TOWN OF PALM BEACH

Office of The Town Clerk

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

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting, was called to order on Tuesday, February 13, 2007, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett was not in attendance.

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Alan Brown - Recreation Assistant Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Brian Fuller - Fire-Rescue EMS Coordinator
Charles Langley - Public Works Assistant Director
Michael Mason - Law Enforcement Major, Police
Edward J. Moran - Fire-Rescue Chief
Jim Palmer, I.S. Systems Analyst
Michael Reiter - Police Chief

Jane Struder - Finance Director
Rob Walton, Chief Code Compliance Officer
Spencer Wilson - I.S. Manager
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. SWEARING IN OF ELECTED OFFICIALS -
The Honorable Judge Kathleen Kroll.

Mayor McDonald, as presiding officer, recognized The Honorable Judge Kathleen Kroll.

The Honorable Judge Kathleen Kroll administered the oaths of office to the following newly elected officials: Mayor Jack McDonald, Council Member Denis P. Coleman, and Council Member Gail Coniglio.

IV. ORGANIZATIONAL ITEMS

A. Election of the Town Council President
Pursuant to Section 3.01 of the Town Charter.

The Town Council cast ballots; Richard M. Kleid was elected as President of the Town Council.

B. Election of the Town Council President Pro Tem
Pursuant to Section 3.01 of the Town Charter.

President Kleid, as the new presiding officer, announced that Denis P. Coleman was elected by the Town Council as the President Pro Tem of the Town Council.

V. PRESENTATIONS

A. Recognition of Gail Coniglio, Landmarks Preservation Commission, From March 2005 Through February 2007.

Mayor McDonald recognized Gail Coniglio for her service on the Landmarks Preservation Commission, from March 2000 through February 2007.

B. Recognition of Nancy Murray, Planning and Zoning Commission, From November 2001 Through February 2007.

Mayor McDonald recognized Nancy Murray for her service on the Planning and Zoning Commission from November 2001 through February 2007.

C. Recognition of Peter Broberg, Planning and Zoning Commission, From February 1999 Through February 2007.

Mayor McDonald recognized Peter Broberg for his service on the Planning and Zoning Commission from February 1999 through February 2007.

D. Recognition of Ray Herr, Firefighter/Paramedic, Fire-Rescue Department, Upon His Retirement from the Town of Palm Beach After 26 Years and 3 Months of Service.

Mayor McDonald recognized Ray Herr, Firefighter/Paramedic, Fire-Rescue Department, for his years of service.

E. Recognition of Suzanne Sills, Police Sergeant, Police Department, Upon Her Retirement from the Town of Palm Beach After 17 Years and 8 Months of Service.

Mayor McDonald recognized Suzanne Sills, Police Sergeant, Police Department, for her years of service.

F. Recognition of Joe Trione, Development Review Coordinator, Planning, Zoning, and Building Department, Upon His Retirement from the Town of Palm Beach After 13 Years and 5 Months of Service.

Mayor McDonald recognized Joe Trione, Development Review Coordinator, Planning, Zoning, and Building Department, for his years of service.

VI. COMMENTS OF MAYOR JACK McDONALD

TODAY WE WERE HONORED TO HAVE OUR FIRST FEMALE CHIEF JUDGE KATHLEEN KROLL PERFORM THE SWEARING IN CEREMONY.

TODAY WE ALSO WELCOME GAIL CONIGLIO TO THE TOWN COUNCIL AND I AM PLEASED SHE HAS JOINED US. FOR THE FIRST TIME IN 12 YEARS WE HAVE TWO FEMALE MEMBERS ON THE COUNCIL. GAIL BRINGS FRESH IDEAS AND YOUTH TO THIS COUNCIL. I ALSO RECOGNIZE THAT THE AVERAGE EXPERIENCE LEVEL OF THIS COUNCIL IS JUST OVER TWO YEARS, THE LOWEST IN RECENT MEMORY.

RECOGNIZING THIS FACT, I WANT TO REFLECT ON WHAT ATTRACTS PEOPLE TO PALM BEACH. THEY DO NOT LIVE HERE BECAUSE WE ARE A PROGRESSIVE COMMUNITY, OR FOR OUR PUBLIC SCHOOLS, THAT WE HAVE A STARBUCKS, OR PROVIDE 7 DAY A WEEK BANKING SERVICES. PEOPLE LIVE HERE BECAUSE IT IS SAFE, BEAUTIFUL, CLEAN, WELL RUN AND PRESERVED, WITH GREAT SERVICE AND A SLICE OF GENTILITY. PALM BEACH DOES NOT HAVE THE CONVENIENCE OF NEW YORK CITY OR GROWTH OF WEST PALM BEACH. SMALL SPECIAL PLACES GENERALLY ARE NOT CONVENIENT OR WANT GROWTH, AND THAT IS WHAT MAKES THEM SMALL SPECIAL PLACES. IT IS INTERESTING TO READ THE FRIENDS & NEIGHBORS PROFILE PUBLISHED IN THE DAILY NEWS WHERE THEY ASK THE QUESTION: IF YOU COULD CHANGE ONE THING ABOUT PALM BEACH WHAT WOULD IT BE? THE MOST COMMON RESPONSE IS NOTHING -- IT'S GREAT. IT IS PRESERVATION NOT PROGRESS THAT ATTRACTS THE MAJORITY OF THIS TOWN. WE ARE A TOWN FILLED WITH MANY COMMUNITY MINDED VOLUNTEERS. THEY LIVE HERE BECAUSE OVER A PERIOD OF MANY YEARS OUR MAYORS AND TOWN COUNCILS, WITH OUR RESIDENTS, HAVE CREATED, NURTURED AND PRESERVED SOMETHING SPECIAL. WE HAVE A STRONG FABRIC OF SUPPORT FROM OUR COMMUNITY ORGANIZATIONS: THE PRESERVATION FOUNDATION, THE GARDEN CLUB, THE CIVIC ASSOCIATION, THE CITIZENS' ASSOCIATION, AND

OUR VOLUNTEER COMMISSIONS, THESE ORGANIZATIONS VOLUNTEER AND FINANCIALLY SUPPORT THE PRESERVATION AND BEAUTY OF THIS TOWN.

APPROVAL OF THE TOWN HALL BUMP OUT IS A GOOD EXAMPLE OF A SHORTSIGHTED ECONOMIC DECISION INSENSITIVE TO THE CHARACTER OF THIS TOWN. FORTUNATELY OUR RESIDENTS AND LANDMARKS COMMISSION SPOKE LOUDLY AND THIS TRAVESTY WAS AVOIDED. FORTUNATELY WE HAVE AN ACTIVE, AGGRESSIVE AND CONCERNED CITIZENRY THAT ACTS AS A WATCHDOG BUT THE COUNCIL, THIS COUNCIL, IS THE GUARDIAN.

I ATTENDED TOWN COUNCIL MEETINGS FOR TEN YEARS PRIOR TO JOINING THE TOWN COUNCIL AND I OBSERVED MANY FORMER COUNCILPERSONS SERVE ON THIS DIAS. I REMEMBER WELL THE STRONG POSITIONS OF BOB GRACE AND GEORGE MATTHEWS IN DENYING APPLICATIONS THAT WOULD CHANGE THE CHARACTER OF THIS TOWN WITH NO PATIENCE FOR APPLICANTS THAT SUED OR THREATENED TO SUE THE TOWN.

ANYTHING OF VALUE REQUIRES SACRIFICE. SO WE SACRIFICE GROWTH, PROGRESS, SOME HIPNESS AND SOME CONVENIENCE, TO MAINTAIN THE VALUES THAT MAKE THIS THE TRULY UNIQUE COMMUNITY IT IS.

WE LIVE IN A TRANSIENT SOCIETY AND WANT SOMETHING THAT FEELS PERMANENT. WE HAVE A DESIRE FOR CRAFTSMANSHIP AND SENSE OF CONTINUITY THAT CAN BE FOUND HERE.

IT IS FLATTERING TO BE DESCRIBED AS PROGRESSIVE AND ENLIGHTENED BUT IF IT RESULTS IN THE DIMINUTION OF OUR HISTORY, OUR ARCHITECTURE AND OUR STYLE OF LIVING, I WANT TO BE DESCRIBED AS OLD FASHIONED.

REGARDING THE ROYAL POINCIANA PLAZA APPLICATION, SIDNEY SPIEGEL, AS TRUSTEE A/K/A THE ROYAL POINCIANA PLAZA: I AM DISAPPOINTED TO SEE THIS APPLICATION ON THE AGENDA AND I AGREE WITH THE CIVIC ASSOCIATION'S LETTER PUBLISHED SUNDAY IN THE PALM BEACH DAILY NEWS. THEIR RECOMMENDATION TO DEFER ACTION ON THIS APPLICATION

WHILE LITIGATION IS PENDING IS LOGICAL AND LEGALLY CORRECT. IT SEEMS BIZARRE THAT AFTER SPENDING IN EXCESS OF $166,000.00 IN LEGAL FEES AND COSTS DEFENDING THIS APPLICANTS LAWSUIT AND ASSOCIATED ACTIONS THAT WE WOULD PROCEED WITH AN APPLICATION THAT DIRECTLY DEALS WITH THE ISSUES BEING LITIGATED.

GENERALLY, WE ARE SO SENSITIVE ABOUT DISCUSSING MATTERS IN LITIGATION. HOW CAN THIS COUNCIL HAVE A SUBSTANTIVE DISCUSSION ON THIS APPLICATION WITHOUT TALKING ABOUT THE VERY ISSUES BEING LITIGATED. WE ARE OUTRAGED ABOUT THE FLAGPOLE; WE SHOULD BE OUTRAGED ABOUT THIS APPLICATION. BOTH LAWSUITS REVOLVE AROUND BREAKING THE RULES OR BREACHING AGREEMENTS. YOU HAVE AN ORDINANCE ON THE AGENDA TODAY THAT WOULD PRECLUDE CODE VIOLATORS THAT ARE IN NONCOMPLIANCE WITH ANY OF THE TOWNS REGULATIONS, CODES, OR ORDINANCES FROM RECEIVING BUILDING PERMITS OR HAVING APPLICATIONS CONSIDERED FOR DEVELOPMENT REVIEW. SHOULD SIDNEY SPIEGEL'S LITIGATION PROVIDE HIM AN OPPORTUNITY TO PROCEED. I DO NOT THINK SO.

THANK YOU.

VII. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Markin enthusiastically welcomed Gail Coniglio. She payed tribute to Allan Wyett, as well as his wife, Carol, for 12 years of service to the Town of Palm Beach.

Council Member Brooks congratulated Mr. Kleid on his appointment as President of the Town Council. He commented in opposition to the placement of Special Exception #5-2007 onto the Town Council Agenda for today's meeting. He suggested that this item not be heard until the court procedures had been completed.

President Kleid stated that it was fitting as a new Town Council year was beginning that they look to the past, and he recognized the contribution made by Allen Wyett over the many years he served on the Town Council. He looked to the future noting that they knew contributions would be made by Gail Coniglio.

He commented that they were indebted to Denis Coleman for his leadership and stewardship as President of the Town Council for this past year. He discussed the issues that the Town would be facing this coming year and suggested that they listen to each other, the comments of staff and the public, and to respect the opinions of all in an atmosphere of collegiality.

VIII. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Beth Heath, 2830 Wilderness Road, West Palm Beach stated that she worked in the Town of Palm Beach for the past eight years. She explained that she was walking Boomer, a Bichon, who resided at 548 North County Road, when he was viciously killed by a Doberman residing at 665 North Lake Way. She reviewed the three steps that Palm Beach County would take regarding such incidents. She urged the Town to enact an ordinance to protect the residents of Palm Beach and their animals or use their influence to change the existing County Ordinance. She requested that the Town Council honor the petition and letters they received from residents, and that they demand that this Doberman and any other animal that attacks and kills be permanently removed from the Town. She distributed a packet to each Town Council Member containing information relative to this issue for their review.

President Kleid advised Ms. Heath that the Town Council would look at the petition and act on it, if necessary.

President Pro Tem Coleman expressed his sympathy, but advised that the Town Council could not enact ex-post facto ordinances. He encouraged Ms. Heath to go to civil court and to seek a restraining order.

In response to Council Member Markin, Town Attorney Randolph advised that the Town could adopt an ordinance relative to this issue. He explained that the Town currently relied on the County Ordinance, because it did not have the ability or the staff to enforce all of the rules and regulations.

Council Member Markin stated that she would like the Town to look into adopting an ordinance that would be stricter than what the County has in place.

Ann Vanneck, 217 West Indies Drive, commented that the Doberman in question had tried to attack her two dogs a month previous to the vicious attack on Boomer. She advised that she had not reported the incident because she did not believe she had a venue for a dog that pulls down its owner. She stated that the Town did need to investigate adopting an ordinance that restrained animals of that size and nature. She noted that the Doberman, two weeks after the attack, still was not fenced in and could get out and kill a child.

President Pro Tem Coleman requested that staff provide a report for the next Town Council Meeting to include the following two items:

- With advice of counsel, determine whether the Town Council could seek a restraining order against a citizen; and
- If the process required by creating an ordinance took too long, did the Town have a legal right, to deal with an animal when the owner had been indifferent about its behavior.

Council Member Markin suggested that the Police Department investigate to determine if it was the same dog. She advised that if it was the same dog, under the County Ordinance, it could be removed since it would have been the second attack.

Ms. Heath advised that there was a question about the identity of the dog; the owner had referred to it with a different name than everyone else on the street.

Town Manager Elwell stated that staff would provide a full report to the Town Council addressing several questions that had been raised.

President Kleid stated that it was the consensus of the Town Council that, for next month's Town Council Meeting, staff should provide a report to them, as well as a draft ordinance, if possible. He stated that the Police Department should investigate this situation further providing to the Town Council a report.

Leslie Evans, 135 Seminole Avenue, commented as follows:

- Congratulated Gail Coniglio, thanked President Pro Tem Coleman and wished President Kleid good luck.
- Thanked Florida Department of Transportation (FDOT) for getting most of the lights working on Royal Poinciana Way, after seventeen months.
- Thanked the Town for doing what they could relative to the lights.
- Thanked Allen Wyett and his wife Carol for the years of service and for what they accomplished with the medical concerns of the Town and other issues he championed over the years.

- Stated that Beverly Davis, a past president of the Citizens' Association and a very strong advocate for the south end, passed away last month. He stated that her passing should be noted and that she would be missed.

President Kleid echoed the sentiments of Mr. Evans stating that Beverly Davis was a very good lady and very valuable to the Town with her services.

Ava Roosevelt, 210 Tangier Avenue, commented on the diseased Ficus trees to be discussed later by the Town Council. She requested that the Town remove the trees as they affect her property and had become a nuisance.

Jere Zenko, 232 Tangier Avenue, discussed the need for left turn signals at both Sunrise and Sunset Avenues and requested that they be implemented immediately.

IX. APPROVAL OF AGENDA

The following changes to the Agenda were made:

ADDED Item XII.B.13., Extended Work Hours for North Ocean Boulevard Seawall Revetment Project, to the Regular Agenda, New Business.

DEFERRED Item XIX.B.2., Waiver of Agreed Maximum Time Schedule for 455 North County Road, to the March 13, 2007, Town Council Meeting.

DEFERRED Item XIX.C.4.a., Variance #3-2007, Application of Lois Umbach relative to property known as 577 East Woods Road, to the March 13, 2007, Town Council Meeting.

REMOVED Item XII.B.8., 2243 Ibis Isle - Enforcement Timeframes Contained in the Code Enforcement Ordinance.

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

X. CONSENT AGENDA

A. MINUTES: JANUARY 8, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING MINUTES.

B. MINUTES: JANUARY 9, 2007
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING.

C. MINUTES: JANUARY 11, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING MINUTES.

D. MINUTES: JANUARY 16, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING MINUTES.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JANUARY 24, 2007.

F. RESOLUTIONS

1. RESOLUTION NO. 2-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Removal of Historic or Specimen Trees from Properties Located Within the Town of Palm Beach; Providing for the Recording of Said De-designation; Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County, Florida. [H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 3-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Urging Members of the Florida Legislature to Support Certain Issues During the 2007 Legislative Session.
[Sarah E. Hannah, Assistant Town Manager]

3. RESOLUTION NO. 8-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Contract Between The Town of Palm Beach and Tyler Technologies to Provide an Integrated Municipal Software System

to the Town Based on the Requirements in RFP 2006-01 and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Spencer D. Wilson, Information Systems Manager]

4. RESOLUTION NO. 11-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving a Change Order to Engineered Environments, Inc. for Additional Costs Associated with the Installation of Six Replacement, Mahogany Windows Within Town Hall.
[H. Paul Brazil, Director of Public Works]

G. OTHER

1. Authorization to Proceed with Design of the D-9 Storm Water Pump Station Upgrade Project.
[H. Paul Brazil, Director of Public Works]

2. Approval of Schedule for Annual Review of Strategic Plan and Pre-Budget Goal Setting. [Peter B. Elwell, Town Manager]

3. Approval of Additional Funding for Public Information Services Related to Potential Placement of Overhead Utility Lines Underground. [Peter B. Elwell, Town Manager]

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

XI. PUBLIC HEARING

A. Application for Class I Dune Vegetation Permit - 1564 North Ocean Way.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning and Building Veronica Close explained that the applicant was requesting a Class I Dune Vegetation Permit to make improvements to the dune adjacent to his property. The Town's Consultant, George Gann of Echohorizons, Inc., after reviewing the application, had some recommendations. She discussed the recommendation made by Mr. Gann, which were included in the backup material and on the list of conditions recommended by staff.

Attorney Frank Lynch, on behalf of the applicant, advised that Ms. Close accurately reviewed the application, and that the applicant would accept the conditions for approval.

Motion made by Council Member Brooks to approve the request for a Class I Dune Vegetation Permit application as submitted for the property at 1565 North Ocean Way. President Pro Tem Coleman seconded the motion.

Public Comment:

Lynn George, 249 Mockingbird Trail, asked if the property being discussed, was at the ocean at the end of Indian Trail next to Mr. Rich's property? She strongly objected to any planting west of the coastal construction line.

Mr. Lynch responded that the property Ms. George addressed was not his client's property. The property was not developer-owned and was intended to be the residence of his client. He stated that it was not the Rich property, and that it was formally owned by Mr. and Mrs. Wilkens.

In response to Ms. George, Mr. Lynch advised that they were proposing to plant east of the coastal construction area.

Ms. George advised that her objection still stood.

President Pro Tem Coleman withdrew his second to the motion approving the request for a Class I Dune Vegetation Permit application. He explained that he was withdrawing his second, because of the issues that were now being brought up.

Town Manager Elwell explained that the Town Council had to determine whether they were satisfied that they had received proper advice on the precautions being taken not to harm the dune system.

President Pro Tem Coleman advised that the Town Council should proceed in the same manner used during development reviews, where they would be presented with schematics as well as a plot plan of a proposed application. He noted that the Town Council had not been provided with diagrams of the property and that was the reason he did not know what was being proposed. The presentation was in a form that was totally uninformative.

Mr. Lynch advised that he did have a presentation that he could make before the Town Council.

President Pro Tem Coleman explained that it would have been helpful to have that information included in the backup. He suggested that this item be deferred to the next Town Council Meeting.

Mr. Lynch stated that the application was complete, and he did not know why the materials had not been included in the backup. He advised that it had been approved by the State, and he had gone over the full presentation with Town staff.

In response to Council Member Coniglio, Mr. Elwell advised that this item had been advertised. He explained that the Town was at a disadvantage since the Town Consultant, Mr. Gann, was unable to attend today's meeting, and he suggested deferring this item for a month. He noted that staff could then provide a more complete backup package, and the Town Council would be in a position to consider all the factors related to this before a final decision was made.

After further discussion, it was the consensus of the Town Council to allow Mr. Lynch to make a five minute presentation on behalf of the applicant.

Mr. Donald Skowron, Morgan Wheelock, Inc., on behalf of the applicant, provided an aerial photograph to illustrate and discuss the subject property. He reviewed the proposed plan, advising that approval of the application had been granted by the Florida Department of Environmental Protection, and that the plan had been reviewed in the field.

President Pro Tem Coleman reiterated that the form of the presentation today was inadequate for the questions at hand.

Discussion ensued regarding the elevation of the dune.

President Kleid called for a second to the motion and hearing none suggested deferring this item to the March 13, 2007, Town Council Meeting, when additional information could be provided by staff to the Town Council.

Council Member Brooks made a motion to defer the Application for Class I Dune Vegetation Permit, 1564 North Ocean Way, to the March 13, 2007, Town Council Meeting. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

Discussion ensued relative to what information the applicant would be required to bring back to the Town Council at next month's meeting. Council Member Markin advised that she wanted to see the vantage point from the ocean looking westward, as to the topography, as well as the perspective from the ocean, looking westward.

Town Manager Elwell advised that, in addition, to Council Member Markin's request, staff requested that the applicant provide a rendering that would show, looking straight down, the continuity from the home and the yard area into the dune system and out to the beach, which would enable the Town Council to see that linear continuity as well as the north/south.

XII. REGULAR AGENDA

A. Old Business

1. Palm Tran - Update Regarding Route 42.
[Richard M. Kleid, Town Council President Pro Tem]

President Kleid provided a report on Palm Tran Route 42. He advised that he had attended, on January 18, 2007, a meeting of the Palm Tran Planning Subcommittee, which voted to recommend to the Board that Route 42 be extended from South Ocean Boulevard in Lantana to Federal Highway. He noted that he had advised the Subcommittee that the Town of Palm Beach's Town Council had authorized the expenditure of up to $1,000 to underwrite free ridership on the new extended route for one week.

President Kleid announced that the Palm Tran Service Board would be meeting on February 15, 2007 at 1:30 p.m. at the Agricultural Center, 559 Military Trail in West Palm Beach, and advised that he intended to attend that meeting, and urged all interested citizens, who were concerned over Route 42, to attend that meeting.

2. Town Hall Renovation and Related Town Facility Issues.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell referred to the memorandum to the Mayor and Town Council, dated February 5, 2007, and included in the backup material to discuss the Town Hall renovation and related Town facility issues. He requested that the Town Council consider the information provided on the various alternatives for relocating the Human Resources Department and the Office of Information Systems outside of Town Hall; and as a separate project, the Town Council consider moving forward with Town Hall renovations for all of the remaining functions that would remain in Town Hall.

Mr. Elwell discussed the three options and commented as follows:

Option 1: Relocate to 1001 Frederick Street (West Palm Beach).
Option 2: Relocate to new building at existing Public Works facility.
Option 3: Relocate to new commercial building under construction in West Palm Beach.

- Staff believed that out of the three alternatives Option 1 was too expensive to warrant substantive consideration today.
- Noted that there was an issue with Option 3 relating to emergency power that had not been addressed in the backup. At this point, it remained unresolved as to how an emergency generator would be provided.
- Staff would like to receive the Town Council's preference, but did not believe the Town Council was in a position to make a definitive decision about choosing between Option Two and Option Three, at this time.

In response to President Kleid, Mr. Elwell stated that the monthly fees associated with Option 3 would include maintenance dues for the overall management of the site. He advised that staff did have preliminary information relative to monthly fees, but had not as yet negotiated those fees to any degree. He noted that before the Town Council would be in a position to make an informed decision, staff needed to provide additional information to them

Council Member Brooks advised that he did not care for any of the options. He suggested that the Town consider the old Police Department garage on Dixie Highway. He asked if that property could be renovated at a lower cost since it was Town-owned, which would cut down on the fiber optic expense. He noted that he had not evaluated the Dixie Highway property, and did not know the condition of that building.

Mr. Elwell responded that he could not provide a definitive answer, but his observation was that it would be so substantial a renovation, that it would make more sense for the Town to build new. He stated that the question raised, in terms of another alternative, was whether it would be viable to modify that building or construct a new building. He noted that the Town Council could, if they wished to, consider that location as opposed to the two staff presented. It would certainly be a third way to provide the 3,000 square feet offsite that was needed.

In response to President Pro Tem Coleman, Mr. Elwell commented as follows relative to the negatives, from a policy point of view:

- Option 2: [Relocate to new building at existing Public Works facility].
  - It would impact the current operation of the Public Works Department. The Town would have to modify how they functioned at that Public Works site in order to accommodate additional people, activity and the physical presence of a new building.
- Option 3: [Relocate to new commercial building under construction in West Palm Beach].
  - The Town would not have the same identity they would in a Town of Palm Beach facility.
  - The Human Resources Department and the Office of Information Systems would occupy three of the commercial units within the commercial condominium building; there would be other functions going on; and the Town would not have control over the other people or what business they might be conducting.
  - The site was a bit further west of the Public Works facility.
  - The operating expenses would be subject to change over time and in ways that the Town could not directly control, the way the Town directly controlled the maintenance of their own facilities.

Council Member Markin suggested the option of placing the Human Resources Department in an executive office somewhere by themselves due to the privacy and confidentiality concerns of a Human Resources Department. The Office of Information Systems should be located elsewhere, from a disaster recovery standpoint. She advised that a sound structure would be needed, whether it was at the Public Works site or another location, in the case of an emergency.

Mr. Elwell responded that staff had not considered relocating to two different sites, because they were dealing with such a small amount of square footage compared to their overall needs. Staff completely agreed on the necessity of a generator and emergency backup plan, which needed to be onsite, wherever the Office of Information Systems was relocated. The Town needed to be confident that the facility they would either build or buy would be a refuge for them in a post storm situation.

Mr. Elwell commented that there was a mix of pros and cons, and again the bottom line, from staff's perspective, was that they believed either of the two options were viable. He advised that staff could review a split arrangement, and they could look to the area just to the west of the north bridge, if that was what the Town Council wanted staff to do next. He stated that staff was not prepared to recommend one over the other.

Council Member Markin commented on the following:

- The efficiency factor of moving Information Systems (I.S.) out of Town Hall after the project to upgrade the computer system had been approved. The project was more than $1 million.
- Consideration should be given to separately relocate the Human Resources Department (H.R.) into a condo/office situation.
- She was in favor of moving ahead with the renovations for Town Hall in order to get the staff housed properly.

Discussion ensued regarding the options for relocating the Human Resources and Information Systems Departments.

Motion was made by Council Member Brooks to authorize Town Manager Elwell to proceed with awarding a contract in the amount of $380,000 from the Town Facilities Fund to Digby Bridges, Marsh & Associates to proceed with the next step in the design of the Town Hall renovation, for consideration by the Town Council at the March 13, 2007, Town Council Meeting.

Mr. Elwell stated that staff would provide at the March 13, 2007, Town Council Meeting, additional information regarding the relocation of the Human Resources Department and Information Systems. He explained that, as an additional step for next month's meeting, staff would present the proposed floor plan for the Town Council to review, modify, or approve as the first step in the Town Hall renovations. The Town would plan the renovation of Town Hall with a different cast of characters remaining in the building as Planning, Zoning & Building would not relocate. Staff would move quickly, at that point, to turn that floor plan into the detailed design, specifications, documents, etc. to bid the project to start the actual renovation of Town Hall.

Mr. Elwell explained that the recommendation to contract with Digby Bridges, Marsh & Associates was due to staff's belief that they would be able to move forward more expeditiously with the project because of their knowledge of the physical elements of Town Hall.

President Kleid passed the gavel to second the motion.

Yvelyne D. Marix, 1570 North Ocean Boulevard, urged Digby Bridges, Marsh & Associates when they reviewed the new floor plans, to make it a priority to save 1,500', to allow the most important department of the two, which required a second story, to remain in Town Hall.

On roll call, the motion to authorize Town Manager Elwell to proceed with awarding a contract in the amount of $380,000 from the Town Facilities Fund to Digby Bridges, Marsh & Associates to proceed with the next step in the design of the Town Hall renovation, for consideration by the Town Council at the March 13, 2007, Town Council Meeting, was unanimously approved.

Town Manager Elwell requested direction from the Town Council regarding the options discussed for relocating the Human Resources Department and the Office of Information System.

The consensus of the Town Council was for staff to proceed in obtaining additional information on all the concepts discussed today.

Council Member Markin commented, for the record, that the Town walked away from Astorino and made a commitment to return to Digby Bridges, Marsh & Associates, on the basis that Digby Bridges, Marsh & Associates had knowledge of this building. She stated that she would like to make note of the fact that, in the replacement of the windows in Town Hall, the base bid amount was $82,500. The Town ended up spending $126,700. She noted that the contract had been based on knowledge that they might have had or should have had regarding the deterioration of Town Hall. She hoped that there would not be that kind of an overage on this building, and that Digby Bridges, Marsh & Associates used their experience and knowledge to ensure overages of that nature do not occur in the renovation of this building.

B. New Business

1. RESOLUTION NO. 10-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Expressing Opposition to House Bill 529 Known as the "Consumer Choice Act of 2007" (H529), Urging Florida Legislative Representatives to Refrain from Any Form of Support or Co-sponsorship of H529 and to Vote in Opposition of H529, Requesting Governor Crist to Advise the House and Senate Leadership That He Does Not Support H529 in Advance of the Opening of the 2007 Regular Session, and Directing that this Resolution be Forwarded to Florida Governor Crist, the Palm Beach County Legislative Delegation, the Mayor of Each Municipality in Palm Beach County, the Leadership of the Palm Beach County League of Cities, the Leadership of the Florida League of Cities, and Each Member of the Palm Beach County Board of County Commissioners; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council, dated February 2, 2007, and included in the backup material, to discuss Resolution No. 10-07 opposing House Bill 529, Consumer Choice Act of 2007. He advised that this bill was not favorable to the interests of the Town of Palm Beach as well as other local governments throughout Florida. Staff recommended that the Town Council adopt Resolution No. 10-07.

President Pro Tem Coleman advised that, at his request, this item was pulled from the Consent Agenda because he believed it was not strong enough. He requested that the Town take a more proactive role, find out which legislators were responsible for this Bill, who the sponsors were, and that the Town contact the municipalities that the Town has worked with. He requested that a letter be sent to the legislators informing them that the Town was against the proposed bill. He stated that he viewed it as a direct attack on home rule; and in addition to sending a motion to the Governor's office, he would like the Town to be much more proactive.

Council Member Brooks stated that he agreed with President Pro Tem Coleman. He stated that he would vote for this Resolution. He noted that if the Bill did not pass this session, it would eventually pass. The Town's fight needed to be proactive. He advised that part of the major push for this Bill were cable companies and BellSouth.

In response to President Pro Tem Coleman, President Kleid suggested that the Town, to be more proactive, should approve a motion directing staff to send a strong letter to the sponsors of this Bill stating that the Town was opposed to it, and that staff obtain the cooperation of all the other people that were part of the consortium requesting they send similar letters.

Council Member Brooks suggested that the Florida League of Cities send letters as well.

Town Manager Elwell suggested that staff speak with the Town's local legislative delegation and see where they stood on this bill.

Mayor McDonald advised that the Town did not address this issue before the delegation several weeks ago and wondered if there was a reason they did not address this issue with them.

Town Manager Elwell responded that this issue was not addressed as the property tax issue was the one of primary importance as the Town looked ahead to the coming legislative season. This item had emerged as staff prepared for this Town Council Meeting.

Town Attorney Randolph read Resolution No. 10-07 by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to approve Resolution No. 10-07 opposing House Bill 529, Consumer Choice Act of 2007 (H529). On roll call, the motion carried unanimously.

Town Manager Elwell suggested that staff provide a report to the Town Council, within the next week or so, that would identify the sponsors, and to the best of their ability, identify the positions of the people within the Town's legislative delegation. He stated that staff would work with the Mayor to prepare the right type of letter that would go to the Municipal Underground Utilities Consortium (MUUC) partners, as well as other municipalities, to express the Town's strong opinion.

2. Medical Care Commission Funding Request.
[Michael Dennis, M.D.]

Dr. Michael Dennis advised that the Medical Care Commission had held 32 meetings, conducted 11 site visits to clinical facilities, and had devoted more than 1,650 hours. The Commission was deeply committed to the principal that the health of the citizens of the Town was too precious of a commodity to ignore. He explained that the Commission was charged with evaluating the scope and availability of services within a reasonable driving range of the Island with a particular focus on emergency services. He discussed the mission and accomplishments of the Commission.

Dr. Dennis stated that the $2 per resident allotted to the Medical Care Commission, in their budget, had been used, and they had faced a cost overrun of about $14,000. He advised that they had not come back before the Town Council to request the difference, as the six members of the Commission shared that cost overrun.

Dr. Dennis advised that the Medical Care Commission planned to create, print and distribute a substantial medical care guide, which could be kept at one's desk or near one's phone. The contents would include pages for personal medical information and advice on how to recognize or react to crisis situations, details on the Town's highly skilled fire-rescue teams, and material including maps on the location and services within the Town's region. The guide would be designed in such a manner that it could be updated periodically; and if other communities so desired, the guide could be the basis for a medical care guide for their own citizens. He noted that this had not been done anywhere else, to their knowledge, and Palm Beach would be at the forefront in this category of service. He advised that the estimated cost of graphics, assembly, printing and mailing was $49,150.

Dr. Dennis discussed future projects and advised that the Medical Care Commission was determined to make a difference that would satisfy generations to come. He asked for the Town Council's assistance with the medical care guide. He noted that they were asking a little less than $5 per resident for a document, which may save someone's life, and if only one life was saved, it would be well worth the investment.

Council Member Brooks thanked Dr. Dennis and the members of the Medical Care Commission for the wonderful job they had done in the past thirteen months.

In response to Council Member Brooks, Dr. Dennis advised that they hoped the medical care guide would be printed and ready for distribution by late March as they would like to have it distributed before many of the seasonal people moved on.

President Pro Tem Coleman stated that he believed it was great and should be incorporated with the Town's website.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to approve funding for the Medical Care Commission's medical care guide in an amount not to exceed $49,150 from the General Fund Contingency. On roll call, the motion carried unanimously.

President Kleid stated that the consensus of the Town Council was that the Medical Care Commission had done a terrific job.

3. Seaview Park Multipurpose Field Upgrade.
[Jay Boodheshwar, Director of Recreation]
TIME CERTAIN: 4:00 P.M.

Director of Recreation Jay Boodheshwar advised that staff was bringing forward for consideration by the Town Council, a public/private partnership proposal to upgrade the Seaview Park multipurpose field by installing a new synthetic surface and sports lighting system. He referred to his memorandum to the Mayor and Town Council, dated February 6, 2007, and included in the backup material.

Mr. Boodheshwar introduced Mr. Paul Leone and Mr. Jack Thompson, who were representing the Palm Beach Day Academy, and Mr. Dan Borislow.

Mr. Boodheshwar advised that staff was requesting the Town Council's action and direction on the following issues:

- Acceptance of private funding commitments from the Palm Beach Day Academy and Mr. Borislow along with the conditions that apply to these commitments.
- Approve an amendment to the current Declaration of Use Agreement between the Town and the Palm Beach Day Academy.
- Approve the relocation of the Trauma Hawk landing zone from Seaview Park to an acceptable site approved by the Fire-Rescue Department as well as the Healthcare District.
- Direction to either use a dual approach with regard to possible zoning review and design or zoning review first and then design.
- Appropriation from the Recreation Contingency Fund in the amount of $73,700 to complete the design and prepare construction drawings for bid in order to move forward with this project.

Mr. Boodheshwar provided a power point presentation regarding the proposed project.

In response to President Kleid, Mr. Boodheshwar advised that staff had not identified the exact hours the field would be utilized, but did not recommend using the field any later than the hours of the Seaview Tennis Courts, which was 8:00 P.M. Staff recommended that all activity in the park cease at that time.

President Kleid asked Mr. Boodheshwar if the field would be utilized by teams other than those representing the Town or the Palm Beach Day Academy, such as semi-pro teams?

In response to President Kleid, Mr. Boodheshwar responded that he would have to defer answering that question. The Town Council had previously approved a rental policy along with a fee schedule to rent the field for special events, and the Recreation Department had, in the past, rented the field. He noted that there were usually one to two rentals every two months. He advised that as far as this proposal was concerned, it was strictly for the Town and for the Palm Beach Day Academy's use.

President Pro Tem Coleman asked about drought and water restrictions since synthetic turf required irrigation in the summer.

In response to President Pro Tem Coleman, Mr. Boodheshwar commented as follows:

- Irrigation was not necessary for maintenance of the field and many communities had retrofitted their fields because of the summer heat. It was a convenience issue to just cool it down, and it was an added feature.
- The agreement the Town had with the Palm Beach Day Academy was a two party agreement. The Town had a separate agreement with the Public School, which was more of an interlocal agreement.
- The field would completely be on Town property.

Council Member Brooks commented on the following:

- Mr. Borislow's letter advising that the charitable fund he represented was prepared to make a donation toward this project had not been addressed to the Town. The letter should be subject to Town Attorney Randolph's dictation for legal purposes.

- The conditions listed in Mr. Borislow's letter, in particular, the lighting for the field.
- Thanked Mr. Leone for providing a location at The Breakers Hotel for Trauma Hawk to land.
- Thanked Mr. Thompson for agreeing to participate, and for putting it in writing.

Council Member Coniglio asked if the increased costs for the maintenance of the proposed field would be paid for by the Town?

Mr. Boodheshwar advised that the ongoing maintenance costs would be reduced as there would no longer be a need for mowing, fertilization, sodding, irrigation, etc. He stated that staff would use those savings for a depreciation fund since the field had a life expectancy of 15 to 25 years depending on use.

In response to Ms. Coniglio, Mr. Boodheshwar advised that only Town property would be used for this project.

Town Manager Elwell stated that the infield area would not be affected and would remain natural.

Council Member Coniglio advised that she had spoken with Mr. Borislow and that she understood that he wanted to move this project along quickly. She commented on the impact that the reconstruction of the tennis courts could have on the new field and questioned whether that concerned him.

Dan Borislow, 1045 South Ocean Boulevard, responded to the concern of Council Member Brooks relative to providing a legal document regarding his donation. He advised that the same fund had previously donated more than $250,000 - $300,000 to the Town without any legal documents, and that other commitments had been made to the Recreation Center and to the Police Department, also without legal documents, which were fulfilled. He stated that there was no reason that this commitment would not be fulfilled.

Council Member Brooks stated that the difference was that there would be children playing and exercising on the synthetic surface; and legally speaking, there should be a document that would hold Mr. Borislow harmless, which should be addressed by Town Attorney Randolph. He explained that documents were meant to protect both parties, and there were certain procedures that a municipality must undertake to protect them and to protect the donor.

In response to Mr. Borislow, Ms. Coniglio stated that she had full faith in him, but her worry that the field may need to be torn up in the future, due to construction.

Mr. Borislow responded that, at present, the field was dangerous and anything would be an improvement.

Council Member Markin advised that she had several concerns and wanted to have a clear understanding as to whether this particular artificial surface would drain better or worse than natural turf.

Mr. Boodheshwar responded that the playing surface would be consistent and there were no areas that would be different from other areas. The fiber material infill with the rubber material would be consistent throughout the playing surface.

Council Member Markin expressed concern regarding drainage.

Jim Walton, Southwest Greens of Jupiter, Florida, installers of synthetic turf in South Florida, responded with technical information related to synthetic turf. Director of Public Works Brazil explained that there would be increased runoff into the existing drainage system, but it would not be appreciably more.

Council Member Markin addressed additional concerns as follows:

- Lighting and height of lighting poles;
- Night activity;
- The field was being donated for a purpose, which was that they wanted to hold soccer tournaments and events, etc.;
- Parking;
- Open space issue;
- The Trauma Hawk site.

Mr. Elwell commented on the following:

- Usage of the field:
  - It was the intent to use the field in the early evening hours routinely, after dark in the winter, which was one of the factors that led to the public/private nature of the proposed project.
  - Once the school day ended, there was a very limited amount of time to use the playing field before it became dark and was no longer safe to play.

- One of the reasons the school was so very interested in participating in this project was that there would be early evening time when the lights would be used and play could continue.
- Some frequent use of the lights was intended.
- Green space issue was an exemption due to provisions in the Charter. Public facilities that were used for recreation, at the time of the adoption of the green space amendment to the Charter, could continue to be utilized, at the Town Council's discretion, for construction of additional recreational facilities. This would come under that exemption as opposed to maintaining green space.

Fire-Rescue Chief Moran stated that after being contacted by Mr. Boodheshwar regarding Trauma Hawk, he and his staff looked at the four proposed sites. He commented as follows:

- The site that was the top choice of The Breakers Hotel on their site, was also the top choice for the representatives of the Trauma Hawk.
- The Trauma Hawk Captain came out to the site with Brian Fuller, Town of Palm Beach EMS Chief, to coordinate the maps plugging them into a GPS device. They were both confident that the site would be fine.
- An actual flyover by the pilots to observe the site from the sky was the final step by Trauma Hawk needed for approval.
- The site was advantageous for the Fire-Rescue Department as it was right off of County Road and it had limited access to hotel guests and limited impact on the hotel operations.
- It was imperative that the Town maintain three sites: north, central and south. This site did meet the needs for a central location.
- Appreciated the offer from The Breakers and wanted to ensure that an agreement was put in place relative to this offer.

In response to Council Member Markin, Chief Moran advised that it was on The Breakers golf course, hole #3, on west side County Road and on the south side of the golf administration building.

Paul Leone, President of The Breakers Hotel, clarified that the site was located at what The Breakers referred to as Pine Walk West, on the west side of County Road, and it was on holes #3 and #4. He stated that emergency vehicles could easily access Pine Walk to stage there. He explained that in order to clear the site, in the case of an emergency, The Breakers had staff onsite such as rangers, managers, and nearby security. After the golf course operation closed down in the evening, there was twenty-four hour security to assist with the logistics. He advised that The Breakers used the Doppler Weather System to clear the course when there was lightening, and it could be used during an emergency as well.

In response to concerns regarding the height of the light poles, Mr. Boodheshwar commented that staff was concerned with the aesthetics. He pointed out that the standard color of the poles was a galvanized grey, and they could be painted black or whatever color that might be more preferable for blending into that area.

In response to President Kleid, Mr. Boodheshwar stated that he would be open to turning the lights off at 8:00 p.m., as a condition of approval.

Mr. Leone suggested that the field remain open until 9:00 p.m.

In response to President Kleid, Mr. Boodheshwar advised that he was correct that the Town would have to pay for the original design study, and if the cost exceeded the study cost, the Town would have to pick up the gap. He explained that in their long term financial plan for fiscal year 2008, they had earmarked $500,000 to put toward this project with the full intention of approaching the Palm Beach Day Academy, in a formal fashion, to participate in the project. He advised that if there was a funding gap, the money could be taken from Capital Funds.

Mr. Elwell advised that staff anticipated that there would probably be the need for a zoning review. Staff was not conclusive on that yet because of how rapidly they put together this for the Town Council's consideration today. He explained that if a zoning review was required, they would have to come before the Town Council for official zoning consideration, but if one was not needed, staff would come back to give the Town Council an opportunity to review the design that would go out for bid. He noted that this would occur very quickly, within the next couple of months.

Council Member Markin asked if the cost to maintain the natural turf versus the synthetic had been extrapolated out and what the replacement costs would be?

Mr. Boodheshwar advised that they had not looked at the exact numbers. There were some unknowns as to the maintenance of the synthetic surface. Staff knew from talking to the industry people that it was about half, if not less, than what the cost was to maintain a natural field. He noted that staff had not done the total math over the life cycle, because the life cycle would vary depending on use.

Discussion ensued regarding maintenance and replacement costs as well as drainage.

Mr. Borislow stated that he would put up the engineering fees, so that the Town would not be at risk. The Town, if they decided to move forward, could then contribute the $73,000 or $74,000 in the back end of this project instead of the front end. He added that the lights would prevent children from getting hurt as the field was not safe at present.

Norman Goldblum, 109 Everglade Avenue, stated that this was a great project and he would like to see the Town move ahead with it. The Town should consult with their lawyers relative to the height of the light poles.

Attorney Randolph stated that he believed that would occur down the road when the zoning aspects of it were looked at.

Mr. Elwell stated that, as this project moved along and was brought back to the Town Council, at a future date, they might decide to move forward with the field and not the lights. He noted that those were the decisions the Town Council would continue to consider.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to accept the donations from Mr. Borislow and The Palm Beach Day Academy for the proposed upgrade of the Seaview Park Multipurpose Field, subject to a design study and to legal review. On roll call, the motion carried 4/1 with Council Member Markin dissenting.

4. Contract with Comp Comm for Telecommunications Study in the North End. [Peter B. Elwell, Town Manager]

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council, dated January 26, 2007, and included in the backup material, to discuss a contract with the Town's wireless telecommunications advisor, Comp Comm, to analyze wireless coverage weaknesses within the north end of Town. He provided an update on the current status of wireless communications in the Town and the recent steps taken to improve service in the Town as authorized by the Town Council.

Mr. Bradford advised that the adoption of Ordinance No. 1-07, which was on today's Agenda, would make the process simpler and faster to obtain approvals for wireless telecommunications sites. The Ordinance would allow wireless antennas in multi-family zoning districts. He explained that more places within midtown would be eligible for sights and virtually every parcel south of Sloan's Curve would be eligible for sights.

In response to President Pro Tem Coleman, Mr. Bradford stated he could look at the service between Worth Avenue and Southern Boulevard Bridge and try to determine a solution to the poor service there, if it continued to be a problem.

Council Member Markin asked why the Town would propose to contract with Comp Comm now rather than wait to see how the antenna on The Breakers antenna would facilitate the north end?

Mr. Bradford responded that the Town could wait but explained that he had been told on many occasions by service providers that the work on The Breakers would be good for one mile north and south of it. The good that would come from The Breakers' antenna would essentially stop in and around the Palm Beach Country Club area.

President Kleid advised that he did not believe the Town needed to spend money on another consultant. He stated that it was fairly obvious that wireless facilities could be placed at the Sailfish Club or the Palm Beach Country Club as all the other properties in that area were private residences. He suggested that the Town proceed using those two locations, contact the carriers to see if they agreed with the Town, and bypass the consultant.

Town Manager Elwell stated that if the Town Council chose to bypass the consultant, he urged that they include in their appeal to the carriers not only the two private properties but the many Town-owned properties located in that area.

President Pro Tem Coleman requested including Worth Avenue to the Southern Boulevard Bridge in the study.

Mr. Bradford advised that before staff could do that, it had to be determined what locations would actually work before adding locations on.

In response to President Pro Tem Coleman, Mr. Bradford stated that the question in using a pump station was whether the Town would allow a tower with an antenna due to height of same. He stated that they might be able to use The Colony Hotel once Ordinance No. 1-07 was adopted, and advised that he could look into the use of the Bath and Tennis Club.

Mr. Bradford explained that staff would notify the carriers and ask them, what sights, if available, they believed could be used to improve their service.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, not to accept the proposal of Comp Comm for North End Wireless Coverage Analysis. Staff was instructed to contact telecommunications carriers regarding the use of available sites within the Town at the north end and from Worth Avenue to Southern Boulevard. On roll call, the motion carried unanimously.

Council Member Brooks commented that, since this Ordinance would greatly help to aid and abet the fears of parents of children in the Seaview area, it may be possible, under the aegis of protecting these children, that a first and second reading take place today.

Attorney Randolph responded that if there was a genuine emergency ordinance, it could be passed on one reading, and advised that the Ordinance would have to be declared an emergency.

Town Manager Elwell clarified that it was his understanding that the situation at The Breakers was moving along, but it was not moving along at a pace that would require a one reading ordinance adoption; a first reading this month and a second next month would be sufficient.

5. Removal and Replacement of Trees at Phipps Ocean Park and the Wrightsman Estate Property.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council, dated February 5, 2007, and included in the backup material, to provide a report on the removal of trees at Phipps Ocean Park and at the Wrightsman Estate. He explained that at the Wrightsman Estate, Tangier and North County Road, the Town had previously lost six Ficus trees and the Town was in the process of replanting that area with a generous donation from Ms. Dean. The Garden Club was assisting the Town in creating a small park there. He advised that three more Ficus trees had been stricken with hypoxlon canker, which had been confirmed by the Town's consultant, by laboratory tests, and by a second outside consultant. The trees were dead and dangerous and needed to be removed. He recommended that after the trees were removed, the Town continue with their present program, which included the twelve palms that had already been installed, the planting of twenty-four more palms that would go in across both pieces as well as seven new shade trees.

Mr. Brazil stated that in Phipps Park the Town had lost three Paradise trees due to the hurricanes. The Paradise trees were not specimen trees nor were the ones at the Wrightsman Estate. Staff recommended replacing them with three Gumbo Limbo trees, with The Garden Club's help. He noted that they were asking for the Town Council's approval to continue on with this work.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to approve the removal of six trees on Town-owned property, Phipps Park and the Wrightsman Estate. On roll call, the motion carried unanimously.

6. Request for Town of Palm Beach Participation in Town of Palm Beach Shores Inlet Park Improvement.
[H. Paul Brazil, Director of Public Works]

Mayor McDonald recognized and welcomed Mayor Tom Mills from Palm Beach Shores. Mayor Mills introduced Cindy Lindskoog, Town Administrator, Town of Palm Beach Shores.

Director of Public Works Brazil referred to his memorandum to the Mayor and Town Council, dated February 2, 2007, and included in the backup material, to discuss and provide some perspective on the Town of Palm Beach Shores Inlet Beach Park Project and how it tied into the Sand Transfer Plant. He provided a computerized image of the Sand Transfer Plant area, and advised that staff was requesting the appropriation of $75,000 from the Capital Contingency fund.

Council Member Markin clarified what the total costs for the project would be noting that the cost to the Town of Palm Beach Shores would be $467,500 and the Town's contribution $75,000.

Motion made by Council Member Markin, seconded by President Pro Tem Coleman, to approve the appropriation not to exceed the amount of $75,000 from the Capital Contingency Fund for the Town's participation in the Town of Palm Beach Shores Inlet Beach Park Improvement Project. On roll, call the motion carried unanimously.

7. Consideration of Purchasing an Emergency Notification System or Service. [Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her memorandum to the Mayor and Town Council, dated February 2, 2007, and included in the backup material, to discuss the possibility of purchasing an emergency notification system.

Ms. Hannah explained that, on several occasions, Mayor McDonald had requested staff to look at different ways to notify residents during an emergency situation. She advised that one way to do that was through an emergency notification system, which was a device that allowed the Town to record a message, which would be sent out to either:

a) Whomever signed up for the program; or
b) A group of people within a certain geographic boundary.

Ms. Hannah discussed the concerns related to this type of system and the options available to the Town.

Council Member Brooks stated that the basic question was why the Town would attempt to duplicate what private business did far more comprehensively.

The consensus of the Town Council was that no action should be taken.

8. 2243 Ibis Isle - Enforcement Timeframes Contained in the Code Enforcement Ordinance. [Jack McDonald, Mayor]

Removed under Item IX., Approval of the Agenda. [The item will appear before the Code Enforcement Board].

9. Town Regulations and Procedures Related to Construction Projects that Do Not Finish by the Applicable Deadline.
[Denis P. Coleman, Town Council Member]

President Pro Tem Coleman explained that there were two development review items on the Agenda today, which had pulled building permits that went beyond the time limit proscribed by Town Code. He advised that a resident had contacted him regarding an applicant who had pulled a building permit for two years. He commented that if an applicant no longer had a building permit, then they would have to reapply and pay additional fees, but believed it was not satisfactory to have someone in violation of a building permit with a $20 million dollar property fined by the Code Enforcement Board at $250 per day.

President Pro Tem Coleman recommended staff review the Town's construction permit process and return before the Town Council with a list of suggestions. He suggested that one way to address this issue would be that at the end of two years or whatever the time limit, if the work was not completed, new fees could be applied so that the projects were finished within the proscribed time frame. He suggested that this item be referred to staff and that they return to the Town Council with a list of suggestions.

The consensus of the Town Council was for staff to review this matter and bring it back at another meeting.

Town Manager Elwell advised that staff had already considered another related item that the Town Council had previously referred for review. It was Council Member Brooks' concern regarding multiple construction projects on a single street. Attorney Randolph was nearing completion of his work on that matter, which would be presented to the Ordinance, Rules and Standards (O.R.S.) Committee. Since these two issues addressed the same kinds of quality of life issues that relate directly to construction projects, and how the Town Code regulated those projects, staff believed that, in the near future, those two items should be presented together at an O.R.S. Committee Meeting where it would be appropriate to obtain a preliminary review, and then those items would then be brought back before the Town Council.

10. Schedule Changes for 2006-2007 Zoning Season.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Veronica Close referred to her memorandum to the Mayor and Town Council, dated February 2, 2007, and included in the backup material, to discuss the remainder of the 2006-2007 Zoning Season schedule, which included the items recommended to be studied, and the schedule by which to study them.

In response to President Pro Tem Coleman, Ms. Close responded that there were only two categories in the Town Code relating to nightclubs:

- Restaurants, which had a very restrictive Code relative to what could occur in a restaurant.
- Nightclubs, which had the least restrictive Code.

Ms. Close advised that it was staff's recommendation to the Town Council that they study what could occur between those two categories to provide restaurants with more flexibility. She commented that a study might produce a third or even a fourth category.

In response to President Pro Tem Coleman, Attorney Randolph advised that the Planning and Zoning Commission would be the appropriate place to address what made up a community as far as commercial districts.

Motion made by Council Member Brooks, seconded by Council Member Markin, to adopt the study list and proposed schedule for Phase II 2006-2007 Zoning Season. On roll call, the motion carried unanimously.

11. Consideration of Implementing an Extended Zoning Season. [Richard M. Kleid, Town Council President Pro Tem]

President Kleid stated that he placed this item on today's Agenda, because he wanted the Town Council to consider the implementation of an extended Zoning Season. He commented on the following:

- The Planning and Zoning Commission should devote more time to strategic planning. Meetings devoted to strategic planning should be separate from meetings discussing zoning items.
- Suggested that, due to the Planning and Zoning Commission's heavy agenda, they meet more often and hold regularly scheduled meetings as do their counterparts: Architectural Review Commission, Landmarks Preservation Commission, and Code Enforcement Board.
- Staff and the Commission have been requested to condense too much in too short a period of time, even without taking on a more aggressive planning component, limiting full discussion and placing a great burden on staff.

President Kleid stated that for the purpose of discussion, he was requesting that the Town Council consider the following:

- Should the Zoning Season be extended from eight months to ten months?
- Should the Zoning Season remain at eight months, but encourage the extension of the period of meetings to ten months to accommodate meetings devoted purely to planning. Many Commissioners applied to be to serve on the Planning and Zoning Commissioner believing that it would be for an eight month season.
- Should un-excused absences be extended from two to three?
- Should the Planning and Zoning Commission meet on a regularly scheduled basis with a set day each month?

Council Member Brooks stated that he could not support the Planning and Zoning Commission meeting once a month for twelve months. He noted that they did not sit as a quasi judicial body as did the Town Council. He recommended that, with the cooperation of the Chairman, the Planning and Zoning Commission keep their existing schedule, but hold two, three or even four additional meetings to address strategic planning elements.

Council Member Markin commented on the following:

- Concurred with President Kleid.
- The Zoning Season should be extended.
- The Town has major issues before them, and if the Planning and Zoning Commission had more responsibility, the number of items that came before the Town Council could be reduced.
- The number of excused absences should not be increased.
- The use of alternate seats as training seats, and their importance due to the complex issues and terminology used by the Planning and Zoning Commission.
- Supported a minium of a ten month schedule, but ideally a twelve month schedule, and would vote for same.

Discussion ensued regarding Planning and Zoning Commission meetings relative to their length of meetings, number of meetings held per year, holding meetings during season only, and holding more substantive meetings.

Director of Planning, Zoning and Building Close provided the history of the Planning and Zoning Commission's progress. She explained that at the end of the season, staff presented a list of study items to the Planning and Zoning Commission, which they reviewed to either add or subtract from the list. Staff presented the proposed study items to the Town Council for their decision on what they would like to the Planning and Zoning Commission to study the following year. She noted that this process had been, in some part, dictated by available resources. The Planning and Zoning Commission, in the last couple of years, had been very interested in additional planning, but the list that had been established dictated the agendas for the following year.

President Pro Tem Coleman suggested that the Town Council authorize the Planning and Zoning Commission to set their own agendas, and decide for themselves whether twelve month a year meetings were needed, or full day, or two day meetings within a week were needed.

Council Member Coniglio advised that it was her understanding that the original premise for holding seasonal meetings was so that residents that left Town during the summer could have input.

Harrison Robertson, 134 Seagate Road, Chairman of Planning and Zoning Commission stated that he had been on the Commission for six years. He commented on the following:

- The Commission operated on the basis of what items were brought to them by staff.
- Several issues he suggested to staff for consideration by the Planning and Zoning Commission would be placed on their agenda in the next two months. The items were variances and generators.
- During his six years on the Commission, meetings generally would be held in the morning, taking up the entire morning. The Commission would adjourn when all items, as provided by staff, had been completed.
- The extension of the Zoning Season would depend on whether staff could do the work necessary to bring subjects up for consideration by the Commission.
    - Recommended hearing from Ms. Close and Mr. Castro as to whether or not staff would be able to present matters for consideration by the Commission if the Zoning Season was to be extended.
    - Meetings should not be set just to have more meetings. The Commission only wanted to schedule additional meetings if staff was able to present the business to be acted on at those meetings.

President Pro Tem Coleman commented on strategic planning, and asked how the Town Council could get the Commission to set part of the agenda so that they could move it up a step and become a real planning Commission instead of just a processing Commission? He noted that meetings should be held during the summer.

Council Member Markin commented that there should be a larger commitment on the part of the Town Council, and/or staff, and or the Town to give the Planning and Zoning Commission more responsibility.

Mayor McDonald stated that it appeared that the item, as listed on the agenda, was just not accurate, because it looked as if the only intent was to extend the Zoning Season. He noted that if it was really meant to discuss what the Planning and Zoning Commission should be considering and what additional levels of responsibility they should have, then that was how the item should have been listed.

Mr. Robertson explained that zoning law was a very technical law. The Planning and Zoning Commission dealt with matters that were brought to them by the staff with suggestions from the Town Council or from him, as Chairman, as to what the staff should study to bring to the Commission. He stated that if the Town Council wanted them to study strategic planning, they would do so, but to date, the Commission did not have anything brought before them on that subject. He noted that they have been dealing purely with zoning matters, with a section or two on the long range plan.

Council Member Brooks commented that it appeared that there was not much support for a twelve month meeting schedule for the Planning and Zoning Commission. He noted that Mr. Robertson made some valid points.

President Pro Tem Coleman asked that if planning was not going to take place during Planning and Zoning Commission meetings, and planning was a proactive and self-initiated process, where in the Town was it going to take place? He advised that he believed it should probably be the Planning and Zoning Commission or else the Commission's name should be changed.

Leslie Shaw, 318 Seaspray Avenue, stated that he believed planning was a twelve month process and that there were members of the Commission who did believe that there should be an extended period, if not mandatory for twelve, but maybe ten, nine months, but some type of meeting schedule.

Mr. Shaw stated that he believed that out of all the commissions that had been empowered by the Town Council, the Planning and Zoning Commission, which he called the " Planning Board" because that was what it should be, had the least authority, and in fact, had no authority. He explained that the Commission reviewed what staff gave them, and they made comments, but the Town Council was the only body that acted on any issues pertaining to zoning or planning. Planning and Zoning did not make decisions, but they conferred, objected, and the Town Council made the decisions on what to do.

Mr. Shaw noted that if the Town Council was looking at a re-design of what planning was to do, and its powers, that was a separate discussion. He advised that he believed there was definitely a desire of the Commission to look at issues. Planning was what the Commission should be titled. Zoning was a by-product of planning, and it was time for them to get back to doing some serious planning, long term, and have the ability to make decisions, and use the resources that it had.

Town Manager Elwell stated that staff needed to provide to the Town Council additional information if there was action to be taken in the near future. He noted there had been some evolution of the Commission in the last four or five years and provided historical context of the Commission. He stated that the agenda was established by the Town Council, with input from the staff, input from the Commission, and input from the public. It was not simply staff that identified items to be considered, but it was a process, but that process, historically, because of the seasonality of the Town, had been restricted. It used to be six months, now it was eight months, and he noted that the change had been made during the last two or three years. He explained that three or four years after slightly changing the official legal structure of this process, they were now into a much more complicated process, but basically following the same model. The focus was on a Zoning Season, rather than a twelve month continuous process.

Mr. Elwell suggested asking the Planning and Zoning Commission to consider this themselves, at their next meeting, and make a recommendation to the Town Council, or at least provide some input as to what they see as ways to strengthen their role. The Town Council should hear from the Commission, so that a staff report could be prepared. The Commissioners should speak with the Town Council directly to continue the dialogue.

Alan Goldberg, Planning and Zoning Commission Member, advised that the Commission had discussed this issue. He explained that they had not been supported by staff for the planning side of this. He noted that the Town Council, basically, was isolated from their discussions on matters that were coming up due to the Sunshine Law. He commented on the selection of members of the Planning and Zoning Commission. He stated that he was a developer in the construction business and believed that developers should be utilized on issues concerning the Town, such as undergrounding. The Planning and Zoning Commission should hear issues first before going to the Town Council. Staff had to support the Commission's expansion as well as the expansion of the decisions of the Town Council.

President Kleid stated that there was a consensus of the Town Council that there should be additional discussion at the Planning and Zoning Commission's meeting next week on this particular subject, in conjunction with staff, as to how they could take on more of a planing function. The Commission should report back to the Town Council on their thoughts.

Mr. Robertson advised that as far as planning, Town Attorney Randolph could confirm that the Town Code stated that the Town Council was the planning agency. It was only a year or two ago that the Commission's title was changed from Zoning Commission to Planning and Zoning Commission. He advised that the Commission had started some planning work. The Commission had two areas, one was a long range plan, and the other was a strategic plan, and the latter had not been dealt with at all. He suggested that the Commission should be doing more on planning. He advised that Ms. Close was an excellent Director, and Mr. Castro was an excellent Zoning Administrator, but they were only two people, and he believed that an additional person was needed in Zoning. He suggested that the Commission meet two or three times a month, during the season and not come back in the summer, if that was agreeable to the Council. He reiterated that, again, it was the question of the staff being able to produce the work for the Commission's consideration, as to whether the Commission met twice a month, three times a month, etc.

Council Member Markin stated that in the summer time, the Commission could deal with some proactive planning issues, at a time when it was a little bit slower, and existing staff could be utilized. She suggested the Town Council request the Planning and Zoning Commission, set a section of their upcoming meeting, for a proactive workshop to discuss how they could better serve the Town Council as a sounding board for them. She noted that the Commission had ideas on many of the different aspects of planning and zoning that the Town Council might not have even thought about, and they should put together a recommendation to this Town Council, both on the schedule that they would like to see, and what they would like in terms of additional responsibility, in order that the Town Council could seriously be more committed. The Planning and Zoning Commission should be the Town's strongest Commission.

President Kleid concurred that the Planning and Zoning Commission should take this issue up and return to the Town Council with their thoughts, and that staff should have input as well.

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

Town Manager Elwell advised that Mr. Dowell would remain an alternate, in his current position with the Planning and Zoning Commission, and that was the reason his name was not on the ballot. It was not due to his resignation. He stated that there were only two slots to fill, not three.

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

Regular Members: William M. Guttman
Leslie A. Shaw

Alternate Members: Eugene Lawrence
Floyd L. Wideman, Jr.

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The luncheon recess was taken at 12:35 P.M.

The Town Council meeting of February 13, 2007, was reconvened at 2:15 P.M.

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13. Request for Extended Work Hours for North Ocean Boulevard Seawall Revetment Project
[Peter B. Elwell, Town Manager

Town Manager Elwell explained that he had this item added to the agenda because the Town had received the permit from the Army Corps of Engineers, and the work had begun on the revetment. He noted that since the final paperwork from the government took longer than expected, and because the Town had an absolute deadline of April 30, 2007, imposed by the State of Florida, the Town was severely constrained in the time available to complete this major construction project.

Mr. Elwell stated that staff believed it was important to give the contractor every available day and time to complete this work on the Town's behalf. Staff's recommendation was for the Town Council to grant approval for the contractor to work on

Sunday's and that the daily window of time available for them to work would be from 8:00 A.M. to 8:00 P.M., Monday through Sunday.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to approve the Waiver to Sec. 42-199 of the Town Code of Ordinances, as recommended by staff, in order to allow construction work on the North Ocean Boulevard Seawall Revetment Project from 8:00 A.M. to 8:00 P.M., seven days a week. On roll call, the motion carried unanimously.

XIII. TEMPORARY ADJOURNMENT OF THE TOWN COUNCIL MEETING

PLEASE NOTE THAT ITEMS XIV THROUGH XV BELOW WILL BE HEARD AT 2 P.M. OR AS SOON THEREAFTER AS POSSIBLE.

The Regular Town Council Meeting was adjourned at 12:35 P.M.

Motion made by Council Member Markin, seconded by President Pro Tem Coleman to adjourn the Regular Town Council Meeting. On roll call, the motion carried unanimously.

XIV. CONVENE AS LOCAL PLANNING AGENCY

A. Call to Order and Roll Call

The Local Planning Agency convened at 12:36 p.m.

President Kleid requested comments from the public and there were none.

B. ORDINANCE NO. 1-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Section 134-2 by Adding Definitions for Building Height for Building on Lots along Lake Trail, by Modifying the Other Definitions for Building Height to Address Additions on Existing Buildings, and by Modifying the Definition of "Through Lot" by Not Including Lots along Lake Trail in Said Definition; Section 134-2 by Adding a Definition for Height for Building on Lots East of the State of Florida Coastal Construction Control Line; by Modifying Section 134-419

by Adding a Provision for Raising Nonconforming Buildings to Meet Minimum Flood Elevation; by Amending Section 134-2029 to Allow Antennas in the R-D(1) and R-D(2) Zoning Districts as Permitted Uses and to Modify the Existing Regulations by Allowing Antennas as Permitted Rather than Special Exception Uses in the Town's Commercial Zoning Districts and PUD-A Zoning District; by Amending Section 134-2107, 134-2061, 134-2062, and 134-2063 by Eliminating All References to Antennas; by Amending Section 134-1109 by Permitting Offices as Special Exception Uses on the First Floor in the C-TS Zoning District Provided Certain Conditions Being Met; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to recommend, as the Local Planning Agency, that the Town Council adopt Ordinance No. 1-07. On roll call, the motion carried unanimously.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to adjourn the Local Planning Agency. On roll call, the motion carried unanimously.

XV. ADJOURN AS LOCAL PLANNING AGENCY

The Local Planning Agency was adjourned at 2:20 P.M.

XVI. RECONVENE THE TOWN COUNCIL MEETING

President Kleid reconvened the Regular Town Council Meeting of February 13, 2007, at 2:21 P.M.

XVII. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting of February 13, 2007, was called to order at 2:21 p.m. All Town Council members were present.

XVIII. ORDINANCES

A. Second Reading

None

B. First Reading

1. ORDINANCE NO. 1-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Section 134-2 by Adding Definitions for Building Height for Building on Lots along Lake Trail, by Modifying the Other Definitions for Building Height to Address Additions on Existing Buildings, and by Modifying the Definition of "Through Lot" by Not Including Lots along Lake Trail in Said Definition; Section 134-2 by Adding a Definition for Height for Building on Lots East of the State of Florida Coastal Construction Control Line; by Modifying Section 134-419 by Adding a Provision for Raising Nonconforming Buildings to Meet Minimum Flood Elevation; by Amending Section 134-2029 to Allow Antennas in the R-D(1) and R-D(2) Zoning Districts as Permitted Uses and to Modify the Existing Regulations by Allowing Antennas as Permitted Rather than Special Exception Uses in the Town's Commercial Zoning Districts and PUD-A Zoning District; by Amending Section 134-2107, 134-2061, 134-2062, and 134-2063 by Eliminating All References to Antennas; by Amending Section 134-1109 by Permitting Offices as Special Exception Uses on the First Floor in the C-TS Zoning District Provided Certain Conditions Being Met; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney John Randolph read Ordinance No. 1-07, by title, as printed above.

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

2. ORDINANCE NO. 3-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for an Amendment to the Code of Ordinances at Part II, Chapter 1, General Provisions, So as to Create a New Section 1-15 to Be Titled "Noncompliance and Unpaid Liens," Said Provision to Provide That No Building Permit Shall Be Granted and No Application for Development Review Shall Be Considered Relating to Any Property Which Has Been Adjudicated by the Town's Code Enforcement Board to Be in Noncompliance with Any of the Regulations, Codes, or Ordinances of the Town or Against Which a Lien Exists in Favor of the Town Which Is Unpaid; Providing for Notice; Providing an Opportunity for Appeal; Providing an Opportunity to Show Good Cause as to Why Said Requirement Shall Not Be Applied; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John C. Randolph, Town Attorney]
Deferred from the January 9, 2007, Town Council Meeting.

Town Manager Peter Elwell read Ordinance No. 3-07, by title, as printed above.

Henry McIntosh, 124 Via Bethesda, asked whether or not, noncompliance in respect to an ongoing contractual relationship with the Town would be covered by this Ordinance?

Attorney Randolph responded that Ordinance No. 3-07 related to code enforcement violations that had been adjudicated by the Code Enforcement Board.

Council Member Coniglio asked, as a point of interest, if the project on the property in violation had not been completed, would the same permit application process apply to another property as far as this Code was concerned?

Attorney Randolph responded that it would apply only to the property that was in violation.

President Kleid stated that if it was a different piece of property, then it would be a different code enforcement problem.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to adopt Ordinance No. 3-07 on first reading. On roll call, the motion carried 4/1 with Council Member Coniglio dissenting.

XIX. DEVELOPMENT REVIEWS

All those who would be providing testimony were administered the oath by Town Clerk Eichhorn.

A. Appeals

None

B. Time Extensions

1. Request for Time Extension at 242 Tangier Avenue.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, requesting additional time to complete the construction project at 242 Tangier. She referred to the reasons for the delay in the project, and requested a five month extension, and stated that the construction should be completed by the end of October 2007; the Town's completion date had been May 14, 2007.

Mr. Alan Dayton, 241 Tangier Avenue, submitted photographs of the property in question, noting that the site was very messy, and that he had looked at it for over one year. There had been no screening at the site; a sign had been erected indicating that there was no trespassing; when anyone parked in front of the site, the police had been called to tow the car away. Mr. Dayton explained that it had been necessary for him to call the Code Enforcement office in June, because of his concerns related to flying objects, due to the approaching hurricane season; he suggested that there should be regulations in place so that all of these things were monitored on a regular basis. He noted that there were three "spec" houses being built on Tangier Avenue at the same time. He stated that there had been no work done on the subject property for eight months, and that it was his belief that the reason for the delay was the softening of the real estate market, and the developer was interested in finding a purchaser. As recently as December 2006, a time schedule was put forward to complete the construction by the end of March, with a final inspection date to be on April 10, 2007. Now, two months later, the applicant was requesting an extension.

Ms. Jere Zenko, 232 Tangier Ave., commented that the applicant had reapplied for a permit on December 6, 2007, and it was her understanding from the November 17 meeting of the Code Enforcement Board that 15 days had been given to either apply for a permit to tear down, or to reapply.

Attorney Ziska advised that the applicant had applied to reactivate the permit within the 15 days.

Ms. Zenko noted that there had been an inspection on October 20, 2005, and there had not been another one until March 9, 2006. She suggested that something definitive needed to be done, and that the neighbors were tired of the situation.

Director of Planning, Zoning & Building Veronica Close commented that the applicant was within the time allowed to request an extension. They had originally obtained their permit on June 14, 2005, and they were allowed 23 months. The project was taken to the Code Enforcement Board; the applicant did reactivate the permit, and the staff had some recommendations regarding the extension request. Staff recommended that if the job was not completed by October 15, 2007, a fine of $1,500 per calendar year would be levied until the Certificate of Occupancy was issued.

Attorney Ziska advised that she had given the reasons for the delay in the project, and the applicant had every intention to complete the project. She explained that a tight construction was prepared in anticipation of code enforcement; the schedule that was prepared subsequently was a more realistic time schedule.

President Pro Tem Coleman requested clarification on "reactivating" a permit.

Ms. Close explained that the applicant would come in to reapply for the permit, and the permit would be re-issued to them.

Chief Code Compliance Officer Rob Walton explained that the applicant had paid a $50 reactivation fee to reactivate the permit. When the applicant had reactivated the permit, they did so as ordered by the Code Enforcement Board, and the applicant gave a completion schedule, with a completion date of April 10, 2007, which was a condition of the Code Enforcement Board. If the applicant did not meet that completion date, the issue would be given back to the Code Enforcement Board, at which time the Board would authorize a penalty from the date of the hearing.

Ms. Close explained that the schedule put forth by the applicant had been at the November 16, 2006 Code Enforcement Board, and that was when the permit had been reactivated. If the applicant did not complete by April 10, 2007, the project would be brought before the Code Enforcement Board, at which time the Board could assess a fine.

Council Member Brooks commented that the project would have to be finished, and suggested that the applicant be given until June 10, 2007, with a $2,000 per day fine after that.

Council Member Markin commented that the applicant had filed for an extension within the proper time frame, and there were violation penalties in place if the applicant did not finish in time.

Council Member Brooks moved granting of the time extension until June 10, 2007, with the following conditions:

- **$2,000 per day fine if construction was not completed on that date;**
- **Applicant was to gravel the front of the house, secure the property for safety, site screen the property, and conform to all conditions enumerated, including the parking on the street;**
- **Install a 4' green painted plywood fence to shield Mr. Dayton's property.**
- **Leave no construction debris laying on the property.**

The motion was seconded by President Pro Tem Coleman. On roll call, the motion carried unanimously.

2. Waiver of Agreed Maximum Time Schedule for 455 North County Road. [Veronica B. Close, Director of Planning, Zoning, and Building]
Request for Deferral to the March 13, 2007, Town Council Meeting Per Memo Dated February 5, 2007, from Veronica B. Close, Director of Planning, Zoning, and Building.

DEFERRED TO MARCH 13, 2007 TOWN COUNCIL MEETING.

C. Variances, Special Exceptions, and Site Plan Reviews

The oath was administered by Town Clerk Eichhorn to all those who would be providing testimony regarding the following items.

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

None

3. Old Business- More Than 15 Minutes

a. SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS & VARIANCES - MODIFIED The application of Adam Schlesinger relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Boulevard (former Hilton Hotel); located in the R-D(2), B-A Zoning District. The applicant is requesting to convert this existing 134-unit hotel into a 107-unit condominium hotel. The building will be completely renovated, including the demolition and reconstruction of the entire interior and exterior walls, and the addition of a partially sunken 200-space parking structure to replace the existing 144-space surface parking lot. The swimming pool will be relocated to the interior of the building on the fourth floor, and tennis courts will be built atop the parking structure. The building is and will remain 5 stories over a basement. However, the entrance road will be ramped up and the lobby will be relocated from the basement to the first floor. The hotel already contains customary hotel accessory uses including a gift shop and two dining rooms. These uses will continue in the new hotel but will be reconfigured. Special Exceptions to change ownership of an existing hotel in the R-D(2) district; to allow tennis courts to be built on a structure (the parking deck); and, to expand existing accessory commercial uses in the hotel by enlarging the gift shop from 168 square feet to 436 square feet and adding a small tennis pro shop of 528 square feet. Variances requested for the following: to enlarge a nonconforming building which will be partially demolished and reconstructed by greater than 50% of its existing cubic volume; unenclosed structures over 15 ft. high are required to meet setbacks. The entrance portals at A-1-A will be 4 ft. from the north and south property lines in lieu of the 30 ft. minimum required by code, a variance of 26 ft; side yard setback for hotel building of 27.40 ft. in lieu of 30 ft. minimum required by code on the north side, and 26.00 ft. in lieu of 30 ft. minimum required by code on the south side; hotels in the R-D(2) district are required to have 35% minimum landscaped open space. This site will have 25.3%, requiring a variance of 9.7%. The existing site has 19.3% landscaped open space.; lot coverage of 53.3% in lieu of 22% maximum allowed by code for a five-story special exception structure. The existing site has 27.8% lot coverage.; a maximum east-west building dimension of 424.25 ft. in lieu of the maximum 150 ft. allowed by code; a porte-cochere dimension of 50 ft. x 68.75 ft. in lieu of the maximum 30 ft. x 30 ft. allowed by code.; a tennis pro shop (accessory commercial use) outside the main building, and with its own external entrance which is not permitted by code; variance to allow parking to be arranged so that a car must be moved before another car can enter or exit a parking space, for the mechanical and stacked parking; and, a variance to allow 200 parking spaces in lieu of the 324 required for a hotel with dining rooms and accessory commercial uses. There are currently 144 parking spaces on the property. Deferred from the April 11, 2006, June 13, 2006, and October 10, 2006, December 12, 2006, January 9, 2007, Town Council Meetings, and September 6, 2006, Special Town Council Meeting.

Ex-parte communication was declared by President Kleid with past conversations with Attorney Brindell.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the applicant had now been before the Town Council four times, the last time December 12, 2006. At that time it had appeared that there was consensus with regard to the plan that was submitted that day. That plan had been changed substantially, over time, in response to comments that had been received from the Town Council. The applicant had been directed to return in January 2007, however, because it was a holiday month, there had not been enough time to meet with staff to draft the Declaration of Use agreement, and the Construction Management Agreement. A consensus had now been arrived with staff on those drafts, although there were a few minor changes that had been made in the parking lot layout in response to the Fire Marshal.

Seth Yeslow, Project Manager, displayed the site plan and reviewed the changes made to date.

Zoning Administrator Paul Castro advised that staff had no comments relative to the site plan modification required by the Fire Marshal and the traffic engineer in regard to the parking lot. Staff did have other issues regarding the Declaration of Use Agreement. The applicant had agreed to the changes recommended to the draft Declaration of Use Agreement, however, there was an issue relative to the violations of either of the agreements, and staff had discussed changes with the applicant relative to any other citations regarding violations to the Town Code.

Attorney Brindell replied that he was in agreement with that.

Zoning Administrator Castro clarified that the Declaration of Use Agreement outlined the hours of operations for outdoor seating, the dining rooms, the upstairs pool area, entertainment and music, and many of the other activities related to the hotel use. He also noted that when the parking was modified to include the requirements of the Fire Marshal, the variance for that parking would need to be re-advertised, and that item would have to come back to the Town Council. He recommended that the other portions of the site plan, the Declaration of Use Agreement, and Construction Management Agreement go forward today.

In response to President Kleid, Attorney Brindell advised that it was his understanding that there was a formal agreement with the Royal Saxon. He agreed that would be reflected in the Declaration of Use Agreement.

Jim Ryan, 2860 South Ocean Blvd., commented that he would like to see a stated construction time frame, and a possible performance bond.

Zoning Administrator Castro advised that there was a clause in the agreement that, afer pulling the building permit, the applicant would need to finish in the allotted time per Town Code, or pay a fine of $2,000 per day until completion.

Discussion took place regarding a performance bond as opposed to a demolition bond. Attorney Brindell commented that a performance bond was based on the cost of building the project, which would be a huge bond, and was very different from having a bond to demolish what did not get completed.

After further discussion, Attorney Brindell advised that he would confer with the Town Attorney as to how to do a demolition bond, and also deal with the possibility of a bankruptcy issue. If there was not a way to work that out, he would return to the Town Council.

President Kleid clarified that the lawyers would review the issue and try to give the best protection to the Town, while being fair to the developer.

Town Manager Elwell clarified that the Declaration of Use Agreement and Construction Agreement had made the penalties clear. The question was then raised that the penalties should also apply to violations of the Town Code. If that occurred, the Code Enforcement Board process would start, and the penalty would be assigned by the Board. The intent was to ensure that there was a commitment made that the applicant was complying with all of the rules of the Town, in exchange for the special approval that was being received. The applicant had agreed that the penalties would also apply to violations of the Town Code, not just to violations of the Declaration of Use Agreement and Construction Agreement.

Attorney Brindell stated that he wanted to ensure that, since the penalties would apply to both the Declaration of Use Agreement and the Construction Agreement, that there would not be double penalties going at the same time during the construction phase. He was assured that was not the intent.

Town Attorney Randolph advised that once everything was worked out with the applicant, it would be brought forward to the Town Council.

President Pro Tem Coleman moved deferral of Site Plan Review #5-2006, with Special Exceptions and Variances. The motion was seconded by Council Member Brooks.

Discussion took place. Attorney Brindell commented that he had hoped that there would have been some progress made today; he was under the assumption that the only issue that would need to come to come back to the Town Council was the variance because of the change in the parking count.

President Pro Tem Coleman moved approval of Site Plan Review #5-2006, with Special Exceptions, subject to the Town Council acceptance of the Declaration of Use Agreement, and the Construction Agreement. Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.

Attorney Brindell requested approval of the variances associated with the request, with the exception of the variance that would change because of the parking numbers.

Town Manager Elwell suggested that the wording of the motion made by President Pro Tem Coleman was fine, and clarified that "subject to" meant that if the Town Council was not happy with the two agreements, the approval granted through these motions would become null and void.

President Pro Tem Coleman moved approval of the requested variances, subject to the Town Council acceptance of the Declaration of Use Agreement, and the Construction Agreement [with the exception of the variance that would change because of the parking

numbers and would be re-advertised]. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

b. SITE PLAN REVIEW #2-2007 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Royal 160, LLC relative to property described as lengthy legal description on file; commonly known as 160 Royal Palm Way; located in the C-B Zoning District. Request special exception approval for continued operation of hotel under new ownership. Prior to the adoption of the zoning in progress for hotel condominium conversions, the Applicant and the professionals engaged by the Applicant have had several pre-submission meetings with Town staff in connection with this application. These meetings have included provision of draft applications, the required traffic concurrency analysis and architectural plans for staff's review and analysis for completeness. The Applicant believes it is vested and not subject to the zoning in progress for hotel condominium conversion. In the event, however, that the Town Attorney concludes that the Applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application. Request special exception approval for expansion of hotel's accessory uses, including 1,500 square foot expansion of spa facility; addition of 1,335 square feet of public space, plus 360 square feet of back room space, for function room in a building in lieu of existing tent facility; replacement of the existing second floor function space with a 3,600 total square foot dining room including 840 square feet for outdoor seating on balcony. Request special exception approval to permit outdoor dining with maximum of 56 seats on 840 square foot second floor balcony on front facade. Request site plan approval for expansion of an existing hotel within nonconforming building. This site plan request includes the addition of a 1,940 square foot porte-cochere/covered drop off and relocation of the loading dock from the front facade to under the west wing of guest rooms: relocation and construction of new lobby; the construction of a 1,695 total square foot addition in the rear yard to serve as function space in lieu of the existing tent facility space: an expansion of the spa facility to 4,100 square feet; replacement of the existing second floor function space with a 3,600 total square foot dining room, including 840 square foot dining area on balcony:

renovation of guestrooms (net reduction of units: 95 to 80): construction of an enclosure for an existing outdoor fire stairwell; new roof design and materials; infilling the walls of the balconies: a new 2,160 square foot loggia in the back pool area of the building fronting the swimming pool: and adoption of exclusively valet parking for the site. A variance request to permit construction of porte-cochere/covered drop off with front set back of .34 feet, in lieu of 34.72 foot minimum required front yard setback required by Code. A variance request to permit construction of relocated curb cut and porte-cochere/covered drop off, expansion of existing spa and construction of permanent function space, which increases lot coverage to 66.4%, in lieu of the 61.4% existing lot coverage and the 50% maximum lot coverage allowed by Code. A variance request to permit construction of relocated curb cut and porte-cochere/covered drop off, expansion of the existing spa and construction of permanent function space, with overall landscape space of 23% overall landscaped space (no change from existing), in lieu of the 30% minimum overall landscaped space required by Code. A variance request to accommodate new mansard roofing design and material, to permit overall building height of 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code. A variance request to accommodate new mansard roofing design and material to permit building height of 34.61 feet from zero datum (no change from existing) in lieu of 25 feet maximum building height allowed by Code. A variance request to have three (3) architectural tower features in lieu of the two (2) maximum tower features allowed by Code. A variance request for two (2) of the architectural tower features with front yard setbacks of 24.5 feet and 24.88 feet in lieu of the 39.72 foot minimum front yard setback required by Code. A variance request for three (3) architectural towers, 5 feet maximum in height, with an overall building height of 40.27 feet, in lieu of the 35 feet maximum overall building height allowed by Code for the towers. A variance request to enclose an existing exterior stairwell creating a tower feature with an existing 6 foot rear yard set back, in lieu of the 28.88 foot minimum rear yard setback required by Code. A variance request to construct addition of function room with 1,695 total square footage, to replace current tent facility, with a 10.0 feet rear yard set back, in lieu of 28.88 foot minimum rear yard set back required by Code. A variance request to accommodate new mansard roof design and materials with a 5.8 feet side yard set back (no change from existing) at western property line, in lieu of the 19.72 foot minimum side yard set back required by Code. A variance request to allow outdoor dining room seating on the front outside balcony where said use is required by Code to be entirely within the principal building. A variance to allow a marquee wider than the entry way and with support closer than eighteen inches to the face of the curb. A variance request to construct 4,750 square feet of additional improved space, without providing the one additional loading berth required by Code. A variance request to provide 88 off street parking spaces, in lieu of 97 existing spaces and the 23 additional spaces required by Code as a result of planned improvements described in this application. A variance request to allow required parking to be stacked in a method which requires the movement of another vehicle in order to move another vehicle. *Deferred from the January 9, 2007, Town Council Meeting.*

Attorney Jacquie Miller, on behalf of the applicant, requested a deferral of the application. She explained that there were a number of issues raised by staff that she believed could be addressed, and the applicant needed more time to do so.

President Pro Tem Coleman moved deferral of Site Plan Review #2-2007, to the March 13, 2007, Town Council meeting. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

a. <u>VARIANCE #3-2007</u> The application of Lois Umbach relative to property described as South 3 feet of Lot 26 and Lot 27, Woods Landing Plat No.2; commonly known as 577 East Woods Road; located in the R- B Zoning District. Variance request to allow construction of a 749 square foot two-story addition with lot coverage of 36% in lieu of existing 30% and maximum allowed 30%. **Request for Deferral to the March 13, 2007, Town Council Meeting Per Letter Dated February 6, 2007, From Peter S. Broberg.**

DEFERRED TO MARCH 13, 2007, TOWN COUNCIL MEETING.

b. SPECIAL EXCEPTION #2-2007 WITH SITE PLAN REVIEW AND VARIANCES The application of James W. Harpel relative to property described as lengthy legal description on file; commonly known as 1102 North Ocean Boulevard; located in the R-B Zoning District. Special Exception request to permit demolition and reconstruction of beach house in approximately the same location. Site Plan Review if requested as component of Special Exception approval relating to new beach house and proposed spa and hardscape. Variance request to permit new beach house, with lot width of 52.91 feet in lieu of the 100 foot minimum lot frontage required by Code. Variance request to permit a new beach house with a width of 13 feet in lieu of the 10 feet maximum width allowed by Code. The existing beach cabana is 13 feet in width. Variance request from the ocean vista requirement. The Code requires that a new cabana provide an open vista across 50% of the lot width. The applicant is requesting that most of the existing wall remain and not be required to provide the 50% vista. Variance request to relocate the entry gate on the wall/fence combination further north at a height of 4 feet in lieu of the 30 inch maximum height allowed by Code. Variance request to construct two (2) retaining walls in a 107 linear foot area with a total height of 12 ft. above the crown of road at Queens Lane in lieu of the 6 ft. maximum height allowed by Code within the 35.0 ft. required street rear yard setback. Variance request to construct two (2) retaining walls in a 23 linear foot area with a total height of 9.6 ft. above the crown of the road at Queens Lane in lieu of the 6 ft. maximum height allowed by Code within the 35.0 ft. required street rear yard setback. Variance request to construct a removable 12.35 foot high awning structure with a street rear setback of 15 ft. in lieu of the 35.0 ft. minimum street rear yard setback required by Code.

Ex-parte communications were declared by Council Member Coniglio, with the architect; by President Kleid with Architect Smith and Mr. Chopin; by Council Member Brooks with the assistant to Architect Smith, relative to the application.

Attorney Frank Chopin, on behalf of the applicant, addressed the Town Council. He referred to the site plan, architectural renderings prepared by Architect Jeff Smith, aerial photos of the beach house, and presented the requests being made. He noted that the property was landmarked. The proposal had been before the Landmarks Preservation Commission, which had unanimously recommended approval. He advised that the hardship related to the property was unique in the Town of Palm Beach, and was the only property that he knew of that had four front yard setbacks. The property was zoned R-B and for any other house in that district there was a 15' setback in the rear yard.

Attorney Chopin referred to the aerial photos of the beach house, noting that the applicant wanted to tear down the current beach house and rebuild it. He reviewed the variances being requested in that regard.

Zoning Administrator Paul Castro provided the following staff comments: the grade on one side of the property was substantially different than the other side, and the applicant would be substantially raising the grade of the property for the pool deck, as well as the open cabana area. He questioned the retaining wall within the street setback.

Attorney Chopin replied that the retaining wall was 9' on the westernmost portion of the property, along with a chain link fence of 3' above the crown of the road, inside the hedge.

Mr. Castro commented that he was not sure if there was enough relief requested in the application, if there was a chain link fence on top of the retaining wall.

Attorney Chopin explained that the request for the retaining wall indicated 12.35, including the chain link fence inside the hedge; the other retaining wall was 9.6'.

Mr. Castro continued with staff comments: The reason for the retaining wall was to raise the grade so that the back patio location would be in line with the terrace to the pool area. The relief being requested was somewhat self-created. Staff was concerned that more landscaping would be needed to block the walls from the neighbors to the north. The ocean vista was a requirement in the Town Code to ensure that when a cabana was built on the east side of Ocean Blvd., that they would have a clear view or vista over 50% of the width of the lot; a clear and continuous vista, with no interference. The applicant did not have a clear vista across that narrow small lot, at that location. Staff questioned the hardship on the retaining walls.

President Kleid called for comments from the public. There were none.

Discussion took place regarding Code provisions for fences and the vista. Attorney Chopin explained that the applicant was not enlarging, and, because of the location of the property itself, visibility should not become an issue that would entice anyone to want to get particularly restrictive in terms of what the applicant was trying to do.

Architect Smith explained that the vista was not continuously clear because of the existing wall, which was the original landmarked wall, and the applicant would like to keep that wall. The wall could be seen through very easily.

Attorney Chopin responded to the concerns of Council Member Markin regarding the variances being requested, and the hardship. He suggested that a precedent would not be established by allowing the retaining wall; he explained the grade of the land in conjunction with the retaining wall. He noted that the Council had long recognized the issues caused by the contour of the land. The finished floor, was dictated by the lot elevation at 14'. Because of the unusual situation, the applicant could either ask for a retaining wall so that the pool could be put at a reasonable level, or steps could be built in order to access the pool. Another hardship was that the house was landmarked.

After further discussion, Council Member Brooks moved approval of Special Exception #2-2007, Site Plan Review and Variances, based upon the findings that such grant will not adversely affect the public interest, and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, with the condition that the wall along Queen's Lane should be adequately landscaped. The motion was seconded by President Pro Tem Coleman. On roll call the motion carried unanimously.

Council Member Coniglio expressed concern regarding adequate landscaping being put in place at the wall along Queen's Lane.

Council Member Brooks incorporated the condition that the wall along Queen's lane should be adequately landscaped.

Attorney Chopin commented that was guaranteed.

c. <u>SITE PLAN REVIEW #3-2007 WITH SPECIAL EXCEPTION AND VARIANCES</u> The application of Cheryl Minikes relative to property described as lengthy legal description on file; commonly known as 324 Cherry Lane; located in the R-B Zoning District. Site Plan Review request to allow the construction of a two-story single family residence on a non-conforming platted lot which is 42.88 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District. Special Exception request to allow driveway gates to be set back 8 feet from the street pavement for a property located on a dead-end street in lieu of the 18 foot minimum required. Variance request to allow construction of a new two-story residence with a point of measurement for cubic content, height and overall height of 28 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 23.7 feet NGVD for the front half of the lot and 9.1 feet NGVD for the back half of the lot as required for a through lot. Variance request to allow a combination retaining wall and fence for the driveway down ramp to be at a height of 14 feet in lieu of the maximum 10 foot maximum allowed. Variance request to allow a two-way drive aisle access to be 12 feet wide in lieu of the 20 foot minimum width required.

Ex-parte communication was declared by Council Member Brooks with Attorney Maura Ziska, by President Pro Tem Coleman with Mr. Minikes, by Council Member Coniglio with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, along with Dana Bernard, the designer of the project. The project had been brought to the Architectural Commission (ARCOM) last month, and the site plan had since been slightly modified. Two zoning requests had been eliminated: the special exception request for gates closer than 18' at a dead end street was now eliminated; the garage was slightly redesigned to be on the west side of the house, and the variance for the retaining wall height was now eliminated. The applicant would return to ARCOM this month with the revised project. She advised that the hardship was the topography of the property.

Zoning Administrator Paul Castro provided the following staff comments: The property in question was a unique piece of property. The applicant request was to build a brand new house at the same elevation as the current house, at 28'. Staff's position had been that the elevation recommended was approximately 24' above sea level. The applicant would still be able to build a reasonably sized home with a very good view of the lake. ARCOM had recommended that the applicant not be granted the relief, and that the applicant could build a house in the architectural style wanted, without the point of measurement requested. Staff recommended that the house be at 18" above the crown of the road or somewhere around 24' NGVD above sea level, with the deck also at elevation 24'.

Attorney Ziska responded that ARCOM deferred the project, and did have a comment with regard to the massing. The applicant decided to address the massing in a different way, by shifting the house back 14' from the Trail, dropping the house by one foot, dropping the pool deck another couple feet, dropping the wall another four feet. With regard to the topography of the property, she suggested that 24' would not be appropriate, since it would involve digging out four feet of rock and dirt. A finished floor and point of measurement at 27' would still be lower than the existing house.

Council Member Brooks clarified that the applicant had followed ARCOM's general direction of lowering the house, but had only lowered it by one foot, in lieu of four feet, which was what they had asked. He suggested an elevation of 26'.

Attorney Ziska advised that the house could be built at 26'.

Council Member Markin moved approval of Site Plan Review #3-2007 with Special Exception, based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 135-329, items 1 through 11; approval of the variances, with the condition that the house be reduced from 28' to 26' , finding 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 Council Member Brooks. On roll call the motion carried unanimously.

d. SITE PLAN REVIEW #4-2007 WITH SPECIAL EXCEPTION AND VARIANCES The application of Il Lugano Condominium Association relative to property described as lengthy legal description on file; commonly known as 300 Seminole Avenue; located in the R-D(2) Zoning District Site Plan Review request to redesign and reconstruct a dock facility from 14 slips to 7 slips to accommodate larger boats and avoid seagrass beds. Special Exception request to modify the previously approved special exception on the subject property to build the proposed dock. Variances requested to construct the dock and associated appurtenances a maximum of 226 feet west of the U.S. Bulkhead line in lieu of the 150 foot maximum allowed; to construct dolphin piles 26 feet west of the U.S. Pierhead line in lieu of the 6 foot maximum allowed; and, for a side yard setback for pilings to be 10 feet from the south property line and 10 feet from the north property line in lieu of the 25 foot minimum required.

Ex-parte communication was declared by Council Member Coniglio with Attorney Maura Ziska, and with Attorney Peter Broberg, who was representing the party in opposition to the application being considered; Council Member Brooks with Attorney Peter Broberg, President Pro Tem Coleman with the applicant, Attorney Broberg, and Mr. Goldblum; President Kleid with Attorney Broberg, who was representing L'Ermitage Condominium.

Attorney Maura Ziska, on behalf of the applicant, accompanied by Coastal Engineer Jeff Scott, addressed the Town Council, providing a brief history of the proposed dock. She explained that the Town Code allowed docks 150' long; this proposal was for a 196' dock. The proposed dock would be a private dock for the use of the Il Lugano owners only, and would have seven slips. The other variances being requested were for the pilings that were originally there, but had been washed away with the hurricanes. She explained the hardship for the length and configuration of the dock was that there were no structures allowed by Florida Department of Environmental Protection (FDEP) in protected sea grass and manatee feeding zones.

Ms. Ziska noted that The Parc Regent Condominium had no objection to the proposal

Attorney Peter Broberg, on behalf of L'Ermitage, addressed the Town Council, stating that the Town Code said that a dock was not allowed to go out beyond 150' from the shoreline, and not more than 6' beyond the pier line. The Code also said that there had to be a setback line on either side of the property of 25'. He noted that he was not objecting to the dock, but to the width/size of the dock. He cited some of the history associated with this project, referring to minutes of 2003, wherein the project was presented to the Town Council and was denied.

Attorney Broberg explained that he was objecting to the proposal because the boats would be bigger, there would be more staff, the parking was already limited on Seminole, and there would be much more activity with the larger boats docking.

Norman Goldblum, Commodore of Palm Beach Island Yacht Club, Commodore of the United States Naval Institute, Commodore of Georgetown Yacht Club, addressed the Town Council. He noted that he had boated on the Lake Worth Lagoon from 1979 until two years ago. He noted that two or three years ago, a 25' distance was instituted between the property line and the pilings, for safety reasons. Now, it was proposed to put in pilings only 10' from the property line, with bigger boats. He explained that there was a safety factor resulting from the tides and winds.

Attorney Ziska responded that navigation experts had said that navigability of the dock was safe; the proposed pilings would not be a navigation problem. She suggested that it would be unfair to deprive the owners of the Il Lugano of a dock, because of speculation that perhaps in the future L'Ermitage may have a dock.

Zoning Administrator Paul Castro provided the following staff comments: he reviewed the staff concerns that were brought forward when the longer dock had come to the Town Council in the past. Staff was now concerned about the safe distances between piers, which was 1.1 times the size of the dock, and then 150% of that distance would be the navigable distance that was necessary between piles of a dock and the dock next to it. The main concern of staff was the dock to the south, and that the applicant demonstrate the hardship not only for the setback requirements, but also why they need to go so far out past the U.S. pierhead line, simply to get an extra slip.

Jeffrey Scott, P.E., Isiminger & Stubbs Engineering, addressed the Town Council on behalf of the applicant. He established his credentials. He responded to the size of the slips and the distance between slips.

Council Member Brooks asked why it was necessary to accommodate such large vessels that violate the 25' width necessary for navigation?

Attorney Ziska replied that bigger boats were desired at the dock; that was why they were trading it from a 14 slip commercial dock to a 7 slip reconfigured dock.

Council Member Brooks replied that the vessels for the 7 slips were four times the size of the vessels that were using the 14 slip dock.

Mr. Jay Denger, Manager, Park Regent Condominium, property to the south of the subject property, stated that the Park Regent had never really liked the slips to the south, but the length of the dock was a bigger problem, so when the applicant agreed to reduce the length of the dock there was a negotiated settlement. That did not take away the concerns of the slips on the south and how boaters would navigate from there, however, even though he was not objecting to that, he wanted to clarify that there was a problem with the two south slips.

Council Member Brooks moved denial of Site Plan Review #4-2007 with Special Exception and Variances, on the basis that it would adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have not been met. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

TIME CERTAIN: 2:15 P.M.

e. SITE PLAN REVIEW #5-2007 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Sidney Spiegel, as Trustee #31520371 relative to property described as lengthy legal description on file; commonly known as Royal Poinciana Plaza 340 Royal Poinciana Way; located in the C-PC Zoning District. The Poinciana Plaza site is 11.96 acres in area. The proposal is to replace (through demolition of existing) the 878 seat Royal Poinciana Theatre, private supper club, and Hibel Building, with a 74 unit, two and three story hotel complex and a new 299 seat theatre for Florida Stage. In addition, 4,397 square feet of other retail space will be demolished in association with the creation of a central circulation driveway between the two existing main east/west Plaza buildings.

I. Site Plan Review request to construct a 74 unit, 2 and 3 story hotel with underground parking (190 spaces) and associated amenities including a dining room, bar and spa, and to construct a new 299 seat theater for Florida Stage. The hotel will consist of three buildings connected by a covered pedestrian arcade. Other site improvements include a central driveway between the existing plaza retail buildings and some surface parking.

ii. Special Exception – Section 134-1259(a)(11) special exception request for a 74 room hotel including accessory commercial uses in the C-PC Zoning District.

iii. Special Exception – Section 134-1259(a)(5) special exception requests for 299 seat theatre, a 1,905 square foot restaurant containing 56 seats indoors and 24 seats outdoors, and a night club/bar containing 1,296 square feet and 20 seats.

iv. Special Exception – Section 134-1259(a)(10) special exception request for a spa/fitness center containing 3,770 square feet.

v. Variance request from Sections 134-1261, 134-1262(10), and 134-1874 regarding maximum building length. The hotel consists of three separate structures which are joined by open-air arcades for pedestrian weather protection, thus technically creating a single building 434 feet long in lieu of the 150 feet maximum allowed. The existing theatre building is 269.16 feet long.

vi. Variance request from Section 134-1262 for a third floor in the C-PC Zoning District. Code allows two stories so this variance request is for one additional story on two of the four building components.

vii. Variance requests from Section 134-1262(8)(b) which allows a maximum building height of 25 feet. The three story building components will be 35 feet in height to the interior ceiling in lieu of 25 foot maximum allowed. The existing theatre building is 32.83 feet in height.

viii. Variance request from Section 134-1262(8)© for overall building height which allows a maximum overall building height of 5 feet over the maximum allowable height for a flat roofed building. This request is for an overall building height of 48 feet to the top of the architectural features on the three story buildings in lieu of 30 feet maximum allowed. The existing theatre building is 50.16 feet in overall height.

ix. Variance request from Section 134-1262(9)(b) for lot coverage. When the new underground parking garage for the hotel is included as required by Code, this project will have a lot coverage of 37% in lieu of the 35% maximum allowed for two story buildings. Existing lot coverage is 26.9%.

x. Variance request from Section 134-1262(11)(b) for landscaped open space, a request to construct the improvements which will result in landscaped open space of 15.2% in lieu of the 14% existing and the 25% minimum required by Code.

xi. Variance request from Section 134-1875, 'open vistas' which requires that a minimum of 25% of the aggregate width of the lot be left open. If the open air arcades connecting the three buildings are treated as structures, hence creating one large building on this property and if the arcades are treated as opaque structures, this project will have open vistas of 13.3% in lieu of the 25% minimum.

xii. Variance request from Section 134-1906(2) which requires that proposed special exception uses be located entirely within the principal building with no outside entrances. This variance request is to allow 24 outdoor seats for this project's restaurant, with outside entrances.

xiii. Variance request from Section 134-2172 (valet parking) which requires that required off-street parking must be so arranged that each automobile may be placed and removed from its assigned parking space and taken to and from the property without the necessity of moving any other automobile. This project requests to have a total of 61 valet parking spaces which will not meet this requirement.

xiv. Variance request from Section 134-2176 regarding the number of parking spaces required. The new hotel and theatre would require 279 off-street parking spaces. This proposal will create 230 non-valet spaces in the Redevelopment Area which is currently approved for 246 spaces, most of which are valet spaces. A variance for 49 spaces is requested.

The existing theatre, dining club, and Hibel Building would require 382 spaces by Code. It should be noted that the overall Royal Poinciana site was previously approved for 745 parking spaces in Site Plan Review #5-99. This overall number will be increased to 755 after the redevelopment of this property.

xv. Variance request from Section 134-2211(a) for number of loading berths. Code requires that loading berths be calculated on gross floor area of all uses which in this case would generate the requirement for five loading berths in the Redevelopment Area. This project is proposing two loading berths, one for the hotel and one for the Florida Stage.

xvi. Release of Unity-of-Title and replacement of 1979 Declaration of Use Agreement.

Ex-parte communication was declared by Council Member Markin with the developer, by Council Member Coniglio with Attorney James Brindell, with Mr. Sanchez, and Mr. Brennan and that she was given a brief explanation of their plan; President Pro Tem Coleman declared that he had met with a number of people on all sides, including the plaintiffs and the defendants, with Attorney Brindell; President Kleid declared ex-parte with the developer, Attorney Brindell, Ms. Sanchez, and the Palm Beach Theater Guild.

President Kleid set forth the procedure that would be followed. The case would be presented, supporters would be heard from, objectors would be heard from, staff comments would be heard, any rebuttal would take place, and then there would be discussion by the Town Council. He stated that it was his understanding that the application would be limited purely to the concept of what was intended to be built, and there would not be any expert witnesses presented, or discussion about special exceptions or variances. This presentation today was just for the airing of the concept.

Attorney Brindell advised that the applicant was not asking for a vote on the application and the request for special exceptions or variances; there were several experts present to present the concept of the project, but not to provide expert testimony for special exceptions and variances.

President Kleid requested that objectors limit their comments specifically to the concept of the project.

Attorney Brindell stated that Mr. Jorge Sanchez, and Mr. Rafael Portuondo would explain the proposal, and gather comments from the public and the Town Council. He added that this route had been set out for the applicant; it was the preference of the Town that the applicant present something that would come forth in a public hearing process. Today only the concepts would be discussed.

Council Member Brooks noted that this morning, under the Town Council Comments, he had stated his opposition to this item being on the agenda until the lawsuit had been completed. He suggested that the Town Council's time and comments were not appropriate, when the lawsuit was not yet even on the docket.

President Kleid responded that the application had been accepted through the Town's process, and that it would be courteous to at least listen to it.

Mr. Jorge Sanchez, Sanchez & Maddux presented a site plan and photographs related to the project. He explained his involvement in the project and introduced Architect Rafael Portuondo, who would provide details of the site plan. Mr. Portuondo proceeded to provide details of the project.

The following members of the pubic spoke in objection to the project concept presented:

Patrick Flynn, President Palm Beach Theater Guild, 2600 N. Flagler Dr., West Palm Beach, FL.

Arnold Hoffman, 150 Bradley Place, Palm Beach, FL.

Catherine Grace Jordon, 250 Bradley Place, Palm Beach, FL.

Henry Goldsmith, 44 Cocoanut Row, Palm Beach, FL.

Etonella Christlieb, 200 Everglades Ave., Palm Beach, FL.

Vivian Hyberg, 5982 Forest Hill Blvd., West Palm Beach, FL.

Marc Goldberg, 44 Cocoanut Row, Palm Beach, FL.

Albert Mendez, 250 Everglade Ave., Palm Beach, FL

Richard Strauder, 211 Seaspray, Palm Beach, FL.

John Mashek, Preservation Foundation, Palm Beach, FL., noted that the Landmarks Preservation Commission (LPC) would be reviewing the property in question, and requested that nothing be done by the Town Council until the LPC could take a look at it. He further commented that if the Town requested a study of the Royal Poinciana Plaza from a planning perspective, the Preservation Foundation would be happy to assist.

Lory Volk, Vice Chair John R. Volk Foundation, commented that a legal notice was published for this application; that the project was outside of the Comprehensive Plan.

President Pro Tem Coleman commented that he did not remember voting to change the agenda, and that notice had been given.

President Kleid commented that the attorney for the developer had sent a letter saying that he was not interested in this particular application dealing with special exceptions and variances, when he really wanted to present a concept to see whether or not there was any enthusiasm for this concept.

Attorney Brindell commented that, based upon his twenty-five years of appearing before the Town Council, projects of this size were never accepted on just one hearing. He stated that he was told by the Town's legal counsel that if the applicant wanted to put something in front of them to consider, that an application needed to be filed.

Council Member Brooks commented that he would vote to defer this application until the court case had been heard. He suggested that some aspects of the impacts of the project had not been mentioned, and that the court case was not yet even on the docket.

Sidney Spiegel, Palm Beach Gardens, FL, Principal Managing Officer of Royal Poinciana Plaza, commented that he had started in 1979, and had taken the Plaza to where it was today. He suggested that they were now trying to beautify the property.

Leta Foster, 345 Pendleton Lane, and 64 Via Mizner, Palm Beach, questioned whether the park would be accessible to the public, or whether it was part of the proposed hotel.

Attorney Brindell responded that the greenspace along the water would be accessible to the public through the hotel property.

Architect Portuondo commented that there was much misconception about the project, and that the scale was actually coming down.

Robin Disston commented that there were actually two projects, one renovation, and one the destruction and re-building. He suggested that it would be easier to look at the project as two different projects. He questioned the proposed parking places.

Further discussion took place regarding the parking spaces and the uses of the proposed project.

Council Member Brooks remarked that since it had been brought to attention that variances were to be heard, as well as special exceptions, he would **move that the Town Council deny all requested variances and special exceptions requested in Site Plan Review #5-2007.**

Town Attorney Randolph advised that the applicant had requested to just present the concept first, to see whether or not they could get past that; if they were to get past that, then consideration could be given to the variances and special exceptions. He suggested that there should not be a motion to deny the variances and special exceptions at this point.

Council Member Brooks amended his motion to state that the petition [Site Plan Review #5-2007] be put in abeyance until the 15th Judicial Circuit, and/or the 4th District Court, ruled on the petitioner's lawsuit. The motion was seconded by Council Member Markin.

President Coleman remarked that he would like to hear the variances, and would like to ask several questions related to what could be built, how much square footage, how many parking spaces, how much greenspace would be allowed, if the current buildings were torn down.

Council Member Markin commented that she did not believe it was appropriate to talk about the variances, since other applicants in the past had requested not to move forward with an application after clarifying their projects.

On roll call, the amended motion of Council Member Brooks to put the petition, Site Plan Review #5-2007, in abeyance until the 15th Judicial Circuit and/or the 4th District Court made a ruling on the petitioner's lawsuit, carried 4/1: Council Member Brooks, Council Member Markin, Council Member Coniglio and President Kleid casting affirmative votes; President Pro Tem Coleman casting a dissenting vote.

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

Ex-parte communication was not declared by any Council Member.

Lawrence Griffin, on behalf of the applicant, along with Peter Brooks, Golf Course Manager, addressed the Town Council, requesting Special Exception and Site Plan approval to install a generator and an above ground diesel fuel tank on the Everglades Club site. He referred to the survey indicating the location of the tank and generator, which was approximately 90' west of South County Road, behind the existing one story water treatment facility building and pump station.

Zoning Administrator Paul Castro provided the following staff comments: Several letters of objection had been received; one of the neighbors requested that the applicant be required to house the generator in a building. Staff questioned why a waiver was needed from Zoning In Progress.

Mr. Griffin replied that the decibel level of the generator was 72 decibels at 7 meters, or 22'. The generator was 500' from the property to the south, and the closest property was along South County Road. He explained that the one story water treatment facility building blocked the generator from South County Road, as well as the two hedges that were between South County Road and the generator.

Discussion took place. Council Member Markin expressed concern that approval would set a precedent.

Zoning Administrator Castro noted that the generators were a study item, and the Planning & Zoning Commission would be discussing it on February 22nd, with their recommendations then going to the Town Council on March 12, 2007. He noted that the applicant would still need site plan review, but the results of the generator study item may change what was needed by the applicant in regard to the Zoning In Progress waiver.

Zoning Administrator Castro clarified that with site plan approval, the applicant must understand that if they proceed forward with the generator, they would need to move it far enough away from the water treatment facility to be able to build a building around it, or a wall around it, if it was determined that was required.

Council Member Markin moved approval of Special Exception #1-2007 with Site Plan Review, and deferred the waiver of Zoning in Progress to the March 13, 2007, Town Council meeting. The motion was seconded by Council Member Brooks. On roll call the motion carried unanimously.

5. Other

None

XX. ANY OTHER MATTERS

There were none.

XXI. ADJOURNMENT

There being no further business, the regular Town Council Meeting of February 13, 2007, was adjourned at 7:15 p.m.

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk