TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON DECEMBER 11, 2007

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, December 11, 2007, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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
William Amador - Fire-Rescue Chief
Kirk Blouin -Administrative Captain, Police
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Planning, Zoning and Building Assistant Director
Paul Castro - Zoning Administrator
William Crouse - Human Resources Director

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Tim Frank - Planning Administrator
Fred Hess - Police Sergeant
Charles Langley - Public Works Assistant Director
Michael Mason - Law Enforcement Major
John Page - Planning, Zoning and Building Director
Michael Reiter - Police Chief
Gary Sallenbach - Support Services Major, Police
Jane Struder - Finance Director
Spencer Wilson, Information Systems Manager
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of James Palmer, Information Systems Analyst, for 20 Years of Town Service.

Mayor McDonald recognized James Palmer, Information Systems Analyst, for 20 years of faithful service to the Town, and presented him with a Certificate of Recognition in grateful appreciation for his years of loyal and dedicated service to the Town of Palm Beach. He commented that Jim was the IS Department before there was such a department. He noted that one of the first people Amy Wood thanked, when chosen Employee of the Year at last month's Employee Recognition Ceremony at the Breakers, was Jim Palmer for all the work he had done in terms of converting the Town's computer systems, etc.

IV. COMMENTS OF MAYOR JACK McDONALD

I have four comments today. The first I want to start with is the tax referendum. Next month our residents are being asked to vote on a proposed property tax constitutional amendment. The Florida League of Cities opposes the amendment because it fails to deal with the disparities and inequities in the State's property tax system and further erodes an already unfair system. The League has passed an opposition resolution asking for support and I suggest that the Town Council take this matter up next month so our residents will hear a discussion on the merits of the proposed constitutional amendment.

West Palm Beach Mayor Lois Frankel is forming a citizen advisory group made up of cross section of commercial and residential water customers to review the City's major goals regarding water service, and she has asked me to select two members. I have recommended William Mikus and Paul Leone and they have accepted.

I will be leaving for Tallahassee today to attend the swearing in ceremony of Senator Atwater as Senate President Designee. So there are two agenda items that I will miss, but I want to make comments about at this time.

First is the review of the one-way east traffic on Seaview Avenue. I have received many letters and telephone calls about this situation; and if it is determined that there are any safety issues associated with this change, it must be reversed.

The second is the appointment of the Town Manager. This decision is made by the Town Council. However, under the Charter it is the Mayor's responsibility to oversee the Town Manager's faithful execution and enforcement of Town Ordinances, laws, policies, procedures, and acts of the Council. So, I am pleased to report, for 2007, that he has met those requirements and recommend his reappointment as Town Manager.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Markin commented regarding the scheduling of a Public Works Committee meeting, on January 3, 2008, at 1:00 p.m., to discuss upcoming and potential Public Works projects and to discuss streamlining the permitting and construction projects.

Council Member Coniglio expressed her appreciation to the Police Department, and congratulated Police Chief Reiter and the Police Department for exceeding the established standards for accreditation. She thanked all Town employees for their loyalty, courtesy, and dedicated contributions.

President Kleid thanked the Police Department in particular, because of the very important special bond between the Police Department and the residents.

President Pro Tem Coleman noted that he had received communication regarding some confusion that had taken place at the Fire-Rescue and Police Department Retirement Board Meetings. He requested that Town Manager Elwell provide a report. Mr. Elwell advised that staff would confer with the individuals involved in order to schedule them to appear at either the January or February Town Council Meeting.

Council Member Brooks commented that at the holiday season of Hanukkah and Christmas, he wanted to remind all of the Town's citizens that underneath the religious significance of those feasts, the subset was the virtue of hope. He wished that everyone could capture that elusive virtue sometimes, which would bring to them equanimity, tranquility, and a positive outlook in life. He thanked Mr. Elwell for his superb leadership, noting that the vision statement, was totally generated by Mr. Elwell, his department heads, and the entire staff. The statement: "The Town of Palm Beach delivers the highest quality service by continuously improving and always striving to be the standard by which all others are measured," was truly a wonderful present for Hanukkah and Christmas and for all residents.

Town Manager Elwell advised that tomorrow at 10:00 a.m., at Bethesda-by-the-Sea Parish Hall, there would be an open house for the public regarding the referendum, which would be held on Tuesday, December 18, 2007, on the drainage and Reach 8 Beach Bond.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Mr. John Scarpa, 1676 South Ocean Boulevard, Chairman of the new 501 (c) (3) Palm Beach Police Foundation, extended holiday greetings to all. He requested the support of the Town Council for an advertisement, paid for by the Foundation, which would extend congratulations to the Policeman's Ball. He noted that the purpose of the foundation was to provide support to the men and women of the Palm Beach Police Department, both sworn and civilian employees, and to provide and raise funds for the children of those employees. He advised that the Foundation committed $25,000 annually to Crime Watch and sponsored the Policeman's Ball.

In response to President Kleid, Mr. Scarpa advised that the Town seal would be removed from the advertisement.

Motion made by Council Member Coniglio that the Town Council would support, in the form of an advertisement, the Policeman's Ball sponsored by the Palm Beach Police Foundation, with the condition that staff tweak the wording of such an ad. The motion was seconded by Council Member Brooks.

President Pro Tem Coleman supported the motion but requested that the reference to ticket sales be deleted from the ad.

Council Member Markin supported the motion as long as the Town Council was consistent relative to the Fireman's Ball.

On roll call, the motion carried unanimously.

Yvelyne D. Marix, 1570 N. Ocean Boulevard, commented regarding the following three items, which were all connected with public information and transparency for the voters and tax payers:

- Expenditure items placed on the Consent Agenda - suggested placing a short resume on the Consent Agenda items in order that the public was made aware of what the reason or the importance of the items was.

- Ordinances - suggested that it was very important that a resume consisting of one or two paragraphs be read before the legalese that went with approving and/or reading them; one short paragraph about what the item means.

- The Steering Committee for the Royal Poinciana Area Planning Study.

Town Manager Elwell responded that staff would contact each of the 19 members of the Steering Committee today to confirm the scheduling of the first meeting

Kirsten Braden, 305 Hibiscus Avenue, thanked the Mayor and Town Council for the wonderful welcome she had received as a new resident; thanked Chief Reiter and his team for organizing a tour of the Police Station for her seven-year-old son; thanked Council Member Markin for her help during the renovations on her house. She commented regarding her experience with feral cats when taking her children and dogs for walks.

Council Member Markin suggested that Ms. Braden contact PB Cats and she asked that Ms. Braden provide her own contact information to the Town Clerk.

Bruce Bent, 17 Golfview Road, commented regarding Town funds in the Florida local government pool, the Reach 8 beach renourishment, and the public meeting in regard to the upcoming bond referendum.

President Kleid responded that the Town had withdrawn their funds from the State Board of Administration (SBA), and that the public meeting regarding the bond referendum would be held at Bethesda-by-the Sea tomorrow at 10:00 a.m.

Stacy Mandel-Palegi, 211 Eden Road, commented in opposition to the one-way conversion of Seaview Avenue, and requested that the Town Council reverse their decision. She commented that the Palm Beach Day Academy was a good neighbor and was one of the oldest and most respected Town-serving institutions.

Kathy Leone, 1 South County Road, commented in opposition to the one-way conversion of Seaview Avenue. She noted that she had been disappointed that the Palm Beach Day Academy had not been consulted regarding the one-way conversion.

President Kleid responded that he was concerned relative to misinformation, noting that it was not true that the Palm Beach Day Academy had not been involved as there had been constant discussion by the Town and the Town's traffic consultants with the administration of the Palm Beach Day Academy.

Charlie Kilvert, 441 Seabreeze Avenue commented on safety issues regarding the one-way conversion of Seaview Avenue.

Ron Schram, 1420 North Ocean Boulevard, commented in opposition to the reversal of one-way traffic on Seaview Avenue.

President Kleid advised that he wanted to set the record straight as far as facts were concerned, noting that there were only two policemen assigned to that area.

VII. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

MOVED Item VIII.C.2., Resolution No. 72-07, to Item XI.B.4., immediately following Ordinance No. 26-07.

DEFERRED Item VIII.D.4., Approval of Agreement for Long Term Maintenance of Ibis Isle Park to a future Town Council Meeting.

DEFERRED Item XII.A.1., Appeal by the Bath and Tennis Club of an Administrative Decision Not to Allow Cooling Towers Eighteen Feet from the Side Property Line, 1170 South Ocean Boulevard to the January 8, 2008, Town Council Meeting.

DEFERRED Item XII.C.3.a., Special Exception #9-2007 with Site Plan Review and Variances, 216 Colonial Lane, to the January 8, 2008, Town Council Meeting.

DEFERRED Item XII.C.3.b., Special Exception #10-2007 Revised , 235 Sunrise Avenue, to the January 8, 2008, Town Council Meeting.

DEFERRED Item XII.C.4.b., Special Exception #15-2007 with Site Plan Review and Variances, 241 Seaview Avenue, to the January 8, 2008, Town Council Meeting.

DEFERRED Item XII.C.4.d., Site Plan Review #23-2007 with Special Exceptions and Variances, 333 Peruvian Avenue, to the January 8, 2008, Town Council Meeting.

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

VIII. CONSENT AGENDA

A. MINUTES: NOVEMBER 13, 2007
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON NOVEMBER 16, 2007.

C. RESOLUTIONS

1. RESOLUTION NO. 70-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Scheduled Replacement Purchase of the Autocite Ticket Writing Devices and Software Upgrade from Duncan Technologies and Authorizing the Town Manager to Execute the Purchase on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

2. RESOLUTION NO. 72-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Department of Public Works, Engineering Division, Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach at Chapter XII, Miscellaneous Provisions, Construction Parking; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]
(RELOCATED ON AGENDA TO ITEM XI.B.4. TO BE HEARD IMMEDIATELY FOLLOWING ORDINANCE NO. 26-07.)

3. RESOLUTION NO. 73-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving DEP Contract No. 07PB5 Between the State of Florida Department of Environmental Protection and the Town of Palm Beach under the Bureau of Beaches and Coastal

Systems Florida Beach Management Funding Assistance Program for the Lake Worth Inlet Management Plan Implementation and Authorizing the Town Council President to Execute Same on Behalf of the Town. [H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO.74-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving FDEP Contract No. 07PB6 Between the State of Florida Department of Environmental Protection and the Town of Palm Beach under the Bureau of Beaches and Coastal Systems Florida Beach Management Funding Assistance Program for the South End Palm Beach Restoration, Reach 8 Project and Authorizing the Town Council President to Execute Same on Behalf of the Town. [H. Paul Brazil, Director of Public Works]

D. OTHER

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

2. Authorization To Purchase Two Replacement Fire-Rescue Transport Units From The Town's Vehicle Replacement Fund. [William Amador, Fire-Rescue Chief]

3. Waiver of Seasonal Restrictions Regarding Work in Rights-of-Way to Allow for Kiosk Installation.
[H. Paul Brazil, Director of Public Works]

4. Approval of Agreement for Long Term Maintenance of Ibis Isle Park. [H. Paul Brazil, Director of Public Works]
(DEFERRED ITEM XII.D.4. TO A FUTURE TOWN COUNCIL MEETING.)

