TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL HELD ON NOVEMBER 12/13, 2008

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Monday, November 12, 2008, at 9:30 a.m., in the Town Council Chambers and continued on Tuesday, November 13, 2008, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Richard M. Kleid
President Pro Tem Gail Coniglio
Council Member Denis P. Coleman
Council Member Susan Markin
Council Member David A. Rosow

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
William Amador - Fire-Rescue Chief
Kirk Blouin - Law Enforcement Major
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Castro - Zoning Administrator
William Crouse - Human Resources Director
Jane Day - Historical Preservation Consultant
Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director
Michael Reiter - Police Chief
Daniel Szarszewski - Police Captain

01/29/2010

Jane Struder - Finance Director
Jeff Taylor - Building Official
Rob Walton - Lead Code Compliance Officer
Spencer Wilson - Information Systems Manager
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Lowry M. Bell, Jr., Planning and Zoning Commission, From February 2002 Through September 2008.

Mr. Lowry M. Bell, Jr., was unable to attend today's meeting, but was recognized with great appreciation for his service on the Planning and Zoning Commission.

B. Recognition of Alec Flamm, Public Employees Relation Commission From October 2004 Through September 2008.

Mayor McDonald recognized Alec Flamm with great appreciation from the Town Council for his service on the Public Employees Relation Commission.

C. Recognition of Richard Krock, Firefighter Retirement Board of Trustees, From October 2004 Through September 2008.

Mayor McDonald recognized Richard Krock with great appreciation from the Town Council for his service on the Firefighter Retirement Board of Trustees.

IV. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald made the following comments:

The Town has earned, again, the Certificate of Achievement for excellence in financial reporting for the Fiscal Year 2007, Comprehensive Annual Financial Report, and the Distinguished Budget Award for the Fiscal Year 2008 Budget Document. The awards, given by the Government Finance Officer's Association, represent a significant accomplishment

by a government and its management team, and provide independent confirmation of the quality of our financial management. Congratulations to Jane Struder, and our fine Finance Department on these outstanding achievements. Thank you, Jane.

Last month, Council Member Rosow remarked that there were 77 home foreclosures in Palm Beach. He later realized the inaccuracy of this statement and quickly sent an email clarification to the Town Manager. His initial remarks made publicly and on the internet, received a much larger audience than his later clarification, so I want to publicly state that he believes the number is most likely 7 and not 77.

Also, continuing with Council Member Rosow, he circulated an email regarding the allocation of our real estate tax monies of $218 million +; $49 million goes to Palm Beach County, $95 million to the County school system, $13 million to the Healthcare District, and $7 million to children services. In his email, he suggested attendance of the meetings of these agencies. Our Governmental Review Impact Panel (GIRP) reviewed this situation in 2005, and for different reasons decided not to establish liaisons with those agencies. But in view of budget restrictions, implicated since GIRP's recommendation, I believe Council Member Rosow raises a timely issue and I think it should receive attention. Therefore, I am designating Council Member Rosow as my designee to attend budget meetings of these agencies, in an effort to control spending growth. I direct the Town staff to provide any meeting information and backup to him and the Town Council to provide policy direction.

Lastly, Home Rule passed on November 4, 2008, which was a great victory for the Town of Palm Beach, and 37 other municipalities. I want to publicly recognize a person important to its success, and that is Town Manager Peter Elwell, who brought this issue to my attention nearly two years ago. I appreciate his initiative in doing so. Without his perception and alertness, it is unlikely Home Rule would exist today in Palm Beach County. Thank you, Peter. I also want to thank this Council again for their leadership on this issue. It is also your legacy. Thank you, Mr. President

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Markin:

On October 30, 2008, a joint meeting was held regarding the expansion of the Port of Palm Beach. The Town Council, along with Palm Beach Shores, had a very unified approach to the meeting. The meeting was very informative, there was more information to obtain, and there will be more meetings in the future; the expansion could be very detrimental to the Town.

President Pro Tem Coniglio:

Thanked the Mayor and congratulated him on maintaining the ability for the Town to govern itself; thanked Council Member Coleman for his service and expertise on the Town Council; thanked everyone for participating today in the decision making process.

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

Etonella Christlieb, 200 Everglade Avenue, commented regarding the Royal Poinciana Plaza redevelopment, and the preservation of the historical building, inside, in the Town of Palm Beach.

Henry McIntosh, 124 Via Bethesda, commented regarding Home Rule, and thanked the Mayor.

Jere Zenko, 232 Tangier, commented regarding, the agenda item: Authorization to Proceed with Actuarial Study on Investment Returns.

Barbara Tolley, Ibis Isle Road, commented regarding the problems encountered with Sterling Palm Beach, management company at the Royal Poinciana Plaza.

Brian Kosoy, Sterling Palm Beach, provided a response to Ms. Tulley regarding the problems.

Mary Marsuvian Biederman commented regarding Mr. Stolman's article in the *Palm Beach Daily News*, about the Royal Poinciana Plaza.

VII. APPROVAL OF AGENDA

The following changes were made to the Agenda:

CORRECTION, on page 4, of the Agenda of November 6, 2008, Item XI.A., Water Committee Meeting read October 20, 2008, and should be October 21, 2008.

