TOWN OF PALM BEACH
Office of the Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON OCTOBER 10, 2000

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting of October 10, 2000, was called to order at 9:30 a.m. in the Town Council Chambers by President Jack McDonald. On roll call the following Elected Officials were found to be present:

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

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

Acting Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Director of Planning, Zoning & Building Robert Moore
Assistant Director of Planning, Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Planner/Project Coordinator Timothy Frank
Chief Code Compliance Officer Brian House
Human Resources Director William Crouse
Finance Director Jane Skittone
Assistant Finance Director Cheryl Somers
Fire-Rescue Chief Vincent Elmore
Information Systems Manager Spencer Wilson
Police Chief Frank Croft
Public Works Director Al Dusey
Recreation Supervisor II Alan Brown
Town Engineer James Bowser
Town Clerk Mary Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President McDonald led the pledge of allegiance.

III. PRESENTATIONS

A. Recognition of Robert J. Doney Upon His Retirement From the Town of Palm Beach After Twenty-Six Years of Service From February 25, 1974 Through August 11, 2000

Mayor Smith presented retired Town Manager Robert J. Doney with a plaque from the Mayor and Town Council. Mr. Doney also received a ring recognizing his twenty-six years of service.

IV. COMMENTS OF MAYOR LESLY S. SMITH

Here we are in October already, and as the social season begins to heat up, so do the issues that Town government must grapple with. I have a number of comments this morning.

First, I share the Town Council's disappointment that the sellers have rejected our $2.75 million offer for the Gray's Mobil parcel. There is no question that we need to acquire additional space for fire rescue and expansion of the Building Department. But I would remind the Council that there are other options - and we must seek them out. There is no reason to be held hostage by unreasonable demands. And while I am sympathetic to sellers looking for a way out of bankruptcy, the Town of Palm Beach is a business, not a charity. If we agreed to make the mortgage payments for every business in Town, there would be a long line outside our door! So, let's look around or make a deal that makes the most financial sense for the Town.

Something else that does not make financial sense for the Town is to succumb to Bell South's premature and inadequate offer of settlement. I see no reason why we should forego money to which we are legitimately entitled, and I believe that settling at this level sets a very dangerous precedent.

Something that DOES make financial sense for the Town is to continue to invest excess tax proceeds into our capital improvements fund. In approving our fiscal year 2001-2002 budget, the Council has held the line on taxes and, at the same time, been cautious about saving for a rainy day. It is a mark of our enormous economic prosperity that property values are high - I don't think anyone in this room would want property values to be depressed, and that evaluation is certainly outside the purview of the Council. So I do not understand the dialogue about our alleged deceptive budget and taxation measures. We have staggering infrastructure repair needs and, although I am not Alan Greenspan, even I know that this economy won't last forever. So let's keep our capital fund full.

Speaking of infrastructure, if you were floating along Town roads during the virtual monsoon we had about ten days ago, the only solution we can offer is patience. The City of West Palm Beach's storm sewer and waste water improvement projects are under way and they promise an end in sight. A more tangible end is in sight for our road improvement projects - we have been promised a December completion.

While the Good Sam - St. Mary's dilemma is beginning to seem like old news, I want to keep you updated and assure you that I continue to monitor the situation and look for opportunities to act on behalf of Town residents. At the moment, it seems to be a waiting game - we are waiting for the Attorney General's forensic audit so we will have real numbers with which to assess the situation. We are awaiting the report of the Community Advisory Board, which in turn is awaiting the numbers. And, as of last week, we are awaiting a judge's decision about a lawsuit filed by a group of interested parties, including some of our residents. It is tempting for me as well as for others, I am sure, to jump the gun by suggesting quick solutions - why doesn't the health care tax district intervene? Why doesn't the county take over? Why doesn't a private buyer step up? They have all been approached and they all say they need to see the numbers! Believe me, this is an extremely complex issue and at this point, we have some of the nation's best experts looking at it. I will keep you informed.

As if that weren't enough, another problem that is coming to a head, right off our north end shore, is the proposal to turn Peanut Island into a mega tourist attraction, complete with restaurant, waterfall and waterfront activities - all requiring significant infrastructure improvements that taxpayers will have to pay for. More important is the danger to our ecosystem posed by these new plans, which are completely contrary to the original intent to keep Peanut Island an unspoiled sanctuary. I can think of no greater example of lack of information, miscommunication and outright deception among the levels of government that have a say on this issue. The Port Commission, which gives new meaning to the word imperialism, is out of control and besieged by allegations of corruption and conflict of interest. The alleged Maritime Museum - which consists of a couple of rooms and an insiders' club, from what I hear - has been challenged for fiscal irresponsibility. Palm Beach County is apparently trying to sneak into its approved plan a restaurant that was never part of the original proposal. I am absolutely stunned. The same people that tried to build a skyscraper statue of Christopher Columbus on our doorstep a couple of years ago are trying to foist on us an atrocious restaurant spewing waste into the Intracoastal Waterway. I urge the Council to express its outrage, to confront the County Commission for making this virtually a done deal BEFORE its October 24 public workshop and to stop these plans before Peanut Island becomes Coney Island.

Returning to land here, we have before us the report prepared by Urban Design Studio & Duncan Associates for the Town of Palm Beach Prototype Guidelines. I agree with others who have commented that the report is not user-friendly. It is very hard to understand and I think before we take any action, we need to synthesize the recommendations into language that we all speak. My great fear is that in trying to simplify our process, we have instead made it more complicated. We just need to look at the number of variances on today's agenda to realize how much we need clear, simple guidelines.

It has occurred to me, however, that an important way to be more clear and more fair is to adopt a policy that we will stick to the zoning guidelines we have established and variances will NOT be granted except in the most urgent and critical cases. Other towns have managed to hold the line by stating up front that they do not grant variances just because the petitioners are nice people or because they have contributed to the community or have relationships with Council members. One of our purposes in contracting for these prototype design guidelines was to take architectural questions out of the political and the personal. So I would like the Council to set a policy that gets tough on variances - remembering that the variances we grant are in perpetuity and we may have to live with more than we bargained for.

Finally - I always like to close with good news - the Town has received a $200,000 grant from the Palm Beach County Department of Environmental Resources Management towards the construction of the D-12 pump station .... which extends from Royal Poinciana Way to Wells Road, ocean to lake. Town Engineer James Bowser was largely responsible for our getting this grant because of his excellent presentation to the selection committee. Thank you, Jim, from all of us for your continued outstanding work for the Town.

The Mayor announced a reception will be held on Monday, October 30th, from 5:00 p.m. to 7:00 p.m. at The Breakers Hotel to honor Bob Doney. October 30th will be proclaimed "Robert J. Doney Day".

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

DEFER Variance No. 6-2000, Edwin L. Ecclestone, Jr., 190 S. Ocean Boulevard, to the December 12, 2000, Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer Variance No. 6-2000, Edwin L. Ecclestone, Jr., 190 S. Ocean Boulevard, to the December 12, 2000, Town Council meeting. On roll call the motion carried unanimously.

DEFER Variance No. 36-2000, Weldon Yeager, 347 Australian Avenue, to the December 12, 2000, Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Wyett, to defer Variance No. 36-2000, Weldon Yeager, 347 Australian Avenue, to the December 12, 2000, Town Council meeting. On roll call the motion carried unanimously.

DEFER Special Exception No. 17-2000 With Site Plan Review & Variance, Echo Restaurant, 230 Sunrise Avenue, to the November 14, 2000, Town Council meeting.

Motion made by Councilman Brooks, seconded by Councilman Wyett, to defer Special Exception No. 17-2000 with Site Plan Review & Variance, Echo Restaurant, 230 Sunrise Avenue, to the November 14, 2000, Town Council meeting. On roll call the motion carried unanimously.

Councilman Brooks moved approval of the Agenda, as amended. The motion was seconded by Councilman Allen Wyett. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Mr. Anthony O. Sevic, 2335 South Ocean Boulevard, Tres Vidas, addressed the Mayor and Town Council and requested the Town continue with efforts toward correcting the worsening conditions at the Sea Lord, next door to Tres Vidas.

Larry Taube, Attorney for Palm Beach Cat Rescue & Humane Society, addressed the Mayor and Town Council and explained the operations and mission of the society.

Ms. Judy Schraft, 325 Crescent Drive, addressed the Mayor and Town Council requesting the Town consider establishing a dog park as other communities have recently done.

VII. APPROVED AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF SEPTEMBER 12, 2000

B. APPROVAL OF TOWN COUNCIL PUBLIC HEARING MINUTES OF SEPTEMBER 11, 2000

C. APPROVAL OF TOWN COUNCIL PUBLIC HEARING MINUTES OF SEPTEMBER 21, 2000

D. APPROVAL OF CHECK REGISTERS FOR SEPTEMBER 2000

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON SEPTEMBER 27, 2000

F. OTHER

1. Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

2. Consideration of Approval of Allocation of Funds in the Amount of $6,016 From the Capital Improvement Fund Contingency Account to Provide Funds Necessary to Pay for South Fire Station Re-Roofing Project

3. Consideration of the Recommendation for Beneficiaries and Distribution of Proceeds for the 18th Annual Town of Palm Beach Pro-Am Benefit Golf Tournament. Russ Bitzer, Director of Recreation

4. Consideration of Bid Award to G&K Services in the Amount of $28,880 for Sealed Bid 2001-01, Uniform Rental Services

Councilman Brooks moved approval of the Approved Agenda. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

VIII. REGULAR AGENDA

Old Business

A. Update on the Proposed Florida Department of Transportation Project on Royal Poinciana Way Phasing Plan. James M. Bowser, Town Engineer

Town Engineer James Bowser addressed the Town Council, stating that Florida Department of Transportation (FDOT) Consultant Manager Perla Medina-Kinne, as well as the project engineers were present today to provide information concerning the Royal Poinciana Way Phasing Plan.

FDOT Consultant Project Manager Perla Medina-Kinne addressed the Town Council, stating that she was hopeful that the contract for the project would be awarded on schedule. She indicated that FDOT had been working closely with the Public Works Department, as well as with members of the community, in order to address the concerns of citizens. The suggestions made had been incorporated regarding maintenance of traffic and the time frames of work hours. She noted that the FDOT understood the importance of the project, and had increased incentive money to the contractor in order for the project to be completed on time.

Mr. Umberto Gomez, Project Engineer, addressed the Town Council, stating that he had provided a copy of the traffic control plans to the Town Council, and that the sidewalk would be replaced on the north side of Royal Poinciana Way, from Bradley to North County Road; from the curb line to the buildings.

Mr. Leslie Shaw, representing the Royal Poinciana Association, addressed the Town Council, stating that there was a concern with the time frame of the project and meeting scheduled deadlines. He recalled that the Royal Poinciana Association had been directed to return to the Town Council with suggestions; in that regard David Miller, of David Miller Associates, had provided a basic plan.

Mr. David Miller addressed the Town Council, stating that there were certain design opportunities that could be considered for incorporation in the project, such as pedestrian enhancement, additional landscaping, and street furnishings. He suggested that additional time be spent with Town staff and FDOT in this regard.

President McDonald commented that the Town Council had received the proposal of Mr. Miller this morning, and staff would have the opportunity to work with FDOT in this regard.

Ms. Medina-Kinne advised that the project had gone through many changes, and a point had been reached where plans could now be finalized; FDOT had made an effort to accommodate as many suggestions made by Town staff and the Royal Poinciana Association as they could without impacting the schedule. She noted that she had been contacted by Mr. Miller regarding possible redesign of the plans; she stressed that the project was already behind schedule, that it was not being handled through Tallahassee, and there would be some flexibility as to how the project was carried out, however, there would be a point where changes could no longer be accommodated. She explained that if the project was redesigned, the construction schedule could not be met; if some of the recommended changes were incorporated the project would be postponed and the money would then go to something else.

In response to Councilman Goldblum, Ms. Medina-Kinne advised that the suggested temporary walkways across the median strips would be incorporated.

Mayor Smith noted that the Town of Palm Beach had not delayed the project; there had been FDOT personnel problems which had resulted in the delay; she also noted that there was not a landscape plan included with the plans that had been submitted.

Ms. Medina-Kinne replied that it was policy to distribute plans at the 30% stage, 60% stage, 90% stage, and a field review at 95%, which had already been done. She commented that the Town of Palm Beach had been very cooperative.

Mr. Bowser commented that there would be no changes to the existing median as it currently existed; the landscaping would remain as it was; the plans had not envisioned changing anything in that regard; when the job was finished there would be new curbing, new pavement, new striping, working drainage, however, there would be no landscaping changes. He explained that there had been public hearings held in this regard three years ago, and the project had been split at the request of the Town so that it would not be done during one season, which resulted in the loss of a whole year – the first phase was underway currently; the second phase would begin next year.

President McDonald clarified that no changes could be made if the project went according to schedule; if changes were made then the project would be delayed for an unknown period of time.

Mr. Leslie Evans commented that scheduling problems with the project had been encountered for various reasons, and questioned the replacement of cement with cement, noting that other materials had been used in other projects/locations.

Ms. Medina-Kinne advised that the schedule could be maintained, with a start date of approximately the end of April, however, additional changes could not be incorporated. She advised that she would be present each month at the Town Council meeting to report on what was taking place. She addressed the comment of Mr. Evans concerning cement, noting that brick pavers could be used, however, it would have to be requested by the Town and the Town would have to participate in expenses as well. She also noted that the entire sidewalk was not being replaced because some of the sidewalk was in the FDOT right-of-way, and some of it was not, and was private property; right-of-way acquisition or temporary easements would entail at least two and one-half years.

Mr. Evans commented that earlier questioning had resulted in the response that the sidewalk would be replaced between the street and the buildings, however, the plans did not indicate the same thing.

Project Engineer Gomez commented that he had misunderstood the question of Councilman McLendon – he explained that on the north side of Royal Poinciana Way in front of the business, the whole length of sidewalk would be replaced from S. County Rd. to Bradley Place, however, the width of the sidewalk would be only to the right-of-way line. He apologized for the confusion, explaining that in some locations the right-of-way line coincided with the edge of the building, in other locations it did not.

Mr. Evans commented that the current plans indicated that there were 50 street signs on galvanized metal between Cocoanut, Bradley, and No. County Rd. – the cheapest concrete was going to be put in as well, striping would be on the street. He suggested that signs that were painted and uniform be used and grouped.

Ms. Medina-Kinne advised that it was not possible to change the signs at this point in time, without delaying the project.

Mr. Gomez advised that signs were placed properly according to established guidelines; he requested specific information from Mr. Evans in this regard.

Mr. Evans commented that the street was a main street, and very important.

Architect David Miller commented that the FDOT and he could discuss the issues and come back to the Town Council to report on the results.

Ms. Medina-Kinne replied that she would meet with Mr. Miller, however, she clarified that she would need to establish a point of contact with the Town of Palm Beach.

President McDonald suggested that the FDOT work through Town Engineer Bowser, who would notify anyone who should be included.

Councilman Wyett asked when the project would be rescheduled by the FDOT if it could not now be completed on time?

Ms. Medina-Kinne replied that if the project was pulled, the money would most likely go for something else, and the project would then have to go back on the planning schedule, which could take anywhere from several years to 10 years. She advised that she would explore any opportunities to use brick pavers, however, the Town would have to contribute to the costs.

Mayor Smith clarified that Town Engineer Bowser would coordinate the meetings between the FDOT, Mr. Miller, Mr. Evans, and the Garden Club.

B. Status Report Regarding the Town Beach Restoration Project. Albert P. Dusey, Director of Public Works

Public Works Director Al Dusey reported that his memorandum of September 27, 2000 outlined the status of the beach restoration project as follows:

1. Mid-Town - from approximately Via Los Incas to El Vedado Road

Project involves placement of about 1.23 million cubic yards of sand over about 2.44 miles (12,900'). The sand will be pumped from the borrow area south of the location used for the original, shorter, Mid-Town Project. To reduce environmental impacts, the project has been shortened about 700' at the south end and the advanced fill has been eliminated over a distance of about 800' at The Breakers' rock pile. Approximately 0.32 acres of hard bottom will be affected by the project and a mitigation reef will be constructed adjacent to, and north of, The Breakers' rock pile in 8-10' of water.

The State permitting process is proceeding normally with a State permit issuance expected in about two months.

At the Federal level, the notice period is over at the end of September. Comments received by the U.S. Army Corps of Engineers will be forwarded o the Town consultant for review and analysis. Barring any unexpected problems, a Corps permit should be issued in 4-5 months.

2. Phipps Ocean Park - From Sloans' Curve to the Ambassador Hotel:

Project involves placement of about 1.5 million cubic yards of sand over 1.95 miles (10,300'). The sand will be pumped from two borrow areas located between 1.5 and 2.6 miles south of the project's midpoint and about 3,500' offshore. The Town consultant has requested a variance from State regulations to allow use of these borrow areas because they contain some gravel sized and cobble sized coral fragments. In response to additional requests for analysis, the Town consultant sampled numerous cores from the beach within the project limits and compared these results with the sand in the two borrow areas. Through selective dredging of the borrow areas, the consultant has determined that about 2.5 million cubic yards of sand are available that is very compatible with the sand on the existing beach.

It appears that the Town consultant and DEP environmental permit staff have reached basic agreement on the outstanding environmental issues and the Town's final submission should occur the end of September or the first few days of October. A DEP permit is expected in November.

At the Federal level, an interagency meeting is scheduled for mid-October to review any outstanding Federal agency issues. There is an expectation that a Corps of Engineers' permit will be issued in December or January.

3. Erosion Control Line:

We have discussed the process for establishing the erosion control line with DEP staff. The two Town consultants are preparing maps and profiles supporting the establishment of an ECL based on the design berm and we expect to be able to provide this information to DEP staff for their review this week. Once approved, final ECL plans will be prepared and proceed through the normal State process, including a public hearing. This activity is expected to take four to five months. Most of this time is spent by the Bureau of State Lands in Tallahassee.

4. Reaches 2, 5 & 8:

Staff will be recommending feasibility level study on these Reaches to determine the most economical projects with the least environmental impact. The intent is to come to agreement with State DEP permit staff on what would be acceptable projects in these Reaches so that actual permitting will be easier, faster and less expensive. Reaches 2 and 8 are both anticipated to be very difficult to permit and will both require innovative design considerations.

5. Funding:

State DEP has provided a contract which the Town Council has approved for the State to cost-share in Mid-Town and Phipps in the amount of $6,359,182.

Palm Beach County has agreed to some minor changes in their interlocal agreement which will pay for 12.5% of the cost of Mid-Town and Phipps. This agreement will be brought to the Mayor and Town Council when the final cost estimates are available for inclusion in the agreement. This agreement is expected to result in County participation of approximately $2.3 million.

Councilman McLendon asked if Mr. Dusey and the consultant were content with the ability to obtain the appropriate sand from the designated borrow areas?

Mr. Dusey replied that the consultant had analyzed the borrow areas in every way he could, and the intent was to use borrow area four, which contained sufficient sand, and the least amount of material that may be considered objectionable.

Councilman McLendon asked Mr. Dusey if the adoption of the Erosion Control Line was going to be decided by some special legislative board or committee?

Mr. Dusey replied that the Bureau of State Lands would process the application to the Board of Trustees of State Lands, who would have the final say; he considered that with the support of DEP the application would go well.

C. Status Report Regarding Progress of Florida Department of Transportation South County Road Project. James M. Bowser, Town Engineer

Town Engineer James Bowser referred to the construction schedule prepared by Ranger Construction Company, which was the contractor working on the South County Road project. Mr. Thomas Driscoll, Construction Engineer for the Florida Department of Transportation (FDOT), the Project Manager, Eric Petrone, and Bob Schaeffer with Ranger Construction were present today to respond to any questions.

