

Council, Mayor and Staff:

**On July 15, 2020 Council instructed that we all get together and discuss.** My wife and I were looking forward to sharing ideas with the lorio's (131 Seaview owners) and their landscape planner (Mr Williams). To quickly resolve the issue of their planned huge trees bringing iguana feces to our roof. Meeting in person can build trust, and save Council precious time.

Unfortunately the lorio's and Mr Williams still have never contacted us (**ever**). We wrote friendly invites to call, discuss, meet and we still are happy to. They simply will not speak with us. Instead we must now respond to the lorio's July 23 letter for the upcoming Council hearing:

The lorios now amazingly propose **a huge set of Calophyllum Brasiliense tree hedges found in Brazil's Amazon Rainforest to be planted 35 feet wide all the way across our building, 13.5 feet high just at our roof soffits, where iguanas had always left feces!**

See Calophyllum Brasiliense at the link:

<https://www.flickr.com/photos/mercadanteweb/albums/72157630466293022>

Photo in the **above link** shows Calophyllum Brasiliense found in Brazil, Peru Amazon Rainforests (a/k/a "jacareuba" "Brazil leaf" "Santa Maria"). It absolutely does not belong just under our (any neighbor's) roof soffits. It has large plentiful fruit, coarse leaves, thick branches and grows fast. Its **fruit is poisonous to humans and pets**, but iguanas may love this plant of the **Amazon Rainforest**, which is lizards' natural habitat. It is very tough as a hedge to keep trimmed, and can grow to a massive 60 feet tall. See the **link**:

<https://www.alamy.com/jacareuba-or-lagarto-caspi-calophyllum-brasiliense-and-brosimum-right-image60694610.html>

See also the AUB education site quote, first paragraph: "*One should remember that its **fruit is poisonous** and this can be an undesirable aspect...*"

See link:

<https://landscapeplants.aub.edu.lb/Plants/GetPDF/5fa2b0d8-d6c2-4c44-afd4-0ef1f5896e54>

Our **friendly recommend** to the lorio's was instead a **Podocarpus** hedge, landscape experts' favorite tall hedge for South Florida. However, we received **no answer** at all from the lorios on this idea, nothing.

**Podocarpus** hedge is all across the entire **front** of the **Everglades Club** Palm Beach on Worth Ave. Podocarpus is used by experts as a tall hedge in fine gardens as it can be manicured, and is very attractive. **Podocarpus** is "salt-tolerant, hot and cold tolerant, does well in any area of South Florida. Hot sun or shade is just fine." Podocarpus is in fine home gardens throughout the Town of Palm Beach. (South Fla. plant guide on Podocarpus link:

<https://www.south-florida-plant-guide.com/podocarpus.html> )

**Podocarpus** was chosen by the **Town of Palm Beach** for its renewed **Fountain Park** in the center of town (see photo below). *Podocarpus is the entire Fountain park!*



Our town parks have **no** Calophyllum hedge anywhere, nor does the Everglades Club. Everglades Club and our town would never choose Calophyllum, as that would be a mess.

Our town wisely chose **Podocarpus** for hedges, as it is safe, non toxic, sturdy, attractive, and much nicer to keep trimmed. The new White Elephant Palm Beach also has podocarpus hedges, as does the new Bristol condos.

Breakers landscape experts also chose Podocarpus for all their main hedges to replace the Pine, as it looks great and is sturdy. Podocarpus can also be “manicured” into curves as seen at the Breakers. It is the most desired hedge for landscape planners. There are no Calophyllum hedges anywhere on Breakers property, as that would be a mess.

**A reasonable 9 foot height limit:** Podocarpus is still a very tall grow hedge. It can grow 40 feet tall easily. Last month we wrote letters (via Maura) proposing as a courtesy, the idea of **Podocarpus** 35 ft long hedge by our building. But no taller than **9 feet**. Iguanas can still climb Podocarpus to our roof, so a 9 ft limit is essential.

