TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON MARCH 13, 2007

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, March 13, 2007, 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 Richard M. Kleid
President Pro Tem Denis P. Coleman
Council Member William J. Brooks
Council Member Gail Coniglio
Council Member Susan Markin

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
Tim Frank - Planning Administrator
Charles Langley - Public Works Assistant Director
Edward J. Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Judy Wells Hoffman, Landmarks Preservation Commission, From March 1999 Through March 2007.

Mayor McDonald recognized Judy Wells Hoffman for her service on the Landmarks Preservation Commission, from March 1999 through March 2007.

IV. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald recognized the Society of The Four Arts and congratulated them on the dedication of their redesigned sculpture garden, and their intent to have the garden function as a public park. He noted that the Society had evolved from an organization that primarily looked inward, to one with a strong focus on community needs. The sharing of the gardens and the development of the college on the lake provided significant enhancement to the town. He thanked the Society for their generosity and community spirit.

Mayor McDonald's comments continued: He had agreed to chair a Political Action Committee, "Let Us Vote." Today there were petition gatherers at the polls to obtain signatures to amend the County Charter to require a dual vote whenever power changes hands between local governments. If we are successful, it will require both County and municipal voter approval for Charter Amendments that would affect municipal powers or functions. Approximately 54,000 signatures must be obtained in order to have this issue placed on the ballot. In order to accomplish this task, the financial and petition gathering support of every municipality in the County will be needed. The voters of Palm Beach County should have the right of extended dual vote, just like voters in other parts of Florida. If the amendment passes, it will give municipal voters more control over local regulations and services.

Presently, the electorate of a Charter County, such as Palm Beach County may preempt a town's land use regulations by Charter, meaning the County can regulate such matters as town density, greenspace, sign ordinances, historical preservation, building appearance rules, including setback and height regulations, zoning and public safety standards – all over and against the wishes of town voters. We cannot leave our future on these extremely important town issues to the discretion of the County Commission — it is time for Palm Beach to step up and assume leadership on a County issue. I accepted the responsibility to spearhead this Committee.

The Town Manager and I will be traveling to Washington, D.C. on March 27th to lobby for the passage of a water resources development bill. Along with the Port of Palm Beach and the County, we will be requesting an expansion of the sand settling basin to trap more sand for our beaches and rehabilitation and improvement of the Sand Transfer Plant. We recently met with Congressmen Klein and Mahoney. Congressman Klein will be the sponsor for all of our requests – $2 million for the Sand Transfer Plant, and $4 million for annual inlet maintenance dredging. We will be meeting with members of the Water Resources and Environment Subcommittee of the House, the Energy and Water Development Subcommittee of the House, and the Senate Appropriations Committee.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Pro Tem Coleman advised that after the last Code Enforcement Board Meeting, a resident had contacted him regarding the propriety of a member of the Code Enforcement Board who voted in favor of leniency for a developer who had been cited for an ongoing violation. He explained that a potential fine involving tens of thousands of dollars was waived, and it appeared that the Board Member's spouse was the listing broker for the cited developer. He requested that the Town Manager investigate the facts and report back to the Town Council at the next Town Council Meeting as to any potential conflict of interest.

Council Member Brooks thanked Mr. Duggan for his leadership at the Society of the Four Arts, Mrs. Hulitar of The Garden Club, and the many citizens who had contributed millions of dollars to the redesigned sculpture garden. He recommended that those citizens who had not as yet visited the garden do so as it was a masterpiece, and it was one more jewel in the crown of Palm Beach.

Town Manager Elwell advised that there had been some concern relative to the schedule change, made at yesterday's Special Town Council Meeting, moving the Public Hearing for the proposed landmarking of Royal Poinciana Plaza to the Monday, April 9, 2007, Special Town Council Meeting. He recommended that this item remain on the original schedule for the Tuesday, April 10, 2007, Regular Town Council Meeting, along with the Development Reviews. He noted that all other Town business would be moved to the Monday, April 9th, Special Town Council Meeting, in order to balance the two days.

President Kleid responded that he believed the Palm Beach Theater Guild had sent a postcard to all of its members informing them that the proposed landmarking of Royal Poinciana

Plaza was to be heard by the Town Council on April 10, 2007. He suggested that the Town Council hear that item in the morning of Tuesday, April 10th, and then the Development Reviews would be presented. He noted that on the preceding day the Town Council would hear all Town business.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Richard Raffo, 173 E. Inlet Drive, commented on the 60 to 80 racing bikes traveling every Saturday and Sunday along North Ocean Boulevard and County Road to the Inlet Dock, where they drank the water and relieved themselves. He noted that they rode right along the road creating a very dangerous situation. The Police had been called many times, but due to some antiquated law, had not been able to do anything. He requested the assistance of the Town Council before a serious accident occurred.

Chief Reiter responded that President Kleid was correct that bicyclists had the same right of way as motorists. He stated that bicyclists were permitted to take the entire lane, and ride in the middle of the lane, no more than two abreast, as long as they moved at the same speed of traffic and did not impede traffic. Police Officers had attempted to stop groups of 30 to 40 bicyclists, which was very difficult to do; and when they had done that, in the past, it turned into a melee. He advised that the Police Department had not observed individuals relieving themselves, but that situation could be addressed, if needed.

VII. APPROVAL OF AGENDA

The following changes to the Agenda were made:

ITEM VIII.c., Architectural Commission Meeting Date from February 27, 2007, to February 28, 2007.

ITEM XII.B, Ordinance No. 5-07 incorrectly advertised as Ordinance No. 4-07 and it should be Ordinance No. 5-07.

ITEM XVI.B.1., Ordinance No. 5-07 incorrectly advertised as Ordinance No. 4-07 and it should be Ordinance No. 5-07.

DEFERRED Item XVII.3.a., Site Plan Review #2-2007 with Special Exceptions and Variances, application of Royal 160, LLC relative to property known as 160 Royal Palm Way, to the April 10, 2007, Town Council Meeting.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to defer Item XVII.3.a., Site Plan Review #2-2007 with Special Exceptions and Variances, application of Royal 160, LLC relative to property known as 160 Royal Palm Way, to the April 10, 2007, Town Council Meeting. On roll call, the motion carried unanimously.

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

VIII. CONSENT AGENDA

A. MINUTES: FEBRUARY 12, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

B. MINUTES: FEBRUARY 13, 2007
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON FEBRUARY 27, 2007.

D. RESOLUTIONS

1. RESOLUTION NO. 12-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor to Execute an Amendment to an Interlocal Agreement with Palm Beach County for the Restoration and Maintenance of Town-owned Lands in the Lake Worth Lagoon. [H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 14-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Interlocal Agreement Between the Sheriff's Office of Palm Beach County, Florida and the Town of Palm Beach Police Department Authorizing Reimbursement of $13,800 to the Town of Palm Beach in Federal Grant Funding; Authorizing the Expenditure of $13,800 from the Contingency for the Purchase of a Hal Bomb Rigging System, Providing an Effective Date. [Michael S. Reiter, Chief of Police]

E. OTHER

1. Approval of FY 2008 Budget Calendar.
[Jane Struder, Director of Finance]

2. Approval of Rescheduling the October Town Council Meeting to be Held on October 4, 2007. [Peter B. Elwell, Town Manager]

3. Approval of Early Construction Starts for Various Town Projects. [H. Paul Brazil, Director of Public Works]

4. Approval of Extended Work Hours for Dune Planting at Reach 7 and Reach 8. [H. Paul Brazil, Director of Public Works]

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

IX. PUBLIC HEARING

A. Application for Class I Dune Vegetation Permit- 1564 North Ocean Way. [Veronica B. Close, Director of Planning, Zoning, and Building]
Deferred from the February 13, 2007, Town Council Meeting.
TIME CERTAIN 9:30 A.M.

Attorney Frank Lynch, on behalf of the applicant, advised that at last month's Town Council Meeting, the applicant had been requested to provide additional information related to the elevations of the property.

Mr. Donald Skowron, Morgan Wheelock, Inc., presented architectural renderings to illustrate and discuss the information requested by the Town Council.

In response to Council Member Markin, Mr. Skowron advised that the elevations were compatible with the elevations of the property north and south of the applicant.

Lynn George, 249 Mockingbird Trail, advised that last month it was reported that she had objected to construction west of the coastal construction line but it was east of the construction line. She advised that she had not realized that the coastal construction line ran through the applicant's home, and most of his property was east of the coastal construction line.

Ms. George advised that according to the tax assessors drawings, it appeared that the applicant had already planted east of their property line onto Florida State lines, but she had just been assured, through a private discussion, that was not true. She noted that she was concerned that the applicant was taking public lands for private development, and requested reassurance that was not the case. She asked what happened to these lands, after they were planted, if they were Florida State owned lands?

Attorney Lynch stated that he could not speak for the other property owner. He assured the Town Council that the applicant had every intention of complying not only with Town Codes but with State laws as well.

Mr. Skowron assured Ms. George that they did not plan to remove any sea grapes and planned to follow the regulations of the State as well as the Town.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to approve the application for Class I Dune Vegetation Permit, 1564 North Ocean Way. On roll call, the motion carried unanimously.

X. BOARD/COMMISSION ANNUAL REPORT

A. Landmarks Preservation Commission.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Director Close provided a brief summary of staff related duties as they pertained to the Landmarks Preservation Commission (LPC) and the accomplishments of the Commission.

Eugene Pandula, Chairman of the Landmarks Preservation Commission, presented a summary of the Commission's Annual Report for 2006, as provided in the Town Council backup.

President Kleid asked what type of background and education would Mr. Pandula request an applicant applying to the Landmarks Preservation have?

Mr. Pandula responded that, in the past, landmarking had been a volunteer effort. He advised that today, with the legal, philosophical, building and zoning code issues, an attempt should be made to have as much technical expertise as possible on a commission. He suggested that people with some type of education or training in the arts and architecture, specifically, or in urban design or community planning would be beneficial.

In response to Mayor McDonald, Mr. Pandula discussed the fifty-year rule explaining that it was not a rule, but it was guideline criteria formulated many years ago for designating landmark buildings. He noted that historic preservation started in 1935, more generically, in this country, with the passage of the Historic Preservation Act at a time when things moved slower and there was less urgency in the development process. The ability for a building to stand the test of time was a bit easier, but those aspects of society changed as had the rate of change of architectural styles. He commented that with that rate of change, it became more important to look at certain seminal buildings to prevent their possible loss even if they were less than fifty years old. He discussed La Ronda, designed by John Volk, noting it would have been an important building to designate and save, in the Town, that was under fifty-years old. It had not passed the approval process and was torn down. He suggested that the Town develop a format to prevent that from happening in the future.

In response to Council Member Brooks, Mr. Pandula did not have a specific answer regarding the time line for the restoration of Seagull Cottage.

In response to Council Member Markin, Mr. Pandula responded that the Landmarks Preservation Commission was quite well run, and he would not choose to change it too much. He believed that continuing education, training, and seminars would be helpful.

President Kleid asked the following of Mr. Pandula:

- If holding meetings every month on a particular date was beneficial?
- If there was a problem, in the summertime, to get Commissioners to appear?
- Had the Commission received feedback from the public that matters were being handled out of season?

Mr. Pandula responded that designations occurred only in season, and during the summer months, only the review and approval of certificates of appropriateness occurred. He advised that he had never heard any negative feedback related to that issue. He noted that time certain, monthly meetings, were useful, and he believed that it was important, given the nature of construction processes and activities, that there not be a dead period in the middle of the year where nothing was approved. It could put projects off six months to a year. The vast majority were approved unanimously after some debate, and with the exception of designations, he did not see a benefit in taking anything out of sequence or going on a hiatus for the summer months.

President Kleid thanked all members of the Landmarks Preservation Commission for their service, as well as Mr. Pandula for his presentation today and for his service as Chairman of the Commission.

XI. REGULAR AGENDA

A. Old Business

None

B. New Business

1. Staff Report Regarding Options for Strengthening Town Dog Regulations.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her memorandum to the Mayor and Town Council dated March 2, 2007, and included in the backup material, to provide a report regarding the options for strengthening Town dog regulations. She advised that it was staff's recommendation that, instead of enacting a stricter ordinance, the Town Council review and encourage residents to utilize existing Town ordinances. She discussed the following existing Town ordinances noting that the first two might effectively apply when dealing with a dangerous dog, but the last two were not as effective:

- Section 10-6. Animals creating nuisances
- Section 10-11. Penalties
- Section 10-43. Running at large prohibited
- Section 10-44. Impounding

Ms. Hannah advised that the Town Council had directed staff, at the February 13th Town Council Meeting, to provide a full report of the Doberman incident. Police Chief Reiter had informed her that it would not be advisable to report to the Town Council, in writing, on this matter while a criminal prosecution was pending. She advised that Chief Reiter was present to provide a summary and answer questions related to this matter.

Ms. Hannah requested that the Town Council review what was available through existing Town ordinances for dog regulations. If the Town Council did not believe the ordinances were strict enough, the other option would be to enact stricter ordinances, which would require additional training and resources from staff. The Town could also add an Animal Control Division, which would require additional employees as well as additional resources, and training.

In response to President Kleid, Chief Reiter advised that the Palm Beach County Division of Animal Care and Control completed their investigation and chose not to press charges. The Town of Palm Beach Police Department reviewed that investigation and conducted an additional investigation, which determined that charges were appropriate. He advised that a Notice to Appear was filed with the Clerk of the Courts for violation of the Palm Beach County ordinance for failure to properly confine a dog or cat. He stated that prosecution was pending.

Michael Weber, from Los Angeles and Palm Beach, requested that the Town pass a stricter ordinance. He commented that two Dobermans, owned by the same person, attacked no less than four people and killed one dog within a four-year period. He advised that there had been another unreported attack the week Boomer was mauled. The Dobermans should not be blamed, but the owner should be. He noted that he lived on the same street as the Dobermans and felt threatened.

Beth Heath, 2830 Wilderness Road, West Palm Beach stated that she was the person who was walking Boomer the day he was killed. She advised that she truly believed that the Town of Palm Beach needed an ordinance to prevent this type of incident from happening. She presented a petition from over 100 residents of the Town of Palm Beach who would like to see the Town do something. She volunteered her time to the Town if there was anything she could do to help in enacting an ordinance.

Council Member Markin stated that to place an Animal Control Unit in Town would be very costly, but she believed there were other remedies the Town could entertain. She suggested that before investigating the alternatives suggested by Attorney Randolph in his memo, which was included in the backup, the Town should evaluate this particular circumstance and situation to be certain that the Town had done everything possible.

Council Member Markin asked if there was another incident with this particular dog, how would they prove it was the same dog, if there was nothing on record as to the dog's identification?

Chief Reiter advised that he believed that he had read the dog was tattooed or chipped. He noted that the dog had some sort of indicator that would allow them to identify it.

Ms. Hannah explained that once the County designated a dog as dangerous, that dog should be permanently identified as dangerous. She advised that she did not know if this dog was deemed dangerous or not, but if it was, that was how it would have to be identified.

In response to President Kleid, Chief Reiter advised that the dog was classified as potentially dangerous by the County.

Ms. Heath commented that the dog would not be declared dangerous until he attacked or killed again.

Council Member Markin advised that was her point, that the dog had not been tattooed or tagged and the County had not done anything to help the Town resolve this situation. She suggested the following ways to deal with situations of this nature in the future:

- A record of the dog's identification should be maintained in the Town's Police Department.
- The Town should have some code enforcement perspective that could be addressed and used in this type of situation.
- The Town could classify the dog as a "dangerous dog" if the County did not do so.
- The Town could require a Surety Bond and Liability Insurance of up to $100,000.

Ms. Heath commented that supposedly there was a Palm Beach County ordinance being worked on, but she was unable to obtain a lot of detail of its content, or if and when it would be adopted. She noted that the Town should not have to wait for this ordinance to be enacted, and should do something prior to that.

Ms. Heath stated that Animal Care and Control suggested that when Ms. Lane walked her dog, the dog should wear a muzzle. She advised that the dog was not being walked when he attacked and killed Boomer, but came off his property.

President Kleid advised that the Town did have the option of seeking injunctive relief and the option to bring a situation of this nature before the Code Enforcement Board, and Ms. Heath had the option of bringing civil action against the dog's owner for any damages that she might have sustained.

President Pro Tem Coleman advised that he was hesitant to enact an ordinance that did not have any practical way of being enforced, and he did not believe it would solve the problem. He noted that he would be more inclined to seek injunctive relief against the owner.

Town Attorney Randolph commented on the Town's seeking injunctive relief, and as indicated in his memo, it was a route the Town could take by alleging a public nuisance. It would be up to the court to determine whether or not an order would be entered to enjoin this person from allowing the dog to run at large, or some other remedy the judge might fashion. He noted that injunctive relief was not only available to the Town but to its residents as well.

President Kleid commented on the following:

- Section 10-6. Animals creating nuisances, did not address animals that inflicted physical damage on another animal or person. The Town could strengthen the ordinance in that area.
- Section 10-44 (c). Impounding, The $25.00 penalty could be increased.
- Liability Bond.
- Reliance of the Town on outside agencies.

Council Member Brooks inquired of Ms. Heath if anyone had attempted to talk to Ms. Lane, the dog's owner? He suggested this issue be resolved without the addition of ordinances.

Ms. Heath advised that she had been contacted by Ms. Lane's sister, who asked what they could do to make this situation right. She then stated that they could not do anything to make it right.

Council Member Brooks commented that they could not make it right for Boomer, but they could make it right by following the existing ordinances. He did not want to imply that he did not have empathy for this very tragic situation, but he believed that this was a case for civil action and not consideration of an ordinance.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to direct the Town Attorney to seek injunctive relief against the dog's owner.

Council Member Markin advised that she supported the motion, but requested action should be taken to require identification of the dog, locally, as the Town could not rely on the County.

President Pro Tem Coleman suggested that as part of the motion, there be a request to include photographs of the dog for identification purposes.

In response to President Pro Tem Coleman, Chief Reiter commented that the owner of the dog was uncooperative, at this point, and had not produced the dog.

Discussion ensued relative to including the requirement for a Surety Bond and Liability Insurance, as well as identification of the dog.

In response to President Kleid, who asked if the Town could add the requirement of a Surety Bond, Mr. Randolph stated that it would be better to deal with that issue through a separate motion and advised that an ordinance change would be required.

Pam Mettler, North Lake Way, advised that she lived across the street from Ms. Lane and believed that there was a chain link fence completely around the Lane property. She commented that Ms. Lane did not recognize the fact that her Doberman was a vicious attack dog and treated the dog as a house pet on the street. The issue was not only about the dog but the owner as well, and the lack of responsibility on the part of the owner in taking care of the dog. She noted that it was not known if it was the same Doberman or a different dog.

President Pro Tem Coleman asked, if how the motion was phrased was important to the Town in seeking an injunction?

Town Attorney Randolph advised that Town Council authorization would be sufficient and certainly the record of this meeting would contain the information indicated.

On roll call, the motion to direct the Town Attorney to seek injunctive relief against the dog's owner carried unanimously.

In response to Attorney Randolph, Ms. Heath agreed to be the contact person to provide the information he required to include in his report.

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At approximately 11:00 a.m., President Kleid advised that Ms. Trina Lane, the owner of the Doberman in question, was now present as she was unaware of the time this item was to be discussed. He advised that if there were no objections, he would invite her to address the Town Council.

Trina Lane, 665 North Lake Way, addressed the Town Council and read into the record a letter regarding the situation concerning her Doberman.

In response to President Kleid, Ms. Lane advised that her dog was not tattooed or chipped for identification purposes as it had not been declared a dangerous dog. She presented letters, in support of her dog, to the Town Clerk for placement into the record. She reiterated that her dog was not vicious, and that her present dog was between 65 -70 pounds and her prior dog was a full-grown Doberman.

Council Member Markin commended Ms. Lane for appearing before the Town Council today, under duress and this difficult situation. She suggested Ms. Lane cooperate with the Town and with the Police Department to ensure that there was someway to positively identify the dog in this case.

Discussion ensued and Ms. Lane volunteered to have her dog chipped.

In response to President Kleid, Ms. Lane commented that the whole incident was terrible, and that she had not slept for nights because of it. She stated that she took responsibility, but she believed it was the responsibility of both parties. It was the responsibility of an owner to protect its dog, and it was also the responsibility of an owner, if in a situation where they felt threatened, not to scream, and to pick up their dog. She reiterated that she, of course, took a certain amount of responsibility for the incident.

In response to President Kleid, Ms. Lane said she would not agree to muzzle her dog, when it was out, as it was not vicious.

President Kleid thanked Ms. Lane for appearing before the Town Council.

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At approximately 11:30 a.m., President Kleid announced that Ms. Trina Lane had again asked to address the Town Council, because had not been unaware that the Town Council had asked for injunctive relief against her.

It was the consensus of the Town Council not to recognize Ms. Lane as they were aware of her opinion relative to this matter, and the Town Council would proceed accordingly.

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[The following discussion took place after the luncheon recess under Public Comment.]

Trina Lane, 665 North Lake Way, commented that when she had appeared before the Town Council this morning, she had been totally unaware of the possibility of an injunction or of any action being taken against her. She advised that she had attended the meeting to clarify events of the incident and to lobby for large breed dogs. She stated that if there was any possibility of an action to be taken against her, her attendance should have been mandatory. She advised that she did not want an injunction placed against her and hoped that the Town Council did not want one either. She noted that she was willing to make reasonable remedies to resolve this situation and reviewed the steps she had already taken to make sure that this situation did not repeat itself.

In response to President Kleid, Ms. Lane responded that she believed the legislative body of Animal Care & Control had already cleared her dog, and that he did not need a muzzle.

President Kleid thanked her for her comments.

Mayor McDonald requested that the Town Council reconsider the injunction against Ms. Lane.

Council Member Markin explained that the Town Council had voted earlier in the meeting for the Town Attorney to pursue legal action, and she did not believe that the Town Council should further discuss this issue when some of the concerned people were no longer present. She suggested that, before the next Town Council Meeting, Ms. Lane try to work with her neighbors advising them of what she was willing to do. She recommended sending them a letter, or meeting with them or their spokesperson in order to work things out. If a mediator was needed, perhaps the Town could assist in providing one. She added that if muzzling the dog when she walked him, was what it would take, maybe that was what she should agree to, but she should try to work it out before the next Town Council Meeting when the issue would be discussed and after it was advertised.

Motion made by President Pro Tem Coleman to defer the action taken earlier today directing the Town Attorney to seek injunctive relief against the dog's owner, in order that the parties involved be given the opportunity to resolve the issue and report back to the Town Council at the April 9, 2007 Town Council Meeting. The motion was seconded by Council Member Markin.

After discussion, Mr. Elwell advised that this item would be on the April 9, 2007, Town Council Meeting to hear what had occurred with the communication between the involved parties.

President Kleid stated that the idea was to have them try to amicably settle this before that time and come back to the Town Council with an agreement.

On roll call, the motion carried unanimously.

2. FY 2006 Comprehensive Annual Financial Report (CAFR).
[Jane Struder, Director of Finance]

Finance Director Jane Struder introduced Mark Veil, a partner with Caler, Donten, Levine, Druker, Porter & Veil, P.A., the Town's auditing firm. She stated that he was before the Town Council to make a brief presentation regarding the audit results for FY2006.

Mr. Mark Veil, Town Auditor, presented a summary of the Comprehensive Annual Financial Report (CAFR) for the 2006 fiscal year, which was included in the backup.

Council Member Markin complemented Mr. Veil on the management summary and the detail of the various departments, specifically:

- Suggestion of the use of procurement cards in Public Works
- Recommendation to closely review purchasing cards used by employees on a daily basis.
- Recommendations made for the Office of Information Systems relative to security and backup.

In response to Council Member Markin, Town Manager Elwell advised that staff did not believe that the redundant UPS was necessary, because the facilities where Town computers were located all had automatic generators. He stated that staff agreed about the necessity of having proper system backup because systems will fail, and the Town needed to ensure that when they did, there was something that would prevent the more significant losses of data.

In response to Council Member Markin, Ms. Struder advised that the significant increase in the Town's revenues for charges for services was due to the hiring of a new EMS coordinator who had been able to take care of the huge backlog and collect on the outstanding accounts.

Council Member Brooks requested Mr. Veil and his professional association monitor events in Tallahassee, and voice the concerns of the municipalities.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to accept the FY 2006 Comprehensive Annual Financial Report (CAFR). On roll call, the motion carried unanimously.

3. RESOLUTION NO. 13-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Statement of Investment Policy for the OPEB Trust Board of Trustees of the Town of Palm Beach Pursuant to Section 82-153 of the Code of Ordinances of the Town of Palm Beach and Providing an Effective Date. [Jane Struder, Director of Finance]

Finance Director Jane Struder referred to her memorandum to the Mayor and Town Council, dated March 1, 2007, and included in the backup material, to review Resolution No. 13-07, adopting the Other Post Employment Benefit (OPEB) Trust Statement of Investment Policy. She noted that this resolution was before the Town Council for their consideration.

Ms. Struder advised that last October, the Town Council adopted Ordinance No. 9-06, which established the OPEB Trust. She noted that a transfer of $16,000,000 from the reserves of the Health Insurance Fund was appropriated in the FY2007 budget to establish the trust. These funds, currently, were invested in the State Board of Administration Pool earning 5.3%. The ordinance establishing the trust, also directed the Town's Investment Advisory Committee to oversee the investment of the funds and that Committee selected Prime Buchholz and Associates as the Investment Advisor to the fund.

Ms. Struder noted that Mr. Prime was present as was Mr. Steven Brown, a member of the Investment Advisory Committee.

Mr. Jon Prime provided a brief presentation on the details of the Statement of Investment Policy for the OPEB Trust and responded to questions from Town Council Members.

President Pro Tem Coleman asked if anyone had ever explored a contingent loan repayable only if the fund gets into surplus?

Mr. Prime responded that it was a good question. He commented that his firm had never explored that, and he was not aware of any organization that had used something like that as a funding model. He stated that he did not know if it would be allowed under regulation. He advised that one of the constraints was that they operate in a regulatory environment, however, he would research the issue.

Town Manager Elwell stated that he believed it was an appropriate question because it affected not only the OPEB but all three of the retirement funds. He suggested that staff, together with Mr. Prime, review same to provide a report to the Town Council.

Town Manager Elwell read Resolution No. 13-07 by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to approve Resolution No. 13-07. On roll call, the motion carried unanimously.

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

President Kleid announced that, after casting ballots, the Town Council had appointed the following to the Architectural Commission:

Regular Members: Morgan Dix Wheelock
William Feldkamp

Alternate Member: Samuel Boykin

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

President Kleid announced that, after casting ballots, the Town Council had appointed the following to the Landmarks Preservation Commission:

Regular Members: Eugene Pandula (Non-resident Expert Member)
Robert T. Eigelberger
Hazel Rubin
Charles Roberts

Alternate Members: Dudley L. Moore, Jr.
Wallace Rogers

REPORT ON ROOFTOP GENERATOR AT 748 HI-MOUNT ROAD

President Kleid explained that at yesterday's Special Town Council Meeting, a request was made for staff to provide the Town Council with a written report on the rooftop generator at 748 Hi-Mount Road.

Director of Planning, Zoning and Building Veronica Close provided a history of the rooftop generator at 748 Hi-Mount Road as follows:

- In general, a generator was allowed on a roof as long as it was in compliance with the Zoning Code regarding overall height and front setback.
- Staff was aware of two generators that were placed on the roof, but it was a relatively uncommon practice even though it was allowed.
- The architect sought ARCOM staff approval for the generator in question, in the Spring of 2005.
- The original application, according to the plans presented to the Planning Administrator, did meet zoning requirements.
- It was sufficiently screened by the baluster on the roof.
- It was approved and the Fire-Rescue Department signed off on it and a permit was issued.
- The applicant applied for a gas/electric building permit; applied for the gas and electrical right-of-way; and six months later applied for the building permit.
- When the building permit final inspection was done relative to beams necessary to support the placement of the generator on the roof, there was no generator in place when they received the final for the building. The gas inspection/electrical inspection was performed later.
- Staff was advised that there was a visibility problem with the generator. Staff went out and did a field inspection and did find that the generator was not in the same location as the original staff approval and that it was not adequately screened.
- When staff went back to review the revision to the permit, on the revision it was stated site screening and ARCOM approval was required.
- When staff went out to review it, they realized that the generator was much larger and appeared to be taller than the one that was originally approved.
- The generator did meet the Building Code, but it did not appear, that it met the Zoning Code. Staff would not know the answer until the architect came in and provided the plans of what was existing.
- Staff noted that the generator was not properly screened.
- Staff had contacted the architect several times, over the past several months, to work with him to correct the screening.
- If the applicant did not correct the screening problem, and if there was a Zoning Code violation, they would be brought before the Code Enforcement Board.

Ms. Close responded to questions from Town Council Members relative to this generator.

Mr. Elwell clarified that the particular determination as to what type of code might have been violated and what types of proceeding might be appropriate at the Code Enforcement Board was still under review. He advised that it was his understanding of the facts concerning this matter that if there no remedial action taken, the applicant was in violation of the approval they received, and there would be follow up and enforcement action taken by staff.

President Pro Tem Coleman commented that if there was a violation of the code, the violator should have to come back before the Town Council. He noted that the violator could be penalized for not abiding by the code, but neither staff nor Code Enforcement could make determinations to waive the code. If there was a violation of the code, the generator either would be removed or come back to the Town Council for a variance.

Discussion ensued and Ms. Close reviewed the process noting that the applicant would be cited for the violation, and if the violation was not corrected, it would come before the Code Enforcement Board. The Code Enforcement Board required that the violation be corrected. The violator would come before the Town Council for approval or remove the generator.

Chief of Fire-Rescue Moran explained that if it was a commercial structure, the Fire-Rescue Department was involved early on in the permit review process. The building would be governed by all fire prevention codes, which regulated generators on rooftops, and they would be inspected on an annual basis because it was a commercial establishment.

In the case of a residential structure, the Fire-Rescue Department would not normally be involved in the permit application. He noted that he had heard Ms. Close comment that the Fire-Rescue Department had been involved in this particular case, but he was not familiar with it. He discussed the process of reviewing a permit application for a generator at a single family home, and advised that he would not advise or recommend the placement of a generator onto a roof and would do everything he could to talk them out of it.

Council Member Markin commented on her concerns: The length of time that this situation had gone on; how the Town Council found out about it; and her personal outrage that somebody would apply for a building permit to do one thing, do another and then have it slip through the cracks.

Ms. Close clarified that there had been a revision submitted, and the revision was signed off by the Plan Reviewer. The revision did reflect the current location of the generator, and that there was a note on that revision requiring ARCOM approval and screening of the generator. She advised that although the generator was placed as shown on the plan, it did not receive all of its approvals.

Ms. Close advised that this was a very unusual case, but she believed there might be other generators on roofs, but staff was only aware of two in Town. She explained that their inspectors and code officers try to identify problems, but this particular generator was behind a hedge, and the only way to see it was if you were coming toward it, but not laterally.

Council Member Markin advised that a sequential order of approvals should be spelled out and identified.

President Pro Tem Coleman suggested holding the contractor responsible, rather than only the homeowner.

In response to Council Member Coniglio, Town Manager Elwell stated that fundamentally it was a legal question, and staff would review and address the specific question of remedies the Town could impose on contractor violators of the Code.

Discussion ensued and Attorney Randolph noted that there were several instances where a contractor and an owner had been fined, but there was not a way to collect against the contractor; the property owner could be held responsible through the lien process. He advised that because contractors were regulated by State law, there was a great deal of case law out there related to the inability to license them or even register them. He explained that he had concerns over the Town's ability to fine the contractors, and he would have to research that in much more detail before being able to come back to the Town Council on that issue.

Ms. Close advised that staff was presently looking to change parts of Chapter 18, and was working with the Town Attorney to appear before the Ordinance, Rules and Standards (O.R.S.) Committee with some recommended changes. The changes involved ensuring that contractors abide by Town codes.

President Pro Tem Coleman suggested listing on the Town website contractors who repeatedly broke Town rules.

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The luncheon recess was taken at 12:35 p.m.

The Town Council meeting of March 13, 2007, was reconvened at 2:10 p.m.

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PUBLIC COMMENT:

President Kleid commented that there had historically been a time allotted for citizen comments during the afternoon session. He requested that be included in future agendas.

Trina Lane, 665 North Lake Way, was recognized, and addressed the Town Council in regard to the previous discussion and action taken regarding dangerous dogs. *(Discussion was added to comments and actions, which occurred earlier in the meeting.)*

XII. CONVENE AS LOCAL PLANNING AGENCY

A. Call to Order and Roll Call

The Local Planning Agency meeting was called to order on March 13, 2007, at 2:20 p.m., in the Town Council Chambers. Mayor McDonald, President Kleid, President Pro Tem Coleman, Council Members Brooks, Coniglio, and Markin were present.

B. ORDINANCE NO. 5-07 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 134-1729 by Modifying and Adding Regulations for the Size and Placement of Generators in All of the Town's Zoning Districts; 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]

Planning, Zoning, and Building Director Close reported the changes that were made as a result of the previous day's meeting. Following were the recommendations:

- The decibel for the mechanical equipment on the property was required to meet the Town's code;
- Generators over 100 kilowatts be fully enclosed in a building;
- Generators between 60 and 100 kilowatts were required to receive the Architectural Commission and Landmarks Preservation Commission approval; and
- Provides an administrative waiver within an appeal to the Town Council for the provisions.

Responding to Council Member Brooks, Ms. Close indicated that adding the recommendation of not having any generators on the roof would need to be incorporated and an additional reading, as the zoning in progress would be modified.

Town Manager Elwell suggested that Town Council proceed with this Ordinance and separately direct staff to bring an ordinance for first reading in April, and second reading in May to address the roof issue.

Motion made by President Pro Tem Coleman, seconded by Council Member Markin to approve staff's recommendations. On roll call, the motion carried unanimously.

President Kleid requested that staff bring back to the April 10, 2007, Town Council meeting, an Ordinance regarding generators on the roof.

XIII. ADJOURN AS LOCAL PLANNING AGENCY

Council Member Markin moved to adjourn the meeting, seconded by Council Member Brooks, and on roll call, was approved unanimously.

XIV. RECONVENE THE TOWN COUNCIL MEETING

The Regular Town Council Meeting reconvened at 2:25 p.m.

XV. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order at 2:25 p.m., in the Town Council Chambers with Mayor McDonald, President Kleid, President Pro Tem Coleman, Council Members Brooks, Coniglio, and Markin.

XVI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 1-07 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 Definitions for Building Height for Building on Lots along Lake Trail, by Modifying the Other Definitions for Building Height to Address Additions on Existing Buildings, and by Modifying the Definition of "Through Lot" by Not Including Lots along Lake Trail in Said Definition; Section 134-2 by Adding a Definition for Height for Building on Lots East of the State of Florida Coastal Construction Control Line; by Modifying Section 134-419 by Adding a Provision for Raising Nonconforming Buildings to Meet Minimum Flood Elevation; by Amending Section 134-2029 to Allow Antennas in the R-D(1) and R-D(2) Zoning Districts as Permitted Uses and to Modify the Existing Regulations by Allowing Antennas as Permitted Rather than Special Exception Uses in the Town's Commercial Zoning Districts and PUD-A Zoning District; by Amending Section 134-2107, 134-2061, 134-2062, and 134-2063 by Eliminating All References to Antennas; by Amending Section 134-1109 by Permitting Offices as Special Exception Uses on the First Floor in the C-TS Zoning District Provided Certain Conditions Being Met; 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 Randolph read Ordinance No. 1-07 by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to approve Ordinance No. 1-07 on second reading. On roll call, the motion carried unanimously.

President Kleid announced that there would be a third and final reading, due to a slight change made to Ordinance No. 1-07, on April 10, 2007, at the Regular Town Council Meeting.

2. ORDINANCE NO. 3-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for an Amendment to the Code of Ordinances at Part II, Chapter 1, General Provisions, So as to Create a New Section 1-15 to Be Titled "Noncompliance and Unpaid Liens," Said Provision to Provide That No Building Permit Shall Be Granted and No Application for Development Review Shall Be Considered Relating to Any Property Which Has Been Adjudicated by the Town's Code Enforcement Board to Be in Noncompliance with Any of the Regulations, Codes, or Ordinances of the Town or Against Which a Lien Exists in Favor of the Town Which Is Unpaid; Providing for Notice; Providing an Opportunity for Appeal; Providing an Opportunity to Show Good Cause as to Why Said Requirement Shall Not Be Applied; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John C. Randolph, Town Attorney]

Town Attorney John Randolph read Ordinance No. 3-07 by title, as printed above.

Motion by President Pro Tem Coleman, seconded by Council Member Brooks, to adopt Ordinance No. 3-07. On roll call, the motion carried unanimously.

3. ORDINANCE NO. 4-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, To Include a new Section 118-15 Entitled "Establishment of School Speed Zones, Enforcement; Designation"; Providing for the Establishment of School Speed Zones; Providing a Speed Limit; Providing for Hours of Regulation; Providing for Penalties; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 4-07 by title, as printed above.

Motion made Council Member Brooks, seconded by President Pro Tem Coleman, to adopt Ordinance No. 4-07. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 5-07 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 134-1729 by Modifying and Adding Regulations for the Size and Placement of Generators in All of the Town's Zoning Districts; 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 Randolph read Ordinance No. 5-07 by title, as printed above.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve on first reading Ordinance No. 5-07. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 6-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to the Retirement System; Amending Section 82-98 to Amend Subsection © Paragraphs 2 and 7 Distributing 175 Revenues upon Receipt and Providing for Interest at Rate Determined by Monitor; Amending Section 82-99 to Eliminate Self Directed Investments; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Bonni Jensen, Attorney to the Firefighters Retirement Board]

Town Attorney Randolph read Ordinance No. 6-07 by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to approve on first reading Ordinance No. 6-07. On roll call, the motion carried unanimously

XVII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Request for Waiver of Agreed Maximum Time Schedule for 455 North County Road.
[Veronica B. Close, Director of Planning, Zoning, and Building]
Deferred from the February 13, 2007, Town Council Meeting.

Attorney Frank Lynch, on behalf of the property owner at 123 LLC, requested an extension of their permit for several of the following reasons:

- During the renovation, landmarked issues were found, requiring approval by Landmarks Preservation Commission;
- Materials were not readily available
  - Roof tiles were handmade in South America;
  - Items that were found in Europe were incorporated into the house;
- Hurricanes caused delays;
- Ancient artifacts located on the property caused construction delays; and
- At the commencement of the project, in 2003, the property comprised of wood and hollow tile structure, and was considered for demolition by neglect of the previous owner. The house has been rebuilt from the inside out and is made of concrete and steel structure.

Attorney Lynch indicated that the requested extension date was December 31, 2007.

Planning, Zoning, and Building Director Close noted that as the original permit was issued April 24, 2001, and the permit was issued again on October 22, 2001, to Brennan Design, which was due to expire on April 25, 2007. An extension was requested originally to October and it was modified to December 31, 2007, which would make a total of 80 months total construction time, and about 50 months since Mr. Brennan assumed the project. Staff recommended to not grant the extension and bring them before the Code Enforcement Board, if the project was not completed by April 25, 2007. The alternative was to revoke the permit and reissue it, but there had been steady progress. It would be a stellar landmarked property when completed. Staff did not intend to revoke the permit. However, if the Council granted the extension, staff recommendations were to not allow a further delay beyond December 31, 2007, a fine of $500 per day levied, beyond whatever time was granted, north entrance access would be used, perform landscaping within 35 feet within County Road to screen property entirely by May 15, 2007, use Special Duty Police Officers regarding truck traffic.

Public Comment:

Attorney Maura Ziska, representing Dan and Karen Swanson, of 474 N. County Road, commented that The Swanson's had been tolerating this construction project for the last four years. If the Council granted an extension, it was being requested that the extension be as tight as possible and that screening be required by landscaping their west half of the property, which would help in containing the sand and debris.

Council Member Brooks stated that a fine would be imposed, if the date of December 31, 2007, was not met.

Council Member Markin commented that this property was extremely problematic, and that it would be an asset to the Town, and that the Town should be flexible. She indicated that the December 31, 2007, date should be adhered to, and a fine be imposed any day thereafter.

Motion made by Council Member Markin, seconded by Council Member Brooks to approve the time extension to December 31, 2007, with a $500 fine thereafter with Planning, Zoning, and Building's conditions. On roll call, the motion was denied 3-2, with Council Members Markin and Brooks casting an affirmative vote, and President Kleid, President Pro Tem Coleman, and Council Member Coniglio dissenting.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve the time extension to December 31, 2007, with a $2,000 fine thereafter with Planning, Zoning, and Building's conditions, including screening. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. VARIANCE #3-2007 The application of Lois Umbach relative to property described as South 3 feet of Lot 26 and Lot 27, Woods Landing Plat No.2; commonly known as 577 East Woods Road; located in the R- B Zoning District. Variance request to allow construction of a 749 square foot two-story addition with lot coverage of 36% in lieu of existing 30% and maximum allowed 30%. *Deferred from the February 13, 2007, Town Council Meeting.*

Ex-parte communication was declared by Council Member Markin via a conversation with Attorney Broberg; Council Member Coniglio via a conversation with Attorney Broberg; and President Kleid via a telephone conversation with Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, to provide a brief history of the application.

Architect Ted Davis presented a site plan to provide an overview of the variance request.

Town Attorney Randolph clarified that the applicant was not before the Town Council for an appeal of the decision of the administrative official. He did not believe there was room for argument in regard to Mr. Castro's interpretation as to whether it was a first or second floor.

President Kleid requested that the applicant limit discussion the question of the variance and not to the legality of it.

Discussion ensued relative to the nature of the variance request. Attorney Broberg advised that the applicant had worked very hard to bring it into compliance and to make it a de minimis hardship.

Zoning Administrator Paul Castro advised that staff questioned the hardship relative to increased lot coverage, because they were not only going above the existing one-story with a loft, which staff did consider a second story, but they were adding more coverage on the property.

In response to Council Member Coniglio, Mr. Castro advised that there was a complaint from a neighbor. He commented that there had been testimony at the Architectural Commission meeting relative to the proposed addition being placed on the house, and that there had been a split vote.

In response to Council Member Brooks, Attorney Broberg advised that Town code was the hardship. He noted that it was a one-story house, but had to be considered a two-story house due to the loft. The applicant was caught by the code, because they had to go to 30% coverage for the entire property versus the 40% allowed for one-story structures.

In response to President Kleid, who asked if that legally was a hardship, Attorney Randolph advised that Town code was usually what brought people before the Town Council. The hardship did have to do with the land, and came about as a result of the configuration of the property. The argument was circular as it went back to the interpretation given by Mr. Castro in regard to it.

In response to Council Member Markin, Mr. Davis advised that they were, with the addition, within the requirements of the one-story structure. The issue came back to a simple interpretation of the code. The property was at 30% and they were going up to 36% because of the addition. The applicant would be allowed to go to 40% if it was one-story. It was the two-story interpretation that took them over the now 30%.

Mr. Castro advised that if they were to simply build over the existing foot print of the house, at the 30% coverage, they would not require a variance, but they were adding on an addition that exceeded the maximum allowed for a two-story structure and that was the reason for the variance.

In response to Council Member Markin, Mr. Castro advised that they could go up within the footprint of the existing building at 30% lot coverage or they could leave it as a one-story house.

Attorney Broberg requested a deferral for this variance request.

President Kleid advised that it appeared to be the consensus of the Town Council to grant the deferral.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, to defer Variance #3-2007 to the April 10, 2007, Town Council Meeting. On roll call, the motion carried unanimously.

b. <u>SPECIAL EXCEPTION #1-2007 WITH SITE PLAN REVIEW AND WAIVER OF ZONING IN PROGRESS</u> The application of The Everglades Club Inc. relative to property described as lengthy legal description on file; commonly known as 500 South County Road; located in the R-A Zoning District. This is a request for a Special Exception with Site Plan Review, to install a 360kw standby generator and an above ground flame shield 4,000 gallon fuel tank to be located on the east side of the Everglades Golf Club, near South County Road. The proposed generator and fuel tank will be located on the west side of the existing reverse osmosis plant and pumping station approximately 89 feet west of South County Road. The purpose for the improvements is to operate the water plant and related pumps for maintenance/irrigation of the golf course during power outages. The height of the proposed generator is seven (7) feet above grade. The height of the proposed fuel tank is seven (7) feet above grade. The proposed Waiver of Zoning in Progress is requested to not require the generator to be entirely enclosed within a building. *Deferred from the February 13, 2007, Town Council Meeting.*

Attorney Renee Renuart, on behalf of the applicant, along with Peter Brooks, Golf Course Manager addressed the Town Council, to discuss the proposed request. She advised that they were before the Town Council last month to request a special exception for a standby generator and that they had also requested a waiver of Zoning in Progress, which had been deferred by the Town Council pending staff's recommendations. The issue was whether or not the generator needed to be enclosed, and they were before the Town Council today to request that the applicant not have to enclose the generator. The generator, which would be located on the golf course, was 89' from South County Road and was behind an 8' hedge as well as a 14' building.

Zoning Administrator Paul Castro advised that Zoning in Progress required that a generator over a 100KW be enclosed within a building, screened appropriately from the neighboring properties. He advised that the request was a valid request for the waiver of that provision. Proposed Ordinance No. 5-07 would require, in similar situations, that generators be enclosed within a building. The generator, in question, was behind an existing utility building for the golf course and was substantially off the road screened by a hedge the length of the property.

President Kleid commented that if the new ordinance was adopted, the fact that they had screening by landscaping would not be applicable, and the only question would be whether or not this building actually screened it from the road.

Mr. Elwell advised that the Town Council, at yesterday's Special Town Council Meeting, requested Ordinance No. 5-07 be amended to require generators to be completely enclosed on four sides with a roof instead of being shielded on three sides. The question today was whether this situation was so unique because of the size of the property and location of the generator within the property, that the Town Council believed it was appropriate to grant a waiver in this case.

In response to Peter Brooks, President Kleid stated that he had visited the site, and advised that the location was substantially behind the building.

Mr. Peter Brooks commented that the site of the generator was remote.

President Kleid asked if there were comments from the public and there were none.

Council Member Brooks stated that this was a unique situation, and found it to be favorable, in particular, because they did not use Town water.

Motion was made by Council Member Brooks, seconded by President Pro Tem Coleman, to approve Special Exception #1-2007 with Site Plan Review and Waiver of Zoning in Progress. On roll call, the motion failed 3/2, with Council Member Brooks and President Pro Tem Coleman casting affirmative votes; and President Kleid, Council Member Markin and Council Member Coniglio dissenting.

Town Attorney Randolph advised that an alternate motion was required in order that there was some affirmative action.

Council Member Markin stated that it was unfortunate because the timing was very bad since the Town Council would be adopting today an ordinance relative to this issue. She noted that this situation was unique and although she would like to be able to approve it, that could set such a bad precedent.

Attorney Renuart stated that she did not know if it would be acceptable to Mr. Peter Brooks, or to the Town Council, to place a wall around the generator, but not to completely enclose it.

In response to Ms. Markin, Mr. Peter Brooks advised that they did not know what the added expense would be to place a generator inside of a building and adding a roof.

After further discussion, **Council Member Markin made a motion to approve Special Exception #1-2007 with Site Plan Review and Waiver of Zoning in Progress, if the**

applicant agreed to surround the generator on four sides, and the sides come up to and above the height of the generator, within a reasonable distance, acceptable by the Planning, Zoning and Building Department. Council Member Coniglio seconded the motion.

In response to Attorney Randolph, Council Member Markin advised that she was referring to the Planning, Zoning and Building Department for the height of the walls, if the ordinance to be discussed this afternoon, did not allow for it.

Mr. Castro commented that the wall would be the height of the generator including the exhaust.

Council Member Markin amended that motion, which was accepted by the seconder, to include that "the wall would be the height of the generator including the exhaust. On roll call, the motion carried 4/1 with President Kleid dissenting.

2. New Business- Less Than 15 Minutes

   a. VARIANCE # 5-2007 The application of John and Elizabeth Raese relative to property described as Lot 24 and the East ½ of Lot 25, Plat of Jamaica Lane; commonly known as 286 Jamaica Lane; located in the R-B Zoning District. Variance request for a point of measurement for height and rear setback to allow the accessory structure point of measurement of 18 feet NGVD in lieu of the 17.14 feet NGVD maximum allowed by code; and variance request to construct an accessory structure (greenhouse) with a 5 ft. west side setback in lieu of the 12.5 foot minimum required.

Ex-parte was declared by Council Member Markin via a conversation with Attorney Broberg; Council Member Coniglio via a conversation with Attorney Broberg; and President Kleid via a conversation with Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, along with Jim Frogner, Land Planner, addressed the Town Council. He explained that there were two variance requests. The applicant was eliminating the variance request for a point of measurement and was requesting the variance for a 5' setback. The hardship was the configuration of the land.

Jim Frogner, Land Planner, displayed photographs and a site plan of the property in question to discuss the merits of the proposed project.

Zoning Administrator Paul Castro provided the following staff comments:

- A letter of objection was received from Mr. Wearn relative to the hardship.
- Staff questioned the hardship as it related to the side yard setback.
- The Architectural Commission voted that the point of measurement variance was necessary to build the greenhouse.
- ARCOM voted to recommend approval to the Town Council but did not recommend approval for the side yard setback.

Council Member Brooks commented that the vote of the Landmark Preservation Committee was 4/3 with the recommendation that the applicant avoid having to obtain a variance for the west side setback by moving it at least 12'. The applicant was desirous of having workspace but that would not constitute a hardship. He recommended that it be moved at least 12', if possible more, and then a variance would not be required.

Discussion ensued and Director of Planning, Zoning and Building Close advised that the applicant had already placed it at 5', but would be required to move it another 7.5' in order to conform to the Code.

Attorney Broberg advised that the owner to the west had not objected to the application.

Motion made by President Pro Tem Coleman to deny the side yard setback variance and to approve the point of measurement variance (9"). The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

Attorney Broberg clarified that approval was granted for the point of measurement variance, and the other variance for the west side setback was denied.

b. SUBDIVISION #1-2007 The application of Paul L. Maddock Jr. and the estate of Paul L. Maddock relative to property described as lengthy legal description on file; commonly known as 545 & 561 North Lake Trail and 549 North Lake Way; located in the R-B Zoning District. Subdivision of 4.83 Palm Beach acres into 6 lots with a cul de sac street creating a separate lot for each of the two landmarked structures on the property. (Proposed Lot 1 "Ducks Nest" and Proposed Lot 2 "Old Church")

This item, XVII.C.2.b. was discussed with the following item, XVII.C.2.c.

c. VARIANCE #6-2007 The application of Paul L. Maddock Jr. And the estate of Paul L. Maddock relative to property described as lengthy legal description on file; commonly known as 545 & 561 North Lake Trail and 549 North Lake Way; located in the R-B Zoning District. Applicant is proposing to subdivide the subject 4.83 Palm Beach acres of land (1 lot) into six lots and a cul de sac street. Proposed variances to accomplish this request are as follows: Variance for proposed Lot 1 to allow the lot at the end of a proposed cul de sac to have a width of 25 ft. in lieu of 100 ft. minimum required; variance for proposed Lot 2 to have a front building height plane setback of 57.2 ft. in lieu of 75 ft. minimum required; variance for proposed Lot 1 to have a south side yard setback of 11.6 ft. in lieu of 15 ft. minimum required; variance for proposed Lot 2 to have a north side yard setback of 8.9 ft. in lieu of the 15 ft. minimum required; and, variance for proposed Lot 2 to not construct a two car garage onto an existing house.

Ex-parte communication was declared by President Pro Tem Coleman, and by Council Members Markin, Coniglio, and President Kleid with Attorney Broberg.

Attorney Peter Broberg, on behalf of Paul Maddock, Jr., provided an overview of Subdivision #1-2007, and Variance #6-2007.

Paul L. Maddock, Jr., addressed the Town Council, for the record, that he was not taking the Church to Martin Luther King Park, or Duck's Nest to Peanut Island, and was not building a golf course or creating condominiums. He presented the development plans of his property to the Town Council.

Zoning Administrator Castro made several of the following comments:

- The Landmarks Preservation Commission did not agree with the variance request to not construct a two car garage onto an existing house, as it was necessary to keep it with the integrity of the existing building. Staff requested an opportunity to review it at this location.

- Staff's concerns:

    - Typically in a subdivision, lot lines were perpendicular to the radius of the cul de sac, not as outlined in the proposal, as Lots 1 and 3 were very thin.

    - The Homeowner's Documents should be provided for review by staff and the Town Council to ensure that the landscaping and maintenance obligation of the cul de sac were adequately handled.

    - Public Works requested provisions for safe sight visibility triangle parcels that would be dedicated to the Homeowner's Association as their obligation to maintain.

    - Lake Trail was dedicated for public and Town use, and was the Town's obligation to maintain, which was a concern of the Planning, Zoning, and Building Department.

    - It was the Town's obligation to maintain Maddock Way as a public street, as proposed in the plat.

    - Engineering consultant, Gareth Klotz, recommended a type of curbing designed for driving fire trucks over the small curbing that protected the landscape area.

- The hardship was questioned as the cul de sac could be placed further to the east to eliminate the variance.

- The design of the cul de sac was communicated with the applicant early on to redesign it to be more in keeping with the general standard practice in the engineering of cul de sacs.

- Three non-access parcels to South Woods Road were shown as a cul de sac, but it was actually a 20 foot access easement. Staff recommended that a non-access strip or patching be provided to lots 5 and 6 to prohibit access to that easement or South Woods Road.

Council Member Markin commented that the two properties adjacent to North Lake Way should have a protective easement in order to prevent the placement of driveways off North Lake Way, as it was a very busy section.

Mr. Maddock replied that all the access would come in to the primary road. He noted that moving the cul de sac north or south impacted the structures, and too far east would impact the adjacent property.

Responding to Council Member Brooks, Mr. Maddock provided details as to why the property was not homesteaded.

Tom McCarthy, Consulting Engineer, indicated that if the cul de sac was moved east, the access to Duck's Nest in Lot 3 would be worse. The cul de sac, from their point of view, had been moved around until it could not be improved.

Responding to President Pro Tem Coleman, Mr. Castro replied that the Fire Marshall reviewed the issue of a fire truck being unable to move around the cul de sac, but the Town Consulting Engineer recommended installing the type of curb that could roll, in order to get a vehicle through.

Mr. Castro stated that a garage would be required in staff's recommendation on Lot 2, a side yard variance would be needed, and the further south lot could be designed to provide enough space, as only two or three more feet were needed to meet the adequate setback for a garage.

Attorney Broberg indicated that at some point in time the Church would be renovated and at that time there would be opportunities to add a garage; he said he did not know the best location, as it was difficult to provide for something that may never be used.

Council Member Markin inquired if there was any consideration that would ensure that on Lot 3 along the Lake in the southern corner, the frontage of the third home could be even with the two landmarked properties north of it?

Attorney Broberg responded that the house immediately to the south of lot three was virtually right on top of Lake Trail. It was also a two-story house, and created a barrier looking out to the southwest. Locating a structure farther back, would only exacerbate the problem. The house was about seven or eight feet above Lake Trail and was a two-story house, so there was a substantial site-screening caused by that house and the adjacent house to the east; it would create more of a hardship to move the house back to the new site. Secondly, he said he would not want to restrict a person in what they could do and where they could place it, as they would build something that would have to fit in comfortably next to the Church, and he would rather leave it up to Landmarks or ARCOM in the future in order to not hinder creativity with the structure.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to approve Subdivision #1-2007, and Variance #6-2007, with the eventual incorporation of a garage.

Council Member Brooks thanked the Maddock family for preserving the historical significance of Duck Nest and the Old Church.

Council Member Markin requested that the requirement to have the protective easement along North Lake Way be added.

Amended motion to approve Subdivision #1-2007, and Variance #6-2007, eventually incorporating a garage, and a protective easement requirement along North Lake Way. The maker and seconder agreed.

Town Attorney Randolph advised that the motion include the condition that staff have the opportunity to review the homeowner's documents.

Amended motion to approve Subdivision #1-2007, and Variance #6-2007, with the following conditions: a garage eventually would be incorporated per staff recommendation; a protected easement along North Lake Way; and staff review of Homeowner's Documents. The maker and seconder agreed. On roll call, the motion carried unanimously.

d. <u>SPECIAL EXCEPTION #3-2007 WITH SITE PLAN REVIEW</u>
The application of Palm Beach Orthodox Synagogue, Inc. relative to property described as Floral Park Lots 178, 177, 176, and S. 8.14 feet of Lot 175; commonly known as 120, 122 and 126 North County Road; located in the C-TS Zoning District. Special Exception to expand the existing Synagogue by using the existing office building that was Rampell & Rampell as the foyer to join the applicant's property to the South (the operating sanctuary) to the property to the North (the previously approved multi-purpose room); and to reconfigure the 2nd story by removing 1,127 square foot thereof while retaining room for 3 offices. Based on the principle of equivalency of this use, the additional space will demand less parking than the previous use. The request proposes to increase the occupancy of the multi-purpose room from 132 (as allocated under Special Exception #14-99) seats to 158 seats to

match sanctuary occupancy. In addition, this request also proposes to allow this multi-purpose occupancy to increase based on the permitted principal of equivalency for parking from the approved 52 (as allocated under Special Exception #27-2001) seats to 100 seats when the sanctuary is in use. Such increase does not maximize its permitted use under equivalency.

Ex-parte communication was declared by President Kleid with Dr. Michael Gelfand, President of the Palm Beach Orthodox Synagogue, Inc.

Attorney Richard Zaretsky, on behalf of the applicant, provided an overview of Special Exception #3-2007.

Zoning Administrator Castro noted that staff's critical concern was the interrelated parking that would be generated from the classroom use during the week and in the evenings. Based upon the parking requirements in the code, there was a deficiency of 11 spaces. It could be viewed from a declaration of use standpoint and the uses limited to certain segments of that area, but it would become very difficult to regulate compliance with the declaration of use. A variance was needed based upon the number of seats that were being shown today.

Responding to Council Member Brooks, Rabbi Scheiner stated that the classrooms were used to educate the children on Sunday mornings. He commented that on the Sabbath, the main sanctuary was used and there was no simultaneous use.

Responding to President Pro Tem Coleman, Mr. Castro indicated that according to the plan, all the doors except for one set were removed, which appeared to be a temporary door with a partition that could be opened.

Dr. Michael Gelfand commented that the west wall was not being changed significantly in the plan as it was currently designed. The plan was to retain the wall exactly as it was today and to keep the existing door.

Responding to President Pro Tem Coleman, Rabbi Scheiner clarified that there were no state regulations pertaining to a church or a synagogue offering a few hours a week of informal education for children , as it was not licensed as a school. Attendance was only three hours, which did not require a playground. The parking lot behind the synagogue was completely vacant on Sunday mornings, as the restaurant and shops were closed.

Discussion occurred with Council Member Markin, Mr. Castro and the applicant, in which it was clarified that a solid wall was between the foyer and the sanctuary, as there was a discrepancy between the plans.

Responding to Council Member Markin, Zoning Administrator Castro explained that in the 2005 plan, the second floor was smaller than the current one being proposed. Almost two-thirds of the actual area was open from the first floor to the second floor ceiling, whereas now it was less than a third, with stairs going up to the second floor. The current proposal was for four offices and five classrooms, and previously it was planned for four offices, and no classrooms.

Responding to Council Member Markin, Rabbi Schriner commented that there were four designated parking spaces in the parking lot behind the Synagogue, and a long-standing agreement with St. Edward's Catholic Church to utilize their entire parking facility.

Mr. Castro interjected that according to the code, in order to lease parking space, a variance was needed to eliminate the required parking in order to provide supplemental parking offsite. Required parking was not allowed offsite.

Town Attorney Randolph advised that if the administration had made a determination that a variance was required for this application, and no variance had been advertised, before moving forward, advertising was needed, or the appeal of the decision of the administrative official as it related to the requirement of the variance.

Responding to President Kleid, Town Attorney Randolph indicated that the applicant could not proceed on the variances and return at a later date, as that variance had not been advertised. Notice would need to be given with response by the public to state their concerns with regard to the variance.

Mr. Castro noted that when the application was originally submitted, it was his understanding that they were re-orientating the sanctuary but with the same layout as before, which did not generate a demand for more parking.

Responding to President Kleid, Town Attorney Randolph explained that the approval of the site plan was dependent on being able to get the variance.

Mr. Castro stated that the offsite parking could not be recognized, even if it was done 10 years ago, as the code did not allow it. He commented that he was addressing the demand for more parking based upon the floor plans submitted.

Responding to Council Member Coniglio, Mr. Castro recommended that the hours of operation for the classrooms, and the occupancy of the hall be tied to a Declaration of Use Agreement with similar fines as proposed in all other Declaration of Use Agreements.

Council Member Brooks suggested that Reverend Dwight Stevens at the Paramount Building be contacted to use 20 or 30 of their parking spaces through a Declaration of Use Agreement, as it was located in a closer proximity to the Synagogue. Services did not begin until sundown, so the commercial use of the building was empty.

President Kleid commented that a deferral would allow time for the applicant to resolve the issue, and return to the April 10, 2007, Town Council meeting.

Responding to President Kleid, Mr. Castro commented that the wall would be redrawn, and that the issue was the new classrooms on the second floor, and the loss of the open foyer, which triggered the loss of the principle of equivalency, because it was more wide open than the original approval.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to defer Special Exception #3-2007 with Site Plan Review to the April 10, 2007, Town Council meeting. On roll call, the motion carried unanimously.

e. Matters Related to the Proposed Brazilian Beach Resort Project at 2842 Ocean Boulevard.

I. **MODIFIED** SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS & VARIANCES

The application of Adam Schlesinger 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. **Modification**: The new surface valet parking lot was conceptually approved by the Town Council on February 13, 2007. However, the parking lot layout had to be modified to accommodate interior landscape islands and turning radii requested by the Fire Marshal. This application seeks final approval of the parking lot. Variance is to allow 148 parking spaces in lieu of the 200 parking spaces originally proposed and the 307 minimum required for a hotel with dining rooms and accessory commercial uses. There are currently 144 parking spaces on the property.

Ex-parte communication was declared by President Pro Tem Coleman with Attorney Jim Brindell.

Attorney Brindell provided an overview of the modifications made to the Site Plan Review.

ii. Declaration of Use Agreement and Construction Agreement

Attorney Brindell indicated that the proposed revisions that staff provided were acceptable relative to the Declaration of Use Agreement, and that the proposed changes to the Construction Management Agreement were acceptable except for one provision: Condition 2.I.4. required a Construction Performance Bond posted for 125% of the estimated cost of the project; on a $15 million project, that would be $18.75 million. He proposed that the construction loan would be based on the complete value of the property, including the value of the land and the completed project, which would be sufficient to cover the cost of the construction plus a loan interest reserve.

Attorney Brindell continued that the lender imposed two other requirements, to address the bankruptcy concern: (1) the borrower was a single purpose entity, voluntary filings by single purpose entities were routinely dismissed as bad faith filings, and (2) if a bankruptcy filing was made by the borrowing entity, personal loan guarantees were required of the member/shareholder of that borrowing entity, which were triggered as full recourse guarantees if that entity voluntarily filed a bankruptcy action.

Attorney Brindell proposed two conditions in place of staff's condition: (1) the owner would provide documentation to the Town that the construction loan was a single purpose entity prior to receipt of the building permit, and (2) that the members/shareholders or partners would provide full recourse completion guarantees if the entity filed for bankruptcy; and a demolition bond would be posted, in favor of the Town, in an amount of 125% of the estimated cost of the demolition debris removal and sodding and irrigation.

Town Attorney Randolph clarified the two items included in the agreement and indicated that the proposal by Attorney Brindell provided some protections. However, the downside was that the guarantees were only as valuable as the person that gave the guarantees. The second paragraph provided a form of a demolition bond, but in the event of bankruptcy, it would not be effective, as the court would not allow it to be demolished.

Responding to President Pro Tem Coleman, Attorneys Mark Bideau and David Layman, Greenberg Traurig LLP, explained the involuntary bankruptcy process.

Zoning Administrator Castro noted that many of the design aspects of the surface parking shown on the plan were based on comments from the Fire Marshall and the Traffic Engineer relative to access, traffic circulation, and fire safety. The only other comment addressed the variance from the parking standpoint, in which there were over 200 seats in the dining room, and busing of over 40 employees. Although there was a reduction in the number of rooms, it was an intense use for only having 148 parking spaces. He requested that the applicant address the hardship issue.

Attorney Brindell indicated that the hardship was that it was an existing building with an existing parking regimen, which had been improved considerably. The number of rooms and the number of restaurant seats had been reduced, from 276 to 225. There were no large conference rooms, only two small ones, and the property had not had parking problems in the past with the additional rooms and seats and only 144 spaces.

Responding to Council Member Coniglio, Adam Schlesinger noted that the occupancy was lower in the summer, therefore, not as much parking would be needed, but there would be access to it all year long; the overflow parking would be offsite.

President Kleid inquired about Attorney Brindell's indication at February's Town Council meeting that there was a formal agreement with Royal Saxon, Inc., to allow access to the beach and that it would be reflected in the Declaration of Use Agreement. Attorney Brindell responded that he did not agree to that because the Agreement would be recorded and the agreement negotiated with the neighbor specifically stated that it would not be recorded.

Town Manager Elwell explained that the Royal Saxon agreement (although not directly recorded) would be referenced in the Declaration of Use Agreement.

Council Member Brooks commented regarding his concern with how documents were interpreted and how qualifications were read by the Court.

Responding to Council Member Brooks, Attorney Layman noted that in any commercial real estate venture, there were risks. However, the lenders required a single purpose entity for the developer, which allowed them to have only one project, one or two outside directors to the developer, that the development entity had in its bylaws that it could not declare bankruptcy without the approval of the outside director, which would be unlikely.

Discussion occurred with Mayor McDonald and Attorneys Brindell and Layman regarding entities registered in the State of Delaware, the length of the loans, and that the litigation site for foreclosures and construction would be in Palm Beach County.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve the Modified Site Plan Review #5-2006 with Parking Lot Variance, and Agreements as amended subject to approval of staff and Town Attorney. On roll call, the motion carried unanimously.

f. VARIANCE #4-2007 The application of Paul Wittman relative to property described as Lot 28 Stotesbury Park Revised Plat; commonly known as 231 Coral Lane; located in the R-B Zoning District. To allow construction of a new two story residence with a point of measurement for cubic content and height of 9 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 7.5 feet NGVD maximum allowed, as determined by the Town for lots abutting low streets.

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

Attorney Maura Ziska, stated, for the record, that she represented the applicant Paul Wittman, and provided an overview of Variance #4-2007. Attorney Ziska noted that the hardship, evident in the photographs, was to preserve the coral in the existing condition of the property; the Architectural Commission (ARCOM) had unanimously approved the variance last month.

Architect Harold Smith presented the renderings and plans of the project.

Zoning Administrator Castro commented that staff originally questioned the hardship on the variance, that the site was visited, and the coral ledge was evident, as shown in the photographs. Staff's concerns were that the landscape ribbon shown on the dry board did not count as landscaped open space, the size of the generator would go in the rear setback because of the new generator provisions. He indicated that the Architectural Commission recommended approval of the project.

Responding to Council Member Markin, Mr. Smith indicated that there was coral beneath the pool, and there was one significant area where there was a lack of coral, which was the previous location of a pool that was located on both lots. He noted that the footings would have to be excavated anywhere from 18 to 24 inches in depth, and excavation would be kept to a minimum.

Responding to Council Member Brooks, Attorney Ziska conveyed that the hardship was the change of grade from the Town's point of measurement to the actual grade of the property, which consisted of coral rock about a foot and a half above the Town's point of measurement.

Responding to Council Member Brooks' concern about bringing the height down to eight feet, Attorney Ziska noted that the owner would need to excavate the coral in order to maintain the ceiling heights, and they were trying to preserve the coral. Architect Smith added that the building height was only six inches higher than allowed by code.

Council Member Markin commented that there was excavation for the pool, but not for the house; the coral and elevation of the property made a natural coral bed that raised the house up, and that it would be one less house that would flood.

Architect Smith noted that the proposed grades in the backyard were roughly eight to eight and a half feet and some fill would be needed to keep the excavation to a minimum, and that they were also keeping the pool size down.

Paul Wittman, applicant and managing member of the partnership building the house, replied to Ms. Markin that they were trying to avoid excavating in order to lower the house to eight feet while the surrounding property was at nine or nine and a half feet.

Council Member Markin moved that Variance #4-2007 be granted finding support thereof that all the criteria applicable to this application as set forth in Section 134-201a, items 1-7, were met. President Pro Tem Coleman seconded the motion. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. SITE PLAN REVIEW #2-2007 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Royal 160, LLC relative to property described as lengthy legal description on file; commonly known as 160 Royal Palm Way; located in the C-B Zoning District. Request special exception approval for continued operation of hotel under new ownership. Prior to the adoption of the zoning in progress for hotel condominium conversions, the

Applicant and the professionals engaged by the Applicant have had several pre-submission meetings with Town staff in connection with this application. These meetings have included provision of draft applications, the required traffic concurrency analysis and architectural plans for staff's review and analysis for completeness. The Applicant believes it is vested and not subject to the zoning in progress for hotel condominium conversion. In the event, however, that the Town Attorney concludes that the Applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application. Request special exception approval for expansion of hotel's accessory uses, including 1,500 square foot expansion of spa facility; addition of 1,335 square feet of public space, plus 360 square feet of back room space, for function room in a building in lieu of existing tent facility; replacement of the existing second floor function space with a 3,600 total square foot dining room including 840 square feet for outdoor seating on balcony. Request special exception approval to permit outdoor dining with maximum of 56 seats on 840 square foot second floor balcony on front facade. Request site plan approval for expansion of an existing hotel within nonconforming building. This site plan request includes the addition of a 1,940 square foot porte-cochere/covered drop off and relocation of the loading dock from the front facade to under the west wing of guest rooms: relocation and construction of new lobby; the construction of a 1,695 total square foot addition in the rear yard to serve as function space in lieu of the existing tent facility space: an expansion of the spa facility to 4,100 square feet; replacement of the existing second floor function space with a 3,600 total square foot dining room, including 840 square foot dining area on balcony: renovation of guestrooms (net reduction of units: 95 to 80): construction of an enclosure for an existing outdoor fire stairwell; new roof design and materials; infilling the walls of the balconies: a new 2,160 square foot loggia in the back pool area of the building fronting the swimming pool: and adoption of exclusively valet parking for the site. A variance request to permit construction of porte-cochere/covered drop off with front set back of .34 feet, in lieu of 34.72 foot minimum required front yard setback required by Code. A variance request to permit construction of relocated curb cut and porte-cochere/covered drop off, expansion of existing spa and construction of permanent function space, which increases lot coverage to 66.4%, in lieu of the 61.4% existing lot coverage and the 50% maximum lot coverage allowed by Code. A variance request to permit construction of relocated curb cut and porte-cochere/covered drop off, expansion of the existing spa and construction of permanent function space, with overall landscape space of 23% overall landscaped space (no change from existing), in lieu of the 30% minimum overall landscaped space required by Code. A variance request to accommodate new mansard roofing design and material, to permit overall building height of 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code. A variance request to accommodate new mansard roofing design and material to permit building height of 34.61 feet from zero datum (no change from existing) in lieu of 25 feet maximum building height allowed by Code. A variance request to have three (3) architectural tower features in lieu of the two (2) maximum tower features allowed by Code. A variance request for two (2) of the architectural tower features with front yard setbacks of 24.5 feet and 24.88 feet in lieu of the 39.72 foot minimum front yard setback required by Code. A variance request for three (3) architectural towers, 5 feet maximum in height, with an overall building height of 40.27 feet, in lieu of the 35 feet maximum overall building height allowed by Code for the towers. A variance request to enclose an existing exterior stairwell creating a tower feature with an existing 6 foot rear yard set back, in lieu of the 28.88 foot minimum rear yard setback required by Code. A variance request to construct addition of function room with 1,695 total square footage, to replace current tent facility, with a 10.0 feet rear yard set back, in lieu of 28.88 foot minimum rear yard set back required by Code. A variance request to accommodate new mansard roof design and materials with a 5.8 feet side yard set back (no change from existing) at western property line, in lieu of the 19.72 foot minimum side yard set back required by Code. A variance request to allow outdoor dining room seating on the front outside balcony where said use is required by Code to be entirely within the principal building. A variance to allow a marquee wider than the entry way and with support closer than eighteen inches to the face of the curb. A variance request to construct 4,750 square feet of additional improved space, without providing the one additional loading

berth required by Code. A variance request to provide 88 off street parking spaces, in lieu of 97 existing spaces and the 23 additional spaces required by Code as a result of planned improvements described in this application. A variance request to allow required parking to be stacked in a method which requires the movement of another vehicle in order to move another vehicle. *Deferred from the January 9, 2007, and February 13, 2007, Town Council Meeting.*
Request for Deferral to the April 10, 2007, Town Council Meeting Per Letter Dated March 5, 2007, From Jacqueline S. Miller.

Deferred Site Plan Review #2-2007 with Special Exceptions and Variances to the April 10, 2007, Town Council Meeting, under Item VII., Approval of Agenda.

4. New Business- More Than 15 Minutes

There were none.

5. Other

There were none.

XVIII. ANY OTHER MATTERS

There were none.

XIX. ADJOURNMENT

There being no further business, the regular Town Council Meeting of March 13, 2007, was adjourned at 4:30 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk