TOWN OF PALM BEACH

Office of The Town Clerk

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON DECEMBER 13, 2005**

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting of December 13, 2005, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas C. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Rob Walton - Chief Code Compliance Officer
Alan Brown - Acting 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
Tim M. Frank - Planning Administrator

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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
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 Hugh Davis, Building Board of Adjustments and Appeals, From July 1993 Through July 2005.

Mayor McDonald recognized Hugh Davis, Building Board of Adjustments and Appeals, with a plaque in grateful recognition of service to the Town of Palm Beach from July 1993 through July 2005.

B. Recognition of Thomas Youchak, Code Enforcement Board, From January 2003 Through August 2005.

Mayor McDonald recognized Thomas Youchak with a plaque for service on the Code Enforcement Board, from January 2003 through August 2005,

C. Recognition of Keith Robinson, Police Captain, Upon His Retirement from the Town of Palm Beach After 27 Years and 1 Month of Service.

Mayor McDonald recognized Keith Robinson, Police Captain, for his service to the Town, and his extension of service as a result of Hurricane Wilma with a gold watch.

IV. COMMENTS OF MAYOR JACK McDONALD

This is the Holiday Season, and I am surprised to see so many of you here. I was going to thank each of you individually, the citizens and civic groups, for your participation and attendance at our meetings, but most of all for your participation in community affairs. There are some of you that attend every month, and participate and we appreciate that. It is the life blood of our community, your participation. Kudos to all of you! And Welcome!

Commission Appointments - During the past few weeks, I received several comments regarding commission appointments, specifically Architectural Review Commission (ARCOM) and Planning and Zoning. I voted on those appointments for 12 years and I understand the political, social, and other reasons to vote for applicants, other than relevant background qualifications. I also know that it is common to receive applications from candidates with no direct experience. We have no pool of highly qualified applicants. We primarily have interested, concerned, and well-meaning residents. The situation became so severe in Landmarks Preservation Commission that a nonresident seat was permitted in order to obtain needed expertise, along with Town employees and outside experts, to help the Commission with their decisions. The Landmark Preservation Commission deals with far fewer properties than ARCOM or Planning and Zoning. Unless you eliminate residency requirements, which I am not recommending, I do not believe you can attract enough qualified applicants for these commissions. How many commissioners have architectural urban planning experience? Gerard S. Caden, Professor of Urban, Planning, and Design at the Harvard University Graduate School of Design spoke last week at the Art of the Town Symposium, and emphasized the importance of expertise in the Land Use Regulatory process through the use of individuals trained in Urban Design and Planning. The composition of the Planning and Zoning Commission should not be dominated by lawyers. Although lawyers are good at crystallizing abstract ideas and writing laws, the ideas themselves often come from other disciplines. And although this idea is not mine, I embrace it and encourage the Council to consider the use of experts for ARCOM and Planning and Zoning. Hopefully, this would result in improved land use planning, aesthetic standards, judgements, protection of the Town's unique character, and expert help along with clear direction of the job.

Ordinance 18-05 - Today staff is recommending that you allow the use of leaf blowers on Saturday during the Season and that they be allowed to exceed recommended decibel levels this season. I disagree. The ordinance was enacted in response to residents requesting quiet weekends during the season without excessive noise. A reasonable request and expectation. A review of the documentation attached to the recommendation does not reflect one resident in support of it. The season is the lowest rain time and slowest growing season of the year. Use of leaf blowers on Saturday benefits a few, at the expense of the community. I urge the Council to consider the wishes of the residents and excise the Saturday leaf blower recommendation. Thank you.

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

ADDED VIII. B. 11. request from Mark A. McCorkle of Palm Beach Realty Partners for Right-of-Way Permit to work at South County Road and 204 Brazilian Avenue to repair damage to the building caused by Hurricane Wilma.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Wyett to approve the addition of item VIII. B. 11. to the Agenda. On roll call, the motion carried

unanimously.

DEFERRED to January 10, 2006, Town Council meeting, Item XI. C. 2. b., Variance #39-2005.

Motion made by Councilman Coleman, seconded by President Pro-Tem Goldblum to defer Item XI. C. 2. b., Variance #39-2005 to January 10, 2006, Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED to January 10, 2006, Town Council meeting, Item XI. C. 4. 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. 4. b., Modified Special Exception #20-2005 with Site Plan Review and Variance to January 10, 2006, Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED to February 14, 2006, Town Council meeting, Item XI. C. 5. Other, Plat Abandonment and Resolution No. 71-05.

Motion made by Councilman Wyett, seconded by Councilman Coleman to defer Item XI. C. 5. Other, Plat Abandonment and Resolution No. 71-05 to February 14, 2006, Town Council meeting. 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.)

Dr. Harry Horwich, South Ocean Boulevard, commented that if the item under New Business regarding the use of Phipps Tennis Facility was approved, the south half of the Town's residents would pay twice as much for use of the facilities as those who played at Seaview Park. Mr. Horwich noted that at Seaview Park there was 100 to 200 curbside parking spaces, and at Phipps Tennis Facility there was no curbside parking within walking distance.

Dr. Stan Lilja commented about the Great Lakes Dredging Company charging the Town of Palm Beach approximately $6 million more than Ocean Ridge for beach nourishment. He added that in Resolution No. 94-05, there was no mention of: the Town advancing $6.8 million to the U.S. Army Corps of Engineers for rebuilding the Sand Transfer Plant; the pipeline project; or the Federal Emergency Management Agency (FEMA) application for beach nourishment due to the 2004 Hurricanes. He indicated that the omissions by the Town were in conflict with the Sunshine Law.

Councilman Wyett stated that if the residents at the north end allowed the Town to move sand to the south end, it would save millions of dollars for the Town.

Captain Eric Gilbertson, 151 Chilean Avenue, commented that the creation of the unfair assessment tax formula resulted in high assessment values on homes. He suggested that a reduction in the Town's budget would offset the burden of the cost of home restoration after the storms.

VII. CONSENT AGENDA

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

Motion made by Councilman Kleid, seconded by President Pro-Tem Goldblum to defer to January 10, 2005, the approval of the November 30, 2005, Town Council meeting minutes. On roll call, the motion carried unanimously.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON NOVEMBER 18, 2005.

C. RESOLUTIONS

1. RESOLUTION NO. 83-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Transfer and Change of Control Agreement between the Town of Palm Beach and Adelphia Cablevision of West Palm Beach, IV LLC; Adelphia Communications Corporation; Time Warner Cable; Holdco Exchange II, LLC; Parnassos, LP; Time Warner NY Cable LLC; Comcast Corporation and Authorizing the Mayor of the Town to Execute the Transfer and Change of Control Agreement on Behalf of the Town of Palm Beach.
[Thomas G. Bradford, Deputy Town Manager]

Motion made by Councilman Wyett, seconded by Councilman Coleman to move Resolution No. 83-05 to the Regular Agenda, New Business, Item VIII. B. 12. On roll call, the motion carried unanimously.

2. RESOLUTION NO. 90-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Michael Jenkins of Applied Technology Management Inc. as Project Manager for the Town of Palm Beach Grant Application to the Florida Boating Improvement Program and Granting Michael Jenkins the Authority to Apply for and Administer the Grant on Behalf of the Town of Palm Beach. [Thomas G. Bradford, Deputy Town Manager]

3. RESOLUTION NO. 92-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Joint Participation Agreement Between the State of Florida Department of Transportation and the Town of Palm Beach for the Installation of Specimen Trees at the East Bridgehead of the Royal Park Bridge in the Town of Palm Beach. [H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 94-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving and Directing the Mayor to Execute When Appropriate, an Agreement under Section 204(e) of Public Law 99-662 with the U.S. Army Corps of Engineers for the Purpose of Reimbursement to the Town as Local Sponsor for Costs Associated with Upgrading the Lake Worth Inlet Sand Transfer Plant. [H. Paul Brazil, Director of Public Works]

D. OTHER

1. Authorization to Continue to Retain Smith and Ballard, P.A., to Represent the Town in Tallahassee on Legislative and Executive Branch Issues. [Peter B. Elwell, Town Manager]

2. Approval of Extraordinary Longevity Pay for Eligible Employees Having in Excess of Twenty (20) Years of Service to the Town of Palm Beach. [Peter B. Elwell, Town Manager]

3. Authorization for FDOT to Plant Mangroves Along the Western Edge of Phipps Ocean Park. [H. Paul Brazil, Director of Public Works]

4. Authorization to Proceed with Final Design of the D2 Stormwater Pump Station at Palmo Way.
   [H. Paul Brazil, Director of Public Works]

5. Approval of Adelphia Request to Work in Rights-of-Way for Non-Emergency Purposes After December 1 to Complete Hurricane Wilma Related Repairs.
   [Thomas G. Bradford, Deputy Town Manager]

Motion made by Councilman Wyett, seconded by Councilman Coleman to approve the Consent Agenda as amended. 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/Political Initiatives

Attorney Robert Wright reported on the following proposed legislative action points for the undergrounding of overhead electric and other facilities:

- Ensure that all utilities were responsive to community requests for information of proposed conversion of aerial utility lines and facilities.

- Public Service Commission (PSC) tariffs on aerial facilities were the service standard because they were less expensive, and customers would be required to pay the difference for desired underground service.

- Underground distribution service should be the statewide service standards for electric utilities, and other similar utilities.

- Required or encouraged use of existing rear-yard easements was needed.

- Eliminate or reduce the cost burden of the municipality to purchase the same underground facilities that were paid for in the conversion process by the municipality. Options for the municipality: full credit for the amount paid, or pay the difference between what was paid and actual cost of the facilities.

- Regulate the amount of overhead expenses passed on by utility companies to a requestor of a conversion to underground service as part of the overall cost of the project.

- Instill the competitive process of selecting construction firms for the conversion process, for cost savings, instead of the utility companies using their own personnel, resulting in higher prices.

- Completion of projects in reasonable timeframes on a community wide basis.

- Establishment of an official policy of the State of Florida to proactively enhance and protect the service systems for the people, including conversion of utility facilities providing for designated funding to facilitate the process statewide.

- Utility franchises may be granted under the terms and conditions provided.

Councilman Kleid noted that on Attachment B in the backup, the Florida Statute 366 under "Use of rear-yard easements encouraged," the last sentence should read: The utility may require that such easements be kept clear of obstructions *in order to provide* access to the underground facilities.

Attorney Wright responded to questions by the Town Council, and reported on the progress made to date on the upcoming issues.

b. Florida Power & Light's (FPL's) "Ballpark Estimate"

Attorney Wright provided several observations regarding the "Ballpark Estimate."

- Ballpark numbers seemed favorable to convert the whole Town.

- Letter from FP&L dated December 7, 2005, suggested that easements were required prior to requesting the detailed cost estimate. A binding estimate would cost more than $100,000 before commencing with the detailed design.

- The Town required the detailed design in order to know which easements were necessary.

Deputy Town Manager Bradford responded to the Town Council's questions regarding cost, and said that he would continue to research in order to determine the difference in his numbers and FP&L's numbers.

President Brooks requested that staff distribute the legislative action points to all previously designated recipients, and delay the cost estimates because of the substantial differences.

Ned Barnes , President, Palm Beach Civic Association, stated that Mr. Bradford's efforts of extrapolating the numbers was a very difficult process, and suggested moving to the next step, which was a binding cost estimate.

Town Manager Elwell noted that staff would: pursue sponsors, assign a committee, and follow-up with recipients of the letter to ensure that they had received the legislation. In addition, staff would follow-up with newspaper editorial boards to ensure public support. Mr. Elwell indicated that more time was needed to analyze the cost estimates in order to have an informed discussion on January 10, 2006. He concluded that utilizing backyard easements would reduce costs and prevent the delay of obtaining new easements.

Discussion ensued among the Town Council about cost, timing, referendum, easements, and effects of a 12-month construction period. Mr. Elwell noted that staff would proceed on the legislative effort, research FP&L's ballpark estimate and binding cost estimate of a 12-month construction period, and report the results on January 10, 2006, at the Town Council meeting.

2. Additional Consideration of Specific Location for Sea Gull Cottage Within Bradley Park. [Peter B. Elwell, Town Manager]

Town Manager Elwell recommended that Town Council make a final determination regarding the preferred location for Sea Gull Cottage within Bradley Park, for the referendum on February 7, 2006.

Reginald Stambaugh, Executive Director, Preservation Foundation, reported that Urban Planner Ray Gindroz recommended the middle site for the location of the Cottage, after extensive studies and site visits.

Mayor McDonald recommended accepting the middle site, as it could be used for Town functions.

Councilman Coleman stated that he was opposed to placing the Cottage on the Lake, and that his first preference was on the northeast corner where it could be seen.

Councilman Kleid noted that there were several reasons as to why the Cottage should not be placed on the Lake, and that his personal preference was on the northeast corner of Bradley Park.

President Pro-Tem Goldblum stated that he was in favor of the middle location for the Cottage, because it would bring some life to the Park, and it could be used for many different functions.

President Brooks stated that he favored option two, which was the middle site. He suggested developing a master plan for Bradley Park to include landscaping and allowing more availability for the citizens.

Nancy Murray commented that the Garden Club offered to share in the cost with the Preservation Foundation of a master plan for Bradley Park.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum to approve the middle site as the location of the Sea Gull Cottage within Bradley Park.

In response to Councilman Coleman, Town Attorney Randolph advised that the ballot question would not include the location of the Cottage within Bradley Park.

Upon roll call, the motion carried 4-1, with Councilmen Wyett, President Pro Tem Goldblum, Councilman Kleid, and President Brooks casting affirmative votes; Councilman Coleman dissenting.

B. New Business

1. Parking Fees at Phipps Ocean Park.
[Peter B. Elwell, Town Manager]

Town Manager Elwell stated that staff recommended that the Town Council consider the quarterly recreational parking permit program presented in the memorandum dated March 31, 2005, from Finance Director Jane Struder. The following items were discussed:

- If a fee was paid for a tennis membership, there should be no additional charge for parking.

- If free parking was provided for tennis players, there was a concern of compromising the State funding assistance program received from the Florida Department of Environmental Protection (FDEP) for the beaches.

- Develop a permit parking system, not tailored specifically to tennis players, but paid on a quarterly basis, with a placard, permit, or hanger allowing first come, first serve basis.

- The differences between Seaview Park and Phipps Ocean Park; at Seaview Park on-street parking was available, but the parking was limited; the Royal Palm Way Parking lot servicing Seaview Park had exactly the same regulations as at Phipps Ocean Park parking lot.

Discussion ensued among the Town Council to find solutions to the parking situation. Following was a few of the ideas suggested:

- Reduce the tennis fee by $1 per session;

- Reduce the parking fee to $10 per quarter;

- Reduce the tennis fee and not touch the parking fee;

- A parking permit cost $50 per quarter and a tennis membership cost $50 per quarter;

- At Phipps Ocean Park, there was no opportunity to park for free, and at Seaview Park there was ample parking for free along Seaspray Avenue, which was one block from

Seaview Park;

- Include within the cost of the tennis membership, the cost of parking, to distinguish from the bathers, who pay no fee to utilize the beaches, only to park;

- Increase the tennis membership fee slightly to pay for parking, in order to assist the Leisure Services Enterprise fund, as every year the tennis facilities were in a deficit; and

- Provide the tennis players with tokens for parking at the time of applying or renewing membership.

Motion made by Councilman Wyett, seconded by Councilman Coleman that staff analyze the parking system at Phipps Ocean Park, and return with a recommendation at the January 10, 2006, Town Council Meeting.

Mayor McDonald added that the seasonal fees were based on the mediocre to average condition of Seaview Park, and not the world class facility at Phipps Ocean Park. The fees were artificially low and would have to be adjusted based on the facilities that the Town provided. The Mayor commented that staff would need to study the whole fee system in conjunction with the parking issue, and not just parking.

Upon roll call, the motion carried unanimously.

2. Complaints Regarding Noise and Hours of Operation at Amici - Review of Compliance with Special Exception No. 4-2004 with Site Plan Review and Variances.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Close provided a history of the progress of the noise complaints at the Amici Restaurant, and clarified the hours of operation as follows:

- 10:00 p.m. - last dinner order outside dining area
- 12:00 p.m. - last dinner order inside dining
- 1:00 a.m. - last call for drinks

Maurizio Ciminella, owner of Amici Restaurant, stated that in 15 years in Palm Beach this was the first time he had been requested to attend a Town Council meeting because of a problem at his establishment. He said he would address the noise problem, resolve it, and improve it.

President Brooks publicly thanked Mr. Ciminella for the numerous 501c3 organizations that was allowed to raise money from 6:00 p.m. to 8:00 p.m., at his restaurant.

Attorney Ron Kolins introduced Meg Sevalli (ph), a neighbor of the complaining party, to express her views of how she was impacted by Amici's operation.

Meg Sevalli(ph) stated that she lived in the same complex of the person who had made the complaints, and during the same time, she had not experienced any late outburst of noise, or late night dining.

Councilman Coleman commented that the noise complaints were clear, factual violations of Special Exception #4-2004.

Councilman Kleid requested the results of the Police Department's response to the calls at Amici's, and whether the complaints were justifiable.

Police Chief Reiter responded that there were three noise complaints from the same person. On the first complaint the Restaurant manager agreed to lower the volume on the music, because the officer's perception was of loud music; on the second complaint, the officer had no perception of loud music or of any violation, and on the third instance the Restaurant manager agreed to lower the music.

Councilman Wyett emphasized that a complaint of one neighbor was the same as a hundred. He added that the ordinance protected the peace and quiet of residential areas.

President Brooks asked Attorney Kolins, on behalf of his client, if the events and provisions of music were clarified through the interpretation in the backup and what was heard from the Council.

Attorney Kolins replied that other than the music issue and decibel level of the music, there were no other problems that had taken place.

Mr. Elwell noted for the record, that the complainant was notified of the Town Council meeting as well as Mr. Ciminella.

3. Potential Inclusion of Decorative Features in Florida Department of Transportation's Reconstruction of SR A1A from Southern Boulevard to Royal Palm Way.
[H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil reported that there were possible decorative improvements to be completed in association with the ongoing State Road A1A project. Mr. Brazil pointed out that the cost estimates provided for the improvements could be higher depending on the bids the Florida Department of Transportation (FDOT) received. Following were the improvement items:

- Traffic Signal Poles
- Decorative Light Poles
- Decorative Sign Posts
- Pedestrian Crosswalks

Mr. Brazil noted that the first improvements were the traffic signal arms, which Council had requested be done on an opportunistic level, and then the decorative lighting was next.

Councilman Kleid noted that the Town Council agreed in concept to upgrade the decorative lighting poles at times when other work was being done in the area. He pointed out that work was being done in other areas of the Town, but only Hammon Avenue to Southern Boulevard was being considered for the lighting upgrade.

Mr. Brazil explained that staff would address the Town Council for the section between the south Town limits and Lake Worth Road, and that the section between Widener's Curve and Southern Boulevard could not be upgraded due to right-of-way limitations. Mr. Brazil indicated that the Greater South County Road Association expressed concern about an insufficient level of lighting in the section between Hammon Avenue and Royal Palm Way, and requested the Council to direct staff to study the area separate of today's issues.

Councilman Coleman stated that his highest priority was the pedestrian crosswalks and was in favor of anything that would cause the traffic to slow down.

Mr. Brazil explained that the Town was limited on FDOT's roadways, but there was more flexibility on the Town's side streets and roads.

Councilman Wyett said he supported the crosswalks because of the public safety issue, but was not supportive of the cost for decorative light poles, when the funding could be used for undergrounding of utility lines.

Mr. Brazil responded to President Pro-Tem Goldblum's question explaining that the wires for the light fixtures in the Historic District were above ground, and between Banyan Boulevard and Southern Boulevard, the light fixtures were above ground, and nonexistent from there south.

Responding to President Pro-Tem Goldblum regarding the decorative light poles being hurricane proof, Mr. Brazil noted that FDOT's standard of the concrete poles had survived better then the decorative poles. Mr. Brazil explained further that the decorative poles surviving a hurricane depended on how well they were assembled and installed.

President Brooks indicated that the Historic District should be decorative, that he supported the crosswalks, and inquired about the funding for the project.

Mr. Elwell responded that there was more than enough money in the contingency fund. He pointed out that FDOT needed an answer regarding the decorative sign posts.

Susan Markin, 1450 N. Lake Way, expressed concern about the poor lighting in the north end of Town as there were more citizens, and the largest concentration of children residing on the north end year-round. Ms. Markin requested that the north end be considered in the budget plan for lighting, and re-paving of the roads. She inquired as to the completion date of the project on the North Lake Way Pump Station behind the Palm Beach Country Club.

Mr. Brazil responded that a long-term paving program was being developed as a result of the increase in the paving budget, and an emergency plan was in place to quickly convert the access road blocked by construction work on the Lake Way Pump Station to an accessible egress. He noted that construction would be completed before Christmas, but remedial work would remain for landscaping and paving. Mr. Brazil added that Ms. Markin's comments would be considered as future paving plans were developed.

Motion made by Councilman Wyett, seconded by Councilman Coleman to approve the construction of textured pedestrian crosswalks for public safety. On roll call, the motion carried unanimously.

Motion made by Councilman Wyett not to approve the installation of the decorative sign posts.

Councilman Wyett expressed concern about the cost of installing the sign posts.

Motion failed for lack of a second.

Motion made by Councilman Coleman, seconded by President Pro-Tem Goldblum to approve the installation of the decorative SIGN posts. On roll call, the motion carried 4-1, with Councilman Wyett dissenting.

Public Works Director Brazil noted that the traffic signal poles had already been approved by the Town Council.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Coleman not to approve the upgrading of the traffic signal pole at the Central Fire Station. On roll call, the motion carried 4-1, with President Brooks dissenting.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum to deny approval of the installation of the decorative LIGHT poles. On roll call, the motion carried 4-1, with Councilman Kleid dissenting. (This motion was reconsidered following the luncheon recess.)

President Brooks requested staff bring back alternatives for the light poles.

Mr. Elwell responded to Councilman Coleman that FDOT would subsidize funding from the concrete poles for the cost of the decorative light poles.

Police Chief Reiter pointed out that aside from the aesthetic view, there were areas that required additional illumination for crime prevention values, limited sight distances, and at intersections.

Councilman Coleman suggested that the motion be reconsidered for further discussion.

**********The luncheon recess was taken at 12:30 p.m.***********

**** The Town Council Meeting of December 13, 2005 was reconvened at 2:00 p.m.*****

President Brooks reconvened the meeting to continue the discussion of Item VIII. B. 3.

Public Works Director Brazil noted the following options of the street lighting project:

- Florida Department of Transportation's (FDOT) standard installation would consist of concrete street light poles and metal cobra head fixtures, at no cost to the Town;

- If the Town chose to pay for upgrading the street lights, an estimated cost to the Town would be approximately $455,000; or

- Staff proposed that the Town's Public Works Department could do the project for an overall cost savings of approximately $200,000.

Mr. Brazil recommended, based on conversations with FDOT and their consultant, that staff be directed to implement the project, assume a Joint Project Agreement with FDOT, and their consultant would provide FDOT's design to the Town. Staff would provide the Town Council with a firmer cost estimate, and if the Town Council decided not to accept the project, there would be no cost to the Town.

Responding to President Brooks regarding the time issue, Mr. Brazil noted that he would return to the Council in May or June.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Kleid that staff proceed toward a Joint Project Agreement with FDOT regarding the decorative LIGHT poles, return with a firm cost estimate for review by the Town Council, and for a determination of the acceptance of the estimate. On roll call, the motion carried unanimously.

President Brooks passed the gavel and made a motion to revisit the decorative upgrade of the traffic signal pole, in the Historic District, in front of the Central Fire Station and tie it back into the full plan presented in April or May. There was no second made for the motion.

Discussion ensued and the Council members agreed to decline the upgrade of the traffic signal pole at the Central Fire Station with the FDOT project, and that staff would bring back alternatives to be addressed separately.

4. Conceptual Review of Seaview Park Master Plan Alternatives.
[H. Paul Brazil, Director of Public Works]

Public Works Director Brazil reported that staff and the Recreation Department developed conceptual alternatives for a redesign of Seaview Park Tennis Facility. The three alternatives site plans were as follows:

- Seven courts in the same footprint;
- Seven courts in a slightly larger footprint that would get the setback from court to court closer to regulation; and
- Total of eight courts.

Mr. Brazil related that the Recreation Advisory Board agreed to consider the three redesign alternatives and a fourth alternative, which included an at-grade parking facility with an elevated tennis surface above it, which included consulting fees of $15,000.

Councilmen Coleman, Wyett, Kleid, and President Pro-Tem Goldblum were not supportive of the fourth alternative, the elevated tennis court, for various reasons.

Mayor McDonald commented that in view of the parking problems of the Town, this would be the opportunity to consider the fourth alternative.

President Brooks requested staff to proceed with the first three alternatives for the tennis courts at Seaview Park, and to obtain public input at an evening public meeting and return to the Town Council to discuss the three alternatives.

Mayor McDonald called attention to a second issue in a letter from Mr. Spaziani, Chairman of the Recreational Advisory Commission, regarding a suggestion to lower the water costs at the south end golf course.

Town Manager Elwell indicated that staff was currently exploring the option, presented by Mr. Spaziani, of the conversion of non potable water into potable water.

Councilman Wyett advised against involvement in any system, unless it was well proven.

5. RB Zoning District Neighborhood Index.
[Allen S. Wyett, Town Council Member]

Councilman Wyett related that at the Community Meeting regarding the RB Zoning District Neighborhood Index, there was strong opposition to rezoning. He indicated that if the second hearing on December 14, 2005, was similar to last week's meeting, the Town Council should reconsider continuing with the third and fourth meeting. Mr. Wyett stated that the next meeting would provide enough input for the Town Council to make their decisions. He brought out the issue that in 1982, a particular lot in Palm Beach was permitted more coverage, than was permitted today, which would subject the Town to a lawsuit under the Burt J. Harris Act.

Councilman Coleman said he agreed with Councilman Wyett regarding the citizen's sentiment of opposing the re-zoning. He commented that he would not support something that the citizens did not want.

Mayor McDonald noted that there were citizens that would be expressing another viewpoint at the next meeting. He noted that the effects of an economic analysis would provide information on property with less restrictive zoning as being more valuable. The purpose of the four meetings were to allow everyone to air their opinions and viewpoints.

Councilman Kleid related that although at that particular meeting there was support not to proceed with the other meetings, a process was put in place to allow the maximum amount of people to speak for or against the issue.

President Pro-Tem Goldblum concurred to proceed with the meetings in order for the Town Council to determine what was right for the Town.

Councilman Coleman contended that more liberalized zoning did not lead to greater values. He stated that zoning was part of what built the value in the Town, providing a balance of community and property rights.

Councilman Wyett clarified that the citizens attending the last meeting did not want their right to expand their homes lessened, nor property values lowered as a result of it.

Mayor McDonald stated that the Town Council had to make the best decision for the Town regardless of the concern of a lawsuit, under the Burt J. Harris Act.

Mr. Elwell noted that the subject matter of the remaining meetings addressed different issues and should be continued.

David Barton, Jamaica Lane, suggested that at the next meeting, the Maximation Study needed to be presented at the start of the meeting with an unbiased moderator. He related that his request that the computer model be presented at the last meeting was denied by staff because it would take time away from the speakers.

Bill Guttman, 216 West Indies Drive, said he disagreed with Councilman Wyett regarding the nature of the four Community Workshops, as the first two were intended to address the Neighborhood Index, and the second two were intended to address the RB District divided into several sub-zones. They were two discreet issues and the workshops must go forward.

Sam Boykin, 285 Jamaica Lane, submitted a petition to the Town Council opposing the indexing plan. (The petition was provided to Town Clerk Eichhorn.)

Ralph Deldeo, 265 Fairview Road, commented that Planning, Zoning & Building Director Close did a wonderful and fair job at the last meeting.

Carol Koeppel, Southland Road, commented that she agreed with Councilman Wyett, in that if it appeared that the majority in the community were not in favor of the proposal, there was no point to continue the meetings. Ms. Koeppel stated that the Town had increased in value with the development of replacing homes and added beauty to the Town. She added that to decrease the size of a normal family home, would not do the Town justice.

President Brooks clarified that Mrs. Marix requested that there be two evening meetings, to be fair to citizens at this time of year. He said she requested a day and an evening meeting. Although, the evening meeting on December 1, 2005, was unanimously against the indexing concept, the Town Council voted to set up a process for the issue, and will stay the course. The meeting will be held tomorrow, December 14, 2005, for those who wish to speak, and then proceed to the Planning, Zoning and Building Commission for review of the concept and then to the Council with a recommendation. He concluded that there were two public meetings to handle the RB district, as it was an exceptionally large district, and that the process must be followed.

Responding to Mr. Barton's request to present the Maximation Study at tomorrow's meeting, Mr. Elwell maintained that it would be inappropriate because it would steer the public in a biased direction.

6. Long Term Financial Plan. [Jane Struder, Director of Finance]

Finance Director Jane Struder provided a PowerPoint Presentation of the Third Annual Long-Term Financial Plan. Ms. Struder noted that this plan covered FY2006 through FY2010, and the presentation included the following:

- Current financial condition;
- Current status of reserves;
- Summary of forecast for the funds; and
- Staff recommendations and conclusions.

Councilman Wyett expressed concern regarding the following items:

- Items not included in the forecast, such as the placement of underground wiring;
- Items not included had interest rates, whether they were bonded or not;
- Any expense the Town Council incurred, should be forecasted;
- How did the potential (non-forecasted) items affect the decrease in the millage? ; and
- The Capital Reserve Fund should be increased from the current $17 million, which was inadequate in the event of a catastrophic hurricane.

Town Manager Elwell reported that the Town's rating by both Moody's and Standard & Poor's was Triple A, and that the discussion of appropriating funds for building up the Reserves would best be addressed during next year's budget issues. Mr. Elwell commented that it was too early in the process of the new positions and the placement of the underground wiring to forecast the projected increase in the budget.

Councilman Wyett commented that the public was informed that the millage rate would decrease, and asked if the potential items that were not forecasted would have an effect on the millage rate. Councilman Wyett indicated that there were many more items than the two discussed that were not forecasted.

Ms. Struder indicated that other items were the Planning, Zoning and Building new office building, which could be funded by Reserves, and the coastal projects.

Mr. Elwell noted that a meeting would be scheduled for the coastal projects, which would be funded separately through the bond for the initial program, and would revisit it for future funding of projects.

Finance Director Struder commented that the millage rate decreased the first year by $200,000 and the final two years by almost $2 million, which left room in the out years to add some of the items that were on the list.

7. Leisure Services Enterprise Fund Business Plan.
[Jane Struder, Director of Finance]

Finance Director Struder provided an update of the status of the Leisure Services Enterprise Fund Business Plan. Following were the highlights of FY2005:

Town Docks

- Nine video recording cameras were installed;
- Net income exceeded $180,290; and
- Marine Crime Watch successfully implemented.

Recreation Activities

- 100% of the participants rated the activities as excellent or good;
- 98% to 100% were satisfied with the conditions of the facilities;
- Received $78,000 in donations; and
- A generator was donated for the Seaview Park facility to be used as a comfort station during Hurricane Wilma.

Tennis

- Proposed Master Plans for Seaview Park Tennis facility completed;
- Courts 4, 5, and 6 at Phipps Ocean Park completed by the end of December; and
- Annual permit sales increased.

Par 3 Golf Course

- Posted a loss for the year, but despite hurricanes, revenues were within 92% of the budget; and
- Ranked in the top 10 short courses in America; and
- Hired a new superintendent.

Ms. Struder indicated that the retained earnings in 2010 may drop below the 25% minimum to $800,000, representing a 19% level, rather than a 25%. This fund's retained earning balance would be monitored closely over the next three years, to ensure that the balance does not drop below the minimum required.

Town Manager Elwell noted that this type of forecasting was done to identify issues that need to be addressed, in order to avoid problems while managing capital projects and operating revenue.

President Pro-Tem Goldblum asked if the monies for the Town library would be paid from the Leisure Cultural Fund.

Mr. Elwell responded that it was an item to be considered and would be addressed during the budgeting for next year, both name change and funding for the library.

8. Appointment of Town Manager Pursuant to Section 4.02(b) of the Town Charter. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum dated September 7, 2005, to the Mayor and Town Council, included in the backup material, referring to the annual appointment of the Town Manager from December 14, 2005, through December 13, 2006.

Councilman Coleman recommended that the six-month severance compensation be amended to a 12-month severance compensation including health benefits.

Town Attorney Randolph advised the Council to direct staff to prepare an amendment in the contract and to bring it back for approval.

Motion made by Councilman Coleman, seconded by President Pro-Tem Goldblum to approve a contract amendment for inclusion of a 12-month severance compensation including health benefits. On roll call, the motion carried unanimously.

Motion made by Councilman Wyett, seconded by Councilman Kleid to approve the reappointment of Peter B. Elwell to serve an additional one-year term as Town Manager. On roll call, the motion carried unanimously.

9. Code Enforcement Board Appointments.
[Veronica B. Close, Director of Planning, Zoning, and Building]

President Brooks announced that Rosemary Reder was appointed as a regular member of the Code Enforcement Board to fill the position vacated by Thomas M. Youchak.

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

President Brooks announced that John Schuler was appointed as a regular member of the Planning and Zoning Commission to fill the position vacated by Joanna Golino; and William M. Guttman was appointed as an alternate member of the Planning and Zoning Commission to fill the position held by John Schuler.

11. Request from Mark A. McCorkle of Palm Beach Realty Partners for Right-of-Way Permit to work at South County Road and 204 Brazilian Avenue to repair damage to the building caused by Hurricane Wilma. [H. Paul Brazil, Director of Public Works]

Mr. McCorkle, spoke on behalf of Leslie Evans, requesting a right-of-way permit to repair the building at 204 Brazilian Avenue, as a result of water intrusion.

Public Works Director Brazil commented that the Public Works Department did not have the authority to approve the right-of-way permit requested, but had determined that the repair work could not be postponed until the season was over.

Responding to the Council members questions, Mr. McCorkle, addressed the following concerns:

- The merchants were notified about the contracted work;
- Impact to the merchants would be kept to a minimum;
- A lift would be used to provide patrons accessibility to the merchants;

President Pro-Tem Goldblum recommended scaffolding as was previously done on Worth Avenue to minimize the impact to the merchants and pedestrians.

The Town Council discussed the issue and agreed that the least impact alternative would be to use scaffolding, to be more pedestrian friendly, minimize scope of work to just water-tightening the building and not doing any aesthetic work, until the season was over.

Mark McCorkle agreed with the Council to notify the contractor to begin work on Monday, December 26, 2005, or Tuesday, December 27, 2005.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum to approve a six-day, Right-of-Way Permit with the use of scaffolding so as to be more pedestrian friendly, to minimize the scope of work to water tightening the building, and not doing any aesthetic work until the season was over. The applicant agreed to begin work on Monday, December 26, 2005, or Tuesday, December 27, 2005. On roll call, the motion carried unanimously.

12. RESOLUTION NO. 83-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Transfer and Change of Control Agreement between the Town of Palm Beach and Adelphia Cablevision of West Palm Beach, IV LLC; Adelphia Communications Corporation; Time Warner Cable; Holdco Exchange II, LLC; Parnassos, LP; Time Warner NY Cable LLC; Comcast Corporation and Authorizing the Mayor of the Town to Execute the Transfer and Change of Control Agreement on Behalf of the Town of Palm Beach.
[Thomas G. Bradford, Deputy Town Manager]

Representatives from Adelphia Communications Corporation and Comcast Corporation were in attendance and introduced themselves.

Deputy Town Manager Bradford recommended that the Town Council approve the proposed Transfer and Change of Control Agreement for the Town franchise to provide for cable television services from Adelphia Communications Corporation to Comcast Corporation.

Mr. Bradford commented on two primary issues of concern:

1. Condition of the infrastructure as a result of hurricanes - that Comcast Corporation agreed to carry out the applicable technical standard as in the national electric code.

2. Undergrounding - that Comcast Corporation was not opposed to undergrounding, was interested in any benefits accrued by the proposed legislation, and interested in existing funding through the Federal Highway Administration and others. Comcast was opposed to paying for underground conversion.

Klayton Fennel, Vice President of Government Affairs for Comcast, South Florida, stated that in the existing agreement between the Town and Adelphia, it was clear that if other providers converted to undergrounding, Comcast Corporation would convert at their own cost. Mr. Fennel requested to have policy discussion how to best recover the expense of undergrounding through the customers.

Councilman Wyett expressed dissatisfaction with Adelphia's poor customer service. He stated that he wanted assurance in the contract with Comcast that the Town would have better service, than with Adelphia. Councilman Wyett suggested that a concession be included in the agreement to televise Town events.

Mr. Fennel replied that Comcast's philosophy was to partner with the local franchising authorities, outside of the franchise agreement for public symposiums, and that he would gladly meet with the Town Council in order to partner with the Town of Palm Beach.

Town Attorney Randolph read Resolution No. 83-05, by title as printed above.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Coleman to approve Resolution No. 83-05. On roll call, the motion carried unanimously.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 17-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances at Chapter 38 Emergency Services, Article II, Alarm Systems, at Section 38-35 So as to Provide the Authority to the Town Manager to Waive False Alarm Charges for Extended Power Outages; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney John Randolph read Ordinance No. 17-05 by title, as printed above.

Councilman Coleman moved adoption of Ordinance No. 17-05 on second reading. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE 18-05 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]

Mayor McDonald offered kudos to Scott Lewis thanking him for all he did for the Town in the aftermath of Hurricane Wilma. He especially thanked him for the cooperation and help he gave the Town in working with FEMA.

Director of Planning, Zoning and Building Department Veronica Close discussed Ordinance No. 18-05, referring to her detailed memorandum to the Mayor and Town Council, dated December 8, 2005, and included in the back-up material. She explained that Ordinance No. 18-05 represents a modification of previously passed Ordinances No. 10-05 and No. 11-05. She advised that at the July 12, 2005, Town Council meeting, staff was requested to work with the landscapers to resolve the issue regarding Saturday work for landscaping and to prepare a modification to the ordinance which allowed construction work on Saturdays during the off season.

Ms. Close advised that staff met with members of the landscaping industry including Scott Lewis, and as a result of these meetings, staff recommended the adoption of Ordinance No. 18-05, which clarifies the intent of the Town Council's actions regarding construction work and landscaping activities on Saturdays.

In response to Councilman Coleman, Ms. Close stated that landscaping work, apart from the leaf blowers, could occur all day long. She noted that the landscapers could not work on Sundays, holidays or the Friday, after Thanksgiving.

In response to President Brooks, Ms. Close stated that the Ordinance could go into effect upon the second reading, on January 10, 2005. She advised that there was progress in hiring a part-time Code Enforcement Officer and staff hoped to have one on board shortly.

President Brooks noted that the Code Compliance Officer's cell phone would be available to the residents and that there would be a push to educate the landscaping industry on Ordinance No. 18-05.

Ms. Close advised that the Town's Police Officers and Code Compliance Officer's were presently addressing violations to these ordinances and were available to do so on Saturdays.

Police Chief Reiter stated that Police Officers were on call seven days a week, twenty-four hours a day to help enforce Town Ordinances. He explained that because of the many nuances in the changes, the Police Department was further educating their officers in all those changes and taking a more active role in enforcing ordinances in times when Code Enforcement Officers are unavailable.

Councilman Wyett asked Scott Lewis if there was enough time to effectively clean up a property between 9:00 a.m. and 12 noon, or should the Town consider adjusting the hours to be more liberal without disturbing the neighbors?

Mr. Lewis responded that work can be started at 8:00 a.m. but noise could not be made until 9:00 a.m.. He advised that about eighteen companies were involved in the discussions relating to this ordinance and many compromises were made. He noted that there approximately 480 companies working on the island.

Mr. Lewis advised that the Friday before Thanksgiving was not a legal holiday, and he requested the phrase "including the Friday immediately after Thanksgiving" be removed from the ordinance. He said not being able to work on that Friday was very burdensome to their industry, creating a five-day gap in service during one of the busiest times of year.

Councilman Wyett stated that he could support Mr. Lewis' request.

In response to Councilman Coleman, Ms. Close stated that there was no requirement related to ear protection.

Councilman Coleman suggested that the ordinance should require workers to have ear protection. He stated that the landscaping companies should be asked to make sure their laborers wear head gear or some type of ear protection.

President Brooks stated he was supporting Mayor McDonald's earlier comments and suggested banning leaf blowers on the weekends.

In response to Mayor McDonald, Scott Lewis advised that before using leaf blowers, they used push brooms and hoses, which can no longer be used due to restrictions of the South Florida Water Management District. He noted that the water restrictions go into effect always during the season, but presently there were no restrictions. He stated the South Florida Water Management District requests that landscaping businesses not use hoses because water would be wasted.

In response to Mayor McDonald, Mr. Lewis asked the Council to consider the 65 decibel leaf blowers. He stated that he did not believe they had heard a brand new 65 decibel, which was shockingly quiet. He advised that it was quieter than a number of weed eaters, edgers, mowers, cut off saws, and chain saws. He asked that the Council give the Ordinance a chance before changing it ahead of time. He explained that changing to 65 decibel leaf blowers was a costly venture for the industry. He stated that the main issue discussed with Ms. Close, Mr. Elwell and Mr. Walton, Chief Code Compliance Officer was enforcement of the Ordinance. He added that he did not want to see the legitimate companies hurt.

Mayor McDonald stated that if they were not used, at all, no one would be hurt and there would not be a matter of enforcement.

Mr. Lewis asked the Council to consider that businesses such as the Four Arts, First National Bank, Poinciana Plaza cannot have their landscaping done during the week because of the parking situation. He explained that there were locations, in the business district in particular, which do butt up against residences in most cases, where small windows of opportunities were needed, and asked them to give the ordinance a chance.

In response to Mayor McDonald, Mr. Lewis stated that he believed this ordinance was a compromise. He noted that the ordinance would be costly since landscaping companies would have to purchase new leaf blowers by next October. He advised that businesses would be restricted in their use of blowers on Saturdays giving up 60% to 70% of their day because they had been using the blowers all day.

Mr. Lewis asked that the Town help with enforcement suggesting that they consider using tags on the blowers to show they were the right decibel blower, so that anyone could see. He noted that it would be very visible, and if someone was using a blower that did not have it, a violation could be called in. He stated that they were willing to pay for those tags and believed that Ms. Close could do it administratively.

Mayor McDonald stated that was a reasonable suggestion.

Councilman Wyett made a motion to adopt Ordinance No. 18-05 on first reading with the caveat that landscaping entities be allowed to operate on the Friday after Thanksgiving, providing that the new 65 decibel leaf blowers were used.

Councilman Coleman requested that Councilman Wyett amend his motion to include noise protection for the workers.

Ms. Close advised that the standard for the decibel rating for the leaf blowers, which staff was recommending, was 65 decibels, and was the only part of the Ordinance that was effective October 1, 2006. She added that staff does have a way to identify leaf blowers that were in violation of the Ordinance.

Ms. Close informed the Council that there were two minor amendments made to the Ordinance after they received it in their packet.

1. On page 1, add the word Friday that was inadvertently taken out;
2. The period of the year - no substantive changes, but if the Council does allow the Friday after Thanksgiving, that change would be made in the ordinance as well as the ear protection.

Town Manager Elwell clarified that Councilman Wyett wanted to put back the Friday after Thanksgiving as a normal workday as long as the new blowers were used.

Councilman Wyett suggested that the Town Manager have the authority to lift the restriction on construction work on the Friday after Thanksgiving should there be a hurricane requiring hurricane related repairs that could occur.

In response to President Brooks, Mr. Elwell stated that it depended on the timing of the storm, and noted that there was a period of time when the Town was in an emergency situation when administratively projects were being allowed to be worked on; but as soon as a Council meeting could be held, staff would ask for the Council's direction.

Councilman Coleman requested Mr. Wyett amend his motion to include protective head gear for workers.

In response to Councilman Wyett's concern of whether it was practical, Mr. Lewis stated that workers do have OSHA and worker's compensation. The landscaping companies do have head gear, and could make them available. He added that he did not know that anyone was willfully doing it the wrong way to hurt their workers; but believed it was up to the Town Council to make that decision. He advised that his company does make them available.

Councilman Coleman advised that he wanted protective head gear to be a requirement, not an option, comparing them to seat belts.

Elizabeth Murphy, 265 Park Avenue, explained that the Civic Association Beautification Committee had been considering leaf blowers for several seasons. She stated that leaf blowers contributed to drainage problems. She noted that she knew of several people who had requested their gardeners to rake, for the same price. The response was positive and those people were encouraging other neighbors to do the same. She advised that she believed it was a good idea to require the protective ear gear but the onus should be on the landscaping industry and not on the caretakers.

Councilman Wyett made a motion to incorporate the following amendments into Ordinance No. 18-05:

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

- **Requirement for protective ear gear for workers.**

Councilman Coleman seconded the motion. On roll call, the motion carried unanimously.

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

Councilman Wyett made a motion to adopt Ordinance No. 18-05 on first reading, as amended. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Brooks commented regarding code enforcement violations relating to the timely tree trimming of coconuts, that were dismissed for compliance. Chief Code Compliance Officer Rob Walton explained that each case was based on its own merits; in addition there was a legal requirement that a warning first was issued, in order to provide the violator the opportunity to correct the violation.

Councilman Wyett suggested that the membership requirements of the Architectural Review Commission (ARCOM) should include more than two architects, and that an education process was necessary for persons that were appointed to commissions.

Councilman Coleman commented that strong code enforcement was necessary; he also suggested an education process for citizens, which would relate to the ARCOM duties and process.

XI. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Brazilian Court Construction Extension Request.
[Veronica B. Close, Director of Planning, Zoning, and Building]
Deferred from the November 30, 2005, Town Council Meeting.

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

Attorney James Brindell, on behalf of the Brazilian Court Hotel, advised that Adam Schlesinger, a principal of the Brazilian Court Hotel, Architect Gene Lawrence, and Project Manager Jim Woolems of Woolems Construction were all in attendance.