Mr. Thomas Driscoll, Construction Engineer for the FDOT advised that the intention had been for completion in the middle of October, however, there had been a significant number of utility conflicts on the project; a sewer line had been replaced on Seaview Avenue; additionally, he requested expansion of the hours of work for Ranger Construction from 7:00 a.m. to 7:00 p.m. Monday through Saturday in order to complete the project by the end of December. He noted that there may be some minor remaining items after that time, and the FDOT would work with the Town for an acceptable conclusion after that point. He pointed out that the goal was to get the road opened completely to traffic, and have the sidewalk, curb, etc. restored so that the Town was in a presentable condition as the season began.

Town Engineer Bowser explained that work hours of 8:00 a.m. to 8:00 p.m. had been granted previously, and because of the change in daylight hours, the hours of 7:00 a.m. to 7:00 p.m. were now being requested.

Councilman Wyett moved approval of the work hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, with Saturday work hours from 8:00 a.m. to 7:00 p.m. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

D. Status Report on U.S. Army Corps of Engineers Activities Toward Upgrade of Lake Worth Inlet Sand Transfer Plant and Other Activities Providing for Accretion of Sand on Town Beaches. Albert P. Dusey, Director of Public Works

Public Works Director Al Dusey reported that the U.S. Army Corps of Engineers would be furnishing a schedule for the Sand Transfer Plant; expansion of the settling basin had been discussed, with the request to place excess sand at the Mid-Town beach, which could result in 200,000 - 300,000 cubic yards of sand at no cost to the Town.

Mr. Dusey reported that the sand that had been pledged to the Town from Peanut Island as part of the Corps' project to unload sand from the island placed by previous dredge projects, had been pledged to Palm Beach county for a reclamation project in the intracoastal at the Lake worth Municipal Golf Course, however, 1+ million cubic yards of sand from Peanut Island may eventually be placed at the Phipps Ocean Park in November 2001.

Mr. Dusey reported that, as of this date, there had not been a response to the letter (dated August 22, 2000) from Mayor Smith to Richard Bonner requesting Corps assistance with the Town Coastal Management Plan. He noted that he had been informed that a reply was being formulated.

Mayor Smith suggested that Mr. Dusey obtain information from the municipality of Lake Worth concerning the sand pledged to its golf course.

New Business

E. Staff Report on BellSouth Issues. David F. Jakubiak, Assistant to the Town Manager *(Deferred from September 12, 2000 Town Council Meeting)*

Assistant to the Town Manager David Jakubiak referred to the staff report dated October 5, 2000, summarizing the issues as follows:

The history of the issue related to the franchising of BellSouth – in 1997 BellSouth had approached the Town of Palm Beach to extend the Franchise Agreement with the Town. At that time the Town Council elected not to extend the Franchise and as a result there had been litigation with BellSouth. In the meantime, the new State communication tax law had gone into place which required that communities would not be able to franchise the telephone company as of January 1, 2001; even though the Town was entitled to franchise BellSouth at this time, it would be pointless to enter into a Franchise Agreement for only a few months. He reported that various meetings had been held with BellSouth, with emphasis on the Town Public Works Rights of Way Manual and associated zoning regulations.

Mr. Jakubiak reported that it was the understanding of staff that BellSouth was attempting to upgrade its system to provide DSL service, and that they would need to work in the rights-of-way in order to do that; they would need to enter into an agreement with the Town for a piece of Town property. Staff was not prepared, at this time, to provide any recommendation related to the lease, and that information would be brought back to the Town Council at a later date.

Mr. Jakubiak reported that Town Attorney Randolph would be prepared to speak about a proposal regarding the audit issue, which had not been resolved at this time.

President McDonald asked if Ocean Terrace, west of Lake Way was an issue, or would negotiations be completed with Palm Beach Country Club and BellSouth?

Mr. Jakubiak responded that it was not entirely clear on the specific property that BellSouth was attempting to secure.

Mr. Sid Poe, Regional Manager, BellSouth, addressed the Town Council, suggesting that each issue be approached on a separate and distinct basis. He stated that it was his understanding that today some type of closure would be reached on the easement issue on the right-of-way in the Town, at Ocean Terrace. Since it was an existing right-of-way, and an existing easement, Mr. Poe proposed that BellSouth would operate under the terms of the existing Right-of-Way Manual for the use of the Ocean Terrace property.

In response to Councilman McLendon regarding the space west of Lake Way, Public Works Director Dusey explained that some years ago the owner of the property had actually gained ownership of the access path, and in exchange for allowing the Town to have an access path, half of the Ocean Terrace right-of-way had been traded with the property owner; a fence had been installed by the Town as part of the transaction. He explained that the other half of the property was the property that BellSouth was proposing to use.

Councilman Wyett moved approval of the property located at Ocean Terrace west of Lake Way for the use of BellSouth. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Mr. Poe then addressed the next issue: the lease terms for BellSouth leases/licenses on Town property sites. He clarified that BellSouth had proposed a lease, however, the term of the lease continued to be an issue, as well as the language of the lease. Mr. Poe stated that a 10-year lease was not adequate, as proposed, because of the tremendous investment in dollars.

Councilman Wyett suggested that a 10-year lease be accepted, with a clause included that would state that renewals would not be unreasonably withheld. He stressed the importance of fiber optic service, which would occur as a result of upgrades to the system.

Councilman Brooks suggested that a 10-year lease was very reasonable.

President McDonald commented that it was the consensus of the Town Council that the 10-year lease would be acceptable; Mr. Poe agreed that he would take the message back to BellSouth, with every intent to resolve the issue and come back to the Town Council next month.

Acting Town Manager Thomas Bradford advised that Town staff was not opposed to leasing property to telecommunication providers, as it would provide a vital service to residents, however, there must be a mechanism that could be consistently used with all telecommunication providers as to how to go about establishing the value of the property to be leased. He requested direction in this regard.

Attorney Sharon Liebman, representing BellSouth Telecommunications, addressed the Town Council, stating that BellSouth had started with an easement request of the Town, on two different sites, to place facilities to upgrade service and provide new services in the north end area. Originally an easement had been requested for 99-years. Since that time discussions with Town staff had resulted in their preference not to grant an easement, but the preference to grant a lease of the land, as opposed to an easement. BellSouth had agreed with that concept. Ms. Liebman advised that Town staff had also proposed an appraisal process to value the land, which was acceptable to BellSouth. She reiterated that a 10-year lease would not provide sufficient protection for BellSouth based on the investment in the site, and suggested that perhaps there was some middle ground resolution.

President McDonald advised that some type of resolution could be worked out between Town Attorney Randolph and BellSouth; he asked if the appraisal process was acceptable to BellSouth?

Attorney Liebman agreed that the appraisal process was acceptable, however, the 10-year lease concept was not acceptable.

Councilman Wyett suggested that the piece of property in question was adjacent to a street that contained 10,000 sq. ft. lots, which was worth roughly $500,000 in the area; a formula could be applied based on those numbers and the amount of space leased.

President McDonald suggested that the Town Attorney and Town staff could establish an appraisal formula and return to the Town Council to report.

Attorney Liebman clarified that the sites being discussed regarding the leasing of Town property were not rights-of-way property.

****

At this time, the Town Council heard Item VII. I. - Consideration of BellSouth Proposal for Settlement/Offer of Judgment in BellSouth Telecommunications, Inc., vs. Town of Palm Beach

I. Consideration of BellSouth Proposal for Settlement/Offer of Judgment in BellSouth Telecommunications, Inc., vs. Town of Palm Beach

Town Attorney Randolph advised that BellSouth had offered the amount of $60,000 to settle Case No. 98-9010AI, BellSouth Telecommunications, Inc. vs. Town of Palm Beach. He recalled that the audit had indicated that there was approximately $35,000 of additional franchise revenue due to the Town of Palm Beach; the Statute would allow the Town to go back an additional three years, and the Town had taken the position that there would be additional monies due for periods of time prior to and subsequent to the audit. He advised that the amount offered, $60,000, was substantially too low, as well as too broad, as it would require the Town of Palm Beach to give up any consideration of charges in the future. He suggested that more information was needed in this matter, and he recommended that this issue be deferred.

Councilman Brooks moved deferral of the consideration of the BellSouth Proposal for Settlement/Offer of Judgment in BellSouth Telecommunications, Inc., vs. Town of Palm Beach, to the November 14, 2000 Town Council meeting. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

****

F. Town Staff Report on Negotiations for Gray's Mobil Parcel *(Deferred from September 12, 2000 Town Council Meeting)*

1. Resolution No. 45-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Declaring the Town's Official Intent to Seek Reimbursement for Certain Capital Expenditures Made or to be Made in Respect to the Relocation, Acquisition, Construction and Equipping of a New Fire Rescue Facility, and Renovation of Portions of Town Hall From the Proceeds of its not to Exceed $8,000,000 Principal Amount of Bonds *(Deferred from September 12, 2000 Town Council Meeting)*

Acting Town Manager Thomas Bradford referred to the back-up written documentation that had been provided today, as to the last position of both parties relative to negotiations for Gray's Mobil Parcel, and suggested a synopsis of the two proposals. He noted that a new offer had been received yesterday from Gray's Mobil that may have an impact on the decision making process.

President McDonald suggested that the latest offer be discussed today, since that would deal with the latest expression of intent.

Mr. Bradford explained that the latest offer was a proposal for a purchase price of $2.850 million, with a deposit on signing of the real estate contract of $1.5 million, and they would agree to immediately pay off all existing mortgages from those proceeds and give a sole lien to the Town of Palm Beach until the closing occurred, which would be on June 1, 2002, approximately 18 months from today, and the balance of the purchase price would be due at that time. They would be willing to have the environmental costs split at $50,000 a piece; any costs over $100,000 would be borne by Gray's Mobil; they also proposed that they would pay all costs of carrying the property, including real estate taxes, insurance, property management, maintenance, utilities, etc., until June 1, 2002.

Mr. Bradford noted that the Town of Palm Beach had offered $2.750 million as a purchase price, with the costs of the environmental clean up split, and that the seller would be responsible for anything over $100,000; that they could stay on the property for a nominal rent until May 1, 2001. He advised that he had spoken with Town Attorney Randolph, and had learned that some time would be needed to review how the interests of the Town would be protected legally for the length of time as proposed by Gray's Mobil.

Councilman Goldblum noted that the proposal had just been received, and moved that the issue be deferred to the November 14, 2000, Town Council meeting. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett suggested that staff had indicated that the Gray's Mobil site was preferable, however, he noted that the Town owned another site across the street that could be utilized.

Fire-Rescue Chief Ken Elmore responded that parking was the main reason that the site across the street could not be utilized – there were currently 50 parking spaces for employees there, and there was no other location to replace the parking areas. From the point of view of the Fire Department, the exit from the Gray's Mobil site was much better. He noted that one current problem with the current facility was that all medications used by the Fire Department must be maintained below 85 degrees, and in order to do that roof top air conditioning units were necessary on the top of the vehicles.

Councilman Wyett suggested that the Town Manager be authorized to continue to look at alternatives.

Mayor Smith asked the amount of taxes on the Gray's Mobil property?

Mr. Bradford replied that the amount was $31,000 per year.

On roll call the motion to defer carried unanimously.

Mr. Bradford advised that costs would be attached to seeking other alternatives, and suggested that staff be authorized to expend not in excess of $13,500.

Councilman Wyett moved approval of authorizing staff to expend not in excess of $13,500 (to come from the General Fund Contingency) to pursue alternative sites. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

G. Request to Form Selection Committee for Landscape Architectural Consultant For Boynton Landscape Park Development. Albert P. Dusey, Director of Public Works

Public Works Director Al Dusey advised that the Town policy regarding selection of certain professionals was based on State law, and the Town Council could decide whether a Selection Committee would be used to choose from the group of consultants for the Boynton Landscape Park development.

President McDonald noted that the format for the selection committee, as set forth in the memorandum of Mr. Dusey, dated September 14, 2000, would place Councilman Wyett as the representative from the Town Council.

In response to the suggestion of Councilman Wyett to add Mayor Smith as a member of the selection committee, Town Attorney Randolph advised that Councilman Wyett and Mayor Smith could serve together, provided the meetings were public meetings.

Mayor Smith suggested that Mr. Joe Ugi, Facility Maintenance Division Manager/Public Works Department, be included on the selection committee.

H. Peanut Island Water and Sewer Issues and Future Land Use Atlas and Text Amendment. Timothy M. Frank, Planner/Projects Coordinator

Mr. Timothy Frank, Planner/Projects Coordinator, addressed the Town Council, referring to his memorandum regarding the use of Peanut Island, dated September 28, 2000, stating that the new land use designation of the area may open up it up to commercialization of the island, and there was an upcoming workshop scheduled with Palm Beach County to discuss the land use issues. He recommended that a letter be sent stating the objections of the Town of Palm Beach to any commercial activities; more detailed information would be brought forward at the scheduled workshop.

Councilman Brooks commented that it appeared that any opposition would need to come through some type of an environmental lawsuit.

Mr. Frank responded that there would be some standing regarding land use – they had issued a Comprehensive Plan, which, in his opinion, would not allow commercial uses.

Town Attorney Randolph advised that there may be some potential for standing, however, it would need further examination.

Councilman Wyett referred to the suggestion made in the September 28th memorandum relating to Palm Beach annexation of Peanut Island, and suggested that it be further investigated.

Mr. Frank responded that the island was owned by the Florida Inland Navigational District, (FIND) and Palm Beach County leased some of the land from the Port Authority.

Mayor Smith commented that the island had once been in private ownership, and had been considered by several developers from New York, however, at that time, Palm Beach County was adamant that it would stay as a conversation/preservation area and could not be developed.

Mr. Frank recommended that the President of the Town Council be authorized to sign the prepared draft letter of objection to the revised land uses and proposed zoning changes on Peanut Island, with staff continuing to research the matter and report when there was further information.

Councilman Wyett moved approval of giving authorization to the Town Council President to sign the letter of objection to the revised land uses and proposed zoning changes on Peanut Island, with staff continuing to research the matter and report back to the Town Council. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Ms. Wendy Victor, 208 Via Tortuga, requested that she be allowed to go the upcoming workshop, and report back to the community.

President McDonald explained that the workshop was opened to the public, and that Mrs. Victor was welcomed to attend and report back to the community.

I. Consideration of BellSouth Proposal for Settlement/Offer of Judgment in BellSouth Telecommunications, Inc., vs. Town of Palm Beach

This item was heard earlier in the meeting, immediately following Item VII. E.

IX. RESOLUTIONS

A. Resolution No. 33-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving the Palm Beach County Interlocal Agreement with Municipalities of Palm Beach County and the School District of Palm Beach County to Establish Public School Concurrency and Authorizing the Mayor to Execute the Same on Behalf of the Town. Timothy M. Frank, Planner/Projects Coordinator and Leo Noble, Palm Beach County School Board Consultant *(Deferred from August 8, 2000 Town Council Meeting)*

Town Attorney Randolph read Resolution No. 33-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE PALM BEACH COUNTY INTERLOCAL AGREEMENT WITH THE MUNICIPALITIES OF PALM BEACH COUNTY AND THE SCHOOL DISTRICT OF PALM BEACH COUNTY TO ESTABLISH PUBLIC SCHOOL CONCURRENCY AND AUTHORIZING THE MAYOR TO EXECUTE SAME ON BEHALF OF THE TOWN.

Councilman Wyett moved approval of Resolution No. 33-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Resolution No. 50-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute a Sovereign Submerged Lands Easement, BOT File No. 500221796, on Behalf of the Town of Palm Beach, Between the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the Town of Palm Beach for the Purposes of Obtaining a Nonexclusive Easement in the Lake Worth Lagoon Along the Par 3 Golf Course Shoreline. James M. Bowser, Town Engineer

Town Attorney Randolph read Resolution No. 50-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SOVEREIGN SUBMERGED LANDS EASEMENT, BOT FILE NO. 500221796, ON BEHALF OF THE TOWN OF PALM BEACH, BETWEEN THE STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND AND THE TOWN OF PALM BEACH FOR THE PURPOSES OF OBTAINING A NONEXCLUSIVE EASEMENT IN THE LAKE WORTH LAGOON ALONG THE PAR 3 GOLF COURSE SHORELINE.

Councilman Wyett moved approval of Resolution No. 50-00. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

C. Resolution No. 51-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Five Foot Utility Easement on Property Commonly Known as 358 El Brillo Way, Palm Beach, Florida. Maura A. Ziska, Esq., Agent

President McDonald noted that a letter had been received from Attorney James McCartney Wearn regarding Resolution No. 51-00, which would be discussed after the resolution was read.

Town Attorney Randolph read Resolution No. 51-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A FIVE FOOT UTILITY EASEMENT ON PROPERTY COMMONLY KNOWN AS 358 EL BRILLO WAY, PALM BEACH, FLORIDA.

Councilman Wyett questioned the reason for abandoning the easement?

Town Engineer James Bowser responded that the Town had an abandonment procedure for residents wishing to abandon rights-of-ways or easements. There was a 5' utility easement on the property, which at one time had been on the property line; the property owner had then acquired property to the east of this easement, which now bisected the property, and was interfering with the use of the property as a result of restrictions on construction in easements. Mr. Bowser noted that initially there had been one objection from BellSouth, who had believed that they had a cable in the easement, however, it had been discovered that BellSouth was not in the easement, and they had issued a letter of no objection; a letter had been received from Attorney Wearn objecting to the abandonment, with a number of issues raised. Mr. Bowser explained that the issue relative to the Public Works Department was the issue raised concerning the right-of-way, which was in the special easement document that was issued to create the parcel – he explained there was no "right-of-way" as typically recognized as public land; it was still only an easement, described as an easement right-of-way for the utilities to use – he stated that he did not see this right-of-way as any different than an easement. Mr. Bowser advised that it was the recommendation of staff that the abandonment be approved by the Town Council.

Town Attorney Randolph advised that if the easement was a "private easement," he did not believe the Town would have the right to abandon it, however, he did not have total information in this regard.

President McDonald suggested that Resolution No. 51-00 could be deferred in order for Town Attorney Randolph to review the deeds and come to a conclusion.

Attorney Maura Ziska commented that she had done a deed search for the parcel in question; the deed articulating the easement had been dated1944, was a private covenant that ran with the land, and set forth an easement for utilities over the division lines of every plot in the plat of El Bravo. She explained that the deed was only for the parcel in question, and had run with the land since then; the only prior record of activity was a record of the plat, and she had concluded that it had been just for the benefit of the property owner. She noted that she had met with Town Engineer Bowser concerning the easement on the property and had explained that her client wished to do some construction; he had indicated that the process of abandonment through resolution would be necessary. She stated that the private covenant would only benefit this property owner, and it was for utilities.

President McDonald commented that although Ms. Ziska had processed the application correctly, there were some concerns to be addressed.

Town Attorney Randolph advised that a process had been offered to the property owner in an attempt to alleviate the problem. He noted that after hearing the concerns of Attorney Wearn, he had some concerns that this may be a private matter, as opposed to a public matter, and he would need to conduct further review.

Councilman Brooks moved approval of deferral of Resolution No. 51-00, to the November 14, 2000 Town Council meeting, to allow Town Attorney Randolph to further research the matter. The motion was seconded by Councilman Wyett. On roll call the motion to defer carried unanimously.

X. ORDINANCES

Second Reading

A. Ordinance No. 23-00 - Amending the Code of Ordinances at Chapter 42, Environment, Article V, Noise, Section 42-199, Hours for Construction Work; Providing for Severability; Providing for Codification; and Providing for an Effective Date and a Sunset Date. Robert L. Moore, Director of Planning, Zoning & Building

Town Attorney Randolph read Ordinance No. 23-00 by title (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES AT CHAPTER 42, ENVIRONMENT, ARTICLE V, NOISE, SECTION 42-199, HOURS FOR CONSTRUCTION WORK, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE AND A SUNSET DATE.

Councilman Brooks moved approval of Ordinance No. 23-00 on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

First Reading

B. None

XI. COMMENTS OF THE TOWN COUNCIL MEMBERS

President Pro-Tem McLendon conveyed his appreciation to Police Chief Croft for the letter sent by his secretary to the Town

Council.

Councilman Goldblum expressed his concerns that everyone should be alert to the hospital situation (St. Mary's/Good Sam), and he did not think many people understood the consequences the Town would face if one of the hospitals closed.

Councilman Wyett expressed his support for Mayor Smith's comments regarding the handling and granting of variances by the Town Council. He suggested an open discussion regarding the problem be held – either at a Council meeting or a work shop to determine how the discussions could be reduced and how the message could be transmitted to attorneys regarding frivolous requests for variances. He suggested a final answer might be to have the Council adopt a Board of Review, separate from the Council, to hear variances subject to appeal to the Council.

Councilman Wyett commented that he did not think the Town Council should pass another revenue bond, and any bond issue that is not crucial in the size of $8 million, or anything in that vicinity, should go to the Town voters for approval, explaining that the Town residents could then decide.

President McDonald stated that he assumed the new policy where the Town Manager would call each Council member every time something of significant importance happened in the Town was acceptable to all members. He explained that if individual members of the Town Council did not wish to receive these calls, the Town Manager could be notified and the call would not be made.

Mayor Smith asked Public Works Director Dusey when the mangrove mitigation project would begin at the Par 3 Golf Course that was anticipated to begin in August?

Town Engineer Bowser responded he expected the project to begin in mid-November

President Smith commented that all of the school children would be asked to come and help with the mangrove plantings at the Par 3 Golf Course.

******The Town Council Meeting of October 10, 2000,
was adjourned at 12:10 p.m. for the luncheon break******

******The Town Council Meeting of October 10, 2000,
was reconvened at 1:35 p.m. on October 10, 2000******

XII. DEVELOPMENT REVIEWS

A. Time Extensions - None

B. Variances, Special Exceptions, and Site Plan Reviews

Old Business

At this time Town Clerk Pollitt administered the oath to all those who would be testifying to the following matters.

C. SITE PLAN REVIEW NO. 10-2000 WITH VARIANCE The application of Burton Handelsman, Love III relative to property described as Unit 1 of Via Lela of Worth Avenue; commonly known as 250 Worth Ave. Condo Unit 1; located in the C-WA Zoning District. To allow construction of a 1st and 2nd floor additions (134.34 sf & 63.5 sf respectively) on a non-conforming building, providing 56.02% lot coverage in lieu of 35% maximum allowed, and providing no additional parking in lieu of one off-street parking space required *(Deferred from September 12, 2000 Town Council Meeting)*

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

Attorney Peter Broberg, on behalf of Burton Handelsman, addressed the Town Council, distributing photographs of the area in question. He explained that the hardship was that the building had been built long before the Town Code had been in place, and strict interpretation of the Code would not allow the owner of the property to keep the building viable. He noted that technically the Code required one additional parking space for every 200 sq. ft., however, the request today was for 134 sq. ft.; he requested that this requirement be waived, since the additional 134 sq. ft. would not increase the personnel in the building, nor cause more traffic.

Assistant Building Director Veronica Close gave the following staff comments: Fire Department: fire sprinklers required for the two additions; Comprehensive Plan: demonstrate hardship; removes open space and increases density of a nonconforming situation; Building Department: hardship must be addressed; Town Manager: hardship must be addressed.

Attorney Broberg advised that the hardship was that the variance was de minimis, and the building was simply being squared in on the south elevation, and a hazardous situation was being alleviated on the inside portion.

Councilman Goldblum moved denial of Site Plan Review No. 10-2000. The motion died for lack of a second.

Councilman Wyett moved approval of the request, with the exception of the courtyard addition. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/2, with Councilman Wyett, President Pro-Tem McLendon, and Councilman Brooks casting affirmative votes; Councilman Goldblum and President McDonald casting dissenting votes.

D. VARIANCE NO. 6-2000 - Edwin L. Ecclestone, Jr., 190 S. Ocean Blvd.; located in the R-B Zoning District. To allow construction of an awning providing no side yard setbacks on the north or south in lieu of 10' required and providing a 3' rear yard setback in lieu of 10' required *(Deferred from July 11, 2000 Town Council Meeting)* **(Request for Deferral, per Letter Dated September 29, 2000, from James R. Brindell, to be deferred to the December 12, 2000 Town Council Meeting)**

This project was deferred earlier in the meeting, under Item V. Approval of the Agenda.

E. VARIANCE NO. 36-2000 The application of Weldon Yeager relative to property described as Lots 47-56, Royal Park Block 3; commonly known as Unit 5, Casas DeCarlos Condominium, 347 Australian Ave.; located in the R-C Zoning District. To allow installation of a patio awning which would increase lot coverage from 40% to 40.0078% in lieu of 35% maximum allowed *(Deferred from August 8, 2000 Town Council Meeting)* **(Request for Deferral, per Letter Dated September 15, 2000, from Weldon Yeager, to be deferred to the December 12, 2000 Town Council Meeting)**

This project was deferred earlier in the meeting, under Item V. Approval of the Agenda.

F. VARIANCE NO. 42-2000 The application of Norman Latham Trust relative to property described as Lot 22, East Shore; commonly known as 271 Plantation Rd; located in the R-B Zoning District. To allow construction of a 2nd floor addition providing 28.08' street sideyard setback in lieu of 30' required *(Deferred from September 12, 2000 Town Council Meeting)*

Ex-parte communication was declared by President Pro-Tem McLendon via telephone with Attorney Paine, and by Councilman Wyett via telephone with Attorney Jim Paine.

Attorney Jim Paine, on behalf of the applicant, addressed the Town Council, stating that the property owner desired to add a second floor addition; the hardship was that for structural and water proofing reasons, the second floor addition would need to be aligned with the existing west wall. He emphasized that, because the property was a corner lot, there was extensive green space wrapping around the house. In addition, he noted that the plan contemplated the removal of an existing, nonconforming one story portion of the structure along the north property line.

Assistant Building Director Veronica Close submitted the following staff comments: Comprehensive Plan: does not meet criteria for granting a variance; Building Department: would be new construction on an existing wall.

Architect Dario Giocamelli pointed out architectural details on the plan exhibited.

Councilman Wyett moved approval of Variance No. 42-2000, considering that it was an improvement to the property, was a de minimis request, and the house preceded the zoning ordinances in this regard. The motion was seconded by Councilman Brooks.

In response to President Pro-Tem McLendon, Attorney Paine explained that the existing structure on the land, as well as the shape of the lot were part of the hardship.

President McDonald asked Town Attorney Randolph if a hardship must run with the land, or could run with the land and/or structure?

Town Attorney Randolph replied that it normally ran with the land, however, the structure would be considered in regard to the use and shape of the land.

On roll call the motion to approve Variance No. 42-2000 carried unanimously.

G. VARIANCE NO. 44-2000 The application of Laura Andre Inc. relative to property described as Lots 158 & 159 Floral Park; commonly known as 159 Sunset Ave; located in the R-C Zoning District. To allow construction of a 2nd story addition with a point of measurement of 17.28' NGVD in lieu of 12.37' maximum allowed; to allow construction of a driveway reducing the landscape open space from 40.4 to 32.9% in lieu of 35% minimum required; and, to allow construction of a spa providing 7.23' sideyard setback in lieu of 10' required *(Deferred from September 12, 2000 Town Council Meeting)*

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

Since there was no one present to address Variance No. 44-2000, the request was moved to the end of the agenda.

At the end of the Agenda, Architect Skip Jackman, addressed the Town Council, recalling that he had appeared last month requesting a variance on the property in question; subsequently the request for the spa had been removed from the proposal, and changes had been made to the plans to eliminate the raised roof section. He withdrew the request for open space landscaped area. He presented photographs of the project. The point of measurement variance was being requested because the land was built up with the house existing on a hill, and the centerline of the street was on a much lower elevation.

Assistant Building Director Veronica Close commented that the project would need to continue to meet the Department of Public Works curb cut requirements.

Councilman Wyett moved approval of Variance No. 44-2000, noting that he disapproved of the proposed circular drive, based on the turf block, as it would give the impression of a lack of green space from the street; he found the hardship as going with the land elevation and the small site. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Brooks casting a dissenting vote.

H. VARIANCE NO. 45-2000 The application of Misbah Ahdab relative to property described as Lots 63 & 64 Mark Rafalsky; commonly known as 745 N. Lake Way; located in the R-B Zoning District. To allow installation of driveway gates providing a 4' street sideyard setback in lieu of 18' required *(Deferred from September 12, 2000 Town Council Meeting)*

Ex-parte communication was declared by President Pro-Tem McLendon via a meeting with Attorney Ziska discussing the pros and cons of the request, and by Councilman Goldblum, who had discussed the plans with Attorney Ziska.

Attorney Maura Ziska, representing Misbah Ahdab, addressed the Town Council, stating that the property was located on the corner of Northlake Way and Fairview Road, and the main entrance for guests and service vehicles was located on Northlake Way. A garage faced Fairview Road, as required by the Code, and there was a secondary driveway leading to the garage, which was only used by the owners, who wished to install a sliding gate along the edge of their property 4' from the property line so that their three children could play outside safely. She explained that the hardship ran with the land, and was the location and configuration of the residence on the property in relation to Fairview Road; the safest location for a gate was alongside the fence and hedge so that it could protect, yet not endanger the children; in addition this was not the main entrance; only the owners would use the driveway, accessing the gate by remote control. Ms. Ziska reported that a traffic study had been performed, and it was concluded that the proposed gate would not be hazardous, or impede traffic, health, safety and welfare to the general public. She referred to similar variance requests that had been granted in the past.

Assistant Building Director Veronica Close gave the following staff comments: Building Department: hardship needs to be addressed by the applicant.

Councilman Wyett commented that he saw no hardship or reason to grant the variance request.

Councilman Goldblum noted that the driveway was on a slant, and in order to put gates in, they would have to go back along the property line – they could not swing into the driveway; he considered that there was a safety factor, and moved approval of Variance No. 45-2000, with the hardship being the location and configuration of the residence on the property in relation to the

road, and the distance from the property line to the garage would not leave room for a gate; in addition there was a change of elevation between where the garage was located and where the street was located. The motion was seconded by Councilman Brooks.

In response to Mayor Smith, Mr. Misbah Ahdab, property owner, stated that there was no house door on the north side of the property.

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

I. VARIANCE NO. 46-2000 The application of James H. Clark Trustee relative to property commonly known as 1500 S. Ocean Blvd.; lengthy legal description on file at the Building Dept; located in the R-AA Zoning District. To allow construction of a relocated main drive entry with gate posts at a 16.33' height in lieu of 8' maximum allowed, allow gates at a 14.33' height in lieu of 8' maximum allowed, and to allow supporting walls at a 10.58' height in lieu of 6' maximum allowed *(Deferred from September 12, 2000 Town Council Meeting)*

Ex-parte communication was declared by Councilman Brooks with Attorney Doyle Rogers; by President Pro-Tem McLendon with Attorney Rogers; by Councilman Goldblum with Attorney Rogers; and by Councilman Wyett with Attorney Rogers.

Attorney Doyle Rogers addressed the Town Council, stating that the property was a very large restoration project, which had been unanimously approved by the Landmarks Preservation Commission approximately one year ago. He explained that the applicant was now requesting a variance concerning the main drive entry, which was a safety issue; Architect Mark Marsh would explain the size of the gate and its location on the land.

Architect Mark Marsh addressed the Town Council, stating that the original existing entry had been on the east end of the property on a curve element, which had presented a traffic danger; the relocation proposed was at the north side of the property, which had been approved by the Landmarks Preservation Commission. He displayed an architectural rendering of the area, explaining that a landmarked courtyard area had created a restriction on the placement of the drive entry and gates; the current owner wished to replicate the original gates in solid bronze, which had created a proposed entry feature which would require a relocation, and thus the variance being requested. Mr. Marsh further explained that safety reasons, the landmarked elements, and an existing banyan tree all contributed to the justifications for the variance request

Zoning Administrator Paul Castro stated that staff believed that the gates should be consistent with neighboring properties in terms of height; the Comprehensive Plan stated that there was no hardship, with adequate room to place the gates outside of the front setback, as the neighbors to the north had done; the curve element contributed to a dangerous traffic situation; the Town Manager had commented that there was no hardship; Mr. Castro verified that the surrounding wall on the front property line would conform to the 6' height requirement.

Attorney Rogers responded that the property to the north was not a landmarked property, and therefore not restricted; he explained that the hardship with the property in question was that it was required to conform to a landmark approval. He displayed photographs of the property and very large restoration project in question, noting that the Mar-a-Lago property gates were only 10' from the roadway, and pointed out other similar gates in the area. He noted that at the time the original gates had been installed there had been no restrictions on setbacks.

President McDonald commented that currently vehicles coming north and south come around a curve before they arrive at the location of the property in question; and that he had encountered several instances within the last several months where traffic safety problems had occurred; he considered that the relocated drive entry would be more of a safety problem, and that the hardship was self-created because the entranceway was being moved. He expressed concern with the distance of the gates from the road, resulting in a situation where traffic waiting to turn into the property would cause a back-up of traffic right before a curve in the road. He indicated that cars entering the property would need to be in a position where they would be off the road when waiting to enter the gates because of the curves in the road.

Attorney Rogers responded that there was quite a distance from the curve to the gate area, and the landmarked status limited the choices of placement of the drive entry; he maintained that several other properties in the area had a similar problem.

Councilman Wyett commented that safety issues and the setback issue should not be confused – if the gates were closed only one car could fit within the 35', and usually there would not be more than one car at a time on the average; if a function was ongoing, the gates could be left open to facilitate traffic. Mr. Wyett noted that the question was the height of the gate posts, and the question was whether the gates would conform at 8', with no question or setback, or adhere to the original plans with the impressive height of the gates maintained. Mr. Wyett moved approval of Variance No. 46-2000, with the hardship being the fact that the property was landmarked, and moving the gates back would affect the landmarked areas, and would interfere with access for emergency vehicles.

In response to President McDonald, Town Attorney Randolph advised that the landmarked status was not considered a hardship.

Councilman Brooks seconded the motion to approve Variance No. 46-2000.

Ms. Polly Earl, Preservation Foundation, commented that the property was one of the treasures of Palm Beach, and suggested that the hardship was commingled, having to do with the land and the configuration of the property on the land; the configuration of the landmarked aspects on the land could constitute the necessary hardship. She maintained that the original architect had designed the proposed gates, which meant that Mr. Fatio had conceived that the size and scale of the gates were suitable for the house, and embellished and accented the house in the proper way.

Mayor Smith commented that the pillars and the gates that were originally on South Ocean Blvd. were of the size and proportion being proposed today, and if the entrance had not been changed those pillars and gates would have remained, although the width being proposed was greater.

On roll call the motion to approve Variance No. 46-2000 carried 4/1, with President McDonald casting a dissenting vote.

J. <u>SPECIAL EXCEPTION NO. 15-2000 WITH VARIANCES</u> The application of Stephen Shapiro for Highland Unlimited Inc. relative to property described as W32.37' of Lot 6, Lot 7, E20.22' of Lot 8, Reverie Block 2; commonly known as 230 Pendleton Ave.; located in the R-B Zoning District. To allow construction of a 2nd story addition providing a 4.9' sideyard setback in lieu of 15' required, allowing 33.5% lot coverage in lieu of 32% existing and 30% maximum allowed, and allowing a 6.23 cubic content ratio in lieu of 5.49 existing and 4.5 maximum allowed. To allow installation of a second kitchen in said addition *(Deferred from September 12, 2000 Town Council Meeting)*

Ex-parte communication was declared by Councilman Goldblum with Attorney James Brindell concerning the merits of the application, and by Councilman Wyett with Attorney James Brindell.

Attorney James Brindell, on behalf of Stephen Shapiro, addressed the Town Council, stating that the house was 4,782 sq. ft. two-story house built in 1938, and symmetry was one of the characteristics of the Georgian Revival style. He presented an elevation of the property in question, noting that it was on the list for landmarking; the proposed plan was to restore the facade to the original Georgian design. Most of the houses on the street were close to the curb, and most were nonconforming with regard to setbacks, and lot coverage. The garage on the house in question was not accessible from inside the house. The lot was substandard in width and depth; 10 of the 22 houses on the street contained more square footage than the house in question; 14 of the 22 houses had a second floor over the garage.

Attorney Brindell presented an elevation of the proposed construction, extending the garage so that it could be entered from within the house; the second story addition would be a staff/guest room, creating the balance typically expected of this type of home; the landscaped open space would be increased by 3.2%. He noted that letters of support had been received from the three abutting property owners most affected. He explained that the purpose of the CCR and lot coverage requirements was to ensure that new development would be consistent with the character of the street, and in this case those code requirements would prevent the applicant from improving the property in a manner which was consistent with the neighborhood and architectural style of the house.

Assistant Building Director Veronica Close gave the following staff comments: Comprehensive Plan: no hardship, request is excessive and does not meet criteria for granting variances; Town Engineer: survey dose not show easements, and there would be an objection if proposed construction conflicted with any easements or public utilities; Building Department: hardship must be addressed; Town Manager: hardship must be addressed.

Attorney Brindell explained that the hardship was the undersized lot, relative to width and depth, and the location of the house on the property necessitated the only logical placement of the addition, which would allow the house to be restored to its Georgian Revival design; the property would be denied the right to have the same sort of element common throughout the block.

Mayor Smith commented that there was great pride of ownership on Pendleton Avenue, and in most cases there was a second floor addition over the garage; she suggested that the hardship was due to the undersized lot.

President Pro-Tem McLendon moved approval of Special Exception No. 15-2000 with variances, with the hardship running with the land. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/2, with President Pro-Tem McLendon, Councilman Brooks, and President McDonald casting affirmative votes; Councilman Goldblum and Councilman Wyett casting dissenting votes.

<u>New Business - Minor</u>

K. None

<u>New Business - Major</u>

L. <u>SITE PLAN REVIEW NO.11-2000 WITH VARIANCES</u> The application of CPG Brazilian Ltd Liability Corp.relative to property described as Lots 4 & 5 Royal Park Block 1; commonly known as 445 Brazilian Ave.; located in the R-C Zoning District. To allow construction of a parking garage, and the modification of the multi-family dwelling and the hardscape.

Variances are requested for the principal structure as follows: raise this nonconforming structure to 7.5' NGVD elevation from the existing 5.5'; allow existing setbacks to continue at 3.1' west sideyard, 8.75' east sideyard, and 24.4' frontyard setback in lieu of 27.5' required; and to allow an 8' frontyard setback for an unenclosed accessory structure (barbeque). Variances requested for the proposed garage are as follows: allow a 3.33' sideyard setback in lieu of 20' required; allow a 5' rearyard setback in lieu of 30' required; allow 46% lot coverage in lieu of 35.2% existing and 30% maximum allowed; and to allow a 27% landscaped open space in lieu of approx. 60% existing and 35% minimum required

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney James Brindell to discuss the merits of the application; by Councilman Goldblum with Attorney James Brindell; by Councilman Wyett with Attorney James Brindell.

Attorney James Brindell, on behalf of the owner of the property, addressed the Town Council, stating that the property was currently a 14 unit, two-story apartment building constructed in the 1920's, sitting at an elevation of approximately 5.5 NGVD, which was 2' below the Town standards. Until three years ago there was a six-car garage and concrete pavement covering the entire rear yard of the property; the garage went into disrepair and the Town required that it be demolished. Currently, no parking was provided on site, although there was an existing driveway from the street to the backyard. All of the other properties on the block have on site parking. The lot was undersized in area by 55%, and in width by 33%, and was 180' in depth. The five-story South Lake Condominium was next to the property, behind it was a three-story office building, to the east was a four-unit townhouse complex. He noted that the proposal would reduce the number of units from 14 apartments to four condominium units, and a key part of the plan would adhere to the Town redevelopment policy to provide on site traffic flows and vehicular parking.

Attorney Brindell submitted a modification to the request, which would eliminate the request for the two fireplaces which were in the two front patio areas. He submitted the following project objectives:

To raise the building up to the minimum flood elevation of 7.5'; to raise the ground level as part of raising the building; install an underground exfiltration system to handle drainage on site; reduce the density by 71.4%; reduce the parking nonconformity by 77.4%; provide four on site covered spaces (which would still leave a deficiency of seven); provide some basic amenities in terms of the small courtyard areas; eliminate 16 air conditioning window units and provide four modern energy efficient units on the roof of the building.

Attorney Brindell displayed a rendering of the property in question, explaining that communications had taken place with the neighbors on both sides, a number of discussions had been held with Mr. And Mrs. Martin Purcell to allay their concerns; a letter had been provided to the Town with all elements agreed upon, with one change – once the building was raised and the land raised, a 7' wall from the rear property line up to a point that was immediately across from the rear of the apartment building; from the rear of the apartment building down to the end of the existing retaining wall on the Purcell property the wall would go to 6', either on top of the existing retaining wall, or immediately adjacent to it, whichever was most practical. There would also be a hedge on the rear component of the west side of the wall, maintained to at least 10'. The cost of installing the hedge, wall, and maintenance of both would be the responsibility of the applicant, with the Purcells providing the appropriate easements/agreements to allow the work to be done.

Attorney Brindell established that the South Lake Condominium had an issue with the four proposed air conditioning units, and he indicated that the units could be screened if desired, and much of the material currently on the roof would be removed.

Attorney Brindell explained that variances were necessary in order to raise the building; a west sideyard setback of 3.1' and an east sideyard of 18.75', and a frontyard setback of 24.4'. The other three variances related to providing parking on site, requiring a sideyard setback of 3.3' on the west, and a rearyard setback of 5'. He established that the hardship was that the lot was undersized. Lot coverage variance of 46% in lieu of 30% was being requested (the existing was 35.2% – that only was in existence because the old garage and paved parking area were demolished); the landscaped open space variance request was to provide 27% in lieu of 35%. He noted that the request attempted to bring the property into conformance with the Town Code and Comprehensive Plan.

Assistant Building Director Veronica Close gave the following staff comments: Comprehensive Plan: density reduction would be advantageous, however, the landscaped open space should not be reduced to below the Code requirement; there was no objection to the variance for the setback caused by the elevation; Town Engineer: no trees allowed in the rear easement, applicant must meet requirements for storm drainage, and sidewalks and curbs should be upgraded to Town standards; Building Department: pavement and drainage must be addressed, landscaping in rear utility easement would be prohibited, size and height of the garage as well as relocation of air conditioning units are of concern; Town Manager: air conditioning units and barbeque grill could be problematic (barbeque grill had since been removed).

Attorney Greg Young, Edwards & Angell, LLP, on behalf of Mr. and Mrs. Martin Purcell, addressed the Town Council, stating that the issues had been resolved, and the project was supported by Mr. and Mrs. Purcell.

Attorney Frank Lynch, on behalf of the South Lake Association, addressed the Town Council, clarifying that all barbeque pits would be removed, and noted that the air conditioning units on the building would sit at the third floor level of the South Lake Association – he requested that they not be installed on the roof, as well as no other equipment of any type be placed on the roof. He suggested that the air conditioning units be placed in the setbacks at the rear or sideyard setbacks as permitted by Code. The second area of concern was the patios across the front of the building – they appeared to be close to the sidewalk, and he requested that they be omitted from the project. The third area of concern was the impact of construction on the South Lake Condominium, and trespassing on the property. He suggested that something be done in order to protect the South Lake Condominium during construction.

Councilman Goldblum agreed that the air conditioning units should be placed in the rear of the property so that the noise would not bother nearby residents; he also requested information concerning the garage.

Architect Ames Bennett displayed an architectural rendering of the proposed construction, explaining the garage structure with a mezzanine area for storage.

In response to Mayor Smith concerning the relocation of the air conditioning units, Attorney Brindell responded that there was no physical room on the west side, nor in the rear of the property Mr. Bennett explained that the units could be put behind a wall on the garage side on the ground, if necessary; the units were vertically discharged, with the noise going straight up – therefore they would not disturb anyone on the roof. He noted that they could be site screened on the ground, and did not believe that another variance would be required in this regard.

In response to Mayor Smith regarding the applicant building a wall on the east side of the property prior to beginning construction work, Attorney Brindell responded that the filling would be done first; a determination would have to be made as to adding to the existing wall. Mr. Bennett further explained the raising of the building; once the building was raised the wall could be added.

Councilman Wyett expressed concern regarding the start up date of the construction project, and considered that the garage was too high and imposing; he suggested that the air conditioning units be dispersed on the roof, rather than be concentrated together.

Attorney Brindell responded that the applicant did not intend to start the project until the season was over.

Architect Brindell addressed the patio issue raised by Attorney Lynch, stating that there would be landscaping in front of the patios and it would not create any more use than what currently could be there. He indicated that there would be a construction management plan as well.

Councilman Brooks moved approval of Site Plan Review No. 11-2000, with the following conditions:

1) incorporating the comments of staff regarding drainage and landscaping in the easement;
2) the air conditioning units remain on the roof, dispersed, with site screening;
3) the garage would remain as presented.

The motion was seconded by Councilman Goldblum.

Mayor Smith asked if the action of the Town Council today would preclude the Architectural Commission from saying that the garage was too high?

Attorney Randolph responded that the Architectural Commission would still have an opportunity to look at the garage; it should be made clear that there was room for the Architectural Commission to review the garage.

Councilman Brooks incorporated the agreements that had been made with Mr. and Mrs. Purcell into the motion of approval, as well as the clarification that the garage would be subject to review of the Architectural Commission.

On roll call the motion to approve with conditions carried unanimously.

M. VARIANCE NO. 48-2000 The application of Robert Fromer relative to property described as Lot 13 less E15' & Lot 13A, Allard; commonly known as 326 Via Linda; located in the R-B Zoning District. To allow construction of a boat lift providing a 7.5' sideyard setback in lieu of 10' required

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

Attorney Maura Ziska, representing Robert Fromer, addressed the Town Council, stating that a dock currently existed on the property, which had been built crooked, slanted to the south; as such the difference between the riparian property line and the dock at the bulkhead was approximately 10' greater than at the end of the dock. She explained that the applicant owned a 40' boat, which would be in Florida from November to April, staying at the dock; the boat would only be placed on a lift in the event of a storm or if the owner left town for a weekend. The boat would require at least three feet of water to operate, and the lift would need to be 14' wide to accommodate the width of the boat. She produced a brochure exemplifying the appearance. She explained that the hardship ran with the land; the existing dock was built at a slant before the building code had been enacted, and the boat lift could not be constructed towards the bulkhead because the water was too shallow. For aesthetic purposes the proposed location was the most desirable place for the boat lift so as not to obstruct the view from Lake Trail. The request was minor and de minimis; there were only two 12" pilings that would be encroaching; the neighbor to the south supported the request, and there were many existing docks on North Lake Trail with boat lifts.

Assistant Building Director Veronica Close gave the following staff comments: Comprehensive Plan: the applicant should conform to the Code; Building Department: hardship must be shown.

Mayor Smith asked if the boat lift could be built on the other side?

Attorney Ziska responded that the lift had to be built in a way that the boat could be easily maneuvered, without a dock in front of it; in addition, the water was very shallow on that side.

In response to President McDonald, Town Attorney Randolph explained that riparian rights would run with the property.

Attorney Ziska explained that the dock had already been existing when the applicable building code had been put into place; the hardship was the slant of the dock, and the water was too shallow in the area that would be conforming.

President Pro-Tem McLendon moved approval of Variance No. 48-2000, with the hardship being the depths of the water. The motion was seconded by Councilman Goldblum.

Mayor Smith suggested that a reason for projects to be done without a variance should always be considered; in this case, it may have been possible to use the other side of the dock.

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

N. VARIANCE NO. 49-2000 The application of P.B. Orthodox Synagogue relative to property described as Lots 178 & 179, Floral Park; commonly known as 120 N. County Rd.; located in the C-TS Zoning District. To allow a business identification sign at a 19' height in lieu of 15' maximum allowed

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

Attorney Maura Ziska, on behalf of Palm Beach Orthodox Synagogue, addressed the Town Council, stating that the building in question was landmarked and a building identification sign was in existence. The hardship for the variance request today was that the windows were arched stone, with awnings, that topped at 15', and it would be impossible to place a building identification sign along the perimeter of the building, and that was where all of the building identification signs had been placed since the inception of the building in 1928. The square footage of the sign would be approximately 6 ½ ', which would meet Town Code; at some point a previous owner had removed the sign, which necessitated the variance request.

Assistant Building Director Veronica Close asked if the proposed sign was intended to replace the window signs currently in place?

Ms. Ziska replied affirmatively, and stated that the window signs had been removed.

