TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 8, 2001

I. CALL TO ORDER AND ROLL CALL

The regular meeting of the Town Council was called to order at 9:30 a.m. on Tuesday, May 8, 2001, in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance:

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

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

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager David Jakubiak
Town Attorney John Randolph
Finance Director Jane Skittone
Fire-Rescue Chief Kent Koelz
Beach Patrol Supervisor John Fletemeyer
Human Resources Director William Crouse
Police Chief Michael Reiter
Public Works Director Al Dusey
Planning, Zoning & Building Director Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Planner/Projects Coordinator Timothy Frank
Zoning Administrator Paul Castro
Recreation Director Russ Bitzer
Town Engineer James Bowser
Town Clerk Mary Pollitt
Deputy Town Clerk Susan Eichhorn

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Presentation of 2001 Town of Palm Beach College Scholarship to Kimberly Snyder by Mayor Lesly S. Smith - Program Sponsored by the Palm Beach Civic Association and the Citizens' Association of Palm Beach.

IV. COMMENTS OF MAYOR LESLY S. SMITH

In addition to Kimberly Snyder's scholarship, we have another significant award to announce: Beach Patrol Supervisor John Fletemeyer has been given the 2001 Paragon Award for Aquatic Safety by the International Swimming Hall of Fame. This is in recognition of Mr. Fletemeyer's considerable career accomplishments, and we are proud to have him on our Town government team. Congratulations, John.

I want to acknowledge that May 15th is Police Memorial Day, during which the Town's flags will fly at half-mast to honor those police officers who have died in the line of duty. We are fortunate to have honorable and dedicated police officers on our Town force and we appreciate the exemplary service they provide – so we are proud to participate in this commemoration.

We have been asked by the City, County and Local Government Law Section of the Florida Bar to participate in its annual campaign to proclaim May as Civility Month. While I find a certain irony that a group of lawyers would be asking US to be civil – this is certainly consistent with our practice that differences of opinion, however strenuously argued, be presented with courtesy and respect. So, I have a proclamation –

Looking at our agenda for today, I note that Mr. Dusey will brief us on the request for study of regional impacts from the proposed modifications to traffic flow in the

City of West Palm Beach. The Metropolitan Planning Organization voted for this study at the urging of County Commissioner Warren Newell and I urge the Council to voice its support, as well. With all due respect, decisions that affect the commuting patterns and traffic flow of an entire county – including Palm Beach – cannot be made in a vacuum. I have two specific concerns about the plans that are currently on the table: first, that they will so clog traffic that emergency vehicle time from Palm Beach to Good Samaritan will be greatly increased, endangering lives; and second, that vehicles coming into West Palm Beach from the south end of the county will be tempted to do an end run – to go through the Town of Palm Beach and then across the north bridge – to circumvent Flagler, Olive and Dixie. We have enough problems with residential traffic because of our road construction schedule – we don't need additional cars on our roads.

I am especially pleased to welcome Joe Borello from the Florida Department of Transportation, and Ken Rearden from the City of West Palm Beach, to talk with us about coordinating the roadway construction and water main replacement projects ahead. That's exactly the kind of teamwork that we need among government agencies.

We have a staff report on complaints about after-hours construction, and in this case I would suggest that we emulate West Palm Beach's recent action to enforce strict limits after hours and on weekends. We cannot avoid the road construction and infrastructure repair over the next few years, but we can make sure it is the least intrusive to residents. We have to make life livable.

Finally, as chair of the Long-range Strategic Planning Board, I am happy to recommend to the Council WRT as a consultant to assist the board at its May 16th meeting. We are working on developing a mission statement and consensus on our scope of work. The Board's next meeting is May 16th at 1:00 pm.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

MOVED TO THE CONSENT AGENDA Item IX.A.1.c. Conceptual Approval of Entry Into a Joint Project Agreement with Florida Department of Transportation to Resurface Southern Boulevard and State Road A1A from South Town Limits to Southern Boulevard;

Motion made by Councilman Wyett, seconded by Councilman Brooks to move Item IX.A.1.c. to the Consent Agenda, as Item VIII. D. 7. On roll call the motion carried unanimously.

MOVED from the consent agenda to the regular agenda - Item VIII.D.7. Staff Report Regarding Proposed Tennis Courts at Phipps Ocean Park [Peter B. Elwell, Town Manager].

Motion made by Councilman Brooks, seconded by Councilman Goldblum to move Item VIII D. 7 from the Consent Agenda to become Item IX. B. New Business - 7. On roll call the motion carried unanimously.

Motion made by Councilman Brooks, seconded by Councilman Goldblum to approve the Agenda, as amended. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Eric N. Gilbertson, 151 Chilian, noted that the Town was entering into the budget season and questioned the Town's millage rate which should go down because of increased property appraisal values. He also requested Town Hall have a "night drop" for payments received by the Finance Department. He concluded with a request to repair the five groins south of Jungle Point to retain the sand from Mid-Town Beach.

Gilda Ellis Beane, 248 Park Avenue, distributed a letter to the Mayor and Town Council outlining a solution for the feral cat problem.

Howard Levin, 200 North Ocean Boulevard, complained about feral cats entering his residence.

Anthony Ocepek, 2335 S. Ocean Boulevard, requested cooperation from the Town regarding Town owned vehicles that are driven across Tres Vidas property to work on the beach and provide access for the public to the beach. He also read a letter from the Tres Vidas Association supporting the improvements planned for the Sea Lord property.

Jerry Frank, 2784 S. Ocean Boulevard, spoke in favor of sloping beaches to provide protection for seawalls. Mr. Frank called for compromise with the beach protection issue factions as well as the drainage problems in the north end of Palm Beach.

Gary Lickle, former Chairman of the Shore Protection Board, read a statement supporting the Town's beach renourishment project.

Connie Gasque, 161 Root Trail, expressed her concerns for the environment that would be affected by beach renourishment projects.

VII. PUBLIC HEARINGS

Town Clerk Pollitt verified proof of publication regarding the following items; she administered the oath to all those who would be addressing them.

A. Landmark Designation of 160 Wells Road, Resolution No. 34-01.

Planner/Project Coordinator Timothy Frank, addressed the Town Council, stating that the subject property had been reviewed by the Landmarks Preservation Commission, and had been found to meet the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day addressed the Town Council, stating that the house at 160 Wells Rd. was a Mediterranean Revival style house, designed and constructed by E. B. Walton in 1927. Wells Road was one of the oldest streets in the Town of Palm Beach. She noted that there had been no negative comments from the property owner, and that the property had been nominated by Mr. Jeff Smith, who had been the Chairman of the Landmarks Preservation Commission at the time. Mr. Smith had discussed the nomination with the owners.

President Pro-Tem McLendon expressed concern that there had been no comments of agreement from the property owner.

Director of Planning, Zoning & Building Robert Moore commented that there had been proper notification and certified receipt of the notification, and that he could not recall any instance where a property owner had failed to voice an objection if there were any; he noted that it was normal procedure to move forward if the property owner did not contact the Building Department with an objection.

Councilman Goldblum suggested that a written statement be obtained from the property owners approving any landmarked property.

Mr. Moore responded that a written statement could be obtained if the Town Council so directed.

Mr. Frank commented that four return receipt letters were sent to the property owners of proposed landmarked properties, and each of them had been received and returned by the property owner of the property in question.

Town Attorney Randolph commented that the property owners were notified, and had voiced no objection; he noted that a written statement would attach an obligation on the property owner to advise whether or not they wanted the property landmarked.

President Pro-Tem McLendon moved approval of acceptance of the designation report for the landmark designation of 160 Wells Road. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

Councilman Wyett moved that the landmark designation of 160 Wells Road be deferred to the June 12, 2001, Town Council meeting so that staff could contact the property owner for affirmation. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

Mayor Smith suggested that there be personal contact with the owners of any property that was considered for landmarking; President McDonald commented that the ordinance would then require changing, which would necessitate a review by the Ordinances, Rules & Standards (ORS) Committee.

B. Landmark Designation of 424 Brazilian Avenue, Resolution No. 35-01.

Planner/Project Coordinator Timothy Frank addressed the Town Council, stating that the subject property had been reviewed by the Landmarks Preservation Commission, and had been found to meet the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day addressed the Town Council, stating that she had spoken personally with the owner of the property; the house at 424 Brazilian Ave. was of Mediterranean Revival style, was designed by Maurice Fatio in 1929, and was an example of what was happening to the Town of Palm Beach during the 1920's.

President Pro-Tem McLendon moved acceptance of the designation report for the landmark designation of 424 Brazilian Avenue. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

President Pro-Tem McLendon moved approval of Resolution No. 35-01, designating 424 Brazilian Avenue as a landmarked property of the Town of Palm Beach. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

VIII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF APRIL 10, 2001.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON APRIL 25, 2001.

C. APPROVAL OF CHECK REGISTERS FOR APRIL 2001.

D. OTHER

1. Approval of Allocation of FY02 Drug Control and System Improvement Funds to Palm Beach County. [Michael S. Reiter, Chief of Police].

2. Request for Study of Regional Impacts From Proposed Modifications to Traffic Flow in the City of West Palm Beach. [Albert P. Dusey, Director of Public Works]. ***(This item was pulled for discussion under Item IX. Regular Agenda, A. 1.a. and b., per the request of Mayor Smith).***

3. Approval of Official Town Comments Regarding Proposed Deepening of Intracoastal Waterway. [James M. Bowser, Town Engineer].

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

Works]. **(Staff Recommends Deferral to the June 12, 2001 Town Council Meeting).**

5. Staff Report Regarding Construction Complaints/After-Hours Complaints. [Albert P. Dusey, Director of Public Works].

6. Staff Report Regarding Planning, Zoning & Building Department Office Space. [Peter B. Elwell, Town Manager].

7. Conceptual Approval of Entry Into a Joint Project Agreement with Florida Department of Transportation to Resurface Southern Boulevard and State Road A1A from South Town Limits to Southern Boulevard;

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

IX. REGULAR AGENDA

A. Old Business

1. Coordination of Roadway Construction Projects with Florida Department of Transportation (FDOT) and the City of West Palm Beach.

   a. Sequencing of Work on Royal Palm Way and Royal Poinciana Way. [Joe Borello, FDOT].

Mr. Joe Borello, Florida Department of Transportation (FDOT) reported that a request had been received from Town Engineer Bowser to review the overlap in schedules for the Royal Poinciana Way project and Royal Palm Way improvements. He explained that he had delivered a letter to Mr. Bowser this morning summarizing what could be done to move the projects around.

The Royal Poinciana Way improvement project that had been scheduled to be constructed within the upcoming year would be moved to be constructed during the summer of 2003 – funding had been identified, and the project was now being re-programed.

Mr. Borello referred to the small section of Royal Palm Way between Cocoanut Row and A-1-A, noting that it was not included in the bridge project, and had not been identified as part of the original bridge replacement study, however, a commitment had been made to the Town that the section would be completed and drainage upgraded. The project was to be constructed in 2003, however, Mr. Bowser had requested that it be done in the summer of 2002 if possible. He suggested that a design/build contract would be used to go to construction next summer; approval for advancement of the funding had been attained.

Mr. Borello gave an update of the new bridge construction: currently the contractor for the demolition of the bridge was running a little behind schedule, as they had encountered some old construction debris on the bottom of the water, which caused them to request a time extension; the demolition would be completed in another month. A contractor had been retained to build the new bridge; negotiations would take place to ensure that construction of the roadways would not be done in the winter months. Mr. Borello introduced Mr. Bill Vee, the FDOT consultant engineer overseeing the construction phase of the project; employees of URS Corporation would oversee the contractor's operation.

Mrs. Polly Earl urged the Town Council to establish some sort of process to meet problems that homeowners and businesses encountered with construction projects

b. Water Main Replacement Projects. [Ken Rearden, City of West Palm Beach].

Mr. Ken Rearden, Director of Public Utilities for the City of West Palm Beach, addressed the Town Council, exhibiting graphic material to identify the progress of work on the water mains in the Town of Palm Beach. He referred to the Interlocal Agreement of 1999, providing water to the Town of Palm Beach for 30 years; the design process had begun in November of 1999, and had now come to the finalization of the design and the permitting stage. He presented a packet of information regarding the projects involved, explaining the projects that remained to be completed, and the projects that had been completed to date. He advised that City of West Palm Beach staff was present to respond to questions; he would provide updates periodically if requested.

In response to President Pro-Tem McLendon, Mr. Reardon confirmed that the water pipes installed, as part of the five-year program, would be a total of 16 miles, and that the total amount of piping in the Town amounted to 33-34 miles. Mr. Rearden noted that the City of West Palm Beach was required to put 8% of the revenue from the Town of Palm Beach into a renewal/replacement account; to date there was approximately $900,000 in that account. He advised that two underwater crossings would be replaced: Flagler Bridge crossing, and Barcelona Road crossing.

At this time discussion took place regarding:

Item VIII. D. 2. Request for Study of Regional Impacts From Proposed Modifications to Traffic Flow in the City of West Palm Beach (which was pulled from the Consent Agenda, for discussion under Item IX. A. 1., per the request of Mayor Smith).

Public Works Director Al Dusey reported that a letter had been received from Palm Beach County Commissioner Warren Newell concerning some of the street modifications that were being proposed in West Palm Beach, and how that would impact regional traffic flow. Mr. Dusey stated that he shared that concern, and recommended that the transportation study for Palm Beach County consider the modifications proposed by West Palm Beach to determine impacts to the Town of Palm Beach.

President Pro-Tem McLendon moved approval of the recommendation of Mr. Dusey that the transportation study for Palm Beach County consider the modifications proposed by West Palm Beach in order to determine any impacts to the Town of Palm Beach. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

In response to Mayor Smith, Mr. Dusey explained that several street projects were being done by the City of West Palm Beach in conjunction with the Town of Palm Beach – Bradley Place, Everglades Road, and Emerald Lane north to Miraflores.

c. Conceptual Approval of Entry Into a Joint Project Agreement with Florida Department of Transportation to Resurface Southern Boulevard and State Road A1A From South Town Limits to Southern Boulevard. [Albert P. Dusey, Director of Public Works]. *(Deferred from March 13 and April 10, 2001 Town Council Meetings).*

Under Item V. Approval of the Agenda, this item was moved to the Consent Agenda.

2. Drainage Update.

a. Status Report on Overall Drainage Improvement Projects. [Albert P. Dusey, Director of Public Works].

Public Works Director Al Dusey reported that Atlantic Avenue was approximately 70% complete, with expectations to be fully restored by June 8th; work was started on Coral Way, Emerald Lane, and Crescent on April 23rd, and was moving very slowly – there had been a problem with a water main that had been resolved; a fall completion date was expected; the Garden/Eden/alley north of Eden area was a priority project that was under design, with expectations to complete the work during the summer; the D-12 pump station at the end of Everglades Avenue was under construction, with a completion date of November; the D-12 collection system was under construction; the extra pumps for D-4, D-6, D-7, D-9, and D-10 had been ordered; the extra pump for D-14 had been ordered and permitting was being pursued; the D-4 drainage basin audit was complete; the upgrade of the D-2 storm water pump station would be concluded after the basin analysis that was underway; the D-17, Clarendon Avenue, storm water pump station would be started as soon as all property owners came to agreement; a proposal from the consultants had been requested to start design on Regents Park Road; staff was working on the Phipps Plaza connector; the temporary emergency pump stations were doing very well; cost estimates for back-up electrical generators were being pursued for D-16 and D-18.

b. Update and Request for Direction Regarding the Interim Emergency Pump System. [Albert P. Dusey, Director of Public Works and Howard L. Searcy, P.E.].

Public Works Director Al Dusey reported that LBFH, Inc. had completed the analysis of the inflow capabilities at the D-4, D-8, D-10, D-2 and D-9 pump stations; D-8 and D-10 were the two stations that did have sufficient inflow capacity to sustain the installation of an additional pump; D-2 did not have that capability, and did not have back-up pump capacity or a generator, so it was decided that a pump would be ordered; based on additional study the D-4 station at Phipps Estates was found to be able to provide sufficient water and support an additional pump, which had been ordered; permanent installation was being pursued on the D-9 pump station, as part of the basin analysis that was underway. He requested concurrence from the Town Council on the direction that was being taken; the D-9 pump station was the one that appeared not to have sufficient inflow capacity to sustain an additional pump, therefore, staff was not pursuing installing an additional pump.

Town Manager Elwell explained that it had been the clear direction of the Town Council that increased capacity was desired from the pumps, however, staff was now seeking direction regarding the D-9 pump station, because capacity could not be increased with another pump at the D-9 station; it would only provide redundancy in the case of failure of the first pump. He noted that staff was pursuing purchase of the pumps, rather than lease, based on economic analysis; staff had proceeded to order four out of the five pumps, with the D-9 pump being the station that could not sustain an additional pump. He noted that it would be addressed during the design of the permanent solution.

Mr. Howard Searcy, LBFH, Inc., addressed the Town Council, stating that the pumps had been ordered, with installation to commence in late June; all four pumps would then be operational.

After further discussion, it was the consensus of the Town Council that there was concurrence with the recommendations and report of Public Works Director Al Dusey regarding the interim emergency pump station.

c. D-4 Drainage Basin Audit. [Albert P. Dusey, Director of Public Works and Metric Engineering].

Public Works Director Al Dusey reported that the basin audit for D-4 had been completed; he summarized that the run-off factors that had been used in the 1976 design of much of the system were too low. He suggested that the basin analysis continue, and that eventually a set of design standards be recommended to the Town to be used in future design efforts; additional pump stations could also be considered on a permanent basis. He noted that there were recommendations made by the consultants as a result of the study, including an independent pump station located at Wells Road and Lake Way, however, he recommended that nothing be pursued until the complete basin analysis was concluded.

There was no further action taken by the Town Council at this time.

3. Continued Consideration of Issues Related to Feral Cats. *(Deferred from March 13, 2001 Town Council Meeting).* [William J. Brooks, Town Council Member].

Councilman Brooks commented that he had contacted Attorney Weinstein, who represented the Palm Beach Cat Rescue organization, with suggestions regarding the feral cat issue. Attorney

Weinstein had replied only recently, as a result of a heavy travel schedule. Councilman Brooks recommended that a deferral of the consideration if issues related to feral cats be granted for one month.

Town Manager Elwell suggested that it be deferred explicitly for a time certain, or deferred indefinitely until a council member requested that it be brought back.

Councilman Brooks recommended that the feral cat issue be brought back for discussion at the July Town Council meeting.

4. Proposed Additional Staff to Ensure Timely Implementation of the Town's Adopted Coastal Management Plan. [Peter B. Elwell, Town Manager]. *(Deferred from March 13 and April 10, 2001 Town Council Meetings).*

Councilman Brooks referred to the comprehensive memorandum of Town Manger Elwell, dated May 3, 2001, concerning the proposed coastal management coordinator position, moving approval of the recommendation contained therein for approval of authorization to create a coastal management coordinator position. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

B. New Business

1. Proposed Donation of L'Encantada Fountain. [Albert P. Dusey, Director of Public Works].

Public Works Director Al Dusey reported that a representative of the property owner of L'Encantada had approached staff with the donation of a fountain with a pump and lighting system. He recommended that the Mayor and Town Council accept the donation to be used either in the

Boynton Landscape property, or in Phipps Plaza. He estimated the worth of the fountain to be $25,000.

Town Manager Elwell clarified that the recommended allocation of $5,000 from the general fund contingency to pay for relocation expenses was a not-to-exceed figure.

Councilman Goldblum moved approval of acceptance of the donation of the L'Encantada fountain. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. ARCOM Recommendations Regarding the Design of the Park at the Corner of Peruvian Avenue and South County Road. [James M. Bowser, Town Engineer and Don Murakami, Murakami Landscape Architects, Inc.].

Town Engineer James Bowser addressed the Town Council, reporting that the project had been taken to the Architectural Commission (ARCOM) on April 25, 2001, and some helpful comments had been received; the trellises had been relocated; he pointed out that the trellis feature had not been included in the budget allocated. In addition, the architect had also provided for five foot public sidewalks around the site – Mr. Bowser suggested that a variance be granted to avoid construction of a ten foot sidewalk, which was required by Code, with the other five feet be reserved for the future, should other future development take place. He explained that it may be many years before a ten foot sidewalk would be required, and the five feet that was reserved for use in the future could remain as green space until such time that it was decided that ten feet would be appropriate.

In response to Mayor Smith, Town Attorney Randolph advised that he would review the Town Charter as it related to additional Town property becoming part of the greenspace amendment. *(At a later point in the meeting, Town Attorney Randolph confirmed that the park would not be included as greenspace under the Town Charter; the Town Charter only dealt with those properties that were listed in it).*

Architect Don Murakami addressed the Town Council, providing exhibits of the proposed park plans, stating that ARCOM had given some recommendations, among them that the pavilion structure be relocated, continuation of the palms located on Peruvian Avenue, that the circular specimen tree be moved further west, that the park should have more grass; Mr. Frank had identified some Code conflicts and setback issues as well. He submitted his revised plan, which was predicated on having a pavilion/trellis structure; he noted that ARCOM had also suggested that the project should not be phased, and that quality was important in terms of material and how it was expressed. He explained that if the plan was amenable to the Town Council, the plan would then

return to ARCOM.

Councilman Wyett requested the additional costs associated with the revised plan.

Mr. Murakami replied that the arbor would be the most significant cost component, however, he could not give a specific figure as it was dependent upon the materials that would be used.

Councilman Goldblum commented that it had been his understanding that the initial plan had not included an arbor, and that it had been planned to build the arbor later at an additional cost.

Mayor Smith asked if the removal of the two corner pavilions and the arbor would result in the project costs remaining the same as originally allocated?

Mr. Morakami replied that the project would then remain within budget.

Mayor Smith commented that $250,000 had been budgeted for the park, which was an adequate amount for a park and a parking lot; she suggested that the arbor and/or pavilion could be added at a later date if so desired; the benches would be stone, the walls would be masonry, and the original plan could be completed for the budgeted amount.

Director of Planning, Zoning & Building Robert Moore commented that the plan would not have to return to ARCOM, as their review and recommendations had been received; if the Town Council approved the plans today, there would be no need for the project to return to ARCOM.

Councilman Brooks moved approval of the plans that had originally been submitted, which would not include the arbor or pavilions. President McDonald passed the gavel to second the motion. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

Mr. Morakami commented that the implementation of the plan approved would give a less effective overall look of the park; he suggested that palm or shade trees could be added to compensate.

Mayor Smith responded that her concern regarding the arbor was related to maintenance and upkeep expenses.

Town Engineer Bowser commented that the parking lot component had been estimated at a cost of $35,000, however, he hoped to received bids under that amount, and use any remaining funds for landscaping items.

3. Conceptual Discussion of Alternatives for Supplying Additional Water for Irrigation in Town. [Albert P. Dusey, Director of Public Works].

Public Works Director Al Dusey addressed the Town Council, stating that discussion would take place concerning the direction of the Mayor and Town Council with respect to irrigation systems in Town; he recalled that irrigation had been studied at great length over the past 10-15 years, and more recently by Hutcheon Engineers in 1995, where the amount of irrigation, peak flows, and rough estimates of a distribution system had been included.

President McDonald commented that his comments last month had stemmed from considering the R-O system that would be allowed for use during drought restrictions under the water contract with the City of West Palm Beach. He suggested that this item may be referred to the Strategic Planning Board for review.

Councilman Wyett commented that, if the current drought continued, portable R-O facilities may be put into use; he suggested that a plan for an emergency situation and the use of portable equipment be created (which could be referred to the Strategic Planning Board); the other alternative was to go to a permanent R-O facility.

President Pro-Tem McLendon commented that there were two ways to accommodate a parallel pipe line for irrigation water – with the use of well-treated water from the regional treatment plant, laying a pipe alongside the existing City of West Palm Beach pipes, or insert a smaller pipe within the old City of West Palm Beach water pipes ; he suggested that further discussion take place in this regard.

Councilman Goldblum commented that the placement of four wells in Town, and appropriate piping would allow the use of irrigation water; the piping would constitute most of the costs.

Councilman Wyett commented that waste water re-use would carry enormous costs; it would be much more economical to subsidize natural water with R-O water coming from the Florida Aquifer, which would not require two pipe systems. He urged that the Town Council authorize investigating costs of putting in an R-O system, and that negotiations be opened with the City of West Palm Beach regarding their intentions if the drought continues.

Mayor Smith asked Public Works Director if there had been any study concerning individual de-salinization? She noted that it had been considered in the 1970's for the larger condominiums.

Mr. Dusey replied that he did not believe that individual de-salinization systems had been considered.

Mayor Smith suggested that individual de-salinization systems be considered, as well as other alternatives.

Councilman Goldblum moved approval of staff analyzation of costs to build an R-O plant. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett commented that he was quite informed about reverse osmosis, as he sat on the board of a firm doing such work; he maintained that the cost of building such a plant was immaterial, because it could be done at no cost at all to the Town – it could be done on a build/own/operate plan. He explained that if municipal water standards were used for such a plant, the costs would be less than what was now paid to the City of West Palm Beach for natural water; that would not take a distribution system into account. He suggested that the information regarding costs to build an R-O plant was readily available, and would not require further costs to the Town.

Councilman Brooks requested that Councilman Goldblum broaden the motion to include a more regional approach, as the problem was not only effecting Palm Beach.

Mayor Smith commented that the Town was precluded from becoming independent from the City of West Palm Beach in the water contract; she suggested that irrigation water could be considered, but not operating as an independent water supplier.

President McDonald clarified that he had suggested that an R-O plant be considered that would provide eight million gallons per day, which was acceptable and allowable under the current water contract.

Councilman Wyett commented that it was not practical from a cost point of view to build a plant with eight million gallons capacity as a stand-by facility for the total needs of the Town; he suggested that it would be practical to use supplementary R-O water, or any other source of water -- supplementary would mean making up the difference between what may be supplied by the City of West Palm Beach and what was needed.

On roll call the motion of Councilman Goldblum, which he clarified was to approve authorization of staff analyzation of costs to build an R-O plant, taking into consideration contiguous municipalities failed 2/3; with Councilman Goldblum, and President Pro-Tem McLendon casting affirmative votes; Councilman Wyett, Councilman Brooks, and President McDonald casting dissenting votes.

Councilman Wyett moved approval of authorization for staff to review what would have to be done to provide a temporary emergency water supply to keep the island in a reasonable shape, with a two to four million gallon capacity, in conjunction with other municipalities. The motion was seconded by Councilman Brooks.

Town Manager Elwell suggested that the Strategic Planning Board consider the emergency water supply issue, as he was concerned with the volume of large projects currently under consideration by staff.

On roll call the motion carried 4/0, with Councilman Wyett not casting a vote.

It was then clarified that the Town Council intended that the temporary emergency water supply issue be referred to and considered by the Strategic Planning Board

4. Request for Authorization to Retain a Consultant to Assist the Strategic Planning Board. [Peter B. Elwell, Town Manager].

Town Manager Elwell reported that the Strategic Planning Board had recommended retaining the firm of Wallace Roberts & Todd, LLC, to assist in the initial phase of its work; the estimated cost for the first phase was not-to-exceed $8,800.00. He recommended approval of that sum with the funding to come from the general fund contingency.

Councilman Brooks moved approval of funding in a not-to-exceed amount of $8,800, to be taken from the general fund contingency, for retention of the consulting firm of Wallace Roberts & Todd, LLC, to assist the Strategic Planning Board. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

5. Adoption of Goals and Objectives Related to the Annual Performance Review of the Town Manager. [Peter B. Elwell, Town Manager].

Town Manager Elwell reported that the proposed goals and objectives related to the annual performance review of the Town Manager had been submitted to the Town Council. He indicated that the three major areas were communication (internal and external), efforts to improve the Town

budget document, and attention to major projects facing the Town on drainage and beaches.

President McDonald suggested the addition of the following:

A customer service standards and verification objective – what level of customer service is being provided to residents and a way of verifying that standard.

The established guidelines regarding attendance and monitoring of external boards and commissions that make decisions relative to the Town.

A procedure for notification of critical incidents to the Town Council - having one procedure that would work for all departments.

Councilman Brooks complimented Mr. Elwell on the three major goals, and stated that he did not want too much on the Town Manager's plate, and that some of the objectives under the three major goals might make that plate very full.

President McDonald reminded all that the first review for Mr. Elwell was due in August, 2001, which was a six-month performance review.

Councilman Brooks moved approval of the goals and objectives for the Town Manager as submitted by Mr. Elwell, with the additional items added by President McDonald (as noted above). The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

6. Consideration of Offer of Judgment Regarding BellSouth Telecommunications, Inc., vs. Town of Palm Beach, Case No 98-9010 AI dated April 10, 2001. A Closed-Door Attorney-Client Session, Per F.S. 286.011(8), May be Held to Discuss this Matter Immediately Following this Regular Town Council Meeting in the Town Council Chambers, 360 South County Road, Palm Beach, Florida. Attorney/Client Session Attendees: Mayor Lesly S. Smith, Town Council President Jack McDonald, Town Council President Pro-Tem Samuel C. McLendon, Town Councilman

William J. Brooks, Town Councilman Norman P. Goldblum, Town Councilman Allen S. Wyett, Town Attorney John C. Randolph, Town Manager Peter B. Elwell, and Jane Pastore, Ley and Marsaa, Court Reporters.

Town Attorney John Randolph advised that an offer of judgment had been received from BellSouth, and as a result he would now need the advice of the Town Council as to a response. He recommended that the matter be considered at a closed door session, where discussion could take place.

Councilman Goldblum moved approval of having a closed door session at 5:01 p.m.. The motion was seconded by President Pro-Tem McLendon.

President McDonald announced that the closed door session meeting would be held at 5:01 p.m. today, May 8, 2001, with the following persons in attendance: Mayor Lesly Smith, Town Council President Jack McDonald, Town Council President Pro-Tem Samuel McLendon, Town Councilman William Brooks, Town Councilman Norman Goldblum, Town Councilman Allen Wyett, Town Attorney John Randolph, Town Manager Peter Elwell, and Court Reporter Jane Pastore, Ley & Marsaa Court Reporters.

Town Manager Elwell clarified that the public had been notified via the agenda for the regular Town Council meeting being held today; that if a closed door meeting was held today it would immediately follow the regular meeting, rather than at 5:01 – he explained that the notice stated that the closed door session could be held at any time that the regular business of the meeting was finished.

Councilman Goldblum revised his motion to approve a closed door session at the end of the regular Town Council meeting of May 8, 2001.

On roll call the motion carried unanimously.

7. Staff Report Regarding Proposed Tennis Courts at Phipps Ocean Park [Peter B. Elwell, Town Manager].

Mayor Smith commented that there had been a number of rumors concerning the tennis courts at Phipps Ocean Park. She explained that staff had been directed to investigate the placement of tennis courts in both the south and north ends of Town at the last Town Council meeting. She

noted that she had heard that Town Attorney Randolph had advised that tennis courts could not be placed in the north end space, as it was covered by the greenspace amendment; in addition, she had heard that there were two tennis courts that would be donated to the Town by developers of projects that were on the Agenda today. She stated that the rumors of these gifts were only rumors, and that the hearing on the projects this afternoon would not depend on whether the tennis courts were given to the Town. She clarified that she did not know of any staff report as yet.

President McDonald clarified that this item had been included on the Consent Agenda, to basically accept the report of Town Manager Elwell, which said that he would come back next month and make a full report.

******The luncheon recess was taken at 12:15 p.m.******

******The Town Council meeting of May 8, 2001 was reconvened at 2:00 p.m.******

X. RESOLUTIONS

A. Resolution No. 36-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Agreement with the East Central Regional Waste Water Treatment Facility Board Related to Adoption and Enforcement of a Pretreatment Ordinance. [James M. Bowser, Town Engineer].

Town Attorney Randolph read Resolution No. 36-01 by title:

> A RESOLUTION OF THE TOWN COUNCIL OF TE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN AGREEMENT WITH THE EAST CENTRAL REGIONAL WASTE WATER TREATMENT FACILITY BOARD RELATED TO ADOPTION AND ENFORCEMENT OF A PRETREATMENT ORDINANCE.

Councilman Brooks moved approval of Resolution No. 36-01. The motion was

seconded by President Pro-Tem McLendon. On roll all the motion carried 4/0, as Councilman Wyett had temporarily left the room.

XI. ORDINANCES

A. Second Reading

1. Ordinance No. 9-01 - An Ordinance of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 114, Article II, "Local Occupational License Tax," of the Town of Palm Beach Code of Ordinances Section 114-43, Amending General License Fees. [Robert L. Moore, Director of Planning Zoning & Building].

Town Attorney Randolph read Ordinance No. 9-01 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 114, ARTICLE II, "LOCAL OCCUPATIONAL LICENSE TAX," OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 114-43, AMENDING GENERAL LICENSE FEES; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 9-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

2. Ordinance No. 10-01 - An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 74 of the Town Code of Ordinances, Relating to Parks and Recreation, at Article I, Section 74-1, Recreation Advisory Commission, at Paragraph (E) Relating to Consecutive Terms. [Russ Bitzer, Director of Recreation].

Town Attorney Randolph read Ordinance No. 10-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 74 OF THE TOWN CODE OF ORDINANCES, RELATING TO PARKS AND RECREATION, AT ARTICLE I, SECTION 74-1, RECREATION ADVISORY COMMISSION, AT PARAGRAPH (E) RELATING TO CONSECUTIVE TERMS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 10-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

B. First Reading

1. Ordinance No. 12-01 - An Ordinance of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 46, Fire Prevention and Protection, Amending Article III, "Fire Prevention", of the Town of Palm Beach Code of Ordinances Adopting by Reference the 2000 Edition of NFPA 1 and the 2000 Edition of the National Fire Protection Association Life Safety Code [Kent W. Koelz, Chief of Fire-Rescue].

Town Attorney Randolph read Ordinance No. 12-01 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 46, FIRE PREVENTION AND PROTECTION, AMENDING ARTICLE III, "FIRE PREVENTION", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES ADOPTING BY REFERENCE THE 2000 EDITION OF NFPA 1 AND THE 2000 EDITION OF THE NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY

CODE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Councilman Brooks moved approval of Ordinance No. 12-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

President Pro-Tem McLendon complimented Mrs. Smith on her speech in Orlando on Monday morning.

Councilman Brooks requested the issue of Wayne B. Lewis's purchase of the Town owned property next to the Turnpike be put on the June Town Council Agenda for discussion.

XIII. DEVELOPMENT REVIEWS

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Pollitt administered the oath to all those who would be testifying in the development review items.

1. Old Business

a. AMENDED VARIANCE NO. 9-2001 The application of David and Karen Carter relative to property described as East ½ of Lot 177 & Lots 179 & 181, Poinciana Park; commonly known as 156 Seabreeze Avenue; located in the R-B Zoning District. To allow construction of a two story addition with the first story portion having a side yard setback of 9.33 feet in lieu of 10.7 feet existing and 12.5 feet required, and the second story portion having a 9.33 feet side yard setback in lieu of 15 feet minimum required. *(Deferred from April 10, 2001 Town Council Meeting).*

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Broberg regarding the merits of the variance application.

Attorney Broberg, on behalf of David and Karen Carter, addressed the Town Council, stating that the variance request had been presented at the meeting last month, and was now being presented in an amended form. He recalled that the house was placed on the lot in an off center manner, and the applicant had wished to demolish an existing first floor of 182 sq. ft., and add back 228 sq. ft.--for a 45 ft increase, based on two side yard setbacks in the same area. The applicant had now revised the request with a reduction in square footage, and building a 30.96' addition in the footprint of the first floor structure; the hardship was the size of the lot and the positioning of the house on the property.

Zoning Administrator Paul Castro commented that the applicant had been asked to redesign the house to minimize the variance request; the hardship was the narrow lot; the applicant had minimized the variance request.

President Pro-Tem McLendon moved approval of amended Variance No. 9-2001, with the hardship being the size of the lot and the existing positioning of the house on the property. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/0, as Councilman Wyett had temporarily left the room.

b. VARIANCE NO. 15-2001 The application of Troy and Deborah

Maschmeyer relative to property described as Lot 7, Plat of Boulevard Estates; commonly known as 153 Kings Road; located in the R-A Zoning District. To allow a rear basement setback of 10' in lieu of 15' required, and a retaining wall and wall at a combined height of 11'2" in lieu of 10' maximum height allowed within 10' of rear and side setback. *(Deferred from April 10, 2001 Town Council Meeting).*

Ex-parte communication was declared by Councilman Brooks with Troy Maschmeyer; and by President Pro-Tem McLendon with architect Jacquie Albarran.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the Maschmeyers had been seeking a way to provide a garage at their home; they had consulted with staff, and had come up with an approach to place the garage underneath the northeast corner of the house, which would require the two variances being requested. He provided letters of support from adjoining neighbors, explaining that the hardship was that because of the location of the house on the lot, the only place to locate the proposed garage was in the location proposed.

Director of Planning, Zoning & Building Robert Moore provided the following staff comments: Comprehensive Plan: technical limitations, alternate design that could meet the Code should be considered; Building Department: trading one nonconformity for a lesser nonconformity, suggests a hold harmless agreement, since there was an opportunity for flooding.

Attorney Brindell agreed that the applicant would enter into a hold harmless agreement with the Town, and would provide it to any prospective purchaser of the property.

In response to Councilman Goldblum, architect Albarran explained that there would be a pump system for drainage.

Councilman Goldblum moved approval of Variance No. 15-2001, with the condition that the applicant provide a hold harmless agreement. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

c. VARIANCE NO. 19-2001

(1) The application of Sydell Miller relative to property described as Ocean Vista Addition, Lots 9 through 20

& North 20 feet of Lot 21, commonly known as 1425 South Ocean Boulevard; located in the R-AA Zoning District. To allow construction of a front yard wall and piers to be set back 5 feet from the property line, at a height ranging from 8'4" to 11'4" above the crown of the road, in lieu of the 6 feet maximum allowed. *(Deferred from April 10, 2001 Town Council Meeting).*

(2) Request for extended work hours for 1415-1425 South Ocean Boulevard per letter dated April 23, 2001 from Maura A. Ziska.

******The following is a verbatim transcript:******

Deziel: Good afternoon, my name is Robert Deziel and I represent the applicant. This is a deferral from last month and I believe we were sent away with instructions to – I forget what the objections were, if any, to the actual variance request. A substantial portion of the conversation surrounded the completion schedule, – that's my recollection.

McDonald: That's correct.

Deziel: Okay. So since that meeting – I'll first talk about the variance and then jump over to the completion schedule. We've had a chance to speak with the neighbor to the south's attorney, who had one comment for us relative to the variance request, and that was an objection to the design of some of the metal work at the top of the gate that is set back more than 35'. So, what we've done is we've removed that and we'll take another look at that and probably take a different looking, or something, to the Architectural Commission, but at this point before you is a drawing without that element on the top of the gate.

McDonald: This is what you're requesting approval of today, Mr. Deziel, the drawing?

Deziel: Yes. And the variance request before you is to allow - - the height of the wall is not where the gate is – I can explain it this way. We're asking for a height on a wall to go from six feet to a height larger than six feet closer to the road than the thirty-five foot setback line. The neighbors' objection was to that portion of the gate that is beyond the thirty-five foot setback line that is not subject to a variance. But, in order

to keep this rolling, and to try to get something done here, we did take that element off. I want to put that into perspective for you. We think we have a valid hardship, and the hardship relates to the grade of the land where the wall is relative to the crown of the road, and last week, or last month, we also submitted a list of all the other walls in the area that were stamped by an engineer that we had do a survey of the different wall heights, and some of those wall heights were, if you still have it before you, were on the average in the ten-eleven foot range, and I believe this request was eight feet Jeff? It's eight feet plus or minus a few inches either way. So, we're well within the realm of the minimal variance, in terms of a request for what we need here. And we're hoping that we can get the approval today, and if you want me to proceed on with the conversation about the construction schedule, I'll be happy to do that.

McDonald: Yes, I think so.

Deziel: Okay. Jeff Smith, the project architect, and Hugh Davis, the project contractor, and myself, along with Maura Ziska, met with Mr. Moore, Mr. Castro, and Mr. Randolph to discuss a completion schedule. And we think we're working on something that gets the project done in basically two overall phases. We're looking to have the exterior of the residence, which will include all landscaping, driveways, irrigation, anything in the gates, anything that you can think of with respect to the outside of a home, completed by December 31st of this year. And then we're looking to complete the balance of the interior of the residence – and I'd like to describe for you how we foresee that happening. There will be finish painters, and finish carpenters, and not a lot of them, would come into the home as it's completely done in December, and probably work for - we've told Mr. Moore and Mr. Randolph and Mr. Castro - until March 31st, and that work would be carried on in a fashion none other than like normal deliveries to a home in this area of town, where you have a few trucks come each day, whether they're service people, delivering goods, or whatever. So, we think we have an orderly plan that we're suggesting to the town in which this home can be and will be completed.

McDonald: Thank you, Mr. Deziel. Your comments now are a little counter to Mr. Moore's memo. His had a date of November 17th, and you're using December 31st, so I'm wondering, what's the real date?

Deziel: It's difficult for me to comment on that, because I had no participation in Mr. Moore's memo.

McDonald: Okay. Mr. Moore?

Moore: Actually the memo of November 17th involved the extended working hours for the outside, and I believe that was the issue.

McDonald: I'm looking at the May 2nd memo that says that – it's the request for extended hours, and it uses a completion date of November 17th.

Moore: For the length of the – actually for the length of the hours. They want to stop – they're not asking for anything beyond the 17th of November.

McDonald: Oh, they just want to go to regular hours after November 17th.

Moore: They'll go to regular hours after the 17th of November.

McDonald: All right. Any questions – we'll do staff comments, Mr. Moore?

Moore: Mr. Castro, and then myself and Mr. Randolph.

Deziel: Before you start could I add – I didn't realize we were talking about the extended hours.

McDonald: We're not. I just had a question. I just asked a question, that's all.

Deziel: Because with respect to the extended hours, we've had a request by the neighbor that we'd like to comply with on the record.

McDonald: We'll get to that. Thank you. Mr. Castro?

Castro: Thank you. Staff will reserve their comments as it relates to the extended hours and the time schedule when that's appropriate. As it relates to the variance itself, staff's comments are that there are several, if not many of the walls along South Ocean Blvd., along that stretch of South Ocean Blvd., that have higher walls than the Code allows, and what the applicant is requesting is that that wall be set – zero datum, about two feet above the road as it exists, and then have eight feet above that for their walls, and that is, in comparison to the other walls along that stretch of South Ocean Blvd., consistent. Our comment, as it relates to gates, although they're not asking for relief on the gates, since we did see those, is that they have to have a minimum clearance where that bar stretches across the gate at thirteen and one-half feet; otherwise, the applicant needs to demonstrate the hardship as it relates to their point of measurement for the wall.

Brooks: Robert, I realize that the sketch was done prior to the installation of a substantial number of ficus, at probably twenty feet – have you seen the property recently? I suspect at about twenty feet. Consequently, I don't see the purpose of giving the variance for the wall, as it almost appears academic – you've got this huge ficus hedge running from the south of the property to the north.

Deziel: Mr. Brooks, the ficus hedge that you all see there now is a temporary hedge, simply to screen the residence during the construction period.

Brooks: Temporary?

Deziel: Yes. That will not be there upon completion. That's strictly a site/visual screening effort to soften the construction site, and then as all of the landscaping installation occurs, that hedge will be removed.

Brooks: Jeepers, creepers! I know it's not my money, but – wow.

Mayor Smith: Money is not an object on this application.

Goldblum: I'm not clear that bar on top of the gates. Is that high enough, Mr. Smith?

Jeffrey Smith: Currently, there is no bar in the proposed sketch.

Mayor Smith: There's a bar on the sketch we're looking at.

Jeffrey Smith: Well, there isn't. Right now, the gate's just opened. There's nothing above them at this moment. If there's a line it was not erased, that's all.

Mayor Smith: It looks pretty definite. Same size as the frame of the gates. You might want to put it out.

Deziel: Mr. Goldblum, can I ask you a question – was the question going to be that, if it were a bar, would it meet the Fire Department's request that it be high enough?

Goldblum: Right.

Deziel: The answer is yes. We've already responded to those comments, and we'll put it on the record that if that is a fixed bar, it will meet the Fire Department requirements.

Goldblum: That's all I wanted. Thank you.

Deziel: Okay.

Wyett: I notice that you have the piers that support the gates, and then you have wings on each side "x" number of feet, it's hard to tell how many feet. Are those wings straight wings, or is the drawing otherwise?

Deziel: They're straight.

Wyett: Well, that makes that gate very heavy, and it looks like the request is eight feet – it looks like it might be twelve feet high there at that point – it's very heavy – extremely heavy.

Jeffrey Smith: It's much higher than eight feet, but you've got to realize that's past the thirty-five foot setback the Town requires for height.

Wyett: My second comment is that, yes, there are a great many walls in this area, and I think allowing all those walls was a mistake as you're driving around Widener's Curve, going toward Southern Blvd., it's beginning to look like a walled in situation completely, and this particular estate I think is six hundred feet of wall?

Jeffrey Smith: No – three hundred thirty –

Wyett: Three hundred feet of wall – that's a lot of –

Brooks: That's from home plate to left field in Fenway Park – plus fifteen feet.

Wyett: I don't see the necessity for this request, and I don't go along with the hardship. There is no hardship. If we grant it it's because we want to grant what everybody else has, but I don't see a hardship in this situation. Your property is two feet above the road, and another six feet, which is standard, is eight. It's a lot of height. It really falls, in my category, why we're hearing it.

McLendon: I just want to mention how bothersome I find the length of construction, and I don't know if I've heard yet a completion date. November was the limit of expanded hours, as I understand it now.

Deziel: I'm sorry, Mr. McLendon. I'll address that again, if you'd like me to.

McLendon: Please.

Deziel: Okay. We have talked with Mr. Moore and Mr. Randolph about a schedule of completion that would include a date of December 31st of this year for the exterior, so that you could visualize the exterior being fully completed – irrigation, hardscape, landscape, all hard construction, all vertical walls, anything that you can think of – where the irrigation is running and it looks like someone's living in the home, and then we think there's a ninety day period – we've proposed a ninety day period after that – to close out and get a C.O. on the interior.

McLendon: That would include additional trucks on site – a considerable number at times?

Deziel: Actually, it would be additional trucks, but no considerable number I mean, I'd like you to get a feel for where the home will be at on say January 1st. We're talking about interior finishes, where laborers would actually come in the driveway, park in the garage – the garage is ample to house the vehicles – and then they would enter the home through the interior of the home, and they'd be working from within the interior shell of the home, so we're not talking about laborers, to a great extent, walking the exterior of the property. The home will have the appearance of a completed home, however, there will be some finish work going on inside.

McLendon: What is the period of time from ground breaking until now?

Deziel: I'm not sure.

Moore: Four years to April 30th.

Wyett: At the last meeting we talked about an exterior completion date of October 31st. I'd like to have an explanation of why you request for the exterior December 31st now? I don't care if you take from now until the year 2100 to do the inside, because nobody really sees that.

Deziel: The response to that is that the individual that made that statement isn't here today. That was someone that was working on the team that isn't working on the team

anymore, and it's not because they gave a bad date, but we went back from what you asked us to do. We went back and we internally came up with a schedule that we thought we could sit down with people that know construction, which include Mr. Moore and Mr. Castro, and are working on providing a more detailed schedule in coming up with something that was realistic. I think you'll recall, that conversation about the completion date was a little bit of a surprise to me, and I wasn't fully prepared for it last month, as we are this month.

Wyett: Are you saying that we need more than six months just to do the landscaping and the final exterior of this house?

Deziel: Yes.

Wyett: With extended hours?

Deziel: It includes several approvals from the State of Florida DEP, and those approvals can take in excess of ninety days to get them.

Wyett: How about just the front of the house?

Deziel: We're working on that too.

Wyett: Does that require DEP approval in the front?

Deziel: Some of it does. Obviously, it depends on where the coastal line is, but it's not just by the ocean, but . . .

Brooks: Mr. Deziel, I want to preface my remarks by saying that most assuredly you and Ms. Ziska and Mr. Davis and Mr. Smith certainly are earning your money on this case, but I respectfully suggest that – you obviously, Robert, have picked up the feeling of the Council that our patience is running very thin, and that Mrs. Miller should be apprised of the fact that the Town of Palm Beach is not her own personal fiefdom and it's time that we move on and that we get this done. I just say that. I realize that you don't always like to – sometimes the messenger is shot, and we wouldn't want that to happen to you, Robert, we most assuredly wouldn't, but if somehow you could convey that message, that yes, Rome wasn't built in a day or a week, but, you know what I'm saying

Deziel: Mr. Brooks, just for everybody's information, Mrs. Miller does have a great deal of remorse about the fact that the project is taking longer than anybody wanted, and we

have a cohesive effort to bring it in within the dates that I've given you. I understand that those don't make you happy, or they're not acceptable, but I can only enforce that we are doing our best, and we'll get it done within the dates we've given you. Mr. Wyett, if I can just make one comment on your statement . . .

McDonald: Let me jut interrupt you, Mr. Deziel, and then you can go ahead. Anyone that is waiting here on the Sea Lord issue, we've received a letter of deferral on the Sea Lord, so that will not be heard today. If that's affecting anyone here today.

Moore: The west portion will be heard – the four units to a single family.

McDonald: Okay. I stand corrected. But if we ever get these deferrals the same day as the Council meeting, it's going to go ahead. If you can't get your deferrals before the day of the Council meeting, it goes. Sorry. Mr. Deziel, go ahead.

Deziel: I really think there is a hardship, and it really runs in two locations: number one, think of the road at seven and a half feet – I'm just giving you an example – but think of the location where we want to put the wall is at nine or ten feet, somewhere in that range. So, not only do we lose that difference, but all the homes in this section sit at about twenty-one feet, so when you're in a home, and you're in the home and you're trying to screen yourself from the traffic, and you've got a wall that when you look at the angle of vision, looks like it's about a foot or two feet tall, we have two hardships going for us here – one, is the difference in the grade between the road and where the wall will go, and then the difference in the grade of where the wall is and where the home actually is. Because when you're sitting at twenty-one feet and you're looking down at eight feet, I mean the cars are right there, and that's the reason why I can tell you that every single wall – there might be one exception – but every single wall from Southern Blvd., down to that Widener's Curve there, has walls that exceed the Town requirement.

Wyett: I grant you that everyone has them, – I mentioned that in my comment, but I'll refer you to a house designed by the same architect – the Kramer property – and the wall really doesn't screen the house; as a matter of fact, the house is highlighted by the wall, and it's a very beautiful house – I compliment the architect. And, also, I don't know what you're putting behind the wall, but usually there's landscaping that may be behind the wall, that really gives you the protection.

Deziel: But security is involved too, and that's why all these people put in ten foot walls, is because security is a big issue there.

Wyett: If walls gave security, prisons with walls that are fifteen or twenty feet high don't keep them out.

McDonald: I think, Mr. Deziel, I have to differ with you there, because one of the applications, was it Mesa Capa– that was because the lights coming down the hill were going to be shining into their – some sort of – I don't think it had anything to do with security.

Deziel: Security was an issue, but the lights were about the third of four issues.

McDonald: Okay, because I remember that as the most important. Mr. Castro, then we're going to go to Mayor Smith.

Castro: Thank you, Mr. President. As you recall last month this application was deferred – the wall was part of the issue, but one of the bigger issues was the construction and the time it took to get the house to where it is now, and we were directed by the Council to meet with the applicant as it relates to the construction, and staff met with them as it related to coming up with a schedule and some built in mechanisms to ensure that the completion would occur when they said it was going to occur, and based on the meeting with the applicant's representatives, we're going to have a schedule that was going to be designed for certain phases, and if those phases were met, then that would give staff the assurance that they were proceeding on time and on schedule.

McDonald: Are you addressing the variance or the extended working hours?

Castro: I'm addressing the entire issue as it relates to the variance, because that was deferred because of that issue, and so we keep going back and forth as it relates to completion of the house and the variance, and I just wanted to outline staff's position on the entire issue related to the completion, and we are working with the applicant to come up with a schedule with time lines, and if those time lines aren't met, to try to come up with some agreed upon fee or penalty incurred, based on meeting those guidelines, to have them complete at the date that they're saying for the outside, with the interior being done later; the intent being to get the house completed on the outside as soon as possible, so that the impact on the neighbor is less than what it is today. The applicant has already worked towards putting some additional landscaping on the north side and into the front. So, our recommendation is that the Council approve the extended hours, based upon meeting a certain schedule, coming upon an agreed upon schedule, with certain penalties being incurred if they don't meet that schedule, and that the Council look at the variance as it relates to the neighboring properties and that hardship.

Mayor Smith: Mr. Deziel, can you tell us – is the landscaping plan for this property going before the Architectural Commission, or is it already approved?

Deziel: We're scheduled to go before the Architectural Commission this month.

Mayor Smith: All right, so it has been submitted?

Deziel: Yes.

Mayor Smith: And all the other plans for the house have been submitted?

Deziel: Yes ma'am.

Mayor Smith: And they're all approved?

Deziel: No, we have another hearing yet. ARCOM is in about two weeks.

Mayor Smith: And that's your final time, right? Mrs. Miller will not be making any changes after the Architectural Commission meeting this month?

Deziel: I don't believe so. I don't think we've made any changes; we just haven't come in with it yet. Maybe this will help you too, – we also have an application pending with the State, that we hope to have approved – those same plans that we've submitted to the Architectural Commission, we've also submitted for the DEP approval, and we're anticipating and hoping that we get that approval this month also.

Mayor Smith: Right. Well, I believe the reason it's been running late is because the plans have been changed several times by Mrs. Miller, is that not correct? I mean, you're not going to tell me this was approved four years ago, and it's taken Mr. Davis this long to build it?

Deziel: I don't know what the answer is, but I do know this – we haven't submitted any plans before that we've gotten approvals on that we're asking for changes on – we're not changing anything that's been approved.

Mayor Smith: Good. Well, if I could just finish up here. Looking at your hours for construction, I think 8:00 is too late after the first of November. I think the neighbors will be returning. That will be in the dark, and I think it's not acceptable to have them submitted to that. I think November 1st is fine, but November 15th is too late, and the fines, as I understand it, that you have worked out with the Building Department, will go into effect as of December 31st, and if so, what are they?

Deziel: We're still talking about those fines, and I want to make one thing very clear – the submission of the discussion about fines were brought in connection with requesting a variance approval and then the variance approval brought on a conversation about a construction process. So, I'm not – if we don't get our variance, I mean, I'm not coming here to tell you I want to be fined if I miss anything, because you're not giving me anything to volunteer to agree to any fines.

Mayor Smith: As I remember it, the conversation on the fines came up because your project has taken longer than the Town of Palm Beach allows for a construction project, is that not right, Mr. Moore?

Moore: That's correct.

Mayor Smith: And that's how we got into the discussion of the fines. So, I would like to know if the Council votes on this project today, which hopefully will be for the very last time, because we all want to see it done, that the fines and the timing of them going into effect, and the amount of the fines will be determined by the Council today. Why would that not be so?

Moore: We have had, as Mr. Castro indicated, we have had a meeting with the representatives of Mrs. Miller and our attorney, Mr. Randolph. We had discussed a set of conditions that would give us some checks and balances, and also some penalties to impose as an incentive also to finish. Those incentives are still going back and forth between Mr. Randolph's office, our office, and the applicant's office. I would like Mr. Randolph to speak to that portion of it, if he would, but our understanding was a little different from Ms. Ziska's in the letters that are going back and forth currently.

Mayor Smith: Well if I can only say one thing, Mr. Moore, that I don't think that this project should

be kept in the dark, and I would expect that you would share some of those conditions and the fines with the Council so that they may incorporate them into whatever motion that they may choose to make today.

Moore: Yes, absolutely, that's why I wanted Mr. Randolph to speak to this to a certain degree because the letters have been going back and forth between the real lawyers and not me, and the other lawyers.

Mayor Smith: Right. So, you know, this is a four year thing, and let's see where we stand so they can get it done for once and for all. God bless Mrs. Miller – she'll be very happy in this house, I hope.

McDonald: Okay, before we go to – I want to have public – does Mr. Kolins want to speak to this? Anyone else want to speak to this? Mr. Kolins? Is there anyone else that's going to speak to this? If you do, come up please. You're the only one, Mr. Kolins, go ahead please.

Kolins: For the record, Ron Kolins, Mr. President, Madam Mayor, and members of the Council, I represent the Picowers, who live immediately to the north of the Miller house, and as you know, my clients have been the most directly impacted people by this construction, now in excess of four years. We certainly share your desire to have this project completed, I can assure you, however, it was only yesterday when I first took off the web the agenda for today's meeting, that I saw that one of the things to be considered was an April (I think it is) 23rd letter from Ms. Ziska about these extended work hours. So, last night, and again this morning, I spoke with my client, and I'd like to share with you our views about the extended work hours, and hope that you will accommodate those views, because I think my clients, at the very least, deserve that.

My clients request that the extended work hours not be allowed to begin until the first of June because they expect to spend a fair amount of time between now and the first of June in their home. They also expect to be again spending a pretty fair amount of time in their Palm Beach home after the first of September. So, I request of you that whatever late or additional work hours you grant, and we certainly support it in concept, so that the house gets finished, that it be limited to the period June 1 through August 31st. That's point number one. Point number two – I guess I feel a little regretful that when the staff convened a meeting of Mrs. Miller and the staff and Mr. Randolph and whoever, that they did not include representatives of the Picowers, knowing full well that we've been involved in this unfortunately in a little bit of an

adversarial relationship because of all that's happened for all this time, and we didn't have any say in whatever plans they've come up with. I daresay that any system of fines that would be imposed upon Mrs. Miller for further delays, would have to be extraordinarily high to be financially meaningful, and to be an impetus to really complete the project in a fast way due to financial fear of fines. So, if there are to be fines, I would suggest that they need to be quite high to be meaningful. And my last comment is simply this. My recollection is that as a condition of approval of the Miller house and some of the variances way back when, my client has a right to approve the landscaping that's going to go along the north side of the Miller house –south side of the Picower house, running east/west. I heard Mr. Deziel tell you that they're going to Landmarks with the landscape plan in two weeks, and to the best of my knowledge, we have not seen, or been consulted, about that landscape plan as it relates to their obligation to seek our approval for that portion of it. So, that is something that needs to be done, and obviously if we get it now it's going to be done at the last minute, and I will do everything I can to expedite that consideration so it doesn't impose upon their scheduled appearance before ARCOM, but I want to make a record here today, and to advise you that to the best of my knowledge, at any rate, we have not been consulted about that, as we must be under your directives. Thank you.

McDonald: Thank you, Mr. Kolins. It's not a landmark yet, it's ARCOM. Mr. Randolph do you have the fines finalized, so you can tell us something?

Randolph: I can tell you what the fines are that we discussed.

Deziel: I'd like to ask for a deferral of the application before you at this time, if I could be granted that.

Wyett: So move.

Mayor Smith: Why?

Brooks: I'm not so sure. How much longer are we going to put up with this? I mean, let's move it up or down, but . . .

Deziel: Here's why, Mrs. Smith. When we came up with the plan that we presented to you, which do include some fines . . .

McDonald: Wait a second, Mr. Deziel. Does the Council want to hear reasons for a deferral?

Brooks: Certainly.

Deziel: To a certain degree, the neighbor has had their input from inception, and all along, and when we started thinking about how we could get this project on the dates I've already given you, that included a couple of things, and that included those extended work hours. Now, it wasn't me, but it was an associate in my office that spoke to Mr. Kolins, and we were informed that Mrs. Picower might be in town during some of those dates, and we said absolutely we would accommodate her like we have during the balance of the period we've been working there, but to shrink the extended work hours, it makes those dates unrealistic, because we have sat down and calculated this to a degree where it makes it very difficult. So, therefore, I don't want to get deeper into the discussion of the due dates we've given you, and those due dates and the fines were all given under the premonition of we come here, we get a variance, we work on a schedule, we report to Mr. Moore, probably bi-monthly, along with Mr. Castro, and keep them fully informed. But the deal on the other side is changing, so I can no longer deliver the deal that I've been having a conversation on.

McDonald: Okay. Then what's your reason for a deferral today. Do you think you can do that if you get a deferral?

Deziel: No. We'll go back. We'll figure out what everybody wants to do. We'll work with Mr. Moore and Mr. Castro and Mr. Randolph again, and try to come up with some new dates with some new hours, and re-visit the whole thing. The dates won't be the same; they'll be further out. I'm just trying to be – I do not want to come here and give you dates, Mrs. Smith, that we can't meet, and Mr. Moore will remember that he specifically asked us how do the extended hours calculate into the due dates you've given us, and I think he was insinuating could we shorten the dates, and it was affirmative by all three professionals that those have been incorporated into the due date with a fine pencil, so we're talking about eliminating, I think, half of the – we're talking about extended hours for six months that are now going to three months. You're talking about a lot of time there. I'm trying to come back with an intelligent answer for you.

McDonald: All right. Mr. Deziel, I would say from last month, you know, when we spoke with the builder and some other representatives here, and you offered them to us as saying these are the people that know – that was the premise under which they spoke, and they, at that point, actually I thought they used September 30th as the completion date. I know it wasn't into December, so it was earlier than that, and they were – supposedly they knew what they were saying, and now we're back here this month and it's now – and there wasn't even any discussion of extended work hours last

month, and the completion date was earlier than it is now with the extended work hours. So, I think the Council is getting very frustrated. Mr. Wyett?

Wyett: I understand where you're coming from. I just calculated you'd be losing two months, or 120 hours, the equivalent of three weeks. That's considerable construction time. I don't know if I go along with the idea, and I think that before you have a withdrawal, you ought to see if the Council wants to restrict it to three months, or whether we're going to be more generous, because if we decide to be more generous you may be able to withdraw your request for deferral. But I don't want to see this thing stretch, because I can tell you now, that if this thing is going to stretch on the outside – not so much on the inside – beyond December 31st, I don't care if you never finish the house, because I will be asking for a cease and desist. The reason I'm being so dramatic is that this has got to come to a final finish. Now, God bless Mrs. Miller – she's a wonderful person. I know her personally, and I'm not trying to be hard on her, but this is being hard on the town, and therefore I have to protect the town, and that's my only position. If this was just personal between Mrs. Miller and myself, I would give her a thousand years to complete.

Deziel: I'll say this, Mr. Wyett. I don't know who is complaining other than Mrs. Picower.

McDonald: All right. Do you want a deferral, Mr. Deziel? Let me just clarify that before I go to the Council. Are you asking for a deferral?

Deziel: If we can get a variance and we can work out the hours with Mr. Kolins today, we would have it heard and determined today. If we're not going to get a variance and we can't work out the hours, I think it's in your best interest, because other people are waiting, that we defer it.

Brooks: Mr. Kolins, I certainly understand and appreciate your defense of your client, Mr. and Mrs. Picower; these good people need an abundance of consideration. Unfortunately, your very valid statements have left us with a Hobson's choice, as you've heard up here. Mr. Deziel says he cannot complete with any degree of assurance unless he gets the variance. You see the frustration on the part of the Council. So, we want to be considerate and understanding of Mr. and Mrs. Picower, but reality is those shortened hours are putting Mr. Deziel in a difficult position, and adding to our frustration. Is there any way you could ask Mr. and Mrs. Picower – today's what – the 8th of May – we have twenty three days left in the month – if we could just jam it ahead – they'll be out of here maybe in June – is there any way, so we can get some – right now we're nailing jello to the wall, and it's getting pretty tiring.

Kolins: Mr. Brooks, let me respond to you this way, in all candor, for four years now, before you were part of the Council, there have been all kinds of promises made about the completion of this house. This is not the first set of deadlines and promises, and every single deadline and every single promise has gone by the wayside, to the detriment of my client, so I have to ask myself why the Council would worry about being, for lack of a better word, generous, to Mrs. Miller. And I don't know Mrs. Miller, so this isn't personal to me either. Maura Ziska came up to me outside this room just prior to this hearing and said something that I'm going to . . .

McDonald: No. We don't want to hear it.

Kolins: It's relevant, Mr. McDonald.

McDonald: No. Just answer. He asked you a question.

Kolins: I am, and it's part of answering that question, and it will just take a moment – but she said to me something I was going to ask – I didn't mention it because she said it, but it needs to be on the record – that they would not do extended hour construction when my client came to town – all we had to do was tell them, and they wouldn't do it on those days. She agreed to that privately with me. I would ask Mr. Deziel to confirm publicly that would be – no matter when the months are – that would be the case. First of all, I think that's very important to then go back to my client and asking the question, Mr. Brooks, that you're asking.

Brooks: And believe me, I understand their frustration, Ron.

McDonald: All right. Let's take some action. I think we've got enough comments.

Goldblum: If we stick by the hours you have now, and not work when the Picowers are in town, do we have a firm amount on the fines, or don't we? Can we wrap this up today?

Deziel: Okay. One question, Mr Goldblum. When you say don't work when their in town, you mean don't work beyond normal business hours?

Goldblum: Yes.

Deziel: Okay, and with the variance approval the answer is yes.

Goldblum: And we have the amount of the fines, is that right?

Deziel: Yes.

Goldblum: Then I would like to make a motion.

Brooks: Second. I read your mind Norman!

Goldblum: The motion is we accept the variance on the wall. . .

Brooks: I thought we were just on the hours.

McLendon: Let's get the whole thing.

Goldblum: It's both.

Brooks: I'd like to split it, if you'd consider that.

McDonald: All right. Well then make your motion on the variance then, Mr. Goldblum.

Goldblum: **I'd like to make a motion on the variance on the walls, that due to what exists in that area already, the hardship of security, and so forth, we accept the variance.**

McLendon: **Second.**

Town Clerk Pollitt calls roll and motion fails 2/3, with Councilmen Goldblum and President Pro-Tem McLendon casting affirmative votes; Councilman Brooks, Councilman Wyett, and President McDonald casting dissenting votes.

McDonald: Motion fails three to two. Is there another motion?

Brooks: **I move that we accept the first part of the variance request for the hours, incorporating Mr. Kolins' request on behalf of his clients, that they just operate normal business hours when Mr. and Mrs. Picower are in town.**

Deziel: I'd like to request for a deferral. That wasn't what I answered to Mr. Goldblum. That was . . .

McDonald: Okay. We understand. Okay. The applicant has asked for a deferral.

Deziel: Okay. We don't want the extended hours, and we don't want any fine agreements,

and we don't want any extended hours.

Mayor Smith: Could I say one thing. Mr. Deziel, at this point, I'm getting the impression, and please tell me I'm wrong, that you're going to say that this Town Council is holding up the project.

Deziel: I'm not saying anything, Mrs. Smith.

Mayor Smith: You just said that if you had to take a deferral today, that this would hold up your time table and you would not be completed by the date you gave us earlier.

Deziel: No. What I said was, and I'll restate it, was that I'm not going to throw out the completion dates and the fines we've agreed to relative to those completion dates if we don't get the things we came here for, because those were – the fines and the completion dates were the direct result of coming in here for a variance, so I'm going to feel awfully awkward if I was duped into coming in here and thinking I could get a variance, and agree to all these other things, but I don't get what I came here for.

Mayor Smith: All right. I understand that Mr. Deziel. When the motion failed to approve the wall and gates as we're looking at, did you have an option "B" for a lower wall?

Deziel: No ma'am. We're only asking for two feet. Eight feet is already too low.

Goldblum: Bill, can we put both of them together.

McDonald: Just a moment. So, the motion failed for the variance, and the only other question is the extended work hours. You want a deferral, correct, Mr. Deziel?

Deziel: Before I do that I'd like to ask Mr. Goldblum to make a motion combining the variance, the work hours, and the fines and the completion dates.

Goldblum: If acceptable.

McDonald: Well, I don't think Mr. Goldblum voted on the prevailing side, so I don't think . . . I'll defer to Mr. Randolph, but my understanding is that if you – it's a motion to approve the variance, which was just denied, and he was on the recommending side, not the prevailing side. Mr. Randolph?

Randolph: I think it sounds like a new motion. It's not a motion to reconsider the previous motion. It's a new motion altogether. So, I think anybody can make a new motion.

McDonald: All right. Mr. Wyett.

Wyett: **I'd like to make a motion and divide this project – to give you the extended hours as originally requested – I think it's to November – to November 17th, but you can't very well agree to a set of fines, and then come in and – you are correct – it would be totally unfair to say here is a set of fines, and now you're giving less time. So, my motion is for an extended time to go to November 17th as originally requested, and incorporate the fines, which I consider inadequate. I'm just addressing the fines for a minute – for an ordinary individual these fines are substantial – this is merely an annoyance – fines are usually designed to get action and attention – these fines won't do that, so I would like to know from Mr. Moore and Mr. Randolph, if they fail, how long – let's say they want to take another year and pay the fines, what's going to happen?**

McDonald: Is there a motion? You made a motion. Is there a second?

Brooks: **Yes, I'll second it.**

Mayor Smith: Could I ask that the fines, the amount of the fines, be made for the record please?

McDonald: All right. What is the amount of the fines?

Deziel: I'm withdrawing that application. I'm not doing that. I'm not doing that. What I will do to make everybody I've heard speak to today is as follows: I would agree to accommodate Mrs. Picower, if we get a phone call in advance, whenever she's in town between now and we'll go with Mrs. Smith's date of November 1. So, if we go from now until May 1 [*sic*], subject to getting a call, we'll go to normal business hours. We'll stick to the due dates, we'll stick to the fines, and we want the variance, and I think everybody is made happy there. Now we just need a motion on that.

McDonald: Well, there's a motion and a second on the floor, so let's call it.

Deziel: There is no motion. I've withdrawn that application.

McDonald: No, you didn't make the motion, Mr. Deziel. Mr. Wyett made the motion.

Deziel: I'm telling you right now, that if that's approved –

McDonald: You don't mind if we vote on it, though, do you? Would that –

Deziel: I do mind. I do mind. Because you're presuming that I'm going to agree to the things that Mr. Wyett is expecting in connection with that approval of that motion. We're not doing that.

Wyett: Can I just ask you a question? I just gave you everything you asked for as part of Variance 19-2001, section two is the only part I'm referring to, which is the extended hours. I was giving you until November 17th. You just went back to November 1. I'll stay with the 17th, and give you the 17th, and I will amend, which you mentioned, Mr. Kolins – when the Picowers are in town you will suspend additional hours.

Deziel: But, I want Mrs. Smith's November date in there, and I want the variance in there, and then we'll go with it.

Wyett: That's a separate issue. We want to handle it in two separate parts.

Deziel: We're not doing the second – if you want to do that, do the variance first, and then that one, and we'll go that route.

Wyett: Mr. Deziel, we are the Council, you are the applicant.

Deziel: All right. We're not interested in that.

Wyett: I think the Council has preference.

McDonald: There's a motion and a second on the floor, and the applicant does not want the Council to proceed on that motion and wants to withdraw. So, what would be the proper –

Randolph: He doesn't have to accept the results of your motion. If you grant it to him, he doesn't have to accept it.

McDonald: All right. Mrs. Pollitt?

Town Clerk Pollitt calls roll, and motion passes 3/2, with Councilman Wyett, Councilman Brooks, and President Pro-Tem McLendon casting affirmative votes; Councilman Goldblum and President McDonald casting dissenting votes.

McDonald: Passes three to two, Mr. Deziel.

Deziel: I just want it for the record, because we do have a court reporter here. As far as we're concerned, nothing passes, and it's a shame that we couldn't have – I think Mr. Goldblum could have made a new motion that would have been approved, and that would have made everybody happy, but what happened here was a motion was approved that made people happy that aren't even parties to the issue here.

McDonald: All right. Thank you, Mr. Deziel. Is there any further action?

Wyett: I didn't intend that my motion die with part two. Somebody is perfectly willing and able to entertain the wall motion. I'm not terribly in favor of it, but I think he is entitled to a decision of the Council.

McDonald: It failed. It's been voted on.

Wyett: Ya, but I think that motion was more than just the wall.

Brooks: No, it was just the wall, and it was defeated.

Wyett: Just the wall? Sorry, I misunderstood.

Deziel: So, would you make a motion for the wall?

Brooks: It's been defeated, Robert.

Deziel: No, but he voted no for it, so he could make a motion to reverse it. Would you do it, Mr. Wyett?

Wyett: No.

McDonald: Okay, next item, Variance No. 21-2001, the application of Charles Sarkis relative to property located at 1360 North Ocean Blvd. Ex-parte, Mr. Goldblum?

Goldblum: Yes.

McDonald: Well, who with, and what about?

Goldblum: With Mr. Kolins and the owner of the house.

McDonald: And the owner of the house?

Goldblum: Right.

McDonald: All right. Mr. McLendon.

McLendon: Same thing, and visited the site.

McDonald: All right, I've had none. Mr. Wyett.

Wyett: Mr. Kolins and Mr. Sarkis, relative to the merits of the case.

McDonald: Mr. Brooks.

Brooks: Yes sir. I met with Mr. and Mrs. Sarkis, with Mr. Kolins. I walked the outside of the house, and the inside of the house.

McDonald: All right, who is going to speak to this.

Kolins: I am, Ron Kolins, Mr. President, but could we have two minutes. We have to set up a model and a few things here, so if you'll give us two minutes.

McDonald: All right. Do you want us to go ahead with something else while you're setting up?

Kolins: No, because we'll only be getting in the way of those people. We just need two minutes.

Randolph: We need an affirmative action in regard to that last project. You made a motion to deny, which –

McDonald: No, I think the motion was to approve, but it was denied.

Randolph: Motion to approve, which was denied, so you need to follow up with a motion to deny.

McDonald: All right. Let's hear it.

Brooks: **I move that we deny the variance request for the height of the wall as recently submitted by Mr. Deziel.**

McDonald: All right. Is there a second?

McLendon: **Second.**

McDonald: Okay. Mrs. Pollitt?

Town Clerk Pollitt calls roll, and motion carries 4/1, with Councilman Goldblum casting a dissenting vote.

McDonald: All right. Mr. Kolins.

*****End of verbatim transcript*****

(Mr. Kolins continues with presentation regarding Variance No. 21-2001).

d. VARIANCE NO. 21-2001 The application of Charles Sarkis relative to property described as North Shore Addition to Palm Beach, Lot 2-A & Addition Replat Lot 2-B; commonly known as 1360 North Ocean Boulevard; located in the R-B Zoning District. To allow construction of a second story addition, creating a split level home with a point of measurement for height and cubic content area of 17.67 feet NGVD in lieu of 16.14 feet NGVD maximum permitted; or alternatively, to construct a second story addition, creating a split level home with a cubic content ratio of 4.6 in lieu of the 4.5 maximum permitted; and to allow habitable space in the amount of 108 square feet to be maintained below two stories as additional mechanical equipment room space in the lower level section of the

proposed split level house. *(Deferred from April 10, 2001 Town Council Meeting).*

Ex-parte communication was declared by Councilman Goldblum with Attorney Kolins and Mr. Sarkis; by President Pro-Tem McLendon with Attorney Kolins and Mr. Sarkis, as well as by visiting the site; by Councilman Wyett with Attorney Kolins and Mr. Sarkis relative to the merits of the case; by Councilman Brooks with Attorney Kolins and Mr. and Mrs. Sarkis, as well as by visiting the site.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, requesting that the record of last month be incorporated by reference into the record of this meeting. He reminded the Council that two variances had been requested in order to put a second story portion on the house. Attorney Kolins explained that after discussions with staff, and with the understanding that the mechanical area was not habitable space, there was no longer a need for the second variance, and he thus withdrew that portion of the request.

Attorney Kolins then referred to the point of measurement variance request, displaying a model of the house in question, pointing out that the house was a split level, however, nowhere in the house were there more than two habitable floors on top of each other; therefore it was perfectly lawful and within the Code requirements. Since last month, he pointed out that a change had been made to the house because of the concerns regarding the mass of the house – a foot and one-half had now been taken off of the roof of the house than what had originally been presented. He clarified that the request would have no impact between the finished floor and the top of the beam, but did impact the overall exterior mass of the house. He explained that the property that the house sat upon was uniquely high, and the peculiarity of the lay of the land and its height required the variance request; the applicant was thus able to the save the house, rather than tear it down; the house was consistent with the area.

Architect Harold Smith displayed photographs indicating houses in the area.

Attorney Kolins noted that if the applicant could not save the house and add the additional space, the unavoidable alternative would be to tear it down and build a new house. He noted that a new house would not be able to have a basement at all, and in order to meet the required 4.0 CCR, the house would be bigger and more massive than the present house – he indicated on the exhibited plan the dimensions of a larger house.

Director of Planning, Zoning & Building Robert Moore commented that the issue of a mechanical room was now moot; he cautioned that the "what if" house would also need a point of measurement variance, because of the FDEP requirements. He stated that staff had asked the applicant to consider dropping the tie beam down further then 18", and for a good number of reasons

they had retained the higher ceiling; it was his understanding that there was no reduction in the tie beam from last month. Mr. Moore pointed out that if the Town Council granted the request today, the same thing could not be achieved with a new house; staff believed that the tie beam could be dropped further.

Mr. Willie DeGray, 110 Seagate, commented that some of the information about the house in question was confusing; the house that was there had been built above ground and then filled in front of it; it was basically a three story house, and he maintained that a can of worms would be opened, with three story houses all over Town.

In response to Councilman Brooks, Architect Smith explained that if the house had been on an interior lot along that stretch of property, a variance would not be required – it was the corner lot, taking the average elevations, that forced the variance request.

Mr. Moore explained that the reason the ordinance had been adjusted and changed was because of the aspect of the appearances of houses on the street on Ocean Blvd. that had a distinct drop-off as they headed to the west; that was why the ordinance was changed, and that was why the applicant was requesting a point of measurement variance, which had not been granted on other occasions, after homes had been built that did appear to be three story homes.

Councilman Brooks referred to the drawings presented by Architect Smith, and asked Mr. Moore if the 4.0 CCR would apply if the present house was demolished.

Mr. Moore responded that staff did encourage older homes being adjusted and adding additions, rather than tearing the houses down, but in order for the applicant to do this, a variance was needed for more cubic content than could be put on the property if they did not have the point of measurement variance. He explained that the reasoning of the applicant was that the hardship was the height of the tie beam, and how it would alter the appearance of the house from the street if it was lowered.

Mr. Andrew Janis commented that a group of people on three streets, Dolphin, Reef, and Seagate, all owned a beach cabana, and that was the most expensive club you could join – the Palm Beach Country Club was peanuts compared to the costs for the beach cabana – one had to buy a home on one of the three streets in order to become a member. He explained that when the applicant explained their plans, a group of people who lived within 200' of them signed a petition opposing the addition of another floor. He explained that the original designer of the house had purposely designed the house as a small house, and had designed a small area for his maid and her husband, and had thus built the first floor with an apartment for them; he had installed two garages so that they could have their own garage; the first floor was inhabited by them for almost 40 years. He maintained that the blueprints presented were inaccurate.

Attorney Kolins represented that there was no basement in the house, and the applicant was under the 4.5 CCR that was maximum for the house; the current house would have more CCR than the "what if" house, because the "what if" house was all above ground.

Councilman Wyett commented that the issue was the height of the second floor – he suggested that lowering the tie beam would make the windows look squat and the house would be somewhat of an eyesore. He maintained that for a variance of 18" the house could be very attractive, and there was no practical reason not to grant the request.

Councilman Wyett moved approval of Variance No. 21-2001, as submitted, finding the hardship as the shape of the lot, the nature of the slope of the land, and the fact that the Code had just recently changed. The motion was seconded by Councilman Brooks.

Attorney Kolins offered that the applicant could lower the tie beam 3", to make the request 15" if it would make any difference.

On roll call the motion carried unanimously.

e. SPECIAL EXCEPTION NO. 8-2001 with Site Plan Review The application of Boston Homes, Inc., Mr. Martin Atkins, President relative to property described as Lot 10 and a portion of Lot 11, Cherry Lane, commonly known as 312 Cherry Lane; located in the R-B Zoning District. To allow construction of a two-story, single family home on a non-conforming unplatted lot with only 80 feet in depth in lieu of the 100 foot minimum required. *(Deferred from March 13 and April 10, 2001 Town Council Meetings).*

Ex-parte communication was declared by President Pro-Tem McLendon via a meeting with Attorney Broberg and Architect Pandula to review the plans; by Councilman Brooks via conversation with Attorney Broberg, and via walking the subject property; by Councilman Goldblum via a site visit.

Attorney Peter Broberg addressed the Town Council, stating that the project in question had been voluntarily deferred several times, explaining that the prior owner of the property had obtained several variances to build a new house and had partially demolished the existing house. His client

had then purchased the property and had obtained a demolition permit, and had demolished the house, and had plans to build a new house on the property. He noted that, according to Code, a platted lot would only require site plan review, and the advertised language had stated that it was a special exception with a site plan review – the language should reference platted lot, with no reference to special exception.

Architect Gene Pandula addressed the Town Council, stating that the lot in question was in the center of the lake block of Cherry Lane, surrounded by five different properties. The property was 80' deep, with a total lot area of 14,240 sq. ft.; with the exception of the lot depth, it was conforming. The property was very unique in its topography, with many grade differences. The proposed project would conform to all Zoning Code requirements; there were no variance requests; there was compliance with building height as it related to contiguous properties. He stated that he had talked to three of the neighbors, two of whom were opposed to the proposed two story building. He exhibited the proposed plans, also indicating the streetscape, hardscape, landscape and drainage plans.

Zoning Administrator Paul Castro commented that the site plan, as presented, met all lot, yard and bulk requirements of the Code; the drainage plans had not yet been reviewed by the Town engineer; there was substantial change in grade from the rear of the property, and one of the neighbors had expressed concern as to drainage, the retaining wall, and the buffering landscaping between the second story of the proposed house and his house. Staff recommended approval, with additional landscaping outside of the utility easement that would help to buffer the subject house from the neighboring houses to the south.

Mr. John Nicolo, 331 Polmer Park, addressed the Town Council, stating that he was representing himself, his wife, and five of the owners in Polmer Park; documents and appraisals had been submitted as part of the record. He referred to the statements made by Mr. Pandula, and noted that the neighboring property at 300 Cherry Lane that had no objection to the proposal was a spec house that was built by a developer and had not been sold for two years; he maintained that the only person who liked the proposed house was another developer. He maintained that the property was being planned by a developer in such a way so as to maximize the bottom line profit, at the expense of the people in Polmer Park. He stated that he was located directly behind the proposed house, and it loomed over his pool, bedrooms, and bathrooms, and was very close. He referred to the ficus hedge, which was said to be 18' high, and disputed that the hedge was not 18' high, and was 7 or 8' high. He stated that the elevation of the proposed house was roughly 6' higher than his, and the proposed house was very high and very close to him, and was a detriment to everyone in Polmer Park. He suggested that a one-story house in excess of 5,000 sq. ft. could be built on the lot, and there was no objection to a one-story house. He explained that the objection to the proposed house was because of the unusual and unique circumstances of the topography of the land, and the differentials in topography in the area. He pointed out that he had seen a plan in the Building

Department that indicated that the wall that was expected to be demolished was 6.4' on his property, and furnished a survey to indicate that the wall was indeed on his property; in addition, he stated that measurements for height were not taken from the first floor elevation, but from the high point of the crown of the road above it – in this case the high point of the crown of the road above it was 23.1', while the floor elevation was at 19.5'. He stated that the side yard setbacks must be those of an R-AA district if the lot in question exceeded 150' in width; those being shown were those of an R-B district; he referred to the section of the Code referring to the setbacks, and furnished a copy to the Town Clerk for the record. He specified that his basic objection was that the height of the house was obtrusive and was looking directly down on his house.

Mr. Castro indicated that the plans furnished to the Building Department indicated a new 6' high wall, and the drainage plan indicated 7' high walls. He indicated that the point of measurement was from the highest crown of the road; the applicant was well below the maximum height allowed in the Code. He noted that the side yard setbacks referred to by Mr. Nicolo were only for lots over 20,000 sq. ft.

Mr. Pandula responded that the wall would by 7' high from the lowest adjacent grade, which he believed was appropriate for the privacy issue. He noted that there was now a new owner for 300 Cherry Lane. He discussed the elevations as they related to the grade of the land.

President McDonald suggested that when someone came to the Building Department to review plans, and the plan was then changed later, the person should be informed of the change in plans.

Mr. Castro replied that the plans submitted were also new to him.

Architect Pandula explained that the plans had been originally filed at the end of January, and in his pre-meeting with Mr. Castro it had been indicated that there was zoning in progress; the house had then been re-designed. When it was re-submitted, he and Mr. Castro had realized that there was an angle of vision from rear property lines that also applied. The plans were then taken back and the floor elevation was altered from 22' to 19.5'. He maintained that the plans that were being used at this meeting had been issued to Mr. Castro approximately one week ago.

Mr. Castro responded that the plan received by the Building Department showed 19.5', and the plans were submitted, however, many times when plans were re-submitted (with items such as the requested paving/drainage plans and a location map indicating all properties within 200'), any modifications would also come in, and he was not told about the modification, in this instance, when the plans were re-submitted.

President McDonald clarified that Mr. Castro then did have the plan in question, and pointed

out that he did not think it was right for a resident to try to speak to something that was no longer valid, and there must be some procedure of informing interested parties that the plans had changed.

Mr. Castro responded that Mr. Nicolo had seen the plans in question, which were the plans that indicated the 19.5' NGVD floor elevation.

Architect Pandula apologized for not highlighting the changes.

Mr. Nicolo commented that it did not matter whether it was 19.5' or 22', the bottom line was that the construction of the house would change the character of the neighborhood, and it would de-value the homes of Polmer Park; he acknowledged that there was a right to build a house, however, not a house that would injure five or six houses next to them. He suggested that a one-story house could be built, and requested that the Town Council deny a two-story house on that lot.

Mayor Smith commented that she had not seen the paperwork indicating the appraisals on the properties.

Mr. Nicolo responded that the applicability of the appraisals was that the properties surrounding the proposed house would be de-valued; he indicated that there was an affidavit from a Florida certified appraiser.

Attorney Broberg submitted a letter from Anderson & Carr Appraisers, and read some excerpts before submitting it into the record – "it is the appraiser's opinion that the proposed construction of a new home situated in the lake block, containing approximately 5400 sq. ft. of living area is in keeping with the current market standards demanded for new construction in the town of Palm Beach. The appraisers have researched the adjoining subdivision on the south, known as Polmer Park. Homes on this street range from one to two-stories in height, and the average range of the main living area is 5750 sq. ft. The proposed new residence for the subject will conform in size. and standard set by these homes. The proposed two-story home, when built on the subject lot, will substantially increase the market value along Cherry Lane. It will also increase the value of Cherry Lane Subdivision, and will complement the adjoining homes."

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

Councilman Wyett commented that the law in the State of Florida required the Town of Palm Beach to allow reasonable development of a person's property. Now, the Town Council was denying the right to develop the property.

Town Attorney Randolph advised that a follow-up motion would now be necessary.

Councilman Goldblum moved denial of Special Exception No. 8-2001. The motion died for lack of a second.

President Pro-Tem McLendon then made a motion to defer Special Exception No. 8-2001, requesting that the applicant meet with the neighboring property owners, and re-design the project to make it smaller. The motion was seconded by Councilman Wyett. On roll call the motion to defer Special Exception No. 8-2001 to the June 12, 2001 Town Council meeting carried unanimously.

f. SITE PLAN REVIEW NO. 6-2001, WITH SPECIAL EXCEPTION AND VARIANCES The application of The Darby Corporation and 3000 South Ocean Boulevard, LLC relative to property described as Tract 1: The south 100 feet of that part of the North 200 feet of the South 1398.77 feet of Government Lot 1 in Section 26, Township 44 South, Range 43 East, lying West of Ocean Boulevard, less a certain parcel and Tract 2: A strip of land 20 feet in width lying adjacent to and westerly of and measured at right angles to the westerly R/W line of State Road A-1-A; commonly known as 3024 South Ocean Boulevard/3000 South Ocean Boulevard; located in the RD-2 Zoning District. To allow site plan approval to construct two five-story buildings, creating 30 condominium units, with below grade parking, health and exercise facilities, party rooms, maintenance and management offices, lobbies, mail rooms, concierge stations, a swimming pool, twenty cabanas and two tennis courts on 4.079 acres; to allow a special exception to the RD-2 height regulations to allow two five-story buildings with lot coverage not to exceed 22%, and a variance to allow a zero datum of 20 feet NGVD for all elevation and height determinations for all buildings and structures on the entire property, above and below ground, in lieu of the lot grade called for in the definitions (7.5 feet NGVD); requesting sub-basement ceiling elevations of 18 feet NGVD in lieu of 5.5 feet NGVD which is the lowest point of the public street abutting the project, variance to allow cabanas within the sub-basement variance to allow the elevations of three sides of the basement cabanas to have

floor levels 0' below the level of the contiguous exterior ground outside the building, in lieu of 2 or more feet required for a basement a variance to allow certain permitted and accessory uses on the property to be located in the basements and sub-basements of the buildings without such uses causing the basements or sub-basements to be included or considered as a story or counted in computing height, such uses to include health and exercise facilities, party rooms, maintenance and management offices, lobbies, concierge stations, and mail rooms (at a minimum elevation of 7.5 feet NGVD), and cabanas (at a minimum elevation of 9.5 feet NGVD), in addition to other uses ordinarily allowed in the basements and sub-basements. *(Deferred from April 10, 2001 Town Council Meeting to Modify the Application).*

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, recalling that the details of the project had been discussed last month; he stated that a letter of support had been received from The Palm Beacher, the property immediately to the south, and an agreement had been attained with the owner of the old WPBR site to landscape the west side of A-1-A, across from that WPBR property; the west side of the Darby Corporation property would also be landscaped.

Architect Gene Lawrence reviewed the plans with the changes made since the last meeting, noting that the comments at the last meeting had involved parking spaces, and the issue of landscaping the lake side, opposite the space, and there was a concern with the appearance of the basement wall being exposed on the north building; the original plan had a retention pond in front of the building, and the addition of a sub-basement would now add parking to the west side of the building; the guest parking was now moved and the space revetted. He exhibited a plan of the basement, with the addition of a sub-basement to the west of the building, which would become the staff parking area, giving an additional eleven spaces for cars; an area east of the south building would add an additional seven spaces; the total addition of 17 parking spaces would bring the figure up to 2.83 cars per unit, as opposed to 2.2. He presented a modified rendering indicating the additional greenspace in the center of the property and the revetment in the green space east of the west building.

Zoning Administrator Paul Castro commented that there had been similar relief granted to applicants in the past as it related to allowing other specific uses that were related to permitted uses and accessory uses to multi-family in the basement and sub-basement level; staff believed that the project in question was compatible with the surrounding area, and would be conducive to the aesthetics of the Town of Palm Beach.

Attorney Brindell addressed the hardship, noting that there were extreme elevation changes

on the property; without the variance of the elevations of three sides of the basement cabanas to have floor levels 0' below the level of the contiguous exterior ground outside the building the redevelopment would have to occur with increased lot coverage and less open space, which was the same reason variances were granted in the 2770 Condominium approval; the uses in the sub-basement variances were all uses typical of all of the condominiums in the area, and similar types of approval had been granted in the 2770 Condominium project.

In response to Councilman Wyett, concerning a time schedule, Attorney Brindell advised that there would be a pre-construction meeting with staff, and a detailed program would be scheduled.

Director of Planning, Zoning & Building Robert Moore advised that the Code allowed 27 months for completion of the project.

Mr. Jerry Frank, Co-Chairman of the Citizens' Association, addressed the Town Council, stating that delegates from 43 condominiums had met with the developers, and there were no objections.

Councilman Goldblum moved approval of Site Plan Review No. 6-2001, with Special Exception and Variances. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

2. New Business - Minor

   a. None.

3. New Business - Major

   a. VARIANCE NO. 24-2001 The application of 260 South Ocean Boulevard, LLC, John Sullivan, President, relative to property

described as lengthy Metes and Bounds legal description (on file); commonly known as 260 South Ocean Boulevard; located in the R-B Zoning District. To allow construction of a swimming pool within 4'9" of the south property line near the western boundary of the property in lieu of the 10' minimum required.

Attorney Wade Byrd, on behalf of the applicant, addressed the Town Council, stating that a variance was being requested for a swimming pool on a highly irregular, odd-shaped lot, with a commercial parking lot on the south, a commercial parking lot on the west, and a Florida Power & Light (FP & L) power station facing the property.

Zoning Administrator Paul Castro commented that the lot was very irregular in shape, and the variance requested was next to a commercial parking lot; staff did see that there was a hardship related to the request.

Councilman Wyett moved approval of Variance No. 24-2001. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

b. VARIANCE NO. 26-2001 The application of Adrienne Newman relative to property described as the North 104.89 feet of Lots 19 and 19A of Eden Properties; commonly known as 1020 North Lake Way; located in the R-B Zoning District. To allow construction of a loggia addition on the west side of the house which will increase the lot coverage to 31.8% in lieu of the 30% maximum allowed for a two-story residence.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, advising that he had forwarded photographs of the property to Zoning Administrator Castro, and stating that there was a very exposed west side to the property; the proposal was to construct a loggia from the center of the house extending over an existing patio area, adding about 338 sq. ft. under an open loggia. He noted that the house faced the west, with no protection from the sun; an awning could be installed according to Code, that would cover 562.74 sq. ft. without having it count against lot coverage. He suggested that it would be better structurally and from a maintenance point of view to have a permanent solid roof structure.

President McDonald clarified that an awning would work, without requiring a variance.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: should be designed in a manner which will conform with the Code; Building Department: hardship must be addressed, or designed to meet the Code; Town Manager: no hardship, revise plan to meet the Code.

Attorney Brindell advised that the hardship was the impact of the sun on the house, and without the variance, more actual covered space could be created on the property than could be accomplished with the variance.

Councilman Wyett moved denial of Variance No. 26-2001, commenting that there was no hardship, as a hardship must go with the land. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

c. VARIANCE NO. 27-2001 The application of Richard Scrushy relative to property described as Lots 47, 47A, North 59.55 feet of Lot 458, 48-A, Eden Properties; commonly known as 1000 North Lake Way; located in the R-B Zoning District. To allow construction of a 125 sq. ft. one-story addition which increases the lot coverage from 31.5% to 31.9% in lieu of the minimum 25% required; said addition having a 15 ft. side yard setback in lieu of the 22 ft. minimum setback required; and, said addition causing the building to have a 118 degree angle of vision in lieu of the maximum 116 degree angle allowed.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the applicant was proposing an addition of 125 sq. ft. in the front of the house – the lot was large, and the house had been built before the sliding scale had gone into effect. He exhibited a drawing of the existing structure, and the proposed addition, which would increase the greenspace from 35% to 43%.

Zoning Administrator Paul Castro commented that lot coverage was being increased over and above what was allowed by Code, and requested that the applicant address the hardship.

Attorney Broberg replied that the Code required that a minimum variance be provided, which he maintained had been done – the addition would not impact anyone else. The house had been built prior to the Code requirements. He advised that the addition was being made to expand the current room, and the applicant was squaring off a section of the house with the extension of a room.

Councilman Wyett commented that he saw no hardship, and moved denial of Variance No. 27-2001. The motion was seconded by Councilman Brooks.

After further discussion, Councilman Wyett withdrew the motion to deny, as did the seconder of the motion, Councilman Brooks.

Councilman Wyett moved deferral of Variance No. 17-2001 to the June 12, 2001 Town Council meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

d. SPECIAL EXCEPTION NO. 9-2001 The application of CBRS Realty, Ltd. relative to property described as Lots 6 & 7, Block 8, Royal Park Addition; commonly known as 361 South County Road, Suites F&G, located in the C-TS Zoning District. To allow a 494 sq. ft. building contractor's office space on the first floor which would have no frontage or entrance directly onto a sidewalk fronting a roadway.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the property in question was directly across the street from Town Hall, and was an office for a construction company, which had no frontage or entrance directly onto a sidewalk fronting a roadway, and that all requirements for a special exception were met.

Director of Planning, Zoning & Building Robert Moore commented that the Town-serving documentation must be addressed.

Attorney Broberg replied that Town serving documentation would be provided upon renewal of occupational license.

Councilman Brooks moved approval of Special Exception No. 9-2001. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

e. SPECIAL EXCEPTION NO. 10-2001 The application of The Palm Beach Day School, Inc. relative to property described as Parcels 1 and 2 (lengthy Metes & Bounds legal description on file) and Lots 664 through 752, Poinciana Park 3rd Addition; commonly known as 241 & 246 Seaview Avenue, located in the R-B Zoning District. To allow modification to previously approved Special Exception Use condition of approval to allow continued use of temporary portable classrooms for one additional year until the end of the 2001-2002 school year.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objection to the request for the extension of the use of a portable classroom, however, cautioned that this was the third one-year approval granted to allow the continued use of temporary portable classrooms for Palm Beach Day School.

Councilman Wyett moved approval of Special Exception No. 10-2001. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.

f. MODIFIED SITE PLAN REVIEW NO. 3-2001 The application of Seminole South Inc. (President - Scott Granet) relative to property described as Lot 1, List Addition No. 1; commonly known as 201 List Road, located in the R-B Zoning District. To allow modification of Site Plan Review Application #3-2001 by modifying one of the conditions of approval to request a landscaped open space requirement of 46% in lieu of the 54% required as a condition of

approval of a previously approved site plan application, and the 40% minimum required by the Zoning Code.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the Town Council had believed that the hardscape proposed in the original site plan had been excessive, and had suggested that the greenspace be increased by 8%. She advised that it had been determined that the reduction was extreme and excessive because of the small size of the lot.

Zoning Administrator Paul Castro commented that the applicant was providing 6% more open space than required by Code, and based upon the modified plan, staff believed that it met the spirit and intent of the Code.

Councilman Brooks moved approval of modified Site Plan Review No. 3-2001. The motion was seconded by Councilman Goldblum. On roll call the motion carried 3/1, with Councilman Brooks, Councilman Goldblum, and President McDonald casting affirmative votes; Councilman Wyett casting a dissenting vote; and President Pro-Tem McLendon casting no vote as he had temporarily left the room.

g. SITE PLAN REVIEW NO. 7-2001 WITH VARIANCE The application of CSC Palm Beach Limited Partnership relative to property described as a parcel of submerged land in the Intracoastal Waterway (Lake Worth) located in Section 15, Township 43 South, Range 43 East, Palm Beach County; commonly known as 190 Bradley Place, located in the RD-2 Zoning District. To allow the re-design and reconstruction of a dock facility from 16 slips to 7 slips, and the construction of the dock and associated appurtenances at a maximum of 258' west of land in lieu of the 150' maximum allowed.

President McDonald advised that a letter had been received requesting deferral of this item until the June 12, 2001 Town Council meeting.

Councilman Brooks moved deferral of Site Plan Review No. 7-2001, with Variance, to the June 12, 2001 Town Council meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as President Pro-Tem McLendon had temporarily left the room.

h. VARIANCE NO. 28-2001 The application of Sand Pillow Properties, Inc. relative to property described as Parcels 4A and 4B (lengthy Metes and Bounds legal description on file); commonly known as 2310 South Ocean Boulevard, located in the R-C Zoning District. To allow construction of a new pitched roof system increasing the height of the building by 17.5" within the side (south) setback line, and increasing the height of the building by 32.5" within the rear (west) setback line, and to allow the new roof overhang to encroach 1' into the rear (west) setback.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that there were actually two applications involved with this property, which was the former Sea Lord Hotel property; variance request 28-2001 was dealing with the property on the intracoastal side, the west side of A-1-A, currently with eight rental units. The proposal was to convert the property to a single family home within the existing footprint, except for some architectural detailing, and the addition of a pitched roof, in keeping with the Mediterranean style. He explained that the hardship was the location of an existing structure on an undersized lot.

Zoning Administrator Paul Castro commented that, given the existing use of the property, the proposal of the applicant was very conducive to the area, and was a very good conversion of a more intense use to a less intense use; the variances requested were diminimus; staff saw a hardship relating to the conversion of a pitched roof from a flat roof, and recommended approval.

In response to Mayor Smith, Architect Gene Lawrence advised that the landscaped open space was 35% in the front yard, and a total of 33.75% of the whole project.

In response to Councilman Wyett, Architect Lawrence advised that he would re-study the blank wall pointed out on the architectural drawing by Councilman Wyett, for insertion of a balcony or window to make it more architecturally interesting..

Councilman Goldblum moved approval of Variance No. 28-2001. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

i. SITE PLAN REVIEW NO. 8-2001 WITH VARIANCES The application of Sand Pillow Properties. Inc. relative to property described as Parcels 1, 2 & 3, Palm Beach Estates (lengthy Metes and

Bounds legal description on file); commonly known as 2305 and 2315 South Ocean Boulevard, located in the R-C Zoning District. To allow for Site Plan Review for eight multi-family dwelling units within two buildings on 1.3 acres of land. The west building being two stories and containing two units, and the east building being three stories and a basement and containing 6 units, together with parking (mostly in the basement or sub-basement) and three swimming pools. Variance requested for a maximum building height (not including basement/sub-basement) of 34.42' in lieu of 23.5' and for overall building height (not including basement/sub-basement) of 35.09' in lieu of 26.5', for the eastern building. Variance for number of stories, to request 3 stories (not including basement/sub-basement) in lieu of 2 stories for the eastern building. Variance for minimum rear yard, requesting 20' in lieu of 30' along the north property line. Variance for front yard setback (south property line) to allow swimming pools to encroach a maximum of 10' into the front setback. "Building height" point of measurement variance for corner lots, requesting a "zero datum" of 20 feet NGVD in lieu of 12.98 feet NGVD (average elevation of surrounding streets). Variance requesting a sub-basement ceiling elevation for the eastern building of 18.0 feet NGVD in lieu of 6.85 feet NGVD which is the lowest point of the public street abutting the overall project. Variance to allow the cabanas to have floor levels 0' below the level of the contiguous exterior ground outside the building, in lieu of 2 or more feet required for a basement. Variance to allow the cabanas to be located in the basement of the building without the use causing the basement to be included or considered as a story or counted in computing height, in addition to other uses ordinarily allowed in basements.

President McDonald advised that a letter had been received requesting deferral of Site Plan Review No. 8-2001, with Variances, to the June 12, 2001 Town Council meeting.

Councilman Brooks moved approval of deferral of Site Plan Review No. 8-2001, with Variances, to the June 12, 2001 Town Council meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

4. Other

a. Zoning Commission Report and Recommendations Concerning Drainage.

Zoning Administrator Paul Castro recalled that a recommendation had been submitted to the Zoning Commission on April 11, 2001, relative to their meeting of April 17, 2001. The Zoning Commission had then met and discussed several issues that had been recommended by staff, based on the direction of the Town Council, to come up with some mitigating factors regarding drainage, and storm water retention. He presented Exhibit A, which included the recommendations and report from the Zoning Commission regarding staff recommendations to them; based on the format of the report, study items for the 2001-2201 zoning season were identified on the first page – one of the main recommendations was not to study a moratorium in the R-B District as it related to problems with drainage/drought in the R-B Study; there were storm drainage recommendations that needed no action that staff was addressing during the upcoming zoning season; there were also other items related to code and policy changes that would need to be made, based upon recommendations of staff.

Mayor Smith asked if the Strategic Planning Board would be considering the drainage matters, as well as the usage of water, storm sewers, etc.?

Director of Planning, Building & Zoning Robert Moore responded that the Strategic Planning Board would be reviewing some of the issues, however, the items discussed with the Zoning Commission were more specific items that staff believed were essential to be put into place now in order to address the current issues, while the Strategic Planning Board considered the overall issues.

Councilman Brooks moved acceptance of the Zoning Commission Report. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Councilman Brooks moved approval of authorization for staff to make administrative and ordinance changes where necessary and bring them forward to the Town Council. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.

b. Tentative List of Zoning Study Items and Calendar for 2001/2002 Zoning Season.

Zoning Administrator Paul Castro reported that there were 14 items on the list of zoning study items and the six items in the Zoning Commission Report and Recommendation would be

added to the list; Council members had also requested the study of three other items: the maximum height of walls along Lake Trail; to allow more than five stories by special exception in the R-D2 District, provided that there are some constraints regarding density, landscaped open space and lot coverage; to re-study the point of measurement on corner lots, specifically on the dunes.

Councilman Wyett suggested another study item: he explained that currently there was a requirement that a concrete wall be put around a generator because of noise, however, in checking on the new generators, he noted that the noise level was under 55 decibels, which was very low. He suggested that the ordinance or zoning regulation could be changed if equipment tested below a certain decibel level.

Mr. Moore replied that it would be an administrative requirement, not a zoning requirement, and he would be happy to have it reviewed administratively.

President Pro-Tem McLendon moved approval of the Zoning Study Item List, and the Zoning Calendar presented. The motion was seconded by Councilman Goldblum.

Mayor Smith referred to Zoning Study Item 13., which was a study provision to exempt the Town from its own zoning regulations, and she stated that she did not believe the Town should get any special opinion, and the item should not be studied. She suggested that the Town should do everything it could to avoid variance requests, and if one was needed, the Town should go through the same public procedure as anyone else.

Mr. Moore responded that it had been the standard policy for the Town to go through the same procedure as anyone else, however, there could be occasions when it may be necessary to consider exempting the Town, upon the advice of Town Attorney Randolph.

On roll call the motion carried unanimously.

XIV. ANY OTHER MATTERS

Town Attorney Randolph referred to the letter of May 7, 2001, from attorneys for BellSouth Telecommunications, Inc., Heinrich Gordon Hargrove Weihe & James, P.A. which changed the offer of judgment in Case No. 98-9010 AI, BellSouth Telecommunications, Inc. vs. Town of Palm Beach, and explained that it needed some clarification. He stated that he had contacted Attorney Thomas Dye in regard to it, and Attorney Dye had indicated that he would need to check with his client before he could clarify the intent of the offer. Town Attorney Randolph advised that the Town Council could choose to have a closed door session so that he could update them as to the

conversations regarding this matter, as they relate to the two items that are allowed to be discussed at a closed door session – settlement negotiations, or a strategy session relating to litigation expenditures.

It was determined that the Town Council would enter into a closed door session.

President McDonald announced that the Town Council meeting of May 8, 2001, would be adjourned for a closed door session at this time (5:03 p.m.). He announced that those present for the closed door session would be: Mayor Lesly Smith, Town Council President Jack McDonald, Town Council President Pro-Tem McLendon, Councilman William Brooks, Councilman Goldblum, Councilman Wyett, Town Attorney John Randolph, Town Manager Peter Elwell and Court Reporter Ms. Good.

XV. ADJOURNMENT

The meeting of the Town Council was adjourned at 5:03 p.m. The Town Council and those others announced in attendance then met in the announced closed door session.

The Town Council meeting of May 8, 2001 was reconvened at 5:20 p.m., with President McDonald calling the meeting to order, and announcing the termination of the closed door attorney/client session.

The reconvened meeting of the Town Council was adjourned at 5:21 p.m.

Jack McDonald, President

Mary Pollitt, Town Clerk