TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON NOVEMBER 14, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting, was called to order on Tuesday, November 14, 2006, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Jane Day - Historical Preservation Consultant
Tim Frank - Planning Administrator
Charles Langley - Public Works Assistant Director
Edward J. Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

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

III. PRESENTATIONS

None

IV. COMMENTS OF MAYOR JACK McDONALD

THIS MORNING I WANT TO PRAISE A GROUP THAT REGRETFULLY DOES NOT RECEIVE MUCH PRAISE, AND THAT GROUP IS THIS TOWN COUNCIL. I WANT TO RECOGNIZE THEM FOR THEIR HANDLING OF THE STARBUCK'S ISSUE. WHAT STARTED OUT IN A PROCEDURALLY CONFUSING WAY ENDED IN A CALM AND DELIBERATE DECISION. I SERVED WITH VARIOUS COUNCILS OVER THE YEARS AND STARBUCK'S IS ONE OF THE MOST CONTROVERSIAL ISSUES I HAVE SEEN. REACHING A DECISION WAS A DIFFICULT ONE AND NO MATTER WHAT SIDE OF THE ISSUE YOU WERE ON, YOU SHOULD APPRECIATE THE TOWN COUNCIL FOR RESOLVING IT IN A PROFESSIONAL MANNER THAT FOLLOWED THE LEGAL REQUIREMENTS. THEY SHOWED LEADERSHIP AND A SENSE OF RESPONSIBILITY WHILE WORKING WITHIN THE FRAMEWORK OF AN ORDINANCE THAT PROVIDED NO FLEXIBILITY. THE DECISION TO DECLARE ZONING AND PROGRESS WHILE A NEW ORDINANCE WAS BEING STUDIED WAS A WISE ONE, AND DONE WITH THE INTENT TO PROTECT THE TOWN IN THE FUTURES. SO COUNCIL PERSONS, I APPLAUD YOU AND AS A SMALL TOKEN OF MY APPRECIATION, I WOULD LIKE TO INVITE ALL OF YOU TO BE MY GUEST TODAY AT LUNCH.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Coleman congratulated PB Cats, Inc., on their hundredth neutering.

President Coleman requested that discussion of condominiumization of hotel rooms be added to the Agenda.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve the addition of Item X.B.12 to the Agenda. On roll call, the motion carried unanimously.

Mr. Coleman requested that discussion of adopting an ordinance banning people that had been convicted of a code violation, to not be allowed to apply for any permits without appearing before the Council, as leverage to slow down the tempo of people who like to push the limits of the code.

President Coleman passed the gavel to add to the Agenda discussion of adopting an ordinance requiring anyone convicted of a code violation to appear before the Town Council to apply for a permit in the Town. Council Member Wyett seconded the motion. On roll call, the motion carried unanimously.

Mr. Coleman requested a discussion added to the Agenda regarding placing a limit to members participating by phone at the advisory committee meetings, as the frequency had been increasing.

President Coleman passed the gavel to add to the Agenda discussion of limiting phone participation by members at the advisory committee meetings. The motion was seconded by Council Member Wyett.

President Pro Tem Kleid indicated that the problem was not the members being on the phone, but that the system needed to be enhanced. At the last meeting of the Planning and Zoning Commission, at least two and three people were on the phone, which was very difficult for those in the audience to follow the conversations.

Upon roll call, the motion carried unanimously.

Mr. Coleman suggested to defer Item X.A.4., the consideration of the expansion of Town Hall for one month, as there may be some disagreement in the community, and that he would like the Town Manager to pursue leasing space at 250 Royal Palm Way on a permanent basis. He indicated that it would meet the Town's needs, save one or two million dollars of temporarily retrofitting it, had a number of parking spaces, and circulation would stay on Royal Palm Way. He noted that by deferring it before any opinions were expressed, the Council and Town Manager would be in a stronger position to negotiate with the potential landlord; at next month's meeting a complete list of alternatives could be presented.

Council Member Wyett commented that the subject needed to be discussed based on the Sunshine Law, as it could not be discussed outside of the Council Chambers.

Council Member Brooks said he was opposed to postponing the decision on Town Hall expansion, as the matter had been studied extensively, and that he would like to vote on the issue.

Motion made by Council Member Brooks to examine Mr. Matthews offer [as well as other concepts] at the December 12, 2006, Town Council meeting.

President Pro Tem Kleid indicated that he was opposed as well, that a great deal of time had been spent studying the subject, and it would be important to air it, even if no decision was made today. During the course of the discussion, the Council could add other opportunities to lease including Royal Palm Way.

Council Member Brooks withdrew his motion.

Council Member Wyett requested that discussion of the establishment of commissions to be added to the Agenda.

President Pro Tem Kleid commented that a lot of press attention had occurred because of the Town's position on the size of the flag at Mar-A-Lago, and the following of procedures for permitting this flag and landmarking approval. He explained that there was a lot of misinformation and in an attempt to keep the public informed, he read the following official response of the Town to anyone who speaks or inquires about the flag:

> The Town of Palm Beach affirms the right of everyone to fly the American flag. As in most communities, Palm Beach requires that all structures including flagpoles must meet certain regulations regarding construction, materials, location, size, etc. We are assisting Mr. Trump, as we would any resident, so that he may file the proper applications for his flagpole to comply with the Town's reasonable regulations. This issue is not about the flag, it is about the flagpole. It also is about the fundamental American principle that we are a nation of laws and apply these laws equally to all citizens.

Town Manager Elwell commented that the Traffic and Parking Improvement Plan would be deferred to December 14, 2006, Town Council meeting, as refinement of the writing and explanation of the analysis would ensure that the best quality product was provided to the public and the Town Council.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Suzanne Jones, manager of Spring Flowers Children's Boutique at 337 Worth Avenue and the corner of Via Mizner, requested that variances be discussed when all residents were in town, and that the Town Council reconsider the method of noticing and granting variances.

Responding to President Pro Tem Kleid, Mr. Elwell indicated that if there were complaints, a waiver of construction of work hours would be invoked, causing the extension of work hours to be withdrawn until the complaints were satisfied. As a result of this circumstance, staff had implemented a policy that anyone who requested an extension of time would be required to send a notice to all the people within the radius that might be affected, otherwise the request would be denied.

Planning, Zoning, and Building Director Close noted that staff had researched the code, and revised the policy so that anyone in the Worth Avenue district, of the 100, 200, and 300 block, requesting construction during the season, must notify surrounding tenants and owners within 200 feet. If a condominium, the condominium association could be notified, not each owner. All the business owners and tenants were required to be notified, at least 10 days in advance, to provide an opportunity for the Town Council to hear any impacts on the Avenue.

Zoning Administrator Castro clarified that certified notices were sent to only the abutting property owners and those that were adjacent or across the street. This policy was determined by the Town Council.

Ms. Close explained that staff was monitoring the situation and policies had been revised for the Worth Avenue District for construction work during the season. She continued that the department's policy at the present time was for the applicant to hand deliver or send regular mail in order to notify an extension of hours to all surrounding tenants and owners within 200 feet.

Town Manager Elwell commented that in order to ensure that the policy was implemented for the long term, an ordinance could be provided at the December 12, 2006, Town Council meeting.

Responding to Council Member Wyett, Mr. Elwell noted that if an applicant missed the deadline in notifying the tenants and owners, their request was deferred to the following Town Council meeting.

Council Member Wyett suggested that all the letters should be certified as they were opened more so than regular letters. He added that there needed to be some penalty for failure to comply with the policy.

Responding to President Pro Tem Kleid, Ms. Close clarified that in this particular waiver and in all the waivers, if problems occurred the job would be stopped immediately. She added that the applicant was required to sign an affidavit that they would mail the letters, and if it was determined that the letters were not mailed, their approval would be subject to recision.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to

request Town Attorney Randolph to prepare an ordinance for first reading for the December 12, 2006, Town Council meeting, to include the points discussed; a policy for mailing notification letters to tenants; a penalty for the applicants for not notifying residents according to Town regulations.

Nancy Briggs, 358 Seaspray Avenue, commented that the 200 feet for the required notice to residents may not be adequate.

Upon roll call, the motion carried unanimously.

Later in the meeting, Town Attorney Randolph noted that the proposed ordinance should be brought forward to the Planning and Zoning Commission for their recommendation to the Town Council..

Dr. Sanford Kuvin, East Inlet Drive, requested that there be discussion of Resolution No. 79-06, under the Consent Agenda, relative to the proposed bond issue of an amount not-to-exceed $14 million to finance the costs of the North Ocean Boulevard Seawall project, which was currently estimated at almost $3 million. He commented that the Council inform the residents of the intended disposition of the remaining $11 million, other than it being spent on other public facilities.

Town Manager Elwell clarified that the intent of the Resolution was to protect the Town's interest, by allowing the monies that were currently being spent for the seawall as cash to enable to be replenished through the bond.

Yvelene D. Marix, 1570 N. Ocean Boulevard, commented that an item on the Consent Agenda for $14 million involving the seawall was disturbing, and that the issue should be clear to those who would pay for it; she suggested that the Council return to the monthly Finance and Tax Meetings.

Raymond Snow, 255 Monterey Road, chairman of the Police Officers' Retirement Fund Board of Trustees, provided responses to questions that had been raised at the October 9, 2006, Special Town Council meeting regarding investment performance versus the 8% assumption rate and whether they were taking additional risks to meet their goal. He distributed an unofficial handout, and discussion took place regarding opportunities for savings through custodial efforts, and fund exposures affecting performances.

Dr. Sten Lilja requested more information regarding Resolution No. 79-06, which contained confusing language about the Town's declared but non-binding intentions. He also requested that Council explain to the residents regarding a staff statement that the 2000 Coastal Management Plan had been largely accomplished, as Reaches 1, 2, 5, and 8 had not been restored.

Heidi Torres, 339 Seaspray Avenue, commented regarding traffic and parking concerns on Seaspray Avenue. She suggested that speed bumps may help to slow the traffic.

Gail Coniglio, 1139 North Ocean Boulevard, commented regarding the Town Hall renovations, that the design concept would be submitted to the Landmarks Preservation Commission, and that the Seaview Tennis Courts Reconstruction Plan would be completed at one time, rather than in phases.

VII. APPROVAL OF AGENDA

The following changes to the Agenda were made:

ADDED Item X.B.12., discussion of condominiumization of hotels to the Regular Agenda, New Business.

ADDED Item X.B.13., discussion of proposal for the creation of an ordinance to regulate submittals of new applications when a property had been cited for and had not resolved code violations to the Regular Agenda, New Business.

ADDED Item X.B.14., discussion of phone participation at meetings by members of Advisory Committees, to the Regular Agenda, New Business.

ADDED Item X.B.15.,discussion of establishment of commissions to the Regular Agenda, New Business.

DEFERRED Item X.B.11., discussion of U.S. Army Corps of Engineers' Lake Worth Inlet Dredging Project to a Special Town Council meeting on November 20, 2006.

WITHDRAWAL of Item XII.C.2.a., Variance #36-2006, at 665 North Lake Way, per letter dated October 27, 2006 from Attorney Maura Ziska.

DEFERRED Item XII.C.4.a., Special Exception #10-2006, with Site Plan Review and Variance, Coco Palm Beach, to December 12, 2006, Town Council meeting.

TIME CERTAIN 4:00 P.M., Item XII.C.3.b., Special Exception #7-2006, Hebrew Academy.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to

approve the Agenda as amended. On roll call, the motion carried unanimously.

VIII. CONSENT AGENDA

A. MINUTES: OCTOBER 9, 2006
APPROVAL OF THE SPECIAL TOWN COUNCIL MEETING MINUTES

B. MINUTES: OCTOBER 10, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING MINUTES

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON OCTOBER 25, 2006.

D. RESOLUTIONS

1. RESOLUTION NO. 72-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Excluding Certain Already Designated Historic or Specimen Trees Located on Properties Within the Town of Palm Beach; Providing for the Recording of Said De-designations and Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County, Florida. (324 Cherry Lane)
[H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 73-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property (142 Seabreeze Avenue) Hereinafter Described and Stating That the Subject Property Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Veronica B. Close, Director of Planning, Zoning, and Building]

3. RESOLUTION NO. 74-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to General GMC Truck Sales for Supply and Delivery of One 2 ½ Yard Dump Truck.
[H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 76-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Amendment No. 2 to FDEP Contract No. H5PB2, Between the State of Florida Department of Environmental Protection and the Town of Palm Beach for the Bureau of Beaches and Coastal Systems 2004 Hurricane Recovery Plan Project Known as the Southern Palm Beach Island Dune Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town.
[H. Paul Brazil, Director of Public Works]

5. RESOLUTION NO. 77-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to EarthBalance Corporation for the Dune Vegetation Project, Sealed Bid No. 2006-11.
[H. Paul Brazil, Director of Public Works]

6. RESOLUTION NO. 78-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Standby Systems, Inc. for the Delivery, Installation and Start-up of One, 150 kw Generator and One 600 kw Generator for the D-2 Storm Water Pump Station.
[H. Paul Brazil, Director of Public Works]

7. RESOLUTION NO. 79-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Declaring the Town's Official Intent to Seek Reimbursement for Certain Capital Expenditures Made or to Be Made with Respect to the North Ocean Boulevard Seawall Improvement Project from the Proceeds of its Not to Exceed $14,000,000 Principal Amount of Bonds and Providing for an Effective Date.
[H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 80-06 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]

9. RESOLUTION NO. 81-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Local Government Agreement Between the State of Florida Department of Environmental

Protection and the Town of Palm Beach for the Palm Beach Harbor Maintenance Dredging Project and Authorizing the Town Council President to Execute Same on Behalf of the Town. [H. Paul Brazil, Director of Public Works]

E. OTHER

1. Extension of Right-of-Way Permit for Town Hall Window Replacement Project. [H. Paul Brazil, Director of Public Works]

2. Authorization to Purchase Fire-Rescue Vehicles. [Edward J. Moran, Chief of Fire-Rescue]

3. Approval of Payment Under Town's Supplemental Life Insurance Program. [Jane Struder, Director of Finance]

4. Re-Appropriation of Funds from General Fund Contingency for Online Parking Ticket Payments and Audio Minutes of Town Council Meetings. [Thomas G. Bradford, Deputy Town Manager]

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

IX. BOARD/COMMISSION ANNUAL REPORT

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

Planning, Zoning, and Building Director Close noted that the Evaluation and Appraisal Report, required by the state every seven years, was near completion and would be followed by an amendment to the Comprehensive Plan, which was approximately an 18 month procedure. Secondly, Calvin, Giordano & Associates, were the new planning consultants that would assist with the Comprehensive Plan Amendment, and the zoning season study items if needed. The department had completed its analysis of computer systems and would be making a recommendation, for the Council's approval, in time for implementation next year.

Harrison Robertson, 134 Seagate Road, chairman of the Planning and Zoning Commission, provided a brief report with the following comments:

Last season's agenda:

- Neighborhood CCR - the CCR as presently constituted was modified to involve the average CCR of the other homes on the street within 400 feet of the property subject to the CCR, and was talked down by north end residents;

- Siemen and Larsen Report related to the proposal at ARCOM and Landmarks Preservation Commission to use alternative development standards, rather than variances, report on reorganizing the code on special exceptions, which was not adopted; and

- The Town Council directed staff to study Royal Poinciana Way but not Royal Poinciana Plaza because of pending litigation. Mr. Robertson requested on behalf of the Commission and staff that Royal Poinciana Plaza be placed back on the agenda, as the two properties were considered as one for planning and zoning purposes.

This season's agenda:

- Possible placement of telephone communication antennae throughout the Town;

- Size and placement of generators;

- Condominium hotel use and conversion of hotels into condominiums;

- Variance criteria and possibility of creating new categories;

- Formula or chain restaurants;

- Delegating the authority of variances to another board or commissioner;

- Nightclubs as related to restaurants; and

- Underground utilities.

He requested that the Council keep the Planning, Zoning, and Building Department on the island.

Town Attorney Randolph suggested that the amendment to the zoning code on the motion previously made, relating to notice to abutting property owners, be added to the Planning and Zoning Commission's agenda. He noted that the proposed ordinance should be brought forward to the Planning and Zoning Commission for their recommendation to the Town Council.

Motion made by Council Member Wyett, seconded by Council Member Markin to approve the addition to the Planning and Zoning Commission's agenda: the proposed ordinance changing the notice requirements; the Planning and Zoning Commission to make recommendations to the Town Council. On roll call, the motion carried unanimously.

X. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager Bradford addressed the Town Council, requesting feedback on four specific items:

1. The Power Services, Inc. (PSI) report on the Cost Effectiveness of Underground Electrical Distribution Facilities in Florida.

2. Review and comment on the update of townwide cost estimate by R. W. Beck.

3. Review the Average Useful Life of Infrastructure report.

4. Review and comment on the draft general obligation referendum ballot language.

Mr. Bradford reported that, through the efforts of Attorney Schef Wright, the Public Service Commission (PSC) and Florida Power & Light (FPL) had agreed that the PSC hearing on the proposed credit tariff would occur no earlier than December 19, 2006. In return, the Municipal Underground Utilities Consortium (MUUC) study was to be submitted by November 6, 2006. The study had indicated that the credit for local government projects should be 50.54%, as opposed to the 25% that was submitted by FPL.

Mr. Bradford provided an update on the project status. He noted that the updated cost estimate produced by R. W. Beck Inc., was $63,000,000, including the Contribution in Aid of Construction (CIAC) formula, including telecommunications, project management, and owners expenses. He advised that he had also provided a table that indicated the costs for a 30 year general obligation (GO) bond. He noted that the debt service table in the backup material provided had indicated the costs to the property owner, "Property Owner Annual Cost, after 10 years per $1 million of Taxable Value," and he explained that he had intended to indicate that, over time, the debt service would step up, as draws were made. There was no guarantee that the draw would cause the final cost to be at its highest in the tenth year. He explained that he wished to strike that language and simply say that, based on a 30 year debt service schedule, it would cost $319 per one million of taxable value. The Average Useful Life Report had indicated that the average useful life of the facilities was 30 years; therefore, the general obligation bond referendum could contain a term of 30 years. The resolution for the referendum was provided today for comment and questions, with the intention of adoption at the December 12, 2006 meeting. The drop date relative to ballot language going to the Supervisor of Elections for the February 6, 2006, election was approximately 30 days prior to the referendum. Everything must be finalized by that point in time.

The selected pubic relations firm had mailed out the survey instrument on October 17th, and the response had been high to date. The findings would be presented at the December 12, 2006, meeting.

Council Member Wyett suggested that the cost estimates be updated at 9% per year from the time of approval of the referendum to the date the project actually started, as well as throughout the project, due to increases in construction costs. He expressed concern with the public relations portion of the project and whether there would be enough time for citizens to understand the total concept.

In response to Council Member Wyett, Mr. Bradford explained that there were some areas in Town where property owners or subdivisions were already totally underground; there was no way to credit them for those expenses. Secondary service would be totally reconfigured to come from the front yard, as opposed to coming from the back yard as it did today.

Mr. Bradford advised that it was believed there was enough time to do at least two mail outs of information, if the Town Council approved that, and provided the funding.

After further discussion, it was the consensus of the Town Council that discussion would take place at the Special Town Council meeting to be held on December 11, 2006,regarding issues such as the inflationary impacts related to the project costs, as well as a determination of how many houses did not already have underground secondary service.

President Pro Tem Kleid pointed out that if there was a credit for hardening, the costs would be reduced, and the property owner's cost per $1 million of taxable value would be less as well.

Council Member Markin complimented Mr. Bradford on the report provided, and requested more information on the variable for unforseen costs that could be included in the total costs of the project. She requested that Rod Macon, from FPL comment on the results of the PSI report.

Mr. Macon advised that he could not comment on the PSI report at this time.

Mr. Bradford responded to questions from Council Member Markin regarding easements, and fiber optic conduits.

Town Manager Elwell commented that the total costs of the project, including any unforseen percentages, would be discussed at the December 11, 2006, Special Town Council meeting.

In discussion pertaining to the resolution and ballot language, President Pro Tem Kleid requested that the ballot language be changed from "not exceeding the legal rate," to ***"not exceeding the legal maximum interest rate or rates."***

Town Manager Elwell advised that the language change would be taken to bond counsel, and the change would be made if there were no concerns voiced by them.

Mr. Alec Flamm, South Ocean Blvd., commented that the PSI report was very powerful. He stated that the credit would come about due to the savings that accrued to FPL. That same argument could be made with BellSouth or Comcast, and should also entail a credit. The rental fees paid to FPL by BellSouth and Comcast were savings that would also accrue to FPL, which should also become a credit to the Town. He explained that the report was very valuable as a tool in negotiating with BellSouth and Comcast.

Town Manager Elwell advised that he would inform Mr. Macon, of FPL, of the date of the Special Town Council meeting, and request his presence.

2. Update Regarding Sea Gull Cottage.
[John C. Randolph, Town Attorney]

Town Attorney Randolph provided a status update regarding Sea Gull Cottage. Discussions had been ongoing between the representatives of Royal Poinciana Chapel and the Preservation Foundation. The Chapel was interested in keeping the Cottage on its property, and the Preservation Foundation was engaged in conversation with the Chapel to achieve that end, in a way that was beneficial to all parties involved.

Reg Stambaugh, on behalf of the Preservation Foundation, indicated that within the next 30 days the terms would be resolved.

It was the consensus of the Town Council that a written confirmation of the closure would suffice, as opposed to placing the item on next month's Agenda.

3. Consideration of Proposal to Retain a Nationally Respected Urban Design

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

Planning, Zoning, and Building Director Close indicated that staff recommended retaining the existing planning consulting services, as opposed to the consideration of hiring a nationally respected planning firm to study Royal Poinciana Way. If the Council wanted to bring in a national consultant, Ms. Close suggested hiring an individual rather than a national firm, and their name could be appended to the existing planning consultants' contract.

Council Member Wyett agreed to not hiring a nationally known urban consultant, as the existing consultants should be adequate to performing the task.

Council Member Brooks indicated that he respectfully disagreed with Council Member Wyett, as Royal Palm Way was the main thoroughfare into the north end of the Town; that a national design consultant would not likely accept a position as a subcontractor to the existing planning consultants.

President Pro Tem Kleid stated that the Town should engage the services of a nationally renowned urban design consultant to study the Royal Poinciana Gateway area, and the outside professional should be the point man in leading the Town in its planning process. He/she must have experience in creating and implementing complex projects, and must have the respect of the developers and the Town's citizens. With respect to the cost, he said he was hoping to secure help from the private sector and organizations in the Town, such as the Preservation Foundation, the Palm Beach Civic Association, the Citizen's Association, the Four Arts Society, and the Garden Club. With respect to operating as a subcontractor, he said he agreed with Council Member Brooks, that a nationally renowned person would not want to be placed in that situation.

Council Member Markin commented that she could appreciate both viewpoints, but she could not see the Town redeveloping either Royal Poinciana Way or Royal Poinciana Plaza.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to approve that the Planning, Zoning, and Building Department be instructed to seek a nationally renowned urban design consultant and report back on the results of their search. On roll call, the motion failed 3-2, with President Pro Tem Kleid and Council Member Brooks casting affirmative votes, and President Coleman, Council Members Markin and Wyett dissenting.

President Pro Tem Kleid noted that the Town Council deleted the Royal Poinciana Plaza from the 2006 Zoning Season. He said he had recently discovered from the legal counsels that were involved in the litigation concerning the Royal Poinciana Plaza, that there was no stricture that the Planning and Zoning Commission include it, provided that they stay clear from the litigable issues.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to approve the inclusion of the Royal Poinciana Gateway area and the Royal Poinciana Plaza in the Planning and Zoning study items .

Responding to Council Member Brooks, Town Attorney Randolph stated that it would not impede the litigation to discuss this matter, if the specific issues involving the litigation were not discussed.

Leslie Evans, 251-253 Royal Poinciana, suggested that, before anybody was hired, a workshop be scheduled for discussion, with the interaction of the property owners and the Town to see what was possible, especially in light of the new restrictions on eminent domain.

Council Member Markin commented that inclusion of Royal Poinciana Plaza into the study was appropriate whether litigation was pending or not, as it sent a bad message for the Town to halt observations, perspectives, goals, and/or future thoughts on any particular piece of property, just because someone decided to sue the Town.

Responding to Mayor McDonald, Town Attorney Randolph advised that discussions regarding the 1979 lease, and its effect, and anything coming out of that lease should not take place. Any proposals relating to the development of the Plaza could be studied without it interfering with the litigation.

Nancy Murray, member of the Planning and Zoning Commission, noted that the Commission needed a vision in order to resolve the problem, instead of getting lost in governmental and other issues.

Responding to Mayor McDonald, Town Attorney Randolph indicated that the agreement would become null and void in the event of a zoning change, which diminished the use of the property. He added that the outcome would not be affected by the 1979 agreement if the limitation were upheld as it would only be going forward conceptually and that the Planning and Zoning Commission would not be doing a rezoning this year, but only meeting to discuss potential rezoning.

Upon roll call to approve the inclusion in the Planning and Zoning study of the Royal Poinciana Gateway area, the Royal Poinciana Plaza, the motion carried 4-1, with Council Member Brooks dissenting.

Council Member Brooks expressed concern that something could surface relative to the lawsuit.

4. Review of Drawings and Cost Estimates for Expansion of Town Hall to the North. [Peter B. Elwell, Town Manager]

Town Manager Elwell advised that the focus today was the Astorino, Inc., study of the conceptual design, renderings, and a cost estimate of the north end of the building.

Responding to President Coleman, Mr. Elwell indicated that, as the Town Hall was an important historic building, the governing body would determine what was in the best interest in the Town. The Landmarks Preservation Commission would provide input, and would either approve it or express their concerns and the Council would make the final decisions about the building plans.

Director of Public Works Brazil indicated that Astorino, Inc., the architects, would be providing a preliminary overview of the floor plan, that were not final construction drawings. The plans would depict that it was possible to retain the existing employees in Town Hall.

James Centanni, of Astorino, Inc., introduced Kristin Materka (ph), project manager of the project, and provided a presentation of the expansion of Town Hall. Exterior elevations of the bump out on the north end of the building were included in the presentation.

Mr. Brazil noted that the preliminary cost estimate based on current prices from contractors for similar work for renovation of the existing building was $8.2 million, the bump out/new construction was $1.75 million, and with the outfitting/furnishings and window treatments the estimated total construction cost for the building by itself was $10.206 million. Phasing the existing employees was the most expensive part of the project, as it would not be possible to retain the Planning, Zoning, and Building (PZB)employees in the building while providing the contractor with any amount of appreciable work. The temporary relocation costs were included in this amount, which was the rent based on a two-year estimate, carpet and paint of the leased space, utilities, maintenance fees and common charges to landlord, and moving costs - - an estimated temporary/relocation cost of $1.322 million. A 10% contingency was recommended and the total estimated project cost was $12.680 million. He pointed out that the windows in the building had been deteriorating, and as a separate project the estimated cost was $1.7 million without contingency.

Town Manager Elwell noted that the roof needed structural rehabilitation, which would cost approximately $650,000, and was included in the estimate. It may have to be addressed separately if the Town Hall renovation did not proceed expeditiously.

Responding to President Pro Tem Kleid, Mr. Brazil indicated that the first floor of Town Hall was built slightly above grade, which would cause extra work, but not an imminent concern with the structural integrity of the foundation. Mr. Brazil further indicated that in some areas, because of existing load bearing columns, certain widths may not be able to be met for compliance of the

American Disabilities Act (ADA).

Mr. Elwell stated that after renovation every portion of the building would comply with ADA where possible and those areas that did not comply would be eligible for a waiver because of the historic status of the building.

Responding to Council Member Wyett, Mr. Brazil stated that he would include the $350,000 that was promised for the roof, as it had not been included in the estimated calculation of the project. Mr. Brazil further answered that the cost for additions was $500 per square foot, and was considerably higher than new construction, as it was an abnormal situation of tying into the existing building, and moving utilities, and other unknown issues.

Mr. Elwell clarified that the $500 square foot from the architect was for actual construction work, and the $150,000 additional in Mr. Brazil's cost estimate reflected the utility relocation for the new portion of the building.

Council Member Brooks stated that he was opposed to the bumping out of Town Hall in order to house PZB employees, as the Town was requesting$1.75 million from the taxpayers, which roughly equated to $550 per square foot. He noted that for 31 employees in the PZB department, through October, the department received 345 trips on a weekly basis: 270 from contractors, 55 from other architects/lawyers, and 20 trips from residents, which was about 5.7% of the traffic on an average week coming into the building from the residents.

President Pro Tem Kleid indicated that $500 was not unusual for this type of project, as it was not new and had to be worked as an addition, which increased the cost. He commented that the equation would need to be factored in regarding moving PZB to another location.

Council Member Markin stated the it would always cost more to renovate an old building in order to make it functional and to maintain its architectural integrity as a landmarked building. She advised that taxpayers would be asked for money to either maintain and/or make changes in the building. The goal was to provide services to Town residents, which was not determined by the traffic or parking, but by retaining staff in Town.

President Coleman stated that the proposal was to bump out Town Hall to acquire 3200 square feet of space or acquire space elsewhere to house PZB. He suggested rearranging PZB within Town Hall and perhaps moving other support services to another location in order to avoid bumping out the building.

Mr. Elwell advised that moving other support services could be explored, if the Council wanted staff to move forward in that direction and bring it back at the December 12, 2006 Town Council meeting.

Discussion continued regarding bumping out the Town Hall building and relocating other departments. The Council discussed proceeding on the study of relocating other departments and the goal to keep everyone under one roof.

Mr. Elwell asked for direction on whether staff was to move forward toward a refined design or to consider other options before making a final decision.

Council Member Wyett commented that renting a building at another location would be expensive and adding up the those costs and the total cost of renovation , would be close to the same numbers and the employees would be in two different locations with no advantage. He suggested adding a larger third story, as a study item, to be used sometime in the future.

Alec Flamm, 2000 South Ocean Boulevard, suggested leasing, or purchasing a building that could be sold later. As productivity improved through technology, the employees could be moved back to Town Hall.

Yvelene D. Marix, 1570 North Ocean Boulevard, commented that she was in favor of keeping the entire facility on the island, and requested that the Town Council delay their final decision until the public was made fully aware of the four sets of plans by the architects.

Responding to Jere Zenko, 232 Tangier Avenue, commenting on planned growth, President Coleman advised that there was zero personnel growth over the next five years, in order to make up for the previous growth. Ms. Zenko commented that building permits were down 15% , and questioned if this function of government lessened the emergency of providing PZB more space.

Reg Stambaugh, on behalf of the Preservation Foundation, commented that the Foundation was opposed to the bump out and requested that the Council vote against it. He indicated that they would like to participate in the restoration process, and that the bump out would cause an adverse effect to the architectural design. He noted that it needed to be reviewed by the Landmarks Preservation Commission.

Leslie Evans, 214 Brazilian, commented that the bump out would affect the scale of the area, would cause parking concerns, and suggested utilizing the Town parking lot behind the gas station for needed space.

President Pro Tem Kleid advised that he was in favor of bumping out the building, but if there was to be consternation from the Preservation Groups that felt it was inappropriate, he believed it should be taken into consideration.

President Pro Tem Kleid made a motion that the Town Council refer the bump out of

Town Hall to the Landmarks Preservation Commission for their study and recommendations back to the Town Council.

Council Member Brooks suggested that the Town Council should take definitive action today, and then it would be academic for Landmarks to undertake the question.

Council Member Wyett stated that Landmarks could not make decisions for the Town Council. He advised that a decision needed to be made whether to renovate or add an addition to the building, and it was a decision that needed to be made by the Town Council.

Council Member Markin commented that the needs of the Town as well as the the needs of Town staff needed to be looked at, and that staff was not getting a wish list. She noted that there was a morale issue relative to the cramped quarters of the staff, and that staff deserved the best that could be provided to them.

Council Member Markin stated that, as much as she respected the Preservation Foundation, and what they had done for the Town, to dictate what the Town did with this building, and what staff's requirements were in this building, was not the right direction for them to take. She noted that the proposal would go through the normal course with the Landmarks Commission, and the Town Council would welcome their input.

President Pro Tem Kleid's motion died for lack of a second.

Council Member Brooks made a motion that the Town Council dismiss the option of bumping out the north end of Town Hall.

Council Member Brooks stated that if the motion failed, the Council would continue discussion, but if it passed, the Town Council could then discuss this item further at the December 12, 2006, Town Council meeting.

President Coleman passed the gavel, and seconded the motion.

Council Member Wyett stated that an affirmative vote to this motion would automatically mean that they would still need to go outside the building for space.

On roll call, the motion failed to pass: Council Member Brooks and President Coleman casting affirmative votes; Council Member Markin, Council Member Wyett and President Pro Tem Kleid casting dissenting votes.

Council Member Markin made a motion to accept the plan as presented by Astorino,

in its entirety, with the option of changing specific details as the project moved along, as needed. Council Member Wyett seconded the motion.

Council Member Markin clarified that the motion was to take the recommendation, as presented by Astorino, with the bump out, and with the intent that the Town Council would discuss it further in December. If any other viable plans were presented, the Town Council would consider them, but the budget and everything associated with the plan, presented today, was approved to move forward.

Mayor McDonald stated that he agreed with Mr. Evans comments relative to parking. He agreed, as well, with the Preservation Foundation that this building should not be bumped out. He explained that what they were trying to do was to take a historic building, that was never built for the number of people occupying it presently, and retrofit it to make it work. He stated that it did not work and would not comply with some of the federal requirements. He advised that there was no reason to retrofit this building and end up with a building that would not serve or accomplish its purpose. He stated that, as Mr. Flamm pointed out, why should the Town sink that kind of money into a project, if they only had a temporary need for rental space.

President Pro Tem Kleid stated that he would like to renew his suggestion that the issue of the bump out be referred to the Landmarks Preservation Commission, as he believed there was a segment of the community that felt, from a preservation point of view, that this was not the thing to do. He stated that he would like to hear from the Landmarks Preservation Commission, who were charged with that type of responsibility, to come back to the Town Council with their opinions. The Town Council could then decide if they wanted to accept their opinion or not. He advised that he believed that would have a great influence on him, personally, as to whether or not he wanted to pursue the bump out.

President Coleman advised that passing this motion would refer this issue to the Landmarks Preservation Commission, and the Town Council could then choose to accept or dismiss their recommendation.

Discussion ensued, and President Coleman advised that Ms. Markin had a motion on the floor. **On roll call, the motion carried 3/2, with Council Member Markin, Council Member Wyett, and President Pro Tem Kleid casting affirmative votes; Council Member Brooks and President Coleman casting dissenting votes.**

Town Manager Elwell clarified that the conceptual design would now be turned into a detailed design that would be readied for review by the Landmarks Preservation Commission as well as sending the project out for bid, etc. Staff was charged with defining this project and bringing it back to the Town Council when additional decisions needed to be made by them.

5. Update Regarding Palm Tran Routes and Schedules.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her memorandum to the Mayor and Town Council, dated November 8, 2006, and included in the backup material, to provide an update on Palm Tran Bus Routes 41 and 42. She advised that President Pro Tem Kleid attended the meeting of the Palm Tran Service Board held on October 19, 2006. She outlined the report, which was included in the backup:

- Service Board voted to reduce the trips on Seminole Avenue by three per day, presently there were seven. The two trips in the morning and the two trips in the afternoon would continue on Seminole Avenue; the three trips in the middle of the day would not be on Seminole Avenue and would not go north of Publix.
  - The change would begin January 1, 2007. Route changes were made three times a year, and the next change occurred in January.
- Route 42 - Route services the south part of Town.
  - Palm Tran agreed to allow the route to continue for several months to see if ridership increased. If an increase in riders did not occur, as Route 42 had the lowest ridership in the entire Palm Tran system, it would be eliminated.

Ms. Hannah noted that she and South Palm Beach Town Manager Rex Taylor met with Palm Tran last week to discuss Route 42, and that she had also met with Palm Tran to discuss Route 41. She explained that at the October 10, 2006, Town Council meeting, the Town Council approved a proposed route change that would remove Seminole Avenue from Route 41, and Royal Poinciana Way would be used instead. She advised that the recommendation for an alternate route had been proposed to Palm Tran, but it was not working out logistically.

Ms. Hannah advised that a proposal to increase ridership on Route 42 was made to Palm Tran. The proposal was to connect Route 42 to Route 1, Palm Tran's busiest route, which ran up and down Dixie Highway, from Palm Beach Gardens to Boca Raton. She reviewed several concerns of Palm Tran related to that proposal.

Ms. Hannah noted that one of the suggestions made by Palm Tran was for the Town to split the cost of the operation of the route with them. Palm Tran would figure out how much it cost to operate the route on an annual basis and an interlocal agreement would be negotiated, with the Town paying a part of the cost; South Palm Beach would be asked to participate in that as well.

Ms. Hannah advised that the other option would be to buy bus passes for residents in order that the route become financially viable. The Town would purchase the passes and either give them free to the residents or charge for them.

Council Member Wyett stated that Route 42, the southern route, was vital to the Town as it was tied into a medical transport service used by residents to go to the doctor or the hospital. If that route was eliminated, so would the medical transport service.

Ms. Hannah advised that it was true that the Town would lose their Palm Tran Connection's Paratransit Service that only operated in locations that had fixed bus routes. She stated that the Town had asked about this issue and was advised that if Palm Tran eliminated a route, and it was not a request by the Town, then the Palm Tran Connection's Paratransit Service might not be eliminated. She stated that until such time as the route was eliminated, the Town would not know if the Palm Tran Connection's Paratransit Service would be eliminated as well.

President Pro Tem Kleid advised that relative to Route 41, a Traffic and Parking Study would be presented next month, which may suggest that Sunrise Avenue become a one-way street. If the Town Council agreed to that, it might be an argument for Palm Tran to use Sunrise Avenue, as there would probably be a sufficient radius for turns. He suggested that the Town Council keep that in the back of their minds when looking at the Traffic and Parking Study. He echoed the sentiments, relative to Route 42, and that it was important for the Town to keep that route operational, and suggested that the Town should encourage people to publicize this, in an attempt, to get public support in favor of Route 42. He noted that he was very cognizant that when a large number of people were very supportive of an issue, governing boards tended to listen a little more closely.

Council Member Markin stated that if the County gained a bus, to be used for their most urgently needed areas, by eliminating a route, the least that Palm Tran could do would be to continue to provide the Town with the Palm Tran Connection's Paratransit Service . She suggested that the Town should sit down with Palm Tran to negotiate that issue and advise them that this was a priority. The Town should pursue this issue, and have it confirmed as soon as possible. She suggested that the negotiations should include how much the residents of the Town had given to the County for revenues and tax dollars versus what they received from the County. She stated that the residents would be amazed at the lack of return on their investment.

B. New Business

1. Request for Temporary Use of North Fire-Rescue Station Property for Enhancement of Cingular Wireless Network in Town. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford explained that he had been working with various wireless telecommunication service providers to improve the quality of service within the Town. He stated that Cingular offered to put a COLT (Cell On Light Truck) at Seaview Park, but that site did not work out. He advised that a temporary site was found at the North Fire-Rescue Station to place the COLT until such time as their anticipated site was approved and installed at The Breakers. He stated that both Cingular and Verizon were pursuing that.

Mr. Bradford referred to his detailed memorandum to the Mayor and Town Council, dated November 8, 2006, and included in the backup material, to provide a report relative to this request. He advised that staff recommended that the Town Council approve this request which would be subject to an acceptable license or lease agreement that would be approved by the Town Attorney.

Motion made by Council Member Brooks to approve the New Cingular Wireless PCS, LLC, request to utilize the North Fire-Rescue Station Property on a temporary basis to improve the Cingular wireless network in Town, subject to a lease or license agreement approved by the Town Attorney. Council Member Wyett seconded the motion.

In response to Council Member Wyett, Mr. Bradford discussed the options available to Verizon or Sprint if they wished to set up temporary facilities at the North Fire-Rescue Station or locations in Town.

On roll call, the motion carried unanimously.

2. Florida Department of Transportation (FDOT) Regarding Unrepaired Light Fixtures on Royal Poinciana Way Between South County Road and Bradley Place.
[H. Paul Brazil, Director of Public Works]

3. Florida Department of Transportation (FDOT) Regarding Paving and Related Work on South Ocean Boulevard.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil explained that he would address the above two items at the same time. He noted that, at the Town Council's request, a representative from the Florida Department of Transportation (FDOT) was present to address two issues: the light fixtures on Royal Poinciana Way; and the ongoing paving work on A1A on the south end of the Island.

Rob Cables, Project Manager, Florida Department of Transportation, confirmed that the parts for the decorative lighting on Royal Poinciana Way had been ordered and that there was a twelve-week lead time. He noted that it would probably be mid-February before they were installed.

Discussion ensued regarding liability issues connected to the length of time it was taking to repair the light fixtures on Royal Poinciana Way.

In response to Council Member Markin, Mr. Cables advised that decorative lighting fixtures were maintained by outside agencies, such as the Town of Palm Beach. He explained that the Town approached FDOT for assistance, probably last December, and the fixtures were ordered about two weeks ago.

Council Member Markin stated that she did not understand the lack of response from FDOT in an area that was so critical.

Mr. Cables advised that FDOT did not have a mechanism for replacing decorative lighting, and it was something they had to work out. It was new territory for them.

Council Member Markin asked if, in going forward, the Town would experience the same type of lag time relative to decorative lighting, as the Town planned to place decorative lighting throughout the Island.

Mr. Cables advised that the Town could experience this again, if there was a widespread effect, as there had been, due to the number of hurricanes in the region, with suppliers and contractors in high demand.

Town Manager Elwell requested an update from Mr. Cables on the traffic signals at the intersection of Bradley, Cocoanut, and Royal Poinciana, and how that figured in with the decorative lighting.

Mr. Cables advised that subject was a bit more embarrassing for the FDOT, in that it was actually a Hurricane Jeanne issue, which occurred two years ago. He stated that there had been a consultant working on this issue, all this time, and FDOT had not been able to receive updates until very recently. He stated that a foundation, with the Town's permission, would be going in on November 27, 2006, with the mast arm and signal work to follow in the next three to four weeks.

President Pro Tem Kleid stated that he had the same concerns as other Town Council members, and that the Council was frustrated with what had transpired relative to this issue. He asked if there was anything that the Town could do to get FDOT to respond more promptly and efficiently?

Town Manager Elwell advised, in response to Council Member Markin's question earlier, that what caused this to be an FDOT item instead of a Town item, was the fact that it was still under warranty from the installation. He commented that the installation was an FDOT project, and there were issues raised by Town Engineer Bowser as to whether the fixtures had been properly installed, and then the damage had occurred. The fixtures were all still under warranty. He noted that if the Town had reached the point where they had taken over the responsibility for maintenance of those lights, it would have been a Town restoration issue rather than an FDOT restoration issue. He advised that, as the Town moved forward with decorative lighting, in other areas of Town, in most cases, down the road, it would be the Town's responsibility.

Mr. Cables addressed the Town Council relative to South Ocean Boulevard - Sloan's Curve to Southern Boulevard Milling and Resurfacing. He advised that he had been instructed to inform the Town Council that the final friction course and initial striping would take place by the end of this week for the entire project; and there would be no further lane closures past November 22, 2006. He noted that punch list issues would be addressed through December, and final acceptance should be received by the end of December 2006, early January 2007.

Mayor McDonald stated that the management of this project, in the last two weeks, had deteriorated.

In response to Mayor McDonald, Mr. Cables stated that he understood that FDOT would conduct the revetment project, but he was not privy to the exact timetables. He stated that he believed it was a joint project with FDOT being a part of it. He advised that he was uncertain as to whom it was to be joint with and would have to do some research relative to that.

Town Engineer Bowser advised that it was an FDOT project. He explained that one of the reasons the project started late this year was that they had to rebid the job, because the revetment work had been removed from this year's work. He noted this project would occur next summer.

Mayor McDonald asked why the revetment work had not been done first?

Mr. Bowser responded that he had expressed the Town's concern with the paving this year to FDOT. He noted that he agreed with Mayor McDonald's comments and understood his concerns.
He advised that when reviewing FDOT projects, staff always tried to think of the cost and inconvenience to the residents.

Mr. Cables responded that as far as he knew they would continue with the final paving. He advised the Mayor and Town Council that he wished he had better answers for them.

President Coleman stated that it was his thought that the Town Council might request Mr. Elwell to write FDOT and asking them the following questions:

1. Why Mr. Cables' supervisor left before this issue came before the Town Council?
2. Who made FDOT decisions relative to paving, revetment and re-paving?
3. Who would be accountable?

Mayor McDonald stated, in defense of FDOT, that it was difficult for an organization to appear at a meeting of this nature not knowing how long it would take before they would be heard.

In response to President Coleman, who stated that FDOT could have been provided with a time certain to address the Town Council, Mayor McDonald suggested that could be used as a procedure in the future.

Town Manager Elwell advised that staff would follow- up with FDOT and the Mayor, in his role as the Town's lead intergovernmental person. He noted that he would communicate with the Mayor, after this meeting, and between them they would be in touch with the right officials at FDOT.

Mr. Cables explained that they partnered with other governmental agencies, such as the City of West Palm Beach, on a regular basis. FDOT sent representatives, on a monthly basis, to meet with engineering officials, in order to have open dialogue on projects. He stated that the Town was invited to attend any progress meetings FDOT held relating to ongoing projects on the Island, and that future concerns, could be addressed at either a monthly or quarterly meeting.

Leslie Evans, 214 Brazilian Avenue, stated that the cavalier attitude of the FDOT disturbed him. He suggested that Town Attorney Randolph write a letter to FDOT addressing the liability issue at Royal Poinciana Way.

Council Member Wyett suggested setting a policy to provide agencies, such as FDOT, a time certain for when they appeared before the Town Council.

Mr. Cables addressed Mr. Evans comments and apologized if he appeared cavalier. He stated that one of the issues related to decorative lighting was that there was a fixture that actually fell, in advance of the hurricane. There was a design issue problem that FDOT had to deal with, as well, and the manufacturer was slow to provide a design, thinking that they might have to accept liability if they provided an upgraded design. The design was finally received from them, and the fixtures that were being replaced were upgraded.

President Pro Tem Kleid stated that he understood the original contract called for completing this project by November 22, 2006, with bonuses, etc. He asked if that was still on the table or had it been changed?

Mr. Bowser responded that it was his understanding that they had a problem getting an FDEP permit, in addition to rebidding the job, and starting late. The original project was to be completed, including the punch list, by November 22nd. This had been changed, making the bonus date November 22nd, completion the end of December 2006. The condition here was that the lane closures, and the impact to the residents would end no later than November 22nd. He stated that he did write to protest the fact that he found out about that item many months later. He advised that he did try to keep Mr. Elwell advised as to what was going on.

4. Garden Club Proposal for a Second Kapok Tree at the Royal Park Bridge. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil referred to his memorandum to the Mayor and Town Council, dated November 3, 2006, and included in the backup material, to provide information relative to the Garden Club's proposal for a second Kapok tree at the Royal Park Bridge.

Council Member Wyett made a motion to authorize the Town Manager to enter into contracts necessary to install a second Kapok tree at the east end of the Royal Park Bridge. President Pro Tem Kleid seconded the motion. On roll call, the motion carried unanimously.

At the request of Nancy Murray, Mr. Brazil addressed the timing of this project. He advised that due to events at the Four Arts Society, they requested the Town complete this project as soon as possible, which would be before the first of the year. He noted that the work would take place during season, starting early in the morning, completing the project in one to two days; the work could be done on a weekend. He stated that he would like to accommodate the Four Arts with this schedule.

Town Manager Elwell stated that staff would advise the Town Council of the actual date, and staff considered Council's discussion on this, as their authorization to allow work on a Saturday and Sunday, whichever made more sense from a traffic point of view.

5. Request for Waiver to Allow "Grandfather" Status for Temporary Installation of Book Sale Signs Near the Society of the Four Arts. [Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, Building Close stated that the request before the Town Council was for a waiver to allow temporary installation of book sale signs at the Four Arts Society.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to

approve a Waiver of Section 134-2372(2), to allow temporary signs at the Four Arts Society.

Council Member Brooks requested the approval be contingent upon the Four Arts Society respecting the schedule of the Town Council meetings.

Council Member Wyett amended his motion to approve the Waiver of Section 134-2372(2), to allow temporary signs at the Four Arts Society, subject to the condition that the events of the Four Arts Society accommodate the dates when Town Council meetings are held. On roll call, the motion carried unanimously.

6. Tennis Facilities

a. Phipps Ocean Park Tennis Facility.
[Jack McDonald, Mayor]

i. Parking

Mayor McDonald explained that he had expected several tennis patrons to be present today to address parking concerns at the Phipps Ocean Park Tennis facility. He suggested that the Town Council move to the next Agenda item, since they were not in attendance.

ii. Court #6

Director of Public Works Brazil provided an update and brief history regarding the ongoing issues with Court #6 at the Phipps Ocean Park Tennis facility. He commented as follows:

- Papico Construction, Inc., Contractor, had repeated problems with blistering, especially after a heavy ran.
- Papico tried numerous methods for repair, and none had been successful for any length of time.
- Papico had taken over maintenance of the court, extended the warranty, and to their credit, had tried about everything.
- Staff requested placement on Papico's construction schedule for a complete rebuild, and advised Papico that staff considered a complete rebuild as a warranty item.
- Papico agreed to place the Town on their construction schedule. The best case scenario Papico could offer the Town was before Thanksgiving, and worst case scenario was to have it completed by Christmas. Staff was not optimistic it would be completed by Thanksgiving but was hopeful it would be completed by Christmas.
- Staff had not obligated the Town for any financial responsibility for the rebuild,

In response to Council Member Markin, Mr. Brazil stated that Papico Construction had extended their warranty twice; they had worked with the Town in good faith and had not said that they would not honor their warranty.

Council Member Markin stated it had been two years that Papico had put the Town off, all to forego redoing the court. She commented that she hoped they would rebuild the court as it was long overdue.

In response to Council Member Wyett, Mr. Brazil responded that they would get a new warranty with a replacement court.

b. Seaview Tennis Center. [Jay Boodheshwar, Director of Recreation and H. Paul Brazil, Director of Public Works]

i. Master Plan

Director of Recreation Jay Boodheshwar referred to his detailed memorandum to the Mayor and Town Council, dated November 8, 2006, and included in the backup material, to provide a brief summary on the background and history of the Seaview Tennis Court Master Plan Project.

Mr. Boodheshwar advised that the Recreation Advisory Commission, at their meeting of November 8, 2006, reconsidered the Master Plan Project and unanimously voted to move forward with the current plan. The Commission directed staff to explore additional playing and teaching alternatives for both tennis patrons and professionals; and to finalize the transition usage plan for the Phipps Ocean Park tennis facility during this project.

Mr. Boodheshwar discussed the commitment of The Breakers to provide use of their tennis facility to the Town's annual pass holders during a large portion of the anticipated construction period.

President Pro Tem Kleid asked Mr. Boodheshwar if he had contacted condominium associations, both in the south end of Town and also those in mid-Town who had tennis courts as to whether or not the Town might be able to utilize them.

In response to President Pro Tem Kleid, Mr. Boodheshwar advised that he had a meeting Friday morning with one of the condo groups on the south end of Town, which had a very nice facility that was underutilized during the summer. He noted that was the south end plan for an alternative facility.

President Pro Tem Kleid advised that there were some mid-Town condo's that had tennis facilities that might be even more convenient, and suggested Mr. Boodheshwar speak with them.

Michael Spaziani, 32 Seaspray Avenue, Chairman of the Recreation Advisory Commission, presented the report of the Recreation Advisory Commission and discussed the following concerns and suggestions:

- Length of the construction period
- Residents should be assured that construction would not be for a period longer than six months.
- Suggested lengthening the work day to shorten the period of construction time.
- Suggested stiff penalties should be placed in the contract to address lateness in the construction contract.
- Concerns of the professionals that work at Seaview.

Discussion ensued relative to lengthening the work day in order to complete this project as quickly as possible.

Town Manager Elwell advised that staff would work out the details of the project and would bring back a specific recommendation to the Town Council.

Mr. Boodheshwar reviewed three elements of concern:

1. Lengthy construction time.
2. Reduction of eight courts to seven.
3. The elimination of the stand alone back wall.

ii. Arrangements for Play at Alternative Locations While Seaview is being Upgraded

Discussion regarding alternative arrangements had occurred previously.

Phil Johnston (ph), resident, stated he was an instructor at the Seaview Tennis Facility, as an independent contractor. He discussed the following two points:

1. Suggested the Town Council defer this decision, at this time, because there were compelling reasons that the courts should be landmarked.
2. Environmental impact of the project.

Mr. Johnston submitted a petition in opposition to the physical plan itself, which contained sixty signatures of residents who used the Seaview tennis facility.

Discussion ensued and Mr. Johnston reiterated his concerns regarding the physical plan for the tennis courts in particular to slippage.

Council Member Markin advised that she had spoken with Mr. Johnston and understood his concerns. She noted that he had advised her that the Seaview Tennis Facility did not have a roller. She urged that once the project was completed, the courts needed to be properly maintained to extend their life, which meant obtaining a roller and making sure that there was someone there who knew how to maintain them.

President Coleman suggested that Mr. Johnston meet with staff and Mr. Spaziani to discuss his concerns. This item could be placed on the Agenda of the Special Town Council meeting that was to be set within the next ten days.

Discussion ensued regarding whether a motion to reconsider this project was needed to place it back on the calendar for the next Special Town Council meeting.

A motion to reconsider was not made and there was no further discussion.

7. Parking Regulations on Hi-Mount Road.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Close advised that staff supported the request to return the parking regulations on Hi-Mount Road to preconstruction conditions.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to approve the return of parking regulations on Hi-Mount Road to preconstruction conditions. On roll call, the motion carried unanimously.

8. Review of Town Ability to Limit the Number of Construction Projects Occurring on a Single Block.
[William J. Brooks, Town Council Member]

Council Member Brooks advised that Town Attorney Randolph had responded with a three-page letter which had been included in the backup, to his request to further consider the possibility of the Town adopting a regulation to allow a restriction on construction, one home per block on east/west streets. He requested the Town Council make a motion to direct Attorney Randolph to continue his research to determine if the Town could put into effect an ordinance that would protect the citizens of the Town of Palm Beach.

Motion made by Council Member Brooks to recommend that Town Attorney Randolph continue pursuing whatever legal ordinance might be available to the Town of Palm Beach relative to the demolition situation. The motion was seconded by President Coleman.

Council Member Wyett stated that he understood Council Member Brooks' concerns relative to the construction of multiple homes on a given street and the impact it had on its neighbors. He advised that he did not think it was legal to limit construction to one lot per street.

Council Member Markin agreed with Council Member Brooks relative to multiple demolitions and multiple construction sites on the smaller streets, especially cul-de-sacs, where the traffic flow and inconvenience to the residents was a concern. She stated that her concern was that it might not necessarily be legal to limit construction projects on a street, but if it was legal to do so, or if there was a way to do it, then she would second Council Member Brooks' motion. She advised that if it was not legal, she did not want any more legal time spent on reviewing this, and noted that she would look to Attorney Randolph to provide the Town Council with some perspective on this issue.

Council Member Brooks advised that his request to Attorney Randolph was that he examine this under the aegis of the health, welfare and safety of the Town's citizens.

Discussion ensued and President Coleman stated that there was a permutation of issues, and suggested referring this issue to staff to categorize them and come back before the Town Council as the Town Council could not provide legal direction. Staff could delineate between big streets little streets, parking, etc.

Town Manager Elwell stated that for those reasons, and because there were so many choices to be made, this issue could be considered by the Ordinances, Rules and Standards Committee on its way back to the Town Council, and after staff had dealt with it.

Council Member Brooks withdrew his motion in order that this issue be directed to staff for further review.

Town Manager Elwell stated that, based on today's discussion, it was the consensus of the Town Council to refer this item to staff for review, and then for consideration by the Ordinance, Rules, and Standards Committee before bringing it back to the Town Council.

9. Energy Efficient or "Green" Vehicles.
[Denis P. Coleman, Town Council President]

President Coleman urged the Town Council to direct staff, where possible, to buy energy efficient vehicles.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to direct staff to purchase energy efficient vehicles when possible and to return to the Town Council, if additional funding would be required. On roll call, the motion carried unanimously.

10. Request for Policy Direction Regarding a Potential Adopt-a-Park Program.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated November 8, 2006, and included in the backup material. He requested that the Town Council confirm his recommendation that the Town would not create an organized Adopt-A-Park Program primarily, because of signage and commercialism issues, which he believed were not in the best interest of the Town.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve a policy that the Town would not create an Adopt-A-Park Program. On roll call, the motion carried unanimously.

11. US Army Corps of Engineers' Lake Worth Inlet Dredging Project– Final Authorization for Town Payment of Differential Cost to Place Sand on the Beach Instead of in the Near-Shore Area.
[H. Paul Brazil, Director of Public Works]

Deferred (earlier in the Agenda under Item VII) U.S. Army Corps of Engineers' Lake Worth Inlet Dredging Project - Final Authorization for Town Payment of Differential Cost to Place Sand on the Beach Instead of in the Near-Shore Area to the November 20, 2006, Special Town Council Meeting.

12. Condominiumization of Hotel Rooms.

President Pro Tem Kleid stated that he believed the Planning and Zoning Commission planned to study the issue of condominiumization of hotel rooms, and suggested leaving it up to them.

President Coleman stated that while this was being studied by the Planning and Zoning Commission, hotel rooms could fall under the radar screen, becoming condos, and the study would be moot.

In response to President Pro Tem Kleid, President Coleman stated that making this a Zoning-in-Progress item, was a wonderful idea.

Town Manager Elwell clarified President Coleman's concern that while the Planning and Zoning Commission reviewed this issue, in order to make recommendations to the Town Council, several months would go by, and applications for conversion could be made between now and when this was settled. He stated that it was his understanding that President Coleman wanted the Town to take the most extreme possible position, which would be legally defensible as Zoning-in-Progress. He explained that when the Planning and Zoning Commission gave consideration to this item, they could forward to the Town Council a recommendation for regulations so strict as to prohibit the conversion of hotel units into condominium hotel units; and therefore, effectively, it would be a moratorium. He stated that Attorney Randolph could advise the Town Council on the proper legal language, but whether it became Zoning-in-Progress or a moratorium, the action of the Town Council would preclude any more applications for conversion between now and such time as this was settled.

Council Member Brooks stated that it would be safer for the Town to opt for Zoning-in-Progress, as a moratorium could be open to legal challenges.

Attorney Randolph stated that this was not a moratorium, but was Zoning-in-Progress. He clarified what Mr. Elwell had stated, noting that they did not know what the study would recommend. It might be regulation, it might be prohibition, but in the meantime, if the Town Council wanted to prevent applications for conversion from trying to get under the radar while considering this item, it would be appropriate for a motion to be made to declare Zoning-in-Progress. The motion would be made with the understanding that the declaration of Zoning-in-Progress would mean that no permits would be accepted for condo/hotels during the period that this was being studied by the Planning and Zoning Commission and the Town Council.

Council Member Wyett made a motion to declare Zoning-in-Progress in regard to condo/hotels and with the understanding that the declaration of Zoning-in-Progress meant no permits would be accepted for condo/hotels during the period that this was being studied by the Planning and Zoning Commission and Town Council. Council Member Brooks seconded the motion.

Leslie Evans, 214 Brazilian Avenue, requested that the Town Council defer this item for one month, because it not been publicized or placed on the Agenda. The people who might be impacted by this would then have the ability to present their argument.

On roll call, the motion carried unanimously.

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It was the consensus of the Town Council to hold a Special Town Council meeting on Monday, November 20, 2006, at 9:30 a.m., and the following items would be deferred to the November 20, 2006, Special Town Council meeting.

Item X.B.13., Discussion of Proposal for the Creation of an Ordinance to Regulate Submittals of New Applications When a Property Had Been Cited For and Had Not Resolved Code Violations.

Item X.B.14., Discussion of Phone Participation at Meetings By Members of Advisory Committees.

Item X.B.15., Discussion of Establishment of Commissions.

Town Manager Elwell clarified that a meeting would be held on November 20, 2006 to address the U.S. Army Corps of Engineers' Lake Worth Inlet Dredging Project, and a Special Town Council meeting would be held on Monday, December 11, 2006, at 10:00 a.m., to further consider the undergrounding project.

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XI. ORDINANCES

A. Second Reading

None

B. First Reading

1. <u>ORDINANCE NO. 14-06</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Amending Chapter 30, Consistency and Concurrency Management System, of the Town Code of

Ordinances by Creating a New Article IV Titled "Proportionate Fair-Share Program"; Providing a Mechanism to Allow for Proportionate Share Contributions from Developers Toward Traffic Concurrency Requirements; Providing That Each and Every Other Section and Subsection of Chapter 30 Shall Remain in Full Force and Effect as Previously Adopted; Providing a Conflicts Clause, a Severability Clause and Authority to Codify; Providing an Effective Date; and for Other Purposes.
[Veronica B. Close, Director of Planning, Zoning, and Building]

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

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

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

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

Motion made by Council Member Brooks, seconded by Council Member Markin, to approved on first reading Ordinance No. 15-06. On roll call, the motion carried unanimously.

XII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Waiver of Section 42-199 Hours for Construction Work- Commerce Bank at 380 South County Road.
   [Veronica B. Close, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by President Coleman with the applicant.

Attorney Bonnie Miskel, on behalf of the applicant, advised that the project had been delayed at least ninety days, and they had hoped, at this point, to be well under construction.

Council Member Wyett made a motion to approve the Waiver of Section 42-199 for Construction Work, Commerce Bank at 380 South County Road. Council Member Brooks seconded the motion.

Attorney Miskel requested clarification of whether the motion approved recommendations pursuant to the applicant's request or to staff's recommendation.

In response to President Pro Tem Kleid, Council Member Brooks advised that the motion for approval was subject to the qualifications recommended by staff.

In response to President Coleman, Ms. Miskel stated that the applicant would bury utility lines.

After further discussion, **the following conditions were included in the motion as were the conditions listed in staff's memorandum to the Mayor and Town Council dated November 3, 2006, which was included in the backup:**

- **Limited hours on four Saturdays, January 20, 2006 through February 20, 2007, 9:00 a.m. to 2:00 p.m., to receive deliveries.**
- **The Town is to receive prior notice of those deliveries and all deliveries would be onsite, not offsite.**

Upon roll call, the motion carried unanimously.

2. Request for Extension of Work Hours at 150 Worth Avenue per Letter Dated October 31, 2006, from James R. Brindell.
   [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Jim Brindell, on behalf of the applicant, provided background information regarding the request for an extension of work hours for Caviarteria and Starbucks located at 150 Worth Avenue.

Director of Planning, Zoning and Building Close explained that staff recommended denying a blanket approval for work during the winter season for Caviarteria. She advised that the applicant pulled a permit February 20, 2006, and staff believed that they have had adequate time to complete this project.

Ms. Close stated that if the Town Council did approve their request, the approval should contain the same conditions given to other applicants, which included prohibiting work through the Thanksgiving weekend and through the holiday period.

Council Member Wyett made a motion to approve the applicant's request for an extension of work hours.

Council Member Markin commented on the granting of special exceptions and variances, which allowed applicants to work during the season. She advised that she was inclined to be much firmer in granting these requests, because she believed they deteriorated the quality of life in Town, during the season.

Attorney Brindell advised that The Esplanade differed from other stores on Worth Avenue as it did not have the capacity to internalize construction work or deliveries. He noted that for twenty years this had been the way the Town worked with The Esplanade. It was not until very recently that they had been informed that would no longer be the case unless the applicant appeared before the Town Council. He advised that there had not been any forewarning that the policy would change.

Town Manager Elwell advised that staff would request two motions, one for Caviateria and one for Starbucks. He clarified that the issue before the Town Council was one of interpretation. He explained that there had been a change of leadership within the Planning, Zoning and Building Department (PZ&B), and the prior interpretation, which had been in effect for twenty years, was an informal understanding, based on the fact, that the interior of The Esplanade was somewhat different than the rest of the Avenue. The Ordinance was quite clear as to what was required, and with the change of leadership, and after reviewing the Ordinance, PZ&B's current leadership decided that these requests needed to come before the Town Council for approval.

Council Member Brooks made a motion to deny the request for extended work hours for Caviateria for the reasons outlined by staff, namely that they had been granted sufficient time to complete this project.

Joanna Vertalami, co-owner of Caviarteria, advised that they had been in business inside The Esplanade for five years. She explained the reasons construction had been delayed and requested an extension in work hours.

After discussion, Council Member Brooks withdrew his motion.

Council Member Wyett made a motion to approve the request for extended work hours for Starbucks with the conditions listed in Director of Planning, Zoning & Building Close's memorandum to the Mayor and Town Council dated November 3, 2006, and included in the backup. Council Member Brooks seconded the motion. On roll call, the motion carried 4/1 with Council Member Wyett, Council Member Brooks, President Pro Tem Kleid, and President Coleman casting affirmative votes; Council Member Markin cast a dissenting vote.

Council Member Wyett made a motion to approve the request for extended work hours for Caviarteria to include the same conditions listed for Starbucks in Director of Planning, Zoning & Building Close's memorandum to the Mayor and Town Council dated November 3, 2006, and included in the backup. Council Member Brooks seconded the motion. On roll call, the motion carried 4/1 with Council Member Wyett, Council Member Brooks, President Pro Tem Kleid, and President Coleman casting affirmative votes; Council Member Markin cast a dissenting vote.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. SITE PLAN REVIEW #17-2006 WITH SPECIAL EXCEPTION AND VARIANCES The application of Desmond and Dorothy Ann Heathwood relative to property described as Condominium Parcel PH-2 (a/k/a Parcel PH-B), ONE ROYAL PALM WAY CONDOMINIUM; commonly known as 100 Royal Palm Way, PH-2; located in the R-D (2) Zoning District. Site Plan review for a 141 sq. ft. awning. Special Exception to install one awning on a floor above three stories in height. Variances to install a 141 sq. ft. awning with a street side yard setback of 4 feet in lieu of 62.5 foot minimum required; to install the awning with a rear yard setback of 10 feet in lieu of 30 foot minimum required; to install an awning on the 6th floor of a building in a District that allows 3 story buildings by right and 5 story buildings by a Special Exception; and, to install the awning at a height of 69.08 feet in lieu of the 62.5 feet maximum allowed.

Ex-parte communication was declared by Council Member Markin with Attorney Broberg; and President Pro Tem Kleid via a telephone conversation with Attorney Broberg.

Attorney Broberg, on behalf of the applicant, addressed the Town Council.

Director of Planning, Zoning and Building Close stated that ARCOM recommended approval and staff did not have any objections to the application.

Motion was made by Council Member Wyett, seconded by President Pro Tem Kleid, to approve Site Plan Review #17-2006 with Special Exception and Variances. On roll call, the motion carried unanimously.

b. SITE PLAN REVIEW #18-2006 WITH SPECIAL EXCEPTION AND VARIANCES The application of Thomas J. and Carroll D. Swan, Jr. relative to property described as Condominium Parcel PH-4 ONE ROYAL PALM WAY CONDOMINIUM; commonly known as 100 Royal Palm Way, PH-4; located in the R-D(2) Zoning District. Site Plan Review for the awning. Special Exception to install one awning on a floor above three stories in height. Variances to install a 332.50 sq. ft. awning with a street side yard setback of 4 feet in lieu of 62.5 feet required; to install a 332.50 sq. ft. awning with a rear yard setback of 10 feet in lieu of 30 feet required; to install an awning on the 6th floor of a building in a District that allows 3 story buildings by right and 5 story buildings with a Special Exception; and, to install the awning at a height of 69.08 feet in lieu of the 62.5 feet maximum allowed. *Deferred from the October 10, 2006, Town Council Meeting.*

Attorney Broberg, on behalf of the applicant, addressed the Town Council.

Director of Planning, Zoning and Building Close stated that ARCOM recommended approval and staff did not have any objections to the application.

Motion was made by Council Member Wyett, seconded by Council Member Brooks, to approve Site Plan Review #18-2006 with Special Exception and Variances. On roll call, the motion carried unanimously.

2. New Business- Less Than 15 Minutes

a. VARIANCE #36-2006 The application of Trina Lane relative to property described as Lot 11, Brams Addition to Palm Beach; commonly known as 665 North Lake Way; located in the R-B Zoning

District. To allow construction of a 247 square foot permanent open loggia where an awning was once located. The variance is to increase the lot coverage to 33% in lieu of the 31% existing and the 30% maximum allowed in the R-B Zoning District. **Request for Withdrawal Per Letter Dated October 27, 2006, From Maura A. Ziska.**

Withdrawn under Item VII., Approval of the Agenda.

b. SPECIAL EXCEPTION #9-2006 WITH SITE PLAN REVIEW The application of The Breakers Palm Beach Inc. by Alex Gilmurray, Vice President, Finance relative to property described as lengthy legal description on file; located in the PUD-A Zoning District. Special Exception with Site Plan Review to renovate the old golf clubhouse at the Breakers Hotel. The renovations will include a lounge/break room for Spa and Beach Club employees where the ladies locker room was previously located, the reconfiguration of existing office space, and the creation of new offices by enclosing 945 square feet of space on the second floor which is currently open balcony on the west side of the building overlooking the golf course. No new employees will be added as a result of these renovations. Site Plan Review is also requested for awnings at the new golf and tennis clubhouse and in the main parking lot. The 652 sq. ft. awning for the new club house is to provide shelter for staging the golf carts and is at the basement level. The 80 sq. ft. awning for the parking lot is to give shelter to the valet parkers. A special exception is required because the hotel, which is a special exception, is being expanded. Site Plan Review is required for the enclosure of the balcony and the addition of awnings.

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

Zoning Administrator Paul Castro provided a brief overview of Special Exception #9-2006 with Site Plan Review.

Motion was made by Council Member Brooks, seconded by Council Member Wyett, to approve Special Exception #9-2006 with Site Plan Review. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #11-2006 The application of Sidney Speigel, Trustee (Property Owner); The Michael R. McCarty Restaurant Group, LLC (Tenant and Applicant) relative to property described as lengthy legal description on file; commonly known as 50 Cocoanut Row #101; located in the C-PC Zoning District. Request for special exception to permit conversion of 611 square feet of space currently used for office and storage to use as banquet seating and bar area containing twenty (20) seats. The overall seating for the restaurant will not increase because when the banquet seating is used all twenty (20) seats will be removed from the allowed indoor and outdoor seating. Total seating will remain 151.

Ex-parte communication was declared by President Coleman with Mr. McCarty; Council Member Brooks with Mr. McCarty and with Attorney Hanlon; President Pro Tem Kleid with Mr. McCarty.

Attorney Hanlon, on behalf of the applicant, was present.

Zoning Administrator Castro advised that staff had no objections to this application.

Motion made by Council Member Brooks, seconded by Council Member Wyett, to approve Special Exception #11-2006. On roll call, the motion carried unanimously.

d. SPECIAL EXCEPTION #12-2006 The application of Island Palm (Richard Day) relative to property described as Lots 11 through 17, Block 7, of Revised Map of Royal Park Addition to Palm Beach; commonly known as 350 South County Road; located in the C-TS Zoning District. Request to modify a previously approved Special Exception to : (I) have a 302 square foot retail alcove as part of the Island Palm Restaurant next to the hostess stand; and (ii) to allow four (4) umbrellas for the outdoor seating area on Australian Avenue.

Ex-parte communication was declared by Council Member Markin; President Pro Tem Kleid via a meeting with Mr. Day; President Coleman via a meeting with the applicant; Council Member Brooks with Mr. Day.

Attorney Ziska, on behalf of the applicant, presented renderings to provide an overview of the special exception.

Council Member Wyett stated that he did not have a problem with the request for placement of umbrellas at the outdoor seating area, but did have a problem relative to a retail store and restaurant combination.

In response to Council Member Wyett, Attorney Ziska explained that the alcove area had been part of the previous restaurant's, Galaxy Grill, approval. The additional seats they had been given were located in the back area behind the bar, toward the kitchen. She advised that the request was for a permitted use and explained that the 300' retail alcove area would be used to sell shirts.

Mr. Richard Day, owner of Island Palm, stated that they had been informed by the Fire Department where to place the umbrellas so as not to interfere with people sitting at those tables with traffic.

Zoning Administrator Castro advised that the last set of plans submitted showed 154 seats in the restaurant, and the occupational license showed they had been approved for 150 seats. He noted that four seats would have to be eliminated if the alcove area was used for retail space, which might cause them to be in violation of their liquor license.

Council Member Markin suggested that, in the future, the awnings should be extended out to eliminate the need for the umbrellas.

Zoning Administrator Castro advised that the applicant could extend the awnings, but would need to come back before the Town Council to modify the site plan. He suggested that the Town Council put that recommendation into today's motion, and then the applicant might not have to come back before the Town Council.

After further review regarding the history of the applicant's prior approvals, Mr. Castro determined that the applicant had previously been approved for 154 seats. He advised that if the applicant maintained 150 seats, they would not be in violation of their liquor license.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to approve Special Exception #12-2006 with the condition that, at the discretion of the owner, the awnings would be extended to eliminate the need for the umbrellas, which would require ARCOM approval. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. SITE PLAN REVIEW #9-2006 WITH VARIANCES The application of The Villas, Inc., Leo Albert, President relative to property described as Lots 12 through 25 inclusive, a portion of Lot 26 and a portion of Lot 29, Block 13 of Royal Park Addition; commonly known as 425 Worth Avenue; located in the R-D(2) Zoning District. The applicant requests modification of site plan approval by Town Council to place an emergency power generator and screen wall at the Northeast corner of the existing site; variance for locations of generators and pool equipment: applicant seeks a variance to locate an accessory structure (emergency power generator) and screen wall within the street rear yard setback. The applicant seeks a street rear yard setback of 7 feet in lieu of 30 feet minimum as required by code for an accessory structure. The applicant seeks a variance to allow a screen wall at a height of nine (9) feet in lieu of six (6) feet maximum allowed in a street rear yard. *Deferred from the July 11, 2006, August 8, 2006, September 7, 2006, and October 10, 2006, Town Council Meetings.*

Director of Planning, Zoning and Building Close advised that when staff met with the applicant, they had indicated they would attend the Town Council meeting today to request removal from the Agenda. She noted that staff had not heard from the applicant and recommended removal of this item from the Town Council Agenda.

In response to Town Manager Elwell, Ms. Close clarified that staff recommended that this item be removed from the Agenda as a project. The applicant would have to reapply. She noted that the Town Council could deny this request, which would mean that the applicant could not come back for a year.

Attorney Randolph stated that the applicant, if removed from the Agenda, could then refile and readvertise.

Motion made by Council Member Markin, seconded by President Pro Tem Kleid, to remove Site Plan Review #9-2006 with Variances from the Agenda. On roll call, the motion carried unanimously.

b. SPECIAL EXCEPTION #7-2006 The application of the Hebrew Academy of PB relative to property described as lengthy legal description on file; commonly known as 240 Cocoanut Row; located in the R-B Zoning District. A request for a Special Exception to allow a private academic pre-school ("Hebrew Academy of Palm Beach") to operate at the old Palm Beach Public School Gymnatorium building at 240 Cocoanut Row with 16, 207 sq. ft. of gross leasable area. The applicant's proposed pre-school will start with 8 students and will not exceed a capacity of 30 students. There is a proposed fenced in recreation area of approximately 3,300 sq. ft. on the Northeast corner of the subject property. **NOTE: THIS MATTER WILL BE HEARD AT A TIME CERTAIN OF 4:00 P.M.**

Ex-parte communication was declared by Council Member Markin with Rabbi Scheiner and residents in the area; President Pro Tem Kleid with Rabbi Scheiner, Attorney Ziska, and residents in the area; President Coleman with Rabbi Scheiner, Attorney Ziska and residents in the area; Council Member Wyett with Rabbi Scheiner, Attorney Ziska and residents in the area; Council Member Brooks drove along Seaview Avenue, the Four Arts and Cocoanut Row extensively, since the last meeting.

President Coleman stated that the issue was the serious problems that Seaview Avenue had, and the applicant was the straw that broke the camel's back. He suggested that staff review the following three items:

1. Resident parking, which had fourteen spaces, that he counted yesterday;
2. Make the street a two-way street;
3. Close off the Four Arts, exiting there only when there were events at the Four Arts, which would then have a police officer.

President Coleman advised that he was trying to separate the issues, which the Town Council would not be able to resolve today. He noted that he was going to ask the Town Council to instruct staff to look at those issues as a possible means of taking some of the pressure off of the traffic movement within that area, so that the issue of the Hebrew Academy could be separated out from the legitimate angst that the neighbors were feeling.

Council Member Brooks advised that he totally agreed with President Coleman. He noted that the problem, in his judgement, came down to the parking situation. The Hebrew Academy had a maximum of five or six cars, which used the south side of the Four Arts parking. The problem was that the citizens who lived on Seaview, in particular the west end, find bumper to bumper cars in front of their houses, which spill over to Seaspray.

Discussion ensued regarding parking. President Coleman stated that he would recommend staff come back next month with recommendations related to parking, along with the traffic study.

Attorney Maura Ziska, on behalf of the applicant, advised that Rabbi Scheiner, Dean of the Hebrew Academy, and representatives of the Hebrew Academy were present today. She explained that at the October 10, 2006, Town Council meeting, the Hebrew Academy, had been given an additional thirty days to work with the neighbors and alleviate some of the neighborhood concerns. She noted that they framed the issues into three concerns, and believed that they have met the neighbors concerns in regard to the following:

1. Traffic Flow:

   Parents have complied with the letter they had received mandating an orderly drop-off and pick-up policy, which required them to use the Four Arts Plaza only to access the Four Arts parking lot and not to use Seaview Avenue.

   Attorney Ziska read into the record an e-mail she received from the Town's Traffic Consult, Gareth Klotz, which further confirmed compliance by the parents to this mandate, as well as confirming that the traffic circulation and parking concerns raised by residents along Seaview Avenue, were coming from Palm Beach Public School and not the Hebrew School. These concerns needed to be addressed with the Public School.

2. Parking:

   Attorney Ziska stated that in a letter sent to parents on October 12, 2006, they were requested not to park on Seaview Avenue or in the parking lot on Cocoanut Row. She She presented a photograph to indicate that a chain with a "No Parking" sign had been strung across the south parking lot.

   Attorney Ziska advised that only the teachers were using that parking lot, and the chain would be put up so that parents would not use it. It was hoped that people from the Public School would not be using the parking lot.

   Attorney Ziska stated that arrangements had been made with the Four Arts Society for additional parking if needed, in their lot west of the Hebrew Academy.

3. Aesthetics of Play Area:

   Attorney Ziska advised that a five-foot hedge as well as flowers were planted around the play area screening students, fence and playground equipment. The hedge would continue to grow and would be maintained to improve aesthetics of the play area.

Attorney Ziska advised that a certified letter was sent to the neighbors on November 3, 2006, outlining their progress and asking them to call her if there were any additional concerns. The only response she received was a voice mail from Mrs. Van Andel advising that there was a pocket in the hedge where she could still see some of the plastic playground equipment. She advised that was corrected the next day.

Attorney Ziska addressed the traffic concerns and agreed that they be separated out, and the special exception should be granted as the Hebrew Academy has not adversely impacted the neighborhood. Mr. Klotz noted that there was no negative traffic impact stemming from the Hebrew Academy. She stated that Town-serving documentation had been submitted to the Town.

Robert Moore, Consultant, on behalf of the Hebrew Academy, provided a brief history of the Hebrew Academy and recounted why this application was before the Town Council, and clarified the special exception and the steps that followed.

Zoning Administrator Castro advised that this application had been in front of the Town Council for several months and some of the issues were parking and traffic circulation. He explained that the Town's Consultant had looked at the street and made observations on several occasions as stated by Attorney Ziska. The Hebrew Academy had different peak times than Palm Beach Public and Palm Beach Day School, and the Consultant observed that there was not a traffic conflict or parking conflict during that time frame.

Mr. Castro discussed the concerns staff had relative to use of the parking lot on Cocoanut Row, traffic backup on Cocoanut Row, and the use of Seaview Avenue. He stated that one of the options, mentioned today, was for the Town Council to consider eliminating any use of Seaview Avenue through Four Arts Drive other than for large special events held by the Society of the Four Arts. He advised that the Traffic and Parking Study would be before the Town Council next month, and it addressed many of these issues. He noted that most of the major problems in this area, from staff s' standpoint, were related to drop-off and pick-up at both Palm Beach Day School and Palm Beach Public School.

Mr. Castro advised that the Hebrew Academy's application represented that they would have a maximum of thirty students, and if they wanted to expand that enrollment, in the future, they would have to come back before the Town Council in a special exception application to modify their application.

Public Comment:

Nancy Briggs, 358 Seaspray Avenue, thanked the Town Council for considering the traffic problem. She discussed the following:

- The impact from the three schools affected the entire neighborhood, and requested a complete traffic study to include the use of school buses, to include the entire area, and to be conducted during season, when the Society of the Four Arts was open and more people were using the tennis courts.
- Requested that Seaspray Avenue be included in the discussion of traffic and parking.
- The 200' for the required notice to residents might not be adequate.
- A special exception should be something that had special circumstances enhancing the life in Palm Beach and not detracting from the quality and the safety of residents.

James Thompson, 426 Seaspray Avenue moving to 441 Seaview Avenue, commented on the following:

- The radius of impact on the corner of Seaview Avenue and Cocoanut Row was far greater than 200' and believed that notice of this issue should have been sent to a far greater audience.
- Discussed safety concerns, and traffic complications.
- Town-serving issue.

In response to Mr. Thompson, Attorney Ziska stated that there were presently twenty children, and she was not certain how many families were represented. She noted that there were fifteen cars dropping off children and that a couple of families had siblings that attended the preschool.

Discussion ensued regarding the Town-serving requirement. Council Member Markin advised Mr. Thompson that there were two families from Palm Beach that were represented in the school.

Mr. Thompson stated that this then became a convenience for a few people and a great inconvenience for a great many and hoped they would carefully study the parking issues and the traffic.

Mr. Castro clarified that the notices went out twice because they had to renotice due to a description issue in the application. The notices went out to residents within 300 feet of the old gymnaturium and the school across the street.

Sandy Thompson, 426 Seaspray moving to 441 Seaview, commented that she echoed everything said by her husband, James Thompson. She identified the many issues that concerned them as follows:

- No parking available for anyone coming to their home, such as help, family, visitors.
- Tiny one-way street.
- Corner of Seaview Avenue at Cocoanut Row

- Consider question of parking permits for Seaview Avenue

Ms. Thompson did not want to ignore the value to have, in Town, the Hebrew School, but as citizens they deserved some rights as well and deserved consideration by the Town Council.

Barbara Chevallard, 330 Seaspray Avenue, commented on the following:

- Increase in traffic, speeding and parking congestion on Seaspray Avenue since the renovation of the Palm Beach Public School.
- School buses racing down the street.
- Non-resident parents parking carelessly and illegally to walk their children to the Public School.
- Lower Speed Limits/Speed Limit Signage:
    - Noted that if the speed limit was respected at 25 miles per hour, it would still be dangerous.
    - No speed limit signs on Seaspray Avenue.
    - Speed limits on Cocoanut Row, Seaspray Avenue and in school zones.
    - School zone flashing speed limit sign.
- Parked cars on both sides of the street forcing Seaspray Avenue to become a narrow one-way.

Ms. Chevallard noted that she had received the certified letter sent by Attorney Ziska. She questioned why Seaspray Avenue was not mentioned in that letter as she feared everything was being pushed over to Seaspray Avenue.

Discussion ensued regarding Ms. Chevallard concerns, observations and suggestions.

Council Member Brooks stated that as a neighbor on Seabreeze Avenue, he sympathized with her. He suggested the possibility of placing speed bumps in the streets but noted that the Fire-Rescue Department and the Police Department were not in favor of that because of the potential damage to the safety of their vehicles.

President Coleman suggested staff study the possibility of changing the direction of Seaview Avenue from east to west to west to east. He advised that all the "Sea" streets would be addressed.

Council Member Wyett stated that he believed the Town Council had made a fundamental error today in not asking Palm Beach Public School and Palm Beach Day School to attend today's meeting. He advised that the Town Council needed to look at the entire picture. The increase in the number of children at Palm Beach Public School exacerbated the problem, which would not be solved by not allowing the Hebrew Academy to remain there. He noted that the problems would be exactly what they were now, because fifteen to twenty students with between eight and twelve cars dropping off and picking up would not be visible. It was part of the problem. He reiterated that all parties needed to be brought together.

Council Member Wyett suggested declaring all of those streets as school zones in order to go from the present 25 mph down to a much lower level.

Council Member Brooks advised that the Town Council had voted several years ago to lower the speed limit from 30 to 25, which has not been observed. He explained that Police Officers would not write a speeding ticket for five or six miles over the speed limit. He suggested, as a solution, the use of a blinking light when school was in session, with a speed limit of 20 mph when the light was blinking.

Ms. Briggs stated that every car was one too many and suggested that if there was room for a third school, those students should be bussed in from West Palm Beach as one unit as well.

Council Member Wyett suggested the use of overtime officers to patrol the streets until such time as behavior patterns could be changed.

Dorothy Letts, 419 Seaview, advised that it was the special exception which was the key. Special exceptions were supposed to enhance the neighborhood, and she did not know if the Hebrew Academy would or would not enhance it. She noted the applicant was doing everything to make it look better, but questioned the Academy's necessity. She expressed concern over the number of students attending Palm Beach Public School.

Discussion ensued relative to the number of students allowed Palm Beach Public School.

Ms. Gabriel Kuvin, 149 East Inlet Drive, inquired as to how many children that attended Palm Beach Public and Palm Beach Day School lived in Palm Beach?

Mayor McDonald stated that in the Public School system, there were actually 40-some students. He believed it was 42 students, not only in Town, but Countywide.

Mr. Leslie Evans, 135 Seminole, stated that Palm Beach Public School and Palm Beach Day School caused many of the problems. He noted that there used to be a crossing guard at Seaview Avenue and Cocoanut Row, which caused traffic to backup. He advised that he disagreed with the statement that Seaview Avenue and Cocoanut Row was the worst intersection, but that County Road and Seaview Avenue backed up tremendously. The direction of the street could not be changed, because the traffic would be horrendous.

In response to Mr. Evans, Mayor McDonald advised that there was a cap on the number of students allowed at Palm Beach Day School.

Council Member Wyett made a motion to defer Special Exception #7-2006 to December 12, 2006, Town Council Meeting, in order for the Traffic and Parking Study to have been received and heard. Council Member Brooks seconded the motion, on the condition that Council Member Wyett added to the motion that the Town invited the Head Master of Palm Beach Day School and the Principal of Palm Beach Public School. Council Member Wyett agreed to amend his motion to include Council Member Brooks' condition and to extend previous conditional approvals until that time.

Attorney Ziska requested the Town Council vote on the special exception today as holding it up another month would not solve the global traffic problem. The Traffic and Parking Study could be discussed next month, but a vote on the special exception could occur today.

Council Member Markin concurred that this item should be deferred. She noted that her concern was the expectation level of the residents that the Traffic and Parking Study would resolve these issues. She advised that a lot of the concerns were not related to the Hebrew Academy but definitely were related to Palm Beach Public School, which the Town Council had no control over. The only thing that the Town Council did have control over was the Hebrew Academy. She advised that she would prefer to review the Traffic and Parking Study and take it into consideration at the same time the Town Council was considering the Hebrew Academy, because to do so now would be premature to the results of the study.

Council Member Markin commented that she did not believe the Hebrew Academy should enroll any more students. She noted that the applicant stated there were twenty students enrolled, but the number of students should be frozen until next month's Town Council meeting when it will be given further consideration by the Town Council.

On roll call, the motion carried unanimously.

Mr. Castro clarified that Council Member Markin's statement that the number of students at the Hebrew Academy should be frozen was a request and was not part of the motion.

4. New Business- More Than 15 Minutes

    a. <u>SPECIAL EXCEPTION #10-2006 WITH SITE PLAN REVIEW AND VARIANCE</u> The application of Coco Palm Beach relative to property described as the East 10 feet of Lot 30 and all of Lots 31-37 inclusive, Floral Park, and Lots 190 to 200 inclusive, Floral Park; commonly known as 290 Sunset Avenue and Sunrise Avenue Parking Lot with no address; located in the C-TS Zoning District. A request to modify the previously approved Special Exception #10-2002, Condition number 2, to relocate the 30 off-site shared supplemental parking spaces from the Wachovia Bank parking lot located at 285 and 255 Sunrise Avenue and 165 Bradley Place to a parking lot on Sunset Avenue behind the Publix Supermarket, which is 500 feet from the Coco Palm Beach Restaurant. A request to modify the previously approved Site Plan to place a 462 square foot temporary tent in the courtyard of the property to cover the outdoor seating area. A variance request to allow the placement of a 462 square foot temporary tent to protect the outdoor seating for dinner from November through April of every year. The Code requires temporary tents to meet lot coverage and setback requirements thus the variance request is to increase the lot coverage to 44.7% in lieu of the 35% maximum allowed and the 42.4% existing. **Request for Deferral to the December 12, 2006, Town Council Meeting Per Letter Dated October 23, 2006, From Maura A. Ziska.**

Deferred Special Exception #10-2006 with Site Plan Review and Variance to the December 12, 2006, Town Council meeting, under Item VII., Approval of the Agenda.

b. SPECIAL EXCEPTION #13-2006 The application of Thomas Campaniello relative to property described as a portion of Lot 35, Block E, Royal Park Addition; commonly known as 288 South County Road; located in the C-TS Zoning District. Request for Special Exception approval to permit a 4,454 sq. ft. restaurant at this location. The restaurant is proposed to have 181 seats with 6 parking spaces during lunch and 23 parking spaces at night behind the building. The off-street parking is technically being met based upon the principal of equivalency.

Ex-parte communication was declared by Council Member Brooks with Attorney Curtin.

Attorney Barry Curtin, on behalf of the applicant, advised that they were seeking approval of a 4,400 square foot restaurant. He commented on the following:

- The footprint and configuration of the restaurant would be the same as the previous restaurant, Amici's.
- The facility would be updated as would the fire sprinkler system.
- The original restaurant contained seating for 181 persons. The requirements of the

new Fire Code modified the number of seats down to 138, a reduction of 43 seats from the prior restaurant, which had exactly the same square footage.

Attorney Curtin advised that Mr. Walter Staib, their restaurant consultant, had to leave before addressing the Town Council as he had a plane to catch.

Michael Mosher, Architect, displayed and reviewed architectural renderings to provide an overview of the application.

Zoning Administrator Castro stated that the Fire Marshall advised him that the applicant had agreed to comply with Safety Code 101 and the fire suppression system.

Mr. Castro advised that staff had a concern related to traffic circulation and the valet parking pattern for parking behind the building. He noted that the valet operation was the same as Amici's. He commented that, in the rear of the building, the restaurant would have approximately six spaces during lunch and twenty-six spaces in the evening for valet parking in the rear of the building, and staff anticipated that they would use some on-street parking as well. He noted that this would bring back to that area additional evening activity, which staff believed necessary for this area.

Council Member Wyett stated that the restoration of the restaurant to an active position was welcome.

In response to Council Member Wyett, Mr. Castro clarified that there would be twenty-three spaces not twenty-six.

Council Member Wyett proposed to the Town Council that a condition of approval for new restaurants would be the restaurant would enforce the rules of their valet parking and answer to the Town. The restaurant could receive steep penalties and the possibility of being closed down if the valets were not kept under control.

Mr. Mosher advised that the proposed restaurant had a traffic pattern plan that would avoid previous valet parking problems. He stated that the only place the valets could park was behind the building.

Council Member Wyett suggested that the owner of the building place awnings on the second floor of the building.

Mr. Castro advised that the applicant would be required to obtain a valet parking permit from the Police Department. He noted that if there were issues or problems with valet parking, the Police Chief would call in the operator of the valet company as well as the restaurant owner to try to work out operational issues.

Mr. Castro discussed the following in response to comments of Town Council Members and concerns of staff:

- The maintenance of special exceptions would be contingent upon valet parking being conducted properly, and would be made a condition of approval.
- Staff suggested limiting the hours of operation, as represented by the applicant's attorney, in a letter dated October 16, 2006, and recommended that the Town Council incorporated the following hours of operation in their approval.
    - Monday - Friday, 11:30 a.m. to midnight, dinner served until 10:30 p.m.
    - Saturday - 11:30 a.m. to midnight, dinner served until 11:30 p.m.
    - Sunday - 10:30 a.m. to midnight, dinner served until 11:00 p.m.

Motion made by Council Member Wyett to approve Special Exception #13-2006 with the conditions discussed.

Council Member Brooks stated that he did not believe the restaurant could be held responsible for the valet.

In response to Council Member Brooks, Attorney Curtin advised that the applicant had signed a contract with the valet company, and he was not certain if there was a Hold Harmless Clause in that contract.

Attorney Randolph suggested that the motion clarify what would trigger the applicant having to come back before the Town Council.

Council Member Wyett stated that the applicant would have to return before the Town Council if there was a violation of the valet rules.

Discussion ensued and President Coleman suggested that the motion should state that the applicant would have to come back before the Town Council if they received three citations, at which point, the continuation of their special exception could be in jeopardy.

Council Member Wyett stated that the first rule could be to take-away valet parking, which he did not want to do because that would hurt the patrons of the restaurant.

Town Manager Elwell clarified that three formal citations would trigger the review of that restaurant for a determination.

President Coleman stated that they would review the situation but it did not mean it was automatic that the special exception would be withdrawn.

In response to Attorney Curtin, Council Member Wyett stated that, in the future, this would be a condition applied to all new restaurants that came before the Town Council.

Council Member Markin commented on Mr. Wyett's recommendation that the awnings be updated, and suggested that a condition of approval should be that awnings would be added to the second floor.

Ms. Close suggested that the Town Council make that recommendation to ARCOM, and staff would request that ARCOM examine this issue when reviewing the storefront.

President Coleman stated that the Town Council would recommend to ARCOM that this building have two stories of awnings.

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

Council Member Markin, at the request of Attorney Curtin, clarified her motion stating that the issue of the awnings would automatically go before ARCOM. The Town Council would strongly recommend to ARCOM the placement of awnings on the second floor.

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

Deputy Town Manager Thomas Bradford, on behalf of the Town of Palm Beach, presented an overview of the application for a Town Public Safety Dock. He advised that the Town had been approved to receive a $100,000 grant from the Florida Fish and Wildlife Conservation Commission, which would expire on December 31, 2006. He stated that a requirement of the grant was placement of a sign noting the participation of the Florida Fish and Wildlife Conservation Commission.

Zoning Administrator Castro stated that staff had no objections to this application.

In response to Council Member Wyett, Mr. Bradford stated that he believed the cost of the project would be about $200,000, with $100,000 coming from the grant.

Jeff Cloninger, 411 Brazilian Avenue, Vice President of the Royal Park Homeowner's Association, introduced several fellow Directors of the Association. He discussed the following two points:

1. The Association did not believe construction of a new dock was necessary.
2. The Association requested that if the Town Council determined a new public safety dock was needed, the approval should be deferred until there was a comprehensive master plan for both Lakeside Park and the Town docks, with a review of same.

Town Manager Elwell clarified that this project was part of the master plan for the docks. He noted that previously there had been discussion amongst the Town Council about whether or not there might, at some point be, a master plan for the redesign of the park, but that had not yet occurred.

Mr. Cloninger stated that setting a deadline of December 31st just because a grant had been offered to the Town might be putting the cart before the horse.

In response to President Coleman, Mr. Bradford responded that the Town would have to ask for an extension, because construction would not start prior to December 31st. He stated that the Town had formally contacted the Commission, and the Town had been informed by the Commission's staff that the extension would be granted, but they would grant only one extension. He explained that the Town had applied for a permit from the Army Corps of Engineers in May 2005, which had not yet been received. The request for an extension would be based on when the Town believed they would receive the permit. He advised that the Town's consultant had been present, but left to catch a flight out of Town. He noted that they had conferred before he left, and the intent was for them to meet next week, upon his return, in order to determine when the permit would be granted. The Town would then adjust their request for an extension, accordingly.

In response to Council Member Markin, Mr. Bradford advised that this grant could not be used for anything other than this dock. The grant program could be used for things that were associated with public access to public waterways, but this particular item was relative only to the dock. He stated that if they had not been the recipient of this grant, the Town would probably move ahead with this project. He commented on the following:

- The Town would receive $15,513 per annum if the space at Brazilian Dock was leased out. The Town was now losing that money.
- The Police Department would like to have another boat, which they believed could be obtained through donations. The Police Department had two marine officers and each could drive a boat.
- The Police Department was unable to coordinate and organize joint operations that occurred with the Florida Marine Patrol and the Palm Beach County Sheriff's Office. The proposed dock would provide them a place from which to do that.

In response to Mr. Cloninger, who stated that the Town would be spending $300,000 to make $15,000 in revenue, Mr. Bradford advised that the life of a dock was 25 years, so the Town would make a lot of money.

Council Member Wyett commented as follows:

- He supported the position of the Association noting that it was not against progress but was against blind progress.
- He did not support a second police boat, even if it was donated, as it would have to be manned and maintained. It would be a poor investment on the part of the Town.

Council Member Markin commented as follows:

- The Police Department had stated that they preferred two officers on a boat for backup.
  - If there were two boats, they would have to hire two additional officers.
  - Concern over spending upwards of $60,000 or $70,000 to man two boats.
  - The least of the Town's concerns were on water. The Town had more concerns with the simple enforcement of parking tickets, speeding on residential streets, etc.

President Coleman suggested deferring this item in order to investigate it further.

Council Member Wyett advised that if deferred it would force the residents to return before Town Council and they felt very strongly about this project.

In response to Council Member Brooks, Police Department Major Mason, addressed the dock space. He advised that the current dock was never designed for the size of the vessel that they now had. It was a very difficult space to maneuver into and the lift did not work properly in the low water, because it was so close to the bulkhead. He advised that they hoped to correct this situation with the new dock, and to have better joint cooperation with other law enforcement agencies. He stated that the dock was so close to the land that it could not be properly secured.

In response to Council Member Wyett, Mr. Bradford stated that the grant could probably not be extended for more than six months.

Council Member Wyett suggested delaying the decision four months, and perhaps, by that time, there would be a master plan.

Town Manager Elwell advised that he, too, had spoken with the citizens present today and understood their good intentions. He explained that this issue was not coming to the Town Council cold, as they and their predecessors had seen a draft conceptual master plan, which had received conceptual approval for the docks from the Town Council. He commented, in response to President Coleman's idea for master planning of the green space, that the Town had a master plan for the docks, which received conceptual approval from the Town Council; and all along, had the highest priority of the items to be implemented out of that master plan. He noted that certain elements of it were not to be pursued, because they were either too commercial or the structures were unnecessary. He advised that staff had received Town Council's direction not to work on certain aspects, and had also received their direction, as a matter of priority, to seek this grant and develop this particular element because of the public safety nature of it. He reiterated that they were not here cold, for the first time, to suggest the idea of a public safety dock, and that this project had been considered several times, in the past.

In response to President Coleman, Mr. Cloninger advised that their objection, from the start, was the concept. The Association believed that the whole of Lakeside Park should be part of a master plan.

Council Member Brooks reiterated Mr. Elwell's comments concerning this project. He commented that he knew Council Member Markin was not a member of the Town Council at the time this issue had been discussed, but was unsure whether President Coleman had been a member. He advised that this had been discussed and voted on. He explained that, at that time, there was no concept that the green space would be redone. He noted that he respected the Association, but did not know why they were now trying to tie the two together. He stated that the Town Council undertook that decision matrix for the docks, refined it and threw some elements out.

In response to President Coleman, Mr. Bradford advised that once the dock was built, it could be removed, but the Town might have to pay back the money to the State.

Council Member Wyett stated that they would not lose anything by taking the maximum deferral allowed, and hope, in that time, the master plan would be ready. He commented that if the Town took a four-month deferral, it might be enough time to allow the Town to still apply for the grant, should the Council approve it.

Mr. Bradford responded that there was no master plan for the park, no money had been allocated, the process had not begun, and they did not know how long it would take.

President Pro Tem Kleid stated that if the Town went ahead with this part of the project, which had conceptual approval, as stated by Council Member Brooks earlier, it did not preclude the Town from having a master plan vis a vis the green area.

Council Member Markin advised that when this issue was discussed she sat on the other side of the dais. She stated that when the master plan had been presented there had been a lot of opposition to various parts of it, and then it was decided that it would be tabled. She noted that was the last she had heard of it as a resident and as a Town Council Member. The dock proposal was then presented, and the Town Council discussed spending money for the dock. She commented that what had happened since then was the formation of this Association who had presented their concerns, after the fact. She stated that the issues the Association had, were twofold.

1. Clarification of what the Town intended to do now, and in the future, relative to the docks.
2. Development of a plan for the green space.

She advised that as much as the Town would like a new dock, it should be done in a manner that the residents would feel comfortable with, and the Town should work with them on it. She noted that the issues were cost and an overall plan.

In response to President Coleman, Mr. Bradford advised that there was a multipurpose easement to the north, and the proposed place for the dock was actually the furthest it could go to the north without encroaching onto the cable easement. He reviewed some of the other issues related to location of the proposed dock.

Discussion ensued regarding the location of the dock, and President Coleman stated that relocating it might solve all problems.

Council Member Wyett made a motion to defer Site Plan Review #19-2006 with Special Exception and Variances to the December 12, 2006, Town Council meeting, for further discussion of the master plan and other issues. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

D. Other

1. Renato's Restaurant, 87 Via Mizner, Special Exception #17-2005 with Site Plan Review and Variances- Review of Condition Regarding Upgrading the Parking Lot Adjacent to the Restaurant. [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Bill Atterbury, on behalf of the applicant, advised that they were before the Town Council because of a condition of approval of Special Exception #17-2005 for Renato's Restaurant. The Town Council had approved additional outside evening seating for Renato's, and had also approved the use of 19 parking spaces within the adjacent parking lot located at 330 Peruvian. The parking lot was a non-conforming lot, which was paved around the outside, gravel in the center with a bit of a depression to facilitate drainage. The condition for approval for use of the spaces was that in one year the applicant would have to come back before the Town Council and readdress staff's recommendation that Renato's upgrade the parking lot to current Town standards.

Attorney Atterbury noted that circumstances had not changed, and for the applicant to incur the costs of updating the parking lot would still be an undue burden. He noted that Renato's was a year to year tenant of a portion of the parking spaces, a portion of the day. There were 52 spaces in the lot, which were used by other businesses on the Avenue during the day, and Renato's only used 19 spaces at night for valet parking. He explained that Renato's was a sole proprietorship, which had been open during the summer, to their financial disadvantage. The imposition of this condition would be an additional burden, which would be unfair.

Zoning Administrator Castro reviewed the reasoning behind staff's recommendation for this condition of approval last year. He advised that staff recommended that if the owners of the parking lot or the restaurant were unwilling to upgrade the paving and drainage of the parking lot used for supplemental parking, the owner of the restaurant should find another location for off-site parking. If the applicant did not move to another location, staff would recommend the elimination of the additional seating granted as a condition of approval to use the parking lot.

In response to Council Member Wyett, Mr. Castro stated that he had discussed with the applicant's attorney the use of the Apollo parking lot.

Council Member Wyett stated that restaurants and businesses on Worth Avenue have had difficulties in the last year, and suggested that the strict Codes the Town could be made more lenient to help some of these people out. He noted that restaurants were not getting the same traffic during the summertime, and were not quite as busy in season, for some reason. He advised that he did not want to impose this hardship on Renato's.

President Pro Tem Kleid stated that he did not believe in punishing the applicant for something that they had no control over.

Council Member Markin asked if the applicant had, over the past year, researched what the cost to redo the lot would be before they came to the conclusion that it was not financially feasible for them to do anything?

Attorney Atterbury responded that they did not research the costs, but that they knew it would be substantial. He stated that the applicant had discussions with the landlord's representative, who had taken the position that the landlord did not want to upgrade the lot, primarily because the gravel in the center of the lot facilitated drainage and avoided flooding problems. He advised that the applicant did not have the landlord's permission to upgrade the parking lot.

President Coleman asked what leverage the Town had over the owner of the lot, and at what point, could the Town bring in code compliance or what ordinances could the Town pass, which would accelerate the likelihood that they would bring it into code compliance?

In response to President Coleman, Ms. Close stated that if any improvements were made to the parking lot, the requirements of the Town's new storm drainage Ordinance would have to be adhered to, including providing for 2" of storm drainage on the site and the repaving. She stated that the Town could not do anything, if it had been grandfathered, and as long as the repairs had been made. She noted it had been grandfathered.

Council Member Brooks agreed with President Pro Tem Kleid that the tenant should not be responsible for the landlord's actions unless the tenant did something that was deleterious to the property.

Motion made by Council Member Brooks to approve the request of Renato's Restaurant, 87 Via Mizner, Special Exception #17-2005 with Site Plan Review and Variances, to remove the condition of approval regarding the upgrading of the parking lot adjacent to the restaurant. President Pro Tem Kleid seconded the motion. On roll call, the motion carried unanimously.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the Regular Town Council meeting of November 14, 2006, was adjourned at 6:57 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk