TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON JANUARY 10, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting of January 10, 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 G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Andrew Cox - Assistant Fire Chief
William Crouse - Human Resources Director
Jane Day - Historical Preservation Consultant

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Joanna Golino, Planning and Zoning Commission, From February 2001 Through September 2005.

Mayor McDonald presented a plaque to Joanna Golino for four years of service on the Planning and Zoning Commission.

B. Recognition of Dennis W. Wytrykush, Lifeguard, for 20 Years of Town Service.

Mayor McDonald presented a plaque to Dennis W. Wytrykush in recognition of 20 years of service to the Town.

C. Recognition of Scott Lewis as the Governor's Point of Light Award Recipient.

Mayor McDonald presented a Governor's Point of Light Award certificate to Scott Lewis for his service during hurricane related events.

IV. COMMENTS OF MAYOR JACK McDONALD - None

Town Manager Peter Elwell welcomed the new Recreation Director Jay Boodheshwar.

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED to February 14, 2006, Town Council meeting, Item VIII. B. 5., Update Regarding Kapok Trees at the East Approach to the Royal Park Bridge.

Motion made by Councilman Wyett, seconded by Councilman Kleid to defer Item VIII. B. 5., Update Regarding Kapok Trees to February 14, 2006, Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED to February 14, 2006, Town Council meeting, Item XI. C. 1. b., Modified Special Exception #20-2005 with Site Plan Review and Variance.

Motion made by Councilman Wyett, seconded by Councilman Coleman to defer Item XI. C. 1. b., Modified Special Exception #20-2005 with Site Plan Review and Variance to February 14, 2006, Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED to February 14, 2006, Town Council meeting, Item XI. C. 4. b., Commerce Bank Special Exception #21-2005.

Motion made by Councilman Wyett, seconded by Councilman Kleid to defer Item XI. C. 4. b., Commerce Bank Special Exception #21-2005 to February 14, 2006, Town Council meeting. On roll call, the motion carried unanimously.

ADDED Item VIII. B. 6. to discuss the proposal to declare opposition to the proposed Town Charter Amendment to eliminate the Town Manager's authority to hire and fire the Town's Department Directors, urging the citizens to vote against the amendment in the referendum on February 7, 2006.

Motion made by Councilman Coleman, seconded by President Pro Tem Goldblum to add Item VIII. B. 6. - discussion of the proposal to declare opposition to the proposed Town Charter Amendment to eliminate the Town Manager's authority to hire and fire the Town's Department Directors, and urging the citizens to vote against this amendment in the referendum on February 7, 2006. On roll call, the motion carried unanimously.

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

There were none.

VII. CONSENT AGENDA

A. MINUTES: NOVEMBER 30, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES

B. MINUTES: DECEMBER 13, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON DECEMBER 16, 2005, (except item B78-05).

D. RESOLUTIONS

1. RESOLUTION NO. 1-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Breakers Hotel Roof Tile Replacement and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Veronica B. Close, Director of Planning, Zoning, and Building]

2. RESOLUTION NO. 2-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Breakers Hotel: Fire Sprinklerization and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Veronica B. Close, Director of Planning, Zoning, and Building]

3. RESOLUTION NO. 3-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for 5 Middle Road and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Veronica B. Close, Director of Planning, Zoning, and Building]

4. RESOLUTION NO. 4-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for 181 Clarendon Avenue and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Veronica B. Close, Director of Planning, Zoning, and Building]

5. RESOLUTION NO. 6-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Venue Agreement Between Beacon Wi-Fi Technologies and the Town of Palm Beach Town Docks and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

E. OTHER

1. Authorization to Form a Selection Committee Under the Consultants' Competitive Negotiation Act for Architectural Services.
[H. Paul Brazil, Director of Public Works]

2. Approval of Revised Construction Schedule for Storm Water Pump Stations.
[H. Paul Brazil, Director of Public Works]

3. Appropriation of Funding for Drainage Plan Permitting at the Okeechobee Boulevard Yard Trash Disposal Site.
[H. Paul Brazil, Director of Public Works]

4. Appropriation of Funding for New Fuel Line at the Lake Worth Inlet Sand Transfer Plant.
[H. Paul Brazil, Director of Public Works]

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

VIII. REGULAR AGENDA

A. Old Business

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

a. Legislative Update

Deputy Town Manager Bradford discussed the following items regarding the legislative update:

- The proposed legislation approved by the Town Council was mailed to all parties identified by the Mayor and Town Council as instructed.
- Resolutions had been adopted in support of the legislation by some of the communities for the underground conversion.
- Attorney Robert Wright was working with Joe McCann in Tallahassee for acquiring sponsorship of the legislation. Senator Atwater agreed to be a sponsor.
- Mayor McDonald scheduled a meeting with the editorial staff at the Palm Beach Post, and to make introductory remarks at the Palm Beach County Legislative Delegation meeting on January 30, 2006.
- Mayor McDonald planned to attend several of the Public Hearing committee meetings.

b. Communications with Florida Power and Light (FP&L) Regarding Cost Estimates.

Mr. Bradford related that several of FP&L's recommendations for obtaining cost estimates were:

- Implementation of the project in phases, because of its magnitude;
- Identification of the easements with FP&L; and

- Allowance of 10 to 15 weeks for the preparation of the binding estimate by FP&L.

Mr. Bradford provided an overview of the differences between staff estimates for electrical conversion costs and FP&L ballpark estimates.

Town Council members and Rod Macon of FP & L, discussed several of the following issues:

- The inclusion of the payments by the taxpayers that participated in individual underground conversion project in the definition of the Recovery of Cost in the legislation;
- FP&L would consider rear-easement possibilities on a case by case basis, but that their preference was front easements;
- In order for FP&L to produce a binding cost estimate, easements for the entire Town would have to be provided before the engineers designed the system;
- Each phase may have to go to a referendum, and the voters may not be in favor of doing one area over another;
- Implementing two phases simultaneously, for example, placing underground wiring south of Sloan's Curve and working on another phase on the north end of Town;
- Costs could be added as the improvements were being done, which would be preferable over floating a bond for 20 or 30 years without knowing the total cost; and
- A pay-as-you-go basis, or a long-term bond issue, spreading the cost over a long period of time.

Town Manager Elwell noted that staff would proceed with developing and prioritizing the phases of the project with FP&L, address the easement issue, and acquire binding estimates on the early phases of the project for the February 14, 2006, Town Council meeting.

Public Comment:

Lloyd Ecclestone commented that he had previous experience in the implementation of undergrounding utilities and that the Council would need to know the total conversion costs, implementing it in phases. He noted that a bond issue approval could be done in sections, maintaining the unity of the Town to proceed forward. He expressed concern that a future Town

Council would halt the conversion process of placing underground utilities.

Mr. Macon responded to Samuel McClendon that maintenance cost on a life-cycle basis on an underground or overhead system were not factored in the equation of the project cost. A new underground system had maintenance advantages only for the first year, but on a life-cycle basis, there was no clear evidence that the maintenance of an underground system cost less than an overhead system. He continued that FP&L preferred front easements, because over time, facilities placed in areas that become inaccessible, were difficult to maintain; FP&L, however, would utilize rear easements whenever possible.

Alec Flamm, 2000 S. Ocean Boulevard, commented that a cost estimate had two objectives: the cost of engineering and installation, and the development of numbers that would relate the magnitude and timing of the project for the public. He suggested the following: develop the first two phases, acquire binding estimates, get a better than ballpark estimate for the entire project, and then expeditiously move forward with the first two phases.

Councilman Wyett recommended that either a special committee of citizens be created to develop the phases or that it be assigned to the Public Works Department, in order to move forward in a more expeditious manner.

Mr. Macon answered questions from the Council members.

President Brooks requested that staff work with FP&L to develop a set of phases for the undergrounding project, focus on the easement issue, including Councilman Wyett's suggestion of establishing a committee comprising of citizens such as: Mr. Flamm, Mr. Ecclestone, and the Civic Association, and present a solution to the Mayor and Town Council at the February 14, 2006, Town Council meeting.

c. Proposed Lake Towers/Dunbar Road Underground Utilities Special Non-ad Valorem Assessment Project.

Deputy Town Manager Bradford provided a review of the proposed financing and timing of the Special Non-Ad Valorem Assessment project for the conversion of aerial utility lines in the 300 block of Atlantic Avenue and the 300 block of Dunbar Road, as stated in the memorandum dated January 5, 2006.

i. Review of Proposed Project Schedule

Mr. Bradford noted that if the project was approved, the construction would be completed on or about July 1, 2006, and the 15-year assessment would appear on the property tax bill for the first time on November 1, 2006.

ii. Review of Cost Estimates and Estimated Annual Assessment

Mr. Bradford indicated that the total cost of the project was estimated at $185,710, with an estimated annual assessment of $248.56, for 72 affected properties. Staff proposed that the line of credit for $2 million would provide the Town with funds for the project and possible future projects. Mr. Bradford noted that all the costs would be borne by persons utilizing the line of credit. He stated that this was the mechanism for the Town to have the money up front, without reducing its own resources in order to accommodate a requested special assessment.

iii. Town Council Authorization to Proceed

Councilman Coleman commented that the Town would cooperate with the residents, but that they should fund their project. He added that otherwise it could be an open-ended commitment for other groups of citizens to request the Town to extend its line of credit until it was depleted.

Councilman Wyett indicated that Town funds and staff's time should not be used for private projects.

Responding to Mr. Elwell's question as to the extent of involvement by staff, Councilman Coleman replied that the Town's position was to cooperate with the citizens' initiatives, by acting as a liaison for the Town, in order to be kept current and in concert with the project.

President Pro Tem Goldblum noted that the action should be included in the Town's undergrounding project, and that the citizens should not go forward with private, individual projects, because it might distract from the Town-wide project.

Mayor McDonald and Councilman Kleid indicated that they agreed that it was important for the Town to be supportive of the citizens and for staff to be in contact with the citizens' consultants on the project.

Public Comment:

Bill Dansey, 250 Bradley Place, speaking on behalf of the Lake Towers Condominium Association, indicated that a similar financing plan was available through the state legislature, in which the cost of the project could be spread over 20 years on the residents utility bill. He requested the Town's cooperation allowing for financing through the state legislation.

Responding to Mayor McDonald, Mr. Bradford explained that the 20-year payment on the utility bill would be to pay the municipality and not FP&L.

Mr. Elwell indicated that the citizens would need to borrow the money independently, or draw on their own resources to make a donation to the Town, to pay for the project. He stated that the Town needed to be in a coordinating role, not a cooperating role on the project, because the nature of the work was intrusive construction activity and it would be integrated later into a Town-wide project.

President Pro Tem Goldblum expressed concern that the Lake Towers residents would have to pay twice, the second time at the commencement of the Town-wide project.

Councilman Coleman replied that the residents had made the cost/benefit decision in order to be the first to have underground utilities.

Mr. Elwell interjected that at the October 11, 2005, Town Council meeting, it was said that the Town would accelerate certain areas, as small projects to move ahead of the line, because the citizens were willing to pay for their piece now, and for their share of the Town-wide cost later.

Mr. Dansey commented that the residents would need the Town's assistance in obtaining and/or condemning easements per the state legislature.

President Brooks indicated that the Town Council members should thank the citizens, and tell them that they were unable to help them at this time.

Councilman Wyett noted that it would be more beneficial for the citizens to make a one-time payment rather than finance the cost.

Motion made by Councilman Wyett, seconded by Councilman Coleman to defer the item to allow the petitioner to review the project and implement it without the Town's help, and to return to the Town Council if assistance was needed.

President Pro Tem Goldblum stated that the citizens should be notified that they would not be reimbursement for the charges incurred on the project, and that payment was expected at the time the Town-wide project was implemented.

Mayor McDonald stated that if the citizens were willing to pay for the project, the Town needed to cooperate as much as possible, even if it required hiring an additional staff person.

President Brooks conveyed that by participating in the project the Town would be competing with itself.

Mr. Elwell clarified that staff's direction was to cease working on the project, allowing the private interest to work on it as they wished.

Councilman Coleman suggested that the citizens pay a filing fee for a building permit to the Planning, Zoning & Building Department (PZB) as a contractor or homeowner would for a project.

Mr. Bradford replied that it was legal to obtain a building permit for the Lake Towers project. The Town had charged a 2% administrative fee, to cover the estimated staff time in overseeing the ads and easement work, and other administrative work.

Upon roll call, the motion carried unanimously.

iv. RESOLUTION NO. 07-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Declaring the Town's Official Intent to Seek Reimbursement for Certain Expenditures Made or to be Made With Respect to the Burying of Certain Utility Cables Within the Town from the Proceeds of Its Not to Exceed $2,000,000 Principal Amount of Bonds and Providing for an Effective Date.

President Brooks stated that no action would be taken on Resolution No. 07-06.

2. Proposed Annual Parking Permit and Fee to be Included in the Annual Tennis Permit and Fee for Both the Phipps Ocean Park and Seaview Tennis Centers. [Peter B. Elwell, Town Manager]

Town Manager Elwell addressed staff's proposed recommendations regarding the cost and payment of parking at Phipps Ocean Park. Mr. Elwell provided an overview of the proposed annual fee structure indicating that a $100 increase was for parking, and for restoring the once-reduced fees to market level.

Councilman Kleid suggested designating a limited number of free parking spaces, in an inconvenient area, for both the tennis facility, and the public beach on a first come, first served basis.

Councilman Coleman pointed out that if parking permits were approved, use restriction should be imposed on the tennis players to prevent utilization of parking for the public beach. In addition, he suggested that time restrictions could be added on the permits.

Councilman Wyett commented that he supported the free designation of a parking area; and, that he was not concerned about the residents misusing the permits, as most of them lived on the beach.

Mr. Elwell noted that there was competition at Seaview Park for the Royal Palm Way parking lot because of the variety of parking needs related to recreation programs, the Public School, and the Day School. He said that imposing parking restrictions at the tennis facility would be beneficial to the Town.

President Pro Tem Goldblum recommended designating certain parking spaces for the tennis players, on a first come, first served basis.

Motion made by Councilman Kleid, seconded by Councilman Wyett that a limited number of first come, first served free parking spaces for the tennis facility and the public beach be designated at Phipps Ocean Park in the northwest corner of the parking area; and not increase the annual permit fee to cover parking.

Councilman Coleman agreed not to increase the permit fee for parking, but expressed concern about increasing the permit fee in order to restore the price to the market level.

Councilman Kleid commented that increasing the permit fee to return it to the market level was a separate issue.

Mr. Elwell clarified that the northwest corner of the parking area was in the south lot, and was used for meetings in the South Fire-Rescue Station. He suggested identifying 15 parking spaces, to accommodate the public meeting, tennis players, and beachgoers needs.

Amended motion made by Councilman Kleid, seconded by Councilman Wyett that 15 first come, first served free parking spaces for the tennis facility and the public beach be designated at Phipps Ocean Park in the northwest corner of the south parking area, and not to increase the annual permit fee to include parking. On roll call, the motion carried unanimously.

3. BellSouth Request for an Easement at Palmo Way Nursery to Locate a New Box to Provide DSL Service to the Northerly 16 Blocks of the Town. [H. Paul Brazil, Director of Public Works] *Deferred from the October 11, 2005, Town Council Meeting*

Public Works Director Brazil reported that Palmo Way Park was identified as an appropriate location for a new equipment cabinet to provide DSL on the north-end of Palm Beach to serve a 12-block area. The existing easement needed to be expanded to accommodate the cabinet. Mr. Brazil noted two agreements with BellSouth Telecommunications were necessary : an agreement for the expansion of the existing easement and an agreement for developing an ingress-egress easement, allowing for insurance coverage and indemnification for the Town's protection. He requested that the Town Manager be authorized to sign the agreements after Town Attorney Randolph's review.

Motion made by Councilman Wyett, seconded by Councilman Coleman to approve authorization of the Town Manager to execute two agreements, one to expand the existing easement, and the other to allow utilization of a separate ingress-egress easement that necessitated a provision for insurance coverage as well as indemnification for the Town. On roll call, the motion carried unanimously.

B. New Business

1. Proposed Display of America's Cup Yacht at the Society of the Four Arts. [Ervin S. Duggan and Peter Grubb]

The Society of the Four Arts President Ervin S. Duggan requested permission to display "America3" yacht, winner of the 1992 America's Cup race, in conjunction with an exhibition of Mr. Koch's maritime art collection. Mr. Duggan indicated that the yacht would be displayed adjacent to the Intracoastal Waterway, and that an existing sculpture would be moved to make way for the yacht.

Mr. Koch's Special Projects Director Peter Grubbs presented four renditions of the yacht, in order for viewing by the public.

Responding to President Pro Tem Goldblum, Mr. Grubbs indicated that the yacht would be brought over land by a truck, via the Royal Palm Bridge.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum to approve the display of the America3 Cup Yacht at the Society of the Four Arts.

Mr. Elwell stated that staff's recommendation was to hold final approval until staff had met with the applicants in order to address considerations for a safe and successful display of the yacht.

Amended motion made by Councilman Wyett, seconded by President Pro Tem Goldblum to tentatively approve the display of the America3 Cup Yacht at the Society of the Four Arts, until staff submitted a set of conditions of approval at the January 17, 2006, Town Council Zoning Workshop.

Councilman Wyett indicated that the amendment would be subject to Town Manager Elwell and Mr. Duggan reaching a satisfactory agreement, and that there was no need for the Town Manager to return to the Town Council, unless an agreement could not be made.

Mr. Elwell noted that there would be some closures of Lake Trail during installation and demobilization of the yacht, which would need the Council's approval.

Responding to Mayor McDonald, Mr. Duggan noted that the exhibit would run for five weeks, and that there would be a normal amount of visitors, but not crowds.

Upon roll call, the motion carried unanimously.

2. Request for Improvements in the Police Pension Benefits. [Sgt. George Frick]

Police Pension Board Chairman Sergeant George Frick requested direction by the Town Council to provide an ordinance to be submitted at the February 14, 2006, Town Council meeting. He noted that the ordinance would include a multiplier increase to 3.5% for the Police Officers' for all years of service, modify the Cost of Living Adjustment effective on the 13th month following retirement, and would include all officers employed with the agency on October 1, 2005.

President Brooks indicated that he had met with Sgt. Frick and discussed that there was a discrepancy in the state mandated formula between Florida Statute, Chapter 185 and 175, which was beyond the control of the Council.

Councilman Coleman stated that he had met with Sgt. Frick, and discussed the deficiency in the pension fund, and rather than refusing the request, he would table it and move forward over time. He could not support it now, but it did not reflect the fine job by the Police Department.

Councilman Wyett commented that he agreed with what Councilman Coleman had stated.

There was no further action taken by the Town Council at this time.

3. Update Regarding Kapok Trees at the East Approach to the Royal Park Bridge. [H. Paul Brazil, Director of Public Works]

This item was deferred to February 14, 2006.

4. Alternatives for Relocation of the Planning, Zoning, and Building Department to West Palm Beach. [Peter B. Elwell, Town Manager]

Town Manager Elwell requested to pursue The Purchase Option rather than the Construction Option as the preferred alternative for the relocation of the Planning, Zoning, and Building (PZ&B) Department to West Palm Beach, and address it at the February 14, 2006, Town Council meeting.

Mr. Elwell related that the Purchase Option would be a purchase of an existing building on Dixie Highway, south of Southern Boulevard, in West Palm Beach. The options were:

- Purchase or lease a suitable location, with a preference for purchasing; or

- Construct a building on one of the Town-owned vacant properties.

Mr. Elwell continued that the Construction Option would occupy valuable land, with less than the highest and best use, preventing future sale of the property; and it would take more time to construct a building, causing a delay for the PZ&B Department to relocate.

President Pro Tem Goldblum indicated that he opposed the location of the Purchase Option, for several of the following reasons: the PZ&B office should be close to the center of Town; there were traffic problems coming over Southern Boulevard and A1A; most of the action took place north of the center of Town; the time spent by the inspectors traveling from the building on Dixie Highway, several times a day, was not worthwhile; and the Town should utilize the land that it owned.

Councilman Coleman indicated that he liked the facility on Dixie Highway. He noted that the costs of constructing a building on the Town's property, or acquiring and renovating the facility with the Purchase Option were approximately the same. He indicated that he would prefer to spend $4 million and increase the Town's asset base, rather than spend $4 million to encumber Town property by building on it.

Councilman Wyett noted that building on the Town's property on Quadrille Avenue would be considered the most expense public building ever built. The land was currently worth $10 to $15 million and would probably cost $1,000 to $2,000 per square foot to build. He stated that he did not want to purchase the property on Dixie Highway because it was too far away, and the traffic problems were enormous crossing the Southern bridge. He indicated that a building located on Royal Palm Way was available for lease, with two vacant floors, each 10,000 square feet, with available parking. The building was scheduled for review by the Town Council next month for renovation.

President Brooks stated that he was opposed to the purchase of the property on Dixie Highway for several of the reasons enumerated by President Pro Tem Goldblum. He noted that he was not opposed to constructing a building on the property owned by the Town on Quadrille Boulevard, because there was an inordinate amount of time lost through the negotiation with Florida Crystals for their property, and although the Quadrille property would appreciate in value, the Town could construct a building two stories high, and have it engineered for four stories.

Councilman Kleid stated that he was not opposed to the purchase of property on Dixie Highway because it could be less expensive and faster to resolve. He indicated that the quicker the PZ&B Department was relocated, the faster the Town Hall could be remodeled. He pointed out that Mr. Elwell was only requesting time to bring back information to the Town Council, and that it would benefit the Town to acquire as much information as possible.

Planning, Zoning, and Building Director Close responded to Mayor McDonald indicating that there were more inspections on the north side of the Town, and that the contracted inspectors handled the southern side of the island.

Mayor McDonald noted, after receiving responses from staff to his questions, that trips by the inspectors to and from the office were not a determining factor, but that the PZ&B Department's need for relocation in order to have reasonable office space should be accomplished quickly. He indicated that he would side with Councilmen Coleman and Kleid.

President Brooks stated that Councilman Kleid's point for staff to bring back information on the Purchase Option, was reasonable and that a time limit should be imposed on it. He conveyed that after two years of negotiating with Florida Crystal, the Town had nothing. President Brooks noted that the Town could pay for a building with property the Town owned on Okeechobee Boulevard. He concluded that the Dixie Highway property was too far from Town.

Mr. Elwell indicated that he did not want to invest a month's of work, on developing a deal with the Dixie Highway building, if three of the Council members were sure today that they were not in favor of the location.

Mayor McDonald stated that he did not want to be involved in a construction project at this time, because of the cost of materials, and uncertainties.

President Brooks responded that selecting the Dixie Highway location would be similar to a construction project because of the cost involved in the renovation. He indicated that the Town was eligible to receive a $350,000 grant for the rehabilitation of Town Hall, and a decision on the relocation was needed as soon as possible.

Motion made by Councilman Kleid for staff to gather more information about the Purchase Option on Dixie Highway, south of Southern Boulevard, and bring it back to the February 14, 2006, Town Council meeting.

Responding to Councilman Coleman, Mr. Elwell indicated that the Dixie Highway property could be occupied later this year, and building on Quadrille Boulevard could take up to two years.

President Pro Tem Goldblum commented that the Town should not rush a decision that they would have to live with for 20 to 30 years. The PZ&B Department had worked in the Town Hall for many years, and another year would not make or break them.

Councilman Coleman seconded the motion.

Town Attorney Randolph indicated that in order to give proper direction to Mr. Elwell, the motions should be divided.

Upon roll call, the motion failed 2-3 with Councilmen Kleid and Coleman casting affirmative votes, and President Brooks, President Pro-tem Goldblum, and Councilman Wyett casting dissenting votes.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum that staff provide a real estate report showing the availability of buildings north of the North Bridge,at the February 14, 2006 Town Council meeting.

Discussion occurred among the Council members that staff should be provided with a capped dollar amount while searching for a building, in order to keep it in the parameters of what the Town planned to spend.

President Brooks suggested that staff follow Councilmen Coleman and Wyett's suggestion to stay within a capped dollar figure, and present the options of buying, leasing, or building on the Town's property, at the February 14, 2006, Town Council meeting.

Town Manager Elwell clarified that staff direction was to search north of Quadrille Boulevard for approximately 10,000 square feet of space to buy or lease, and report back at the February 14, Town Council meeting.

5. Suggested Rotation of the Office of Town Council President. [William J. Brooks, Town Council President]

President Brooks suggested that at the February 14, 2006, Town Council meeting, the Town Council would vote in the Sunshine Law, and set up a rotation basis for the Office of the Town Council President. He noted that because it was a pro bono position, it would be acceptable if a Council member chose to decline the Office.

Discussion occurred among the Council members, and several of the comments and questions were:

- Would the procedure be for a one-year or two-year term?
- Would the same procedure be followed for the President Pro Tem?
- As a democratic organization, the Council could vote for a President, with no one holding the office as President for more than two years; after the two-year term, the President could skip a year of being President.
- The next Council member in line for President should be based on a senior member who had not previously served.

- Every year should be treated separately, because a senior member may not want to be on the Council for a second year; after which the next senior member would follow.

- What was the rotation of the first senior member that served, does he/she drop to the bottom of the list?

Mayor McDonald commented that not everyone was qualified to be President, and that the Town Council President had the ability to select the best person each year; and after serving 2 years or more, that person would have the ability to say that it was time to rotate the Office of President, but it did not have to be mandated by the rule or the charter.

Councilman Coleman indicated that rotation with more than a year was a good idea.

Councilman Kleid noted that he was in favor of a term limit of 2 years for the Office, and not in favor of a rotation.

Town Attorney Randolph advised that anyone who did not wish to be considered for the Office may provide that information to the Town Manager, who would forward it to the Town Council.

Town Manager Elwell commented that on the morning of the February meeting, he would then have only the names of the people who had an interest in serving.

Councilman Wyett stated that he favored the idea that no one served more than two consecutive years in Office.

6. Proposal declaring opposition to the proposed Town Charter Amendment to eliminate the Town Manager's authority to hire and fire the Town's Department Directors, urging the citizens to vote against the amendment in the referendum on February 7, 2006.

Motion made by Councilman Coleman as follows: "I move that the Town Council through this motion, declares its official opposition to the proposed Charter amendment that would eliminate the Town Manager's authority to hire and fire the Town's department directors. As the Town's governing body and the supervisors of the Town Manager, we believe adoption of this amendment would be detrimental to the best interests of the Town because it would be a step backward to an inferior management structure. Therefore, we urge all Town voters to vote against this amendment in the referendum on February 7th."

The motion was seconded by President Pro-Tem Goldblum.

Public Comment:

Yvelynne Marix, 1570 N. Ocean Boulevard, commented that it was embarrassing and appalling for elected officials to try to influence a vote, by taking this action. She stated that the amendment was good and honest, and would not be a step back.

Councilman Coleman explained that the Council chose not to micro-manage the Town Manager, and that it was appropriate to comment on the referendum item.

Councilman Wyett stated that he opposed the petition, but wanted to defend Ms. Marix's right to have the petition, and that he considered the Council taking a formal position against it, as a direct attack on the right of the people. He indicated that it was the right of the people he wished to defend.

President of the Palm Beach Civic Association Ned Barnes related that the referendum was about the Town Council, and the Council's every day procedures. He stated that speaking with the voters, it was not clear what the issue was about, and that it was critical in this referendum, to let the voters know where the Council stood. The voters were waiting to hear from the Council, so that they would know how to vote.

Councilman Kleid addressed Ms. Marix saying that the citizens had a right to know how their elected officials felt. He noted that this question would be asked by the newspapers and at the Public Forums.

Councilman Wyett stated that he could not vote on this motion because it was against democratic principals, and indicated that he would vote no for the amendment at the ballot box.

Councilman Coleman moved approval. The motion was seconded by President Pro Tem Goldblum. Upon roll call, Councilman Coleman, President Pro Tem Goldblum, Councilman Kleid, and President Brooks cast affirmative votes; Councilman Wyett stated that he could not vote on this issue because it was against democratic principles.

Town Attorney Randolph advised Councilman Wyett that he was not permitted to abstain in regard to a vote, unless there was a conflict of interest.

IX. ORDINANCES

A. Second Reading

1. <u>ORDINANCE 18-05</u> An Ordinance of the Town Council of the Town of

Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 42, Environment, Section 42-198 Relating to Operation of Certain Machinery During Winter, Sundays and Legal Holidays; Section 42-199 Relating to Hours for Construction Work; and Section 42-230 Relating to Lawn Maintenance Equipment Noise; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Director Veronica B. Close advised that incorporated into Ordinance No. 18-05, on second reading, were the two amendments the Town Council voted to include at the December 13, 2005, Town Council Meeting.

* Landscaping businesses would be allowed to operate leaf blowers on the Friday after Thanksgiving, as a normal Friday workday, provided that the new 65 decibels leal blowers were used [65 decibels regulation to be effective as of October 1, 2006];

* Requirement for protective ear gear for workers.

Town Attorney John Randolph read Ordinance No. 18-05 by title, as printed above.

President Pro Tem Goldblum moved adoption of Ordinance No. 18-05 on second reading. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

B. First Reading

1. None

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Kleid: Inquired as to any action on the issue he had raised several months ago, regarding video cameras to monitor traffic congestion throughout the Town, so that there would be a prompt police response. *[Town Manager Elwell will consult with Police Chief Reiter and provide a written report].*

Councilman Wyett: Commented regarding the Charter Amendment, and stated that the present situation did not need to be changed.

XI. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal by Frank Chopin of ARCOM approval of project located at 995 South Ocean Blvd. (B78-05).
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Veronica Close referred to her detailed memorandum to the Mayor and Town Council, dated December 30, 2005, and included in the back-up material. She then discussed the appeal by Attorney Frank Chopin of the Architectural Review Committee (ARCOM) approval of the project located at 995 South Ocean Boulevard, reviewing staff comments, along with a brief history of the project advising that it was first heard by ARCOM at their August 24, 2005 meeting.

- Property located between Ocean Road and the ocean;
- Architect Bridges, Bridges Marsh & Associates, Inc., presented a 770 square foot second story addition, which meets zoning code;
- Existing building has some non-conformities;
- Architecture of proposed addition was to be consistent with the existing Bermuda style structure;
- ARCOM Commissioners Smith, Diver and Rosenberg stated that they were aware of the neighbors' objections to the proposal;
- Letter read, into the record, which stated there was a pending lawsuit regarding a private easement located to the north of the subject property;
- Architect Bridges had recommended that the existing awning windows throughout the house be replaced with impact resistant glazing;
- Representatives for the owner advised that although the structure had existing non-conformities, the addition does fully conform to the zoning code;
- Project was deferred from September for restudy;
- Modified designs were presented at later meetings, which were deferred for continued study (particularly, the relationship between the staircase and the second floor);
- Another modification (landscaping plan) was presented at the November ARCOM meeting, which were objected to by neighboring property owners;
- Move for denial was presented at the November meeting, but a substitute motion carried, which deferred the project to the December meeting.
- At the December ARCOM meeting:

- Architect Marsh presented a new hardscape and landscaping plan, which neighbors continued to object to;
- Testimony given questioning the feasibility of the vegetative screening between the properties;
- Motion for denial of the project defeated by a vote of 5/2, and a subsequent motion for approval was presented and carried 5/2.

Attorney Jackie Miller addressed the Town Council, on behalf of the petitioner Frank Chopin, owner of 977 South Ocean Boulevard, located immediately to the north of the subject property. She commented that the Architectural Review Commission (ARCOM) was to be commended as they do get issues right 99.9% of the time, but one out of one thousand times, they get it wrong. She stated that this issue was one that they got wrong.

In response to President Brooks, Attorney Miller stated that everything she said today was offered as argument in favor of the petitioner.

Attorney Miller advised that there were two-story beach houses further south down the road, but on this particular stretch of South Ocean Boulevard, the houses were small one-story bungalows. She explained that there was not a groundswell of support even among ARCOM members to approve the design of this house. She reported that the design came before ARCOM on four different occasions and it was approved the fourth time. She explained that during the last ARCOM hearing, a landscape plan was offered as a buffer to appease the neighbors. She remarked that the boundary between Mr. Chopin's property and the Conrad's property literally had 12" of green space on which landscaping could be placed.

Attorney Miller, presented a survey, pointing out the 12" of green space where it had been suggested the buffering landscape be placed. She noted that Horticulturist Allen Stopeck, not as a paid consultant but as a knowledgeable person, stated that it could not be done, especially when the home has a 20" overhang. The 12" would not work to put in any buffering landscape. She explained that it was then suggested that the structure should be looked at instead of the landscaping.

Attorney Miller stated that Architect Marsh did do the best he could do for a "pop-up", and it was probably as good as one could get, but the point was that this was a conspicuous street where the most beautiful of Palm Beach homes were located. She noted that the home presently was a small Bermuda style home that suited the setting. The home was oversized on the lot, and there was hardly any space to work with. The only place to go would be up, which did not mean ARCOM should approve the design.

Attorney Miller announced the ARCOM members that were present today, she was not attacking their decision, but suggested that after having looked at this item four times, they may have felt the plans were not so bad. She reported that the Town Council would be looking at this project for the first time.

Attorney Miller, presented photographs, to point out what the house presently looked like and to discuss this issue.

- Addition looked as if it was stuck on the house; trying to make a small bungalow into a bigger house;
- Pop-up addition would be seen from the hedge;
- Lot might be the smallest on this stretch of the ocean;
- Maxed out for the size of the home on the lot;
- The house sits on top of the street;
- Design has no aesthetic appeal;
    - Addition of second story on top of a house that already sits on top of the street;
    - Design would make the house look out of order and conspicuous in the neighborhood - not the conspicuous improvement that should be approved by the Town of Palm Beach.

Town Attorney John Randolph advised President Brooks that he would not follow the same format for an appeal as he would for a variance. He explained that the Council might inquire as to whether or not the applicant wished to have time for rebuttal; and the petitioner would be granted an opportunity for further rebuttal.

Attorney Randolph advised that under an appeal, the applicant or the petitioner, in this case, who was termed "an interested party," since they were neighbors, had to state in their application what criteria, set forth in the standards, had not been followed. He stated that in the petitioners letter, the following was indicated:

- The existing home did not meet the requirements for its zoning district;
- It allows for the construction of an addition to an existing house that was incompatible with the nature and character of the neighborhood.

Attorney Randolph advised that the Town Council, in their deliberations on this appeal, should make a determination as to whether or not the Architectural Review Commission (ARCOM) erred in its determination of those criteria in approving this application.

In response to President Brooks, Attorney Randolph advised that aesthetics was one of the items ARCOM considered in their decision making.

Attorney Maura Ziska, on behalf of Donald and Stephania Conrad, owners of 995 South Ocean Boulevard, stated that she was accompanied by Architect Mark Marsh and Landscape Architect Mike Phelps. She advised that there was no basis for overturning ARCOM's approval of this project. She noted that ARCOM carefully reviewed this project for four months, and not because it was a detriment, but because they wanted to get the project right. The project was approved in December 2005.

Attorney Ziska explained that the project called for a 700 square foot second story addition, which meets code, and would allow the owners to have a master bedroom. She noted that there would be more landscape screening and green space, as requested by ARCOM. She added that there was nothing in the code that requires landscape buffers for neighboring properties, which was something that ARCOM considered, but does not require.

Attorney Ziska advised that the neighbors' objections were without merit, and there were other two-story residences in that area; the addition on this property was tasteful and did not inhibit anyone's view of the ocean; the subject easement dispute, which had been previously referenced at ARCOM meetings, and earlier today, had nothing to do with the ARCOM approval. She stated that the Town Council should be reluctant to overturn a commission's decision and should deny Mr. Chopin's appeal.

Councilman Kleid requested that Attorney Miller discuss the grounds for the appeal, as stated in Mr. Chopin's letter dated December 21, 2005, and to explain where she believed ARCOM erred.

In response to Councilman Kleid's request, Attorney Miller discussed the five (5) grounds for appeal listed in Mr. Chopin's letter.

1. She advised that the chief point she wanted to address was that a pop-up did not belong on that beautiful stretch of South Ocean Boulevard.

2. She advised that it was non-conforming, and if a new house was to be built, it would not be allowed because it was non-conforming.

   - Non-conforming in size;
   - Non-conforming in lot dimensions;
   - Non-conforming front-yard setback;
     - The front-yard setback was for a two-story house and that was why they meet the requirements.
     - The second story was only 35' away from the front street.
   - The side-yard setback met the requirements;
   - The rear-yard met the requirements;
   - The maximum lot coverage had not changed due to the fact that it was so beyond maximum lot coverage that it was off the charts.

3. She advised that it was her understanding that the basis for the statement that there

was inappropriate ex-parte communication, was that Mr. Chopin understood, based upon part of what he heard, during the course of the hearing, was that one of the members of the Commission had met with the applicant's landscape architect.

4. She stated that she believed that the statement neighbors were denied a full and fair hearing, stemmed from just that; that in fact, someone else had an ex-parte communication.

5. She advised that one of the members of the Architectural Review Commission effectively told the landscape designer what to do.

Councilman Kleid asked Attorney Miller if it had been announced at the open meeting that there was ex-parte communication?

Attorney Miller responded that it was announced by the landscape architect. She stated that she had not been present at the meeting.

Councilman Kleid stated that it appeared there had been disclosure of an ex-parte communication.

Town Attorney Randolph explained that it was his understanding from speaking to the applicant, prior to the hearing, that Item 3 and Item 4 were not going to be used as a basis for going forward today. He advised that if those items were going to be raised, he would have had some comments.

Attorney Miller responded to Attorney Randolph that was the reason she did not discuss those items today.

Councilman Kleid stated that it was not made clear to the Town Council.

Discussion ensued on those items and both parties apologized for the misunderstanding.

Attorney Ziska advised that even though the house was non-conforming, the owner did remove hardscape, increased green space, and was doing as much as possible to improve the lot. She reiterated that the code allowed for the expansion on a non-conforming house, as long as the addition met the code, which occurred all the time in the Town.

Mr. Floyd Wideman, Chairman of the Architectural Review Commission (ARCOM) briefly discussed the last three items. He stated that he believed they impugned the Architectural Commission, and he resented that very much.

Attorney Randolph reiterated that those items were not part of the Town Council's consideration because the arguments set forth in numbers three, four and five had been waived.

Mr. Wideman responded that the person being accused of having an inappropriate ex-parte was present. He asked Mr. Wheelock, Vice Chairman of the Architectural Review Commission, to respond because an accusation was being made about him, which was certainly not true.

Attorney Randolph explained that it would not be necessary for this appeal to have Mr. Wheelock respond.

Councilman Coleman suggested noting, for the record, that Mr. Wheelock takes exception and denied that accusation. He commented that it was not the job of the Council to find fact with that, and it was just disagreement. He stated that it gets down to two points.

1. The property does not require a variance, and therefore, not a consideration of the Town Council.
2. The other point was a question of aesthetics. There had not been a presentation of aesthetics today to make a determination on.

Councilman Coleman advised that he would uphold ARCOM's decision since the applicant had not presented any information to base a decision on.

Mr. Wideman stated that along that strip there were eleven (11) houses with seven two-story homes and four one-story homes. He referred to Attorney Miller's discussion on aesthetics and said that there was nothing aesthetically beautiful about Mr. Chopin's house. He stated that he believed it was irresponsible to send a letter such as this to the Town Council. It was full of total untruths, impugning the Architectural Review Committee.

President Brooks stated that he understood why Mr. Wideman was upset over the letter, and he, too, had been upset when he read the letter. He explained that the Town Attorney had not seen the letter, which has been withdrawn.

Attorney Miller addressed Councilman Coleman's concern that there had not been a presentation of aesthetics. She explained that she would not have stepped down earlier, if she had realized that Mr. Marsh was not going to make a presentation. She noted that she would have borrowed his presentation boards during her presentation.

Councilman Coleman advised that up to this point, after both parties had made their presentations, he had no information to make an assessment of the situation.

Attorney Miller explained her objections, using Architect Mark Marsh's presentation boards of the front elevation. The worst feature of this one-story Bermuda style home was that it sat on top of the street, and the addition would now make it a two-story house sitting on top of the street. She reiterated that Mr. Marsh should be commended for what he had presented, and that it was the best that could be done.

Councilman Wyett noted that Attorney Miller started out talking about the inability to properly plant in an area that only had 12" of space and asked whether, in her estimation, ARCOM believed the 12" of space was sufficient to landscape, significant in their approval?

Attorney Miller responded that it was hard to tell, and explained that, at the last ARCOM hearing, a full presentation of the landscaping was made, with the focus on placing buffering landscaping in that 12" space. She stated that it was her belief they thought that would appease the neighbors' concerns relative to the building of a two-story house on top of the street.

Attorney Miller stated according to the transcript of that meeting, a few of the ARCOM members believed they should not be talking about the landscaping, but they should be judging the merits of the house on its own. She reiterated that members were satisfied by the architecture, but did not express what led to their votes.

Councilman Wyett stated that it was his understanding that approval of a landscape plan was required of ARCOM before a Certificate of Occupancy could be received.

Attorney Miller responded that she understood that, but her understanding was that this item was before ARCOM for purposes other than landscape approval, but for purposes of receiving a building permit for improvements to the house and only the house.

Discussion ensued with regard to the landscaping issue. Councilman Wyett recommended that the project return to ARCOM for a final review of the landscaping.

President Brooks advised that the Council's purpose was to decide whether ARCOM acted appropriately, and noted that the Council does not review the entire project. He stated that the problems were that Mr. Chopin was not present today, and the attorney of record stated that she had not attended the December ARCOM meeting.

Councilman Kleid, as a point of order, stated that the applicant had not presented any factual information. He advised that if Attorney Miller had an objection to the landscaping plan, because it was inadequate, she did not present the landscaping plan or refute what she objected to. He noted that she objected to the aesthetics of the house, but did not accept the fact that it was legal under Town Code, as a non-conforming structure not requiring a variance. He commented that she had not presented the square footage, had not given any specific information, had not shown anything comparable along the road except to say that further down south there were two-story buildings.

Councilman Kleid suggested that the decision made by ARCOM should be accepted, and that the Council affirms ARCOM's recommendation.

President Pro Tem Goldblum made a motion to dismiss the appeal by Frank Chopin and uphold the decision made by ARCOM to approve the project located at 995 South Ocean Boulevard. The motion was seconded by Councilman Kleid. On roll call, the motion carried 4/1, with President Pro Tem Goldblum, Councilman Kleid, Councilman Coleman, and President Brooks casting affirmative votes; Councilman Wyett dissenting.

B. Time Extensions

1. Request for Extension of Work Hours for The Breakers Cabana Project. [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney James Brindell, on behalf of the applicant, advised that The Breakers Cabana Project lost two demobilizations and remobilizations because of hurricanes. The Weitz Company expected to complete the project by the end of March. He requested that the prior extension be further extended to the end of March, pursuant to the same conditions of the prior approval.

Councilman Wyett made a motion to approve the time extension to the end of March without Sunday work. The motion was seconded by President Pro Tem Goldblum.

Discussion ensued regarding the hours of operation on Saturdays with President Brooks requesting the work hours be limited to 5:00 p.m. before daylight savings, and 6:00 p.m. after daylight savings.

In response to Councilman Kleid, Town Manager Elwell advised that staff did add some conditions which were listed in the back-up.

After further discussion the following conditions were included:

1. **Approved time extension to the end of March;**
2. **Limited Saturday work hours to 8:00 a.m. to 5:00 p.m. before daylight savings, and 6:00 p.m. after daylight savings.**
3. **To include all conditions as set forth by staff and approved during The Breakers request for extended work hours, at the June 14, 2005, Town Council Meeting.**

On roll call, the motion carried unanimously.

2. Request for Extension of Work Hours for Four Winds Project at 1768 South Ocean Boulevard.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Maura Ziska, on behalf of the property owner, requested that the contractor be allowed to work full construction hours for this season and for next season in order to complete the project by April 1, 2007. She advised that the neighbors did not have any objections. She explained that the site was three acres and all construction vehicles would be self-contained on the site. The neighbors to the north and south have consented. She noted that the property was not located in an intense traffic area of Town.

Councilman Wyett made a motion to approve the request for extension of work hours for the Four Winds Project at 1768 South Ocean Boulevard, with the following conditions:

1. **The approved request for extension of work hours with the condition that the approval of this extension should not be considered to be a precedent in the future.**
2. **Any noise complaints will be cause for work to stop during extended hours.**
3. **Written approval from neighbors to the north and south.**
4. **No work on Saturday, Sundays or all Town observed federal holidays and the day after Thanksgiving.**
5. **No equipment allowed during the season per Section 42-198 of Town of Palm Beach Town Ordinance (such as pile driving, sandblasting, Gunite machines).**
6. **All work much be completed by April 1, 2007.**

The motion was seconded by President Pro Tem Goldblum.

Discussion ensued regarding approval to allow work on Saturday. **Councilman Wyett amended the motion to allow work on Saturdays out of season to start at 8:00 a.m. and stop at 5:00 p.m., until daylight savings, at which time it would stop at 6:00 p.m.**

On roll call, the amended motion carried 4/1, with Councilman Wyett, President Pro Tem Goldblum, and Councilman Coleman casting affirmative votes; Councilman Kleid dissenting.

Councilman Kleid clarified his vote explaining that he voted no, because he was in favor of letting the applicant work on Saturdays, not that he was opposed to allowing extending hours.

Discussion ensued regarding working on Saturday out of season. Director of Planning, Zoning and Building Veronica Close advised that the code already allows for construction on Saturdays out of season.

Town Attorney Randolph explained that, parliamentarily, if the Council wanted to reconsider this issue, someone on the prevailing side would need to make a motion to reconsider. He stated that from previous discussion, it seemed that the maker of the motion thought, when it was said, that he was going along with the consensus, which was to allow the applicant to work on Saturday.

Councilman Wyett advised that he originally said no to allowing them to work on Saturdays. He explained that he believed, due to the conversation of the Council, that they wanted to allow the work to continue, and that was the reason he amended the motion to allow Saturday work.

Councilman Wyett made a motion to reconsider the previous motion. The motion was seconded by Councilman Kleid. On roll call, the motion carried 4/1, with Councilman Wyett, Councilman Kleid, President Pro Tem Goldblum, and President Brooks casting affirmative votes; Councilman Coleman cast a dissenting vote.

Councilman Wyett made a motion to approve the request for extension of work hours for Four Winds Project at 1768 South Ocean Boulevard, with the following conditions:

1. **The approved request for extension of work hours with the condition that this should not be considered to be a precedent in the future.**
2. **Any noise complaints will be cause work to stop during extended hours.**
3. **Written approval from neighbors to the north and south.**
4. **Allow work on Saturdays, out of season, as long as there were no objections from the neighbors; and in accordance with all the conditions as previously stated. Start at 8:00 a.m. and stop at 5:00 p.m. until daylight savings, at which time it would stop at 6:00 p.m.**
5. **No equipment allowed during the season per Section 42-198 of Town of Palm Beach Town Ordinance (such as pile driving, sandblasting, Gunite machines).**
6. **All work must be completed by April 1, 2007.**

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

3. Proposed Construction Extension Agreement for the Brazilian Court Hotel. [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney James Brindell, on behalf of the applicant, stated that, as directed by the Town Council, a Construction Extension Agreement for the Brazilian Court was prepared, for review by the Town Council, at this meeting. He noted that before them was the revised draft with staff's proposed modifications provided in add/delete format. He commented on the changes made by staff to the following Provisions:

- Provision 2.a. - No work shall recommence on the Ohio House nor shall the Ohio House property be used for any purpose.

- Attorney Brindell stated that the applicant did not have a problem with that. He noted that there was no reason why four or five vehicles could not be parked in front of the house, as was presently being done, and storing materials inside the house. He requested that the applicant be allowed to do that as it should not be considered constructing on the property.

- Provision 2.d. - No public road right-of-way shall be ~~closed~~ used to accommodate deliveries of construction materials to the Hotel. ~~;unless prior approval is obtained from the Director of Public Works.~~

    - Attorney Brindell stated that he believed Town Engineer James Bowser had concerns relative to the possibility of lane closures. The applicant did not plan to do that. He commented that if all deliveries had to be made to the Hotel parking lot, as stated in Provision 2.f., it would need to be off-loaded there and then moved across the street through a public right-of-way to get to the job site. He advised that a better approach would be to drive a particular delivery right up to the side of the hotel, off-load the delivery and be done with it. The delivery plan(s) could be worked out with the Police Department and Public Works Department.

Director of Planning, Zoning and Building Veronica Close advised that Provision 2.a. in the Agreement had the date of May 15, 2006 and it should be May 1, 2006.

Zoning Administrator Paul Castro advised that staff believed all loading, unloading and staging was to be conducted from the parking lot area. The purpose was to ensure that no construction vehicles parked in the street at any time during the unloading of material. He explained that was why staff made those proposed changes to the Agreement. He noted that in the Agreement drafted by the applicant, it stated "unless prior approval is obtained from the Director of Public Works." He explained that staff understood that any use of the street was not allowed.

Attorney Brindell reiterated that the point on that issue was that all deliveries had to be made to the parking lot, and they would then have to be redelivered back across the site. He noted there might be an occasion that the Public Works Director would agree to allow some deliveries made directly to the side of the hotel and off-load it directly into the hotel. He advised that all they were requesting was to have the ability to ask the Public Works Director to allow that, on those occasions.

Mr. Castro advised that he had not had an opportunity to discuss some of staff's concerns with the applicant.

- The concern regarding the use or storage on the Ohio House property would create activity that had not been contemplated.

- The roof of the Ohio House had not been secured and needed to be buttoned down.
- The applicant needed to replace some exposed wood with roofing material.

Attorney Brindell advised that he was not suggesting the storage of material outside the Ohio House, but would like to store them inside the Ohio House. He requested that they also be allowed to park four or five vehicles in front of the Ohio House.

In response to Councilman Coleman, Attorney Brindell advised that they would park those vehicles off the street and that there was a landscape screen in front of them.

Councilman Coleman expressed his concerns that the entire street would look like a construction project for the next two years.

Ms. Close advised that cars can be seen parked on the lot of the Ohio House. She stated that they were not fully screened by the fence or the hedges. In response to Attorney Brindell, she advised that if a higher fence was placed there, it would not be aesthetically appealing.

Councilman Wyett stated that an agreement should have been reached before coming to Council to have avoided this back and forth on minor points. He added that he would not like to have this happen again, and the matter should be deferred until such time as the applicant and the Planning, Zoning and Building Department could arrive at a complete agreement.

Discussion ensued regarding the comments on the amount of time spent in discussion on the Brazilian Court Hotel.

In response to Attorney Brindell, President Brooks and President Pro Tem Goldblum both advised that staff would have to approve the Agreement before the applicant came back before Council.

Town Manager Peter Elwell advised that he would execute the document if the Council chose not to see the Agreement, and Council delegated staff to sign off on it.

Councilman Coleman made a motion to delegate authority to Town Manager Elwell to sign off on a modified Construction Extension Agreement for the Brazilian Court Hotel. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. VARIANCE #39-2005 The application of David Koch relative to property described as Lots 1 though 4, according to the Plat of Primavera Estates (Ocean Section); commonly known as 150 South Ocean Blvd./158 South Ocean Blvd.; located in the R-B Zoning District. Since a portion of the residence is landmarked and other portions are important architectural design features, it is the desire of the applicant to recreate the design of the residence to look substantially similar to its current appearance. It is necessary to demolish and reconstruct the residence. The new residence will be joined with the house to the North. Because the existing residence is non-conforming, the following variances are needed to reconstruct the non-conformities: Request for a variance to allow an overall height of 32.63 feet in lieu of the 30 feet maximum allowed in the R-B Zoning District; request for a variance to allow an angle of vision of 133.08 degrees in lieu of the 116 degrees allowed in the R-B Zoning District for a lot that is 300 feet wide; request for a variance to allow the south street side yard setback on Clarke Avenue to be 20' in lieu of the 35' minimum required in the R-B Zoning District for a lot in excess of 20,000 square feet; and, request for a variance to allow a cubic content ratio of 4.70 in lieu of the 4.74 existing and the 3.50 maximum allowed in the R-B Zoning District. *Deferred from the December 13, 2005, Town Council Meeting.*

Ex-parte communication was declared by Councilman Kleid with Attorney Ziska; and President Pro Tem Goldblum with Attorney Ziska;

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

- Overall height;
- Angle of vision (which has been reduced since the application was submitted)
- Street setback on Clarke Avenue;
- Overall cubic content ration.

Attorney Ziska explained that Mr. and Mrs. Koch purchased the property on Clarke Avenue, which was next to their home on South Ocean Boulevard and Barton Avenue. The Koch's main house was a Palm Beach historic landmark and the Clarke Avenue house was partially landmarked. The east facade columns were the only portion of the home that was landmarked.

Attorney Ziska explained that the architect's plans to incorporate the Clarke Avenue house into the main house was negatively received when presented to the Landmarks Commission. She advised that the Landmarks Commission suggested that the architect look at both properties, separately in order that the best preservation could be achieved with the existing house. The Landmarks Commission wanted the Clarke Avenue facade, the arches on the east facade, and the interior courtyard area to be preserved because they believed they were the important features of the residence.

Attorney Ziska stated that the variances were for existing non-conformities. The overall CCR of the site would be reduced because of the mass of the Clarke Avenue house. She advised that the hardship runs with the land. The property situation was unique in that two landmarked properties were being combined. The Landmarks Commission unanimously approved the project after months of redesign. She noted that, in order to implement the plan, the variances were necessary.

Attorney Ziska advised that Architect Tom Kirchhoff was present to review the project as was Historic Preservation Consultant Jane Day, to answer any questions regarding the Landmarks Commission approval.

Zoning Administrator Paul Castro provided the following staff comments:

- The Police Department would like the applicant to work with them in order to supply security on a regular basis - to set up a security room and all security measures;
- The Fire-Rescue Department requires that the entire building be fire sprinkled;
- Site vision requirements for the intersection of Clarke Avenue and the alley would be required and worked out at the time of the building permits;
- Drainage for the site would be required and worked out at the time of the building permit;
- The Zoning Division of the Planning, Zoning and Building Department requests that the applicant demonstrates the hardship;
- The Landmarks Commission did recommend approval, along with several revisions as stated by the applicant, relative to the coordination of combining the two homes to meet the Landmark Commission's provisions for holding the integrity of the landmarked structures.

President Pro Tem Goldblum made a motion to approve Variance #39-2005, with conditions as recommended by staff. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

b. MODIFIED SPECIAL EXCEPTION #20-2005 WITH SITE PLAN REVIEW AND VARIANCE The application of Randal and Barbara Smith relative to property described as lengthy legal description on file; commonly known as 447 Primavera Avenue; located in the R-A Zoning District. Applicant requests to modify previous Special

Exception with Site Plan Review approval to allow construction of a new two-story single family residence on a non-conforming unplatted parcel that is 137 feet in depth in lieu of the 150 foot minimum required in the R-A Zoning District; applicant requests a variance to build the proposed modified house with a building height plane setback of 37 feet and 1 inch in lieu of the 51 foot 5 inch minimum required. This is a modification of a previously granted variance which allowed a building height plane setback of 35 feet in lieu of 50 foot minimum required. *Deferred from the December 13, 2005, Town Council Meeting.* **Request for Deferral to the February, 14, 2006, Town Council Meeting Per Letter Dated December 27, 2005, From L. Frank Chopin.**

DEFERRED Modified Special Exception #20-2005 to the February 14, 2006, Town Council Meeting.

2. New Business- Less Than 15 Minutes

a. <u>VARIANCE #2-2006</u> The application of The Ross Family Residence Trust for Michael Ross and The Ross Family Residence Trust for Merry Ross relative to property described as Lot 1 and that part of Lot 1-A lying West of a line parallel to the West boundary thereof and 16 feet East thereof, measured at right angles thereto, of Tangier Estates; commonly known as 321 Tangier Avenue; located in the R-B Zoning District. Variance to allow the construction of a six foot (6') high wall immediately adjacent to the south property line along Tangier Avenue, in lieu of the required three foot (3 foot) setback; and, variance to eliminate the requirement to have landscaping on the street side of the wall consisting of a continuous hedge at least three feet in height at the time of planting.

Ex-parte communication was declared by President Pro Tem Goldblum with Mr. Ross, and he declared he walked the property several times.

Attorney Ron Kolins, on behalf of the applicant, stated the request was for a variance to allow a wall to be placed on the property line in lieu of the 3' setback. He presented a diagram to explain what the applicant proposed, and to point out the many negatives that impacted the applicant's quality of life.

- Auxiliary motors, immediately adjacent to the applicant's property used for the drainage system make a great deal of noise;

- Sewer lift station causing a great deal of odor. (Noted that the Public Works Department should be commended in the steps they have taken - using special filters, etc. - to try to mitigate that odor, but a problem remains.)

Attorney Kolins advised that in order to block out those negatives, the applicant wanted to construct a wall right on the property line, which would prevent putting the required 3' hedge in front of the wall on their property. He presented photographs to show the placement of the wall and explained that there was some property owned by the Town at that location; the wall could not be placed right up to the road. He advised that the applicant would be willing, with the Council's permission, to plant those hedges immediately adjacent to the wall on Town property.

Zoning Administrator Paul Castro advised that the Town had placed a lift/pump station at that location. He noted that the Public Works Department had been working with the property owner as it related to the impact of those facilities. He explained that the applicant did not want to eliminate the large Ficus hedge in order to put in a significant wall feature. He added that the applicant needed to address the hardship relative to some of the situations created by the Town s' placement of the lift and pump stations.

President Brooks stated he believed that Mr. Kolins had addressed the hardship when he discussed the Town-owned facilities and how they negatively impacted the applicant.

Councilman Wyett made a motion to approve Variance #2-2006. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

Councilman Kleid stated the reason he was voting to approve this item was that he believed the Town imposed a hardship on this applicant.

President Brooks extended his thanks to Mr. Ross and the residents of the lake block of Tangier who have put up with the problems in that location over the past two years.

In response to Attorney Kolins, it was the consensus of the Council that the applicant could plant the hedge. Town Manager Elwell informed the applicant that the Town would maintain the hedge.

Town Engineer James Bowser advised that there were utilities that were very close to that property line and did not know what the impact would be to planting the hedge.

b. VARIANCE #4-2006 The application of Lake Towers Association, Inc., William Dansey, President, relative to property described as lengthy legal description on file; commonly known as 250 Bradley

Place; located in the R-D(1) Zoning District. Variance to redesign a retaining wall and fence combination which would raise the height of the planter/wall/fence combination to a height of six feet in lieu of the four foot maximum allowed within twenty-five feet of Lake Trail; and, variances to a) allow the planter wall/fence combinations to be built without the required three foot setback; and b) to allow the planter wall/fence combination without the three foot continuous hedge in front of said wall.

President Brooks temporarily left the room, passing the gavel to President Pro Tem Goldblum.

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

Bill Dansey, representing Lake Towers, advised that the variance request was for placement of a wall on Atlantic Avenue where it abuts Lake Trail. He stated that payment for this would be made by Lake Towers, and that they were not requesting any financing from the Town.

Mr. Dansey presented architectural renderings and photographs to discuss the proposed project. He pointed out what the wall would look like once the project was completed as well as what the wall currently looked like. He noted that inside the fence was a pool that had just been completed. He explained that Lake Towers was required to place a 4' fence/wall between the street and the pool on the inside. He stated that Atlantic Avenue slopes which makes the path about a foot higher, commenting that the pool deck was flat. He explained that when placing the 4' wall on top of the existing 4' fence, the applicant would be going over the 4' maximum required within 25' of the street.

Mr. Dansey advised privacy was another issue relative to this matter. He stated that vegetation could not be placed in front of the wall due to the space, and if vegetation was placed there, the parking spaces could not be entered into. He noted that they proposed to place the vegetation at the top of the wall in the planters.

Zoning Administrator Paul Castro explained that the proposed project required the applicant to substantially excavate a lot of the soil behind the retaining wall and push the proposed wall and fence back 3' or 4' between the edge of the pool and the drop off.

Mr. Castro commented that staff believed the applicant needed to demonstrate the hardship relative to the code. He noted there were some extenuating circumstances. He explained that the way the property was constructed, substantially more modifications should be made than what they were proposing today, in order to meet code.

Councilman Coleman moved approval of Variance #4-2006. President Pro Tem Goldblum seconded the motion after passing the gavel to Mayor McDonald. On roll call, the motion carried 3/0, as Presidents Brooks and Councilman Wyett had temporarily left the room.

c. VARIANCE #6-2006 The application of Christopher and Andrea Kauffmann, husband and wife, relative to property described as Lots 618, and 620 Poinciana Park 3rd Addition and Lots 315, 317 and 319, Poinciana Park; commonly known as 434 Seaspray Avenue; located in the R-B Zoning District. Variance to allow the construction of a one and two story addition partially above an existing garage with a front setback of 30 feet in lieu of the 45 foot minimum required for the building height plane setback requirement.

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

Attorney Jim Paine, on behalf of the applicant, presented architectural renderings and photographs of the subject property. He advised that the request was for one variance to allow the construction of a one and two-story addition partially above an existing garage with a front setback of 30' in lieu of the 45' minimum required for the building height plane setback requirement. The hardship, which runs with the land, was twofold:

- The lot was non-conforming in two dimensions; only 75 feet of street frontage instead of the 100 feet required by the code, and 222.97 feet deep, which exceeds the specified dimension for R-B zoning lot depth and creates a requirement of an additional front setback;
- Due to the configuration of the lot, the existing structure was built in accordance with zoning regulations, applicable at the time of construction, in a position that makes the second floor addition difficult to achieve under current zoning.

Attorney Paine advised that, without the requested variance for this addition, the proposed second floor master bedroom addition would be pushed south, out of alignment with the existing structure, and further back from the street than other existing residences in the neighborhood. He stated that the proposed additions would not impact the neighbors.

Attorney Paine stated that the applicant appeared before the Architectural Review Commission (ARCOM) and two motions were made. He advised that initially there had been a 6/1 vote to approve the variance, and then there was further discussion of the architecture. The item was deferred for further study. He explained that there had been discussion on placement of the wall. He commented that it was his belief that to correctly get the geometry of the roof, the applicant had moved the wall far enough back. The wall was further back than most of the neighbors. He noted that it complied with the normal R-B setback and the only reason a variance was technically required was because of the excessive lot depth that existed, due to the odd configuration which included a pool. He commented that many of the neighbors were supportive of the pool.

Mr. H. Loy Anderson, 15 South Lake Trail, stated that it has been a delight to have the Kaufmanns as neighbors, and they have improved the neighborhood. He commented that he could not say enough about what they have done to that piece of property and felt that the proposed addition was beautiful and very compatible with the neighborhood. He hoped the Town Council would support the proposed addition.

Attorney Paine introduced the applicants, Mr. And Mrs. Kaufmann, and advised they were available to answer any questions.

Zoning Administrator Paul Castro advised that his comments were specifically related to the code provision. He explained that when the Kaufmanns purchased the lot to the rear, they were required to enter into Unity of Title Agreement because they built a swimming pool which was an amenity to the front of the house. The Unity of Title increased the lot depth substantially, changing the front setback, which would be required based on the R-B Zoning District setback requirements of either 35' or 1' for every 2' of building height. He noted that Mr. Payne had mentioned that the property was dissected by an easement to the rear. He stated that there was approximately 35' from the proposed addition to the rear property line and almost to the easement. He advised that there was a substantial amount of property in the rear where the addition could be built.

Mr. Castro discussed the concerns raised by the Architectural Commission pertaining to the property and the architecture itself. He advised that ARCOM asked the applicant to return to study the possibility of placing the addition further back.

Director of Planning, Zoning and Building Veronica Close advised that the first action taken by the Architectural Commission was to recommend approval of the variance request by the Town Council. The motion passed by a 6/1 vote. She stated that ARCOM had further discussion about moving the addition back. The second motion unanimously deferred the item to the January 2006 meeting in order to restudy the addition. She advised that ordinarily, as there appeared to be two conflicting motions, staff would ask ARCOM what action they preferred taking:

- Recommend to the Council that they approve the variance;
- Request by the applicant to defer.

She noted that staff had not asked ARCOM what their preference was, and now the applicant was before the Council, even though there seemed to be disagreement amongst ARCOM members as to whether or not this addition could be moved slightly back.

Attorney Paine stated that Mr. Castro did give a fair analysis of the options and explained that the Kaufmanns did not want to compromise their views from the kitchen and dining areas. He stated that the floor plan worked a lot better if it were allowed to remain; the exterior of the house appeared to be more cohesive, if allowed to remain. He commented that there were many architectural reasons why it should not be pushed back. He advised that the applicant was in keeping with the neighborhood and the R-B Zoning District.

Councilman Wyett made a motion to approve Variance #6-2006.

In response to President Brooks, Ms. Close reiterated that it was an error on the part of staff to have the applicant appear before the Town Council before a final determination had been made by ARCOM.

The motion was seconded by President Pro Tem Goldblum.

In response to Mayor McDonald who asked, if the Council were to grant a variance, did that mean the Architectural Commission did not have to deal with anything other than the appearance of the house, Ms. Close stated that was not ordinarily done, but ARCOM might choose to do so.

Mayor McDonald advised that he agreed with Councilman Wyett's motion to approve Variance #6-2006.

In response to Councilman Kleid, Mayor McDonald stated that the motion did not have to be amended because the applicant had to return to ARCOM for consultation on the architecture.

On roll call, the motion carried unanimously.

Councilman Kleid advised that he voted for the motion because he believed that there was a hardship with the land.

Attorney Payne clarified that the Council approved the front line, but ARCOM could comment on the window arrangements and other issues normally considered by them.

Ms. Close advised that the Architectural Commission had the right to move the mass around on the lot.

President Brooks responding to Ms. Close's statement, asked why this item was before the Council for a definitive vote when it has to go back to another commission? He advised that the Council was a quasi-judicial body that approved this item on a 5/0 decision, and now it was stated that ARCOM could move the mass around.

Ms. Close stated that the Council's decision was the ultimate decision.

Mayor McDonald stated that the Council granted a variance for the applicant's front yard setback. ARCOM could not require any greater setback than what was already required.

Attorney Randolph advised that this was not a site plan review but a variance request. He noted that the decision he heard and believed to be, was that the Architectural Commission would be confined to dealing with the architecture.

President Brooks reiterated that this issue should have been finalized by ARCOM.

d. SITE PLAN REVIEW #1-2006 The application of Sandra D. Brady relative to property described as Lot 6, Cherry Lane; commonly known as 252 Cherry Lane; located in the R-B Zoning District. Site Plan Review approval is requested to construct a new two-story home on a nonconforming platted lot that is 80 feet in depth in lieu of the 100 foot minimum required.

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

Attorney James Brindell, on behalf of the applicant, stated that the house at 252 Cherry Lane was to be demolished to rebuild a new home with a partial second floor on a non-conforming lot that was 80' in depth in lieu of the 100' minimum required. He reviewed the application advising that no variances were requested, and the property would meet or exceed all setbacks and cubic content criteria. He noted that Architect Jacquie Albarran met with the Cherry Lane Association President and Vice President, and he understood that they were favorably impressed with the project.

Architect Jacquie Albarran, SKA Architects, presented photographs and a site plan to discuss the merits of the application.

In response to President Brooks, Attorney Brindell advised that there were no variances required. He noted that a site plan was required because it was a platted non-conforming lot.

Mr. Weldon Yeager, 255 Cherry Lane, stated that he and his wife were present today because they approved of this project and believed it would help the neighborhood a great deal.

Zoning Administrator Paul Castro stated that the site plan meets all the zoning requirements. He reviewed staff comments advising that the following conditions were requested by the Public Works Department:

- Drainage walls;
- Driveway site visibility triangles;
- All construction parking should be on-site with no on-street parking.

Councilman Wyett made a motion to approve Site Plan Review #1-2006. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

3. New Business- More Than 15 Minutes

a. VARIANCE #1-2006 The application of Roberto and Joanne deGuardiola relative to property described as lengthy legal description on file; commonly known as 9 Lagomar and 12 Lagomar; located in the R-A Zoning District. Variances to allow construction of a two-story addition with a point of measurement (for height and overall height) of 14 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 7.58 feet NGVD maximum allowed, as determined by the Town; to allow the side yard setback for the interior staircase to be 3.16 feet to 9.9 feet in lieu of the 15 foot minimum required in the R-A Zoning District; to allow the side yard setback for the third floor infill addition to be 10 feet in lieu of the 15 foot minimum required in the R-A Zoning District; to allow the height for the infill addition with a height of 34 feet in lieu of the 25 foot maximum allowed (the overall height remains the same as it is tied into the existing roof ridge.); to allow the rear yard setback to be 3.67 feet to 11.33 feet in lieu of the 15 foot minimum required in the R-A Zoning District; and, to allow the construction of a retaining wall in front of another proposed combination retaining wall and decorative fence in the street side yard setback at a combined height of 11.2 feet above the crown of the road in lieu of the 6 foot maximum allowed.

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Ziska; Councilman Wyett with Attorney Ziska, the property owners, Mr. And Mrs. Roberto deGuardiola, and Architect Kirchhoff; Councilman Coleman with Attorney Ziska, the owners, Mr. And Mrs. Roberto deGuardiola and Architect Kirchhoff; and Councilman Kleid with Attorney Ziska and Architect Kirchhoff.

Attorney Maura Ziska, on behalf of the applicant, stated she was accompanied by the property owner, Roberto deGuardiola, and Architect Tom Kirchhoff. She advised that the variances requested were for point of measurement, side yard setback, infill addition, height, rear yard setback, and construction of retaining walls on the cul-de-sac.

Attorney Ziska explained that the property was once a large estate that spread from ocean to lake. In the 1930's, the estate was split into about twelve parcels and the residences were cut in pieces and separated. She advised that the present owners purchased two parcels combining them to make a more conforming lot. They demolished one of the non-conforming houses and the applicant proposed to renovate the existing residence. She explained the staircase has been pulled back further away from the property line, by another three or four feet, which would be reviewed by Architect Kirchhoff.

Attorney Ziska explained that the hardship, which runs with the land, was that the property was extremely irregular in shape and size, and the renovations, which require variances, would be an improvement to the property. The grade of the property and the finished floor of the existing residence also present a hardship because it was much higher than the crown of the road. The property slopes from the house to the cul-de-sac.

Architect Tom Kirchhoff, on behalf of the applicants, presented an architectural model and the proposed site plan, to discuss the merits of the application, reviewing the variances being requested.

Zoning Administrator Paul Castro stated that the situation before Council today was very unique. He advised that there was a hardship as it relates to the house, and the integration of some of the concepts the owner proposes for their living space. He reviewed those proposals and the reason variances were required. He stated that staff requested the applicant demonstrate the hardship and reiterated that there were unique circumstances.

Architect Tom Kirchhoff advised that he neglected to state and point out where the property drops off dramatically.

Councilman Wyett congratulated the owner of the property for their purchase and willingness to renovate. He congratulated Architect Kirchhoff on his imaginative approach to the project, and noted that he found the hardships to be sustainable.

Councilman Wyett made a motion to approve Variance #1-2006.

Mayor McDonald stated that he agreed that all the houses that had been chopped up really do present hardships. He asked why the variance could not be minimized relative to the applicant's request to move the house a little further, pointing out the direction.

Architect Kirchhoff advised that two studies had been done relative to that variance, but stated a variance would still be required and explained the reasons for that. He advised that two revisions had been done, and pointed out a stairway at one location, and another to show the point where the the stairway would be pulled to. He advised that issue would be addressed when they went before ARCOM.

Councilman Coleman stated that he agreed with Mr. Wyett and commended everyone.

The motion was seconded by Councilman Coleman. On roll call, the motion was approved unanimously.

4. Other

a. Plaza Inn (Site Plan Review #7-2005 with Variance)-- Consideration of Proposed Declaration of Use Agreement. [Veronica B. Close, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by President Pro Tem Goldblum with Mr. Louis Pryor; and President Brooks with Attorney Ray Royce and Mr. Louis Pryor on the Declaration of Use Agreement. Councilman Kleid, Councilman Wyett and Councilman Coleman declared they had no ex-parte communication since the last meeting.

President Brooks advised that he had suggested to Mr. Brindell that he meet with Attorney Royce and that he had asked Mr. Pryor to include a representative of the condominium immediately to the west.

In response to President Brooks, Attorney Brindell and Attorney Ray Royce stated that they had reached an agreement.

Attorney Brindell, referring to the Declaration of Use Agreement submitted January 10, 2006, noted that further revisions were made based on their continuing conversations up to the time of lunch, and since lunch, today. He advised that there were just three more changes which Attorney Royce and his client have requested, and which had been agreed to. He stated that he would go through those changes and point out where those changes were made. He noted that they were not very significant or extensive. He reported that an agreement had also been reached with the neighbors.

Attorney Brindell reviewed the changes as follows.

1. Page 4, under Condition #13 - The swimming pool shall be closed between the hours of ~~9:00 p.m.~~ <u>8:00 p.m.</u> and 7:00 a.m.
(The hours changed from 9:00 p.m. to 8:00 p.m.)

2. Page 5, No. 2. - The Board of Directors of the Brazilian Apartments, <u>or any</u>

apartment owner shall be entitled to institute judicial proceedings to enforce Article IV, Conditions 1, 2, 3, ~~7, 9, and 12~~ 8, 10, and 13. Provided however that at least fourteen days prior to instituting a proceeding under this provision, said Board or apartment owner shall provide Owner with written notice of a contemplated proceeding and the matters giving raise to such proceeding.
(Added "or any apartment owner"; Changes conditions from 7,9, and 12 to 8,10, and 13 because a new 4 was added regarding the noise ordinance compliance so there were changes to the numerical order; added "or apartment owner".)

Attorney Brindell stated that it was his belief that, with those changes, they were in accord with the neighbors. He requested that the Town Council approve the Declaration of Use Agreement.

Attorney Royce advised that they were in agreement and Attorney Brindell had correctly described the changes. He believed it was a fair arrangement for all concerned, and had no objection to the Council approving the Declaration of Use Agreement. He commented that both he and Attorney Brindell acted in good faith in trying to resolve this issue. He commented that he wanted to be certain that everyone was working off of the Agreement that was revised today, January 10, 2006.

Mr. Louis Pryor, 227 Brazilian Avenue, thanked the Town Council for their patience, he thanked staff, Attorney Ray Royce and Attorney Jim Brindell. He stated that as of yesterday, he was concerned an agreement might not be reached for another month or two.

Councilman Wyett made a motion to approve the Declaration of Use Agreement.

Zoning Administrator Paul Castro discussed staff comments and expressed the concern that when the variances had been granted previously, they were for the unique hotel use in existence at that time. He explained that when the agreement was received, staff had some concerns relating to the ability to condominiumize the hotel. He commented that staff would like to look at this concern next year when other applications come up, as they relate to the impacts that could occur with that type of condominiumization of the hotel, specifically parking issues.

Attorney Brindell responded to staff comments noting that staff should consider, when discussing condominiumizing the hotel, that the units were on the average of 500'. He stated that they were hotel rooms, a room with a bath and closet, not condominium units. He explained that if the owner does turn it into a condominium, the neighbors would most likely benefit from it, because there would be more people who have a stronger investment in the way the hotel operates, and with the same concerns of Mr. Pryor and his neighbors. He believed that would add to the support of the Declaration of Use Agreement.

Councilman Coleman questioned staff's comments on parking, and that he needed clarification. He asked if the Declaration of Use Agreement was approved, giving the owner of the hotel, the right to condominiumize, would the owner then have to provide parking under Town Code, or does this as presently construed, provide for parking under the code?

Mr. Castro advised that staff's concerns were related to traffic and parking issues. He noted that the staff report states that Council approval was needed because the hotel use was no longer the same when the variances were approved. He noted that the parking would need to be addressed should the applicant be allowed to change that unique hotel use, granted under the variances, into a condominium fee simple type situation where the owners owned each unit.

Councilman Coleman asked for an explanation of the Code criteria, if the hotel were to be condominiumized, which he assumed the applicant could do without coming back before the Council. What were the parking requirements of such an action?

Mr. Castro responded that it was fairly complicated. He explained that when the variance was granted for the hotel, they were allowed to completely demolish the hotel and rebuild. He noted that under normal circumstances, the parking requirements for this type of use would be substantially higher than what they were today.

In response to Councilman Coleman, Mayor McDonald advised this issue should be considered at this time by the Council. He explained that it could simply be done by adding a condition to the approval: "if they were to contemplate conversion to a condominium, they would have to come back to Council to seek approval."

Attorney Brindell stated that he would need clarification. He explained that the Brazilian Court Hotel was a condominium hotel but was still a hotel, functioning as a hotel. He stated that the Council may want to consider a different parking schedule for condominium hotels; and if they do, then they would need to do some research. He reiterated that what was being talked about were hotel size rooms, a room and a bath, not a condominium. He advised that the Town Code relating to condominiums was based on large size condominiums, such as an apartment complex.

Councilman Coleman reiterated that he was trying to understand what was required under Town Code.

Mayor McDonald stated that the Brazilian Court was not a good analogy because the Brazilian Court was a landmarked property. The rooms were much larger than one room and a bath.

Attorney Brindell stated that for the twenty years or more that he has been here, the Council always reiterated that condominiumizing hotels did not change the fact that it was a hotel, if it continued to operate as a hotel.

Councilman Coleman stated that his question had not been answered and asked what the requirements for parking were for this property if it was to be condominiumized.

Mr. Castro responded that he could not answer Councilman Coleman's question, but there would need to be a traffic study. The problem was that this had been presented to the Council for use as a hotel. He noted that there was another situation in Town, the Palm Beach Hotel, where many of the units were converted into rooms that people live in continuously, and that there were parking issues at that location.

Mr. Castro reiterated that the reason staff brought this issue before the Council was that, the variances previously granted, were based upon the hotel that sits there today, a unique hotel use that the Council wanted to continue and perpetuate over time. He stated that staff's questioning of this had to do with the fact, that based upon approvals the Council gave them for that unique hotel use, if the hotel was condominiumized, those approvals would not be for the same use as before. He advised that despite what the applicant stated regarding that the hotel rooms would remain hotel rooms, staff had not seen that happen in the past.

In response to Town Manager Elwell, Mr. Castro stated that the applicant would not have to come back before the Council, if the Council had not added the condition for approval stated by Mayor McDonald earlier.

Town Manager Elwell stated that the parking, as it has been approved for this current approval would continue to apply, and they would need no further approval from the Town in order to condominiumize, unless you put in language ,such as the Mayor described and staff recommended requiring them to come back and get Council approval in order condominiumize.

Councilman Coleman stated that he would like to have that condition placed in the approval of this item.

President Pro Tem Goldblum stated he would like to build into the Agreement that if a parking problem occurs, the Town could enforce valet parking in a parking lot. He stated he did not want to see cars all over the street where there was not enough room. He also did not want to see cars doubled up creating a fire hazard. He did not want to wait until the hotel was converted into a condominium. He stated that they were presently turning it into a condominium.

Mayor McDonald stated that he had not been aware that the applicant was actually considering turning the hotel into condominiums.

Mr. Ajit Asrani, owner of the Plaza Inn, stated that there was a good possibility that they would condominiumize the units, but the hotel use would continue to be the same as it currently was and as it has been for sixty-five years. He advised that last year when the Council was kind enough to grant them variances, there was no such discussion on the possibility of condominiumizing.

Mayor McDonald stated that he thought the issue was to allow the hotel to survive because of its unique character. The reason the hotel needed all the variances from the Council was to enable the Plaza Hotel to exist as the Plaza Hotel. He noted that he was surprised that the hotel was to become condominiumized. He advised that he was not disagreeing or criticizing.

Mr. Asrani stated that condomiunimizing does not delineate the hotel's obligations to the community relative to being Town-serving. He advised that it would still continue to be used as a hotel charging more after having put fifteen million dollars into it. He noted that there would still be fifty rooms, and that conceptually it would not change.

Councilman Coleman stated that if it becomes a condominium, it would require more parking. He advised that if, in the future, a hotel wanted to become a condominium, he requested that the issue come back to Council; but if it was going to be condominiumized now, he wanted a study. He stated a hotel was one thing, but a residential condominium hotel would have very different parking requirements.

President Brooks stated that at 500 square feet a unit, he did not believe they could become residential units.

Attorney Brindell advised that, in order to continue to be a hotel, there were some limitations defined in the Town Code relating to the period of occupancy during the year, which included the owner.

In response to President Brooks, Director of Planning, Zoning and Building Veronica Close stated that staff would red flag any request that the owner of the hotel might make regarding the tearing down of walls to enlarge the rooms. She advised that hotel condominiumization was a new phenomenon. The answer was no to the question that if the applicant came in tomorrow, would there be a specific section of the code that addressed condominium hotels, and what were those requirements. The Town has concerns about that and it was something staff wanted to address in the future.

Ms. Closed stated that, in the meantime, negative parking effects have been seen and that was why this issue was being brought to the Council's attention. She noted that staff suggests approving the Declaration of Use Agreement, as presented, without reference to condominiumizing the hotel. She stated that a traffic plan should be required in order for staff to come back before the Council to either report that the condominiumization would have no effect on traffic and parking, or that it would impact the Town.

Discussion ensued regarding Article V in the Declaration of Use Agreement, and Ms. Close advised that it was at the time staff saw Article V that they became aware that this was to become a condominium project. She suggested that Provision 11, which requested a traffic management plan acceptable to the Town's Police Department, be a requirement of staff, but only in reference to the hotel and the underground garage.

Councilman Coleman stated that he was pleased that the neighbors have resolved their issues and would be in favor of moving this forward, but would do so subject to a parking plan returning to Council, subject to Town Council approval. He advised that he would not approve the parking today, since staff has not looked at it.

Mr. Asrani stated that it would not be a pure condominium, as was discussed today. He advised that the hotel does not even have appropriate kitchens, but has kitchenettes of sorts. He noted that there were currently twenty-four parking spaces, and fifty rooms under the old plan.

Mr. Asrani advised that in 2004, traffic studies were presented and approved for seven valet spaces and fifty-nine spaces. The valet procedure could still be instituted. He added that there was no evidence to show that his hotel or the Brazilian Court had impacted the Town negatively. He stated that overall there was concern that there was a parking problem in Town. He noted that he lived in Town and had a parking problem right in front of his own house. He asked that the Council please approve this project and not put him through what he has gone through for the past five years in trying to get this project approved.

Councilman Coleman advised that they were going through this because it was the most dynamic changing project anyone has ever seen. He noted that last February the request was just for a financial extension and now the entire project has changed and evolved further.

Mayor McDonald advised Mr. Brindell that the confusion was that the Council, obviously was not aware that the hotel was going to have a condominium use. He explained that by leaving the kitchen and bedrooms the way they presently were, it could be converted to condominium use without meeting any of the requirements that a condominium would need to meet. He stated that confusion without a parking or traffic study has changed it a bit today. He commented that the Council wants more information to see if the item could proceed the way it was. He advised that it caught everyone by surprise, himself included, and it had not been brought to the Council before. He added that it was an unusual project and the Council bent over backwards trying to work with Mr. Asrani to make this hotel viable, as a hotel, the way it has existed in its non-conforming use. He stated that a condominium hotel was a little different animal than what it was today.

Attorney Brindell stated that there has not been any attempt to deceive the Council. He responded to President Pro Tem Goldblum who suggested a provision that was similar to the Brazilian Court Declaration of Use Agreement, that if a traffic management problem occurs then they would have to come back with a plan before Council. He stated that could certainly be done here.

Councilman Coleman stated that he was referring to parking. He advised that staff had not reviewed this, it had not been talked through and the impacts of parking were unknown. He noted that he had legitimate concerns, and that he was in favor of ratifying what the applicant presented, but questions have come up regarding parking, and he would like them resolved in the normal course of business. He wanted it clarified now, up front at the beginning.

Town Manager Elwell stated that Mr. Brindell and the applicant consented in the Declaration of Use Agreement, to the suggestion for the traffic management plan at item #11 (page 4). He asked that based upon the conversation that had occurred here today, would they accept a modification to that which inserts "and parking," so that it would be a traffic and parking management plan?

In response to Town Manager Elwell, Attorney Brindell responded that he would accept the modifications.

Town Manager Elwell then suggested that there would be a separate sentence, at that location, in the agreement, that would address this conversion question, so that the traffic and parking management plan would need to reflect what would be required for traditional hotel use, without any condominiumization, and separately, if it is any different, a traffic and parking expert would analyze whether the needs would be different if it had been condominiumized.

In response to Attorney Brindell, Town Manager Elwell stated that there would be an "a" and a "b", which would say that for one use the needs would be a certain set of needs, and for the other use it might be different needs – within the one study. He asked if that covered the bases?

Zoning Director Close responded that she believed it would. She asked if Mr. Elwell anticipated that the applicant would be required to return to the Town Council for approval?

Town Manager Elwell advised that it currently states that it was subject to the Police Department's approval. He commented that he believed the Town Council needed to decide whether they wanted to see this again.

President Brooks stated that he sensed the Town Council would like to see it.

In response to President Brooks, Mr. Arsani stated he was comfortable with any suggestions. He advised that next door was a condominium that had 28 units, about the same size, if not slightly larger, than what was being proposed.

Discussion ensued regarding the request for a traffic/parking study. Attorney Brindell explained that their concern was that this traffic study could end up being a six or eight month study. He advised that the applicant would be waiting to come back to Council for another time extension because they would not be able to start construction out of season, and that Mr. Asrani would need to know what his financing scheme was going to be before starting construction.

Councilman Goldblum advised Mr. Brindell that he would only approve the Declaration of Use Agreement if it was for a hotel only. He explained that if they wanted to make it a condominium/hotel, they would have to come back before Council to get approval. He noted that to receive that approval, they would have to show that there was enough parking. He stated that he agreed with Mr. Coleman. He reiterated that the Council was not here today to consider a condominium hotel but to consider it only as a hotel. He commented that the applicant had a choice to either defer this item, or agree to have it approved as a hotel.

In response to Attorney Brindell, President Pro Tem Goldblum stated that, as far as he was concerned, Mr. Elwell's suggested language for the Declaration of Use Agreement was not acceptable.

Attorney Brindell stated that they would certainly like to get a Declaration of Use approved so they could try to move forward in some fashion.

In response to Councilman Wyett who asked if the financing was conditional on the hotel becoming a hotel condominium, or would he be able to obtain financing for a hotel only use, Mr. Asrani stated it would be difficult to get financing. He advised that the hotel would require at least 15 million dollars worth of construction, with construction costs having doubled. He stated that it would be very hard to finance a hotel with conditions such as this, having to come back before Council to receive approval for condominium/hotel designation. He advised that he never was under the impression that there would be any problems as he had a hotel next door, which had done exactly the same before coming to the Council.

Councilman Wyett stated that he was sympathetic and senses that the Council had concerns that the fifty-eight or fifty-nine parking spaces would not support fifty condominiums. He suggested, as a compromise that, in the event they elect to condominiumize, it would not exceed twenty-five.

Town Attorney Randolph stated that the thing that makes this discussion difficult was state law that relates to condominiums, which says that the Council cannot differentiate between ownership. He explained that the Town does not deal with ownership, but deals with use, so when talking about condominium use versus hotel use, a form of ownership was what was being talked about, and was something which may make the Council go astray of the state law as it relates to that. He stated that having said that, the particular section under the code relating to the granting of variances – there was one specific criteria, which allows the Council to give consideration to granting of variances, in order to perpetuate the use of a long existing hotel in a particular area. He advised that he thought they gave consideration to that in granting these variances. He noted that even though there was an argument to be made that the Council does not deal with ownership, the fact was that when this was first heard, he believed, the Council was thinking that they were perpetuating the use of the hotel as it had existed. He thought that there was an argument that Attorney Brindell could make that they were not changing the use; they were going to operate it just like the Council had approved it. He commented that if the Council was going to require them to show that they were not entitled to have a condominium there, they would have to be able to show through a traffic study, as Mr. Castro had indicated, that a condominium form of ownership was going to change the use that the Council had intended when this was first approved. He thought there was an argument to be made that indeed the use could be different, unless the applicant could prove differently through a traffic study.

Town Manager Elwell advised that he would be persuaded by what Mr. Randolph just said, at least, as to why they should not attempt to insert what staff had recommended as paragraph 13, that would require them to come back and get permission to condominiumize. He explained that it was not persuasive to him that the Council should not further pursue the possibility of changing the language of #11. The traffic management plan had already been consented to and what was being asked for here, because of the potential impacts of the condominiumization, was to expand the scope of #11, to be a traffic and parking management plan, and to have some specific reference to a set of facts "a" and a set of facts "b", where under the one case it would be the use as it has always been, and in the second case, it would be the use as a condominiumized hotel. He advised that if that was obtained, the data would be the data, and then all of the discomfort that was felt in this room right now about "what if" and the potential impacts, would be addressed with what the experts report would be either similar impacts or different impacts. He stated that if they were substantially different, then on another day, the Council would still have to have a conversation about what that means for this project.

President Brooks commented that Mr. Asrani would be able to begin construction, but for his problem on securing the necessary financing. He asked Mr. Brindell if that was a fair assumption:

Attorney Brindell responded that he believed they were on the right track. He stated that if the hotel was to remain, as it was now, just a hotel, it seemed to him that having the Police Department sign off on it would be acceptable. He explained that at any such time as a condominium form of ownership would be proposed, then a new plan would have to be brought back, or they would revise that plan, and bring it back to the Council, if that was what the Council requested.

Town Manager Elwell explained that the explicit intent of that would be so that the Council might impose some additional parking requirements.

Attorney Brindell responded that in that circumstance, that scenario would come back to the Council.

Councilman Coleman advised that he did not want to vote on whether the applicant condominiumizes this project or not. He advised that he was simply talking about parking, and that the Council could impose a requirement that did not interfere with changing the nature of ownership, but required that he meets standards of parking that might be different, subject to a traffic study.

Town Attorney Randolph stated that the traffic study might state that there was no change, however, the applicant had an obligation to come in and prove that to the Council.

Councilman Coleman asked if the applicant could come back and argue that this was not valid under Florida law, because the Town was really encumbering their right to condominiumize?

Town Attorney Randolph responded that they could argue that, but believed there was a very strong argument that the Town was dealing with use, particularly because of that criteria under Town Code, which talks about perpetuating this hotel as it had existed. He noted that it appeared to him that they were acceding to that requirement.

Councilman Kleid, at the request of President Pro Tem Goldblum, read what he believed the Council wanted to add to paragraph #11, a separate sentence which said: "If the hotel is condominiumized, the owner shall provide a traffic management plan acceptable to the Town Council."

Councilman Kleid rephrased the sentence to say: "Prior to the owner condomininiumizing the hotel, it shall present a traffic and parking study acceptable to the Town Council."

In response to President Pro Tem Goldblum, Town Manager Elwell stated that included in the first sentence of paragraph #11, it would say: "traffic management would be changed to traffic and parking management."

Councilman Wyett stated that there were a couple of practical aspects. He questioned anyone purchasing a condominium that did not have a parking space. He advised that there was a new type of condominium ownership and timeshare ownership suggesting that there needed to be a definition in the Town Code relating to these types of ownerships in order to keep up with current conditions. He discussed the Ritz Carlton Resorts as an example of a condominium/hotel.

Mayor McDonald advised that a condominium had been approved on Hammon, which had no parking at all.

Councilman Kleid amended Councilman Wyett's motion to have included in paragraph #11, a separate sentence: Prior to the owner condominiumizing the hotel, it shall present a traffic and parking study acceptable to the Town Council.

Discussion ensued and Councilman Kleid advised that his motion would stand as presented and there would not be any changes to the first sentence. The following motion was ultimately made:

Councilman Kleid clarified the motion to approve the proposed Declaration of Use Agreement with the revisions as suggested by Attorney Brindell:

- **Page 4, under Condition #13 - The swimming pool shall be closed between the hours of ~~9:00 p.m.~~ 8:00 p.m. and 7:00 a.m.**

- **Page 5, No. 2. - The Board of Directors of the Brazilian Apartments, or any apartment owner shall be entitled to institute judicial proceedings to enforce Article IV, Conditions 1, 2, 3, ~~7, 9, and 12~~ 8, 10, and 13. Provided however that at least fourteen days prior to instituting a proceeding under this provision, said Board or apartment owner shall provide Owner with written notice of a contemplated proceeding and the matters giving raise to such proceeding.**

  And

- **Revisions approved by the Town Council to paragraph #11 as follows:**

  The Owner shall provide a traffic and parking management plan acceptable to the town's Police Department and which shall be enforced by said Department. Prior to the owner condominiumizing the hotel, it shall present a traffic and parking study acceptable to the Town Council.

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

b. Commerce Bank (Special Exception #21-2005)-- Consideration of Proposed Closure of Entrance from Park Avenue. [Veronica B. Close, Director of Planning, Zoning, and Building] **Staff Recommends Deferral to the February 14, 2006, Town Council Meeting, per Memorandum Dated December 30, 2005, from Veronica B. Close, Director of Planning, Zoning and Building.**

DEFERRED Special Exception #21-2005 to the February 14, 2006, Town Council Meeting.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business, the regular Town Council Meeting of January 12, 2006, was adjourned at 4.55 p.m.

William J. Brooks
President

ATTEST:

Susan A. Eichhorn
Town Clerk