# TOWN OF PALM BEACH

Office of The Town Clerk

## MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 10, 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, April 10, 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
Assistant Finance Director Cheryl Somers
Police Chief Michael Reiter
Public Works Director Al Dusey
Planning, Zoning & Building Director Robert Moore
Assistant Planning, Zoning & Building Director Veronica Close
Zoning Administrator Paul Castro
Chief Code Compliance Officer Brian House
Recreation Director Russ Bitzer
Town Engineer James Bowser
Town Clerk Mary Pollitt

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Proclamation Declaring April 17, 2001 as "Gertrude Maxwell Day." [Lesly S. Smith, Mayor].

Mayor Smith read a proclamation in honor of the 90th birthday of Gertrude Maxwell, declaring April 17, 2001 as "Gertrude Maxwell Day."

Mrs. Maxwell expressed her thanks, stating that her birthday and the incorporation of the Town of Palm Beach coincided. She stated that the Palm Beach forefathers had the foresight to go to Miami to engage an attorney to draw a charter for the Town of Palm Beach on April 17, 1911. She stated that the Town of Palm Beach was world renown for its natural tropical environment, cultural activities, and for the humanitarian interests of its citizens. She noted that she was grateful for the support given to the Save-A-Pet foundation to help save doomed homeless pets from cruelty, suffering, and pre-determined death. She stated that the Town of Palm Beach would flourish with the best of everything forever, and that she was grateful and proud to be a small part of it.

IV. COMMENTS OF MAYOR LESLY S. SMITH

"I have just a very few comments before we address today's agenda. First, I have a growing concern about the apparent financial difficulties of the City of West Palm Beach and about a citywide sales tax increase proposed as a solution. We in Palm Beach are directly affected in two ways. First, West Palm Beach is legally committed to set aside some of the proceeds of their water contract with us, to pay for repairing and replacing water lines to, and in, the Town of Palm Beach. This obligation is clearly set out in the contract - Section 5 Capital Improvements – Subsection A Five Year Plan - Priority Order and Section B Funding Requirements for 18 million dollars and the work is scheduled to begin next year. I read in the newspapers that Mayor Daves flew to Tallahassee to lobby the Legislature for a sales tax increase to pay for, among other things, infrastructure repair. He said that previous assurances of adequate water utility funds may have been made, in his words, "to tell the City Commission what they wanted to hear." How – or whether – Mayor Daves pays to replace of crumbling water pipes on his side of the Intracoastal is none of our business, but we certainly must insist that adhering to our water contract is not correlated with a sales tax increase.

"A second point – I cannot imagine that a sales tax increase confined to the city limits of

West Palm Beach would make economic sense to either merchants or consumers. CityPlace is building a solid relationship with Palm Beach shoppers, but why would we pay more at CityPlace for merchandise we could buy for less on Worth Avenue, the Gardens Mall or Boca Town Center? And why would we be willing to pay more for restaurants and services knowing that the extra half-cent underwrites only West Palm Beach's wish list – which includes a multi-million dollar stadium downtown – while we receive no benefit. I urge the Town Council to contact our state legislative delegation and tell them to reserve sales tax authority to counties, who use the money to benefit everyone from Boca to Jupiter, from Wellington to Palm Beach.

"We all continue to watch the St. Mary's – Good Samaritan buyout by Tenet. Negotiations are scheduled to be completed by June 30 and while the deal may not be perfect, there is general agreement that this is the best compromise for keeping both hospitals open. But it won't be over June 30. The question remains of how to set up and manage the "pots" of foundation money from these hospitals, including several million that accrued from the original Good Sam-St. Mary's merger. It is my hope that these funds can be consolidated with a minimum of controversy and legal manipulation, and that a new broad-based board will direct their investment in critical health-related needs that are currently not met. A large portion of these funds were donations from Palm Beach residents, so we continue to have a stake in their distribution.

"Just one comment about today's agenda, which you will notice is loaded with requests for variances. I repeat a concern I have expressed before that the Council's wholesale consideration and granting of variances undermines the integrity of our planning and zoning regulations. In the past couple of years, we have invested a great deal of time and money in formulating design guidelines that preserve neighborhoods and perpetuate the architectural legacies we value. But why would anyone follow the rules when an end-run to a Council member can override our guidelines? There will always be special cases where Council intervention may be necessary, but I would like to see the number of variances granted cut to almost zero.

"We know that the season is winding down to an end when the Town of Palm Beach suddenly becomes front page news in our local papers. The story on the front page about the large water users in town neglected to feature that the largest property owner had reduced his water consumption by 30% far and away above the reductions in the surrounding areas – I believe. As far as the town is concerned, since January 24th, we have issued 377 warnings and since February 10th, we have issued 49 notices to appear before the Code Enforcement Board.

"I want to offer special congratulations to two Town of Palm Beach police officers who were recognized for their exemplary service. The Palm Beach Post nominated two of our finest – Officer Sherry E. Madden and Officer Michael S. McClure – for its Distinguished Law Officers of the Year award. Officer Madden was nominated in the category of crime prevention, and Officer McClure was cited for his work in crime solutions. We don't tell our police officers often enough how much we appreciate their work, and I want Officers Madden and McClure to know they are winners in our book.

"That's all I have, except to underscore my support for the ordinance for preservation of historic and specimen trees, which is up for second reading and I hope will pass without opposition. Thank you."

V. APPROVAL OF THE AGENDA

The following changes were made to the Agenda:

**ADD** Item VIII.B. Regular Agenda - B. New Business, 6. - Discussion of the Palm Beach Par 3 Golf Tournament.

**Motion made by Councilman Goldblum, seconded by President Pro-Tem McLendon to add to the Agenda - Item VIII..B. Regular Agenda - B. New Business, 6. - Discussion of the Palm Beach Par 3 Golf Tournament. On roll call the motion carried unanimously.**

**MOVE** Item XII. Development Reviews, B. 3., New Business - Major, b. - Variance No. 13-2001, 272 Queens Lane to become Item XII. Development Reviews, B.1., Old Business, b.

**DEFER** Item XII. Development Reviews, B. 1., Old Business, d. - Special Exception No. 8-2001 with Site Plan Review, to the May 8, 2001, Town Council meeting.

**Motion made by Councilman Goldblum, seconded by President Pro-Tem McLendon, to defer to the May 8, 2001, Town Council meeting - Item XII. Development Reviews, B.1., Old Business, d. - Special Exception No. 8-2001 with Site Plan Review. On roll call the motion carried unanimously.**

**DEFER** Item XII. Development Reviews, B. 3. New Business - Major, d. - Variance No. 15-2001, 153 Kings Road, to the May 8, 2001, Town Council meeting.

**Motion made by Councilman Brooks, seconded by Councilman Wyett to defer to the May 8, 2001, Town Council meeting - Item XII. Development Reviews, B. 3. New Business - Major, d. - Variance No. 15-2001, 153 Kings Road. On roll call the motion carried unanimously.**

**The amended Agenda was approved through motion of President Pro-Tem McLendon,**

**seconded by Councilman Goldblum, and carrying unanimously on roll call.**

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Mr. Eric Gilbertson, 151 Chilian, addressed the issue of the difficulty encountered by pedestrians using the Town crosswalks, and provided comments on the speech he would give to the Palm Beach County School Board regarding crime in schools.

Dr. Sten Lilja, 1330 N. Ocean Boulevard, questioned who had approved the petition filed on behalf of the Town of Palm Beach by the law firm of Greenberg Traurig, which would dismiss work that was being done by Town residents regarding beach renourishment.

Mr. William Cooley, 233 Tradewind Drive, commented that after two years of study of the beach renourishment program he had come to the conclusion that the project, as currently planned, probably would not happen. He explained that he had personally met with the Army Corps of Engineers, had spent time with lawyers specializing in environmental law, and had read everything he could find on the subject and the project. He stated that he believed that the State or Federal government would not allow the project to proceed in its present form, as it would lead to the destruction of The Breakers' rock pile, 20 acres of the near shore hard bottom and turtle nesting areas. He noted that the last resolution passed by the Town Council indicated that the project size was now \$75 million over 11 years; the Federal contribution was gone; the County Beaches and Shores Council had voted 11/4 against the project, and it was doubtful that any funds would be forthcoming from the County; State contributions were limited to \$6.35 million; the Town had sold \$23.5 million in bonds and spent millions of dollars on engineers and lawyers to date. He stated that the Corps of Engineers permitting process included a two-word test that the project could not pass – "avoidance" and "minimization." He maintained that there was a real need for shore protection in certain areas of Palm Beach, however, advancement of the current plan was not the answer. He suggested that a fresh look be taken at beach renourishment and storm protection, as there was a very real possibility of catastrophic property damage while the debate regarding the project was ongoing. He questioned the amount of engineering and legal fees that had been spent on the project. He requested that the Town Council place the subject of beach renourishment and/or storm protection on the agenda for the next meeting, or as an alternative, requested that the Mayor convene and moderate a round table discussion between representatives of the various factions concerned with the issue.

