TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON MARCH 14, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting of March 14, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett

Others present for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Andrew Cox - Assistant Fire Chief
William Crouse - Human Resources Director
Jane Day - Historical Preservation Consultant
Tim M. Frank - Planning Administrator
Charles Langley - Public Works Assistant Director

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Jon Luscomb - Dock Master
Michael Mason - Major Law Enforcement
Edward J. Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Cheryl Somers - Assistant Finance Director
Jane Struder - Finance Director
Karen Temme - Risk Manager
Rob Walton - Chief Code Compliance Officer
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Eichhorn gave the invocation. President Coleman led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Susan Markin, Planning and Zoning Commission, From February 2003 Through February 2006.

Mayor McDonald presented Council Member Susan Markin with a plaque recognizing her service on the Planning and Zoning Commission from February 2003 through February 2006.

IV. COMMENTS OF MAYOR JACK McDONALD

Today I want to announce the "lets put it off until the requester is a dead award." And I would like to make the award today to the FDOT for their extreme delay in replacing the do not turn sign at the west end of the Southern Boulevard Bridge and replacement of the correct speed limit signs along South Ocean Boulevard. All requested last year. All followed up without success since then.

On another matter but also involving the FDOT, I urge the Council to commence negotiations immediately with DOT to switch the replacement of the North Bridge with the Southern Boulevard Bridge. A representative of the MPO at last week's GIRP meeting stated there are no "safety issues associated with replacement of the North Bridge." Advance replacement of the Southern Bridge will also result in an improved traffic circle, improved traffic flow and beautification of the southern entrance to Palm Beach. There are compelling reasons to make the switch. And I ask the Council to press ahead with this request. Along with this request must be an unequivocal rejection of any simultaneous replacement of both bridges.

I recently appointed a Medical Care Commission and assigned them the monumental task of studying and providing recommendations to improve the provision of health care services to our residents. They are off to an excellent start. It is important to their mission that they have the full support of the community (which they have) and the support of this Council. The Commission must be allowed to focus on their responsibilities without interference and the injection of any separate personal agendas. One articulate and intelligent voice must be allowed to speak. I request the Council confirm their support of the commission and remove any obstacles to a successful completion of their mission.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Coleman commented on the following items:

- Recognized President Pro Tem Kleid for coordinating the agreements regarding the Dune Restoration project;
- Suggested that an e-mail registration program be developed for citizens to receive summaries of the meetings; and
- Suggested that the Town Departments' presentations to the Town Council include the Board/Commissions' accomplishments in their monthly reports.

President Pro Tem Kleid commented on the following items:

- That Palm Beach County Commissioner Jeff Koons's report to the Governmental Impact Review Panel (GIRP) indicated that there was available funding for local traffic studies, and bus transportation from railway connections;
- That outside funding sources existed for the Town Traffic and Parking Study; and
- Suggested that Mayor McDonald meet with the City of Lake Work officials and leaders of their civic associations in order to forge a better working relationship.

Council Member Markin commented on the following item:

- Suggested adding an action to the Strategic Plan regarding the redevelopment of the City of West Palm Beach and its effect on the Town of Palm Beach.

Council Member Brooks commented on the following items:

- Suggested that the applicants for the various Boards/Commissions appear before the Mayor and Town Council on the Monday afternoon preceding a regular Town Council meeting; and

- Suggested that comments/suggestions regarding the Medical Care Commission should be directed to Dr. Michael Dennis, Chairman.

Council Member Wyett commented on the following:

- That the Medical Care Commission would be brought up to date as soon as possible regarding the ongoing negotiations in the public sector regarding the hospital; and

- Congratulated the Police Department for arriving at a solution for pension benefits.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Diana Holt commented that the water from the City of West Palm Beach had an unpleasant odor and presented a sample of it to the Council;

Connie Gasque, 167 Root Trail, commented that there was an animal problem on Root Trail.

Bill Guttman, 216 West Indies Drive, commented that the Town needed a singular voice in the medical care area to communicate with Tenet Health Care.

Ray Golden, President of El Lugano Condominium, commented that the noise problem had been mitigated, but the sound system at "Club Y" was very loud. Mr. Golden thanked the professionals of the Town for their remediation efforts.

Leslie Evans, 135 Seminole Ave., commented that he would like an ordinance passed that no more than three to four pets per house would be allowed because of the numerous amount of cats on Root Trail, and the condition of the street, street lights, and irrigation sprinklers on Royal Poinciana Way were in poor condition.

Wendy Victor, 208 Via Tortuga, commented that a perfect opportunity for the Town to participate in the expansion of greenspace was a property called "Tree Tops", which was located on the lake, and was about to be demolished. She also suggested a computer efficiency study of departmental office work to determine if there could be cost savings.

VII. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED to April 11, 2006, Town Council Meeting, Item XI.A.1., Appeal of the ARCOM Decision at 120 Seagate Road.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to defer Item XI.A.1., Appeal of the ARCOM Decision at 120 Seagate Road to April 11, 2006, Town Council Meeting. On roll call, the motion carried unanimously.

DEFERRED to April 11, 2006, Town Council Meeting, Item XI.C.1., Variance #7-2006.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to defer Item XI.C.1., Variance #7-2006, to the April 11, 2006, Town Council Meeting. On roll call, the motion carried unanimously.

DEFERRED to April 11, 2006, Town Council Meeting, Item XI.C.4.d., Site Plan Review #5-2006, with Special Exceptions and Variances.

Motion made by Council Member Wyett, seconded by Council Member Brooks to defer Item XI.C.4.d., Site Plan Review #5-2006, with Special Exceptions and Variances, to April 11, 2006, Town Council Meeting. On roll call, the motion carried unanimously.

WITHDRAWN Item XI.C.5.b. & i., Plat Abandonment, 515 North County Road, and Resolution No. 71-05.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to withdraw Item XI.C.5.b. and i., Plat Abandonment, 515 North County Road, and Resolution No. 71-05. On roll call, the motion carried unanimously.

MOVED from the Consent Agenda, Item VIII.C.1., Resolution 15-06 to Regular Agenda, as Item IX.B.6., and Item VIII.D.3, Release of Restrictive Covenant Relating to Zoning Variance No. 61-88 to Regular Agenda, as Item IX.B.7.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve moving Items VIII.C.1., Resolution 15-06, to the Regular Agenda as Item IX.B.6., and VIII.D.3., to the Regular Agenda as Item IX.B.7., Release of Restrictive Covenant Relating to Zoning Variance No. 61-88 from the Consent Agenda. On roll call, the motion carried unanimously.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve the Agenda as amended. On roll call, the motion carried unanimously.

VIII. CONSENT AGENDA

A. MINUTES: FEBRUARY 14, 2006
APPROVAL OF THE MINUTES OF THE REGULAR TOWN COUNCIL MEETING.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON FEBRUARY 22, 2006.

C. RESOLUTIONS

1. RESOLUTION NO. 15-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Revised Statement of Investment Policy for the General Employee Board of Trustees of the Town of Palm Beach Retirement System Pursuant to Section 82-57(b) of the Code of Ordinances of the Town of Palm Beach and Providing an Effective Date.
[William C. Crouse, Director of Human Resources]

This item was moved to the Regular Agenda as Item IX.B.6.

2. RESOLUTION NO. 16-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Agreement under Section 215 of Public Law 90-483 with the U.S. Army Corps of Engineers for the Purpose of Reimbursement to the Town as Local Sponsor for Costs Associated with Upgrading the Lake Worth Inlet Sand Transfer Plant; Authorizing the Mayor to Execute the Agreement at the Appropriate Time and Directing the Town Manager, or His Designee, to Effectuate the Execution of the Agreement Pursuant to Section 215 of Public Law 90-483 and the Memorandum of Agreement with the U.S. Army Corps of Engineers. [H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 20-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Rescinding its Previous Approval of Resolution No. 12-06 and Approving a Revised Florida Boating Improvement Grant Agreement Between the Florida Fish and Wildlife Conservation Commission and the Town of Palm Beach for the Proposed Public Safety Dock Project and Authorizing the President of the Town Council to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager]

D. OTHER

1. Authorization to Start Work Prior to May 1 on an Air Line, Water Main, Sanitary Sewer Main Improvement Project Along State Road A1A/South Ocean Boulevard Between Southern Boulevard and Sloan's Curve. [H. Paul Brazil, Director of Public Works]

2. Authorization to Expend $66,188.90 for Purchase of a Computer Data Storage System That Was Included in the FY06 Budget. [Spencer D. Wilson, Information Systems Manager]

3. Release of Restrictive Covenant Relating to Zoning Variance No. 61-88. [Veronica B. Close, Director of Planning, Zoning, and Building]

This item was moved to the Regular Agenda as Item IX.B.7.

4. Authorization to Expend $66,274.00 from the General Fund Contingency (To Be Reimbursed by FEMA and Insurance) for the Purchase of Two Replacement Lifeguard Towers for Mid-Town Beach. [H. Paul Brazil, Director of Public Works]

5. Approval of Plans to Display a Centennial Countdown Clock. [Michael S. Reiter, Chief of Police]

6. Authorization to Expend $50,000 from the Capital Improvement Program Due to Increase in Cost of New Fuel Line at the Lake Worth Inlet Sand Transfer Plant.
[H. Paul Brazil, Director of Public Works]

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve the Consent Agenda as amended. On roll call, the motion carried unanimously.

IX. REGULAR AGENDA

A. Old Business

1. Proposed Retirement Benefit Increase for Police Officers and Firefighters. [Peter B. Elwell, Town Manager]

Town Manager Elwell indicated that several meetings were held in order to obtain information for staff's recommendation that the multiplier be increased from 3.25% to 3.5% for all years of service, applicable to all police officers and firefighters on the payroll on or after October 1, 2005. Surveys were taken throughout the area, and the increase was necessary in order to attain the top quartile status of competitive pensions once again.

Mr. Elwell noted that the Cost of Living Adjustment (COLA) enhancement was considered but that it was not necessary at this time since the employee's contribution rate was lower than other municipalities in the market.

Mr. Elwell provided information on how staff based their recommendation. He stated for the record, that the cost of implementing the increase would be $508,000 per year.

Responding to Council Member Markin, Mr. Elwell explained how the cost was calculated, and the impact to the budget.

Responding to Mayor McDonald, Mr. Elwell indicated that it was determined that the General Employee's Pension Plan was competitive, which was why there was no recommended change.

Public Comment:

Mr. Walter Ross, 456 Worth Avenue, commented that in the last five years, the police officers and firefighters pensions have increased, but the general employees' pensions have not increased as much. He added that as the wages increased, so did the pensions, and that could be an indicator of what the future pension cost would be.

Responding to Mr. Ross, President Coleman explained how the pension cost was affected in the budget.

Mr. Elwell noted that he could be contacted for further explanation, by any member of the public. He said that there were two separate issues: the benefit that was provided, and the calculation of that benefit.

Motion made by Council Member Brooks, seconded by Council Member Wyett to authorize staff to obtain a final actuarial cost analysis, and prepare an ordinance to increase the pension multiplier from 3.25% to 3.5% for all years of service, applicable to all police officers and firefighters on the payroll on or after October 1, 2005. On roll call, the motion carried unanimously.

2. Planning for Placement of Overhead Utility Lines Underground. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford provided a status report regarding the burial of overhead utility lines and recommended that special counsel, Attorney Schef Wright be authorized to intervene in Florida Power & Light (FPL) petitions before the Public Service Commission (PSC) for several of the following reasons:

Legislative Update:

- The legislators in the Senate and the House of Representatives had agreed to sponsor the proposed underground utilities legislation approved by the Town Council under Senate Bill - SB2122 and House Bill - HB1529;
- All municipalities in Florida had expressed a serious interest in the proposed legislation;
- The Town anticipated many compromised proposals to the legislation and attempts to bury the bill in committees;

- FPL made public its intention to promote undergrounding by investing (not charging for) 25% of the cost of local government sponsored overhead to underground conversion projects; and

- Mayor McDonald wrote to 18 mayors suggesting the formation of a municipal underground utilities consortium for the purpose of cost sharing a study to determine if the 25% was a fair FPL contribution to local government, in which 10 cities responded to join the Town.

FPL:

- FPL would need 10 to 15 weeks to do the binding cost estimate for Phase 1;

- Adelphia/Comcast and BellSouth had not yet notified the Town that they could start and finish their work in a timely manner, which was necessary before a binding cost estimate could be done;

- FPL requested to research the possibility of converting in five to seven years versus nine to eleven years; and

- President of BellSouth Marshall Criser telephoned Mr. Bradford to say that BellSouth was on board with working with the Town; however, a letter from Mr. Criser was not as promising; and

- Deposits were needed for the binding cost estimate to move forward on Phase 1.

Mr. Bradford concluded his report by saying that the revised cost estimate to convert the entire Town to underground service was $49.8 million and $10.2 million for Phase 1, instead of $11.5 million.

Attorney Wright indicated that there were six dockets open at the Florida PSC on matters that bear directly on how the contribution to aid construction in the Town or in any other municipality similarly situated would pay for an underground conversion project from an electric public utility company such as FPL.

Attorney Wright explained the dockets to the Town Council, and recommended that the Town formally intervene in the tariff amendment docket, explaining that the equivalent of intervening was to file a notice of participation in each of the rule making dockets, which he had drafted.

Council Member Brooks commented that BellSouth may be more amenable to the Town's requests as a result of the merge with AT&T.

Attorney Wright responded to Council Member Brooks that the Town could begin interacting with Comcast, rather than Adelphia. In addition, he explained that SB2122 and HB1529 would reinstate the right that was formerly vested by the statute and municipalities to purchase facilities at the end of a franchise, first through arbitration as opposed to eminent domain, and that the bill would cover cable also.

Council Member Wyett stated that it was time to set a date to design a referendum question, in a straw question, for the voters to have an opportunity in November, to voice their opinion regarding the placement of overhead utility lines underground in order to proceed.

President Pro Tem Kleid indicated that it was important to make a point about the cost of restoration after a hurricane when discussing the restoration costs between the placement of underground and overhead utility lines.

Council Member Markin noted that if the utility lines were buried, and one of the major grids in the City of West Palm Beach went out, the Town would not benefit by buried lines. Ms. Markin asked if FPL had any plans to enhance their mainstay of grids in the City in addition to restoring the service after a hurricane?

Attorney Wright responded to Council Member Markin that FPL declared their going forward policy in their storm secure plan, that they would build all new construction, to either hardened, overhead, or underground systems; and were committed to support legislation and ordinances and work with municipalities toward ordinances requiring underground. He added that if all the lines were underground on the island, and there was only an upstream of distribution feeder from the Town to a substation on the mainland that was out, the island would be back in operation at the same time as the distribution feeder.

Mr. Elwell responded to Council Member Markin that the Council would make the decision on March 31, 2006, on whether to place the cost on the referendum ballot, and the type of financing that was decided would determine how the question would be written on the ballot.

President Pro Tem Kleid commented that the Town should be prepared for the following question by the citizens: If all the utilities were placed underground, why would the Town rely on the utilities on the mainland for service? Mr. Kleid indicated that the answer was that the Town's service would be restored more expeditiously because the repairs could be made without entering the Town.

Public Comment:

Mrs. Yvelene Marix, 1570 N. Ocean Boulevard, asked if the residents' questions and concerns could be addressed in a scheduled discussion by a staff or Council member.

Responding to Mrs. Marix, Mr. Elwell stated that on March 31, 2006, a Special Town Council meeting was scheduled for discussion of the financial options, and on April 13, 2006, a Special Town Council meeting was scheduled to address field, logistical, and impact issues for the community.

Council Member Wyett commented that some of the answers would not be known until the Town received the design from FPL.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to approve Special Counsel Schef Wright to intervene in FPL petitions before the PSC. On roll call, the motion carried unanimously.

3. Items Regarding Town Boards and Commissions.

a. Presentation of Recommendations of Palm Beach Civic Association in Report Dated February 6, 2006.
[Royall Victor, III, Palm Beach Civic Association]

Mr. Royall Victor, III, of the Palm Beach Civic Association indicated that the Palm Beach Civic Association formed a committee to review the functions of the Town's Commissions and Boards, in order to enhance the efficiency of the Town's governing process. Mr. Victor provided a brief overview of the Report dated February 6, 2006.

The Town Council members and the Mayor made the following comments about the report:

- Suggested scheduling a workshop meeting to discuss the Civic Association's report, inviting all commission members and board members to attend;

- Disagreement with the statement on the bottom of page 2 of the report that the Town Council had many overrules of the commission's recommendations;

- Suggested a full-time year-round calendar for every commission;

- The observation that the Town Council members were not always present at the commission meetings, was deliberate, allowing the commissions to function on their own;

- Other Town Council members attended the commission meetings for the flavor of the debate, and to obtain knowledge of the candidates applying to the commissions; and

- It would be more effective to bring in one commission at a time, before bringing all of them together.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to approve scheduling a Special Town Council Meeting in May 2006, to discuss the report of the Palm Beach Civic Association, and to receive comments from the Architectural Review Commission, the Landmarks Preservation Commission, the Planning and Zoning Commission, and the Code Enforcement Board. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting after the luncheon recess.

b. Proposal to Employ an Expert to Advise ARCOM on Architectural Matters. [Jack McDonald, Mayor] *Deferred from the February 14, 2006, Town Council Meeting.*

Mayor McDonald related that several members from ARCOM approached him to propose that an expert be employed to advise the Commission on architectural matters, but since then he had received a letter from ARCOM saying that they did not need an architectural expert, but a code enforcement inspection advisor.

Mr. Wyett stated that ARCOM was required to have two architects and one landscape architect, but the requirement could be increased. He noted that there were many retired architects in the Town that could volunteer their services without incurring a $50,000 to $80,000 cost of hiring a consultant, and at the same time improve the Commission.

President Coleman suggested that this item could be discussed during the monthly ARCOM discussions on how to make this improvement.

It was determined that this item would be discussed at the Special Town Council Meeting in May 2006.

4. Update Regarding the Potential Leasing of Town-owned Property in West Palm Beach as a Supermarket Site.
[Jack McDonald, Mayor]

Mayor McDonald commented that he had mailed a letter to several supermarket operators, last week, and asked if the Town Council would authorize staff to approach Publix in order to request a zip code survey of their customers, to find out where the customers were coming from.

Council Member Wyett noted that because the Publix parking lot had very tight parking places, that the grocery store should be encouraged to build a more spacious parking lot, by purchasing the land behind them.

Council Member Markin expressed concern that selling the Town's valuable piece of land at a reasonable cost would take away the City's incentive to develop their infrastructure.

A consensus of the Town Council authorized that staff request Publix grocery store in Palm Beach for a zip code survey of their customers.

B. New Business

1. **TIME CERTAIN ITEM TO BE HEARD AT 10:00 A.M. OR AS SOON THEREAFTER AS POSSIBLE**
Report Regarding Water Quality Concerns and the City's Actions to Address Them. [Ken Rearden, Assistant City Administrator, City of West Palm Beach]

Assistant City Administrator of the City of West Palm Beach Ken Rearden provided an update on the status of the water quality issue. Mr. Rearden commented that there were taste and odor issues from the water out of the tap, caused by the storms in the last two years, Frances, Jeanne, and Wilma, but that the water was safe to drink. He explained how the problems were caused, and noted that a new plan had been implemented to treat the water. The City was awarded $1.5 million as a result of a lawsuit for a new design of the water treatment plant.

Responding to President Coleman, Mr. Rearden indicated that the bottom line schedule was 18 months to complete everything. He added that the City was requesting grant assistance from U.S. Congress and the State of Florida, as this was a hurricane related problem.

Councilman Wyett commented that he had read about the water problem in the *Palm Beach Post,* but would have preferred being notified by the City. He suggested a reverse osmosis system to help the water problem.

Council Member Brooks commented that the odor problem preceded the arrival of Frances in September 2004; as a consumer, he noted that the hurricanes relative to the problem was not the total answer.

Responding to President Coleman, Mr. Rearden said that on a guess, 60% - 40% of the water was used for irrigation, and that the City would not go to two water delivery systems.

Responding to Council Member Markin, Mr. Rearden explained that the water from Lake Okeechobee was a poor quality, but normally there was enough blend that did not affect the taste and odor of the water.

Project Manager Nigel Grace noted that the plant, constructed in 1918, would be optimized and equipment replaced wherever necessary, and the existing capabilities would be augmented, but it would take time because of the magnitude of the plant.

Assistant City Administrator of the City of West Palm Beach Rearden stated that a monthly progress report would be provided to the Town Council, as well as a West Palm Beach Public Utility Department schedule of activities regarding the water quality concerns, including timeframes.

2. Road Resurfacing Schedule for Mid-town and North End Streets. [Jack McDonald, Mayor]

Mayor McDonald commented that a large part of Town appeared to be worn, especially the streets, which had not been paved or resurfaced for years.

Director of Public Works Brazil noted three scenarios in the Town regarding the roads: relatively new pavement in good condition; good structural condition, but aesthetically sub-standard; and patched instead of repaved from side to side on the road. Mr. Brazil discussed the following items:

- In the past, more asphalt was added to the roads, instead of repaving, and covered the curbs;
- A program called Micro Resurfacing was used, which was a very thin layer with additives, but wore off quickly;

- There were several roads that needed milling and resurfacing because of poor structural conditions;

- Last year the budget for the roads were increased from $100,000 to $225,000 a year for milling and resurfacing the worst streets, but would not be enough to repair all the streets in Town;

- Most recent approach to repairing the roads was to mill and resurface from side to side, take down the old asphalt, find the old curb lines, build the road back up to the proper elevation, remove the excess, and apply new asphalt;

- Consider implementing this project with the undergrounding project, the storm project, or other roadway impact projects;

- Micro Resurfacing was not recommended, because in the third and fourth year it would start to look patchy, and would worsen in the fifth and sixth year;

Mayor McDonald stated that he was interested in something that was quick, and did not cost much, but would aesthetically improve the roads.

Mr. Elwell commented that staff could design a program to address the aesthetic from structural issue, increasing the annual commitment to road resurfacing.

Council Member Markin noted that the streets appeared in disrepair, and that the Town needed a proactive master plan automatically budgeted on a yearly basis that coordinated with the undergrounding project.

Mr. Brazil replied that Public Works Department did plan, except for the undergrounding, all the infrastructure work at least five years out, which included the milling and resurfacing or patching roads. He added that an inventory of all the streets, width, length, etc., and the condition was reviewed annually.

Mr. Elwell commented that currently $225,000 was used toward the maximum amount of milling and resurfacing the roads that were in the worst condition in Town. He suggested that if the amount needed to be increased to improve the overall quality of the roads in Town, staff could provide the information needed to decide whether its worth it or not, and to address it in the upcoming budget process.

Council Member Wyett suggested to repair the roads simultaneously with the undergrounding.

There was a consensus by the Town Council to discuss the road resurfacing issue in the upcoming budget discussions. Staff would provide cost estimates at that time for improvement of overall quality of roads.

3. Proposal to Require Sodding Instead of Seeding of Vacant Lots. [Jack McDonald, Mayor]

Mayor McDonald requested that the Council revise the Ordinance to require sodding and irrigation instead of seeding to beautify the vacant lots.

Motion made by Council Member Brooks to revise the Ordinance to require sodding and irrigation instead of seeding.

Council Member Markin stated that lots remain vacant before Code Enforcement officers notify the owners of the condition. Seeding was good if enforced and grows in two weeks. She indicated that sodding required: that the land be grated first; large trucks and equipment; and if the sod did not take, it would be patchy, brown, and die. Ms. Markin suggested enforcing that seed gets placed immediately following demolition.

President Coleman noted that this item could be discussed with the Code Enforcement Board.

Motion withdrawn by Council Member Brooks.

It was determined that this matter would be discussed at the future Special Town Council Meeting, which would be scheduled to review all Boards and Commissions.

**********The luncheon recess was taken at 12:25 p.m.***********

**** The Town Council Meeting of March 14, 2006, was reconvened at 2:10 p.m.*****

4. Architectural Commission Appointments.
[Veronica B. Close, Director of Planning, Zoning, and Building]

President Coleman announced that the following three Regular Members appointed to the Architectural Commission were: Leslie C. Diver, Thomas M. Youchak, and Jeffery W. Smith; and the following three Alternate Members appointed to the Architectural Commission were: Kenn Karakul, Samuel Boykin, and Mark Bennett.

5. Landmarks Preservation Appointments.
[Veronica B. Close, Director of Planning, Zoning, and Building]

President Coleman announced that the three Regular Members appointed to the Landmarks Preservation Commission were: Patrick Segraves, Eileen L. Bresnan, and Eugene Pandula (Non-Resident Expert Member); and three Alternate Members appointed to the Landmarks Preservation Commission were: Gail L. Coniglio, Hazel Rubin, and D. Imogene Willis.

6. RESOLUTION NO. 15-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Revised Statement of Investment Policy for the General Employee Board of Trustees of the Town of Palm Beach Retirement System Pursuant to Section 82-57(b) of the Code of Ordinances of the Town of Palm Beach and Providing an Effective Date.
[William C. Crouse, Director of Human Resources]

President Coleman discussed the investment strategies of the General Employee's pension funds, and noted that the employee's ability to increase benefits was retarded by an anachronistic approach to investment. He suggested scheduling open discussions, and inviting residents of the Town that were successful investors, to speak on the subject.

Discussion ensued among the Town Council Members about the three investment pension boards and the Investment Advisory Committee. Several of the comments were:

- That the Town had an Investment Advisory Board comprising of very qualified people that made investment decisions in conjunction with outside investment people;
- That at minimum, the Town could receive the input of wealthy, successful investors;

- That the Town Council did not want to be investment strategists and experts, and should re-evaluate the investments if it was not happy with the return; and

- That the pension investments were too conservative, institutions were earning large rates of returns, and the Town could also become successful investors instead of feeding the deficit every year.

Mr. William Guttman suggested that the Town Council ask the Investment Advisory Committee to research the issue, and that before appointing a committee to manage the funds, engage the Investment Advisory Committee in the process of developing principles as to what was an appropriate asset allocation benchmark.

Council Member Brooks commented that he supported President Coleman to discuss this matter, without fiduciary responsibility, and that it was important to monitor the monthly budget and the results of the investments.

President Pro Tem Kleid commented that the Town Council should request the Investment Advisory Committee review their asset allocations, and invite citizens that were successful in their investments to participate. He noted that one of the committee members was also a member of the Columbia University Board of Trustees, and that the Council should not debate the issue now, but should request that the Committee review the asset allocation.

Mr. Elwell explained the following:

- The three separate pension board funds comprised of employees and residents of the Town, having an independent fiduciary responsibility, and other responsibilities related to the oversite of the funds/programs;

- The Town's oversite of the boards were limited, and the benefit changed only when the Council permitted it;

- This was an opportunity to obtain the expertise of the Investment Advisory Committee (IAC) for a greater benefit to the Town by assigning responsibility to the existing IAC without creating something new;

- The Investment Advisory Committee (IAC) did not invest pension monies, or equities and fixed income, but operated in a narrow range of investments, which was the reserve funds of the Town, and was not governed by the laws of pension investments, but the actual more liquid funds of the Town;

- There was a change in the laws that related to the long-term funding of the health insurance liabilities for all local governments, and in order to comply with the laws, the Town would no longer have a health insurance fund within the family of funds of the operating monies of the Town, but would have a separate trust fund, similar to the pension funds;

- The four chairs of the three pension boards and the IAC would be scheduled to meet as a combined group to interact on the investment issues, and invite the successful, private investors in the Town;

Mr. Elwell noted that the Code Enforcement Board was scheduled first, in April; second, the Landmarks Preservation Commission on April 11, 2006; third, the ARCOM at the May Regular Town Council Meeting; and the combined boards would attend the June Town Council Meeting;

It was the consensus of the Town Council to accept the schedule, as suggested by Mr. Elwell.

Mr. Elwell recommended approval of Resolution No. 15-06, which amended the Statement of Investment Policy for the General Employee Board of Trustees of the Town of Palm Beach Retirement System . Mr. Elwell pointed out that one of the recommendations was to create more flexibility relating to investing, within the established guidelines of institutional investors, to review what was in the best interest of the Town's taxpayers and the members of the fund.

Town Attorney Randolph read, by title, Resolution No. 15-06.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to approve Resolution No. 15-06. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting after the luncheon recess.

X. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 1-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Section 134-2, by Adding Cross References to Other Pertinent Regulations in the Definitions of Basement and Sub-basement; by Relocating Section 134-1516 to Section 134-1608; Sections 134-1609 through Section 134-1611, by Creating New Sections and Renumbering Other Sections to Add an Exception to Allow Basements and Sub-basements Outside of the Above Building Footprint and to Correct a

Scrivener's Error; Section 134-2179, to Correct a Scrivener's Error; Section 134-1698 by Providing for a Regulation to Require a Lake Vista on the West Side of Lake Trail; Section 134-390 and Section 134-419, by Changing the Maximum Completion Dates for Restorations, Enlargements, Reconstruction or Alterations of Structures to be Consistent with the Building Regulations; Section 134-1730, by Adding a Provision to Regulate the Maximum Height of Outdoor Lighting Equipment; Providing for Severability, Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney John Randolph read Ordinance No. 1-06 by title, as printed above.

Councilman Brooks moved adoption of Ordinance No. 1-06 on second reading. The motion was seconded by Council Member Markin. On roll call, the motion carried 3-0 as President Pro Tem Kleid was temporarily out of the room and Councilman Wyett had left the meeting.

B. First Reading

None

XI. DEVELOPMENT REVIEWS

Town Manger Peter Elwell explained to those persons present for Development Reviews that there were only four Council Members present, and that it would take three affirmative votes to approve a zoning matter such as a variance or special exception. He noted that because there were only three Council Members present, the Mayor would vote only in the case of a 2/2 tie. He stated applicants would be at some marginal disadvantage as compared to when a full five member Council was sitting; and it would be the applicant's decision to advise the Council whether they wanted to proceed with the application or request a one month deferral.

A. Appeals

1. Appeal of ARCOM Decision- Marcie Stollof, 120 Seagate Road- Case No. B14-06. **Request for Deferral to the April 11, 2006, Town Council Meeting Per Letter Dated March 3, 2006, From Ronald K. Kolins, Esq.**

Deferred appeal of ARCOM Decision - Marcie Stollof, 120 Seagate Road - Case No. B14-06, to the April 11, 2006, Town Council Meeting.

B. Time Extensions

1. None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. VARIANCE #7-2006 The application of Michael and Lisa Schultz relative to property described as Lots 3 and 3A, Esplanade Estates; commonly known as 1438 North Ocean Blvd; located in the R-B Zoning District. Variances to allow construction of a two-story addition with points of measurement for height, building height plane, overall height and cubic content ratio of 17.79 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 9.74 feet NGVD maximum allowed, as determined by the Town; to allow the building height plane setback from elevation 17.79 feet NGVD ranging from 54 feet to 65 feet in lieu of a minimum setback required ranging from 42 feet to 49 feet for various portions of the proposed additions; to allow five (5) dormer windows in habitable space which the Code does not permit; and, to allow two (2) windows in a gabled end of a roof which is above the maximum height allowed which is not permitted by the Code. *Deferred from the February 14, 2006, Town Council Meeting.* **Request for Deferral to the April 11, 2006, Town Council Meeting Per Letter Dated March 3, 2006, From Maura A. Ziska.**

Deferred Variance #7-2006 to the April 11, 2006, Town Council Meeting.

2. New Business- Less Than 15 Minutes

a. VARIANCE #11-2006 The application of Frank and Maureen Wilkens relative to property described as lengthy legal description on file; commonly known as 1491 North Ocean Boulevard; located in the R-A Zoning District. Variance requested from the code which requires the existence of a proper ocean bulkhead when any structure is built within 50 feet of the Town bulkhead line. The applicant requests that the bulkhead not be constructed to extend the additional 22.5 feet to the north as required by code.

Ex-parte communication was declared by Councilman Brooks with Attorney Ron Kolins.

Attorney Kolins, on behalf of the applicant, discussed the merits of the variance requested from the code requiring the existence of a proper bulkhead when any structure was built within 50 feet of the Town bulkhead line. He advised that the applicant was requesting that the bulkhead not be constructed to extend the additional 22.5 feet to the north as required by code.

Zoning Administrator Paul Castro stated that this was the first time a situation of this nature had occurred in Town, which was due to the requirements of the Florida Department of Environmental Protection (FDEP) being different from the requirements of the Town.

In response to Councilman Kleid, Mr. Castro stated that he did not believe the Town code should be amended to conform more with FDEP requirements. The applicant would not have had to request the variances they were asking for today, if the improvements being made were at least 50' from the bulkhead line, as was intended in the original provisions of the code.

President Coleman advised that he questioned the hardship because it was self-created. The applicant was aware of the rules and chose to deliberately move ahead. He noted that he did not see a hardship.

Attorney Kolins stated that he believed that some of the statements made today were unfair. He noted that he was not involved and did not represent the applicant when they received the approval for their house. He did not know what occurred at that time. The only encroaching structure on the property was a pool house that existed before and exists now, which the applicant was making improvements to.

Attorney Kolins stated that the applicant was willing to extend the seawall, hiring well-known engineers to process the application form, doing everything they had to, but the State would not allow them to. He noted that the applicant planned to raise the wall, which they were allowed to do. He advised that the State said that extending the seawall would be harmful to the neighbor.

He noted hundreds of feet of water was located on the other side of the wall. He stated that he was presuming that the Town was telling the applicant that part of their house, which was already constructed, would have to be torn down.

President Coleman stated that he remembered when the Town Council referred this to the FDEP as the Council did not want to deal with it. The applicant was advised to apply for an application with the FDEP if they wanted a variance.

Attorney Kolins stated that the Council advised the applicant to come back to them after going to the FDEP. He explained that they have come back because the FDEP would not give them the ability to obtain the permit.

Attorney Kolins stated that his clients were caught in the middle of this and to penalize them for 22' of seawall was unfair. He advised that this was a rare situation, and Mr. Castro noted that this was the first time this had ever happened. He noted that his clients would build it immediately, if they could, and that the Council should think about fairness when it relates to their citizens.

President Coleman stated that the Council also has to think about the law, which was the hardship.

Councilman Brooks agreed that there should be fairness, but the law was not always fair. He advised that it was a difficult case, and he would make a motion to deny the request for the variance.

Attorney Kolins questioned the Council regarding the FDEP order, asking if they believed the refusal of the State to allow the applicant to build a seawall, was a hardship?

President Coleman stated that the applicant's recklessness in constructing something that they knew or should have known required a variance, and going forward with it was a business risk they chose to take.

President Brooks made a motion to deny Variance #11-2006. President Coleman passed the gavel to President Pro Tem Kleid to second the motion.

President Brooks amended his motion to deny the request for Variance #11-2006 because the applicant had not met the criteria as set forth in the document. President Coleman passed the gavel to President Pro Tem Kleid to second the amended motion. On roll call, the motion carried 4-0, as Councilman Wyett had left the meeting.

b. VARIANCE #13-2006 The application of Robert K. Wood relative to property described as Lot 36, Singer Addition; commonly known as 116 Gulfstream Road; located in the R-A Zoning District. Request for variance from the side yard requirements in the R-A zoning district to construct a one story, 343 square foot open loggia with a side yard setback of 10.6 feet in lieu of the 15 feet minimum required.

Ex-parte communication was declared by Councilman Brooks with Attorney Kolins regarding petition Variance #13-2006, the application of Robert K. Wood.

Attorney Ron Kolins, on behalf of the applicants, advised that Mr. and Mrs. Wood were in the audience today. He explained the application requested was for a 4'4" side yard setback to enclose an existing loggia. The enclosure would not be walled in on all sides but would have large arched openings. He advised that the applicant needed to enclose the loggia because adjacent to the property, Mr. Ed Cury, of The Cury Group, owned a three-story condominium building that looked down into their patio area.

Attorney Kolins read into the record a letter dated February 17, 2006 from Mr. Cury that supported the application. He advised that Mr. Cury believed approval of this request would provide those persons buying units in his buildings with greater privacy.

Attorney Kolins stated that this application did not increase any setback deficiency, because the setback used by the enclosure was the same as what was already there. The small rear small section of patio area was being enclosed; the lot was very narrow, 79' wide, for an R-A lot. He advised that it was one of the very few R-A lots, which abuts the R-C Zoning District.

Attorney Kolins presented diagrams of the property to discuss the merits of the application. He explained that the variance was required to enclose the loggia and the proposed enclosure would not change the setbacks.

Zoning Administrator Paul Castro stated that the lot was only 215' deep and was approximately 78' wide. The specific open loggia was up against a two-story home directly to the east. He advised that the applicant needed to demonstrate the hardship criteria in the code. He noted that a variance was granted previously; and at the time, the variance was granted, Mr. Cury was constructing the multi-story building. The applicant was concerned about privacy to the pool area in the back. He stated that there were no letters of objection and noted the letter from Mr. Cury that supported the proposal.

Attorney Kolins stated that the hardships were the size of the lot and its relationship to the three-story building.

Councilman Brooks advised that he would make a motion to approve this application because he believed that the hardship was directly tied to the size of the lot.

In response to President Pro Tem Kleid, Attorney Kolins advised that, presently, there was screening, noting that it was difficult to get screening up four stories tall.

Councilman Brooks made a motion to approve Variance #13-2006. The motion was seconded by Council Member Markin. On roll call, the motion carried 4-0, as Councilman Wyett had left the meeting.

President Pro Tem Kleid advised that he was voting to approve the variance, because it had been approved by a previous board, and that he was going to follow that tradition.

c. SITE PLAN REVIEW #3-2006 WITH VARIANCE The application of RRD Enterprises, LLC, Rena Rowan and Vic Damone relative to property described as lengthy legal description on file; commonly known as 10 Sloan's Curve Drive; located in the PUD-B Zoning District. Site Plan Review to construct two additions onto an existing townhouse comprised of 212 square feet; and, variance to allow two infill additions which will enclose an atrium and entry feature thereby increasing the lot coverage to 36.3% in lieu of the 33.8% existing and the 35% maximum allowed in the PUD-B district. The proposed additions modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code.

Ex-parte communication was declared by Council Member Markin who had a brief conversation with Mrs. Rowan; President Pro Tem Kleid declared a brief telephone conversation with Mrs. Rowan; and Councilman Brooks declared a brief telephone conversation with Attorney Ziska.

Zoning Administrator Paul Castro advised the Town Council that there was a scrivener's error on the application, and the case number was Site Plan Review #3-2006 not 2005.

Attorney Maura Ziska, on behalf of the property owners, stated that the application was for a site plan review request to allow a modification of a previously approved PUD in the Sloan's Curve townhouse section. She noted that the variances requested were very minor and would not be seen from the road or from the beach area. The plan was to enclose two open areas and to add an overhang to an existing entry feature. The lot coverage would increase to 36.3% , which was in excess of the 35% required.

Attorney Ziska advised that variances had been granted, in the past, allowing enclosure of atriums in the Sloan's Curve townhouse section of the Town. She noted that she had obtained approval several years ago for the applicant's neighbor to enclose their atrium.

Attorney Ziska stated that the hardship runs with the land. The zoning code has changed relative to stricter lot coverage requirements, to the existing configuration of the atrium, and to the open features as they exist today. The total addition, which was very minor, would be 212 square feet. The open areas were nonfunctional and approval of this application would improve the usability of the townhouse.

Attorney Ziska advised that ARCOM did review this project and unanimously approved the variance request.

Architect David Miller presented a site plan review to discuss the merits of this application. He noted that approximately thirteen of the fifteen town homes have had similar infills and renovations, in the past.

Attorney Ziska mentioned that the applicant did not have the written approval letter from the Condominium Association, but Mr. Miller had presented the project to them. The Condominium Association verbally stated that they had no problem with the infill enclosures. The Association did have some comments regarding the trellis and the look of the windows, but those comments had nothing to do with the variance requested today.

In response to President Coleman, Attorney Ziska advised that the variance would be conditioned upon the applicant providing the Town with a copy of the letter of approval from the Condominium Association.

Zoning Administrator Castro stated that ARCOM did recommend approval of the proposal and staff requests that the applicant speak to the hardship relative to the conditions in the code regarding the variance criteria. He advised that a condition of approval would be subject to the Association's approval.

Planning, Zoning and Building Director Veronica Close stated that if the Condominium Association comes back with changes to the windows, the trellis or to an exterior feature, and the applicant comes to staff for approval, which staff finds they cannot give, the applicant would have to go back to ARCOM for that change.

In response to Council Member Markin, Architect Miller stated that there was slightly more roof square footage, which fell in areas where the open atriums previously were, that were tied into the existing sub-surface drainage system. He explained that it was anticipated that they would incorporate guttering and down spouts to tie directly into that as well.

Zoning Administrator Castro advised that when the applicant applies for their building permit and the Town Engineer deems it necessary, the applicant should provide for a 2" drainage retention. He noted that he would require that of them.

President Pro Tem Kleid referred to the statement that thirteen out of the fifteen town units have this type of enclosure.

In response to President Pro Tem Kleid, Zoning Administrator Castro stated that the Town had approved this type of enclosure for thirteen town home units. He noted that in the eleven years he has been with the Town, two or three applicants have received site plan and variance approvals to enclose those areas.

President Pro Tem Kleid stated that in separating the entry feature from the atrium, it was his understanding, that the atrium might create a public health problem. He asked what the justification was, other than the fact that it was previously done before, to enclose the entry feature?

Ms. Ziska explained, using visuals, that the entry feature was already covered, and the front door was being moved to side, which already counted for lot coverage since it was already covered. She noted that the applicant wanted to add an overhang so that when at the door, they would be covered if it was raining, etc.

Councilman Brooks made a motion to approved Site Plan Review #3-2006 with Variance. The motion was seconded by Council Member Markin. On roll call, the motion carried 4-0, as Councilman Wyett had left the meeting.

3. Old Business- More Than 15 Minutes

None

4. New Business- More Than 15 Minutes

a. VARIANCE #10-2006 The application of MRR Holding Corp. (Ron Romeo) relative to property described as Lot 51, the North 33-1/2 feet of Lot 52, and all of Lot 85, Singer Addition to Palm Beach; commonly known as 20 Middle Road; located in the R-B Zoning District. Variance requested to allow the construction of a second story addition comprised of 157 square feet with a north side yard setback of 13.1 feet in lieu of the 15 foot minimum required in the R-B Zoning District; and, variance requested to allow a building height plane setback for a roof, balustrade and entry feature to range from 27.9 feet to 46.3 feet in lieu of the minimum range required of 30 feet to 60 feet for a property that has a depth in excess of 150 feet.

Ex-parte communication was declared by President Pro Tem Kleid with Attorney Maura Ziska; Councilman Brooks declared a brief telephone conversation with Attorney Maura Ziska.

Attorney Maura Ziska, on behalf of the applicant, reviewed the variances that had been requested.

- Allow construction of a second story addition with a side yard setback of 13.1 feet in lieu of the 15 foot minimum required in R-B Zoning District;
- Allow a building height plane setback for a roof, balustrade and entry feature.

Attorney Ziska noted that the minor changes requested by the owner would improve the architecture, meet their living needs and correct leaking problems caused by the existing roof and skylight. She provided architectural renderings, site plan, and photographs to discuss the merits of the proposed project.

Attorney Ziska explained that the hardship, which runs with the land, was that the existing configuration of the house was nonconforming in that the existing side yard setback for the second floor master bedroom was 13.1 feet. She advised that adding to the master bedroom would be in line with the existing setback and would not further encroach into the setback. The portion that was nonconforming was only 15 square feet.

Attorney Ziska stated that ARCOM believed the changes requested were positive and supported those changes. She advised that there were no objections from the neighbors.

Zoning Administrator Paul Castro reviewed the variances requested by the applicant. He stated that ARCOM did have concerns relative to the windows. He noted that, at this time, windows were not projected to be placed on the side where the applicant was requesting a side setback variance. He noted that ARCOM had concerns that a future owner might want to place windows at that location, and the owner would be looking down on the neighbor's property, which was about 70' - 80' away from that area. He explained that ARCOM had suggested placing a restrictive covenant so that windows could not be placed there, in the future. He stated that the applicant needed to address the hardship as it relates to the code provisions.

Attorney Ziska addressed the concerns that ARCOM had relative to the placement of windows on the addition. She advised that she did not believe there was any room for the placement of windows, and noted that windows had never been requested by the applicant.

In response to President Coleman, Attorney Ziska stated that she did not believe placement of a restriction on the approval was necessary because there was no room to place windows in that area. She commented that it would be an unnecessary restriction on the property.

Mr. Castro advised that a restriction might not be necessary for the present owner, but would be necessary for future owners.

In response to President Pro Tem Kleid, Attorney Ziska stated that ARCOM did approve the application.

In response to President Pro Tem Kleid, Mr. Castro stated that ARCOM had provided the Town Council with a positive, affirmative statement. He noted that ARCOM had stated that the architectural changes proposed by the applicant, as well as the new roof style, was an enhancement to the property; and based upon the merits of the architecture, the relief the applicants were requesting was acceptable to them. He advised that ARCOM always provided a statement of that nature.

In response to Council Member Markin, Attorney Ziska advised that a portion of the balcony was encroaching into the setback.

In response to Councilman Brooks, Attorney Ziska reiterated that the hardship, which runs with the land, was that the existing configuration of the house was partially nonconforming, and the proposed expansion of the master bedroom was to square off the bedroom by allowing 15 sq. ft. of the addition to be nonconforming. The hardship for the building height plane variance was related to the depth of the property.

In response to President Pro Tem Kleid, Councilman Brooks stated that he would include a caveat that the approval include a restrictive covenant with respect to the placement of windows in that area would not be allowed.

In response to Attorney Randolph, Councilman Brooks stated that he was making the motion to approve this variance due to the hardship.

Councilman Brooks made a motion to conditionally approve Variance No. 10-06 as identified on architectural drawings prepared by Smiros & Smiros Architects. The condition of approval was that the applicant record an acceptable deed restriction that prevents, in the future, additional windows on the second story portion of the north side of the subject house. The motion was seconded by President Pro Tem Kleid. On roll call, the motion carried 4-0, as Councilman Wyett had left the meeting.

b. <u>VARIANCE #12-2006</u> The application of Gay Ann Cinque and Alfred J. Cinque relative to property described as Lot 3, less the East 0.5 feet of Golf View Addition to the Town of Palm Beach; commonly known as 3 Golfview Road; located in the R-A Zoning District. Request for variance from the side yard requirements in the R-A Zoning District to construct a second story addition with a west side yard setback of 4.5 feet in lieu of the minimum of 15 feet required; for variance from the rear yard requirements in the R-A zoning district to construct a second story addition with a rear yard setback of 11.3 feet in lieu of the minimum of 15 feet required; and, variance from the lot coverage requirements in the R-A zoning district for a 21 square foot portion of the second floor to increase the lot coverage from 28.26% to 28.46% in lieu of the 25% maximum allowed.

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

Attorney Ron Kolins, on behalf of the applicant, stated the request was for a variance to allow placement of a second floor on top of the rear garage. The purpose of this request was that the applicant's daughter and family would be living with them and the space was needed.

Attorney Kolins reviewed the three variance requests as follows:

1. A 4.5 foot setback in lieu of the minimum 15 feet on the west side.
2. A rear yard setback of 11.3 feet in lieu of 15 feet required.
3. Lot coverage to increase from 28.26% to 28.46%.

Attorney Kolins stated that it was a minuscule increase in lot coverage as a result of an eave of a roof overhang. He advised that there were a couple of hardships, which pertain to the property.

- An existing single family home exists on a lot that was only 75 feet wide located in the R-A zoning district.
- Alley in the rear of the property owned by the applicant:
    - Depth and/or width of the alley not counted when calculating setbacks:
    - Behind alley, was a public parking lot:
    - All persons living on the street have a share of the alley.

Attorney Kolins advised that because a public parking lot was located in the rear of the property, the variance requests would not impact any of the neighbors. He noted that the only persons that could be impacted were those to the west. He advised that the neighbors' architects and attorneys had contacted him regarding two issues they had relative to this application. He noted that those issues had been resolved, and the neighbors were now very supportive of the application. He explained that the issues that they had concerns with had to do with gutter systems. The neighbors wanted to be assured that the applicant's drainage would be kept on the applicant's property.

Attorney Kolins advised that the proposed location of the air conditioners would change. He also noted that there was heavy foliage between the applicant and the neighbors. He presented architectural renderings to discuss the merits of this application.

Zoning Administrator Paul Castro advised that the additions that were being placed on the house, for the most part, fit over an existing flat roof portion of the house. He noted that it had been stated that it was a roof eave overhang, but it was cantilevered out with load-bearing beams to increase the width of the proposed addition and that was the reason for the lot coverage variance.

Mr. Castro stated that only two air-conditioning units were allowed in a setback. He noted that the plans showed there was an existing air-conditioning unit there as well as a proposed air-conditioning unit. He advised that Mr. Kolins had stated that two air-conditioning units were to be moved to another location indicating that there would be four air-conditioning units. He explained that only two units would be allowed at that location, not four.

Attorney Kolins advised that the applicant did commit to the people next door and would honor that commitment. He stated that they would either put the air-conditioning on another side where there were no units or, if necessary, come back to Council.

Mr. Castro stated that staff questioned the hardship on the variance specifically the lot coverage variance.

Attorney Kolins advised that their architect, who was present, had just advised him that the project could be done with only two air-conditioning units.

In response to Mayor McDonald, Attorney Kolins advised that a variance regarding this property had been granted years ago.

At the request of Council Member Markin, Attorney Kolins displayed a drawing of the proposed second story addition and reviewed the proposed project. He noted that there were no windows on the side of the property of the neighbor to the west.

Mr. Castro advised that on the second floor, a balcony was proposed that would connect to the house, which created the need for the railing, which was also part of the variance. He noted that there was a flood insurance variance application approved to allow for renovations in 1994, and, as noted by Mr. Kolins, for the garage. He stated that there was a variance denied for the side yard setback variance back in 1998. He noted that he believed that was relative to a garage at that time as well, but was not certain.

Attorney Kolins advised that he represented the applicant relative to that garage, and they were granted the setbacks that were needed to put in the garage with the proviso that they have a deed restriction regarding the landscaping between the two houses. He stated that they honored that as best as they could. He pointed out the location of the heavy foliage between the neighbors to the west.

Mr. Castro advised that the original variance that had been denied was much larger in scope, because they had proposed to stack two cars in the garage. The applicant reapplied in December of that same year and received approval for that same garage.

Attorney Kolins stated that he did not remember the first variance but did remember that the second one was approved.

Council Member Markin asked why a variance was needed for the connecting or balcony?

Mr. Castro explained that the building was in the required setback and was only 4' from the property line. The railings, themselves, were within a required setback and required the relief as well. He stated that it was considered a second story when it was made into a balcony and was not a balcony at this point.

The architect for the project pointed out that the entire area was beyond the side setback, the existing area where the railing goes.

Attorney Kolins stated that when there was a 75' wide lot in the R-A zoning district, there was not a lot of space for anything. He suggested that the Council consider that, because with that width and the setback requirements, it was very hard to have anything that was liveable.

Council Member Markin made a motion to approve Variance #12-2006 .

In response to Mayor McDonald, Council Member Markin stated that she believed the hardship was the size of the lot. She noted that those houses were squeezed into very narrow lots and square footage of the homes were very small. She advised that when an addition can be made onto a house that makes it more functional for the family, she believed it was well worth doing.

The motion was seconded by Council Member Brooks.

Council Member Brooks noted that the reason for his hesitation was the hardship. He advised that he was sensitive to the 75' wide lot, but it did not necessarily equal a hardship. He stated that, in this instance, perhaps, it did and that was the reason he was seconding the motion.

On roll call, the motion carried 3/1: Council Member Markin, Council Member Brooks, and President Coleman casting affirmative votes; President Pro Tem Kleid dissenting; Council Member Wyett had left the meeting.

c. SITE PLAN REVIEW #4-2006 (MODIFYING SITE PLAN REVIEW #8-2005 WITH VARIANCES) The application of Linda A. Gary and Michael Belisle relative to property described as Adams House Lot 3; commonly known as 419 Chilean Avenue; located in the R-C Zoning District. Request for a change to a previous condition of approval of the original site plan for the four town homes. The request is to eliminate the prior condition requiring that the atrium areas be kept as landscaped open space in perpetuity, as well as the restriction precluding a screen enclosure over the atrium; and, request for another site plan review modification to enclose a second story open terrace on the rear of the townhouse at 419 Chilean Avenue; covering an area of 306 square feet.

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

Attorney Ron Kolins, on behalf of the applicant, stated that he would be discussing two matters relative to this property. He commented that he had previously come before the Council for a variance on this townhouse requesting approval to enclose the atrium. He explained that the Council had approved the enclosure of his client's atrium for many reasons including health related issues. He explained that the townhouse was in a row of four townhouses, located in one building, on Chilean Avenue. He advised that of the four townhouses, two other homes had previously been approved to enclose their atriums.

Attorney Kolins stated that, subsequently, Zoning Administrator Paul Castro informed him that staff had discovered there was a deed restriction on this property, which covered a number of issues including the covering of these atria. He explained that, at Mr. Castro's request, and because it was the right thing to do, he was before the Town Council today with an amendment to that deed restriction. The amendment eliminated the prohibition against enclosing the atria for each unit. The deed restriction had been executed by all four of the townhouse property owners. He explained that the Town needs to be included on the restriction and requested that the Council approve the amendment. He provided the document to Town Attorney John Randolph.

Zoning Administrator Paul Castro advised that when the town home was originally built, the properties had placed on them a deed restriction and/or condition of approval that all of the atriums had to remain open atriums for landscaped open space. He noted that permits have been issued, in the 1980's, to enclose some of the atriums without the applicants having to obtain a release from the restrictive covenant.

Mr. Castro advised that the variance had already been granted, and the applicant had demonstrated to the Council that they met the hardship as it related to the code. He explained that because there was a condition of approval, it required the Town Council to release the restrictive covenant requiring the atrium areas be kept as landscaped open space, in perpetuity, in order for them to build that.

Mr. Castro advised that when the application was submitted, a master bedroom was shown on the back, which was actually a sundeck. He noted that site plan approval by Council was required to enclose the second story open terrace on the rear of the townhouse.

Attorney Kolins stated that Mr. Castro was correct, but he had wanted to discuss the modification of the deed restriction first, and then would move onto the second issue.

In response to President Coleman, Attorney Kolins stated that he would review the bedroom enclosure issue. He explained that behind the atrium of the townhouse was an open deck that the applicants had always intended to enclose to make it into a bedroom. He advised that the property owners were unaware, when they came before Council several months ago, a site plan approval was required. He noted that they were aware it did not require a variance. He stated that the applicant was requesting site plan approval to allow the enclosure of that portion of the second floor adjacent to the atrium and backing up to the back of the home in order that it could be used as a bedroom.

Attorney Kolins presented photographs and a site plan to discuss the merits of this application.

Council Member Brooks stated that the original site plan approval was January 8, 1980, with the restrictive covenant. He advised that his concerns related to the owners of the townhouses who believed that the restrictive covenant could be eliminated simply by signing the proposed amendment. He noted that the Town Council's predecessors had imposed that restrictive covenant and believed that open space and green space were very important.

Attorney Kolins explained that three of the four townhouses have covered the atriums. He stated that most importantly was that the green space argument was purely numerical, in this case, because these atria were internal to the houses and would not be seen externally by anyone. He noted that it was not really open space or green space as it was not outside the house.

Attorney Kolins stated that the atrium was a health hazard because of problems with leakage, and insects. He noted that was part of the hardship when they came before Council for a variance three months ago.

Council Member Brooks advised that this issue had been covered in November when the Council approved the variance. He stated that, at that time, they were unaware of the restrictive deed and that was what concerned him. He commented that because a mistake was made, he did not believe the Council should perpetuate it.

Attorney Kolins stated that three mistakes out of four had been made, because three of the four units have gone through the same procedure. He explained that it was the Town who required this amendment. He reiterated that the area did not really contribute to green space area under any circumstances. He advised that he understood what Council Member Brooks' concern was, but noted that the situation had changed, and believed that presently, many years after these atriums had been built, it had been learned what a hazard and a problem they were. Hurricanes have flooded and damaged these areas, and when they were built those issues were not considered.

Mayor McDonald commented that since this had been missed three other times before, what was the Town going to do with all the deed restrictions that were approved and were not being heeded.

Mr. Castro advised that the deed restriction was in the property file and should have been caught at the time the original research was done for the variance application by the applicant's attorney. He explained that it was a requirement that had been placed on applications, specifically when Poinciana Plaza came in and the deed restriction was found on the Plaza. He stated that he did not have an answer.

Mayor McDonald stated that deed restrictions were imposed with no mechanism in place to know that there was a deed restriction when a property returns for another application.

Director of Zoning, Planning and Building Veronica Close advised that in the past the department did not have the means by which to keep track of all of these restrictions. She stated that they were in the process now of working toward getting a computer system that would help them do that. She explained that as of two years ago, the department started a manual sheet that recorded all of these agreements in an attempt to ensure that staff was able to keep track of them.

Ms. Close advised that added into the zoning application was a provision that asks for history back to 1970. She explained that this was an additional attempt to try and identify all existing agreements. She noted that was not done for ARCOM or Landmarks but they may want to record for the future in order to identify those for them as well.

In response to Mayor McDonald, Ms. Close advised that it was on the department's list in November 2005, when Attorney Kolins requested the variance for this property. She explained that, as indicated, agreements were overlooked, and staff does not go back through their property records, but requires the applicant to do that.

In response to Mayor McDonald, Attorney Kolins advised that he did not misstate his application six months ago, because he was unaware of the deed restriction. He stated that there were, historically, two others as well, that the same thing occurred. He noted that he did not know why that happened, but there had to be some reason, in this case, why it happened.

Mayor McDonald noted that Council Member Brooks' point of green space was well taken. He asked what happened, as an open area, when it rained, did the rain flow into the ground?

Attorney Kolins responded that the rain flows into the units, because the seals were not holding. The hurricanes created many problems, and whenever there was a heavy rain storm, the atrium did not hold the water; and in addition to water, there was moisture which created bugs.

Mayor McDonald asked if it was a pervious substance on the ground?

Attorney Kolins responded that he did not want to answer that because he was not 100% certain of what it was. He did not recall the substance.

Council Member Brooks stated that he was the one that had pushed for what was now known as Exhibit E, Site History on the applications, three or four years ago. He explained the request was made precisely for the reasons the Council was in this difficult position. He advised Mr. Kolins that it was his obligation in November 2005 to look at the site history.

Attorney Kolins stated that they somehow missed it; perhaps it had not been recorded in the right place.

Mr. Castro stated that it was in the Town's microfiche for property records.

Council Member Brooks stated that a system should be put in place to prevent this from happening. He advised that he did not see how the Council could deny this request.

Council Member Markin stated that the area was green space and was allocated as green space when the units were constructed. She advised that when looking at the units, as constructed on the lots, they take up a lot of space. She explained that they were trying to make sure the owners were able to get a townhouse built at that location, but still adhere to the green space requirements that were so important.

Council Member Markin asked if there was a history for the very first townhouse that had enclosed their atrium? She asked if the approval was on record or was it done illegally? She asked if they would then have to come back, after the fact, to Council?

Ms. Close stated that staff could not answer that, at this time. The records were kept in the Town's microfiche, which would take quite a bit of research. Staff would be happy to do that if the Council wanted to defer the project.

Council Member Markin stated that from personal knowledge of some of these units, it was her understanding that the very first enclosure was done without approval. The owner did not believe that they would be approved because they knew there was a deed restriction. She noted that it was hearsay, but it would be interesting to find out if the first one was done legally.

Council Member Markin stated that when there was a construction site that was being approved, based on a certain amount of green space requirement, and they use up the green space requirement with atriums, the real issue was to go back to ARCOM to make sure the use of atriums was not being equal to green space. She stated that she saw a precedent being set here over and over again where someone can put in an atrium, which was so easily retrofitted, after the fact. She explained that Council was now making a commitment on construction, on a given amount of green space, after someone puts a roof on it. She noted that the Town was losing the green space, losing the perviousness of the property that the Town required and then this type of situation occurs. She stated that she understood why the applicant wanted to do it but if one looked at the mass of that townhouse, on that lot, and she did not know how much hardscaping currently existed on this particular space, it made it very difficult. The real issue was going back to ARCOM to make sure that atriums were not being calculated into green space requirements.

Mr. Castro advised that, in the past, specifically regency style homes were being built with large courtyards in the middle, which could never be seen from the outside. He explained that about two years ago, the Planning and Zoning Commission recommended and the Town Council approved, a provision that required 50% of the required landscaping to be within 10' of the property line to try to preclude these types of things from happening again. He explained that a majority of the landscaping was to the outside to benefit the neighbors as well as the residents in the front.

Mr. Castro stated that staff does have some mechanisms in place to try to preclude these types of situations from happening again. He noted that atriums do not always serve their intended purposes, and advised that many times they would be paved, or paver stones would be placed down instead of using it as open green space. He added that many times the atriums do have drainage systems so that they do not flood. He stated that he believed when the atrium was built, there was a drainage system placed in there to prevent flooding, but he did not know that for a fact in this situation.

President Coleman suggested, in response to Council Member Markin's comments at a meeting the other day relative to creating green space, that in the future, there could be some type of compensation for green space in the community.

Council Member Markin responded that something like that was very creative but stated that there was a need to be very specific about the atrium rule. She believed that someone needed to look at it whether it was ARCOM or Planning, Zoning, and Building, or both.

Ms. Close stated that when the plan reviewers look at plans, they calculate the open space, which they do because it was a requirement in the code and was for the purpose of drainage. She stated that, this particular covenant, stated it could not be covered by anything at all, which told her it was intended to meet the open space requirement.

Council Member Markin stated that if the applicant wanted to cover up that green space on that lot, was there any other location on the property that could provide additional green space?

In response to Ms. Markin, Attorney Kolins stated that he did not know, as he had not looked at that. He advised that he could look into it.

Council Member Markin stated that if the applicant wanted to use up green space that was, in fact, deed restricted, which was done for a purpose, that they should be able to come up with some form of green space somewhere else.

Attorney Kolins advised that the applicant had a deck around the pool. He stated that by looking at the site plan, he did not see anywhere else they could do that, in this particular case.

Attorney Kolins stated that he could make sure that the Council sees the calculations made from a drainage standpoint.

In response to Mayor McDonald who advised that a 2" drainage retention was required at present, Attorney Kolins stated that the applicant would do whatever was required.

Council Member Markin asked if a roof was placed on the atrium, would the water go over to the other home?

Attorney Kolins advised that it would not and the neighbor's atrium was roofed as well. The roofs were angled for the water to drain off in a particular direction so as not to go on another persons' property.

Council Member Brooks commented that he would second someone else's motion, as he believed the Council had no choice but to approve this request.

President Pro Tem Kleid agreed with Council Member Brooks stating that the Council was in a catch-22 situation.

President Pro Tem Kleid made a motion to approve the Site Plan Review #4-2006 for the enclosure of the atrium, for the same reasons approved the last time, that it was a public health issue.

Attorney Kolins stated that, for the record, what the Council was moving to approve was the modification of the deed restriction to allow enclosure of the atrium.

President Pro Tem Kleid amended his motion to delete the deed restriction regarding the enclosure of atriums, in order to allow enclosure of the atrium.

Mr. Castro clarified that the modification to the deed restriction was for all four units. He wanted it clarified whether it was being modified to eliminate that restriction in all the cases of the atriums or in just this case?

President Coleman suggested that the Council move to eliminate the restriction for those units that have made application here, because he still wanted to talk about the people who knowingly violated the deed restriction. He stated that if one of the atriums was filled in improperly, the Council should not approve that retroactively.

Council Member Markin suggested that they go back and find out if the first one was legally done.

Attorney Kolins stated that even if one unit was done illegally, it was before his client came along, and his client should not be punished for something someone else did. He noted that they were already under construction, and the variance had been granted. He noted that the townhouse had already been torn apart.

Ms. Close asked to have the motion clarified asking if it was to remove the restriction from those receiving approval.

Town Attorney Randolph stated that it was a comment and not a motion, and President Pro Tem Kleid stated that was not the motion. He advised that people have already done it, and he did not see how they could redo this, even if it had been done illegally.

Mayor McDonald stated that they could be required to come back, individually, asking the Council to remove the deed restriction. He advised that was what he believed Ms. Markin was saying. He stated they should deal with each one on the facts of that situation.

Council Member Markin stated that her fear was that the Council would be setting a precedent.

President Coleman agreed with that.

President Pro Tem Kleid then amended his motion to state that the approval was only applicable to this particular applicant.

Town Attorney Randolph stated that he did not have the deed restriction, but Mr. Kolins stated that it related to the entire property, and it would have to be lifted for the entire property unless the deed restriction was modified as it related to all the properties.

Attorney Kolins stated that the way the Council was talking about handling this situation was fine for his client. He was not trying to argue about it, but legally, he believed a deed restriction was a building wide restriction, and provided how to get rid of it: three quarters of the owners have to agree to it. He noted that he had all of the owners sign and the town just needs to sign on. He stated that he did not know if there was a way to pick and chose who would be impacted by the change.

President Coleman stated that Attorney Kolins had just convinced him to request a deferral and review the history in order to say to the previous owners who was legitimate and who was not.

In response to Attorney Kolins who asked how that would affect the outcome for clients, President Coleman stated that the applicant would have to come to the table if they were in violation.

Attorney Kolins advised that his clients have done it right.

President Coleman stated that he would be in favor of bringing everyone back to the table.

Attorney Kolins advised that it was a matter of estoppel for people who, in 1980, had enclosed their atriums, without approval and there was nothing that could be done to them.

Council Member Markin stated that a choice could be given to them. They could be made to remove the covering of the atrium unless they could compensate the Town for green space either on their property or elsewhere, in some capacity. She stated that she did not know if it was a cost factor, a fine or a penalty.

Mayor McDonald had a couple of legal questions. He stated that Mr. Kolins noted that removing the deed restriction only required 75% of the unit owners in agreement with the Council to go along with it. He noted that it was said that the Council could not, practically, deny it. He explained that he believed, if the deed restriction was not removed, then there would be a title issue for every one of these owners, down the road, when they tried to sell their townhouse. He stated that from a practical standpoint it was a problem for the owners, and they would each have to come in to have that deed restriction removed or it would be a cloud on the title.

Attorney Kolins stated that his client was in the process of completely gutting and renovating that townhouse from top to bottom. He asked if construction had to now stop? He stated he did not know if the roof was up or not and did not know exactly what stage the construction was in other than it had been torn apart.

Mr. Castro stated that he did not believe the atrium was opened up.

President Pro Tem Kleid withdrew his motion, at this time.

Council Member Markin made a motion to defer the portion of Site Plan Review #4-2006 regarding previous landscaped open space restriction, and restriction precluding screen enclosure over the atrium until research of the history of the entire property, going back to 1980, in that location, was completed. The motion was seconded by Council Member Brooks. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting.

Attorney Kolins asked the Council if there would be a motion to approve the site plan review. He noted that the Council did not have a problem with that request, which was for the bedroom.

Mr. Castro advised that there was a request for a modification above the sundeck, which did not require a variance nor a restrictive covenant on that request. He advised the Council that they could take action on that portion of the site plan approval, bringing back the other portion of the site plan approval with the atrium and the variance relief.

President Pro Tem Kleid made a motion to approve the portion of Site Plan Review #4-2006 regarding the second story open terrace on the rear of the townhouse at 419 Chilean Ave. The motion was seconded by Council Member Markin. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting.

In response to Attorney Kolins who asked the Council to clarify what to tell his client relative to the atrium, President Coleman advised him to return next month. He noted that the Council would have the facts on the four units, and it would be discussed next month.

Attorney Kolins asked if it was within their purview to ask for an applicant to do something else in Town to compensate for the loss of the green space?

President Coleman stated that he believed there was a sensitivity, and the Council was not trying to penalize his client, but if they removed the entire covenant now, the Council would have nothing to bring the other parties to the table with and no information to talk about.

President Pro Tem Kleid stated that the Council would have, in essence, rewarded these townhouse owners for something they did illegally, but not the applicant.

President Coleman advised that if nothing was to change, the applicant was just delayed 30 days. The Council needed to obtain the information on the others, because unfortunately, the applicant was married to them too.

d. SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of City National Bank of Florida, as Trustee of Land Trust Agreement dated 9-20-2005 known as Trust Number 2401-2301-00, William E. Shockett, Executive Vice President & Trust Officer relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Boulevard; located in the R-D(2), B-A Zoning District. The Applicant is requesting to convert this existing 134-room hotel into a 107-room hotel condominium. The building will be completely renovated, including the demolition and reconstruction of the entire interior and exterior walls, and the addition of a partially sunken 220-space parking structure to replace the existing 144-space surface parking lot. The swimming pool will be relocated to the interior of the building on the fourth floor, and tennis courts and tennis pro shop will be built atop the parking structure. The building is and will remain 5 stories over a basement. However, the entrance road will be ramped up and the lobby will be relocated from the basement to the first floor. The hotel already contains customary accessory uses including a gift shop and two dining rooms. These uses will continue in the new hotel, but will be reconfigured. Special exception to change ownership of an existing hotel in the R-D(2) district; special exception to allow tennis courts to be built on a structure (the parking deck); and, special exception to expand existing accessory commercial uses in the hotel by enlarging the gift shop from 168 square feet to 436 square feet and adding a small tennis pro shop of 420 square feet. Variance requested to demolish more than 50% of the cubic volume and reconstruct and enlarge the nonconforming building; for a side yard setback for parking garage of 10 feet in lieu of 30 foot minimum required by code on the north side, and 15 feet in lieu of 30 foot minimum required by code on the south side; for lot coverage of 63.6% in lieu of 22% maximum allowed by code for a five-story special exception structure; for a maximum east-west building dimension of 426.6 feet in lieu of the maximum 150 feet allowed by code; for a porte-cochere dimension of 40 feet in lieu of the maximum 30 feet allowed by code; for a tennis pro shop (accessory commercial use) outside the main building, and with its own external entrance which is not permitted; to allow parking aisle widths of 21.66 feet and 21.75 feet in lieu of the 25 ft. minimum required by code; and, variance to allow parking to be arranged so that a car must be moved before another car can enter or exit a parking space, for the mechanical parking lifts. **Request for Deferral to the April 11, 2006, Town Council Meeting Per Letter Dated February 22, 2006, From Adam Schlesinger.**

Deferred Site Plan Review 5-2006 to April 11, 2006, Town Council Meeting.

5. Other

   a. Consideration of Coco of Palm Beach Restaurant's Traffic Consultant Report on Traffic Circulation and On-street Parking in the Area Around the Restaurant. [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Frank Lynch, on behalf of his client, advised that the Town Council requested the applicant come back with a traffic study after the restaurant had opened. The applicant's traffic consultant, DKS Associates, had been working with the Town's traffic consultant, Gareth Klotz of American Consulting Engineers, in order to provide all information required for Mr. Klotz to review the traffic circulation and parking issues. He stated that Town staff would report on the results of the study.

Attorney Lynch noted that based on the study, it appeared that the impact on traffic was very small, as a result of the opening of the restaurant. The available parking spaces on the street were not impacted, and even with the restaurant open, there were approximately forty spaces available during peak hours.

Zoning Administrator Paul Castro advised that the Town's traffic consultant had reviewed the report and had worked with their traffic consultant to address the deficiencies in the original report. The study was found to be acceptable. The impacts were nominal, as it related to evening traffic in this area, based on valet parking at the Biltmore Galleria, and the traffic circulation issues there. Staff was recommending acceptance of the traffic study, at this time, for dinner only.

Council Member Brooks made a motion to accept DKS Associates, Inc., On-Street Parking and Traffic Circulation Report. [Pertaining to night time parking only, at this time]. The motion was seconded by President Pro Tem Kleid. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting.

b. PLAT ABANDONMENT The application of Trump Properties, LLC, relative to property described as the Plat of Reef Estates, Plat Book 28, Page 55, of the Public Records of Palm Beach County, Florida, commonly known as 515 North County Road, located in the R-AA Zoning District. Request to abandon the subject plat, including all right-of-way and easements.

I. RESOLUTION NO. 71-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Vacation and Annulment of the Plat of Reef Estates, Plat Book 28, Page 55, Public Records of Palm Beach County, Florida; Providing an Effective Date. *Deferred from the September 13, 2005, October 11, 2005, December 12, 2005, and February 14, 2006, Town Council Meeting.* **Request for Withdraw Per Letter Dated March 3, 2006, From Raymond W. Royce.**

Plat Abandonment request and Resolution No. 71-05 withdrawn from Agenda.

c. Request for Waiver of Section 42-198- The Reef Condominium Assoc. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Department Director Veronica Close stated that the recommendation from staff was to allow, during season, the sandblasting of balconies for The Reef Condominium Association. She explained that normally the noise ordinance would not allow this. Staff recommendation was that work must be performed only between 9:00 a.m. until 5:00 p.m., Monday through Friday to allow completion of this project before hurricane season begins. She advised that this project was the result of damage caused by the last hurricane.

President Pro Tem Kleid made a motion to approve the request for waiver of Section 42-198 - The Reef Condominium Association, to allow sandblasting of the balconies, during season, with the following conditions:

- **Work must be performed only between 9:00 a.m. until 5:00 p.m. Monday through Friday - No Saturdays, Sundays or holidays.**
- **Shield neighboring properties from the sandblasting truck with a sound wall, if in their vicinity.**

Council Member Markin seconded the motion. On roll call, the motion carried 4-0, as Council Member Wyett left the meeting.

d. Request for Waiver of Section 18-242 Due to Modification of Project at 447 Primavera Avenue. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Department Director Veronica Close stated that this project had come before the Town Council, at their meeting last month, as a new project with a request to demolish. She advised that, at that meeting, she had mentioned there would be a subsequent request for a reinterpretation of the number of days for construction. She explained that normally twenty-two months was allowed, and staff was recommending that since there had been no work on the unfinished house for at least a year, that the interpretation of the code be that the twenty-two months start at the demolition permit.

Attorney Ray Royce, on behalf of the applicant, advised that they would prefer that the twenty-two months commence at the time of the issuance of the building permit, he has been advised by Mr. Eastwood of Worth Builders, that they could live with the twenty-two months from the time of the demolition permit. The demolition permit was issued just a few days ago. Demolition commenced Monday, and they were waiting for the building permit.

Council Member Markin made a motion to approve the request for waiver of Section 18-242 - 447 Primavera Avenue, for a new 22- month construction schedule to begin with the issuance of the demolition permit. Council Member Brooks seconded the motion. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting.

e. Request for Waiver of Section 42-199, Hours for Construction Work, at 3200 South Ocean Boulevard. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Department Director Veronica Close stated that the recommendation from the staff was to allow construction work at 3200 South Ocean Boulevards between 9:00 a.m. until 5:00 p.m., including Saturday and Sunday through the end of April. She noted that the work to be performed was concrete restoration work, which had been interrupted by the hurricanes.

President Pro Tem Kleid approved the request for waiver of Section 42-199 - 3200 South Ocean Boulevards to allow work between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays and Sundays through the end of April; with the proviso that they are an executing party to the Temporary Right-of-Way Agreement that had been forwarded to them. Council Member Brooks seconded the motion. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting.

XII. ANY OTHER MATTERS

Mr. Tom Bradford, Deputy Town Manager, stated that at the Special Town Council Meeting of March 13, 2006, the Town Council granted special dispensation to staff relative to working with the contractor to provide for the dune and beach restoration on the south end of Town. He advised that today there was a housekeeping matter to discuss, because at yesterday's meeting, there was an item staff failed to bring to the attention of the Council. He noted that due to the emergency situation with the dune restoration project, and the time constraints involved, staff was asking that the Town Council allow staff to proceed with the trucking subcontractor, Eastman Aggregate to perform the dune restoration work for the approximately $1.1 million. He stated that staff would like to place in the record that Council authorized an emergency purchase, using Bean's subcontractor Eastman Aggregate for an approximate amount of $1.1 million in order to allow the work to go forward.

In response to President Pro Tem Kleid, Mr. Bradford advised that the costs were somewhat similar, noting that the $1.1 million was roughly the same as Bean had subcontracted for with Eastman.

President Pro Tem Kleid stated that the Town would have more direct control over the project, and would be closer to the people who were affected by it, making the situation better since the Town would have control over it.

President Coleman stated that the purpose of this discussion was because the contractor was not sure that Town staff had authority to do this without a competitive bid and without the Council making this motion.

Council Member Brooks made a motion to approve the request for approximately $1.1 million to use Eastman Aggregates as the subcontractor, and the Town of Palm Beach as the general contractor. President Pro Tem Kleid seconded the motion. On roll call, the motion carried 4-0, as Council Member Wyett had left the meeting.

XIII. ADJOURNMENT

There being no further business, the regular Town Council Meeting of March 14, 2006, was adjourned at 5:15 p.m.

Dennis P. Coleman
President

ATTEST:

Susan A. Eichhorn
Town Clerk