TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE TOWN COUNCIL MEETING HELD ON OCTOBER 8, 2002

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order by President Brooks at 9:30 a.m. The following Elected Officials were found to be in attendance on roll call:

Mayor Lesly S. Smith
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Samuel C. McLendon
Councilman Jack McDonald
Councilman Allen S. Wyett

Also attending for all or part of the meeting were:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Town Attorney John Randolph
Chief of Police Michael Reiter
Chief of Fire-Rescue Kent Koelz
Finance Director Jane Skittone
Recreation Director Russell Bitzer
Human Resources Director William Crouse
Public Works Director Al Dusey
Director of Planning, Zoning & Building Robert Moore
Town Engineer James Bowser
Planning Administrator Tim Frank
Assistant Director of Planning Zoning & Building Veronica Close
Zoning Administrator Paul Castro
Chief Code Compliance Officer Brian House
Town Clerk Mary Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. President Brooks led the pledge of allegiance.

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III. PRESENTATIONS

A. Palm Beach County Historical Society, Harvey E. Oyer, III, President

Harvey E. Oyer explained the derivation of the 'Palm Beach' name. Mr. Oyer presented a framed text of an article, "The Wreck of the Providencia", that appeared in a popular history magazine to the Mayor and Town Council with the request to display the article for all visitors to Town Hall to see.

Mr. Oyer recognized Palm Beach County Historical Society staff members: Executive Director Lauren Ment, Office Manager Margaret Tamsburg, Director of Special Events Jane Branneke, and several Board Members, Martha McKenna, Phil Whiteacre, Laurel Baker, Jane Told, Inge Bowdre, Charlie Ellington, Wes Blackman, Polly Earl, and Mark Cuillo.

IV. COMMENTS OF MAYOR LESLY S. SMITH

We have a lengthy agenda today and some controversial issues, as always to discuss, so I will be brief. I do want to speak to a couple of topics. We are pleased to have Palm Beach County School District Staff with us today to update us on the funding possibilities, flood elevation waivers, project timing, and most important—challenges posed by some of the Town's requests regarding the Palm Beach Public School.

I am sorry to see that the future of Palm Beach Public School has been a polarizing question for the Town. People feel strongly one way or the other as if it were a black or white issue, but, of course, it isn't. It's an extremely complex problem with an economic and social impact on us and on the County with both long term and short term ramifications. I admit that I feel strongly about retaining the school on the island, but I recognize that it may take time to sort out the differences and negotiate a consensus. Most importantly, for all of us, this will require an open mind, the willingness to listen, and patience on all sides.

I hope that we will undertake today's discussion in this spirit.

Also before us today is the issue of feral cats on the island – another problem that has divided the community. In the last week or two, the Town has received letters from several residents who have been inconvenienced and distressed, extremely in some cases, by the cats' presence. But for the most part, they oppose killing them. I am not sure anyone has a good solution anywhere in this country, and the Town has researched it, to a degree. But, before us today is the conflict between the Town's ordinance which prohibits other than domesticated animals and the County ordinance which permits maintenance of feral cat colonies as long as they are registered, sterilized, vaccinated, and tagged. Under the County ordinance, colonies can be seized or removed for public health and safety reasons if the cats are creating a public nuisance, or if the registered care-giver fails to abide by the County ordinance. It seems to me we have two problems. First, it is clear that in some cases, the colony care-givers have failed to abide by the County regulations, and second, that feral cats have become a very severe problem in some areas. In other words, today, the ball is in our court. This problem has plagued us for years. Today, I ask that we consider additional options to the new Town trapping program. Perhaps, the Town would be best served by supporting and financing a trap, neuter, and release program in addition to the already instituted trapping program. Hopefully, we can find a way to serve the public in the most humane way possible.

As we don't have another Council meeting before the November 5th elections, I'm making my get out the vote pitch this morning. In Palm Beach, we are proud of our track record of volunteerism, and it seems to me we could extend this to Election Day. We are all aware that despite best efforts, there were numbers of glitches in the primary election process. Most of them trace to lack of trained, helpful volunteers.

I'm happy to see there is such a big audience here today, because I am asking the various civic associations, including the Civic Association, the Citizens' Association south of Sloan's Curve, the Preservation Foundation, the Kiwanis, the Rotary, the Chamber, and every group that commits to our community to organize your members to volunteer to work at polling places – wherever in the County they are assigned – to help people understand how to vote, and make sure that their votes will count. The Supervisor of Elections is still accepting applications for volunteers. Anyone who can make this commitment should call that office at 656-6200 and ask for the poll worker department.

Many of us in Palm Beach vote absentee, and the rules have changed. Anyone can request an absentee ballot, but it must be in writing – in person, by mail, or through the Supervisor's web site, which is: www.pbcelections.com.

Ballots are mailed to you, but within four days of the election, they must be picked up at the Supervisor's office – and all absentee ballots have to be returned to the Supervisor's office by 7:00 p.m. on Election Day. It is also essential to know that when you vote in person, you must have a valid photo i.d. There is a wealth of information on the Supervisor's web site, and I encourage everyone to learn the rules and make this an Election Day we can be proud of.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

ADD Item XII.A.4. Request to Continue Construction at 150 Worth Avenue by Hedrick Brothers Construction Company until November 15, 2002

Motion by President Pro-Tem Goldblum to add this item to the agenda. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

ADD Item XII.B.3.Other c. Proposed Change in the Zoning Season Meeting Dates

Motion made by Councilman Wyett to add this item to the agenda. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

ADD Item VIII.B.New Business 8. Discussion of the North Lake Way Drainage Project

Councilman Wyett said he would like to have some discussion regarding the nineteen month projected drainage construction on North Lake Way.

Motion by President Pro-Tem Goldblum to add this item to the agenda. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

ADD Item VIII.B.New Business 9. (from the Consent Agenda) Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town.

Councilman McDonald said he would like to have this item moved from the Consent Agenda to the Regular agenda

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

VI. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

Town Manager Elwell said he recognized that people would be speaking to both sides of the feral cat issue, and, summarizing from the August Town Council Meeting, he stated the Town Council established the Town's policy in an effort to protect public health and to conduct a humane and cost effective effort to address the growing problem and growing risk of the feral cat population in Town as it relates to human health in the Town. He said the Town has begun this program in partnership with Palm Beach County Animal Care and Control, and the details of that are still being refined at this time. He continued that the program has been strongly endorsed by the State Health Department—the State of Florida has expressed its concern—it shares the Town's concerns for public health and endorses strongly the policy established by the Town.

He said he wanted to stress that this decision was not made rashly or lightly by the Town Council, but rather in response to the legitimate public health concern which emerged this summer thoughout the area and after literally years of review of this matter and consideration and restraint, in terms of Town action, regarding whether or not the cats are a nuisance. He noted that there were very strong feelings on both sides of the issue, and for years, consideration was given as to whether the Town ought to have an appropriate role in addressing the nuisance question; however, the Town did not act on that question, because of other things occurring in Town---there was some hope that with communication between the parties, the situation might be properly managed.

Mr. Elwell said that the field implementation of the actions taken by the Town Council in August have only just begun, because it took a while to obtain the traps; to coordinate the procedures between the Town and Palm Beach County Animal Care and Control. He urged the public to allow the prior actions to work or not with monitoring of the field work and, at a future date, to consider whether future actions are warranted.

Connie Gasque, 167 Root Trail, said the cats and the cat care givers have more rights than the property owners, and the bottom line is that it is against the law to establish and feed any wild animal community. She continued that the Police Chief said he wouldn't enforce the law, and he does not. She distributed pictures citing her complaints against the feral cats and care givers.

Don Kino, 205 Sanford Avenue, distributed copies of two letters that appeared in the Palm Beach Daily News on October 6th written by Dr. Sanford Kuvin and Catherine Bradley. He said he wanted to address the issue of rights and Ms. Bradley's ability to maintain felines should not be extended past the limits of pet ownership as dictated by the Town. He continued that if that were extended, it infringes upon the people who do not choose to have cats on their properties which pose health risks. He said he believed that an individual's rights outweigh those of the feral cats.

Jim Pappas, owner of property between Seminole and Everglade on North Ocean Boulevard, said he owns two homes under construction and is planning to build a third. He presented a bag of cat food that he said was placed on his doorstep, and it was the fourth dropping of cat food on his property in the last five days. He said he has 'trespass' signs posted; he has been accused of being a cat killer; and he presented a letter from his neighbor to his west who lives in Canada who has had similar problems. He said he hired police to watch his property plus a private investigator, and he has filed a trespass/felony charge against Catherine Bradley as she was seen on the property. He continued she has not been arrested because the County Prosecutor has not issued an arrest warrant.

He continued that Palm Beach does have a rat problem as well as a cat problem, and when food is left on public streets and on peoples' properties who are not in residence, if the cats do not eat the food, the rats do eat it. He said he was being invaded and harassed, and the Police have not been able to do anything unless they physically catch her on the property.

Dr. Sanford Kuvin, 149 Inlet Drive, Chairman of the Kuvin Center for Infectious and Tropical Diseases of the Hebrew University of Jerusalem, former Vice President of the National Washington-based Foundation for Infectious Diseases, testified as an expert in infectious diseases before the Congress and the World Health Organization about animal to man transmitted diseases, said his purpose in addressing the Mayor and Council was to put into perspective the public health risks that face the residents of Palm Beach by the expanding feral cat population. He said it was not a nuisance risk, but a public health risk. He said the word 'feral' means wild and quoted the Secretary of the Department of Public Health in Florida as stating the concept of managing free roaming feral cats is not tenable on public health grounds because of the persistent threat posed to communities from injury and disease.

Dr. Kuvin said the Town Attorney was advised in a letter dated September 27th by the Palm Beach County Attorney's Office that all registrations of feral cat colonies, issued under Palm Beach County ordinance in Palm Beach will be rescinded. He continued that the Town ordinance that prohibits the maintenance of the wild, feral cat colonies was created in response to public health needs many years ago. He asked if this or any other town would tolerate 1,200 to 2,000 wild, feral dogs, foxes, raccoons, opossums, or squirrels?

Dr. Kuvin said because the feral cats are fed and nurtured, the numbers are guaranteed to increase significantly into the thousands. He said one of the more than two dozen diseases transmitted from wild, feral cats to man, is rabies. He cited the twenty-five recorded cases of rabies in Palm Beach County this year with Palm Beach County being the highest county in the State of Florida.

Dr. Kuvin continued that through cat bites, scratches, urination, and defecation, rabies, cat scratch fever, toxoplasmosis, and a host of bacterial, parasitic, and fungal diseases are easily transmitted to men, women and children causing acute and chronic and sometimes fatal illnesses. He said these diseases not only include common ringworm and infectious staphylococcal diseases, and intestinal worms but a parasitic disease called toxoplasmosis which can seriously damage a newborn of an infected woman. He said about 5% of dog bites but 30% of cat bites become infected, and the wild, feral cats of Palm Beach do pose a significant and a potentially serious health problem to all of the residents in Palm Beach.

Dr. Kuvin quoted the Center for Disease Control and Prevention Veterinary Services, feral cats live on an average of only two to three years as opposed to domestic cats who live twelve to eighteen years, in part because of no health management within the wild cat population which live a miserable, sickly life within their reduced life span. These cats are sick and die from a host of common cat diseases such as feline distemper, feline leukemia, herpes virus, calisaya virus and other infections because they are free-roaming; they are not monitored, tagged, treated or traced.

Dr. Kuvin concluded there was no public health justification for keeping the expanding population of feral cats on the confined real estate of Palm Beach with their potential for disease transmission. He said the most difficult but the most direct way to control the problem is to enforce the existing ordinance and law, prohibiting the feeding of any wild animals, including cats, and if this prohibition were fully enforced, the feral cat population would decline and would come into ecological balance with the feral cats would deal with the resident rat population as part of their food supply. Dr. Kuvin said another humane option would be to trap, neuter or spay, then deport these rather miserable creatures to abundant, vacant land west of the Town in Palm Beach County, to live out their lives in a natural habitat and allow the residents to live unencumbered by the cat transmitted diseases.

Gertrude Maxwell, 1700 S. Ocean Blvd, representing Save-A-Pet, offered to assist in resolving the feral cat problem in Palm Beach. She said sufficient time should be allowed to save as many of the feral cats as possible with the feral cats to be relocated to a place where they are wanted and needed. She continued there is no other choice although it hurts many animal lovers, a humane and kind solution must be found. She quoted Governor Jeb Bush's proclamation on October 4th: "Animals are a beautiful part of our natural world."