We even proposed they do this **while we own our home**, which is **currently for sale**. We have heard **no response** at all to this reasonable idea. Just nothing. The Iorio's and Mr Williams have never responded to any of the friendly letters or phone calls **ever**. Not a good sign for building **trust**. We will be happy to provide Council or staff with copies of all the letters we have sent the Iorios.

**WHY A LIMIT OF 9 FEET?** **After 3 years trying many things to keep iguanas from our roof, only when we cut 6 feet of the Iorio's current hedges away from our 15 foot roof soffits, did iguana feces immediately and totally stop. Hence the 9 feet height limit. (15 - 6 = 9)** (Note: Our historic soffit ornaments are actually at 15 feet height, not 15.5'. Anyone can come and measure. Mr Williams' drawing is a bit off). **Photo** below: our soffits, our mutual wall & tight areas.

**Cutting less than 6 feet of their hedges away from our soffits just did not stop iguanas.** We tried 2, 3, even 4 feet cut away on the hedges, and iguanas still got on the roof. Only when we cut a full 6 feet, as experts advised, did Iguana **feces immediately stop everywhere** on the **roof**, wall, their patio, our front above our garage, our driveway, everywhere.



It has now been **9 months** and the iguana problem is still 100% solved, to our relief after 3 awful years. We also were puzzled why 3 or 4 feet distance did not stop the iguanas. But the iguana handlers we spoke to told us: “*you need to cut 6 full feet away*” and they were correct. It worked! Unfortunately, the lorio’s tree hedge plan, **35 feet** all across this wall (in photo) and **height** just at our **roof soffits** (in photo), will bring iguana feces right back to our roof.

**Other reasons for the 9 foot limit:** the higher the hedge the more impossible to keep trimmed, requiring tall ladders in a *tight* area. See **pic:** our very **tight area** on our right side of wall. (*Note also: the west neighbor's hedges shown in the pic are actually 6 ft from our roof. A side view pic of the distance is below*).

We also keep soffits painted on this historic home, and put shutters up, all using tall ladders annually in this **tight space** that may have hedge branches that would make this hazardous. The wall is only 5.5 ft high in that area. With a tape measure one can see that **9 feet is tall enough**, with 35 ft wide of hedges pouring out 4 feet over our wall in that tight space (see pic).

We will *also* have 70 more feet of loiro’s giant hedges all across our south boundary we are required to keep trimmed, but we are not complaining about that. Our concern is their **frightening** hedge height request along our building, just at our roof soffits.

**Fact: If the lorio’s hedges are any higher than 9 feet by our building, then iguanas will get to and leave feces on our big roof again. The 2 feet “protective” distance in Mr Williams’ drawing will not stop iguanas. Experts remind us: iguanas are amazing climbers.**

Iguana feces would once again be a serious *hazard* for my wife and I using our garage and driveway, as feces would also fall from the roof front. **Feces did fall on our heads during rain**, after we thought we had cleaned everything. Once, after returning from 2 months away, there was **40 square feet of iguana feces** all over our roof. See **pic** below of **daily feces from our front roof**. We had to clean the roof repeatedly. It was a 3 year nightmare that we will not put



up with again. Iguanas also tore at our large roof vent trying to enter our attic, forcing us to tar it over completely. See link to a similar issue: <https://www.youtube.com/watch?v=SNZaJedOLqQ>



**The science:** Iguana feces mixed with rainwater is a hazard, falling from a roof, falling on driveway, onto walking areas. **This is a severe hazard to my wife and I, and any guests.** See the link. There are many such articles:

[Captive Green Iguana Carries Diarrheogenic Escherichia coli Pathotypes](#) See also: [Captive green iguana is a reservoir of diarrheogenic Escherichia coli pathotypes](#)

**The TOWN OF PALM BEACH also warns of this known serious health hazard:** *“Green iguanas can transmit infectious bacterium Salmonella to humans through contact with water or surfaces contaminated by their feces”.*

Town link: <https://www.townofpalmbeach.com/909/What-is-a-Green-Iguana>

The lorios’ plan requires us to rely fully on them (and their gardeners) to keep a difficult 35 feet wide of hedges trimmed to height, week after week for years, to keep iguana feces off our roof. Their “plan” shocked us. **We don’t want a future constantly needing Town Staff, Council, other authorities to protect us from the lorio’s hedges, and iguana feces they cause.** The lorios are not responding to calls and letters, why would they in the future?

So there would need to be a **proper written short agreement** that the lorio’s promise and agree to keep the hedges, plants near or affecting our building **limited to 9 feet** (including all expenses to do that). Not simply a statement at hearing or note on a drawing buried in plans, or an email. The agreement will be for future different Town **staff** or Council. We and **Town Staff** will have a document to **easily rely on** any time.

**Response to the lorio’s letter to Council #1:** The lorio’s current hedge is 3 or 3.5 feet inside their property, *proving the lorio’s plans to put it there again is **not** enough distance.* That hedge still provided a fine iguana ladder to our roof. So will their new planned hedges. On their question if we want removal of their current hedges (lorio’s #1 and #5) yes please **do** remove these whitefly, termite infested hedges as soon as possible. Builder must then place tall protective panels. Panels should be removed if a *hurricane watch* (and any open building materials) to prevent damage to our property. I believe all of that is a requirement of builders.



**The lorio's #2.** Near our building the current hedge was kept **11 to 13 feet** height the past 3 years, and iguanas still had an easy climb to our roof. The lorio's now want new hedges of Amazon Rainforest trees at **13.5 ft** height! Iguanas feces will be back on our roof. It was only when we cut a full **6 feet** of hedge away from our **15 foot** roof soffits, that the iguana feces finally stopped.

As to Mrs lorio's comment on the location of the roof structure of our 1925 historic home, and thus location of our home itself, this is irrelevant under **law**. It is also unclear if Mrs lorio is asking for demolition of our home!

**What is the relevant law all must follow?** The lorio's saw our roof structure **before** they bought 131 Seaview months ago. The lorio's had advice likely from architects, builder, broker. Courts make clear time and again, *a new owner who should have been aware of such a problem, certainly cannot later complain.* Namon v. State Dep't of Env'tl. Reg., 558 So.2d 504 (Fla 3rd DCA 1990). *"A person who purchases land with notice of ... impediments ... can justify few, if any, legitimate expectations of development rights which rise to the level of constitutionally protected property rights."* Elwyn v. City of Miami, 113 So.2d 849, 852 (Fla. 3d DCA 1959).

The **relevant** issue is whether this Town can place restrictions on an owner's use of their property, as in this case. Florida's Supreme Court (current law) answered that question absolutely yes, *"[especially if it] adversely impacts another's property"* See Graham v. Estuary Properties, Inc., 399 So.2d 1374, 1382, 1383 (Fla.), cert. denied sub nom.

Other law that a Court would look at, if this all ends up there: "subjective expectation" that land could be developed a certain way *"is no more than an expectancy, and does not translate into a vested right."* Namon v. Department of Env'tl. Regulation, 558 So. 2d 504, 505 (Fla. 3d DCA 1990).

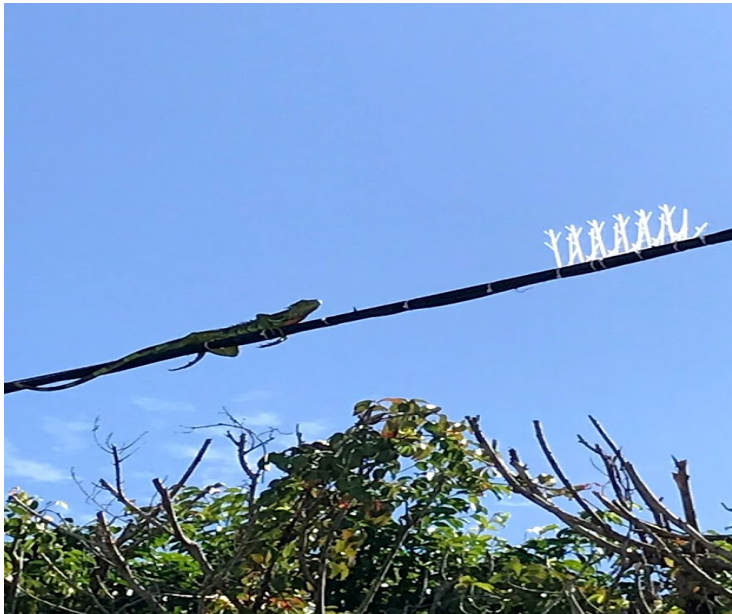
Case law explains if an owner is not allowed to *"do all they would like to do" with their property, "that alone is not sufficient for them to complain."* See Burger King v. Metropolitan Dade County, 349 So.2d 210 (Fla 3rd DCA 1977); Metropolitan Dade County v. Reineng, 399 So.2d 379 (Fla. 3rd DCA 1981); Nance, supra; Crossroads Lounge v. City of Miami, 195 So.2d 232 (Fla. 3rd DCA 1967)... *[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it is unsuited...and which [injures] the rights of others."* Florida Supreme Ct., in Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981), cert. denied, sub. nom; and See also Namon at 505 (citation above).

Courts have made clear: **"A 'reasonable expectation' must be more than a 'unilateral expectation or an abstract need'"** Court in Namon, citing Claridge v. New Hampshire Wetlands Board, 558 So. 2d 504, 505 (Fla. 3d DCA 1990); 125 N.H. 745, 485 A.2d 287, 291 (1984). **That includes Mrs lorio's unilateral expectations or abstract needs for "privacy."**

**As to Mrs Iorio's privacy:** Our guest house is almost always empty, we never rent. We are always at the main house a distance away. At our club daytime, and gone summers. We live alone and have no children. The Iorio's will have privacy. The Iorio's would be more concerned about iguana feces & odor than about privacy, if iguanas get back on the roof.



**The Iorio's #3:** It is the lower thick **ATT Cable** iguanas use, and parts of it droop as low as **15 feet** in spots. Iguanas **do not** use the 35 foot high *powerline*. The ATT cable is just above our roof (seen in pic). **Mr Williams' drawing of a straight 18 ft cable all the way across** (and calling it "*powerline*") is incorrect. Anyone can come for a view, bring a tape measure too! **Drawings look nice, but a live viewing proves all.**



**Pic** of iguana confronting our bird spikes that are also protecting the Iorio's patio areas 100%.

**The Iorio's #4** implies the next owner of our house will have no rights. Most buyers who look at our house want to preserve it. The next owners will not want iguana feces on the roof either. They will complain. *The problem will continue to take up time of staff, police, council, etc.* **Years of dispute can be avoided now at the planning stage.**

As to Mrs Iorio's statement that iguana feces simply "resolved" we need to correct this. The *resolution* happened **only because we cut 6 feet of their hedge away from our roof soffits**. The Iorio's plan will bring iguana feces back to both our homes.

**The Iorio's other #4** implies our west neighbor has hedges at our roof. The photo (**below**) taken a couple weeks ago shows our west neighbor's hedge here is about **6 feet from our roof**. Anyone can meet us here, have a look. This photo also shows our west iguana cable spikes, all 100% effective. The Iorio's plan will make these devices useless, as their hedges will help iguanas directly to the roof (See pic).

Bird-x goop that we used was seen in an architect's photo shown at the last hearing. We had put Bird-x across the south and west of our roof. Bird-x did not stop iguanas, but provided a useful **track** to see where iguanas came from. Iguanas always came from the hedge on the lorio's property, never from the west or anywhere else.



**The Iguana invasion is here.** The Town's iguana removal efforts are nice, but a removal day here or there will never solve the iguanas. Experts, including Florida county and city websites have shown we will just have to live with iguanas, but with *simple changes*. This includes no longer allowing iguanas to get near a roof, especially a **neighbor's** roof. If iguanas get near a roof, they will get on it.

The old days of allowing tall hedges to grow so close to a neighbor's home, just because it is Palm Beach,

are really **over**. The reason: the **iguana invasion**. *Tall trees, hedges should not be allowed to grow near a neighbor's roof soffits, if that neighbor objects.* This is a common sense solution to a key iguana problem, keeping iguana feces from roofs. To do so otherwise would make for a **hazardous nuisance** per Florida law (see **notes below**).

It is easier to simply not allow planting of tall grow trees near a neighbor's building. But if planting of tall trees/hedges is allowed by the town at a neighbor's building, there should at least be a requirement that tree/hedges be kept cut away by 6 feet from the neighbor's roof soffits.

Respectfully, Martha and Steven Jeffrey Greenwald, Esq.

See *Shiny Sheet* article on our Town's advice and warning of iguana feces dangers (see **link below**). My wife and I are **following our Town's advice for iguanas**. We successfully "*modified the iguanas' habitat*" as our Town strongly recommends, using cable spikes and other devices. The applicants' plan however shows **they have no interest in this town's iguana** recommendations to *prevent foliage useful to iguanas*, given their choice of massive 35 foot wide tree hedges from a lizard habitat (Amazon Rainforest) at a height just at our roof soffits. <https://www.palmbeachdailynews.com/news/20190726/palm-beach-suggests-harassment-habit-at-modification-to-deter-iguanas> (Shiny Sheet link may need to be clicked twice)



## Notes IN SUPPORT OF A SIMPLE TOWN CODE, and our simple request:

The Florida Supreme Court current law on **nuisance** is anything that “*either annoys, injures, or endangers the comfort, health, repose or safety of the citizen, or which ... in any way renders unsafe and unsecure other persons in life or in the use of their property.*”

Municipalities have full authority and responsibility to prevent a nuisance. *Windward Marina v. City of Destin*, 743 So. 2d 635 (Fla. 1st DCA 1999); *Florida Supreme Court in Prior v. White*, 80 So. 347 (1938).

CURRENT FLORIDA LAW THAT WE ALL MUST FOLLOW: a property owner cannot use their property in any way that interferes with an adjoining landowner's right to enjoy his property. 38 Fla. Jur 2d Nuisances § 1 (2014); *State ex Rel. Pettengill v. Copelan*, 466 So. 2d 1133, 1135 (Fla. 1st DCA 1985).

There is **abundant precedent** for a simple Town Code to keep tall tree hedges from neighbors' buildings, in addition to our **Town's even stricter rules on whitefly** treatment and removal. *For example, Florida authorities can and do regularly issue “Agricultural Warrants” if there is probable cause to believe any plants or trees may lead to a pest or pathogen, including any “animal pest.” Officials have authority under statute to “seize” or “destroy” plants harboring animal pests.* See Fla. Stat. § 933.40(1)(a) and (b). Another example, Florida's efforts to combat citrus canker allow removal of any affected citrus, *including that sprouted by natural means.* Fla. Stat. § 581.1843(5) (2014).

There are also laws on preventing toxins from migrating past boundaries to neighboring properties, including through watershed. There are broad federal, state, and local laws on contamination of adjoining land. These laws allow government action (and private lawsuits) imposing liability even **without proof the landowner caused the pollutive condition to the adjoining property**. In *Aramark Unif. & Career Apparel, Inc. v. Easton*, 894 So. 2d 20 (Fla. 2005) the Florida Supreme Court held Florida Statute 376.313(3) provides for an action under strict liability requiring no proof of causation. 894 So. 2d at 24, 28.

The best would be for **no** tall growing trees planted near a neighbor's building, this to prevent dangerous **iguana feces on neighbors' roofs**. We always like to be on friendly terms with neighbors, so we genuinely tried to work things out. But applicants have shown nothing toward us that is remotely reciprocal, no response. So a simple town code would be helpful to protect us and all Town citizens. A code could simply require: an owner **keep their plant growth cut at least 6 feet from, or below a neighbor's roof soffits** (*if the neighbor requests*, and at the owner's expense). Such a simple Town code would also save staff, police and Council time dealing with the problem repeatedly.