TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON DECEMBER 12, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting, was called to order on Tuesday, December 12, 2006, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Alan Brown - Recreation Assistant Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Jane Day - Historical Preservation Consultant
Tim Frank - Planning Administrator
Rod Gardiner - Recreation Assistant Director
Charles Langley - Public Works Assistant Director

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Edward J. Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Peter Geisler for Service on the Firefighters Retirement Board of Trustees from October 1, 2004, through September 30, 2006.

Mayor McDonald recognized Peter Geisler for his service on the Firefighters Retirement Board of Trustees from October 1, 2004 through September 30, 2006.

IV. COMMENTS OF MAYOR JACK McDONALD

LAST MONTH THIS COUNCIL APPROVED A BUMP OUT OF THIS LAND MARKED BUILDING TO ACCOMMODATE A SPACE DECISION, BUT ALONG THE WAY PRESERVATION WAS FORGOTTEN. HAD THIS DECISION BEEN IN THE FORM OF A RESOLUTION OR ORDINANCE I WOULD HAVE VETOED IT.

THIS BUILDING IS THE CROWN JEWEL OF THE HISTORIC DISTRICT AND THE CROWN JEWEL OF THE TOWN'S PROPERTY. IT PROVIDES BALANCE, BEAUTY AND HARMONY TO THE LAND MARKED MEMORIAL FOUNTAIN & PLAZA AND IT DESERVES AND REQUIRES IN ITS PRESENT FORM THE PROTECTION OF THIS AND ANY FUTURE TOWN COUNCIL. THEREFORE, I ASK THIS COUNCIL TO RECONSIDER AND CHANGE THEIR DECISION OR DELAY ANY ACTION AND EXPENDITURE OF FUNDS TO ALTER THIS STRUCTURE UNTIL AFTER THE FEBRUARY ELECTION.

LAST WEEK THE ARMY CORP OF ENGINEERS IN RESPONSE TO OUR REACH 8 BEACH NOURISHMENT PERMIT APPLICATION STATED WE NEED A SUPPLEMENTAL ENVIRONMENTAL IMPACT STUDY. THAT STUDY WOULD TAKE APPROXIMATELY 2 AND ½ YEARS TO COMPLETE, BE DONE AT OUR EXPENSE WITH THEIR CONTRACTORS AND UNDER THEIR SUPERVISION.

THIS IS A TREMENDOUS BLOW TO OUR PROJECT AND TO REACH 8 PROPERTY OWNERS. IT IS DIFFICULT FOR OUR RESIDENTS, WHO ARE IN AN EMERGENCY SITUATION, TO UNDERSTAND. THEREFORE, I AM REQUESTING A WORKSHOP BE CONDUCTED IN EARLY JANUARY WITH THE COE AND FDEP TO RESPOND TO OUR RESIDENTS AND DISCUSS ANY EMERGENCY ACTION THAT THE TOWN OR PROPERTY OWNERS MAY TAKE BEFORE THE 2007 HURRICANE SEASON.

AND FINALLY IN RESPONSE TO RESIDENT REQUESTS THE TOWN'S MONTHLY LITIGATION REPORT, 5 YEAR STREET PAVING SCHEDULE AND A SUMMARY OF ANY CONSULTANT STUDY OR REPORT WILL APPEAR ON THE TOWN'S WEB SITE.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Coleman commented that he agreed with Mayor McDonald's remarks relative to the bump out of Town Hall. He advised that he voted against the bump out but respected the majority vote to approve same. He stated that he questioned whether issues of this sensitivity in the community should be decided by a 3/2 vote. He requested that those Council Members who voted in the affirmative might introduce a resolution for reconsideration.

President Pro Tem Kleid commented that "Time Certain" items, with a discretionary approach, were a good idea, which was not only a public service but allowed the Town Council to hear input from all interested parties.

Council Member Wyett commented as follows:

- All facts related to the bump out were unknown.
- All the costs related to the project were not totally understood.
- The public had not seen the layouts for the proposed additions and renovations.
- The bump out was one of the more economical ways to provide space.
- He was in favor of keeping the Planning, Zoning, and Building Department in Town.

Council Member Brooks commented that at this time of the year, with the Judaic Feast of Lights, Hanukkah, and the Feast of the Nativity, Christmas, noting that the bedrock of both of these feasts was the virtue of hope, and asked that everyone be hopeful for the coming year and grateful for what they had received. He stated that, at this time, he wanted to extend a sincere thank you to the staff of the Town for all that they do, often times, under the radar of the citizens.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Morgan Wheelock, 301 Australian Avenue, Chairman of ARCOM, commented, personally and not for ARCOM, in favor of the bump out.

Etonella Christlieb, 200 Everglade Avenue, thanked the Mayor, Town Council Members, and Town Manager Elwell for maintaining the Town in order to keep it looking beautiful. She commented on saving the Royal Poinciana Plaza, saving the theater and saving Town Hall. She also questioned the Town's hiring an attorney from Tallahassee, to represent the Town.

Harrison Robertson, 134 Seagate Road, Chairman of the Planning and Zoning Commission, commented that three of the Town Council Members voted for the "extension" - which he believed should not be referred to as a bump out - of Town Hall to accommodate the Planning, Zoning, and Building Department. He urged those three Town Council Members to persuade the other two Members to keep PZ&B in the center of Town where it belonged.

Jere Zenko, 232 Tangier Avenue, made and submitted written comments concerning Town Hall renovations to the Mayor and Town Council. She commented on the inconsistencies and inaccuracies of the Astorino study, and spoke in opposition to the proposed Town Hall renovation project.

Patrick Flynn, President of the Palm Beach Theater Guild, commented in opposition to the proposed Town Hall renovation.

Janet Gordon commented that the Town was in need of an arts center, and a theater.

Kit Pannill, 4 South Lake Trail, commented in opposition to the extension of Town Hall.

President Pro Tem Kleid clarified that the $12 million figure took into account the renovation of this particular building itself and not the addition.

Will Graves stated that he was from Winter Park, and was the creator of Friends of Winter Park and Friends of Windmere, an unpaid volunteer. He commented in opposition to changing the site lines of Town Hall.

William Guttman, 216 W. Indies Drive, Alternate Member of the Planning and Zoning Commission, commented, personally, in opposition to moving forward with Town Hall renovations without allowing the Landmarks Preservation Commission to review same.

Carol Flanagan, 369 South Lake Drive, President of the Garden Club of Palm Beach, commented in opposition to the bump out of Town Hall. She noted that she personally was opposed and the Garden Club was opposed.

President Coleman commented that he believed this issue would be referred to Landmarks. He advised Mr. Robertson that if it was decided not to expand this building, it did not mean that PZ&B could not remain as there were other departments that the Town Council could request Town Manager Elwell consider relocating, either on Island or off Island. He stated that the discussion was not whether PZ&B remained in Town Hall, which he believed had been resolved, but whether other departments could be conveniently relocated.

Judy Wells Hoffman, 211 Bermuda Lane, Landmarks Preservation Commission Member, commented in opposition to the bump out.

Council Member Wyett commented that there should be a Town workshop on Town Hall renovations. He explained that he voted for the expansion, because he saw the need and stated he would reconsider, but only after a workshop was held giving the residents the correct information.

After further discussion, it was the consensus of the Town Council that further discussion would take place under the Town Hall agenda item.

VII. APPROVAL OF AGENDA

The following changes to the Agenda were made:

TIME CERTAIN - 10:30 A.M., Item X.A.1., Florida Department of Transportation (FDOT) Updates Regarding Work on A1A South of Southern Boulevard and Repair/Replacement of Lights on Royal Poinciana Way.

TIME CERTAIN - 2:00 P.M., Item XIII., Convene as Local Planning Agency.

TIME CERTAIN - 2:30 P.M., Item XVI.C.1.c., Site Plan Review #19-2006, with Special Exception and Variances, Town of Palm Beach Municipal Dock, 300 South Lake Drive.

TIME CERTAIN - 3:00 P.M., Item XVI.C.3.c,, Special Exception #7-2006, Hebrew Academy of Palm Beach.

ADDED Item X.B.9., discussion of proposed Interlocal Agreement with Town of Lantana, to the Regular Agenda, New Business.

ADDED Item X.B.10., Lakeside Park Master Plan.

ADDED Item XVI.B.3., Time Extension request from Hedrick Brothers to allow scaffolding on Royal Palm Way to remain in place during the season.

DELETED Item XVI.C.b., Variance #25-2006, Application of Thomas Longhurst relative to property known as 228 Phipps Plaza.

Council Member Wyett requested that Item X.B.10., Lakeside Park Master Plan be heard with Item XVI.C.1.c., Site Plan Review #19-2006, Time Certain of 2:30 P.M.

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

VIII. CONSENT AGENDA

A. <u>MINUTES: NOVEMBER 14, 2006</u>
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. <u>MINUTES: NOVEMBER 20, 2006</u>
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON NOVEMBER 17, 2006.

D. RESOLUTIONS

1. RESOLUTION NO. 75-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Supporting and Endorsing the Principles of Home Rule and Adopting the Policies Set Forth below to Support the Premise That All Municipalities Should Have the Authority to Govern Within Their Jurisdiction; Further Providing That Such Authority Should Not Be Eroded; Providing an Effective Date; and for Other Purposes. [Sarah E. Hannah, Assistant Town Manager]

2. RESOLUTION NO. 84-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Petersen Industries, Inc. for Supply and Delivery of One Yard Trash Collection Truck.
[H. Paul Brazil, Director of Public Works]

E. OTHER

1. 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]

2. Reappropriation of Funds for the Okeechobee Boulevard Maintenance Building and the North Fire-Rescue Station Range Hood. [H. Paul Brazil, Director of Public Works]

3. Reappointment of James Karman to the General Employees Retirement Board of Trustees.
[William C. Crouse, Director of Human Resources]

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

IX. PUBLIC HEARING

A. RESOLUTION NO. 83-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and

Confirming the Determination of the Landmarks Preservation Commission That the Property at 221 Seaspray Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning Administrator Tim Frank presented Resolution No. 83-06, and noted that there was proof of publication and the necessary documentation.

Mr. Frank advised that the subject property was located at 221 Seaspray Avenue and the architect was Gustav Maass. The Landmarks Preservation Commission had studied the property and found that the necessary criteria had been met in order to designate the property as a Town of Palm Beach Landmark.

Historical Preservation Consultant Jane Day presented the Designation Report regarding the property located at 221 Seaspray Avenue. She advised that the owner brought the house forward for designation as a landmark.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to accept the Designation Report, as part of the record. On roll call, the motion carried unanimously.

Town Attorney Randolph read Resolution No. 83-06 by title, as printed above.

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

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to approve Resolution No. 83-06 designating the property at 221 Seaspray Avenue as a Landmark of the Town of Palm Beach. On roll call, the motion carried unanimously.

X. REGULAR AGENDA

A. Old Business

1. Florida Department of Transportation (FDOT) Updates Regarding Work on A1A South of Southern Boulevard and Repair/Replacement of Lights on Royal Poinciana Way. [Melvin Pollock, Florida Department of Transportation] **TIME CERTAIN: 10:30 A.M.**

Town Manager Elwell explained that, in accordance with the Town Council's determination, visiting government officials would be provided a "Time Certain" in order that business could be conducted efficiently. He introduced Melvin Pollock, P.E., Operations Engineer, West Palm Beach Operations, Florida Department of Transportation (FDOT).

Mr. Pollock addressed the issue of the light fixtures on Royal Poinciana Way advising that FDOT had received confirmation from the manufacturer that the needed parts (11 fixtures and 8 connectors) would be shipped on February 2, 2007. He stated that FDOT anticipated that the contractor would mobilize on-site in mid-February. He noted that they would coordinate with the Town to minimize the impact of this project.

In response to President Coleman, Mr. Brazil advised that, at some point, the Town would be responsible for these fixtures and would keep spare parts in inventory for these types of replacements.

Mayor McDonald commented that, at last month's Town Council Meeting, the representative from FDOT indicated that some municipalities had monthly meetings with their engineering department to discuss the status of projects. He advised that the Town would be interested in doing that and asked how that could be done.

Mr. Pollock responded that he could coordinate that request with Mr. Bowser. He stated that it was important to keep communication lines and dialogue open, not only during the construction period but during the design phases of projects, to ensure that the finished product was to the satisfaction of the Town. He noted that this could be done on an informal basis.

Discussion ensued and Mr. Brazil advised that the Town had attended weekly progress meetings when projects went into the construction phase; and on the planning side of a project, the Town was involved from the inception and remained involved all the way through the letting of the contract.

Council Member Wyett asked, in regard to bridge replacement, when the Town would receive notification if FDOT planned to take land on Royal Poinciana Way, on the Royal Poinciana Plaza side?

Mr. Pollock responded that both of the bridge replacement projects were currently in the Planning, Development and Environment Study (PD&E) phase, where both sides of the corridor, the Town and West Palm Beach, had an opportunity to be involved. He noted that effort was, presently, ongoing, and there had already been some coordination with his design counterparts on that effort. He advised that both projects were in the work program for 2011, and FDOT was discussing staggering them as they obviously would not have both bridges under construction at the same time.

In response to President Coleman, Town Manager Elwell stated that staff would provide a written report as to the status on the planning for the two projects. The Town Council could then determine if they would like to discuss the issue further.

In response to Mayor McDonald, Mr. Elwell responded that he would find out what the time frame was of the formation of the committee involved in the planning of the middle bridge, which included the Garden Club and several residents.

Mr. Elwell requested Mr. Pollock to address the timing for the installation of the mast arm for the traffic signals.

Mr. Pollock explained that they had run into some underground issues with the foundation, which pushed the installation into the first week of December. He noted that the Town requested a postponement until after the first of the year, and the contractor has been scheduled to place those foundations January 3, 2007 and January 5, 2007.

Mr. Elwell thanked Mr. Pollock for postponing the project until after the first of the year.

2. Update on Phipps Ocean Park Tennis Court Number Six. [Jack McDonald, Mayor]

Director of Public Works Brazil, at the request of Mayor McDonald, provided an update on Phipps Ocean Park Court Number Six. He advised that since the Town Council Meeting of November 14, 2006, the contractor, as promised, completed additional remedial work. He stated that Recreation Department staff found the remedial work to be unacceptable.

Mr. Brazil noted that a formal letter had been written to the contractor, who for the first time, had shown some signs of resistance to a rebuild of the court. The contractor's position was that the Town had not seen a heavy rain, which would show blistering of the court, and until that occurred, staff did not believe the contractor could be convinced to rebuild the court on his own accord. He advised that with the assistance of Town Attorney Randolph, the Town would, unfortunately, have to proceed with lawyers.

In response to Mayor McDonald, Attorney Randolph advised that he would review the paperwork, because he was uncertain if the Town would be in a position to proceed with another contractor, if doing so would jeopardize the Town's right to seek action against the present contractor.

In response to Mayor McDonald, Mr. Brazil advised that the contractor had been given more than a year, probably close to two years to re-mediate.

Attorney Randolph advised Mayor McDonald they would take into consideration that the contractor had been given between a year or two to make the court playable when reviewing the documents.

Town Manager Elwell advised that staff was aggressively working on this task and was shifting into legal mode in order to resolve it.

Mayor McDonald asked Attorney Randolph to take under advisement, when considering this matter, that court number six needed to be rebuilt before the Seaview tennis courts were torn up, which was scheduled for either April or May.

3. Consideration of Establishing Procedures for Creating Boards, Commissions, Committees, and Panels.
[Allen S. Wyett, Town Council Member]

Council Member Wyett commented on the commission Mayor McDonald recently appointed, which was disbanded. He noted that, in the past, three commissions had been established by Mayor McDonald when the Town Council was not in session and had not been consulted. He believed the Mayor should submit to the Town Council any requests, when creating a commission, for either their approval or disapproval since the money for these commissions would be appropriated by the Town Council. He requested input from other Town Council Members relative to this matter.

Council Member Markin agreed that there should be some discussion during a Town Council Meeting relative to the formation of any commissions.

Council Member Brooks requested clarification from Town Manager Elwell as to what the Town Charter spoke to regarding the Mayor as the Town ombudsman vis a vis the establishment of committees.

Town Manager Elwell advised that the Town Charter did not speak specifically to the establishment of committees, in that role; but the Charter addressed the responsibility of the Mayor, and the authority of the Mayor to resolve concerns of the residents by addressing those concerns with the Town Council and Town staff.

Mayor McDonald commented that he disagreed with both Council Members Wyett and Markin, advising that the Charter stated that the Mayor, as the Town ombudsman, could take any appropriate action regarding such concerns. He noted that gave the Mayor permission to form committees, and he planned to continue doing so.

President Pro Tem Kleid stated that he believed it was just good practice to communicate; and he believed strongly in advise and consent, which was a good way to proceed with this item. He commented to the Mayor that he believed when considering the formation of a committee, he should present it to the Town Council for discussion. He noted that an added benefit for the Mayor would be suggestions the Town Council might have such as whether the formation of such a commission was a good idea or not. The decision to form the committee would then be up to the Mayor.

Mayor McDonald disagreed for the following reasons:

- Sunshine Law prohibits any private conversations, and all discussion would have to be held at a public meeting.
- Volunteers would be dissuaded from serving if their volunteerism was to be discussed at a public meeting, and before the formation of the committee.

President Pro Tem Kleid responded that he was not suggesting the Town Council talk about the individuals, but discussion should occur regarding the concept of whether a particular committee should be formed. He advised that he believed the Town Council could do the same in the Sunshine. The choosing of the individuals could certainly be at the discretion of the Mayor.

Council Member Markin reiterated that communication was very important and noted that those persons volunteering would want to know that they have the support of the Town Council or Town Manager.

Mayor McDonald stated that he continued to disagree with the Town Council on this issue and advised that when reading the Charter, the responsibilities of the Mayor were much different than the responsibilities of the Town Council Members. He noted that he was not part of the Council unit, in that sense. He advised that he strongly believed in communication as well.

Council Member Wyett discussed former Mayor Lesly Smith's approach to appointing a commission. He stated that he believed Mayor McDonald was usurping some part of the Town Council's prerogative, as well.

Council Member Brooks commented on Council Member Wyett's reference to the formation of the Strategic Planning Commission advising that it had been unanimously approved by the Town Council, and then Mayor Smith appointed the members to the commission.

Mayor McDonald advised that as long as the Town Council had the responsibility of funding a commission, they did not have to approve the formation of a commission, nor did they have to fund it. The Town Council would have that ultimate responsibility.

Council Member Wyett commented that he did not appreciate learning about a committee appointment in the newspaper and was not debating the Mayor's right to appoint a commission or commission members. He believed it should be done here in the Town Council Chambers. He stated that if there were objections, the Town Council could advise him of them, and if they had accolades for him, they could offer them to him. He stated that it was a courtesy that the Mayor should give to the Town Council.

Mayor McDonald responded that he has always requested Mr. Elwell to notify each Town Council Member prior to the formal announcement of a committee, in order that they were informed, individually.

Mr. Elwell advised that Mayor McDonald's statement was correct.

B. New Business

1. Town Hall Renovation- Astorino Proposal for Final Design and Other Professional Services. [Peter B. Elwell, Town Manager]

President Coleman commented that a large group of residents wanted the Planning, Zoning, and Building (PZB) Department to remain in Town Hall. As the "bump out" involved 3,000 square feet, he suggested that the building remain at the present size and that the Town Manager should be directed to explore the relocation of other departments on the island.

Council Member Wyett said that he spoke on behalf of a number of concerned citizens that too much space was given to various different areas and the layout should be more conservative.

President Coleman agreed that PZB should remain in the building. The Town Manager could be directed to return with a plan that kept PZB at Town Hall, the footprint would remain the same, and the Council's discussion could be about incremental space in the building.

Council Member Markin stated that in reviewing the new plan, there was no single department that comprised 3200 square feet. For example, Human Resources Department was the most logical department to be relocated, as they interfaced solely with employees, and comprised 1700 square feet; the Finance Department comprised 1926 square feet. She noted that the Town was either equal to or below the industry standards of working space, and that the Town Council's first goal should be to house staff under one roof in an efficient and productive manner.

President Coleman suggested that the Town Manager return next month with a plan to resolve the concerns, keeping everyone on the island.

President Pro Tem Kleid stated that they could proceed on a parallel basis, with an alternative plan to move out other departments, not move out PZB, and continue to use the present space.

President Coleman noted that to proceed on parallel paths, two proposals would have to be referred to Landmarks Preservation Commission, one to bump out the building and the other to keep it the way it is. If Mr. Elwell could return with a plan, there could be a savings of $865,000 in architectural fees.

President Pro Tem Kleid stated that he was prepared not to proceed in funding the plan, but to wait for input from Landmarks Preservation Commission.

Council Member Brooks commented that at least one department would need to be relocated, and that Landmarks Preservation Commission should be presented with a conceptual concept. He commented that he was opposed to sending a proposal with architectural drawings, as the majority of groups that impacted the Town were opposed to the bump out.

Council Member Markin indicated that the most appropriate and professional course of action would be for the Town to move forward with the proposal with input from the Landmarks Preservation Commission and the Preservation Foundation on how the addition was to be built.

President Pro Tem Kleid made the following comments:

- He suggested that the Landmarks Preservation Commission and the Preservation Foundation consider the proposed two-story 25-foot addition in the following context: allow personnel to be accommodated under one roof; preclude long-term leasing, which would quickly expend more money than the proposed $1,750,000 million cost of the addition; and that it was more economical than buying and constructing another building on or off the island.

- Landmarks Preservation Commission should consider recommending that the Town engage a recognized architect that had demonstrated a sensitivity to preservation through extensive completed work, or have a design competition to plan the addition.

Council Member Wyett commented that a decision would need to made soon, as the roof was in poor condition, and in order to repair it, the PZB Department would have to be moved out of the building. The renovation encompassed more than the expansion, and the meetings could not be ongoing for another year or two. Relocating smaller departments would gain 3,500 square feet of space. However, it would be inconvenient, as there was much communication between the Finance Department and the rest of staff. There was less communication between Human Resources and staff, but there was interfacing with them, and only 1700 square feet would be gained. He requested that Town Council have a special meeting directly following the Landmarks Preservation Commission meeting.

Public Comment:

Gail Coniglio, Reg Stambaugh of the Preservation Foundation, Yvelyne D. Marix, Kathleen Wallace, Rebecca Williams, Ann Vanneck, Keith Elliott, and Geri Zenko commented in opposition to the expansion of Town Hall.

Motion made by President Pro Tem Kleid that the proposed addition, in a conceptual sense, be referred to the Landmarks Preservation Commission meeting of December 20, 2006, for its recommendation, and that the Town staff be directed to restudy the Astorino, Inc., plan determining if departments can be moved, other

than Planning, Zoning, and Building, to permit the present use of the space. Council Member Wyett seconded the motion. On roll call, the motion carried unanimously.

Council Member Wyett requested a Special Town Council meeting during the first week of January in order to make a decision to resolve the problem.

Motion made by Council Member Wyett, seconded by Council Member Markin to meet the first week of January to discuss Town Hall renovation. On roll call, the motion failed 3-2, with Council Members Wyett and Markin casting affirmative votes, and President Coleman, President Pro Tem Kleid, and Council Member Brooks dissenting.

Town Manager Elwell stated, for clarification, that staff would present a conceptual rather than a detailed plan, for discussion at the Landmarks Preservation Commission meeting. He further clarified that consideration would be given to relocating two smaller departments, in order to accommodate the PZB Department in Town Hall.

President Coleman indicated that Town Council made the determination that space would be allocated for PZB first and the remainder of the residual needs would determine relocation of other departments outside the building.

Discussion ensued regarding the required square feet for the departments and the available information in which to make the determination of affected departments. Cost was discussed, and Mr. Centanni of Astorino, Inc., conveyed that, as there were available monies remaining on the purchase order, no additional funding was needed to restudy the plan.

Motion made by Council Member Wyett to restudy the program, using available funds, for submission at the next Town Council meeting.

Wendy Victor of the Landmarks Preservation Commission, requested that the Commission be allowed to review the detailed plans of the entire historic Town Square, which were approved three to four years ago.

President Coleman answered that the Landmarks Preservation Commission's concern was the exterior of Town Hall, and not the interior.

Council Member Markin asked that consideration be given to expanding the greenspace to enhance the northern perspective of the building, and that the square footage of the departments be utilized in order for staff to return with a potential schematic of building space somewhere in Town, with cost figures related to it, in order that a decision could be made next month.

Motion made by Council Member Wyett failed for lack of a second.

Motion made by Council Member Markin that the Town Manager use the existing layout of square feet indicated in the Astorino, Inc., proposal and indicate, by next Council meeting, the placement of various departments, and related costs. Council Member Wyett seconded the motion.

Town Manager Elwell noted that staff would be able to provide information and cost estimates, and not hard numbers on the financial side. He commented that he did not know if it would put the Council in the position to make a decision in January because of the holidays and vacations during this time of year, and as a new piece of work had been added.

Responding to Council Member Markin, Mr. Elwell stated that the information of square feet would provide needed data when doing the exercise, and indicated that if one of the options was to lease space, it would be very definable for the Council's approval. A purchase of property for a small amount of space would not be considered, but an add-on to a building such as Public Works facility in West Palm Beach could be considered. He inquired about whether the relocation of the determined departments would need to be on or off the island, and noted that there were cost-effective options off the island as compared to leasing on-island office space.

President Pro Tem Kleid commented that the Town Manager's first step was to make a practical determination, depending on the amount of available space, and from there he could move forward.

It was the consensus of the Town Council that staff would be allowed a broad mandate, to return to the Council for closer examination.

2. Townwide Traffic and Parking Improvement Plan.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford referred to his memorandum to the Mayor and Town Council, dated December 4, 2006, and included in the backup material, to provide information relative to the Townwide Traffic and Parking Improvement Plan. He explained that the proposed Plan would not become final until the proposed strategies had been reviewed and approved by the Town Council. He advised that staff was asking the Town Council make one decision regarding the following two options:

1. Plan to review one or two of the tasks and associated proposed strategies at each upcoming monthly Town Council Meeting; or
2. Hold a series of relatively short Special Town Council Meetings devoted specifically to review and approve elements of the Traffic and Parking Improvement Plan elements.

Mr. Bradford provided an update and a brief history of this project.

Council Member Wyett commented that the one problem he had, after reading the Traffic and Parking Improvement Plan, was that it had been conducted off-season. He addressed Mr. Brian Mirson and asked that when he made his presentation, he provide his thoughts on how the recommendations could be accommodated in season.

In response to Mr. Wyett, Mr. Mirson noted that American Consulting Engineers of Florida (ACE) had anticipated that concern, but it was not one that he shared. He explained that he believed ACE had adequately addressed that issue through their adjustment factors, and where they had some concerns, they identified them.

Brian Mirson, American Consulting Engineers of Florida (ACE), provided a power point presentation to summarize elements of the Townwide Traffic and Parking Improvement Plan.

Discussion ensued relative to the process the Town Council would use to review this Plan.

Council Member Markin commented that she was not adverse to a Special Town Council Meeting to address this issue or any other issue, but preferred the placement of items onto the Agenda of a Regular Town Council Meeting, because more people attended Regular Town Council Meetings.

William Diamond, 220 Wells Road, suggested that by delineating this proposal geographically, the Town Council could achieve many of the goals they hoped to achieve. The public should be informed, through a public notice, of the areas to be reviewed in order that they could attend meetings pertaining to the areas of interest to them.

Town Manager Elwell agreed that the Town Council should hold a Special Town Council Meeting to focus on prioritizing the elements of the Plan. He stated that once the

Town Council had gone through those first steps, the other phases could be accomplished at a Regular Town Council Meeting.

After discussion, it was decided that the initial meeting to further discuss and prioritize elements of the Townwide Traffic and Parking Improvement Plan would be a Special Town Council Meeting to be held on Monday, January 8, 2007, at 1:30 p.m.

3. Proposed Amendment of Drainage Improvement Program Construction Schedule. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil referred to his memorandum to the Mayor and Town Council, dated December 4, 2006, and included in the backup material, to address modifications to the schedule of the Storm Water Improvement Program.

Mr. Brazil advised that staff recommended that the Town Council approve the following modifications to the schedule of the Storm Water Improvement Program:

- A one-year delay in the 2007 Storm Drainage Improvement Program and possibly some of the planned waterline installation field work.
- In the best interests of the affected residents, stop heavy construction work on the D-2 (Palmo Way) Pump Station Project until the Spring of 2007.
- The D-2 Station was scheduled to be constructed after completion of the D-2 Station, and the D-9 Station the following year. Due to operational issues and reliability concerns, staff recommends that the D-9 (Mediterranean Road) Pump Station be constructed after the completion of D-2 and then D-10 be constructed the following year.

Mr. Brazil advised that these proposed changes in the schedule would not impact the program financially but would delay the overall Storm Drainage Project by one year.

In response to President Coleman, Mr. Brazil stated that it was staff's first inclination to leave the financing package exactly as it was now, but to extend the construction.

Discussion ensued regarding funding and the options available to the Town. Town Manager Elwell advised that staff would like to look at the proposed FY08 budget to determine whether that money could be put aside for drainage, or whether it could be directed toward beach renourishment, or some other use that might be appropriate.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to approve the extension of the Drainage Improvement Program Construction Schedule for one year; completion of project in 2012.

In response to Mayor McDonald, Mr. Brazil advised that the Town was landscaping the areas around the construction sites on Palmo Way.

In response to Council Member Markin, who asked how many Public Works projects were back-logged, Mr. Brazil advised that there were more than twenty individual projects in addition to what was discussed today.

On roll call, the motion carried unanimously.

4. Prohibition on Processing New Applications for Properties with Unresolved Code Violations. [John C. Randolph, Town Attorney]

Town Attorney Randolph referred to his letter dated December 7, 2006, included in the backup, to inform the Town Council that he had been researching this issue, and had reached some preliminary thoughts and conclusions. He explained that he had not arrived at any final conclusions, and was requesting a time extension, deferring this issue to the January 9, 2007, Town Council Meeting.

Motion made by Council Member Brooks, seconded by Council Member Markin, to defer this item to the January 9, 2007, Town Council Meeting. On roll call, the motion carried unanimously.

5. Annual Report on Unpaid Assessments, Fines, and Fees and Authorization to "Write Off" Certain Monies Deemed Uncollectible. [Jane Struder, Director of Finance]

Finance Director Jane Struder referred to her memorandum to the Mayor and Town Council, dated December 1, 2006, and included in the backup material, to provide a status report of delinquent accounts.

In response to Council Member Markin, Ms. Struder stated that collecting payments due on EMS fees took a long time. She stated that out of the $187,000 total due on EMS accounts, as of September 30, 2006, $72,000 was over 120 days; and the current portion due was about $40,000. She stated that, this past year, there had definitely been an improvement in collections due to the new medical billing specialist.

In response to Mayor McDonald, Town Attorney Randolph advised that the Town had received an offer in the amount of $30,000 from the attorney for Mockingbird Trust to settle the foreclosure action filed by the Town. He advised that the amount due the Town was $80,021.20.

Council Member Brooks commented that he did not believe a closed session hearing was needed, and he did not want to appear as a grinch at Christmas time, but the settlement offer was inadequate.

Motion made by Council Member Brooks, seconded by Council Member Wyett, to reject the settlement offer of Mockingbird Trust in the amount of $30,000.

President Coleman suggested that the Town should counter the offer, and if Mockingbird Trust did not pay the amount due, they would have to pay attorney fees.

On roll call, the motion carried unanimously.

In response to Mayor McDonald, Attorney Randolph advised he did not know why the Town had not filed a foreclosure action against Charles Roddy. He noted that it appeared that this case should be brought before the Code Enforcement Board for their recommendation for foreclosure.

Director of Planning, Zoning, and Building Department Director Close advised that Mr. Roddy had submitted a letter requesting some consideration for a reduced amount, which she believed was rejected. She noted that it would be timely to file for foreclosure, at this point.

In response to Mayor McDonald, Ms. Close advised that a lien had been filed against Stuart Wood, 2860 South Ocean Boulevard, #316, and the Town was close to filing for foreclosure.

Attorney Randolph advised that they had not reached the three-month period required to file a foreclosure action against Stuart Wood.

Mayor McDonald inquired into the Code Enforcement lien against the Palm Beach White House, 2565 South Ocean Boulevard, a condominium association.

Ms. Close advised that staff was getting ready to issue a second letter requesting payment, and if no response was received, a lien would be filed.

In response to President Pro Tem Kleid, Ms. Struder stated that it was the practice of this Town Council, after receipt of payment from Medicare not to pursue further payment for EMS fees. The Town had never pursued a deceased patient's estate.

Mayor McDonald stated that was correct, because at the time this procedure was implemented, there had been a great deal of reluctance to even force the collection of fees even if the recipient was still alive, but certainly if they were deceased. It had been the policy of prior Town Councils.

Town Manager Elwell clarified that the Mayor's recollection was correct, but stated that staff had been advised by legal counsel that the Town must continue to attempt to collect from individuals after the insurance companies had paid. The approach, when there was a living patient who owed the Town money after all of the insurance had been paid, was to continue to pursue payment. He noted those were the cases that were listed as past due. The policy of pulling back from seeking payment had only been for those cases where the patient was deceased.

Council Member Wyett noted that when this procedure was put in place, the Town did it on an experimental basis, because it was somewhat controversial. It has been found that charging for EMS services has been successful, and suggested, if the Town Council concurred, adopting a new policy of pursuing the estate of the deceased.

President Pro Tem Kleid made a motion, seconded by Council Member Wyett, that the Town pursue the estates of deceased patients, who have assets, for delinquent EMS fees. On roll call, the motion carried 4/1, with Council Member Brooks dissenting.

President Pro Tem Kleid made a motion, seconded by Council Member Wyett, to write off the EMS charges balance of $3,825, and the balance for parking tickets and penalties issued prior to September 30, 2003, in the amount of $179,760.

In response to Mayor McDonald, Attorney Randolph advised that a Notice of Claim would be sent to all delinquent accounts.

On roll call, the motion carried unanimously.

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

Finance Director Jane Struder referred to her memorandum to the Mayor and Town Council, dated December 1, 2006, and included in the backup material, to present the Fourth Annual Long Term Financial Plan FY 2007 through FY2011.

Council Member Markin acknowledged the excellent work of the Finance Department.

7. Recreation Enterprise Fund Business Plan.
[Jay Boodheshwar, Director of Recreation]

Recreation Director Jay Boodheshwar referred to his memorandum to the Mayor and Town Council, dated December 1, 2006, and included in the backup material, to provide a power point presentation of the Recreation Enterprise Fund FY2006/07 Business Plan Report.

In response to President Coleman, Mr. Boodheshwar advised that staff was cognizant of what was occurring all along the Florida corridor.

President Pro Tem Kleid requested information relative to the private participation in the field, and what they were attempting to do.

Mr. Boodheshwar stated that he left his description vague regarding private participation relative to this item, because presently, there was a commitment to help with planning and possible funding. He advised that the foot traffic the Recreation Center received on their multipurpose field was above the minimum standard for facilities like that. He noted that there was an ongoing problem, which sometimes was a safety issue related to wear and tear, which needs to be addressed. He commented that using that specific project, staff thought it would be a good idea to step back and look at the entire picture not just the tennis center.

Town Manager Elwell advised that when they had a better handle on the scope and the costs, staff planned to have this issue as an agenda item to discuss the details with the Town Council in order to receive direction on how to move forward.

In response to Council Member Markin, Mr. Boodheshwar advised that he based his increase in tennis and golf play on statistics provided by PGA of America and the National Golf Foundation. He noted that the potential impact of baby boomers would be over a twenty-year period, which would be incremental. He stated that the Sporting Goods Manufacturers Association had just completed a six year study on traditional sports, and revealed that tennis had grown by 8% and was the only traditional sport that had grown. Golf had declined 14% in that period. of time.

Council Member Markin noted that she had spoken with Mr. Boodheshwar earlier, and wanted to make a request, on the record, that the Town seriously consider keeping the backboard wall that currently is in place at Seaview.

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

Council Member Brooks made a motion to appoint Mr. Elwell to serve an additional one-year term as Town Manager from December 12, 2006, through December 11, 2007. Council Member Wyett seconded the motion. On roll call, the motion carried unanimously.

9. Interlocal Agreement with the Town of Lantana [Peter B. Elwell, Town Manager]

Town Manager Elwell requested approval by the Town Council of an Interlocal Agreement with the Town of Lantana. He stressed that the Town of Lantana had been extremely helpful and welcoming to the Town in addressing this need on a very expedited basis.

Mr. Elwell advised that the Town of South Palm Beach was also providing the same helpful approach, and Mayor McDonald, along with staff, would personally attend the Commission meeting to address a similar matter. He noted that, in all likelihood, there would be an interlocal agreement with the Town of South Palm Beach, similar to the agreement with Lantana.

After discussion and at the request of Town Manager Elwell, **Council Member Wyett made a motion to approve the Interlocal Agreement with the Town of Lantana, for access, for completion of the Beach Regarding Project; and subject to the Town Attorney's approval of the form of the document, authorize the Mayor to execute a similar document with the Town of South Palm Beach. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.**

President Coleman suggested that the Mayor write a letter to the Council of the Town of Lantana thanking them for responding on an ad hoc basis to the Town.

10. Lakeside Park Master Plan
TIME CERTAIN: 2:30 A.M. - (Was heard with Item XVI.C.1.c., Site Plan Review #19-2006)

At the request of Council Member Wyett, this item was heard with Item XVI.C.1.c., Site Plan Review #19-2006.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 14-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Amending Chapter 30, Consistency and Concurrency Management System, of the Town Code of Ordinances by Creating a New Article IV Titled "Proportionate Fair-Share Program"; Providing a Mechanism to Allow for Proportionate Share Contributions from Developers Toward Traffic Concurrency Requirements; Providing That Each and Every Other Section and Subsection of Chapter 30 Shall Remain in Full Force and Effect as Previously Adopted; Providing a Conflicts Clause, a Severability Clause and Authority to Codify; Providing an Effective Date; and for Other Purposes.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 14-06 by title, as printed above.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to adopt Ordinance No. 14-06. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 15-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 114, Taxation, by Repealing Article II with a New Title "Local Business Tax" in Order to Comply with Recently Enacted State Legislation; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing for an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 15-06 by title, as printed above.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to adopt Ordinance No. 15-06. On roll call, the motion carried unanimously.

B. First Reading

None.

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The luncheon recess was taken at 12:35 p.m.

The Town Council meeting of December 12, 2006, was reconvened at 2:05 p.m.

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XII. TEMPORARY ADJOURNMENT AS TOWN COUNCIL

The Regular Town Council Meeting was adjourned at 12:35 p.m. for the luncheon recess.

XIII. CONVENE AS LOCAL PLANNING AGENCY

A. Call to Order and Roll Call

President Coleman called the meeting of the Local Planning Agency to order at 2:05 p.m. On roll call, the following elected officials were found to be present: Mayor Jack McDonald, Town Council President Denis Coleman, Town Council President Pro Tem Richard Kleid, Town Council Member William Brooks, Town Council Member Susan Markin, and Town Council Member Allen Wyett.

B. Proof of Publication

Director of Planning, Zoning, and Building Department Director Close stated there was proof of publication.

C. Public Hearing Regarding Evaluation and Appraisal Report (EAR)

Director of Planning, Zoning, and Building Department Director Close referred to her memorandum to the Mayor and Town Council, dated November 20, 2006, and included in the backup material, to present the Evaluation and Appraisal Report (EAR) of the Comprehensive Plan. She advised that the Planning and Zoning Commission recommended approval by the Town Council of Resolution No. 82-06 to adopt the proposed Evaluation and Appraisal Report of the Comprehensive Plan and authorized transmittal of the document to the Department of Community Affairs for a sufficiency review in accordance with Section 163.3191, Florida Statutes.

Ms. Close stated that William Brisson, Brisson Planning Solutions, Inc., a major contributor to the EAR, and Tim Frank, Town of Palm Beach Planning Administrator, were both present to answer any questions.

Council Member Brooks thanked staff for their work on the EAR. He noted that he was very pleased that staff was able to integrate the EAR with the Strategic Plan.

President Pro Tem Kleid requested staff address workforce housing. He stated that Town inventory showed it was sufficient, and wondered if the Town had ever considered partnering with another community.

Ms. Close responded that the Town did have a housing element and had looked at affordable housing. She stated that the new initiative was workforce housing, which she believed would be incorporated into the Town's Modified Comprehensive Plan as to how the Town wanted to address that issue.

Planning Administrator Tim Frank commented in regard to the workforce housing issue. He explained that the Town donated their housing credits to Palm Beach County in order to be able to seek federal funds. He advised that each community was entitled to a certain amount of funding that they could request and apply for. He explained that the Town would pretty much be ineligible for these programs, so they gave their allocation to the countywide consortium. In the last inventory, the Town had four times as many units as they actually had people, who were in middle and moderate income housing. He explained most of those people were domestic assistance and dormitory persons who worked in the larger institutions.

In response to President Coleman, Mr. Frank advised that the Town did not get anything in return for their gratuitous gesture.

In response to President Coleman, Attorney Randolph stated that the Town needed this from the County in order to meet their workforce element in the Comprehensive Plan. It was an opportunity for the Town that worked both ways.

D. Approval of the Report

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve the adoption of the Evaluation and Appraisal Report of the Comprehensive Plan. On roll call, the motion carried unanimously.

XIV. ADJOURN AS LOCAL PLANNING AGENCY

The Local Planning Agency meeting was adjourned at 2:09 p.m.

XV. RECONVENE AS TOWN COUNCIL

President Coleman reconvened the Regular Town Council Meeting of December 12, 2006, at 2:10 p.m.

A. Call to Order and Roll Call

President Coleman called the reconvened meeting of the Regular Town Council Meeting to order. On roll call, the following elected officials were found to be present: Mayor Jack McDonald, Town Council President Denis Coleman, Town Council President Pro Tem Richard Kleid, Town Council Member William Brooks, Town Council Member Susan Markin, and Town Council Member Allen Wyett.

B. Proof of Publication

Director of Planning, Zoning, and Building Department Director Close stated there was proof of publication.

C. Public Hearing Regarding Evaluation and Appraisal Report (EAR)

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

D. RESOLUTION NO. 82-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting the Evaluation and Appraisal Report for the Palm Beach Comprehensive Plan; Stating the Intent of the Town Council to Amend the Comprehensive Plan Based upon Recommendations Contained in the Report; and Approving Transmittal of the Report to the Department of Community Affairs in Accordance with Section 163.3191, Florida Statutes.

Town Attorney John Randolph read Resolution No. 82-06, by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to approve Resolution No. 82-06, which adopts the Evaluation and Appraisal Report for the Palm Beach Comprehensive Plan and authorizes transmittal of the document to the Department of Community Affairs for a sufficiency review in accordance with Section 163.3191, Florida Statutes. On roll call, the motion carried unanimously.

XVI. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Request for Extension of Time for Right-of-Way Permit at 380 South County Road (Commerce Bank) Per Letter dated December 4, 2006, from Bonnie Miskel with Ruden McClosky.

Public Works Director Brazil referred to his memorandum to the Mayor and Town Council, dated December 4, 2006, and included in the backup material, to address the time extension request of Commerce Bank. He advised that the applicant had received a waiver of Section 42-199, hours for construction work on Commerce Bank at 380 South County Road, from the Town Council on November 14, 2006. He noted that, on the recommendation of staff, the Town Council did not approve the scaffolding that was presently in the right-of-way. The applicant requested that the Town Council reconsider granting a time extension for the scaffolding to remain in place until March 10, 2007, for public safety and public convenience reasons. He advised that staff had inspected the site, and the applicant had provided a safe passageway along the sidewalk, and complied with everything staff requested.

Council Member Markin commented that Commerce Bank had been extremely cooperative and patient with the Town, and the least the Town could do was extend the timing on this particular issue.

In response to President Coleman, Mr. Brazil advised that the contractor who erected the scaffolding was familiar with the rules of Palm Beach. He explained that when the scaffolding had been was erected, it was within the time frame of what was allowed. The request before the Town Council was for an extension into season, which was an unusual request.

Town Manager Elwell confirmed that the Town Council, at their November 14, 2006 Town Council Meeting, explicitly said no to the scaffolding. He noted that between November 14, 2006 and December 1, 2006, the applicant had every right to have the scaffolding up and just needed a right-of-way permit from the Town. He advised that after December 1, 2006, the applicant needed special relief from the Town Council, which staff suggested the Council not grant as they believed it was a step too far and would have public impacts. He stated that his disappointment in this was not that the scaffolding went up, even though it surprised staff when it did, but that it went up with every intention of keeping it up for months.

Mr. Elwell noted that Town staff had met, onsite with the applicant's staff, advising that it was evident to the Town that the scaffolding was clearly intended to stay in place for a while, and not just a couple of weeks. He stated that, after that point, they had been very cooperative in working with the Town to get to this point today with the understanding that if the Town Council did not approve this today, the scaffolding would come down tomorrow. The issue today was how did communication occur internally between the people involved in the project, that caused them to install scaffolding with every intention of keeping it up for months, when on November 14th they received clear direction from the Town Council not to do that.

In response to President Coleman, Mr. Elwell advised that there was one day that the scaffolding did block the public right-of-way, and he and Mr. Brazil went out to personally address the situation. He noted that since that time, the applicant had been very cooperative.

In response to Mayor McDonald, Zoning Administrator Paul Castro advised that there had been other problems with the site. He advised that a crane had blocked Peruvian Avenue for quite some time. He stated that PZ&B did have a construction meeting with the superintendent on the job as well as the contractor, Mr. Woolems, to discuss issues relative to the job site, after the crane incident.

Attorney Bonnie Miskel, on behalf of the applicant, stated that this site was a little different from some of the others that have had scaffolding, and that was the reason they were before the Town Council. She clarified that the applicant had not been turned down for scaffolding in the right-of- way explaining that they had requested an extension of construction hours, which had been approved subject to several conditions. She noted that one of the conditions stated that the scaffolding could not be in the right-of-way beyond the end of November. She advised that she submitted to the contractor the conditions for approval that would be discussed at the November 14, 2006, Town Council Meeting for review. The contractor made one request and that condition was modified, which was for limited hours on certain Saturdays, specifically when steel was to be delivered.

Attorney Miskel stated that the problem arose due to the contractor's misunderstanding of right-of-way and her communication to them. She apologized for any inconveniences the construction of this building might have caused the residents as it had not been their intention to do so. She noted that they have tried very hard from the beginning to hold pre-application meetings with Town staff and the building official to ensure a very smooth transition. She stated that it really was not an intentional violation of the rule, but it was a lack of understanding of where the property line was. She reiterated that the contractor did not realize that they would be using a portion of the right- of- way.

In response to Council Member Markin, Ms. Miskel advised that the scaffolding did provide protection for people walking on the sidewalk. She added that the scaffold had been designed and placed there in accordance with OSHA rules and regulations. She stated that they were prepared to minimize, to the extent possible any potential impacts from an aesthetic point of view.

Ms. Miskel advised that they needed two stories of scaffolding until the end of January and then they could drop the scaffolding down to one story to further minimize visual impacts until the end of February, and at the end of February, they were confident they would not need it at all. She stated that, at this point, they were moving on track. She noted that the scaffolding was there for safety concerns.

Town Manager Elwell stated that staff concurred that the scaffolding provided a measure of safety, but advised that it was possible to use different methods than had been employed on the site. The debris could be contained differently, and the scaffolding would not be required.

After discussion, regarding the survey, property line, and scaffolding, Mr. Hunter of Woolems Construction, advised that:

- Due to the amount of demolition occurring at that site, the contractor believed scaffolding was the safest method of protecting the sidewalk.
- Meeting with Mr. Elwell and Mr. Brazil on November 28th where they discussed opening up the sidewalk.

- Contractor ordered a 5' wide scaffolding and the scaffolding received was actually was 6'.

Council Member Brooks advised that this was not the first situation that this Council has been faced with and questioned whether this was another example of where it was easier to ask for forgiveness than to ask for permission.

President Coleman suggested the following:

- Staff examine declaration of use agreements.
- Request new declaration of use agreements with a price tag of $25,000 along with a per diem penalty for amending the declaration of use agreement.

Attorney Randolph stated that he believed as a condition of the extension request, the Town Council could assess a penalty.

Planning, Zoning, and Building Department Director Close advised that the Town would not have a Declaration of Use Agreement applicable to this property, but they could have a construction agreement. She suggested that staff draft a construction agreement that would outline penalties for violations. She advised that, in the case of assessing a penalty, it was prospective rather than retrospective.

Mayor McDonald stated that a penalty could be made a condition of approval for granting the extension.

Council Member Wyett stated that the Town Council should be consistent when applying penalties, making them a condition of approval for every single case.

President Coleman noted that was why he referred this issue to staff requesting they review same and come back to the Town Council with suggestions. He commented that code enforcement at $250 a day just did not get anyone's attention.

Discussion ensued regarding imposing appropriate penalties for violations, and Town Manager Elwell stated that staff had clear direction on a going forward basis to provide guidance to the Town Council.

In response to Mayor McDonald, Attorney Miskel advised that the request was to have the scaffolding remain until March 10th. She noted that they could amend that request so the second level of scaffolding was removed by the end of January and the first level removed by the end of February.

After continued discussion, **President Coleman passed the gavel to make a motion to grant the request for the extension of time subject to payment of a $25,000 penalty. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.**

At the request of Council Member Markin, Attorney Miskel agreed to remove the second level of scaffolding by the end of January and the first level by the end of February.

2. Request for Extension of Work Hours at 2295 South Ocean Boulevard (Harbour House) Per Letter Dated December 6, 2006, from Julian Butler with Lang Management Company.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Department Director Veronica Close referred to her memorandum to the Mayor and Town Council, dated December 7, 2006, and included in the backup material, to provide an overview of the request for an extension of work hours at 2295 South Ocean Boulevard (Harbour House). She explained that the request by Harbour House was to allow certain noise producing activities during the season.

Julian Butler, Manager of the Harbour House, explained that, as a result of a Code Enforcement Board action, work was started, just before the beginning of season, on the concrete restoration of Harbour House. He requested that the applicant be permitted to sandblast on the north side of the building during the season. He noted that they did have a letter from The Reef Condominium granting the applicant permission as long as precautions were taken to try to stop as much of the dust as possible from traveling over to their facility.

David T. Colston, P.E., Engineer with Structural Engineering Associates, Inc., on behalf of the applicant, advised that they did request the contractor to place the small compressor used to run the sandblasting equipment into the garage structure with acoustic barriers placed around it. He stated that he believed most of the noise from the compressor could be suppressed, and that the only issue related to the sandblasting would be the dust. He explained that they had also requested that the contractor place some shielding to try to prevent dust from traveling over to The Reef Condominium. He added that if there were any complaints the applicant would be responsive to them.

In response to President Coleman, Mr. Colston advised that the work would continue into 2007, most likely through the summer. He explained that the contractor would not be sandblasting every day, but only a few days a week. He stated that the applicant was willing to entertain timeliness on this matter and requested permission to conduct the sandblasting throughout the season and continue on after that.

In response to Mayor McDonald, Mr. Butler stated that the applicant did have, in writing, permission from The Reef Condominium, which was located on the north side of the Harbour House. He advised that they were scheduled to complete the restoration of the building in the early part of 2008, with painting of the building to follow.

President Pro Tem Kleid clarified that the applicant was requesting permission to sandblast during the season as they currently did not have that permission. He added that they did have permission to sandblast off season.

Council Member Markin asked why it was necessary for the applicant to do this work during season, and what would it cost them to wait until the end of the season to sandblast?

Mr. Colston responded that when there had been extensive corrosion of the steel, it was extremely important when removing the concrete that the steel be cleaned as thoroughly as possible. The International Concrete Repair Institute set forth the standards, and the American Concrete Institute had done a lot of research relative to this issue. He explained that sandblasting seemed to be the only way to get the chlorides off the steel. He commented that he would certainly like to have the steel sandblasted, and if they could not, it would most likely delay the project.

Council Member Markin advised that she was not in favor of approving the request for sandblasting. She noted that it was noisy, messy and not something that should be done during the season.

President Pro Tem Kleid asked where the Code Enforcement Board fit into this matter, and how did the construction schedule get positioned?

Ms. Close explained that the Harbour House was experiencing severe problems with falling concrete, which was brought to the attention of the Code Enforcement Board. The Harbour House was cited and asked to proceed with the restoration, but had experienced some difficulties, at their board level, in determining how to proceed. Harbour House had a change of Board of Directors, which enabled them to embark on this project; and when they appeared before the Code Enforcement Board with a schedule for making those repairs, which would be done in phases, and the Code Enforcement Board accepted that schedule.

In response to President Pro Tem Kleid, Ms. Close advised that the Code Enforcement Board was not aware that there would be sandblasting during season.

Council Member Brooks commented that under discussion was a building with many elderly people; the noise related to the pneumatic "electric" sledgehammer, was an additional concern. He advised that, for the record, he could not support this request, but noted that he could support the applicant starting the project May 1, 2007.

Stuart Shulman, 2280 South Ocean Boulevard, which was part of The Reef facility, commented that he had been involved in some of the negotiations, and the project had been okayed by The Reef. He explained that last year The Reef was given the right to do the same work, and he did not see any reason why the Harbour House should not be given that right as well.

Council Member Wyett stated that Mr. Shulman made a valid point, and that the issue was between neighbors. He noted that not all projects could be done off season.

Mr. Shulman stated that there was a cost factor involved, and he did not want to see money spent for no reason at all, which would be the case if the Town Council denied the applicant's request.

Mr. Butler explained that the only work, at present, would be on the north side of the building, but advised that he would contact Tres Vidas as well as the owners of the townhouses as requested by Mayor McDonald.

President Coleman stated that he would support the applicant's request, with the following conditions:

- Provide to the Town a "date certain."
- Sandblasting not be allowed during Thanksgiving 2007, Christmas 2007, and New Year's 2008.

Discussion ensued, and Mayor McDonald suggested that the applicant should be asked not to come back to the Town Council asking for any sandblasting work outside of the summer, during season, other than this one request.

In response to Council Member Brooks who asked if there was a written tally of how the unit owners voted on this project, Mr. Butler commented:

- The unit owners did not vote on the restoration project, but did vote on the special assessment. A requirement of the cooperative was to vote on special assessments.
- There were 141 votes, and 120 were positive votes out of 192 units. The vote was taken during the summer when many residents were out of Town.
- The residents were aware that there would be a pneumatic sledgehammer.

Council Member Markin suggested notice be provided to the owners of the town homes.

After further discussion, Ms. Close outlined the conditions to be included in the approval.

- No sandblasting after the Friday before Thanksgiving, November 2007.
- The location of the compressor be approved by staff to minimize noise and danger to the neighbors.
- Sandblasting should only be allowed 9:00 a.m. to 5:00 p.m., no work on Saturdays, Sundays and holidays.
- Any valid noise complaints may be grounds for revocation of the waiver.
- Notification to all adjacent property managers, boards that the request had been granted.
- A dust wall between the Reef and the Harbour House, as requested by The Reef.
- No work between December 12, 2006 and January 3, 2007.
- Wet sandblasting only*.
- No pneumatic jackhammer.

*Discussion ensued regarding the condition of wet sandblasting only, and it was decided that the condition be changed to state dry sandblasting with protection.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett, that the applicant at 2295 South Ocean Boulevard (Harbour House) be granted permission to do sandblasting during this season, subject to the conditions specified by Planning, Zoning, and Building Department Director Veronica Close. On roll call, the motion carried 4/1, with Council Member Brooks dissenting.

3. Request for Extension of Time for Right-of-Way Permit at 230 Royal Palm Way, Per Letter Dated December 7, 2006, from Gene Parker, Vice President - Hedrick Brothers Construction.

Public Works Director Paul Brazil stated that staff did not have much information on this item, as it was a late entry onto the Agenda. He noted that scaffolding was in place at 230 Royal Palm Way, and the applicant was requesting an extension. He advised that the scaffolding had been in place for some time and was in the right-of-way. He commented further that this item was similar to the Commerce Bank request, as it was also providing some safety for pedestrians.

Mr. Brazil advised that, at Town Manager Elwell's direction, staff requested Hedrick Brothers, the contractor on this project, to notify all adjacent property owners that this issue was to be discussed at today's Town Council Meeting. He noted that he had not received any feedback. He requested that Hedrick Brothers address this request themselves.

Gene Parker, Hedrick Brothers Construction, advised that their predicament was not like Commerce Bank. He explained that they had filed for a right-of-way permit with the Florida Department of Transportation (FDOT) and Town of Palm Beach Public Works Department. He noted that they did have a scaffolding and engineering plan, which had been approved. The problem was that their permit expediter left without informing them that they were required to re-file for this permit in order to receive Town Council approval if work went beyond November 30, 2006.

After commenting, **Council Member Wyett made a motion to approve the request by Hedrick Brothers Construction for an extension of time for a right-of-way permit at 230 Royal Palm Way. The motion was seconded by Council Member Brooks.**

In response to President Coleman, Mr. Parker advised that the extension was needed until April 25, 2007. He stated that the permit had been granted for a period of three months only.

In response to President Pro Tem Kleid, Mr. Brazil explained that Public Works did not have the authority to grant a right-of-way permit for scaffolding in the right-of-way, during season. He advised that was the reason the permits were written that way, and it was the responsibility of the contractor to come back and ask for an extension, as they were doing today. The request would normally occur much sooner than this. He stated that it would not be practical to assume that they would be able to get the project completed during the summer on this type of construction, on a building this large

Council Member Wyett amended his motion to grant the request of Hedrick Brothers Construction for an extension of time for a right-of-way permit at 230 Royal Palm Way, to May 1, 2007, for an additional five days; the seconder, Council

Member Brooks, agreed to the amendment. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. MODIFIED VARIANCE #25-2006 The application of Sue Duchene, as Personal Representative of the Estate of Willem K. Wirtz relative to property described as lengthy legal description on file; commonly known as 228 Phipps Plaza; located in the R-C Zoning District. Request to modify a previously approved variance (Variance #23-79) to eliminate a condition of approval which allowed a 267 square foot addition on the south side of the house with a 7.9 foot rear yard setback in lieu of the ten-foot minimum required at that time and the fifteen foot minimum required today. The request is to eliminate that condition that requires said addition to be removed when the owner sells the property. The applicant, which is Trustee for the property, wants to leave the addition intact at the time of sale. Request variance to add a sloped roof element onto the existing addition which the applicant is requesting to keep. This variance increased the overall height of the addition in the required 15 feet setback by 4 feet 5 inches to its highest point at the ridge.

Ex-parte communication was declared by President Coleman via a conversation with the architect; and Council Member Brooks via a conversation with Attorney Curtin.

Attorney Barry Curtin, on behalf of the applicant, stated that the applicant had been before the Town Council at the August 8, 2006, Town Council Meeting, to request a variance from a condition of a prior variance granted in 1979, which required the removal of a 267 square foot addition. He explained that the Town Council recommended the applicant present their request to the Landmark Preservation Commission.

Mr. Curtin advised that the Landmarks Preservation Commission, at their meeting of September 20, 2006, unanimously approved the addition with the recommended improvements. He noted that they found that the addition enhanced the property. The

Town's consultant had stated that the proposed improvements were compatible with the architecture of the original Howard Major designed home.

Mr. Curtin stated that present today with him was the consulting architect on the project, Jacquie Albarran, and the original architect, Rafael Saladrigas.

Mr. Curtin presented architectural renderings to provide an overview of the variance request. He discussed the hardship, which he noted existed due to certain physical characteristics that were unique to this property. He advised that Mr. Pandula, President of the Landmarks Preservation Commission, indicated that this was a classic example of a hardship that runs with the land.

In response to Council Member Wyett, Architect Jacquie Albarran advised that this application was heard previously, but she had not been involved with the project at that time.

Zoning Administrator Paul Castro provided staff comments as follows:

- The Town Council had referred this application for consideration to the Landmarks Preservation Commission.
- In the interim, the applicant redesigned the roof system. The original design was a flat roof with a sun deck area.
- The Landmarks Preservation Commission recommended approval of the variances.
- The original approval in 1979, granted the variance based on a medical condition. As a condition of the 1979 approval, the applicant agreed to remove the addition, if the property was ever sold or transferred.
- Demonstrate hardship relative to removing the addition.
- Demonstrate hardship for the rear yard setback for the modified roof.

Council Member Wyett moved that Modified Variance #25-2006 be granted finding the hardship to be the size and shape of the land, excessive easements, the very small size of the property, and the fact that it was a landmarked property. The motion was seconded by Council Member Brooks. On roll call, the motion carried 3/2, with Council Member Kleid and President Coleman dissenting.

President Pro Tem Kleid stated that he believed the only reason the applicant was requesting this variance was to sell the property, which would provide to them a major economic value. He noted that he did not find that grounds for a hardship.

b. VARIANCE #25-2006 The application of Thomas Longhurst relative to property described as lengthy legal description on file; commonly known as 228 Phipps Plaza; located in the R-C Zoning District. Request to modify a previously approved variance (Variance #23-79) to eliminate a condition of approval which allowed a 400 +/- square foot addition on the south side of the house with a 7.9 foot rear yard setback in lieu of the ten-foot minimum required at that time and the fifteen foot minimum required today. The request is to eliminate that condition of approval that requires said addition to be removed when the owner sells the property. The applicant, which is Trustee for the property, wants to leave the addition intact at the time of sale. *Deferred from the August 8, 2006, September 7, 2006, and October 10, 2006, Town Council Meetings.*

Deleted under Item VII., Approval of the Agenda.

c. SITE PLAN REVIEW #19-2006, WITH SPECIAL EXCEPTION AND VARIANCES The application of the Town of Palm Beach relative to property described as Royal Park Addition, North 1557.35 ft of Block 20; commonly known as 300 South Lake Drive; located in the R-B Low-Density Residential Zoning District. Site Plan Review, with Special Exception, adjacent to a municipally owned and operated parks and recreation area (Lake Drive Park) in order to construct a new Town municipal dock extending 68 feet +/- to the west from the bulkhead line for public safety purposes with associated ancillary structures and uses. A variance to construct a security gate with a Knox box to be built at the foot of the dock which shall be 9.25 feet in height in lieu of the seven foot maximum pursuant to Section 134-1669. A variance to construct an institutional sign with additional language identifying a Florida Fish and Wildlife Conservation Commission grant, which is not part of the allowed language for said sign.

Deferred from the November 14, 2006, Town Council Meeting.
TIME CERTAIN: 2:30 P.M.

President Coleman announced that The Preservation Foundation had offered to underwrite a Master Plan for Lakeside Park for up to $40,000. The Town would select the planner, coordinating with the Preservation Foundation.

President Coleman passed the gavel and **made a motion to accept funding in the amount of $40,000 from The Preservation Foundation to the Town of Palm Beach, with Town staff selecting a planner for the Lakeside Park Master Plan. The motion was seconded by Council Member Wyett. On roll call, the motion carried unanimously.**

Council Member Wyett made a motion directing staff and the consultant to keep the Royal Park Homeowners Association informed on the process used in the development of a Master Plan for the Lakeside Park Project.

After further discussion, **President Pro Tem Kleid seconded the motion. On roll call, the motion carried unanimously.**

Council Member Brooks made a motion to defer Site Plan Review #19-2006 until the Master Plan for Lakeside Park had been developed.

Discussion ensued regarding deferral of Site Plan Review #19-2006. **President Pro Tem Kleid seconded the motion. On roll call, the motion carried 4/1, with Council Member Wyett dissenting.**

Ex-parte communication was declared by Council Member Markin with Jeffrey Cloninger regarding the dock; President Pro Tem Kleid with three representatives of the Association; President Coleman with Mr. Miller; Council Member Wyett with each of the gentlemen present today from the Association; and Council Member Brooks read a letter from the Royal Park Homeowners Association supporting the Association's position.

William R. Miller, 330 Cocoanut Row, President of the Royal Park Homeowners Association, introduced members of the Association that were present today. He requested that a letter and memorandum he hand delivered last week to the Town Manager, Mayor and Town Council be made part of the record.

Jeffrey Cloninger, 411 Brazilian Avenue, Vice President of the Royal Park Homeowners Association, read a statement into the record addressing the Association's opposition to any further development of the docks. He discussed several key issues that the Association felt warranted close review by the Town Council before any decision was made on the proposed addition of a new Public Safety Dock to the existing Town marina.

President Coleman clarified that there were many options brought forth in the Town's Traffic and Parking Study. He stated that there was no proposal for a garage at Lakeside Park. It was just one of the options; the consultant advised he would have been negligent in if he had not included it in the report. He advised that the Town Council had indicated, as a matter of policy, that they would not welcome the donation of a second police boat due to the operating expense items.

Mr. Cloninger stated that it was the Association's point that a new dock was not needed for one boat.

Yvelene D. Marix, 1570 N. Ocean Boulevard, suggested that the Town look at whether a generous resident might be willing to pay for the yearly rental for docking the Town's police boat at the Sailfish Club.

Deputy Town Manager Bradford advised, relative to the Master Plan, that the Town would have to go through the procedures necessary to hire planning, architectural and engineering firms. The firm the Town had onboard for this purpose was Kimley Horn and Associates. He reviewed the proposal from Kimley-Horn for a Master Plan of Lakeside Park at a cost of $45,900. He requested the Town Council make a motion to approve $5,900, which was the amount needed to augment payment for this contract.

President Coleman advised that he was bound to consult with the Preservation Foundation before approving the hiring of Kimley-Horn.

Town Manager Elwell suggested placing this item on the Agenda for the January 9, 2007, Town Council Meeting.

President Coleman advised that he would agree to approve same, on a contingency basis, in order to move forward, if the Town Council agreed.

In response to Council Member Wyett's suggestion that Kimley-Horn be requested to reduce their fee, Mr. Bradford stated that he would confer with them.

Mr. Elwell stated staff would confer with The Preservation Foundation in order to move ahead, and if additional funding was needed, it would be addressed at next month's Town Council Meeting.

After further discussion, **President Pro Tem Kleid made a motion to engage Kimley-Horn as planner/consultant for the Lakeside Park Project, at a cost not to exceed $40,000, subject to consulting with the donor, The Preservation Foundation. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.**

President Coleman thanked The Preservation Foundation for their contribution of $40,000.

2. New Business- Less Than 15 Minutes

   a. VARIANCE #37-2006 The application of Lauro and Areany Bianda relative to property described as Lot 38, Bungalow Park Addition to Palm Beach; commonly known as 262 Park Avenue; located in the R-C Zoning District. A variance to demolish and rebuild a non-conforming two story house that is 2,406 square feet. The variances requested are to rebuild the same size and style home in approximately the same footprint with modifications. The variances being requested are as follows: A lot width of 50 feet in lieu of the 75 foot minimum required; a lot depth of 70 feet in lieu of the100 foot minimum required; a lot area of 3,500 sq. ft. in lieu of the 10,000 sq. ft. minimum required; a front yard setback of 8.1 feet in lieu of the 25 foot minimum required; a west side yard setback of 3.6 ft. in lieu of the 10 foot minimum required; lot coverage of 35.9% in lieu of the 30% maximum allowed; and, reconstruction of a new house without the required 2-car garage.

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

Attorney Maura Ziska, on behalf of the applicant, presented architectural renderings to provide an overview of the requested variances. She noted that the hardship, which ran with the land, was that the house was completely nonconforming to today's Town Code. The lot was nonconforming in area, width and depth, and not being able to rebuild this house would be an extreme hardship as a liveable house could not be built on this lot.

Architect Harold Smith used architectural renderings to discuss the merits of the application.

Zoning Administrator Paul Castro discussed the following concerns of staff:

- Street scape - The size of the house was substantially taller and looked more imposing than the neighboring homes.
- Town Code required a two-car garage. Building a garage might eliminate on-street parking. Staff recommended at least a one car garage with a driveway placed on the property to eliminate two cars from parking on the street at that location.
- The original plan showed a spiral staircase going up to the attic on the second floor. The spiral staircase had been eliminated from the plan, but the space was left. The concern was that by putting in a staircase to the attic, a third floor might be created. Staff recommended that the hallway be designed to eliminate that design configuration.
- No hardship was seen in some of the variances requested.

In response to Council Member Wyett, Mr. Smith advised that he was sure there was a way to place a one car garage there, but they would lose at least one of the parking spaces on the street in order to get a driveway to go into the single car garage.

Council Member Wyett advised that he had no problem with the house, but stated that there should be, at least, a one car garage placed there.

Council Member Brooks noted that they were discussing a lot that was 3,500 square feet. He stated that while he would like to see a garage, he did not know if it was possible.

Mr. Smith in response to Council Member Wyett stated that they would lose one of the parking spaces that were on the street now, and that there was not enough room on the lot.

Discussion ensued regarding parking and the code requirement for a two-car garage.

Council Member Markin noted that this issue needed to be revisited due to concerns with height, setback, parking and garage space.

In response to President Pro Tem Kleid, Attorney Ziska advised that ARCOM had some issues with architecture of the house and deferred same.

Discussion ensued and Planning, Zoning, and Building Department Director Veronica Close reported that ARCOM advised the Town Council that implementation of the proposed variance would not cause negative architectural impacts. ARCOM approved the entry feature, but wanted to see the removal of the balconies on either side of the entry feature and that motion carried.

In response to President Pro Tem Kleid, Ms. Ziska noted that ARCOM did not like the balconies, and that was why they did not want to approve it, from her recollection. The applicant agreed to remove the balconies. She noted that the applicant had to go before ARCOM this month because there were other items.

Attorney Ziska explained that they would lose space on the street and lose green space if parking was provided onsite. She stated that they were improving the situation by making two nonconforming setbacks conforming. The street was the exact same setback as there today, and there would be an increase in the green space. They were trying to build back the same house more or less.

After further discussion, **Council Member Wyett made a motion, seconded by Council Member Brooks, to approve Variance #37-2006. On roll call, the motion carried 3/2, with Council Member Markin and President Pro Tem Kleid dissenting.**

President Pro Tem Kleid advised that he cast a dissenting vote because he did not find any hardship.

b. VARIANCE #38-2006 The application of Joan Goodman relative to property described as lengthy legal description on file; commonly known as 911 North Ocean Boulevard; located in the R-A Zoning District. The applicant is proposing to demolish an existing guest house and replace it with a new wing which will be connected to the main house by an elevated hallway. For aesthetic reasons, it is important for the new wing to be at the same elevation and height as the main house. This will require a point of measurement variance for the new wing. Building height for a residence abutting a low street is to be measured from 7.5 feet National Geodeetic Vertical Datum Mean Sea Level (NGVD). The applicant requests a point of measurement for height and overall height of 21.61 feet NGVD in lieu of the 7.5 foot NGVD required for a 7,500 square foot addition on the north side of the existing house. This is a modification and clarification of Variance No. 31-2006 which was approved by the Town Council on September 7, 2006. The purpose of this modification is to revise the point of measurement request to add 1.53 feet because the previous request was based on an NAVD datum instead of an NGVD datum as required by Town Code. There is no change in the dimensions (including the height) in the proposed new wing.

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

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve Variance #38-2006.

Zoning Administrator Paul Castro advised that this variance was necessary and had to be re-advertised and re-noticed to correct an error between the NAVD numbers and the NGVD point of measurement variance granted. The house was at the same elevation identified and shown to you several months ago. Staff requested the same conditions relative to the Fire Marshall be placed on the approval.

Council Member Wyett amended his motion to incorporate Mr. Castro's request; seconder Council Member Brooks was in agreement. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. <u>MODIFIED SPECIAL EXCEPTION #10-2006 WITH SITE PLAN REVIEW</u> The application of Coco Palm Beach relative to property described as The East 10 feet of Lot 30 and all of Lots 31-37 inclusive, Floral Park and Lots 194 to 200 inclusive, Floral Park; commonly known as 290 Sunset Avenue and Sunrise Avenue Parking Lot with no address; located in the C-TS Zoning District. A request to modify the previously approved Special Exception #10-2002 Condition Number 2 to relocate the 30 off-site, shared supplemental parking spaces from the Wachovia Bank parking lot located at 285 and 255 Sunrise Avenue and 165 Bradley Place to a parking lot on Sunset Avenue behind the Publix Supermarket, which is 500 feet from the Coco Palm Beach Restaurant. A request to modify the previously approved Site Plan to place four (4) 8 foot x 8 foot umbrellas that are 9 feet 6 inches tall in the outdoor dining area of the courtyard.

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

Attorney Maura Ziska, on behalf of the applicant, provided an overview of Modified Special Exception #10-2006 with Site Plan Review.

She noted that she was here with Dario Giacomelli, Giacomelli Architecture, who was the architect on the project and Jerry Wentzel, Traffic Engineer with DKS Associates.

Attorney Ziska advised that the application was twofold and commented as follows:

- The application was to modify a previous approval with regard to the valet parking. She advised that they were requesting relocation of 30 off-site parking spaces to a parking lot on Sunset Avenue. She noted that Traffic Engineer Jerry Wentzel of DKS and Associates concluded that relocating the parking lot would improve the efficiency and safety of the valet operations.

- The second part of the approval related to the site plan review for the courtyard outdoor seating area. The applicant was proposing to use four umbrellas for the outdoor seating area to create a nicer outdoor dining experience.

Motion made by Council Member Wyett to approve Modified Special Exception #10-2006 with Site Plan Review. Council Member Brooks seconded the motion subject to strict enforcement on the parking and valet.

Zoning Administrator Paul Castro commented that staff requested the applicant receive approval for the umbrellas from the Landmarks Preservation Commission since it was a landmarked building. He noted that it would be a special exception, because they were modifying the outdoor seating with the request for the umbrellas.

Mr. Castro advised that the plan for off-site parking had been studied by the Town's traffic consultant in March 2006, when the applicant submitted an application requesting lunch service. He commented on the following:

- Traffic Circulation Plan.
- Condition of approval, as well as a Town Code provision: A parking attendant would be required, at all times, when valet parking was in use; and a valet parking permit was required.
- Condition of approval: If there were three confirmed violations of the Valet Circulation Plan, the applicant would be required to come back to the Town Council for reconsideration of the approved supplemental parking arrangement.

In response to Council Member Markin, Mr. Castro advised that the plan showed the street going one way eastbound, which would actually be consistent with the traffic circulation plan that was provided to the Town for valet parking. He advised that the applicant was not increasing the number of outdoor seats. The request was for covered seating, which would affect the architecture and aesthetics of the appearance of the building from Sunset Avenue, and that was the reason staff had requested Landmarks approval

Ms. Markin remarked that, personally, she believed the addition of the umbrellas was a plus to the outdoor area and added to the character of the space.

Council Member Wyett stated that he did not believe the request for umbrellas that were moveable needed to go before the Landmarks Preservation Commission.

In response to President Pro Tem Kleid, Ms. Ziska advised that the umbrellas that were currently there were picnic table umbrellas that went through the middle of the table. She informed him that it was a new requirement that applicants had to appear before the Town Council for placement of umbrellas.

Discussion ensued regarding the placement of umbrellas requiring prior approval. Mr. Castro noted that restaurants with umbrellas that were not seen from the right-of-way did not require approval.

Council Member Wyett amended his motion to approve Modified Special Exception #10-2006, with the seconder, Council Member Brooks, in agreement, to include the conditions requested by staff, as follows:

- **Parking attendant is required at this location, at all times, when valet parking was in use.**
- **Valet parking permit is required.**
- **If there were three confirmed violations of the Valet Circulation Plan, the applicant would be required to come back to the Town Council for reconsideration of the approved supplemental parking arrangement.**

On roll call, the motion carried unanimously.

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

No ex-parte communication was declared by the Town Council*.

Attorney Jim Brindell provided an overview of the modified Site Plan Review #5-2006 with Special Exceptions & Variances and summarized the differences between the previous plan and the proposed one.

Architect Oscar Garcia discussed the major impacts of the design; Seth Yeslow, project manager, presented the plans of the parking configuration, the lobby, services, and Frank Meroney presented the landscaping plans.

Joel Silverman, the construction management consultant, provided an overview of managing the project.

Zoning Administrator Castro expressed several of staff's concerns and recommendations:

- As the parking area was a large expanse of asphalt, half the space could be eliminated on both sides in two different locations to provide parking islands with shade trees;

- ARCOM recommended approval of providing a screened wall around the proposed parking area;

- Discussion was needed regarding the type of material used on the face of the building;

- Plans and details regarding the back of the hotel were needed;

- Implement a declaration of use agreement, which would include the operational aspects of the outside areas, the valet parking, and a separate construction agreement with leverage related to penalties if deadlines or conditions were not met;

- The additional 12 parking spaces was not enough for employees, residents, and visitors. A declaration of use agreement was needed to bring employees in and out of the site without individually parking on the property. The hotel had a full complement of personnel: maid and maintenance staff, concierge service, waiters, waitresses, and cooks.

- The operational aspects would need to be addressed such as: outside music, dining, beach activity, hours of operation, the dining rooms and outside seats, in which staff needed more specifics on the number of seats.

- The valet operation and management plan needed to be reviewed for approval by the Police Department not to have any impacts off-site and to keep all onsite.

- It was vital to have preconstruction and construction meetings with staff and the Town's inspectors to ensure that the site operated appropriately.

- A construction agreement with the Town, for the Council's approval, was needed to ensure that all phases of construction were met, and to indicate the method of bussing in construction workers, who would remain onsite, and how the security of the site would be handled.

Public Comment:

Walter Cairns, director of Palm Worth Condominium Association, commented that the corporation did not object to the proposed parking arrangement.

Jere Zenko, 232 Tangier Avenue, commented that it would be nice if the owner finished one thing before going on to another.

Lynn Damico of Royal Saxon Condominium Association, commented that Mr. Schlesinger had granted direct beach access to all residents, their families and guests of the Royal Saxon, and she provided several of the details of an agreement with him.

*President Pro Tem Kleid corrected, for the record, that he was declaring ex-parte, in which he met with Mr. Schlesinger and Mr. Brindell, and had contact with Lynn Damico, and Tim Anthony president of Royal Saxon Condominium Association.

*Council Member Markin corrected, for the record, that she was declaring ex-parte, in which she met in passing with the applicant's team post their appearance at the last ARCOM meeting.

Responding to President Pro Tem Kleid, Mr. Meroney noted that there were two adjacent rows of the same ficus, which would prevent any car lights from showing through the parking area.

Attorney Brindell indicated that the hardship related to the existing conditions was the lot coverage of the current location of the building, the valet parking was a standard request, as the parking layout could not be done without the variances. The required parking spaces would be placed on surface parking, as stacking was not acceptable.

Responding to Council Member Brooks, Attorney Brindell noted that a draft declaration of use agreement, and a draft construction agreement would be provided to the Council.

Council Member Wyett commented, for the record, that the applicant did not have a legal variance. He indicated that the parking lot was under landscaped, and more parking spaces would be lost by the placement of more palms.

Motion made by Council Member Brooks to accept the proposal by the applicant, with condition of staff's points, including letter from Jim Brindell, emphasizing parking concerns, for signature approval in one month from now.

Motion made by Council Member Brooks withdrawn.

President Coleman suggested that Town Manager Elwell develop a new declaration of use agreement including items such as noise, in order to set a new standard other than a $250 code enforcement and to conceptually approve it.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve deferral of Site Plan Review #5-2006 with Special Exceptions and Variances - Modified to January 9, 2007, Town Council meeting. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #7-2006 The application of the Hebrew Academy of PB relative to property described as lengthy legal description on file; commonly known as 240 Cocoanut Row; located in the R-B Zoning District. A request for a Special Exception to allow a private academic pre-school ("Hebrew Academy of Palm Beach") to operate at the old Palm Beach Public School Gymnatorium building at 240 Cocoanut Row with 16, 207 sq. ft. of gross leasable area. The applicant's proposed pre-school will start with 8 students and will not exceed a capacity of 30 students. There is a proposed fenced in recreation area of approximately 3,300 sq. ft. on the Northeast corner of the subject property. *Deferred from the November 14, 2006, Town Council Meeting.*
TIME CERTAIN: 3:00 P.M.

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

Attorney Maura Ziska, on behalf of the applicant, advised that Rabbi Scheiner, Dean of the Hebrew Academy and Benjamin Wahl, representative of the Hebrew Academy were present today. She explained that this issue had been deferred since August, and at the November 14, 2006 Town Council Meeting, it was deferred for another month pending receipt of the Traffic and Parking Study.

Attorney Ziska advised that the Traffic and Parking Study concluded there were no deficiencies in parking attributable to the Hebrew Academy, and that the parking and traffic issues were was not a problem of the Hebrew Academy. She believed that the report specifically attributed the problems to the Public School, and requested permanent approval of the special exception.

Zoning Administrator Paul Castro stated that Ms. Ziska's comments relative to the Town's Traffic and Parking Study conclusions were correct. He advised that the only issue pending, which had not been presented to the applicant as yet, was that when staff conducted a site visit last week, it was determined that part of the fence and hedging might be within the site visibility triangle. Staff requested, as a condition of approval, that the applicant meet the site visibility requirements on the corner of Seaview Avenue and Cocoanut Row.

Peter Van Andel, 417 Seaview Avenue, commented in opposition to the application noting that there were twenty-five or more residents of the Seaview/Seaspray neighborhood who remained opposed to the application for the same reasons heard previously by the Town Council. He commented further as follows:

- The Hebrew Academy had done a good job with the playground and that issue was no longer objectionable.
- The Traffic and Parking Study was an extraordinary condemnation of the parking deficit, and the overbearing impact of traffic generated by the two existing schools.
- Concluded, with regard to the special exception, that until traffic and parking problems were solved, there should be no occupation or use of the building occupied by the Hebrew Academy for any purpose, least of all a school.
- The Town Council had no choice but to deny the special exception, and then to proceed forthwith to creatively and aggressively solve the larger and more complex problem of traffic and traffic.

Mr. Castro briefly reviewed the conditions previously placed on the Hebrew Academy when the Town Council approved, on a temporary basis, the operation of the Academy. He commented on the parking lot on Cocoanut Row. Staff recommended the applicant be required, as a condition of approval, to provide some mechanism to allow for turnaround in the parking lot to drive out and not back out onto Cocoanut Row.

In response to President Pro Tem Kleid, Attorney Ziska advised that the teachers parked in the little parking lot off of Cocoanut Row, which had a chain with a "No Parking" sign strung across the entrance to the lot. She advised that the Four Arts Society indicated to them that when construction was completed on the garden, they might be able to explore a safer way to exit that parking lot.

Council Member Wyett commented as follows:

- Progress had been made, and it was unfair of Mr. Van Andel to request that the Town Council deny the application until there was a Master Plan to improve the area.
- Pledged to the residents of that area that he would do everything possible, and he believed the Council would join him, in alleviating the problems.
- He noted that the Town was a victim of Palm Beach Public School, which had deceived them; and a serious problem existed that was caused by the Public School, and perhaps, Palm Beach Day School, as noted in the Traffic and Parking Study.
- The residents should consider whether they would like to have their streets marked with "No Parking before 10:00 a.m." signs, which would force the Public School to find replacement parking.

Council Member Markin stated that she hoped the Town Council had learned not to give conditional approvals before hearing from the residents. She noted it was an uncomfortable situation for the residents as well as the Hebrew Academy. The Hebrew School had done a very good job with the playground to make it befitting of the neighborhood. She advised that she was uncomfortable with the fact that the Town had not been able to gain resident approval for the Hebrew Academy, which was one of the conditions when temporary approval had been granted.

James Thompson, 426 Seaspray Avenue moving to 441 Seaview Avenue, commented on the issue of Town-serving relative to the Hebrew Academy.

President Coleman informed Mr. Thompson that Town-serving was a broad criteria and the Town Council had been advised that the applicant did meet that criteria.

Attorney Ziska advised that the Hebrew Academy submitted their Town-serving documentation and that they would submit Town-serving documentation every year upon renewal of their occupational license.

Discussion ensued, and Mr. Castro provided the definition of Town-serving.

In response to Mr. Thompson, President Coleman advised that he was correct that the Palm Beach Public School did not answer to this Council. He noted that they answered to the Palm Beach County School Board.

In response to President Coleman, Mr. Thompson stated that ticketing or decal parking would be welcome.

President Coleman invited Mr. Thompson to attend the Special Town Council Meeting to be held on January 8, 2006 at 1:30 p.m. when the Council would be reviewing the Traffic and Parking Study.

Mr. Thompson responded that he would attend that meeting. He noted that past failures in planning created this situation, and the Hebrew Academy as well as the residents were victims of that situation.

Council Member Brooks commented that, as Mr. Thompson stated, the problem was traffic and parking. The Hebrew Academy was not the problem, but it was reflective of a much larger problem.

After discussion regarding an investigation he conducted related to parking issues in the area, **Council Member Brooks made a motion to remove the temporary approval for the Hebrew Academy and grant them a Special Exception for the following reason:**

- **The cap was for not more than 30 students, and in a few years, the presence of the Hebrew Academy at that location would be academic because they would need a larger facility.**

Council Member Wyett seconded the motion.

Discussion ensued regarding the term of the lease. Attorney Ziska advised President Coleman that it was a three-year lease with a one year option.

Town Manager Elwell suggested that perhaps the term of approval should be made a condition of approval.

Council Member Brooks amended his motion to include the terms of the lease as a condition of approval of Special Exception #7-2006. Council Member Wyett seconded the motion, as amended.

Mr. Castro requested all conditions previously outlined be incorporated into the motion.

After further discussion, **Council Member Brooks further amended his motion, seconder, Council Member Wyett in agreement, with the following conditions of approval:**

- **Drop off and pickup of students shall only be from the Four Arts parking lot to the west of the school building. Vehicles leaving the parking lot shall exit the lot south on Four Arts Plaza to Royal Palm Way.**
- **The employees, vendors or student's parents shall not park, drop off or pickup on Seaview Avenue.**
- **The parking lot on the southeast side of the school building, next to Cocoanut Row, shall only be for teachers. The parking lot is required to be closed after the teachers arrive by closing a chain, which is required to be moved closer to the right-of-way.**
- **There shall be a maximum of 30 students attending the subject school.**
- **The applicant shall remove all hedge and fence material out of the safe site visibility triangle on the southwest corner of Seaview Avenue and Cocoanut Row.**
- **Term of lease: three years, with a one year option.**

In response to President Coleman, Mr. Elwell advised that the process to sticker Seaview would begin with a study, collecting the data as to what types of parkers were using that area and how the competing uses were affecting each other. There were criteria set out under the law that advised the Town, under the Gainesville Plan or the Arlington Plan, what actions the Town could take and legally defend to reserve parking, in that particular area, for that type of person who needed to use the parking.

Neil Kozokoff, 315 Seaspray Avenue, discussed the collateral issue of safety. He advised that Seaspray Avenue became a race track between 7:20 a.m. and 7:50 a.m., and suggested the placement of speed limit signs, turns onto Seaspray Avenue be restricted, and the use of police enforcement. He requested that the safety issue be addressed in advance of the bigger issue of traffic.

On roll call, the motion to approve Special Exception #7-2006, with conditions, carried unanimously.

Discussion ensued regarding what could presently be done relative to Seaspray Avenue and the "Sea" streets.

President Coleman advised he was not looking to take any action at this time, but suggested starting the study now and not waiting a month.

Council Member Markin recommended taking action as she did not believe a study was needed. She suggested placement of two police cars and a tow truck on those streets for the next thirty days.

Town Manager Elwell clarified that there was no impediment in the enforcement of what was already in place. He stated that when changing regulations, flow patterns, hours of parking, the options needed to be looked at more fully.

Council Member Markin agreed with Mr. Elwell, but noted that, in the meantime, the residents needed to know that the Town would respond to their consistent concerns.

President Pro Tem Kleid stated that police enforcement should begin tomorrow.

Chief Reiter provided an overview of the action taken by the Police Department immediately following last month's meeting.

Discussion ensued regarding placement of no parking signs, reduction of the speed limit, designating the area a school zone, and police enforcement.

Chief Reiter stated that if busses were speeding, the Police Department would cite them, and requested that the residents who have observed that, provide the department with that information.

In response to President Coleman, Chief Reiter stated that if he had evidence of cars traveling those streets at 50 mph, he would definitely send letters to the Palm Beach Day School and Palm Beach Public School asking for their cooperation.

Council Member Wyett suggested that the Town invite the two local schools to the January 8, 2007, Special Town Council Meeting.

Barbara Chevallard, 330 Seaspray Avenue, advised that she had taken many pictures of the public school busses speeding down the street. She questioned why the busses used Seaspray Avenue and did not go north on Cocoanut to make a left over the north bridge?

Ms. Chevallard advised that the principal recently sent a letter to all parents of students of Palm Beach Public School telling them to use Seapray Avenue and not to make u-turns on Cocoanut Row. She noted that it was very dangerous and a safety issue.

Council Member Brooks stated that he believed part of the agreement had been that the busses had to go north on Cocoanut and then west on the north bridge.

After further discussion, Mr. Elwell stated that staff would follow up with the school district regarding the route the school busses were taking.

The consensus of the Town Council was to invite the two schools to attend the Regular Town Council Meeting being held on January 9, 2007 with a time certain.

Mr. Thompson requested designating the area as a school zone to lower the speed limit in the area and not delay it for another month.

4. New Business- More Than 15 Minutes

D. Other

There were none.

XVII. ANY OTHER MATTERS

There were none.

XVIII. ADJOURNMENT

There being no further business, the Regular Town Council Meeting of December 12, 2006, was adjourned at 7:00 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk