

to be back for all Council meetings except for the one in April. Mrs. Douthit indicated she anticipated being here also. Mayor Marix stated she has no firm plans. Mr. Heeke indicated he too had no firm plans. Mrs. Wiener believed she might not be here for the August meeting. Mr. Ilyinsky indicated he did not know when he will be traveling.

Quorum for
summer
months

XVI. ADJOURNMENT: There being no further business, the meeting was adjourned at 5:45 PM.

Grace T. Peters
Town Clerk

MINUTES OF MARCH 27, 1990
SPECIAL TOWN COUNCIL MEETING

A Special Town Council Meeting was called to order by President Heeke at 1:05 PM in the Town Council Chambers on March 27, 1990. On roll call, the following electes officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilwomen Douthit and Wiener and Councilman Weinberg. Also attending were Mr. Doney, Mr. Randolph, Mrs. Peters, Chief Terlizzese, Mr. Moore, Mr. Dusey, Mr. Jakubiak, Mr. Elwell and Mr. McPhail.

Mr. Doney led the Pledge of Allegiance. Invocation was given by Mrs. Peters.

President Heeke noted during the recent hearings done on the beach access in the north end of the island, there has been a perception given to the public that the Town is denying access and very little emphasis given on the public safety at two particular locations. He reported the Court even noted the concern for public safety but this was not emphasized in the press and there was a perception that we are shutting off the gates and they were there for purposes other than protecting the people who were using the beach. He stated a memorandum has been received from the Town Manager and he called on him to read it:

North end
Beach
access

Mr. Doney indicated the memorandum to the Mayor and Town Council is as a result of conferences with the Town Attorney, the Police Chief and Mr. Dusey and himself and he read: "Subject: El Pueblo Way and La Puerta Way Beach Accesses. Date: March 27, 1990. As you recall, subsequent to the recent removal of private fences and gates at El Pueblo and La Puerta Ways, concerns were expressed by certain residents in the area of those streets and by Chief Terlizzese as to the public safety hazards which may exist resulting from the absence of said gates and fences. The Town therefore directed the replacement of the gates and fences to address the problems which had been called to our attention.

In light of concerns recently expressed that gates and fences may be interpreted by some as impeding access, I have recently requested that an analysis be done to determine if the public safety concerns can be met at these areas without the continued imposition of the gates and fences by the Town. On consultation with Chief Terlizzese, we have determined that there are alternative methods available to address the above referenced safety concerns.

On that basis, therefore, I am recommending that the gates and fences placed by the Town be removed and that the alternative safety measures discussed with the Chief be put into effect. Specifically, I am recommending that the vegetation at both sites be substantially reduced thereby eliminating impairments to visibility.

Since there will no longer be a gate or fence at La Puerta or El Pueblo, the necessity for injunctive and declaratory relief no longer exists. It is my recommendation therefore, after consultation with the Town Attorney, that this action be dismissed."

Mr. Heeke called on Mr. Randolph for his comments and Mr. Randolph gave a history of where we are and how we got there - He stated there was a meeting subsequent to Mr. Medlen having removed the gates at La Puerta and El Pueblo and after the gates were removed, they were contacted by property owners who advised them that those gates had existed for so many years because of safety concerns that the property owners in the area had for their children and their grandchildren and others who used that particular access. We pointed out when presented with those public safety concerns, the Council determined that in order to maintain the status quo and in order to provide for the public safety, the Town itself would go ahead and put the gates and fences back up. He indicated to the Council at that time that there existed a 1975 judgment which caused some concern as to whether or not gates and fences could be placed at those particular locations. He stated because the public safety concerns were of paramount and immediate interest, the Council decided they should, to alleviate the problem immediately, go ahead and put the gates and fences back up. He thought because of the concern that he noted to the Council that they indicated they wished to put the fences and gates up to take care of the safety concerns, but also enjoin their being taken down and find out for sure from the court what the status of the 1975 judgment is, so that the Town Council knew what they were doing was correct. He stated that is what they did and that is where they are today. He stated they are a little further ahead because they did go to an injunctive relief hearing and because there was a promise made under oath that the gates would not be taken down, the Court denied the temporary injunctive relief and further indicated that since the Town sought to have the gates remain, that it erect signs which would indicate that this is public access to public beach. He stated the Order of the Court itself indicated that the Court was of the opinion that the Town was attempting to impede access at this particular area and there have been other concerns noted from others and in the press that that is the Town's concern. He thought this memorandum from Mr. Doney results from all that has happened and what they are looking at it whether or not there is another way to address the public safety concerns, so they do not have to have the continuation of the fences and gates. He believed if the Council felt the public safety concerns could be addressed in another way, then they could alleviate the questions that exist in the minds of some as to the purpose of the gates and fences, by simply removing them and dealing with the public safety matter in another way and in doing that there would no longer be a question as to the injunction or declaratory relief and no purpose to continue the lawsuit and it would be dismissed.

Mr. Heeke called for comments on th the public safety aspect of the issue. He noted the memorandum from Mr. Doney is a summary of an investigation made by the Police Department concerning this matter. Mr. Doney responded there also was a field review by the Chief of Police, Mr. Dusey and himself and viewing alternatives to address the public safety concerns as he understood them from the hearing and in order that the Town can be in the best position to protect its interests.

Mrs. Douthit was concerned about reducing the greenery in these areas in order to provide visibility and also about the maintenance of the dune and the beach in that area as we have heard about roots holding the beach sand and now we are talking about taking them down and that concerns her. Mr. Heeke asked if anyone wanted to address the pitential of damage to the dune by removal of the vegetation. Mr. Doney responded the vegetation between the fence as it exists and the edge of the roadway is principally Australian Pine and

North end
beach
access

that is not considered to be a valuable type of vegetation for holding the dune in place. He felt what they were looking at as an alternative is some type of low relief vegetation that will not impair visibility of pedestrians as they access the roadway and giving northbound motorists the clearest possible visibility of pedestrians as they exit from either La Puerta or El Pueblo.

Mayor Marix believed this would have to be those who are over four feet high. She asked if there was a seawall in this area? Mr. Doney responded there is a seawall at both accesses. Mayor Marix wondered if the seawall failed, and if during a hurricane this roadway was undermined, whose responsibility would it be? Mr. Doney responded the roadway and underlying utilities which are Town maintained would be the Town's responsibilities. He noted if there were other underlying utilities, such as gas or water, those would be the responsibility of those utility companies.

Mrs. Wiener felt they were all being caught up in a topsy-turvy kind of situation but the fact of the matter is there are lots of people from out of this Town who use the beaches and it is not a matter of access but a matter of safety for those people who do use the beach area. She believed the people who live in the immediate area are aware of the danger as they approach the roadway as they are aware so the people who live in the area would not be as seriously affected by the lack of the gate as the people who do not live in Palm Beach as they are not aware of the way traffic flows in and out of there and it is short moment to approach the roadway. She felt the gates were more of a service to people who were not familiar with the area than they are to our own residents. She felt if people were thinking about what we have here rather than what they think we have here, they would understand there has never been a question of beach access as our records indicate no one has ever been arrested for walking on the beach and those gates if they were removed would be extremely dangerous to people coming here and using our beaches.

President Heeke asked about the alternative ways to try and preserve a safe margin of public safety. Mr. Doney responded the issue of the fences and the gates is a legal issue but as an alternative in addressing the public safety concerns to insure the greatest visibility of pedestrians who would be moving towards the Ocean Blvd., it is his belief that the best way the Town could address that issue, other than having the gate and the fence would be to remove the vegetation that provides sight screening for pedestrians. He stated it is a two way sight screening as they would like the motorists to be able to see the pedestrians and likewise for the pedestrians of any age to be able to have their view of traffic as it goes northward unimpeded by any vegetation. He stated it is intended that the trimming be done but there are other alternatives down the road which could be considered by way of landscaping and providing a hedge row in that area which would not be an impediment for sight vision for the pedestrians as they approach the roadway. Mr. Heeke asked how the people exiting from the beach would be warned there is a danger ahead. Mr. Doney stated a sign could be placed stating "Caution - traffic ahead." Mr. Weinberg suggested a stop sign be placed there for the people leaving the beach going to the road. Mr. Doney indicated he will consult with the chief as to the best way to protect the pedestrians.

Mr. Heeke indicated there are other accesses throughout the island and all of which need to be considered from a public safety point of view, although in some respect this is unique since it is the thrust of the present litigation. He recalled some others have varying degrees of visibility. Mr. Doney agreed and indicated they have looked at other public accesses on their field trip and there are potentially needs for some trimming at certain other access or other actions which should be taken in order that they handle and treat the other actions which should be taken in order that they handle and treat the other accesses in a similar manner and make sure that pedestrians are protected as they exit from those accesses.

Mr. Heeke called for comments from the public and Mr. Wade Byrd responded with his comments: "My name is Wade Byrd and I am a resident at 236 La Puerta Way, Palm Beach. The residents of this area urged initially and have continued to urge that this lawsuit against Mr. Medlen not be filed for many reasons. If the lawsuit can be dismissed, we would urge it be dismissed. For reasons that I have discussed with you. I think it's ludicrous to believe that a man who comes into the Town of Palm Beach - Mr. Medlen - takes the law into his own hands - destroys property not belonging to him but belonging to others and be allowed to do that with the police officer looking on directing traffic. And the editor of our newspaper making that man the Palm Beach Man of the Year - the folk hero. And turns to the residents of Palm Beach who live on these two streets and makes them the villains. I can assure you that we are not the villains who live in this area. That contrary to what the editor state, there is no intention from any property owner to erect a cabana at the end of these streets so our property values may increase. These fences and these gates have been up there some forty years and they were put there for the purpose of keeping kids and others from running into Ocean Blvd. They were put there before Mr. Medlen ever considered beach access and I tell you that's a misnomer. It's not a question of beach access. Now, as I understand the proposition here today, you are willing to try to dismiss the law suit if in fact you remove the fences and the gates. Let's look at that. Again, we don't want the law suit. We have never wanted the law suit. If the fear is that the 1974 judgment prohibited the Town of Palm Beach from putting up fences and gates so you now dismiss the lawsuit the you take down the fences and gates, you have in effect said 'we agree the 1974 judgment prohibits us from putting up fences and gates'. So you tear them down and two weeks from now, some kid runs across the road and is killed. And suddenly, everybody realizes the fences and gates perhaps could have saved that child's life. And where are you as the City Fathers - the Town Fathers - you are in a position that you cannot put up - you can no longer construct a fence and gate because you have agreed that the 1974 judgment prohibited you from doing that act. Ludicrous. In my opinion, Mr. Medlen has no standing in the Town of Palm Beach to force us in a court of law to remove gates, fences or to change the type of plant that is in Royal Poinciana Plaza in the middle of the road. He has no such standing. We should take every effort to dismiss the lawsuit if we can. This is a country of laws - not of men. The question is if Mr. Medlen's proposition is that if the fences and gates weren't there, then more people would use that access for the purpose of going to and from the beach. If that proposition is correct, then the issue is - is it better to have more people going to and from the beach that is less safe than to have fewer people going to and from the beach that is more safe? I think the answer is the latter. If they want us to remove those fences and those gates, let them produce one person who can testify under oath or otherwise that he, she or it has ever been denied the access through those gates. I urge this Town Council to take every effort and immediately take every effort to dismiss the law suit, if it can in fact be dismissed. But I do not think at this stage that it is prudent or wise or responsible to say to the world that we can no longer put fences or gates in that particular area or any other area in the Town of Palm Beach with a similar unopened road access problem. We are not talking about just now - we are talking about in the future. Thank you."

Mr. Heeke asked Mr. Randolph about the last two sentences on the first page of the Order which indicated the 1974 judgment did not address the issue for which we put up these particular gates and asked if that was the case? Mr. Randolph confirmed that was so. Mr. Heeke asked if they were estopped or did the 1974 judgment reach to a public safety issue. Mr. Randolph responded the 1974 judgment did not address the public safety issue.

Mr. Gustav Broberg gave his comments: "My name is Broberg. I and my family have resided at 208 El Pueblo Way forty years and I feel I am intimately knowledgeable about what is happening and what is going on. Back in the early fifties, 1950's, with the help of Mr. Rick Caruso and other members of the street at that time,

North end
Beach
access

for a very few, we constructed the area now in contention by putting up the wood fence and the gate. I think this is now the fourth gate that has been up there - the others having seen their best days and rotted away. Caruso and I built the bargeque pit. We all contributed to the cost of the stairways, the wooden stairways down to the beach which are our property and I feel that after forty years of this foilage as you call it and trees and fences having been in existence with no accidents whatsoever of people coming up onto the street can't help but stand as a pretty good premise of what we are talking about today as far as safety is concerned. The act of Mr. Medlen coming into our Town and coming onto our street and destroying this private property - I liken it to being Mr. Medlen coming into our Town and coming onto our street and destroying private property - I liken it to being Mr. Medlen coming along and ripping off your aerial on your car parked on the public street. I just don't think he has the inherent right to do anything along those lines. We have never kept him out of the area. We have never kept one person from going through the area - the fence - the gate - past our barbeque pit - past the paved area that we put in there with the blessing of the Town at that time - to the steps to go down to the beach. We have never stopped one person. The gate has never been locked. There is a wooden thing to keep it firmly shut, but it has never been locked. All you have to do is reach behind it and unlock it. Now, it would be pretty hard to enlarge on what Mr. Byrd has said because he has said it so perfectly right to the point, except for one item. In addition to urging you that this suit be withdrawn and as I understand the rules of procedure, it can be done. But I would take exception to Mr. Doney's opinion or recommendation that before the suit is asked to be withdrawn, that we do certain things like cut down the fence - cut down the gate and lower the Australian Pines. I don't think you should do that ahead of getting the suit dismissed. And if Judge Rogers won't dismiss it on those grounds, then we will approach that situation again. Certainly there is an area of appeal of Judge Rogers - if he refuses to dismiss it. So I would not do anything at this time except to ask the court - petition the court to dismiss it and I don't feel he has any authority not to do it. And I thank you."

Mrs. Wiener stated the fact that those people who are visitors from elsewhere - those people who are vacationing here and whoever else who has been using that beach access - will be the better protected as a result of these gates, as in addition to the gates being there for the residents who are fully aware of the dangers are there for everybody, as the unsuspecting person needs the protection perhaps more than anyone. She felt when they are talking about public safety, they do not only mean the residents and taxpayers of this Town, but the public safety of anyone who uses the beaches.

Mayor Marix commented on the corner which leads to this area, in front of the Kennedys and around the bend of the area we are discussing, is one of the most dangerous in the Town and she drives this area several times a day. She knows people slow down to look at the Kennedy house and it is a double blind corner and on northward there is a 15 mile per hour speed limit and southward it is 25 miles per hour. She believed most people don't pay attention to the speed limits and when they get around the corner from the Kennedys, one is practically on to this area. Mr. Heeke agreed and felt it was a shame the press has not seen fit to give an accurate statement of the physical conditions there as there is not a denial of access.

Mr. Heeke noted it has been suggested by Mr. Broberg that we file for a dismissal and asked the attorney his thoughts about that? Mr. Randolph felt the only purpose this meeting was called for was because of the memorandum from Mr. Doney and looking into alternative steps. He needed direction from the Council if these alternative steps were taken and he felt it was indeed appropriate to dismiss the lawsuit. He felt it was apparent the public safety concerns were paramount and the alternative measures do not appear to really address in full the public safety concern so if the decision that the gates and fence be left in tact, and since the public safety concerns were not addressed in the 1974 judgment and Council feels that that can be distinguished, the Council can give consideration to taking a voluntary dismissal of the lawsuit pending; or petition the court for a dismissal. He did not know what the impression of the court would be as the final judgment indicated the Judge was maintaining jurisdiction.

Mr. Heeke believed this was public access and he has no problem with the signs remaining on the fences or gates stating it is public access. He felt this was not the issue today as he saw it. He asked if it should be communicated to the court that we have no reservation if that is the way the Council feels about leaving the signs of public access on the gates. Mr. Randolph thought that would be incumbent upon them if the lawsuit was dismissed to allow that portion of it to remain as that was an Order of the Court and if Council is satisfied with that and felt from a public safety standpoint, the gates should remain and they intend to erect the signs in good faith, in accordance with the Judge's Order, then they could make the determination that the remaining issues be dismissed and because the signs are being erected, they no longer need the injunctive relief. Mr. Heeke recalled Mr. Medlen has consented not to further damage to them, under certain circumstances. Mr. Heeke asked if he was talking about the existing signs? Mr. Randolph stated he was talking about the signs as ordered by the Court which would say "Public Beach - Public Access". Mayor Marix asked if they would be free standing signs to which Mr. Randolph responded affirmatively. Mrs. Wiener felt the free standing signs would bring a public safety problem in times of storm but if the court feels that that particular type of sign says it better than the sign on the gate, then they would have to comply.

Mrs. Wiener moved that Council direct the Town Attorney to ask the Court to dismiss the suit against Mr. Medlen and that in asking for this dismissal, we advise the court that the Town is in total agreement with the public access signs which have been placed on the gates and that we feel it is unfortunate that people have not understood that this has always been public access but records indicate it has been and if this will clarify anything in anyone's mind, they certainly are of a mind to keep the signs on the gates and of a mind also to withdraw the suit. Mr. Heeke believed that they had to comply with the Order requiring free standing signs which have the words "Public Beach and Public Access?" on them. Mrs. Wiener indicated she would cover that if the Court still feels it is necessary as if on the other hand, the Court would understand a free standing sign could be a danger, we would be more pleased to have the sign on the gate as they are now.

Mr. Randolph advised the issue of temporary injunctive relief which was the first portion of the case has been addressed by the Court, so he did not think they could be dismissed from that but stated if the Council did not feel that the permanent injunctive relief is any longer necessary and they don't feel that the declaratory relief is necessary, they can direct a voluntary dismissal be taken of the lawsuit. Mr. Heeke believed rather than asking we are moving for a voluntary dismissal. Mr. Randolph believed they would be asking for him to take a voluntary dismissal to which Mrs. Wiener agreed. Mr. Heeke advised the Town Attorney is also authorized to indicate to the court the public access signs presently on the gates would remain and if necessary, they will do the free standing but they have reservations about the safety of that aspect.

Mr. Broberg advised he did not think they wanted to do anything more than take the voluntary dismissal and then if the Court brings up the subject of the free standing signs, that can be addressed at that time. Mrs. Wiener pointed out this has already been ordered to which Mr. Heeke agreed.

Mr. Byrd pointed out the court has issued a temporary order and there is nothing final here and even though the Town Council has authorized the Town Attorney to file a notice of voluntary dismissal, it is not known whether the Judge will find that notice complies with the rules and it could be that the Judge or the opposing counsel would argue that in order to dismiss we need an Order of Court and the motion made today should be authorization for the Town Attorney to file a notice of voluntary dismissal and if there is an issue raised as to whether or not the temporary order by its nature is also gone because the law is gone, then the free standing sign would be left to the discretion of the Town Attorney. Mr. Randolph believed that remains to

be seen and if it is the Town Council's desire in the motion that the gates and fences not be removed, since they feel it serves a legitimate public safety interest and the remainder of the case be voluntarily dismissed, he believed they could do that in one motion.

Mr. Heeke felt the Attorney should have certain latitude to make decisions that he may be called upon to make swiftly and that is implicit in this discussion to which the remainder of the Council agreed.

Mr. Heeke understood the motion was to direct the Town Attorney to dismiss the suit which Mrs. Wiener clarified as being correct. Mr. Ilyinsky seconded the motion.

On roll call, the motion carried unanimously.

COUNTY COMMISSION'S ACTION ON A-1-A. Mr. Doney explained Mr. Elwell, Mr. Moore and Attorney Jurgens attended the Palm Beach County Commission meeting and Mr. Moore addressed the Council indicating this matter was commented on by the County Attorney. He stated there was no public comment permitted today on this item and that was scheduled for their meeting of April 17. Mr. Cook, the County Attorney, stated Mr. Moore, delivered his report to the County Commission on their research which went back to 1912 on the chain of title for this property and the County Attorney was convinced the County had title to the property. He further informed the County Commission that as a result of this title, they wished to contact the property owners of the subject properties where encroachments existed and the Town of Palm Beach is one of those property owners at Phipp's Ocean Park - the beach stairs. Mr. Moore indicated that in addition to their contacting the property owners, his further statement was they wished to negotiate with those property owners for either the removal of a method of payment - lease or rental - of their encroachments as they exist. He spoke to a representative from the County Attorney's Office and made him aware of the fact that the Town had not received proper notice on this and Mr. Jurgens is preparing a letter to Mr. Cook, copying Commissioner Elmquist requesting all of the pertinent information including the title chain, so it can be studied and this matter should be put on the April Town Council meeting agenda for direction in taking a position on this matter at the Commission meeting of April 17th.

Mayor Marix asked if she heard correctly and the County wants the Town to pay rent for this beach access? Mr. Heeke felt they were not as yet at that point.

Mrs. Wiener made a motion to adjourn the meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously and the meeting was adjourned at 2:05 PM.

Grace T. Peters, Town Clerk

TOWN COUNCIL MINUTES OF TOWN COUNCIL
MEETING HELD APRIL 11, 1990

I. CALL TO ORDER AND ROLL CALL; The meeting of the Town Council for April, 1990 was called to order by President Heeke, on April 11, 1990 at 8:30 AM in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilwomen Wiener and Douthit. During the afternoon session, Councilman Weinberg was also in attendance. Also in attendance for all or portions of the meeting were Town Manager Doney, Mr. Myers, Mr. Dusey, Mr. Bitzer, Mr. Crouse, Mr. Jaguar, Mr. Elwell, Mr. McPhail, Chief Terlizzese, Chief Elmore, Mrs. Peters, Mrs. Haynie-Timmons, Mrs. Crozier, Mr. Bowser, Mr. Moore, Mr. Zimmerman, Ms. Zamecnik, Cpt. Shetron and Attorney Monaghan.

President Heeke explained the first hour of the meeting will be devoted to the budget.

II. INVOCATION AND PLEDGE OF ALLEGIANCE. Father Joseph Ryan of St. Edwards Church gave the Invocation. Pledge of Allegiance was led by Mr. Doney.

III. STATUS OF CURRENT FY90 (10/1/89 - 9/30/90) GENERAL FUND AND OTHER FUND BUDGETS. Mr. Doney explained back-up material has been sent to the Mayor and Council which accurately identifies this year's budget status at this time. Mr. McPhail has indicated the figures, projected revenue, and expenditures are based on five months experience and these figures will be refined and revised as needed as we move forward into the fiscal year.

Mr. McPhail emphasized these figures are for five months and it is somewhat difficult to project the year end figures, based upon the five month figures. He noted revenues are made up of four main categories:

- Property Taxes
- Nontaxable Revenues
- Transfers from two of the three Enterprise Funds, (Marina Fund and Parking Fund).
- Use of Fund Balances

He indicated the revenues for the first five months, if extended out will be within four thousand dollars of the amount that was budgeted. He noted ad valorem property taxes are down slightly, due to reduction in the tax roll. He stated other revenues, utility taxes, franchise fees, state revenue sharing, local government licenses and permits are approximately \$175,000 higher than anticipated, but this too is on a five month basis.

Mr. McPhail noted the Inter-Fund transfers will be made, which means that to balance the budget, \$1,565,000 of prior year surplus is needed instead of \$1,570,000 which was budgeted, which is an indication that revenues are on target.

He stated there are graphs showing the four main sources of revenues. He noted Exhibit 2 hows a summary of the actual expenditures for the last three fiscal years and what expenditures are projected to be for these categories. He stated the expenditures are estimated to be at 97% of the General Fund Budget. He noted usually the expenditures total between ninety-four through ninety-seven per cent, which is an indication they do a good job in budgeting so there is no unexpended funds or surplus at the end of the year. This enables the Town to maintain the Triple A rating on bonds, and he noted this Town is the only municipality in the State of Florida with that rating.

Mr. McPhail noted page eight in the hand-out shows the expenditures over the last several years. Mr. Heeke noted the projected spending looks like it is under budget in all of the Operating Accounts.

Mayor Marix noted on the first chart, there were no use of fund balances in 1987, 1988 and 1989 but in 1990, there is a projection to do so. Mr. McPhail responded that generally they budget that item and in actuality that is never used as when you close out the end of the fiscal year, the expenditures are deducted from the revenues and the balance goes into the Fund Balance. He noted in these particular cases, the revenues exceeded the budget in each year and there was no need to use fund balances.