TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON APRIL 8, 2003

I. CALL TO ORDER AND ROLL CALL

The regularly scheduled Town Council Meeting was called to order by President William Brooks at 9:30 a.m. on April 8, 2003, in the Town Council Chambers. Upon 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 McLendon
Councilman Allen S. Wyett

Also attending for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Town Attorney John Randolph
Attorney John McCracken
Police Chief Michael Reiter
Police Support Services Major Gary Sallenbach
Director of Planning, Zoning & Building Robert L. Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Chief Code Enforcement Officer Brian K. House
Recreation Director Russell Bitzer
Public Works Director Al Dusey
Public Works Assistant Director Paul Brazil
Town Engineer James Bowser
Public Works Facility Maintenance Division Manager Joe Ugi
Human Resource Director William Crouse
Finance Director Jane Skittone
Fire-Rescue Chief Kent Koelz
Firefighter-Paramedic John Cuomo
Town Clerk Mary A. Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Robert "Kip" Little, Police Sergeant, Police Department, Upon His Retirement From the Town of Palm Beach After Twenty Three Years and Nine Months of Service.

Mayor Smith recognized Police Sergeant Little who began his career with the Town on April 2, 1979 and was promoted to Police Sergeant in 1984. She presented a Town ring to Sergeant Little in appreciation of his years of service.

B. Presentation of 2003 Town of Palm Beach College Scholarship to Brett L. Albritton by Mayor Lesly S. Smith - Program Sponsored by the Palm Beach Civic Association and the Citizens' Association of Palm Beach.

Mayor Smith said that Brett's educational goals are to pursue a career in the medical field specializing in orthopaedics inspired by his work with participants in the Special Olympics program. Mayor Smith noted Brett's accomplishments covered two pages, and presented him a check, sponsored by the Palm Beach Civic Association and the Citizens' Association of Palm Beach.

IV. COMMENTS OF MAYOR LESLY S. SMITH

In a year where tightening our belts has been the theme, we are pleased to find that our fiscal responsibility has been rewarded. Our bond ratings have been upgraded – citing specifically our conservative and solid management practices – so that the Town now has AAA ratings from both Moody's and Standard and Poor's. Much of the credit goes to Finance Director Jane Skittone for her skill in managing our financial affairs, and I want to recognize her for her dedication and outstanding work.

We have a couple of things on our agenda today that will be welcome news because they address problems of widespread community concern. Mr. Dusey will be presenting the staff recommendation on eradicating lethal yellowing palm disease, about which we have had numerous calls and letters. We will be hearing two proposals related to our growth management needs. The preliminary design for Town Hall renovation –

which is long overdue – gets this project moving, and I hope we can put it on an accelerated schedule. Also, Leslie Shaw will present recommendations by the Royal Poinciana Association related to FDOT's construction project on Royal Palm Way in summer, 2004. I think we should take these requests to heart, since the merchants along Royal Palm Way will be greatly inconvenienced by the project, and we have a responsibility to minimize any negative economic impact.

Finally, we are pleased to hear today Code Enforcement Board appointments and Recreation Advisory Commission appointments. We have such a wealth of talent and experience in Palm Beach, and the willingness of our residents to volunteer for boards and commissions is quite extraordinary. I congratulate the new appointees – and re-appointees – and I look forward to working with all of you.

It has been an honor to chair the Strategic Planning Board and to serve with such distinguished members. When we first met, it was a daunting task – a bit like looking at a ball of clay and envisioning from it a breath-taking sculpture. But somehow – thanks to countless hours of hard work, thanks to well-argued differences of opinion and negotiation, thanks to extraordinary ideas from Palm Beach residents, and thanks to help beyond the call of duty from our consultants, we did indeed shape a vision of our future. We present the proposed strategic plan today to the Town Council, confident that the future we deserve will come from the shared commitment we all make.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

DEFER Item XII.C.1.a.(1) Site Plan Review No. 15-2002 with Special Exception, Variances & Flood Variance to the May 13, 2003, Town Council meeting.

Councilman McLendon made a motion to defer Site Plan Review No. 15-2002 to the May 13, 2003, Town Council meeting. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

DEFER Item XII.C.1.a.(2) Appeal of an Administrative Decision Regarding Special Exception No. 15-2002 to the May 13, 2003, Town Council meeting.

Councilman Wyett made a motion to defer the appeal of an administrative decision regarding Special Exception No. 15-2002 to the May 13, 2003, Town Council meeting. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

President Brooks announced Item XII.C.1.a. Special Exception 6-2003 with Site Plan Review and Variance would be heard at the end of Development Reviews due to a death in the family of Architect Jeffrey Smith.

Councilman Wyett made a motion to approve the agenda as amended. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

VI. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Floyd Wideman, a resident of Eldorado Lane, said people who operate leaf blowers are blowing the yard trash into the street and leaving it there. He continued the yard trash is allowed to wash into the drains during a rain storm.

Mr. Wideman said the Town Council adopted the following goal in March 2002: Maintain strict zoning regulations in order to preserve and increase green space as well as the beauty of Palm Beach.' Mr. Wideman said the Council had forgotten that certain criteria must be met including a hardship must exist and the hardship cannot be self-created. He continued with the examples of two variances granted by the Town Council on a single piece of property: 1) a variance to build on a lot of 4,506 sq. ft. where the required minimum is 10,000 sq. ft. or a 55% reduction from the zoning regulations, and 2) a variance for a lot depth of 42.6 ft. in lieu of the 100 ft. required or a 57% reduction from zoning requirements. He added other variances were granted for a 9.4 ft. front setback in lieu of the 25 ft. required or a 62% reduction from zoning requirements; a variance for a rear setback for 8.0 ft. in lieu of the 15 ft. required or a 47% reduction; and a variance for a lot coverage of 36% in lieu of the 30% maximum allowed or an increase of 20% in lot coverage and the consequent reduction in green space.

Mr. Wideman said that all of these were apparently granted in spite of the fact that any existing hardship was self created, and the people who purchased the properties knew they could not build anything on the lot without a lot of variances, and they assumed they could get them and they did. He asked how the Architectural Commission could deal with the variances? He implored the Council to observe the regulations and follow the Council's stated goals and grant variances only if they meet all of the required criteria.

Joel Martino, 109 Ocean Terrace, distributed a letter from the Department of Environmental Protection regarding the Town's failure to complete the required midpoint monitoring of the recent Mid-Town beach renourishment project. Mr. Martino said this was a remarkable breech of trust and shows that Ms. Tate has not revealed the extent that she has tried to circumvent the regulations and environmental safeguards. He continued that despite many assurances from Ms. Tate and other Town officials, this incident clearly shows the lack of concern for the Town's natural environment. He questioned how the Town can do adaptive management when not even the most basic environmental monitoring is being completed as required by permits?

Dr. Sten Lilja,1330 North Ocean Boulevard, said he was quoting from the Palm Beach Daily News article from April 6th when President Pro-Tem Goldblum was quoted, "I think the Town Council and staff could do a better job of listening and communicating with all Town residents." Dr. Lilja said he delivered a letter on March 7th to Town Hall addressed to the Town Council, and to date no comments or communications were made to the letter which reveals and substantiates serious misrepresentation and obfuscations regarding beach matters amongst them the claim that the Town is committed to no more than $24.6 million for the so-called ten year plan. He said he maintains that the Town is morally, if not legally, committed as well to the Council's formally approved costs for the second half of the ten year plan and that Council must inform the residents of that fact.

Dr. Lilja asked the Council to not deprive the residents of the whole truth by using a legal technicality to mislead the citizens about the huge, potential total costs to the taxpayers. He proposed that points he brought up at this meeting and before be subject to public discussion and verification, rather than having Town employees present disingenuous and misleading information in letters to the editor of the Palm Beach Daily News.

Eric N. Gilbertson, 151 Chilean, said Council members encourage residents to attend Town meetings, but if the President of the Council denies a citizen the right to speak, citizens will shy away from the meetings. He continued that if the time of the Council is so limited, he suggested the Council should get a raise, and past Councils have recommended two day sessions for a meeting.

Mr. Gilbertson added there are no pedestrian crosswalk signs on South Ocean Boulevard at the Mid-Town Beach area, and with the new sand, there is more foot traffic plus the drivers go fast on South Ocean Boulevard. He said the Police Department told him the Public Works Department had no money to put in crosswalks that cost $400 each. He offered to donate $200 for the three needed signs totaling $1,200 if five other citizens would donate $200 each.

President Brooks said he does not deny citizens the right to speak, but out of concern for all of the citizens, the three minute limit should be observed.

Director of Planning, Zoning & Building Robert Moore requested Item XII.A.1. Appeal of Administrative Decision Which Denied Permission to Allow Property Owner to Change Addresses be moved to be heard in conjunction with item XII.C.1.c.Special Exception No. 8-2003 with Site Plan Review and Variances.

Councilman Wyett made a motion to move Item XII.A.1 Appeal to be heard with Item C.1.c. Special Exception No. 8-2003. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON MARCH 11, 2003.

B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON MARCH 25, 2003.

C. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON MARCH 31, 2003.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON MARCH 26, 2003.

E. RESOLUTIONS

1. None.

F. OTHER

1. Authorization to Proceed to Implement a Pet Waste Collection System. [Albert P. Dusey, Director of Public Works]

2. Formation of a Selection Committee for Electrical/Mechanical Engineering Services in Accordance with the Consultants' Competitive Negotiation Act (CCNA).
[Albert P. Dusey, Director of Public Works]

3. Approval of Request by Ballast Nedam Construction, Inc., to Extend Hours of Night Lane Closure on Royal Park Bridge to Pour Concrete. [Albert P. Dusey, Director of Public Works]

President Pro-Tem Goldblum made a motion to approve the Consent Agenda. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

VIII. COMMITTEE REPORTS

A. Presentation of the Proposed Strategic Plan.
[Mayor Smith and Members of the Strategic Planning Board]

Mayor Smith said it was an honor to work as chairman of the Strategic Planning Board and introduced the members who were present at the meeting: Bill Cooley, Al Flamm and Bill Watchman. She noted that the fourth member, Bruce McAllister, was not able to be present at the meeting.

Mayor Smith recapped the Committee met for over two years and thanks to hours of hard work, well argued differences of opinion and negotiation, extraordinary ideas from Palm Beach residents, help beyond the call of duty from the consultants, and Town Manager Peter Elwell and Deputy Town Clerk Susan Eichhorn, the vision for the future was shaped by the Committee.

Mayor Smith said the Strategic Plan is being presented to the Town Council with confidence that the future the Town deserves will come from the shared commitment all residents will make.

Councilman Wyett said in view of the two years of very hard work and the contributions of many citizens, the Town Council has an obligation to review the report; to incorporate items from it into the plan of the Town; and to include items from the plan in a vision of the Town's future if possible.

President Pro-Tem Goldblum said the Council has to study the plan and prioritize items in the plan.

President Pro-Tem Goldblum made a motion to accept the Strategic Plan as presented by the Strategic Planning Board with the Town Manager, or his designee, to develop a time sensitive schedule to be approved by the Town Council which will ensure that each of the recommendations of the Strategic Plan is brought forward in a timely manner for the consideration by the Town Council with appropriate actions being taken where deemed necessary at the discretion of the Town Council. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

President Brooks pointed out that most of the recommendations as set forth by the Strategic Planning Board have a time frame of on-going with the vast majority of those having been before the Town Council in one form or another. He added it will be incumbent, not only on this Council, but on its successors to work through the plan as presented by the Strategic Planning Board.

B. Recognition of the Strategic Planning Board Members for Their Service to the Town of Palm Beach. [Town Council President Brooks]

President Brooks said he wanted to add his appreciation to the Mayor's comments for the hours dedicated to the work of this committee. President Brooks presented plaques to Chair Lesly S. Smith, William Cooley, Alec Flamm, and William Watchman.

IX. REGULAR AGENDA

A. Old Business

1. Staff Recommendation for Action(s) Regarding Lethal Yellowing Palm Disease. [Albert P. Dusey, Director of Public Works.

Public Works Director Al Dusey recapped that at the March 11th Town Council meeting, the Town Council approved a program, including education of the residents informing them of the vulnerability of the Malayan and Maypan coconut palms to lethal yellowing as previously they were thought to be resistant to lethal yellowing. Mr. Dusey said the second phase of the program is the monitoring phase where the Town would examine 24 randomly selected properties based in half mile increments; inspect the palms quarterly; and determine if lethal yellowing is increasing or not.

Mr. Dusey said the Town Council approved the inoculation of all Town-owned susceptible palms including the palms that were underplanted in the rights-of-way, in parks, and other properties. He continued the estimate of palms on private properties is approximately 40,000 with approximately half of those being inoculated by residents on a voluntary basis.

Mr. Dusey discussed the Lethal Yellowing Service Alternatives Menu included with his March 31st memorandum that included the existing Town program at a cost of

$18,000/year (0 cost to residents), the approved Town program at an estimated cost of $26,000/year (estimated $600,000 cost to residents), the approved Town program providing contract for residents' use at an estimated cost of $26,000/year (estimated $240,000 cost to residents), the approved Town Program providing Town administered inoculation service at resident cost at an estimated cost of $26,000 cost/year with a $50,000 cost for inventory (estimated $340,000 cost to residents); and a program providing 100% inoculation of susceptible palms at Town cost with an estimated cost of $621,200/year with a $50,000 inventory (0 cost to residents).

Mr. Dusey suggested the least expensive program would be one where the Town competitively bid lethal yellowing contract services and allowed the residents to use that bid for their own private properties; paying the contractor directly but receiving the volume discounts of competitive bidding.

Mr. Dusey reported that Dr. William Howard from the University of Florida Research Center in Ft. Lauderdale was in attendance at this meeting with suggestions for involving his services to conduct a scientifically based study of lethal yellowing in Town at an approximate cost of $2,000 or $3,000.

Dr. Forest William Howard said he was the Associate Professor of Entomology at the Ft. Lauderdale Research and Education Center which is a research station maintained by the University of Florida, and he conducted research on insect pests of palms and tropical trees. He continued that he worked in the lethal yellowing research field in the 70's and 80's identifying the planthopper as the main spreader of lethal yellowing. He said the strategy for controlling the spread of the disease was to manage the ground cover that would lessen the incidence of the insect which can be done on coconut palm plantations but is hard to do with the turf grass conditions in Florida. He added that although he was not a lethal yellowing expert, he worked with plant pathologists who were.

Mr. Dusey reported the Jamaica Coconut Industry Board who was involved in the propagation of certified coconut nuts that keep the coconut industry moving forward had shown an interest in the Palm Beach lethal yellowing situation and asked Dr. Howard to comment on that situation.

Dr. Howard responded the certified seed is used by nurseries in Florida to provide new palms for the area with the USDA certifying Jamaica as the source of the seed. He said the Board visited South Florida in March and wanted to see the palms in Palm Beach. Dr. Howard said he accompanied them to Palm Beach, driving around in the area, looking at between 800 and 1,000 palms noting that one was diseased. He added that he observed one palm with lethal yellowing before coming to this meeting and did not see an epidemic of lethal yellowing in Palm Beach based on his observations.

Dr. Howard reported that once previously he had visited Palm Beach in 1992 or 1993 where it was reported a lethal yellowing epidemic was occurring and no evidence of lethal yellowing was observed.

Dr. Howard said a scientific survey including counting dead stumps might be advisable to determine the extent lethal yellowing was present.

Councilman Wyett asked what would the affect be on inoculated trees if the neighboring property had infected trees?

Dr. Howard responded the palms that were inoculated with antibiotics were fairly well protected, but as soon as inoculations stop, the trees would be susceptible to lethal yellowing. He continued if alternate palms are inoculated, as early experimental work determined, inoculated palms would be the ones usually saved.

Councilman McLendon questioned what was included for the $2,000 study?

Dr. Howard replied the study would provide scientific information, the details of which had not been worked out. He continued that people would be trained to recognize the disease and work with a designed program to determine how many palms were affected. He said usually students or part-time people would be employed to do the survey under his direction.

Yvelyne deMarcellus Marix, 1570 North Ocean Boulevard, said the discussion is very interesting, but the bottom line is that the Town has an epidemic, and the Palm Beach Country Club lost 100 trees in addition to the losses of many other residents in Town. She continued the Town should be practical and 1970's research should not be repeated. She added the Town should get a handle on the problem and determine how the costs should be paid for.

Mrs. Marix said she understood trees could be vaccinated for $12.00, three times a year, and it is not practical to expect residents to do the inoculations on their own due to the turnover of properties, etc. She suggested using the same people to inoculate who work for the Town of Jupiter who are the same people the Town employed previously. She added the approximate $450,000 costs could be defrayed by organizations such as the Civic Association, South County Road Association, etc.

President Pro-Tem Goldblum said he would like to maintain his own trees and he is willing to pay to have his trees injected while the Town maintains the Town trees.

Dr. Sanford Kuvin, E. Inlet Drive, commented that Councilman Wyett's remarks were extremely important—that the disease cannot be isolated. He explained he was an infectious disease expert and has worked with micro plasma which is the offending organism in the lethal yellowing case and called the phyto plasma in the plant, but the epidemiology of diseases remain the same regardless if they are human, animal, or plant. He continued that with a highly infective disease such as lethal yellowing, the information available from plant pathologists around the world and Florida and in his opinion, the Town of Palm Beach is in the midst of an epidemic.

Dr. Kuvin continued that whatever has been said about the non-epidemic in Palm Beach pales in comparison to the certified scientific existing facts. He added that reputable and creditable sources are accepted or the Town is doomed to lose the palm trees more quickly than slowly. He said, referring to Mr. Dusey's four suggested programs, the fact is that all trees have to be inoculated, Town or private, or it is a prescription for failure. Dr. Kuvin said an epidemic cannot be run by allowing some of the trees to be inoculated by owners while others are not.

Dr. Kuvin said Dr. Harrison's published report of 3 months ago states that approximately 80% of Maypan and dwarf Malayans are dead, infected with lethal yellowing, and the world is in the midst of resurgence of lethal yellowing. He said he would applaud the concept of a study, but if the appropriate scientific backup was gathered, it would cost more than $2,000. He continued that if the town chose to inoculate all of the trees, the only correct solution, a $500,000 budget should be established with $25,000 or $30,000 directed to Dr. Harrison and his colleagues to carry out a proper index of what is going on.

Dr. Kuvin said the incubation period for lethal yellowing is 12 to 18 months; therefore, trees that appear healthy today, may, in fact, be diseased and are spreading the disease. He noted that Jupiter originally followed the program from the Town of Palm Beach, and the Town has not taken notice of Jupiter's program.

President Pro-Tem Goldblum asked Dr. Kuvin if he agreed or disagreed if the Town inoculated trees, they would be immune from acquiring lethal yellowing?

Dr. Kuvin responded that the current wisdom is that if healthy trees are inoculated that are not infected with lethal yellowing, the tree will be protected against infestation by inoculating 3 times per year, but if infected trees are inoculated, the disease is only being contained, and the tree would undoubtedly die an earlier death. He continued that the two parameters for control are prevention by inoculation of healthy trees and control of infected trees.

President Pro-Tem Goldblum said his point was that if the Town takes care of its trees and individuals should take care of their own trees with the result that property owners who do not inoculate will have dead trees while the property owners who do inoculate will save their trees.

Dr. Kuvin replied that people, in his opinion, would support a concept of inoculating their own trees, but from an infectious disease point of view, if all the trees are not inoculated, with no exceptions, the epidemic will continue.

Nancy Murray, representing the Garden Club of Palm Beach, said if the Town Council agrees to go ahead with Dr. Howard's program, volunteers from the Garden Club would work under Dr. Howard's supervision. She continued these would be people who know the Town and are horticulturists and present during the summer months.

Mr. Dusey read the following from Dr. Harrison's letter:

"It is evident from the last thirty years that lethal yellowing is here to stay in south Florida as an endemic disease. The recent history of lethal yellowing is characterized by localized outbreaks which flare up in neighborhoods causing considerable concern among residents unfamiliar with the disease. Once the most susceptible palms have been killed, lethal yellowing subsides although reappearing in these neighborhoods several years later in palms lost to disease to be replaced by similar, vulnerable varieties or species.

"The ebb and flow of lethal yellowing has been apparent particularly during the last decade and reflects both numbers and maturity of palms in older and new neighborhoods alike and periodic redistribution of infectious planthoppers by major weather events.

"What can be done today in order to manage the disease? The first option is to do nothing. Let the disease run its course and eliminate the most vulnerable palms and then replant and replace with other palms as needed. A second option is to protect all coconut palms from acquiring the disease. This can be done by treating the palms with tetracyclines. As cell wall less bacteria, phytoplasms are highly sensitive to tetracyclines. Terramycine, administered to palms by trunk injection protects palms from contracting lethal yellowing. OTC, oxytetracycline, can be used as therapudence as well. If administered to palms in the early stage of the disease development, such treatments can arrest symptom development after which the palm recovers sufficiently to resume normal growth. OTC treatment is not a curative one, and symptoms will return on previously infected palms.

"A third disease management program might fall somewhere in between the two extremes I have just described. Such a program has been in place in the city of Naples...etc."

Mr. Dusey said the experts have expressed opinions that different actions can be taken—do nothing; inoculate every tree or do something in between. He continued that the Town Council had chosen something in between; allowing the residents to make their own decision to inoculate with the Town researching ways to make those costs more tolerable.

Mr. Dusey reported the Town has begun the inoculations of the Malayan and Maypan palms on Town property, and two inoculation cycles will be completed this year with an additional appropriation of $6,500 to cover the costs of doing inoculations with Town personnel. He continued that twenty-four properties in Town have been observed in ½ mile increments with one confirmed lethal yellowing in a total of 610 palms on the twenty-four properties.

Mr. Dusey said he recommended the Town Council adopt the contract method and allow the residents to use the contract for the greatest cost benefit. He added if all the trees in Town were inoculated, extra staff would be needed by the Public Works Department.

Councilman Wyett made a motion to appropriate $6,500 to cover the costs of doing inoculations with Town personnel; to provide educational materials to encourage Town Residents to inoculate their palm trees; and explore the possibility of having Dr. Howard's group identify a potential lethal yellowing problem.

David Leavitt, 1480 Via Manana, commented that he lost half of his susceptible palms during the past three years, and he depends on the Public Works Department every day, and they do a great job. Mr. Leavitt said he would like to see the Town not have the expense of the injections if homeowners would do their own injections. He said he has begun injections; the Town does have a problem; and he urged the Town to take action.

Councilman McLendon asked for a clarification of Councilman Wyett's motion.

Councilman Wyett said his motion was to appropriate $6,500 so the Town can immediately start an inoculation program for the balance of this year and suggest that at the current budget hearings that take place in June, an appropriation be put in for the full fiscal year of next year. That was the first motion. The second motion is to hire Dr. Howard and to accept the volunteers *(the motions were combined as one)* to make an assessment of all of the palms in the Town, private and public, so the Town can inform the private property owners of the perils that may be faced and the advantages of the inoculations.

Mayor Smith said she thought the residents could be informed immediately – providing names of companies they could call, and her concern was to not wait for the budget meetings. Mayor Smith added she would like to see the Town have a contract for the Town-owned palms and the private palms with the private property owners billed for the services. She expressed her concern with the time frame if action is not taken soon.

President Pro-Tem Goldblum, referring to the Mayor's comments, said the Town could contract with the three companies the Town uses and send a letter to residents naming the three contractors, including prices, and recommending residents moved forward in this manner.

Mayor Smith said she agreed with that statement.

Councilman Wyett said he would incorporate that with his motion.

Town Manager Elwell clarified the Town Council wanted to move forward with the third option in Mr. Dusey's memorandum that approved the Town program for providing a contract for residents' use which is the most cost effective way to provide something that can comprehensively address the threat to the Town.

Mayor Smith added this does not preclude during the budget season for the recommendation for the Town to come in and pick up the whole program, and this will be doing something to get it started now.

President Pro-Tem Goldblum seconded the motion. On roll call, the motion carried 5-0.

President Brooks thanked Dr. Kuvin, Dr. Howard, Mrs. Marix, and Mrs. Murray for their contributions to the discussion.

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President Brooks recognized Strategic Planning Board Vice-Chairman Bruce McAllister who was unable to attend the meeting earlier to receive a plaque and recognition by the Town Council.

President Brooks read the inscription on the plaque and thanked Mr. McAllister for his services.

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(Ordinance No. 3-03 was heard next – out of order. Transcript of same can be read under its placement in the regular Agenda))

2. Staff Update on Proposed Initiation of Foreclosure – 1496 North Lake Way, Code Enforcement Board Case Number 02-1396. [Robert L. Moore, Director of Planning, Zoning & Building]

Director of Planning, Zoning & Building Robert Moore reported that the owner of the property at 1496 North Lake Way had been given the opportunity to comply with the direction given at the last meeting, which was: clean-up property, sod it, landscape it, and eliminate the dumpster. The property had been photographed this morning, and Mr. Moore distributed the photos for the review of the Town Council. It was still the estimation of staff that if work continued at its current pace it would be near the end of July before a certificate of occupancy would be issued. It was the recommendation of staff that the foreclosure proceedings be initiated.

Attorney Greg Kino, on behalf of Mr. De Olaso, addressed the Town Council, distributing photographs of the property in question. He noted that he had also brought letters from neighboring property owners who supported Mr. De Olaso finishing the project. He briefly read the letters into the record:

Letter from Bill Radon, 224 Mediterranean Rd.
Petition signed by six property owners on Mediterranean Rd.
Letter from Michael Thomas Cashore, 224 Mediterranean Rd.
Letter from Bill Brothers, architect

Attorney Kino commented that the project had taken longer than the Town wanted it to, longer than a neighbor or two had wanted, and certainly longer than Mr. De Olaso had wanted. The renovation had been complex. Attorney Kino provided information on the other architectural works of Mr. De Olaso. He maintained that the contractor could not work any faster on the job; it was going incredibly well and foreclosure would take longer than finishing the job.

President Brooks pointed out that Attorney Kino had indicated at the March meeting that the project would be landscaped and ready to go by April.

Contractor Mike Ventura addressed the Town Council, stating that he had revised the schedule with a completion date of June 16, 2003. He stated that quality had been a big issue, and had delayed the whole standard process. He stated that he did not believe more manpower would help, and that there had been a big step from the point when he took over to the closing up of the walls. He stated that the most of the landscaping was now completed, and the only thing lacking was the 6" curb, and a drainage box. He estimated that the outside, everything visibile, could be completed by the next Town Council meeting in May.

After further discussion, Councilman Wyett moved that the owner be given two weeks to get the visual section of the property into first-class, finished shape, that was acceptable to the Building Department. He stated that if the owner failed to do so, he would then move for foreclosure at the next Town Council meeting.

In response to Mayor Smith, regarding the $25,000 cash bond, Attorney Kino replied that staff had indicated that it was not an acceptable amount; until it was determined that amount was adequate, it had not made any sense to do that.

Mayor Smith commented that to proceed any further without a bond was totally wrong.

Mr. Moore commented that staff had originally estimated $100,000 for a cash bond; obviously work had been done since that time and the figure would now be lower.

Attorney Kino commented that he did not want to tie up Mr. De Olaso's money so that the job could not be finished. He suggested that he could work with the Building Department in that regard.

Town Attorney Randolph noted that fines were accumulating at $250 per day, and the owner had the right to come before the Code Enforcement Board upon completion, and ask for a reduction or abatement of the fine because he had come into compliance. He cautioned, however, that even after completion, there would be the issue of how to handle the fines that had accumulated. He suggested that a satisfaction of lien rights could be incorporated within the bond, which would avoid having to go to foreclosure on the lien.

President Pro-Tem Goldblum moved to include in the bond the cost of finishing the project (135% of the cost), and add to that the $250 per day fine, up to the date of June 10, 2003.

Attorney Kino responded that Mr. De Olaso did not have $100,000 to give to the Town. He noted that the property was unencumbered; there were no mortgages against the property, and that was the Town's security.

Mr. David Leavitt, 1480 Via Manana, commented that he and two other neighbors were very upset with the project. He stated that he was a carpenter, and had designed solar houses, and that it was very interesting to watch the project in question proceed for two-three years. At least half the house was still under a tarp; there were two doors on the north side with plastic sheets; the owner was living in the house. He maintained that the project was affecting property values.

Attorney Kino proposed that a bond could be posted in the amount of 135% of the completion costs that could be drawn down as the job was being finished. Since the property was unencumbered, when the completion date arrived the Town could decide what it wanted to do. If Mr. De Olaso could not come up with whatever costs were decided, a mortgage on the property would have to be put on the property to pay the fine.

President Pro-Tem Goldblum moved that foreclosure proceedings would begin if the project was not: completed by June 10, 2003, with all conditions met. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

Mr. Elwell clarified that if the project was completed by June 10, the matter would be included on the June 10, 2003, agenda for the purposes of reviewing the fine.

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

****The Town Council Meeting of April 8, 2003 was reconvened at 2:00 p.m.****

3. Staff Update on Proposed Initiation of Foreclosure – 317 Garden Road, Code Enforcement Board Case Number 02-1417. [Robert L. Moore, Director of Planning, Zoning & Building]

Chief Code Compliance Officer Brian House reported that, to date, the windows had been removed from storage on the back of the property; the gates had been secured, however one gate was unsecured again; the trash had not been removed from the alleyway; the property had not been sodded, seeded, or irrigated. He recommended that foreclosure begin on the property.

Town Attorney Randolph noted that he was not able to give advice regarding this property, since Attorney McCracken, of his office, represented the owner of the property in some previous pending litigation; in the event the Town went forward with foreclosure, another law firm would be required to handle the matter.

Director of Planning, Zoning & Building Robert Moore suggested that, since Attorney Royce was not present to represent the owner, there should be some effort to inform the owner and postpone the matter for one more month.

Councilman McDonald recommended that foreclosure proceedings begin.

President Pro-Tem Goldblum moved that the owner be given 15 days to comply with the requirements of the Code Enforcement Board, and if that was not done, foreclosure proceedings would begin. Councilman Wyett seconded the motion. On roll call the motion carried unanimously.

4. Staff Update on the Sea Lord Hotel Property, 2315 South Ocean Boulevard.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Chief Code Compliance Officer Brian House reported that presently there was a fine of $250 per day commencing February 25, 2003, and it was continuing because no meaningful work had been accomplished to date. He noted that the property owner was also being brought before the Code Enforcement Board for a separate issue, since it had been found that the lack of a structural covering of the swimming pool was not part of the original case.

Attorney James Brindell stated that he had represented this project in the past, however, he had not heard from the client for over a month. He noted that he had advised his client of the pending code enforcement violation, but had not heard back from the client to date.

Town Attorney Randolph explained that the foreclosure would not be recommended until the matter again went before the Code Enforcement Board; the Statute required that the lien be filed for 90 days before moving forward with foreclosure recommendations.

Mr. House indicated that the building was secure as of yesterday, with all gates closed and locked; there was no place of entry on the first two floors. He noted that their approvals for development that had been acquired would expire in June 2003.

Town Manager Elwell clarified that it was hoped to have the matter come back before the Town Council in June, assuming that the situation had not changed, however, the timetable to adhere to Statutes and to bring everything properly before the Code Enforcement Board may require it to wait until July.

B. New Business

1. Proposal from Hartman and Associates for Conceptual Study and Cost Analysis of a Proposed Emergency Water Supply System. [Albert P. Dusey, Director of Public Works]

Public Works Director Dusey reported that a proposal had been obtained from Hartman and Associates to complete a feasibility study of an emergency water supply system for the Town of Palm Beach. He recommended approval of a not-to-exceed amount of $21,090 from the Capital Improvement Fund contingency for Hartman and Associates to evaluate the Town's system.

Councilman Wyett suggested that the study be tabled until discussions could take place with the City of West Palm Beach regarding their proposals regarding an emergency water supply, and that the use of temporary R-O facilities be considered. He suggested that the issue was being approached in a piece-meal manner, and that various R-O vendors would provide plenty of information to the Town Council, so that a more comprehensive decision could be made. He suggested that the Town Council conduct a workshop in this regard.

Town Manager Elwell explained that the Strategic Plan included the recommendation that the study be conducted, with the indication that a feasibility study would be conceptual, in order to determine whether an emergency system, that could be activated on short notice, would be practical.

After discussion, Councilman McDonald moved that the issue of the emergency water supply system be referred to the Public Works Committee for further study. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

2. Proposal from Digby Bridges, Marsh & Associates for Evaluation and Conceptual Design for Town Hall Renovations.

[Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported that renovations of the Town Hall were proceeding. The procedure would begin with a thorough evaluation of the utilities in the building, the structural walls, and a preliminary design that would lay out how each department would function. The renovations would not start until the new fire station was completed and occupied. He requested authorization to appropriate $63,500, from the Capital Fund contingency to fund the proposal obtained from Digby, Bridges, Marsh & Associates.

Councilman McDonald moved approval of the request to appropriate $63,500 from the Capital Fund contingency to fund the proposal for evaluation and conceptual design for Town hall renovations, obtained from Digby, Bridges, Marsh & Associates. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Request by Royal Poinciana Association for Town Council Endorsement of Certain Elements to be Included in the Plans for FDOT'S Royal Poinciana Way Construction Project During the Summer of 2004. [Leslie A. Shaw]

Mr. Leslie Shaw, on behalf of the Royal Poinciana Association, stated that all of the issues had been addressed in the plans for the Florida Department of Transportation (FDOT) Royal Poinciana Way Construction project. He stated that the proposed 120-day project was the substantial completion (meaning that the infrastructure would be in, the construction completed). What would not be included in the 120-day period would be final landscaping, irrigation issues, signage, etc. There were two pending issues: the license agreements between the property owners and FDOT; and the median area, which was under the guardianship of The Garden Club. Final plans were being drafted, which would be coming to the Town Council for review. He thanked the representatives of FDOT, and the Town Council for allowing the ability to make suggestions for the project.

Town Engineer Bowser clarified that the 120-day schedule were 120 working days, not typical calendar days. He estimated that the 120-day work schedule would equal 163 calendar days.

FDOT Project Manager Fernando Moralez commented that the post office located on S. County Rd. was registered as an historical building, and although the sidewalk was an FDOT property, the fact that the building was an historical building may delay the project. He stated that he asked the designer to evaluate the design regarding the sidewalk in front of the post office

4. Code Enforcement Board Appointments.
[Robert L. Moore, Director of Planning, Zoning, and Building]

After casting ballots, the following appointments were made to the Code Enforcement Board:

Regular Members: Gene Lawrence, Hugh Davis III, Tom Youchak

Alternate Members: George Klein, Elizabeth Murphy

5. Recreation Advisory Commission Appointments.
[Russell E. Bitzer, Director of Recreation]

After casting ballots, the following appointments were made to the Recreation Advisory Commission:

Regular Members: Milissa Agnello, Bill Bone

Alternate Members: Michael Andrews, Timothy G. Coffield

X. ORDINANCES

A. Second Reading

1. Ordinance No. 10-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Investment Policy of the Town at Section VI, Authorized Investments, to Incorporate a New Item G Allowing for Investments in Corporate Bonds Rated A or Higher; Amending Section VII, Investment Parameters, at Paragraph 2 Thereof Relating to Maximum Maturities; Amending Section VIII, Performance Benchmark; Amending Section XI, Reporting; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[Jane Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 10-03 by title.

Councilman Wyett moved approval of Ordinance No. 10-03 on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

B. First Reading

1. Ordinance No. 3-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to Benefit Group Firefighter and Benefit Group Police Officer in the Retirement System; Adding Section 82-74 to Establish Share Accounts for Certain Moneys Received from Florida Statutes Chapter 175 and 185 Tax Revenues; Providing for Rollovers; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John B. McCracken, Esq.] *(Deferred From January 14 and March 11,2003, Town Council meetings)*

Attorney John McCracken explained the original backup package delivered to the Town Council involved both Chapters 175 and 185 of the Florida Statutes which involve Firefighters (175) and Police Officers (185). He continued that the Police Officers decided they do not want to pursue, at this time, their application to the Town Council to set up a share account; and therefore, would prefer that their issues be deferred. He said the substitute ordinance, recently submitted, eliminated Chapter 185 and Police Officers from the pending request for share accounts which now only relate to Firefighters.

Mr. McCracken explained that Chapter 175 of the Florida Statutes allows the Town to impose a premium tax, which the Town has imposed a 1.85% premium tax on fire insurance companies and property insurance companies which write fire and property insurance policies within the Town limits, that tax is collected by the State; and that money is remitted to the Town called 'Chapter Monies'. He said these Chapter Monies may be utilized to fund the firefighters' pensions, and the premium tax may or may not be levied based upon the election of the Town. He continued that several years ago when Chapters 175 and 185 were dramatically amended, discussion took place regarding if the Town would continue to participate in receiving Chapters 175 and 185 monies, and the decision was to continue receiving monies.

Mr. McCracken recalled the concern was that the boards had to split under the new legislation into a Public Safety Board and a General Employee Board, and extra restrictions were put on both the Pension Board and the Town resulting in a debate if it was worth it to get the money back from the premium tax. He continued that the Public Safety Board deals with both Chapter 175 and Chapter 185, Firefighters and Police Officers, but today the concern is with the firefighters.

He said that two years ago, the Public Safety Board proposed an increase in benefits to the Town Council with the multiplier being increased so that the pensions would be enriched, and the Town Council approved the recommendations of the Board with increased benefits implemented for both firefighters and police officers. He added that the benefits were applicable to existing members of the pension plan, and members of the pension plan are employees of the Town who have not retired; although a person can be an employee of the Town who has retired and are 'drop' participants. Mr. McCracken explained the drop plan allows those individuals who qualify for retirement to enter the so-called drop program, and under the drop program, they may continue their employment with the Town and their pension payments are payable to their drop accounts. He continued when the increased benefit was passed, it did not apply to drop participants; it did not apply to retirents; and it only applied to employees of the Town after certain dates. Mr. McCracken said the Town has Town employees who are drop participants who are working side-by-side with other employees of the Town who are members of the pension plan, and the members are receiving benefits that the drop participants are not thus causing some friction and disappointment on behalf of the drop participants that they were not included in that particular benefit enhancement.

Mr. McCracken said an actuary for the retirement plan incorporated the chapter monies into the other monies that are funded by the Town to pay for the increased benefit, and the Public Safety Board recently determined that was the case and commented that was not the intention—to use the Chapter monies to pay for the increased benefit. He continued that the reason for referring this item to the Town Council at this time was that the Public Safety Board has been working for more than a year to bring a plan for a share account whereby the members of the pension plan have separate accounts set up to share in chapter monies, and the design of the share account ordinance is that whatever chapter monies that have not been previously designated for benefits for firefighters that come from the premium taxes, disbursed by the State, would go into the share accounts.

Mr. McCracken said if the chapter monies are utilized for paying the benefit improvement that was in the multiplier from a year and a half ago, then less money is available for the share accounts. He continued that the issue at this meeting is to see if the Town Council would reconsider and direct that the benefit improvement that was provided to give the 3.25 multiplier would be paid, not through chapter monies, but through other Town resources so that the chapter monies would go into the share accounts.

Town Manager Elwell said Attorney McCracken's description is accurate with the first Town Council decision related to the question if the Council wants to revisit the funding of the benefit improvement from the fall of 2001, and the second question is consideration of Ordinance 3-03 which addresses only the Fire-Rescue employees.

Mr. Elwell noted the backup material provided information regarding the chapter monies, and the legal opinion provided by Attorney Jim Lind concluded that the Town has no obligation to change the funding, and this is a policy decision for the Town Council as far as the financial implications for the Town and any other considerations the Council would give to the previous decision. He explained that there was nothing incorrect or inappropriate about how the matter had been handled to date; there was nothing to fix or correct, and it was now a judgment call to be made as to the baseline matter. There was also information in the back up regarding the implications both to the taxpayers and to the employees regarding whether or not the baseline is changed through funding the 2001 improvement differently than how it had been funded to date.

Attorney McCracken added that the share account ordinance was applicable to not only members, but also to drop participants, through a special provision in Chapter 175, which allowed drop participants to participate through a supplemental plan in this type of benefit.

Fire Department Public Safety Board Trustee John Cuomo addressed the Town Council, reading a statement of concern to the first issue, in regard to why it would be appropriate to amend the way it was originally paid for, instead of out of 175 Chapter money being paid for by the tax money. He stated as follows:

> "First let me state that we at the Fire Department are making no accusation of wrong doing on anyone's part whatsoever, or any inappropriateness as to the way it was funded. I believe there may have just been a misunderstanding and we've come today to see if we can rectify this. There is a large group of firefighters here today, as you've recognized, so please let me assure you that they're not here in any adversarial way whatsoever. We're here because this is an issue of one that deeply concerns us. If I may, I'd like to explain to you why. The Town of Palm Beach has a group of firefighters that take a lot of pride in their job. In fact, we believe that we deliver the best service, not just in Palm Beach County, not just in the State of Florida, but we believe that we deliver the best service in our country. Our beliefs are validated constantly by firefighters throughout the country when they hear about the things we are doing here, and although that we believe that we are exceptional at our job, we know that when we cross that bridge each morning we are part of a team of good employees throughout the Town; a team that

includes the Police Department, Life Guards, the Personnel Department, the Maintenance Departments, the Dispatchers, and all of the others that are employed by the Town. About a year ago all of the Town's employees asked for an increase in their pension benefit; an increase in the amount of a (unintelligible) percentage, as Mr. McCracken brought out. All of the general employees, which include all your Town employees, with the exception of Police and Fire, received this increase paid for by the Town's tax payers. The Police and Fire Department asked also for an increase in their pension benefit. We did receive it, but it was paid for by State dollars, and not the Town's tax dollars. Because the Police did not have enough State dollars, you, as the Town's taypayers, are paying essentially 98% of their benefit, about 98% of their benefit. When the Town approves to pay for a benefit for us, as firefighters, we consider it as a thank you from you as a job well done. A thank you is very important to us. It is important to us as a group, who are willing to risk our lives everyday that we come to work. The way it has worked out, and again, with no accusation of inappropriate behavior whatsoever, but the way it has worked out – essentially all of the Town's employees, with the exception of the firefighters, will have this benefit paid for by Town's tax dollars. I can explain to you why throughout the paperwork, if you wish to see that. We're here to ask that our benefit also be paid for by Town's tax dollars, and not the State tax dollars. Also, I would like to show you, throughout the paperwork, how it will not be as expensive as you might think. So, that's my statement, and if you have any questions I'd be glad to answer them and show you in the paperwork things that I brought out."

In response to the request from President Brooks for an explanation of the statement relating to the tax dollars that pay Town employee pension benefits, with the exception of the firefighters, Town Manager Elwell explained that State Statutes provide for what was called "chapter money," -- Chapter 175 and Chapter 185 -- in the case of the firefighters, Chapter 175. Those funds are provided explicitly for the provision of additional benefits to the public safety officers, both police and fire. It has been a normal procedure, other than when the funding of the benefit improvement is explicitly described as being other than with chapter money – in some cases a sharing of costs with employee contributions to the fund, and the Town tax dollar contributions to the fund – in other cases purely from Town tax dollars. In cases where that is not explicitly identified as being the funding source, it was normal and proper that Chapter 175 money, in the case of the firefighters, be a source of funding for providing improved benefits. There was no such source of funds that exists at all as regards general employees, and Chapter 185 money is available to provide that same benefit to the Police Department. The chapter money, based on the formulas and the type of insurance that each, in its own right, is attached to, is a surcharge on the premiums paid by the Town residents. Because the 175 fund has so much more money in it, and flowing through it, than the 185 fund, it is true that the Town taxpayers subsidize a portion of the police benefit; a portion is also paid from the remaining available funds of the Chapter 185 money. Chapter 175 money was sufficient to pay for the benefit for the fire-rescue officers, and above and beyond funding that benefit, there are still additional Chapter 175 monies that are available to fund the share accounts being proposed today. He explained that the equity decision was a policy decision about whether to re-visit the 2001 decision or whether to move forward.

Councilman Wyett commented that the source of the Chapter 175 funds is provided by the taxpayers, because they paid a tax on their insurance premiums; he noted that high property values dictated higher insurance policies; higher insurance policies provide higher premiums which, in turn, provide more funds for the Chapter 175 money. He stated that since there was adequate money in the Chapter 175 fund, and enough money left over for share accounts, he would have trouble taxing the residents for additional money, since the Chapter 175 funds were sufficient.

Town Manager Elwell explained that the Town Council did not need to take an action on the baseline issue, unless there was a change in the decision made in 2001; the appropriate motion at the moment would be to move approval of Ordinance No. 3-03. He noted that if the ordinance was adopted without a change in the baseline, each firefighter would receive approximately $2,500 in an initial payment and then approximately $1,000 per year in the future.

Town Attorney Randolph read Ordinance No. 3-03 by title.

Councilman Wyett moved approval of Ordinance No. 3-03 on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

2. Ordinance No. 11-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 114 of the Code of Ordinances Relating to Taxation; at Section 114-43 Relating to Fees Charged for Occupational Licenses; Providing for the Amendment of Fees and Addition of New Occupational License Categories; Providing for Severability; Providing for Repeal of all Ordinances or Parts of Ordinances in Conflict; Providing for Codification; and Providing an Effective Date. [Veronica Close, Assistant Director of Planning, Zoning & Building]

Town Attorney Randolph read Ordinance 11-03 by title.

Town Manager Elwell explained that the original fees had been arrived at several years ago by a Blue Ribbon Panel, in accordance with a procedure established by State Statute. Another Blue Ribbon Panel could be created, or, a standard percentage increase was allowed every other year, without having such a panel.

Director of Planning, Zoning & Building Robert Moore explained that at the time that the Town Council had previously appointed a Blue Ribbon Panel, as allowed by the State of Florida, to examine the occupational license fee structure, they were allowed to address only an increase of the existing fee structure.

President Pro-Tem Goldblum moved approval of Ordinance no. 11-03 on first reading. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XI. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

Councilman McDonald complimented the Public Works Department on the handling and efficiency of a trash pick up request that a resident had experienced.

Councilman McLendon requested information from Public Works Director Dusey concerning the replacement of the Everglades Island transmission replacement, with regard to his suggestion that the project be postponed and the money used for replacement of other pipes in Town.

Mr. Dusey indicated that he would request a response from Town Engineer Bowser.

XII. DEVELOPMENT REVIEWS

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

A. Appeals

1. Appeal of Administrative Decision Which Denied Permission to Allow Property Owner to Change Addresses for 100 Everglade Avenue and 101 Seminole Avenue. [James R. Brindell, Esq.] **(Staff Recommends This Matter be Considered Prior to Special Exception No's. 7-2003 and 8-2003 with Site Plan Review and Variances at Item XII.C.1.c. and XII.C.1.d. Below)**

B. Time Extensions

1. None.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. <u>SITE PLAN REVIEW NO. 15-2002 WITH SPECIAL EXCEPTION, VARIANCES & FLOOD VARIANCE</u>

(1) The application of F.J.K. Properties, Inc., and F.J.K. Properties III, Inc. - Frederick R.Keitel, President relative to property described as Lot 39, Block E of Revised Map of Royal Park Addition to Palm Beach for the four-story building to be rebuilt and Lot 40, Block E to include the adjacent building that shares parking pursuant to a Declaration of Covenants and Restrictions; commonly known as 230 Royal Palm Way; located in the C-OPI Zoning District. Requesting Site Plan Review with Special Exception and Variances to demolish and rebuild a four-story office building with no increase in the total floor area or gross leasable area to be constructed substantially within the same building footprint as the existing building; variance to allow a 4.5 ft. front setback in lieu of the 21 foot minimum required; variance to allow a zero (0.0') side setback on

the east and west property line in lieu of the 21 ft. minimum required; variance to rebuild four stories in lieu of the three-story maximum allowed by special exception; variance for a maximum height of 44.17 ft. (as measured from the floor) in lieu of the 35 ft. maximum allowed in the C-OPI zoning district; variance to add an additional four feet of height increasing the total height to 48.17 ft in lieu of the 40 ft. maximum allowed.; variance to have 28.55% lot coverage in lieu of the maximum lot coverage of 25% allowed; variance to have 11.39% landscape open space in lieu of the 30% minimum required and to provide 5% front landscape open space in lieu of the 35% minimum required; variance to provide air conditioning units 8 ft. above the roof in lieu of the 3 ft. maximum allowed; variance to provide 36 off-street parking spaces in lieu of the 61 spaces required; and, a flood variance to maintain the existing first floor elevation at 4.8 ft. NGVD in lieu of the 7.5 ft. NGVD minimum requirement.
(Deferred From December 10, 2002 and February 11, 2003, Town Council meetings) **[Staff recommends Deferral to the May 13, 2003, Town Council Meeting]**

(2) Appeal of an Administrative Decision Regarding Special Exception 15-2002 (230 Royal Palm Way). [Raymond W. Royce, Esq., Holland & Knight, LLP. *(Deferred From December 10, 2002 and February 11, 2003, Town Council meetings)*
[Staff recommends Deferral to the May 13, 2003, Town Council Meeting]

b. <u>SPECIAL EXCEPTION NO. 6-2003 WITH SITE PLAN REVIEW AND VARIANCE</u>
The application of Kevin M. and Lisa McGovern relative to property described as Lots 527 and 528 (less westerly 81 feet) and Lots 532 and 533, Poinciana Park 2nd Addition; commonly known as 224 South Ocean Boulevard; located in the R-B Zoning District. To allow construction of a beach cabana in the Beach Area/R-B Zoning District which is 21.75 feet x 51.5 feet in lieu of the 10 feet x 20 feet maximum allowed; variance for beach cabana having 1,003 square feet in lieu of the 200 square foot maximum allowed; and variance for a beach cabana which is 9 feet in height, 21.5 feet in overall height in lieu of 8 feet height and 12 feet overall height maximum allowed in the Beach Area District.

(Deferred From February 11 and March 11 ,2003 Town Council meetings)

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Ron Kolins, by President Pro-Tem Goldblum with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the applicant had worked on a compromise with the neighbors, and now had reduced the size from 1,003 sf to 635 sf.; the height and width of the structure had also been reduced. He presented a graphic rendering of the structure, explaining the architectural details. He discussed the meetings/conversations held with neighboring property owners.

Zoning Administrator Paul Castro provided staff comments, stating that staff questioned the hardship related to the size and height of the proposed cabana.

Mr. George Klein, 130 Seaspray Avenue, addressed the Town Council, stating that he had attended the meetings held, and had no objections to the plans themselves; he noted that the house was in need of a great deal of repair, however, and suggested that the applicant should not be allowed a variance of any kind at this time.

Attorney Peter Broberg, on behalf of Mr. and Mrs. Lowenstein, the neighbors to the south, addressed the Town Council, stating that they applauded the McGoverns for the efforts being made, however, the proposed cabana was not in compliance with the Code requirements. He suggested that future development would take place on the property in between the two properties, and pointed out that whoever bought those lots would be requesting variances of the same type.

Attorney Kolins commented that each case should stand on its own merits; in this case, one part of the hardship was that the 14,000 sf lot in the R-B Zoning District was a code anomaly, and the architect was going to restore the main house to what it was many years ago. The cabana would go hand-in-glove with that, and could not be any smaller.

Mr. Al Church, 202 Seaspray, addressed the Town Council, stating that a petition had been signed by neighboring property owners who opposed giving any variance whatsoever, as they believed there was no hardship. In addition, there was a legal beach access beside the property in question for all those living on the "Sea" streets. He explained that the reason people were opposed to the cabana was that they believed that it would change the atmosphere of the beach. He noted that the meeting held by Attorney Kolins had been publicized via the handing out of flyers. He suggested that a substantial number of people were opposed to the variance request, and urged that the Zoning Code be followed.

Ms. Carol Carmen, 110 Seaspray, addressed the Town Council, stating that she had signed a petition opposing the cabana, however, the current cabana was not the size that she had signed against on the petition, and was now smaller. She stated that she was no longer in opposition to the current proposal.

Attorney Kolins responded that the cabana would have no effect upon the beach access. He noted that he had arranged the meeting after earnestly trying to make it simple for everyone to attend. He pointed out that the current proposal for the cabana was the absolute minimum size that would retain design compatibility with the design of the main house.

Councilman McDonald commented that he did not understand the hardship.

President Brooks commented that he supported the request, since the applicant had made efforts to compromise.

Zoning Administrator Castro pointed out that the property was not in the R-B district, but was in the beach area district, which abuts the R-B district. The purpose and intent of the beach area district was to provide small accessory structures to the main residence, so that someone could make use of the beach area – it was not intended as a larger accessory structure. He noted that a unity of title would be required in this instance, as well as utility hook-up to the house, and an easement granted to the Town. He also noted that it was the opinion of staff that the granting of the variance would set a precedent in the district.

After further discussion, Councilman Wyett moved denial of Special Exception No. 6-2003 with Site Plan Review and Variance. The motion was seconded by Councilman McDonald. On roll call the motion carried 3/2, with Councilman Wyett, Councilman McDonald, and President Pro-Tem Goldblum casting affirmative votes; Councilman McLendon and President Brooks casting dissenting votes.

c. SPECIAL EXCEPTION NO. 7-2003 WITH SITE PLAN REVIEW AND VARIANCES The application of T.A.J.A. Realty Trust (James Pappas, Trustee) relative to property described as lengthy legal description on file; commonly known as 100 Everglades Avenue; located in the R-B Zoning District. Special Exception requested to construct a 10' x 20' beach house within the Beach Area district immediately across North Ocean Boulevard from the primary residence; Site Plan approval

requested for a beach house and associated site features; Variance requested to change the front yard designation allowing a North Ocean Boulevard address in lieu of the existing Everglades Avenue address; and, Variance requested to allow a side setback of 12.90 feet in lieu of the required 15 ft. setback.
(Deferred from March 11, 2003 Town Council Meeting)

(In the course of the meeting, this item was discussed in conjunction with Item XII. Development Reviews – A. Appeals 1. – Appeal of Administrative Decision Which Denied Permission to Allow Property Owner to Change Addresses for 100 Everglade Avenue and 101 Seminole Avenue.)

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, explaining that there had originally been applications for two beach houses. The site plan for the beach parcel on the northern parcel on the corner of Everglades and Ocean Blvd. had been approved. Discussion had then taken place on the second application and it had been suggested that the applicant grant an easement for beach access along the south edge of the beach parcel. He stated that he had now spoken with the owner, and a proposal for beach access accommodation with an easement had been submitted, with certain conditions.

Attorney Brindell explained that originally staff had believed that a variance would be required for the address change issue. After discussion with staff, it had been concluded that the request was a code interpretation question, subject to an appeal of the determination of staff to the Town Council. He explained that the two properties in question had originally been one piece of property with an address of 206 North Ocean Blvd., with the front of the house on Seminole. He noted that every property between Sunrise and Wells Rd. had a North Ocean Blvd. address; all but two of the corner lots had actual fronts on side streets; most of the properties had two frontages on North Ocean Blvd. The applicant was requesting the same consistency in the address of their property. He noted that Mr. Pappas was willing to re-open the easement.

Zoning Administrator Paul Castro acknowledged that addresses had been placed on properties in the past in a hodge-podge way; staff had been attempting to rectify the issue over the past eight-nine years. He stated that he relied upon the corner lot provision in the Town Code in order to determine an address; the most important reason for that was the public safety issue when fire/police services were required. The public safety personnel had indicated that there had been situations where there was a problem responding because an address did not match the front entrance to the home or the primary access to the property. A secondary concern was the delivery of mail and other services provided to the resident. He stated that staff believed that changing addresses set a bad precedent, and staff advised that the recommendation that the administrative determination that the address be on Everglades and Seminole be upheld for the purposes of systematic addressing and public safety.

Councilman McDonald moved to uphold the administrative decision, with denial of the appeal of the administrative decision regarding changing the front yard designation to allow a North Ocean Blvd. address in lieu of the existing Everglades Avenue address. The motion was seconded by President Pro-Tem Goldblum. After further discussion, the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

Attorney Brindell confirmed that the variance request concerning the address change was now no longer appropriate for consideration.

Attorney Brindell then requested approval of the site plan for the beach house.

President Pro-Tem Goldblum moved site plan approval for the beach house, as requested in Special Exception No. 7-2003 with Site Plan Review and Variances. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

d. SPECIAL EXCEPTION NO. 8-2003 WITH SITE PLAN REVIEW AND VARIANCES The application of T.A.J.A. Realty Trust (James Pappas, Trustee) relative to property described as lengthy legal description on file; commonly known as 101 Seminole Avenue; located in the R-B Zoning District. Special Exception requested to construct a 10' x 20' beach house within the Beach Area district immediately across North Ocean Boulevard from the primary residence; Site Plan approval requested for a beach house and associated site features; Variance requested to change the front yard designation allowing a North Ocean Boulevard address in lieu of the existing Seminole Avenue address; and, Variance to allow side setback of 13.71 feet in lieu of the required 15 foot setback. *(Deferred from March 11, 2003 Town Council Meeting)*

2. New Business

a. VARIANCE NO. 12-2003 The application of James and Susan Collins relative to property described as the east 10 feet of Lot 29, all of Lot 30 and the west 15 feet of Lot 31, Block 8, Plat of Revised Map of Royal Park Addition; commonly known as 125 Chilean Avenue; located in the R-B Zoning District. To allow construction of a 22 sq. ft. addition to a one story house with a 7'4" side setback, in lieu of the 12.5 foot minimum required.

Ex-parte communication was declared by Councilman McLendon, and by President Pro-Tem Goldblum.

Attorney James Paine, on behalf of the applicant, addressed the Town Council, stating that an in-fill variance had been granted to the applicant in November. He pointed out that there was a small area of approximately 9 sf, which extended into the same setback line as the variance application in November; he noted that the area should have been included in the request then. He stated that the applicant was requesting the 9 sf variance so as to properly configure the bay window shaped addition, which would remain under the roof overhang, and be completely isolated in the garden.

Zoning Administrator Paul Castro commented that the application was de minimis in nature, however, staff questioned the hardship related to the variance.

After discussion, President Pro-Tem Goldblum moved approval of Variance 12-2003. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

b. VARIANCE NO. 13-2003 The application of New Ventures of Palm Beach County, LLC (Mrs. San Lee) relative to property described as Lot 11, Vita Serena; commonly known as 181 Clarendon Avenue; located in the R-A Zoning District. To allow re-construction of a front yard wall (ranging in height from 9.9 feet to 10.2 feet above the crown of the road) in lieu of the 6 foot maximum allowed; and replacement of three existing gates at heights of 14 feet, 11.4 feet and 10.4 feet, respectively, above the crown of the road, in lieu of the 8 foot maximum allowed; and, to allow the raising of an existing unenclosed accessory structure/architectural feature that will be attached to the front yard wall with a front yard setback of 13 feet in lieu of the 35 feet minimum required and a side yard setback of zero in lieu of the 15 feet minimum required in the R-A Zoning District.

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Maura Ziska to discuss the merits of the case; by President Pro-Tem Goldblum via a meeting with Attorney Ziska; by Councilman Wyett via a conversation with Attorney Ziska, however, he had declined to discuss the merits of the case on the telephone.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the variance request was to allow the wall, gates and gazebo to be elevated to a point in relation to the previous house – to allow the owner to replicate the previously existing landmarked east façade of the residence. She explained that the hardship was that the house and ground needed to be raised because of the flooding problem in the area, and the wall was needed for privacy and protection.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments as submitted on the Application Review Sheet: Comprehensive Plan: does not appear to meet the criteria for granting of variance; request seems excessive; Landmarks Preservation Commission has not been consulted for aesthetic issues. Building Department: no hardship on the wall; no objection to the gazebo. He noted that the street in front of the property would eventually be raised by approximately one foot by a public works project, which would make the variance request slightly less.

President Pro-Tem Goldblum moved approval of Variance No. 13-2003. The motion was seconded by Councilman McLendon.

In response to Mayor Smith, who questioned how the wall had been built higher than Code requirements, owner's representative Mark Mahar stated that there had been approximately 17 variances that had been presented several years ago, and the contractor now had been building the wall as shown on the plans that had been approved by the Town. The construction of the wall was stopped when one of the building inspectors pointed out that the height Code requirement was not being met.

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

3. Other

a. Zoning in Progress – Conservation Designation for Submerged Lands in Lake Worth.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Zoning Administrator Paul Castro reported that there had been some interest from the private sector regarding zoning designations of areas in the corporate limits of the Town located west of the mean high water line of Lake Worth, even though the Zoning Code specifically prohibits development over submerged land and Lake Worth. Staff was requesting that the Town Council adopt a Zoning-In-Progress to occur immediately, that would not allow any applications for the development of property over or on submerged land, until there was an opportunity to study existing regulations.

Ms. Karen Mentor, Ruden, McClosky, Smith, Schuster & Russell, P.A., addressed the Town Council, representing The Patricians of Palm Beach, who owned a submerged parcel – parcel control no. 50-434426000020042. She stated that she was present to register an objection to the proposed Zoning-In-Progress, on the grounds that it was the right of the owner to develop the land, and in objection to the designation of conversation zoning.

Councilman McDonald moved approval of the Zoning-in-Progress, as of April 8, 2003, that would not allow applications for development of submerged lands in contravention of the proposed zoning designation. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Director of Planning, Zoning & Building Robert Moore clarified that staff would proceed with the terms of the zoning study as set forth in the memorandum from himself to Town Manager Elwell, dated March 25, 2003, regarding this matter.

Note: The minutes from the April 8, 2003, Town Council meeting were approved at the May13, 2003, Town Council meeting with the following clarification:

Karen P. Mentor, Ruden, McClosky, Smith, Schuster & Russell, P.A., represented the Patricians of Palm Beach, Inc. The Principal name and address are: c/o William I. Donner, 33 SW 2nd Avenue, Miami, FL 33130.

This representation is different from The Patrician of Palm Beach Condominium Apartments, Inc. represented by Peter C. Mollengarden, Esq. of Becker & Poliakoff, P.A.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

The meeting was adjourned at 4:46 p.m.

William J. Brooks	Mary A. Pollitt
Town Council President	Town Clerk

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

The meeting was adjourned at 4:46 p.m.

William J. Brooks
Town Council President

Mary A. Pollitt
Town Clerk