Attorney Brindell advised that the Brazilian Court Hotel, a landmarked structure, was currently undergoing renovations previously approved by the Council. The renovations would add another fifty years to the life of this landmark property, which was in keeping with the objectives the Town of Palm Beach had for perpetuating landmarks.

Attorney Brindell advised that the hotel hired Jim Woolems and his company, and they started on December 5, 2005. He explained that, prior to starting, Woolems Construction examined the property, the plans, the work that was done, and the work that needed to be done in order to advise Mr. Schlesinger what it would take for completion of this project and when it could be completed. He advised that a new construction schedule had been developed by Woolems, which was provided to Town staff. The company believes the entire project would be finished by September 30, 2006.

Attorney Brindell explained that several months ago, a construction schedule had been developed by another company, which was presented to Assistant Building Official Harry Ackerman. Mr. Ackerman did not believed that schedule was realistic. Mr. Schlesinger decided against using that company and hired Mr. Woolems because of Woolems' reputation, competence and experience in managing these types of projects. He advised that the new construction schedule reflects the evaluation by Woolems.

Attorney Brindell, presented architectural renderings, to discuss the five components of the project: Quads 1,2, 3, the Ohio House, the Lanai Suites, including the areas that had been completed. He requested that the Town Council grant a time extension until September 30, 2006, pursuant to the construction schedule prepared by Woolems Construction. He noted that they would like to continue working under the same hourly conditions as they have been.

Director of Building, Zoning and Planning Veronica Close advised that staff had not had the opportunity to look over the Woolems construction schedule. She explained that staff had recommended all work cease as of December 23, 2005 and resume on May 1, 2006, with completion on September 30, 2006. She advised that Woolems Construction was only being hired as the project manager and not as the actual contractor. She commented that staff still had concerns relative to the level of work being performed. She noted that staff had received comments on a regular basis, in the past, regarding the construction work, and its negative effect on the neighborhood. She explained that staff did have concerns, which was the reason for the recommendation to cease all work during the season. She noted that since Ohio House had been boarded up, staff had not received as many complaints.

Town Engineer James Bowser advised that what had not been noted were the impacts to the right-of-way. He stated that he prefers denying any requests for use of the right-of-way that would encumber parking spaces, sidewalks, etc., in order to support this construction extension request.

In response to Mr. Bowser, Attorney Brindell stated that they had not asked for right-of-way permits, and he was not aware that they would require any.

In response to President Brooks, Attorney Brindell advised that the applicant requested they be allowed to work after December 23, 2005, because it would be counterproductive to cease work.

President Pro Tem Goldblum inquired as to what interior work could be performed, without affecting the neighbors with noise and the trash; what type of work was being performed in Quad 2; and what work had to be finished in that area? He advised the applicant that he wanted the dumpster removed.

Mr. Jim Woolems, President of Woolems, Inc., General Contractors, advised that approximately 85% of the construction could be completed without any noticeable outside activity, such as interiors and the interior courtyards. He, used the presentation boards, to point out those areas: Quad 2 north, Quad 2 south, Quad 3, and the loggia.

In response to President Pro Tem Goldblum, both Mr. Woolems and Mr. Adam Schlesinger, President of CSC Brazilian, Ltd. stated that they would agree to the condition that if any outside complaints were received while working to complete Quad 2 and Quad 3, work would be stopped until the spring.

President Brooks stated that the dumpster on Brazilian Avenue and the green woodwork was atrocious.

In response to President Brooks, Mr. Woolems advised that 85% of the interior work that could be done included electrical, plumbing, air conditioning, drywall, paint and interior finishes in Quad 2, Quad 2 north, Quad 2 south, Quad 3 north and south, and the loggia. The majority of the work was to finish out the suites, which were in a frame stage. He explained that Woolems Construction was not taking over as project managers, but were taking over the actual construction management, with the input of Mr. Schlesinger and his team. He stated that their intent was to continue to manage the construction, focusing entirely on completing this project by September 30, 2006.

In response to Councilman Wyett, Attorney Brindell advised that the first permit pulled by the Brazilian Court Hotel was on April 17, 2003, for work that had been the subject of many hearings. He advised that on October 10, 2004, the Town Council granted an extension to December 1, 2005, with the understanding, at that time, the project would be completed.

Councilman Wyett stated that he believed the Council had a problem granting this request, as it would set a bad precedent. He noted that the applicant brought this problem on themselves, and stated he had a problem with granting approval.

Mr. Schlesinger advised Mr. Wyett that they too had a problem with it, and explained that there had been a string of events that had made renovating this hotel extremely difficult. He stated some of it was out of their control and some were due to choices they had made. He added that they have tried to turn this landmarked hotel around, to make it a much better hotel for everyone in Town. He noted that the applicant had agreed to nine conditions when they were granted an extension last year. He advised that eight of them have been fulfilled, but the ninth, which required finishing the project on December 1, 2005, had not been not fulfilled.

Councilman Wyett suggested that he would agree to compromise and allow, if the Council believed it was appropriate, the applicant to proceed with Quad 2, because it was the least intrusive to the neighbors. He noted that he would not allow them to open the Ohio House, during season, and Quad 3 abuts against residents. He stated that if a compromise could not be reached, he would vote no.

In response to Councilman Coleman, Mr. Woolems stated that to complete this project by September 30th, they would require between 100 and 120 people to work on site. The workers would be bussed in from West Palm Beach. He advised that the amount of material to be brought to the site would be considerable. He noted they have a lay down area across the street from the project, in the parking lot. He stated that the construction material could be lifted by a crane into the center of the building, if necessary.

Mr. Woolems advised that best case scenario would be eight to nine months of construction, if started in May. The construction would continue through next season or stop again in December starting again in May, year after year. The worst case scenario would be ten months. He advised that they would have to add another month if they had to give up the Ohio House and the Quad 3 to start the work.

In response to President Pro Tem Goldblum, Town Engineer Bowser stated that he was not aware of relocation of the gas line, but the sewer line had been abandoned and relocated.

Mr. Bowser recommended, during season, the applicant bring a truck to the site to be used as a dumpster, which would be removed on a daily basis.

In response to President Pro Tem Goldblum, Mr. Schlesinger advised that the open space located near Quad 3was not owned by the Brazilian Court.

Mr. Woolems advised that the parking lot included a lay down area for materials, two large trailers, one for construction and the other for contracting. The material would be fenced using National Fence and green mesh. He advised that the site would be tidied up, and because it was all interior work, noise from jack hammers, or gunite machines, etc. would not be heard.

President Pro Tem Goldblum stated that if there were complaints, then the job would be shut down.

In response to President Brooks, Mr. Schlesinger explained that the green facade was to prevent people from entering the courtyard. He advised they could paint it white or another color. He stated that it was used as a staging area, and work was being done on the courtyard to gear up for the season.

In response to Mayor McDonald, Mr. Schlesinger stated that the courtyard had been cleaned up because the hotel, believing that the project would have been completed by this time, committed to hold events, which could not be canceled. He advised that he was not certain what components were left to complete the courtyard, but most of the work was done.

Mayor McDonald stated that all the impacts were being moved outside, which was affecting the whole neighborhood, and they needed to move them inside. He verified with the applicant that they agreed to the following conditions:

- No work in the Ohio House during the season;
- No dumpsters outside - trucks would be used to remove the debris;
- The applicant would make everything neat and tidy;
- No right-of-way requests ;
- All the workers would be bussed to the site.

Discussion ensued regarding the negotiation of new contracts with the subcontractors for completion of the job. Councilman Coleman suggested the applicant return to Council next month when the negotiations had been finalized. He stated that he was not comfortable granting an extension with the conditions discussed, if negotiations had not been completed.

Mr. Woolems advised that the monthly progress report that was provided to the Council and Ms. Close, as suggested by Attorney Brindell, could show a base schedule to see where the project should be and where the project was.

Ms. Close stated that the schedule provided to staff does show work, commencing now on the Ohio House, to be completed in mid- September. She advised that the applicant had stated there would be no work on the Ohio House, and therefore, needed to address how the work could be completed by mid- September.

President Pro Tem Goldblum suggested that the applicant should be fined $2,000.00 a day, from September 30th on, as an incentive to complete the project.

Mr. Schlesinger accepted the suggestion of President Pro Tem Goldblum.

Councilman Wyett moved approval for the construction extension request on Quad 2 until October 30, 2006, incorporating President Pro Tem Goldblum's fine system ($2,000.00 per day), if the applicant fails to complete the project by that time.

Mr. Woolems advised that eliminating Quad 3 from the plan would impact his schedule to complete the project. Quad 3 was over 40% of the remaining job, and Councilman Wyett's motion would not help him at all. He explained that there was a large buffer between the neighbors and Quad 3, and noted that they were not talking about the Lanai Suites or the pool area.

In response to Councilman Wyett, Mr. Schlesinger advised that the hotel had an excellent relationship with the owners of the private home to the south of Quad 3. He stated that he was not aware of any complaints from the homeowner; and Ms. Close stated she was not aware of any complaints either.

Mr. Schlesinger stated that he could not give up Quad 3, and asked that the Council include Quad 2 and Quad 3, as one, in the motion. He noted that starting in May, for Quad 3, he had purchasers of the condo hotel keys that were obviously upset, and pushing it up from May did not work out for him.

Ms. Close advised that she had made a list of all the conditions heard during this procedure and reviewed them for the Council.

In response to Councilman Coleman, Mr. Schlesinger advised that 99% of the utility work had been done.

Councilman Coleman requested that there be an additional penalty, on a per diem basis, for any worker parking on that street.

In response to Town Attorney Randolph, the applicant agreed to incorporate the conditions into an agreement that would be executed by the applicant.

Councilman Wyett amended his motion to approve the construction extension request on Quad 2 and Quad 3, until October 30, 2006, with all conditions incorporated into an agreement executed by the applicant. Conditions to include:

No dumpsters outside - construction debris to be removed on a daily basis;
Workers to be bussed in;
No right-of-way requests;
Monthly status report to Town Council;
No work on Saturdays or holidays (and holidays otherwise) during the season;
Remove green wall presently in place on north side of the property;
Interior work only on Quad 2 and Quad 3 to begin immediately;
All work to stop if there are any complaints;
Storing materials in the parking lot, with appropriate screening - materials will be delivered into the courtyard;
Install fencing around the storage areas;
No work on Ohio House until May 1st;
$2,000 per day fine after October 30th if work not completed;

Discussion ensued regarding fines for multiple violations of conditions included in the agreement executed by the applicant. The following condition was added to the motion.

> **$2,000 fine for the first five violations of any condition; after that the penalty would go up per each subsequent violation.**

In response to Town Engineer Bowser, Mr. Woolems stated that materials would be delivered so that the rights-of-ways were not impacted, to the parking lot across the street as a lay down area for staging. He advised that they had additional space on Brazilian that allowed for vehicles to pull in. He stated that trucks would be able to drive into the courtyard.

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

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #38-2005 The application of Glenn and Diane Zeitz relative to property described as Lots 193, 195 and 12.5 feet by parallel lines off the entire east one half of Lot 191, Poinciana Park ; commonly known as 142 Seabreeze Avenue; located in the R-B Zoning District. To allow construction of an exterior landing and steps at the level of the finish floor (approx. 21" above grade) to be added to facilitate access to the existing residence through new French doors, at a distance of 7.9 feet from the east side property line, in lieu of the 12.5 foot minimum required.

Ex-parte communication was not declared by any member of the Town Council. President Brooks advised that Attorney Jim Payne tried to reach him, but was unable to.

Councilman Wyett requested staff make their comments, and he would then move approval.

Attorney James Payne stated that he represented Glenn and Diane Zeitz.

Zoning Administrator Paul Castro advised that the Landmark Commission stated the variance being requested would not be detrimental to the landmarked structure. The steps going up to the raised patio were insignificant, and the applicant needed to demonstrate the hardship.

Councilman Wyett made a motion to approve Variance #38-2005. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

b. 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. **Request for Deferral to the January 10, 2006, Town Council Meeting Per Letter Dated November 22, 2005, From Maura A. Ziska.**

Deferred Variance #39-2005 to the January 10, 2006, Town Council Meeting.

c. VARIANCE #40-2005 The application of James Simpson relative to property described as Lot 16, less the 10 feet thereof, Ocean Terrace; commonly known as 1333 North Lake Way; located in the R-B Zoning District. Request variances to allow construction of a second story addition with points of measurement for cubic content ratio and height of 10.08 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 7.5 feet NGVD maximum allowed, as measured by the Town.

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

Attorney Maura Ziska, on behalf of the applicant, stated that the variance request was to allow a second story addition over an existing one-story section of the house. The hardship ran with the land. She advised that the Architectural Review Commission (ARCOM) approved this project and the granting of the variance.

Zoning Administrator Paul Castro stated that staff comments were related to demonstrating hardship. He advised that there was a significant grade change, at that location, on the corner lot; and in order to complete the renovation, which includes a second story addition, the applicant needed the variance for point of measurement, not only for cubic content ratio, but for building height, as well.

Councilman Wyett made a motion to approve Variance #40-2005. The motion was seconded by Councilman Coleman. On roll call, motion carried 4-0, as President Brooks had temporarily left the room.

3. Old Business- More Than 15 Minutes

None

4. New Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #21-2005 The application of Commerce Bank relative to property described as Lots 35, 36 and 37, Bungalow Park Addition; commonly known as 165 Bradley Place; located in the C-TS Zoning District. Request approvals of Special Exceptions to allow the continuation of a town-serving commercial financial institution establishment with greater than 2,000 square feet of gross leasable area (3,040 square feet) on the southeast corner of Bradley Place and Park Avenue; and in the C-TS district on the southeast corner of Bradley Place and Park Avenue.

Ex-parte was declared by President Pro Tem Goldblum via a walk through the property.

Attorney Bonnie Miskel, Ruden McClosky, on behalf of the applicant, stated Commerce Bank was not a traditional bank, but a community service, community based, community minded bank. She advised that they acquired Palm Beach County Bank on December 5, 2005. She explained that they were before Council today to discuss the transition from Palm Beach County Bank to Commerce Bank. She noted that the Town of Palm Beach Code required the applicant to request two special exceptions for the following reasons:

1. The applicant was moving into a structure that was over 2,000 square feet;
2. The applicant was requesting use as a financial institution.

Attorney Miskel advised that they were not expanding the building or asking for a drive- thru, but the applicant was simply converting the existing 3,040' facility from an existing Palm Beach County Bank to a Commerce Bank. She explained that Commerce Bank was primarily located out of the northeast and had been for many years. She noted that if the Council approves the request, the transition would include conversion of the Palm Beach County Bank sign to a Commerce Bank sign, and some very minor interior work. She mentioned that there would not be any impact on the external community.

John Tolomer, President of Commerce Bank, Florida, discussed the history of Commerce Bank, which was founded in 1973. He advised that they were the fastest growing bank in America with their primary goal on customer service. He reviewed some of the features of Commerce Bank.

- Open seven days a week, 361 days a year;
- Typically free standing buildings with on-site parking, ATM's, multiple drive- thru's, to serve their customers in the manner in which they want to, when they want to be served;
- Bank hours Monday through Friday, 7:30 a.m. through 8:00 p.m.;
  Saturday hours 7:30 a.m. to 6:00 p.m.;
  Sunday hours 11:00 p.m. to 4:00 p.m.;
- Bank opens 10 minutes early - before 7:30 a.m. time;

- Bank closes 10 minutes after closing time.

Mr. Tolomer advised that Commerce Bank was very involved in the community, and wanted to be part of the community working closely with the people. He stated that their motto was essentially to serve customers when they want to be served, not when the bank wants to serve them.

Rosemary Reder, 106 Hammon Avenue, stated she was very familiar with Commerce Bank, as her family, in the northeast, banked with them. She advised that Commerce Banks takes care of their customers, and cares about children. She informed the Council that she has been very well served by them, and hoped they would be given consideration.

Mr. Jerry Wilkey, 269 Park Avenue, stated that the bank was located across from his home, and was pleased to hear the Council talk about peace, tranquility, noise and harmony in a neighborhood, since Commerce Bank was proposing to open five days a week, 7:30 a.m. to 8:00 p.m. He explained that there was a synagogue and church in the vicinity, and Saturdays and Sundays were very important to the neighborhood. He said that he and his neighbors strongly oppose the proposed banking hours, which were totally unacceptable. He noted that the previous bank was open five days a week, 9:00 a.m. to 4:00 p.m., which was tolerable.

Mr. Mortimer Goodstein, The Biltmore Condominium, 150 Bradley Place, on behalf of the members of the Biltmore Condominium Association, stated he was the Corporate Secretary of the Association. He advised that they were opposed to the application, only as it related to the hours of operation. The Association believed that opening on weekends, opening early and staying open late was not Town-serving. He noted that the Bank provided this service for its own convenience to attract customers, and extended hours would attract many off island people. He noted that traffic and noise problems were also a concern to all residents in Palm Beach. The Association urged the Council to consider the issue of the hours, but other than the proposed hours, they do not oppose Commerce Bank and welcomed them. He submitted, into the record, a letter from the Palm Beach Biltmore Condominium Association.

Ms. Elizabeth Murphy, 265 Park Avenue, discussed the letter she submitted listing the reasons she strongly opposed the hours proposed by Commerce Bank. She advised that she contacted many banks in Palm Beach that were not investment banks, and all were open Monday through Friday until 4:00 p.m. or 5:00 p.m., without exception. The banks were all closed on the weekends, without exception. She stated there was no reason to make an exception for Commerce Bank. She explained that it was a family/residential area, and they did not want more people and traffic on Bradley Place, during those hours.

Ms. Murphy addressed the concern that the residents of the Palm Beach Biltmore had relative to the amount of traffic there was, when turning west into the Biltmore. She noted that there was now a waiting period to turn in off of Bradley Place, and opening the bank during those additional hours would exacerbate the situation.

Ms. Murphy advised that there had been discussion, previously, regarding completely closing off the entrance on Park Avenue with the ingress at Sunrise, with traffic leaving through Bradley Place. She asked that the Council reconsider that suggestion, explaining that to get into her driveway, she had to do a three-point turn because of the tight space. She added that would be the only commercial ingress and egress on the entire street. She advised that, in regard to the bank continuing to serve as bank, she did not believe there was a need for an additional bank. She stated that there were two Wachovia Banks within 100 to 200 yards of each other, and there was a Bank of America just down the street.

Mr. Ed O'Hara, 259 Park Avenue, explained that the residents of Park Avenue were trying to raise the value levels on their street and discussed the renovations of several residences. He noted that the street still had its problems, but also had its pluses. The street was residential, with the residents able to walk to temple, to church and to Publix. He stated that the downside was the residual noise associated with living within a half a block of Publix, Fedco, etc. He stated that it was a narrow street and increased traffic was unacceptable. He said that granting this application to Commerce Bank, for them to increase their market share, would impinge on the residents of the Town, and what they were entitled to, and what they believe they have here, such as quiet, peace and enjoyment.

Mr. O'Hara advised that his next door neighbor, Mr. Wilson, submitted a letter for the Council's consideration; and he had received a letter from another of his neighbors, Mr. Francis Meagher, 257 Park Avenue, a part- time resident. He read, for the record, the last sentence of Mr. Meagher's letter: "the right to quiet enjoyment is the essence of residential property and should especially be so in Palm Beach."

Mr. O'Hara advised that what Commerce Bank wants to achieve by extending their hours, by giving their customers Saturday's, Sundays and late night hours, could easily be achieved and has been achieved by other banks that have ATM machines.

Director of Planning, Zoning and Building Veronica Close explained that the special exception before the Council was for a bank in the C-TS District and for a property over 2,000 square feet. She advised that the previous bank, Palm Beach County Bank had been denied their request for a drive-thru by the Council.

Ms. Close reviewed staff comments from the following departments noting that there were no comments from the Fire-Rescue Department, Architectural Review Commission, Public Works, Comprehensive Plans, Strategic Plan or the Town Manager.

- Police Department commented that increased traffic congestion should be addressed prior to approval;
- Zoning commented that the expanded hours of operation should be addressed by the applicant as access to the site was from Park Avenue, in a residential area;
- Planning, Zoning and Building Department comments addressed concerns related to expanded hours of operation.

Ms. Close discussed the findings of a survey that had been conducted regarding the hours of ten other banks:

- None of the ten banks opened before 9:00 a.m. or stayed open after 5:00 p.m., Monday through Thursday;
- The drive-thru's do not open before 8:30 a.m. or stay open after 6:00 p.m.;
- Friday hours were 9:00 a.m. to 5:00 p.m. within the bank itself;
- One bank was open on Saturday from 9:00 a.m. to 1:00 p.m.

Ms. Close noted that, in the record, were many letters of opposition, which she believed the Council had now received. She advised that staff had no problem with any of the requests from Commerce Bank except for the following:

- Special Exception Requirement #7, addressed noise. Staff believes there would be increased noise due to the expanded hours;

- Special Exception Requirement #8, addressed increased traffic. Staff believes there would be increased traffic due to expanded hours on a residential street with a negative impact.

Ms. Close added that as Council considers the expanded hours, they keep in mind that there was a shared parking agreement with Coco's on this property. Coco's opened up at 6:00 p.m., which would create a conflict with parking.

Attorney Miskel, on behalf of the applicant, addressed the issue of increased traffic. She advised that with extended hours traffic was not increased, but redistributed. She advised that ATM's do not solve the problem of expanded hours, explaining that you cannot access a safe deposit box unless you go into the bank. She stated that the bank very much wanted to be a good neighbor, and wanted to introduce themselves to the community so the community was comfortable with everything about the bank, from services to products, to time frames. She advised that, as an interim measure, they were prepared to adjust the times until the Council and the neighborhood gets to know them. She said that Commerce Bank was prepared to offer something less, with the opportunity to come back before Council, at a later date, whether it was thirty days or sixty days. She advised that they had received many of the letters from the neighbors on Friday, but did not have the opportunity to meet with them or discuss the application further, in order to see if they could arrive at some resolution. She stated that closing the Park Avenue entrance might be an option and might assist as far as traffic was concerned. She explained that the bank did not own the property but were tenants, and would be willing to approach the landlord, to see if they would be amenable to that.

Attorney Miskel noted that the bank was an interior bank without a drive-thru, and there was not the typical noise from a drive-thru with the intercom system and cars running while waiting to be served. She said it was more of a retail operation like Mildred Hoit, which was located in the same center as Commerce Bank, and was open on Saturdays, as was Fedco. She advised that they would like to be given the same opportunities as their neighbors, noting that, at that location, other businesses were open on Saturday. She added that they were prepared to modify the hours from 8:00 a.m. to 6:00 p.m. or 9:00 a.m. to 6:00 p.m. She advised that they were prepared to work with the Council. She stated that they needed, at a minimum, Monday through Friday, 9:00 a.m. to 5:00 p.m. or 6:00 p.m. She noted that the existing facility hours were 9:00 a.m. to 5:00 p.m. not 4:00 p.m., as was previously stated. She also noted that there was a bank very near the site that offered Saturday hours.

In response to Mayor McDonald, Attorney Miskel stated that they were amending the application to change the hours from 9:00 a.m. to 5:00 p.m., Monday through Saturday. She advised that this would be on an interim basis with the option of coming back after they had an opportunity to meet with the neighbors.

Mayor McDonald stated that under the Town's Code, the application they submitted could not meet the fourteen requirements of a Special Exception. He noted that their application could not be approved, if it did not satisfy the residents, which it did not. He explained that the community was residential and businesses only existed to serve the residents; this request would be a dramatic expansion from the businesses that operate the same type of business, in this community. He reiterated, he did not see how they could comply with the special exception requirements, primarily traffic.

In response to Attorney Miskel, Mayor McDonald stated that, based on what he had heard, the applicant had not provided any evidence proving that they meet the traffic standards. He asked if they had an expert that could testify that they met the requirements of the special exception?

Attorney Miskel replied that the applicant was not expanding the square footage of the building nor were they expanding any uses there. She explained that the special exception being asked for was for an approval of a use that was currently operating on that site today. The use was not new.

Discussion ensued regarding the meeting of the fourteen requirements of the special exception. Mayor McDonald stated that the bank that was located there before did not have those hours, and stated he was not questioning the use, but the expansion of the time.

Attorney Miskel advised that they were trying to offer a better financial product. She noted that the public had requested the expansion of hours in their other locations, and not the officers of the bank.

Councilman Wyett made a motion to approve Special Exception #21-2005, with conditions:

- **Close the entrance on Park Avenue;**
- **Hours Monday through Friday from 8:00 a.m. to 5:00 p.m.; Saturday 9:00 a.m. to 5:00 p.m. with no operation on Sunday.**

The motion died for lack of a second.

President Pro Tem Goldblum noted that the proposed bank was located next to a street with private homes on it, and should maintain the same hours as the other banks in Palm Beach. He added that he would like them to be successful but wanted them to play by the same rules. He said that he would approve the special exception as far as the size.

President Pro Tem Goldblum made a motion to approve Special Exception #21-2005 for size only, with hours Monday through Friday 9:00 a.m. to 5:00 p.m.

In response to President Brooks, Attorney Miskel advised that the headquarters for Commerce Bank were located in New Jersey.

President Brooks advised that Palm Beach was different and that the request for banking hours on Sunday was outrageous. He advised that he could accept Saturday, but opening at 7:30 a.m., and then ten minutes before that was unacceptable. He stated that the conditions for approval include no Sundays; and he did not believe there should be Saturday hours because of traffic.

Discussion ensued regarding the issue of whether it would be Town-serving. Director of

Planning, Building and Zoning Veronica Close advised that the staff did have Town-serving documentation.

In response to Ms. Close, who advised that Fidelity Federal, 245 Royal Poinciana, had Saturday hours from 9:00 a.m. to 1:00 p.m., President Brooks stated that it was located in a commercial area.

President Pro Tem Goldblum made a motion to approve Special Exception #21-2005, with the conditions:

- **The bank was Town-serving;**
- **The hours will be Monday through Friday, 9:00 a.m. to 5:00 p.m.**
- **Close the entrance on Park Avenue.**

Ms. Close advised that the Police Department and Fire-Rescue Department should look at the closing of Park Avenue because of the possible ramifications. She advised that there might be a problem with the parking circulation on the site.

President Brooks passed the gavel to second the motion. On roll call, the motion was defeated 2/3: President Pro Tem Goldblum, and President Brooks casting affirmative votes; Councilman Coleman, Councilman Kleid and Councilman Wyett casting dissenting votes.

Councilman Wyett made a motion to approve Special Exception #21-2005, with conditions:

- **Hours of operation Monday through Friday, 8:00 a.m. - 5:00 p.m.;**
- **Close the Park Avenue entrance if possible; if Park Avenue cannot be closed, then the hours will be Monday through Friday, 9:00 a.m. - 5:00 p.m. [Staff will return with report at the January 10, 2006 Town Council Meeting.**

The motion was seconded by Councilman Kleid. On roll call, the motion carried 5/0.

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 Modified Special Exception #20-2005 to January 10, 2006, Town Council Meeting.

5. Other

a. PLAT ABANDONMENT The application of Trump Properties, LLC, relative to property described as the Plat of Reef Estates, Plat Book 28, Page 55, of the Public Records of Palm Beach County, Florida, commonly known as 513 North County Road, located in the R-AA Zoning District. Request to abandon the subject plat, including all right-of-way and easements.

I. RESOLUTION NO. 71-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Vacation and Annulment of the Plat of Reef Estates, Plat Book 28, Page 55, Public Records of Palm Beach County, Florida; Providing an Effective Date. *Deferred from the September 13, 2005, and October 11, 2005, Town Council Meeting.* **Request for Deferral to the February 14, 2006, Town Council Meeting Per Letter Dated December 6, 2005, From Raymond W. Royce.**

Deferred Plat Abandonment and Resolution No. 71-05 to 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 December 13, 2005, was adjourned at 5:55 p.m.

William J. Brooks
President

ATTEST:

Susan A. Eichhorn
Town Clerk