REQUEST FOR WITHDRAWAL, on page 5, Item XII.B.2., will be heard.

CORRECTION, on Page 7, Item XII.C.3.a, Variance #11-2008, Attorney Maura Ziska should be Attorney Ron Kolins.

DEFERRED, on page 8, Item XII.C.2.4.a., Variance #19-2008 to the December 8, 2008, Town Council meeting.

DEFERRED, on Page 8, Item XII.C.2.4.b., Site Plan Review #10-2008 with Special Exception and Variances to the December 8, 2008, Town Council meeting.

TIME CERTAIN 4:30 P.M., on Page 10, Item XIII.A.1., Ordinance No. 16-08.

TIME CERTAIN 9:30 A.M., NOVEMBER 13, 2008, on Page 11, Item XIV.A.2, City of West Palm Beach Presentation Regarding Opposition to the Proposed Expansion of Palm Beach International Airport.

MOVED, TO BE HEARD AS LAST ITEM ON 11/12/08, - Page 12, Item XIV.B.2., Annual Report on Unpaid Assessments, Fines, and Fees and Authorization to "Write Off" Certain Monies Deemed Uncollectible.

MOVED, on Page 12, Item XIV.B.6., Upcoming Maintenance Dredging of Lake Worth Inlet by the U.S. Army Corps of Engineers, to Page 5, as Item XII.B.1.a., immediately after the South Jetty Repair issue.

ADDED as Item XIV.B.11., Timing of Street Paving [David A. Rosow, Council Member]

Motion made by Council Member Markin, seconded by President Pro Tem Coniglio to approve the Agenda as Amended.

Responding to Council Member Rosow, President Kleid indicated that his request for a discussion regarding the timing of the street paving would be heard under XIV.B.11., following Attorney Ron Kolin's item.

Amended motion made by Council Member Markin, seconded by President Pro Tem Coniglio to approve the Agenda as Amended, with the addition of Item IV.B.11., regarding the timing of street paving. On roll call, the motion carried unanimously.

VIII. CONSENT AGENDA

A. MINUTES: OCTOBER 13, 2008

APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: OCTOBER 14, 2008
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING-CLOSED-DOOR SESSION

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON OCTOBER 22, 2008.

D. RESOLUTIONS

1. RESOLUTION NO. 95-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described (442 Seaspray Avenue) 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."
[John S. Page, Director of Planning, Zoning, and Building]

2. RESOLUTION NO. 96-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions for the Property Hereinafter Described (The Breakers Hotel) 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."
[John S. Page, Director of Planning, Zoning, and Building]

3. RESOLUTION NO. 97-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the First Amendment to the Rooftop Lease Agreement Between the Town and New Cingular Wireless PCS, LLC for Use of the Town Hall Property, 360 South County Road, and Authorizing the Mayor to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

4. RESOLUTION NO. 99-08 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]

E. OTHER

1. Authorization to Proceed with Actuarial Study on Investment Returns. [Jane Struder, Director of Finance]

2. Ratification of Selection Committee Recommendation Regarding Traffic Consultants. [H. Paul Brazil, Director of Public Works]

3. Ratification of Selection Committee Recommendation Regarding Electrical and Mechanical Engineers. [H. Paul Brazil, Director of Public Works]

4. Par 3 Golf Course Renovation

   a. Ratification of Selection Committee Recommendation Regarding Pre-Qualification of Golf Course Contractors. [H. Paul Brazil, Director of Public Works]

   b. Ratification of Selection Committee Recommendation Regarding Pre-Qualification of Contractors for Reverse Osmosis Water Treatment Facility. [H. Paul Brazil, Director of Public Works]

5. Authorization of Funding for Change Order to Expand Scope of 2008 Water Main Improvements. [H. Paul Brazil, Director of Public Works]

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

IX. ROYAL POINCIANA PLAZA

A. Presentation of Conceptual Plans for Redevelopment. [Ann Beha and Morgan Wheelock]

President Kleid announced the procedure that would be followed in the Royal Poinciana Plaza matters: A public presentation of the conceptual plan for redevelopment of the Royal

Poinciana Plaza would be followed by questions and comments from the public and from the Mayor and Town Council. Public comments were not to exceed three minutes in duration; the Town Clerk would signal the time by a tone. During the landmarking discussion, organizations would be allowed to speak for up to five minutes; individuals would be allowed to speak for three minutes. Mr. Kleid requested that there be no comments directed toward the landmarking of the Royal Poinciana Plaza at this time. Comments regarding landmarking issues could be made at the time that the landmark resolution was heard, as the item following the presentation of the conceptual plans.

Mr. Kleid pointed out that there would be no decision made today regarding the conceptual plan; if the plan was realized in one form or another, it would face a long and detailed process, including review by staff; presentation to the Planning and Zoning Commission for possible zoning changes and comprehensive plan amendments; execution of a development agreement, which might include conditions of construction and phasing; binding assurances that the project would be completed within a timely period; modification of the 1979 Agreement; approvals by the Architectural Commission (ARCOM) and/or the Landmarks Preservation Commission (LPC); approval by the Town Council. During the long, detailed process, there would be much negotiation, and also an opportunity for additional pubic input.

Mr. Lee Munder, 300 Seminole Avenue, partner of Sterling Palm Beach, addressed the Town Council, providing introductory remarks to the presentation to be made by Architect Ann Beha and Landscape Architect Morgan Wheelock.

Architect Ann Beha addressed the Town Council, made introductory remarks, and provided a PowerPoint presentation of the conceptual plan for redevelopment of Royal Poinciana Plaza. A site plan of the property was presented.

Landscape Architect Morgan Wheelock addressed the Town Council, providing remarks regarding the landscape vision of the redevelopment plan.

After the presentation, President Kleid polled the Town Council regarding comments concerning the Royal Poinciana Theater.

Council Member Markin commented that the theater was the heart of the project, and facts had been presented during the conceptual presentation. She suggested that if there were more facts that the Town Council did not have relative to the current theater, it would be appropriate to hear them at some point.

Council Member Coleman commented that the discussion was not about tearing down the theater, but was about whether to landmark the Royal Poinciana Plaza or not. He suggested that the comments regarding the theater would not be relevant to the issue of landmarking. He noted that he had reviewed the financial documents of the Palm Beach Theater Guild, finding no financial

substance.

Council Member Coniglio commented that, at this time, questions should be directed to the plan.

Council Member Rosow commented that he was in favor of discussion of whether the existing theater was viable, if someone had financial data to present.

President Kleid commented that, since the theater itself had been brought up during the presentation of the conceptual plan, Mr. Flynn would be recognized.

Public Comment:

The following members of the public spoke in opposition or partial opposition to the redevelopment plan:

Patrick Flynn, Palm Beach Theater Guild

Lawrence McNamara, Treasurer of Preserve Palm Beach Political Action Committee, commented regarding code violations in Royal Poinciana Plaza; parking, and the theater.

Attorney John Eubanks, Moyle, Flanigan et al, on behalf of the Palm Beach Towers Condominium.

Mr. Eubanks responded to questions from the Mayor and Town Council.

Mrs. McNamara, North Lakeside Drive, Lake Worth, Florida.

John Grosskopf, General Manager, Palm Beach Towers.

Mary Marsuvian Biederman (ph) suggested a compromise, taking the best from both sides.

Brad Kinney, Executive Artistic Director of a local playhouse, and Artistic Advisor to the Palm Beach Theater Guild.

Doug Hulse,139 Sunrise.

Mrs. Lillian Jane Volk, 206 Phipps Plaza.

Ms. Lori Volk, Vice Chair of the John R. Volk Foundation.

Rachel Lorentzen, Garden Rd.

Kathleen Wallace, 1472 S. Ocean Blvd.

Janet Gordon.

The following members of the public spoke in support or partial support of the redevelopment plan:

Steven Brown, 184 Bradley Place, Co-Chair of Palm Beach Civic Association, commented that the developers had brought forward a plan that had significant merit; there were several areas of concern that it was hoped would be addressed by the developers during negotiations.

Bruce Gendelman, Kawama Lane.

Lee Goldstein, Co-Chair Citizens Association of Palm Beach, resident at 3120 S. Ocean Blvd. Quagmire

Patricia LeBow, resident of the Town of Palm Beach.

Steven Stolman, 2275 S. Ocean Blvd.

Rita Blades, CEO, Palm Beach Cultural Council

Paul Leone, President, The Breakers Palm Beach, One S. County Road.

Mr. Glazer, Middle Road.

D. J. Fairbanks, Chilean Ave.

William Strawbridge, Chilean Ave.

Rebecca Williams, 232 Seabreeze Ave.

There were no further public comments at this time.

President Kleid opened the discussion for questions and comments from the Town Council. The following points were discussed:

- Increases in landscape, parking, open waterfront public park, the performing arts

commitment, extension of bike trail;

- Review of residential components of the plan by only one Commission;
- Specific time line with no demolition or construction permits without the theater, or a bond for completion;
- Building height and maintenance of the skyline;
- The number of proposed condominiums and the protection of abutting neighbors;
- Financing and phased approach of redevelopment; the affect on the theater;
- Leases in Royal Poinciana Plaza;
- Density and massing of residential buildings;
- The desire for a theater;
- A requirement for a pro forma financial statement;
- The 1979 Agreement;
- The cost of the proposed new theater; the cost of refurbishment of the existing theater;
- The landscaping plan;
- Access to the waterfront.

B. Public Hearing

1. RESOLUTION NO. 23-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as the Royal Poinciana Plaza Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also

Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. *Continued from the April 8, 2008, Town Council Meeting.*

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

Historic Preservation Consultant Jane Day provided the Designation Report, a PowerPoint presentation, and the recommendations of the Landmarks Preservation Commission (LPC). She reviewed her qualifications, noting that a copy of her resume would be provided to the Town Clerk. Ms. Day stated that today, November 12, 2008, the recommendation of the LPC was exactly as it was in April of 2008, with a unanimous recommendation to landmark the entire parcel of the Royal Poinciana Plaza, based upon the ordinance and their recommendations as to how the criteria had been met. She cited editorials in the *Palm Beach Daily News* on November 8, 2008, July 13, 2008, and in 1994 that were related to landmarks preservation. She also cited a letter from John L. Volk, written in 1979, two months after the Landmarks Preservation Commission met for the first time, and one month after the 1979 Use Agreement was signed on the Royal Poinciana Plaza. She complimented Architect Ann Beha and the Sterling Group on their presentation and the homework that they had done. She stated that the plan was an architectural start that should be in the venue of the LPC.

President Kleid clarified that the presentation would be followed by questions from the Town Council, to be followed by a motion from a Town Council member to accept the Designation Report. The owner/representative would then provide information, followed by questions and comments from the Town Council, followed by comments from the public. The staff would be provided an opportunity to speak. The public hearing portion would then be closed and the Town Council would go into Executive Session.

In response to Council Member Markin Ms. Day provided a reply as to what would happen to the property should it become landmarked.

In response to President Pro Tem Coniglio, Ms. Day confirmed that the conceptual plan had not yet been presented to the LPC.

Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman, to accept the Designation Report. On roll call, the motion carried unanimously.

Mr. Lee Munder commented that he was willing to landmark the important architectural elements in the Royal Poinciana Plaza, which included the two parallel Volk commercial buildings, the Slat House cupola, and the easterly facing decorative facade of the playhouse, all of which he strongly believed were the only architecturally significant portions of the property. He was also amenable to having the entire site overseen by LPC in perpetuity. He reviewed the criteria that the Town Council would consider in making a decision regarding whether to landmark.

Mr. Munder contended that the Town Council had a right to landmark only a portion of the property, instead of the entire property, and that landmarking the entire site would create a high likelihood of unintended consequences, exposing the future decisions of the LPC and the Town to legal challenges by special interests. He noted that the Town Attorney, in a letter to the Town's Preservation Consultant said that "I do agree with the concern that Charles Siemon has, that if the entire property is landmarked, it gives those who wish to contest a demolition of a portion of the property an opportunity to do so in the courts, whereas, if only portions of the property are designated, in the event of demolition such would be much less likely to be attacked." Mr. Munder also cited a statement by the Palm Beach Civic Association regarding the issue of standing. Mr Munder noted that many of the buildings in Royal Poinciana Plaza had been identified as non-contributing structures as to landmarking. He maintained that to landmark the entire property and merely identify which buildings or components were non-contributing would ultimately be ripe for challenge and leave both the property owner and the Town open for potential prolonged and expensive litigation. He clarified that if certain provisions of the 1979 agreement remained unchanged, and the theater was landmarked in its entirety, the building would almost assuredly be destined to be moth balled. He maintained that the property owners were entitled to fundamental property rights, and hoped that when the decision was made regarding landmarking, that the right thing was done.

In response to Council Member Markin, Mr. Munder replied that there was no plan beyond today, and that his company was dedicated to helping the community.

In response to Council Member Rosow, regarding violating the 1979 agreement because the theater was not being operated, Mr. Kosoy replied that his interpretation of the 1979 agreement was that as long as the building was being operated, it must be operated as a performing arts venue; it did not indicate that if the building was not being operated, that it must be operated.

Town Attorney Randolph advised that he did not want to bind the Town Council to an interpretation of the agreement prior to his reading it in detail. He noted that the matter had been litigated, and discussed many times, but he would want to be absolutely sure of all details before he bound the Town Council.

Further discussion continued regarding the 1979 Agreement, and the intentions at that time.

Public Comment:

The following members of the public spoke in support or partial support of landmarking:

John Mashek, Preservation Foundation

Attorney Frank Chopin, counsel for the Preservation Foundation

Attorney Edna Caruso - requested that the two letters from her to the Town Council would be made part of the record. (Atty. Caruso was introduced by Attorney Chopin as an expert in the standing issue. A lengthy discussion took place).

Brad Kinney, Executive Artistic Director of a local playhouse, and Artistic Advisor to the Palm Beach Theater Guild.

Janet Gordon

Attorney John Eubanks, Moyle Flanigan et al, on behalf of Palm Beach Towers Condominium.

Lillian Jane Volk.

Lawrence McNamara, 420 N. Lakeside Dr., Lake Worth

Kathleen Wallace, 1472 S. Ocean Blvd.

Mrs. Lawrence McNamara, 420 N. Lakeside Dr., Lake Worth

Lori Volk., John L. Volk Foundation (Entered report from Larry M. Schneider AIA into the record).

John Grosskopf, General Manager, Palm Beach Towers

Rick Gonzales, REG Architects, 307 Evernia St., West Palm Beach

Wendy Victor, 208 Via Tortuga

Diane Dempsey

Bonnie Dearborn, Boca Raton

Alec Flamm, 2000 South Ocean Blvd.

Rachel Lorentzen, 216 Garden Rd.

Peter Rock, 44 Cocoanut Row

Bill Cooley, 8 Windsor Ct.

John Ripley, Preservation Foundation of Palm Beach

In response to Council Member Rosow, Town Attorney Randolph advised that the law stated that a person did not have the right to a view over an adjoining property. He noted that the decision from the Town Council today would be quasi-legislative, and that no one but the landowner would be successful in filing a lawsuit as to whether the property had been landmarked properly or not. Mr. Randolph also advised that landmarking would not abrogate the 1979 Agreement

The following members of the public spoke in objection or partial objection to landmarking:

Attorney Charles Siemon

Ned Barnes, Palm Beach Civic Association
(Noted that if no agreement was reached between the developer and the Town Council, then the Town Council should follow the recommendations of the LPC. If an agreement that sufficiently benefitted Palm Beach residents was reached, the Town Council then should consider landmarking selected portions of the Plaza).