Mrs. Maxwell said that she had confidence that the Palm Beach County Board of Commissioners is willing to assist in solving the problem and cited as an example of their sensitivity the declaration of December 17th as Animal Rights Day every year since 1972.

Mrs. Maxwell requested adequate time for the media to educate the citizens of Palm Beach County regarding the feral cat problem. She encouraged the care givers who have taken care of feral cats that have become quite tame to adopt the cats giving them complete shots and micro chips. She said the cats cannot be free to roam but must be kept in an enclosed area. She said the goal to remove feral cats from the island should be accomplished slowly and humanely with unadopted cats humanely trapped and if the feral cats are not claimed by owners within two business days, they will be humanely euthanized. She requested that the time for holding healthy feral cats be extended for a minimum of ten days at Animal Care and Control. Veterinarians should be encouraged to cooperate to provide spay and neuter services, shots, micro chips and tags at extremely reasonable rates or even free to help solve the current problems.

Mrs. Maxwell concluded that if there is any possibility for the animals to live and be placed in agricultural places where they are used and needed, that should be done.

Judy Schraft, former 17 year board member of the Animal Rescue League, addressed one facet of the Town's plan—the purchase of ten traps to trap cats.

Mrs. Schraft read: "In its over zealous attempt to placate some residents, the Town is undoing much of the good work that has been done so far. Why not at least allow animals that have been spayed, neutered, and/or micro-chipped to be examined and released before being taken to Animal Control where they must be ransomed at an unnecessary cost before being allowed to return to Town? This is a waste of money that could be better spent otherwise. Doesn't that make sense?"

Frank Chopin, Trustee of the Preservation Foundation, said he wanted to be clear that the Foundation does not support the killing of cats and believe there needed to be a solution. He said the Foundation runs a series of educational and seminar programs bringing as many as 20,000 into Pan's Garden and to other educational sites in the Town of Palm Beach. He said he agreed with Dr. Kuvin's comments regarding the health factors and congratulated Mrs. Maxwell on her comments seeking a solution to the problem. He added that the solution appeared to be trap and relocate which doesn't require the killing of the cats. Mr. Chopin said ten traps are not going to solve the problem, and if the problem is to be brought into control, then a lot more traps will be needed with no thought that the cats will be killed but will relocate them.

Mr. Chopin said the Preservation Foundation has suffered illegal feeding on its property although the people have been asked to not feed on the property. He said, based on Ms. Bradley's statements, hundreds of cats have been spayed and monitored daily which means that all the cats on the island would have been spayed or neutered if hundreds are done daily.

Sara Robertson, 339 W. Minster Place, W. Palm Beach, representing Animal Support Kindness and Kinship or ASKK, said her group conducted a number of medical and financial assistance programs for owners and rescuers that include feral cat givers. She cited the example of a Palm Beach building that contacted ASKK with a feral cat problem; the animals were trapped; the cats were spayed and neutered by Dr. Garcia in El Cid; given shots; costs were beween $100 and $150 for all the services; for each cat; the cats were released back to the building site two years ago; no further problems have been reported. Ms. Robertson said she supported the trap, neuter, release initiative whether it is in Palm Beach's case – trap, neuter, put into a sanctuary.

Mayor Smith said the pictures that were circulated by Mr. Pappas and Ms. Gasque were an absolute disgrace, and she was appalled that anyone in Palm Beach in the act of protecting these animals would deface someone's property, put feces and cat food all over someone's property. Mayor Smith said that is not the image the Town wants to project, and it is not beneficial to the animals that the care-givers are trying to help by destroying property in their name. She asked that this not continue.

Catherine Bradley, 165 Root Trail, said there was so much information presented at the meeting that it was astounding. She said she had two newspaper articles, one by Maureen Dowd of the New York Times and Dr. Kuvin's article in Palm Beach. She continued she has given up her life, after emigrating from England, to devote her time to a problem that she did not know existed, but when she realized the extent of the problem, she could not turn a blind eye and pretend it did not exist.

Ms. Bradley said, that unlike some people who show pity on an abandoned animal by feeding it for a day, a week, or six months before leaving for the summer; once she took pity on a mother and several kittens a block away from her home, she felt an obligation to do something more. She explained that she had never owned a cat, especially a cat that ran away when approached, and it was so easy for people to be critical, but very little had been done before—a little trapping here, a little dumping there—and some dear people who continued to feed the cats but did not know what else to do—thus the population grew.

Ms. Bradley said she was impressed with people who attempt to do a kindly thing. She continued that when she was confronted with a problem, she could not ignore it or walk away, and the mother cat and kittens on Everglade Avenue she found were the start of the spay, neuter, release program. She said these programs had been done in other countries for at least twenty years, and she did not know how to do it but found a way to do it without knowing it would bother anyone.

Ms. Bradley said she never meant to do anything wrong, but in her attempts to protect the little lives that now depend on her, she stepped on some toes. She said it does not appear to be about the cats any more, but about her personally, because she does not buckle under because she believes in what she is doing.

Ms. Bradley said she is disgusted by the treatment, or lack of it, by the Town officials and the Police Department, and everything is being done to discredit , malign, and destroy (Ms. Bradley) and a humane program. She continued that the Town has not taken the time to understand.

Ms. Bradley quoted the statistics regarding rabies fatalities to humans in the United States since 1990 that include no cat cases. She said a workshop is needed for the good of all, not just the chosen few, since government works for the people, not just each other.

Ron Kolins, Attorney, said he was very impressed with the clarity that was brought to this issue by the discussion at this meeting. He said three things need to be impressed on everyone: 1) the pictures that were circulated and referred to by the Mayor; 2) absurd equation of the Holocaust and trapping feral cats; 3) the incident of the bag of cat feces brought in by Mr. Pappas showing that people in Palm Beach have to suffer with that constantly.

Mr. Kolins said there are five reasons to continue and enhance the Town's program: the health reasons as discussed by Dr. Kuvin; the nuisances; the trespass; the fact that laws must be adhered to; and the quality of life in Palm Beach. He said he concurred that the cats should be taken to another area of the County, and the Town seems to have come together on this issue with the exception of Ms. Bradley and her supporters.

Beth Pouncey, 301 Chilean Avenue, said the one common denominator at this meeting was that no one came forward with a plan. She said a work shop should be scheduled for all to participate in, following Mrs. Maxwell's suggestion that a time out should be declared to a fair and honest decision based on the science rather than emotional feelings.

Mrs. Pouncey read the mission statement for her proposal for the workshop:

> A proposal for a workshop to educate and exhort those of us who would administer local public policy which controls the lives of the 500 or so documented feral cats that inhabit the island of Palm Beach; to adopt a policy that is shaped by scientific opinion, economic and social reality and compassion with an eye both to examining model programs already in existence in the U.S.A., thus avoiding having to deal with the after effects of thoughtless public policy; by pulling together a team of residents—that's the local humane societies, Palm Beach Cat Rescue, law enforcement, public officials, fundraisers, and grantsmanship experts—I feel we can have maximum impact on the number of cats by embracing a policy of trap, neuter and release while at the same time effecting a public policy that is both safe and humane. Thus I have drafted an outline for discussion committees which comprise the ground work of (her) proposal …for inclusion on the next agenda.

Mrs. Pouncey said she would like to solicit any and all members of the community to give of their time and expertise, and she looked forward to your fair and unbiased ideas dictated by a review of the science. She said there is a vast amount of literature on the issue of over population of companion animals, and feral cats are included in this category. She added they are not wild life.

President Brooks thanked the number of people who spoke on the issue of feral cats, having done so with civility. He said the Town is looking for a humane solution, equally, violation of private property is not going to be tolerated—trespassing, defacing will not be tolerated. He said it was unfair to attack the Police Department also as they have done a marvelous job. President Brooks thanked Mrs. Pouncey, and every effort will be made to arrive at a humane solution; although this problem did not occur overnight and it will not be solved overnight. He concluded that in the meantime, the rules, the regulations and the ordinances of the Town of Palm Beach will remain in effect.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING ON SEPTEMBER 10, 2002.

B. APPROVAL OF MAYOR AND TOWN COUNCIL PUBLIC HEARING

O E. OTHER

1. Stipulation of Settlement with Florida Department of Transportation. [Peter B. Elwell, Town Manager]

2. Update on FP&L Request for Utility Easement at Phipps Ocean Park. (West Side of S.R. A1A) [James M. Bowser, Town Engineer]

3. Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town. [Jane Skittone, Director of Finance]
(This item was moved to the Regular Agenda, see Item VIII.B.9.)

4. Update on Pike Road Property. [Peter B. Elwell, Town Manager]

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

VIII. REGULAR AGENDA

A. Old Business

1. Update on Palm Beach Public School. [Kris Garrison, Planning Director, The School District of Palm Beach County]

Kris Garrison, Planning Director, the School District of Palm Beach County, said the presentation at this meeting is the fourth visit to the Town of Palm Beach to continue to attempt to balance the sometimes competing interests of the School District and the concerns of the community.

Ms. Garrison recapped the 'givens': the school will be rebuilt on the island; a budget has been established in the District's five year capital plan; and the School Board will, to the extent possible and practical, respect the interests of the Town.

Ms. Garrison reviewed the competing objectives identified at the joint workshops held in the Town: 1) interest in preserving the building on the west campus, the former Middle School; however, the School Board will be considering divestiture of that building at the October 16th Board Meeting; 2) interest in preservation of the 1921 building on the northwest corner of the east campus; 3) ball field playability, particularly the multi-usage of the recreation areas on the Town's property; 4) traffic and parking are strong concerns of the Town; 5) the School Board's schedule that has constraints due to the availability of the holding school which will be needed for one year; and 6) the School Board must have a facility that meets the educational adequacy for the students.

Ms. Garrison said the attempt at the September 27th meeting with the Town was to walk through, at a highly conceptual level, the thought process that the staff had gone through to meet each and everyone of the objectives with the goal being the Town selecting scheme no. 6 as the best attempt to balance the competing needs. She continued that what developed from that meeting was that the Town wanted to preserve the

1921 building and selected scheme no. 2, an earlier option in the thought process, that does not work for the School District. Ms. Garrison said the attempt at this meeting was to attempt to figure out where the project goes from here to accomplish the School Board's needs and be respectful of the Town

Jim Beusse, Consultant with 3DI International and Project Manager for the Palm Beach Public project, said his company was hired to manage sixteen projects the County is doing and one of those projects is Palm Beach Public. Mr. Busse said he planned to offer solutions to some problems. He mentioned that two of the absolutes he is dealing with are the project budget and the construction time frame which requires construction to be completed and children attending a new school in August 2004.

Mr. Beusse repeated that the State mandates that the media center not be demolished, and if the 1921 building is to be retained, the first issue is the increased construction time resulting in the opening date of December 2004 with no place to house the students for six months. Additionally, he said the 1921 building requires structural improvements including interior renovations.

He said the School Board of Palm Beach County is prepared to give the Town the R. H. Trumble building, the 1921 building, and it could be removed from the site to any other location determined by the Town. He continued that was the School District's solution to some of the problems raised at the last meeting.

Responding to Ms. Garrison's offer to summarize other previously discussed issues, Councilman McDonald asked the amount of green space that would be removed with Ms. Garrison's preferred plan?

Ms. Garrison responded the ball field would be constructed almost entirely on Town property with approximately a five foot overlap on the School's property, and the campus design includes several green space areas—an outdoor covered play area, a kindergarten play area, and an outdoor stage area resulting in a different configuration of green space. She added that, qualitatively, the green space will be better, more functional providing opportunities not currently available; but qualitatively, the Town's green space will remain unchanged but the school's may be somewhat decreased.

Ms. Garrison, responding to questions from President Pro-Tem Goldblum, said scheme no. 2, selected at the last meeting, met all of the Town's needs but did not meet the School District's needs upon further review, and the attempt now is to try to balance those needs. She continued that an effort to preserve a greater portion of the 1921 building with a different configuration that had a stage enclosed by the 1921 building was presented thus saving the north and west elevations of the building. Ms. Garrison said that a third scenario that balances all of the interests is to donate the building to the Town or to a Preservation Society, a non-profit—however it would be structured.

Mayor Smith ascertained with Ms. Garrison that one of the play areas the children from the Rec Center use now could be available for the children if a gate were installed for access to the Rec Center area.

Councilman Wyett asked if the current shared space the children use for play would be reduced with the only open space being on Town property?

Ms. Garrison replied that in almost every scheme presented, the open space would be primarily on town owned property. She cited some areas the Town would have access to, not currently available, such as a covered area and the outdoor stage.

Councilman Wyett said he was concerned with the reduction in open space and play ground space with the emergence of more young families in Town.

President Brooks added that the School Board owns the property slightly east of second base on the ball field.

Ms. Garrison offered the idea that the ball fields might be switched with the softball field, since it has the most play, locating it on the east side of the property.

Russ Bitzer, Recreation Director, replied that would not work because only 150 feet is available which would preclude its use as any type of baseball field.

Ms. Garrison said her group presented three viable options for the School District: preserving the north elevation; converting that space thus preserving the north and west elevations; or donating the building. She continued that all three options dramatically improve the traffic circulation of the existing campus plus improve the parking situation.

Responding to Mayor Smith's question regarding the timing for the removal of the 1921 building, Mr. Busse responded that Suffolk Construction has been hired with the intention to begin construction during the month of June, and the time table to remove the structure would be during the month of June.

Ms. Garrison mentioned that the moving of the 1921 building at a cost of \$200,000 - \$250,000, also had a cost benefit resulting from the \$3.5 – \$5.0 million that would have been needed for the redesigning of the 1921 building.

Landmarks Chairman Gene Pandula said this project was unique because, after two meetings with the Town, no filings were made to the Town, no documents presented in advance of any meeting, and no documents have been left behind for review. He continued it has been difficult for the Landmarks Commission to review any documents, having a few minutes to evaluate them and then offer meaningful commentary. He said two issues need to be considered: 1)the Landmarks Commission acting as advisors in terms of the landmarked building; and 2) an architectural review of the project.

Mr. Pandula recapped the Landmarks Commission's involvement which, after two meetings a scheme was chosen, but the School District returned with the original scheme relegating the project to a take it or leave it situation. He said six weeks to two months of time have been lost due to those meeting which have produced nothing. Mr. Pandula added that trying to integrate the north and west facades of the original building into the new project, from a preservation standpoint, is almost meaningless as they were integrated to the scheme that was presented.

Mr. Pandula said relocation of the 1921 building was not the correct thing to do, unless it was absolutely the last alternative. He continued that the 4,000 square foot 1921 building was only a portion of the 67,000 square foot proposed new building. He suggested adding the 4,000 square foot requirement the School District planned for the 1921 building and adding it to the 67,000 square foot design, using the 1921 building for another purpose. He added this would take away the increased costs, \$3.5 - \$5.0 million, the flood elevation criteria from the project, and the timing issue, but leaving the building where it is and giving the community an opportunity to provide whatever funds and concept it wishes to restore the building in place.

Mr. Pandula said he was expecting to see, at this meeting, a development of scheme 2 which was selected at the September 23rd joint meeting. He continued that the budget, at that time, was projected to be \$8 million plus the added \$3 - \$5 million for the 1921 building, and \$5 million on an \$8 million project just could not be possible. He suggested that the architecture should be reviewed because it is a prominent site with a prominent structure and it is a building that is passed every day by virtually every Town resident.

Ms. Garrison said the reason no documents were presented to review was that the sole purpose for the four meetings to date was to agree in concept to where the project was heading before drawings were submitted. She continued that if the School District intended to use only one site plan, the School District would not have gone to the trouble to present so many different schemes but would have 'strong-armed' the site plan through. She said her plan was to agree on a concept, develop more detailed plans, and then go through whatever review processes the Town thought were appropriate. Ms. Garrison summarized that the six schemes presented at the September 23rd meeting were not options, but the attempt was to walk the Town through a continuum of a design process to a scheme that would balance the competing concerns of the Town and the School District.

Councilman Wyett suggested incorporating the landmarked facades into a new scheme as accomplished in other communities around the nation. He reminded Ms. Garrison that the Town provides the School Board with $50 million a year in tax revenue or an approximate average of $500,000 for each student resident of the Town of Palm Beach. He added that the school must be appropriate for the community.

Wendy Victor, Alternate member of the Landmarks Commission, presented a document from the Bureau of Historic Preservation in Tallahassee listing compliance procedures for landmarked properties. She said the question to the Bureau was 'Who has jurisdiction?' Mrs. Victor said there is a procedure that needs to be followed and read into the record a letter from the Bureau that stated a submission for review was not received by Friday, October 4th, from the School Board, and the architect, Young Song, was notified that review submissions should be sent to the attention of Laura Camer.

Mrs. Victor said it would have been appropriate to have an architect, versed in historical preservation, look at the project; contact Tallahassee, obtain a compliance review, follow a procedure that will delay the June schedule, and return to the Town on the feasibility of renovating the 1921 building or leave it alone, but the School District cannot have blind jurisdiction over the Town.

Ms. Garrison responded the School District has done research, and the intent was to arrive at a mutually agreeable concept and to pursue with due diligence all of the steps needed to accomplish the agreed concept. She mentioned Section 1.5, Florida Statutes, which speaks to the issue of an educational plant or facility being designated as an historical resource by the School Board with some specific circumstances under which the School Board can designate a School District facility as an historic resource. Ms. Garrison said she did not want to have this kind of dialogue, because it was her hope that the District and the Town would be moving forward with something both could live with. She reiterated that it was her intent to be cooperative, and there are provisions in the Statutes, under demolition or alteration, stating that each Board shall initiate measures and consultation with design professionals having expertise with the division of historical resources of the Department of State to assure that where historical property is to be demolished or substantially altered, timely steps will be taken to determine that no feasible and prudent alternative to the proposed demolition or alteration exists. Ms. Garrison said that prudent and viable alternatives have been presented, and no agreeable compromise or solution has been reached.

Attorney Randolph said the intent of the previous discussions, as Ms. Garrison indicated, was to work with the Commission and the Town Council to achieve a conceptual plan that could be approved by both sides and then could be examined for architectural detail, etc. Mr. Randolph said the School Board could have, earlier in the process, to save time, followed certain statutory procedures and put the Town in the position to respond in a certain period of time, and if the Town did not respond, the plan could go forward. Mr. Randolph said he supported the process at the staff level as it was a cooperative process, and the School Board did not approach the project from a legal standpoint nor has the Town approached it from the legal standpoint. Mr. Randolph stated the Statutes said the Town could not deny the building of the school, but the Town could impose reasonable development regulations as long as those regulations do not prevent the School District from building a school that they deem to be functional.

Planning, Zoning and Building Director Robert Moore said, referring to the consultant's given starting time of June, 2003, that no starting time is a 'given' if it doesn't meet all regulations. Mr. Moore said if the goal of the School District is not to strong arm the Town, as stated by Ms. Garrison, then it appears if the school is not falling down and there is no immediate danger to the children in the existing school, then a delay in finding an alternate school could be found one year later, and work out a positive solution that may not address all of the desires of all parties involved, but it would be a compromise that everyone could live with, especially in the Town. He said Ms. Garrison's position hinges on her willingness to return to the School Board requesting more time to resolve the project.

Ms. Garrison responded parents of the students who would be attending an alternative school protested loudly if their children would be out of the school for more than one and one-half years. She said she, unsuccessfully, investigated other opportunities for saving construction time.

President Brooks requested Ms. Garrison to attempt to find more time to delay the construction.

Mayor Smith recapped the concerns stated at previous meetings and the lack of progress to this point. She said the parties are still several steps away from reaching a consensus, and the Town needs to provide additional input without changing emphasis from one concern to another. She added she would be in favor of moving the bus loop to provide additional green space as requested by President Pro-Tem Goldblum.

Ms. Garrison agreed that changing the bus loop could save some green space. She requested a consensus of Council ideas to prepare for the next meeting.

Councilman McLendon asked Architect Pandula why the façade of the 1921 building could not be worked into the new structure?

Mr. Pandula responded that conceptually it could be; however, the original drawings that were presented did not accomplish this very well. He added that more than the façade is needed, because it is the court yard that makes the building as it was the original public school building in Town and it had an ambience that worked very well for it over the years.

Mr. Pandula apologized for rejecting the movement of the 1921 building when it was first mentioned; however, his instinct was to reject the offer as the Town had no intention of creating a 'Yesteryear Village' with bits and pieces of unwanted buildings. He continued that this Town has self-regulated for ascetics for seventy-five years, and nothing is different about this project.

President Brooks stressed the concept of the committee and suggested a consensus of ideas expressed at this meeting be provided for Ms. Garrison and her group as follows:

> More green space –resulting in the bus route to proceed north on Cocoanut Row and continue over the north bridge;
>
> 1921 building—preserve walls and the court yard, support a waiver request to the State to not bring the elevation into compliance, do not move building, but have the Landmarks Commission consider the issue;
>
> Town Manager,Ms Garrison,Mayor Smith and assistants as needed meet and report to Council with back up materials;
>
> Architectural style – Mediterranean style on the two sides that face streets;

Ms. Garrison summarized that the ball field would be moved west, and to accommodate that, the bus drop off will be positioned partially in the Town's right-of-way with the buses traveling north, over the north bridge. She continued her group will work with Mr. Pandula and his group in an effort to create a design that will preserve the court yard, the north and west facades of the 1921 building with the outdoor area and the stage incorporated into the 1921 area; resulting in more ball field and preservation of the courtyard ambience. She added that part of the parking will be lost on the north end, but a parking agreement with the Four Arts should be in place to compensate for that.

President Brooks reiterated the one year construction plan may not be realistic.

Town Manager Elwell said, after consultation with Ms. Garrison, the School District will attend the October 16th Landmarks Preservation Commission meeting to participate in a further discussion of the issues. He continued the issue will then come back to the November 12th Town Council meeting.

2. Staff Report Regarding the Maintenance of the Grassy Area at the Ibis Isle "Scenic Vista."
[Albert P. Dusey, Director of Public Works]

Public Works Director Al Dusey reported the Ibis Isle Scenic Vista is a unique situation; and for that reason, it would be reasonable for the Town to maintain the turf in addition to the trees if the Association does not wish to do so any longer. He continued that the Town should continue to maintain the irrigation because of the damage that may occur during the other maintenance operations. He requested that the Association continue to pay for the water supply for the next year until the Town can budget for a water meter in FY2004.

Mr. Dusey said the Town does not maintain lighting in this type of area. He cited the Worth Avenue lighting system which is maintained by the Worth Avenue merchants, by agreement with the Town, since its installation.

Mr. Dusey said the Town does not have a program or budget for the removal of exotics and offered to study the cost for removal of the exotics and report back to the Council for appropriation of funds if needed. He continued that the issue of removing exotics may be added to the modification of the Florida Department of Transportation landscape plan, and the Town will continue to monitor that.

Councilman McDonald said the Association has one meter, currently, for the irrigation system. He asked Mr. Dusey if that meter could not be 'taken over'?

Mr. Dusey responded that if the West Palm Beach Water Department would allow that, he had no objections. He added that he recommended the Association continue to take care of the columns at the entrance.

Dennis Johnson, Property Manager Ibis Isle Central, said the Association has two meters that tract the irrigation on the north side and also on the south side of Ibis Way. He added there is a separate meter for the lighting.

Mr. Dusey, after Councilman McDonald suggested the Town take over the two meters, agreed the Town would take control of the meters.

Motion made by President Pro-Tem Goldblum to approve a plan where the Association would take care of the lighting and the Town would do the rest with the issue of the exotics postponed until a decision is made at a later time; the front entrance including the maintenance of the white pillars and ornamentals surrounding the wall will be maintained by the Association. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

B. New Business

1. Request by Ballast Nedam Construction, Inc., for Complete Closure of the Westbound Lanes of the Temporary Royal Park Bridge for 3 Instances of 1 Day Each to Facilitate Construction of the New Royal Park Bridge. [Foppe van der Wal, Project Manager]

Foppe van der Wal, Project Manager, reported the bridge progress is moving forward with the completion of all the foundation shafts and now it is time for the big foundation work with a projected plan to have four major pours of concrete of 1500 cubic yards each; one of which has been finished over a weekend without closing the bridge. He continued that he was concerned with the safety hazards of having traffic on the bridge when the pours are being done and wished to avoid that by having the bridge closed October 12th, Saturday, and two more Saturday pours during the month of November.

Councilman McLendon made a motion to approve the request to close the westbound lanes for three instances as stated by Mr. van der Wal with the condition a police officer be involved in the closings to handle any traffic problems. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

2. Proposed Reduction of Speed Limits on Residential Side Streets. [William J. Brooks, Town Council President]

Town Manager Elwell advised the State requires a study be conducted prior to a municipality attempting to lower a residential speed limit below the State imposed 30 miles per hour standard. Mr. Elwell said the Town could conduct a study using the already retained traffic engineers hired by the Town for a continuing contract. He requested direction from the Town Council to do a study; if so, a proposal, including the fee, would be presented at a future meeting.

Councilman Wyett asked if the proposed lowering of the speed limits would apply to all side streets?

Mr. Elwell responded it was his understanding that the general concern was for all residential side streets of the Town, every east/west street that is residential in character. He continued that, as the study has been proposed, the study would come back to the Town Council to identify what the engineers would consider to be an appropriate speed limit which could be as low as 20 mph but might not be that low.

Police Chief Michael Reiter said it was his understanding from the comments made at this meeting, that this study was for the default, non-posted speed limit, and if a municipality does not otherwise designate the speed limit, 30 mph every where in the State of Florida. The municipality can choose to post a speed limit otherwise. He emphasized that this would be to establish what the default, non-posted speed limit would be on all the residential streets. He added a comprehensive study is required, citing the recent West Palm Beach study which the local courts found to be insufficient for the speed limits posted in West Palm Beach.

Mr. Elwell asked if the Town were to establish a different standard than the State impose 30 mph, would not that standard be posted at the bridges and the south entrance to the Town, but on a given residential street, if a higher standard were acceptable, that higher standard could be posted?

Chief Reiter replied that it was his understanding of the law that a lower number could be posted, but he was not aware that it was permissible to post a higher standard which could never be higher than 30 mph.

Mr. Elwell said, in that event, the Town would be considering a different standard than the 30 mph, but something that would be the Town's standard for all residential side streets, with no differentiating among

Councilman Wyett said the trees and the menorahs should be lit separately.

Mayor Smith said the ceremonies should be separate.

Councilman Wyett seconded the motion. On roll call, the motion carried 5-0.

The meeting recessed for lunch at 12:25 p.m.

President Brooks left the meeting at 12:25 p.m. and would not be in attendance after the lunch break.

The meeting reconvened at 2:07 p.m. after the lunch break.

Comments from Citizens after the Lunch Break

T. J. Fisher, 173 Root Trail, said she had two homes, one at 164 Seminole Avenue and one at 173 Root Trail, and wanted to speak to the issue of the feral cats. She said she put up the first reward for the person responsible for the poisoning of the cats and dogs in the north end approximately three years ago. Ms. Fisher said she lives on the street where Catherine Bradley lives and cats do run around, but foxes, parrots, birds and other wild life are there also that go with living in a community such as Palm Beach. She added that she believed birds transmit more disease in their droppings but was not opposed to birds. She continued that civilized society is judged on the kindness, compassion, humanity that is shown to the domestic and wild animals and Palm Beach has to have a system for feral cats other than extermination. Ms. Fisher said she has never had a problem with Catherine Bradley trespassing or leaving debris on her properties and questioned the involvement the Town has had to this point.

Catherine Bradley, 165 Root Trail, said she attended the morning session with her mother and supporters and was asked why she did not defend herself against the slanderous attacks at that time. She said she did not do the things that she was accused of at the morning session of this meeting.

Neil Fisher, 173 Root Trail, husband of T. J., said he has been involved in negotiations for over 35 years, and, after listening to the discussions in the morning session, he agreed with Mr. Pappas and with Ms. Bradley on some of her views. He continued this is an untenable position with a problem that has to be solved and cited the example of a refuge he was involved with Jim Fowler of Wild Kingdom for wild cats, lions, tigers, etc. He said he learned that once man has interfered in the eco system, there is no retreat within that generation. He suggested someone really needs to them. He added that the study may be accomplished administratively, but further approvals and funding may be necessary at a future meeting.

Mayor Smith suggested the staff would benefit from reviewing the West Palm Beach reports and questioned the need for speed limits on North Ocean Boulevard, north of the Palm Beach Country Club, that is a safety hazard.

Chief Reiter responded that area has been an on-going enforcement area; however both curves at the Palm Beach Country Club, have been standardized. He added some additional signage and changes in the way it is controlled have been implemented.

Councilman Wyett made a motion to defer this issue until the November 12th Town Council meeting to allow time to obtain information from the City of West Palm Beach regarding their studies and a proposal for a Palm Beach study. The motion was seconded by Councilman McLendon and carried 4-1 on roll call with President Brooks casting a negative vote.

3. Proposed Addition of 2 Privately Donated Menorahs to the Town's Seasonal Holiday Displays.
[Norman P. Goldblum, Town Council President Pro-Tem]

Town Manager Elwell, referring to a memorandum received from President Pro-Tem Goldblum, said a proposal was made to have two, privately financed menorahs donated to the Town and handled in a similar fashion as the holiday trees. He continued that the Town would receive the donation of the menorahs; own them and place them each year with the holiday trees. He added the proposed locations are the median on Royal Poinciana Way and in the triangular, privately owned, open-space area at the western end of the Esplanade. Mr. Elwell said if the donation were approved, the Town would try to implement the program this year, but if insufficient time is a problem, the menorahs would be up for the 2003 holiday season.

Councilman McLendon made a motion to approve the donation of the two menorahs.

After discussion regarding the lighting of the menorahs and the holiday trees, Mr. Elwell said the trees and menorahs would be located near each other and the lighting could take place at the same time, but the plan would be, on the first Monday, following Thanksgiving, at Royal Poinciana Way, to light them both.

take control of the situation with perhaps a group discussion with efforts made to establish a sanctuary with many of the cats removed to the sanctuary but still maintaining a feral cat society in Palm Beach that does not need to be fed. He concluded there has to be a balance with sane, reasonable people coming to a solution with compromises by everyone, and euthanasia is not the answer.

Catherine Bradley, responding to a statement that a sanctuary had been offered and was not acceptable, stated she wanted to correct the record that the sanctuary was not offered but it was Mr. Goldblum's suggestion there be a sanctuary. Ms. Bradley added that it was her understanding that Mr. Goldblum for the Town of Palm Beach was going to set up a sanctuary, and she had never stated she would have a sanctuary as she had neither the money or the time.

Rob Reveley, 200 South Ocean Blvd., spoke to the issue of the public school and the quality of life in Palm Beach. He said the Palm Beach School is a place where school children from all of the different schools come together and socialize and is a vital asset to the Town He submitted a petition, signed by 161 families or individuals who have children. He said in the consideration of setting priorities, the highest standard should be applied to preserving open space, perhaps even more than preservation.

Mr. Reveley commented that, as a developer who had built a college in New York and dealt with preservation questions, how poorly the site fits the educational requirements, and urged the School District to think outside the box; perhaps the wrong programs are offered at Palm Beach.

4. Proposed Initiation of Foreclosure – 159 Sunset Avenue, Code Enforcement Board Case Numbers 01-1354 and 01-1355.
[Robert L. Moore, Director of Planning, Zoning & Building]

Mr. Moore said the Code Enforcement Board has authorized and recommended moving forward with the foreclosure, due to non-compliance with the Code Enforcement Board's order to prepare.

Town Attorney Randolph, responding to Councilman McLendon's question regarding impediments, said he knew of none.

Councilman McLendon made a motion to follow the recommendations of the Code Enforcement Board.

Councilman McDonald said he was in favor of the motion but had some concerns regarding the length of time this took before coming to the Town Council since the case started in September 2001. He said a procedure needs to be in place to speed up the process, and every time this has happened, he has brought this to the attention of the staff and Mr. Randolph; however, these things are still not moved along. He asked for Mr. Elwell's and Mr. Randolph's comments to move the process along faster.

Attorney Randolph responded that he understood that the last time this matter was addressed that the staff, through Brian House, did take those remarks into account and has done what could be done to expedite the process. Mr. Randolph suggested he confer with Mr. House, and if the schedule can be improved, the staff could make those changes. He added that he was not involved in bringing cases to the Code Enforcement Board, but he would come back to the Council with any suggestions that would help in expediting the cases.

Councilman McDonald outlined the chronological order of events leading to this date: September 25, 2001, - 25 days; October 18, 2001 – attend a November meeting; November 2001 – found subject guilty and gave them three months to correct the situation; January 17, 2002 -- asked subject to appear again; February 21, 2002 – found subject guilty and started fine of $250 per day; May 16, 2002 --asked subject to come to hearing on June 20, 2002; June 20, 2000 – approved proceeding with foreclosure. He said it took four months, once it was decided to proceed with foreclosure to get to the Town Council.

Mr. Moore replied he believed there was a notice requirement that the Town was unable to serve on the property owner. He offered to check into the situation.

Mr. Elwell said a staff report will be provided advising what happened with this particular circumstance as well as a more general comment on the process to be followed in the future.

Responding to a question from Councilman Wyett, Attorney Randolph said the object of foreclosure is to gain control of the property, make necessary repairs, and sell the property to satisfy the liens.

Mr. Elwell added that he did not believe the Town had an obligation to repair the property to bring it up to Code before selling it.

Mr. Moore said staff could discuss the Code issue.

President Pro-Tem Goldblum said it would be on the November 12th agenda to discuss the proper procedure.

Councilman McDonald said the concern was to get the process started which will probably end in negotiation.

The motion was seconded by Councilman McDonald. The motion carried 4-0 on roll call. ***(President Brooks left the meeting.)***

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

Mr. Moore explained this foreclosure was due to the lack of work on the permit and leaving the condition of the house not meeting the Town Codes.

Greg Kino, Attorney for Javier Marches DeOlaso, said he realized the Town's goal and the Code Compliance Board's concerns, and Mr. DeOlaso wants to bring the property into compliance. Mr. Kino explained Mr. DeOlaso is a resident of Spain and Palm Beach on a part time basis for the past ten years. He continued this is Mr. DeOlaso's home and he is currently living there and plans to do so when the renovation is completed. Mr. Kino said the site was chosen because of the possibility of an extraordinary garden area, and he takes great pride in the house. *(Mr. Kino presented photographs of some of the projects designed by Mr. DeOlaso who is an architect.)*

Mr. Kino said Mr. DeOlaso knows what he is doing, and this project will be an asset to the Town upon completion. Mr. Kino requested additional time to complete the project as he envisioned it. Mr. Kino explained the lack of progress with the firing of the original contractor and the difficulty of hiring additional contractors, which he has in place presently. He added that Mr. DeOlaso is a perfectionist and oversees every detail of the project which has resulted in delays. He continued there is a plan to change that process, and the project does not have a money issue connected to it.

Mr. Kino said a local architect and an engineer, Rick Slider, have been hired with Mr. Slider serving as contract administrator who has produced a construction schedule that is achievable and realistic for completing the project.

Mr. Kino submitted two letters from neighbors, across North Lake Way, in support of the project.

Mr. Kino said the schedule is to complete the exterior of the house and landscaping first, and foreclosure is not the answer towards the completion of the house, and will delay things.

Mr. Moore reported he has received complaints from neighbors who want to see the project finished.

Rick Slider, structural engineer, reviewed the construction schedule and said that his assignment was to understand what the owner wanted, the timing of the construction, to develop a construction schedule, and help the owner facilitate the construction of the project. *Mr. Slider reviewed photographs that he presented to the Town Council.*

Responding to Councilman Wyett's concerns regarding what would be the penalty if the project was not completed by the end of February, Mr. Moore said the current fine of $250/day would continue until the end of February, as it continues presently.

Councilman Wyett replied he wanted more assurance than the $250/day fine that the project would be finished. He requested Mr. DeOlaso provide a greater amount to assure the Town and prevent foreclosure.

Councilman McDonald requested Mr. DeOlaso provide a performance bond that would guarantee the completion.

Mr. Kino replied that Mr. DeOlaso is not a licensed general contractor and could not get such a bond; however, he is a licensed architect.

Mayor Smith suggested collecting the $43,500 fine that has been accumulating since April monthly.

Attorney Randolph said these fines accumulate until they are paid or the Town goes to foreclosure.

Mr. Kino said the fine was not being paid today, because the object was to finish the house, utilizing the fine system to encourage the completion.

Mayor Smith said she thought that a condition to finish the house by March 1, 2003, could be made by the Town Council or foreclosure would be automatic.

Mr. Kino offered a compromise where Mr. DeOlaso could pay part of the fine now and consider the remainder of the fine at the completion of the project.

Councilman Wyett posed an offer that Mr. DeOlaso show good faith by paying $43,500 immediately; post a large sum of money, $250,000 or a bond, guaranteeing completion or forfeit the amount if not completed by March 30,2003; and construction of the pool be moved forward. He added that Mr. DeOlaso was not in a position to negotiate unless he made large concessions.

Councilman McDonald proposed that Mr. DeOlaso pay one-half the fine; hire a general contractor; and have the general contractor put up a bond guaranteeing the date as selected.

Mr. Kino said the procuring of a general contractor will only delay the project as a new general contractor will have to pull all the subs on the site; lien and payment issues will also be problems.

Mr. Moore added he thought it was essential to have a licensed general contractor.

Mr. Slider suggested meeting on a monthly basis with PZ&B to insure the completion schedule is being followed.

Mr. Kino said Mr. DeOlaso agreed to post a $100,000 bond to finish the job, and finding a general contractor at this point when all the sub-contractors are in place will only slow the project down. He offered to have the contract administrator submit a weekly or monthly progress report.

Mr. Moore said, since Mr. DeOlaso is such a perfectionist, that when he took over the project, he got in the way of himself, and that is the reason a professional general contractor should be hired, as a contractor would have a license to protect if the job were not completed with sub-contractors in a timely fashion.

Councilman Wyett made a motion to defer the foreclosure to the April 2003 Town Council meeting with the provisions the owner hire a general contractor; have the general contractor procure a performance bond (135% of cost to complete as determined by Rick Slider); and pay one-half the fines due ($43,500) within twenty days. The motion was seconded by Councilman McLendon.

Mr. Moore said the bond would normally be 135% of the cost to complete the job. Mr. Moore said he agreed with the idea of allowing additional time for completion if a general contractor were hired, because the $250/day fine would still be accruing. He suggested April 1, 2003 as the date of completion.

Mr. DeOlaso said he had the sub-contractors in place who were qualified to finish the job.

Mr. Kino agreed that Mr. DeOlaso would comply with the Town Council's conditions

Councilman McDonald agreed that the issue of the remaining fines would be decided at a later date. He added that if one-half the fine is not paid within twenty days, the foreclosure would be on the November 12th agenda for the same action.

Mayor Smith requested an up-date be provided at the November 12th Town Council meeting.

On roll call, the motion carried 4-0. ***(Mr. Brooks left the meeting earlier.)***

6. Investment Advisory Committee Appointments.
[Jane Skittone, Director of Finance]

Councilman Wyett objected to having only one week's time to review the applicants and allow time for interviews as this is an important issue—the investment of Town funds, and this was an important issue.

Mr. Elwell responded that the Committee was established by resolution and the time table set forth within the resolution stated the closure for receiving application was September 30th with appointments at the October 8th Town Council meeting. He said the normal, annual appointments would be provided ahead of time.

After voting, **the Town Council appointed Michael Andrews, Stephen L. Brown, and Edward Hennessy, Jr. as members of the Investment Advisory Committee. (*President Brooks submitted his ballot before leaving the meeting earlier.)***

7. Consideration of Alcalde & Fay Request to Provide Consulting Services to the Town to Secure Federal Funding for the Corps of Engineers' Alternative Plan (New Sand Transfer Plant) to Provide Additional Sand for Town Beaches.
[Albert P. Dusey, Director of Public Works]

Mr. Dusey explained the Town received a solicitation from Alcade & Fay, lobbyists for the Port of Palm Beach, to provide lobbying service to the Town. He said they have been successful in obtaining funding for the Port in many areas and the Sand Transfer Plant. Mr. Dusey reported the Town does not have any financial difficulty at the present time with the Corps of

Engineers, and he recommended not hiring any lobbyists at this time with the proviso, if needed, someone could be hired quickly.

Councilman McLendon asked Mr. Dusey if the Corps of Engineers told the County they would be reimbursed if they took over the construction of the Sand Transfer Plant?

Mr. Dusey said that had not happened, but an agreement was out there between the Port, the Town and the County that the County would be the lead agency for design purposes on a per diem reimbursable basis which was agreed to by all three participants. He said it was not executed because the final approval of the Sand Transfer Plant recommendation is lingering in one of the higher offices; although the recommendation is the existing Sand Transfer Plant be rehabilitated with larger pumps placed, the pipe be extended to the south, and a better collection system be installed. He said that is expected to be approved with the design process starting after that.

After discussion, **the Town Council took no action on this item.**

8. Discussion of the North Lake Way Drainage Project
[Added to the agenda by Councilman Allen Wyett]

Councilman Wyett said North Lake Way, starting with Queens and running to Mediterranean, is due for construction over a nineteen month period, and it is starting late, stretching into too many seasons. Councilman Wyett suggested the project start approximately October 28th, proceed until November 2003, then stop to give the residents a rest over the 2003-2004 season with construction starting up in April 2004. He said the residents should not have to put up with the construction for two years. He asked the Town Council to consider the speedy approach already approved.

Town Manager Elwell suggested no action be taken at this meeting; however, Councilman Wyett's concerns should be recorded. He continued the project has many variables with a projected broad range of 13 to 19 months for completion, and if the project goes well, Councilman Wyett's timetable will be met. He said the decision could be made in the late summer of 2003 with the pros and cons weighed at that time. He urged the Town Council not make the commitment to the residents at this time that the construction will stop absolutely at Thanksgiving 2003 regardless of the circumstances, because it is possible that the circumstances will be that, with only a few more weeks, the project might be completed.

Councilman Wyett said he did not want to wait until summer and suggested the review be conducted in March or April 2003.

Mr. Elwell said the Town Council will be receiving continuous updates regarding the construction, and a decision can be made at a later time depending upon the monthly updates.

Councilman Wyett said he wanted a consensus from the Council that the residents of North Lake Way would not be subject to an almost two year period of construction.

No action was taken by the Town Council.

9. Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town
[Moved to the Regular Agenda at the request of Councilman Jack McDonald]

Councilman McDonald said he had this pulled from the Consent Agenda because this report is only presented once a year, and at one time the amount was over $1 million. He questioned one amount over $3,000, a solid waste assessment, had an original charge dated November 1st and the first letter was not sent until May 28th, seven months to write a collection letter.

Councilman McDonald continued that the second solid waste claim was dated January 25th with a collection letter written October 1st. He said the collection process needed to be started sooner.

Town Manager Elwell responded those solid waste fees will be assessed, beginning with next year's tax bills, on the bills, and one reason for doing that was to avoid the slowness of the collection process.

Mr. Dusey explained a bill has to be overdue several months before a formal action is taken, and the ability to react in a timely manner has been affected by the staffing in the Public Works Department during the past year with major changes in personnel.

Mayor Smith said Finance Director Skittone's recommendation to write off three accounts should carry the condition that the businesses could not open another business, under another name, without paying the previous fine.

Councilman McDonald made a motion to approve the ecommendation to write off the three accounts, Rinceaux Antiques, Landscape Designers, and Brownie Contracting, with the condition as stated by Mayor Smith. The motion was seconded by Councilman McLendon and carried 3-0 on roll call. ***President Brooks left the meeting earlier, and Councilman Wyett was out of the room.***

IX. RESOLUTIONS

A. Resolution No. 75-02 Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute an Interlocal Agreement with Palm Beach County for the Restoration and Maintenance of Town-Owned Spoil Islands in the Intracoastal Waterway. [James M. Bowser, Town Engineer]

Town Attorney Randolph read Resolution No. 75-02 by title.

Councilman McDonald made a motion to approve Resolution No. 75-02. The motion was seconded by Councilman McLendon and carried 3-0 on roll call. ***President Brooks left the meeting earlier, and Councilman Wyett was out of the room.***

X. ORDINANCES

A. Second Reading

1. None.

B. First Reading

1. Ordinance No. 21-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Various Chapters of the Town Code Relating to Stormwater Management, as Follows: Chapter 18, Buildings and Building Regulations, to Amend Requirements for Site Plans, Floor Elevations, Retaining Walls and Demolition; Chapter 30, Consistency and Concurrency Management System, to Amend Levels of Service and Management Procedures; Chapter 66, Natural Resource Protection, to Amend Requirements of Landscaping Plans and Standards; Chapter 86, Planning, to Amend Definitions, Exemptions, Standards, Plans, Compliance, and Add Threshold Requirements; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date.

[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 21-02 by title.

Motion made by Councilman McDonald to approve the first reading of Ordinance No. 21-02. The motion was seconded by Councilman McLendon and carried 3-0 on roll call. ***President Brooks left the meeting earlier and Councilman Wyett was out of the room.***

2. Ordinance No. 25-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 66, Natural Resource Protection at Section 66-286, to Add Additional Requirements for Moisture Sensing Devices; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph Read Ordinance No. 25-02 by title.

Motion made by Coucilman McDonald to approve the first reading of Ordinance No. 25-02. The motion was seconded by Councilman McLendon and carried 3-0 on roll call. ***President Brooks left the meeting earlier and Councilman Wyett was out of the room.***

Responding to a question from Mayor Smith regarding the monitoring of the moisture sensing devices, Mr. Moore said since 1993, these devices have been installed by Code, and as the older systems wear out, the replacements are corrected. He added the other way to monitor is to have inspectors investigate sprinklers that are on during rain storms or illegal sprinklers on during non-permitted days.

3. Ordinance No. 26-02 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 42, Environment at Section 42-199, to Amend Hours of Construction Work; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing for an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 26-02 by title.

Councilman McDonald made a motion to approve the first reading of Ordinance No. 26-02. The motion was seconded by Councilman

McLendon and carried 3-0 on roll call. *President Brooks left the meeting earlier, and Councilman Wyett was out of the room.*

4. Ordinance No. 27-02 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 78, Article III, of the Town Code of Ordinances Relating to Charitable Solicitations; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for an Effective Date. [Mary A. Pollitt, Town Clerk]

   Town Attorney Randolph read Ordinance No. 27-02 by title.

   Motion made by Councilman McDonald to approve the first reading of Ordinance No. 27-02. The motion was seconded by Councilman McLendon and carried 3-0 on roll call. *President Brooks left the meeting earlier, and Councilman Wyett was out of the room.*

XI. COMMENTS OF TOWN COUNCIL MEMBERS & TOWN MANAGER

The Town Council members had no comments.

Town Manager Elwell recognized the Finance Department for the GFOA award received for the first Annual Report in the new, more informative format.

Gabriela George, 309 Pershing Way, West Palm Beach, requested Town Council members attend the October 16th School Board meeting to protest the sale of the public school building on the west side of Cocoanut Row. She said only four votes on the School Board are needed to stop the sale of the building.

XII. DEVELOPMENT REVIEWS

A. Time Extensions

1. Request for an Extended Construction Period Regarding 234 Worth Avenue. [Samuel Anidjar, Next Authentic]

   Samuel Anidjar, addressing the Mayor and Town Council, requested a two weeks extension to finish the construction in his new store at 234 Worth Avenue. He said the construction should be finished by October 31st, but in case of delays, he requested a two week extension. He confirmed that the Worth Avenue Association approved his request for the extension.

Motion made by Councilman McLendon to approve the extension. The motion was seconded by Councilman McDonald.

Mr. Moore outlined conditions that should be included in the motion: 1) approval of the Worth Avenue Association; 2) any noise complaints will cause work to cease; 3) no parking or construction vehicles along Worth Avenue after November 1st; 4) delivery of materials must be made prior to 10:00 a.m. daily; 5) all work on exterior must be completed by November 1st, including signage; and 6) no work allowed on Sundays and holidays, including November 11th, Veterans Day.

Councilman McLendon and Councilman McDonald agreed to include the conditions as part of the motion. The contractor and applicant agreed to the conditions.

The motion carried 3-0 on roll call. *President Brooks left the meeting earlier, and Councilman Wyett was out of the room.*

2. Request for an Extended Construction Period Regarding 313-1/2 Worth Avenue. [Paloma Fernandez, Vice President, Poopy Corporation, DBA Francesca Romana]

President Pro-Tem Goldblum said this was a similar request as the previous item considered.

Architect Ames Bennett said two new merchants are coming to Worth Avenue, a jewelry store and a woman's shoe store. He reported the two locations are almost next door to each other.

Mr. Bennett said Francesco Romana, Jewelry Store, will be part of the Trillion Store with the installation of a fire wall and minor interior installations. He reported the site is accessed from the Peruvian Avenue entrance and has almost no impact on Worth Ave. He added that the Worth Avenue Association approved the project and requested an extension to November 15th.

Mr. Moore requested the same conditions apply to this request as applied to the previous request.

Motion made by Councilman McDonald to approve the extension to November 15th with the same conditions as included in the previous request. The motion was seconded by Councilman McLendon and carried 3-0 on roll call. *President Brooks left the meeting earlier. Councilman Wyett was out of the room.*

3. Request for an Extended Construction Period Regarding 313-A Worth Avenue. [Carlos Musso, Chairman, UNISA]

Architect Ames Bennett said this is the second of his projects, the shoe store which is almost next door to the jewelry store previously granted a time extension. He identified similar construction activities and requested an extension to November 15th.

Motion made by Councilman McDonald to approve the extension to November 15th with the same conditions to apply as included in the previous two items. The motion was seconded by Councilman McLendon and carried 4-0. ***President Brooks left the meeting earlier.***

XII. DEVELOPMENT REVIEWS

A. Time Extensions

1. Request for an Extended Construction Period Regarding 234 Worth Avenue. [Samuel Anidjar, Next Authentic]

The Town Council approved the request for a two week extension for construction at 234 Worth Avenue with the conditions the Worth Avenue Association approve of the extension; no parking on Worth Avenue; all deliveries made before 10:00 a.m.; and no work on Sundays or holidays.

2. Request for an Extended Construction Period Regarding 313-1/2 Worth Avenue. [Paloma Fernandez, Vice President, Poopy Corporation, DBA Francesca Romana]

The Town Council approved the request with the same conditions as the previous approval.

3. Request for an Extended Construction Period Regarding 313-A Worth Avenue. [Carlos Musso, Chairman, UNISA]

The Town Council approved the request with the same conditions as Number 1 (above).

4. Request to Continue Construction at 150 Worth Avenue by Hedrick Brothers Construction Company until November 15, 2002
[Added to the Agenda at the beginning of the meeting]

Director of Planning, Zoning & Building Robert Moore advised that certain conditions would apply to approval of the request to continue construction at 150 Worth Avenue by Hedrick Brothers Construction, as the Esplanade was self-contained. The conditions were: all vehicles must be on site; materials must be delivered before 10:00 a.m., and all work on the exterior must be completed before November 1, 2002; no work on Sundays or Veteran's Day; all construction vehicles must park inside the Esplanade.

Attorney Brindell advised that the applicant was requesting construction until the date of November 15, 2002, and that the conditions were acceptable.

Councilman McLendon moved approval of the request to continue construction at 150 Worth Avenue by Hedrick Brothers Construction, with the project to be completed by November 15, 2002, with the conditions as stated above by Mr. Moore. The motion was seconded by Councilman Wyett, and carried 3/0, as President Brooks was no longer in attendance, and Councilman McDonald had temporarily left the room.

B. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Pollitt administered the oath to all those who would be addressing the Variances, Special Exceptions, and Site Plan Reviews.

1. Old Business

a. <u>SPECIAL EXCEPTION NO. 14-2002 WITH SITE PLAN REVIEW AND VARIANCES, VARIANCES FOR CUBIC CONTENT RATIO AND LOT COVERAGE: LANGUAGE PORTION MODIFIED FROM ORIGINAL APPLICATION</u> The application of Charles Sarkis relative to property described as Lot 2A, Replat of North Shore Addition; commonly known as 1360 North Ocean Boulevard; located in the R-B Zoning District. A variance request to allow construction of a non-habitable first floor covered entry on the front of the house, and variance to construct a non-habitable first floor loggia and balcony on the front of the house both of which would increase the cubic content ratio to 5.75 in lieu of the 5.5 existing and the 4.0 maximum CCR allowed, and increase the lot coverage to 31.2% in lieu of 29.5% existing and the 30% maximum allowed. (*This Portion of the Application was Deferred from September 10, 2002, Town Council Meeting in Order to Provide Legal Notice)*

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Kolins and Mrs. Smith; by President Pro-Tem Goldblum via a meeting with Attorney Kolins; by Councilman Wyett via a meeting with Attorney Kolins and Mrs. Smith. The subject matter of the meetings were the merits of the application.

Zoning Administrator Paul Castro pointed out that the special exception/site plan review for the beach cabana portion of this request had been approved last month. The house improvements and swimming pool requests had been deferred and would be presented today.

Attorney Ron Kolins, on behalf of the applicant, presented the application for Special Exception No. 14-2002, indicating the changes that had been made, to address the concerns of the Town Council last month, regarding the setbacks required for the swimming pool.

Attorney Kolins withdrew the request for a variance relating to lot coverage. He explained that the side setback variance for the pool had been eliminated; the front setback variance for the pool had now been reduced; the CCR variance had been dramatically reduced.

Zoning Administrator Castro commented that the property already far exceeded the allowed cubic volume; the swimming pool setback request required further justification.

Attorney Kolins responded that the application addressed each variance criteria. He explained that the hardship was clearly the size of the lot and the lay of the land; there was no other place to put the pool, and there was nothing more that the applicant could do in order to have the pool.

Councilman Wyett moved approval, as modified, of Special Exception No. 14-2002, with Site Plan Review and Variances. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks was no longer in attendance.

Zoning Administrator Castro requested that any plans to be considered at the meeting of the Town Council be provided to staff well in advance of the meeting, in order to have the opportunity to review the plans. He noted that the plans submitted regarding Special Exception No. 14-2002 had not been seen by staff until today.

2. New Business

a. VARIANCE NO. 34-2002 The application of Marilyn E. Tracy relative to property described as Lots 69 & 70, Primavera Estates (Middle Section); commonly known as 322 Clarke Avenue; located in the R-B Zoning District. To allow expansion improvements to an existing garage which has a nonconforming five (5) feet rear yard set back. The Applicant seeks a variance of five (5) feet to permit the construction of a two (2) story addition to the garage which would have a ten (10) feet rear yard set back in lieu of the fifteen (15) feet minimum rear yard set back required by code.

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

Attorney Jackie Miller, on behalf of the applicant, addressed the Town Council, presenting the application regarding Variance No. 34-2002. She explained that the hardship was that the vista being maintained between the pool yard and the second yard would be considerably diminished – the fully matured, majestic palm trees would have to be removed; the request was de minimus.

Director of Planning, Zoning & Building Moore gave the following staff comments, per the Application Review Sheet circulated to pertinent staff: Comprehensive Plan: can be designed to meet the Code; demonstrate hardship for the project.

Councilman Wyett moved approval of Variance No. 34-2002 on the basis that the request was de minimus. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/1, with Councilman McDonald casting a dissenting vote; President Brooks was no longer in attendance at the meeting.

b. VARIANCE NO. 35-2002 The application of Bath & Tennis Club Inc. relative to property described as Palm Beach Causeway Park, Revised Plat, Lots A to M inclusive, and as further described in legal description on file; commonly known as 1170 South Ocean Boulevard; located in the R-AA Zoning District. To allow construction which would replace the existing deteriorated privacy wall that separates the pool deck area from South Ocean Boulevard. A variance is requested for a combination of a wall and a retaining wall within 10' of each other in the front set back area totaling 12'8" in height above the crown of the road, in lieu of the maximum combined height of 6' allowed by code.

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

Mr. Douglas Egam, General Manager of the Bath & Tennis Club presented the application for Variance No. 35-2002. He explained that there was a safety issue involved, as the current wall was severely cracked and leaning in towards the pool.

Director of Planning, Zoning & Building Robert Moore provided staff comments, as per the Application Review Sheet: Comprehensive Plan: does not meet criteria for granting of variance; could be repaired and replaced 50% at a time; Building Department: wall is a replacement of existing wall. He noted that the applicant would also need relief from the time of construction in the general area as well.

Attorney Ray Royce, on behalf of the Mar-a-Lago Club, addressed the Town Council in objection to the request from the Bath & Tennis Club, noting that the Bath & Tennis Club outside loading dock area, which the wall in question was attached to, was unsightly and a safety hazard. He also noted that the overhead electrical lines serving the north end of the Bath & Tennis Club were unsightly, especially since they were in a main entrance area to the Town of Palm Beach.

Mr. Egam responded that the kitchen was directly above the outside loading dock, and there were only two entrances to the Club – the front door and the loading dock area. He noted that there was already very little space in the congested area, and if the wall was extended it would cause delivery trucks to stop traffic and back into the area. He advised that he would evaluate the overhead electrical lines in order to determine if it was possible to move them. He submitted an engineering report concerning the wall, indicating that it was a safety issue.

Mr. Wes Blackman, of the Mar-a-Lago Club presented graphics indicating the wall in question, and expressed aesthetic and public safety concerns. He requested that the applicant be asked to return to the Town Council with options for loading dock/drop off locations, extending the wall, and that the applicant not be allowed to construct during the season.

Architectural Commission Chairman John Schuler commented that the Architectural Commission would review the application, and provide suggestions to the applicant.

Councilman McLendon moved approval of the construction of the privacy wall request in Variance No. 35-2002. After discussion, the motion was withdrawn.

Councilman McDonald moved approval of Variance No. 35-2002, to reconstruct the privacy wall, requesting that a good faith effort be made by the applicant to return to the Town Council at the next meeting (November 12, 2002) with a plan to address the air conditioning of the kitchen, and aesthetic and public safety concerns in the loading/drop off

area. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

c. VARIANCE NO. 36-2002 The application of Gail Trinka relative to property described as the north ½ of a parcel of land in Section 14, Township 44 South, Range 43 East; commonly known as 2300 South Ocean Boulevard; located in the R-C Zoning District. To allow a 11.7 ft. x 13.8 ft. canvas awning to remain requiring a variance for a side set back of 1 ft. in lieu of the 10 ft. minimum required, and a variance for a rear set back of 8.2 ft. in lieu of the 15 ft. minimum required. To allow a 29.2 ft. x 12.3 ft. canvas awning to remain requiring a variance for a side yard setback of 1 ft. in lieu of the 10 ft. minimum required.

Ex-parte communication was declared by Councilman McLendon via a telephone conversation with Attorney Peter Broberg; by President Pro-Tem Goldblum via a telephone conversation with Attorney Peter Broberg; by Councilman Wyett via a telephone conversation with Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council presenting the application regarding Variance No. 36-2002. He maintained that a mistake had been made five years ago, when two awnings had been built without a permit. The awnings had now been brought to the attention of the Code Enforcement Board, and the property owners had been citied. The ruling of the Code Enforcement had resulted in the condition that the applicant must apply for a permit and obtain an inspection within 30-days of the meeting today.

Zoning Administrator Paul Castro provided the staff comments as per the Application Review Sheet: Comprehensive Plan: This does not appear to meet the criteria for granting of a variance; Building Department: Applicant must demonstrate a hardship. He explained that the original work had been done without a building permit, and even if the applicant had come in, at that time, a building permit would not have been issued. He stated that the excuse of a new owner was not a valid excuse in the opinion of staff.

Councilman McDonald commented that the awning located on the north side of the property fronted the parking lot and could be seen all along South Ocean Blvd. He noted that it was very visible from the street and that he could not understand how Code Enforcement had missed it for five years; that he considered it unsightly and had received several complaints over the past year.

Director of Planning, Zoning & Building Robert Moore commented that the initial installation of the awnings had not been permitted, however, a later re-covering of the awnings had been permitted.

After discussion, Councilman Wyett moved approval of Variance No. 36-2002. The motion was seconded by President Pro-Tem Goldblum, and resulted in a tie vote, 2/2, with Councilman Wyett and President Pro-Tem Goldblum casting affirmative votes; Councilman McDonald and Councilman McLendon casting dissenting votes; President Brooks was no longer in attendance at the meeting.

After further discussion, Councilman McLendon moved reconsideration of the motion of approval of Variance No. 36-2002. The motion to reconsider was seconded by Councilman Wyett. On roll call the motion to reconsider carried 3/1, with Councilman Mclendon, Councilman Wyett, and President Pro-Tem Goldblum casting affirmative votes; Councilman McDonald casting a dissenting vote; President Brooks was no longer in attendance at the meeting.