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

6. Authorization to Purchase Logging Recorder for Incoming 911, Administrative Telephone Calls and Radio Channels.
[Michael S. Reiter, Chief of Police]

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

IX. BOARD/COMMISSION ANNUAL REPORT

A. Investment Advisory Committee.
[Michael F. Andrews, Ph.D. and Jane Struder, Director of Finance]

Director of Finance Jane Struder explained that the Investment Advisory Committee's Annual Report was to be discussed at a very opportune time as the Town's investment portfolio had changed, during the past few weeks, due to issues with the State Board of Administration's Local Government Investment Pool (SBOA) on November 29, 2007. She noted that the Town had pulled their entire investment out of the SBOA based on a disturbing Bloomberg article brought to the Town's attention by resident Robert Harvey. She explained that the State had frozen withdrawals from the pool the day after the Town removed their funds, and had not reopened the pool until last week. The Investment Advisory Committee has been following this situation closely and had met twice during the past few weeks.

Ms. Struder introduced Dr. Michael Andrews, Chairman of the Investment Advisory Committee, noting he would present the Committee's Annual Report.

Dr. Michael Andrews, 255 Mockingbird Trail, Chairman of the Investment Advisory Committee, referred to the memorandum to the Mayor and Town Council dated November 30, 2007, and included in the backup material, to provide the Annual Report on the current status of the investments and actions taken during the past year by the Investment Advisory Committee. He commented on the following:

1. Surplus Fund Investments

    - State Board of Administration Local Government Investment Pool
    - Florida League of Cities Bond Funds

2. Health Insurance (OPEB) Trust

3. General Information on the Investment Advisory Committee

    - Current Members of the Investment Advisory Committee

Dr. Michael Andrews, Chairman/Term Expires May 2009
Vice Chair Edward Hennessy/Term Expires May 2009
Stephen Brown/Term Expires May 2009
William Mikus/Term Expires May 2008
Bernard Panfel/Term Expires May 2008

- The Committee held six meetings during the past 12 months.

Dr. Andrews explained that the SBOA employed BlackRock intervention, which utilized a Fund A and a Fund B structure. Fund A funds had been gone through line by line and no problems were found with those particular investments. Fund B funds were segregated out of that pool and were likely to have some incidence of default or the investments would provide less money than was originally expected.

Dr. Andrews explained that the Town had been informed by the SBOA that they would not pay them the distributions the Town believed they were owed for the month of November, which equated to about $220,000. The Town Attorney had been requested to review same to determine if there might be some way the Town might petition or find a legal way to have that money returned to the Town.

Dr. Andrews responded to Council Member Markin's question concerning the interest issue, noting that the SBOA had its own agenda, its own rules and documents, it was not a regulated money market, and the fund was not guaranteed by the State of Florida.

Ms. Struder advised that when the Town entered the SBOA in the early 90's, there was no agreement or at least not one that the Town had found as yet. The State had the right to change things as it went along. She explained that staff had been pulling information off of the SBOA website to obtain their administrative procedures in order to send it to the Town Attorney.

Council Member Coniglio offered her congratulations to the Investment Advisory Committee and expressed her thankfulness to Ms. Struder for her foresight in removing the Town's funds a day before a freeze was placed on the pool. She hoped that the Town would continue to pressure the SBOA for the interest that was due the Town.

Dr. Andrews advised that an option the Town was considering for those funds was alternative investments. He explained that the money had been sent over to Wachovia Securities in one of their governmental issues, with the Town currently receiving about 4.5 percent. He noted that the Town was really not losing anything, and as the Town moved forward, the Committee would evaluate and come up with what they believed was in the best interest of the Town and the Town's money.

President Kleid, on behalf of the Mayor and Town Council, thanked Dr. Andrews and the Investment Advisory Committee Members for their hard work and dedicated service that they render to the Town.

X. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated December 3, 2007, and included in the backup material, to provide a status report regarding burial of overhead utility lines.

Mr. Bradford explained that at the Special Town Council Meeting held on November 5, 2007, it was decided that the underground referendum scheduled for January 29, 2008, would be postponed. The Town Council requested that staff obtain information pertaining to the development of a binding cost estimate for conversion to undergrounding from the three utility companies serving the Island. He noted that he had contacted each of the three affected utilities requesting specific information and that they provide same by the end of December so that staff could present it to the Town Council at the January 8, 2007, Town Council Meeting.

Mr. Bradford advised that he had spoken to Mr. Rod Macon, Florida Power & Light (FPL), who had been present earlier today but had to leave. He noted that Mr. Macon anticipated meeting the deadline, but he had not heard from Comcast and AT&T as yet, but would follow-up with them before the deadline to see where they stood.

Mr. Bradford noted that the Town had received a letter from FPL dated November 16, 2007, in which FPL was requesting to rebuild a portion of their system from La Puerta Way to Tradewind Drive starting as soon as possible. He noted that the request was in response to reliability concerns with the main trunk line in that area, which ran along the west side of North Ocean Boulevard.

Mr. Bradford commented on the pros and cons of the project, and he addressed the new hardening standards recently adopted by the Public Service Commission (PSC). He noted that Mr. Macon had informed him that he did not know if he could provide the Town with a binding cost estimate for that particular section by January, but could provide a ballpark estimate by then, along with any of the nuances associated with that particular area.

Mr. Bradford advised that if the Town Council was interested in the project, it would be an ideal opportunity for the Town to undertake a pilot project to help in the Town's efforts to solidify the true costs of undergrounding in Town. He noted that all costs could be recouped in the anticipated future bond referendum as a reimbursement of up front costs, and he estimated that the work would cost $1,192,679. He advised that the Director of Finance Jane Struder had suggested that the Town use a line of credit, paying interest only. If the referendum was not held or failed, the Town Council could repay the debt service based upon the term of repayment chosen and budget accordingly. The cost could also be rolled into the bonds that were anticipated to be issued if the voters approved same.

After further discussion, the Town Council directed staff to invite Rod Macon, FPL, to appear at the January 8, 2008, Town Council Meeting, at a time certain if he preferred, to provide a report with a ballpark estimate on the pilot underground wiring project from La Puerta Way to Tradewind Drive.

2. Coastal Management Program.
[Peter B. Elwell, Town Manager]
TIME CERTAIN: 11:00 A.M.

a. Shore Protection Board Recommendations.
[Garrison Lickle, Shore Protection Board Chairman, 1995-1999]

Town Manager Elwell reviewed the background as to how the Town had become so active with coastal management in the mid 1990's. Beach erosion was an issue in the community ever since Palm Beach became inhabited. In the 1950's it was recognized that the Lake Worth Inlet was the most significant cause of erosion in the Town, and through the combined efforts of the Town, Palm Beach County, and the Federal government, the Sand Transfer Plant was constructed there; it was operated for several decades by Palm Beach County, and it became in disrepair and badly damaged by a storm in approximately 1990. The Town was in litigation with Palm Beach County in the 1990's regarding the Sand Transfer Plant, trying to enforce the agreement with Palm Beach County. The Town lost that, not because of arguments were not good as to the obligations the County had assumed, but because the term of the agreement was perpetual. The County had taken on the responsibility to operate it essentially forever, and the Court said that you cannot have such an agreement – there must be a term, and the judge defined what he believed was the term, relying on some other language in the contract. For a few years, the Sand Transfer Plant sat idle. It became very clear during that time that erosion throughout the Island was worsening. The Town officials recognized that, and in 1995 made the decision to reactivate that Plant at Town expense. The Town was now working with the Federal government again to upgrade the Plant, and there was authorization at the Federal level for the upgrade project.

In the mid 1980's, the Town Council authorized a Comprehensive Coastal Management Plan, because beach erosion was recognized as something that needed to be managed in an ongoing way. That Plan was created in 1986. There was some work done in the late 1980's towards the implementation of the Plan. None of the projects had actually come to fruition, because of the same issues being heard today. The Town Council at that time then made a decision to implement the PEP Reef (Pre-Fabricated Erosion Prevention Reef), with the intent that it might be a more permanent solution that would absorb some wave energy off of the mid-town beach. The intent was that it was a less costly, long term approach – rather than placement of sand. Unfortunately, the monitoring of that project indicated that it was actually accelerating erosion in the mid-town beach, rather than preventing further erosion. In 1995, the project was terminated and the PEP unit was turned into the eleven groins at mid-town, and to construct the mid-town beach restoration project. That was in response to a crises situation, where there was actually no sand at all at mid-town.

At the urging of Jack McDonald, in 1995, a Town Council member at that time, the Shore Protection Board was created, and provided guidance as to how to proceed with beach erosion issues.

Mr. Elwell introduced Gary Lickle, who was chairman of the Shore Protection Board.

Gary Lickle addressed the Town Council, stating that the purpose of the Shore Protection Board was to develop a ten-year forecasting plan. Historically, each Council was dealing with a crisis moment. Many people had offered long term solutions, with no real long term plan in place. The Shore Protection Board was formed, and three years later, after listening to many experts, it was determined that there was no silver bullet; there was no fix – it was a question of what was the best technology available.

Mr. Lickle addressed many topics discussed by the Shore Protection Board, such as global warming.

Mr. Lickle noted that the Comprehensive Coastal Management Plan was now in place, and to abandon it now would basically be to abandon the maintenance, and that would result in further infrastructure issues if the maintenance was not kept up, and the Plan was not built for the future. He discussed twelve points that the Shore Protection Board had come up with, noting that the Sand Transfer Plant should always be operational, no matter what – work should be done on getting reimbursements afer, rather than before upgrades were made. It was a full time job to implement the Plan. Renourishment and structures were the best protection available. Seawalls were the last line of defense – they work if they have a dune in front of them, and if they have beach sand in front of them. There should be an ongoing Shore Protection Board. Beach monitoring needed to be emphasized. Environmental concerns must be considered. There must be continual experts on call at all times to answer the call for the permitting process. He suggested that continual education of the public was necessary, and that energy could be directed to changing State law and lobbying the

State to become more progressive in their thinking about groins and about the latest solutions.

Discussion took place regarding;

- Upgrade to the Sand Transfer Plant
- Establishment of a permanent Shore Protection Board
- The proposed project to the south of Palm Beach, designed to break the waves.
- Renourishment in conjunction with a facility to break wave energy.
- Seawalls as a last line of defense, with dunes and beach in front of them, preferably with groins.
- The difficulty in obtaining permits.
- The Everglades Restoration Bill.
- Coordination with other communities.
- The Federal process of authorization, then appropriation.
- The amount of $7-$10 million per year that is currently being spent for sand.
- Implementation of a professional lobbying team.

Comments were heard from members of the public:

- Ned Barnes, Palm Beach Civic Association, regarding the Civic Association Shore Protection Committee;
- Richard Raffo, 173 E. Inlet Drive, former member of the Shore Protection Board, suggesting a commission composed of citizens from both the Citizens' Association and the Civic Association;
- Allen Wyett regarding the impact of accepting federal funding for the beaches;
- Alan Golboro, regarding maintaining the positive relationship with the Army Corps of Engineers;
- Dr. Sanford Kuvin regarding Florida Administrative Code 62B-33.005(5).

Further discussion took place regarding the term "sacrificial sand" and the difference between sand used for dune restoration and sand used for beach restoration.

b. Implementation of Approved Comprehensive Coastal Management Plan.
[H. Paul Brazil, Director of Public Works]

Director of Public Works, Paul Brazil, provided a report reviewing the status of implementation of the updated Comprehensive coastal Management Plan that was adopted by the Town Council in 2000.

c. Status of Coastal Projects from Jupiter island to Boca Raton.

Director of Public Works, Paul Brazil provided a report describing coastal protection projects previously constructed or currently planned by the Town of Jupiter Island, Palm Beach County (from Jupiter to Lantana), the City of Delray Beach, and the City of Boca Raton.

Town Manager Elwell commented regarding the significant difference between Lake Worth Inlet and Boynton Inlet: Boynton Inlet is a shallow, recreational inlet that often actually is so shoaled up that it is not navigable. There is a Sand Transfer Plant at that inlet as well. Both Sand Transfer Plants were designed to the sand that is moving through each of the two areas differently. Both of them were built about the same time. The key difference is that at Lake Worth Inlet there is a very wide shipping channel that is 37 feet deep, when it's freshly dredged, which is an entirely different situation in terms of the interruption of sand. So, that is why the erosion problem north of the Boynton Inlet is so much more severe than what is seen south of the Boynton Inlet.

Mr. Elwell commented regarding the condition of the Lake Worth Inlet Sand Transfer Plant: More than a decade ago, the Town was in a situation where the Plant was sitting idle – it was not operating, and in that circumstance, sitting and waiting for the Federal government became unacceptable. People in the community came to the Council and pushed hard for the Town to take the responsibility of paying the necessary costs, getting it restored, keeping it operational, instead of waiting for somebody else to do that, because it was having such a negative affect on the Island, and Council did that. All of the Councils since then have stuck with that, funding the budget each year. We pump a lot of sand each year through the Sand Transfer Plant, however, it is not going to be a reliable plant for the long term, but week in and week out, year in and year out, right now, it is doing the job. Pumping more sand than now would create a reverse problem – we will pump more sand past the Inlet than is naturally coming to the Inlet, and we will create a deficiency on the north side. So, it will be engineered and permitted in such a way that prevents us from doing that, but where we will be allowed to bypass everything that we naturally would have received if the Inlet was not there. There's engineering and science in that, that is going to take some wrangling to find what that is. It is really a reliability factor, and a long term prospective that makes the construction of an upgraded plant necessary. What makes the upgraded Plant necessary is not that we're sitting here without sand bypassing at present. At this very moment we are doing a repair on the engine – that is a very momentary thing. On an ongoing basis, it is an old plant that needs to be replaced, but it is functional and it does bypass sand throughout the year.

So, we have a Sand Transfer Plant that is not really totally effective, but a little sand comes out. Mr. Elwell advised that staff would provide further information that would enable the Council to make an informed decision as to whether to expedite the upgrade, and perhaps forego some of the Federal money that might be available.

In response to Council Member Markin, Mr. Brazil explained the following: emergent breakwaters were more permittable than a traditional groin field, for all of the reasons that have been talked about here today. The problem on the south end of Reach 8 is the same problem that the county is seeing in other communities ---- where you have offshore breakwaters, because you have near shore exposed hard bottom, and the permitting agencies do not want to cover those resources. The goal is not to build up sand in that area. We have considered that, and conversation had taken place with Council when we had to decide whether we were going to truncate Reach 8 or not. If we had started that very day formally planning for emergent breakwaters on the south end of Reach 8, it would have put us in a position where the regulatory agencies would have required a very long three year study. The only way we could avoid that three year study and get, hopefully, an expedited permit, was to focus only on the truncated area where we were going to place sand, receive that permit, and if directed by Council, as soon as we received that permit, staff would go out and explore that with the county, extending their project up into Reach 8. But, if we formally do that now, the Reach 8 permit that we are trying to get stops. The County knows the Town's position, and the study was being done with the Town in mind.

Mr. Elwell responded to Council Member Marking regarding the notice that had been provided regarding further dredging of the Inlet: We are aware of plans that the Port of Palm Beach has, and they have been communicating with the Corps about. I did not see the exact notice that you just mentioned and would like to see that and how they are representing it. The status of it, as we understand it, from communications with the Corps, is that they are also at a feasibility stage on that – not further along into any kind of a permit process, but they do have plans that they would like to pursue for the future that would deepen the Inlet, enlarge the turning basin, and make it possible for more and larger ships to come in and out of the Port of Palm Beach, and that is something we're keeping an eye on to see how it progresses, and at the appropriate time weigh in on it.

Mr. Brazil explained that the sand in the existing turning basin may not be suitable for placement on a beach, because of what has built up there over time. The best sand from dredging activities is what shoals up in the existing cut for the Inlet itself. The settling basin, and expanded settling basin, is the vast source for sand if that was going to be used as a fill site.

President Pro Tem Coleman requested that Town Attorney Randolph present a factual letter for publication in the Palm Beach Daily News, regarding a declaration of emergency, in order to clear the misinformation floating around in the public.

d. Legal Opinion Regarding Declaration of Emergency.
[John C. Randolph, Town Attorney]

Town Attorney Randolph referred to his opinion letter, dated November 16, 2007, and included in the back-up material, regarding the Town of Palm Beach Emergency Armoring. He summarized that Rule 62B-33, Florida Administrative Code, did not allow an emergency order of the Town to bypass the Federal Endangered Species Act. Measures used for temporary protection must be the minimum required, and such measures must be temporary protection, as opposed to a permanent fix, and shall be subject to being removed within sixty days of installation unless approved by permit. He noted that if the Town were to go to the expense of attempting to address the emergency by a permanent fix, the Town would be at great risk of not having the fix permitted and being required to remove the structures.

Town Manager Elwell made the following comments: I would like to add a visual image, so that everyone can better appreciate the standard that the state applies to this imminent danger. Most recently, we've all seen photographs in the newspaper, and I know some people in the room have actually been to the site to see, the condominium building in South Palm Beach that was being undermined by the waves about a month ago. Emergency action was taken there to actually install some rigid structural protection for that building – save that building – and I don't know what the end result will be in terms of the 60 days and the communications that those owners are having with the state. However, we had a similar example here in the Town that people will remember, just a few years back, when we experienced Hurricane Francis, and old South Ocean Blvd. was being actively undermined by that storm. We took emergency action both during the storm and then follow up to the storm to be placed what needed to be placed there to first save the road, and then reconstruct it in a way that would meet all of these standards. So, that is what imminent danger is – the actual damage that is beginning to be caused to a structure, and we have taken such action here in the Town. We will continue to take such actions here in the Town when the emergency is real, and we can do it in accordance with those statutes and not expose the Town to the liability and future costs that Mr. Randolph has identified. But, that's not the condition – just to reinforce what he said as part of his remarks – that's not the condition – as fearful as we all are for the condition of the Reach 8 shoreline, that is not what we're experiencing today in Reach 8.

In response to a question from Mr. Golboro, Town Attorney Randolph explained that the only way the Feds would be involved would be under the Endangered Species Act, and state law can be more restrictive than is required under the Endangered Species Act, but not less restrictive. The lands immediately off shore were sovereign state lands. Anything landward of mean high tide, the Federal government had nothing to do with, because it was outside of that Endangered Species Act.

Town Manager Elwell reviewed what was expected at the next meeting:

- Information about the Sand Transfer Plant – enough to make a determination as to whether to expedite the Town moving forward, with or without the possibility of ultimately getting federal reimbursement. Information about the current functioning of the Plant as well as some information about what the upgrade would include. That would include bypass rates and the natural littoral rate.

- The potential of a Shore Protection Board. Staff would bring forward the necessary steps and the decisions that would need to be made about creating such a board. He explained that a private organization was able to do whatever they might choose to do, and so was anyone else in Town able to proceed with whatever they chose to do privately. If the Town Council created a Shore Protection Board of the Town, as an operating arm of the Town, then that was going to be a Town Board subject to the Sunshine, and all of the different aspects of being a Town board. All of the members of the public would be invited to come and participate in that process, including whatever other private committees may exist for the same purpose.

- The Coastal Coordinator position was something that had come up today – and the question of teaming up with the neighbors – what might be done on a more global basis that may or may not have anything to do with our particular projects, but might have a lot to do with attempting to change state law and have other impacts that are broader than just managing our own shore line.

- What was being spent on sand on a level basis every year.

- Definition of a specific mission and objective for a Shore Protection Board, whether it be an ad hoc committee or a standing board.

- Review of lobbying potential and coordination with other communities.

Discussion took place regarding having staff bring information forward at the January Town Council meeting regarding a standing Shore Protection Board.

President Pro Tem Coleman moved to direct the Town Manager to come back with a plan for a full standing commission, that would encompass the following responsibilities: They would do long term planning. They would do budget review and make a recommendation to the Town Council for its approval, as far as the budgeting for beach renourishment or anything having to do with that. They would have responsibility for the water around the island, that includes the inlet and intracoastal. They would come up with a plan for lobbying subject to the approval of the Town Council. There would be a coastal coordinator, who would report to them and on a dotted line basis and clearly report to Mr. Elwell. They would also be charged subject to not violating the terms of our charter, where the Mayor is in charge of extra territorial relationships with concepts on how to team up with our neighbors. They would be in essence, a creditable body to our residents that someone on a full time basis is reviewing this and coming up with a plan. They would be charged with annually reporting to this Council as to what they have done and the status of where we stand. They would not have any authority to spend money. The budget is here, but they come up with a creditable budget, which they pull apart, and we will not spend the time, or have as detailed knowledge as they

would on an ongoing basis.

Council Member Coniglio seconded the motion, with the statement that an educational component would be included. President Pro Tem Coleman agreed.

Town Manager Elwell clarified that the Coastal Coordinator position would not be a part of the draft ordinance creating the board, and suggested that it may be better to have that come as a separate piece of information in the back-up material provided in January. In addition, information would be provided regarding the staffing component to the board, and related costs.

President Pro Tem Coleman stated that he was not trying to mandate a budgeted position.

On roll call, the motion carried unanimously.

Former Mayor Yvelyne Marix, 1570 N. Ocean Blvd. commented regarding the ramifications of the Sunshine Law in circumstances where there was an independent board gathering material and presenting it to the Town Council.

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The luncheon recess was taken at 12:40 p.m.
The Town Council Meeting of December 11, 2007, was reconvened at 2:00 p.m. with Time Certain Item X.B.3., Reconsideration of Seaview One-Way Issue.

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3. Status Report on Townwide Hiring Freeze.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated December 5, 2007, and included in the backup material, to provide a monthly status report on the Town hiring freeze.

Town Manager Elwell advised that the Town had saved approximately $80,000 during the month of November as no additional positions had become available and no positions had been filled. He noted that the vacant police officer positions he had authorized the Police Department to fill had not as yet been filled, which left another month's worth of savings to accrue. The hiring freeze had resulted in a total accumulation of savings in the amount of $652,762, which were real savings as compared to the budgeted funds approved by the Town Council.

The Town Council accepted the status report on the Townwide hiring freeze as presented by Mr. Elwell.

B. New Business

1. Proposed Schedule of Public Meetings Regarding Comprehensive Review of Town Operations. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated December 5, 2007, and included in the backup material, to discuss the proposed schedule of public meetings regarding the Comprehensive Review of Town Operations. He advised that staff was finalizing the written report and anticipated distribution to the Town Council and to the public next week.

Town Manager Elwell noted that staff recommended that the Town Council select two dates in January to present the reports and three dates in February or March for Special Town Council Meetings. The purpose of each meeting would be to consider the report and make decisions in a public setting with open public participation.

President Pro Tem Coleman suggested that one meeting should be held for the review of medical and pension benefits only.

Council Member Brooks agreed with Mr. Coleman and believed that the workshops held in January should each be for one item, and then, in January, determine the three meeting dates for February or March.

The consensus of the Town Council was to hold the workshops on January 15, 2008 and January 31, 2008. The Town Council agreed to the request of Town Manager Elwell that staff be allowed to set the schedule for items to be discussed with some Town operations discussed on day one, and the rest of the Town operations along with benefit related issues on day two.

After discussion, February 26, 2008, February 28, 2008, and March 10, 2008 were tentatively selected as the three dates for the Special Town Council Meetings.

2. Informational Item Regarding Digital Television.
[Brian Lawlor, V.P.E.W. Scripps General Manager W.P.T.V.-Channel 5]
TIME CERTAIN: 10:00 A.M.

Council Member Brooks introduced Brian Lawlor, Vice President of Sales of E.W. Scripps Television Division and General Manager of W.P.T.V. - Channel 5, and Ms. Bernadette O'Grady, Program Director for W.P.T.V.

Mr. Lawlor thanked the Town Council for the invitation to appear before them today to present, on behalf of the National Association of Broadcasters, information on a fairly dramatic change, which would affect his business as well as many of the residents. He noted that effective February 17, 2009, all American television stations, by law, must switch the way they broadcast, from an analog signal to a digital signal. He provided a brief video presentation that explained the transition and what challenges could be expected.

In response to Council Member Markin, Mr. Lawlor advised that this was the beginning of the informational process and stores would be providing significant amounts of awareness regarding this change. He explained that in March 2007, manufacturers stopped making televisions that did not have digital tuners and one could no longer go into a Circuit City or Best Buy and purchase a television that would not work a year and half from now.

President Kleid thanked Mr. Lawlor for the valuable information.

3. Reconsideration of Seaview One Way Issue.
[Susan Markin, Town Council Member]
TIME CERTAIN: 2:00 P.M.

Council Member Markin advised that she had requested that reconsideration of the one-way conversion of Seaview Avenue eastbound be placed on today's Agenda due to the complaints she had received concerning safety issues relative to drop-off and pickup of Palm Beach Day Academy students. She commented that when the Town Council initiated conversations regarding the one-way conversion of Seaview Avenue eastbound, many discussions were held in the presence of the prior headmaster. She noted that certain issues occurred as a result of the change of direction that had not been anticipated, such as the blinding rising sun when driving east and students dropped off on the wrong side of their cars, causing them to run between the cars to get to the school.

Council Member Markin introduced and commended Head of the Palm Beach Day Academy Dr. Rebecca van der Bogert, whom she advised had lived with this change since the beginning of the school year, evaluating it every day and making necessary changes to make it a safe situation. She also commended the Town of Palm Beach Police Department for going beyond the call of duty in trying to make it safe. She noted that some good had come out of this change, which had been a learning experience and evolutionary process.

Dr. van der Bogert thanked the Town Council for providing her the opportunity to come before them to discuss the steps taken by Palm Beach Day Academy relative to the one-way conversation of Seaview Avenue. She noted that the Palm Beach Day Academy had worked closely with the Police Department and was very grateful to them. She briefly reviewed the steps Palm Beach Day Academy had taken relative to drop-off and pickup procedures.

Dr. van der Bogert requested that the Town Council consider restoring the original east to west direction of traffic on Seaview Avenue along with the implementation of the following, which could solve some of the original concerns of the Town Council, that had triggered the change of direction.

- Parent Vehicle Placard System;
- Additional staff and faculty members added in the a.m. and p.m. for drop-off and pickup;
- Letters and e-mails to parents regarding drop-off and pickup procedures;
- Instruct parents to unload students on the curbside of the car whenever possible;
- Older students placed on the sidewalk to assist younger students out of cars to increase the flow of traffic and encourage unloading on the curbside;
- Children unloaded on south side of street, instructed to walk to the south sidewalk and cross over with the security officer;
- Student drop-off point moved as far west as possible to decrease congestion and traffic on Seaview Avenue;
- Addition of a bus route to pick up students in the Flagler area reducing the number of cars.

Dr. van der Bogert concluded that she, along with the faculty of Palm Beach Day Academy, was prepared to work with the Town Council on any issues that might arise if the Town Council reversed the flow of traffic on Seaview Avenue.

President Kleid thanked Dr. van der Bogert for her spirit of cooperation and her report.

Council Member Coniglio thanked Dr. van der Bogert for her presentation. She noted that she was not on the Town Council when the decision was made to reverse the streets, and when it was revisited several months ago, she had been in favor of holding off. She advised that she was prepared, at this time, to make a motion to reverse the one-way direction going eastbound to westbound for traffic flow on Seaview Avenue, and commented regarding the procedures set forth by Dr. van der Bogert. She noted that Seaspray residents had expressed great concern with bus travel on the street, and she requested that the Palm Beach Day Academy follow within that. She asked the Town to follow through with the Palm Beach Public School who made the commitment October 8, 2002 to run that bus route north on County Road to the north bridge, move the drop-off further west, and she hoped that they would add the parking places back on South County Road. She believed that it needed to be reversed.

Motion made by Council Member Coniglio to reverse the one-way traffic on Seaview Avenue eastbound to westbound with the following conditions:

- **Additional staff from the Palm Beach Day Academy would be provided to allow for a safe and more efficient method of moving children in and out of their cars.**
- **The student drop-off point would be moved as far west as possible to minimize traffic backup on South County Road.**
- **School bus travel would not occur on the "Sea" streets. Palm Beach Day Academy would adhere to that and the Town should follow through with Palm Beach Public School who made the commitment on October 8, 2002 to run bus routes north on County Road to the north bridge.**
- **Parking spaces would be returned to South County Road.**

Council Member Brooks commented on a letter received after lunch today by the Town Council from the Palm Beach Public School requesting that the one-way east direction of Seaview Avenue not be reversed. He noted that this was an instance where everyone had to work together and that what had surfaced was the issue of safety. He agreed that the Town Council had good intentions when they had voted to reverse Seaview Avenue one-way eastbound.

Council Member Brooks seconded the motion to reverse the direction of Seaview Avenue from eastbound to westbound.

Council Member Markin advised that she would support the motion if it included the following conditions:

- No parking on the north side of the street.
- Parent Vehicle Placard System would be maintained by Palm Beach Day Academy.
- Additional staff with teachers in the a.m. and p.m. drop-off and pickup times be maintained.
- The drop-off should be kept as far west as possible on Seaview Avenue.

Council Member Coniglio responded that if Council Member Markin was speaking to any additional amendments to the motion, her motion included all of those conditions except for the parking, which she believed would be decided by the Police Department. She advised that she stood firm in her motion with the premise that the parking would be returned on South County and school busses from both Palm Beach Day Academy and Palm Beach Public School would not travel on the "Sea" streets.

In response to President Pro Tem Coleman, Council Member Markin advised that she wanted to ensure that no parking would take place on the north side of the street as part of the terms of this reversal.

Town Manager Elwell clarified that Ms. Markin was requesting the strict enforcement of prohibiting the parking of cars on the sidewalk on the north side of the street.

Council Member Markin advised that was exactly what she was requesting and that she believed the school was in favor of that as well.

Council Member Brooks advised that there was an existing Declaration of Use Agreement between the Palm Beach Day Academy and the Town of Palm Beach. He noted that if Ms. Coniglio added those conditions to the Declaration of Use Agreement requested by Ms. Markin, he would second her motion.

In response to President Kleid, Dr. van der Bogert advised that the conditions would be acceptable to her.

Town Manager Elwell commented that Town Attorney Randolph would need to address the Declaration of Use Agreement.

Town Manager Elwell requested that the motion include funding for signage and paint in a not-to-exceed amount of $20,000 from the General Fund Contingency, noting that he believed the cost would be much less than that, but was not certain what it would take to reverse the street.

Discussion ensued **and Council Member Coniglio amended her motion, seconded by Council Member Brooks, to include funding in a not-to-exceed amount of $20,000 from the General Fund Contingency.**

In response to President Kleid who noted that the blinking light at the west end would now have to be moved to the east end, Town Manager Elwell advised that he needed to work with staff on defining exactly what needed to happen and for that reason staff was asking for a not-to-exceed figure.

Discussion ensued regarding the Declaration of Use Agreement, and Town Attorney Randolph explained that the Agreement was related to zoning issues.

Council Member Brooks advised that he understood, but he was suggesting that the conditions be added to the Agreement, which would be legal.

On roll call, the motion, as amended, to reverse the one-way traffic on Seaview Avenue eastbound to westbound with the following conditions carried unanimously:

- **Additional staff from the Palm Beach Day Academy would be provided to allow for a safe and more efficient method of moving children in and out of their cars.**
- **The student drop-off point would be moved as far west as possible to minimize traffic backup on South County Road.**
- **School bus travel would not occur on the "Sea" streets. Palm Beach Day Academy would adhere to that and the Town should follow through with Palm Beach Public School who made the commitment on October 8, 2002 to run bus routes north on County Road to the north bridge.**
- **Funding in a not-to-exceed amount of $20,000 from the General Fund Contingency.**
- **Parking spaces would be returned to South County Road.**
- **Palm Beach Day Academy to maintain the Parent Vehicle Placard System.**

Town Manager Elwell advised that it was the intent of staff to move as quickly as possible to reverse the street, and obviously, the best time would be to coordinate that change with the upcoming school vacations. He noted that staff would make it very clear when that change would occur and with much public notice.

Dr. van der Bogert thanked the Town Council and staff, advising them that the Palm Beach Day Academy considered Palm Beach Public School their neighbors and would work with them and their concerns.

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

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated November 16, 2007, and included in the backup material, noting that Section 4.02(b) of the Town Charter required the appointment of a Town Manager for a one-year term. He advised that he was originally appointed at the December Town Council Meeting in 2000, and each December that appointment was revisited.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, to appoint Peter B. Elwell to serve an additional one-year term as Town Manager, from December 11, 2007 through December 10, 2008. On roll call, the motion carried unanimously.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 24-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 2, Administration, to Include a New Article IX Titled Right to Indemnification; Creating a New Section 2-616 Relating to Sovereign Immunity; Creating a New Section 2-617 Relating to Right to Indemnification; Creating a New Section 2-618 Providing Indemnification Not Exclusive Right; Creating a New Section 2-619 Relating to Criminal Cases; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 24-07 by title, on second reading, as printed above. He noted that a change to this ordinance had been proposed on first reading; and as a result of the points brought up by Karen Temme, Risk Manager, in a letter she sent to him, he was looking at those proposed changes working with Mr. William Guttman.

Town Attorney Randolph explained that the issue for the Town Council was whether they wished to move forward on second reading, allowing him to come back with proposed amendments in another ordinance at a later date.

Council Member Coniglio moved adoption of Ordinance No. 24-07, on second reading, with the knowledge that at a later date Town Attorney Randolph would return with proposed amendments. The motion was seconded by President Pro Tem Coleman. On roll call, the motion carried 4/0 as Council Member Brooks was temporarily absent from the meeting.

B. First Reading

1. ORDINANCE NO. 28-07 **EMERGENCY ORDINANCE TO BE ADOPTED ON THIS FIRST AND ONLY READING:** An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, Article V, Valet Parking Regulations at Section 118-149, Subsection Five (5); Modifying Existing Permit Application Procedures to Provide for New Insurance Requirements; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated December 3, 2007, and included in the backup material, to discuss Emergency Ordinance No. 28-07 amending the insurance requirements for valet parking permit holders. He explained that to enable the execution of a contract between the Town of Palm Beach and Express Parking, Inc., and to allow valet parking service to commence on December 13, 2007, the Town Council proposed at the November 13, 2007, Town Council Meeting that the change would be made through an Emergency Ordinance (one-time reading) at the December 11, 2007, Town Council Meeting.

Town Attorney Randolph read Emergency Ordinance No. 28-07 by title, on first reading, as printed above.

President Pro Tem Coleman moved adoption of Emergency Ordinance No. 28-07. The motion was seconded by Council Member Coniglio. On roll call, the motion carried 4/0 as Council Member Brooks was temporarily absent from the meeting.

2. <u>ORDINANCE NO. 23-07</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, to Amend Section 118-14 to Include a Definition of Commercial Vehicle; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 23-07 by title, on first reading, as printed above.

Deputy Town Manager Bradford advised that this ordinance came out of the Ordinances, Rules and Standards Committee (ORS) discussions held in August and November of this year. The proposed ordinance would modify the definition of a commercial vehicle as requested by the Police Department as well as allowing a vehicle owner to affix ID requirements to the car in lieu of painting on the sides of the vehicle.

In response to President Kleid, Town Attorney Randolph advised that he could amend the last sentence in Section 1 (c) to include "transportation to <u>and from</u> job sites" instead of <u>to</u> job sites.

President Pro Tem Coleman moved approval of Ordinance No. 23-07 on first reading with the amendment that Section 1 (c) - last sentence to state: Personal vehicles of employees of commercial enterprises used for personal transportation to <u>and from</u> job sites in the Town

are exempt from these commercial vehicle identification requirements. The motion was seconded by Council Member Coniglio. On roll call, the motion carried unanimously.

3. <u>ORDINANCE NO. 25-07</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 2, Administration, Article IV, Boards and Commissions, Division 2, Planning and Zoning Commission, at Section 2-326, So as to Provide That the Term of Each Member Shall Run until October 1 of the Year in Which Their Term Ends; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 25-07 by title, on first reading, as printed above.

Council Member Brooks moved approval of Ordinance No. 25-07 on first reading. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

4. <u>ORDINANCE NO. 26-07</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 18, Buildings and Building Regulations, Article II, Administration of Planning, Zoning and Building, So As To Include A New Division 4 Titled Compliance With Town's Right-Of-Way Manual For Any Permits Issued Pursuant To Chapter 18; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date. [John C. Randolph, Town Attorney]

<u>RESOLUTION NO. 72-07</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Department of Public Works, Engineering Division, Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach at Chapter XII, Miscellaneous Provisions, Construction Parking; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]
(RELOCATED ON AGENDA TO ITEM XI.B.4. TO BE HEARD IMMEDIATELY FOLLOWING ORDINANCE NO. 26-07.)

President Kleid advised that Ordinance No. 26-07 would be discussed in conjunction with Resolution No. 72-07, which had been pulled from the Consent Agenda.

Town Attorney Randolph read Ordinance No. 26-07 by title, on first reading, as printed above.

Council Member Markin moved approval of Ordinance No. 26-07 on first reading. The motion was seconded by President Pro Tem Coleman. On roll call, the motion carried unanimously.

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated December 3, 2007, and included in the backup material, to review Resolution No. 72-07, amending the Right-of-Way Manual to incorporate the provisions of the 3 Strike Rule as approved by the Ordinance, Rules and Standards Committee (ORS).

Mr. Bradford explained that the manual was used by the Public Works Department to enforce the regulations associated with the right-of-way in Town. The Town now had the ability to utilize code enforcement officers, police officers and parking enforcement personnel, in addition to Public Works employees to effectuate right-of-way violations. The resolution required that appeals that were generated by non-Public Works personnel would be heard by the Chief of Police instead of the Director of Public Works.

Mr. Bradford explained that he believed the reason this resolution was pulled from the Consent Agenda was because in drafting the resolution, he had misunderstood exactly what the Ordinances, Rules and Standards Committee (ORS) had wanted when it came to the 3 Strike Rule. He advised that he had spoken with Council Member Coniglio, and she approved the additional language he had added last night and read same into the record. He noted that the Town Council had not seen the amended resolution as yet.

After further discussion regarding the 3 Strike Rule relative to extenuating circumstances, the number of waivers allowed, stop work orders, and the appeal process, it was determined that staff would report to the Town Council, in writing, as to what had been waived, and the Town Council would then be able to address any problems.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to approve Resolution No. 72-07 with revised language as set forth by Deputy Town Manager Bradford. On roll all, the motion carried unanimously.

5. ORDINANCE NO. 27-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances At Chapter 2, Administration, Article V, Code Enforcement, Division 2, Code Enforcement Board, Section 2-439, Citation Fine Schedule, in the Manner Set Forth Herein; Providing For Severability; Providing For Repeal of Ordinances in Conflict; Providing For Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 27-07 by title, on first reading, as printed above.

Council Member Markin moved approval of Ordinance No. 27-07 on first reading. The motion was seconded by Council Member Coniglio. On roll call, the motion carried unanimously.

6. ORDINANCE NO. 29-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, Article V, Valet Parking Regulations; Providing New Definitions and Modifying Existing Definitions; Providing Additional Prohibitions; Providing for New Permit Requirements and Modifying Existing Permit Requirements; Providing for New Permit Expiration Provisions; Providing for New Permit Application Procedures and Modifying Existing Permit Application Procedures; Establishing New Permit Fees and Requiring Permit Fees to Be Adjusted Annually Pursuant to Changes in the Consumer Price Index; Establishing Procedures for Use of Private Property in Conjunction with Temporary Valet Service Permits; Providing for Staging Requirements in Public Right-of-way for Temporary Valet Service Permits; Modifying Penalty Provisions for Violation of the Permit Terms; Establishing Revocation and Modification Procedures for Revocable Temporary Valet Services Permits; Increasing Permit Transfer Fees and Requiring an Annual Transfer Fee Adjustment; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 29-07 by title, on first reading, as printed above.

Council Member Markin advised that she would move approval of this ordinance, but would also like to have discussion on residential valet parking permits due to problems associated with that issue.

In response to Council Member Markin, Mr. Bradford advised that he preferred to keep residential valet parking permits separate from this ordinance.

Council Member Markin moved approval of Ordinance No. 29-07 on first reading. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

Mr. Bradford noted that there was a problem staff had learned of relative to valet parking within the last week, which he wanted to bring to the attention of the Town Council in order to get some direction. He explained that often a restaurant or club would have a luncheon or special event of some magnitude whereby the number of cars generated by that event could literally overwhelm the Town's parking inventory within a two to three or sometimes larger block areas. Vehicles parked in residential permit parking areas only; in the one hour and two hour areas without regard for time limits; and meters would be fed when parked in metered parking.

Mr. Bradford noted that staff would like to address that by actually codifying a ways and means of dealing with those issues as well as residential valet parking permits. Staff would report back to the Town Council as soon as they were able to do so with some suggestions and a possible ordinance that could address those problems.

Discussion ensued and staff was directed to return with a report addressing a permit for residential valet parking, and a means of dealing with enforcement of parking regulations related to events held in Town.

XII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal by the Bath and Tennis Club of an Administrative Decision Not to Allow Cooling Towers Eighteen Feet from the Side Property Line, 1170 South Ocean Boulevard. [James Brindell]

The appeal by the Bath and Tennis Club of an administrative decision not to allow cooling towers eighteen feet from the side property line at 1170 South Ocean Boulevard was deferred to the January 8, 2008, Town Council meeting.

B. Time Extensions

1. Reconsideration of Request for Extension of Work Hours at 2 Via Mizner (per Letter Dated November 29, 2007, from Ian M. Kean).

Ex-parte communication was declared by Council Member Markin, Council Member Coniglio, President Kleid, President Pro Tem Coleman, and Council Member Brooks with Ian Kean.

Ian Kean explained his dilemma regarding the distinction between the final inspections and obtaining the certificate of occupancy. He requested that the fine be waived or that a later date be provided with a fine subsequent to it; if he was subject to a fine for final inspection purposes, that he would be permitted the right for a post final inspection in order to complete the apartment, without interruption.

Town Attorney Randolph advised that procedurally, because this item was acted on last month, if the Town Council wanted to reconsider it, a motion would need to be made for reconsideration by someone who voted on the prevailing side.

Motion made by Council Member Brooks, seconded by Council Member Coniglio to reconsider the motion of the Request for Extension of Work Hours at 2 Via Mizner. On roll call, the motion carried unanimously.

Motion made by Council Member Brooks to approve the Request for Extension of Work Hours at 2 Via Mizner, and waive the penalty.

Motion withdrawn in order for staff's comments to be heard.

Staff Comments:

Planning, Zoning, and Building Director John Page commented that as the project would be completed by March 15, 2008, and if the Council was inclined to reconsider its action from last month, staff was in agreement. He added that staff was not eager to see any violations of seasonal work permitting on Worth Avenue, but as the project was substantially completed, the remainder of the work was of the quiet variety, and a number of property owners have shown support.

Jeff Taylor, acting Building Official, suggested that any work done after the finals, such as the replacement of the plumbing fixtures, would need to be re-permitted under a new permit.

Council Member Brooks indicated that he would include that in his motion.

Mr. Kean commented that he was concerned that it might be impossible to obtain a permit after the initial permit lapsed in the time period before May 1, 2008.

Mr. Taylor noted that with the Council's acceptance, it would be allowable.

Council Member Markin asked if Council was approving that there would be no fines if the project was not finished by March 15, 2008? She indicated that she did not know how it could be done, as ordinances were in place to not have construction occur during the season.

Council Member Coniglio commented that if the final completion date of March 15, 2008, had not been met, a $2,000 fine would be appropriate.

President Pro Tem Coleman commented that, he was hesitant to apply the $2,000 fine across the board, as it was intended for large commercial projects.

Council Member Markin asked if there was a way to assign the fine based upon someone who was not a large commercial developer? A precedent was set for the Council to be lenient in one case versus another and destroy the whole point of keeping peace during season.

Responding to Council Member Coniglio, Mr. Kean noted that the work could be taken to final completion by March 15, 2008, and, for example, if the door hardware had not arrived in time, his concern was that he would have to stop the project, versus paying the fine.

Responding to President Kleid, Mr. Kean said that if the Council were to allow another month for completion, April 15, 2008, his project would be totally completed.

Town Manager Elwell commented that extending the project to April 15, 2008, without a penalty would be inconsistent with what the Council decided previously. He added that the penalty amount was not set forth in the code, as there were different circumstances in different situations; it was completely within the Council's discretion to decide the correct penalty.

President Kleid indicated that the project would be completed by March 15, 2008, and that there would be a small amount of work remaining afterwards.

Motion made by Council Member Brooks, seconded by Council Member Coniglio to approve the Request for Extension of Work Hours at 2 Via Mizner to April 15, 2008, subject to a penalty of $2,000 per day thereafter; subject to all other conditions set forth by staff. On roll call, the motion carried 4-1, with Council Member Markin dissenting.

2. Landmark Estates, Subdivision #1-2007 (per Letter Dated November 7, 2007, from Peter S. Broberg).

Ex-parte communication was declared by Council Member Markin that she had spoken with the involved parties; President Kleid and President Pro Tem Coleman with Attorney Peter Broberg.

Attorney Broberg, on behalf of the applicant, made the following comments:

- On March 13, 2007, approval of the Subdivision was requested and because two houses were landmarked, variances were granted;

- Language in the approval indicated that at some point in the future a garage would be incorporated into the "Old Church";

- The letter from the Town, dated April 4, 2007, indicated that one of the conditions was that a garage would be built at the "Old Church" first, he said he did not think that was the intent of the approval in March, and requested clarification;

- The applicant came back in May and requested to have the garage built in the future, in which The Town Council decided that there should be a definitive timing relative to it and it was agreed that the "Old Church" and the "Duck's Nest" next door should have proper two-car garages within two years of filing the plat;

- The language was put into a Declaration of Use - Conditions and Restrictions, and would be recorded;

- Mr. Castro would review the Declaration of Use as soon as it was finalized;

- The original approval in the April 4, 2007, letter requested that all permits for the constructions of the road, curb, and infrastructure of the plat, be done within six months of the March 13, 2007, approval;

- Two months had elapsed while dealing with the garage issue;

- If the plat was not recorded within six months and the applications for the permits submitted, all the approvals would be null and void;

- An application had been submitted for an extension prior to the six-month deadline;

- The applicant requested an extension, to file the plat, and pull the permits to do the construction of the plat, but the road work could not be done until May 1, 2008;

- The variances would expire in March, and the applicant was trying to synchronize recording the plat, pulling the permits, and applying for the variances to December of 2008;

- One of the conditions, prior to filing the plat, was to demolish two buildings, a pool, and three roads;

- The roads would be removed as required when Maddock Road was completed;

- The applicant would like to keep the pool, for the use of "Duck's Nest", and the Tea House, as someone was living in it, and proposed to put the language in the Declaration of Covenants that allowed the Tea House and the pool to remain on the property until two years from filing the plat or the lots were sold, whichever was sooner;

- Requesting two items: An extension to December 2008 and allowance to keep the Tea House and the pool until two years from filing the plat, as the plat could not be filed until the Tea House and the pool was removed.

Town Attorney Randolph indicated that he thought that this was a request for an extension, and if the conditions were part of the Subdivision approval, there should have been a request to modify the conditions of the Subdivision.

Staff Comments:

Zoning Administrator Castro made the following comments:

- A provision in the code stated that a subdivision had to be recorded within six months of the approval and all of the improvements for the subdivision had to be within six months of the recordation of the plat, which was understood to be a very short time frame;

- As part of the Subdivision approval, staff required, for the pre-application deadline, that non-conformities on the property could not be created when properties were subdivided, and as such a demolition plan was required;

- The demolition plan was the removal of all structures within the Subdivision that would create non-conformities when the Subdivision was recorded;

- It was a code provision as related to eliminating non-conformities when doing a development order, such as this, which was why it was a condition of approval;

- The demolition plan was submitted as a documented exhibit to the application, which was required at the time of recordation of the plat; the non-conformities had to be removed or non-conforming situations were being created;

- During season, right-of-way permits to build roadways could not pulled, but the work could begin on the right-of-way outside of North Lake Way, with a building permit; and

- Staff recommended an eight-month time extension to record the plat, and if there was a request to change the conditions as part of the Subdivision approval, it may need to be re-noticed.

Responding to Council Member Markin , Attorney Broberg replied that in March, the variances were up, which was a year, and work could not be started until May. If the filing of the plat was being pushed out, the applicant would like to have the variances pushed out.

Mr. Castro interjected that when the plat was recorded the variances would be implemented.

Council Member Markin commented that she understood the timing issues, and would allow a 10-month extension, since staff indicated 8 months, and the applicant requested 12 months.

Responding to Council Member Brooks, Mr. Castro noted that the entire property was landmarked and the Landmarks Preservation Commission recommended approval of the Subdivision.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve a 10-month time extension in order to record the plat. On roll call, the motion carried unanimously.

Discussion occurred among Attorney Broberg, the Town Council members, and staff regarding the Developer's Agreement of the phasing out of the pool and the Tea House. During the discussion, Mr. Castro noted that a new application to modify the Subdivision approval was required in order to enter into a Developer's Agreement to phase out the pool and Tea House, which would be advertised, and notice given to the property owners within 300 feet. Town Manager Elwell explained that it would not be ready in time for the January 8, 2008, meeting, thereby pushing it out to the February 12, 2008, Town Council meeting.

Council Member Brooks indicated the variances could be discussed during the January 15, 2008, Special Town Council meeting, which was one month ahead of the February 12, 2007, schedule.

Staff was directed to work with the applicant regarding modification of the Subdivision approval to enter into a Developer's Agreement regarding the removal of nonconforming structures created by the Subdivision. The item would be added to the agenda for the January 15, 2008, Special Town Council meeting.

3. 455 North County Road (per Letter Dated November 20, 2007, from Francis X. J. Lynch).

Ex-parte communication was declared by President Kleid and Council Member Brooks with Attorney Frank Lynch on the telephone and a letter.

Attorney Lynch, on behalf of the property owner, commented that in March 2007, an extension was granted to complete the house by year-end, or there would be a fine. The house was struck by lightning in the middle of July 2007, had been destroyed, and the work would need to begin again. The applicant requested an additional two years in his letter. The applicant was currently requesting to construct seven days a week, and 24 hours a day, and offered the following proposal:

- The construction would only be inside, once the roof was dried in, which was expected by year-end;
- Blackout curtains would be used to avoid light effects; and
- Workers would be bused to the site, to avoid adverse parking problems.

Attorney Lynch indicated that with approval of the above, the house could be finished by this time next year, rather than two years. In addition, he offered to approach the neighbors and request their written consent to the proposal . If the consent was obtained, he would present it to the Town Council, and move forward. He could come back at a later date, but the permit would need to be extended today, as it would expire at the end of this year.

Council Member Brookscommented that although the proposal was appreciated, the Council could not approve a seven day a week, 24 hours a day construction.

Attorney Lynch commented that it was not every day that a house was burned to the ground in the midst of construction, which he considered extenuating circumstances. He did understand that the precedent was dangerous.

Council Member Markin noted that she would be willing to work with the owner on an aggressive plan outside of the two years. She suggested that Attorney Lynch go back to the owner and return with a modified plan that was more realistic.

Staff Comments:

Planning, Building, and Zoning Director John Page made the following comments:

- Staff was comfortable with the two-year time extension, <u>but</u> <u>not</u> the 24/7 work schedule.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio to approve a 24-month time extension for reconstruction of the structure. On roll call, the motion carried unanimously.

4. Request for Waiver of Section 42-198 at 2295 South Ocean Boulevard, Harbour House (per Letter Dated November 16, 2007, from Julian Butler).

Julian Butler, building manager for Harbour House, requested permission to sandblast the rusted rebar in order to prepare the garage decks for new concrete, and to use Pneumatic hammers to remove the concrete from the garage deck.

David Colston, engineer for the project, provided an update of the work that was completed on the project.

Staff Comments:

Planning, Building, and Zoning Director Page made the following comments:

- One year ago, a request came in, and it was acknowledged that completion would not be done until year 2008; and

- Staff was reluctant to recommend use of the Pneumatic jack hammers because of the noise and vibration, and recommended use of the smaller jack hammers.

Responding to President Kleid, Mr. Page replied that last year's proposal was that staff did not recommend use of the Pneumatic jack hammers, but it was allowed by the Town Council.

Mr. Butler indicated that they were permitted the sandblasting, but had to use the electric jack hammers at that time.

Mr. Colston noted that the contractor was in agreement to use the electric jack hammers during this period.

Motion made by Council Member Coniglio to approve the Request for Waiver of Section 42-198 at 2295 South Ocean Boulevard, Harbour House.

Responding to Council Member Brooks, Mr. Butler agreed to use the electric jack hammers.

Responding to Council Member Markin, Mr. Butler indicated that currently there were over one hundred residents living in the building. A temporary valet service was being used through the completion of the project. The work for the sandblasting was being completed on the north side of the building, and the neighbors had been informed that the extension was being requested. The work on the south side of the building had a vacant lot next to it.

Amended motion made by Council Member Coniglio, seconded by Council Member Brooks to approve the Request for Waiver of Section 42-198 at 2295 South Ocean Boulevard, Harbour House, with the conditions set forth by staff. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

None

3. Old Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #9-2007 WITH SITE PLAN REVIEW AND VARIANCES The application of Andrew N. Adler, relative to property described as lengthy legal description on file; commonly known as 216 Colonial Lane; located in the R-B Zoning District. Request for special exception with site plan approval for a new two story single family home of 2,793 square feet, on existing portions of platted lots that total 6,150 square feet in area in lieu of the 10,000 square foot minimum required by the R-B zoning district. Variance request to permit a front yard setback for the first story of 21.83 feet in lieu of the 25 foot minimum required. Variance to permit a one car garage in lieu of the two car garage required. Variance request to permit a swimming pool with a rear setback of 4.33 feet in lieu of the 10 foot setback required. *Deferred from the July 10, 2007, and August 14, 2007, Town Council Meetings.*

Special Exception #9-2007 with Site Plan Review and Variances was deferred to the January 8, 2008, Town Council meeting.

b. SPECIAL EXCEPTION #10-2007 REVISED The application of Island Hotel, Inc., by Brad Bleefeld, Vice President and Treasurer; relative to property described as Palm Beach Hotel Condominium. Commercial Unit C-22, Per Condominium Declaration of 2/12/81; commonly known as 235 Sunrise Avenue, Unit C-22; located in the C-TS Zoning District. The application requests a special exception for a 200 seat synagogue on the top floor of the Palm Beach Hotel where a function room exists.

(i) Consideration of Proposed Declaration of Use Agreement. **Request for Deferral to the January 8, 2008, Town Council Meeting Per Letter Dated November 30, 2007, From James R. Brindell.**

Special Exception #10-2007 Revised was deferred to the January 8, 2008, Town Council meeting.

c. SITE PLAN REVIEW #14-2007 WITH VARIANCES & SPECIAL EXCEPTION The application of The Villas, Inc., Leo Albert, President, relative to property described as Lots 12 through 25 inclusive, a portion of Lot 26 and a portion of Lot 29, Block 13 of Royal Park Addition, as recorded in Plat Book 4, Page 1 of the Public Records of Palm Beach County, Florida; commonly known as 425 Worth Avenue; located in the R-D(2) Zoning District. Request a modification to the Villas' site plan to construct a 515 square foot building located at the northeast corner of the subject property to house a 350 kilowatt generator. The proposal includes the elimination of two (2) off-street parking spaces The applicant seeks a variance to eliminate two (2) required off-street parking spaces. The applicant requests a special exception to provide two (2) supplemental off-street parking spaces located on a property approximately 75 feet west of the subject property. The applicant seeks a variance to locate an enclosed building and 350 kilowatt emergency power generator within the street rear yard setback. The applicant seeks a street rear yard setback of 5.4 feet in lieu of 30 foot minimum required by code for an enclosed building and 350 kilowatt emergency power generator. *Deferred from the August 14, 2007, September 11, 2007, October 4, 2007, and November 13, 2007, Town Council Meetings.*

Ex-parte communication was declared by Council Member Markin, President Kleid, and Council Member Brooks with Attorney Frank Lynch, and Council Member Coniglio with one resident.

Attorney Lynch, on behalf of the Villas, Inc., provided an overview of the request. He indicated that the hardship was a through lot, as there were two front yard setbacks. It was a condition relative to the property that was not caused by the Villas, Inc.

Leo Zeman (ph), representative of Florida, Power & Light, addressed the issues of alternative sized generators.

Attorney Lynch commented that additional concerns of the generators were the elimination of the loading zone and the problems created with site screening.

Responding to questions by the Town Council, Mr. Zeman specified the approximate size of the four generators and noted that they could physically fit in the garage, even though there were issues of venting the exhaust and emissions.

Attorney Lynch continued the discussion of the applicant's request.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The site was very unique and the building was older and built out to a larger scale than could have been built today;

- The way the building was located on the property was not a good location to provide an alternate source generator in case of an emergency;

- The elevators and emergency lighting were required to be in operation during an emergency situation on a barrier island, where there was mandatory evacuation;

- The building was only 5'5" from the rear property line of the street;

- The Architectural Commission (ARCOM) unanimously recommended that the Council not approve the Variances as it would not be in architectural keeping with the design in the layout of the existing building and architecture; and

- Staff struggled with the hardship as it related to the large size of the generator and the close proximity to the property line.

Council Member Brooks expressed concern that ARCOM did not recommend approval, and that two parking spaces were being eliminated. He suggested leasing a generator, which would not require ARCOM's approval, and would be less costly.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve deferral of Site Plan Review #14-2007 with Variances & Special Exception to the March 11, 2008, Town Council meeting. On roll call, the motion carried unanimously.

a. <u>MODIFIED REVISED SITE PLAN REVIEW #15-2007 WITH VARIANCES</u> The application of Villa D'Este Condominium Association, Inc.; relative to property described as Lots 7 and 8 and the east 22 feet of Lot 9, Block 5, H.W. Robbins Addition, Ocean Park, in the Town of Palm Beach, Florida, according to the records on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida as recorded in Plat Book 6, Page 78; commonly known as 230 Everglades Avenue; located in the R-C Zoning District. The applicant requests a modification to the Villa D'Este site plan to place a 100 kilowatt emergency power generator and a 9.75 foot tall wing wall located at the northeast corner of the existing site; a variance to locate a 100 kilowatt emergency power generator and wing wall with a side yard setback of 1.33 feet in lieu of the 3.59 foot setback originally requested and in lieu of the 20 foot minimum required; a variance to construct the wing wall to screen the 100 kilowatt emergency power generator within the side yard setback with a height of 9.75 feet in lieu of the six foot maximum allowed. *Deferred from the August 14, 2007, September 11, 2007, October 4, 2007, and November 13, 2007, Town Council Meetings.*

Attorney Frank Lynch, on behalf of the applicant, provided an overview of the request.

Architect Donald J. Skouron, Jr., of Morgan Wheelock, Inc., on behalf of the applicant, presented architectural renderings of the project.

Staff Comments:

Mr. Castro made the following comments:

- The setback was 20' on the side yard for a generator, and not 5';

- A letter of objection had been received from the neighbor to the west *[Responding to Mr. Castro, Attorney Lynch noted that there was a front door adjacent to the property, and was located behind the neighbor's 9' hedge and site wall]*;

- The Architectural Commission recommended approval six to one;

- Staff questioned the hardship, as there was adequate room in back of the property, which was communicated to the applicant during the pre-submittal meetings; and

- Locating the generator in the back of the property would impact the applicant's amenities in the backyard.

Attorney Lynch indicated that the enclosure was 9' by 15' by 9' tall. If placed in the rear of the yard, it would appear as large as a 9' tall car, which would impact three or four units rather than one unit in front of the yard adjacent to the property line.

President Pro Tem Coleman stated that he did not see the hardship. He suggested to re-study it to find a smaller generator.

Council Member Markin commented that an applicant either had a property that could facilitate a generator, or not. The applicant did not want to inconvenience the people who would benefit from the generator, but would be inconveniencing the neighbor by placing the generator in close proximity to the neighbor's front door. She said she agreed with staff that there was no hardship.

President Kleid indicated that the generator was too large for the property, the ones who would benefit were not willing to absorb the problem, and it was an inconvenience to the neighbor.

Mr. Castro commented that three smaller generators of 60 killowatts or below for each of the three units, could be placed 5' from the property line, with the wall, rather than one 100 killowatt generator for all three units.

Council Member Coniglio indicated that a deferral would allow the applicant to decide on smaller units, as she could not accept a setback of less than 20' from a neighbor that objected.

Motion made by Council Member Coniglio to approve a deferral of Modified Revised Site Plan Review #15-2007 with Variances to the March 11, 2008, Town Council meeting. President Pro Tem Coleman seconded the motion.

Discussion occurred among the Town Council regarding numerous requests for maximum size generators rather than minimum. Mr. Castro indicated that staff was not always successful in encouraging applicants at pre-application meetings to request the minimum size generators, due to the past record of approvals.

Upon roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

a. VARIANCE #33-2007 The application of Estate of Robert W. Gottfried; relative to property described as Lot 125, Mark Rafalsky Tract; commonly known as 748 Hi Mount Road; located in the R-B Zoning District. The applicant requests a variance for the screen parapet wall and generator to have a building height plane setback of 42 feet for the wall and 46 feet for the generator in lieu of the minimum 55.5 foot setback for the parapet and the minimum 57.4 foot setback for the generator.

Ex-parte communication was declared by: Council Member Brooks, who had indicated that he had walked the property, had a conversation with Architect Gene Lawrence and the late Robert W. Gottfried; President Kleid, who indicated that he had a conversation with Attorney Peter Broberg regarding this request; President Pro Tem Coleman indicated that he had spoken with Attorney Broberg; and Council Member Markin indicated that she had talked with Attorney Broberg.

Attorney Broberg, on behalf of the applicant, provided an overview of the request. He submitted letters from neighbors Elizabeth Furlaud, Dr. Cantor, and Mrs. Humphries, who had no objections to the generator.

Architect Lawrence displayed architectural renderings, and distributed photos of the property in question.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The generator was permitted in July 2005, a revision in August of 2005, and a subsequent revision in December of 2005;

- The first submittal met the code, as generators were allowed on the roof, at that time;

- At the time of approval, it was placed further back from the front face of the building, and was a lower sized generator;

- It was approved by Planning Administrator Tim Frank, as it met the building height plane, and it was screened from the street;

- A subsequent revision in August, raised the platform, and pushed the generator closer to the front of the face of the building;

- The existing generator was taller than the one that was permitted, and was not detected by staff;

- The final was approved, and the final inspection occurred in March of 2006;

- It came to staff's attention as it related to the building height plane issue about the same time it came to the Council in March of 2007, as it related to being in the front setback;

- The applicant had to address the hardship issue relative to the variances; and

- At that time the hardship issue was addressed, although it had changed from the original submittal of the building permit, it received a final inspection and was approved, as it exists today.

Responding to Council Member Markin, Mr. Castro indicated that the generator was taller than the one originally permitted, which sat lower on the roof.

Responding to Council Member Markin, Attorney Broberg noted that the generator was the same, in kilowatt size, as the original one that was permitted. The difference was the muffler, or sound jacket, on top and the back, which wrapped the generator and made it larger and taller.

Responding to Council Member Markin, Mr. Castro indicated that he could not confirm Attorney Broberg's response, as he did not have the specifications. He commented that staff was more sophisticated now, regarding generators, as there were more being installed.

Responding to President Pro Tem Coleman, Architect Lawrence indicated that he had not been the original architect for the project. He said that it could have been the same generator, with the sound jacket added later, and that the generator was raised by placing two angles underneath it to go wall to wall rather than sit on top of the deck.

Mr. Castro clarified that it was sitting above the roof, on beams, which were raised higher on the parapet, when it came in for the revision in August. There was a note that said it required the Architectural Commission's approval, but it never went that far.

Responding to President Kleid, Architect Lawrence noted that the generator needed the channel to run from wall to wall, but it could be lowered if necessary.

Responding to Council Member Brooks, Mr. Castro commented that when the final inspection occurred, he could only speculate, that the generator on the plans, even the final revision, appeared to be shorter than the existing one. The mechanical, plumbing, structural, and the proper location was inspected, but not the height of the generator.

Motion made by Council Member Brooks to approve Variance #33-2007.

Responding to Council Member Coniglio, Mr. Castro noted that the setback for a two-story house would be 30', not 25'. A lot that was over 150' deep, was a 2' setback for every 1' in building height. The house was non-conforming to the front setback as it related to the 150' deep lot. It was non-conforming already. He could not speak to the hardship, as it was up to the applicant. It was a very large house on a deep lot, but the constraints were topography and the way the house was situated.

Attorney Broberg indicated that the hardship was a one-story house, in an R-B District; it was deficient to the R-A overlay because of the code change. There was no place to put the generator, around the house, without the 5' problem with the neighbors.

Council Member Brooks moved that Variance #33-2007 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. Motion seconded by Council Member Coniglio. On roll call, the motion carried 4-1, with President Pro Tem Coleman dissenting.

b. SPECIAL EXCEPTION#15-2007 WITH SITE PLAN REVIEW AND VARIANCES The application of Palm Beach Day Academy, Inc.; relative to property described as lengthy legal description on file; commonly known as 241 Seaview Avenue; located in the R-B Zoning District. The applicant requests a special exception with site plan review to modify a previous condition of approval on Special

Exception#13-2002 with Site Plan Review to allow the portable trailer to remain through the 2008-2009 academic year (June 2009); special exception with site plan review is also being requested to build a 41 space gated parking lot on the west field for school parking and student drop off and pick up. Variances requested for the parking lot are as follows: a variance for a minimum overall landscaped open space of 46% in lieu of the minimum 55% required; a variance for a minimum drive aisle width of 13 feet for one-way 45-degree parking, in lieu of the 15 foot minimum required; a variance to allow off-street parking within the front setback of 9.8 feet in lieu of the 25 foot minimum required. **Request for Deferral to the January 8, 2008, Town Council Meeting Per Letter Dated November 28, 2007, From James R. Brindell.**

Special Exception #15-2007 with Site Plan Review and Variances was deferred to the January 8, 2008, Town Council meeting.

c. <u>SITE PLAN REVIEW #22-2007 WITH VARIANCES</u> The application of Sirenity Investors, LTD (Kasia Adelstein, Director); relative to property described as the west 80 feet of Lot 1, Block 2 of "Villa Marine," according to the Plat thereof, as recorded in Plat Book 2, at Page 98 of the Public Records of Palm Beach County, Florida; commonly known as 106 Hammon Avenue; located in the R-C Zoning District. The applicant requests a Site Plan Review to renovate and convert a non-conforming two story, 12 unit multi-family building into a two-story, 4 unit building. The site plan is being modified by renovating the existing building in approximately the same footprint with the following modifications: 1) remove and replace all windows with impact windows and add decorative surrounds; 2)relocate roof access stair; 3) remove concrete walkways and replace with grass; 4) remove canopy, stairs and piers from front entrance; 5) relocate entrance from north side to west side of the building; 6) add a handicap ramp to west side of building; 7) remove roofed staircase on west side of building; 8) remove roofed staircase on east side of building; 9) add 47 square foot 2nd floor balcony on east side of building; and, 10) lowering the interior 1st and 2nd floors to create taller ceiling heights on both floors. Variances are requested to 1) allow a front yard setback of 5.67 feet in lieu of the 25 foot minimum required for architectural detail on parapet; 2) allow an east side yard setback of 8 feet in lieu of the 20 foot minimum required to enclose an existing covered entry and add a covered balcony and provide architectural details on parapet; and, 3) allow a west side yard setback of 8 feet in lieu of the 20 foot minimum required for balcony and architectural detail on the parapet and a west side yard setback of 17.5 feet in lieu of the 20 foot minimum required for the roof access stair.

Ex-parte communication was declared by: Council Member Coniglio, President Kleid, and President Pro Tem Coleman spoke with Attorney Maura Ziska; Council Member Markin communicated via email with Attorney Ziska; Council Member Brooks read all of the letters pertaining to the application.

Attorney Ziska, on behalf of the applicant, provided an overview of the request. The hardship runs with the land and the property was non-conforming in size.

Architect John Moore, of Smith and Moore Architects, displayed and reviewed the architectural renderings.

Responding to Architect Moore, Mr. Castro noted that the two air conditioning units on the roof and a setback were allowed, which meant that relative to the Architectural Commission and the neighbor's concerns, there were other opportunities to screen the units from the neighbors, or to make more aesthetically pleasing on a flat roof building.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The Architectural Commission (ARCOM) recommended approval;
- ARCOM's concern was the air conditioning units and the neighbors;
- ARCOM requested that white rock be placed on the roof;
- Staff's concern, after listening to the neighbors, was the actual use of the roof as a patio;
- Staff would recommend that using the roof as a patio be a restrictive covenant and that the door on the roof be locked at all times unless the equipment was being maintained;
- The air conditioning equipment could be moved elsewhere on the property, but

movement of the stairs might be required in order to facilitate having two units;

- The units could be placed in three different setbacks, provided there was a 5' setback;

- The location for the generator was in the front setback, but within the building;

- Staff required that the applicant provide the location of the proposed future generator;
- Hardship criteria would need to be addressed for the variances;

- Flat roof entry area would be enclosed and a balcony for both of the units;

- A balcony would be provided in an enclosed area, which would not have any access and was only an architectural detail;

- Variances were required for the balconies, which were not mentioned;

- Two patio areas were being provided, with fountains and relocation of the stairwell on top;

- One of the unique issues relative to the site was that the first floor of the building would be removed and lowered, because it was elevated and there was a crawl space;

- The floor was being lowered in order to obtain more ceiling height, and to keep the roof; and

- Gutting the entire inside of the building, except for the membrane, the entire outside of the building, would keep the cubic volume in order to keep it a non-conforming building.

Attorney Joseph Janssen, on behalf of the Winthrop House, 100 Worth Avenue, was located directly across the street from the building at 106 Hammond Avenue. He distributed photographs, and indicated that the Winthrop House Association was opposed to the variances, as the Winthrop House's south units face and look down upon the roof. The photographs showed that the owner failed to maintain the roof. The roof had been used as a terrace; the building was subject to a 25' front setback, but it was only 5' away from the property line. It was a flat roof that collected water and debris. He submitted to the Council that there was no other place in the Town that the mechanical equipment was exposed and visible by any other unit. He requested that screening or a structure be proposed to take care of the flat roof issue and the mechanical equipment.

Responding to President Kleid, Attorney Janssen noted that the major variances were that the building was situated only 5' from the property line.

Council Member Brooks stated that there was no law that required covering the top of an air conditioning unit.

Discussion occurred regarding how the roof could be improved. Mr. Castro provided recommendations on placement of the units, and that a restrictive covenant be imposed that the roof be used only for maintenance purposes.

President Pro Tem Coleman commented that the roof lines could not be changed, but that it could be made to appear more pleasing, and allow access.

Jim Wilner, resident of Winthrop House for 30 years, commented that he could not understand why the flat roof could not be replaced by a peaked roof.

Council Member Markin said she agreed with the Winthrop House residents, and that she was in favor of the flat roof being changed to a peaked roof.

President Pro Tem Coleman commented that the property was being improved, and the owner was not required to change the type of roof on the building.

Council Member Brooks agreed with President Pro Tem Coleman.

Motion made by Council Member Markin to approve a deferral of Site Plan Review #22-2007 with Variances for the applicant to determine whether or not the roof would be changed from flat to pitched.

Motion failed for lack of a second.

Motion made by Council Member Brooks to approve deferral of Site Plan Review #22-2007 with Variances to the January 8, 2008, Town Council meeting.

Attorney Ziska commented that it would entail additional variances, other than moving the air conditioning equipment to the ground, anything else would require additional variances.

President Kleid, on behalf of the Council, commented that the Council would look favorably on variances if the quality and appearance of the roof was improved.

Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

d. SITE PLAN REVIEW #23-2007, WITH SPECIAL EXCEPTIONS AND VARIANCES Application of L.G.Lima, LLC (Robert and Donna Lloyd George, Principles); relative to a property described as Lots 41 through 45, inclusive, Block 11, Revised Map of Royal Park Addition to Palm Beach, according to the map thereof as recorded in Plat Book 4, Page 1 of the Public Records of Palm Beach County, Florida; commonly known as 333 Peruvian Avenue; located in the C-TS Zoning District. Applicant requests Site Plan Review to construct a new three story 10,607 square foot building. The first floor is to include retail space and twenty-nine (29) parking spaces. The second floor is proposed to include a mix of residential and office uses. The third floor is to include a fountain, two open pergolas, open deck and landscaping. Also, a request for special exception to permit a second floor, special exception to permit approximately 3,910 square feet of residential tenancy on the second floor. Request a variance to permit height of 28.67 feet in lieu of 25 feet maximum height permitted. A variance to permit backing isle for parking with width of 21.5 feet in lieu of 25 feet minimum required for ninety degree parking; a variance to permit parking spaces with a width of 8.5 feet in lieu of 9 feet minium required; a variance to permit five (5) stacked parking spaces to be serviced by valet parkers to comply with the requirement of 29 total parking spaces; a variance to permit front set back of 11 feet in lieu of 13 feet minimum required; a variance to permit third floor use for an elevator, fountain, open deck and open pergolas in lieu of the two story maximum permitted; a variance to permit total floor area of 22,230 square feet in lieu of 15,000 square feet permitted; a variance to permit side yard setback on both side yards of 5 feet in lieu of 6.84 feet minimum required; a variance to permit balcony on the west side with setback of 1 foot in lieu of 2.84 foot minimum required and on the east side with setback of 1 foot in lieu of 2.84 minimum required; and a variance to permit no commercial loading zone in lieu of one required. **Request for Deferral to the January 8, 2008, Town Council Meeting Per Letter Dated November 30, 2007, From M. Timothy Hanlon.**

Site Plan Review #23-2007, with Special Exceptions and Variances was deferred to the January 8, 2008, Town Council meeting.

D. Other

None

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the December 11, 2007, Town Council meeting was adjourned at 6:55 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk