TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON JULY 13, 2004

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order at 9:30 a.m. by President Allen Wyett. On roll call the following Elected Officials were found to be in attendance:

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

Others in attendance were:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John Randolph
Charlie Boggs - Purchasing Agent
James Bowser - Town Engineer
Paul Brazil - Assistant Public Works Director
Paul Castro - Zoning Administrator
Veronica Close - Assistant Director of Planning, Zoning & Building
Rick Connors - Director of Public Works
William Crouse - Human Resource Director
John DeIorio - Acting Fire-Rescue Chief
Timothy Frank - Planning Administrator
Robert Moore - Director of Planning, Zoning & Building
Michael Reiter - Police Chief
Jane Skittone - Finance Director
Sandy Tate - Coastal Management Coordinator
Mary Pollitt - Town Clerk

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Bjorn Iverson of Coastal Dynamics, Inc.

Mr. Iverson presented a video and a power point demonstration in support of a sand retention system for the beaches.

IV. COMMENTS OF MAYOR LESLY S. SMITH

We owe a huge thank you to Rod Gardner for making the Town's annual Fourth of July celebration just perfect, even the hotdogs were great! In many senses, this is a serious occasion as we honor our country . . . but much more memorable than the lofty speeches is the laughter of Palm Beach families gathered to have fun in the sun. So, thank you Rod and his wonderful cast of seeming thousands in the Recreation Department for making it all happen.

Reporting on another event that went well, Peter Elwell, Police Chief Reiter, John DeIorio - our Acting Fire Rescue Chief - and I hosted an interagency marine safety meeting June 10 at the Port of Palm Beach. This was designed to bring together leaders of coastal cities, the Port and the County to air concerns and share ideas about maritime safety and domestic security issues. The idea for this meeting came as a result of the Sailfish Club fire. I am pleased to say that the discussion was open and, ultimately, quite productive. We agreed that Palm Beach Fire-Rescue would take the lead in identifying and pursuing options for purchasing a region-serving fire boat, including grant possibilities. The major consensus was that we need to work together, not separately, and to establish regular communications among agencies as we refine our plans and seek additional resources. The group will meet again at the end of this summer, and I feel confident about its ability to coordinate security measures.

Just some brief comments on a handful of today's agenda items.

We have a required public hearing this morning to approve an experiment that was initiated last year. . . including commercial solid waste fees as a property assessment on tax bills. This has proved both efficient and cost-effective, as the County collects the fees for us and transfers the money to the Town.

We also have several items related to strengthening code enforcement measures, especially related to non-payment of fines. We all know some of the horror stories about disregard of fines and penalties, especially for code infractions, and I am pleased to see us put some teeth into these ordinances.

I know that some of you in the audience were at yesterday's budget review meeting - it wasn't exactly standing room only, but thank you for coming

We do have an important expenditure authorization request on this morning's agenda - to provide for furnishings and equipment for an emergency operations center on the third floor of the new Central Fire-Rescue Station. We want this E.O.C. to be fully functional, since one of the hallmarks of the Town's service to residents has always been thorough preparation.

It is hard to believe that we are half-way through the summer. I suspect that some of you - I hope not members of the Council - came in just for the air conditioning . . . but welcome, and we welcome your comments.

I would like to take this opportunity to welcome Rick Conner, the Town's new Public Works Director.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

DEFER item XII.B.1. Brazilian Court Hotel to the August 10, 2004, Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Goldblum to defer Item XII.B.1 to the August 10, 2004, Town Council meeting. On roll call the motion carried unanimously.

MOVE item VIII.F.2. Florida League of Cities Conference - Potential Registration and Designation of Town's Official Voting Delegate to be heard as item number IX.B. New Business 6.;

Motion made by Councilman McDonald; seconded by Councilman Brooks, to move Item VIII.F.2. to be heard as Item IX.B. New Business 6. On roll call the motion carried unanimously.

DEFER item XII.C.1.d. Variance No. 18-2004 to the August 10, 2004, Town Council meeting.

Motion made by President Pro-Tem McLendon to defer Item XII.C.1.d. to the August 10, 2004, Town Council Meeting; seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Motion made by Councilman Goldblum, seconded by President Pro-Tem McLendon to approve the Agenda as amended. On roll call the motion carried unanimously.

VI. Communications from citizens- 3 minute limit please

There were none.

VII. PUBLIC HEARING

a. Commercial solid waste fee assessments.
[H. Paul Brazil, Assistant Director of Public Works]

1. Resolution no. 33-04 a Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, establishing the non-ad valorem assessment rates for commercial solid waste collection; providing an effective date. [H. Paul Brazil, Assistant Director of Public Works]

Assistant Director of Public Works Paul Brazil reported that the non-ad valorem assessment rates had been developed for commercial solid waste collection. All affected property owners had been notified of the public hearing in this regard. Mr. Brazil announced the current rates:

		Current	Proposed
1.	Apartments	11.50	11.50
2.	Low Volume (5 day)	0.023	0.023
3.	Medium Volume (5 day)	0.149	0.153
4.	High Volume (5 day)	0.655	0.665
5.	Low Volume (7 day)	0.029	0.028
6.	Medium Volume (7 day)	0.195	0.186
7.	High Volume (7 day)	0.853	0.810

President Wyett requested any public comment. There was none.

Town Attorney Randolph read Resolution No. 33-04 by title, as printed above.

Motion made by Councilman Brooks, seconded by Councilman Goldblum to adopt Resolution No. 33-04. On roll call the motion carried unanimously.

VIII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF JUNE 8, 2004.

B. APPROVAL OF SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION MINUTES FOR THE MEETING OF JUNE 8, 2004.

C. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF JUNE 9, 2004.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING OF JUNE 23, 2004.

E. RESOLUTIONS

1. RESOLUTION NO. 32-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Changes to the Strategic Plan and Providing for an Effective Date.
[Sarah E. Hannah, Assistant to the Town Manager]

F. OTHER

1. Authorization to Expend Up to $25,000 from Capital Improvement Fund Contingency for an Engineer to Develop Renovation/ Replacement Alternatives for the Oceanfront Roadway Protective Seawall Opposite the Palm Beach Country Club.
[H. Paul Brazil, Assistant Director of Public Works]

moved to Regular Agenda

2. Florida League of Cities Conference - Potential Registration and Designation of Town's Official Voting Delegate.
[Peter B. Elwell, Town Manager]

3. Approval of Selection Committee's Recommendation to Retain Caler, Donten, Levine, Porter, Drucker & Veil as the Town's Auditors for the Period 2004-2008.
[Jane Skittone, Director of Finance]

4. Authorization to Transfer Funds for Proposed Contract with Urban Design Studios for Additional Work on the Maximization Study for the 2004-2005 Zoning Season.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon, to approve the Agenda as amended. On roll call the motion carried unanimously.

IX. REGULAR AGENDA

A. Old Business

1. Town Hall Renovation - Proposed Modification to North Facade.
[H. Paul Brazil, Assistant Director of Public Works]

Assistant Director of Public Works Paul Brazil reported that staff had been directed to approach the Landmarks Preservation Commission (LPC) at their June 16th meeting to present possible alternatives for alterations to the north end of Town Hall to allow for a Building Department lobby entrance. He advised that Architect Mark Marsh would address the alternatives presented.

Architect Mark Marsh addressed the Town Council, exhibiting two proposed Town Hall North Elevation alternatives, which had been discussed and reviewed by the LPC, for consideration of the Town Council. He noted that a formal presentation would be made to the LPC at its upcoming meeting, which would include the recommendations of the Town Council made today.

Councilman Goldblum moved acceptance of alternative #2, with the decorative filigree door, as presented by Architect Marsh. The motion was seconded by President Pro-Tem McLendon.

Councilman McDonald commented that it was his opinion that the new doors would cause the building to lose its historical integrity.

Ms. Maya Gaillard, Preservation Foundation, thanked Mayor Smith and the Town staff for including the Preservation Foundation in the renovation process. She conveyed that there had been conversation about the adaptive use of the building, and the fact that there was a very real need inside the building, as well as ADA issues to be considered. She highly recommended alternative #2 for the north entrance.

In response to Mayor Smith, Mr. Brazil explained that the construction estimates had already included an allowance for construction modification at the north end of the building; the alternative would fit well within the program.

Former Mayor Yvelene deMarcellus Marix commented that she was very unhappy to see such a major change in the Town Hall, and that the matter was being brought up when there were not that many people in Town. She suggested that the matter be discussed when there were more people from the public to give opinions.

Director of Planning, Zoning & Building Robert Moore commented that there were many customers using the Building Department facilities and there was a need for a functional entrance.

Ms. Kelly Layman, member of the Florida Historical Commission, commented that the Town Hall structure had been on the National Register Review Board agenda in March, and as an alternate member to the National Board for Florida she wanted to ensure that the change in the door did not affect what was approved by the National Register Review Board.

Architect Marsh replied that the design was conforming because the opening would not be changed; the architects were working within the existing form.

Mr. Moore responded that the subject had been discussed with Historic Preservation Consultant Jane Day, and it was in line with the Secretary of Interior standards for modifications and renovations, which should not affect the landmarking on the National Register of Historic Places.

On roll call the motion to approve alternate #2 for the decorative door on the north end of the Town Hall carried 4/1, with Councilman Goldblum, President Pro-Tem McLendon, Councilman Brooks, and President Wyett casting affirmative votes; Councilman McDonald casting a dissenting vote.

2. Status Report and Recommended Actions on Adelphia Rate Filings. [Thomas G. Bradford, Assistant Town Manager]
Deferred from the April 13, 2004, and June 8, 2004, Town Council Meetings.

Assistant Town Manager Tom Bradford reported that he had contacted other communities in an effort to inform other local governments as to the situation with Adelphia, and the potential to cost share in the review of their proposed rates, however, there had been very little interest expressed by other communities. He stated that he had reviewed the United States Security and Exchange Commission filings of Adelphia, and it was his feeling that Adelphia was in no position to request a rate increase until their financial house was in order. He explained that the record reflects that Adelphia could not provide accurate costs and why there was a necessity to raise their rates. He suggested that some sort of rate analysis be accomplished in order to protect the citizens of Palm Beach, and recommended that the Town Council approve a General Fund Contingency allocation in the amount of $34,650 to secure the services of Ashpaugh & Sculco, CPAs, PLC to review three of the five different rate forms that Adelphia has filed with the Town. If for some reason the request for funding was considered too great, he recommended that, at a minimum, the Town Council fund a review of the FCC Form 1235, as if that form contained flaws and was not challenged, the Town and its citizens must live with the results of any inaccuracy for 12 years, whereas the other forms could come up again in as little as one year or less.

Councilman McDonald commented that he had read the 27-page memorandum from Mr. Bradford in this regard, and that he agreed with the recommendation to do the rate study, however, he did not agree that staff should pursue the formation of a Municipal Cable TV Coalition in conjunction with 36 other municipalities in Palm Beach County, given the lack of interest.

Councilman McDonald moved approval of the allocation of $10,000 from the General Fund Contingency to secure the services of Ashpaugh & Sculco, CPAs, PLC to review FCC Form 1235 (pertaining to the costs that Adelphia claimed relative to rebuilding the Town of Palm Beach Cable TV system).

Councilman Brooks expressed concern regarding the delay in hearing procedures, and the consideration that the Town may be far down the judicial pipeline.

In response to Councilman McDonald, Town Attorney Randolph stated that he was of the opinion that the Adelphia bankruptcy proceedings would not have an effect on the rates.

The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, with Councilman McDonald, President Pro-Tem McLendon, Councilman Brooks, and President Wyett casting affirmative votes; Councilman Goldblum was temporarily out of the room.

B. New Business

1. Phipps Ocean Park Beach Restoration Project Update and Recommendations. [Peter B. Elwell, Town Manager]

(The Town Council approved the engagement of Greenberg Traurig to pursue an appeal of

the permit proffered by the Corps of Engineers; they did not authorize staff to begin the design of a dune restoration project as an interim storm protection measure).

Town Manager Peter Elwell reported that a memorandum had been distributed to the Mayor and Town Council describing the recommendations as to how to proceed with the Phipps Ocean Park Restoration Project. Attached to that memorandum was a six page letter from Attorney Reginald Bouthillier, Greenberg Traurig, who was present today, setting forth the procedure for challenging the permit offered to the Town by the Army Corps of Engineers. He summarized that the permit for the project had been issued by the State of Florida approximately three years ago, and the Town had been prepared to move forward and construct the beach project this winter, however, the permit from the Army Corps was not acceptable. Even though attempts to negotiate better terms had been made, the point had been reached where further effort invested in that approach would not serve the Town well, and it was now necessary to appeal the permit through the formal federal appeal process. The time involved in going through that process would prevent the Town from constructing the project during the upcoming winter season. He noted that if the Town as not successful in the appeal, the further manner in which to challenge the permit was by filing an action in federal court.

Mr. Elwell explained that staff recommended:

- Authorization to proceed to file the appeal, with the attorneys now taking the lead, rather than staff.

- In order to be prepared to provide some storm protection to the properties that would have benefitted from the Phipps Ocean Park Restoration project, staff also requested authorization to prepare a plan for dune restoration in that area. Dune restoration would not provide as much storm protection as a beach restoration would, however, it would bolster the dune and provide a measure of storm protection for what was now a critically eroded area, until there was the ability to construct a high and wide beach in that area. Staff would be prepared to discuss costs for a dune restoration project in the near future.

Councilman McDonald moved that the Town engage the law firm of Greenberg Traurig and proceed to file the appeal of the permit proffered by the Army Corps of Engineers.

In response to President Pro-Tem McLendon, Mr. Elwell replied that he did not know the exact costs of this project to date, and requested that Coastal Management Coordinator Sandy Tate provide an update.

Coastal Management Coordinator reported that the amount spent to date on the design phase of the project was approximately $300,000-$350,000. The SCIS document had cost approximately $250,000, and the mitigation reef cost $1.4 million.

Town Manager Elwell pointed out that the costs were being shared with the State of Florida, and the expected cost of the project in toto was to have been between $10 and $11 million.

Councilman Brooks seconded the motion.

In response to President Wyett, Town Manager Elwell replied that the intent of the recommendation for the dune restoration was within the project area, within Reach 7, from Sloan's Curve to the Ambassador Hotel, because that is the area that would have benefitted from the beach restoration project if it could have been constructed during the upcoming winter. The project could be designed to proceed with Reach 7 or Reach 8, or only a portion of the area.

President Wyett suggested that Reach 8 be considered as part of the dune restoration project.

Ms. Tate commented that the feasibility study for Reach 8 was still in preparation at this time, and the disadvantage of dune restoration was that when it was conducted without an appropriate beach in front of it, it would be extremely vulnerable. She explained that dune restoration in and of itself was not usually a final solution; even beach nourishment was not a final answer, as renourishment was needed periodically. She considered that Reach 7 and Reach 8 would need to be studied very closely in order to assess them individually to see specifically where dune restoration would be appropriate.

Town Manager Elwell replied that in conversations internally and with the State of Florida, staff would explore both Reach 7 and Reach 8, and come back to the Town Council with more details about the design as it evolves. He noted that Attorney Bouthillier, of Greenberg Traurig had offered a discount of $50 per hour in his hourly rate, and the range of the work required was estimated at $60,000 to $90,000.

Mr. Elwell clarified that the recommendation of staff was to authorize the filing of the appeal and to proceed in the manner outlined by Attorney Bouthillier in his memorandum, and that staff be authorized to begin the design of the dune restoration project as discussed today, to study both Reach 7 and Reach 8.

Mr. Dick Kleid, 2660 S. Ocean Blvd., as President of BeachPoint Condominium Association, one of the condominiums located in Reach 7, commented that there was a great burden of proof on the part of the Town to win in an administrative proceeding, and he requested that Attorney Bouthillier provide an estimate of the chance of success in the administrative proceeding.

Attorney Reginald Bouthillier, Greenberg Traurig, replied that when a decision maker, such as the Army Corps of Engineers, was asked to reconsider its decision, it was very difficult to have that same decision maker overturn its decision. It would be a very difficult to prevail, however, it was necessary to go through the process; there was the potential that the Corps could be convinced to change its position on several points.

Mayor Smith expressed concern regarding the costs experienced thus far, and commented that individuals in the local office of the Corps seemed to be working against the Town, and suggested that perhaps those individuals should be excluded from the appeal process so that a fair hearing can be conducted. She also noted that she was opposed to spending any money on beach renourishment in this area right now – if a permit was ever received for this project, the beach renourishment would be buried.

Attorney Bouthillier responded that there were two layers of the appeal – the first layer was basically formulating objections, which would go to the local office of the Corps in Jacksonville; the likelihood of prevailing was slim to none, however, that process had to be completed before going to Atlanta. He considered that there was a greater chance of success in Atlanta, where an officer would be appointed to hear the appeal and conduct an informal proceeding.

Attorney Bouthillier expressed concern that the Town had expended money on the SEIC process, and at the eleventh hour, without consideration of public comment, the Corps chose an alternative that had not even been considered. He considered that was the most persuasive argument that the Town could make, in addition to the fact that the other additional conditions were also considered without public comment at the eleventh hour. He also explained that he could not give precise costs at this time until he could work with staff to evaluate the merits of the appeal.

Town Manager Elwell clarified that the conditions imposed would add millions of dollars to the cost of the project.

On roll call the motion of Councilman McDonald to proceed to file the appeal of the permit proffered by the Corps of Engineers, engaging the firm of Greenburg Traurig, was seconded by Councilman Brooks, and carried unanimously.

Dr. Sten Lilja observed that if a dune restoration was done, it would be on public land and the question of who was going to pay for it must be addressed.

After discussion, Town Manager Elwell indicated that staff would return at the August 10, 2004 Town Council meeting to provide cost estimates for the dune restoration project. He requested authorization to begin a design process, in order to be in the position to perform the dune restoration as quickly as possible, in order to provide some measure of protection to the critically eroded area.

In response to Councilman Brooks, Ms. Tate explained that the dune restoration would not take the place of beach nourishment, and would not provide the storm protection that beach nourishment would provide.

Town Manager Elwell explained that the dune restoration was an interim measure, and staff would continue to keep the Town Council informed in this regard.

2. Discussion of Fire-Rescue Department Facilitating the Purchase of Automatic External Defibrillators (AEDs) by Town Residents. [John J. DeIorio, Acting Fire-Rescue Chief]

Acting Fire-Rescue Chief John J. DeIorio advised that a presentation has been put together by his department in response to the public's interest in obtaining information on purchasing Automatic External Defibrillators (AEDs). He stated that he is recommending a cooperative effort between the Fire-Rescue Department and Town Manager's office to provide contact information for Town residents.

Brian Fuller, EMS Division Commander for the Town of Palm Beach applauded Stanley Rumbaugh for bringing this important issue to the attention of the Town Council and the citizens of Palm Beach.

Mr. Fuller reviewed a video the American Heart Association had prepared on the importance of AEDs. He said that less than five percent survive from cardiac arrest and many lives could be saved if bystanders acted properly by calling 911, begin CPR, and trained personnel apply defibrillation within three to five minutes. He advised that the Fire-Rescue Department suggests, as does the American Heart Association, that businesses place AEDs everywhere there is a fire extinguisher. He emphasized that it is important to train people to use this equipment quickly. He stated that even though the Town of Palm Beach has an excellent response time, it does not take the place of having this equipment at your side.

Mr. Fuller advised that there are four steps in the implementation of an AED program and the first is Medical Oversight. He stated that AED's are considered to be medical equipment and cannot be purchased over the counter. A physician prescription must accompany the purchase of an AED, and the American Heart Association recommends further physician involvement to insure safety and effectiveness. He advised that the medical director employed by the Town for the Fire-Rescue Department has offered his services for free in providing prescriptions for residents wishing to purchase AEDs. He continued that the medical director will be very involved in the program's safety and effectiveness.

Mr. Fuller stated that the second step is selecting an AED. He advised that the Town of Palm Beach Fire-Rescue does not want to suggest any one device over another. He said that they do ask residents to purchase an AED that provides low energy defibrillation. He reported that AEDs require low upkeep, small maintenance and are immediately available in an emergency.

Mr. Fuller stated that the third step is training. He said that any one expected to use a device in a cardiac emergency should be trained in CPR and the appropriate use of an AED. He reported that Fire-Rescue provides free monthly CPR and AED training which any resident is welcome to take advantage of. He continued that the training takes about three to four hours and is an American Heart Association Heart Saver course. He advised that Lt. Mark Bradshaw with the Citizen's Fire Academy is in charge of Fire-Rescue's resident training.

Mr. Fuller stated that the last step is cooperating with your local emergency EMT systems. He advised that any resident considering purchasing or having purchased an AED should contact Fire-Rescue to set up training which is free of charge, and if necessary, the medical director can provide a prescription and his knowledge of the program.

Mr. Fuller stated that in regard to Mr. Stanley Rumbaugh's questions, the process is in place and supported by the American Heart Association and is definitely supported by the Fire-Rescue Department. He advised that they will gladly provide anything they can to help any resident purchase an AED.

Acting Chief DeIorio in response to President Pro-Tem McLendon's question regarding the cost of a unit said they are approximately $900.00 to $2000.00.

Mayor Smith asked if it was not true that there are devices in all three fire stations and the police station?

Acting Chief DeIorio replied that there are many within the Town. He advised that most of the police vehicles have them and that the Police Department is trained in the use of AEDs. He reported that Beach Patrol has them as well.

Mayor Smith said she understands that all of the clubs have AEDs also.

Acting Chief DeIorio said he assumes some do but would not say that all do because he cannot verify it; however, he was of the opinion that they all should have AEDs.

Mayor Smith said that it is an important device that is not that expensive when you think of it as a lifesaving device. She noted that it would be important to do a press release to publicize this free service for anyone in Town. She said the more people that know about them the better.

Acting Chief DeIorio stated that he would get started on a news release.

Mayor Smith suggested that they try to get them into the big stores on Worth Avenue.

Councilman Brooks moved approval of the recommendations set forth by staff: the recommendation for a cooperative effort by the Fire-Rescue Department and the Town Manager's Office to provide contact information for Town residents and local business owners who are interested in purchasing AEDs and that a goal be set to train all Town employees in CPR and AED use. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

3. Potential Purchase of Town Land North of Miraflores Drive and East of North Lake Way by William S. Watchman.
[Peter B. Elwell, Town Manager]

Town Manager Elwell explained that this parcel is no longer needed to house the emergency power supply for the D-3 Pump Station. He advised Council that it was their decision on whether an appraisal should be obtained to identify the selling price of this property. He continued that once that is done the Town, as well as Mr. Watchman, can decide if they want to move forward at the price determined. He reported that the Town would arrange for the appraisal that would be paid for by Mr. Watchman.

Councilman Goldblum asked, after looking at the visuals, where the electric generator station is going for that pump?

Town Manager Elwell explained that this parcel is just open space property and not Town facility property. He indicated the placement of the D-3 emergency power, which was going to go behind the D-4 Pump Station and not anywhere on that piece of property.

Councilman Brooks asked if Mr. Watchman has agreed to put a restrictive deed on this property so that it would remain as green space?

Town Manager Elwell said that they have had conversations about that but he was not in a position to represent on Mr. Watchman's behalf. He suggested that the Council impose that condition on any potential sale.

Councilman Brooks was in favor of the deed restriction.

President Pro-Tem McLendon asked Town Engineer Jim Bowser, if the property is transferred subject to a Town easement, does he foresee the use of lines on this narrow street?

Town Engineer Jim Bowser replied that the Town has given up properties, in the past, that they could have used. He advised that the Town does not own many properties, and there is no way to envision future use. He reported that there is a sanitary sewer that goes through in a north/south direction which precludes from building. He said if Mr. Watchman wanted to build an addition to his property to the west, the easement would have to be cleared and the Town would have to reroute the line at Mr. Watchman's expense as well as rededicate easements. He stated that it is a question to consider.

Mr. Bowser in response to President Pro-Tem McLendon's question of whether the Town has facilities under this property, replied that the Town does have an existing facility on the east side of the property which is used and is needed.

Town Manager Elwell responded that it would not come into play if a deed restriction condition was placed on this property, as mentioned by Mr. Brooks, in order to leave the property as open space.

Councilman McDonald suggested that they determine what the restrictions would be now and then go back to Mr. Watchman, and ask if he even wants to pay for the appraisal with the restrictions Council requests. He listed the restrictions he suggested the Town adopt.

Town Manager Elwell said that those calculations would be based only on the existing property where the house sits today.

After further discussion, the motion was made by Councilman McDonald authorizing an appraisal of the property to be paid for by William S. Watchman subject to the following conditions. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

1. **Deed restriction providing the property shall remain as green space;**
2. **Easement in favor of the Town to be used above and below grade as necessary;**
3. **The new property shall not be considered as part of the yard, lot, and bulk regulations if the residence is demolished;**
4. **A unity of title be executed.**

4. Request for Capital Improvement Contingency Funding for Furnishings and Equipment for the Emergency Operations Center (EOC). [Thomas G. Bradford, Assistant Town Manager]

Assistant Town Manager Tom Bradford advised that the third floor in the new building is a hurricane hardened emergency management center of operations for the Town. He noted it includes two offices, a conference room, four storage rooms, a kitchen, men and women restroom facilities with showers, a communications equipment room, a mechanical room, the EOC and an emergency dispatch, if needed in the future.

Assistant Town Manager Tom Bradford stated that a request is being made today from the Capital Improvement Contingency Fund for $227,519.00. He said that after much analysis between himself, Peter Elwell and others, this was decided to be the minimum needed to make the third floor of the new building a functional EOC.

After discussion, President Pro-Tem Samuel McLendon made a motion to approve staff recommendations as presented. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

5. Appointments to the Building Board of Adjustments and Appeals. [Robert L. Moore, Director of Planning, Zoning, and Building]

After casting ballots, the Town Council appointed the following members to the Building Board of Adjustments and Appeals:

Regular Members	-	Scott Sloane Jeffery W. Smith James B. Williams
Alternate Member	-	Sanford J. Klion

6. Florida League of Cities Conference - Potential Registration and Designation of Town's Official Voting Delegate
[Peter B. Elwell, Town Manager]

Councilman McDonald stated his concerns about this item. He advised that it is very important for the Town to have representation at the conference preferably by the Town Council President and noted that he went when he was Town Council President.

Mayor Smith stated that she too went when she was Town Council President.

Discussion continued on the value of the Town sending a delegate to attend this conference and on who had attended in the past. President Pro-Tem McLendon volunteered to go to the conference being held in Hollywood on August 19th through the 21st.

Councilman McDonald made a motion to designate President Pro-Tem McLendon as the Town's official voting delegate at the Florida League of Cities, Inc. Conference. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0: Councilman McDonald, Councilman Goldblum, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room.

X. ORDINANCES

A. Second Reading

1. <u>ORDINANCE NO. 10-04</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 74, Parks and Recreation, to Include a New Article IV, Inlet Dock Closure; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney and Thomas G. Bradford, Assistant Town Manager]

Town Attorney Randolph read Ordinance No. 10-04 by title as printed above: (second reading).

Councilman McDonald made a motion to adopt Ordinance No. 10-04 on second reading. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0: Councilman McDonald, Councilman Goldblum, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room.

2. ORDINANCE NO. 11-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, at Article III, Parking, Stopping and Standing, Division 2, Parking Meters, Section 118-127, Overtime Parking, Subparagraph (a); Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney and Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Ordinance No. 11-04 by title as printed above: (second reading).

Councilman Goldblum made a motion to adopt Ordinance No. 11-04 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0: Councilman Goldblum, Concilman McDonald, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room.

3. ORDINANCE NO. 12-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances at Chapter 38, Emergency Services, Article II, Alarm Systems, at Sections 38-35 (b) and 38-62 (b) So as to Provide a Ten Percent per Month Penalty for Nonpayment of Fines and Fees; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney and Jane L. Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 12-04 by title as printed above: (second reading)

Councilman Goldblum made a motion to adopt Ordinance No. 12-04 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0: Councilman Goldblum, Concilman McDonald, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the

room.

4. ORDINANCE NO. 13-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Relating to Violations of the Use of the Rights-of-way in the Town Pursuant to the Standards Applicable to Public Rights-of-way and Easements; Providing a Penalty for Nonpayment and Providing That the Code Enforcement Board Have Jurisdiction Relating to Matters of Nonpayment; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney and Jane L. Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 13-04 by title as printed above: (second reading)

Councilman Goldblum made a motion to adopt Ordinance No. 13-04 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried 4-0: Councilman Goldblum, Concilman McDonald, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room.

5. ORDINANCE NO. 15-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 70, Offenses, to Include a New Section 70-9 Prohibiting the Carrying or Use of BB Guns, Pellet Guns or Air Guns Within the Town; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney and
Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Ordinance No. 15-04 by title as printed above: (second reading)

Councilman Goldblum made a motion to adopt Ordinance No. 15-04 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0: Councilman Goldblum, Concilman McDonald, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room.

B. First Reading

1. ORDINANCE NO. 14-04 An Ordinance of the Town Council of the Town of Palm, Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 58, Law Enforcement, to Create a New Article IV Relating to the Administration of Off-duty Police Services; Providing for Regulations; Providing for Application for Services; Providing for Charges; Providing for Disposition of Revenue; Providing for Compensation of Officers Performing Off-site Services; Providing for the Prohibition of Direct Compensation; Providing the Status of Officers Performing Off-duty Services; Providing for Penalties for Nonpayment; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for Repeal or Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney and Jane Skittone, Director of Finance]

Town Attorney Randolph read Ordinance 14-04 by title as printed below: (first reading).

ORDINANCE NO. 14-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 58, Law Enforcement, By Adding a New Article IV Titled Fees for Special Assignments, Providing for the Imposition of Fees for Services and Equipment Relating to Special Assignments for the Town of Palm Beach Police Department and for the Town of Palm Beach Fire-Rescue Department; Providing for Penalties; Providing for Jurisdiction of the Code Enforcement Board; Providing for Severability; Providing for the Repeal of Ordinances in Conflict; Providing for Codification; Providing for an Effective Date.

Councilman Goldblum made a motion to approve the first reading of Ordinance No. 14-04. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0: Councilman Goldblum, Concilman McDonald, President Pro-Tem McLendon and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room.

2. ORDINANCE NO. 19-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Ordinance No. 7-03; Providing Certain Benefit Options under Chapter 82 of the Code of Ordinances to Certain Public Safety Officers Who Are Drop Participants in the Retirement System; Providing an Option to Such Drop Participants under Section 82-64, Code of Ordinances, to Elect to Purchase an Increased Multiplier for Calculation of the Amounts of Their Pensions under Section 82-59; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing an Effective Date.
[William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Ordinance No. 19-04 by title as printed above: (first reading)

Councilman Goldblum made a motion to approve the first reading of Ordinance No. 19-04. The motion was seconded by Councilman McDonald and carried 5/0 on roll.

XI. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman McDonald offered to donate a shade tree for the Town Park located at South County Road and Peruvian Avenue.

Mr. McDonald also requested a sketch from the Public Works Department for the landscaping project to be undertaken by the residents of Ibis Isle.

Town Manager Elwell informed him the sketch was complete and would be provided to him.

XII. DEVELOPMENT REVIEWS

A. Appeals

1. None

B. Time Extensions

1. Brazilian Court Hotel. [Robert L. Moore, Director of Planning, Zoning, and Building]

This item was deferred earlier in the meeting.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. <u>SPECIAL EXCEPTION #18-2004 WITH SITE PLAN REVIEW AND VARIANCE</u> The Application of Robert J. Dwyer and Concetta A. Dwyer Relative to Property Described as Lots 22, 26, 27 and 28, Via Vizcaya Addition; Commonly Known as 880 South Ocean Boulevard; Located in the Beach Area Zoning District. Request for a Special Exception with Site Plan Review to Allow a 100 Square Foot (10 Foot by 10 Foot) Freestanding Beach Canopy in the Beach Area District, to Be Placed on an Existing Concrete Deck; and, Variance to Maintain the Existing Wall at a Height of 38.5 Inches at the Northernmost Point of the Property to 48 Inches at the Southernmost Point of the Property (Measurements Vary Because of the Change in Road Elevation); and, to Maintain a Hedge at a Height of 36 Inches at the Middle of the Property to 38 Inches at the Southernmost Point of the Property in Lieu of Creating the Ocean Vista with 50% of the Wall and Hedge Height Not Exceeding 30 Inches above Ocean Boulevard. *Deferred from the June 8, 2004, Town Council Meeting.*

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

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that this matter was before Council last month with the matter deferred in order to speak to staff and come back with something that was agreeable to all.

Mr. Kolins advised that the applicant wishes to construct a small 10'x10' canvas beach cabana that will only have the canvas on it for one to two months out of the year. He stated that the site plan and special exception meet all the requirements. He noted the variance request has been affected by a recently passed requirement for any new cabanas located on the beach. He reported that it was now required that you cut down any wall or vegetation for fifty percent of the linear distance on north or south to no more than thirty inches.

Mr. Kolins, using visuals, pointed out the beautiful wall and vegetation along the property. He noted that the property had a road sloping down from north to south so it varied from forty-eight to thirty-eight inches in height above the crown of the road. He said that taking down that wall would be more than his client should have to do.

Mr. Kolins advised that he met with Mr. Moore a couple of weeks after the deferral, and they reached an accommodation and mutual understanding. He said that Mr. Moore agreed to recommend that Council approve the condition of placement of a deed restriction. He stated it would say that the owner would not put up the canvas portion anytime during the off season . He advised that the applicant would agree to that condition.

Director of Planning, Zoning & Building, Robert Moore stated that he advised Mr. Kolins that this was a new section in the ordinance, and for the Council to grant a variance for it, would be a very difficult thing to do. He reported that he told Mr. Kolins that this new requirement was made retroactive and existing walls have to be altered to meet the thirty inches intended for the vista. He stated that it is the Council's decision to make, but the recommendation of the Planning, Zoning & Building Department is to require the condition of a deed restriction. He continued that it would mean the canvas comes down during the season with a deed restriction for this property owner and their successors. He said the penalty would be action taken by the Code Enforcement Board.

Attorney Randolph stated that a deed restriction may not be necessary since the approval would just be for a canvas awning. He did advise Council, if they did approve the request with a deed restriction, it should state that the structure cannot be enclosed with anything other than canvas, in order to protect the Town against future purchasers who might want to add more than canvas.

Mr. Kolins stated the applicant would accept that.

Councilman Goldblum made a motion to approve Special Exception No. 18-04 with the condition a deed restriction be executed stating the canvas will be removed during the off season, and the structure shall not be enclosed in the future. The motion was seconded by President Pro-Tem McLendon . On roll call the motion carried 4/0: Councilman Goldblum, President Pro-Tem McLendon, Councilman Brooks, and President Wyett casting affirmative votes; Councilman McDonald was temporarily out of the room.

2. New Business

a. VARIANCE #15-2004 The Application of Steven L. Apple Relative to Property Described as Lot 15, Primavera Estates (Ocean Section); Commonly Known as 132 Clarke Avenue; Located in the R-B Zoning District. To Allow for Construction of a One Story Infill Addition with a Side Yard Setback of 8.16 Feet in Lieu of the 12.5 Foot Minimum Required.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that this is a re-application of a previously granted variance which was done in May of 2000. He said that the existing westside yard setback is 8.16' which was conforming when the John Volk designed house was built in 1957. He displayed photographs of the property, explaining that the house is very heavily hedged all around the perimeter, and it is pretty small compared to others on the street. He said there is a second story element which is a very small portion of the house. He continued that the proposal is to renovate the existing house with a one story infill on the westside of approximately 165 square feet. He continued that it is in line with the existing exterior building line of the house. He asked Architect Jacquie Albarran to indicate the location of the inset.

Mr. Brindell stated that it is a diminimus request with the house having a 2.7 CCR which is way under what is allowed and under what is existing on the street. He said that the lot coverage would only be 22.6% and the code allows 30%. He stated that the lot width does not meet the minimum code width requirement which is the fundamental hardship. He said it is the same hardship as presented before. He continued that it is such a small proportion of the linear side of that house and the lot is substandard in width.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan, Zoning and Town Manager's office: find no hardship, expansion of a non-conforming building; and Planning, Zoning and Building Department's comments relative to the Assistant Director: demonstrate the hardship.

Dick Kleid, Chairman of the Planning and Zoning Commission, commented that he thought an economic hardship had to be shown for a variance.

Councilman Goldblum stated that the hardship had to be with the land, and Mayor Smith advised that the Town Council cannot even address economic matters.

President Pro-Tem McLendon moved approval of Variance No. 15-04, based on the hardship that the request was an in-fill and the lot was narrow. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/1: President Pro-Tem McLendon, Councilman Brooks, and President Wyett casting affirmative votes; Councilman Goldblum cast a dissenting vote. Councilman McDonald was temporarily out of the room.

b. VARIANCE #16-2004 The Application of Peter D. and Julie F. Cummings Relative to Property Described as Lot 7, plus the East 6.14 Feet of Lot 8 of Supplementary Plat of El Bravo Park; Commonly Known as 201 El Bravo Way; Located in the R-A Zoning District. Variance Requested to Increase the Existing Non-conforming Lot Coverage of 26.63 % to 27.69% in Lieu of the Maximum 25% Allowed; Variance to Decrease the Existing Non-conforming Landscaped Open Space Percentage from 42% to 41%, in Lieu of the Minimum 50% Required; and, Variance to Allow a 25.8 Ft. Street Side Yard Setback in Lieu of the 35 Ft. Minimum Required.

Ex-parted communication was declared by Councilman Goldblum with Attorney Kolins; President Wyett with Attorney Kolins; President Pro-Tem McLendon with Attorney Kolins and driving by the site; Councilman Brooks with Attorney Kolins and driving by the site but could not see subject area.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that this case is a small infill of 207 square feet which cannot be seen from any direction at all on the streets. He advised that the property is landmarked and last month the Landmarks Commission gave a successful, supporting advisory opinion.

Attorney Kolins reported that the hardship is twofold. He said the first being that it is a landmarked historic structure. He stated very little could be done to the property, if more space was needed by the family, because the Landmarks Commission would not allow very much. He advised that the Landmarks Commission was supportive, in this case, because the design for the small addition is compatible with the main house, and also because it cannot be seen from the road.

Attorney Kolins reported the second reason was that in 1987, when the house was purchased, it was already slightly non-conforming in two areas. He said that first the house was non-conforming by being one percent over the maximum lot coverage percentages; and secondly, about one percent below the minimum green space requirements. He continued that the owners acquired this property which left them no room to breath. He said that the diminimus request only adds one percent to the lot coverage and one percent less of green space.

Zoning Administrator Paul Castro stated, for the record, that it was not just one addition requesting a variance before them but two additions requesting variances.

Mr. Kolins advised that there is only one addition requiring a variance. He stated that there was another small second floor addition which would go to Landmarks but it was not before the Town Council today and did not require a variance.

Zoning Administrator Paul Castro asked if it was correct that one addition required a lot coverage variance and the other addition on the side did not require any variances at all?

Mr. Kolins responded that was correct.

Mr. Kolins displayed a site plan and photographs explaining that the reason he is before Council today is for the internal 200 square foot addition and advised that he is not here for relief from the addition referenced by Mr. Castro. He reported that photographs were taken from a variety of directions to show that the area where the addition is going is not observable from any direction. He noted that anyone that was at the property can confirm that for him.

Zoning Administrator Paul Castro stated that it was really not an infill variance. He said that the site plan shows it as an addition onto the front of the house not as an infill between two sections of the home. He advised that three variances were being asked for. He said one was for lot coverage, one was for landscaped open space, and finally, the street side yard variance.

Mr. Castro advised that the Landmarks Commission had no major objections to the proposal but the Zoning Department as well as the Town Manager's office found no hardship. He stated that as a landmarked property, the Town tries to help the owner's utilize the property better, but it was also a fairly large piece of property as well.

Councilman Brooks said that in the past, the Town has tried to accommodate landmarked property with reasonable requests. He advised that when he drove the property, he couldn't see anything from the street. He stated that the request was reasonable, and he would move approval for this petition.

Mayor Smith reported that the owners have put a lot of time and effort into keeping it. She said it was a prime example of an application that the Town Council should support because it showed that landmarked houses can be moved into the 21st century.

Councilman Brooks moved approval of Variance No. 16-04, based on the hardship that it is a landmarked property. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0: Councilman Brooks, President Pro-Tem McLendon, Councilman Goldblum, and President Wyett casting affirmative votes. Councilman McDonald was temporarily out of the room.

c. VARIANCE #17-2004 The Application of the 190 South Ocean Land Trust, Republic Security Bank, Trustee, Kenneth Schrader Relative to Property Described as Lengthy Legal Description on File; Commonly Known as 190 South Ocean Boulevard; Located in the Beach Area Zoning District. Variance Requested to Allow the Replacement of a Chain Link Fence with a Six-foot-high, Metal, Picket-type Fence of Modern, Slim-profile Style to Be Located on Top of an Existing Concrete Retaining Wall/seawall at a Maximum Total Height of 6.85 Feet from the Crown of Ocean Boulevard in the Front Setback Area in Lieu of Six Feet Maximum Permitted, and a Maximum Height of 12.4 Feet from the Lowest Grade on Either Side of the Property Line in the Remaining Side Yard Setback in Lieu of Seven Feet Maximum Permitted

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

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that this was a request for variances necessary to allow the height of a fence that extends east and west along both sides of the ocean side of the property. He said the existing fence replaced an old and aging chainlink fence of the same height or higher. He advised that the hardship was that the land substantially slopes down as you go from the road to the ocean. He said this fence had to be built on top of an existing seawall or walls that extend to a seawall in the east/west direction.

Mr. Kolins displayed photographs and a site plan of the seaward side property in order to see where the fence was located and to explain the issues.

Planning, Zoning and Building Director Robert Moore stated that there was a hardship in the fact that this was a very unique piece of property. He continued that staff does not have any objection for this east/west fence. He reported that there was a misunderstanding by Mr. Ecclestone's foreman regarding the request for a variance. He noted that the fence has already been installed replacing the old fence, and it was very attractive but would need the variance.

Mr. Moore stated that there is a problem coming up and an administrative ruling has been granted allowing the pedestrian gate adjacent to the road to stay at 6' instead of 4' or 30". He advised that it had been granted administratively but the sliding gate that is there is not approved nor could it be approved unless there have been changes within the last two weeks.

Mr. Kolins, referring to the sliding gate, reported that he had spoken to Mr. Ecclestone who said he would have it taken down. He advised it should now be down. He stated that a 4' gate painted a color that does not reflect the sun will be placed there.

Councilman Goldblum advised that the gate is already down.

Councilman Brooks asked if Clarke Avenue beach was public?

Mr. Moore responded that it was.

Councilman Brooks stated that the property is somewhat isolated.

Mr. Moore agreed stating that it is an unusual piece of property. He stated that this property is exactly the kind that qualifies for the Council's consideration for unique hardship when considering variances.

Councilman Goldblum advised that he was wrong when he said there wasn't an angle cut at a previous meeting because there is one coming out at Seabreeze Avenue. He said you can see the cars coming down from there.

Councilman Goldblum moved approval of Variance No. 17-04, based on the hardship that the land slopes to the ocean. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

d. VARIANCE #18-2004 The Application of Brazilian Avenue, LLC, Stephen Dattels, Managing Member, Relative to Property Described as Lots 45 and 46, Block 4, Revised Map of Royal Park Addition to Palm Beach; Commonly Known as 430 Brazilian Avenue; Located in the R-C Zoning District. Variance to Allow Construction of a New, Two-story Residence on a Lot with a Width of 50 Feet in Lieu of the 75 Foot Minimum Required and a Lot Area of 8,560 Square

Feet in Lieu of the 10,000 Sq. Ft. Minimum Required in the R-C Zoning District; Variance to Allow the East Side Yard Setback to be 5 Feet for the Garage in Lieu of the 10 Foot Minimum Required in the R-C Zoning District; Variance to Allow the East Side Yard Setback to be 8 Feet for the Main House in Lieu of the 10 Foot Minimum Required in the R-C Zoning District; And, Variance to Allow the East Side Yard Setback to be 8 Feet for the Swimming Pool in Lieu of the 10 Feet Minimum Required in the R-C Zoning District. **Staff Recommends Deferral to the August 10, 2004, Town Council Meeting.**

This item was deferred earlier in the meeting.

e. SPECIAL EXCEPTION #20-2004 WITH SITE PLAN REVIEW the Application of Karen True Relative to Property Described as East 80 Feet of Lot 24, Tangier Estates; Commonly Known as 242 Tangier Avenue; Located in the R-B Zoning District. Special Exception with Site Plan Review to Modify a Previous Approval (SE #6-2004 W/SPR) Which Allowed the Construction of a Two-story, Single Family Residence on a Non-conforming Lot Which is 80 Feet in Width in Lieu of the 100 Foot Minimum Required in the R-B Zoning District.

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

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, informing them that this site plan was before the Town Council in February, 2004, and it is a slight modification to the Site Plan Review. She said there were minor changes which Architect Saladrigas will review. She advised that the changes were more than the thresholds and that is the reason the request has come back to Council. She said that the lot is non-conforming but the house does meet the code in all respects. She reported that they were here for just a site plan review.

Architect Raphael Saladrigas, Brower Architectural Associates, reviewed the changes and pointed out the modifications. He stated that it passed the threshold for site plan approval when modifications were made. He pointed out the modifications showing that the house was widened another 3'4" and added an area to the kitchen on the ground floor and second floor. He used the floor plans to point that out. He said they took a covered area in between the garage and the main house and took the cubic content ratio of that and added it back into the house, expanding it.

Zoning Administrator Paul Castro stated that as part of moving that section back into the house, the umbilical from the back building to the front was a two story element, an open second story element walkway from the house to the two-story garage/guest house/service quarters was part of that modification.

Mayor Smith stated that now it is one story and open.

Mr. Castro responded that was correct with a trellis and a fireplace in the middle opening out to the pool. He advised that there were no objections.

Councilman Goldblum moved approval of Variance No. 20-04, to modify a previous approval of SE #6-2004 w/Site Plan Review. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

f. SITE PLAN REVIEW #8-2004 The Application of John and Mary Rossi Relative to Property Described as Lot 112, According to the Plat of Boca Raton Company's Inlet Subdivision; Commonly Known as 1500 North Ocean Boulevard; Located in the R-B Zoning District. Site Plan Review to Allow the Construction of a New, Two-story, Single Family Residence on a Non-conforming Platted Lot Which Is 87 Feet in Depth in Lieu of the 100 Foot Minimum Required in the R-B Zoning District.

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

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, and advised that she was here with Architect Harold Smith. She stated that the site plan review before them was for a new house on a non-conforming lot and that she is not requesting any variances.. She stated the property is over 10,000 square feet but did not conform in width. She said currently the one story Bermuda style house was going to be replaced with a two story house.

Architect Harold Smith, Smith and Moore Architects, stated that the home is 4, 389 square feet in total area with a cubic content ratio of 4.0; the conforming lot area is 10,131 square feet; the lot coverage by building is 23.8%; and landscaped open space is 43.3%. He advised that the home is in the intersection of Mediterranean Road and North Ocean Boulevard. He reported on the homes surrounding this property, described the home on the subject property and identified some of the major site plan elements.

Councilman Goldblum asked how many feet from the property line is the adjoining house?

Mr. Smith responded that it is 15' with a 27' separation between the two homes from the property line.

Councilman Brooks asked what the square footage would be for the surrounding contiguous properties, and if this was the only two story home in that neighborhood?

Mr. Smith advised he did not have the information on the square footage and that there is a two story home to the north.

Mr. Smith, responding to a question from Mayor Smith, said he did have a street scape so the Council could see the surrounding houses.

President Wyett mentioned that there was a letter of objection from Gilbert and Lyn Kapelman.

Zoning Administrator Paul Castro responded that the letter had some very strong objections on several items. Using the site plan before him, Mr. Castro commented that the 30' setbacks mentioned in the letter for Mediterranean and North Ocean Boulevard, have been met. He reported that the applicant is not required to meet it on the street side yard because it is a one story garage addition. He explained that there is a code condition for one story portions of homes that states there can be an 18' setback from the property line on the street side yard if it is a one story garage addition. He advised that they are providing 18.8'.

Mr. Castro said another objection listed in the letter was that the applicant did not meet the required 15' setbacks for accessory structures. He reported that the swimming pool structure on the south side of the house is only required to be 10' from the edge of the water to the property line, not 15'. He stated that the applicant meets all of the lot yard bulk requirements and exceeds them in many areas or are less in many areas depending on how it is looked at. He advised that all code requirements are met.

Mr. Castro stated that the Kapelman's objection that the home may be out of scale with the neighboring homes is legitimate. He advised that Mediterranean has several smaller homes, one story homes, and this house, while not exceeding many of the maximums, is much larger than some of the homes on Mediterranean.

Mr. Castro commented on the concerns that Public Works had and staff concurred. He said it was recommended that the applicant meets the required, or whatever is most stringent requirements, to open up side visibility for through traffic on North Ocean Boulevard.

Mr. Castro advised that the second concern voiced by Public Works, but not in their comments, regarded the two curb cuts on North Ocean Boulevard. He advised that there is a policy limiting one curb cut onto that major thoroughfare.

Mr. Castro said that the third concern was to ensure that all of the landscape material was kept out of the easement.

Discussion ensued regarding the concerns of staff and Public Works. Mr. Castro advised that the applicant meets all requirements except for the side visibility triangle and Ms. Ziska said that they would make modifications in order to meet that requirement.

Ms. Ziska stated that requirement would be met and they can modify it.

Architect Smith said they would take the 15' x 15' area and take the hedge back making it a 15' x 30' area.

Mr. Castro stated it may have to be more than that because the recommendation is that the applicant meets the most stringent of either what the requirement is today or what the proposal is to be adopted next zoning season as Zoning in Progress.

Discussion took place comparing the heights of the surround homes, and Mr. Moore stated that Mediterranean is one of the toughest streets for the Zoning Commission because it is a street in transition and redevelopment. He said that the two story invasion of the one story street has caused a lot of heartache. He advised that the rest of Mediterranean is mostly one story, but if there is a two story, it is only a partial two story. He commented this property is a corner and that ARCOM has historically treated them a little differently if facing North Ocean or North Lake Way. He said even though this is a street in transition, there are concerns since this particular lot faces North Ocean and has a North Ocean address.

Mr. Smith displaying the pictures reviewed the surrounding homes, pointing out the very large two story homes.

Mr. Castro responded to a question on the location of the Kapelman's house with regard to the applicant, advising that it is on the northeast corner of Mediterranean and North Ocean Boulevard. He said it is cattycorner.

Councilman McDonald asked Mr. Castro about the Code Sec. 134-329 No. 11 relative to the appearance of the house in terms of the other single family houses on the street wanting to know if it meets the criteria.

After Attorney Randolph read the code, Mr. McDonald asked Mr. Castro if, in his opinion, this project conforms to the code.

Mr. Castro responded that the house is larger than many of the houses on Mediterranean, specifically the 200 block, and a survey done several years ago showed that many of those houses were built in the sixties and early seventies.

Mr. Castro responding to Mr. Goldblum's statement that the house is on North Ocean Boulevard explaining that the house is on the corner and is on that 200 block of Mediterranean even though it is going to have a North Ocean Boulevard address. He commented that it is sensitive to the neighbors. He continued that the one objecting neighbor is located cattycorner and is much further away than the neighbor directly behind on Mediterranean. He advised that the neighbor on Mediterranean has not voiced any objection.

Ms. Ziska advised that John and Jill Rau who live on Mediterranean have no objections and support the application.

Mr. Castro reviewed the site plan stating that there is no objection, provided the applicant meets the intersection vision requirement in the code. He continued that it would be up to the Architectural Commission to look at the mass and size of the house to ensure that it is not too dissimilar or similar to the houses in the surrounding neighborhood.

Councilman Goldblum moved approval of Site Plan Review No. 8-2004 with the condition a site triangle at the corner be part of the landscaping plan. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

g. SITE PLAN REVIEW #9-2004 WITH VARIANCE The Application of William S. Friedman Relative to Property Described as Lots 21, 22, 23, and 24, Palm Beach Shores; Commonly Known as Vacant Lots on Queens Lane; Located in the R-B Zoning District. Site Plan Review for a New, Single-family Residence on a Lot 94 Feet Deep in Lieu of the 100 Foot Minimum Required, 80 Feet Wide in Lieu of the 100 Foot Minimum Required, and a Lot Area of 7,520 Square Feet in Lieu of the 10,000 Square Foot Minimum Required; and, Variance to Allow the Front Yard Setback of the Two Story House at 24 Feet in Lieu of the 30 Foot Minimum Required.

Ex-parte communication was declared by Councilman McDonald with Mr. Whitfield, neighbor of the William S. Friedman, applicant.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that this request for site plan review with variance was necessary because the 94' x 80' does not meet the depth, width or overall size in the R-B Zone. He advised that the applicant wants to build a house which conforms to all the requirements of the R-B Zone except for the second floor in the front of the building. He continued that the first floor was presently at 27' 4" which was 2' 4" further back than the required plat at 25' . He stated all the other houses on the street were set at 25'. He said that the second floor was at 27' 4" and should be at 30'. He said they were also asking for a balcony that would exceed further into the setback. He noted that it was his opinion that the intent of the plan was met, that they were sensitive to the 25', and that they were certainly in compliance with all the other houses with regard to size.

Mr. Broberg introduced architect Raphael Saladrigas and asked him to present the street scape and explain the proposed site plan and how the balcony system worked.

Architect Raphael Saladrigas, Brower Architectural Associates, advised a figure ground study had been conducted of the north side of Queens Lane and three buildings on the south side of Queens Lane. He used a drawing to show that the majority of the houses were between 24' and 27' depending on their location and that some houses had balconies as well. He stated that the original plat shows a 25' front building line and assumed that was done primarily because of the lack of depth in the lot. He explained that they wanted to have the house fit in so as not to look like a missing tooth on the street and advised a point of 27' 4" was chosen to allow for a cantilevered balcony. He noted that the house was placed back a little bit further than the 25' building line.

Mr. Broberg advised that there is a 2.5' easement in the back of the property. He stated that they are only working with 91.5' instead of 94'.

Mr. Saladrigas showed the Queens Lane front elevation along the street, and pointed to a ground floor portion of the house and advised it was conforming. He noted that the second floor building facade was at 27' 4" and said the portion of the balcony shown on the variance was to the 24' point. He stated that everything else about the house was conforming.

Mr. Broberg advised that the hardship is the configuration of the lot: the width, depth and overall size.

Planning, Zoning and Building Director Robert Moore stated that everything on Queens Lane was non-conforming. He advised that the setbacks, the lots, the heights, for the most part, were non-conforming but historically, it was a charming, gorgeous street liked by everyone.

Mr. Moore continued that Mr. Broberg's argument that most of the street already has setbacks at 25' instead of the required 30' was a good one. He reported that there had been extensive discussion regarding this setback when Mr. Broberg and Mr. Saladrigas went before ARCOM with this variance. He advised that an agreement was reached for a compromise that would address both issues and which can be found in the minutes from the Architectural Commission. He stated his disappointment that Mr. Broberg and Mr. Saladrigas did not mention the compromise during their earlier discussion today.

Zoning Administrator Paul Castro added that the Architectural Commission advised that they had no problem with the balcony but did recommend the setback should be 30'. He noted that there was plenty of room on the back of the house, as designed, to push the house back. He said that the width of the swimming pool may have to be limited a little bit, but it can meet code and meet the 30' setback on the second floor. He advised that this would eliminate the need for a variance. He reported that staff sees no hardship with the variance being requested.

Mr. Moore, again, stated his disappointment that the compromise reached with the Architectural Commission was not mentioned especially since ARCOM felt there was a legitimate reason to ask for a limited variance and staff said there was no hardship and wanted the house moved back.

Mr. Saladrigas apologized explaining that he believed it would be part of the staff's recommendations. He reviewed ARCOM's recommendation that the main body of the house not including the balcony should be pushed back to the 30' mark or 1'8" further, to the north, than it is now.

Councilman McDonald said since all the lots on the street are non-conforming, why would that be a basis for a variance?

Mr. Moore explained that the applicant wanted to take advantage of the depth of the lot since it was not the 100' that would normally be used in a standard lot. He continued that the applicant wanted that to be the basis of the hardship in order to locate the house closer to the street and take advantage of the deficiency in the lot depth.

Mr. Moore in response to Councilman McDonald stated that the lot was deficient in depth and width.

Mr. McDonald amended his ex-parte stating that he did receive a call from the applicant's next door neighbor, Mr. Whitfield. He stated that Mr. Whitfield apprised him of an agreement that the applicant would maintain an 18' hedge. He suggested that any approval made by Town Council include that agreement.

Mr. Moore advised that it was not possible to have an 18' hedge at planting and they informed Dr. Whitfield that a 12' hedge would be planted now which would be maintained at 18'. He advised that this agreement was reached at ARCOM and Town Council had the option to put same in place or they could let ARCOM apply it.

Zoning Administrator Castro pointed out that the agreement has to be with the owner of the property, Mr. Friedman, and would be in the form of a deed restriction.

After further discussion, Mr. Moore advised that the variance would be to move the house back 30' and the balcony could project 1.5' further into the front yard setback.

Councilman Goldblum moved approval of Site Plan Review No. 9-2004; denied the variance request for a front yard setback at 24 ft. in lieu of the 30 ft. minimum required, with the condition a deed restriction be executed to plant a 12 ft. hedge to be maintained at 18 ft. The motion was seconded by Councilman Brooks. On roll call the motion carried 4-1: Councilman Goldblum, Councilman Brooks, Councilman McDonald, President Wyett casting affirmative votes; Councilman McLendon cast a dissenting vote,

3. Other

a. Zoning-in-Progress: Intersection Vision. [Robert L. Moore, Director of Planning, Zoning, and Building]

Councilman McDonald moved approval of zoning in progress for the intersection vision The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

b. Request for Extended Construction Work Hours/Days at 101 North County Road. [Robert L. Moore, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Direct Robert Moore reviewed staff recommendations.

Attorney Maura Ziska stated that the applicant agrees to all staff recommendations. She advised that she met with Harry Ackerman before the Town Council meeting and reviewed same. She continued that all the neighbors within 200' were notified and there were no complaints received.

Councilman Brooks moved approval of the request for extended construction hours/days at 101 North County Road with the following conditions. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

- **The job will be stopped if noise complaints are received from the**

neighbors

- **Supervisors must be present during extended hours**
- **Neighbors within 200 ft. must be notified**
- **No papers on windows**
- **Trim back sections of hedge that encroach on sidewalk**
- **No work on Sundays or legal holidays**
- **Work to be completed by December 15, 2004**

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the Regular Town Council Meeting of July 13, 2004, was adjourned at 12:55 p.m.

Allen S. Wyett
Town Council President

Mary A. Pollitt
Town Clerk