TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, MARCH 11, 2008

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, March 11, 2008, 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 Gail Coniglio
Council Member Denis P. Coleman
Council Member Susan Markin
Council Member David A. Rosow

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
William Amador - Fire-Rescue Chief
Kirk Blouin, Administrative Captain, Police
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 - Planning, Zoning and Building Assistant Director
William Crouse - Human Resources Director
Jane Day - Historical Preservation Consultant
Tim Frank - Planning Administrator
Fred Hess - Police Sergeant
Richard Howe - Law Enforcement

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Major Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director
Michael Reiter - Police Chief
Jane Struder - Finance Director
Spencer Wilson - Information Systems Manager
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. 2007 Firefighter of the Year-Lieutenant Craig Stanfield

Mayor McDonald recognized Lieutenant Craig Stanfield for being selected as the 2007 Firefighter of the Year, and presented him with a plaque. He commented that he has been an exceptional, faithful, dependable, steady employee, and has been an anchor in the Fire-Rescue Department. He noted that in 2007, he designed and created the joint confined space rescue training facility at the South Fire Station; redesigned the Fire-Rescue Special Ops vehicle; designed and built a work space area for tool and equipment maintenance; and has continually shared his experiences with everyone in the Fire-Rescue Department. He stated that he defined the Town of Palm Beach Vision and Values Statement, and he has been a great asset to the Fire-Rescue Department and the Town of Palm Beach.

IV. COMMENTS OF MAYOR JACK McDONALD

I do have comments today, President Kleid. Thank you and they are on a timely topic, which is water. I want to say it was refreshing recently, while staying at a hotel in Washington, D.C., to take a shower without smelling the water and enjoy being able to open my eyes without the water stinging or burning. That leads me to the water we receive from the City of West Palm Beach – water which has been a source of great disappointment and certainly, not what we envisioned in 1999 when negotiating our water contract. Town residents pay for and should receive an adequate supply of good quality drinking water. Several times, during the past few years, West Palm Beach has supplied an inferior product. The City has shown a lack of planning and oversight of their water plant and resources. They failed to maintain or improve the plant and develop alternate sources of water. They know surface water can no longer serve their customers. Palm Beach County will request, this Thursday, approval to take water from the Florida Aquifer to supplement their water supply. The Town of Highland Beach has no water supply problems or water restrictions. Mayor Frankel's response to severe water restrictions was "to get used to it," not develop alternate supplies as fast as we can like the County. West Palm Beach cannot agree on how to handle its water problems.

Two West Palm Beach City Commissioners recently requested the Mayor not proceed with the development of the waterfront project because of tight budget times. Meanwhile, the City is transferring millions of dollars of water revenues to the general budget. Since 2004, this has been approximately $16 million, $5 million of it Town money. This is occurring while the water system is near collapse. The transfers, although legal, are irresponsible.

We have experienced taste and odor problems since 2005. The City was made aware of these problems in 2004, but continued transferring money to their general budget. The City appears to have ample funds to pursue other projects, but not a financial commitment to water, our most precious resource.

The Mayor appeared before this Council last month and apologized for the inconvenience of five months of bad water, but provided no solution and no assurance she would use water profits to improve the system. She did say everything is on the table and to wait another six months. I do not believe that the Council can or should accept this timetable. The Council should initiate action today to commence meetings with the West Palm Beach City Commission regarding the improvement of water quality, water improvement of the infrastructure, and in development of alternative water sources. Unlike Palm Beach County, there is no immediate strategy for future alternative sources and no money to pay for the work.

I remember a Frank Cerabino column written last year headlined "Frankel Goal: You Pay, She Plays You for A Fool." It is a nonuser fee, which translates into getting Town residents to pay for something they don't get. It seems to be alive and working well in Palm Beach. How about a rebate to our residents for five months of inferior water?

Last month, the Mayor said everything is on the table, and yesterday she said, we will explore in any direction you want. The table is set and now is the time for this Council to initiate action and extend an invitation for the Mayors and two Councils to meet and start negotiating a water relationship that will serve our community with its most precious resource.

Thank you.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Coleman:

1. Requested, following up on the Mayor's discussion of water, staff to provide a report to the Town Council on the full context of the City of West Palm Beach's transferring of water revenues: what amount exactly had been transferred and what the money had gone for.

2. Referred to the number of requests for deferrals received by the Town Council on Development Review items heard in the afternoon at Town Council Meetings, requesting that the Town Council take some action on this issue.

Council Member Rosow:

1. Echoed what Council Member Coleman had just said.

2. Applauded the Mayor McDonald for his comments on water, noting that water was a severe issue. West Palm Beach Mayor Frankel was disingenuous when commenting yesterday on the Town of Palm Beach's water usage. The City of West Palm Beach had been notified two weeks ago about a problem with one of their water lines located by the Beach Club, which had not as yet been addressed.

3. Referred to a meeting with a representative of Koch Membranes, which was very involved with desalinization and reverse osmosis plants, the tour taken by President Kleid and Sarah Hannah of a desalinization reverse osmosis plant, and back of the envelope calculations for a 10 million-gallon reverse osmosis plant using seawater was approximately $50 million with a building

that would be no more than 4,200 square feet and tankage.

4. Suggested that the Town explore now being water independent and that he would be happy to do anything the Council would ask him to do to further that effort in order that Town residents get water, clean water and the Town did not have to be dependent on West Palm Beach.

5. Suggested that the blinking FPL warning sign on the north end was totally inappropriate. The work going on was de minimus and the sign should be removed.

President Pro Tem Coniglio:

1. Requested staff identify prior consultation reports from the 1979 era related to reverse osmosis reports and additional sources, etc., which she believed would be helpful not only to the Council in making decisions, but the public as well.

2. Questioned, in addition to the Mayor's suggestion, if this was a good time to have conversations, not only with Palm Beach County, in identifying additional alternative sources.

3. Agreed with Mr. Coleman regarding the development review deferral policy and was hopeful that the Town Council would adopt the same procedure as Landmarks and ARCOM: the first deferral was a free pass; the second time they must come before the Town Council to ask for permission; and the third time three strikes you were out.

President Kleid:

1. Commented that he had visited the Highland Beach reverse osmosis plant with Assistant Town Manager Sarah Hannah and Assistant Public Works Director Chuck Langley. He noted that he was most surprised because it was a very attractive building situated between their Town Hall and Public Library which was right in the center of Town. One would not know that it was a water facility. It was quiet with no noise coming from any of the wells. The interior of the plant was spotlessly clean and relatively quiet. It was run by one person, who operated the plant from a computer, twenty-four hours a day, seven days a week. It was a very successful project, which might be the prototype for the Town to consider.

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

David Leavitt, 1480 Via Manana, explained that he represented the following group of residents that had concerns relative to the PB Cats Program and who wanted to join the Board of PB Cats.

Allen and Zelda Mason
Alex Hufty
Marian Albergo
Lilly Pulitzer Rousseau
David Leavitt

Mr. Levitt noted that these residents pledged to contribute their time and money to make PB Cats work and requested that they be given the opportunity to help.

It was the consensus of the Town Council that when PB Cats came up on the agenda, information would be requested regarding the unwillingness to increase their cadre of volunteers.

Mr. Leavitt advised that PB Cats might have had some recent resignations that depleted their Board and asked the Town Council look into that.

Alex Hufty, 154 Atlantic Avenue, commented on the following:

- The firing of a five-year cat feeder by PB Cats on January 9, 2008.
- Cats had not been fed at any station for 15 nights out of 60, noting that there were stations where there had not been any feedings for 60 nights.
- For 60 days, she had been feeding cats in order to keep them from starving.
- PB Cats did not accept the money she raised to pay for food and to hire back the feeder.
- The Police wanted to ticket her when she was stopped for feeding the cats, but then the Police Officer informed her that she was on the list of cat feeders.
- A year ago there were 300 cats, today there were 1,000.
- At least nine members of the Board had resigned and the Board needed people. The residents mentioned by Mr. Leavitt were willing and knowledgeable, and were officially volunteering to be placed on the board to fix existing problems.

Harriet Golding, 361 Crescent Drive, presented a resolution to the Town Council, requesting that the Town of Palm Beach divest itself of investments in both the Sudan and Iran. The resolution was provided to the Town Clerk.

Ralph Del Deo, 265 Fairview Road, commented on the drainage project, noting that it was essential to complete not only with respect to the homes that flooded, but due to public safety issues. He requested that residents receive a status report, at some point. He commented that there were a number of roads on the north end that had constantly been re-paved over the decades, causing the crowns of the roads to be higher than the surrounding properties, which impeded proper drainage. He requested that the Town look at that and possibly re-pave some of those streets.

Ervin Duggan, President of the Society of the Four Arts, advised that he could not be present this afternoon when this item came before the Town Council and had been allowed to comment at this time. On behalf of the Society of the Four Arts, he commented as follows:

- The Society of the Four Arts was interested in a win-win situation for everyone involved in the parking and traffic problems in the school and Four Arts district.
- The Society of the Four Arts, as a part of a win-win situation, wanted to own the west campus Palm Beach Public School building outright.
- The purchase of the school building would put between $5 and $6 million into the School Board treasury.
- The Society of the Four Arts was eager to be a good neighbor, eager to stretch itself to make additional parking available, willing to work with the Town, with the schools, with the residents, and wanted to assure the Town Council that they were willing to give their all to join in on a win-win solution for all

Council Member Coleman responded that at a meeting with the School Board, the principal of the school and the head of the PTA intervened, noting that they did not want the Society of the Four Arts to acquire the property because they had concerns relative to keeping the property for future expansion.

In response to Council Member Coleman, Mr. Duggan advised that at the meeting, the principal was very frustrated over the parking situation, and the PTA president advised that they did want to keep the property. He commented that keeping the school was a somewhat illusory solution because the Four Arts currently had that west campus building under a 25-year lease; the Society of the Four Arts was two years into a 25-year lease, and would like to convert that into outright ownership.

He did not see how waiting 23-years would help the local school or the community in any way, when an immediate solution was needed.

Council Member Coleman advised that the result to the Town, if the School Board reacquired the building in 23-years, would be increased density where it was least needed.

Mr. Duggan responded that he believed that it would increase the density, and that there was a State law, which forbid the existence of an elementary school on two sides of the street.

President Pro Tem Coniglio thanked Mr. Duggan and the Society of the Four Arts for their contribution to the community. She appreciated their willingness to even consider additional parking, which might impact the Society of the Four Arts, but would benefit the community in a much happier way. She advised that with the public school on the agenda today, the Town Council would certainly give his comments a great deal of consideration.

Laurel Baker, Palm Beach Chamber of Commerce, commented on the issue of outdoor seating, its impact on the business community, and the character of the Town. The idea of discouraging people from being outside was confusing and she requested that the Town Council think about how they wanted people to enjoy the Town, and to think of what came out of the Charrettes relative to outdoor dining, waterfront dining, etc. She advised that a Chamber of Commerce survey of 475 residents of the Town overwhelmingly expressed a desire for outdoor experiences

Samuel Boykin, 285 Jamaica Lane, commented on a gentleman who had addressed the Town Council last May requesting help with Reach 8, and congratulated President Kleid as well as all of the Town Council, staff and everyone involved in the good job they had done relative to that issue. He commented on the maintenance of the streets on the north end, in particular North Lake Way, which needed to be resurfaced.

William Diamond, 220 Wells Road, followed up on the comments made by Laurel Baker, noting that Senator David Aronberg sponsored a bill about a year ago, which he wanted to call "Leo's Law" after Leo Diamond, his poodle. The idea of the law was to allow local municipalities to pass neighborhood legislation to allow pets on the outside portions of restaurants. He suggested that the Town Council look into adopting such a law, which would make pet owners very happy as well as Leo Diamond.

After discussion, it was the consensus of the Town Council to add to the agenda of a future Town Council Meeting discussion on allowing pets on the outside portions of restaurants.

Dr. Sten Lilja, 1330 North Ocean Boulevard, commented on the March 7, 2008, Erosion Control Workshop, noting his disappointment that no member of the Town Council had been in attendance. He believed that someone had to ascertain for the Town Council what was presented at that workshop. He discussed the information reviewed at that meeting on the new Erosion Control Line (ECL), and distributed a packet to the Mayor and Town Council relative to this matter.

VII. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

DEFERRED Item XIV.A.1., Appeal by the Royal Poinciana Chapel of an Administrative Decision Regarding Designation of Columbarian Addition as a Wall, to the April 7, 2008, Town Council Meeting.

DEFERRED Item XIV.C.3.a., Special Exception #14-2007 with Site Plan Review and Variances, 476 South Ocean Boulevard, to the April 7, 2008, Town Council Meeting.

DEFERRED Item XIV.C.3.c., Special Exception #2-2008, 290 Sunset Avenue, to the April 7, 2008, Town Council Meeting.

CHANGE IN PROPERTY OWNERSHIP, Item XIV.C.4.b., Special Exception #4-2008, 1695 South Ocean Boulevard: ownership is now in the names of Christopher H. Browne and Andrew Gordon.

DEFERRED Item XIV.C.4.c., Site Plan Review #1-2008 with Variances, 125 Worth Avenue, to the April 7, 2008, Town Council Meeting.

DEFERRED Item XIV.C.4.d., Modified Site Plan Review #23-2007 with Special Exceptions and Variances, 333 Peruvian Avenue, to the April 7, 2008, Town Council Meeting.

ADDED discussion on the Town's Deferral Policy to the Agenda of the April 8, 2008, Town Council Meeting.

ADDITIONAL REQUESTS FOR DEFERRAL: On December 14, 2007, the Town Council deferred Site Plan Review #14-2007 with Special Exception and Variances (The Villas, 425 Worth Avenue) and Site Plan Review #15-2007 (Villa De'Este, 230 Everglades Avenue) to the March 11, 2008, Town Council Meeting. Both of these applications are for generators on multi-family properties. Although these two items were inadvertently left off the March 11, 2008, Town Council agenda, this will not create a scheduling or notice problem today since both applicants have submitted written requests to defer these items to later Town Council meetings. Therefore, staff recommends that Site Plan Review #14-2007 be deferred to the Special Town Council Meeting on Monday, June 9, 2008, and that Site Plan Review #15, 2007 be deferred to the Special Town Council Meeting on Monday, April 7, 2008. In addition, due to the number of months these agenda items have been deferred (both items were originally scheduled for the August 14, 2007, meeting), staff recommends that the applications be re-advertised and re-noticed to the neighboring property owners.

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

VIII. CONSENT AGENDA

A. MINUTES: FEBRUARY 11, 2008
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

B. MINUTES: FEBRUARY 12, 2008
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING
(Approved with amendment made by Mayor McDonald.)

C. MINUTES: FEBRUARY 26, 2008
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON FEBRUARY 27, 2008.

E. RESOLUTIONS

1. RESOLUTION NO. 15-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Three Year Enterprise License Agreement with ESRI Which Will

Provide the Town with Unlimited License Use and Support of ESRI Enterprise Software and Authorizing the Town Manager to Execute this Purchase on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

2. RESOLUTION NO. 17-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Waiving Section 6-1.4 of the Town's Purchasing Manual; Awarding a Purchase Order to Arras Group for Electrical Switchgear for the Inline Booster Station Project; and Authorizing the Town Manager to Execute a Contract for Said Purchase.
[H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 19-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Elan Lawn and Landscape Services, Inc., for Hedge Trimming Maintenance Service for the Town of Palm Beach, Sealed Bid Number 2005-05.
[H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 20-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Detroit Diesel for a 350 kw Generator for the Inline Booster Station Project.
[H. Paul Brazil, Director of Public Works]

F. OTHER

None

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

IX. PUBLIC HEARING

A. RESOLUTION NO. 16-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission That the Property at 235 Sunrise Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John S. Page, Director of Planning, Zoning, and Building]

Planning Administrator Tim Frank presented Resolution No. 16-08, noting that the subject property, Palm Beach Hotel, was located at 235 Sunrise Avenue, and the architect was Mortimer Dickinson Metcalfe. The Landmarks Preservation Commission had reviewed and found that the property met the necessary criteria for designation as a Landmark in the Town of Palm Beach.

Historical Preservation Consultant Jane Day presented the Designation Report regarding the property located at 235 Sunrise Avenue, noting that this was a voluntary designation.

Ms. Day responded to questions and concerns of the Mayor and Town Council.

John Ripley, on behalf of the Preservation Foundation of Palm Beach, commented in support of the landmarking of the Palm Beach Hotel Condominium.

Wallace Rogers, resident of the Palm Beach Hotel, commented in support of the landmarking of the Palm Beach Hotel Condominium.

Town Attorney John Randolph read Resolution No. 16-08 by title, as printed above.

Motion made by President Pro Tem Coniglio to adopt Resolution No. 16-08 designating the Palm Beach Hotel, 235 Sunrise Avenue as a Landmark of the Town of Palm Beach, on the basis that it met the criteria set forth in Ordinance No. 2-84, also known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. The motion was seconded by Council Member Coleman. On roll call, the motion carried unanimously.

X. BOARD/COMMISSION REPORT

A. Firefighters' Retirement Board. [Richard Krock, Chair]

B. Police Officers' Retirement Board. [Raymond Snow, Chair]

Raymond Snow, 255 Monterey Road, on behalf of both the Firefighter's Retirement Board and the Police Officer's Retirement Board, presented an interim report authorized by both Boards, specific to the following two issues:

1. Audits
2. Administrator

Mr. Snow responded to questions and concerns of the Town Council.

After discussion, a **motion was made by Council Member Coleman, seconded by President Pro Tem Coniglio, to adopt a Town Policy directing the Town Manager provide the Town Council with qualified opinions or management letters issued by sub-entities that have accountants. On roll call, the motion carried unanimously.**

President Kleid, on behalf of the Mayor and the Town Council, thanked both Boards for their dedicated service to the Town.

The consensus of the Town Council was to accept the report provided by Raymond Snow, on behalf of the Firefighter's Retirement Board and the Police Officer's Retirement Board; and directed Town Manager Elwell, to investigate the accommodation of an administrator on Town property.

XI. COMMITTEE REPORTS

A. PUBLIC WORKS COMMITTEE MEETING OF FEBRUARY 27, 2008. [Gail Coniglio, Town Council President Pro Tem]

President Pro Tem Coniglio presented the following report and reviewed the recommendations made by the Public Works Committee held on February 27, 2008, and attended by both Chair Coniglio and Committee Member Markin.

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REPORT OF THE PUBLIC WORKS COMMITTEE MEETING
HELD ON FEBRUARY 27, 2008

I. CALL TO ORDER AND ROLL CALL

The Public Works Committee Meeting was called to order on Tuesday, February 27, 2008, at 4:00 p.m., in the Town Council Chambers. On roll call, Chair Gail Coniglio and Committee Member Susan Markin were present.

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

David Rosow - Town Council Member
Thomas G. Bradford, Deputy Town Manager
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Assistant Director of Planning, Zoning and Building
Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director
Jeff Taylor - Acting Building Official
Susan A. Eichhorn - Town Clerk

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. ADMINISTRATIVE ACTIONS TO IMPROVE CONSTRUCTION PERMITTING PROCESS [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil and Assistant Director of Planning, Zoning and Building Veronica Close addressed the following items listed in Deputy Town Manager Thomas Bradford's memorandum to the Public Works Committee dated February 22, 2007, and included in the backup material, and responded to questions and concerns of the Committee:

1. <u>**Permitting Communication Improvements**</u>

The Public Works Permitting Project Engineer is maintaining telephone logs and his voice mail revised to include reference to Chuck Langley, Assistant Director of Public Works, as back-up. Public Works related checklists are currently being modified for availability at the front counter and online. Standard details for land development will be added to ROW Manual as time permits

over the next few months. Target date for Town Council consideration of a resolution making such changes is the May 13th Town Council meeting. These details will also be available at our front counter. They will also be available on the Town's web site after the revised manual is officially approved by the Town Council.

Mr. Brazil commented on the above item, distributing copies of the Draft of the Town of Palm Beach Public Works Department Guidelines for Plan Review to the members of the Public Works Committee.

Chair Coniglio requested Mr. Brazil email the resolution as noted above to Public Works Committee Members prior to the May 13, 2008, Town Council Meeting.

The Planning, Zoning & Building Department (PZB) have developed a number of checklists for use by contractors in submitting permit applications. They pertain to generators, shutters, doors, windows, condominium and light commercial renovations, and a recently developed listing for building permit applications, which is attached as Exhibit A. As new checklists are developed, they will be placed at the counter and on the internet. PZB will be adding the following additional checklists to the website by April 30:

- *Light commercial*
- *Residential renovation*
- *Commercial renovation*
- *Marine structures*

Ms. Close provided comments on the above item.

Chair Coniglio requested Ms. Close email the new checklists as noted above to Public Works Committee Members prior to April 30th.

PZB is also working on a flowchart for development applications, including construction permits, for placement on the internet, to assist users in understanding the process for *application submission. This flowchart should be ready by March 31, 2008.*

Ms. Close provided comments on the above item.

PZB staff is developing a mechanism which would enable contractors and owners to access the Department's website to track the status of their permit applications. Information would be updated twice daily at noon and 4:30 pm. This ability will be available by the end of March. This should significantly reduce the number of calls made to the PZ&B inquiring about the status of permit applications. The Department is using the same spreadsheet technology used in other logs that have been developed over the past year. When the new system comes on line, the use of these logs will be replaced by an interactive system through EDEN.

Ms. Close provided comments on the above item.

At the previous Public Works Committee it was suggested that Public Works contact applicants, or their applicable consultants , whenever the ROW permit or drainage submittal is inadequate pursuant to Town standards and staff review comments become redundant without positive change, meaning the applicant still does not understand what is required. Public Works can implement this task immediately; however, there may be some confusion by the applicant when they later receive comments (marked-up plans from PZB).

Mr. Brazil provided comments on the above item.

Previously, the Committee indicated that whenever an inspection appointment cannot be kept the inspector, as a courtesy, should make a telephone call to the applicant whenever the inspector is delayed or unable to keep inspection appointments. Public Works inspections are made on the same day they are requested or the morning of the next day should time run out. Public Works does not currently make appointments with only a staff of one (1) to handle them. The new EDEN software may enable Public Works *to make appointments for inspections. If so, common courtesies would be expected to be followed. In PZB it is very rare that inspectors are not able to accomplish an inspection on the day it is scheduled. When this does happen, they contact the GC and reschedule for the following day. Inspectors have been reminded to call and advise the GC if this should happen. It is more likely that an inspection is not included in the day's work (since inspections are still assigned manually), the contractor fails to call in an inspection, the wrong inspection code is used by the contractor, or some mis-communication occurs regarding an inspection. These situations are handled on a case-by-case basis, with the chief building inspector re-scheduling the inspection for the following day. When the new software system is installed, with automated inspection assignments, situations involving mis-handling should all but disappear.*

Mr. Brazil and Ms. Close addressed the above item.

At your last meeting, Jim Braden, of Hibiscus Avenue, enumerated problems he was having with the renovation of his house and, specifically, with a sewer lateral issue affecting him and his neighbors. He indicated that he was still awaiting receipt of a letter from the Director of Public Works indicating when a sewer main extension will be constructed by the Town. This letter was written by John Page, Director of PZB on February 14th to Mr. Braden and the other two affected neighbors advising them that the sewer main extension was scheduled to begin in May of this year and that the required homeowner work should be coordinated with the Town for possible efficiencies and cost savings for the homeowners.

Mr. Brazil advised that Mr. Braden and the two affected neighbors had not, as yet, responded to the letter sent by Director of Planning, Zoning and Building Page.

Ms. Close estimated that it would take about 10 days to process the homeowners permits and, the applicants would be given approximately 60 days to complete the work.

Ms. Coniglio requested that Mr. Brazil continue to follow up on this issue.

Staff was asked to look at expedited plan review in Public Works for ROW permits similar to what is done in PZB for building permits. Public Works has concluded that with only one (1) staff member devoted to doing ROW permits that it is not practical to create an expedited plan review process by reviewing plans overnight. Public Works reviews the plans as soon as practicable. PZB has more than one worker to provide for requested expedited plan review.

Ms. Close explained PZB's program for expedited permit review, noting that the applicant paid extra for that service.

Mr. Brazil provided comments on the above item.

- Hiring of contract help for ROW permit review or for expediting permit reviews would not be feasible.

Committee Member Markin noted that this was a job area that could be made more efficient, by allowing more time to be spent on other things through technology, etc.

2. <u>Permitting Efficiences</u>

PZB processes an average of 545 construction permits per month (not accounting for seasonal fluctuations). Of those, approximately 126, or 23%, contain plans, and are reviewed by PZB in an average of 9.32 business days. Public Works' review adds an average 3.8 days, and Fire Review adds an average of 2.71 days, and total review for all Departments averages 15.38 business days. The rest of these permits involve no plan review, and are issued within three to four days of receipt. When considered in total, average review time is 6.35 business days for all construction permits processed by PZB. PZB receives approximately 100 right-of-way permit applications per month. These permits are reviewed by Public Works and issued by the PZB within three to four days of receipt.

Ms. Close provided comments on the above item.

Responding to Deputy Town Manager Bradford, Ms. Close addressed State Law as it related to turnaround time for permits.

PZ&B explored the concept of concurrent plan review in 2002, even implementing it for a short time. Three sets of plans were required, and each was sent to a different department for concurrent review. However, when comments were placed on the plans by plan reviewers, it was quickly proved infeasible to consolidate those comments onto all three sets of plans; the process was redundant, time-consuming and error-laden, particularly since all plans had to be redistributed among the plan reviewers.

PZ&B intends to re-institute the concept of concurrent plan review with the acquisition of specialized software that allows plan marking directly to plans by multiple users simultaneously, in conjunction with implementation of the EDEN permitting system. This software will record all comments in one digitized file that can be reproduced by architects and engineers. These comments can then be made available on the internet so that architects, engineers and contractors can review permit applications as they are processed through the system. The EDEN permitting system is scheduled to be implemented at the end of August 2008, with the capability to conduct concurrent plan review to follow within three months. This system requires the use of plan-size monitors in addition to software acquisition, and IS and the PZ&B are currently gathering information on those costs and identifying funding sources. Initially, users of the system will be able to submit paper or digitized plans, during the first three months of implementation, to familiarize users with the process. Ultimately, the Department's intent is to convert to the use of digitized plans wherever possible.

In response to Chair Coniglio, Ms. Close advised that between six and ten monitor boards would be needed, depending on the level of interaction with Public Works. She noted that staff did not have the hardware costs or know what the time frame was with those products.

Ms. Coniglio suggested that Ms. Close needed to obtain the hardware costs.

Action Item:

Committee Member Markin addressed Ms. Close commenting on the ways Public Works and PZB could be more efficient from a customer satisfaction standpoint and from an efficiency standpoint. She advised that Information Systems had suggested hiring an additional person for their department, and she believed that person could be dedicated to specific applications, which would justify the addition of that person and/or the cost of the software.

Committee Member Markin believed it was well worth discussing, noting that there was a 30 or 60 day window before it would be brought up again at the Town Council level. She suggested that staff present to the Town Council specific efficiencies that definitely helped with the process, that were more specific to PZB: customer satisfaction, digitizing the plans, and all items mentioned in the backup thus far.

Ms. Close commented on another process for PZB to be more efficient, which was not included in the report: the bar-coding of comments in the field, which was an interactive process.

The Florida Building Code allows the imposition of up to four times the plan review fee for non-responsive re-submittals. Although this has not been a significant problem, the Department intends to propose an escalating fee when multiple plan reviews are necessary due to insufficient submittals, in an effort to limit staff time required for this purpose. This proposal will be included in the next revision of Chapter 18, which will occur in October 2008.

Ms. Close provided comments on the above item.

Chair Coniglio requested that staff carefully consider the amount charged for escalating fees, with respect to an established policy for multiple review, so the applicants would not be adversely impacted.

Easy access to all Town permits, including ROW permits, is

currently available at the front counters of PZB. ROW permits are available at the front counter of Public Works. The ROW permit application is currently located on the Public Works segment of the Town's web site and has been since 2006.

Ms. Close provided comments on the above item and responded to questions and concerns of the Committee Members.

3. <u>Other Issues</u>

The concept of shared parking (at the various clubs in the off-season) to be used by the construction industry will be added to the proposed list of zoning season study items to be considered by the Town Council in May in developing a scope of work for the Department for the 2009 Zoning Season.

After discussion, Ms. Close advised that she would she would contact the various clubs to see if they would be willing to share parking in the off-season.

Coordinating Cap-off inspections between the Public Works and PZB was briefly discussed on January 3rd. The two Departments have scheduled a meeting to finalize a procedure whereby checklists for demolition cap-offs will be routed through the storm-water engineer to the Water Resources Supervisor of the Public Works Department. When inspections are completed, the results will be entered through the computer system or by phone. PZB will train the PW inspectors on the procedures required for recording inspection results.

Ms. Close commented on the above item, advising that PZB would be meeting with Public Works on Monday, March 3, 2008, to review the procedure for cap-off inspections. Training sessions would be conducted for the PW inspectors.

Housing the stormwater engineer within PZB was also discussed. Currently, the PW engineer uses a plan review table at PZB, when available, to do minor plan reviews. Major plans reviews involve transporting the plans to the Public Works Department,

and reviewing the plans. There is little or no space at the present time for the major reviews to be conducted in PZB. When Town Hall is renovated, space has been allocated for these plans to be reviewed within PZB, thus enabling plans to be tracked within the Department, and limiting the possibility of plans being lost during transport. Preferably, with the advent of concurrent plan review with the acquisition of the necessary software and hardware, the issue of employee location will become irrelevant except for when newly hired employees are being trained.

Ms. Close provided comments on the above item.

Mr. Brazil advised that Public Works had always had some inherent reservations for that employee to work out of PZB, noting that the employee needed to work at the direction of the Town Engineer or Assistant Director. He believed going digital would be a great and happy middle ground.

Ms. Coniglio commented that she agreed this issue might resolve itself with the implementation of the new software program and the use of monitors.

Lastly, there was some discussion at the last Public Works Committee meeting relative to permits, including foundation permits, being issued for projects for which incomplete or no building plans had been submitted. PZB has issued foundation permits in some cases, but only when 1) the foundation permit application has been submitted as part of a complete building permit package, and 2) zoning and structural reviews have been completed and no conflicts with or violations of the zoning or building codes are identified. In addition, no inspections can be scheduled on any work performed under the foundation permit until the building permit has been issued. It should be noted that the date of issuance of the first permit for a project, such as a demolition or foundation permit, becomes the date used for calculation of total time allowed for construction under the code.

PZB also does not issue a building permit unless all items required by the PZB are submitted, and all plans are reviewed for conformance to the Zoning and Florida Building Codes. Chapter 18 of the Town's code specifies all items required to be

submitted before issuance of the building permit. A common misunderstanding is that finishes, such as counter tops, flooring, etc, are required to be shown on the plans. The Florida Building Code does not regulate finishes; therefore, PZB cannot require that this information be included on the plans in order for a permit to be issued. In Palm Beach, finishes are frequently specified that are difficult to fabricate or require long lead times in ordering, which may add to the length of time to complete the project. However, the applicant is ultimately responsible if a permit is voided because construction exceeds the time allowed under the code.

Ms. Close provided comments on the above item.

Committee Member Markin noted that at the previous Public Works Committee Meeting discussion had occurred relative to the possibility of Martin Gauthier, Project Engineer, working out of PZB. She questioned whether further thought had been given to this issue.

Mr. Brazil responded that Mr. Gauthier needed to work out of Public Works a good piece of his time, he worked under the direction of Public Works employees, and his technical advice came from that location. He noted that his salary was paid out of PZB's budget but he was a Public Works employee.

IV. CAPITAL IMPROVEMENT PROJECT PLANNING & BUDGETING ISSUES [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford referred to his memorandum to the Public Works Committee dated February 22, 2007, and included in the backup material, to provide an overview of the following Agenda items:

1. **R&R & Reserves**

Renewal and Replacement (R&R) expenditures and reserve levels for the Town's capital improvement program were discussed in some detail at the Public Works Committee meeting on January 3rd with a clear indication from Committee members that the building of a reserve for infrastructure expenditures was

needed and that a justifiable formula be developed to be used as an objective when making determinations on annual funding for infrastructure items.

As a starting point, in reviewing the FY 2008 Capital Improvement Program (CIP) budget, we find that reserves, or fund equity as it is called in the budget document, are estimated to be $9.537 million at the beginning of the fiscal year. Unfortunately, 100% of it is designated reserve for projects not yet completed, meaning there is no undesignated CIP fund balance to be used to apply to future projects. However, the Town Council controls the budget, and as such, any of these projects can be reviewed for continued funding at any time. In addition to these currently designated reserves, Public Works budgets about 10% each year as a capital contingency for unexpected projects or project cost overruns. This could be considered as undesignated reserve of the fund.

If one wishes to plan for cash funding of capital projects a 5 through 20 year CIP forecast becomes critical. In order to determine the need for funds and the adequacy of existing funds, one must know with relative certainty the forecast for future funding needs. In my opinion, such an undertaking should be assigned to a consultant that would report to an oversight work team consisting of one or more representatives from Public Works, the Finance Department, the Planning Administrator and the Town Manager's office.

A five year CIP plan does exist. Prepared by Public Works, it estimates a total need for funds of $21.258 million, including FY 2008. When estimated offsetting revenues are included, the net need for funds is $17.103 over five years for an annual average CIP expenditure of $3.421 million per year. $3.421 million exceeds FY 2008 CIP revenues by $75,000.

As for R&R expenditures, I have attached a spreadsheet that shows two major programs in the townwide CIP, namely sanitary sewer and stormwater. This is shown as Exhibit C. I chose these programs to *focus on because they are two programs commonly operated as utility enterprise funds by municipalities. As you can see, the overwhelming majority of what is spent in the programs is for renewal and replacement work as opposed to new* *construction.*

If the goal is to establish a target level of R&R expenditures for comparison purposes based on that which is done by others, commonly referred to as benchmarking, we need to take a look at what others are doing. In this regard, I contacted our bond counsel, Rick Miller, to ask if he could provide us with an indication of what one typically sees in bond covenants of public utilities or entities. It is common for utility bond covenants to have a requirement for the utility to maintain a certain spending level to ensure that management will not ignore maintenance to the point of running the utility into the ground, thus threatening the utility's ability to re-pay debt. Mr. Miller's response is attached as Exhibit D. As you can see, there are many ways to establish R&R spending requirements, but, as I mentioned at the last meeting, 5% of annual revenues is very common. Another common way is to require R&R as a percentage of utility, or system, value. Jim Bowser, Town Engineer, mentioned that the East Central Sewage Treatment Facility that he is involved with on behalf of the Town, makes their R&R target 2% of system value, but that they were beginning to experience some R&R funding difficulties at that rate.

If the Town were to use a percentage of revenues as an R&R spending target, what revenues does one attribute to the storm drainage and sanitary sewer operations of the Town, total General Fund revenues, total CIP revenues or something else? If one wants to establish R&R expenditure targets as a percentage of value, at what value and at what percentage?

The table on the next page was created to show some options for how this might be done. If a percentage of revenue is preferred, it appears that the answer for the Town lies somewhere between the two options shown in the table. Using the General Fund revenues seems too high and using CIP revenue seems too low. If a percentage of value is preferred, it is imperative that true replacement value be established, perhaps as part of the work envisioned to develop a 20 year CIP long term plan and that a reasonable replacement schedule (the percent of value to be used as an R&R target) be assigned. Most, if not all, of what has been reviewed here can also apply to the other major infrastructure categories of the Town. These other infrastructure items are

roads, street lighting, traffic signals, sidewalks and buildings.

R&R Options Table

	Sanitary Sewer	Stormwater
Avg. Annual R&R Exp. Last Five years	$427,872	$1,369,453
Replacement Value [1]	$13,887,445	$16,387,615
Annual R&R if @ 4% of Value [2]	$555,498	$655,505
Annual R&R if 5% of Gen. Fund Rev. (FY08)	$3,216,728	$3,216,728
Annual R&R if 5% of CIP Fund Rev. (FY08)	$167,000	$167,000

Deputy Town Manager Thomas Bradford addressed this item. Discussion included the following:

He explained that he had reviewed the current capital improvement plan budget, and found that there were reserves (which in the budget document were called "fund equity") in the amount of $9.5 million at the beginning of the current fiscal year. Unfortunately, 100% of it was designated reserve, meaning that it was specifically allocated or encumbered for projects that were not yet completed. In the capital budget, there was a line item that was called "contingency" in the amount of approximately $335,000, which was approximately 10% of the total expenditures that were for significant overruns or for projects that may arise that had not been planned. That, in essence, was the reserve in the capital improvement program.

Mr. Bradford stated that if the goal was to start having reserves, something would have to be done. Many cities had a stopping point where they looked at the status of projects, and assuming a project was finished and there were unspent funds in the account, then those dollars could be swept into an undesignated reserve account to be used for whatever was approved in that particular fund. That sort of thing could be accomplished during budget discussions. If there was a desire to go to cash funding, it would become absolutely critical to have a long term capital improvement plan – something in excess of five years. He explained that staff mentioned at the last meeting that was something that they wanted to do, so that funding could be started to be done on an annual basis for future items, so that the taxpayer would not take a big hit. He noted that it was his opinion that a long term budgetary plan was best done with the use of a consultant, with the consultant reporting to a staff team.

Public Works Director Brazil noted that in the capital improvement program, line items were designated for storm and sanitary – some specific, some intentionally very general. Those were the equivalent of reserve accounts – staff had already earmarked in the out years where dollars would be accumulated in those very generic descriptions for things like rehabilitation of storm structures. In the short term, staff had a good definition of specific things that would need rehabilitation/replacement; from 5-20 years, it was more vague, however, Public Works did foresee those items that were standard.

Committee Member Markin commented that the reason that she had asked this to be on the agenda was because she believed that the residents needed to be informed, and the Town Council needed to be enlightened. Potential infrastructure costs need to be known when residents are asked to vote on some of these items. Before a consultant was hired, this matter must be placed before the Town Council to see whether or not there was interest in the concept of setting specific reserves.

Public Works Director Brazil responded that staff would need to present to the Town Council all of the infrastructure things that were looming. The value of what the Town already owned would need to be determined, plus what had already been programmed to replace. With those two things in mind, a logical estimate of what would be needed in a reserve fund could be made. He suggested that staff be allowed to finish the long term plan and ask the Town Council for a philosophical discussion about how the reserves would be accomplished.

Committee Member Markin stated that her goal was to have enough information to prioritize at the Town Council level, or the residents could see a list of all of the things that needed to be done, and come up with a priority list so that there would be maintenance of the infrastructure with the funding to do that.

Mr. Brazil commented that more time was needed in order for staff to provide full information.

Mr. Bradford referred to the spreadsheeet indicating R & R expenditures for two major programs in the townwide CIP – sanitary sewer and stormwater. He discussed the different ways to establish R & R spending requirements. It would be difficult to determine the amount of reserve necessary until there were solid numbers relative to the age of the system, and the true replacement value of the system.

After discussion, it was the consensus that staff had to finish the long term plan, bring it to the Town Council for a philosophical discussion on how to fund reserves. The conversation was needed at the Town Council level, after fuller information was received. The estimated costs for reserves would also need to be translated into tax dollars. It was suggested that this issue would be brought forward for discussion at the Town Council level sometime during the summer.

Mr. Bradford noted that a capital improvement program had more impact to Public Works in and of itself. There were other fundamental programs of the Town, such as the planning function and the finance function that also had a vested interest in making sure that the content of the plan met their needs, as well as the needs of Public Works.

Mr. Brazil commented that a philosophical discussion could take place without seeing a 20-year plan, based on the short term plan of 0-5 years, if the Town Council should desire to discuss the issue this month. He noted that long term plan information would not be available at that time.

Committee Member Markin responded that she believed the long term plan would take a lot of work, and a philosophical conversation could take place at the Town Council meeting in April, at least prior to the budget conversations.

It was decided that the information that would go to the Town Council would include projected costs, what the tax consequences were, etc. The target date for presentation to the Town Council was in April/May, with a philosophical overview discussion to take place.

2. ***Drainage and Beach Renourishment Funding***

The work envisioned in the December 18th bond referendum that failed to pass, which would have funded the completion of the North End 10 year drainage plan and the Reach 8 segment of the Coastal Management Plan, cannot be ignored in capital improvement planning. However, in light of the sensitivity of these two issues, staff believes it would be best that those items be handled at the Town Council level to enable all elected officials to have an opportunity to be actively involved unless the full Town Council delegates the issue to this or some other committee of the Town Council.

Mr. Bradford commented that it was the opinion of staff that, due to the sensitivity of the drainage and beach renourishment funding issues, it would be best to deal with these two items at the Town Council level, to allow every elected official to participate in the discussion.

Committee Member Markin responded that, at the last meeting, these specific issues had been left out because they were being discussed at the Council level.

Committee Member Markin commented on the two action items that had evolved from today's meeting:

1. The Building Department will come up with specific application needs to increase the intensity of their technology, that goes along with digitalizing plans, the

space savings related to that, and some of the other things mentioned in the backup; to get very specific with them so they could be brought up to the Town Council at the next Council meeting or whenever IS was going to be coming back to the Town Council.

2. The formula to be used for R & R options, and being prepared to present it to the Town Council at a future designated meeting.

Committee Chair Coniglio stated that today there was no action being taken by the Committee until the items were studied further.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further business, the Public Works Committee Meeting of February 27, 2008, was adjourned at 5:30 p.m.

Gail Coniglio, Chairman
Susan Markin, Committee Member

End of Public Works Committee Report

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Motion made by Council Member Markin, seconded by Council Member Rosow, to accept the report of the Public Works Committee. On roll call, the motion carried unanimously.

B. FINANCE AND TAXATION COMMITTEE MEETING OF MARCH 3, 2008. [Denis P. Coleman, Town Council Member]

Council Member Coleman presented the following report and reviewed the recommendations made by the Finance and Taxation Committee held on March 3, 2008, and attended by both Chair Coleman and Committee Member Rosow.

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REPORT OF THE FINANCE AND TAXATION COMMITTEE MEETING
HELD ON MONDAY, MARCH 3, 2008

I. CALL TO ORDER AND ROLL CALL

The meeting of the Finance and Taxation Committee was called to order on Monday, March 3, 2008, at 10:30 a.m. On roll call, Committee Chair Denis P. Coleman and Committee Member David Rosow were found to be present. Others present for all, or a portion of the meeting were: Town Manager Peter Elwell, Finance Director Jane Struder, Assistant Finance Director Cheryl Somers, Town Clerk Susan Eichhorn.

II. APPROVAL OF AGENDA

The Agenda was approved through motion of David Rosow, seconded by Chairman Coleman.

III. REVIEW OF VARIOUS FINANCIAL DOCUMENTS AND CONSIDERATION OF STREAMLINING THE FORMAT OF THE TOWN'S ANNUAL REPORT

Committee Member Rosow referred to the Annual Report of 2001, as an example of the format he was considering. He noted that the only picture included should be of the employee of the year, along with a description of why the employee was chosenAll other information included should be strictly financial. In addition, the Annual Report should be printed in black and white only.

During discussion, the following items were recommended for inclusion in the revised format for the Annual Report:

Information discussed for inclusion in the Annual Report:

Balance sheet

Long term debt figures
Historical summary (budget to budget) of employee positions for the past five years (salary and wage history for the past five years , with an asterisk denoted for Kruesler Park, given the contractual relationship between the Town and Palm beach County.
Historical summary of pension programs for the past five years
Capital expenses which are run through the budget (anything over $50,000)
Contractual expenses (anything over $50,000)
Insurance: property, worker compensation, etc.
Compensation by department
Revenues by department
Referred to the Budget In Brief booklet - pages 13 and 14. Suggested that new Annual Report should include five years of data, and include revenue for each department as well.
Percentage of budget that is necessary for compensation, pensions and medical.
Consolidate equipment depreciation for the Town, and then list it by department.
Include in the Annual Report the pages regarding property taxes and pie charts, etc.

Town Manager Elwell noted that with the proposed revised format of the Annual Report, citizens who want to reconcile this information to more detailed budget documents would not be able to do so. The summary report would be helpful to people in understanding what items the Town Council can make decisions about, and which items are not under Town Council control. It would be noted that more detailed information could be obtained via the extensive financial information available from the Finance Department on the Town website.

During discussion regarding expenditures, Finance Director Struder commented that a separate sheet could be included as part of the annual report, that would discuss capital expenditures in each department – not capital improvement projects, but large capital expenditures that were not taken from the equipment replacement fund.

In reference to the production schedule for the Annual Report, Town Manager Elwell advised that it now looked like an April distribution date.

Committee Chair Coleman and Committee Member Rosow both expressed a preference for the format of the 2001 Annual Report, with a front page highlight notation that only 20% of the ad valorem tax revenue remains in the Town of Palm Beach.

Town Manager Elwell commented that the Annual Report would also bring forth all of the ways that citizens can obtain information regarding the Town through the internet, television channel 18, email registration for information, etc. He noted that the community rating system required the distribution of flood protection information to every resident, so that would need to continue to be included in the Annual Report.

After discussion, it was agreed upon that the listing of the Board/Commission members would continue to be part of the Annual Report. Town Manager Elwell and Finance Director Struder would review the information to be included in the revised Annual Report. It would be underscored that the intent was to increase transparency and make it easier to understand.

Public Comment:

William Diamond, 220 Wells road commented that the Annual Report should be an executive summary that the average person can review, with translations that ordinary people can understand.

Jerry Frank, 2784 South Ocean Blvd., commented that there has been some discomfort with the increase of the budget over a period of time, and people were looking for reasons why this happened. He suggested that there be an explanation set forth in the Annual Report. He suggested that attention be drawn to the fact that Channel 18 also contains Town information.

Lee Goldstein commented that it was important to note that the Town only keeps 20% of the ad valorem tax revenue.

IV. ANY OTHER MATTERS

There were none

V. ADJOURNMENT

There being no further business, the Finance & Taxation Committee Meeting of March 3,2008, was adjourned at 11:57 a.m,

Denis P. Coleman, Chairman
David A. Rosow, Committee Member

End of Finance & Taxation Committee Report

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Discussion ensued, and it was the consensus of the Town Council to not include a calendar in the Annual Report; to provide a slimmer report, reflecting financial data only, and present a draft to the Finance and Taxation Committee prior to presentation to the Town Council.

Motion made by Council Member Markin, seconded by President Pro Tem Coniglio, to accept the report of the Finance and Taxation Committee. On roll call, the motion carried unanimously.

XII. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated March 4, 2008, and included in the backup material, to provide a status report regarding burial of overhead utility lines.

Mr. Bradford requested that the Town Council allow staff to temporarily stop providing a monthly status report. Staff proposed to come back to the Town Council with a Comprehensive Report on all of the contractual issues when they had been finalized and make recommendations, at that time, addressing all UG issues.

Motion made by Council Member Rosow, seconded by Council Member Markin to defer status reports regarding burial of overhead utility lines until there was additional information, at future Town Council Meetings, and when additional policy consideration would be needed. On roll call, the motion carried unanimously.

2. Potential Changes to the Town Charter and Code of Ordinances for Municipal Elections. [John C. Randolph, Town Attorney]

Town Attorney Randolph referred to his memorandum to the Mayor and Town Council dated February 29, 2008, and included in the backup material, to briefly review potential changes to the Town Charter and Code of Ordinances for municipal elections.

a. Schedule for Qualification of Candidates

Motion made by Council Member Rosow to approve amending the qualification schedule for candidates for the Town Council, to require that all filing papers would be filed by 5:00 P.M. on the Friday immediately following the Tuesday Caucus. The motion was seconded by Council Member Coleman.

Yvelyne D. Marix, 1570 North Ocean Boulevard, commented that potential changes to the Town Charter and Code of Ordinances for municipal elections was one of the most important items related to the future of the Town, and requested that discussion be deferred to a time when the Town Council could seriously consider it. She commented in favor of early voting and requested that the Town Council consider that issue as well.

On roll call, the motion carried unanimously.

Town Attorney Randolph noted that he would prepare an ordinance, which would place a Charter Amendment before the electorate, and would come back before the Town Council for first reading.

b. Term Limits

It was the consensus of the Town Council to defer this item to a future meeting.

c. Cap on Campaign Fund Raising

Town Attorney Randolph advised that the Town could not impose a cap on campaign expenditures because it would be a First Amendment violation.

d. At-Large (One "Group") Versus Specific Seat (Up to 3 "Groups") Elections

It was the consensus of the Town Council to defer this item to a future meeting.

3. Status Report on Townwide Hiring Freeze.
[Peter B. Elwell, Town Manager]

01/29/2010

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated March 3, 2008, and included in the backup material, providing a monthly status report on the Town hiring freeze.

B. New Business

1. Reach 8 Beach Restoration Project.

a. Status Report. [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council dated March 4, 2008, and included in the backup material, to provide a status report on the Reach 8 Beach Restoration Project.

Mr. Brazil noted that National Marine Fisheries very recently advised the Town that they would withdraw their objection to this job if the Town was willing to build additional mitigation in the amount of a total of 10.5 acres of mitigation. He noted that staff believed the building of an additional 2.5 acres of mitigation was excessive and requested direction from the Town Council on that point.

Town Manager Elwell commented as follows:

- The series of actions before the Town Council today did not involve the commitment of a dollar of Town money other than for the building of an additional 2.5 acres of mitigation at a cost of $2.5 million additional to the project.
- The other actions' staff was requesting of the Town Council today would keep this process moving forward and salvage it for this year.
- A Special Town Council Meeting had been scheduled for March 21, 2008, at 11:00 A.M., at which time the Town Council would be asked to make a decision regarding the Notice to Proceed and that would involve the commitment of Town resources.

Mr. Brazil responded to the questions and concerns of the Town Council.

Motion was made by Council Member Rosow to authorize Town staff to reject the request made by the National Marine Fisheries for an additional 2.5 acres of mitigation.

President Pro Tem Coniglio questioned why the Town Council could not hold this conversation on March 21, 2008, when there would be more information before them.

In response, Mr. Brazil explained that the following was needed in order to move this process forward:

- Conditional authorization on the contract;
- Easement Agreement;
- CCL Issue.

President Pro Tem Coniglio seconded the motion made by Council Member Rosow to authorize Town staff to reject the request made by the National Marine Fisheries for an additional 2.5 acres of mitigation. On roll call, the motion carried unanimously.

b. ORDINANCE NO. 8-08 An Emergency Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2007, Providing an Effective Date.
[Jane Struder, Director of Finance]

Town Attorney Randolph read Emergency Ordinance No. 8-08 by title, as printed above.

President Pro Tem Coniglio moved adoption of Emergency Ordinance No. 8-08. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

c. RESOLUTION NO. 21-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Declaring the Town's Official Intent to Seek Reimbursement for Certain Capital Expenditures Made or to Be Made with Respect to Improvements to Town of Palm Beach Reach 8 from the Proceeds of its Not to Exceed $9,300,000 Principal Amount of Bonds and Providing for an Effective Date.
[Jane Struder, Director of Finance]

Town Attorney Randolph read Resolution No. 21-08 by title, as printed above.

Town Manager Elwell underscored the fact that this resolution preserved the Town Council's ability to replenish the funds, but it did not obligate them to replenish the funds.

Council Member Markin moved adoption of Resolution No. 21-08. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

In response to Council Member Rosow, Mr. Elwell explained Resolution No. 21-08 and the reason this item needed to be addressed by the Town Council today.

d. Construction Access Easement Agreement with 3200 Condominium. [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council dated March 4, 2008, and included in the backup material, to review the Construction Access Easement Agreement with the 3200 Condominium for use with the Reach 8 Beach Restoration Project.

Motion made by Council Member Rosow, seconded by Council Member Coleman directing the Town Council to authorize the Mayor to execute a temporary ingress/egress agreement with the 3200 Condominium for use with the Reach 8 Beach Restoration Project. On roll call, the motion carried unanimously.

e. <u>RESOLUTION NO. 18-08</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Great Lakes Dredge & Dock Corporation for the Reach 8 Beach Restoration Project. [H. Paul Brazil, Director of Public Works]

Town Attorney Randolph read Resolution No. 18-08 by title, as printed above.

Town Manager Elwell explained that approval of Resolution No. 18-08 allowed the Town to negotiate a better more balanced mix of mobilization money and actual project construction money, which reduced the Town's risk to mobilizing when the Town did not have all permits in hand. He advised that the Town Council was not obligating any money today; the obligation of actual funds would occur when the Town gave Notice to Proceed; and that the Town Council, today, was giving the Town the ability to contract with Great Lakes Dredge & Dock Corporation.

Council Member Markin moved adoption of Resolution No. 18-08. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

f. RESOLUTION NO. 22-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Requesting the Board of Trustees of the Internal Improvement Trust Fund to Establish an Erosion Control Line for the Reach 8 Beach Restoration Project (Dune Section) and to Approve the Project.
[H. Paul Brazil, Director of Public Works]

Town Attorney Randolph read Resolution No. 22-08 by title, as printed above.

Town Manager Elwell explained that an Erosion Control Line (ECL) for the beach project had already been established by the Town, which was believed to have been sufficient for the entire job as it had been in the past. He noted that this was a new requirement of the Florida Department of Environmental Protection (FDEP), and that this new policy would be required for all future dune projects. He advised that staff recommended Town Council approval, which required the Town to set an ECL for the dune restoration portion of this project at the southern edge of it, in addition to what had already been done in setting an ECL of the beach restoration portion.

Council Member Markin moved adoption of Resolution No. 22-08. The motion was seconded by Council Member Rosow. On roll call, the motion carried unanimously.

At this time, Mr. Stephen Brown made the following comments:

Mr. Stephen Brown, 184 Bradley Place, Secretary/Treasurer of the Palm Beach Civic Association. He noted that he was a member of the Investment Advisory Committee, which invests the reserve funds. He commented that he believed it was very important for the Town, in going forward, to maintain their conservative policy, and hoped that when it was decided to replenish the reserves or not, the Town Council would do so, at least in part, or in total. It was equally important for the Town to maintain their AAA rating as the conservative reserve position was important to that AAA rating.

Discussion ensued, and Council Member Rosow encouraged the Town to immediately look at borrowing money short term to be used for the Sand Transfer Plant Project. He discussed matters relative to the allocation of funds.

John Mashek, Preservation Foundation, commented on funding options relative to the Town Hall renovations, noting that the Preservation Foundation had funded Town Hall renovations a number of years ago; and committed the Preservation Foundation to paying for the Mizner fountain.

Discussion continued relative to the budgetary options available to the Town.

Alec Flamm, 2000 South Ocean Boulevard, suggested that the Town Council consider taking monies from the Storm Drainage Fund and moving them over into the Shore Protection Project, the sand portion of the project. He believed that this item could be presented for further consideration at the March 21, 2008, Special Town Council Meeting.

After discussion, it was suggested that Mr. Flamm's idea be placed in the backup, for discussion, at the March 21, 2008, Town Council Meeting.

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Town Manager Elwell requested that the Town Council take action and place back on today's Agenda Item XIV.A.1., Appeal by the Royal Poinciana Chapel of an Administrative Decision Regarding Designation of Columbarian Addition as a Wall.

Mr. Elwell explained that staff understood that a neighbor who had voiced objections indicated to Zoning Administrator Castro that he, or a representative, would be present today relative to this item. Mr. Elwell noted if the objector was not present at the time this item was to be heard, it would be appropriate to defer this matter for a month.

Motion made by Council Member Coleman, seconded by President Pro Tem Coniglio to add Item XIV.A.1., Appeal by the Royal Poinciana Chapel of an Administrative Decision Regarding Designation of Columbarian Addition as a Wall, back on today's Agenda. On roll call, the motion carried unanimously.

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2. Eminent Domain Acquisition of the Royal Poinciana Playhouse.
[Denis P. Coleman, Town Council Member]
TIME CERTAIN: 11 A.M.

Council Member Coleman explained that he requested this item to be placed on the Agenda for discussion, in order to become educated on what eminent domain was and not for consideration of exercising eminent domain on the Royal Poinciana Playhouse.

Town Attorney Randolph introduced Attorney H. Adams Weaver, Jones, Foster, Johnston & Stubbs, P.A., noting that he was an expert in eminent domain.

Attorney Weaver advised that he had met briefly with Council Member Coleman regarding the process of eminent domain. He provided educational information regarding the eminent domain process, noting that eminent domain was the ability of the government to take private property for dominantly public use.

Attorney Weaver noted that Attorney Toby Brigham, a well-respected eminent domain attorney, and Charles Siemon, a land planner and advocate of property rights, were in the audience today.

Attorney Weaver responded to questions and concerns of the Mayor and Town Council.

Council Member Coleman commented that the discussion today should be kept to the philosophy of eminent domain

President Kleid noted that it was the consensus of the Town Council not to proceed with condemnation actions.

3. Discussion of Lobbying in Washington, DC, with Jerry Stouck of Greenberg Traurig. [Susan Markin, Town Council Member]
TIME CERTAIN: 11:15 A.M.

Council Member Markin commented that she had requested that this item be placed on the Agenda today to bring awareness to and obtain a feeling from the Town Council as to whether they wanted to discuss, at a future meeting, the Town's lobbying position in Washington, D.C. She explained that this issue had come to mind with the expansion of the Port.

Council Member Markin noted that, in preparation for this meeting, she had spoken with Attorney Jerry Stouck, Greenberg Traurig, to provide him with information relative to the needs of the Town. She explained that Mr. Stouck realized that a lot more time and effort would be needed, on his behalf, and that direction would be needed from the Town Council, as to whether or not they were seriously interested in enhancing the Town's lobbying position.

Discussion ensued, and Mayor McDonald commented on the following:

- The Town has had great success in terms of their lobbying efforts, receiving $1.8 million for the Sand Transfer Plant, and had hit a home run in Washington, D.C. over the last year or so.
- The Town was not on a retainer basis in Washington, D.C., and did not have the type of relationship and the expense associated with the type of relationship being discussed.
- The Town used the number one lobbying law firm in Washington, D.C., and he did not see any reason to change, noting that was his responsibility.

- The firm would be a good choice if the Town Council wanted to fund them and put them on a retainer basis.

After further discussion, Town Manager Elwell echoed Mayor McDonald's comments that the Town had received good service from their lobbying firm, Patton Boggs. He advised that there were two issues that the Town Council should address today:

1. Increase the activity in Washington, D.C. on the Town's behalf, and consider establishing a retainer relationship, which would exceed $25,000 a year and would be a funding decision for the Town Council.

2. If the Town Council wanted to consider any firms other than Patton Boggs.

Mr. Elwell advised that the Mayor was the lead person on these issues under the Town Charter and had expressed his satisfaction with Patton Boggs, and he believed, as well, that the Town had received good service from them. He requested direction from the Town Council on these two issues.

Council Member Markin advised that she was not criticizing the job Patton Boggs was doing, but was suggesting that the Town Council could be a little more informed and educated on lobbying potential and issues that might come forth.

After discussion, it was the consensus of the Town Council to direct Town Manager Elwell to provide a report at the May 13, 2008, Town Council Meeting, regarding lobbying efforts by both the Washington, D.C. During the budget process, lobbying funding issues would be discussed.

Discussion ensued, and it was the decision of the Town Council to direct Town Manager Elwell to provide a broad presentation at the May 13, 2008, Town Council Meeting, including the lobbying efforts of both the Washington, D.C. and Tallahassee lobbying firms.

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At this time, **a motion was made by Council Member Coleman to approve implementing a policy that no speakers would appear on the agenda of Town Council Meetings unless invited by the Town Council. The motion was seconded by President Pro Tem Coniglio.**

Mayor McDonald requested that the motion exclude the rare instances where public officials wished to address the Town Council or were invited to do so by the Mayor.

In response to President Kleid, Council Member Coleman advised that he would add that to his motion, but would rather withdraw the motion.

In response to President Pro Tem Coniglio, Mayor McDonald advised that as the Mayor of intergovernmental relationships, he did have the power of superceding Charter ability to invite a representative of any local government and withdrew his request to have the motion amended, requesting that Council Member Coleman proceed with his motion as made.

Council Member Rosow commented that this was much to do about nothing, and requested that Council Member Coleman withdraw his motion, and Council Member Markin agreed.

On roll call, the motion carried 3/2:

Council Member Coleman:	**Yes**
President Pro Tem Coniglio:	**Yes**
Council Member Markin:	**No**
Council Member Rosow:	**No**
President Kleid:	**Yes**

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4. Review of Water Situation.
[David A. Rosow, Town Council Member]

Council Member Rosow commented on the water contract between the City of West Palm Beach and the Town of Palm Beach, noting that he had a copy of the contract along with Town Attorney Randolph's analysis of it. He briefly reviewed a portion of the contract and provided some history related to it. He noted that the Town had been paying a surcharge for about one year, which he did not believe was legal or appropriate and that all of the Town's residents deserved a refund. The City of West Palm Beach was in default, and the Town should notice them because they had not supplied the quantity, the quality and have placed a surcharge on the Town.

Council Member Rosow distributed a copy of the Florida Drought Monitor put out by the University of Nebraska in conjunction with National Oceanic and Atmospheric Administration (NOAA). He stated that he did not agree with the excuses for water quantity or the South Florida Water Management District (SWFMD) imposition of a restriction on water. He suggested that the Town should go at this full blast, call the City of West Palm Beach in default, and move on and become water independent.

Mayor McDonald clarified that water needed to be pulled from Lake Okeechobee, which allowed the SFWMD to restrict water. It was directly relevant to the SFWMD and advised that our area was in a drought.

In response to Mayor McDonald, Town Attorney Randolph advised that Florida Statute Chapter 180.191 allowed a surcharge if there was a drought, and that Statute had specifically been addressed during the negotiations of the water contract, which indicated that there would be no surcharge. He distributed the resolution adopted by West Palm Beach in 2004, to further discuss the issue of the surcharge. He advised that this issue was one of several that could be raised with the City of West Palm Beach if there was an interest in declaring them in default, such as the quality of water along with other circumstances of the agreement.

The Town Council Members commented on the following:

- Surcharge
- Development of objectives
  - Rates
  - What was best way to increase the quantity of water the Town had access to, and what was the most efficient way to do that?
- Declaration of default
  - Formal complaint in writing to build paper trail/letter of notice
  - Legal basis for declaration of default

- Termination of contract
- Water independence

Norman Goldblum, 109 Everglade Avenue, commented on reverse osmosis systems currently in use by other entities in the Town; he believed it was far more important for the Town to have a reverse osmosis system than underground wiring; and he suggested Mayor McDonald form a Water Committee to that end.

Discussion ensued among the Mayor, Town Council Members and Attorney Randolph relative to this issue.

Alec Flamm, 2000 South Ocean Boulevard, commented on the surcharge issue, the conditions of the water contract, and funding options.

After further discussion, Council Member Coleman commented regarding the following:

- He was in favor of drafting a letter of dissatisfaction to the City of West Palm Beach.
- The amount of money spent by the City of West Palm Beach on underground piping since the contract was signed.
- The amount of money that the City of West Palm Beach would spend to upgrade the piping between now and 2029.
- Capital costs for the Town to create and operate a reverse osmosis plant, and consideration of the possibility of such a plant selling water back into the system.

John Ripley, on behalf of himself, not the Preservation Foundation of Palm Beach, noted that he was a resident of West Palm Beach where the water was not any better. He provided comments regarding water supply, water production, environmental impacts related to use of the aquifer water, and using brackish water for landscaping.

After further discussion, **a motion was made by President Pro Tem Coniglio directing the Town Council to appoint a subcommittee entitled the Water Committee, composed of Council Member Rosow as Chairman and Council Member Coleman as a Committee Member; the Committee would have staff time at their disposal; would serve for the period of time required to come up with a plan; and be allowed to bring in witnesses and consultants, etc. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.**

Ned Barnes, Palm Beach Civic Association, commented that the Association had a group of residents that met regarding water issues. He invited the Water Committee to attend tomorrow's meeting where the Director of Public Utilities for Palm Beach County would discuss the available options regarding this issue.

William Diamond, 220 Wells Road, commented regarding the water contract, and comments made by Mayor Frankel.

Town Manager Elwell suggested the following relative to what he believed he had heard from the Town Council:

- A letter of dissatisfaction from Mayor McDonald to Mayor Frankel.
- The letter should be strong but polite about quality, quantity, and the surcharge.

Council Member Coleman stressed that it was important to include in the letter that Mayor Frankel should not be able to say one thing on one side of the lake and a different thing on this side of the lake.

After further discussion, **Council Member Rosow made a motion to approve submitting a letter of dissatisfaction with the water situation in Palm Beach, from Mayor McDonald to Mayor Frankel. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.**

5. Lakeside Park.

   a. Status Report on Implementation of Approved Improvements. [H. Paul Brazil, Director of Public Works]

   b. Proposed Donation.
      [Jay Boodheshwar, Director of Recreation]

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council dated February 29, 2008, and included in the backup material, and provided a status report on the implementation of the approved improvements for Lake Drive Park. He suggested that the Town Council direct staff to work with the Civic Association Beautification Committee, the Garden Club and concerned residents to see if they could, within the budget and in the spirit of the master plan, arrive at a slight modification to this meeting everyone's needs.

Mr. Brazil included for discussion the request by Mrs. Shyla G. Reich to construct a memorial bench and pergola structure in Lakeside Park in memory of her parents

Charles and Regina Giller. He noted that this item was to have been presented by Director of Recreation Jay Boodheshwar, but Mr. Boodheshwar could not be present at this time.

John Ripley, on behalf of the Preservation Foundation of Palm Beach, commented on the Lake Drive Park Master Plan, and the lack of communication on this subject, requesting that information be shared with the Preservation Foundation along with the Royal Park Homeowner's Association, and the Civic Association Beautification Committee.

Robert Schofield, 369 South Lake Drive, Royal Park Homeowner's Association commented regarding the Lake Drive Park Master Plan.

Isabel Furlaud, 745 Hi-Mount Road, commented on the $16,000 donation for the memorial, and requested that the Town Council explore a guideline for memorials.

Yvelyne D. Marix, 1570 North Ocean Boulevard, commented that Lakeside Park, as part of the Town's green space, could not be built upon without a referendum.

Council Member Markin commented on the need for a Townwide standard on memorial plaques, requesting that the committee look at that issue.

President Pro Tem Coniglio made a motion to accept the report and information provided by Public Works Director Brazil; and directed staff to work with a committee (Civic Association Beautification Committee, the Garden Club, the Preservation Foundation, Royal Park Homeowners' Association, and residents) to work together to gather all ideas and work toward slight modifications to the remaining improvements: the sidewalk, the hedge installation, back-in parking, installation of the kiosk, etc.; work together on the design, appropriate location of the proposed donation, and the Mayor Illyinsky Memorial. The motion was seconded by Council Member Rosow. On roll call, the motion carried unanimously.

Staff would return to the Town Council at a later date for consideration of the proposed donation.

6. Report Regarding Landscape Maintenance Regulations (Saturday Hours, Decibel Levels Relative to Leaf Blowers, and Alleged Violations on Sunset Avenue). [Michael S. Reiter, Chief of Police]

Police Captain Kirk Blouin referred to Chief Reiter's memorandum to the Mayor and Town Council dated February 28, 2008, and included in the backup material, to present a report regarding landscape maintenance regulations.

Motion made by Council Member Rosow to ban the use of all motorized landscaping equipment on Saturdays during the season. The motion died for lack of a second.

After discussion, **Council Member Rosow amended the motion authorizing that, through an ordinance amendment, there be no use of motorized landscaping equipment on Saturdays, starting December 1st through April 30th. Staff was directed to prepare the proposed ordinance for first reading at the April 8, 2008, Town Council Meeting.**

Robert Moore, former Director of Planning, Zoning and Building, commented on the following:

- Homeowners had, in the past, came forward in opposition to banning motorized landscaping equipment on Saturdays.
- The Town should notice the landscape maintenance people that this item would be placed on the April 8, 2008, Town Council Meeting.
- Equal Protection Clause.

Mr. Elwell advised that staff would examine the current ordinance to review requirements for residents doing their own yard work.

Discussion ensued, and the motion was further amended as follows:

Council Member Rosow amended the motion authorizing that through an ordinance amendment, there be no use of motorized landscaping equipment (with leaf blowers banned for certain, even for resident use) on Saturdays, starting December 1st through April 30th. Staff was directed to prepare the proposed ordinance for first reading at the April 8, 2008, Town Council Meeting. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

7. Request for Waiver of Section 42-199, Hours of Construction-United State Army Corps of Engineers (USACE) for Repairs on the South Jetty at Lake Worth Inlet.
   [H. Paul Brazil, Director of Public Works]
   TIME CERTAIN: 12 P.M.

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council dated February 28, 2008, and included in the backup material, to briefly discuss the United States Army Corps of Engineers (USACE) project to make repairs on the south jetty at the Lake Worth Inlet. He noted that accessing the jetty would require travel through a north/south easement that ran between the Kuvin and Bauer residences. It would be a noisy operation and would impact the residents.

Mr. Brazil advised that staff requested that the Town Council consider the request by the United States Army Corps of Engineers (USACE) for a waiver of Section 42-199, Hours of Construction Work, for this project. He noted that the request was coming up due to the availability of USACE crews and sea turtle nesting season.

Discussion ensued, and Rick McMillan, USACE Representative, responded that the Corps had no problem in pushing their start date to the end of March 2008; the Corps could coordinate the efforts between this project and the dredging project in the harbor; the Corps needed 60 days to complete the job; and if the project began on April 1, 2008, it was the Corps intention to complete the project by June 1, 2008.

Mr. McMillan and Mr. Brazil responded to questions and concerns of the Town Council Members.

After further discussion, **President Pro Tem Coniglio made a motion to approve the request for Waiver of Section 42-199, Hours of Construction by the United States Army Corps of Engineers (USACE) for repairs on the south jetty at the Lake Worth Inlet with the following conditions:**

- **Heightened dissemination of information from the USACE to the residents;**
- **Coordination of efforts between this project and the dredging project in the harbor;**
- **Work to be initiated after March 30, 2008;**
- **Increase collaborative relationship as the Town moved forward in the permitting processes.**

The motion was seconded by Council Member Coleman.

Sanford Kuvin, 149 East Inlet Drive, commented in opposition to granting the waiver. He urged the Town Council deny the request for waiver; suggested that the Corps explore other options such as the use of the beach or barge; and noted that ordinances were given and made by the Town to protect the Town and its residents.

Mr. McMillan responded to questions and concerns regarding the following:

- The use of a barge.
- Working on Saturdays.
- The use of Dr. Kuvin's driveway.

Discussion ensued, and **President Pro Tem Coniglio amended her motion to include as a condition of granting the waiver that there would be no work on Saturdays.**

Mr. McMillan responded that the Corps could explore the possibility of using Dr. Kuvin's driveway under acceptable conditions provided that Dr. Kuvin sent the necessary paperwork to the Corps and began a dialogue with the Corps' attorneys.

The motion as amended was seconded by Council Member Coleman. On roll call, the motion carried unanimously.

Mr. Brazil clarified that it was not just the work described in that easement, but trucks would be staged in the road. Staff would issue a Right-of-Way Permit, monitor the permit, and ensure that all services were maintained.

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The luncheon recess was taken at 12:55 p.m.
The Town Council Meeting of March 11, 2008, was reconvened at 2:00 p.m.

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8. Request by School Board of Palm Beach County for Further Consideration of Potential Joint Project to Provide Additional Off-Street Parking in the Seaview Avenue Area. [Kristin K. Garrison, Planning Director, The School District of Palm Beach County]
   TIME CERTAIN: 2 P.M.

Kristin Garrison, Planning Director, School District of Palm Beach County, addressed the Town Council, conveying her appreciation for the opportunity to address them. She noted that long term School Board Member Paulette Burdick was in the audience and would address the Town Council today.

Ms. Garrison reviewed the request by the School Board of Palm Beach County for further consideration of a potential joint project to provide additional off-street parking in the Seaview Avenue area. She discussed possible solutions to the parking problems and responded to the questions and concerns of the Town Council.

Paulette Burdick, School Board Member of the School District of Palm Beach County provided comments regarding working together to solve the parking issues, and future planning endeavors of the School District.

Discussion ensued, and Ms. Burdick was advised that it was a "no" to a parking garage at the Seaview Avenue Recreation Center.

Henry McIntosh, 124 Via Bethesda, advised that he was a member of the Executive Committee of the Society of the Four Arts. He commented regarding the proposal of the Society of the Four Arts for the old school building.

After further discussion, it was the consensus of the Town Council to request that representatives of the School District work with all involved entities (the Palm Beach Public School, the Society of the Four Arts, and the Palm Beach Day Academy) and come back with a parking plan. The plan should take into consideration and appease the residents in the area; it was noted that the School had a responsibility to have the number of students/teachers that it could facilitate.

Wendy Victor, 208 Via Tortuga, commented on her involvement with the school since 2001. She noted that the school had grown and grown, and urged the Town Council to hold the line.

Ms. Burdick, on behalf of the School District of Palm Beach County, thanked the Mayor and Town Council for their time and openness to consider doing something a little bit different, but the School District understood the Town's position and thanked them for stating it clearly and articulately. The School Board would move forward as a District to do what was needed.

9. PB Cats Request for Transition Station.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her memorandum to the Mayor and Town Council dated February 29, 2008, and included in the backup material, to discuss the request of PB Cats, Inc. for a transition station.

Brian LaRue, Executive Director of PB Cats, Inc., reviewed the request made by PB Cats, Inc. asking that the Town of Palm Beach provide space to shelter cats while they were in transition.

Discussion ensued, and it was the consensus of the Town Council to direct staff to review the proposal to use the Town police vehicle garage area as a transition station for PB Cats, Inc.

In response to Council Member Coleman, Mr. LaRue addressed the complaints made earlier by several residents who commented that they had not been allowed to join the Board of PB Cats, Inc. He submitted a written statement that included statistics related to the operation of PB Cats, Inc., and discussed the report submitted by the opposing group.

Council Member Coleman advised Mr. LaRue that the two groups had to work it out together or they would risk losing the support of the Town Council. He noted that if the cat lovers of Palm Beach could not resolve their differences, they should not expect the Town Council to succeed.

Mr. Elwell advised that staff would provide a report to the Town Council at the April 8, 2008, Town Council Meeting, which would document what staff knew about this matter, but he did not believe that staff would be able to come back with a solution. He advised that staff would work with PB Cats, Inc. and other interested parties toward an amicable agreement, but it might be beyond what staff could achieve.

Council Member Rosow noted that he agreed with Council Member Coleman that the loser in this debate would be the cats. He advised that he was in favor of dropping the Town's participation in the program if this issue came back before the Town Council again. The two groups needed to settle this themselves and should not involve the Town Council or staff as they were not mediators.

Marian Albergo, 642 North County Road, commented that it was only about the cats, and they were more than willing to work with the existing Board of PB Cats, Inc.

Council Member Coleman complimented Alex Hufty for her generous offer of $2,500 a month for a cat feeder.

Ms. Hannah requested clarification regarding the report the Town Council was asking staff to produce.

It was the consensus of the Town Council to direct staff to review the proposal to use the Town police vehicle garage area as a transition station for PB Cats, Inc., and to work with PB Cats, Inc., and other interested parties toward an amicable agreement. Staff would provide a report to the Town Council at the April 8, 2008, Town Council Meeting. If the parties were unable to reach an agreement, staff would report that back to the Town Council as well.

Alex Hufty, 154 Atlantic Avenue, advised that she had raised almost $40,000 in one week for a cat feeder and food, which had not been accepted, and maintained that the Town had given a monopoly to one group.

President Kleid explained that the Town Council wanted to deal only with one group if they were going to deal with anyone. He noted that group should embrace everyone interested in the cats and make that work.

Council Member Markin clarified, as an advisor to this Board, that PB Cats, Inc. has been willing and open to this other group and both groups needed to get together and sit down and come to an agreement.

President Kleid advised that staff would attempt to bring the two groups together, provide a report to the Town Council who hoped the two groups could work together because the loser would be the cats.

10. Town Hall Renovations Update and Decisions Regarding Town Council Chambers Upgrade and Method of Contracting.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council dated March 6, 2008, and included in the backup material, to provide an update and discuss decisions regarding the Town Council Chambers upgrade and the method of contracting.

Motion made by Council Member Rosow, seconded by President Pro Tem Coniglio to authorize a construction-manager (CM) at risk contract. On roll call, the motion carried unanimously.

Mr. Brazil advised that staff would begin standard negotiation procedures with legal counsel, noting that Hedrick Brothers was ranked first in this selection criteria.

In response to President Pro Tem Coniglio, Mr. Brazil advised that the construction-manager (CM) at risk contract would include a completion deadline and a penalty for overruns.

Town Manager Elwell advised that further financing needs for this project would be addressed at the March 21, 2008, Special Town Council Meeting.

Motion made by President Pro Tem Coniglio, seconded by Council Member Rosow to approve the recommendations of the audio-visual consultant, including the 12" above the floor elevation of the dais. On roll call, the motion carried unanimously.

11. North Lake Way Resurfacing.
[Susan Markin, Town Council Member]

Council Member Markin commented on the inconsistent and sporadic resurfacing of North Lake Way, noting that when driving along one of the Town's two major north/south thoroughfares, there was an inconsistency in terms of driving surface, and in the way it looked in terms of resurfacing, and that there was a "patchwork quilt" look all the way up from Royal Palm Way to the north end. She believed that money was wasted by only doing sections of the road and suggested that, at least, consistent sections be paved.

In response to Council Markin, Director of Public Works Brazil explained why the Town approached resurfacing in this manner, noting that a fundamental part of the paving plan approved by the Town Council was not to mill and resurface a road that would be torn up because of an impending utility project. The sections picked were those that were not going to have utility work done on them.

Mr. Brazil noted that if there were impending utility projects within two years on a street, it would not be milled and resurfaced, and that he had personally chosen the span of two years. He advised that it was a Town Council decision, and if the Town Council wanted to mill and resurface roads that would be torn up in the relative near future, staff would do so, but staff had not recommended that on the first round.

After discussion, it was the consensus of the Town Council to direct staff to revisit the street paving schedule during budget discussions, providing an updated street paving schedule, cross referencing work that would affect the schedule, and sections that were not intended to be done soon, and the costs to do them on an accelerated schedule.

William Diamond, 220 Wells Road, thanked Ms. Markin for placing this item on the Agenda and commented that at Bradley Place, in front the new steak restaurant, there was a section that was in terrible condition and he would like that included in the North Lake study.

12. Architectural Commission Appointments.
[John S. Page, 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: William J. Strawbridge, Jr.
Samuel M. Boykin

Alternate Members: Ann Vanneck
Robert J. Vila

13. Landmarks Preservation Commission Appointments.
[John S. Page, 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 (Nonresident Expert Member)
William Lee Hanley, Jr.

It was noted that any currently serving Alternate Member who was not elevated to the position of Regular Member would retain his/her current position.

XIII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 1-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 2, Administration, to Include a New Article IX Creating a Shore Protection Board; Providing for Appointments, Terms,

Qualifications, Functions, Regulations and Procedures; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 1-08 by title, on second reading, as printed above.

Discussion ensued, and the following persons commented in opposition to the creation of a Shore Protection Board: Council Member Rosow, Mayor McDonald and Council Member Markin. Council Member Coleman, President Pro Tem Coniglio and President Kleid commented in favor of creating a Shore Protection Board.

After further discussion, Council Member Rosow made a motion, seconded by Council Member Markin to table Ordinance No. 1-08. On roll call, the motion carried 4/1 with Council Member Coleman dissenting.

It was the consensus of the Town Council to direct Town Manager Elwell to provide monthly reports to the Town Council, on an individual basis, regarding the status of the hiring process for the Coastal Coordinator. A report on any major matters that occur with respect to the beaches, would be provided to the Town Council.

B. First Reading

1. <u>ORDINANCE NO. 4-08</u> 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 Definitions to Allow for a Higher Measurement for Building Height and Overall Height on Lots East of the State of Florida Coastal Construction Control Line; Section 134-2029 to Allow Telecommunication Antennas as a Permitted Use on All Private Club Properties in the R-AA, R-A and R-B Zoning Districts; Section 134-38 by Increasing Zoning and Comprehensive Plan Amendment Application Fees and Creating Other Fees Related to Development Applications and Zoning Interpretation Appeals; Sections 134-793, 134-843 and 134-893 to Allow Single-family Homes to Be Permitted on Nonconforming Platted Lots Without Special Exception and Site Plan Review by the Town Council; Section 134-2 to Create a Definition for a

Distribution Electrical Substation; Section 134-1354 to Prohibit Distribution Electric Substations from the Conservation Zoning District; by Creating Division 13, Section 134-2103 to Create Zoning Regulations for Distribution Electric Substations; Section 134-1111 and 134-1161 to Modify the Outside Table Seating Requirements in the C-TS and C-WA Zoning Districts; Section 134-2 to Create a Definition for Formula Restaurants and Dining Rooms; Sections 134-1107, 134-1159, 134-1259 to Prohibit Formula Restaurants and Dining Rooms in the R-D(2), C-TS, C-WA, C-PC, C-OPI and C-B Zoning Districts; Sections 134-390 and 134-419 to Eliminate the Specific Schedule to Complete Restoration Projects and Cross Reference Section 18-242; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date. Zoning.
[John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 4-08 by title, on first reading, as printed above.

Council Member Markin moved approval of Ordinance No. 4-08 on first reading.

Discussion ensued regarding Sections 134-793, 134-843 and 134-893 to allow single-family homes to be permitted on nonconforming platted lots without special exception and site plan review by the Town Council, and it was the consensus of the Town Council to remove this language from the ordinance.

Zoning Administrator Castro advised that staff had received a letter, after the backup went to the Town Council, from Attorney Jim Brindell relative to some of the language in Section 134-1111 and 134-1161 to modify the outside table seating requirements in the C-TS and C-WA Zoning Districts. He noted that the intent was to not allow tables throughout the C-TS and C-WA Zoning Districts unless special exception approval was granted. Mr. Brindell questioned the language under paragraph "a" of both those sections, there was some subjective language relative to consumption of food, beverages or commodities, which was subjective. Staff wanted that language taken out and simply state "no tables."

In response to Council Member Markin, Mr. Castro advised that no one would be grandfathered in, and any restaurant that had tables outside would be required to receive a special exception from the Town Council.

In response to Mayor McDonald, Mr. Castro advised that he believed the intent was for the Town Council to control issues such as noise, odors, etc., through approval and placing on those approvals any conditions that would help mitigate any possible impacts for outdoor seating.

Town Attorney Randolph suggested that the section related to outdoor tables be removed from first reading.

Robert Moore, former Director of Planning, Zoning and Building, commented on tables and chairs located in the Esplanade, in Via Mizner, and in Via Gucci. He noted that Bice Ristorante had approval for a set number of chairs and tables, and it strictly became a code enforcement issue to count the number of tables and chairs, issuing citations, fines, etc., if necessary. He suggested taking a stronger look at what the Town wanted relative to this issue.

After discussion, **Council Member Markin amended her motion to approve Ordinance No. 4-08 on first reading, with the exception of the language regarding nonconforming platted lots and the language regarding outside tables. The motion was seconded by Council Member Rosow. On roll call, the motion carried unanimously.**

Council Member Markin made a motion to approve conducting the second and final reading of Ordinance No. 4-08 and the other zoning ordinances, which would be coming up in April and May before 5:00 p.m. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 5-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for User Fees for Maintenance of Historic and Specimen Trees Located on Private Property, Providing an Effective Date.
[H. Paul Brazil, Director of Public Works]

Town Attorney Randolph read Ordinance No. 5-08 by title, on first reading, as printed above.

Council Member Markin moved approval of Ordinance No. 5-08 on first reading. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

Council Member Rosow noted that the Garden Club had offered to pay for the care of specimen trees, with Town Council permission. The Garden Club would address the Town Council at the April 8, 2008, Town Council Meeting.

3. <u>ORDINANCE NO. 6-08</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 78, Peddlers and Solicitors, Article III, Charitable Solicitations, Division 2, Permit; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Sarah E. Hannah, Assistant Town Manager]

Town Attorney Randolph read Ordinance No. 6-08 by title, on first reading, as printed above.

After discussion regarding the fee increase, **Council Member Markin made a motion to approve Ordinance No. 6-08 on first reading. The motion was seconded by Council Member Coleman. On roll call, the motion carried unanimously.**

4. <u>ORDINANCE NO. 7-08</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 10, Animals, Article I, in General, Section 10-9, Keeping Certain Animals Prohibited; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 7-08 by title, on first reading, as printed above.

Council Member Rosow moved approval of Ordinance No. 7-08 on first reading. The motion was seconded by Council Member Coleman.

Alex Hufty, 154 Atlantic Avenue, commented that the wording was confusing and questioned what animals the ordinance referred to.

Town Attorney Randolph advised that the ordinance referred to feral cats and that it would not be permitted to feed feral cats on residents' property.

Ms. Hufty commented that people felt strongly about their property and constitutional rights, and the Town would have real problems with this ordinance.

Town Attorney Randolph explained this had been in effect for a long time, and the only thing that was new was the word "feeding." If the Town Council wanted to change that, then it could, but basically, it was a housekeeping matter to make it clear that feeding a feral cat was maintaining and keeping a feral cat, and was prohibited except in the case of a Town designated agency that had been approved to feed cats.

Town Manager Elwell noted that it was important to stress that this had been on the Town's books for a long time, and that it had never been enforced against someone who was conducting these activities on their own property where the animal involved was a feral cat. The ordinance had been enforced when related to feeding in public places or feeding on private property where someone was not welcome, which was the issue.

In response to Council Member Coleman, Mr. Randolph explained that feeding cats on your own property became a public safety and public nuisance issue.

Discussion ensued relative to the concerns expressed by Ms. Hufty and the reasoning behind this ordinance.

In response to Council Member Rosow, Mr. Elwell advised that perhaps, the ordinance was not artfully crafted the first time, but the intent was clear that the Town was not trying to prevent people who were doing this on a very limited basis on their own property and were not creating a nuisance.

Council Member Markin responded that to become a cat feeder, a person would contact PB Cats to obtain a Town ID stating that you were a registered colony caretaker to feed feral cats under the PB Cat organization, and that person would be added to a colony caretaker list.

On roll call, the motion to approve Ordinance No. 7-08 on first reading, carried unanimously.

XIV. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal by the Royal Poinciana Chapel of an Administrative Decision Regarding Designation of Columbarian Addition as a Wall. [James Brindell]

Ex-parte communication was declared by Council Member Markin with the landscape architect George Sanchez and his assistant; by Council Member Coleman with the landscape architect, George Sanchez and his assistant; by President Kleid with the landscape architect, George Sanchez and his assistant; by President Pro Tem Coniglio with the landscape architect, George Sanchez and his assistant; by Council Member Rosow with Attorney Brindell and the landscape architect, George Sanchez and his assistant.

Town Attorney Randolph reminded all that when an ex-parte communication was announced, the information must include with whom the communication took place, and the general nature of the discussion.

Attorney Jim Brindell addressed the Town Council, stating that there was some confusion with this item. He explained that there was a difference between the application filed by the applicant for next month, on April7, 2008, and this appeal, which had to do about the application of the Code. He noted that he had listened to the audio for the meeting today when there was discussion of putting the item back on the agenda, and that was the first time that he had heard that there might be a neighbor who had an issue with the project. He stated that he and Paul Castro had met with the property manager this morning, and agreed that George Sanchez would meet with the neighbor. He requested that this item be deferred to April 7, 2008, to come on before the application, so that the applicant could actually go meet with the neighbor.

President Pro Tem Coniglio moved deferral to April 7, 2008. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

B. Time Extensions

1. Request for Waiver of Section 42-199, Hours of Construction-2842 South Ocean Boulevard (per Letter Dated February 27, 2008, from James R. Brindell).

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, introducing Adam Schlesinger, the principal in charge of the project. He explained that the purpose for the request was to try to complete the project sooner, rather than later. It was hoped that with the extension of time, the project could be completed earlier rather than later. He went on to explain that there were two parts to this: one had to do with an "in season" request – an additional hour in the morning and an additional hour in the afternoon, Monday through Friday, for quiet work only. Work "out of the season" – an additional hour Monday through Saturday in the morning, and an additional two hours Monday through Saturday in the afternoon; the morning hour for quite work only; the two afternoon hours for normal construction work. There would be no deliveries outside the normal allowable construction hours under the Code. Attorney Brindell noted that the Construction Management Agreement contained a standard provision saying that if there was an excess of noise, odor and test the Town had the ability to order a modification or cessation of construction activities. He maintained that there was thus another protection in place through the Construction Management Agreement to back up the request for the quiet hour work.

Director of Planning, Zoning & Building John Page advised that in 2007 the Town and the developer of the project entered into a Construction Management Agreement, and there seemed to be plenty of time to finish the project in accordance with that Agreement; through April 2010.

Acting Building Official Jeff Taylor commented that the project was currently being performed under Demolition Permit. Interior renovation plans were awaited, however, as of yet, there were no approved interior plans.

Adam Schlesinger, President of CSE PB Beach Ltd., advised that the project had gone through demolition, but had not yet started with reconstruction. He stated that granting the requested extension would help the project to be finished sooner, rather than later.

Motion made by Council Member Coleman to approve the request for extended construction hours. *(The motion was later withdrawn).*

James Coyne, Director of Engineering at the Four Seasons Resort in Palm Beach addressed the Town Council in opposition to the proposed request, and requested that the applicant stop construction, at least the demolition side of it, for the next two weeks, for the remainder of the season.

Discussion took place regarding heavy demolition during the season, and Zoning Administrator Castro advised that staff would investigate, although there had been no Code complaints.

Motion made by escalating construction hours during summer months,

Discussion took place regarding the request. Town Attorney Randolph suggested that any motion regarding the request could be bifurcated in order to deal with the requests before the Town Council.

Motion to approve withdrawn by Council Member Coleman.

Council Member Rosow moved that all demolition work be stopped until the season ended, and that the request for extended hours be denied. The motion was seconded by Council Member Markin.

Attorney Brindell commented that the Construction Management Agreement clearly included demolition and that the applicant was entitled to work by that.

Town Attorney Randolph suggested that the motion be bifurcated to deal with the request for extension before the Town Council, and then discuss the Construction Management Agreement issue. He noted that there was a provision in the Construction Management Agreement that addressed excessive noise, and that there were procedures outlined in the Agreement.

Council Member Rosow amended the motion to deny the request of work hours extension until a written agreement was seen between the neighbors and the applicant. The amended motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

Discussion took place regarding the provisions of the Construction Management Agreement.

Acting Building Official Taylor clarified that the Code addressed the type of equipment that could be used during season: electric jack hammers, no pneumatic tools.

Council Member Coleman suggested that the issue should be referred to Code Enforcement – if the applicant was in violation they should be cited.

Acting Building Official Taylor responded that if a complaint was filed, it would be investigated.

President Kleid suggested that the applicant consult with Town Attorney Randolph and PZ & B to determine the requirements of the Construction Management Agreement.

2. Request for Waiver of Section 42-999, Hours of Construction-JP Morgan Bank, 205 Royal Palm Way (per Letter Dated March 5, 2008, from Mark H. LaRoe).

Frank Rosner, Masters Construction, and Paul Cavarretta, Vice President, JP Morgan Chase, addressed the Town Council.

Director of Planning, Zoning & Building John Page advised that staff had visited the bank and their officials several times. The request entailed a one day job, limited to approximately five hours. Staff did not anticipate any disruption to the neighbors and the applicant was agreeable to using very quiet tools.

President Pro Tem Coniglio moved approval of the request for waiver of Section 42-999, with the conditions as recommended by staff:

- **Work limited to one day only.**
- **No equipment utilizing gasoline engines or using electricity rated at 115 volts or higher.**
- **Contractor shall provide for a Town of Palm Beach electrical inspector to be on site at contractor's expense until work is completed.**

The motion was seconded by Council Member Coleman. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #2-2008 The application of Mitchell Rubenstein and Laurie Silvers; relative to property described as lengthy legal description on file; commonly known as 1902/1906 South Ocean Blvd.; located in the R-AA Zoning District. The applicant requests a variance to allow construction of a new two story, 26,198 square foot air conditioned (37,939 square foot total) residence with a point of measurement of 17.31 feet National Geodetical Vertical Datum mean sea level (NGVD) for height and overall height in lieu of the 7.5 feet NGVD to 12.56 feet NGVD maximum allowed.

Ex-parte communication was declared by Council Member Coleman with Attorney Maura Ziska; by President Kleid via phone with Attorney Ziska; by Council Member Rosow with Attorney Ziska.

Council Member Coleman moved that Variance No. 2-2008 be granted, and found, in support thereof, that all of the criteria applicable to the application as set forth in Section 134-201(a), Items 1 through 7 had been met. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

President Kleid asked if there were any objections. There were none.

President Kleid noted that the application asked for a point of measurement, and that in several months an ordinance regarding that would be passed.

b. SPECIAL EXCEPTION #3-2008 The application of 375 South County Associates; relative to property described as LT 1 (Less Trglr Par S County Rd R/W), LT 66 (Less Peruvian Court Cond), & LTS 67 thru 69, Blk 9, ROYAL PARK ADD, Plat Book 4, Page 1; commonly known as 375 South County Road; located in the C-TS Zoning District. The applicant requests a special exception to allow 8 outdoor seats (4 2-seat tables) above the inside capacity for Pastry Heaven in the interior courtyard directly south of the tenant space.

Ex-parte communication was declared by President Pro Tem Coniglio, Council Member Rosow through conversation with Attorney Peter Broberg; by President Kleid through conversation with Attorney Broberg, and an employee from Pastry Heaven.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, and presented the application.

In response to President Kleid, Attorney Broberg replied that the drawings indicated that there would be 3'6" between the corridor.

Zoning Administrator Castro advised that the Fire Marshall shall remain at 3'6" between the two top tables on either side of the via; staff had no further comments relative to the proposal.

Councilman Coleman moved that Special Exception #3-2008 be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. <u>SPECIAL EXCEPTION #14-2007 WITH SITE PLAN REVIEW AND VARIANCES</u> The application of Janina Radtke Revocable Trust; relative to a property described as the northerly 100 feet of Lot 1, Singer Addition to Palm Beach, according to the plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, as recorded in Plat Book 8, Page 81, together with the land lying directly east; commonly known as 476 S. Ocean Blvd.; located in the R-A Zoning District. The applicant requests special exception with site plan review to allow a single-family structure on an existing nonconforming lot of 15,001 square feet in area in lieu of the 20,000 square foot minimum required, and 100 feet in width in lieu of the 125 foot minimum required. In addition, a variance is requested to permit lot coverage of 29.12% in lieu of the maximum 25% allowed for the construction of an 8,556 square foot single family home. A variance is also requested to have a building height plane setback of 42.92 feet in lieu of the 58.67 foot minimum setback required. *Deferred from the November 13, 2007, January 8, 2008, and February 12, 2008, Town Council Meetings.*

Special Exception #14-2007 with Site Plan Review and Variances was deferred to the April 7, 2008, Town Council Meeting.

b. <u>MODIFIED SPECIAL EXCEPTION#15-2007 WITH SITE PLAN REVIEW</u> The application of Palm Beach Day Academy, Inc.; relative to property described as lengthy legal description on file; commonly known as 241 Seaview Avenue; located in the R-B Zoning District. The applicant requests a special exception with site plan review to modify a previous condition of approval on Special Exception#13-2002with Site Plan Review to allow the portable trailer to remain through the 2008-2009 academic year (June 2009); site plan review is also being requested to build a 24 space gated paved parking lot on the eastern portion of the west play field. *Deferred from the December 11, 2007, January 8, 2008, and February 12, 2008, Town Council Meetings.*

Attorney Ray Royce, on behalf of the applicant, addressed the Town Council. He advised that the applicant would like to modify the request to allow the use of the portable classroom until August 1, 2008.

Zoning Administrator Paul Castro advised that there were two issues related to the request. With the request to defer any consideration of the parking lot, staff believed that the application needed to be pulled from the agenda and re-noticed. He also noted that part of the original approval of the gymnatorium, with the portable classroom, required six parking spaces underneath the portable. He stated that he believed that the applicant was asking to stay any consideration of that as well, until August, but that was still something that was required until such time as the applicant re- advertised the notice. If that request was pulled off of the agenda, and the applicant did not come back in August, they would be required to build that parking area.

Attorney Royce advised that there were two requests today:

1. To finish this school year with the portable, and get it out a month or so after the students were out.

2. To defer the rest of the application –the 24 parking places and defer the obligation to put the six parking spaces in.

Council Member Coleman referred to the fact that the school was in violation of the agreement to remove the portable, and moved that a new standard Declaration of Use Agreement be put into effect, and that nothing else be discussed until the other issues of concern had been resolved. The motion was seconded by Council Member Markin.

Discussion took place. Town Attorney Randolph advised that he understood that there was an agreement that the six parking spaces must be provided, and that two actions would need to take place – one related to the first item in regard to the portable, however, because there was an agreement in effect related to the six parking spaces the applicant would need to amend that agreement, or would have to comply. There would be two actions for the Town Council to consider.

Zoning Administrator Castro advised that if the Town Council chose to amend the Declaration of Use Agreement, and to place in the fining mechanisms that were in such agreements today, there would have to be some modification to the Declaration of Use Agreement relative to the parking spaces at that location, and staff would also recommend that the Town Council set a specific date when the applicant would come back if the parking lot was not to be built.

Marty List, member of the Board of Trustees of Palm Beach Day Academy provided comments relative to the entire site plan that had been approved in 1999, and which had encompassed a number of conditions. He explained that the applicant was trying to address parking in a more thoughtful manner for today's needs. The applicant was asking not to build the six parking spaces today. The applicant would like to come back in the fall, and continue to work with the neighbors in dealing with a more thoughtful approach.

President Kleid clarified that the applicant was obligated to put in the six parking spaces, but would have until July 15th to take out the portable trailer and come back to the Town Council with a full plan.

On roll call the motion made by Council Member Coleman carried unanimously.

President Pro Tem Coniglio urged the applicant to continue to work with the neighbors to come to a conclusion that would make everyone happy.

01/29/2010

Town Manager Elwell clarified that the standard Declaration of Use included a \$2,000 per day fine for every day after July 15th as it related to removal of the trailer, but also that the provision would also address all aspects of violations of the Declaration of Use Agreement.

Council Member Coleman responded that he was not trying to include the six parking spaces. He suggested that the fine is to be applied only as far as removal of the portable trailer was concerned.

Town Attorney Randolph clarified that the applicant would need to come back to the Town Council before July 15, 2008, because after that date the applicant would be in violation, and would go to Code Enforcement immediately. The applicant would need to come back well before July 15, 2008, if the applicant did not want the Code Enforcement penalties to begin.

Mike Spaziani, 322 Seaspray Ave., addressed the Town Council, commenting on the violation aspect of the application. He suggested that diagonal parking would allow more parking spaces on the west side of the field.

Attorney Royce requested deferral or withdrawal of the remainder of the pending application and come back to the Town Council with a better and revised plan; in the meantime not to have to build six improved parking spaces in the place of the trailer until the applicant came back to the Town Council. He noted that he wanted to have enough time to solve the issues with the neighbors prior to coming back to the Town Council.

Zoning Administrator Castro recommended that the application be withdrawn, but that the applicant file by a specific date for a Town Council meeting, so that legal notice/advertisement can be accomplished to the neighboring property owners, and the applicant can come back with a proposal related to those six parking spaces.

Town Attorney Randolph advised that the applicant could obtain a deferral of the 24 spaces, which could be done by motion, but that would not address the six parking spaces – those six spaces were not even on the agenda today, and the applicant would not be in compliance by July 15, 2008, so the applicant should be back at the Town Council very soon to deal with the six parking spaces.

Town Manager Elwell clarified that the applicant had now been given until July 15, 2008 for the portable, with a very stiff penalty if the applicant goes beyond that date. As of now, that approval gets them out of violation. What the applicant indicated today was that they did not want to go forward with the rest of the application, because they want to resolve pending issues.

01/29/2010

Council Member Coleman moved approval of the withdrawal of the request to build a 24 space gated paved parking lot on the eastern portion of the west play field. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #2-2008 The application of New Bradley House, LTD (George Levin); relative to property described as The East 10 feet of Lot 30 and all of Lots 31-37 inclusive, FLORAL PARK, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach, Florida, in Plat Book 2, Page 6; commonly known as 290 Sunset Avenue; located in the C-TS Zoning District. The applicant requests a modification to the previously approved Special Exception #10-2002 Condition Number 3 to allow the restaurant to be open for lunch between 11:00 a.m. and 3:00 p.m. and to allow for a modification which would allow for the use of the parking lot previously approved for off-site supplemental parking for the restaurant during the proposed lunch hours. *Deferred from the February 12, 2008, Town Council Meeting.*

Special Exception #2-2008 was deferred to the April 7, 2008, Town Council Meeting.

4. New Business- More Than 15 Minutes

a. VARIANCE #3-2008 The application of Palm V Associates, Ltd.; relative to Lots 5-16 incl., Blk 18, Royal Park Addition; commonly known as 240 Worth Avenue, Suite 7; located in the C-WA Zoning District. The applicant requests a variance from the requirement to provide 3 additional off-street parking spaces above the amount calculated by the principal of equivalency zoning requirement to convert 1,638 square feet residential units to office use (architecture office).

Ex-parte communication was declared by President Kleid via telephone conversation with Attorney Peter Broberg; by President Pro Tem Coniglio via telephone conversation with Attorney Broberg; by Council Member Rosow via telephone conversation with Attorney Broberg.

Attorney Peter Broberg, on behalf of the owner of the building, addressed the Town Council and presented the application. He explained that the hardship was that there was no more parking available on Worth Avenue, and the building had been in place long before the Code was created. It was going to be used as an architectural office, and would be a less intense use than if it were two residences, as it had formerly been. He cited the precedent related to the approval granted to Hermes for office space upstairs, without additional parking.

Zoning Administrator Paul Castro replied that there was a difference between the Hermes application and the application in question, because Hermes had provided proof that the area had been used as office in the past when they came forward with the request. He noted that at the location in question today, records indicated that the last time there was a permit issued, in 1994 to Lars Bolander to renovate a residential unit. All records indicated that the area was used as residential, however, there were mixed uses within all of the buildings in that area. There was no record that there was an office use in the location in question today. Staff had required the current applicant to request a variance, because of the principal of equivalency, because of the conversion of residential units into the office use, which was a change of occupancy as well. The applicant would be required to meet the fire code requirements as well. Staff questioned the hardship.

Council Member Markin moved approval of Variance #3-2008. The motion was seconded by Council Member Rosow. On roll call, the motion carried unanimously.

b. <u>SPECIAL EXCEPTION #4-2008 WITH SITE PLAN REVIEW AND VARIANCE</u> The application of Christopher H. Browne; relative to property described as Lot 2 and the North 15 feet of Lot 3 of BOCA RATON COMPANY"S INLET SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 12, at Page 15 of the Public Records of Palm Beach County, Florida; commonly known as 1695 North Ocean Way; located in the R-A Zoning District. The applicant requests a special exception with site plan review to allow construction of a two-story, single family residence and accessory structure totaling 10,243 air conditioned square feet and 17,861 total square feet, on an unplatted lot that is 110 feet in width in lieu of the 125 feet minimum required in the R-A Zoning District; a variance to allow construction of a swimming pool 16.88 feet from the Town bulkhead line and the proposed residence to be 30.6 feet from the Town Bulkhead line in lieu of the 50 foot minimum setback required where no bulkhead/seawall improvement exists.

Ex-parte communication was declared by Council Member Markin with Attorney Maura Ziska and Mr. Gordon; by Council Member Coleman with Attorney Ziska and Mr. Goodman; by President Kleid with Attorney Ziska and Mr. Gordon; by Council Member Rosow with Mr. Gordon; President Pro Tem Coniglio remarked that she had left messages for Mr. Gordon and Attorney Ziska.

Attorney Maura Ziska, on behalf of the property owners, Andrew Gordon and Christopher Browne, addressed the Town Council, accompanied by coastal engineer Darwin Stubbs, coastal expert Dr. Steven Leatherman, and landscape architect Steve Dauber. Attorney Ziska presented the application. She noted that, after negotiations with the neighbor to the north, the variance related to construction of the swimming pool was now 40 feet rather than 30.6 feet. She explained the reasons for the request: the narrow long layout of the property, and the Florida Department of Environmental Protection (FDEP) should be the agency that establishes the line of adjacent construction. She noted that the FDEP had already preliminarily approved the setback.

Dr. Steven Leatherman provided a power point presentation with information related to the history of the beach.

Mr. Andrew Gordon reviewed the plans for the house, presenting architectural renderings and an architectural model of the proposed residence.

Zoning Administrator Paul Castro advised that the Architectural Commission (ARCOM) had recommended approval of the variances and the project. He explained that the property was a very lengthy property, and the bulkhead provision in the Code really addressed the armament of the ocean relative to the situation of the house and the height of the bulkhead. An early staff comment, related to the hardship, had been that the house should line up with the houses on either side, relative to their setbacks. The original proposal did not do that, and Mr. Castro stated that he did not see how this proposal lined up with the houses on either side.

Attorney Frank Lynch, on behalf of North Ocean Way LLC, 1565 North Ocean Way, Patrick Carney, Principal, addressed the Town Council, stating that Mr. Carney's property was immediately to the south of the subject property. He explained that Mr.

Carney had also filed an appeal to the ARCOM decision, which would be heard by the Town Council next month. Attorney Lynch maintained that the hardship did not exist with the proposed project, and that the applicant did not meet two of the criteria for variances. He provided, for the record, the tax collector's map identifying the subject, and some aerial photographs showing the subject property. Attorney Lynch also pointed out that the plans identified two office uses on the second floor, and that his client would like some confirmation that those office uses would not be typical business offices – traffic offices. He referred to Rick Gonzalez, who was present to present some of the architectural aspects.

Attorney Ziska commented that she did not believe that expert testimony was germane to a site plan review/variance request. There was already an appeal on the docket for the architecture.

Mr. Gordon related the actions that had been taken in discussion with the neighbor.

Attorney Ziska addressed the hardship: there was really no logical reason to require a fifty foot setback for any houses in this area of Town, where the beaches had changed so substantially since the intent of the Code, with the bulkhead line being established in the 1920's. The screening and landscape plan was acurrately reflected in the model and whether the house was set back fifty, forty, or thirty feet, the neighboring house would be compromised because of the landscaping, which was for privacy for both properties. She stated that she believed that the office use was for personal office use.

Attorney Lynch responded with additional comments, and suggested that it was not necessary to encroach on the bulkhead setback.

Attorney Ray Royce, representing Mr. Robert Rich, the neighbor to the north, commented that he had held a number of conversations with Attorney Ziska, and the applicant had agreed to pull back the setback 10 feet. He explained that the applicant had originally requested 30 feet from the Town Bulkhead line; now they had agreed to make it 40 feet. Discussions had also taken place regarding shielding air conditioners from noise, making sure that the generator noise did not come out to the north, etc. Attorney Ziska had composed a list of those conditions, which had been agreed upon. The concerns of Mr. Rich had been satisfied; there were no objections and Attorney Royce urged support and approval of the application. He submitted the letter listing the conditions for the record.

Attorney Lynch clarified that his client would like the applicant to avoid the variance entirely, and the residence go back the 50 feet, as the Code requires, from the bulkhead line.

Attorney Ziska clarified that the variance request for the house had been mitigated by 10 feet.

Zoning Administrator Castro pointed out that even if the applicant moved the house back to the 50 foot setback, there was still a request for the swimming pool to be closer.

Motion made by Council Member Markin to move the variance request for the house back another 10 feet, and the swimming pool. The motion was seconded by President Pro Tem Coniglio.

Attorney Lynch questioned whether the motion included that the residence would sit back 50 feet from the bulkhead line, and the swimming pool would be in the proposed current location.

Town Attorney Randolph clarified that the motion was to deny the variance as to the house, but to grant the variance as to the pool. He suggested that specific criteria be stated.

In response to Council Member Rosow, Attorney Lynch commented that, if the motion was approved, he would go back to Mr. Carney and let him know, however, he could not predict whether Mr. Carney would withdraw his objections and his appeal regarding ARCOM.

Council Member Markin clarified that the motion, in regard to Special Exception #4-2008 with Site Plan Review and Variance was to deny the variance as to the house, because it did not meet the criteria in the Code set forth in section 134-201(a), Items 1 through 7, and that the site plan approval be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certified that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, Items 1 through 11; and that the special exception be granted based on the finding that the granting would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met; that the variance for the swimming pool be granted, finding in support that all of the criteria applicable to the application as set forth in Section 134-201(a) Items 1 through 7, had been met. The seconder of the motion, President Pro Tem Coniglio, agreed with the clarification. On roll call, the motion carried unanimously.

Attorney Royce and Attorney Ziska discussed the conditions that had been agreed upon. Attorney Ziska stated that the conditions were agreed, except for the paragraph that addressed the common 40 foot setback, which was not applicable at this time.

Attorney Royce read what had been agreed to into the record:

- Mr. Gordon and Mr. Browne would be allowed to landscape their north property line to the height and length of Mr. Rich's fence that currently exists on the south property line of the Rich property.

- The generator will be located in the basement and not be vented towards the north.

- If there are a/c units on the north side of the Gordon/Browne property line, they will be sound-proofed with a wall or building. The pool equipment will be in the basement.

President Pro Tem Coniglio moved approval of the conditions as set forth. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

c. SITE PLAN REVIEW #1-2008 WITH VARIANCES The application of Whalou Properties III, LLC (Angelo Bianco, Sr.Vice President); relative to property described as Lots 38 through 48, inclusive, Block 16, REVISED MAP OF ROYAL PARK ADDITION, according to the Plat thereof, as recorded in Plat Book 4, at Page 1 of the Public Records of Palm Beach County, Florida; commonly known as 125 Worth Avenue; located in the C-WA Zoning District. The applicant requests Site Plan Review to renovate a non-conforming, four-story commercial building by additional 1,761 square feet of retail space to the first floor by enclosing the arcade on the front of the building and eliminating 5 required parking spaces. The proposal also includes providing tandem valet parking of 14 cars in the basement garage; variances are requested to accomplish the modifications to the site plan as follows: (I) a variance to allow the required 14 parking spaces to be situated in contradiction to the maneuvering requirements in Section 134-2172; that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The applicant is proposing stacked parking which requires the shuffling of vehicles in order to remove vehicles from required parking spaces; (ii) a variance to increase the square footage from 113,746 square feet to 115,507 square feet in lieu of the 15,000 square foot maximum allowed; (iii) a variance to expand a non-conforming, 4 story building by increasing square footage on the first floor.

Site Plan Review #1-2008 with Variances was deferred to the April 7, 2008, Town Council Meeting.

d. MODIFIED SITE PLAN REVIEW #23-2007, WITH SPECIAL EXCEPTIONS AND VARIANCES Application of L.G.Lima, LLC (Robert and Donna Lloyd George, Principles); relative to a property described as Lots 41 through 45, inclusive, Block 11, Revised Map of Royal Park Addition to Palm Beach, according to the map thereof as recorded in Plat Book 4, Page 1 of the Public Records of Palm Beach County, Florida; commonly known as 333 Peruvian Avenue; located in the C-TS Zoning District. Applicant requests Site Plan Review to construct a new three story 10,049 square foot building. The first floor is to include retail space and twenty-four (24) parking spaces. The second floor is proposed to include a mix of residential and office uses. The third floor is to include a fountain, two open pergolas, open deck and landscaping. Also, a request for special exception to permit a second floor, special exception to permit approximately 4,625 square feet of residential tenancy on the second floor. Variances requested are as follows: a variance to permit height of 28.67 feet in lieu of 25 feet maximum height permitted, a variance to permit parking spaces with a width of 8.5 feet in lieu of 9 feet minium required; a variance to permit eight (8) stacked parking spaces to be serviced by valet parkers to comply with the requirement of 29 total parking spaces, which is not permitted due to maneuvering requirements; a variance to permit third floor use for an elevator, fountain, open deck and open pergolas in lieu of the two story maximum permitted; a variance to permit total floor area of 20,514 square feet in lieu of 15,000 square feet permitted; and, a variance to permit commercial loading zone 18 feet deep in lieu of the 25 foot maximum required and 10 feet of clearance in lieu of the 14 foot minimum required.

Modified Site Plan Review #23-2007, with Special Exceptions and Variances was deferred to the April 7, 2008, Town Council Meeting.

D. Other

1. Planning and Zoning Commission - Prioritization of Planning Functions.
[John S. Page, Director of Planning, Zoning, and Building]

Director of Planning, Zoning & Building John Page reported that the Planning and Zoning commission had recently completed a process of self-identifying critical planning issues important to the Town. They had created a list, and voted on their top priorities, resulting with seven priorities as outlined in the back up material via memorandum dated March 6, 2008. The Planning and Zoning Commission asked that the Town Council consider these items and support moving forward with the studying of these issues.

Council Member Coleman moved deferral to the April 7, 2008, Town Council Meeting. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

2. Review of Condition of Approval for Starbucks Restaurant Concerning the Voluntary Financial Commitment for a Parking Control Officer, Site Plan Review #12-2006 with Special Exceptions and Variances, 150 Worth Avenue.
[John S. Page, Director of Planning, Zoning, and Building]

President Pro Tem Coniglio moved approval of the release of the voluntary commitment by Starbucks Restaurant of $15,000 for a parking control officer to minitor the 100 block of Worth Avenue. The motion was seconded by Council Member Coleman. On roll call, the motion carried unanimously.

XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

There being no further business, the Town Council meeting of March 11, 2008, was adjourned at 7:28 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk