

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON NOVEMBER 30, 2005 (Rescheduled from November 8, 2005, due to Hurricane Wilma)

I. CALL TO ORDER AND ROLL CALL

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

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas C. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Rob Walton - Chief Code Compliance Officer
Alan Brown - Acting Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Andrew Cox - Assistant Fire Chief
William Crouse - Human Resources Director

Minutes 11-30-05
Reg TC mtg.

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

- A. Palm Beach Country Club Announcement of College Scholarship Program to Benefit Children of Town Employees.
[Mike Stein, President, Palm Beach Country Club]

Michael Stein, 227 Via Tortuga, President of the Palm Beach Country Club, presented a check to Mayor McDonald for \$25,000 to support a scholarship program for children of the Town employees on behalf of the Palm Beach Country Club Philanthropic Foundation.

IV. COMMENTS OF MAYOR JACK McDONALD

I want to publicly thank - Senator Jeff Atwater for his assistance with arranging and attending an important meeting with the Florida Department of Environmental Protection in Tallahassee and Representative Mary Brandenburg for her help in obtaining a \$350,000.00 grant from the Florida Historical Commission for repair of Town Hall.

Hurricane Review - As you know Hurricane Season is only six months away and a tropical storm is now in the Atlantic. Later in the agenda, you will receive a staff report regarding Hurricane Wilma. I want to emphasize one and make some additional recommendations. I agree with staff that we purchase additional generators to supply emergency power to the sanitary sewage pump

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stations. Our water staff worked 12- hour shifts during Wilma and they will be working 24- hour shifts if raw sewage starts backing up and flowing onto our streets. We were fortunate this did not happen during Wilma as it did in other communities.

My next recommendation is one the Town Council rejected earlier this year, as a staff request, and that is an in-Town communication system. We need the ability to communicate with residents that do not evacuate before a storm event and may not have power, telephone, or cable. Our website is an excellent communication tool, if you are outside of Town with power or in Town with power and use a computer. However, we are Town with many elderly residents and nationally 2/3 of the elderly residents has never used a computer. Like the president's drug prescription program, seniors cannot access the internet to obtain the information. Local TV does a good job, but is not site specific and cannot meet our criteria. Interestingly, as the Town becomes better at storm recovery (we were the first municipality in Florida to clear their streets so residents could drive to their homes), we instill more confidence in our residents, not to leave. If we underground some or all of our electric lines, we instill more confidence in our residents, not to leave. These measures aid in recovery but do not facilitate evacuation. They indirectly encourage people to stay. On barrier islands, staying is not a good thing.

Why do they stay? Hotels are full, no place to go, they are more comfortable at home, they cannot get back to the island right away, they have always ridden out the storm. Whether we like it or want it, people will stay and we need to be able to communicate with and care for them. In addition, we do not know how many there are. When Peter and I surveyed south end multifamily buildings, after Wilma, we found many more residents than we believed were here, and many needed help. It was easier to check the multifamily buildings; single family homes are much more difficult. I request the Town Council revisit this matter next month and implement a Town communication system before next June.

My second recommendation is to require multifamily buildings to have generators to operate their elevators. With elevator systems out for several days after a storm, it makes removal of the elderly and sick for public safety reasons difficult and slow.

Lakeside Park - At a previous meeting Councilman Coleman suggested that a review should be made of Lakeside Park. I agree and request that he follow up with the Town Council to approve an improvement plan. The park is not what it should be, and it should be more than a walkway to the Marina. It also appears that if the street is made one-way, the parking could be dramatically improved.

V. APPROVAL OF AGENDA

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The following changes were made to the Agenda:

CORRECTED from Resolution No. 81-05 to Resolution No. 91-05, on the Consent Agenda, Item VII. E. 1.

MOVED from the Consent Agenda, Item VII. F. 8., Florida Power & Light Request to Complete Construction Projects After December 1, 2005, to Regular Agenda, Old Business, Item VIII. A. 1. c.

MOVED Item VIII. B. 6., from Regular Agenda, New Business, to Item VIII. B. 1., New Business.

DEFERRED Item XI. A. 1., Brazilian Court Construction Extension Request for Deferral to December 13, 2005, Town Council meeting.

President Brooks stated that if the applicant continued to ask for a deferral, they were, in fact, receiving a time extension. He noted that there were residents living in the establishment, and the noise had been going on for a long time.

WITHDREW Modified Site Plan Review #4-2005 with Special Exceptions per letter dated November 21, 2005, from James R. Brindell, of the application for Sunset Avenue Corporation.

Motion made by Councilman Wyett, seconded by Councilman Kleid to withdraw Item XI. C. 3. a., Modified Site Plan Review #4-2005 with Special Exceptions. On roll call, the motion carried unanimously.

Motion made by Councilman Wyett, seconded by Councilman Coleman to approve the Agenda as Amended. On roll call, the motion carried unanimously.

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

Harry Horwich, South Ocean Boulevard resident, commented that Phipps Ocean Park Tennis Facility charged the tennis players for parking their vehicles, while playing tennis. Swimmers,

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picnickers, and others that come to the park only pay for parking, and not the use of the facilities. Mr. Horwich pointed out that tennis players paid an annual membership and hourly rates and that it was unjust for them to pay for parking.

Councilman Kleid maintained that it was inequitable for tennis players to pay for the cost of the tennis courts, and pay for parking. He added that there may be a problem with the State funding formula.

Councilman Kleid made a motion to direct staff to send a letter to the appropriate state agency requesting the complimentary use of a limited number of parking spaces adjacent to the Phipps Ocean Park Tennis Facility for a specific time period for tennis players who have already paid for the hourly use of the tennis courts.

Mayor McDonald asked for Town Attorney Randolph's comments regarding the allowance of certain people parking free and others paying for parking.

Town Attorney Randolph responded that it would have to be researched; there may be a way to exempt the residents on the basis that they were paying for the use of the tennis courts and would deserve some privilege that nonresidents did not have.

Town Manager Elwell indicated that there were two issues: one facility serving multiple types of customers, and whether all need to be served in the same manner; and regarding Councilman Kleid's motion, a concern about creating this kind of a system would compromise the funding formula the State used in determining which beaches were eligible for state funding assistance. The funding received was for the beaches adjacent to major public facilities. He said he would address the officials in Tallahassee for an answer.

Councilman Wyett agreed with Mr. Horwich that residents should not have to pay for parking, and nonresidents should pay for parking.

President Brooks suggested that Councilman Kleid hold the motion until the December 13, 2005, meeting in order to allow time for staff to research the issue.

Motion Withdrawn until December 13, 2005.

President Pro-Tem Goldblum suggested issuing tokens to be used in the meters.

Dr. Cindy Lookabough commented that since Amici's Restaurant opened two years ago, there had been severe parking and traffic problems, and recently weekend late night band concerts

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and outdoor parties. She stated that there was no permit for the music, and asked the Town Council to please act as soon as possible.

Town Manager Elwell commented that the Police Department and the Planning, Zoning & Building Department had taken action in response to Dr. Lookabough's letter sent on November 13, 2005. He suggested that the public be noticed and the item placed on the December 13, 2005, agenda for a full discussion.

Councilman Wyett indicated that no restaurant or facility of the Town should interfere with the peace and quiet of the residents. He asked the Council by informal consensus to inform Amici's Restaurant that they should cease and desist of the noise immediately or the Town would take appropriate action.

President Pro-Tem Goldblum noted that there had been complaints about other restaurants as well.

Councilman Coleman noted that because there were mechanisms in place, such as the Police Department and the Code Enforcement Officers, the Town Council should not have to become the enforcement board.

Mr. Elwell suggested that the Council wait until they received a formal report of the results of the staff enforcement actions and address the issue at the Town Council meeting on December 13, 2005.

Councilman Coleman replied that in order to bring the restaurants into compliance, he would rather suspend them pending a hearing. He said that would eliminate the problems in the community.

Mayor McDonald commented that the issue should be discussed today, as the resident was present, and the information was available.

Motion made by Councilman Coleman to put the item back on the agenda.

Motion failed for lack of a second.

President Brooks presented a compromise, because the owner of the Restaurant was not aware that the Restaurant could be closed down as a result of the complaint. President Brooks suggested that in the 12 days that remained until the next Town Council meeting, the Amici Restaurant would be observed and the existing problem enforced. On December 13, 2005, at the

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next meeting, it would be on the agenda, and the Restaurant owner would have an opportunity to appear.

Mr. Kleid commented that it should encompass all the restaurants and nightclubs in the Town, not just Amici's Restaurant, in order to resolve this problem.

President Pro-Tem Goldblum asked if a code enforcement officer had the authority to stop a gardener from using a loud leaf blower.

Town Attorney Randolph replied that the officer would cite the gardener for violation of the noise ordinance and then ask him/her to discontinue using the leaf blower.

President Pro-Tem Goldblum indicated that the same action should be applied to the restaurants and nightclubs, and the establishments should be closed down at that point.

Councilman Wyett added that the owner of Amici's Restaurant was aware of the problem and should be told informally that if he did not desist immediately, the Town Council would close down any of his facilities within the Council's prerogative.

In response to Councilman Coleman's request for input, Police Chief Reiter stated that he was not prepared to address the issue, but he was aware that Dr. Lookabough had made at least two noise complaints. He added that the Police Department responded to the complaints, but that he had no data with him to convey the results.

Motion made by Councilman Coleman, seconded by Councilman Wyett to notify Amici's Restaurant immediately that there would be a hearing in two weeks. If a complaint registered in the interim and was in violation, the Restaurant would have all their privileges withdrawn. On roll call, the motion carried unanimously.

Connie Gasquez, 167 Root Trail, commented that the Town applied to Federal Emergency Management Agency (FEMA) for replacement of sand on the beaches. The north end of the beach's sand kept replenishing itself and had good sand. She said that the Town was not critically eroded at midtown except for a spot by Charley's Crab Restaurant. Ms. Gasquez asked why the Town was being charged more for sand than the City of Boynton Beach by the Great Lakes Dredge & Dock Company. She requested that the Town delay re-nourishment of midtown beach until next year, and to leave the sand where it was in the north end.

Mr. Elwell responded that the Town would be addressing a portion of what Ms. Gasquez spoke to later in this meeting, and would be throughout the upcoming winter as the projects

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continued to unfold.

Catherine Bradley commented regarding the remarks made at the Town Council meeting on October 11, 2005, by President Brooks and Mr. Lesley Evans, concerning the feral cat situation, the citations issued to her over two-year period, and the suggestion made to Mr. Lesley Evans to file a civil lawsuit.

Lesley Evans, 135 Seminole, commented that the current code, allowing 10 animals per resident, was too many, and the feral cats had a special status that dogs did not have. He stated that he had a problem with the Town spending \$80,000 to control something that should not be allowed at all.

VII. CONSENT AGENDA

- A. MINUTES: OCTOBER 11, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES
- B. MINUTES: NOVEMBER 2, 2005
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES
- C. MINUTES: NOVEMBER 15, 2005
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES- SEA GULL COTTAGE
- D. MINUTES: NOVEMBER 15, 2005
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES- UNDERGROUND WIRING
- E. RESOLUTIONS
 - 1. RESOLUTION NO. 91-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Policy Release Agreement in the Matter of Frank and Maureen Wilkens v. Town of Palm Beach and Authorizing the Mayor to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

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2. RESOLUTION NO. 85-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the First Amendment to the Contract Between Palm Beach County and the Town of Palm Beach Relating to 9-1-1 Emergency Management as Set Forth in Exhibit "A" Attached Hereto; Providing an Effective Date. [Michael S. Reiter, Chief of Police]
3. RESOLUTION NO. 86-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Town of Palm Beach Police Department Edward Byrne Memorial Justice Assistance Grant (JAG) Program Application to the Florida Department of Law Enforcement and Authorizing the Mayor to Execute the Same on Behalf of the Town. [Michael S. Reiter, Chief of Police]
4. RESOLUTION NO. 88-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Authorizing the Mayor to Execute a Disaster Relief Funding Agreement for Federal and State Assistance for Hurricane Wilma. [Jane Struder, Director of Finance]
5. RESOLUTION NO. 89-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Directing the Preparation of Ballot Language Relating to a Proposed Charter Amendment Initiated by Petition of the Electors; Providing an Effective Date. [John C. Randolph, Town Attorney]

F. OTHER

1. Authorization to Purchase a Computer System Upgrade for the Police Firing Range. [Michael S. Reiter, Chief of Police]
2. Authorization to Purchase Replacement Police Vehicles. [Michael S. Reiter, Chief of Police]
3. Authorization to Purchase Replacement Fire-Rescue Vehicles. [Edward J. Moran, Fire-Rescue Chief]
4. Authorization to Contract with Brisson Planning Solutions, Inc., for Planning Services for the 2005-2006 Zoning Season.

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

5. Authorization to Contract with Research Atlantica, Inc., for Landmark Preservation Consulting Services.
[Veronica B. Close, Director of Planning, Zoning, and Building]
6. Ratification of CCNA Selection Committee Rankings for a Tennis Facilities and Parks Design Consultant.
[H. Paul Brazil, Director of Public Works]
7. Appointment of Mini-PERC Blue Ribbon Panel.
[William C. Crouse, Director of Human Resources]
8. Florida Power and Light Request to Complete Construction Projects After December 1, 2005.
[H. Paul Brazil, Director of Public Works]

Motion made by Councilman Wyett, seconded by Councilman Coleman to approve the Consent Agenda as Amended. On roll call, the motion carried unanimously.

VIII. REGULAR AGENDA

A. Old Business

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

a. Legislative/Political Initiatives

Deputy Town Manager Bradford stated that staff was directed to create legislative action points for dissemination to public officials and a separate letter to mayors throughout Palm Beach County for a political process for facilitating undergrounding within the state. He noted that the action list and the two draft letters submitted for approval could be found in the backup.

Additional discussion occurred among the Town Council members with the following suggestions:

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- Send the letters to the local publications;
- Send a third letter to be addressed specifically to the gubernatorial candidates;
- Councilman Kleid suggested several editorial changes to the letter addressed to the Mayors:

President Brooks inquired if the Florida Power & Light (FP&L) additional charges for the hurricanes were processed by meter or entity?

Attorney Robert Wright explained that FP&L 's additional charge was a separate hurricane surcharge assessed to each meter and charged per 1,000 kilowatt hours used and would expire in February 2008. He noted that the total systemwide amount was \$442 million plus interest authorized by the Public Service Commission (PSC) for recovery.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Kleid to approve three draft letters with the suggested editorial changes and go forward from that point. On roll call, the motion carried unanimously.

Motion made by Councilman Kleid, seconded by President Pro-Tem Goldblum to approve the legislative action points, to be included with the first letter, and as an outline for the creation of the legislation to be drafted by Attorney Wright. Legislation would be brought to the Town Council meeting on December 13, 2005, for approval and transmission of the first letter. On roll call, the motion carried unanimously.

Attorney Wright provided an update on related activities in the area regarding undergrounding and legislative coalition building.

Alec Flamm, 2000 S. Ocean Boulevard, representative of the Palm Beach Civic Association, noted that currently there was a proposed nationwide legislation for tax deductions for hurricane related issues. Mr. Flamm suggested proposing legislation that tax deductions be implemented for hurricane prone areas only, resulting in a deficit reduction to the Government. Mr. Flamm commented that if the letter originated from the Town Council, it would be more effective than from the Civic Association.

President Brooks recommended that Mr. Flamm draft a letter and send it to Town Manager Elwell or Mayor McDonald for more effective communication.

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Mr. Elwell suggested conveying to the legislators that the proposed nationwide legislation needed to be addressed to the reliability of the system instead of aesthetic concerns.

Councilman Wyett stated that the Town needed legislation to override FP&L's notification that the Town would pay for the undergrounding and FP&L would own it.

b. FPL's "Ballpark Estimate"

Mr. Bradford reported that the Florida Power & Light's (FP&L) "ballpark estimate" would be presented at the December 13, 2005, Town Council meeting.

c. Florida Power and Light Request to Complete Construction Projects After December 1, 2005. [H. Paul Brazil, Director of Public Works]

Town Manager Elwell requested approval of a new project requiring three weeks to complete, along with the Consent Agenda item, and approval of the items in Deputy Town Manager Bradford's memorandum of November 29, 2005. Mr. Elwell noted that there would not be a complete blockage of traffic, except on a side street where traffic flow was minimal.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Coleman to approve Florida Power and Light's request to complete four Construction Projects after December 1, 2005. On roll call, motion carried 4-0, as Councilman Wyett had temporarily left the room.

2. Relocation of Sea Gull Cottage to Bradley Park.

- a. RESOLUTION NO. 84-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for a Referendum in Regard to the Use of Bradley Park for the Placement of the Sea Gull Cottage and to Provide That the Town Be Permitted to Enter into a Long Term Lease, for a Period Exceeding Five Years,

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with the Preservation Foundation of Palm Beach; Providing for the
Date of the Election; Providing an Effective Date.
[John C. Randolph, Town Attorney]

Town Attorney Randolph noted that if Town property was leased in an excess of five years, the Charter required that a referendum was necessary for voter approval.

Town Council discussed the following issues:

- The terms of the lease should be included in the ballot question because the terminology "for a period of time in excess of five years" was misleading to the voters;
- The terms of the lease were unknown because the contract had not been negotiated;
- The preamble to the ballot question should include that the expenses were at no cost to the Town; and
- The inclusion of the explanation of the expenses would exceed the Florida Statute requirement of 75 words in total.

Mayor McDonald commented that the terms of the lease were not a Charter requirement for the ballot question, and should not be added. He suggested removing the words "improving same by way of" on the ballot question in order to shorten the language.

Town Attorney Randolph indicated that although the Preservation Foundation was paying for the expenses of the Sea Gull Cottage, it would be inaccurate to say "at no cost" to the Town because there could be unforeseen expenses in the future.

Motion made by Councilman Coleman, seconded by President Pro-Tem Goldblum to adopt Resolution No. 84-05, as amended with the deletion of the words "improving same by way of" in the ballot question. On roll call, motion carried unanimously.

- b. Decision Regarding Specific Location.
[Peter B. Elwell, Town Manager]

Reg Stambaugh, on behalf of the Preservation Foundation, stated that from a historical

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perspective the Landmarks Preservation Commission recommended the location west of the Bradley Pavilion. Mr. Stambaugh noted that at the site, the lower elevations had standing water. He added that the Preservation Foundation requested Urban Planner Ray Gingros to provide a report of the most accommodating location for the use of the Cottage, while respecting the historical context.

President Pro-Tem Goldblum commented that he attended the Landmarks Preservation Commission meeting, and the conversations from the residents adjoining the park indicated that they did not want their view of the lake interrupted. He requested to take into consideration a location east of the Pavilion.

Councilman Kleid commented that although the Landmarks Preservation Commission chose the location for the purpose of preservation, open views in the middle or east end of the Park should be considered.

Mr. Mashek, President of the Preservation Foundation, indicated that the middle location was the first preference of the Landmarks Preservation Commission, but historically the west location was more appropriate. He added that the Preservation Foundation supported either position.

Wendy Victor, of the Landmarks Preservation Commission, indicated that the west location would allow state grants and state funding, but the middle location would not block the views to the water.

Town Manager Elwell suggested deferring today, until input from Mr. Gingros had been received.

Mayor McDonald stated that he changed his position because the locations with the view of the water was as important as a purely historical preservation site.

In response to Councilman Coleman, Town Manager Elwell explained that the Lake Trail could be extended and would be compatible with the Park.

Mr. Stambaugh recommended that the Council make the decisions as to the west location for preservation of the historical Cottage, or the middle location to ensure the view for the adjoining property owners.

Motion made by Councilman Wyett, seconded by Councilman Coleman to defer the decision of the specific placement of Seagull Cottage, to the December 13, 2005, Town Council Meeting to await the report of Urban Planner Ray Gingros, specifically requesting that the report include not only the western-most site, but also the middle site in Bradley Park. On roll

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call, the motion carried unanimously.

B. New Business

1. Medical Care Commission Request for Funding.
[Peter B. Elwell, Town Manager]

Town Manager Elwell recommended \$20,000 from the General Fund contingency account for the Medical Care Commission for services of a person with health care systems expertise to provide part-time contractual staff assistance to the Commission, as requested in his memo dated November 22, 2005, in the backup.

Dr. Michael Dennis, 1231 North Lake Way, Chair of Medical Care Commission, stated that in order to carry out the responsibility of the Commission, an administrative person was needed with the skills conducive to a health care environment. The Town staff was unable to provide support because of the current workload and the specialized nature necessary for the position.

Motion made by Councilman Wyett, seconded by Councilman Coleman to approve appropriation of \$20,000 from the General Fund contingency account for part-time contractual staff assistance for the Medical Care Commission. Upon roll call, the motion carried unanimously.

2. Follow up to Hurricane Wilma. [Peter B. Elwell, Town Manager]
 - a. Extension of "Off Season" Construction Hours and Related Matters

Town Manager Elwell addressed the Memorandum of November 17, 2005, from Veronica Close, Director, Planning, Zoning & Building, which recommended that construction hours be extended and noise restriction relaxed to allow additional time for recovery of Hurricane Wilma. The request was consistent with actions taken last year in the aftermath of Hurricanes Frances and Jean .

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Motion made by Councilman Coleman, seconded by Councilman Wyett to approve staff recommendations for the extension of construction hours and relaxed noise restrictions. On roll call, the motion carried unanimously.

b. Hurricane Bonus for Town Employees

Town Manager Elwell addressed his memorandum of November 21, 2005, and recommended recognition of all the Town employees who rendered outstanding service during Hurricane Wilma to receive "hurricane bonus" pay in accordance with the same methodology as applied last year after Hurricanes Frances and Jean.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum to approve a "hurricane bonus" for Town employees; and approve the methodology used to become part of a policy related to storms in the future; the costs would then be mostly reimbursable through Federal Emergency Management Agency (FEMA). On roll call, the motion carried unanimously.

c. Review of Lessons Learned

Town Manager Elwell presented information provided by the staff of lessons learned from Hurricane Wilma listed on his memorandum dated November 22, 2005.

Mayor McDonald noted that it became clear, while working in the EOC and trying to communicate with people, that the Town needed a better method of communications than what they currently had.

President Brooks commented that the 10-watt radio system did not work, especially at night. He suggested that the Town meet with assignment editors of each of the broadcast facilities during a hurricane recovery.

President Pro-Tem Goldblum called attention to the reverse 911 system, but Police Chief Reiter indicated that in order for it to operate, the telephones had to be working.

Mr. Elwell suggested researching other systems on the market.

Yveline Marix, 1570 N. Ocean Boulevard, commented that she had lost all communication

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after the Hurricane. She suggested that the electronic speed limit signs that were placed on the side of the streets, could be used as a tool for communication to the public.

The Town Council recommended that staff research a better method of communication to residents during storm events.

President Brooks stated that he and other Council members visited the Emergency Operations Center (EOC) during the recent hurricane. President Brooks said he was of the opinion that the Council could be debriefed as a whole, whenever council members were present at the EOC. President Brooks requested that Mr. Elwell secure Mr. Randolph's opinion on this, and have a response at or before the December 13, 2005, meeting.

Mike Stein, of the Medical Care Commission, expressed concern about the Sunshine Law impeding its ability to do what was mandated. Mr. Stein commented that as a result of the Sunshine Law, it would be difficult for the Commission to function.

Town Manager Elwell explained that the imposition the Sunshine Law placed on the Town Council was passed in order that the business that pertained to the public was done in front of and with the participation of the Town residents.

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

Finance Director Jane Struder discussed the Status Report of Delinquent Accounts, referring to her detailed memorandum to the Mayor and Town Council, dated November 15, 2005, and included in the back-up material.

Ms. Struder explained that the report included a spreadsheet indicating the annual delinquent accounts excluding EMS charges and parking tickets as of September 30, 2005, for a total \$88,427. She advised that since the report was prepared, payments had been received reducing the total to \$47,810.

Ms. Struder advised a full-time Medical Billing Specialist had been hired during FY 2005 to improve in the collection of EMS fees. The EMS billing process takes many months to complete,

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and the results of these efforts would be seen in FY 2006.

Ms. Struder requested the authority to write off the following monies deemed uncollectible:

- ▶ Delinquent Accounts in the amount of \$47,810;
- ▶ Uncollectible EMS fees in the amount of \$26,346;
- ▶ Outstanding Parking Tickets and Penalties issued prior to September 30, 2002: \$169,359.

In response to Councilman Coleman, Ms. Struder advised that the Town would continue to pursue collection of these monies. She explained that especially relating to the parking tickets, the collection service would continue to try and collect on outstanding tickets. The Town would continue to carry the balances.

In response to Councilman Coleman, Ms. Struder stated that penalties were accrued in the Town's revenue. She advised that the Town writes off, three years back. The Town does have an allowance for doubtful accounts, which was established on the books, reflecting the write offs as well as accruing the interest on the revenues that have not been written off. She advised that the success rate in collecting parking tickets was 84%.

In response to Councilman Wyett, Ms. Struder advised that cars were booted but many of the offenders that were sent to the collection agency were from out of the state.

In response to President Brooks, Ms. Struder advised that the Town writes off back to three years for parking tickets, but the Town carries an allowance of doubtful accounts on the books that was current.

Councilman Wyett made a motion to authorize "writing off" of the following:

Delinquent Accounts in the amount of \$47,810.
Uncollectible EMS fees in the amount of \$26,346.
Outstanding Parking Tickets and Penalties issued prior to September 30, 2002:
\$169,359.

The motion was seconded by Councilman Coleman.

In response to President Pro Tem Goldblum, Ms. Struder stated that the addresses of people being transported were obtained either off their licenses or from medical information by the EMS

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responders.

Fire Rescue Chief Edward Moran advised that information was either obtained from the patient or patient's family. He noted that sometimes a drivers license was presented and sometimes the information was outdated. He stated that the Fire Department was instituting a policy to make more attempts to obtain accurate information for billing purposes. He advised that they would also communicate with the hospital to insure they both have the same information.

On roll call, the motion carried unanimously.

4. Presentation Regarding Impact of Historic Landmark Designation on Property Valuation.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning and Building Department Veronica Close discussed the Preservation Foundation Report - Economic Comparison Study of Designated Landmarked Residential Properties Un-designated or Non-Landmarked Residential Properties, referring to her detailed memorandum to the Mayor and Town Council, dated November 21, 2005, and included in the back-up material.

Ms. Close advised that the Florida Appraisers and Consultants, Inc. compared landmarked properties with non-landmarked properties to determine if there was any gain or loss in property value.

Mr. Reginald Stambaugh, Executive Director, Preservation Foundation of Palm Beach, stated that the mission of the organization was to preserve historic properties in Palm Beach. He advised that they would like to take an active role in designating properties as historic or landmarked, and to disprove that designating properties, as such, had a negative impact on the value of the property.

Mr. Stambaugh stated that the Preservation Foundation would like to be proactive along with the Town, in designating properties as historic. He advised that the Town of Palm Beach had a "no owner consent" Ordinance, which means the owner does not have to agree to the landmarking of their property. He advised that one of the missions of the Preservation Foundation, for this coming season, was to identify five historic properties that would be eligible for landmarking.

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Mr. Stambaugh advised that this report was the back up for their mission, proving to the Town Council that landmarking does not have a negative impact. He discussed historic districts and the impact that they create. He stated that Mr. James Fallon, Vice President of The Florida Appraisers and Consultants, Inc., had prepared the report and was present to answer any questions.

Councilman Coleman thanked the Preservation Foundation for the report and encouraged the Preservation Foundation to try to educate the community. He advised that he was opposed to landmarking properties without the owner's consent, because he believed landmarking could be done in a more positive manner through education.

President Brooks stated that the Town Council had always been sensitive to an owner's consent and agreed with Mr. Coleman's thrust on good education.

Mr. Stambaugh stated that they, too, wanted all owners to willingly agree to having their properties designated.

Councilman Wyett thanked the Preservation Foundation for their work. He cited a property in Town that was for sale, where the owners did not agree with the findings of the report. He advised that potential buyers were afraid they would not be able to renovate or make changes to the property approved by the Landmarks Commission. He suggested that changes should be made and advised that, in their workshop, they should study the ability of a potential buyer of a landmarked property having the right to change the landmark status. He noted that a provision was needed where there were financial hardships because the land may be appreciating but not the house. The house then was depreciating the land.

Councilman Coleman stated that he would like Landmarks to be viewed by the community as an advocate rather than antagonistic force. He encouraged a message that the Town was flexible, without hurting the integrity of preservation, and that Landmarks was a sympathetic and welcoming venue. He added that Landmarks could be an effective advocate, if the community had a comfort level with it. He stated that there was marketing to be done in order for Landmarks to be viewed as having a friendly environment.

Mr. Stambaugh, responded to Councilman Coleman's statement, advising that was the greatest concern that the Preservation Foundation had as an advocate. He explained it was something he would continue to talk about. He added that they did want to assist the Landmarks Commission in projecting to the community, the importance of a working relationship with an owner. He stated that, presently, there was a cloud over preservation, which seemed to have come from the feeling that the Landmarks Commission was not adaptable. He added that he did believe

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that currently, the Town had a great Landmarks Commission.

Councilman Coleman stated he was not being critical of Landmarks but that Commission members were wearing two hats, a preservation hat and a marketing hat. He explained that the success of preservation in Palm Beach would be successfully wearing both of those hats so that the community would rather go before Landmarks than the Architectural Review Commission (ARCOM).

President Pro Tem Goldblum stated that it was discovered, last year, that landmarked homes were not being inspected often enough and were deteriorating. The Code was changed so that the homes would be inspected every year and that was a practice that needed to be watched.

Mr. Stambaugh stated that he agreed with President Pro Tem Goldblum and advised that he has set out to identify those landmarked buildings that need assistance. He added that he tries to work with Town staff to make sure those properties are protected.

President Brooks advised that the Town Council, at the request of staff, accepted the report of Preservation Foundation - Economic Comparison Study of Designated Landmarked Residential Properties and Un-designated or Non-Landmarked Residential Properties.

Town Manager Peter Elwell stated that staff would set up a workshop date to discuss the recommendations of the Landmarks Preservation Commission, which resulted from the Four Winds study.

5. Palm Beach Public School Update.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning and Building Department Veronica Close provided a status report on Palm Beach Public School Construction Site, referring to her detailed memorandum to the Mayor and Town Council, dated November 21, 2005, and included in the back-up material.

In response to President Brooks, Ms. Close stated that the school would be able to accept students by the second semester. She noted that the contractor's deadline was very early December, and they were working very hard to get to that point.

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6. RESOLUTION NO. 87-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing and Directing the Mayor to Execute a Memorandum of Agreement with the U.S. Army Corps of Engineers for the Purpose of Cost Sharing in Beach Placement of Sand Associated with Maintenance Dredging of Lake Worth Inlet Navigation Projects. [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil, recommended the authorization of \$575,000 as cost sharing for placement of Lake Worth Inlet maintenance dredging material on the dry beach within the U.S. Army Corps of Engineers (USACE) disposal site; and, authorization by the Mayor to execute the Memorandum of Agreement to facilitate the transfer of funds. Mr. Brazil explained that Resolution 87-05 would facilitate placing sand on the dry beach in the pre permitted disposal area. This was the mechanism allowing the Town to pay the USACE the incremental cost difference between placing it in the near shore, and placing it on the dry beach. Mr. Brazil noted that in the backup the source of funding was changed to the Coastal Management Bond Proceeds Construction fund.

Mr. Brazil noted that the 204E, Memorandum of Agreement would allow that the Town would become the local sponsor of the Sand Transfer Plan Improvements, but it would continue to be a USACE project. The Town would expedite, design, and implement the project and any expenses the Town incurred would be refunded by the USACE. The Florida Department of Environmental Protection (FDEP) would refund the Town 50% of any work the Town did outside the USACE that was currently planned in their project.

Town Manager Elwell commented that for the Town to be a local sponsor and manager of the Sand Transfer Plant Improvements project using federal funds was a very significant step forward.

Dr. Sanford Kuvin, submitted a letter to the Town Council, and complimented Mr. Brazil and the Public Works department with the cleanup of the Town following Hurricane Wilma. Dr. Sanford read his letter into the record. Discussion took place regarding several items:

- The Town had never paid any money for sand, but the tradeoff was that by purchasing the sand, the USACE would always place it on the dry beach;

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- He and other residents of Sea Isle Estates, received a letter from Mayor McDonald, dated November 18, 2005, instructing that the Town would go to court for authorization of access to the area between bulkhead line and water line at the north end of Sea Isle Estate homes for the purpose of potential construction of a second buried pipe discharge further south on the beach at some future date;
- It would be a costly multimillion dollar project to taxpayers that would extend a second buried discharge pipe from existing sand transfer plant between 1800 and 2600 feet south from the jetty and associated with 800 square feet concrete motorized one-story booster pumping plant directly adjacent to the south jetty of Palm Beach;
- In 1963, a supplemental declaration, by the developer of Sea Isle Estates dedicated the north end of Sea Isle Estate properties to be used as a private beach for the exclusive use in common of all the owners of the plat;
- According to section 134.1700 of the Code, no structure shall be erected in the Town, east of the Town's bulkhead line along the ocean front, except erosion control devices;
- Consultants' reports of placing the pipe indicated that north end property would lose beach footage, and the south end of the pipe would gain beach footage; and
- There was no evidence that a permanent buried pipe, never designed or tested would put sand into the flow by bypassing the current discharge outfall.

Mr. Elwell responded that the concepts of the pipeline proposed by coastal engineers as necessary in order for the Sand Transfer Plant to function effectively was to bypass the sand and benefit the entire beaches of the Town, because so much sand now becomes impounded in the north end. The Town Council requested that the Mayor sign the letter as a courtesy to explain the Town's intentions. Staff and Town Attorney Randolph prepared the letter specifically to the Sea Isle Estates residents. The 1963 document that Dr. Kuvin referred to may or may not affect Mr. Randolph's opinion, but there was a hiatus area between bulkhead line and the ocean, not owned by anyone. The deeds to the Estates convey that they own up to the bulkhead line. It was necessary for the Town to go to court to declare a trustee because there was no one who was a successor to the corporation who developed the Sea Isle Estates, decades ago, in order to proceed with the project.

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Dr. Stan Lilja commented that he agreed with the placement of sand on the beach where it belonged, but questioned why the cost would be another million dollars. He noted that he read the letter that Dr. Kuvin wrote and that the letter threatened a few Town residents with court action. Dr. Lilja indicated that in the letter, there were disguised issues and intentions.

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

**** The Town Council Meeting of October 11, 2005 was reconvened at 2:12 p.m.****

Mr. Elwell read Resolution 87-05 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY CORPS OF ENGINEERS FOR THE PURPOSE OF COST SHARING IN BEACH PLACEMENT OF SAND ASSOCIATED WITH MAINTENANCE DREDGING OF LAKE WORTH INLET NAVIGATION PROJECTS.

Motion made by Councilman Wyett, seconded by President Pro-Tem Goldblum to adopt Resolution 87-05. On roll call, the motion carried unanimously.

Attorney Guy Rabideau, on behalf of the owner of 143 Inlet Drive, stated that the property fronts on the beach area where the spoil would be deposited according to Resolution No. 87-05. He advised that his client supports this Resolution, but had reservations regarding the letter received from Jack McDonald, in particular the future pipeline burial.

Attorney Rabideau advised that he was familiar with the presentation Dr. Kuvin made expressing his objections to the Town Council, earlier in the meeting, which his client fully supports. He stressed that his client believed the buried pipeline and associated projects would not only severely affect his property values, but also his rights on the beach area. He advised that his client was more than willing to fight this in anyway possible.

President Brooks advised that his comments were now on the record and requested Mr. Elwell take them into consideration.

Councilman Coleman advised that the Town Council was not discussing a pipeline today,

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and when and if the Council discusses a pipeline, he would welcome the gentleman's comments.

Councilman Wyett stated that if Attorney Rabideau's client was one of the owner's of the inlet area where all the sand was now currently built up from the sand transfer plant, then they had brought that upon themselves. He advised that the Town had to search for a way to get the sand south. He stated that if the owners had allowed the Town, when it was requested, to use bull dozers to move some of the sand, as it built up to move it down the beach, to allow it to move down in a natural manner, the Town would not have to go to the expense of building a pipeline. He noted that the Town did not go to court to fight with these property owners.

Councilman Wyett defended the Mayor and his signing of the letter. He stated that he did not believe the letter was underhanded, and objected to Dr. Kuvin's description of the letter.

Councilman Wyett explained that it was the Town's belief that the deeds to the property only show ownership to a certain point, and not all the way down to the high water mark. They were asking who owns that, and whether the Town has any rights to use it; and this would be decided outside this Council.

President Brooks reiterated to Attorney Rabideau that his comments were part of the record, and when this issue becomes germane, he was welcome to come back to address the Council.

7. Changes to the Code Compliance Program.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning and Building Department Veronica Close discussed the changes to the Code Compliance program, referring to her detailed memorandum to the Mayor and Town Council, dated November 17, 2005, and included in the back-up material.

Ms. Close advised that in response to concerns that the Town Council had raised in the past, regarding pursuing code compliance more aggressively, staff was in the process of advertising for a part time Code Compliance Officer.

Councilman Coleman advocated an aggressive position of fines and penalties.

President Brooks stated that he agreed with Mr. Coleman and did not see a problem with the Town being more punitive, citing a case from the minutes at the Code Enforcement Board Meeting of August 18, 2005.

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Ms. Close responded that the Code does have provisions to issue a notice that has a fine attached to it. She explained that the Uniformed Code Citation process was not used all of the time. She stated that it might be appropriate, once the part time code Compliance Officer was on board, to review all of those issues to see which ones could be added to that type of system, and which ones would benefit from another type of process.

Councilman Kleid stated that he heartily endorsed this, as Chairman of the Committee of the Town Council, which was in charge of Code Enforcement. He advised that he had been pushing for something like this because he believed the way it was previously done, the Code violator was given a long period of time; and if he finally cured prior to the Code Enforcement Hearing, nothing was done.

Mayor McDonald stated fining a violator without giving them a chance to dispute their fine, he believed, would not be allowed by Florida Statutes. He said due process, an opportunity to be heard, had to be given. He added that he believed Mr. Kleid's comments were right on point.

Councilman Wyett made a motion to approve the changes relating to the Code Compliance Program. The motion was seconded by Councilman Kleid. On roll call, the motion carried 4/0. President Pro Tem Goldblum was temporarily out of the room.

IX. ORDINANCES

A. Second Reading

None

B. First Reading

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

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Finance]

Finance Director Jane Struder advised that staff recommended approval of Ordinance No. 17-05, which would give the Town Manager authorization to waive false alarm charges during extended power outages caused by major storm events.

Councilman Wyett made a motion to approve Ordinance No. 17-05 on first reading, subject to the reading of the Ordinance. President Pro Tem Goldblum seconded the motion.

In response to Councilman Kleid, Town Manager Elwell explained the two standards that would be applied to this Ordinance.

1. The outage must exceed twenty-four hours;
2. The area of the outage must exceed 20% of the Town.

Mr. Elwell stated that those were minimum thresholds, because when there were outages of that size and for that long, they would usually cover most of the Town and for many more days. He explained that there could be isolated situations, where during the restoration process, there would be areas that did have power, then lost it intermittently, suffered from repeated alarms, due to the surges that go through the system as power was being restored. He commented that Councilman Kleid was correct that some residents would get the benefit of getting fees waived.

Town Manager read Ordinance No. 17-05 by title, as printed above.

On roll call, the motion carried unanimously.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Kleid commented regarding a midday traffic problem at the Southern Boulevard roundabout, caused by the shutting down of the Lake Worth Bridge. He noted that no traffic police were in evidence, and that he had called the Police Department to report the problem, and was told that an officer would be dispatched to assess the situation. He suggested that staff review the costs and feasibility of placing cameras at strategic places in the Town to monitor traffic, with the aim toward having quick police response to traffic jams.

Councilman Wyett commented that some beautiful old trees were lost in the recent

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hurricanes, and he suggested that Town staff review the condition of the larger trees to trim them so that in a hurricane, the winds could pass through.

XI. DEVELOPMENT REVIEWS

A. Appeals

1. Brazilian Court Construction Extension Request.
[Veronica B. Close, Director of Planning, Zoning, and Building] **Request for Deferral to the December 13, 2005, Town Council Meeting Per Letter Dated November 22, 2005, From James R. Brindell.**

DEFERRED to the December 13, 2005, Town Council Meeting.

B. Time Extensions

1. Request of Richard DeMatteis, 416 Seabreeze Avenue Regarding Special Exception #2-2005.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Ziska; Councilman Kleid via a conversation with Attorney Ziska; President Brooks walked the property.

Attorney Ziska, on behalf of the applicant, stated that the Town Council had granted a special exception in January 2005, to allow the placement of gates at 15' instead of 18'. She advised that Mr. DeMatteis, since that time, found he was having difficulty running the electric from his garage, which was located toward the back of the property, to the front. She noted that the applicant was exploring different options - battery operated or use of a generator. He did not want to have his landscaping and driveway area damaged. She explained that Mr. DeMatteis was requesting additional time to figure out how to operate the gates, by meeting with electrical contractors, over the next season. She noted that the applicant lives in New York, most of the time, and was requesting a time extension of their previous approval.

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Councilman Wyett stated that the applicant had a full year to accomplish a minor problem. He reported that the Town had automatically granted, due to the hurricane, a thirty-day extension, and he was against setting a precedent by granting a three-month extension. He advised that he would move to deny the request; and instead of getting the requested three-month extension, the applicant would receive the automatic thirty-day extension that the Town was granting. He noted that he would grant an additional thirty days, giving the applicant sixty days to solve this problem, which would be more than sufficient.

In response to President Brooks, who advised that the applicant was asking for a one year extension, Councilman Wyett stated that his point was then even more valid.

Councilman Coleman stated that thirty days was sufficient. He advised that it appeared these gates were not important enough to the applicant or he would have been present today.

Attorney Ziska advised that her client did want to come back before the Council to request removing the requirement for automatic gates, and asking for manual gates. She explained that she convinced her client to try to work it out, perhaps using a battery.

President Brooks stated that what was being discussed were just regular gates, and he would only grant thirty days to get it fixed. In addition, he noted that the property looked shabby. He said that living in New York was not relative to this issue, and the applicant had an obligation to keep the property presentable.

Councilman Wyett noted that he had made a motion for thirty days, and the Town was granting an additional thirty days due to the hurricane.

Attorney Ziska asked if that meant her client had sixty days to file for a permit?

Councilman Wyett advised that it was sixty days to solve the problem. He noted he did not know what the Planning, Zoning and Building Department's requirements were; and if it required the applicant to complete the project by then or to obtain a permit by then?

Attorney Ziska replied it was to obtain a permit.

Councilman Wyett made a motion to deny the request of Richard DeMatteis, 416 Seabreeze Avenue, for a one year time extension. The applicant would receive an automatic thirty-day extension granted by the Town due to Hurricane Wilma, and an additional thirty days would be granted by the Town Council. The applicant would have a total of sixty days

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to solve the problem. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

- a. VARIANCE #37-2005 The application of Gloria M. Daigh relative to property described as the North 90 feet of Lot 82 and the South 56.4 feet of Lot 83, Singer Addition to Palm Beach; commonly known as 515 S. County Road; located in the R-B Zoning District. Variance request to increase the roof height in a nonconforming side yard setback 8.2 feet from the north property line in lieu of the 12.5 foot minimum setback required; and, variance request to change the roof style which would increase the amount of structure in a nonconforming angle of vision of 120° in lieu of the 116° maximum allowed.

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

Attorney James Brindell, on behalf of the applicant, explained that the house was an existing one-story house that was 53 years old. He noted that the flat roof would be replaced with a sloped roof.

Architect Jacquie Albarran, presented architectural renderings and photographs, pointing out the location of the house. She noted she was the architect for a previous owner; and at that time, all of the ducts located on the roof had been replaced, and they had almost replaced the entire roof. She stated that currently everything was leaking and that the roof should have lasted a lot longer; but due to the hurricanes, flat roofs were having many problems. She pointed out that there was still water sitting on the roof from rain that occurred about a week ago. She also explained that the duct work which was located on the roof, because that was the only place it could be located, had been

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replaced twice and needed to be replaced again. She reported that it was an eyesore for the neighbors and explained the plan to correct that situation.

Attorney Brindell explained a variance was needed because part of the slope of the roof was in the setback, was in the angle of vision, and the structure was nonconforming, which they were requesting to expand.

In response to President Pro Tem Goldblum, Architect Albarran advised that there would be no duct work placed on the roof.

President Pro Tem Goldblum stated that he did not want to see any duct work or air-conditioning units placed on the roofs of homes in the Town of Palm Beach.

Zoning Administrator Paul Castro stated that staff questioned the hardship as it related to the variance. He advised that the Architectural Review Commission recommended approval of the variance because of the improved architecture. He noted that the variances were de minimis as it related to the side yard and the angle of vision.

Councilman Coleman made a motion to approve Variance #37-2005. The motion was seconded by Councilman Wyett. On roll call, the motion carried 4/1. Councilman Coleman, Councilman Wyett, President Pro Tem Goldblum, and President Brooks casting affirmative votes. Councilman Kleid cast a dissenting vote, stating he did not see a hardship.

- b. SITE PLAN #8-2005 WITH VARIANCES The application of Linda A. Gary and Michael Belisle relative to property described as Adams House Lot 3; commonly known as 419 Chilean Avenue; located in the R-C Zoning District. Request for site plan review for a modification to the previously approved site plan to enclose an atrium of the townhouse at 319 Chilean Avenue, covering an area of 298 square feet; request for variance to allow an increase in the building coverage of 39.91%, in lieu of the 38.68 % existing and 35% allowed; and, request for variance to allow a reduction in the landscaped open space of 32.50%, in lieu of the 33.74% existing and 35% minimum required.

Ex-parte communication was declared by Councilman Kleid with the owner and his attorney;

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President Pro Tem Goldblum walked through the house with Attorney Kolins and the owner; President Brooks with Attorney Kolins' assistant Gretchen; and Councilman Wyett with Attorney Kolins' assistant Gretchen; Councilman Wyett received several calls from the owner, but they missed each other.

Attorney Ronald Kolins, on behalf of the applicant, explained that the variance request was to enclose an existing and totally interior atrium of a townhouse. He stressed that the enclosure of the atrium would not be seen externally by anyone. He pointed out, presenting a site plan and photographs, that the townhouse was located within a cluster of four townhouses, with each one having a similar atrium. He advised that two of the townhouses had already enclosed their atriums, and the applicants propose to enclose their townhouse in the same manner.

Attorney Kolins stated that there was a legal hardship, because the property lies at a flood plane elevation of 5' which was 2.5' below the Town's minimum. He explained that as a consequence, the atrium tends to flood. The water not only enters the unit but creates mold and mildew. He advised that the applicant was unable to go into the atrium to properly trim and maintain it, because it was constantly moist. He said it was a breeding area for mosquitoes and other pests.

Zoning Administrator Paul Castro commented that staff does question the hardship, and the hardship criteria should be addressed. He stated that one of staff's main concerns was the drainage.

Attorney Kolins advised that the drainage issue was reviewed with their engineers who assured them that all drainage would be retained on the applicant's property.

Councilman Kleid requested the history on the two townhouses that had enclosed their atriums.

Zoning Administrator Castro stated that they were probably enclosed in the 1980's. He advised that he did not understand how they were permitted to do this, without having to come back to Council, because a site plan review was required to modify the landscape open space as well as the lot coverage. He noted that he did not believe they came before the Council in those situations.

Councilman Wyett made a motion to approve Site Plan #8-2005 with Variances. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 4/0. Councilman Wyett, President Pro Tem Goldblum, Councilman Kleid and President Brooks casting affirmative votes. Councilman Coleman had temporarily left the room.

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Councilman Kleid stated the reason he was voting to approve this item was that he believed there really was a health issue, and this request was a way to solve the problem.

3. Old Business- More Than 15 Minutes

- a. **MODIFIED SITE PLAN REVIEW #4-2005 WITH SPECIAL EXCEPTIONS** The application of Sunset Avenue Corp., Brad Bleefeld, Vice President and Treasurer, relative to property described as Lots 190 and 200 inclusive, Floral Park; commonly known as 235 Sunset Avenue; located in the C-TS Zoning District. This application is a request to construct a new two-story synagogue and Jewish Learning Center on a 1.09 acre parcel of land fronting on Sunset Avenue. The building will have 200 seats on the second floor totaling 2,400 square feet and a social hall, kitchen, and office totaling 5,600 square feet on the ground floor. The building will sit on two lots with frontage on Sunset Avenue. A total of 67 parking spaces will be provided. In addition to functioning as a synagogue, and in common with other religious facilities, this facility will also be used for non-profit cultural purposes such as lectures, art exhibits, Torah study groups, and other special events. Such uses are allowed by right in the C-TS district. The application requires approval of a special exception use for a synagogue in the C-TS district; special exception approval for a two-story building in the C-TS district; and, site plan review approval to construct the improvements identified above. *Deferred from the June 14, 2005, July 12, 2005, and October 11, 2005, Town Council Meetings.* **Request for Withdrawal Per Letter Dated November 21, 2005, From James R. Brindell.**

WITHDREW Modified Site Plan Review #4-2005 with Special Exceptions from the Agenda earlier in the meeting.

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- b. SITE PLAN REVIEW #7-2005 WITH VARIANCES The application of Ajit Asrani TR, Ajit Asrani Trust relative to property described as Lot 5 and the west 85 feet of Lot 6, Block E, Royal Park Addition; commonly known as 215 Brazilian Avenue; located in the R-C Zoning District. Site Plan Approval requested for a modification to the site plan of the Plaza Inn, to construct a 3-story hotel with a total of 50 rooms, to add a 90-seat function room/44-seat dining room (same room with 13 bar stools), to reconfigure the site plan by relocating and redesigning the swimming pool and associated deck, and adding a 59 car parking garage under the structure in lieu of the surface parking lot previously approved. This increased the number of parking spaces available to 59 from the approved 36 plus 6 valet spaces. Variance requested for a front setback of 25 feet in lieu of the 28.4 feet required because of building height. Variance for a rear setback of 5 feet in lieu of the 30 feet required by code, a variance of 25 feet. Variance for a lot coverage of 38.09% in lieu of the maximum 34.7% previously approved by variance and 30% allowed by code. Variance for landscaped open space of 16.25% in lieu of the minimum code requirement of 35%, and previously approved variance of 21.1%. Variance to allow a reduction in parking stall width to 8.5 feet in lieu of the 9 feet required by code for spaces number 39 and 40 on the accompanying parking garage plan. Variance for a building height of 28.4 feet from zero datum in lieu of the maximum 23.5 feet allowed by code for a two story building, a variance of 4.9 feet. Variance for an overall building height of 36.4 feet from zero datum in lieu of the 31.5 (w/sloped roof) feet allowed by code, a variance of 4.9 feet. Variance related to sub-basement off-street parking facilities so that the roof of such sub-basements may be hardscaped areas in lieu of being "sodded, landscaped and maintained" as required by code. Variance related to sub-basement off-street parking facilities so that visible evidence of such underground use (the ramp) can be seen from public street in lieu of no visible evidence of such facilities from a public street as required by code. Variance related to sub-basement off-street parking facilities so that storage areas, as indicated on the parking plan, can exist under required yards in lieu of only parking facilities. *Deferred from the August 9, 2005, September 13, 2005, and October 11, 2005, Town Council Meetings.*

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Ex-parte communication was declared by Councilman Kleid via a meeting with the owner on the property; President Pro Tem Goldblum walked the property twice with the owner and spoke with Attorney Brindell; President Brooks had several communications over the past two/two and a half years; Councilman Wyett had many communications over the past several years, currently none; Councilman Kleid via a meeting with the owner previously, and via a meeting with at least one of the people from the adjoining property.

Attorney James Brindell, on behalf of the Plaza Inn, advised that the following persons were present today:

Ajit Asrani, owner of the Plaza Inn
Architect Ralph Cruz-Munoz
Attorney L. Louis Mrachek , Page, Mrachek, Fitzgerald, Rose, P.A., Co-counsel for the applicant

Attorney Brindell explained that in 2004, the hotel received approval to demolish and rebuild a new, expanded three-story hotel to the east, and to reconfigure the pool/patio area and surface parking lot. He advised that the applicant decided that there were further modifications that would benefit the project, the neighborhood, and consequently the Town; and in June 2005, an application was filed to modify the April 2004 application.

Attorney Brindell, presented architectural renderings, to point out and review the following:

- ▶ The elevations that were approved in 2004 for the hotel, in particular, the west elevation which faces the Brazilian Apartments;
- ▶ The south elevation, of the current approval, facing out onto the street;
- ▶ The proposed west elevation, which shows a dramatic difference in terms of architectural style:
 - More of a residential style - the hotel is located in a residential R-C District;
 - Residences located on same street have architectural elements very similar to the proposed design.
- ▶ The original approval in April 2004, had a function room and food service area on the east side of first floor; dining room and bar on west side (side facing pool and patio).
- ▶ The proposed plan moved function room over to west side; a number of new doors

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proposed out onto the patio - 12 doors off the general area on the first floor area out to the west side. April 2004 approval had six doors.

Attorney Brindell explained that Mr. Asrani had conversations with the neighbors who expressed their concerns regarding the function space, which was right next to the patio area. He advised that Mr. Asrani decided to make additional changes to the proposed plan.

- ▶ The function room and the food service area would be moved back to the east side of the first floor.
- ▶ The bar area and dining room would be moved over to the east side of the first floor instead of on the west side. The seating remains the same at 144 seats.
- ▶ Reduction of the number of doors to the exterior, on the west side, to six, as currently approved.

Attorney Brindell stated that the building would have 6' added onto it in the east/west direction allowing the rooms to have 3' more of depth to them. He added that this would make for a more functional, better sized room. The rooms would be about 500 square feet or less. The rooms presently were about 225 square feet, which were extraordinarily small.

Attorney Brindell explained that, under the present approval, the eastside of the building was only 10' away from the alley separating the property from commercial space on County Road, immediately to the east. He advised that another part of the approval would be to move the building 10' to the west. The west building face would become 16' closer to the westside of the property remaining nearly 90' away from the west property line, far in excess of the required side yard setback; the eastside yard setback, which was currently a nonconformity approved in the current plan, would be reduced from 10' to 20'.

Attorney Brindell explained that the 6' addition was only for the first two floors, not for the third floor. The third floor retains the same dimensions as the current building, length and width wise. He noted that the front setback was the same as previously approved, 25' which was what the current building was. The rear setback was the same as currently approved, 5'.

Attorney Brindell stated that there were currently 24 surface parking spaces, and under the approval in 2004, surface parking was reconfigured to create 36 parking spaces, 6 of which were valet only parking spaces. The proposal placed all of the parking underground, increasing the number of parking spaces to 59, which was a tremendous improvement.

Attorney Brindell advised that on top of the parking garage there would be a combination

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of landscaped areas, seating areas, a linear reflecting pool, the normal pool area, and a gazebo. The improvement would be substantial.

Attorney Brindell discussed the revised plan for landscaped open space stating it would be increased to 32.6%, which included the areas on top of the garage where there would be enough soil to grow plants. If that area was not included, it would be 16.25%. The currently approved plan provides for 38.5% landscaped open space in the front yard, with the Code requiring 35%, and the new plan provides 42.57%, even if the landscaped areas over part of the garage, were not counted, that were in the front yard. If those were counted, it would be up 53.65%. He noted that this would be a substantial improvement over the current plan with regard to the setback from the landscaping area from the street.

Attorney Brindell discussed other differences between the current plan as opposed to the present approved plan.

- ▶ Building mass to the pedestrian looks bigger, because it was, on the currently approved plan.
- ▶ The proposed plan has a sloped roof which goes back, sloping away creating a sense of lowering the building.
- ▶ The approved plan had an elevator override, it had a tall element in front, and it had equipment on top of the building. All of these would be eliminated. The roof system would have a residential look to it.

Attorney Brindell advised that the applicant appeared before the Architectural Review Commission (ARCOM) on August 24, 2005, which approved the design as meriting the variances. The overall plan reduces the potential impacts to the neighbors on the west, substantially improved the quality of the views of those neighbors and of the general public, created substantially more parking places, created more landscaped areas, provided a residential style of architecture which fits in better with the neighborhood and removes all of the accessory elements on the roof, which were in the current plan.

Attorney Brindell requested Mr. Asrani identify photographs that were taken by him. The photographs were labeled applicant's Exhibit 1.

Mr. Asrani explained that the photographs were taken on October 15, 2005, shortly before the hurricane, from a bucket truck that came to trim back some of their palm trees. The pictures were taken from the 4th floor of the adjoining building, at that height, looking eastward toward their building.

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Attorney Brindell stated the point of presenting these pictures was the concern expressed that views from Brazilian, of the ocean, would be obstructed by the new building. He advised that the photographs showed that, presently, there really was no view of the ocean, and what view they did have was not very nice compared to what would be seen in the new plan.

Attorney Brindell discussed the two types of approval before the Town Council. The site plan approval and several variances.

- ▶ A variance to allow a front yard setback of 25'.
- ▶ A rear yard setback variance for 5'.
- ▶ A variance for a lot coverage of 38.09% in lieu of 30%.
- ▶ A variance for landscaped open space of 16.25% in lieu of 35%. This did not count the areas on top of the garage that actually would have soil with plants, that could be irrigated and drained.

Attorney Brindell discussed the Code relative to landscape open space and how the proposed area meets Code requirements.

- ▶ A variance to reduce the parking stall width from 9' to 8.5' for two spaces - spaces 39 and 40.

This relates to columns that would need to come down and he noted that was not an unusual situation and believed it occurred with the underground parking at Neiman Marcus.

- ▶ A variance for the building height of 28.4' in lieu of 23.5', which would allow for two stories in this district. He noted that they would have three stories in the 28.4'. The building height to the top of the tie beam that was approved in the current approval.
- ▶ A variance of the overall building height of 36.4' in lieu of 31.5' allowed by Code for a two-story building. He noted that was the difference between the building height at the top of the tie-beam and the 8' for a sloped roof rather than a flat roof.
- ▶ A variance to allow the roof of the garage sub-basement to have hardscape areas in lieu of sodded, landscaped, and maintained areas.
- ▶ A variance to allow visible evidence from the street of underground use, which would be the ramp.
- ▶ A variance to allow the pool equipment and storage areas in the underground garage.

Architect Ralph Cruz-Munoz explained that the property did not have the room to allow for the ramp to be configured any other way and explained how they proposed to place the ramp. He advised that the pool equipment, storage areas were all under the building. He explained that the hardship relative to the side yard, the front yard and the rear yard setback variance had to do with the depth of the lot. He mentioned the circumstance was the same as the applicant had before in the

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approved application in 2004.

Attorney Brindell stated that the hardship relative to the lot coverage variance was that the applicant had to increase the lot coverage, if the parking was placed underground, to allow for more parking.

President Brooks requested those persons, in support of the proposed plan, come up to speak, at this time.

Mr. Leslie Evans, owner 214 Brazilian Avenue, located immediately to the south of the property, stated that there was not enough parking at the Plaza Inn currently, and the new plan addresses that concern. He noted it would be a welcome improvement, as was the additional green space area over the parking garage. He advised that Mr. Asrani had been a good neighbor who kept his property in good condition, who was very supportive of the Greater South County Road Association, and who was a good member of the community. He stated that he fully supported Mr. Asrani's project, which would be nothing but positive for the entire Town.

Mr. Peter Dupries, Palm Beach resident since 1992, commented on the additional parking and the improvement to the look of the parking lot. He recommended the proposed plan.

President Brooks requested those persons that objected to the proposed plan come up to speak, at this time.

Attorney Ray Royce, on behalf of the Brazilian of Palm Beach Association, Inc., a Condominium Association for the Brazilian Apartments located at 227 Brazilian Avenue, stated that he was also present on behalf of the various owners of apartments, many of whom had written letters to the Council objecting to the application.

Attorney Royce, presented photographs, to show that the Brazilian Apartments were located west and immediately adjacent to the Plaza Inn property. The Brazilian Apartments building was approximately 10', no more than 15' from the west property line of the Plaza Inn, and many of the apartments face out on the east side of the apartment house, which was the west side of the Plaza Inn. He stated that the Brazilian Apartments building was very close to the Plaza Inn and would be greatly affected by the application. He advised that, on behalf of his clients and residents of the apartments, he objected to the application and requested that the Town Council deny it.

Attorney Royce advised that he was before the Town Council back in 2004, during the months of March and April; and at that time, a presentation was made and the applicant agreed,

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ultimately, to remove the fourth floor. He noted that once that was done, there were no further comments or objections. He explained that since this application has only three floors, the height and view of the ocean were not significant issues. He pointed out that the building was, in fact, a little taller, because it had gone from a flat roof to a peaked roof.

Attorney Royce stated that at the Architectural Review Commission meeting, it was suggested that the parking ramp be moved so it opened up onto the circular driveway near the entrance of the hotel. The reason was that if valets or guests were placing cars into the garage, it could be done at the front door of the hotel and not on Brazilian Avenue. ARCOM requested the parking ramp be reconfigured. He suggested how that could be accomplished so there would be less congestion on Brazilian Avenue as well as a reduction in noise.

Attorney Royce stated that his clients did not really object to the asphalt parking lot because it had not been a nuisance or a problem over the years. He explained that what concerned them was the hardscape, all of the promenades, fountains, pools, because they were perfect venues for outdoor entertainment such as cocktail parties, musical aggregations, and other such activities. He explained these activities would draw a lot of people, and there would be inadequate parking as well as problems with noise, lighting, relating to functions held adjacent to a residential area. He noted that the Plaza Inn would no longer be a boutique hotel, but it would have a 44 seat dining room and another 90 seat function area or convention area.

Attorney Royce stated that his clients' major concern was the potential problems associated with having outdoor entertainment adjacent to residential properties.

Attorney Royce placed letters into the record. He stated that the letters indicated there were 15 variances that were previously given in 2004. He advised that Attorney Mrachek had written to one of his clients advising there were 13 variances not 15, in 2004. He noted that this application was for an additional 10 variances, some of which were similar to previous variances, and that the Council was being asked to approve 23 variances in less than two years.

Attorney Royce read a list of documents that he placed into the record advising that he would provide copies to Attorney Brindell, to Mr. Mrachek and to the Town Clerk.

1. 2004 Zoning Application
2. Minutes of the March 9, 2004 meeting relative to this meeting.
3. Minutes of the April 13, 2004 meeting which confirms that the Town Council granted these prior variances, and that the property was located in the R-C Zone.
4. Letter from Zoning Administrator Paul Castro dated April 27th to Mr. Brindell

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- confirming approval of the results of the 2004 meeting.
5. Deed to Mr. Asrani in 1990 conveying the property to him, subject to all valid Ordinances, and a matter of public records in the public records of Palm Beach County.
 6. Copies of the Town of Palm Beach Occupational Licenses for the restaurant and the bar which shows that it was an operating restaurant/bar, operating hotel, licensed in Palm Beach.
 7. Copies of the same documents from Palm Beach County showing that it had also been approved in Palm Beach County and properly licensed as a hotel and restaurant.
 8. 2005 Zoning Application, which Mr. Brindell addressed.
 9. Copies of Town Code Section 134-201, which sets forth the criteria for obtaining variance.
 10. Copies of Town Code Sections 134-386, 134-387, 134-388, and 134-392, which relate to non-conformities, since this was a nonconforming building and nonconforming use.

In response to Attorney Royce, Mr. Castro stated that the building was both a nonconforming use and a nonconforming building.

11. Copies of staff reports from Planning, Zoning and Building signed by Mr. Castro on August 8, 2005 that requests that they demonstrate hardship on the variances because there appears to be none. There was a comment from Tim Frank, Planning Administrator, which stated that it did not meet any of the criteria, and needed a special meeting on August 26, 2005.
12. 16 letters from concerned residents.

Attorney Royce pointed out that the applicant was a nonconforming use, at the present time. He quoted Town Attorney Randolph from page 68 of the minutes of March 2004, Town Council Meeting:

“Town Attorney Randolph commented that he believed that this was the first time that the Building Department had heard that this may be a total rebuild, as opposed to a renovation, and a variance for the 50% rule to allow a nonconforming structure to be rebuilt was one thing. However, it was another thing to allow a use which was not otherwise allowed in the district. He explained that the hotel use was a nonconforming use in the district and once the whole structure was torn down the use would no longer be in effect. A variance could not allow for a use in an area that was not otherwise allowed.”

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Attorney Royce advised that the subject came up again in April 2004, and quoted Attorney Randolph from page 47 of those minutes:

“Mr. Randolph, referring to the 50% demolition rule, said the Council cannot by variance allow for a use within a zoning area that is not otherwise allowed by Code, and when a use is destroyed entirely, that use is gone. He continued that if the Council granted a variance to the 50% rule, in a sense, it would be allowing for a use which is not otherwise allowed in the area.”

Attorney Royce said that the next sentence from the minutes stated:

“Mr. Castro said he agreed with that ruling.”

Attorney Royce stated that even if the parking garage area was found to be attractive, he believed there was a severe legal problem in granting a variance that allows a building to be torn down and rebuilt because it was a nonconforming use. The use would go out of existence, and then by variance, you could not put a new nonconforming use on that property. He pointed out that the applicant could proceed with the 2004 approval, and the time to appeal that approval had passed. He explained that the 2004 approval contains many of the same improvements to the hotel that this proposal contains, but did not contain the hardscape area that his clients' fear would become a terrible nuisance and problem.

In response to President Brooks request, Attorney Royce stated he would make copies of the cases he read into the record and present them to the Town Clerk, at a later time.

Attorney Royce stated that the point of this case was that there must be a hardship and it could not be a self-imposed hardship. An economic disadvantage or a desire to make more money was not a hardship. He noted that the applicant had a large piece of property. The applicant had reasonable use under the R-C Zoning, and because they have an existing hotel that they were operating, with valid licenses to operate; they had reasonable use under the 2004 approval and there was no hardship.

Attorney Royce stated that the applicant already had three reasonable uses.

1. Reasonable use as it was now;
2. Reasonable use by way of the 2004 approval, which he could implement;
3. The right to pursue a reasonable use pursuant to the R-C Zoning.

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Attorney Royce in his summation, stated that Mr. Asrani bought the property in 1990, pursuant to the deed described earlier, subject to zoning. He explained that Mr. Asrani knew that he was buying property that was subject to certain zoning codes and advised that he was operating as a hotel for 15 years and had current licenses to do that. He stated that according to Mr. Castro, the hotel use and the hotel building were both nonconforming. He advised that the applicant wants to enlarge a nonconformity, contrary to the Town's Ordinances. There were no new hardships since 2004, and that there was no hardship in this case.

Ray Angle, 227 Brazilian Avenue, Unit 3-D, stated he lived adjacent to the property in question, and expressed his concern over the west wall being moved closer to his unit. He stated that, he did wish the applicant success, but the proposed plan would diminish the value of his property. He explained that the underground parking appeared to be a good idea, but the concern was for ongoing disputes relative to noise pollution, and how the above garage area would be used in the future.

Zoning Administrator Paul Castro reiterated that the property was a nonconforming use and there were several nonconforming uses within the Town's residential zoning districts that were hotel type uses. The Code does contemplate within Section 134-201 the allowed expansion for that type of nonconforming use, specifically Section 134-201(6), which speaks to allowing additional expansions, if other findings were found. He noted that one of those findings was that proposed variances would be compatible to the surrounding uses, achieving the preservation of the subject use, without opening the possibility of the incursion of uses incompatible with the immediately surrounding area and there were other findings there. He advised that he was paraphrasing.

Mr. Castro discussed staffs' comments and concerns:

- ▶ Applicant should demonstrate hardship - staff questions the hardship of many of the variances being asked for because of the expansion of the nonconforming use;
- ▶ Declaration of Use Agreement should be entered into, that specifically outlines use of every aspect of the property as it relates to noise, hours of operation, valet service, the outside area, the dining areas, the pool function areas, and the overall use of the hotel and its amenities;
- ▶ Declaration of Use Agreement should be brought back to the Council for its consideration and approval;
- ▶ Application approval should be for this applicant only and no one else. Staff requests that any subsequent applicants would have to come before the Council to obtain these approvals again;
- ▶ Staff was concerned with regard to the neighbors and the compatibility of the hotel

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- with the surrounding residential area, specifically the area above the garage;
- ▶ Public Works Department had concerns as it related to the drainage within the garage and the ability to pump the water out of that garage if there was a storm event;
- ▶ Public Works questions the engineering as the applicant has not provided any documentation on how they would keep the garage dry, how they would drain the garage out;
- ▶ Police and Fire Departments had concerns regarding what was being stored in the garage, questioning if there were a fire in the garage, how would they be able to serve that garage;
- ▶ Applicant was required to sprinkle the garage.

Attorney Lou Mrachek explained that he believed everyone would agree that the reconfigured project was better than the old project except for the fear Mr. Royce raised regarding musical aggregation and the noise problems. He advised that there were two things that happened if there was a variance challenge. He noted one was that it gets worked out 99% of the time, or two, that it goes to court with the applicant bearing the brunt of the case.

Attorney Mrachek formally objected, as hearsay, to the 16 letters, from unit owners, and noted that the applicant had not seen these letters. He explained that he was objecting, because at the last presentation, a statement had been made, under oath, that was not the truth. The applicant disproved the statement that the fourth floor of the apartment complex had views of the ocean, in a variety of ways. He stated that whoever made that statement, was not telling the truth. He said that he did not know what facts were in these letters, but he was objecting to them as hearsay; and if there were facts, in the letters, that said the writer was opposed to this application, because they did not like musical aggregation, the applicant would object to those facts.

President Brooks advised that Mr. Mrachek's objection was noted, but the Town Council does accept letters into the record.

Attorney Mrachek stated that the applicant found themselves in a funny situation, having presented a better project, which was being subjected to a variance challenge. It was an interesting policy choice of whether you want good development on one hand or the potential for litigation and settlement on the other hand.

Attorney Brindell stated that the parking ramp suggestion, at the ARCOM meeting, was made by one person, Mr. Shaw, and was not part of the motion of approval.

Attorney Brindell addressed the following concerns:

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- ▶ Four or five parking spaces, addressed by Mr. Castro, as being difficult to get in and out of, could be made valet only spaces;
- ▶ Drainage concerns would be satisfied with the applicant working with their consultant, Tom McCarthy;
- ▶ Request for fire sprinklers would be satisfied;
- ▶ Request for a Declaration of Use Agreement would be satisfied.

Attorney Brindell presented suggestions to four conditions.

1. No live music or other entertainment of any kind on the west patio area unless the Brazilian Apartments Board agreed to it;
2. No loud speakers used on the west patio at any time;
3. Not allowing the west patio to be used for social and business gatherings prior to 8:00 a.m. or later than 10:00 p.m. on any day or night. Agreeing to this would not preclude hotel guests from swimming in the pool or being on the west patio area who were not part of some group;
4. All lights on the west patio would be shielded to shine down and not produce light and glare onto surrounding properties; lights on the west patio would be turned off by 10:00 p.m. every night, except for minimal security lighting.

Attorney Brindell stated that he believed that his four suggestions would address the concerns the Brazilian Apartments had regarding the use of the west patio area.

In response to Councilman Coleman, Mr. Munoz stated that the proposed plans were started in March or April of this year.

Councilman Coleman asked if there would be two existing approvals on the same property or would there be one approval, if the Council approved this application today?

Attorney Brindell stated that if an approval was granted today, it would not be totally affective until the appeal period had passed, or if an appeal was filed, until the appeal was resolved.

Discussion ensued regarding the financing for the present approval and for the proposed approval. Mr. Asrani advised that he would provide the name of the financing company which was based in Miami. He stated that obtaining the financing would not be a problem, as there was plenty of equity in the property.

Councilman Coleman noted that the proceedings today were about the hardship that runs

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with the land, and about the minimum variance that was required. He noted that the discussion pertaining to optimizing aesthetics and optimizing values were not relevant. He stated that the financing question raises credibility issues and the co-counsel said "truth is important."

Attorney Brindell stated that hotels that were fifteen years or older, were in a special category through Town policy. In 1990-1991 Zoning Season, the Code was amended to provide special relief through the variance process for hotels that were fifteen years and older because of the Council's desire to help them remain viable. He explained that Mr. Asrani came in the 2001-2002 Zoning Season requesting the placement of hotels back into the R-C Zoning District where they had been located at one time. He stated that was approved on first reading by the Council, and the Council then had second thoughts, because of concerns about opening the R-C District to hotel projects. He stated that, at the same time, they did express a desire to continue helping existing hotels to remain viable without encouraging new hotels in the R-C District. On second reading, the Council voted it down stating that the variance process was a satisfactory vehicle for applicants to deal with various issues relating to hotels, but were not opening up the whole R-C District to hotels. He explained that was the process Mr. Asrani was advised to continue and use after the 2002 Zoning Season.

Attorney Brindell advised that with additional input, a better project was conceived with the assistance of Architect Munoz, not only from his point of view, but from the Town's point of view, from the neighborhood's point of view, the compatibility.

In response to Councilman Coleman, Attorney Brindell stated it was the same hardship as before, which was for hotels, such as the Plaza Inn, to remain viable. He explained the applicant was not asking for additional rooms, or to expand the hotel, but was asking to make the hotel better so that it could remain viable.

In response to Councilman Coleman's discussion regarding the sensitive issue of greenspace, Attorney Brindell stated that the reality was that they were developing more space with permeable places for plants, which according to Code provisions cited earlier, comply with the concept of landscaped open space under the Town's Code. He noted that the applicant does disagree to that, and was complying with the Code.

Zoning Administrator Paul Castro stated that there were not many aspects of the proposal before them today that were better than the first proposal, specifically the architecture, which could be incorporated into the original proposal. He reviewed additional concerns of staff.

- ▶ The entire property would have to be excavated to build the parking structure

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elevating it somewhat at the deck from the street with the ramp to the garage being seen.

- ▶ Ventilation fans have to run all the time to ventilate out the exhaust.

Councilman Wyett stated that the question comes down to what would be better for the Town? He noted on one side there was an old obsolete hotel, which was becoming more and more difficult to operate. He said that it was really deteriorating inside, and it was not reasonable for it to be renovated.

Councilman Wyett discussed the potential the underground parking lot presents, with an area of open landscaping, that one finds at fine hotels. He stated that he found the proposal to be superior.

President Pro Tem Goldblum asked Mr. Castro if the hardship rules were different for this operation than for a normal hardship?

Attorney Randolph responded that they were not different except that there was additional criteria, under the Town's variance criteria, for the continuation of historic hotels, and that was the category the applicant came under. He advised that it says that in addition to the criteria that have to be met for the continuation of the hotel, you have to still meet the criteria for a hardship that you normally have to meet. He stated that if there was no hardship to the land, you would still have to meet the hardship criteria.

President Pro Tem Goldblum stated that you would still have to have the hardship to the land.

Mr. Castro stated that, as part of the criteria addressed by Mr. Randolph, it contemplates the continuance of the hotel, not a brand new hotel. It contemplates being able to make improvements to the hotel that was there so it would be more viable, as it relates to the use of the hotel, and to preserve it.

In response to President Pro Tem Goldblum, Mr. Castro advised that the variances that had been approved were valid for the previous project and would be valid for this project, if they did not change, such as the side and the overall height. The variance for the rear and the front were needed, because they changed.

In response to President Pro Tem Goldblum, Attorney Brindell stated that they had been talking with the noise consultants relative to the exhaust fans. He submitted into the record, a memo

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of a technical analysis from the consultants, which concluded, that at the property line, these fans should be substantially lower in noise than the Town's 58 decibel limit.

In response to President Pro Tem Goldblum, Mr. Munoz advised that the fans closest to the property to the west were 32 feet away. The company did the estimates and from the property line, the noise from this fan would be 41 decibels, which was substantially lower than 58 decibels. He advised that normal conversations, without microphones, were about 60 decibels, and a refrigerator inside one of those units produces about 50 decibels. This fan was a lot quieter than any noise from the Brazilian Apartments.

In response to President Pro Tem Goldblum, Mr. Munoz stated that the slope from the ramp going to the garage would start in from the sidewalk.

President Pro Tem Goldblum asked if the applicant would be willing to not use the west portion of the open space after dark? He noted the swimming pool, specifically.

Mr. Asrani stated that they had not done that for 16 years. He advised that they do not plan to do that and could agree to that request.

President Pro Tem Goldblum stated that they would need that in writing.

President Brooks advised that Mr. Castro stated Mr. Brindell agreed to a Declaration of Use Agreement, and suggested adding to the agreement, "after 8:00 p.m.", since then we were dealing with day light savings and standard time.

Mayor McDonald stated that he had a legal issue because it was a nonconforming property and a nonconforming use. He asked that if the building was demolished, how under the Town Code, could they build a new building, if the use was extinguished?

Attorney Brindell stated that they would probably disagree that the use was extinguished, if it was part of a process.

Mayor McDonald request Attorney Randolph to restate his opinion for the benefit of Attorney Brindell.

Attorney Randolph advised that he did state his opinion twice before and that the opinion was the same and was based upon the fact that once the use was gone, it could not be resurrected. The purpose of that section of the variance criteria, which says that if you were allowing historic

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hotels, that were in conformity with the neighborhood, to continue was to allow those nonconforming structures to be expanded upon, etc. He explained that the obvious argument to the contrary was that one has the ability to grant a variance to the 50% rule. He stated that he believed that would be one of the arguments to be made here, that yes, you were destroying more than 50%; but that one has the right to give a variance from that. He noted that he believed that argument was used before and also believed that there were two sides to the argument. He thought it made sense not to allow a use to continue once that use was destroyed.

Mayor McDonald advised Mr. Brindell that he did not want the Town Council to act on this proposal, if in their opinion, it was not something that could be granted.

Attorney Brindell stated that the same discussion was had in April 2004, and the Town Council granted approval. He explained that, conceptually, he believed there was a big difference between someone coming in and demolishing a building on a piece of property, just to get the building out of the way and have a nonconforming building or nonconforming use; and then down the road, they want to rebuild it. He thought that was very different from a project like this where there was continuity of plan approval, building permit, demolition, and reconstruction. He stated that he believed it was conceptually different.

President Brooks stated that in July 2001, Mr. Asrani requested that his hotel be placed in the R-C District, which the Council denied. He stated that Council said he could proceed on the variance route. He believed that the Declaration of Use Agreement could satisfy many of the concerns. He stated he could support Attorney Brindell's analogy based on the fact that the old hotel was down, but a better, new hotel was to be put up.

Councilman Kleid advised Attorney Royce that he was going to ask him a direct question, which he did not know if he could answer. He then asked him, assuming that the applicants agreed to a Declaration of Use Agreement, along the lines that were discussed, did he feel his clients would withdraw their formal objection?

Attorney Royce stated that he did not know that he could give him a definite answer, because his clients were not present. He advised that he would have to take the document to them to review and make that decision. He noted he did not have the authority to approve a document he had not seen. He added that he would speculate that it would have a good effect.

Councilman Wyett made a motion to approve Site Plan Review #7-2005 with Variances, subject to a Declaration of Use Agreement specifically outlining every aspect of the use of the property, as it would relate to the outside areas, the dining areas, and the pool function areas;

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agreement to be presented for approval at January 10, 2006, Town Council Meeting. President Pro Tem Goldblum seconded the motion.

Discussion ensued regarding the garage entrance, Architect Munoz explained the applicants position on the location, and the expense of same. Attorney Brindell suggested that the applicant would agree to reevaluate the parking garage and come back with another analysis at the January 10, 2006.

Attorney Randolph requested that the maker of the motion include a finding that the motion was based upon the application having met all of the criteria of the Ordinance of relating to the granting of variances.

Councilman Wyett and President Pro Tem Goldblum both agreed.

Attorney Randolph stated that the conditions discussed today not be enumerated in the motion, since the Council was requiring the applicant to come back with the Declaration of Use Agreement for approval at a subsequent meeting.

Attorney Brindell agreed stating that was a normal process. He added that the concepts have been outlined and need to be put into writing and Mr. Royce needs to look at it; then the applicant would come back before the Town Council.

Attorney Royce requested that all drawings shown by the Architect become part of the record and that they could obtain copies of them.

Director of Planning, Zoning and Building Veronica Close stated that staff wanted to add two comments. She stated that if it was the Town Council's intention to work on further driveway amendments, staff would request the Council to instruct them to work with the Town's parking engineer.

President Brooks stated that from what he understood, the driveway the way it was presented, was the way it would remain. He asked if Ms. Close was objecting to that?

Ms. Close stated that not at all, and recommended that if this was going to come back before Council, it be a date certain in January, because two weeks in December was not enough time for staff.

Attorney Brindell agreed with that.

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Councilman Coleman requested that staff sign off stating that it was not practical to go into the garage, going from east to west, when they come back before Council. He wanted staff to sign off that they had taken a look at that, as part of the Declaration of Use Agreement.

Councilman Wyett amended the motion to include a finding that the motion was based upon the application having met all of the criteria of the Ordinance relating to the granting of variances. The Declaration of Use Agreement to finalize the application would be presented to the Town Council at their January 10, 2006 meeting.

Attorney Royce discussed the appeal process and requested that his appeal period be addressed by Attorney Randolph.

Attorney Randolph suggested that the 30 days to appeal runs from the rendition of a written order of today's meeting, and suggested that there not be a written order until the Declaration of Use Agreement was complete.

In response to Attorney Royce, Attorney Randolph stated the action was not really final until that time that there was a written order, and then the appeal period would start 30 days from that time, if there were to be an appeal.

On roll call, the motion carried unanimously.

Councilman Kleid explained that as a person who did not vote on the previous variances, because he was not on the Council, but was bound by those variances, he was convinced that the new project was better for the Town and was hopeful that the Declaration of Use would satisfy the neighbors; and therefore, he voted yes.

- c. VARIANCE #36-2005 The application of Seminole BD, LLC, Patrick DiSalvo, Principal relative to property described as Lots 47 and 48, except the East 10 feet of Lot 48, Block 5, Ocean Park, H.W. Robbins Addition to Palm Beach; commonly known as 214 North County Road (proposed 201 Seminole Avenue); located in the R-C Zoning District. Variance requested to allow construction of a new

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two story residence on a lot with an area of 9,668 square feet in lieu of the 10,000 square foot minimum required in the R-C Zoning District. *Deferred from the October 11, 2005, Town Council Meeting.*

Ex-parte communication was declared by Councilman Kleid via a conversation with the attorney and looking at the property with the owner; President Pro Tem Goldblum with Attorney Maura Ziska; and Councilman Wyett with Attorney Maura Ziska, a couple of minutes ago regarding what happened at the Architectural Review Commission (ARCOM).

In response to President Brooks, Councilman Wyett stated that, at the October 11, 2005, Town Council Meeting, he made the motion to send this application to ARCOM; and that Mr. Brooks had added to the motion that the comments made by Council should accompany the application.

Councilman Wyett stated that his request was for the application to go to ARCOM to review the site plan and the massing of the building on the site; because he believed; as did others, that there was too much house for the property, and it was too close to the rear lot line, as it related to the house behind it.

Attorney Maura Ziska, on behalf of the applicant, advised that they had been before the Town Council at the October 11, 2005, Town Council Meeting, where they presented a plan for a new house on the corner of County Road and Seminole. She explained that the request before them was for a variance to build a new house on a nonconforming lot. She advised that the house meets Code, in all other respects, and would be treated as a site plan review.

Attorney Ziska explained that at the October 11, 2005, Town Council Meeting, a motion was made requesting the applicant return to ARCOM, so the concerns of the neighbor could be addressed as well as the massing along Seminole Avenue. She advised that since that meeting in October, the following changes were made to the application:

- ▶ Removed an entire second floor bedroom, the length of the house by 500' or 600';
- ▶ Moved the driveway to the east;
- ▶ Obtained an agreement from Palm Tran to move the bus stop on Seminole to County Road;
- ▶ Moved the A/C units as far south as possible and reduced their size putting the bigger A/C units to the rear of the property;
- ▶ Proposing a 6' high wall between the two properties, the property to the west and the

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- subject property;
- ▶ Eliminated many windows;
- ▶ Moved chimney (was on the west side) to the rear of the house in order to allow more planting;
- ▶ Proposing a row of Areca palms and adding much more landscaping to densely site screen the two properties;

Attorney Ziska advised that ARCOM did unanimously recommended the variance. She noted that ARCOM requested the applicant return before them to show what was done with that property line.

Architect Harold Smith, Smith and Moore Architects, noted some additional changes not discussed by Ms. Ziska.

- ▶ Increased the length of the 6' high wall to completely screen the entrance to garage;
- ▶ Moved the driveway entrance to the east;
- ▶ Eliminated the bay window;
- ▶ Removed bedroom suite above the garage to cut down on the massing.

Architect Smith , presented architectural renderings, to explain the modifications to the site plan and discussed the merits of the case.

In response to President Brooks, Mr. Smith stated that the total living area was 5,486 square feet, which has been reduced to 4,922 square feet for a reduction of 564 square feet. He noted that was a little over 10%. He added that it did not count the garage, but when adding in the garage, the covered loggia on the first floor and covered balconies on the second floor, the total square feet would be about 6000.

Attorney Leslie Evans, on behalf of Helen Barberian, stated that the applicant had made a good faith effort, which his client could live with. He added that he would have preferred to see the entrance on County Road instead of Seminole Avenue. He advised that the only thing he would add was that the police be asked to assist with parking problems associated with the Temple. He stated that Ms. Ziska had been very cooperative.

Zoning Administrator Paul Castro stated that the application does meet all the yard, lot and bulk requirements, as it had before. He advised that the applicant had worked with the neighbor, as stated by both the applicant and the neighbor to the west's attorney, in order to make it a more viable side as it relates to the needs to the neighbor to the west with the patio. He stated that staff

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recommends approval. He added that the Architectural Commission still wants to work on the massing and advised that he did not believe ARCOM had seen this proposal and it would have to go back to them as it relates to the massing, the size and the scale on the lot.

In response to President Brooks, Ms. Ziska advised that the applicant was scheduled to go back to ARCOM in December. She noted that they were going back not because of the massing, but to review the landscaping on the west side. She stated that ARCOM had seen the reduced plan, and they did like it and recommended approval of the variance. She said that the applicant was willing to work with ARCOM.

President Pro Tem Goldblum made a motion to approve Variance #36-2005. The motion was seconded by Councilman Coleman.

Director of Planning, Zoning and Building Veronica Close clarified for the record that the motion made by ARCOM was to defer the project to the December 16, 2005 meeting to restudy the architectural massing, to minimize the impact to the west.

President Brooks thanked Ms. Close for that but asked why this application was before the Town Council if ARCOM wants to review it again?

Ms. Close explained that ARCOM considered the variance request which was to build a single family home on a nonconforming lot in the R-C Zoning District. She noted that they did not have a problem with that, but they did have a problem with the massing, which was something ARCOM would ordinarily address as the applicant goes through the ARCOM procedure. She advised that was something ARCOM believed they would ordinarily do.

On roll call, the motion carried unanimously.

Councilman Wyett commented on the R-C District and that a larger house was allowed than in the R-B District by a wide margin. He said that in coming months, the Council should also look at the R-C District when discussing re-zoning.

* * * * *

At this time, Lesley Evans requested a waiver of the 60-day requirement for a permit to have

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a Menorah erected at Bradley Park for the Hanukkah holiday. Mr. Evans noted that he was unable to apply sooner because of the hurricane.

Town Manager Elwell explained that last year, as part of the settlement of prior litigation, very clear procedures were established for a private display during the holidays. He continued that last year, since it was the first year that new permitting procedures were in place, extensions were granted, however, that was a one-time extension only.

Mr. Evans was appealing the decision because of the hurricane, and that he had requested the permit within 45 or 50 days before the permit date.

Councilman Wyett said that since the lighting of the Menorah was on the 28th of December, instead of the 25th, he would vote to allow this one final exception.

Motion made by Councilman Wyett to allow an extension of a permit for Mr. Evans, to display a Menorah in Bradley Park.

Motion died for lack of a second.

Mr. Evans withdrew his request.

- d. SPECIAL EXCEPTION #19-2005 The application of Island Palm Restaurant Inc., tenant, relative to property described as Lots 11 through 17, Block 7, Revised Map of Royal Park Addition to Palm Beach; commonly known as 350 South County Road; located in the C-TS Zoning District. Special Exceptions requested (i) to expand a 4,300 square foot/150 seat restaurant to a 4,980 square foot/154 seat restaurant; and (ii) to relocate 20 seats to a proposed outdoor seating area on Australian Avenue. *Deferred from the October 11, 2005, Town Council Meeting.*

Ex-Parte communication was declared by Councilman Kleid and President Pro-Tem Goldblum with Attorney Maura Ziska, and the Island Palm Restaurant owner, Richard Day.

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Attorney Maura Ziska, on behalf of the Island Palm Restaurant, noted that she was accompanied by Richard Day, the Restaurant Operator. Attorney Ziska requested to expand the 4300 square foot restaurant by 680 feet into an existing room, indoors, and also relocate 20 seats to the proposed outdoor seating area on Australian Avenue. Ms. Ziska indicated the increase would be four seats, which would total 154. Attorney Ziska added that because Australian Avenue did not have a heavily-traveled sidewalk, there would be six to seven feet in between a table, a waiter, and the grass, and an adequate amount of room.

Councilman Wyett expressed concern about the request and mentioned the following issues: the photograph showed only one table against the windows, but with two tables there would not be enough space to move the chairs back and forth in order to seat patrons; safety for the waiter with a tray on his shoulder, the Town Council rejected previous requests by restaurants to use a sidewalk; the expansion would change the nature of the Historic District, which was not permitted, without the approval of the Landmarks Preservation Commission; and it would set a precedent for other restaurants.

Zoning Administrator Paul Castro commented that there appeared to be adequate space for the waiter and tables, but not for a waiter's station to set down the trays in order to serve patrons at tables on the encroaching sidewalk.

Planning, Zoning, and Building Director Veronica Close added that it would be conditional on Fire-Rescue's approval of the spacing of the seats.

In response to Councilman Wyett, Attorney Ziska replied that the original hours of approval were to begin serving lunch at 11:30 a.m., serve dinner until 10:00 p.m., and close at 1:00 a.m.

Mr. Day agreed with President Pro-Tem Goldblum's request not to serve anyone dinner after 9:00 p.m.

Attorney Ziska commented that Mr. Day said if the plates were brought to the tables, there would not be a need for trays.

Mr. Day informed the Council that typically, during the week, the restaurant was open until 10:00 p.m., and on Friday and Saturday until 11:00 p.m.; he responded to President Pro-Tem Goldblum that the tables would be cleared by 11:00 p.m.

Motion made by President Pro-Tem Goldblum to approve Special Exception #19-2005, if the tables were cleared by 11:00 p.m.

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Councilman Wyett commented that the approval was limited to only the corporate name, and if a noise factor arose, it would have to be re-evaluated.

Amended motion made by President Pro-Tem Goldblum to re-evaluate the noise factor in six months.

Mr. Castro suggested that at anytime the conditions of approval were not met, for example, no music, no noise, no seating after 9:00 p.m., and the tables cleared by 11:00 p.m., the Town Council would re-evaluate the Special Exception.

President Pro-Tem Goldblum finalized the motion to include the conditions of approval of no noise or music, no seating after 9:00 p.m., and the tables cleared by 11:00 p.m., and was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

4. New Business - More than 15 Minutes

None

5. Other

- a. Zoning in Progress for 2005-2006 Study Items, Except for the Alternative Development Standards, the Neighborhood CCR, and Re-zoning the R-B District Into Smaller Districts. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Close indicated that the Zoning in Progress was a

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standard action taken every year, once an outline of the proposed changes to the Zoning Code was completed, and this year Ms. Close proposed that the Town Council do that, but do not pass Zoning in Progress for Alternative Development Regulations, the proposed Neighborhood Cubic Content Index or the Concept of Rezoning, which included basements, sub-basements, Lake Trail Vista's wall, and lighting issues.

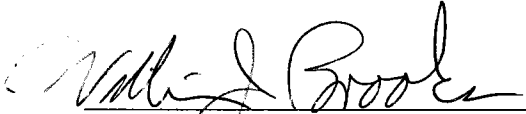
Motion made by President Pro-Tem Goldblum, seconded by Councilman Coleman to approve Zoning in Progress for 2005-2006 Study Items, but not approve the Alternative Development Regulations, the proposed Neighborhood Cubic Content Index or the Concept of Rezoning, which included basements, sub-basements, Lake Trail Vista's wall, and lighting issues.

XII. ANY OTHER MATTERS

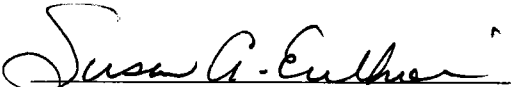
There were none.

XIII. ADJOURNMENT

There being no further business, the Town Council Meeting of November 30, 2005, was adjourned at 5:35 p.m.


William J. Brooks
President

ATTEST:


Susan A. Eichhorn
Town Clerk