TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL HELD ON DECEMBER 8, 2008

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Monday, December 8, 2008, 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 Gail Coniglio
Council Member Denis P. Coleman
Council Member Susan Markin
Council Member David A. Rosow

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Town Attorney John C. Randolph
Paul Brazil - Public Works Director
Paul Castro - Zoning Administrator
Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director
Michael Reiter - Police Chief
Joanna Cunningham - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

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III. PRESENTATIONS

A. Presentations by Applicants for the Shore Protection Board.

The following applicants for the Shore Protection Board, each made a brief presentation to the Town Council:

William Cooley	Robert Cornell	Lee Goldstein
Llwyd Ecclestone	Gerald Frank	Lewis Katz
Scott Hicks	Arnold Hoffman	
Barbara Lindsay	Richard Raffo	

IV. COMMENTS OF MAYOR JACK McDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Laurel Baker, Palm Beach Chamber of Commerce, presented examples of images that were being proposed for empty storefronts, in regard to beautification efforts. Discussion occurred regarding the specifications.

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The Agenda was approved with the following modifications:

WITHDRAWAL, on page 3, Item VII.C.2.d., Special Exception #18-2008 with Site Plan Review.

DEFERRED, on page 4, VII.C.3.a., Variance #19-2008, to January 14, 2009, Town Council Meeting.

DEFERRED, on page 5, VII.C.3.b., Site Plan Review #10-2008 with Special Exception and Variances, to January 14, 2009, Town Council Meeting.
DEFERRED, on page 6, VII.C.4.a., Variance #21-2008, to January 14, 2009, Town Council Meeting.

DEFERRED, on page 6, VII.C.4.b., Variance #25-2008, to January 14, 2009, Town Council Meeting.

DEFERRED, on page 7, VII.C.4.d., Site Plan Review #12-2008 with Variances, to January 14, 2009, Town Council Meeting.

Town Manager Elwell added, for the record, that the deferred projects had been delayed due to deferrals at the Architectural Commission (ARCOM) for further consideration.

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VII. DEVELOPMENT REVIEWS

The Town Clerk administered the oath to all those who would be providing testimony.

A. Appeals

None

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less Than 15 Minutes

None

2. New Business - Less Than 15 Minutes

a. VARIANCE #22-2008 The application of CSC Brazilian LP, by CSC Brazilian GP Corporation, by Adam Schlesinger, President; relative to property described as lengthy legal description on file; commonly known as 300 and 301 Australian Avenue; located in the R-C Zoning District. The applicant requests a variance to expand the existing salon in a non conforming hotel by adding 97 square feet and three beauty salon chairs.
[Attorney: James R. Brindell]

Ex-parte discussion was declared by President Kleid with Attorney Brindell; by President Pro Tem Coniglio with Attorney Brindell; by Council Member Rosow with Attorney Brindell.

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, presenting architectural drawings and the variance request.

Staff Comments:

Zoning Administrator Paul Castro explained that the reason the request was before the Town Council today was that the hotel was in a district where hotels were no longer permitted. There was a provision within the variance section of the code which allowed hotels, that had existed for at least 15 years, to come before the Town Council and request modifications. The request was de minimus.

President Pro Tem Coniglio moved approval of Variance No. 22-2008. The motion was seconded by Council Member Markin.

Council Member Rosow requested that the valets be instructed to be courteous in the way that they drive cars to and from the hotel.

President Pro Tem Coniglio requested that an appropriate number of valet workers be incorporated, and added to the motion of approval that Mr. Schlesinger would have further conversations with the Police Department in regard to the valet situation, and that the valets would be subject to the determination of the Police Chief as to how many additional valets may be necessary. Council Member Markin agreed to the addition. On roll call, the motion carried unanimously.

Mr. Adam Schlesinger agreed that the valets would be instructed to be courteous, and that more valets would be brought in for larger events. He advised that he would meet with

Mr. Castro and discuss the valet situation.

Mr. Castro advised that the Police Department would be the appropriate staff to review the valet situation.

b. VARIANCE #23-2008 The application of Premier Holding Group LLC (Susan D. Hudson, Manager); relative to property described as lengthy legal description on file; commonly known as 601 Island Drive; located in the R-B Zoning District. The applicant requests a variance to permit construction of a combination 65 foot wide concrete dock (extending 12 feet from the bulkhead), boatlift (extending 25.16 feet from the bulkhead) and three mooring piles (the furthest extending 34.75 feet from the bulkhead) in lieu of 6 feet maximum allowed for a marginal dock in this location. The existing wood dock and boatlift are to be removed and replaced by the proposed new dock, boatlift and piles.
[Attorney: M. Timothy Hanlon]
ACTION: Discussed and deferred (by request of the Attorney) to the January 14, 2009 Town Council Meeting.

Ex-parte communication was declared by President Pro Tem Coniglio with Attorney Timothy Hanlon; by Council Member Rosow with Attorney Hanlon.

Attorney Timothy Hanlon, on behalf of the applicant, addressed the Town Council, and presented the variance request, noting that the hardship was related to mitigating the existing seagrass, and the impacts of the wave action from the Intracoastal waterway. In addition, there was an existing wood dock and deck at the rear of the property and removal of that would cause potential problems to the backyard that extended into the pool/patio area. He cited the precedence for approval.

Architect Gene Lawrence provided architectural renderings of the property in question.

Staff Comments:

Zoning Administrator Castro defined "marginal" dock, noting that, in this case, the applicant was meeting the setback to the north and to the south, however, the dock was substantially larger than what existed there today. Staff questioned the hardship.

Architect Lawrence pointed out that the existing bulkhead and the deck was at elevation 8'4"; the new dock would be at elevation 6.75', which was 20" less than the existing dock. He explained that this was not an attempt to make a larger deck; it was an attempt to put a boat in a boat lift, and have a guest be able to tie up alongside of the dock.

Council Member Rosow commented that the dock was too long, and having pilings out so far was not correct; he suggested that everything should be brought in and made smaller.

After further discussion, the applicant requested a deferral, in order to reconsider the overall size of everything and bring it back to the Town Council next month..

Council Member Coleman suggested that the request for a boat lift and a terrace out into the water should be separated.

Council Member Rosow moved deferral of Variance No. 23-2008 to the January 14, 2008, Town Council Meeting. The motion was seconded by Council Member Markin. On roll call, the motion carried 4/1:

Council Member Rosow:	**Yes**
Council Member Markin:	**Yes**
Council Member Coleman:	**No**
President Pro Tem Coniglio:	**Yes**
President Kleid:	**Yes**

c. SPECIAL EXCEPTION #17-2008 The application of TD Bank, N.A.; Gary Kaganowich, VP of Construction; relative to property described as Lots 28, 29, 30 and 31, Block 10, REVISED PLAT OF ROYAL PARK ADDITION, to Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 4, Page 1; commonly known as 380 So. County Road; located in the C-TS Zoning District. The applicant requests special exception approval to allow the continuation of a financial institution under new ownership (Sec 134-1109(a)(12)) and the transfer of its

business tax (occupational) license to a new entity; special exception approval to allow the continuation of a Town-serving commercial establishment with greater than 2,000 square feet of gross leasable area (3,040 square feet) on the northwest corner of South County Road and Peruvian Avenue (Sec. 134-1109(a)(11)).
[Attorneys: James R. Brindell and Brian M. Seymour]

Ex-parte communication was declared by Council Member Coleman with Attorney Jim Brindell; by President Kleid with Attorney Brindell; by President Pro Tem Coniglio with Attorney Brindell; by Council Member Rosow with Attorney Brindell.

Brian Seymour, on behalf of the applicant, addressed the Town Council, reviewing the applications of TD Bank (Special Exceptions No. 17-2008 and No. 19-2008). There was a name change from Commerce Bank to TD Bank, and there were no other changes other than the name, and therefore, the signage.

<u>Staff Comments:</u>

Zoning Administrator Castro advised that the previous bank, Commerce Bank, was required to provide Town-serving documentation each year. Staff recommendation was that TD Bank provide Town-serving documentation each year when the business tax receipt was renewed.

Council Member Rosow moved approval of Special Exception No. 17-2008, with the condition that Town-serving documentation would be provided each year when the business tax receipt was renewed. He requested that staff return with a policy to implement regarding staff approval of these type of requests. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

d. SPECIAL EXCEPTION #18-2008 WITH SITE PLAN REVIEW The application of Adam Schlesinger; relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Blvd.; located in the R-D (2) Zoning District. The applicant requests site plan modification for internal floor plan changes to the basement and first floor levels. The work will include a reconfiguration of the parking garage to relocate the trash and elevator equipment rooms, moving 778 square feet of meeting room space from the first floor to the basement, moving 1,141 square feet of spa space from the basement to the first floor, and relocating the salon in the basement. The plans also include other minor space adjustments and the relocation of the approved open air seating area on the first floor from the southwest corner of the building to the northwest corner. Even though some of the internal floor plan changes involve hotel accessory commercial uses which require special exceptions, no new special exceptions are requested because the previously approved uses and square footage are retained in different locations within the building.
[Attorney: James R. Brindell]
Request for Withdrawal Per Letter Dated November 26, 2008, From James R. Brindell.
Withdrawn under Approval of Agenda.

e. SPECIAL EXCEPTION #19-2008 The application of TD Bank, N.A.; Gary Kaganowich, VP of Construction; relative to property described as Lots 35, 36 and 37, BUNGALOW PARK ADDITION, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 7, Page 26; commonly known as 165 Bradley Place; located in the C-TS Zoning District. The applicant requests special exception approval to allow the continuation of a financial institution under new ownership (Sec 134-1109(a)(12)) and the transfer of its business tax (occupational) license to a new entity; special exception approval to allow the continuation of a Town-serving commercial establishment with greater than 2,000 square feet of gross leasable area (3,040 square feet) on the

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southeast corner of Park Avenue and Bradley Place (Sec. 134-1109(a)(11)).
[Attorneys: James R. Brindell and Brian M. Seymour]

[Transciber Note: Please see discussion under Special Exception No. 17-2008.]

Council Member Rosow moved approval of Special Exception No. 19-2008, with the condition that Town-serving documentation would be provided each year when the business tax receipt was renewed. He requested that staff return with a policy to implement regarding staff approval of these type of requests. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.

3. Old Business - More Than 15 Minutes

a. <u>VARIANCE #19-2008</u> The application of John R. Raese and Elizabeth S. Raese; relative to property described as Lot 24 and the East one-half of Lot 25, Plat of JAMAICA LANE, according to the Plat thereof as recorded in Plat Book 18, Page 93, Public Records of Palm Beach County, Florida; commonly known as 286 Jamaica Lane; located in the R-B Zoning District. The applicant requests a variance to construct a one-story enclosed accessory structure with a point of measurement of 21 feet National Geodetic Vertical Datum (NGVD) in lieu of the 17.14 feet NGVD required.
[Attorney: Peter S. Broberg]
[ARCOM Recommendation: Defer to the December 19, 2008, Architectural Commission meeting.]
Deferred from the November 11, 2008, Town Council Meeting.
Request for Deferral (Special Circumstances) to the January 14, 2009, Town Council Meeting Per Letter Dated November 19, 2008, From Peter S. Broberg.
Deferred under Approval of Agenda.

b. SITE PLAN REVIEW #10-2008 WITH SPECIAL EXCEPTION AND VARIANCES The application of BNB Ventures Palm Beach I, LLC (Len Ackerman, Manager); relative to property described as A part of Lot 36, Block E, of the ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1 Public Records of Palm Beach County, Florida, as described as: Beginning at the NW corner of said Lot 36; thence south on the West line of said Lot 36 125 feet, thence East on a line parallel with North line thereof, a distance of 87 feet; thence North to a point on the North line said Lot 36, just 87 feet East of the Point of Beginning; thence West to the Point of Beginning; commonly known as 204-210 Royal Palm Way; located in the C-OPI Zoning District. The applicant requests a Site Plan Review to construct 11,638 square foot, three story commercial building. A Special Exception is required to allow a three story commercial building in the C-OPI Zoning District. In addition, variances are being requested as follows: (a) a front yard setback of .07 feet in lieu of the 20 feet minimum required for a building and 25 feet minimum required for the tower; (b) an east side yard setback to be 0 feet in lieu of the 10 feet minimum required; (c) a west side yard setback to be 0 feet in lieu of the 10 feet minimum required; (d) lot coverage of 48.6% in lieu of the 25% maximum allowed; (e) a landscaped open space to be 9.1% in lieu of the 30% minimum required; (f) a landscaped open space in the front yard to be 17.6% in lieu of the 35% minimum required; (g) to allow a tower feature to be 4.2% of the maximum gross floor area in lieu of the 2% maximum allowed; (h) an overall height tower to be 49 feet in lieu of the 45 foot maximum height allowed; (I) to allow the architectural tower to be on the entry facade which is not permitted by code; (j) 19 parking spaces in lieu of the 35 parking spaces required (a deficit of 16 parking spaces); (k) to eliminate the need for the 1 required loading space; (l) an individual business identification sign on the proposed building to be above the first floor which is not allowed on a multi-story building; (m) a drive isle width in the parking lot to be a width of 16 feet in lieu of the 25 foot minimum width required; (n) allow the air-conditioning equipment on the roof to be 8 feet in lieu of the 4 foot maximum allowed by code;

(o) to allow the parking spaces to be situated in contradiction to the maneuvering requirements in Section 134-2172; that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The applicant is proposing 11 stacked parking spaces which requires the shuffling of vehicles in order to remove vehicles from required parking spaces.
[Attorney: Maura A. Ziska]
[Architectural Commission Recommendation: Defer to the December 19, 2008, Architectural Commission meeting]
Deferred from the November 21, 2008, Town Council Meeting.
Request for Deferral (Special Circumstances) to the January 14, 2009, Town Council Meeting Per Letter Dated November 17, 2008, From Maura A. Ziska.
Deferred under Approval of Agenda.

4. New Business - More Than 15 Minutes

a. VARIANCE #21-2008 The application of Conrad Yelvington; relative to property described as Lot 10, Via Vizcaya, (Less NLY 2.43 feet); commonly known as 10 Via Vizcaya; located in the R-A Zoning District. The applicant requests a variance to allow gate posts to be constructed with a point of measurement of 5.68 feet National Geodetic Vertical Datum (NGVD) in lieu of the 3.30 feet NGVD required by code. The posts and gate would be 10.38 feet high from the crown of the road in lieu of the 8 foot maximum allowed. [Attorney: Peter S. Broberg]
[ARCOM Recommendation: Defer to the December 19, 2008, Architectural Commission Meeting.]
Request for Deferral (Special Circumstances) to the January 14, 2009, Town Council Meeting Per Letter Dated December 3, 2008, From Peter S. Broberg.
Deferred under Approval of the Agenda.

b. VARIANCE #25-2008 The application of Charles C. Hickox; relative to property described as Lot 32, Plat No. 3 of

EVERGLADES ISLAND DEVELOPMENT according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 23, page 120; commonly known as 528 Island Drive; located in the R-B Zoning District. The applicant requests a variance to permit construction of new addition to existing residence containing 2,508.79 square feet providing a front yard setback of 39.5 feet in lieu of 41.6 foot minimum required.
[Attorney: M. Timothy Hanlon]
[ARCOM Recommendation: Defer to the December 19, 2008, Architectural Commission Meeting.]
Request for Deferral (Special Circumstances) to the January 14, 2009, Town Council Meeting Per Letter Dated November 24, 2008, From M. Timothy Hanlon.
Deferred under Approval of the Agenda.

c. SITE PLAN REVIEW #11-2008 WITH VARIANCE The application of Palm Beach Biltmore Condominium Association, Inc; relative to property described as lengthy legal description on file; commonly known as 150 Bradley Place; located in the R-D(2) Zoning District. The applicant requests a modification of Site Plan Approval to construct a 1,480 square foot building to enclose a 1,500 kilowatt generator and fuel tank on the south side of the subject property. A variance is requested to construct a 1,480 square foot building upon the subject property providing a lot coverage of 33.90% in lieu of 33.36% existing and 22% maximum allowed. [Attorney: Francis X. J. Lynch]
[Landmarks Commission Recommendation: Approve subject to reconsideration of the size of the building and material of the roof.]

The Town Clerk administered the oath to all those who had not been sworn previously.

Ex-parte communication was declared by Council Member Markin with the attorney representing the residents opposing the project; by President Kleid with several of the attorneys involved with the project; by President Pro Tem Coniglio with Attorney Schiller, as well as several residents; by Council Member Rosow with Attorney Schiller and Attorney Frank Lynch, and several residents.

President Kleid explained the procedure. The applicant would be allowed seven minutes to make a presentation; objectors would be allowed seven minutes; the public would then have the opportunity; then staff; the applicant would then be allowed a two minute rebuttal; public meeting would be closed and the Town Council would move into executive session.

Attorney Frank Lynch, on behalf of the applicant, addressed the Town Council, summarizing the application, presenting the legislative history of the ordinance involved. He requested that the meeting wherein the ordinance was adopted be incorporated as part of the record. He presented the statement by Biltmore Maintenance Manager Tim Gibb, to be inserted in the record, as well as the statement of Flea Masters, relating to mold growth, and the statement of Consulting Engineer Danny Brannon.

Mr. Danny Brannon, Consulting Engineer, addressed the Town Council and reviewed the engineering data, and generator size.

Attorney Lynch continued with the presentation of the application, citing precedence, criteria for approval, comments of the neighbors, and reasons for the request for the generator.

Attorney Neil Schiller, Becker & Poliakoff, P.A., on behalf of 62 residents of the Biltmore Condominium Association, addressed the Town Council in opposition to the generator site plan approval, as well as the lot coverage variance. He requested that the site plan approval be denied for the 1500 KW generator and the 1480 square foot housing building, as well as the applicant's lot coverage variance. He provided an aerial view of the Biltmore Condominium, as well as the site at issue, and photographs of the site. He discussed the reasons for the objection. He concluded that the applicant failed to meet the criteria for a lot coverage variance; there was no hardship; the existing generator provided enough electricity to power electricity.

Attorney Eric Christu, Ruden, McClosky, on behalf of Royal Poinciana South, 333 Sunset Ave., Palm Beach, addressed the Town Council in objection to the application, noting that the variance criteria had not met the criteria enunciated by court decisions. He provided background on the application, and presented photographs of the site in question. He requested that the application be denied.

Council Member Rosow commented that it was impossible to review all of the material being submitted at the meeting today.

Town Attorney Randolph noted that there was a policy regarding the timeliness of material submitted regarding applications, however, this was a quasi judicial hearing, and people did have the opportunity to present information. The Town Council could always make a request that objectors provide information beforehand, so that it could be reviewed.

Public Comments:

Mr. Arnold Hoffman, on behalf of the Executive Committee of the Biltmore, addressed the Town Council, stating that he was commenting in order to correct certain distortions in the record.

Attorney Greg Young, on behalf of the Parc Regent Condominium Association, accompanied by Mr. Jay Denger, General Manager of the Parc Regent, commented that the Parc Regent had objected to the previous application filed by this applicant, and as long as the generator remained in the location as set forth in the current application, there was no objection. He reserved the right to comment if the location changed back to the north location

Tara Pearl, resident of the Biltmore Condominium, on behalf of several residents, stated that there were some statements made today that were not accurate, and she made statements in favor of the application.

At this time, the oath was administered to all those who had not been previously sworn.

Mr. Rothstein, resident of the Biltmore Condominium, addressed the Town Council, reading a statement from resident Rob Allen, representing the opposition to the application.

Charlotte Ellis, resident of the Biltmore Condominium addressed the Town Council, making statements about the rights of condominium owners.

Stephen Seder, President of the Board of the Biltmore Condominium, stated that the board believed that it had a fiduciary duty to protect the property of the owners, speaking in favor of the application.

Staff Comments:

Zoning Administrator Castro commented regarding the Town Code and the ordinance regulating generators. He noted that, in this case, the generator in the building did not meet the lot coverage requirement; staff did not see the hardship relative to the variance request for lot coverage. The Landmarks Preservation Commission (LPC) had reviewed the project strictly from the standpoint of the landmarked structure itself, and found that it did not detract from the landmarking structure of the Biltmore Condominium, and recommended that it did not. He noted that they had commented that the building was too large, and some of the structural elements of the roof needed further review.

Attorney Lynch advised that the petition referred to spoke specifically to the rights of the members to approve the generator. The current generator was a 250 KW generator, and was on its last legs. The 375 KW generator referred to by Mr. Schiller was incorrect. Any replacement generator would be required to be placed in a building outside of its current location, according to Code. He referred to some past Code Enforcement situations involving some of the neighboring objectors, and the IL Lugano application as a precedent.

Gene Pandula advised that the size of the proposed building had been reduced by about 20%..

Executive Session:

In response to Council Member Rosow, Engineer Brannon advised that the generator had the capacity to power the building, based upon historical consumption; the consumption had been measured in accordance with the National Electric Code; the Code required that the design load used to size the generator should be 125% of the measured load. Attorney Lynch explained some of the reasons for the proposed location of the generator: the Code required that the generator must be at least ten feet from any window that could be opened, must be vented away from the building; the applicant was working within the existing configuration of landmarked property. He explained that the fuel tank did not have to be at 7.5 NGVD, like the piece of equipment needed to be; therefore, the tank could be tucked underneath the equipment, thus reducing the size of the building approximately 20%.

Discussion continued regarding the age of the current generator, the consumption load, and the measurements of the housing building.

Council Member Rosow moved denial of Site Plan Review #11-2008 with Variance, on the basis of the lot coverage, and that the applicant could come back with a better plan. The motion was seconded by Council Member Coleman. On roll call, the motion carried unanimously.

d. SITE PLAN REVIEW #12-2008 WITH VARIANCES The application of Villas Inc., by John Schuler, President; relative to property described as Lots 12 through 29 inclusive, Block 13 of Royal Park Addition, as recorded in Plat Book 4, page 1 of the Public Records of Palm Beach County, Florida, less that tract described in Deed Book 453, Page 389; commonly known as 425 Worth Avenue; located in the R-D(2) Zoning District. The applicant requests a modification of the Villas' site plan to construct a 512 square foot building on the rear (north) side of the property to house a 350 KW generator, reconfigure the parking and open space in the vicinity of the generator enclosure, and relocate two (2) parking spaces to the front (south) side of the property. Variances being requested are as follows: (1) lot coverage of 40.49% in lieu of the 39.5% existing and the 22% maximum allowed for an existing five story residential building including an accessory building; (2) a street rear setback of 20 feet in lieu of the 30 feet minimum from the north (Peruvian Avenue) property line required by code for an enclosed accessory building and generator in a street rear yard setback; (3) to allow two (2) required off-street parking spaces in the front (south) setback where none are allowed by code; (4) to allow one (1) required off-street parking space in the street rear (north) setback where none are allowed by code; (5) to allow seven (7) re-designed parking spaces in the northeast corner of the site to be 8.5 feet wide in lieu of the 9 feet minimum required.
[Attorney: James R. Brindell]
[ARCOM Recommendation: Defer to the December 19, 2008, Architectural Commission meeting.]
Request for Deferral (Special Circumstances) to the January 14, 2009, Town Council Meeting Per Letter Dated November 24, 2008, From James Brindell.
Deferred under Approval of Agenda.

D. Other

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1. Zoning Study Items That Were Not Selected for the 2008-2009 Zoning Season and the Planning Parameters for the Planning and Zoning Commission. [John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning & Building Director John Page advised that an annual presentation had been made by the Chair of the Planning & Zoning Commission; during that conversation, the Town Council had requested a review of the zoning season study items. He referred to the back up, wherein a listing of the zoning season study items could be found. There were a total of 19 possible study items; 12 of those items had been selected as study items. He estimated that it would cost an additional $165,000 for an outside consultant, to include the study of the 7 items that had not been selected.

After discussion, there was no action taken by the Town Council.

2. Resources Necessary to Consider More Than Five to Ten Properties Per Year for Landmarking.
[John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning & Building Director John Page referred to his memorandum of November 19, 2008, wherein he had outlined the procedure that the Town followed in landmarking properties. On average, it had been estimated that each and every individual landmarked site would cost the Town approximately $3,500 in private consulting expense, through Jane Day of Research Atlantica. The current pace of landmarking was at nine to ten per year. Mr. Page stated that it was his belief that the cost was a real value, and that it would be higher if the Town went to any other outside consultant.

In response to President Pro Tem Coniglio, Jane Day replied that her consulting firm could accommodate additional landmarked properties.

President Pro Tem Coniglio suggested that the Town consider doing five more properties per year, at the same cost per property.

Council Member Coleman questioned whether Ms. Day should recuse herself on issues that involved Architect John L. Volk. Ms. Day responded that she did not believe so. After further discussion, Mr. Coleman suggested that Ms. Day should take it under advisement.

Discussion took place regarding the process that would identify additional properties that may be considered for landmarking.

President Pro Tem Coniglio moved that the Town establish a policy that 15 properties could be landmarked within a season; that funding be identified, and discussion take place with other entities that may be willing to donate funds. The motion was seconded by Council Member Rosow.

Council Member Markin suggested that consideration be given to having the Town pay for ten landmarked properties per year; that there would be a willingness to entertain landmarking twenty properties per year, if an organization in the Town were able to match the funds.

Town Attorney Randolph noted that the motion simply authorized more properties to be studied, leaving the manner in which it will be funded to the future. He raised the issue of conflict of interest, if the Town solicited funds from other groups, since the Landmarks Preservation Commission served as an independent commission, making determinations at a quasi-judicial hearing, as to whether or not properties were indeed landmarks.

On roll call, the motion carried 4/1:

President Pro Tem Coniglio:	**Yes**
Council Member Rosow:	**Yes**
Council Member Coleman:	**No**
Council Member Markin:	**Yes**
President Kleid:	**Yes**

3. Further Consideration of Next Steps Related to Royal Poinciana Area Citizens' Master Plan.

Planning, Zoning & Building Director John Page reported that there was a rich history of the Town's involvement with the Treasure Coast Regional Planning Council (TCRPC). Approximately one year ago, TCRPC and the Town Steering Committee prepared for townwide charrettes. As a result, a plan had been completed by TCRPC for the Royal Poinciana District area. A great deal of public input was received, and the Architectural Commission, Landmarks Preservation Commission, and Planning & Zoning Commission met to make specific recommendations on the plan. The recommendations of the commissions were received and discussed by the Town Council; several months ago, it was requested that the plan be brought back to the Town Council for additional consideration, so it could be determined which elements, if any, would be supported. If the Town Council decided to move forward, the next logical step would be to determine whom the Town would work with to proceed forward with necessary changes to the Comprehensive Plan and to the Zoning Code.

Discussion occurred regarding the TCRPC contract costs. Mr. Page explained that Phase I had been projected at $110,000; that work was completed, and it was paid for. TCRPC staff had indicated that costs were considerably higher than $110,000, however, they had not approached the Town about revising the contract. Phase II had been projected at $70,000, however, TCRPC staff now felt certain that the projected $70,000 expense for Phase II would grow.

Discussion continued regarding the completion of the work. Council Member Rosow suggested that the study of the Royal Poinciana Way be returned to the Planning & Zoning Commission in order for them to hold public hearings, for the purpose of having a dialogue between residents and the Commission so that the recommendations can come back to the Town Council. At that point, the Town Council could determine how to utilize consultants.

John Harmon, Ruskin, Florida, Publix Real Estate Specialist, provided comments regarding the plans of Publix to move forward with the store construction project.

Council Member Coleman requested that staff analyze an egress from Publix on Royal Poinciana Way, in the middle of the block. Planning, Zoning & Building Director Page advised that he would attempt to utilize the existing consultant, and then determine whether anything further was necessary. Mr. Coleman explained that it would help the Town Council to formulate a desire as to whether Publix should be encouraged to have such an egress.

President Pro Tem Coniglio recused herself, on the basis that she owned property on Royal Poinciana Way. The Town Clerk provided her with Form 8B "Memorandum of Voting Conflict For County, Municipal, and Other Local Public Officers."

Further discussion took place regarding the Royal Poinciana area, the Testa's application, and a defined plan for the area.

Former Mayor Marix, 1570 N. Ocean Blvd., commented regarding the lack of minutes, from TCRPC, of the Steering Committee meetings, and the retention of future consultants.

William Guttman, Chairman Planning & Zoning Commission, commented that the Planning & Zoning Commission would need to address the Testa Application for an overlay district that would essentially cover the Royal Poinciana business district. He emphasized that TCRPC had found that many of the buildings in the business district were in poor physical condition, and that the current zoning regulations would encourage urban sprawl.

He noted that he had envisioned that the Planning & Zoning Commission would take the Testa matter up in the month of March, which would enable Mr. Page to go back to TCRPC for help on a very curtailed, narrow project for $70,000. A report could be delivered to the Town Council in the month of January as to where the negotiations with TCRPC were. He urged that there be a back up for an outside consultant, contingent upon there being a consensus developed.

Further discussion took place regarding density in the area, objectives for the area, a directive from the Town Council to the Planning & Zoning Commission, and involvement of the citizens

Council Member Rosow moved that the Planning & Zoning Commission be delegated to study the area for density, setbacks, height, incentives for undergrounding, etc. without any outside consultants, and return to the Town Council with recommendations. The Town Council would then determine the need, if any, for further consultants.

Mr. Guttman commented that he did not think that the Planning & Zoning Commission had the expertise to deal with some of the issues that Mr. Rosow had brought up, without the use of outside consultants. He proposed that the Planning & Zoning Commission make recommendations regarding density and height; if the Town Council accepted those recommendations, the Town should be in a position to have an outside consultant on hand so that the Town could move forward.

Council Member Rosow amended the motion to request recommendations from the Planning & Zoning Commission on the Royal Poinciana Way district, regarding density, height, the via, and any other components which they feel capable of reviewing. The motion to include sending out an RFQ now for potential consultants, and directing Mr. Page to speak to TCRPC regarding its scope of work and fee for Phase II, as well as requesting a dialogue with Publix.

Town Manager Elwell clarified that it was the understanding of staff that TCRPC would not enter into competitive processes; it would be necessary, at this time, to choose whether there would be a first conversation with TCRPC, then report back to the Town Council before issuing an RFQ.

Mr. Rosow withdrew the RFQ portion of the motion. The motion was seconded by Council Member Coleman. On roll call, the motion carried 3/1 (President Pro Tem Coniglio had recused):

Council Member Rosow:	**Yes**
Council Member Coleman:	**Yes**

Council Member Markin: **No**
President Kleid: **Yes**

Council Member Markin commented regarding the lack of minutes of the meetings conducted by TCRPC, stating that should have been be part of the process, and that the Town should demand some sort of documentation.

Council Member Coleman moved that Town staff send TCRPC a letter under the signature of the Town Council, stating that the Town Council expected receipt of documentation regarding any of the meetings held in regard to the Royal Poinciana Way study project. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

There being no further business, the Town Council meeting of December 8, 2008, was adjourned at 12:52 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Coniglio Gail	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town of Palm Beach Town Council
MAILING ADDRESS P.O. Box 2029 (1139 N. Ocean Blvd)	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach — COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED 12/08/08	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Gail Coniglio, hereby disclose that on December 8, 20 08:

(a) A measure came or will come before my agency which (check one)

✓ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, ______;

___ inured to the special gain or loss of my relative, ______;

___ inured to the special gain or loss of ______, by whom I am retained; or

___ inured to the special gain or loss of ______, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Item VII, D. 3 Further Considerations Of Next Steps Related to Royal Poinciana Area Citizens Master Plan.

I own property in the area being discussed.

12/8/08

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.