addressed the Town Council, stating that the roofs were very close together; so close that he could not even put a tent for fumigation purposes over his house. He displayed some renderings of the subject property, and objected to the variance request.

Zoning Administrator Paul Castro explained that when the applicant originally came in, the proposed attic addition had an overhang that did overhang onto the neighboring properties; the house currently was overhanging at two points onto the neighboring property. With the proposed modified roof the applicant was required to eliminate the overhang of the house that was on neighboring property; the new plans do not have the overhang that the existing house had; with the new proposed roof system there was no overhang, and the roof basically went straight up on the east and west side.

Mr. Fagan stated that he was attempting to restore the house, and one of the ways to do it was to put a nice roof on it; the hardship was because of the specifications of the manufacturer and the lack of storage space on such a small building, with no space for the air handler.

Councilman Brooks moved denial of Variance 13-2000, on the grounds that there was no proof of hardship. The motion was seconded by Councilman Goldblum. On roll call the motion carried 3/2, with Councilman Brooks, Councilman Goldblum, and President McDonald casting affirmative votes; President Pro-Tem McLendon and Councilman Wyett casting dissenting votes.

4. VARIANCE NO. 16-2000 - Donna H. Ross, 163 Seabreeze Ave; located in the R-B Zoning District. To allow construction of a new roof system thereby demolishing more than 50% of the cubic volume of both the residence and the garage/guest house. Applicant proposes to replace flat roofs, false mansards and parapet walls with pitched roofs on both the residence and garage/guest house which would increase the roof heights which are in the required 15' east side yard setback and the west side yard setback for the residence, and the west side yard and the rear yard for the guest house/garage. *(Deferred From April 11, 2000, Town Council Meeting)*

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

Councilman Wyett moved deferral of Variance No. 16-2000 until later in the meeting, in order to afford the applicant time to appear. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

At a later point in the meeting, Director of Planning, Zoning & Building Robert Moore notified the Town Council that the architect had been contacted, and that there was no intention for anyone to appear today. He suggested that the request be denied.

Councilman Wyett moved denial of Variance No. 16-2000. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

New Business - Minor

5. VARIANCE NO. 17-2000 - Victoria B. Newhouse, 100 El Bravo Way; located in the R-A Zoning District. To allow construction of an additions at a point of measurement of 17.6' NGVD in lieu of 14.61' required.

Ex-parte communication was declared by Councilman Brooks with Attorney Byrd, as well as walking the subject property; by Councilman Wyett via telephone with Mr. Elias; by President Pro-Tem McLendon via telephone with Attorney Byrd.

Attorney Wade Byrd, representing the owner, addressed the Town Council, stating that at the time the application was filed the house was owned by Ms. Newhouse, and there had been a closing in the meantime.

Attorney Byrd advised that he represented Mr. Elias, through his company, South Ocean /El Bravo, LLC. He stated that the hardships were that the existing structure had a finished floor elevation of 20.14 ft., which was approximately 5.53' above the Town required point of measurement of 14.61'; the property was located along the high ridge line in the Town, which caused the finished floor elevation to be higher, and the property was also a corner lot, which caused the point of measurement to be artificially low. He displayed a model of the finished house, explaining that the comments from the neighboring property owners had been regarding construction traffic, and he submitted a plan for construction traffic to park on the property in front of the house, with heavy landscaping on the north and south. He indicated that the beam height would be consistent with adjoining properties – the house on the south had an elevation of 46.34'; the house at 100 El Bravo had an elevation of 42.6', which was lower than the house on the south; the house on the north was at 41.95'; the house to the west was at 72.43'.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objection to the matching of the existing tie beam; staff believed that would be in order; the hardship was the fact that the road was 2' lower when the house was built.

Attorney Steven Manz addressed the Town Council, representing Ms. Jean Vanhaveren, 101 El Brillo, who objected to the added massing requested; he maintained that there were no special conditions that were unique to the property, as all of the neighboring properties had a similar height situation, and there was no undue hardship shown.

Attorney Byrd responded that the lot was a corner lot, and the point of measurement was artificially low; the hardship was that the property was located along the high ridge of the Town, which caused the finished floor elevation to be higher.

Attorney Manz replied that the legal hardship under Florida law had to radically affect the property value, and there had been no record shown that indicated such; in fact, the property was continuing to appreciate in value. He urged that the variance request be denied, and that the Town Zoning Code be followed.

Town Attorney Randolph advised that the requirement that the Town Council must find in order to grant any variance request was that the application met each and every criteria set forth in the appropriate Zoning Code; in addition, the Bernard vs. Town of Palm Beach case, and subsequent cases, had ruled that a variance should not be granted unless it is shown that there is no other reasonable use for the property, but for the granting of the variance.

Mayor Smith commented that she found the proposed addition overwhelmingly massive, and that there was difficulty finding a hardship for a building of this size.

Mr. Elias replied that the center room that was lower on the ocean side was a one-story room that had an open peaked ceiling; there was no opportunity to build above that. He explained that in order to get a master bedroom on the ocean side a wing must be used.

Councilman Goldblum moved denial of Variance No. 17-2000. The motion died for lack of a second.

Councilman Brooks moved approval of Variance No. 17-2000. The motion died for lack of a second.

Councilman Wyett moved deferral of Variance No. 17-2000 to the June 13, 2000, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion to defer carried unanimously.

6. VARIANCE NO. 19-2000 - Charlotte Beers, 132 Clarke Ave; located in the R-B Zoning District. To allow construction of an addition providing a 8.5' sideyard setback in lieu of 12.5' required.

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

Attorney James Brindell, on behalf of Charlotte Beers, addressed the Town Council, stating that the house in question was a 1957 John Volk house, and the applicant was requesting a variance from a sideyard setback requirement, which was 12.5'. He displayed photographs of the property, explaining that the lot was narrow and under Code, with the house being pushed over to the west side; the only logical place for the addition was as proposed, based on the existing position of the house as it was constructed in 1957; the request was de minimis.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objection.

Councilman Wyett moved approval of Variance No. 19-2000, based on the hardship that the request was an in-fill and the lot was narrow, finding that all of the criteria set forth in the Code had been met. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

7. VARIANCE NO.22-2000 - Seminole South, Inc., 240 Seminole Ave.; located in the R-C Zoning District. To allow development of a single family residence on a 50' wide lot in lieu of 75' required, and to allow said lot area at 5,800 sq.ft. in lieu of 10,000 sq.ft. required.

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

Attorney Ron Kolins addressed the Town Council, stating that the property in question was an existing, platted, but undersized lot, and without the variances being requested the property was useless. He presented a survey, indicating that two non-conforming structures would be eliminated, creating one conforming structure.

Director of Planning, Zoning & Building Robert Moore commented that the Public Works Department would require that the driveway would be 6' from the property line, and there were no other staff objections.

Councilman Wyett moved approval of Variance 22-2000, with the condition that the driveway be 6' from the property line; based on the configuration of the lot, its nonconforming nature relative to the existing Code, and finding that it met all other Code criteria. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

8. SITE PLAN REVIEW NO. 5-2000 - Virginia Devine, 249 W. Indies Dr.; located in the R-B Zoning District. To allow construction of a single family residence on a lot 99' wide in lieu of 100' required.

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

Architect Lindley Hoffman, representing Ms. Virginia Devine, addressed the Town Council, explaining that the proposal was to tear down an existing two-story, non-conforming house, and build a totally conforming one-story, single family residence in its place. The lot was 1' less in width than was required by Code, in lieu of 100' required by Code.

Zoning Administrator Castro commented that the house in question met all aspects of lot, yard, and bulk regulations and met setbacks, with 38% lot coverage; a one-story house would create less of an impact on neighboring properties than what was currently existing.

Mr. Moore commented that the letter of objection from a neighboring property owner would be passed along to the Architectural Commission, since most of the issues contained therein were architectural issues.

Councilman Brooks moved approval of Site Plan Review No. 5-2000. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

New Business - Major

9. VARIANCE NO.18-2000 - Dreamlife Corp., 214 Dunbar Rd.; located in the R-B Zoning District. To allow installation of driveway gates, using the existing gateposts, which are located at a 14' setback in lieu of 18' required.

Ex-parte communication was declared by Councilman Brooks with Attorney Kolins, and Mrs. Horowitz; he also noted that he had walked the site; by President Pro-Tem McLendon with Attorney Kolins and Mrs. Horowitz, who also noted that he had visited the site; by President McDonald with Mrs. Horowitz; by Councilman Goldblum with Attorney Kolins and Mrs. Horowitz; by Councilman Wyett with Attorney Kolins.

Attorney Ron Kolins, representing the applicant, addressed the Town Council, explaining that the house was built in 1991, and had been purchased by the owner in 1994. At the time the house was built the gateposts at both sides of the driveway were in place; an ordinance had been passed by the Town in 1997 requiring the 18' setback. The gates were necessary for the privacy and security of the owner; the driveway was also used for parking when the owners were not in residence by people using the beach, and gates would keep trespassers off of the property. The owner had hired a contractor a few years ago to install gates, however, the contractor had somehow received a permit, even though the gates were not 18' from the right-of-way. During construction, Town inspectors had red-tagged the job, since the gates did not comply with the existing ordinance, and the gates were still not in place. Attorney Kolins displayed photographs of the property in question, explaining that the only alternative for the owner would be to move the posts further back towards the house, which would completely destroy the aesthetics of the house, and create a difficult situation for use of the driveway. He explained that the purpose of the current ordinance was for public safety, and in this case the safety consideration did not apply. He introduced Andrea Troutman, Traffic Engineer, and distributed a traffic analysis which she had prepared.

Ms. Andrea Troutman addressed the Town Council, stating that 24-hour automatic machine traffic counts had been collected along Dunbar Road on Wednesday, April 19, 2000, indicating a total volume of 354 daily trips. She explained that much of the traffic was construction traffic due to construction at neighboring houses; field observations had indicated that 20% of that traffic was construction traffic. The adopted volume for a two-laned local road in Palm Beach County allowed 1,500 daily trips. Pavement width measurements were taken, indicating that Dunbar Road was over 29' wide; vehicles could park on either side of the road, using 8-9' of pavement, and would not impede the traffic flow. She pointed out that vehicles entering 214 Dunbar Road, with the approval of the requested variance, would not extend past any of the parked vehicles; thus no additional impacts to the traffic flow would result, and it was her opinion that approval of the variance would not be a safety or traffic hazard along Dunbar Road.

Attorney Kolins continued that, in addition, the only people using the gates would be the residents and occasional guests; the gates would be automatic, which would allow them to be opening before the car was ready to go through, and the car would not be sitting with its back end sticking out. He produced a letter from the neighbor directly across the street, Astrid Talley, in support of the application, which he submitted for the record.

President McDonald mentioned that he would like the Building Department to be informed when an expert witness was used, so that a rebuttal could be prepared, if necessary.

Director of Planning, Building & Zoning Robert Moore replied that Attorney Kolins had advised that a traffic survey would be completed; he commented that the former contractor had altered the documentation that had required the 18' setback, so that it would not be seen by the field inspector. He agreed that it would be difficult to move the gates back, and stated that he did not believe the owner had any culpability in this situation.

Ms. Wendy Victor, 208 Via Tortuga, addressed the Town Council, stating that she had gone to the site, and that she believed that the variance request would be injurious to the area, as this was precisely the kind of locking out of a neighbor, which was being studied in the R-B district zoning study; the street was beautiful, with most houses open to the street; there were not other gated/across-the-driveway gates in the 200 block of Dunbar. She stated that the feeling of the neighborhood was friendly and accessible and maintained that the gates in question were definitely against the feeling of the block. She pointed out that she was co-chairman of the Civic Association

Zoning Committee, and had been to all of the streetscape meetings; this was precisely the kind of thing that neighbors were having trouble with, and the R-B requirements would be studied, and changed as needed.

Councilman Wyett commented that the setback had been increased from 15' to 18' to ensure that cars were completely out of the street when going through gates, and suggested that the gates should go back to a 15' minimum setback.

Attorney Kolins replied that the owners were not in Town for seven and one-half months per year, and had a right to protect their property; to move the gates back was not acceptable aesthetically, as well as for safety reasons.

Councilman Brooks commented that, if there was no vast departure from existing codes, a sensitivity to the property owner's rights should be acknowledged, and the owner had been taken advantage of by the contractor.

Councilman Brooks moved approval of Variance No. 18-2000. The motion died for lack of a second.

Councilman Goldblum moved denial of Variance No. 18-2000. The motion was seconded by Councilman Wyett.

At this point, Attorney Kolins requested a deferral so that the applicant could reconsider the request.

Councilman Goldblum withdrew the motion to deny, as did the seconder of the motion, Councilman Wyett.

Councilman Brooks moved deferral of Variance No. 18-2000. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

10. VARIANCE NO. 20-2000 - CSC Palm Beach Ltd. Partnership, 190 Bradley Place; located in the R-D(2) Zoning District. To allow demolition/reconstruction of a multi-family structure utilizing temporary walls to comply with Section 134-419 which to limits demo/reconstruction to 50% of existing cubic footage; alternatively, allow demolition to exceed 50%, and modify two previous conditions of approval. (In addition, the owner requests an extension to the hours of construction and the use of a portion of Seminole Avenue for construction trailers and related equipment during demolition and reconstruction) (Request for a Waiver to Extend Construction Hours and Request for Withdrawal of Variance for Cubic Volume Per Letter Dated April 27, 2000, From Mr. James Brindell)

The following motions were made in connection with Variance 20-2000 (A complete verbatim transcript is provided below):

Regarding the variance request and the request for extension to the hours of construction:

Councilman Goldblum moved approval of Variance No. 20-2000, with the following conditions: no work on Sundays or 23 holiday and holiday-related days; a covering would be used on the outside of the structure during demolition; approval of the requested extension of work hours for the off-season, from June 1 through October 15, 2000, of two additional hours, from 6:00-8:00 p.m., all workers will be bused in, an 8' high security wall will be installed, a police officer will be retained on site to manage traffic during peak season or as necessary at any time, extended hours in the evening will be limited to interior work and not demolition, all heavy construction truck traffic will stop at 4:00 p.m., heavy demolition trucks will be used between the hours of 10:00 a.m. and 3:00 p.m. only (including big delivery trucks). The motion was seconded by Councilman Brooks, and on roll call, carried unanimously.

Regarding the request for the use of a portion of Seminole Avenue for construction trailers and related equipment during demolition and reconstruction:

Councilman Goldblum moved approval of the request for the use of a portion of Seminole Avenue for construction trailers and related equipment during demolition and reconstruction, (the parking spaces on the street will be utilized in this regard), with the conditions that the 8' high security wall will be installed, with the trailers and related equipment kept inside the wall; that a hold harmless agreement will be prepared to the satisfaction of Town Attorney Randolph. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Regarding the request for the release of the financial surety bond:

Councilman Brooks moved approval of the release of the financial surety bond, when all the new walls with the ARCOM approved finish and glass were in place, and with the condition that a portion would be withheld or posted for landscaping. The motion was seconded by President Pro-Tem McLendon, and carried unanimously on roll call.

Ex-parte communication was declared by Councilman Brooks with Attorney Brindell, by Councilman Goldblum who had spoken with several adjoining condominium owners, and by Councilman Wyett with Attorney Brindell.

The following is a verbatim transcript of the discussion:

Brindell: Good afternoon, I'm Jim Brindell. I'm here on behalf of the applicant, Il Lugano. I want to start by mentioning that a portion of this item, which was the variance request for relief from the 50% demolition rule has been withdrawn, because we solved that problem without having to seek a variance. What we are here on are several things that are inter-related. One is a request for work hour extension. We provided you with a table showing the demolition/reconstruction plan schedule, and a request with regard to the use of the parking on the south side of Seminole, and also another item has to do with the release time of the bond. What I'd like to do is take the items that relate to the construction part first, and then do the bond last, since I think the people here are more interested in that than the release of the bond. We met with representatives of L'Hermitage and Park Regent a number of times – had a number of conversations with them -- and we have arrived at an agreement with those properties with respect to the work hour request. We also provided them with our construction phasing schedule that you have that came along with my letter. We have, as a result of those conversations, revised the request for work hours substantially in this respect: we're now only asking for work hour extensions for the off-season of two hours, from 6:00 - 8:00 p.m., but only from June 1 through October 15. We also have a provision that there will not be any demolition after 6:00 p.m. in that particular period of time, except with prior notice to both of those groups, excepted out are concrete pours and other sorts of work, but not demolition, unless we give them prior notice. All workers are to be off of the site by that 8:00 p.m. time.

We also have agreed, in addition to the normal of no work on Sundays, we've also agreed to have no work on eight holidays and 15 additional days that are related to the Thanksgiving and Christmas Holiday Season. So, that's a total of 23 holiday and holiday-related days, plus all Sundays, when there would be no work. What I have here for you is a copy, that I'll give to Mr. Castro, of the revised hour request, and it looks a little more complicated than it is, but that's only because there is a period of time here where we would do 8:00 to 6:00 p.m., per Code, from May 1 to May 31st, and then October 15th to November 30th. The next point simply says the two additional hours we're asking for is only June 1 to October 15, so that would be 8:00 a.m. to 8:00 p.m. on that period of time. We do have a note, which I think is consistent with the way the Town normally does it, that we would be allowed to assemble workers a half hour in advance, which you normally do. These workers will all be parking off Island and bused onto the Island.

McDonald: All right. Mr. Brindell, in the future, if you have any handouts, could you perhaps get them up to us a few minutes before your presentation so they can be circulated before?

Brindell: I do have some extras here, but they don't have the final note that I made based on the conversations in the hall, so I've got some extras here without that.

Castro: I'll have someone make copies of this for you.

McDonald: I think Mr. Brindell is finished, so we're ready for your comments. Is that correct? You're finished, Mr. Brindell, right?

Brindell: On those items yes.

Castro: Well, related to – I guess I'll discuss the items as they come up, but related to the work and construction hours, the staff did meet with representatives of L'Hermitage as well as Park Regent, and their concerns related to those hours and to the holidays in which the construction was to occur during season, and it appears that, without hearing from them, that there has been some resolve to those issues. One of the other issues, related to the demolition and what is occurring related to the demolition has to do with reconstructing temporary walls around the first three floors after the completion of demolition, and then starting on the next four floors during peak season. And it was expressed to staff by those representatives that maybe some type of a skin around the upper floors related to that, and Mr. Brindell –

Brindell: On the demolition part, what we've said is this: we're going to use water spray to suppress dust if that doesn't work satisfactorily, then we'll put some sort of a covering over the outside, like a visquene, or something like that, when we get to that stage when the sides of the building are off. All of the interior demo, I'll say interior, not floors, and not load bearing walls, but all the normal unit interior walls and bathrooms and kitchens, and all those things, will be done with the building essentially enclosed in some fashion. Now, Mr. Wyett, I think you have an interest in making sure that's done – that type of interior work is done before the start of the season, and we can do that. So, that's how we're going to take care of that. I might point out that Adam Schlesinger, who is here today, and who is going to be in charge of this project from the owner's point of view, has provided all three of his telephone numbers, home, office, and cell phone, to Mr. Denger and Mr. Britt, who are the managers of the two respective Park Regent and L'Hermitage, and told them to call him if they have any problems at any time, particularly in regard to those issues that we just talked about. In addition, of course, Weitz will be doing this work, and in addition, the supervisor of that job will also have his/her phone number given to those parties too.

Castro: Just one other brief item related to that – when discussing the hours of construction, or the waiver of the hours, one of the items that was expressed to staff related to this was the issue of getting this job done as quick as possible, and through my discussions with the neighboring parties, they wanted to have the sensitivity of season, but they also wanted to give some flexibility to make sure that they could finish this project in a timely fashion and impact them in a minimal amount of time, and I'd just like to express that.

Our recommendation is to give them extended hours; that they bus in their employees; they are going to be putting up an 8' high security wall, which is going to be painted four screen, and we believe they are going to need a police officer on site to manage traffic during season, during peak season, and we do feel that maybe the extended hours in the evening be limited to interior work and not demolition, as was discussed.

McDonald: All right. Do you want them to put the skin on the building? Make it required to do that?

Brindell: Well, we presented you with a schedule – you understand this building

McDonald: I'm asking him Mr. Brindell. I know what you've said. I'm asking Mr. Castro if he wants to require the skin in lieu of you trying the water spray first.

Castro: I think we should have them put the skin on the building as demolition is occurring, so that it not only minimizes dust, but also mitigates some of the noise, and I'd like to modify my recommendation by saying that possibly we should have an officer there for the entire length of the job, instead of just during season.

Wyett: I am very concerned with the heavy demolition – I want to make sure no jack hammers are used. Are you going to use the appropriate saws, because jack hammers are very, very noisy in season – even out of season. I want to make everybody aware that today these residences are used year round. I think one of the residents sitting in the audience is here most of the year, and as far as this congested area of condominiums, we have to be very sensitive to this. On the other hand, I know we have to do a building. I would like to recommend that no matter what time of the year it is that no heavy trucks used for demolition removal be on Town streets other than the hours of 10 - 3. And I make this request because Publix in that area, is a very congested area. We have a higher level of vehicle accidents there, and it is very potentially dangerous to some of our residents, and I don't think I'm imposing a hardship, because those trucks have to be loaded before 10:00 and they should be finished loading prior to 3:00 to get out of here.

Brindell: For removal of demo material is what you're saying.

Wyett: Yes. I'm talking about – once you get your heavy demo and it's going in several stages, then it's more delivery than it is demo, and that comes at various times. I concur with the staff, and I'd like to see flag officers out there for any period of time in which loading or unloading is going on, because the street is very delicate in that area, both in traffic coming off the bridge and going north, and traffic coming back and forth from Publix, not to mention the new vet station we're going to have. And so I'm concerned about extending the hours, and I'd like to hear from some of the building supers I see out there – representatives, the General Managers, and there's one or two residents out there, and I'd like to hear something about their concern about the extended hours.

Goldblum: Two things. Is there going to be heavy demolition during season – in season?

Brindell: There will be some. We indicated that – other than – you understand what's going to happen here? We're going to demolish some of the floor slabs and re-pouring them and some of that will occur during the season. The chart that we gave you –

McDonald: Well, the answer is yes. The answer is yes, Mr. Goldblum. Go ahead.

Goldblum: Personally, I've had several complaints from neighbors that would not like to see any heavy demolition in season. In other words, with jack hammers, like Allen cited, and so forth. I can see taking down wall partitions and things like that, which are not heavy construction, but heavy construction of taking floors, which they are doing, is going to be very noisy during season. It's going to be noisy at any time, but –the other thing, you gave me this time frame and work schedule. I basically do not understand it.

Brindell: Show me what you're looking at. Ya. That's a revision. What that says is –

Goldblum: It says off-season May through November.

Brindell: This is what we've agreed to with both Park Regent and L'Hermitage.

Goldblum: 7:30 a.m. to 8:00 a.m. to assemble workers. Off-season too, it says 8:00 a.m. to 6:00 p.m. all work.

Brindell: Right. That means you do all types of work during that – that's per code. The Code allows for that, except that we restricted it. That would be per Code, correct, and then the next thing basically, is where we've really asked for the extension.

Goldblum: May 1st through May 31st.

Brindell: And October 15th through November 30th .

Moore: Three sets of times they're asking for instead of two.

Brindell: Right. Because they wanted us to restrict our extension request to June 1 to October 15, so we've accommodated their request to do that. The only time we're asking for two more hours is in that period of time, not for the whole off-season.

Goldblum: You're asking for that time between May 1st and May 31st?

Brindell: No.

Goldblum: You're asking 8:00 a.m. to 8:00 p.m.

Brindell: June 1 to October 15 – not the entire off-season, just that period.

Brooks: I would just like to piggy back on Mr. Wyett's comment on the removal of the debris, and I think that's an excellent suggestion, due to the congestion of traffic there. The subject property, most advantageously, has a very large parking area to the south of the main building, which could be used almost as a staging area for the debris, so I just would like to join in Mr. Wyett's comment. The other thing – maybe this is done, Mr. Brindell – you may want to have this posted in the bulletin boards of L'Hermitage and the Park Regent, so that everyone knows the hymnal and, indeed, the hymn.

Wyett: I would to amend my suggestion, besides the demo trucks, to include the large concrete trucks that would be coming in for pours, and also any large trailers, such as forty footers, coming in for delivering of equipment to be restricted to the hours of 10:00 to 3:00, so that would be able to get the traffic out of Town just beforehand, and allow for the traffic that comes in very heavy, and of course during that period of time from 10:00 to 3:00 the police officers would be guiding the situation.

Smith: I'd like to speak more now for the residents. I realize that during the discussions we've had on this project that many, many people think this project will be done in a year and a half, and we know it won't. There were many more conditions put on the building of Neiman Marcus, and that's in a commercial area. You did that, I believe, Mr. Brindell, so you're aware of that. But this is a completely residential area, that is one of the worst traffic areas in this Town, aside from the residents of L'Hermitage and Park Regent, you have residents living just to the north of this and single family homes on the smaller streets. I don't believe that this work schedule – any part of it – accommodates the residents that use that street for Northlake Way, north of the immediate project. The concrete pours, with all respect, Mr Wyett – the concrete pours for Neiman Marcus were done on a Sunday. I don't know why the pours for this job shouldn't be done on a Sunday either, when there's less traffic in that area. I think that the schedule is unrealistic, to bombard the people in this area, starting all the way at the Biltmore, with the traffic they're going to have from the trucks for several years, and submit them to this, year round, for several years is absolutely outrageous. And I think you have to hear from them before you start negotiating with any schedule like this that doesn't even – I appreciate some of the holidays you mentioned, but you haven't even gotten into Easter or any of the others. I mean, this is not acceptable. This is a residential area, and I'd like to hear a lot more about how you're going to watch out for the residents. You want to take parking off the street. I realize Park Regent and L'Hermitage apparently don't have any problem with it, but they are being very agreeable, but I don't think the residents in the building all realize that the dirt, the filth and the noise that they're going to be subjected to for years while this project is going on. It's going to be a mess, Mr. Brindell, and I think if we once all agree on that, we'll then try and get you through it with the least disruption to the residents. But, I haven't heard anything that gives me any comfort that the residents of this Town are going to be taken care of while this project is going on.

McDonald: I'd like to hear public comment now. Does anyone want to speak to this? No one at all? All right, Mr. Wyett.

Wyett: I agree with the comments of the Mayor. She is more comprehensive even than I was, and I think this thing should be deferred for a more comprehensive submission, to make the residents of not only these buildings, but also the people living north and south comfortable.

McDonald: All right. Are you making a motion for deferral?

Brindell: I would like an opportunity to respond, if I might, please.

McDonald: Yes. Yes. Yes. Are you making a motion for deferral, Mr. Wyett?

Wyett: Yes.

Smith: Well, could we get a little more input here, before we defer?

McDonald: Well there is no public input. I asked for that and no one wants to speak to it.

Smith: They're getting ready.

McDonald: Well, then you've got to move. You've got to be up here ready to speak.

Wyett: I defer my motion to defer until I hear everybody.

Ziska: For the record, Maura Ziska. I spoke with Jim Brindell. I've met with Adam Schlesinger. I represent both the Park Regent and L'Hermitage, and we've been meeting about this construction schedule, and although they are very concerned about the noise and the dust, they are willing to let them extend their summer hours to get this job done as soon as possible. And they've given us days off around Christmas and Thanksgiving and certain holidays. And as a trade off we've allowed them to extend their summer hours from June 1st to October 15th, and only do light work, no demo, and the hours of 6:00 to 8:00 p.m.

McDonald: Thank you. I think we understood that those two neighbors are somewhat in favor of supporting your request. Mr. Brindell.

Brindell: Well let me take some of these items: first of all, the schedule that Weitz has given us, which they are confident in, shows this starting – this project starting this month and finishing in November of 2001, not several years. That's, I believe, about a year and a half. So, it's not several years. I mean, if it were several years I don't think they'd probably do the project.

McDonald: Okay, 2001.

Brindell: So that's substantially different, I believe. We have not asked, Mr. Goldblum, for any relief from your noise ordinance. You have a noise ordinance that relates to season and off-season. We've not asked for any relief from that. We will have flag people there. Obviously we will work out with the Police Department whatever additional police control they thought was necessary, like we typically do on all of these projects. The issue of no heavy trucks for demo, other than between 10:00 and 3:00 probably, I think, Mr. Lawrence can address this if we need to in a minute, but I think that probably works. I'm a little more concerned about the concrete pour issue, which I'd like for him to talk about, if I might.

Lawrence: I think we can handle the trucks for the demolition. The basic demolition is going to happen by taking rubber tired bobcats inside the shell of the building and striping the building inside before we take off the outside walls, so that's out of the way. I think if you'll notice what Weitz are doing right now at Neiman Marcus is that they have shoots, which are rubber shoots, which the material comes down, and they have screens in front of that to minimize that dust. The only issue you've discussed that I think could hurt a lot is the concrete trucks. Now, Mrs. Smith is right – when we had the 5,000 yard pour we did it on a Sunday, but you can't keep this thing going by not having concrete trucks during those times, and there's nothing prohibiting that in the rest of it. I think that we probably can work with the heavy demolition trucks, the big trucks, the 12-yard trucks, but the concrete trucks we would appreciate if we could pour those, because these won't be any big pours, where we had the big pour at Neiman – 5,000 yards, we had 75 trucks. We won't have any big pours here, because we have to do this building in small bites. In other words, the slab comes out, a half a building goes back, not 75 trucks. It'll be very few trucks. If we could have the concrete, but we can deal with the 12-yard demolition trucks, if that's.

McDonald: How many trucks, Mr. Lawrence?

Lawrence: To pour the slab – I would estimate you'd probably have no more than 4-6 trucks, not at one given time, running the whole run.

Goldblum: The trucks, when they do pour, will be not on Bradley Place, but will be on the side streets?

Lawrence: They'll be on the side – the other big issue – please make the distinction, because we did both these buildings – we did the Neiman and we're doing this. In Neiman we've got to work from the street because we don't have any front. This, we've got 25 feet of frontage on the property that we can work from, and more than that in the back. The only think we're asking for for the street is trailers and to keep people away from there so things don't come off of the building. So, all of these trucks will be working from the property, not from the street.

Moore: Not in the street, from the property.

Lawrence: But it's a big difference in the two.

Wyett: I can go along with the concrete, since the way you described it – I still would like it restricted to trucks coming and going to be restricted between 10:00 and 3:00, including the big delivery trucks when you have a lot of equipment coming in such as the membranes, I assume, will come in in pretty heavy trucks.

Lawrence: Oh yes, I think all of that can be scheduled.

Wyett: I want to keep as much heavy traffic off the streets during peak traffic hours.

Lawrence: And I understand the intent of that, and I think that's all very workable. The only thing is the concrete. When you've got to pour, you've got to keep that going or your dead in the water.

Smith: Then I notice, if you want to keep the traffic off the streets during the peak traffic hours, which at night, we all know now are between 4:00 and 6:00 p.m., why do you have them working until 5:30, which is right in the middle of the traffic push? Right now you can't get off the Island, very difficult getting off the Island on the north bridge, with the middle bridge out, between 4:00 and 6:00. That's the worst time for traffic, and I've tried coming out of the bank parking lot across from the Biltmore at 5:00, and you've got bumper to bumper and wall to wall trucks going practically all the way up to Wells Road, with the construction trucks, and that's without your project.

Brindell: Well, you realize our workers will not be driving on and off the Island, first of all. They'll be bused on and off the Island, so they won't be coming in individual vehicles.

Smith: Ya, but your trucks – your trucks will be driven on the Island by people, not by robots, and I would like to see the truck traffic restricted to before 5:30 – have the truck traffic stop at 4:00. I mean, certainly nobody is going to sit in this room and say we don't have a traffic problem on the Island between 4:00 and 6:00; of course we do. So, I think if you can minimize the truck traffic, or have the traffic stop at 4:00, why not?

Brindell: Well, what she's getting at, is the Code allows you to work until 5:30 in the season, and she wants us to stop the trucks at 4:00. I assume you didn't mean the trucks for the workers – the transport trucks, but you're talking about the delivery trucks.

Smith: I'm talking about the transfer trucks coming on the Island. I'm speaking for the residents. I know you want to get finished, and I know the building managers have said their residents want to get finished, but when this project starts, and we get the boom, boom, boom, and these trucks going down Bradley Place from the north bridge to this project, the residents are going to be screaming, and you know it.

McDonald: Just accept that condition, Mr. Brindell, and we can get moving here.

Lawrence: Do you have a size of truck? Are you talking about a pick up truck, or are you talking about a three-wheeler type truck?

Smith: Oh, Mr. Lawrence, how do I know? A truck with four wheels, I mean, I don't know.

Lawrence: I think that's perfectly acceptable if we say a 2 ½ ton truck, which is a medium sized construction truck.

Smith: You know, whatever, you know what I'm talking about.

Goldblum: In season, workers are working until 5:30 p.m. – I assume you're not going to take them away from the site before 6:00 p.m.?

Brindell: The work would stop at 5:30 and they would assemble them and bus them off the site.

Goldblum: And I would assume that that time would be at least 6:00?

Brindell: Probably by the time – ya, presume a half an hour – it might take two or three trips.

Goldblum: Can we assume 6:00, so that we got the load of traffic out of there? I don't know if you've ever driven down that street – the traffic of all the construction workers going home in the evening is unbearable.

Brindell: Sure. Right. This was to be –

Lawrence: I would say this also, that those are the workers who drive over here. The trucks that you see are the pick ups and the vans that drive over here and work and take the one guy going in a truck home.

Brindell: Mr. Schlesinger said that the workers, even at the season time of 5:30 quitting time, will be off the site by 5:30.

Schlesinger: We're asking for 'til 6:00 p.m.

Brindell: No, no, he's talking about in season, when it stops at 5:30.

Schlesinger: In season ends at 5:30 – we will be out by 5:30.

Goldblum: I would rather you be out at 6:00.

Brindell: Oh, you would rather than actually then, not start leaving until 5:30?

Goldblum: Right.

Brindell: Well, that's fine then, because the Code allows them to work until 5:30. That's fine.

Goldblum: Ya, that would work 'til 5:30, then break out and leave at 6:00.

Brindell: That's fine. That's right. That's fine – that will sink in fine, then.

McDonald: Do we have all of the conditions in place now here? Any additional conditions – then if not, may I hear a motion?

Moore: Well, don't we have one thing on the public right of way –

Brindell: Oh, I'm sorry, we're going to come back to that one.

Smith: Could you tell me where you're going to be parking? You're not going to be parking on the street are you? Taking off public parking spaces in that area, where it's so tight anyway?

Brindell: Well, only the south side, which is right adjacent to the building, where I don't think you'd really want people parking during construction anyway. But the north side parking – we're not asking to take that – we're not asking to restrict the two lanes of street either.

Smith: All right. And are we going to run into a problem with port-a-lets on the street?

Brindell: On the street? No.

Smith: I mean anywhere visible? Because we have them now with this DOT project on South County Road, and I've had people calling with a problem on that.

Moore: The plumbing code requires that they be sight screened.

Smith: And why is it not sight screened now on County Road?

Moore: Because that's the DOT, and we don't control them. We do control this job.

McDonald: All right. Okay. Let's have a motion.

Goldblum: I make a motion that we accept the changes – modified changes, and go ahead and permit construction - plan review - site plan review.

Brooks: I'll second that.

Brindell: Well, we've already been site plan reviewed. Allow the work.

Goldblum: All right – construction.

Town Clerk Pollitt calls roll, and motion to approve the request for extension of hours of construction, with modifications, made by Councilman Goldblum, seconded by Councilman Brooks carries unanimously.

Brindell: All right. The next item – we just mentioned it – has to do with the request to take the parking on the south side of Seminole, and use that to put some staging trailers there. You don't really want people parking there now, I don't think, during this construction job.

It wouldn't be safe, in any event, so we'd like permission to do that.

McDonald: All right. Discussion?

Brooks: There's no room to have them behind the building, in other words, the south side of the building, where all that parking is?

Brindell: Well, that's again – Mr. Lawrence can talk about it – you need some ability to move some trucks around the site too. Secondly, you're not going to want people parking there, so you're too close to the building – you wouldn't want something to fall on them.

Brooks: Okay.

McDonald: Mr. Bowser?

Bowser: Yes. For the record, Jim Bowser, Town Engineer. Weitz did come in and express – explain their needs, etc. We believe that the site can be – we're concerned about use of the right-of-way and setting precedence here. We believe that the site can be amicably worked, and the public protected with adequate fencing and care is taken by the contractors. We believe that the site is adequately sized; that they can work their job from within, and not utilize the right-of-way. This – Neiman Marcus was a different situation. They had no room on site, and we – you know, the sort of thing where they had to work from the street if they were going to get that job done, but we believe this is a different situation, and we're not really in favor of utilization of the right-of-way on this project.

McDonald: Thank you, Mr. Bowser. Any other comments? Mr. Castro?

Castro: Just, we have an issue, if the Council so chooses to let them use the right-of-way, something related to indemnification – or, if there is an accident on public right-of-way related to construction.

McDonald: I don't think that's what Mr. Bowser was speaking to, but –

Castro: No, that's correct, but if the Council so chooses to let them use the right-of-way, we have a liability issue that we'd like the Council to address.

Brindell: Well, we would certainly like not to exacerbate the potential of a liability by having people too close to the building parking there, and Mr., I think Mr. Lawrence, would like to address that briefly.

Lawrence: You can see from these two photographs the proximity of the building to Seminole, and we believe there is an inherent hazard, and we believe that no matter what you do – whether we let the contractor put trailers there or not, that the fence go up outside those parking spaces so that there is a safety protected zone out there. Now, we think that definitely should be. This indicates where the contractor proposes to put the trailers, which is in the parking only, leaving two lanes at 12 feet, and parking on the north side of the street. This gives us a buffer, and even if you elect not to let them use that for trailers ,we strongly recommend that we put the fence at that point, so that we don't get people in there. And I don't think that the trailers are going to hurt anything. And I'm sure that we're willing to hold the Town harmless, or whatever we need to do. In addition, I think they're paying $600 a month for rent for these spaces, so the Town is getting something back from it.

Wyett: Is that all we're getting?

Lawrence: What do you mean all?

Smith: Can you tell me though, why the residents across the street should have to look at these trailers for a year and a half? I don't care with the fence up. You know, Mr. Lawrence.

Lawrence: You've got an eight foot fence in front of them wherever they are – if they're on the street or they're on the property.

Smith: Ya, but the trailers on the property are less obtrusive than on the street. This is not like – and the Weitz Company does a wonderful job, and it's the only warm, fuzzy feeling about this project is that you do a good job. And you've done a good job at Neiman Marcus, but we're in a residential area – very different from across the street from your beautiful Esplanade, where you did the facade and everything turned out so well.

Lawrence: Don't forget the beautiful Park Regent too.

Smith: And the beautiful Park Regent, of course. But, why in a residential area should the residents be bombarded with more than they have to be, when these trailers can be put on site.

Brindell: I think 12 feet closer isn't going to make it less seen.

Smith: I think we have a recommendation from the Town Engineer not to set a precedent, and I don't see any reason, just for $600 a month, big deal, that the Town should go against a recommendation that may be setting a precedent for future projects in this Town. I really don't. This is a big project, and I think anything we can do to lessen the impact the Council should try and do. It's a residential area. They're going to be very upset looking down on these trailers on the street – not just the people across the street – it's the people looking down from the second and third floors. And I don't see why they should have to look at this all of the time. Mr. Wyett said we have to let you build a building – we don't have to let you build a building, but legally, this is a project you can do, but we're trying to work with you and lessen the impact on the residents – some of which may live here year 'round, and are really going to be subjected to it for a very long period of time.

McDonald: Any other Council comments?

McLendon: Just to be sure I'm correct. Is where the cars are shown on this blown up picture – the one to the left – no the other one – the other picture. Is that where the trailers would be proposed to go? Where those cars are?

Lawrence: Yes, the ones that are in front of Dorset House right now – the three cars that you see on the left is where the trailers were proposed.

Wyett: Where else could you put those trailers?

McLendon: I think I would prefer to have them there than over the sidewalk area for safety –

Lawrence: Well, we strongly feel that there should be – that the fence should be at that line, whether you allow the trailers or not, but the fence should not allow people in there, because there is a six story building and things can fall and get it back.

McDonald: Any other Council comments? Then let's hear a motion. Is there a motion on the floor:

Moore: Not on this. This is another phase.

McDonald: Let's try it again. Let's try another motion.

Wyett: I have a question, which wasn't answered. Where else could you put those trailers if we decide we don't want them on the street?

Lawrence: The answer would be in the east parking lot across the street from – this is the lake – it would be over off Bradley Place and here, or on the Park Regent side over here.

Goldblum: Can you put them on the west side where the pool area was?

Lawrence: There could be some there. We have the trash chute over there – mostly out of the way – so, we would have to be driving around that to let that go, so you sort of have to spread the wealth and try to take care of all of it. We did put the trash chute to the west because that's the most remote from anything.

Goldblum: I make a motion we accept you putting them inside the wall, which will take one lane of the street, am I correct?

Lawrence: Just the parking spaces on the street only.

Goldblum: Yes. Yes. I'll make that motion.

McDonald: Is there a second?

McLendon: Second.

Town Clerk Pollitt calls the roll and motion carries unanimously.

Moore: With that hold harmless satisfactory to Mr. Randolph?

McDonald: With the hold harmless agreement.

Goldblum: Yes. That fence will be painted, and so forth?

Lawrence: Oh, yes.

Bowser: At some point they would be able to move their offices within the confines of the building and have the trailers removed.

McDonald: All right. We want that done as quickly as possible, don't we, Mr. Lawrence?

Lawrence: Absolutely, and we will do that. The object is to get this building built as quickly as we can, and the schedule that we have – I don't think Jim pointed out to you – but, we went through several schedules, and this cuts off four months in the season of 2001, if we can get these things done. The neighbors felt that was helpful, and we think it is too.

McDonald: Thank you Mr. Lawrence. Mr. Brindell are you finished?

Brindell: We have one more item, and that has to do with the release of the financial surety. It's required to have a surety to guarantee that the building will be demolished in the event that it's not completed. We already – for your background – thirteen of the fourteen units are under contract. The loan is in place. There is a bond in place to assure the lender the building will be completed, so the request is that the bond be released at the time that when all the new walls with the ARCOM approved finish and glass are in place in the building.

Moore: The purpose of the bond originally was to ensure that we had a completion of the demolition and we did not have a partially demolished building. The way the applicant is proposing this is we would still, of course, keep a portion of the bond for the landscaping, and so that in itself would certainly not be objectionable from our standpoint. There is one other item that Mr. Brindell, and our office, and Mr. Randolph are discussing it, but we wanted to bring it to your attention, that the docks involved in this property are somewhat controversial. We are trying to resolve that issue with Mr. Brindell and another attorney that represents the owner, but we did want to advise you that currently the docks that are on the property are commercial, and not tied directly to the building, and we are working with Mr. Brindell to try to come to a satisfactory resolution on this.

Brindell: And we're very close to that.

McDonald: What are we saying, Mr. Moore, that this is going to come back, or what are you saying?

Moore: We're saying to you that there is an issue that may come back to you at a later date if it's not satisfactorily resolved. The building permit has a condition that the docks become accessory to the actual building project. We did not want this public hearing to go forward without bringing that to you attention, and you say why didn't we mention it at a later date.

McDonald: Well, I don't want you – is there a vehicle for it to come back?

Moore: Yes, they can appeal my decision to condition that building and permit.

Wyett: I had discussed this with Mr. Moore the other day, and while the docks are being reduced –

McDonald: I don't want to talk about the docks now, Mr. Wyett. It's not an issue now. It's not an issue.

Wyett: This is crucial to the issue. You haven't heard me out why it is.

McDonald: He just said that if they can't resolve it, it will come back.

Wyett: I know, but they have a commercial right to have it, and I'm trying to get across a point that we don't want commercial docks there because it creates additional parking demands in an area that doesn't have the space. So, I consider it very vital that it be tied together to the whole process, and that they give up the commercial rights and recognize that these docks can only be sold and used by the condominium, and not to be used by the outside.

Moore: It would be our suggestion, and since negotiations are under way, and there are some legalities that Mr. Randolph would probably need to speak to at some point – let us go through those negotiations.

McDonald: I don't want to deal with the docks today. Is there a motion? Did you make a request, Mr. Brindell? I thought you did.

Brindell: Yes, we requested that the bond – that we be allowed to have the surety released when all the new walls with the ARCOM approved finish and glass are in place.

McDonald: Is there a motion regarding the bond?

Brooks: I'll move it.

McLendon: Second.

Town Clerk Pollitt calls roll and motion to approve releasing the bond when all the new walls with ARCOM approved finish and glass were in place in the building carries unanimously, with the condition that a portion is withheld or posted for the landscaping.

McDonald: Yes, with a portion being withheld or being still posted for the landscaping. Thank you.

Brindell: Thank You.

********End of verbatim transcript*********

11. <u>VARIANCE NO. 21-2000</u> - Theodore & Ruth Baum, 1409 S. Ocean Blvd.; located in the R-AA Zoning District. To allow construction of 2-one story additions with a 24.5' sideyard setback in lieu of 30' required.

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

President McDonald suggested that the Building Department assess the visual aid equipment in the Town Council Chambers in order to offer improvements.

Attorney Robert Deziel, representing the applicant, addressed the Town Council, explaining that the house in question served as the guest house at one time, for the ocean front home across the street; there had now been a separation of ownership. The applicant was attempting to maintain the single story definition of the structure, and try to build an addition that would be as harmonious as possible. He displayed renderings of the proposed additions, noting that the hardships were: the setback requirements for the zoning district were different when the home was originally constructed, and the particular configuration of the original design, with the east/west layout.

Zoning Administrator Paul Castro commented that the variance requested was de minimis in nature, and took into consideration the view of the neighboring property owners, and staff had no objection.

In response to Mayor Smith, Attorney Deziel stated that all construction activity would be contained on the site, on the most westerly portion of the property, which was furthest away from the property of the Picower property.

Councilman Brooks moved approval of Variance No. 21-2000, with the hardship being that the side yard setbacks had changed since the home was originally constructed, and the fact that the east/west orientation of the home required the location of the addition. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

12. VARIANCE NO. 23-2000 - Barry Pinciss & Joanne Warshaver, 223 Seminole Ave.; located in the R-C Zoning District. To make structures more non-conforming, contrary to Sec. 134-949, by allowing construction of a 2-story addition to a residence providing a 20'-8" frontyard setback in lieu of 25' required, with a 5'-1" sideyard setback in lieu of 10' required, and to allow a stairway addition to the garage/guesthouse providing a 10'-1" rearyard setback in lieu of 15' required. To allow construction of a swimming pool providing a 5'-3" rearyard setback in lieu of 10' required, and a 7'-4" sideyard setback in lieu of 10' required.

Ex-parte communication was declared by Councilman Brooks with Attorney Ziska. He noted that he had walked the property as well.

Attorney Robert Deziel, representing the applicant, addressed the Town Council, displaying renderings of the proposed construction. He explained that the house had originally been built in the '20's as a rooming and boarding house, so the layout was situated for that type of use; the residence was now a single family residence in a two-family zoning district, and it did not have a garage. The applicant wished to take an existing guest house and make the first story a two-car garage, which would make that element conform with the zoning requirements in this Zoning District. In order for the cars to get in and out of the garage, it would be necessary to demolish the northwest corner of the structure; in doing that it caused them to reconfigure the floor plan of the inside of the structure. The net result would be a property of approximately 4,800 sq. ft., which fits in with the neighborhood.

Attorney Deziel addressed the hardships, which were as follows: the real estate itself was substandard in size, and was nonconforming from the frontage standpoint, and was nonconforming from the gross square footage requirement; in addition the structure itself was nonconforming – there had been a change in the code requirements concerning the side element. He explained that the architect had done the best he could to fit a pool in the rear yard. The applicants would like the opportunity to renovate the property.

Director of Planning, Zoning & Building Robert Moore commented that the only hardship staff could see was the undersized lot.

Councilman Brooks asked how two cars could get into the proposed garage; in addition the pool seemed quite small.

Attorney Deziel responded that the second space would most likely be occupied by a small car; the other side was fairly standard; the size of the pool was 10' x 22', sitting 1' off the house on the north side. Mr. Deziel requested that the variance for the exterior staircase be deleted from the request.

Councilman Wyett moved approval, with the hardship being the undersized lot, and the fact that the house had been built 80 years ago, before almost any zoning existed, and the request met all of the other criteria of the Code. Councilman Goldblum seconded the motion. On roll call the motion carried 3/1, with President Pro-Tem McLendon being temporarily out of the room, President McDonald casting a dissenting vote, and Councilmen Brooks, Goldblum and Wyett casting affirmative votes.

13. SPECIAL EXCEPTION NO. 5-2000 - Paramount Church Inc., 139 N. County Rd.; lengthy legal description on file; located in the C-TS Zoning District. To allow Jo's Restaurant to expand restaurant occupancy from 2,307 sq.ft. to 3,028 sq.ft. in a noncontiguous arrangement (1,778 sq.ft. + 1,250 sq.ft.) in the Paramount Building.

Ex-parte communication was declared by Councilman Wyett with Attorney Broberg regarding the merits of the application, and by President Pro-Tem McLendon with Attorney Broberg.

Attorney Peter Broberg addressed the Town Council, distributing two charts for the review of the Town Council, explaining that approximately six months ago Jo's Restaurant had asked to expand, and was granted approval. Now, the owner wished to give up the space she had expanded into, and expand space for a net increase of 721 sq. ft.

Councilman Wyett moved approval of Special Exception No. 5-2000, finding that it met all criteria under the code and, therefore, qualified for a special exception. The motion was seconded by Councilman Goldblum.

Councilman Goldblum mentioned that the method of handling garbage/trash by Jo's Restaurant needed improvement.

On roll call the motion carried unanimously.

President McDonald commented that he did not want to receive handouts at the moment an item is heard; he suggested that it be provided in advance so that it could be reviewed before the meeting.

14. SPECIAL EXCEPTION NO. 6-2000 with Variances - Dr. Andrew Turkell, Island Animal Hospital, 262 Sunset Ave.; located in the C-TS Zoning District. To allow a 2,752 sq.ft. occupancy for a veterinarian office and hospital in lieu of 2,000 sq.ft. maximum allowed, and to allow said service on a first floor. Variances requested are to allow the first floor occupancy in a building that fronts on a sidewalk fronting a roadway, and a variance to the requirement for 4 additional parking spaces.

Ex-parte communication was declared by Councilman Brooks, who had spoken with Attorney Broberg and walked the property; by President Pro-Tem McLendon via telephone with Attorney Broberg; by Councilman Goldblum with Attorney Broberg; by Councilman Wyett, who had spoken with Attorney Broberg.

Attorney Peter Broberg addressed the Town Council, stating that the original application had included a variance to waive the two parking spaces in the garage, however, an area to park had been located on the property and that variance would no longer be needed; thus the application would be so modified. He explained that Mr. and Mrs. Coniglio owned the property, and the house was built many years ago. They had requested to use the first floor for commercial, and the Town Council had granted that request as long as the upstairs remained residential and the commercial tenant below used the upstairs residential; at that time there was also a requirement to provide five additional off-street parking spaces. At a later point, the Town Council had granted the request of Mrs. Coniglio to separate the upstairs residential with downstairs commercial, and to waive the requirement that five additional parking spaces be provided. Currently, the request was to allow the Island Animal Hospital to move into the first and second floors, making both commercial, and the use of the garage in the back for a pet grooming area, with residential above the garage, most likely for staff to live on site; in addition the special exception included a request for a first floor commercial to face on a sidewalk, and a request to waive two parking spaces. Mr. Broberg noted that the Town-serving documentation would be provided. He pointed out that the hardship was that the upstairs portion could not be leased or used as it was currently; the whole surrounding area was commercial, and the only viable use for the building was to use the whole building as commercial.

Mrs. Gail Coniglio addressed the Town Council, stating that she owned the property at 262 Sunset, and that the house was surrounded by commercial properties; it had been very difficult to rent it separately, and the whole property should be used as commercial.

Director of Planning, Zoning & Building Robert Moore commented that the property was zoned commercial, however, the use was partially residential, partially commercial. He noted that the upstairs and the garage would have to be fire sprinklered if the request today was approved. Staff would need a layout for the animals held for boarding purposes; the Building Department believed that the use should stay in Town, as it was definitely Town serving; the use may outweigh the hardship. He suggested granting the special exception for this particular tenant for this use, with any other use requiring approval from the Town Council.

Councilman Wyett moved approval of Special Exception No. 6-2000, waiving the parking hardship, finding the hardship that there was no other reasonable use for the property, with the condition that the upstairs and garage be fire sprinklered, with tenancy restricted for this particular tenant, and any other use requiring approval from the Town Council. The motion was seconded by Councilman Brooks.

Mayor Smith commented that a loading zone was needed in the front of the building, particularly for sick animals.

Mr. Moore explained that condition could be part of the approval.

Councilman Wyett incorporated the condition into the motion that a loading zone be provided in the front of the building, which was also accepted by the seconder of the motion, Councilman Brooks.

On roll call the motion carried unanimously.

Mr. Moore explained that the loading zone would be handled through the Town Manager's office and the Public Works Department.

15. SPECIAL EXCEPTION NO. 7-2000 - Edward W. Cook Trustee, 223 Sunset Ave.; located in the C-TS Zoning District. To allow a 1,500 sq.ft. occupancy on the first floor for a management company.

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 this request was to allow for the occupancy of 1,500 sq. ft. in the rear half of the building on the first floor; the space did not front on the street, nor did it have any direct access directly to a public sidewalk; the space had been used in the past for office space; special exception code criteria had been met.

Councilman Wyett moved approval of Special Exception No. 7-2000. The motion was seconded by Councilman Goldblum.

Director of Planning, Zoning & Building Robert Moore commented that Town serving documentation must be provided.

Attorney Brindell replied that the List Company had been operating in the Town for 50 years, and that a CPA could provide Town serving documentation in the normal permit cycle.

On roll call the motion carried unanimously.

16. SPECIAL EXCEPTION NO. 8-2000 - Judith Heustein, 411 Australian Ave. & 340 Cocoanut Row; located in the R-C Zoning District. To allow applicant to use one supplemental off-street parking space located on an adjacent property.

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

Attorney James Brindell addressed the Town Council, displaying photographs of the subject property, explaining that variances had been received from the parking requirements when two units had been constructed some time ago.

Director of Planning, Zoning & Building Robert Moore explained that the properties had been developed in partnership together, and the partners sold a parking space to the client of Attorney Brindell, which, at the time, had been illegal due to the number of parking spaces required; since that time the ordinance had been modified, and the space now was a supplemental parking space. The application was for that space, and would legitimize the sale of that space some three years ago.

Councilman Wyett moved approval of Special Exception No. 8-2000, finding that the special exception met the criteria listed in the Code. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

17. SPECIAL EXCEPTION NO. 9-2000 - Edwin & Beverly Robbins, 1 Lake Trail Circle; located in the R-B Zoning District. To allow a kitchen in a guest unit over the garage.

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

Attorney James Brindell addressed the Town Council, stating that an addition of a second story inside an existing garage had been approved in January to be used as staff quarters. He explained that the access was from inside of the house, not outside; there was no separate meter for this part of the house, and the request today was for approval of a kitchen, pursuant to the appropriate agreement with the Town.

Director of Planning, Zoning & Building Robert Moore commented that there was no objection from staff, as long as the standard kitchen agreement was signed.

Councilman Wyett moved approval of Special Exception No. 9-2000, finding that it met all criteria under the Code, with the standard kitchen agreement. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Attorney Brindell corrected the application submitted, stating that there had been some reason, at the time, to believe that there were other similar kitchens in the neighborhood, and he did not know whether that was a fact or not at this point, and therefore, withdrew that representation.

18. SPECIAL EXCEPTION NO. 10-2000 - Thomas Campaniello, 240 S. County Rd; lengthy legal description on file; located in the C-TS Zoning District. To allow a 2,201 sq.ft. retail occupancy in lieu of a 2,000 sq.ft. maximum allowed.

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

Attorney Maura Ziska addressed the Town Council, representing Shabahang Persian Carpets, and requesting special exception approval to operate a retail space in an area of 2,200 sq. ft., on the corner of South County Road and Seaview. She explained that the applicant had attended the International Antique and Art Fair this year, and many people expressing interest in the carpets had been from Palm Beach, which inspired them to investigate space in the Town of Palm Beach; although Town-serving had not yet been proven, Ms. Ziska stated that she believed there was a good indication that they would be Town-serving. She noted that there was parking in the front and in the back; there were other retail stores in the neighborhood, and she provided a rendering of the site.

Director of Planning, Zoning & Building Robert Moore commented that the Town-serving aspect must be addressed.

Attorney Ziska explained that since the business was a new operation in the Town, they had not yet had a year in which to prove themselves, however, there was indication that Palm Beach residents or visitors were interested in this type of merchandise; she advised that they would be prepared to come back in one year to provide the CPA report with regard to the Town-serving requirements.

Mr. Moore replied that kind of representation had not been accepted by the Town Council in the past, with litigation occurring over these types of matters. He suggested that the applicant be asked to abandon and seal off the 201 sq.ft. until they could substantiate their Town-serving nature.

Zoning Administrator Paul Castro advised that a letter from a neighbor at 240 S. County Road had been received regarding truck traffic and the delivery of carpets.

Councilman Brooks commented that he had walked the site, and the concerned neighbor was approximately 200' away, and that he could not see a concern.

Councilman Wyett commented that he would not like to see a loading zone created in front of the space, as there was so little parking in the area; he preferred that loading be limited to the side street.

Mayor Smith requested information on the loading/delivery arrangements from Phipps Plaza. She noted that the Fortress Corporation had applied last year for a north end space, and were requested to complete a marketing study to confirm the Town-serving nature of their business; she suggested that some documentation be provided showing that there was a representation of the Town-serving nature of the applicant.

Town Attorney Randolph commented that the space could be utilized as a commercial space, however, he would rather that the application not be approved subject to certain space being blocked off. He stated that he considered that an administrative action. He suggested that the application simply be denied, leaving it up to the Town Building Department to determine how the space could be used.

Mr. Moore offered that the applicant had paid a fee to come before the Town Council, and suggested that the matter be deferred.

President McDonald noted that Town Attorney Randolph had suggested that the application be denied, allowing the applicant to come back to the Building Department for the use of something less than 2,000 sq. ft. He noted that the use of space of less than 2,000 sq. ft. did not need the approval of the Town Council. He suggested that the fee could be transferred to the new application.

Attorney Ziska requested a deferral until the next scheduled Town Council Meeting.

President Pro-Tem McLendon moved deferral of Special Exception No. 10-2000 until the June 13, 2000 Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

President McDonald clarified that a withdrawal of the application, and the submission of a new application in a year would require another fee payment.

C. OTHER

1. Tentative List of Zoning Study Items and Calendar for 2000/2001 Zoning Season

Zoning Administrator Paul Castro advised that a memorandum, dated April 28, 2000, had been presented acknowledging the proposed zoning study items, and tentative calendar. He requested information regarding any additional study items.

Councilman Wyett suggested that an item be added to the zoning study concerning landscaping plans up front, and to do circumference (perimeter) landscaping before construction begins in order to protect adjacent neighbors.

Director of Planning, Zoning & Building Moore advised that would not belong in the Zoning Ordinance, but rather in the Architectural Commission Ordinance, suggesting that this item be discussed at the Ordinances, Rules & Standards Committee meeting.

Councilman Wyett then withdrew the suggestion.

Councilman Wyett suggested that rear yard setbacks should be more than 10 ft., and should be moved to 15 ft. in the R-B District.

Councilman Wyett suggested that attics be allowed and false dormers, so that people could build an attic for storage.

Councilman Wyett suggested that the Zoning Commission study allowing basements ; they should not count as another story in the R-B District.

Councilman Wyett moved approval of his recommendations regarding basements, attics, and false dormers being added to the zoning study items. The motion was seconded by President Pro-Tem McLendon. On roll the motion carried unanimously.

Councilman Wyett moved approval of his recommendation regarding rear yard setbacks being added to the zoning study items. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Mayor Smith clarified that the Town Council could submit zoning study items until the first Tuesday of August, 2000.

President McDonald commented on zoning study item number six, although he was not opposing it, however, he stated that he could not imagine supporting anything that would increase commercial activity in the Town.

Councilman Wyett commented on zoning study item number five, stating that a beach lot could add so much space to a building lot that a huge house could be built.

Councilman Goldblum moved approval of the Zoning Study Item List and Tentative 2000/2001 Zoning Calendar. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Time Extension by Weitz Company, Inc. on Work Hours for Palm Beach Country Club

Mr. Gerald Goldsmith, member of the Palm Beach Country Club, and resident, addressed the Town Council.

Mr. Andrew Chaffey, representing the Weitz Company, introduced himself to the Town Council.

Mr. Goldsmith reported that a major renovation of the Palm Beach Country Club was being done, and he requested extended working hours from 8:00 a.m. to 8:00 p.m., as suggested by Director of Planning, Zoning & Building Robert Moore, rather than the hours requested of 7:00 a.m. to 7:00 p.m.

Mr. Moore commented that it was very difficult to establish a precedent; the only other time such extended hours had been given, which had been around the clock, was to The Breakers, because of the circumstances.

Mayor Smith commented that it may be more appropriate to give the applicant longer hours at this time of the year, rather than giving additional time in November and December.

Councilman Brooks moved approval of the hours of 8:00 a.m. to 7:00 p.m.

Councilman Wyett requested an amendment to the motion to approve the hours of 7:00 a.m. to 9:00 p.m.

Councilman Brooks accepted the amendment, and moved approval of the hours of 7:00 a.m. to 9:00 p.m. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

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

Town Attorney Randolph advised that the Code Enforcement Board had authorized foreclosure, however, because it was the money of the Town that would be involved in pursuing the foreclosure, the matter was being brought to the Town Council for consideration.

Ms. Catherine Bradley, 165 Root Trail, stated that she would be happy to clarify any information regarding this matter.

Councilman Brooks commented that he had been under the impression that Ms. Bradley would be present with an attorney. He suggested that she appear with legal representation.

Town Attorney Randolph advised that the issue before the Town Council today was whether or not to go forward with foreclosure.

President McDonald commented that he had reviewed the title to the property, and it appeared that the real estate taxes had not been paid for the past few years, and had been sold by the assessor's office, so that after three years, a person would be qualified to get a tax deed for the property. In addition, he noted that there was a mortgage on the property, and asked Ms. Bradley if the bank had filed a foreclosure action?

Ms. Bradley replied that it was all in the hands of the attorney, however, the property had been in foreclosure for four to five years.

Mayor Smith asked what would be involved in the foreclosure process, and what costs to the Town would be involved?

President McDonald replied that the real estate taxes were not paid, and if taxes go delinquent, they are then sold to the highest bidder, who can then request a tax deed if the taxes have not been paid at the end of three years; that priority would take place over the mortgage. He explained that if a tax deed was not obtained, because the taxes were paid, then the foreclosure by the lender would proceed, with the Town being in the third position.

Town Attorney Randolph advised that the costs to the Town could vary – from very nominal to a defense situation.

Ms. Bradley commented that she had experienced insurance problems after Hurricane Andrew, however, there were other problems as well, and it was a very complicated legal issue. She indicated that she did not live in the residence currently, and that she had contacted the Building Department regarding the insertion of new windows, as two handymen had offered their services, however, she had been told that she would need a contract and permits.

President McDonald suggested that this matter be deferred so that the attorney for Ms. Bradley could be contacted, and further information could be gathered by Town Attorney Randolph in order for him to make some recommendation to the Town Council.

Councilman Wyett urged that some compassion be exhibited towards any fines or collection of money by the Town, if Ms. Bradley was able to recover the house.

Councilman Goldblum moved approval of deferral of the Proposed Initiation of Foreclosure (Code Enforcement Case No. 99-1089) - Catherine F. Bradley, to allow Town Attorney Randolph to contact the attorney of Ms. Bradley, and gather further information in order to come back next month for some recommendation. Councilman Brooks seconded the motion.

Mayor Smith asked Chief Code Compliance Officer when this issue had come before the Code Enforcement Board, and if the Board had been aware of the fact that the property was already in foreclosure?

Chief Code Compliance Officer Brian House replied that the Code Enforcement Board was not aware of that, and he had not been either, until he had read it in the newspaper.

Mayor Smith commented that it seemed like the issue was coming before the Town Council today as a result of concerns of residents of Park Avenue, and she questioned why maintenance work could not be accomplished on the house to put the property in better condition.

Mr. Moore replied that he would look into that, however, the property was in such poor condition that putting windows and doors in it would not accomplish much.

Mr. House commented that the back wall of the building was in danger of crumbling.

Mayor Smith commented that there was no point in running up bills for Ms. Bradley, who did not have the funds to pay the liens.

Mr. House replied that condemning the property would possibly force a demolition, which was not the goal – it was preferred to clean the property up and maintain the building.

Mayor Smith commented that perhaps the handymen who had volunteered could be allowed to donate their services to repair the property and put the house in better condition.

Ms. Bradley stated that she did not know anything about the Code Enforcement problem until December 15th, when she had received a letter from them; she could not find anyone at the time to begin repair work, however, later on two people had offered their services, whereupon she had immediately contacted the Building Department and had been told contracts and permits would be necessary.

On roll call the motion to defer carried unanimously.

I. ANY OTHER MATTERS

Attorney Randolph reported that, in response to the query of Councilman Wyett, the Town Council could not have a closed door session regarding threatened litigation as discussed earlier in this meeting under coastal issues.

Councilman Wyett suggested that the Town Attorney look into freeing up some of the information, so that it could be openly discussed; he noted that he could not respond to questions from the public, and that he believed it was self-defeating in not being able to discuss the issue.

Town Attorney Randolph indicated that he would review the report concerning the beaches, and determine whether information contained therein could be released; he would discuss the issue with Mr. Stouck.

Mayor Smith commented that she had sent a letter to the hospital and to both newspapers, and hopefully that attention would be given to the fact that Fire-Rescue Chief Elmore had noted that if Good Samaritan Hospital closed, adequate service to the Town would require an extra EMS unit and 14 additional personnel.

XVII. ADJOURNMENT

The meeting was adjourned at 6:11 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk