

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING 2005-2006 ZONING HEARING TUESDAY, JANUARY 17, 2006, 9:30 A.M.

I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting of January 17, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Denis P. Coleman
Councilman Richard M. Kleid
Councilman Allen S. Wyett

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas C. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Planning, Zoning & Building Director Veronica Close
Zoning Administrator Paul Castro
Bill Brisson, Brisson Planning Solutions
Town Clerk Susan A. Eichhorn

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The Invocation was given by Town Clerk Eichhorn. President Brooks led the Pledge of Allegiance.

Minutes 12-13-05
Reg TC Mtg.

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RECYCLED PAPER

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III. APPROVAL OF AGENDA

The Agenda was amended as follows:

ADD the following item to the Agenda: Request by the Society of the Four Arts for Permission to Display an America's Cup Winning Yacht in Conjunction with an Exhibition of Maritime Art - Recommended Conditions of Approval.

Motion to approve the Agenda as amended made by Councilman Wyett, seconded by President Pro Tem Goldblum. On roll call the motion carried unanimously.

Town Manager Elwell referred to his memorandum to the Mayor and Town Council, dated January 12, 2006, enumerating fifteen conditions of approval recommended by staff for the display of America's Cup Winning Yacht at the Society of the Four Arts. All of the recommendations had been generated in meetings held with the applicant; staff believed that all conditions were appropriate in order to protect the public and the Town's interest as a property owner of some of the facilities related to how the yacht would be moved onto the Island, installed and displayed. It was the recommendation of staff that the Town Council grant final approval to the applicant, subject to the enumerated fifteen conditions.

In response to President Pro Tem Goldblum, Society of the Four Arts President Ervin Duggan stated that he agreed with all of the conditions.

Mr. Duggan responded to several questions from Mayor McDonald regarding the closing of Lake Trail, and access of the public.

Town Manager Elwell advised that the timing of installation would be approximately one week, and the timing of the dismantling and removal would be approximately one week. While the display was static, the Lake Trail would be open to the public.

Councilman Wyett moved approval of the request of the Society of the Four Arts for Permission to Display an America's Cup Winning Yacht. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

IV. PROOF OF PUBLICATION

Zoning Administrator Paul Castro acknowledged proof of publication.

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V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

Mr. George Cloutier, resident, commented regarding the beach renourishment project and the use of noisy machinery at night, in particular the high-pitched back-up sound of the tractors. He noted that he was awakened at 4:27 a.m.

Town Manager Elwell explained that the noise for each individual resident would probably encompass two or three nights; the nature of this work necessitated that it go on as continuously as possible. Dredging operations were always done as twenty-four operations, and were always approved as that, with the understanding at a moment in time there will be a disturbance for those residents that were immediately adjacent to the site.

Councilman Kleid stated, for the record, that all of this work had to be done in a particular season, and there was a time line. He noted that the disturbances should not be for long periods of time. He recalled that he had asked staff to try to give residents advance notice of when the work was expected in front of their houses, which was particularly important as the work approached Reach 7. If people were told that the operations would be in a certain location for a week, and if it was emphasized that excessive noise may take place, it was possible that some may find that occasion to take a mini-vacation.

Town Manager Elwell advised that as the project moves to the south, there will be heavy industrial construction going on at the location where sand is coming out of the pipe and the bulldozers are moving the sand around into the proper form on the beach. At any one location, the direct impacts of the noise should be limited to one or two nights. He would check further on the mobilization points and how long those locations would be experiencing noise.

Mayor McDonald commented that after Town Manager Elwell checked the mobilization situation, and depending on those results, the matter would be discussed again.

Mr. Cloutier replied that the area near his home did appear to be something of a staging area.

Town Manager Elwell noted that even if the noise was extended at this particular location as a result of mobilization, it would not last for weeks, because when the mobilization of the project was complete, and the construction worked its way south, the noise would be in the area where sand was coming out onto the beach.

President Pro Tem Goldblum remarked that there were fifty to one-hundred pipes and some valves laying right at the foot of Atlantic Avenue, and suggested that those pipes and valves could be spread out down the beach where they would be needed, during the day, rather than coming to

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that pile each day and taking off one or two pipes.

Councilman Wyett suggested notifying all those residents living on the beach that it would be noisy in front of their property for one to three nights.

Town Manager Elwell requested clarification regarding further discussion of this matter later today, with appropriate staff in attendance, or only if the noise would go on for more than another night or two at Atlantic Ave.

President Brooks commented that a valid complaint had been heard, and that Town Manager Elwell could contact Public Works Director Paul Brazil, and notify Mr. Cloutier, and the Town Council of the results.

Town Manager Elwell replied that if there was an issue that would require the attention of the Town Council, he would address the matter later in this meeting.

Ms. Wendy Victor, 208 Via Tortuga, commented that she lived in the middle of the Island, and had also heard the noise from the beach machinery in the early morning hours; the noise was carrying to residents that did not live directly on the beach as well.

Mr. John Kaywell, 201 Angler, commented that he had been going to the north end homeowner meetings, and suggested that there was a great degree of anxiety about the proposed zoning changes.

Mayor McDonald commented that he had never received an invitation to one of the north end homeowner meetings.

Councilman Wyett commented that approximately 140 residents objected to the proposed zoning.

Councilman Coleman commented that he had not been aware of the meetings, and had not been invited. He noted that the Planning, Zoning & Building Department had held community meetings, in order to gather the input of residents, so that the Town Council could respond to the input of the citizens.

President Pro Tem Goldblum commented that he had attended the Town community meetings, and was there to hear what the residents had to say. He stated that he was not there to influence anyone, and was there to listen. He noted that he had called Mr. Boykin, and told him that he could not attend the north end homeowners meeting, as he had a previous commitment. He stated

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that he would not try to influence anyone until everything was reported, and he would then vote in the manner that he considered best for the Town.

Councilman Kleid commented that he had not received a notice for the north end homeowners meeting, and that he had attended the two community meetings that were held at St. Edward's. He explained that during the period that he was on the Planning & Zoning Commission at least three or four studies had been made, and the Commission was very cognizant with what the people seemed to have wanted at that time, and that was limiting the building that was going on in the Town. Since that time, the Town Council and the Planning & Zoning Commission had decided to hear from the citizens, and the input from the citizens was what was wanted. He noted that he had no preconceived notions, and that he had listened to people; the process was to have the community meetings, then consideration by the Planning & Zoning Commission, then consideration by the Town Council.

President Brooks noted that he had not received an invitation to the north end homeowners meeting. He stated that he had attended the Town community meetings, and that he agreed with President Pro Tem Goldblum and Councilman Kleid that the process must be completed, and that he did not have a preconceived idea. He thanked Mr. Caywell for sharing his insights.

President Brooks acknowledged the presence of John Schuler, Nancy Murray, Alan Golboro, Elizabeth Murphy, and Harrison Robinson of the Planning & Zoning Commission.

Mr. Bill Guttman, 216 West Indies Drive, pointed out that the Town Council would address the Town of Palm Beach 2005-2006 Zoning Proposal Staff Report, which did not deal with the neighborhood index per se, nor with the two workshops that were upcoming related to the concept of possibly sub-dividing the R-B District. He noted that the alternative development standards that he would discuss today had absolutely nothing to do with CCR index, or any effort to down-zone the R-B District in any way.

Mr. Guttman distributed a copy of his remarks to the members of the Town Council. Mr. Guttman noted that he had addressed the Planning & Zoning Commission at their meeting of November 28, 2005, regarding the proposed "alternative development standards" included in the Town of Palm Beach Zoning Proposal Staff Report for the 2005-2006 zoning season. He pointed out that his remarks were included in the minutes of that meeting, and that the Town Council had a copy of those minutes, as well as a copy of the letter dated January 9, 2006, from Town Attorney Randolph to Planning & Zoning Commission Chairman Harrison Robertson.

Mr. Guttman stated that this morning he would address fundamental policy questions regarding the proposed "alternative development standards," as well as the advantages and

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disadvantages of replacing the unnecessary and undue hardship test, that now applies in variances cases, with the practical difficulty standard. The practical difficulty standard differed from the undue hardship test, because no single factor controls the determination of practical difficulties. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered practical difficulties in the use of his property could include the seven non-hardship criteria presently listed in Section 201 of the Town Code, as well as whether the essential character of the neighborhood would be substantially altered, plus the additional factors listed in Attorney Randolph's letter on page four.

Attorney Randolph's letter raised three major concerns about the practical difficulties standard. First, that an applicant would have an easier time proving that he was entitled to a variance. Next, that if a variance request was denied, it would be more difficult for the Town to prevail in an appeal by a landowner from the decision. Finally, if the Town wanted to revert to the undue hardship test, the Bert Harris Act might be triggered, because though the practical difficulties standard is more flexible than the undue hardship test, it is also less stringent than that test.

Mr. Guttman remarked that these were important concerns, but he wondered if they were insurmountable hurdles. For example, if the practical difficulties standard was substituted for the undue hardship test, a Sunset Provision could be included that would automatically repeal the new standard on a specific date after a trial period, unless it was reenacted.

Although it was true that landowners almost always lose when they challenge the denial of variances under the undue hardship test in court, the opposite is also true. Objecting neighbors almost always win when they appeal the granting of variances. Yet, the Siemon & Larsen Report commissioned by the Palm Beach Civic Association demonstrates that an inordinate number of variances were granted, but that few objecting neighbors appeal those decisions.

Parenthetically, the Siemon & Larsen Report concluded that many of the presentations made by property owners during the seven-year empirical survey period covered by the Report failed to demonstrate the degree of hardship that is required by controlling case law. The Report also observed that while the use of variances to provide flexibility in an otherwise inflexible code may appear in the short run to be the "path of last resistance," it may undermine the very purpose of the zoning code – planned, orderly development in keeping with community character – may markedly politicize the variance process, and may lead to disrespect for controlling case law.

Town Attorney Randolph properly noted that landowners who appealed from the denial of a variance request governed by the practical difficulties standard would no longer be subject to a significant litigation disadvantage. The court would decide each case based on whether competent substantial evidence supports the decision of the Town Council. On the other hand, if there was

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competent substantial evidence in the record that supports both the granting and the denial of the variance, the decision would generally withstand judicial review.

Town Attorney Randolph properly cautioned that an applicant would have an easier time proving that he was entitled to a variance under a practical difficulties standard. But as the Siemon & Larsen Report demonstrated, variances are often granted now without proof of an undue hardship, and objecting neighbors almost certainly would prevail if they appealed the granting of the variance.

At the November 28, 2005, meeting of the Planning & Zoning Commission, Mr. Guttman noted that he had expressed considerable concern that the proposed alternative development standards did not go far enough because they did not sufficiently address the areas of the zoning code under enormous pressure, as revealed by the unusually large number and pattern of variances granted during the seven-year Siemon & Larsen survey period, which suggests that the Town Council thinks the zoning code is too restrictive.

Careful reading of the minutes of the November 28, 2005, meeting of the Planning & Zoning Commission will find that there is a clash of perspectives. Speaking generally, zoning commissioners thought the proposed alternative development standards were too liberal and would encourage redevelopment to the maximum allowed under the proposed standards. But those standards were supposed to track the areas of the zoning code under the most pressure and provide flexibility in areas where variances are now routinely granted. He suggested that the Planning & Zoning Commission needed guidance from the Town Council as to whether it wants them to consider flexible standards in the areas where the Siemon & Larsen Report found patterns of excessive granting of variances. Zoning commissioners also expressed concern that flexible standards might encourage overbuilding, even though recent statistics indicate that the pace of redevelopment is much slower in the north end than many originally thought.

Nevertheless, alternative development standards should discourage tear-downs by relaxing restrictions when existing homeowners want to expand or remodel their homes. Everyone knew that most of these homes did not conform to zoning requirements now in place. Why not, for example, let an existing homeowner enlarge a bedroom or add another room along an existing nonconforming side yard setback? But should flexible side and rear yard setback rules apply to vacant parcels of land or to new homes built on lots where an existing home had been torn down? The Planning & Zoning Commission would benefit from guidance regarding those questions.

In addition, some think that the proposed alternative development standards were too complicated, but they should not be surprised about that because (1) the zoning code itself is very complex, and (2) the flexible standards were meant to remain faithful to the underlying purposes of those provisions of the code under pressure, as revealed by the pattern of variances granted.

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The proposed flexible standards would require builders of two-story homes adjacent to one-story homes to respect their neighbors' privacy. This would mean, for example, requiring landscaping that would add privacy and substantially screen and mitigate the appearance of the mass of new buildings when viewed from neighboring properties, aligning windows and balconies to avoid or minimize their impact on the privacy of existing buildings, and massing the second story of new two-story houses in a way that diminishes the visual impact of the mass when viewed from neighboring properties. When lots are combined, perhaps deeper front yard setbacks should be mandated to diminish the appearance of bulk from the street scape. Writing rules that accomplish these goals is a complicated task.

Mr. Guttman concluded with the statement that he believed the Planning & Zoning Commission needed guidance from the Town Council as to whether the Commission should revise the proposed alternative development standards, in conjunction with Siemon & Larsen because the present version of the standards, is too restrictive or too liberal; or, instead, pursue a recommendation on a practical difficulties standards. He stated that, personally, he preferred the alternative development standards approach.

President Brooks acknowledged an oversight when he had recognized the members of the Planning & Zoning Commission in that Susan Markin, a member of the Commission, was also present.

Mr. Sam Boykin, 285 Jamaica Lane, commented that the intention had not been to overlook any of the Town Council members at the homeowner meeting, and for any future meeting he extended, formally, an invitation for the Town Council to attend any of the meetings. He apologized for the oversight. He noted that the explosion of emotion at the meeting had been a build up of emotion. There had been ample opportunity for everyone to speak. He stated that they did not want property divided up into small blocks, and everyone at the meeting knew that there was the right of freedom of speech. He remarked that they would not want to go into the next two community meetings without an idea of what they were going to be about, whether they were going to be recorded, and the qualifications of the people taking the recordings.

Director of Planning, Zoning & Building Veronica Close explained that the upcoming two community meetings would be of the same format that the Strategic Planning Board had used – that was, round table discussions with a facilitator at each table who would be marking down comments in full view of all participants. There were some suggesting questions, just to provide some opportunity for discussion.

Councilman Kleid commented that Mr. Guttman's presentation was very well thought out, and that he was in agreement with a large part of it.

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Ms. Close advised that there would not be specific discussion of practical difficulties because the Planning & Zoning Commission had not had an opportunity to review that as a group, and staff had not made any recommendations in that regard.

Mayor McDonald referred to Mr. Guttman's statement that objecting neighbors almost always won when appealing the granting of variances, and asked the basis for that conclusion.

Mr. Guttman replied that Bernard vs. the Town of Palm Beach set out a standard, and that Town Attorney Randolph should probably respond to the question. He explained that the test was such a high hurdle test that both Charlie Siemon, as well as Town Attorney Randolph, on several occasions, had pointed out that it was virtually impossible, except in the very unusual situation, for a landowner to successfully prove that he could make no reasonable use at all of his property without getting the type of relief that the landowner was seeking through a variance request. As he understood it, that test would amount to almost a finding that if the variance was not granted it would be an unconstitutional taking of the landowner's property, and that was a very difficult test to meet. If a neighbor who objected to the granting of a variance to a landowner in fact filed a writ of certiorari and went to court, the odds were very high that he would win.

Town Attorney Randolph advised that during the last five years there may have been two or three appeals perhaps; there was one under appeal right now. He did not believe that there were a great deal of examples to show that the Town Council was more prevalent either with landowners or with neighbors. He stated that he believed that Mr. Guttman was pointing out a general law, as it related to the high standards that were imposed making it very difficult for the granting to be sustained, however, he also pointed out in the Bernard case that the Town did lose, which came up with the standard that a Town Council should not grant a variance unless it could be shown that there was no other reasonable use for the property without the granting of a variance. That standard was a very difficult standard to overcome.

Mayor McDonald commented that when the Town Council grants a variance, the nature of the hardship is often not stated and included in the motion for approval of a variance.

Mr. Guttman stated that the Siemon & Larsen Report looked at seven years of variance cases that were not appealed by a neighbor, they concluded that if a neighbor had appealed, the Town would have lost.

Mayor McDonald expressed concern that if the standards were changed, there would be a weaker position to prevail under the Bert Harris Property Act.

Mr. Guttman replied that there seemed to be a fairly substantial push for a reduction in the

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number of variances granted, and unless alternative development standards were embraced, and if the practical difficulties test was rejected, he predicted that there would be a lot of neighbors filing appeals when variances were granted.

Councilman Coleman commented that most of the variances being granted were on existing homes, trying to preserve them. He suggested that perhaps new construction was not more of an Architectural Commission question of aesthetics, as opposed to variances and trying to split old, pre-existing homes. He stated that he was intrigued by the possibility of split standards – practical difficulties for existing homes, and undue hardship for new construction.

Mr. Guttman replied that his remarks had implied that going the alternative development standards route may result in a distinguishing between more flexible alternative standards for existing homes than for a vacant lot, for example. He stated that he thought that the standards should be different, depending on whether or not relief was being requested in the case of an existing home, than it should be in the case of a vacant lot or a tear-down; everything possible should be done to preserve the character of the community, but also allow for expansion and some redevelopment within the existing envelope. The distinction could equally be applied to an approach that the undue hardship can place, and instead try to differentiate between existing homes and the new home issue through alternative development standards.

Councilman Kleid stated that it was not crucial whether or not a neighbor would bring a legal action; what was crucial was that, as a Town Council member, he was put in a very uncomfortable position, as he saw many variances coming before the Town Council, which seemed to him somewhat justifiable - improvement of the property, neighbors were not complaining, etc. Therefore, he was inclined to try to vote for them, however, he could not vote for something which was clearly against the law because it did not meet the strict hardship test. He stated that he felt very uncomfortable with the undue hardship rule, when many of the Council members are voting for it, and he understood why they were voting for it, because it was not a bad thing.

Mayor McDonald questioned whether the effect of switching the standards from the hardship to the practical difficulties would result in the same number of changes that were now being granted as variances.

Mr. Guttman agreed with that.

In response to President Pro Tem Goldblum, Town Attorney Randolph replied that there were ways to deal with vacant lots and existing homes differently; he had suggested in his memo that as opposed to using the practical difficulties test, and creating some ambiguity between the two, that the alternative development standard that relate, for instance, to nonconforming structures on

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existing lots. A system of alternative development standards could be devised simply relating to that, if that was the type of thing that was desired to be encouraged, and if it was desired to discourage vacant lots from not meeting the standards. He had also suggested in his memo that perhaps with landmarked structures there may be some alternative development standards, because that might be the type of thing that would be desired to be encouraged.

President Pro Tem Goldblum remarked that the history indicated there was not over-development, and homeowners were being allowed to develop existing homes, and growth was approximately 1.25% per year.

Harrison Robertson, Chairman of the Planning & Zoning Commission, commented that the Zoning Commission had four different subjects, and reported the position of the Zoning Commission:

1. Neighborhood CCR:

The problem of the mega-mansion has been one that the Town has considered for years. There was a CCR since approximately 1997, however, it had been concluded that the CCR was not working to inhibit the construction of mega-mansions. After considerable discussion and debate, and after looking at the maximization study on Jamaica Lane and Ridgeview, the neighborhood CCR had developed, which was an attempt to deal with the compatibility of neighboring structures, but to allow for some increase in the size of what would be built in place of what was there now, and that was the 10% factor with the adjustment of the neighborhood CCR. That was an attempt to deal with the apparent wishes of new property owners to have bigger houses, but to modify the amount of building that could be accomplished by that new owner. The Planning & Zoning Commission would revisit the issue at its February meeting, with staff expected to present their recommendations at that meeting. He pointed out that the Planning & Zoning Commission acted in an advisory capacity.

In response to Councilman Coleman, Mr. Robertson replied that new construction was a concern to him; the mega-mansions upset him, and the neighbors whose privacy had been invaded with the structures that were totally incompatible with the rest of the street.

2. Variances:

Mr. Robertson stated that the law granting variances could not continue to be violated; the Town Council had tried to obtain a practical result in granting variances, finding that a proposed variance was not incompatible with the area. While so much of the building in

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Town was nonconforming, there was an obvious problem with the law as it stands, and it was a hardship to have to build within the strict requirements of the current law. He stated that the law needed to be changed, and the undue hardship test replaced with the practical difficulties test. He did not agree with the alternative development standards, which he considered would add more complexity to the law.

In response to Councilman Coleman, Mr. Robertson replied that he would consider keeping the variance standard of hardship on brand new construction. He explained that if it was existing construction, it should not be torn down and replaced with a larger place if a modification could be accomplished that would enlarge it, but also be sensible and compatible.

3. Alternative Development Standards:

Mr. Robertson stated that he rejected these standards because he believed it would further complicate the code. He noted that these standards were proposed to be adopted for the Architectural Review Commission and Landmark Preservation Commission, not for the Planning & Zoning Commission. He stated that the practical difficulties test would satisfy the problem with the variance provisions.

4. R-B Zoning District:

Mr. Robertson noted that there were two community meetings coming up, where public input would be gathered, and at this point, the Planning & Zoning Commission had an open mind as to what should be done.

President Pro Tem Goldblum commented that new families now needed more space, and asked how that could be accommodated with the zoning laws in place.

Mr. Robertson replied that they could substitute the practical difficulties test for the undue hardship test. The Town Council could not go on granting variances that were in violation of the law.

President Pro Tem Goldblum noted that the large majority of the variances granted were better for the Town of Palm Beach, and made a better life for the citizens of the Town.

Mr. Robertson replied that the Town Council had really applied the practical difficulties test. He stated that he thought that was probably the right action to take, except that the undue hardship

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test was not satisfied.

Mr. Guttman commented that it was important to focus on the fact that there were many situations which were not new home versus existing home situations, where a test would be needed. There were also many situations in the R-B District where, because of the slope of the land, where there were topographic factors that would need to be handled in some way, either by applying one of the alternative variance tests, or by building it into the code as an alternative development standard.

Zoning Administrator Paul Castro explained that there had been a Special Town Council Meeting scheduled for tomorrow (Friday) but only if it was necessary to carry over this meeting.

VI. 2005-2006 ZONING SEASON STAFF REPORT AND THE TOWN PLANNING AND ZONING COMMISSION'S RECORD AND REPORT

President Brooks commented that there had been some very stimulating discussion today, and that Councilman Kleid had correctly pointed out the hardship problem. Additionally, approximately 90% of the lots in Town were not in conformance with the existing code; that impacted the number of variances that the Town Council must face. The alternative development standards or the practical difficulties standards may help that situation.

Zoning Administrator Paul Castro reported that the first two study items on the Report had been discussed at length today, proposed alternative development standards to be administered by the Architectural Commission and by the Landmark Commission were deferred by the Planning & Zoning Commission at their November 28, 2005 meeting. The reason for the deferral to the February 16, 2006 Planning & Zoning Commission meeting was to give them the opportunity to hear the residents in the upcoming public workshops. He explained that the first two workshops had been held to discuss the neighborhood CCR index; the next two upcoming meetings would discuss the overall R-B Zoning District. He explained that having such a large district, the Planning & Zoning Commission would consider staff recommendations which were being prepared for the February 16, 2006 meeting. After consideration, the Planning & Zoning Commission would provide the Town Council with their recommendations.

Zoning Administration Castro recommended deferral of consideration of the 2005-2006 Zoning Season Staff Report and the Town Planning and Zoning Commission's Record and Report to a later date. He noted that a future Town Council workshop date would need to be scheduled.

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President Pro Tem Goldblum moved approval of deferral of consideration of the 2005-2006 Zoning Season Staff Report and the Town Planning and Zoning Commission's Record and Report to a later date. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

President Brooks suggested that Mr. Castro schedule the dates for the upcoming meeting, and notify the Mayor and Town Council of the most acceptable date.

Councilman Kleid suggested holding the meetings earlier, rather than later, so that the meetings are held during the season when residents were present to hear the discussion.

President Pro Tem Goldblum suggested that the Planning & Zoning Commission consider monthly meetings.

Study Item 3: Proposed regulations for basements and sub-basements to allow their footprint outside the footprint of the building above:

Zoning Administrator Castro moved to the next item on the report, Study Item 3., which was Proposed Regulations for Basements and Sub-Basements. He explained that the proposal was to allow basements and sub-basements throughout all districts to be outside the confines of the building above. Right now, in the zoning code, basements and sub-basements must be directly below the building above. The current proposal would allow for a basement or sub-basement to be outside of the confines of the building above, provided that it would count in lot coverage; the surface above it would not count in landscape open space, and it would have to be the minimum setbacks required for the zoning district in which it was located. It would have to also be entirely hidden from view from all sides, so that from the outside appearance, the basement or sub-basement would not be seen on the property. With these provisions, staff believed that some flexibility would be provided for owners to build these types of facilities on their property, and still keep the open space requirements that are in the code.

President Brooks noted that the Planning & Zoning Commission had approved the recommendations of staff.

Councilman Kleid moved acceptance of the recommendations made by the Planning & Zoning Commission to approve the recommendations of staff, for Study Item 3. [Proposed regulations for basements and sub-basements to allow their footprint outside the footprint of the building above] as listed on pages 39-41 of the Zoning Proposal Staff Report 2005-2006. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried unanimously.

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Study Item 4. - Proposed Lake Trail regulations for a scenic vista and wall height:

Councilman Wyett moved acceptance of the recommendations made by the Planning & Zoning Commission to approve the recommendations of staff, concerning the wall on the east side of Lake Trail being maintained at four feet, for Study Item 4. [Proposed Lake Trail regulations for a scenic vista and wall height as listed on page 42- 43 of the Zoning Proposal Staff Report 2005-2006]. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

Zoning Administrator Paul Castro addressed the second portion of Study Item 4. - the Lake vista; the proposal of staff would create a Lake vista across the entire width of the property on the west side of Lake Trail, to ensure that if there was planting, it was separated in such a way that it would still maintain a vista. He explained that currently, someone could effectively screen their entire piece of property, which was a strip of land between the Trail and the Lake, with landscape material, so it would then not be visible for those using the Trail. The recommendation of staff was to create a provision that would create the open vista as proposed in the Zoning Proposal Staff Report 2005-2006, page 43. He noted that the Planning & Zoning Commission had recommended approval of the staff recommendation.

Mr. Castro explained that staff was being proactive – even though the situation may not be prevalent now, there was now the ability for a resident to basically screen, or privatize, that portion of the strip of land between the Lake and Lake Trail with hedge material, and staff was trying to prevent that from occurring, and maintaining the vista over time, and not giving the residents the opportunity to close off that view for the public.

President Pro Tem Goldblum requested that, because of flooding on the Lake Trail in some instances, seawalls along the Lake Trail be reviewed and studied by staff, with staff coming back to the Town Council with a recommendation.

Councilman Wyett commented that the flooding on Lake Trail occurs because of the high tide, and winds whipping strongly.

Councilman Kleid moved approval of that portion of Study item 4., with respect to the land west of the Lake Trail. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

Mr. Guttman commented that discussion had taken place regarding the wall height of four feet on the east side of Lake Trail, and the possibility that it may send a message that variances could not be applied for. He read a statement from the Siemon & Larsen Report: "In the context of the

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Town of Palm Beach, it was difficult to imagine perimeter wall, fence and gate regulations that create legal hardship, that was, to make it virtually impossible to use the land for the purpose for which it was zoned. While such walls, fences and gates would be very desirable for the Town's residential uses, it was not virtually impossible to build and use a home if it does not have walls, fences and gates." He suggested that meant that, if the undue hardship rule was retained, there would be some problematic aspects to it.

President Brooks advised that it was not necessary that the beach renourishment project concerns were addressed during today's meeting; Town Manager Elwell would contact each Council member individually by the end of the day for an update on the status of the mobilization portion of the project, and the concerns as expressed earlier today by Mr. Cloutier.

Study Item 5: Housekeeping item on proposed change of construction time limits for renovation and reconstruction of nonconforming buildings or structures:

President Brooks noted that the Planning & Zoning Commission had approved the recommendations made by staff, on pages 44-45 of the Zoning Proposal Staff Report 2005-2006, for modifications to Chapter 134 of the Town Zoning Code.

Councilman Wyett noted that with the hurricanes, there was an extreme shortage of labor, and the time limit was rather tight.

President Brooks noted that time extensions were given in those instances.

Councilman Kleid moved acceptance of the recommendation of the Planning & Zoning Commission to approve the recommendations made by staff on pages 44-45 in regard to Study Item 5 [Housekeeping item on proposed change of construction time limits for renovation and reconstruction of nonconforming buildings or structures]. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

Study Item 6: Housekeeping item concerning lighting:

President Brooks advised that the Planning & Zoning Commission had approved the recommendations made by staff, on page 46 of the Zoning Proposal Staff Report 2005-2006, for a section regarding outdoor lighting equipment, to be added to Chapter 134 of the Town Zoning Code.

President Pro Tem Goldblum moved acceptance of the recommendations of the

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Planning & Zoning Commission to approve the recommendations made by staff, on page 46 of the Zoning Proposal Staff Report 2005-2006, for a section regarding outdoor lighting equipment, to be added to Chapter 134 of the Town Zoning Code. The motion was seconded by Councilman Kleid. On roll call, the motion carried 4/0, with President Pro Tem Goldblum, Councilman Kleid, Councilman Coleman, and President Brooks casting affirmative votes; Councilman Wyett had left the meeting at 11:20 a.m.

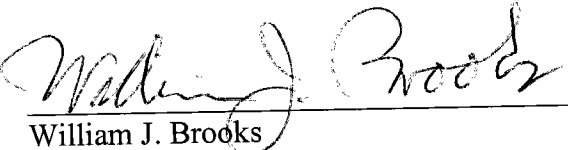
VII. OTHER ITEMS

In response to President Brooks, Director of Planning, Zoning & Building Veronica Close, replied that the mistake had been resolved regarding the absences, as noted in the minutes of the Planning & Zoning Commission minutes of the November 28, 2005, meeting.

President Pro Tem Goldblum moved approval of the corrections made in the November 28, 2005 meeting. minutes of the Planning & Zoning Commission. The motion was seconded by Councilman Kleid. On roll call, the motion carried 4/0, with President Pro Tem Goldblum, Councilman Kleid, Councilman Coleman, and President Brooks casting affirmative vote; Councilman Wyett had left the meeting at 11:20 a.m.

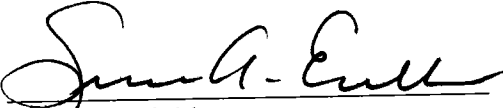
VIII. ADJOURNMENT

There being no further business, the Special Town Council Meeting 2005-2006 Zoning Hearing was adjourned at 11:30 a.m.



William J. Brooks
President

ATTEST:



Susan A. Eichhorn
Town Clerk