Mr. Scott Lewis, landscaper, implored the Mayor and Town Council to take an aggressive stance with the water crisis; he suggested that gray water pipes be considered at the same time that the construction on the water system took place; that grant money may be available for that purpose; and that an emergency task force be created to manage the water crisis.

VII. CONSENT AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF MARCH 13, 2001.

B. APPROVAL OF LOCAL PLANNING AGENCY AND SPECIAL TOWN COUNCIL MEETING MINUTES OF MARCH 13, 2001.

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON MARCH 28, 2001.

D. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES OF MARCH 29, 2001.

E. APPROVAL OF CHECK REGISTERS FOR MARCH 2001.

F. OTHER

1. 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, 2001 Town Council Meeting)* ***(Staff Recommends Deferral to the May 8, 2001 Town Council Meeting).***

2. Potential Additional Staff to Ensure Timely Implementation of the Town's Adopted Coastal Management Plan. [Peter B. Elwell, Town Manager]. *(Deferred from March 13, 2001 Town Council Meeting).* ***(Staff Recommends Deferral to the May 8, 2001 Town Council Meeting).***

3. Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 2000. [Mark Veil, CPA, Caler, Donten, Levine, Drucker, Porter & Veil, P.A.].

   a. Acknowledgment of Receipt of Report.

   b. Acknowledgment of Receipt of Management Letter and Staff Response.

c. Proposal From Caler, Donten, Levine, Drucker, Porter & Veil, P.A., for Audit Services for Fiscal Year 2001 Through Fiscal Year 2003.

4. Proposal to Seek Declaratory Relief Regarding Enforcement of the Town's Taxicabs and Limousine Ordinance in the Matter of Black Tie Limousine. [John C. Randolph, Town Attorney].

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

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

VIII. REGULAR AGENDA

A. Old Business

1. Update on the Schedule of Proposed Florida Department of Transportation Projects on Royal Poinciana Way and Royal Palm Way. [James M. Bowser, Town Engineer]. *(Deferred from March 13, 2001 Town Council Meeting).*

Town Engineer Bowser reported that he had corresponded with Mr. Borello of the Florida Department of Transportation (FDOT), and believed that it may be possible to re-program the project so that work on Royal Palm Way would be done in 2001-2002, and postpone the Royal Poinciana Way project until 2003. He explained that the State would need to find an alternate source of money for Royal Poinciana Way, and the Town Council would need to consent to the postponement of Royal Poinciana improvements.

Ms. Amy Shaugnessey stated that she believed the members of the Royal Poinciana Association would approve of a deferral of construction on Royal Poinciana Way, and had every hope that funding would be available in 2003.

Town Manager Elwell noted that a delay of the project would offer the opportunity to address design concerns that had been expressed by the Royal Poinciana Association.

**Councilman Brooks moved approval of the postponement to 2003 of Royal Poinciana Way improvements by FDOT. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.**

Mayor Smith suggested that a traffic plan be formalized when construction was taking place on both the bridge and Royal Palm Way, to allow two lanes of open traffic, and to allow emergency vehicles proper access to the hospitals.

2. Drainage Project Update.

a. General Update. [Albert P. Dusey, Director of Public Works].

Public Works Director Al Dusey reported on the progress of the drainage project, including the D-4, D-12, and D-17 pump stations and collection systems; the redundant pumps had been ordered for D-9, D-10, D-4, D-6, and D-7; some preliminary construction had been done in the 100 block of Atlantic Ave.; the extra pump for the D-14 pump station was being ordered; construction would start at Coral, Crescent, Emerald and Lake Way on April 16, with anticipated completion in September; construction would begin in the summer regarding replacement of pipes on Garden, Eden, and the alley in between; the basin analyses for the D-9, D-10, D-8, D-4, and D-2 systems had been authorized and work was anticipated to be completed in four-six months; the rehabilitation of the D-2 pump station would be a part of the basin analysis for D-2; preliminary work was being started on the Phipps Plaza connector. He explained that the D-2, D-16 and D-18 pump stations did not have emergency back up power, however, portable generators were available for emergency power.

In response to Councilman Goldblum and President McDonald, Mr. Dusey clarified that he would present a cost estimate for the purchase of additional portable generators.

Mr. David Barton, 216 Jamaica lane, addressed the Town Council, stating that the drainage problem had never been described in detail; there had never been a diagram submitted and the problem had been discussed as a subjective issue, when it was an objective issue; nothing had ever been discussed about the actual cause of flooding. He stated that he had prepared a Petition for a Temporary Moratorium on New Building in the Town of Palm Beach (which he submitted for the record) until the Town had the solution to two critical problems:

1. Creating and adopting a proactive long range land use plan

2. Correcting the water problems in the Town.

Mr. Barton elaborated on the causes of flooding and drainage in the Town of Palm Beach, maintaining that allowing inappropriately sized houses to be built also allowed heavy use of water, which contributed to the flooding problem. He suggested that the flooding problem needed further study. He stated that a moratorium was not unprecedented in the Town, and was a legal method of protection and balancing of building and infrastructure.

Mr. Michael McCloskey, 202 Coral Lane, addressed the Town Council, stating that Howard Searcy, P.E., had communicated with Town Consultant Murray Logan, and Mr. Logan had stated that a June 30th completion date was realistic; he advised that he believed that would address the immediate situation on Coral Lane.

b. Proposal for Interim Emergency Pump System. [Howard L. Searcy, P.E.].

Howard Searcy, P.E., consulting engineer with LBFH, Inc. addressed the Town Council, referred to the "Temporary Emergency Pumping Plan" report submitted to the Town Council, advising that the analysis conducted was to locate the maximum possible capacity at each pump station that was not being addressed by the current program (D-2, D-4, D-8, D-9, and D-10). He advised that the ability to put the emergency pumps in the stations without modification of the station structure, along with taking advantage of the existing outfall where possible, were the key issues to the study. Each station had been reviewed individually, and it had been concluded that a 24-inch hydraulically driven pump could be installed at each station, with the power driving units placed outside the stations. Details of the proposed installation were described in the report, with recommendations and costs included in the report; concerns with noise were a consideration.

Town Manager Elwell advised that the direction was needed from the Town Council today to address any concerns with the noise factor with reduced costs, the preference of purchase versus rental of equipment, and authorization of funds up to $34,800, as reflected in the proposal of Mr. Searcy. He explained that an emergency ordinance (Ordinance No. 11-01) had been prepared if the Town Council was prepared to move forward.

Mr. Dusey stated that he did not yet have information from Mr. Searcy regarding confirmation of the capacity of both the wet walls and the inflow pipe, to ensure that the pump would be supplied by enough water from the system to work; he advised that he did not have confidence that there would be enough water in the wet wells for the pumps to provide relief, and would need information to confirm that they would.

In response to the concerns of Mayor Smith regarding noise, Mr. Searcy explained that the diesel engines could be located so that they were not next to a residence; a muffler on the diesel engine and providing some sort of containment would cut the noise so that it could not be heard beyond 50' of its location.

**Councilman Wyett moved approval of the following:**

1) **the engineering fees of $34,800, as presented by Howard L. Searcy, P.E. to perform the scope of services described for engineering services**

2) **recognition of the noise factor in an emergency situation**

**3) the cost effectiveness of purchase versus rental be left with the Town Manager as a business decision**

**4) consideration of additional work that may be necessary.**

**The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.**

Town Attorney Randolph read Emergency Ordinance No. 11-01 by title:

> AN EMERGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR AMENDMENTS TO THE TOWN BUDGET ADOPTED FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2000; PROVIDING AN EFFECTIVE DATE.

Town Manager Elwell certified that there was, in fact, an emergency that was being responded to, which required the emergency ordinance to be passed on a single reading. He explained that a motion for full funding would authorize staff to proceed with some steps wherein some details were unknown, as there were other providers of services or goods that Engineer Searcy would need to implement – he would solicit quotations, bids would be made, and the funding would need to come from the source of funds authorized in the emergency ordinance. The figure being requested for funding was $600,000, with the basis being the figure on page 8 of the "Temporary Emergency Pumping Plan" submitted on April 6, 2001, by LBFH, Inc., indicating $555,300 as the total estimate for diesel-only pumps being purchased by the Town, and related costs of installation of same. Engineering work would be included (the $34,800 as presented by Engineer Searcy to perform the engineering services). A 10% contingency would be normal, and the recommendation was thus authorization of appropriation from the undesignated general fund balance of $600,000 to be transferred to the appropriate line items.

**Councilman Wyett clarified that his earlier motion had included all recommendations of the Town Manager.**

**Councilman Brooks moved approval of Emergency Ordinance No. 11-01. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.**

B. New Business

1. Consideration of Citizens' Association's Request for Construction of Tennis Courts to be Located in Phipps Park. [Harry Horwich, Co-Chairman,

Citizens' Association and Gerald Frank, Co-Chairman, Citizens' Association].

Dr. Harry Horwich, 2860 South Ocean Blvd., Co-Chairman of The Citizens' Association of Palm Beach, requested that the Town Council consider the possibility of building tennis courts at Phipps Park. He explained that the tennis courts at Seaview Ave. were very difficult to get to, with the steady increase of traffic and congestion in that area.

Mr. Gerald Frank, 2784 South Ocean Blvd., Co-Chairman of The Citizens' Association of Palm Beach, requested that a study be made by the proper Town department for the building of a tennis facility in the Phipps Park area.

**Councilman Wyett moved that consideration of construction of tennis courts at Phipps Park be referred to staff for study. The motion was seconded by Councilman Brooks.**

Mayor Smith proposed that a tennis courts in the north end be included in the study, requesting that it be included in the motion.

**Councilman Wyett amended his motion to refer to Town staff the study of construction of tennis courts at Phipps Park to include a study of tennis courts in the north end. Councilman Brooks seconded the amended motion. On roll call the motion carried unanimously.**

2. Consideration of Settlement Agreement in Counties Drilling Corporation vs. Town of Palm Beach. [John C. Randolph, Town Attorney].

Town Attorney Randolph advised that a settlement proposal had been discussed and recommended at a mediation which had taken place with all parties to the case. He advised that the settlement proposal was as follows:

1) Dames & Moore (the engineering firm involved) would pay Counties Corporation the total sum of $358,000.

2) The Town of Palm Beach would pay Counties Corporation the total sum of $358,000, plus $178,000, which represents the retainer withheld from Counties Corporation in 1996. The total contribution from the Town of Palm Beach is $536,000.

Town Attorney Randolph recommended the settlement as proposed.

**Councilman Brooks moved approval of the settlement proposal as recommended, in the total amount of $536,000, funding to be distributed as set forth in the memorandum to Town**

**Manager Elwell from Assistant Town Manager Thomas G. Bradford, dated April 2, 2001. The motion was seconded by Councilman Wyett. There being no public comment, roll call was taken, and the motion carried unanimously.**

3. Review of the Noise Ordinance Adopted by the City of West Palm Beach. [Allen S. Wyett, Town Councilman].

Councilman Wyett suggested that the Noise Ordinance (No. 3379-00) of the City of West Palm Beach be reviewed and studied by the Ordinances, Rules and Standards (ORS) Committee. He considered that there were too many loopholes in the noise ordinance of the Town of Palm Beach.

Councilman Brooks suggested that staff evaluate Ordinance No. 3379-00 before the ORS Committee would conduct a review, as there was additional bureaucracy that would need consideration by staff.

**Councilman Wyett moved that staff evaluate Ordinance No. 3379-00 before a referral to the ORS Committee. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.**

4. Proposal to Allow Council Members to Join a Committee Meeting as a Voting Member. [Allen S. Wyett, Town Councilman].

Councilman Wyett encouraged more Town Council members to attend Committee Meetings as voting members.

Councilman Brooks commented that Town Committees had been structured on a for profit business model, with the vote of committee members being consultative; he noted that Town Council members could always attend any committee meeting and speak both as a citizen and as a Council member.

There was no further action taken by the Town Council.

5. Recreation Advisory Commission Appointments. [Russ Bitzer, Director of Recreation].

After casting ballots, the Town Council re-appointed James Gavigan and Eileen Morris as regular members of the Recreation Advisory Commission, and Michael Spaziani as an alternate member of the Recreation Advisory Commission.

6. Discussion of the Palm Beach Par 3 Golf Tournament

Councilman Goldblum commented that half of the money collected at the Palm Beach Par 3 Golf Tournament was distributed to the Palm Beach Rehabilitation Center for Children and Adults. He noted that it had been voted by the Recreation Advisory Commission not to continue having the tournaments, and he suggested that one of the civic organizations review the matter, with the intent of keeping it as a charitable tournament.

IX. RESOLUTIONS

A. Resolution No. 27-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Lease Agreement Between the Town and National Cable Acquisition Associates, D/B/A Adelphia Cable Communications, and Lodge Number 19 of the Fraternal Order of Police for Use of a Portion of Town Property for a Steel Radio Tower and Building and Other Cable Television Equipment and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [David F. Jakubiak, Assistant to the Town Manager].

Town Attorney Randolph read Resolution No. 27-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A LEASE AGREEMENT BETWEEN THE TOWN AND NATIONAL CABLE ACQUISITION ASSOCIATES, D/B/A ADELPHIA CABLE COMMUNICATIONS, AND LODGE NUMBER 19 OF THE FRATERNAL ORDER OF POLICE FOR USE OF A PORTION OF TOWN PROPERTY FOR A STEEL RADIO TOWER AND BUILDING AND OTHER CABLE TELEVISION EQUIPMENT AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

**Councilman Wyett moved approval of Resolution No. 27-01. The motion was seconded by President Pro-Tem McLendon.**

Assistant to the Town Manger Jakubiak referred to his memorandum dated April 4, 2001, addressing the agreement with the lease agreement, noting that Adelphia Cable Communications intended to use the site on a short term basis; the rent had been increased based on those short term needs, however, there was not a signed agreement from them at this time – it was the intent to meet with them and resolve the matter within ten days.

Councilman Brooks suggested that Adelphia Cable Communications be given 30-days to vacate the property if they did not sign the agreement.

Town Manger Elwell commented that there had been no indication of objection by Adelphia, and the intent of staff was to proceed to clarify any remaining issues; if necessary staff would return to the Town Council with any modifications.

Town Attorney Randolph advised that Resolution No. 27-01 could be approved, which would include approval of the agreement, however, if Adelphia did not sign the agreement, 30-days notice would be given to them to vacate the property.

**On roll call the motion to approve Resolution No. 27-01 - lease agreement with Adelphia Cable Communications, with the stipulation that 30-days notice be given to vacate the property if the agreement was not signed by Adelphia - carried unanimously.**

B. Resolution No. 31-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Agreement Between the Town of Palm Beach and the Goodman Company for the Demolition of Buildings at the Former Boynton Landscape Parcel, 400 South County Road, and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Assistant Town Manager].

Town Attorney Randolph read Resolution No. 31-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND THE GOODMAN COMPANY FOR THE DEMOLITION OF BUILDINGS AT THE FORMER BOYNTON LANDSCAPE PARCEL, 400 SOUTH COUNTY ROAD, AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

**Councilman Brooks moved approval of Resolution No. 31-01. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.**

C. Resolution No. 32-01 - A Resolution of the Town Council of the Town of Palm

Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute an Interlocal Agreement with Palm Beach County for the D-12 Stormwater Pump Station and Collection System Project Under the Lake Worth Lagoon Partnership Grant Program. [James M. Bowser, Town Engineer].

Town Attorney Randolph read Resolution 32-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY FOR THE D-12 STORMWATER PUMP STATION AND COLLECTION SYSTEM PROJECT UNDER THE LAKE WORTH LAGOON PARTNERSHIP GRANT PROGRAM

**Councilman Brooks moved approval of Resolution No. 32-01. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.**

D. Resolution No. 33-01 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to the Roof Authority, Inc., for Re-Roofing the Old Purchasing Building. [James M. Bowser, Town Engineer].

Town Attorney Randolph read Resolution No. 33-01 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO THE ROOF AUTHORITY, INC., FOR RE-ROOFING THE OLD PURCHASING BUILDING.

**Councilman Wyett moved approval of Resolution No. 33-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.**

X. ORDINANCES

A. Second Reading

1. Ordinance No. 4-01 - Amending Chapter 18, Buildings and Building Regulations, of the Town Code of Ordinances at Article III, Architectural Review, so as to Amend Section 18-168 Relating to Terms. [Robert L. Moore, Director of Planning Zoning & Building].

Town Attorney Randolph read Ordinance No. 4-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, BUILDINGS AND BUILDING REGULATIONS, OF THE TOWN CODE OF ORDINANCES AT ARTICLE III, ARCHITECTURAL REVIEW, SO AS TO AMEND SECTION 18-168 RELATING TO TERMS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**Councilman Wyett moved approval of Ordinance No. 4-01. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.**

2. Ordinance No. 5-01 - Amending Chapter 2, Administration, of the Town Code of Ordinances at Article IV, Boards and Commissions, Division 2, Zoning Commission, Amending Section 2-330 Relating to Consecutive Terms. [Robert L. Moore, Director of Planning Zoning & Building].

Town Attorney Randolph read Ordinance No. 5-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, OF THE TOWN CODE OF ORDINANCES AT ARTICLE IV, BOARDS AND COMMISSIONS, DIVISION 2, ZONING COMMISSION, AMENDING SECTION 2-330 RELATING TO CONSECUTIVE TERMS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**Councilman Wyett moved approval of Ordinance No. 5-01. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.**

3. Ordinance No. 6-01 - Amending Chapter 54, Historical Preservation, of the Town Code of Ordinances at Article II, Landmarks Preservation Commission, Amending Section 54-36 Relating to Appointment, Qualifications, Terms, Compensation, Filling Vacancies and Reappointment; Amending Section 54-37 Relating to Alternate Members. [Robert L. Moore, Director of Planning Zoning & Building].

Town Attorney Randolph read Ordinance No. 6-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 54, HISTORICAL PRESERVATION, OF THE TOWN CODE OF ORDINANCES AT ARTICLE II, LANDMARKS PRESERVATION COMMISSION, AMENDING SECTION 54-36 RELATING TO APPOINTMENT, QUALIFICATIONS, TERMS, COMPENSATION, FILLING VACANCIES AND REAPPOINTMENT; AMENDING SECTION 54-37 RELATING TO ALTERNATE MEMBERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**Councilman Brooks moved approval of Ordinance No. 6-01. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.**

4. Ordinance No. 7-01 - Amending Chapter 126, Vegetation, Division 2, Preservation of Historic and Specimen Trees, at Section 126-58 Relating to Damaging, Destroying Without Permission, Trimming Without Permission, Paragraph (a); by Adding a New Section 126-61 Titled Responsibility for Historic and Specimen Trees During Construction. [John C. Randolph, Town Attorney].

Town Attorney Randolph read Ordinance No. 7-01 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 126, VEGETATION, DIVISION 2, PRESERVATION OF HISTORIC AND SPECIMEN TREES, AT SECTION 126-58 RELATING TO DAMAGING, DESTROYING WITHOUT PERMISSION, TRIMMING WITHOUT PERMISSION, PARAGRAPH (A); BY ADDING A NEW SECTION 126-61 TITLED RESPONSIBILITY FOR HISTORIC AND SPECIMEN TREES DURING CONSTRUCTION; PROVIDING FOR

SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**Councilman Wyett moved approval of Ordinance No. 7-01. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.**

In response to the concerns of Mayor Smith regarding the input of the Garden Club when historic/specimen trees were replaced, Town Attorney Randolph advised that the Town Manager would confer with the Garden Club, however, having an organization outside of the Town being directly named and involved in the enforcement of the ordinance would cause concern because of the delegation of authority of the Town. He suggested that it may be an inappropriate delegation of the authority of the Town, and advised that the Town Manager could be directed, procedurally, to confer with the Garden Club in this regard.

Mayor Smith stated that she would like to see the Garden Club included in the procedure; they had originally brought the concerns to the attention of the Town Council, and they had been a part of the process with the original historic/specimen tree ordinance.

Town Attorney Randolph advised that the Mayor and Town Council could direct the Town Manager, in writing, to confer with the Garden Club, which would carry out the purpose of including them in the procedure.

B. First 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 COUNCIL 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 AN EFFECTIVE DATE.

President McDonald asked Director of Planning, Zoning & Building, Robert Moore, if there was any relationship between the increased amount of the tax and what it cost the Town to provide the service?

Mr. Moore advised that the cost of the tax was predicated on the original freezing of the occupational licenses that took place in the 1970's, wherein the legislature stopped allowing for occupational license taxes to be increased during that time frame. In the early 1990's it was again allowed to increase the fees; the procedure and policy of the Town Council had been to recover the lost funds through the years by increasing the tax when possible.

President McDonald referred to the average cost of an occupational license, which was $300, and asked if it cost the Town that much to renew an occupational license?

Mr. Moore replied that it did not, however, the services of the Planning, Zoning & Building offices used by the business community throughout the year would offset the cost of that license; he gave the example of realtors and attorneys that used the services of the department. He explained the specific procedure used by the department to identify those entities requiring an occupational license.

Chief Code Compliance Officer Brian House explained that every occupation that was not listed specifically was handled under the "unclassified" section of the listing, and all businesses were licensed.

Councilman Wyett pointed out that some valet services were not licensed, and there was a large cost to service them.

**Councilman Brooks moved approval of Ordinance No. 9-01. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.**

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 Wyett moved approval of Ordinance No. 10-01. The motion was seconded by Councilman Goldlbum. On roll call the motion carried unanimously.**

XI. COMMENTS OF THE TOWN COUNCIL MEMBERS

President McDonald suggested that the issue of an R-O plant be re-visited, in terms of being able to supply irrigation water when there were water restrictions in effect with the recent drought situation.

Councilman Wyett agreed with President McDonald, and commented that he was disturbed by the newspaper article in the Palm Beach Post concerning water usage in the Town of Palm Beach. He suggested that a pro-active stance be taken by the Town Council.

President Pro-Tem McLendon commented when the Water Committee had reviewed the alternatives when considering the water contract with West Palm Beach, the renovated waste water from the east central waste water plant had been studied. There had been indications that a separate irrigation system would be cost effective, however, it had not been considered further because all of the streets in the Town would have to be torn up. He suggested that some thought be given to re-consideration of parallel irrigation pipes in the ground when the City of West Palm Beach replaced the water mains.

Mayor Smith commented that there was a plan initially started for construction of an R-O plant at the Par 3 Golf Course. She referred to the article in the Palm Beach Post, noting that according to the size of the properties the figures for the irrigation of properties were not that bad. She commented that the Town of Palm Beach was affected as much by the water situation as anyone else in the County and would continue to comply with regulations.

Councilman Goldblum requested that Mr. Gerald Goldsmith, who was instrumental in installing the deep water well at the Palm Beach Country Club, address the Town Council regarding that matter.

Mayor Smith suggested that the Town Council prepare questions in regard to the water situation for Mr. Ken Reardon, from West Palm Beach Public Utility Department, who would be addressing the Town Council at the May 8, 2001, Town Council meeting.

Town Manager Elwell requested that the Town Council give staff direction as to any specific materials/information that would be needed for the discussion in regard to the water situation at the May Town Council meeting. It was determined that there would be only a conceptual discussion in May.

*******The luncheon recess was taken at 12:30 p.m*******

********The Town Council reconvened its meeting of April 10, 2001, at 2:00 p.m.********

*(During their luncheon break, the Mayor and Town Council, along with Town Manager Elwell, Town Attorney Randolph, and Planning, Zoning & Building Director Moore, visited the Society of the Four Arts, where they received a tour of the main library and children's library facilities.*

XII. DEVELOPMENT REVIEWS

Town Clerk Pollitt administered the oath to all those who would be testifying in the Development Review matters.

A. Time Extensions

1. None.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE NO. 8-2001 The application of David and Jennifer Fischer relative to property described as Replat of Eden Properties, Lots 18 and 18A; commonly known as 1030 North Lake Way; located in the R-B Zoning District. To allow construction of two (2) dolphin piles 171' from the abutting land, in lieu of the 150' maximum allowed. *(Consideration on March 13, 2001 was for informational purposes only. No final action was taken on this item).*

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stated that the application was for a variance from the 150' limit for construction of two dolphin piles. The applicant would need to go beyond 150' to have the two pilings on the outside so that there would be sufficient space for the boat.

Director of Planning, Zoning & Building Robert Moore advised that the reason the variance was necessary was that the placement of 150' matched the old bulk head line, and there was no objection from the staff in this case, as the variance request was minor.

**Councilman Wyett moved approval of Variance No. 8-2001, find the hardship as a safety issue for passengers and crew. The motion was seconded by Councilman Brooks.**

President McDonald asked if there had been any consideration of dredging in lieu of going beyond 150'?

Attorney Brindell explained that dredging permits were not usually authorized if there was sufficient width to extend the pier out without dredging.

**On roll call the motion carried 3/1, as Councilman Brooks was temporarily out of the room, and President McDonald cast a dissenting vote.**

b. VARIANCE NO. 13-2001 The application of Reginald J. and Carolyn Stambaugh relative to property described as The east ½ of Lot 68 and Lots 69-75, Palm Beach Shores; commonly known as 272 Queens Lane; located in the R-B Zoning District. To allow an existing two story house to maintain a 5.3 foot rear yard setback in lieu of the 15 foot minimum required, and to maintain a 94 foot platted lot depth in lieu of the 100 foot lot depth required by splitting from a portion of the property on Colonial Lane.

Ex-parte communication was declared by President Pro-Tem McLendon via telephone with Attorney Broberg.

Mr. Reg Stambaugh, on behalf of the applicants, submitted a position statement for the record, stating that the property at 272 Queens lane originally dated back to a plat, El Encanto 2; the issues that concerned the presentation today were a result of the original plat being configured as 94' x 100' lots; the original plan had been to have residences in the front of the street with the garages in the back; in 1941 John Volk had constructed a house on Lot 18, which at that time was separate from the acquisition of Lot 34; subsequently Lot 34 was acquired and added as a back lot; in 1970 the property had been deeded to Dr. and Mrs. Stambaugh. Mr. Stambaugh related that through the years a number of property owners who had acquired the lots had sold them and allowed in-fill of the vacant lots. He cited specific examples of such sales, and noted that the Town Code had changed, and there was now an issue as to the interpretation of the meaning of the Code in this instance. He noted that Lot 34 was the only lot with a 100' white wall, which prevented the continuity of the single family residential homes on Colonial Lane. He explained that the variance in question was essentially fulfilling the ultimate purpose of the plat. He presented graphic displays of the property in question. He maintained that to deny the variance would create an incredible hardship on the applicants, as neighboring property owners had sold similar lots in the past. He noted that the Code was not clear as to the meaning of the term nonconforming lot, and how the Code should be applied in this instance.

Dr. Reginald Stambaugh, 272 Queens Lane, addressed the Town Council, stating that he was the fourth generation to live in Palm Beach, and that there had been no bridges when the Stambaughs initially settled on the island, and the property in question consisted of mangroves when his family had settled on the island. He noted that his son had presented four other similar pieces of property that had been built upon in the area, and that there was one more property that could also be included.

Mr. Stambaugh explained that the purpose of Dr. Stambaugh's testimony was to advise that similar property owners had sold contiguous lots in a like manner, and that he was personally aware of five properties along Queens/Colonial Lane where contiguous lots were sold by property owners to subsequent buyers.

Director of Planning, Zoning & Building Robert Moore commented that there had been a misunderstanding when the Stambaughs had originally approached the Building Department regarding how the rear property on Colonial could be sold, and the understanding had been that in order for that rear property to be sold it could not leave a nonconformity as to the rear yard. He explained that the Stambaughs had not left the Building Department with a clear understanding of the issue. He noted that the lot was substandard as to depth, as were all lots in that subdivision, and in the past parcels had been permitted to be sold and built upon. The current house had been built with the setback that was permissible at that time.

Mr. Stambaugh stated that the hardship was the fact that the plat was approved by the Town in 1925, with the dimensions of 94' x 100', and the owners had relied upon a Code that was not clear and the owners expected the same treatment as other property owners in a similar situation; the lot had no use if not developed. He noted that there had been no unity of title prior to selling the lot.

**Councilman Wyett moved approval of Variance No. 13-2001, contingent upon ceding 5' x 7' behind the existing air conditioning unit, and trading it for a piece of land on the opposite side of the lot. The motion died for lack of a second.**

**Councilman Goldblum moved approval of Variance No. 13-2001 contingent upon the air conditioning unit being moved, with the hardship being the existing depth of the lot at the time the house was built. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.**

c. SITE PLAN REVIEW NO. 4-2001

(1) Appeal of Administrative Decision to Not Allow Cart Properties, Inc., Arturo Burigato, President, to be Considered for Site Plan Review for a Single-Family House, Making the House on Queens Lane Nonconforming. *(Deferred from February 13 and March 13, 2001 Town Council Meetings).*

(2) The application of Cart Properties Inc., Arturo Burigato, President, relative to property described as Lot 34, El Encanto Plat 2; commonly known as Lot 34 Colonial Lane and 272 Queens Lane; located in the R-B Zoning District. A request for Site Plan approval to construct a two-story, single family home on a non-conforming platted lot 94' deep in lieu of the 100' minimum required and 9,400 square feet in area in lieu of the 10,000 square feet minimum required. *(Deferred from February 13 and March 13, 2001 Town Council Meetings).*

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the architect, Ted Davis, would describe the construction plans in detail.

Architect Davis explained that consideration had been given to adjacent properties as the plans were developed; the driveway was screened on the front side; sufficient room had been allowed on the back side for landscaping; a hedge and partial wall had been provided to screen the adjacent property; screening had been provided around the trash cans; air conditioning units would be screened with a wall along the north property line, with landscaping in front and a 6' hedge screening it on the other side; the east side of the house had sufficient setback. He explained that the architectural character of the building related well to the rest of the street; all required drainage on the property was adequate; all conditions for approval had been met.

Director of Planning, Zoning & Building Robert Moore commented that the drainage plan had not yet been approved by the Public Works Department, and the pool area would need to be screened from neighboring property owners.

Mr. Davis replied that the drainage plans had been designed to satisfy the requirements of the site; the pool would be screened with a 6' hedge, with the landscape area screened with as 6' hedge as well. He noted that the 20' height limit had been selected for the house, which set the criteria for square footage; the maximum lot coverage was 3,816; the maximum floor area ratio was 4,230; cubic content ratio was 4.10.

Mr. Moore noted that there was encroachment in the rear utility easement, according to the Public Works Department, as well as a hedge in the right of way along Colonial Way.

Mr. Davis replied that the hedge would be kept out of the right-of-way.

In response to Councilman Wyett, Mr. Davis indicated that gutters would go directly to the underground system.

Mr. Gerald Goldsmith, representing the owner of 285 Colonial, addressed the Town Council, clarifying that the air conditioning units would be located towards the building on the back corner of the property, and the existing north/south wall between the two properties would be maintained at its current height along the length of the property, with maintained landscaping on both sides of the wall. He indicated that he would give permission to the applicant to maintain the landscaping on the wall.

Mr. Davis indicated the placement of the air conditioning units and pool equipment on the site plan.

**Councilman Goldblum moved approval of Site Plan No. 4-2001. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.**

(3) VARIANCE NO. 22-2001 The application of Cart Properties, Inc., Arturo Burigato, President, relative to property described as Lot 34, El Encanto Plat 2; commonly known as 279 Colonial Lane; located in the R-B Zoning District. To allow construction of two story, single family residence on a non-conforming lot which has a depth of 94 feet in lieu of 100 feet, and 9,400 square feet of area in lieu of 10,000 square feet minimum required.

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

Town Attorney Randolph explained that the Town Council could deal with Variance No. 22-2001 in this regard, which would render the appeal moot.

Attorney Broberg identified the hardship for the variance request (Variance No. 22-2001) in this case as being a platted lot deficient in size; the lot had been part of the property of the Stambaughs (as discussed in Variance 13-2001), and was 94' x 100'.

Director of Planning, Zoning & Building Robert Moore stated that lot was platted and undersized, and staff had no objections.

**Councilman Brooks moved approval of Variance No. 22-2001 with the hardship land itself, being that the platted lot was deficient in size. The motion was seconded by President**

**Pro-Tem McLendon. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.**

Attorney Broberg stated that he would now withdraw the request for an appeal of the administrative decision.

d. 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, 2001 Town Council Meeting).*

**This item was deferred earlier in the meeting, to the Town Council meeting of May 8, 2001, under item V. Approval of the Agenda.**

2. New Business - Minor

a. None.

3. New Business - Major

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.

Ex-parte communication was declared by Councilman Goldblum with Mr. Carter regarding the planned addition.

Attorney Peter Broberg, on behalf of the applicants, addressed the Town Council, stating that the lot was nonconforming; it was proposed to construct an addition; the present house was already deficient in its setbacks. He explained that the front of the house would be removed and replaced, with a net increase of 45 sq. ft.; the house had been built long before the Code had been put in place, and the lot was nonconforming.

Zoning Administrator Paul Castro commented that the applicant was proposing to expand the nonconformity on the already nonconforming house, adding a first and second story addition; staff did not believe that the first story addition expansion was necessary; although the lot was only 62 ½' wide, and the house was straddling the house in an awkward system, staff did not believe that the first floor addition was necessary to provide a front elevation and entry feature that would be conducive to the architecture of the house.

Councilman Wyett suggested that the applicant reduce the variance request, as recommended by staff.

Attorney Broberg noted that the proposed portico would be 2' further from the street than the existing one story element currently in place; the main two story addition would be 3 ½' further back from the street than the existing one story.

Mr. David Scaff,159 Seaspray, expressed concern with the plethora of variance requests on the "Sea" streets, stating that the nature of the streets was changing as a result.

**Councilman Wyett moved deferral of Amended Variance No. 9-2001, to the May 8, 2001 Town Council meeting, to allow the applicant the opportunity to consult with the Building Department. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.**

b. VARIANCE NO. 13-2001 The application of Reginald J. and Carolyn Stambaugh relative to property described as The east ½ of Lot 68 and Lots 69-75, Palm Beach Shores; commonly known as 272 Queens Lane; located in the R-B Zoning District. To allow an existing two story house to maintain a 5.3 foot rear yard setback in lieu of the 15 foot minimum required, and to maintain a 94 foot platted lot depth in lieu of the 100 foot lot depth required by splitting from a portion of the property on Colonial Lane.

This item was moved and heard earlier in the Agenda, under item B.1. Old Business, b.

c. VARIANCE NO. 14-2001 The application of Peter L. and Penny Townsend relative to property described as First Addition to Palm Beach, the part of Lot 10 lying west of Lake Way/Less S 9.5 feet/; commonly known as 1230 North Lake Way; located in the R-B Zoning District. To allow construction of a proposed second story addition on a one story house with a side setback of 14.8' in lieu of the required 15.0' (variance of 0.2' or 2.4").

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

Attorney James Brindell, on behalf of the applicants, addressed the Town Council, stating that the purpose of the request was to add a second floor over part of an existing one story building; there would be no increase in lot coverage, no decrease in landscaped open space, the CCR would be 3.68, well under Code. Attorney Brindell explained that the building currently sat at 14.8' on the portion of the north side where the second story was proposed; the applicant was requesting a 2.4" variance, so that the building did not have to be offset.

Architect Jacquie Albarran, SKA Architects, addressed the Town Council, referring to a graphic exhibit, noting that the nonconforming area had been indicated.

Director of Planning, Zoning & Building Robert Moore commented that the addition could be built without the need of a variance, however, the result would be a very odd looking exterior; staff had no objections to the variance request.

**Councilman Wyett moved approval of Variance No. 14-2001, with the hardship going with the land. The motion was seconded by Councilman Goldblum. On roll call the motion carried unanimously.**

d. VARIANCE NO. 15-2001 The application of Troy and Deborah Maschmeyer relative to property described as Lot 7, according to the Plat of Boulevard Estates, commonly known as 153 Kings Road; located in the R-A Zoning District. To allow the construction of a basement with a rear yard setback of 10.0' in lieu of 15.0' required.

This item was deferred earlier in the Agenda, to the Town Council meeting of May 8, 2001, under item V. Approval of the Agenda.

e. VARIANCE NO. 16-2001 The application of James Niedel relative to property described as Lots 479 and 481 of Poinciana Park 2nd addition; commonly known as 158 Seaspray Avenue; located in the R-B Zoning District. To allow construction of a second floor addition on an existing garage/guest house with a rear setback of 9.5' in lieu of the required 15.0' (variance of 5.5'), to allow a cubic content ratio of 5.46 in lieu of the allowed 4.5 (variance of .96), and to allow a side yard setback of 3.5' in lieu of the required 15.0' (variance of 11.5') for a balcony.

Ex-parte communication was declared by Councilman Goldblum with architect Jacquie Albarran; by President Pro-Tem McLendon with architect Jacquie Albarran on site with the homeowner; by President McDonald with architect Jacquie Albarran via phone and visually at the property site; by Councilman Wyett with architect Jacquie Albarran; by Councilman Brooks with architect Jacquie Albarran, and by walking the property.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the house had been built in 1925, with a two story garage/apartment complex in the rear. He presented photographs of the property in question, noting that the garage was extremely small; he noted that the original paver blocks had been removed with previous renovations, creating more landscaped open space on the property. The applicant was now proposing to remove part of the one story component of the garage/apartment building in the rear, creating additional landscaped open space in the rear yard and reducing lot coverage. He explained that the hardship was the undersized lot, the current location of the garage, and the increase of landscaped open space. He noted that the neighbors on each side had indicated support of the variance request.

Director of Planning, Zoning & Building Robert Moore commented that staff believed the project could be designed to create reduced variance requests; the second story that was being requested would not be permitted today on the accessory lot on such a small lot. He noted that there was also a variance request for a balcony.

Architect Jacquie Albarran referred to a graphic exhibit, pointing out the hardscape that had been removed to date.

**President Pro-Tem McLendon commented that the owner had improved the property, and recommended approval of Variance No. 16-2001, with the hardship being the existing property and size of the lot. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.**

f. VARIANCE NO. 17-2001 The application of Robert L. Terry Jr. relative to property described as West 40 feet of Lot 17 and Lot 19, Gregory Addition; commonly known as 266 Monterey Road; located in the R-B Zoning District. To allow construction of a front entry portico to be set back 20.8 feet in lieu of the 25 feet required.

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

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, exhibiting photographs of the property in question. He explained that the owners wished to add a portico to the front entry.

Zoning Administrator Paul Castro commented that the size of the portico needed to be clarified, and the hardship addressed.

Attorney Broberg explained that the hardship was that the house had been built right up to the building line at the time it was originally designed.

Architect Anthony Harrington, Brower Architectural, addressed the Town Council, stating that 5' x 10' was the foot print of the concrete steps, and the actual volume was 8' x 4'.

**Councilman Wyett moved approval of Variance No. 17-2001. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.**

g. VARIANCE NO. 18-2001 The application of William P. Rayner relative to property described as Lot 35, Revised Plat of Stotesbury Park; commonly known as 216 Emerald Lane; located in the R-B Zoning District. To allow construction of gateposts and a gate at 11 feet in height in lieu of the 8 feet maximum allowed, and to allow an electronic gate to be set back 14 feet in lieu of the 18 feet required. **(Request for withdrawal per letter dated, April 4, 2001, from Peter S. Broberg, Agent).**

**Councilman Wyett moved deferral of Variance No. 18-2001. The motion was seconded by Councilman Brooks. On roll call the motion carried unanimously.**

h. VARIANCE NO. 19-2001 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.

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

Attorney Robert Deziel, on behalf of the applicant, addressed the Town Council, stated that it had come to his attention that there would be some ancillary questions relating to the construction process of the project, in addition to consideration of the variance. He requested deferral until 4:00 p.m. so that the contractor could be present.

The Town Council deferred Variance No. 19-2001 to a time certain of 4:00 p.m.

Attorney Deziel exhibited an architectural drawing of the property in question, stating that the variance request was for a wall ranging from 8'4" to 11'4", in lieu of the 6' height required by Code. He explained that the request was being made as a result of the topography (grade differential) between the crown of the road and where the wall would be placed; all of the other walls in the neighborhood either received variances or had been built prior to the requirement for a variance; the wall was also needed for security reasons.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Fire Department: closed gate did not meet Fire Department 13.5 minimum clearance; Comprehensive Plan: request does not appear to meet criteria for granting variance; Building Department: hardship must be addressed; time schedule for completion; Town Manager: address status of historic tree.

Attorney Deziel responded that the gate had been raised to meet the requirement of the Fire Department; the historic tree had been relocated to a nursery, and was expected to be relocated to the lake front parcel sometime this fall; the construction schedule could be addressed by the contractor, Hugh Davis.

Mr. Hugh Davis, Davis General Contracting, addressed the Town Council, estimated that the project would be completed at the first of the year, or in the late fall of the year.

In response to Mayor Smith, Mr. Davis stated that construction had begun four years ago, in 1997, and that he had not paid any fines for exceeding the length of time for construction on this property; there had been some revisions to the plans that had taken place within the past six months; he believed the major design hurdles had been handled; the interior was progressing very nicely; the exterior, hardscape, and landscape would be focused on in order to come to resolution.

In response to President McDonald regarding a specific date for completion, Mr. Davis replied that the landscaping and site work items would be pending; he suggested that a definitive schedule be submitted; he could not give a specific answer today because he did not have the available information.

Attorney Deziel stated that the landscape plan had not been tendered to the Architectural Commission for review.

Attorney Maura Ziska commented that a portion of the landscape plan would need to go to the Florida Department of Environmental Protection (FDEP); those plans would be submitted to the FDEP at the end of the week – there was a 90-day administrative return on them. She suggested that Mr. Moore write a letter to expedite that process. The landscape plan was scheduled to be submitted to the Architectural Commission in May.

Councilman Wyett moved that with the house and landscaping must be completed by October 31, 2001; before anything else was done to the house the front of it must be landscaped.

Mr. Carlos Sard, Sard and Company, Inc., owner's representative for Sydell Miller, reported that since last June Mrs. Miller had been working very hard at correcting the plans; there had been a problem with the first interior decorator; all were working very hard and diligently to get the project done sometime next fall. He suggested that November was doable; they would be prepared for the Architectural Commission meeting in May.

In response to Mayor Smith regarding why the project had not gone to the Code Enforcement Board, Director of Planning, Zoning & Building Moore replied that staff had met with the owner's representatives, the contractor, the attorneys, and the architects to try to develop a plan to finish the house; Mrs. Miller and Mrs. Picower had met a little over one year ago with him to try to come to some agreement with certain issues at which time most of the concerns of Mrs. Picower were addressed. He stated that the contractors and attorneys had given assurance that the house would be finished, however, it was not finished; in retrospect it should have gone to the Code Enforcement Board; he stated that it was the first and only house that had gone over the time limit. He explained that staff had been trying to eliminate the months of postponement of the project for a Code Enforcement Hearing.

**Councilman Wyett moved deferral of the issue regarding construction time limits on the project to the May 8, 2001 Town Council meeting, for submission of the total project, with a schedule/deadline attached. President McDonald passed the gavel to second the motion. On roll call the motion carried unanimously.**

Attorney Deziel clarified that he would work closely with the Building Department regarding a schedule, and suggested that extended hours be discussed for the summer months.

i. VARIANCE NO. 20-2001 The application of Dr. Steven H. Rose relative to property described as Lots 21 through 24 inclusive and East 15 feet of Lot 20, Block 2, Ocean Park, H.W. Robbins Addition to Palm Beach; commonly known as 163 Seminole Avenue; located in the R-B Zoning District. To allow construction of a one story, two car garage on an existing footprint with a zero side yard setback in lieu of the 12.5 foot setback required, and to allow the proposed garage to also have a zero rear yard setback in lieu of the 10 foot minimum required.

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

Dr. Steven Rose addressed the Town Council, referred to a graphic exhibit of the property in question, stating that the wall on the two story garage on an historic house was falling down. It was currently being supported by temporary beams, and the variance request proposed that the garage be rebuilt with a one story garage; the current garage was beyond repair; there was no other area of the property where the garage could be placed.

Director of Planning, Zoning & Building Robert Moore suggested that the garage be set back further from the property line.

**Councilman Wyett moved approval with the condition that the paved area be shortened. The motion was seconded by Councilman Goldblum. On roll call the motion carried 4/1, with President McDonald casting a dissenting vote.**

j. 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.

Ex-parte communication was declared by President Pro-Tem McLendon via a meeting with Attorney Kolins regarding the merits of the application, and via a meeting with Mr. Janis, an opposing neighbor; by Councilman Wyett via telephone with Attorney Kolins to discuss the merits of the application, and via a meeting with the applicant; by Councilman Brooks via telephone with Attorney Kolins, and via telephone with Mr. Paul Birmingham.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the variance request was to add a relatively small second story to the existing structure, and to enlarge a mechanical room in the basement. He explained that the house currently had two bedrooms, and the Sarkis family consisted of seven children and many grandchildren. The applicant was requesting the ability to have a master bedroom suite on the second floor. He exhibited photographs of the property in question and graphic material relating to the proposed construction, pointing out that approval of the request today would have no impact on the neighboring property owners. He explained that the hardship was the undersized corner lot, and the lay of the land.

Zoning Administrator Paul Castro commented that the bottom level of the house was not considered a basement; issues from staff standpoint were the fact that three stories would be created in the R-B Zoning District; the split level issue; the basement issue; the point of measurement as it related to those houses on the dune – the provision was placed in the Code because of the dramatic change in the elevation from the top of the dune going west. The applicant was now requesting to put a second floor above the one story portion of the house, having a point of measurement higher than the average – the cubic content was actually much larger because of the point of measurement being requested, which was much higher than the bottom level of the house off the dune. He explained that staff had some concerns from the standpoint of neighboring property owners to the west – the Code was intended to require re-design or re-build to meet the Code, or not to build at all. He explained that the habitable space was not the issue; it was the point of measurement and the intent of the Code – from that standpoint staff did not believe there was a hardship in this case.

Attorney Kolins responded that the applicant was subject to and entitled to the 4.5 CCR standard, even though it may be outdated a year from now as a result of staff study/recommendations. He explained that the average of the crown of the road at the three corners for the house in question was 14.74, and the Code allowed the addition of 18" to that average in order to build; the point of measurement was 16.14, and the house was precisely at the point of measurement at the level that it was supposed to be under the Code. He maintained that three levels were not being created.

Mr. Willie DeGray, 110 Seagate Rd., commented that a petition had been signed by Mr.

Janis, Mr. Reese, and other neighboring property owners in objection to the project. He explained that the house had been on the market for some time, and was advertised as a two story house; there had been a maid living on the downstairs portion of the house for at least four years. He requested that information be gathered from Mr. Andy Janis, and Mr. David Reese, neighboring property owners, before any decision was made.

Dr. Sten Lilja, 1330 N. Ocean Blvd., commented in objection to the variance request, reading from a written statement, and stating that it would set a precedent for more of the same, which would eventually alter and destroy the character of the neighborhood. He stated that the application requested a house that was too large for the size of the property and the surrounding areas, and that the hardship was self inflicted.

Attorney Kolins responded that there were second story homes all over the north end of Town, as well as the area along the ocean in this section. He distributed photographs of the street scape, maintaining that the proposed house would fit in just fine. He pointed out that it was impossible to suggest that the request would have any bearing to Mr. Janis, who could not see the house in question regardless of where he stood or looked out from his property.

Architect Harold Smith exhibited line of sight diagrams of the view that Mr. Janis would see of the second floor addition. He explained that the living area would constitute approximately 3,500 sq. ft., with the total area being 5,660 sq. ft.

Attorney Kolins noted that a meeting had been held with the property owners in the area, and Mr. Janis had indicated that his home would belong to his children, who would want to add a second story, and that he did not want the second story of Mr. Sarkis in the way.

Mrs. Jolene Sarkis addressed the Town Council, stating that they had gone to great lengths to determine what could be done to the house; they had met with Zoning Administrator Paul Castro and wanted to work within the confines of the Code. She stated that the neighbors had told her that they had signed the petition before they saw the plans, and had been told that it was going to be a big three story house.

Mr. Charles Sarkis addressed the Town Council, stating that there were 13 houses in the area that were two story. He stated that he had gone to see Mr. Janis on three occasions and he had refused to see the plans or entertain conversation. He stated that he currently lived in the neighborhood, and had purchased the house because of the neighborhood.

Councilman Brooks suggested that the height of the house be compared to houses running north and south on Ocean Blvd.

Attorney Kolins responded that the north/south streetscape was very compatible with the proposed house.

Councilman Wyett commented that the existing house was almost not saleable; it had two bedrooms and was not large; the mechanical room was not a livable space. He maintained that the architect had been very sensitive to the concerns of neighboring property owners.

Director of Planning, Zoning & Building Robert Moore commented that the house could not be built in its present configuration today; remodeling was encouraged rather than new construction. He explained that the way of measuring the point of measurement had been changed in the area in order to be fair to the property owners on Ocean Blvd. He maintained that the biggest question was whether the applicant could build the same house to the east, and not need the variance. If the answer was yes, the applicant would not need the variance.

Zoning Administrator Castro noted that basements were allowed in the R-B Zoning District, however, they did count as a story.

Architect Smith commented that the applicant could not build the house without the 1 ½' variance.

Attorney Kolins commented that the house was not three stories, as the stories would have to be directly over each other to count as three stories; the applicant could tear the house down if he could not remodel, and live without the underground area, however, a taller, bigger structure could then be built on the land with front loading garages. He suggested that the alternative, from a visual standpoint, was infinitely worse than the variance request today.

**Councilman Wyett commented that there would be an economic hardship in tearing down the house and rebuilding, and the Florida Department of Environmental Protection (FDEP) would then require a certain height. He moved approval of Variance No. 21-2001, with the hardship being the lay of the land. The motion died for lack of a second.**

**Councilman Wyett then moved deferral of Variance No. 21-2001, to the May 8, 2001, Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion resulted in a tie vote, with Councilman Wyett and President McLendon casting affirmative votes; Councilman Brooks and Councilman Goldblum casting dissenting votes. Mayor Smith then cast an affirmative vote for deferral to break the tie, requesting that the applicant be told what was necessary to come back before the Town Council.**

Town Attorney Randolph pointed out that a 3/5 vote of the Town Council was necessary for a motion to pass, however, for purposes of deferral the Mayor could break a tie.

**Councilman Wyett clarified that the deferral was being made so that the applicant could try to reduce the variance requests.**

k. <u>VARIANCE NO. 23-2001</u> The application of Bank of New York Trust Company (Cayman) Limited Trust relative to property described as Casa Apava, Lot 7; commonly known as 1341 South Ocean Boulevard; located in the R-AA Zoning District. To allow construction of a new two-story house with a point of measurement for the height determination not to exceed 23 feet NGVD in lieu of the 7.5 feet NGVD maximum allowed.

Attorney Robert Deziel, representing the applicant, addressed the Town Council, distributing photographs of the property in question. He explained that an existing residence on the property would be demolished in order to have a new home built. He reviewed the elevations and site plan of the proposed new residence, indicating comparable surrounding residences. He explained that the existing house had a variance to build a new home at 23' NGVD; although the owner had that approval, the house had been built at 21.74' NGVD. He explained that today the request was to obtain approval for a height of 23' NGVD, which was the same approval that had been given previously; the Code required that the crown of the road be used as the base measurement when constructing a home; since the crown of the road at this point was 7.5' NGVD, there was no way that even a one story residence could be built without the benefit of a variance. In addition, the State of Florida had indicated that they would require a minimum finished floor elevation in the high teens, and that they frown upon homes being built lower than the existing floor elevations.

Attorney Deziel pointed out that the major surrounding houses ranged from 20.8' to 23.5', with an average of 22.42' NGVD. He explained that once the finished floor elevation variance was obtained, the applicant would build a home according to Code requirements. He stated that the hardship had to do with the change in elevation of the land; the Florida Department of Environmental Protection (FDEP) would not allow excavation down to 7.5' to meet the Code requirements; therefore, some variance was required.

Zoning Administrator Paul Castro commented that there was definitely a grade change relating to the crown of the road, and in the past, several houses in the same area had requested point of measurement variances relating to the topography and the dune. He acknowledged that the previous owner had received a point of measurement of 23', and at that time had demonstrated a hardship relating to the topography. He recommended that the applicant be sensitive to the neighbors regarding the construction and lay out of the house, with the point of measurement granted.

Attorney Ron Kolins, representing Mr. and Mrs. Picower, neighboring property owners, commented that the point of measurement variance was not the minimum variance that would resolve the problem; the house to the south of the Picower was well higher than their house; the proposed house was also higher than the Picower house; the Miller house to the south was also taller than the Picower house, all of which were to the great detriment and unfairness to the Picowers. He noted that there was no objection to the proposed layout of the new house, or to the granting of a variance, however, the Picowers were requesting that the proposed house be no higher than their house. In addition, there had been construction next to the Picower house for the past four years, and it was not yet finished. He requested that a firm and absolute maximum time of construction be applied for construction on the proposed house.

Attorney Deziel responded that he believed that it was arbitrary to insist that a home be no higher than another home in the neighborhood; there was a only a 5' difference involved; the Picower house had been built 80 years ago; the proposed house was no larger than theirs on a relative basis. He stated that he would discuss a construction time frame that would be acceptable. He suggested that he reduce the height 1', to the existing floor elevation at 21.74' NGVD.

Attorney Kolins responded that he was confident that the architect could find a way to reduce the height to be no higher than the Picower house.

Director of Planning, Zoning & Building Robert Moore commented that a point of measurement had previously been granted at 23', and the existing house was approximately 3' taller than the Picower house. He suggested that a compromise be made with a point of measurement at 23', and no higher than the currently existing house.

Attorney Kolins responded that the difference between the existing house and the Picower house was 2'; if the applicant started at 21.74' NGVD, that would bring the house to the same approximate height of the Picower house.

Mr. Moore pointed out that the existing house was much closer to the Picower house than the proposed house.

Attorney Kolins replied that was not true – the two story portion of the houses were exactly in the same place.

Attorney Dean Vegosen, on behalf of the owner of the property, which was under contract for sale, stated that he had heard Attorney Kolins say earlier that the way to determine these things was to look at the neighborhood and the streetscape, and if a home fit in and did not make an exception then it was perfectly fine. He maintained that the proposed house would fit with the neighborhood; it was not appropriate for a neighbor to say that a house could not be taller than theirs; if the house was not excessively dissimilar to the other houses in the neighborhood, then it should be approved.

**Councilman Goldblum moved approval of Variance No. 23-2001 at 21.74' NGVD. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/2, with Councilman Goldblum, President Pro-Tem McLendon, and Councilman Brooks casting affirmative votes; Councilman Wyett and President McDonald casting dissenting votes.**

In response to Councilman Wyett, Mr. Moore indicated that construction was limited to a 27 month period.

Attorney Deziel replied that the applicant could certainly work within that time frame.

Mr. Moore explained that if the house was not completed within 27 months, it would technically go to the Code Enforcement Board, where it would be considered as a code violation, and a date and fine set if they did not finish by a certain time.

**Councilman Wyett moved that the house be completed within 27 months, or that construction would cease at that time. The motion died for lack of a second.**

Town Attorney Randolph advised that the variance had already been granted, and the Code addressed the time frame.

President McDonald clarified that the house would be constructed within 27 months, and if not finished a revocation of the permits would be proper and could be considered at that time.

1. SITE PLAN REVIEW NO. 6-2001, with Special Exception and Variance 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, a swimming pool, twenty-one cabanas and two tennis courts on 4.079 acres; to allow a special exception to allow both buildings to be five stories with a maximum 22% lot coverage and to grant a variance for the five-story multi-family building on the west portion of the property with a point of measurement for height of 20.0 feet NGVD in lieu of the 7.5' NGVD maximum allowed.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the objective was to remove the existing Beachcomber Hotel units, some 50 units, and replace them with 30 condominium units between two buildings; there would also be a 50% reduction in traffic generation from the site, underground parking with a pool, 21 cabanas, two tennis courts, and the buildings would be no further seaward than the existing line of buildings in the adjacent areas, and the buildings would be no higher than adjacent buildings to the south. The first inch of run off would be retained, and all open space and setback requirements would be met.

Attorney Brindell reviewed the requests being made today, noting that the hardship regarding the variance request was the extreme change in elevation over the property. He pointed out that meetings had been conducted with The Palm Beacher, immediately to the south, a presentation had been made last week to representatives from the Citizens' Association, the Beaches and Coastal Systems representatives in Tallahassee had been met with to discuss the coastal construction control line issue.

Architect Gene Lawrence addressed the site plan, exhibiting architectural renderings of the proposed construction, detailing the unit themselves, entranceway, tennis courts, and pool deck.

Zoning Administrator Castro commented that staff believed the project to be excellent as it related to the area and the use of the property, however, there were some major concerns relating to the design of the bottom floor, what they were calling a basement and sub-basement – by definition of the Code it did not meet the requirements. A sub-basement would allow the garage areas to be within required setbacks provided that they were below the lowest street grade on the street that they front – the proposed garage areas did not meet the Code requirements. In addition, the basement was not counted as a story in the zoning district, provided it did not exceed 8' above datum, and did not have any uses other than garage or utility services. Both of the buildings had several uses that were not permitted within a basement area, including cabanas, recreation rooms, mail room and offices. Staff recommended deferral in order to meet with the applicant. He noted that staff was unclear regarding the topography and the sub-basements, because on the south side of the property it appeared that there was a substantial change in grade from 20' to 6.5' between the tennis courts and the sub-basement; the point of measurement was being requested at 20', however, the actual structure looked substantially taller from South Ocean Blvd.

In response to Councilman Wyett regarding the placement of sand that would be excavated, Mr. Lawrence stated that it was preferred to build up a dune, put the sand on the beach, and build and nourish the beach. He indicated that if there was any sand left he was sure the owners would be happy to give it to the Town.

Councilman Wyett commented that he found the parking in between the two buildings objectionable.

**Councilman Wyett moved deferral of Site Plan Review No. 6-2001 to the May 8, 2001, Town Council meeting. President McDonald passed the gavel to second the motion.**

Attorney Brindell stated that several issues could be resolved today that would be helpful to completion of the work with staff – the point of measurement issue, and the five story issue.

Mr. Castro replied that clarification of the application was needed by staff – there had been an issue related to the through lot; the application would also need to be modified to include the east side of the property.

**On roll call the motion to defer carried 4/1, with President Pro-Tem McLendon casting a dissenting vote.**

Attorney Brindell commented that the strip of land immediately across the street along the old WPBR site was not subject to the sales contract, however, the applicant had agreed to develop a landscape plan for that area directly across the street from The Beachcomber property, as it was currently an eyesore.

President McDonald clarified that the intent of the owner of the WPBR property should be determined before any decisions were made regarding the project.

Councilman Wyett suggested that landscaping be required, in advance of construction, along the perimeter of the property, so that during two years of construction the site would be screened.

Attorney Greg Young commented that the parcel on the west side of A-1-A was not included in the purchase, and his client did not have any plans to do anything with the property. He encouraged the Town Council to act solely on the application, as his client did not have any plans for the parcel on the west side of A-1-A.

Mr. Gordan Decklebaum commented that in negotiations to purchase the property he had been told that portion was not for sale.

Director of Planning, Building & Zoning Moore commented that there was a lawsuit settled with the City of Lake Worth with a resident, concerning development on submerged land, and the Army Corps of Engineers were blocking that development. He suggested that the developer of the property make an arrangement between now and next month to consider leasing and maintaining it, as it was a terrible eyesore. He noted that the owner of that portion of the property had been very uncooperative regarding keeping the area clean and landscaped.

Attorney Young commented that there had been some Code Enforcement actions taken, and that his client was not a resident of the United States, had suffered a stroke and had not been verbal and able to attend to business affairs. He noted that it had been brought into Code compliance, and that he believed the eyesore was on the east side of A-1-A, not on the west side. He requested that the Town Council review the issue of this particular property independent of the application pending before them.

4. Other

a. None.

XIII. ANY OTHER MATTERS

There were none.

## XIV. ADJOURNMENT

The Town Council meeting of April 10, 2001, was adjourned at 6:00 p.m.

Jack McDonald
Town Council President

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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