

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING: 2001-2001 ZONING HEARING HELD ON APRIL 22, 2002, AT 10:00 A.M.

I. CALL TO ORDER AND ROLL CALL

President William J. Brooks called the meeting to order at 10:00 a.m. in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly S. Smith; President William J. Brooks; President Pro-Tem Norman P. Goldblum; Councilman Jack McDonald; Councilman Samuel C. McLendon; and Councilman Allen S. Wyett. Others attending for all or portions of the meeting were: Town Manager Peter B. Elwell; Town Attorney John C. Randolph; Police Chief Michael S. Reiter; Director of Planning, Zoning, and Building Robert L. Moore; Assistant Director of Planning, Zoning, and Building Veronica Close; Zoning Administrator Paul Castro; Town Clerk Mary Pollitt; and William Brisson, Consultant from Adley, Brisson, Engman.

II. INVOCATION

The invocation was given by Town Clerk Pollitt.

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by President Brooks.

IV. PROOF OF PUBLICATION

Town Clerk Pollitt verified proof of publication.

V. PROCEDURES FOR INPUT BY THE GENERAL PUBLIC

President Brooks said that anyone who wished to speak should feel free to do so either before or after an item on the agenda. He requested that all remarks be contained to three minutes in fairness to all.

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VI. 2001 - 2002 ZONING PROPOSAL STAFF REPORT, CONSIDERATION OF ITEMS 2, 8, AND 14 INCLUDING THE ZONING COMMISSION'S RECOMMENDATIONS AND REPORT DATED FEBRUARY 25, 2002, ON THOSE ITEMS

Item 2. An application by Sidney Spiegel to amend Chapter 134, Zoning, Division 11. C-PC PLANNED CENTER DISTRICT, Sections 134-1256. Purpose and Intent, 134-1257. Permitted uses, 134-1259. Special exception uses, 134-1261. Commercial uses; site plan approval for new buildings, new building additions or changes in permitted uses over certain floor area, 134-1262. Lot, yard and area requirements - Generally, respectively of the Code of Ordinances.*

Amend Sections 134-1256. Purpose and Intent, 134-1257. Permitted uses, (a)(1) by adding (dd) or 134-1259. Special exception uses (b), 134-1261. Commercial uses; site plan approval for new buildings; new building additions or changes in permitted uses over certain floor area; 134-1262. Lot, yard and area requirements-Generally, (4) Density, (6) side yard, (7) Rear yard (8) Height and overall height, (9) Lot coverage, (10) Length and (11) Landscape open space by to allow for a residential use, an increase in building dimension, identifying a residential maximum density, by allowing 3, 4 and 5 story buildings and increased building height and overall height, to created lot acreage and landscape open space requirements for a 4 and 5 story buildings in the C-PC zoning district.

In the alternative, amend Section 134-651, Establishment fo special exception planned unit developments, Section 134-652, Districts were permitted, Section 134-653, Minimum area requirements, Section 134-564, Residential Density, and Section 134-657, Open space and create Section 134-658, Lot coverage, Section 134-659, Height and overall height in PUD-5, Section 134-660, Setbacks from Lake Worth in PUD-5, and Section 134-661, Off-street parking and loading by creating proposed regulations to allow a special exception use for a Planned Unit Development which would regulate off-street parking, height and the number of building stores, lot coverage, landscape open space, setbacks, density and the mixed use of commercial and residential development in the C-PC zoning district.

Zoning Administrator Castro said the three items on this agenda were carry-over items from the November meeting where staff was asked to do further study on these items, and the first item was the Poinciana Plaza request by the owner of Poinciana Plaza where the original

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request was for zoning changes to allow multi-family in that zoning district. He continued that staff made a recommendation to further study a mixed use type of development, similar to a P.U.D. type of development, with the Zoning Commission requesting deferral for further study. In the interim, an agreement was reached relating to the Playhouse where staff further studied the P.U.D. concept and returned to the Zoning Commission. He added the Zoning Commission recommended the zoning remain the same on the subject property, based on the agreement from 1979, which kept the Poinciana Plaza in its current condition.

Responding to a request from President Brooks to comment on the 1979 agreement, Town Attorney Randolph replied the agreement contains a restriction that the portion of the Poinciana Plaza which is used as a theater continue to be used as a theater or for other similar purposes. He said the agreement has a provision in it which indicates that in the event the zoning is ever amended so as to allow for additional uses that the provision will no longer continue in existence. He said it was on that basis that the Zoning Commission decided that it would not entertain the proposal, because the Commission thought that might jeopardize the agreement, and they did not wish to do that.

Councilman McLendon asked Mr. Randolph how that condition could be imposed regardless of what happens subsequently? He offered the example if the tenant (Playhouse) did not pay the rent or fulfill their responsibilities.

Attorney Randolph replied, under that scenario, the terms of the agreement would still apply; presumably the consideration given in exchange for the ability to develop the property was agreed to by the owner of the property. He said until such time something would happen to change that condition, that condition would continue to be in effect.

Harrison Robertson, member of the Zoning Commission, said the Zoning Commission stated the application could properly be brought before the Zoning Commission because of the condition in the agreement, i.e. the owner was prohibited from making the request. Mr. Robertson said the record should also show that in the year following the execution of the agreement, containing the condition which was in 1979, the owner, Mr. Spiegel, came before the Town Council where he recognized the validity of the condition.

Mayor Smith asked Attorney Randolph what the next step should be and was the re-zoning of the Poinciana Plaza dead, once and for all?

Mr. Randolph responded that depended on the Town Council's action at this meeting if the Council accepted the recommendation of the Zoning Commission to disapprove the re-zoning, then that matter is at rest for this particular zoning season.

Mayor Smith questioned if that action would eliminate the threat of litigation by Mr. Brindell

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and his client?

Mr. Randolph replied that question would have to be answered by Mr. Brindell.

Mayor Smith said Mr. Brindell (*in the audience*) was nodding "no". She requested to hear from Attorney Brindell.

Attorney Jim Brindell, on behalf of Sidney Spiegel as trustee owner of the property, said he did not believe it eliminated the possibility of litigation, because they did not think the agreement was valid, certain terms if not all of the agreement, for a number of legal reasons. Mr. Brindell said it was not his client's intention to engage in long term litigation as this does not serve the Town or the client well. Mr. Brindell summarized the Town Council action approving the Zoning Commission's recommendation does not foreclose litigation for reasons that he and his client think are valid reasons.

Mr. Brindell said he thought when he and his client met with the Zoning Commission, the feeling was that everyone thought this property needs to be re-developed over some period of time, under some plan, and it is clear that the Town, if it allows that to happen, wants a master plan for the entire site which seems to be a reasonable request. He said presently the property is covered with asphalt and buildings with only 16% landscaped, open space on a ten acre site, and that site, redeveloped, could do much better than that. Mr. Brindell said he thought most people felt that a mixed use with residential and commercial components was not unreasonable, and that was compatible with the Town's Comprehensive Planning Policies. He said he and his client would like to be in a position where discussion with the Town could be handled creatively concerning how this property should be dealt with in the future rather than spending time and effort on a legal battle regarding the agreement.

Mayor Smith asked Mr. Brindell who in the Town would the discussions be with regarding the development of the property?

Mr. Brindell responded he would talk to anyone the Mayor and Town Council authorized to talk to him.

Mayor Smith said she understood Mr. Brindell's comments, but if the Town Council decides to deny the application to change the zoning at this meeting and dialogue continues, she would like to know what parties would be included and for what purposes.

Attorney Randolph said the Zoning Season is coming to an end, and that doesn't mean the issue could not be raised in conjunction with a new Zoning Season. He said whatever kinds of inputs Mr. Brindell has with staff or with individual members of the Town Council regarding a particular zoning item would be appropriate in anticipation of what might be

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expected next year.

Mayor Smith summarized that the anticipation would be to have a dialogue and return to the Zoning Commission in November with a plan.

President Pro-Tem Goldblum made a motion to accept the recommendation of the Zoning Commission to deny the application. The motion was seconded by Councilman Wyett. On roll call, the motion carried 5-0.

Item 8. Amend Chapter 134, Zoning ARTICLE 1, Section 134-2. Definitions and rules of construction, ARTICLE VI.. DISTRICT REGULATIONS., Sections 134-793, 134-843 and 134-893(b), Existing building lots, of the Code of Ordinances.

Amend Section 1134-2, Lot, by modifying the definition, and Sections 134-793, 134-843 and 134-893(b), Existing building lots, by modifying the language to clarify when a property can be developed or redeveloped for single-family homes on lots.

Zoning Administrator Castro said this item dealt with the issue of nonconforming lots, either of record or unplatted parcels of land. He said staff looked at specifically providing some flexibility in the Code as it related to these types of lots; however, the Zoning Commission recommended the Zoning Code remain the same—in terms of its language and the way it is interpreted—and that any property owner could apply for relief in the form of a variance.

Consultant Bill Brisson said the concept was to allow the separation of two parcels, one or more of which is non-conforming as long as it is non-conforming in area, width, and depth, and if it would otherwise create a conforming lot; because the current Code prohibits the separation of two lots if they are joined to make a conforming lot. Mr. Brisson said the flexibility was to allow each non-conforming lot to be developed individually if it meets at least 80% of the minimum required lot area and the lot width. He said most of the non-conforming lots would fall under the aforementioned criteria. He added that one of the conditions was that no structure would be left on either of the parcels where the structure was left non-conforming to one or another of the lot, yard, and bulk regulations; and one other suggested condition was that if this was granted, the person developing the non-conforming lot, under the stated criteria, would not be allowed to request a variance. Mr. Brisson said that was the summary of the item if the Town Council wanted to allow greater flexibility rather than maintain the current condition where the owner would appear before the Town Council with a variance.

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Councilman McLendon made a motion to accept the recommendation of the Zoning Commission to retain the present language in the Zoning Code. The motion was seconded by Councilman Wyett. On roll call, the motion carried 5-0.

Item 14: Amend Chapter 134, Zoning ARTICLE VI, DISTRICT REGULATIONS, Division 2 through Division 4, Sections 134-795, 134-845, and 134-895, Same-Exceptions to yard regulations, and Divisions 5 through 12, Sections 134-950, 134-1006, 134-1061, 134-1114, 134-1213, 134-1263 and 134-1308. Same-Exceptions., of Chapter 134.

Amend Sections 134-795, 134-845 and 134-895, Same-Exceptions to yard regulations, by creating subsections (4) through (6) and Division 5 through Division 8 and Divisions 10 and 11, Sections 134-950, 134-1006, 134-1061, 134-1114, 134-1213, 134-1263 and 134-1308. Same-Exceptions, by creating subsections (e) through (g) and Section 134-1164 by creating (g) and (h) which would allow open pergolas, arbors and trellises in required setbacks if certain conditions were met in all residential and commercial zoning districts except the Beach Area District.

Mr. Castro said that originally staff had not recommended approval of allowing these types of structure within setbacks, but after further study of definitions, the Zoning Commission recommended the three specific types of definitions and the allowance of open one-story pergolas to extend five feet into a setback provided the structure does not exceed a height of ten feet. He continued that the proposal also allows an arbor within the setback provided the arbor does not exceed a height of eight feet or more than fifteen square feet in area. In addition, one story pergolas, five feet into a setback provided they are not more than ten feet in height and one arbor would be allowed. He said these provisions would apply to commercial districts as well as the multi-family districts.

After discussion of the three proposed definitions, **President Pro-Tem Goldblum made a motion to accept the Zoning Commission's recommendation (approval of the changes). Councilman Wyett seconded the motion. On roll call, the motion carried 5-0.**

VII. DISCUSSION OF POSSIBLE CONSTRUCTION MORATORIUM RELATED TO DRAINAGE ISSUES INCLUDING CONSIDERATION OF THE RECOMMENDATION OF THE ZONING COMMISSION ON SAID ISSUE

Director of Planning, Zoning and Building Robert Moore requested this issue be deferred to

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the Monday, April 29th meeting where drainage will be discussed as many of the issues related to a moratorium are inter-related to drainage problems.

Town Manager Elwell added he agreed the integrated issues should be discussed together in terms of the scope of additional pipes and pump stations with the other side of the issue being consideration of addressing the private property issues that contribute to the drainage situation. Mr. Elwell suggested the Town Council may want to hear comments from the public at this meeting since several residents were in attendance at this meeting.

Mr. Moore read the recommendation of the Zoning Commission which stated the Commission, on a vote of 7-0, did not recommend a construction moratorium and recommended that the Town Engineer have further studies conducted related to impervious area lot coverage and topographical elevations in flood prone areas. He added the study envisioned by the Zoning Commission would be to evaluate existing conditions and potential for future development if properties were built to the maximum size allowed under the zoning regulations within those areas.

Councilman Wyett made a motion to defer the moratorium issue to the April 29, 2002, Town Council meeting to be held at 1:00 p.m. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

David Barton, Jamaica Lane, addressed the Mayor and Town Council and made the following comments:

"Some of you perhaps saw the letter to the editor that Mr. Weeks and I published this past Sunday on this subject. We have attended every meeting on drainage in the last three years. I think we are, if you want to call it, as close to the ground when it comes to dealing with drainage in the neighborhood and our own personal properties.

There are several things to be said. I was at the meeting when this was presented to the Zoning Commission which they returned a vote saying they did not have enough information to make a recommendation on a moratorium. They did not say specifically we're opposing the moratorium. They said they didn't have enough information, and the reason they didn't have enough information is the following things: none of the Zoning Board members had been in attendance at the February 13th Town Council meeting to hear first-hand the consultants detailed information on what and why they recommended remedial steps. The Zoning Board members had not even seen, more or less read, the consultants' five basin study reports. The Board members had not received an executive summary from the Town Manager's office. The Board members had no written recommendations on options to proceed with any of the consultants' findings, and no member was provided a critique of any kind of the consultants' work, even though the Town Council received one. It was one of the

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worst examples of staffing I have ever seen brought before the Zoning Board, and so I wanted that to go on the record, so you are taking it into account what you are getting from the Zoning Board, was under those conditions.

Next, I would consult with some council—in the article we wrote yesterday, we pointed out how did the Town get into this position in the first place? 1. In hindsight, it was negligence on the part of Town Councils in the past. They went in to a swamp area, and made subdivisions that were too small. They passed zoning laws without any differential between zoning and non-zoning areas, and that stands today. Nothing has been done to correct it.

2. Having done that, we who live in the north end are getting costly damages, complained about it, and finally, thanks to the Council, a study was done. The study came back and said it was worse than what we thought, grossly under-sized, and antiquated, couldn't be served, and came back with an astounding amount of money that they need to spend to correct it. The scope of services that was given to the consultants, in our opinion, was incomplete. It said to allow for existing lot coverage, and yet the zoning law allows for something like 80% increase under the maxing out provisions in those areas, and so we say that if you are going to spend \$50 million over the next 50 years without any allowance for change. That is a major flaw.

The second thing, when this got to the Zoning Board, the Public Works Department was there, Mr. Bowser, he was asked directly why does it flood in the north end. He couldn't say the simple thing that the engineers' report says because of excess lot coverage, excess lot coverage is doing it. All right. If you follow my reasoning, that the Council, in past Councils, not necessarily this Council, was negligent in not ever checking, by allowing this building to go forward, year after year, under the zoning laws, no differential for flooding. Now having been given the information, they are still allowing this to happen. When this is now, according to the legal thing, it's an entirely different category. It opens the Town up to class action suits for damages. It's willful negligence. It's not: I didn't know, gee whiz, what happened to us, how did that happen to us? Everybody knows what the problem is now. So I say that this business of a moratorium ought to be considered for another reason. The Council has talked, and I believe rightly so, that to attempt to correct this in any one fell swoop would almost be impossible, because of the disruption that would occur. Therefore, they are thinking this should be spread over a period of time, also because of financing, which of course is going to make it more expensive.

Well, if that is going to happen, something has got to be done to protect the existing people in that area. Last summer, in what we call the dead of summer, us seasonal people, they passed an ordinance, 15-01, which is supposed to be the wonder ordinance, and the wonder ordinance says: don't worry, you won't have to worry about any more problems about flooding in the north end. Go ahead and build within the maxing out of the zoning thing.

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No problem. Under the basis that you can measure accurately, and you can police and enforce Codes accurately on the retention of water, and you have no clinical trials, whatsoever, to back this up. I am contending, that to sort this thing out, there should be a time out to protect the Town and the residents in the north end until there is some proof that this can be done. We have none.

I would like to conclude by saying that I don't understand why, in the examination of the options of dealing with this, there is not also what I call a Blue Ribbon Board, because this is a very complicated big deal, and I believe this work can be done and be done less costly than what has been estimated. I think the people who ought to be doing this are the same type of people who have done things like this in developments all over Florida. They know drainage six ways from Sunday, and I believe you could save money. In the meantime, I submit to the Council that the Council has the responsibility of protecting the landowners now that they know what the cause is. If you don't attack the root cause and only try to get rid of water, after the water is there, that's insufficient."

President Brooks recognized Harrison Robertson.

"Harrison Robertson, a member of the Zoning Commission and a proud homeowner of 134 Seagate Road in the north end, and I am very much in favor of a moratorium, but when the matter came before the Zoning Commission, our learned counsel, Mr. Randolph, said you have to structure the law for a moratorium in two ways, one, you have to have a time limit, a time line on the period that the moratorium will be in effect, and second, you have to have findings, a recitation in the preamble of the legislation, if not in the legislation as to the reason why the moratorium was needed, and we didn't feel we had that information in hand at that time when we voted 7-0 to not have a moratorium. I would say now, after we have the evidence, that the drainage problem will be aggravated by further construction in the north end. Maybe now is the time to have the law enacted for the moratorium.

Thank you.

President Brooks said he thought the Council's decision to postpone, for at least a week, this discussion will provide the Council more time. He added that he wished to assure Mr. Barton that his remarks would be considered when the topic comes up again.

President Brooks called for additional comments from the audience.

"Hello, my name is John Kaywell of 201 Angler Avenue in the north end of Palm Beach. It took me thirty years to get back home. I grew up here. I planned it out, and I finally got here. When I read in the paper that you guys were going to tear up the streets for the next fifteen years, I was like 'what', so I haven't done any study whatsoever, and I am not an

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expert on this, but it would seem to me that possibly a very expedient solution, rather than spending \$40 to \$50 million and tearing up the north end for fifteen years, might be to look into hydraulic pumps on trucks. Maybe the trucks would cost a million dollars a piece, maybe we could have ten of them for the amount of time that the north end gets flooded. I understand the last one was November of 2000. Maybe we could look into something like that, because we certainly have the greatest fire department, and it may be expedient—the thought of putting up with the disruption for the next fifteen years is somewhat personally disturbing to me, and I was just hoping that maybe the Council think outside the box on this one and say maybe there are other solutions rather than the one that seems to be up on the board.”

Mayor Smith:

“My question, I suppose, for Mr. Moore and Mr. Brisson, Is really a week going to give you the time to gather together all the information that is being requested so that the Council can make some sort of decision a week from now, or are we going to be told that we still don’t have enough information, we’ll put it over to November?”

Robert Moore:

“I’d like to make my remarks clearer, and I apologize, Mayor. What we are telling you is that we believe that the issue of drainage and that system and whether or not you are going to have a moratorium and based upon the conditions that the Zoning Commission asked for, that is going to require a good bit of exploration, and there’s no question, if we do the study based upon what the Zoning Commission has asked for, it will be somewhat timely and also cost some money. So, what we are saying is that we think we ought to integrate both of them since they are being related to, verbally, by the public as well as some of our Council, we ought to talk about it at the same time. Frankly, we are doing a brief study for you in preparation for next week to try to tell you how many demolitions we have had over the last ten years; how many new house permits we’ve had; what we’ve had over the last six months of this year and six months last year, so you can see the trends in the north end.”

Mayor Smith:

“I understand that, but I think that the people here that believe that a week from today that the Council is going to make a decision whether or not to go ahead with a moratorium based on this study you are going to have ready, is not a correct statement. There has been no study, as I understand it, authorized, and to further pursue that, as far as the remarks that Mr. Randolph made at the Zoning Commission which I heard, he clearly stated, I thought rather clearly stated, that a moratorium could be certainly tailored in a very restrictive way. The Zoning Commission decided not to go ahead with asking Mr. Randolph to come up with various proposals for a moratorium, but as we’ve seen in the Town of Jupiter, they just declared one because of their traffic on the roads and it is a six months one, very narrowly tailored, and a moratorium can be as broad or as narrow as you want. I understood that is

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what Mr. Randolph said, and I thought that was quite clear at the Zoning thing, and actually gave the members of the Commission something to hang their teeth on if they wanted to, but you all elected—it was unanimous, 7-0, not to have a moratorium.”

President Brooks:

“Mr. McDonald, then Mr. Goldblum, then Mr. Elwell. Mr. McDonald, please.”

Councilman McDonald:

“Mr. Moore, can you tell us, at the next meeting, how many vacant, buildable lots there are in the north end?”

Robert Moore:

“Yes, sir.”

Councilman McDonald:

“You could. And also, if they were built to the maximum allowable under the Code and they had a two inch water retention requirement, how much additional water they pour into the streets where they are located?”

Robert Moore:

“I don’t know if I can give you that answer. I can give you the vacant lots. In theory, and I will say in theory, I am not an engineer, and I apologize, Mr. Bowser is not here this morning. I did not think he was going to be needed here to answer engineering questions. If there is any objection to that, it is my error.

In holding the first two inches, currently, before that ordinance went into effect, it was one inch that was required to be held. The older homes that were built in the 30's, 40's, 50's, and 60's, there was no requirement that any be held. Those were not developed to today's maximums as has been pointed out. Going beyond the first inch, and it is calculable by the engineers, and I have been told by our own staff and outside engineers, it can be done. What holding the first two inches will do, only will delay the water from getting into the system. So, it's designed to delay the water to let the existing properties take advantage of it first of the pumping system, the newer properties with one inch, and the ones today with two inches. So, you would have a three tiered system of allowing water to get into your pumping and drainage system. So, I am not sure I can give you any of the statistical answers, but we can certainly give you the number of vacant lots.”

Councilman McDonald:

All right, buildable, vacant lots.

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President Brooks:

"Mr. Moore, I want to applaud you on coming up with the study on demolitions. I think this is a healthy first step. The other thing, I don't think we can delude ourselves on the two inch. We have heard from experts about how these can experience clogging after--then of course it is no longer the Town's right to impose. It's the property owners obligation and sometimes it is difficult. Mr. Goldblum, then Mr. Wyett."

President Pro-Tem Goldblum:

"For the past year, maybe two years, we've kicked around a moratorium. I know I've suggested it several times. I know it's public knowledge that 70% of the homes in the north end are not built out to their total lot coverage. I think we deserve to put a moratorium in to protect the homeowners that are there now until we can figure out what we want to do, and that is how we ought to go. I mean, I can't consider doing anything else."

President Brooks:

"I think, Mr. Goldblum, that is a very valid point, and we will address that next week. Mr. Wyett, I think you're next. Yes, you are."

Councilman Wyett:

"Well, Mr. Moore will provide us the number of vacant lots. Anyone driving the streets of the north end knows there are almost no vacant lots. Most of the home construction you see is a home being torn down and a new home going up, and this season there are more additions to existing properties than new homes going up, but to tell residents that they can't add on to their property, let's say you have a 10,000 square foot lot, you have a 2,000 square foot house for a period of time that doesn't accomplish anything. It is just going to condense into some time certain, into the future, massive building programs as catch up. So, before we jump into moratoriums, we should very carefully see what the benefits are, and the only moratorium I can see is that we should take into account are those streets that are flooding or are due to be reconstructed and allow no construction on streets that are due reconstruction until that is completed.:

President Brooks:

"Mr. Wyett, perhaps you weren't here, that's exactly what we are going to discuss next week in connection with the drainage. So, Mr. Elwell."

Peter Elwell:

"Thank you, Mr. President. I also wanted to clarify. I think the fundamental, and Mr. Randolph will correct me if I am wrong, but based on many conversations that we've had about this issue, it's my understanding that fundamentally the decision you need to make is whether you are satisfied with the information that is before you or will be before you next Monday that are you satisfied with the information you have in order to make decisions?"

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—both related to the regulation of further re-development on private property and related to the decisions that need to be made about how we are going to move forward with the pipes on the pump stations. If you are satisfied with the information before you, and you're in a position to make decisions about those two things, you may not need to impose a moratorium and, in fact, Mr. Randolph may advise you that it may not be appropriate to impose a moratorium because you won't further be studying anything in particular. There is additional information we're bringing forward to you Monday. Monday, I think the most important decision that you are going to make, because I am anticipating that it is very likely that it will take some additional meetings to make some final decisions about the capital improvement program we're going to undertake, but, initially, one decision that will need to be made is do you have enough information before you on the re-development of private property issue or do you need more? Are there questions that are unanswered that you can't feel that you have made the appropriate final decisions on that part of this situation until you have more information, and if, in fact, you come to that conclusion, then we can tailor a moratorium, the Town Attorney can tailor a moratorium for you, that address what will not be allowed during a period when this matter will be further studied."

President Brooks:

"I believe, Mr. Elwell, this is the question that the Mayor raised and, to a degree, Mr. Wyett. So, there will be a lot of work ahead of us for a week from today."

Mayor Smith:

"One thing I hope, Mr. Elwell, is that next Monday we have some answers to the Phipps Development property. Is this draining into Miraflores? Are the walls filled with holes? Yes, it is draining into Miraflores, because I saw it. I mean, what the individual property owners have done there, I'm saying it to you because you are standing there—what the individual property owners have done that may be in violation of the approval they got for the subdivision and exactly what are the terms from the South Florida Water Management because, obviously, you don't have to be a rocket scientist or to understand pipes to know that since Phipps was built, it's flooding. I mean, that's it. We can see it, and we want to know why."

Peter Elwell:

"Mr. Moore, Mr. Dusey, Rob Walton from Code Compliance, and I met with residents of Miraflores on Friday afternoon, went into some back yards, were able to look at some of the things that we have been reviewing in records but have not been able to field review in some locations. In some locations, there had already been some field review. You are aware that there have been five letters that have been sent out requiring actions to be taken regarding that retaining wall. There may be additional enforcement actions necessary. We're going to be following up. In fact, there will be a letter going out, probably today, certainly early this week that you each will have a copy of well in advance of next Monday's meeting where

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you see the additional work that we are going to be doing specifically addressing that problem. Whether we will be in a position to make final, definitive statements on Monday or not, I think is doubtful, but you will be able to see clearly where we are in further pursuing that particular issue."

Mayor Smith:

"And we will have some answers. We must have some answers, because we have been talking about this for months."

Peter Elwell:

"We already do have some answers, and in fact the actions that have been taken will improve the situation, but there are additional answers that we need in order to be sure that we fully address the situation."

President Brooks:

"Mr. McLendon."

Councilman McLendon:

"Thank you, Mr. President. I would like to ask Mr. Randolph if he could be prepared on Monday to, if not today, to what extent in a building permit activity—now we're talking about construction is being done or proposed to be done—is required for us to put the two inch requirement on that property? Is it any construction? We can do that?"

Robert Moore:

"I can answer that, if you don't—unless..."

President Brooks:

"You're less expensive than the attorney, Bob. Why don't you answer that."

Robert Moore:

"It's currently new construction of new homes and major re-modeling and additions that would be more than 50% of the value of the house. It would not be for a 10 x 10 shed in the back yard."

Councilman McLendon:

"What would be required to make it more inclusive?"

Attorney Randolph:

"Amend the ordinance."

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Councilman McLendon:

"I know we are restricted in what we can do on private property. If we had permission from a homeowner, I assume we could construct an underground leaching system if we so chose. I guess it would have to be an easement?"

Attorney Randolph:

"You could get an easement from a property owner to undertake part of your drainage project if that was something that was part of an overall drainage project."

Councilman McLendon:

"I guess I am a little on the fence as far as a moratorium is concerned. I think I agree with Norman that if you have one, your final decision is a lot quicker than if you still are yakking about it, but I am not ready to vote for it at the moment. Thank you, Mr. Brooks."

President Brooks:

"Mr. Elwell."

Peter Elwell:

"One final clarification if I might, Mr. President. The issue of the enforcability or inspectability of the retention systems. How do we know that these two inch retention systems will, in fact, perform? We will, of course, have engineers in the room to address this with you as part of the drainage meeting next Monday, and they can explain better than I can the technical aspects of how reliable the analysis is to make sure that what's installed at the time of construction will, in fact, retain two inches. There remains an important question and a concern to us about the maintenance of these systems over time. We're currently working right now between staff and the Town Attorney to identify appropriate language that we can bring before you for an ordinance amendment that will allow us to, on some regular basis, go on to properties, inspect the systems, make sure that they are still functioning properly, and take enforcement action to require restoration of the systems if we find they are not functioning properly, so that is, no doubt, an essential ingredient to the long term solution. We can't have these things installed and then fail to perform three or five, ten years down the road, and we are taking some steps to move the Town in that direction."

President Brooks:

"Thank you, sir. Any other comments? Yes, Mrs. Victor."

Wendy Victor:

"Thank you, Mr. Brooks. For the record, Wendy Victor. I just have one additional concern to put before you. As I've read in the paper about our budget shortfalls and how building permits are down. We have less revenue, and at the same time we're looking at drainage and possibly spending money for that, and as we're thinking about building or building to the

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maximum is contributing to our drainage and infrastructure problems. I would just ask that you put these elements together as you are thinking about next week and thinking about the budget for July. I just wouldn't want to get a surprise that we vote to pay for something and then find out we don't have the income coming in to cover it."

President Brooks:

"Thank you, Mrs. Victor. Any other comments from the public at this time? Chairman of the Zoning Commission, Mr. Bertles. Jim?"

James Bertles:

"Good morning. Jim Bertles. Partially on behalf of the Zoning Commission and partially as an individual, resident of the Town. First of all, I can't start without commending you on your brilliance in upholding all the Zoning Commission recommendations so far. This perhaps could be a record, and I have found that in my experience that when we have Zoning Commission members in the audience, you tend to agree with us, and we are absent, because you go on for a long period of time, we all have to get back to our lives, you tend to disagree with us."

President Brooks:

"Jim, from the victory learn the parable, make sure you come to the Council meetings."

James Bertles:

"Having said that, I am not sure I can be here a week from today. I think I might have to be out of Town. So, I just want you to understand, and this part is on behalf of the Zoning Commission, the reason we voted 7-0 not to recommend a moratorium. It wasn't because we don't think there is a problem. We very much do think there is a problem. We don't think it is limited to drainage. That may be the lynch pin that you have to hang your hat on. We think it's not only drainage. We think it's the overbuilding in the north end, and we think, very importantly, that it's the construction congestion for lack of a better word, which I think is a safety issue with just too many trucks on the streets, and if we have an ordinance or a policy that prohibits that, maybe it's just not being properly policed, but it's very, very difficult with all of the congestion just to get up and down the streets in the north end. I think you all realize that.

So, there is a problem. We didn't feel, as Harrison said, we didn't feel we had enough information. We may have been wrong in that, but we didn't, at that time, didn't feel that we were privy to enough information to suggest or recommend a moratorium. Also, very importantly, we were advised by staff, and this goes to what David Barton was talking to you about. We were advised by staff, that Ordinance 15-01 would go a long way to correcting the problem. That the two inch drainage measure, level of service, and the standard that any future construction couldn't be any worse in the amount of drainage within the property

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would help the problem a lot. If you all, as the Town Council, don't think 15-01 by itself is going to correct the problem, you may seriously want to consider some type of specific, limited moratorium.

As an individual resident, I personally, I'm not speaking on behalf of the Zoning Commission, but I personally think that we are kidding ourselves by increasing our drainage retention from one inch to two inches is going to solve the problem. I do agree with David Barton. I disagree with him often, but mostly on how he goes about sending the message as opposed to the message that he sends, and I've told him that, but I think the message that he has given to you today is a good one, and that is what we need to do is look at the root cause of the problem. Why do we have the problem that we have today, and let's not use a band aid approach or try to figure out a band aid approach to solving it. That's something we will talk about tomorrow at our Zoning Commission meeting, and that's something that we hopefully will bring to you—some suggestions. I do think that you need to get out and as I will talk at the Zoning Commission meeting tomorrow, try to look outside the box and try to figure out what we should be doing from a big picture standpoint. Thanks.”

President Brooks:

“Thank you, Mr. Bertles. Mr. Goldblum.”

President Pro-Tem Goldblum:

“I asked this question one other time. In Key West and in the islands, we use cisterns to collect rain water, and I would suggest that we look into that for all new construction on the island. We're spending so much on land. The land costs more than the house usually here, and I think it should be built into the construction cost and have cisterns and that would do away with the two inch retention. I think I would still want the two inch retention, but I would want the cisterns, so I would ask Mr. Moore to look into that and see how that impacts building. Thank you.”

President Brooks:

“Thank you. Mr. McDonald, then Mr. McLendon.”

Councilman:

“Another thing for Mr. Moore—if he could tell us how many of those vacant lots are in the streets that are forecast to most severe in terms of the drainage problem.”

Robert Moore:

“Yes, sir. We'll coordinate that with Mr. Dusey. I don't have that information at my fingertips, but I'll coordinate that.”

President Brooks:

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"Mr. McLendon, please."

Councilman McLendon:

"Just a follow up on Mr. Goldblum's comments. Actually, the cisterns would be an effective vertical pool put in the ground, very commonly used on Long Island in sandy soils areas to get water back into the ground. In our situation here, ground water is so high in relation to grade, the distance is so short, that a vertical type unit is not apt to be cost effective, and I believe that the units being approved by the Town Building Department now include a precast, rectangular section, maybe 3 feet by 4 feet, running horizontally, my problem with what they are doing is that it's filled with stone, and I think if they used this fabric to keep the sand out of the units, you could get a hell of a lot more effective volume from it, and that's one of the things that's on my mind, but I haven't told the Building Department yet. Thank you."

President Brooks:

"Mr. Elwell?"

Peter Elwell:

"Nothing further on this issue. I do have one other matter, briefly, for you when you get to that point."

President Brooks:

"Before we leave this, as you know, good Counselor, the word 'moratorium' often has a pejorative feeling. I look at Jeff Smith as the architect, contractors, developers--so why don't we just scratch that word, and let's declare a truck holiday for five years or something like that. I am sure you can handle that, sir."

Mr. Elwell, your next matter."

Mayor Smith:

"One more question."

President Brooks:

"Oh, I'm sorry. Mayor Smith."

Mayor Smith:

"Yes, if you could clarify for me, Mr. Moore, Mr. Elwell, Mr. Randolph. What more are we going to discuss on drainage next Monday that we have not discussed for the last two years? We have gone through drainage; we've talked one inch, two inches, I don't know how you retain the two inches. This is why we have the experts, and I really don't want you to try and explain it to me, because it wouldn't make any difference."

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What more are we going to discuss next Monday? We had, already, at a previous Council meeting, approved a one year, a hundred year plan to solve the drainage. We then decided at the last Town Council meeting that perhaps that was too expensive. It was going to have to be broken up into phases. What additional information, in addition to the study that we talked about today, are we going to have next Monday? Because I really don't want to go through the pipe sizes again, the placements, and the connections, and everything that we have heard over and over and over. We're talking. We are not acting."

President Brooks:

"I think Mr. Elwell wants to take the first stab at that, Mayor Smith."

Peter Elwell:

"Actually, I'd be delighted. There will be some discussion of the nuts and bolts of the project that you may prefer not to hear again, because you have discussed it before, but it will be discussed in the context of approaching the street improvements, if you will--the capital improvement project of pump stations and pipes. From the perspective of possibly not implementing every recommendation of the drainage consultants if you wish to scale down the plan either in its overall scope or at least in the intensity of the construction that had been discussed previously. We have some thoughts about that. We have shared some of those thoughts. We will be providing a backup package to you that gives you quite a bit more detailed information, focusing on the work to be done in the streets and how we might approach that differently so as to make sure that we don't spend more money or be more disruptive than necessary to address the critical needs of the area. In addition, any further discussion of the locations and pipe sizes and things would be in that context, but in addition to that and the reason for asking you to defer action today is so that, in fact, has become increasingly apparent through the discussions both privately and publically on this issue, there is a need to address the potential moratorium and broader than that, the private property redevelopment regulation issues at the same time in an integrated fashion with the capital improvement side of this question. Not to do the two things and recognizing that they are related but making decisions separately, but to make a set of decisions together about how to approach the problem, and so there will be information brought forward to you, prior to the meeting, and at the meeting, where we look at the kinds of questions you have been asking today, and looking together at would additional action on the private property regulation side make it possible, perhaps, to go further in the effort to reduce the scale and intensity of the pipes and pump station solution? Together, we are going to be working towards an integrated approach to this, and one that will--the fundamental, bottom line goal remains to keep water out of the first floor of homes. There will still always be garages that flood. There will be a handful of homes, that no matter what we do, they are too low-lying for us to even prevent the first floor from being flooded. But, for the vast majority of homes, the goal will be that we keep water out of the first floor in the most economical fashion and in a manner where we cause as little disruption as possible, but recognizing that anything we

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do, of this magnitude, is going to be disruptive.”

Mayor Smith:

“All right. As a follow up to that, I was wondering if it would not be possible to have a representative from the South Florida Water Management District here. They seem to be the people who are going to make the ultimate decision and grant the permits for the amount of water that we will, or will not, be able to put into Lake Worth, and we have been hearing, and I certainly understand that they are holding up permits or it is very difficult, and it takes months of negotiations with them. I think if we could let them know now, and I have mentioned it to Pat Walker at one of the meetings, that we are going to be going for permits—have them here, maybe have them hear what we are going to do, and see if they can’t expedite the procedure once we decide to go ahead with our program.”

Peter Elwell:

“We have had initial contact from our staff to South Florida Water Management District staff and I’ll see if we can get the person from South Florida who is knowledgeable already what we are examining and what we are, in some fashion, going to move forward with, so they can come and give some feedback, publically, about that.”

Mayor Smith:

“Sure, and have them deal with upper level on staff, because the upper level certainly has been very supportive when I have spoken to them. Jackson, is that his name?—on what we’re doing, and ‘yes’ they don’t anticipate there would be problems in reviewing this as quickly as possible. So, I think if we can move this along and see what they say to us, it would be very helpful.”

President Brooks:

“Mr. Elwell, I think you said you have one other matter that you wished to discuss before we adjourn?”

VIII. ANY OTHER ITEMS

Peter Elwell:

Yes, sir. Very briefly, scheduling matter. We had talked at the last monthly Town Council meeting about the possibility of having an update about the Royal Park Bridge project for May 14th, and, in fact, the engineer and DOT have indicated their willingness to come and do that. You had heard last Friday at the City of West Palm Beach joint meeting, and I expected you may not need to hear from these folks in May but perhaps later in the summer. I wanted to get confirmation on that from you.

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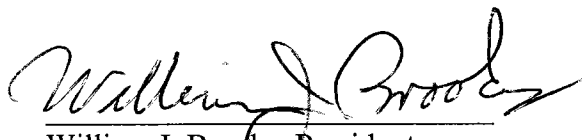
President Brooks:

“We’ll cancel that. It’s an excellent idea. We were updated last Friday. Not much is going to change between that and the 14th of May, so why don’t we schedule that, Mr. Elwell, later in the summer?”

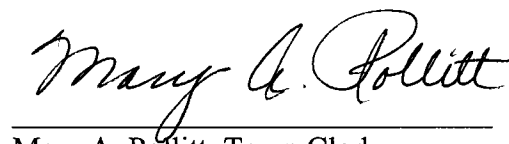
No other matters were presented.

IX. ADJOURNMENT

The meeting was adjourned at 11:17 a.m.



William J. Brooks, President



Mary A. Pollitt, Town Clerk