Councilman Wyett moved approval of Variance No. 49-2000. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

O. VARIANCE NO. 50-2000 The application of Janina Radtke & Zdzislaw Ciomek relative to property described as S95' Lot 60 & N10' of Lot 62; commonly known as 640 Island Dr.; located in the R-B Zoning District. To allow construction of a residence with a 4.395 cubic content ratio in lieu of 3.91 maximum allowed

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Kolins; by Councilman Goldblum with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, displaying a rendering of the house in question, noting that each Council member had received a binder with all relevant information, and stating that this particular case posed the question of how the application of the CCR sliding scale would be approached throughout various types of neighborhoods and streets in the R-B Zoning District. The property in question was located in the R-B District on Everglade Island, which was separate and apart in geography, location and character from the area that was designed to be the subject of the sliding scale, which were the streets in the north end, where there were smaller homes. After a study had been conducted of the north end area, a draft report had indicated that there were different areas and neighborhoods with different characteristics throughout the R-B Zoning District, and there was not a "one-size fits all" approach to dealing with the R-B District. The consultants had suggested approaches such as having a number of different districts within R-B to account for the differences in characteristics and to have different standards appropriate for each type of area within R-B. He maintained that the request today was a test case for that concept. The applicant had one of the last vacant lots on Everglade Island, where there were very substantial homes, and to impose a small or unnaturally low CCR would create the exact opposite effect that the sliding scale was intended to remedy; smaller homes would be created within larger neighborhoods. Mr. Kolins presented statistics that indicated that the majority of homes within Everglade Island were two story, with CCR's in excess of 4; he maintained that the home being proposed was therefore perfectly compatible with the homes in the neighborhood – 6800 sq. ft. under air conditioning, 7800 sq. ft. in total, with a CCR of 4.39, as opposed to the maximum under the sliding scale of 3.91. He stated that the imposition of the sliding scale on a neighborhood to which it was not appropriate would constitute a hardship, and an inappropriate way to apply the standards.

Assistant Building Director Veronica Close gave the following staff comments: Comprehensive Plan: does not meet the criteria for granting a variance; Building Department: show hardship; of the adjacent homes, 3 out of 18 were in excess of the CCR being provided; staff was very concerned about an assault on the Town Code through variance, rather than some other mechanism of granting relief; staff also questioned whether the request was the minimum that would be necessary.

Councilman Wyett commented that, using the data provided by Mr. Kolins, he counted 35 homes on the Island with a CCR under 4; 16 homes with a CCR over 4, however, he considered that the interpretation of the zoning code by Attorney Kolins was most important. He explained that the sliding scale had been considered a fair way to solve some of the problems; there had been no intent to separate the R-B zone by areas or streets; he saw no justification to totally disregard current zoning, which had been designed to improve and protect neighborhoods.

Attorney Kolins responded that the case in question should be considered on its own merit; when consultants, board members, etc., all took the position that there needed to be an acknowledgment of differences in the R-B District. He suggested that Everglade Island had the characteristics of ocean front or intracoastal property; he read CCR statistics from the material presented, stating that his client should not be penalized because of the passage of a sliding scale that did not apply to the area.

Councilman Brooks moved denial of Variance No. 50-2000. The motion was seconded by Councilman Goldblum.

Attorney Kolins requested a deferral in lieu of the motion to deny the request.

On roll call the motion carried 4/1, with Councilman Brooks, Councilman Goldblum, Councilman Wyett and President Pro-Tem McLendon casting affirmative votes; President McDonald casting a dissenting vote.

P. VARIANCE NO. 51-2000 The application of Paul & Geraldine Emmett relative to property described as Lot 27 & W ½ Lot 28, Ocean Park Block 2; commonly known as 143 Seminole Ave.; located in the R-B Zoning District. To allow construction of an entrance portico providing a frontyard setback of 19.8' in lieu of 25' required

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

Attorney Jeff Shaffer, on behalf of the applicant, addressed the Town Council, presenting photographs of the house, as well as the house directly across the street, which already had a portico. He explained that the applicant was requesting a 14' one-story portico that would extend 6' from the front of the home, approximately 8' in width; the home had been built in the 1920's, and at the time there would have been no zoning regulations as to the setback from the home.

Assistant Building Director Veronica Close gave the following staff comments: Comprehensive Plan: Portico could be designed to conform to the Code; Building Department: show hardship; confirm that carport railings previously shown on the plans had been eliminated.

Attorney Shaffer responded that the carport railings had been eliminated.

Councilman Wyett moved deferral of Variance No. 51-2000, in order that the portico could be reduced in height, and moved back. The motion was seconded by Councilman Goldblum.

Ms. Close explained that staff questioned whether this was the minimum hardship necessary; staff believed that a possible redesign might require less of a variance.

On roll call the motion carried unanimously.

Q. VARIANCE NO. 52-2000 The application of Dr & Mrs. William Kaye relative to property described as W100' Lot 56 less street, Eden Properties; commonly known as 302 Eden Rd.; located in the R-B Zoning District. To allow construction of a second story addition on a residence that provides a 13.9' west sideyard setback in lieu of 15' required

Ex-parte communication was declared by Councilman Wyett with Dr. and Mrs. William Kaye.

Attorney Lisa Kaye addressed the Town Council, exhibiting an architectural rendering, and stating that the request had the written support of neighboring property owners; the request today was to allow the construction of a 21' deep second story addition over an existing first floor area. She explained the details of the proposal; the hardship was that without the 1.1' variance into the west sideyard the entire doorway area would have to be re-centered in order to be aligned with the front foyer and hallway, causing a financial and waterproofing problem; the existing interior floor plan would be destroyed; the zoning requirements had changed since the residence was originally constructed; the variance request was the minimum necessary to allow construction of the addition. She exhibited photographs of houses on the street indicating that the proposed construction would make the house in question aesthetically fit the street; she mentioned that the house on the west side of the home was elevated several feet; the east setback was also unique in that the house was on a corner lot of a street that was used only as an access to an alley, and was an entrance street to the neighbor, who supported approval of the request; the east setback would be used to build a rail and balcony and not a second story structure.

Zoning Administrator Paul Castro commented that there had been some confusion related to the application and the plans received by staff; the original plans that staff received had not shown the entire east elevation of the house, and as such the application for the variance on the street sideyard setback was not advertised. He suggested that portion of the request be deferred in order to be advertised; the west sideyard setback request was not objected to by staff, providing that a hardship was demonstrated.

Mrs. Kaye explained that the hardship on the west sideyard setback request was that the first floor structure was already existing prior to current zoning regulations; structural and waterproofing problems would result if the construction could not take place directly above the first floor structure.

Councilman Wyett moved approval of Variance No. 52-2000, with the hardship being with the structure and the land; there was no other place to add the addition on the undersized lot. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

The applicant will return with the street sideyard setback portion of the variance request at the November 14, 2000, Town Council Meeting.

R. <u>SPECIAL EXCEPTION NO. 17-2000 WITH SITE PLAN REVIEW & VARIANCE</u> The application of Echo Restaurant relative to property described as Lots 75-78, Sunrise Ave. Addition 2; commonly known as 230 Sunrise Ave; located in the C-TS Zoning District. To allow elimination of one parking space thereby reducing the required off street parking from 45 to 44 spaces, and to allow an additional 110 sq.ft. occupancy thereby modifying Special Exception approval 28-99 from 4,585 sq.ft. allowed to 4,695 sq.ft. **(Request for Deferral, per Letter Dated October 5, 2000, from James R. Brindell, to be deferred to the November 14, 2000 Town Council Meeting)**

This item was deferred earlier in the meeting to the November 14, 2000, Town Council meeting, under Item V. Approval of the Agenda.

<u>*Other*</u>

S. Request for Extension of Time for Construction at 232 A Worth Avenue. Ronald K. Kolins, Esq., Agent

Attorney Ron Kolins, on behalf of Georgio's of Palm Beach, addressed the Town Council, requesting a 30-day extension in the time for construction at 232-A Worth Avenue; he distributed a letter of support from the Worth Avenue Merchants Association. He explained that construction had been delayed because of the special approval necessary for some miscellaneous spaces, and there had been an issue with the landlord, which had delayed the project as well.

Assistant Building Director Veronica Close commented that staff understood that the extension request was for interior work.

Attorney Kolins agreed that was the case.

Councilman Wyett moved approval of the request for extension of time for construction at 232-A Worth Avenue. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Attorney Kolins commented that the attitude of the Town Council regarding variance requests was evident, and he suggested that an opportunity to address the issue be allowed for those having a viewpoint.

President McDonald suggested that Attorney Kolins could make comments at the next Town Council Meeting under "Communications From Citizens."

Mayor Smith made the following comments:

"I don't believe the Council has an attitude, Mr. Kolins. I believe that the Council is feeling perhaps there are too many variances, and if there are too many variances, perhaps there is something wrong with our zoning code, and if there is, why have you not brought this up in the many times and years that you have appeared before the Council? Perhaps the Council is under the impression that the architects and designers are using the variance route too loosely and the Council is perhaps deciding that the time has come that they will not look happily on variances, particularly when it pertains to new construction."

Attorney Kolins explained that he had not used the word "attitude" the way it was used these days; he clarified that he understood that the Council had an approach to the issue.

President McDonald stated that he had not changed – he had always opposed more variances than he had voted for, and his position had always been the same.

Councilman Wyett commented that there had been too many nebulous variance requests, and the legal community should be discouraged from requesting variances that were questionable.

Councilman Goldblum commented that he would like a panoramic view of the houses on either side of the house a variance was being requested for, in order to get an idea of what the neighborhood looked like.

XIII. ANY OTHER MATTERS

Mayor Smith commented that there may be code violations going on with the Sea Lord renovations, and she suggested that the Town investigate the matter, do the necessary work, and bill the owner.

Assistant Building Director Veronica Close responded that staff would review the property; to determine if violations existed and were the type that would fall into the category where the Town could correct them.

Mayor Smith commented that the Town of Palm Beach Employee of the Year would be named at the Chamber of Commerce meeting in November.

XIV. ADJOURNMENT

The meeting was adjourned at 4:44 p.m.

Mary A. Pollitt, Town Clerk

SEAL OF THE TOWN OF PALM BEACH FLORIDA
INCORPORATED APRIL 17, 1911

Prepared by:
Susan Eichhorn
Deputy Town Clerk