Councilman Wyett then moved deferral of Variance No. 36-2002, to the November 12, 2002, Town Council Meeting, so that there would be a full Town Council present to vote. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/1, with Councilman Wyett, Councilman McLendon, and President Pro-Tem Goldblum casting affirmative votes; Councilman McDonald casting a dissenting vote, President Brooks was no longer in attendance at the meeting.

d. VARIANCE NO. 38-2002 The application of CPG Brazilian, LLP (Kathy Jetson) relative to property described as The East line of Peruvian Court Condominium, according to the Declaration of Condominium; commonly known as 173 Peruvian Avenue, Unit 1; located in the R-C Zoning District. To locate a spa pool wall 6'10" from the side lot line in lieu of the required 10' minimum for a variance of 3'2".

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, presenting the application. He advised that the hardship was the width of the lot, and the lack of an area on the property for a common pool area.

Zoning Administrator Paul Castro commented that the request was a reorganization of an existing impervious area; a form, "Request for Architectural Change" signed by Dr. Cindy Lookabaugh.

Attorney Brindell advised that the company that managed the property indicated that Dr. Luckenbaugh was the acting president of the condominium associatin, and as such, had the authority to approve architectural requests for members of the association. The form had been provided to her; she had then reviewed the plans and signed the form.

Mr. Castro continued that the only condition that she had requested on behalf of neighboring property owners that was added to the plans was to add to the existing wall to make it 7' in height inside the patio area, in order to screen and provide a buffer for their own private area.

Councilman Wyett moved approval of Variance No. 38-2002. The motion waas seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

e. SPECIAL EXCEPTION NO. 18-2002 The application of Worth Avenue Associates LTD relative to property described as Lot 1 (less County Road r/w), Lots 2 through 6 (less building only) and Lots 7 through 24, Block 17, Plat of Royal Park Addition; commonly known as 150 Worth Avenue; located in the C-WA Zoning District. Special Exception requested for expansion of Trevini Restaurant (previously approved under Special Exception #2-2001) to operate an adjacent café in 765 square feet of retail space in the Esplanade and allow an additional 16 outside seats. The café will have a total of 32 seats, of which 16 are proposed to be in the via. Combined square feet of both locations is 6,008 square feet. The original square footage of Trevini is 5,243 square feet. The request also proposes to transfer 24 seats of the 151 previously approved for Trevini to the new café (with the additional 8 seats coming from the 765 square feet of retail space under the principle of equivalency.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, presenting the application for Special Exception No. 18-2002. He presented photographs of the area in question, and explained that there would be no cooking done on site, and the space would be used as a luncheon/afternoon snacks café.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objections to the application. The Fire Department had advised that the aisle width and spacing must be maintained. The applicant would need to return to the Town Council if the outside seating became a problem.

Councilman Wyett moved approval of Special Exception No. 18-2002 (amended), with the provision that the café would be open until 6:00 p.m., with no serving after that time. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

f. SPECIAL EXCEPTION NO. 19-2002 WITH SITE PLAN REVIEW AND VARIANCE The application of Mr. and Mrs. Frank Wilkens relative to property described as lengthy legal description on file; commonly known as 1491 North Ocean Boulevard; located in the R-A Zoning District. To allow construction of a new two story single-family house involving a land area equivalent to or greater than four times the minimum size for the R-A zoning district, and a point of measurement variance in the R-A Zoning District. The applicant requests a variance to the elevation of the finished floor for a new two story single-family house at 18.00 feet NGVD in lieu of the required point of measurement for height and overall height of 7.5 feet NGVD.

Ex-parte communication was declared by Councilman McLendon via a telephone conversation with Attorney Frank Lynch concerning the merits of the application; by President Pro-Tem Goldblum with Attorney Frank Lynch concerning the merits of the application.

Attorney Frank Lynch, on behalf of Mr. and Mrs. Frank Wilkens, addressed the Town Council, presenting the application for Special Exception No. 19-2002 with Site Plan Review and Variance. He explained that the basis for the request was that the property exceeded the minimum required lot size by more than four times. He requested that the application filed by the applicant be incorporated into the minutes.

Attorney Lynch explained that the reason that the variance was required was that a portion of the house was built eastward of the coastal construction control line, and the applicant was thus required to build the structural elements of the house at above 15.41' ., according to state regulations, which he identified as the hardship. In addition, the dune line was high in that area, and many similar variances had been granted in the past.

Attorney Lynch indicated that the application had been discussed with neighbors, and Attorney Royce would address issues that his clients had; an agreement had been made with conditions that the applicant would be willing to accept.

Zoning Administrator Castro commented that the application had several complicated issues, with one of the most pressing issues related to the property to the south. Staff would require that a condition of approval be a unity of title to make one conforming lot of the property to the south. Staff also had some concerns regarding the landscaped open space, and had yet to see a full landscape plan for the property.

Attorney Ray Royce, on behalf of the owners to the north of the property in question, addressed the Town Council, stating that he and Attorney Lynch had worked out a number of matters that were of great concern to the neighbors to the north. He stated that 16 conditions had been agreed upon, and he submitted that agreement for the record, reading the conditions into the record. He requested that the 16 conditions be a part of any approval granted.

Architect Gene Lawrence commented that the house was sited in the proposed location so that it would be equal to the house to the north, with an equal view.

Director of Planning, Zoning & Building Moore advised that the dividing of the lots to the south had been done at the owner's risk, and the seller had reaped the benefit of the sale of the lots to the applicant; staff suggested that the deficiency created be corrected, and recommended that a unity of title on the lots to the south be made a condition of approval, prior to any building permit being issued.

Attorney Lynch noted that the property had not been sold directly to Mr. and Mrs. Wilkens. There had been an intermediate purchaser, who had sold the property to Mr. and Mrs. Wilkens.

Zoning Administrator Castro noted that a survey would be required when the unity of title agreement was presented, and staff would ensure that the lots created would conform to the R-B Zoning District.

Councilman McDonald moved approval of Special Exception No. 19-2002 with Site Plan Review and Variance, with all conditions as discussed incorporated into the motion – the 16 conditions agreed to with the neighbors to the north, and a unity of title for the three lots to the south. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

g. SPECIAL EXCEPTION NO. 20-2002 The application of Mary Overall, tenant, of Paramount Church Inc., owner, relative to property described as Sunrise Avenue Addition, Lots 14 & 15 & Lot 16 (Less northerly 107.78 feet of easterly 83.84 feet and southerly 58.49 feet of easterly 50.62 feet) Floral Park Lots 164 to 172 Inc. (less west 15 feet Palm Beach Ave right of way); commonly known as 139 North County Road; located in the C-TS Zoning District. To allow expansion of the applicant's current first floor real estate office on the first floor in the C-TS zoning district, said additional space being 384 square feet, for a total space of 736 square feet.

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

Zoning Administrator Castro commented that the applicant must continue to provide the Town-serving statement, per the requirements of Code.

Councilman Wyett moved approval of Special Exception No. 20-2002. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

h. SITE PLAN REVIEW NO. 9-2002 The application of CSC Brazilian, L.P. a Delaware limited partnership (Adam Schlesinger) relative to property described as all of Lots 17 through 40 inclusive, Block 3 and all of Lot 41, Block G, Revised map of Royal Park Addition, less a portion of Lots 17, 18, & 19, Block 3, Revised map of Royal Park Addition; commonly known as 301 Australian Avenue; located in the R-C Zoning District. Requesting site plan approval for expansion of an existing nonconforming hotel in existence over 15 years. To include building additions for construction of new units (net reduction of units overall), circulation areas, elevator, outside dining with awning, storage shed, and cooler at the main hotel site; a valet parking layout at the off-site parking lot on Hibiscus Avenue; a variance to allow hotel square footage of 85,973 square feet in lieu of the existing 82,518 square feet of hotel use; a variance to allow the hotel square footage to increase to 4,713 square feet in lieu of the existing 908 square feet of hotel use that currently exists across Australian Avenue to the south in the "Ohio House" which has been used for Brazilian Court workers' quarters in the past; a variance to allow lot coverage of 55% in lieu of the maximum of 30% and 51% existing; a variance to allow a zero foot setback in lieu of the required 23'6" side setback (building height) required for a proposed 30 square foot storage shed to replace 2-30 square foot existing non-conforming storage shed structures; a variance to allow a 15'7" setback in lieu of the required 23'6" side setback (building height) for the construction of a cooler and dumpster shed within the existing loading area; a variance to allow a reduction in required off-street parking of 7 spaces excluding additional 14 proposed valet spaces to be stacked in the lot east of the Hotel; a variance to allow valet only parallel parking in existing parking areas and a reduction in isle width to 8' in lieu of the required 25' for valet parking only; and, a variance to allow valet only parallel parked automobiles to block another automobile requiring an automobile to be moved to allow another to be taken from the property.

Ex-parte communication was declared by Councilman McLendon via discussion with Attorney James Brindell concerning the merits of the application; by President Pro-Tem Goldblum via discussion with Attorney Brindell concerning the merits of the application; by Councilman McDonald via a conversation with Mr. Jesse Newman, and also with Mr. Manny O'Neil, the manager of the property, both to discuss the merits of the application.

Attorney James Brindell, on behalf of The Brazilian Court Hotel, addressed the Town Council, presenting the application regarding Site Plan Review No. 9-2002. He explained that the application was part of an effort to reinforce the vitality of the landmarked hotel, and to address the changing needs of families in the Town, as well as to provide meeting/function needs for civic organizations and residents. He produced the site plan, accompanied by photographs, and pointed out the elements of the proposed construction. He noted that the application called for a 30 sq. ft. enclosed storage area located along the west wall of the property; the variance request for a side yard setback could be eliminated if the applicant was allowed to move the storage area along the concrete drive area adjacent to the new kitchen manager's office.

Attorney Brindell pointed out that the owners had the ability to provide for 30 off-site parking spaces, off-Island, so that, in the season, hotel staff could be parked off-Island. He indicated that a parking analysis had confirmed that the traffic level of service in the area would not be decreased.

Attorney Brindell advised that the hardship was functional; the hotel was landmarked, and currently had inefficient and insufficient spaces in which to operate.

Zoning Administrator Paul Castro commented that the Brazilian Court Hotel was a jewel of Palm Beach, and was a landmark that was desirable to preserve. Staff had been working with traffic consultants on the parking and traffic circulation issues, and had provided the applicant with information in that regard on September 23, 2002; and comments from the applicant had not been received until yesterday; staff had not yet had the opportunity to review those in depth. He expressed concern with adequate parking, and the impact to the neighborhood.

Director of Planning, Zoning & Building Robert Moore pointed out that the hotel included a hotel dining room, (which by definition was NOT a restaurant) which was accessory to the hotel, and there were some restrictions regarding dining rooms. A dining room use would prohibit an exterior entrance directly to the street, no outside signage, and no advertising as a restaurant.

Councilman McDonald commented that he supported the requests of the applicant regarding the landmarked part of the hotel, however, he had concerns with the extension of the intensity of use with the "Ohio House" building across the street from the hotel.

Councilman Wyett commented that there had been complaints regarding the screeching noises on Sunday mornings from the sanitation department equipment, and suggested that the trash at the hotel be held to be picked up on Monday; that the noise level from the three cooling units be reduced, per the request of Mr. Hollis, as well as the pool area not be used for pool parties, entertainment, or outside dining and music.

Mr. Adam Schlesinger, applicant, commented that the unit would be replaced, and that he was working with the sound consultant of Mr. Hollis; the pool area would not be used for entertainment.

Councilman Wyett noted that the state allowed 225 seats for dining purposes, and the plan proposed 298 seats.

Attorney Brindell responded that the calculations from the state were done for different reasons than zoning issues. The state was usually interested in whether there were enough seats to meet certain minimum requirements for certain types of liquor licenses. The intensity of the use was not regulated by the state.

Mr. Moore suggested that starting off with 225 seats would be more acceptable at this time, since the intensity of use of the hotel would be increased. He pointed out that the Ohio House had become part of the hotel, although it was not landmarked, and had formerly been used for dormitory rooms. The plan now proposed converting those employee rooms to another accessory use of the hotel. It had been agreed some time ago that the manager and the secretary would be located in the Ohio House. He noted that the request concerning the lanai suites by the pool would need to be deferred today, as they interfered with a utility easement.

Councilman Wyett suggested that the valet parkers not use the street parking spaces, and that additional parking be secured.

Mr. Moore commented that there was no way that the hotel could function, even today, with a full house, without using the on-street parking.

Councilman Wyett withdrew his suggestion concerning valet parkers using the on-street parking.

Mr. Abraham Gosman, 513 N. County Road, commented that his sons had purchased the hotel, he provided a history of the use of the hotel, and commented on the proposed plan and the associated intensity of use.

Mayor Smith commented that the noise problem of the resident complaining about the sanitation equipment noise was coming from the Chesterfield Hotel, which was adjacent to that property. She also noted that the Chesterfield Hotel and Brazilian Court were located in the same area, and many of the parking problems on the street were created by the Chesterfield Hotel, which had no parking available and used street parking. She pointed out that the Brazilian Court had always been an enhancement to the neighborhood. She suggested that any concerns be voiced today, since the project may need to be deferred as a result of the concern of staff regarding the parking analysis.

Zoning Administrator Castro commented that staff did agree with the 168 seats, however, staff was not prepared to respond today to anything above that for the banquet facilities and outside dining.

In response to the concern of President Pro-Tem Goldblum, Mr. Manny O'Neil, former general manager of the Brazilian Court commented that the fountain courtyard and the area in front of the conservatory was used as a reception area; the interior of the room housed dinner dancing. The basic use of the outside courtyard was for a reception area.

Attorney Brindell agreed that the seats in the fountain courtyard were not being counted as part of the 168 seats.

Police Chief Reiter commented that he had just received the traffic analysis and had not had the opportunity to review the report. He stated that he believed that the residents in the area of the hotel had accepted the fact that there would be some activities, and as a result, there had not been calls received complaining about traffic/noise, unless there were very large events.

In response to Councilman McDonald, Mr. Schlesinger explained that the hotel units would be for sale, and it would be the option of the owner to participate in a rental program. There were no kitchen facilities in the hotel unit.

In response to Councilman McDonald, Attorney Brindell explained that the Ohio House would be used for meeting space , business center and management offices. There would be no associated food service.

Councilman Wyett moved approval of Site Plan Review No. 9-2002, with the number of seats to be worked out with staff, with a formula for the use of valet parkers, and with the conditions mentioned earlier. The motion died for lack of a second.

Mr. Moore urged that another condition be attached: a Declaration of Use Agreement, that would outline all of the conditions of approval.

Councilman McDonald cautioned the Town Council, that approving the project without looking at any kind of a traffic study would set a very dangerous precedent.

Discussion took place regarding the number of seats that was indicated on the record that the hotel currently used.

After further discussion, Councilman McDonald moved approval of Site Plan Review No. 9-2002, with 168 seats in the restaurant(s) , with a review by staff of the traffic study, and the applicant returning to the Town Council next month to determine if the traffic study supported any more seats, and the following conditions:

1. Trash to be held from Saturday until the Monday trash pick-up.
2. Review of the traffic study by Town staff to determine the maximum number of seats available to the hotel.
3. Reduction of noise level from the three cooling units.
4. Pool area not to be used for parties, entertainment, or outside dining and music.
5. Valet parking plan.
6. Declaration of Use Agreement
7. Deferral of three lanai suites – no approval granted at this time.

The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

i. SITE PLAN REVIEW NO. 10-2002 WITH SPECIAL EXCEPTION AND VARIANCE The application of 313 Dunbar LLC (Edward C. Cury, Member) relative to property described as Lot 4, Amended Plat of Replat of Adams Circle; commonly known as 313 Dunbar Road; located in the R-B Zoning District. Site Plan Review requested for a single family two story dwelling on a platted lot with a depth of 97.5 feet in lieu of the required 100 feet depth; a Special Exception to allow gates on a cul-de-sac located 3 feet from street pavement in lieu of the 18 feet minimum required; and, a variance for the front setback to be 25 feet in lieu of the 30 feet minimum required for a second story accessible open patio.

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Ron Kolins to discuss the merits of the application, and by President Pro-Tem Goldblum via a meeting with Attorney Kolins to discuss the merits of the application.

Attorney Ron Kolins, on behalf of the applicant, presented Site Plan Review 10-2002 With Special Exception and Variance application related to 313 Dunbar, presenting a booklet of information pertinent to the property in question, and architectural renderings of the property in question.

Director of Planning, Zoning & Building Robert Moore commented that the allowable height of the parapet wall was three feet. Staff comments included that the Town Engineer had requested that the bulkhead on the seawall be raised to elevation 5 NGVD, per Town Code.

Ms. Joanne Paull, neighboring property owner, addressed the Town Council, confirming the height of the building and wall.

Councilman McDonald moved approval of the site plan portion of Site Plan Review No. 10-2002. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

Councilman McLendon moved approval of the variance portion of Site Plan Review No. 10-2002 with Special Exception and Variance. President Pro-Tem Goldblum passed the gavel to second the motion. On roll call the motion carried 3/1, with Councilman McLendon, President Pro-Tem Goldblum, and Councilman Wyett casting affirmative votes Councilman McDonald casting a dissenting vote; President Brooks was no longer in attendance at the meeting.

j. <u>SITE PLAN REVIEW NO. 11-2002 WITH SPECIAL EXCEPTION AND VARIANCES</u> The application of the Town of Palm Beach relative to property described as Lots 1, 2, 3 , 4 and the north 100 feet of the west 25 feet of Lot 52, inclusive, Block 8, Royal Park Addition; commonly known as 355 South County Road; located in the C-TS and R-B Zoning Districts. Requesting review of modified Site Plan Review #6-2002, to increase the height of the approved Fire-Rescue Facility building to accommodate necessary modifications to the Emergency Operations Center on the third floor; a special exception to allow a modification to the approved two stories above the first floor of the building for the approved Fire-Rescue Facility; and, a variance to modify the third floor to accommodate more space for utilities and a concrete ceiling in the Emergency Operations Center of the fire-rescue station. The building height will be raised to 35' in lieu of the previously approved 33,' and the 25' maximum allowed by code.

All members of the Town Council present at the meeting declared ex-parte communication with members of Town staff and the architect for the project.

Town Manager Elwell explained that in order to provide a poured concrete ceiling for the emergency operations center in the new fire station, there would need to be greater height to the interior structure, although it would not create any greater height to the roof line. An additional two feet would now be required as an additional variance from what had been approved several months ago.

Councilman McLendon moved approval of Site Plan Review No. 11-2002 with Special Exception and Variances. The motion was seconded by Councilman Wyett. On

roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

k. <u>SITE PLAN REVIEW NO. 12-2002 WITH VARIANCES</u> The application of 101 Casa Bendita LLC relative to property described as Lot 6, Casa Bendita; commonly known as 101 Casa Bendita; located in the R-B Zoning District. Site Plan Review to construct a new two-story, single family home on a nonconforming, platted lot with a lot width of 85 feet in lieu of the 100 foot minimum required; a point of measurement variance to allow the height and overall height to be calculated from 21 feet NGVD in lieu of the 12.33 feet NGVD maximum allowed; and, a height variance to allow said house to be constructed at a height of 23 feet NGVD to the bottom of the top chord of the roof framing member in lieu of the 22 foot maximum allowed in the R-B district.

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

Attorney Kolins, on behalf of the applicant, addressed the Town Council, presenting the application for Site Plan Review No. 12-2002 With Variances. He presented photographs and architectural renderings of the property in question, and responded to questions from the members of the Town Council.

Director of Planning, Zoning & Building Robert Moore commented that there was no problem with the site plan or point of measurement variance request. The third request, the height variance, was a huge request, and approval would set a precedent in the R-B Zoning District.

Councilman McDonald moved approval of the site plan portion of Site Plan Review No. 12-2002. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

Councilman McDonald moved approval of the point of measurement variance to allow the height and overall height to be calculated from 21 feet NGVD in lieu of the 12.33 feet NGVD maximum allowed. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

After discussion, Councilman Wyett moved denial of the height variance to allow said house to be constructed at a height of 23 feet NGVD to the bottom of the top chord of

the roof framing member in lieu of the 22 foot maximum allowed in the R-B District. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

3. Other

a. Request for Waiver of Zoning in Progress for the Setback of a Marginal Dock to be Located at 400 Caribbean Way.
[Robert L. Moore, Director of Planning, Zoning, and Building]

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

Attorney Tim Hanlon, on behalf of the applicant, presented the request for a waiver of Zoning in Progress for the setback of a marginal dock at 400 Caribbean way. He explained that the current owners desired to enlarge the dock to provide for a larger yacht; because the pierpoint line of the property ran with the land, there was no option to accomplish that. The request was an issue of safety, because of the proximity to the Inlet, and the exposure of the lot; there was a huge amount of traffic in the area, and when visitors attempt to visit the property via water and tie up to the existing dock it was a safety hazard. The applicant was requesting a reduction in the setback from 25 feet to 11 feet, which was the setback that had applied to the property until the Zoning in Progress.

Zoning Administrator Castro commented that staff did not see a reason to grant a waiver from the Zoning in Progress if it was the intent of the Town Council to require all docks to have the 25 foot setback. The applicant was requesting an additional 34 feet for a larger yacht, and the concern of the Town Council had been to make sure the larger yachts that docked next to side property lines had substantial room to navigate.

Attorney Hanlon responded that the original desire of the owner had been to build a larger dock, out deeper into the water. Because of the location of the pierpoint line, and the resulting restrictions, the owner had been unable to do so. The request today was not to allow for a larger boat, but to provide for safety when visitors arrived by water; it was a safety issue.

President Pro-Tem Goldblum commented that the laws that govern boating required that everything possible be done for safety; a 34 foot dock should not be kept 22 feet away from a neighboring dock, as there would be safety problems. He noted that the area in question was very rough, and difficult to dock, which was all the more reason that more room was necessary.

Councilman Wyett moved denial of the request for waiver of Zoning in Progress for the setback of a marginal dock to be located at 400 Carribean Way. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

b. Request From Francis X. J. Lynch, Esq., for a Waiver From Section 42-199, "Hours For Construction Work," of the Town's Code of Ordinances to Complete a Planned Construction Project. (Coco Palm Beach, LLC – 280 Bradley Place) [Robert L. Moore, Director of Planning, Zoning Building]

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

Attorney Frank Lynch, on behalf of Coco Palm Beach, LLC, 280 Bradley Place, addressed the Town Council, presenting the request for a waiver from the Code of Ordinances allowed hours of construction. He explained that in order to make the project more economically viable, there was a need to be in operation in time for the season. He estimated that the restaurant would open on January 1, 2003. He stated that arrangements had been made with the synagogue to park construction vehicles in the lot located across the street from the restaurant.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objections, with the conditions that there be no work on Sundays or holidays, and if there were any noise complaints, the applicant would not be able to work after the normal working hours. The applicant was required to have staff vehicles parked somewhere other than on the street.

In response to Councilman Wyett, Attorney Lynch agreed that heavy construction delivery trucks would deliver only during normal working hours (8:00 a.m. – 6:00 p.m.).

Councilman McDonald moved approval of the request for a waiver from Section 42-199 of the Town Code of Ordinances for Coco Palm Beach, LLC – 280 Bradley Place, with the following conditions: deliveries during normal delivery hours (8:00 p.m. – 6:00 p.m.); no work on Sundays or holidays; hours from 8:00 a.m. to 8:00 p.m.; no construction during Thanksgiving week and the week between Christmas and New Year's Day. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

c. Proposed Change in Zoning Season Meeting Dates

Councilman McDonald moved approval of the revised Zoning calendar. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Brooks was no longer in attendance at the meeting.

XIII. ANY OTHER MATTERS

Town Manager Elwell clarified that the intent of placing and lighting of the Menorahs would occur in the same sequence with the placement of the Christmas Trees in Town. He explained that the Menorahs would be there for the entire holiday season, just as the Christmas Trees, and that would help to reduce the religious content of the displays – they were simply holiday displays, secularly placed by the Town

Councilman Wyett moved approval of the timing for the Menorah display – that the schedule of placement would coincide with the schedule for the Christmas Trees. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XIV. ADJOURNMENT

The regularly scheduled Town Council meeting of October 8, 2002, was adjourned at 7:45 p.m.

William J. Brooks
President

Mary A. Pollitt
Town Clerk