Michael Ainslie, Seaspray Ave.

Lee Goldstein, Citizens' Association of Palm Beach

After all public comments had been received, the Town Council began its Executive Session.

Ex-parte communication was declared by President Kleid, President Pro Tem Coniglio, Council Members Coleman, Markin and Rosow with the parties involved and with many citizens, regarding the pros and cons of landmarking.

Council Member Rosow began the discussion, and then moved approval of Resolution No. 23-08.

Town Attorney Randolph read Resolution No. 23-08 by title, as printed above.

The motion of Council Member Rosow died for lack of a second.

Comments were heard from the members of the Town Council regarding the development plan, and whether to landmark all, a portion, or none of the buildings in Royal Poinciana Plaza.

In response to Council Member Markin, Town Attorney Randolph advised that the 1979 Agreement did protect the use of the building as a theater, without having to landmark. The fact was that the 1979 Agreement dealt with use, and in landmarking, use was not considered; the architectural and historical integrity was of consideration.

In response to Mayor McDonald's question as to what would happen if landmarking was denied, and then the LPC brought the property back to the Town Council again, Town Attorney Randolph referred to the term administrative res judicata.

Council Member Markin moved that the two commercial buildings, the cupola, and the theater at Royal Poinciana Plaza would be landmarked. The motion was seconded by Council Member Rosow.

Town Attorney Randolph advised that, if this motion carried, a resolution providing the property descriptions would be brought back to the Town Council for approval, so that the document could then be recorded.

President Kleid suggested an informal vote, and if it appeared that the motion would carry, the conditions could be attached to the motion. It was the consensus of the Town Council that the motion would pass.

Council Member Markin moved to approve landmarking the following elements of the Royal Poinciana Plaza:

The two commercial John L. Volk buildings
The cupola
The theater

Further, that any organization continue to work with the Landmarks Preservation Commission in any development process related to Royal Poinciana Plaza thereafter, as well as any conditions that the Town Attorney recommended.

Town Attorney Randolph advised that the following conditions would be recommended.

1. Jurisdiction over architectural review and/or demolition that would normally be with the Architectural Commission would instead be with the Landmarks Preservation Commission;

2. The lawsuit presently pending against the Town of Palm Beach, Poinciana Management, Inc., v Town of Palm Beach, would be dismissed;

3. No demolition of any structures on the property would be permitted by the Town, until all parties having an interest in the property and the Town entered into a binding agreement between the parties, which agreement spelled out conditions related to the development of the property, including provisions which would assure completion of a new theater building prior to the demolition of the existing theater;

4. Receipt of an affidavit and agreement from all parties having an interest in the property that none of the actions of the Town Council were contrary to the provisions of the 1979 Agreement, nor would such actions abrogate any of the terms of the Agreement, including specifically a statement that said actions shall not be considered further development opportunities;

5. That the Royal Poinciana Theater Building shall be maintained in good condition until all approvals were granted, including air conditioning repairs and upkeep as mandated by Town Codes, to avoid demolition by neglect;

6. All persons or entities having an interest in the property shall execute an agreement in writing, agreeing to be bound by these conditions, and further agreeing not to challenge the landmarking of the property

7. Payment of the outstanding cost judgment of $25,000;

8. Failure of the Town and the parties in interest to come to an agreement in regard to the development of the property would result in the landmarking of the entire property.

Town Attorney Randolph noted that these conditions had been prepared as a quid pro quo.

After further discussion, Council Member Markin withdrew the motion to approve landmarking portions of the Royal Poinciana Plaza. Council Member Rosow withdrew his second.

Council Member Rosow moved adoption of Resolution No. 23-08, landmarking the entirety of Royal Poinciana Plaza. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried 3/2:

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

*********Luncheon Recess**********

Public Comment - After the Luncheon Recess:

Gerry Frank, 2784 S. Ocean Boulevard, indicated he felt the town Council should have voted differently the day prior on the land marking issue, with more consideration given to the long range goals of the Town.

X. BOARD/COMMISSION ANNUAL REPORT

A. Planning and Zoning Commission.
[William Guttman, Chair and John S. Page, Director of Planning, Zoning, and Building]

Mr. Page introduced Mr. Guttman to present the Annual Report. Mr. Guttman announced his name and address for the record., 216 West Indies Drive. He will comment on one of the zoning items they will be studying this year, and the commission's planning role. During the 2007-8 season the commission was involved with everything from nightclubs and forming new restaurants, electrical transmission substations, and cellular antennas. They studied zoning regulations applicable to condo/hotel conversions, intersection site triangles, flagpole zoning rules and outdoor seating at restaurants, which will be revisited this season.

In addition, there will be several issues involving the zoning code such as ocean vista requirements, re-zoning lakefront properties from an RV to an RA classification. Applications of the Comprehensive Plan with regard to an overlay district in the Royal Poinciana Village which includes boundaries from Royal Poinciana Way to Sunset Avenue on the North end and North County Road on the east.

Each season the zoning agenda is established by the Council. At the July 18th Council Meeting, the Council authorized the Commission to study 13 zoning items, including the Royal Poinciana area planning study, out of 19 items previously proposed. One of the zoning items calls for studying the elimination of the zoning season. That is a period of less than a year when applications for re-zoning and amendments to eh zoning code may be considered by the P and Z Commission. In March, the Council extended the zoning season from November through April to October through May and the Council the name was changed from the Zoning Commission to the Planning and Zoning Commission.

Much discussion ensued about what the role of the Commission is. Mr. Guttman indicated that 60% of the work was done by consultants. Ms. Markin asked Mr. Guttman that after voting on a year round zoning season, that he felt it was too much responsibility

and wants it changed back? She indicated that the reason it was extended was because zoning issues come up all year round and she would not recommend scaling back the season. A copy of the report was provided to staff and Council Member Rosow asked Mr. Guttman for a copy of his remarks. Mr. Guttman indicated he would provide them to Mr. Elwell for distribution.

Mr. Guttman expressed his disappointment with the Council with their conflicting rules and compliance with the Comprehensive Plan changes and suggested a straw ballot to hear from residents as to whether they wanted to have zoning all year long.

Council President Kleid suggested that the zoning season remain as it which is all year long. Mr. Guttman disagreed and said he feels residents do not want that. Mr. Elwell added that the "season" is becoming longer and longer and business and residents are increasing all year long, not just in the wintertime. Council Member Markin agreed with Council President Kleid and said that the residents do not need to be polled.

Council President Pro Tem Coniglio asked for priority lists if the commission is unable to complete the work. The members of the commission are chosen because of their expertise in the field. Mr. Elwell also indicated that there are many other planning and zoning issues that are broken down further and handled at other committees such as coastal planning, water, landmarks etc.

Council Member Rosow suggested bringing the list of items back to the Council at the December meeting and the Council will assign more work and provide recommendations to the commission

Council President Kleid indicated that every time a new commissioner is appointed, they are asked if they are able to serve year-round, and so far, not one person has objected.

Mr. Page indicated that the Town is in the final stages of hiring a new planner and he feels that 13/19 cases is a well-balanced caseload for the commission.

Mr. Elwell indicated that the remaining six zoning cases will be presented to the Town Council next month and at the same time, the Council can revisit the planning aspects and provide formal direction as to where the boundaries are.

XI. COMMITTEE REPORTS

A. Water Committee Meeting of October 20, 2008.
[David A. Rosow, Town Council Member]

Council Member Rosow gave a review of the four options that the City of West Palm Beach offered:

- The Town remains "as is" as an equal partner with WPB
- Desalination plant in WPB - Palm Beach would use and pay for it
- Floridan Aquifer - Build RO plant in WPB
- Pay and build own plant

Outlined that Palm Beach Residents use 800 gallons per day per person and West Palm Beach residents use 250 gallons per day per person and SFWMD would like to se 150 gallons per day per person. Council Member Rosow said he checked his bills online and he does use 800 gallons per day. Council Member Rosow indicated that he inquired about non-potable water and was informed that there isn't any available in Palm Beach.

Council President Kleid asked if there were going to be more meetings and the answer is yes.

Former Mayor Marix asked if there was a way to know how much water is being used per acre. She said restrictions would make Palm Beach go backward in time and that the lawns would turn brown, and property values would decrease. She also mentioned a water leak by the Palm Beach Club. Mr. Brazil indicated public works was aware of the situation and working on it.

Mayor McDonald asked Council Member Rosow when the City would give recommendations. Council Member Rosow indicated that they are still in the gathering period. He is preparing to interview water consultants which will come before the council to ratify and see if they want to get the Town's own consultants to verify the information from WPB. One of the things the City said to the Committee is that if the Town wanted to build its own plant, they would have to purchase the existing infrastructure from them. The cost would be approximately $100 million to build a plant plus the costs of maintaining a distribution system.

Mayor McDonald said it was unfortunate that the County would not be a supplier which leaves the City as the only water supplier to negotiate with. Mayor McDonald said he is suggesting for the third time that Council Member Rosow engage the City Council because Mayor Frankel will be out of office long before our contract with the City is up. That was how the Town got an agreement the last time, by engaging City Council. The city can be hard to deal with, they can reduce usage, raise prices, eliminate certain foliage for planting (Ficus).

Council Member Markin asked if there was any discussion about separating potable vs. non-potable water. Council Member Rosow did ask, and there are currently no lines available. There are currently 3 RO plants for golf courses on the island for irrigation, and we will have one on the Par 3 , but there is no way to distribute it around the town. So that brought up the sewer lines, when we replace them, we could upgrade sewer lines and add non-potable lines at the same time. Council Member Rosow indicated that it would be a major amount of money.

Council Member Markin said that the Town needs to look at short term and long term. Long term, the town needs to consider things like non-potable lines. Has anyone thought about holding tanks and reservoirs? It seems that each year water is discharged form Lake Okeechobee and is just wasted. Council Member Rosow indicated the issues was asked about and the quarries are currently not being used and that the surplus water currently is going to tide. Council Member Rosow indicated that he will attend the next City Council meetings and will speak to them and will report back.

Council Member Coleman said that West Palm Beach is the only source of viable water, so we will have to deal with them. A list of high users on the island was requested. Long term the Town needs to be more conservative and sensitive with the types of plantings and water conservation as restrictions are going to be in everyone's future. The dike repair at Lake O is several years away. The Town is not going to have the flexibility it wants, and a desal plant has a large carbon footprint and is very costly. The Town needs to take control of the island and see who is using the most water. There are many parties involved with SFWMD, DEP and the City etc. We are headed for rationing.

Council President Pro Tem Coniglio agrees with both Council Member Coleman and the Mayor that the SFWMD holds the hammer and supplies us with water, and they want the Town to reduce their usage by 50%. The cost will be the generating factor. The time frame must be expedited since the County does not want to assist in providing water. West Palm Beach, in the next several months is going to make a decision on their future for their water development plan. Does the Town want to be included in that plan? Does the Town want to generate its own dollars and be included in that?

Council Member Coleman stated that he would like to charge a premium to the largest users on the island. Council Member Rosow said one of the options could be to buy in bulk and re-sell it to the residents.

Council President Pro Tem Coniglio reiterated that the time needs to be expedited based on cost or what the City will hold the Town to, but Council Member Rosow or all of the Council needs to start attending all of the City Council meetings, and find out where the City of WPB is headed and how the Town should fit into their plan. She fears that

Mayor Frankel could potentially say that the City does not want to work with us and we will have to go find another water source, and right now, there aren't any.
Council Member Coleman indicated that we have a supply contract with the City of WPB. He suggests obtaining ownership of the water distribution system. But this is a highly expensive proposition to run a water company. We currently are 30% of their customer base.

Mayor McDonald stated that the City knows they are the only supplier and they will be difficult to negotiate with. Council Member Coleman said that there is one alternative: the Town becomes a bulk customer and then the Town can distribute the water on its terms to the residents. Then once the Town is in a position, then it can look for other sources. The town could do the metering, we set the rates and collect the fees. If the Town can get access to the Aquifer, it would have more control of the destiny of the Town, and become less dependant upon the City.

Mr. Elwell indicated that the contract with the City ends in 2029. Council Member Markin stated that everyone is talking to the short term. She is concerned about the long term. When you look at the SFWMD, their funding was cut from the Alternative Water Supply Program from 42 million to 12 million, and it was disappointing that the County won't help, ,yet the government will spend millions on an airport expansion it doesn't need, doesn't make sense. She thinks the Town needs to form very strong coalitions and work with the Corps, SFWMD and others and don't lose sight of the long term plan. She asked if anyone had spoken to SFWMD staff prior tot he water Committee meeting.

Council Member Rosow said he had met with Carol Wehle, Executive Director about building a Desal plant and she thought that was wonderful and would assist, but then Mr. Merriam gave the presentation and said that there was very little money available.

Council Member Coleman said there is not free access to the ocean. It is highly regulated. Council Member Markin said that with a Desal plant, the salt is removed from the water and then put back into the ocean and that is why it is restricted. Council Member Coleman added that it also is very energy intensive. There are two issues: philosophy and practicality. Where are you going to get the water from? Council Member Markin said we are tied to West Palm Beach. Council Member Coleman disagreed with Council Member Markin and his opinion was that Mayor Frankel does not care about solving the problem.

Henry McIntosh, 124 Via Bethesda, offered that in the late 1970's in California, there were severe restrictions during two drought years. The solution was to cut back,

and if you didn't, the water was shut off. He hopes the Council is proactive on the water issue.

Council Member Markin asked Council Member Rosow if the Town could build its own storage tanks. Council Member Rosow said they could, but that SFWMD will regulate it and where they would be located could be an issue.

Mr. Elwell suggested having another Water Committee Meeting on December 16th after the Finance and Tax Meeting. Council Member Coleman replied he will not meet if everyone is only going to talk philosophy. He wants some concrete solutions and wants to see the requested information from the City of West Palm Beach. Council Member Markin said she would like to explore all options.

The Town also assigned Jim Bowser, Town Engineer to be the staff liaison with the City of West Palm Beach, which was requested by the City of West Palm Beach to be on the West Palm Beach Task Force.

Mayor McDonald asked that the Water Advisory Committee prepare a report for the next Council Meeting. Mr. Elwell will ask them to prepare the update.

B. Ordinance, Rules, and Standards Committee Meeting of October 27, 2008. [David A. Rosow, Town Council Member]

The Committee recommended an amendment to the Ordinance requiring that vacant lots are sodded, irrigated and mowed.

Motion was made by Council Member Rosow and seconded by Council Member Markin. The Motion passed unanimously.

The Committee recommended a Declaration of Use requirement attached to Demolition Permits that would allow a fine of $250.00 per day for every time that the grass is not properly irrigated or mowed.

Motion was made by Council Member Rosow and seconded by Council Member Markin. The Motion passed unanimously.

The Committee recommended that staff bring forward ordinance modifications regarding the issue of Certificates of Occupancies, when owners have failed to comply with the requirements of ARCOM approval to maintain landscaping; the issue of establishing thresholds so that staff can administratively deal with some ARCOM landscaping issues.

The Council supported the recommendation by the Committee to allow large homes staff parking and associated services on-site, with one additional parking space for every 3,000 square feet of additional space in the home.

The Council accepted the recommendation of an ordinance amendment to obligate commercial properties and those residences that exist within a predominantly commercial building to remove hurricane shutters, and put awnings back up within 14 days of the passage of a storm.

Former Mayor Marix spoke in opposition to the amendment fo residential property. She stated that it infringed on her rights as a property owner and that she uses her shutters as a security measure when she is out of town.

Jerry Frank, S. Ocean Blvd., also spoke in opposition as a homeowner and felt as a property owner, he should be able to have the right to put up or remove shutters when he wants to.

Henry McIntosh also opposed the proposed ordinance amendment.

Mr. Elwell clarified the proposed amendment and indicated it would not affect residential properties, but mixed use properties.

Council Member Markin made a Motion, seconded by Council Member Rosow and the Motion passed with Council Member Coleman and Council President Pro Tem Coniglio dissenting.

The Council accepted the Committee recommendation to direct staff to return to the Town Council with a recommendation for a policy to ensure that empty store front windows have a uniform look , utilizing historic pictures of Palm Beach.

Motion was made by Council Member Rosow and seconded by Council Member Markin. The Motion passed unanimously.

The Committee discussed reviewing the land marking procedure and directed staff to provide a report regarding the resources that would be necessary to consider more than 5-10 homes per year for land marking. Council Member Coleman also requested a complete list of the 1100 homes that are on the list for potential land marking.

Council Member Coleman made a Motion to send a letter to each of the 1100 homeowners that are on the list for potential land marking. The Motion died for lack of a second.

The Council accepted a Committee recommendation that ARCOM and other interested entities review a policy for standards for signage throughout the town.

The Committee directed a review by ARCOM of a holiday decorative lighting program that would be paid for by donations from citizens for next year, with staff to report back to the Town Council after all aesthetic issues have been reviewed by ARCOM.

The Committee directed staff to review service/maintenance vehicle parking at a construction site, as part of the overall parking regulation review.

Motion was made to accept the ORS report by Council Member Rosow and seconded by Council Member Coleman. The Motion passed unanimously.

C. Finance and Taxation Committee Meeting of October 31, 2008.
[Denis P. Coleman, Town Council Member]

Council Member Coleman discussed the sewage issue with the Town of Lake Worth and their exorbitant fees. Council Member Markin suggested severing ties with them as they are not fiscally responsible. The Town Council will have to vote at a future date to upgrade all of the force mains and pump stations to be able to use the north wastewater plant for all sewage.

Staff was directed to make modifications to the Capital Improvement Plan and will bring the plan back to the Committee for further review.

A Motion was made by Ms. Coniglio and seconded by Council Member Markin to accept the Finance and Tax Report as provided. The Motion passed unanimously.

XII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Request for Waiver of Section 42-198, Use of Certain Types of Equipment and Section 42-199 Hours of Construction, Palm Beach Inlet South Jetty Repair, Per Request from United States Army Corps of Engineers. [H. Paul Brazil, Director of Public Works] *Deferred from the October 13, 2008, Town Council Meeting.*

Mr. Brazil introduced Jason Spinning of the U.S. Army Corps of Engineers to discuss a previous request concerning a waiver on time, hours and noise for repair of the South Jetty.

Mr. Spinning indicated the waiver is being requested to utilize the beach during construction and that two contracts have already been awarded with regard to the construction. The strategy is to place a concrete pump truck on the federal easement at Inlet Drive. The placement of the pump truck is to reduce impact to the adjacent property owners amenities by avoiding heavy truck movement by the actual pool. Once in place, the truck would block access to the easement by any vehicle. The concrete truck and rigid concrete supply line which will go down 2300-2500 feet and be able to supply the concrete to each segment as proposed. Each line requires flushing after each of the concrete pours. Fresh water would be used for the flushing that would push a plug through the line and would remove the remnant concrete within the line. The water cannot be discharged into the surrounding waters due to the compliance with the State of Florida Water Quality Standards. He proposes creating a pit on the beach and placing the flushing water in the pit to prevent any return water contaminating the other waters. This would minimize the impact to neighbors. The Corps also must comply with the Endangered Species Act and be cognizant of turtle nesting season. That limits work to December 1 through April 30.

The Corps requests the waiver from the noise ordinance from mid-January to April 30 due to the need to utilize the beach to comply with Water Quality Standards, Endangered Species Act and an attempt to minimize the impact to the adjacent property owner. The commencement date has been changed to mid-January to avoid the holiday season and fully intend to comply with 42-198 and 199 - time of work and hours of day. This would be limited to Monday through Friday 9-5pm.

The Corps is proposing eight separate concrete pours to conduct this jetty cap and rehabilitation. This would be eight days of pump trucks and a booster pump running, weather permitting.

Council President Pro Tem Coniglio asked what the previously approved work entailed. Mr. Spinning indicated the work was approved for March through April of last year. There were issues with negotiating and awarding of contracts. The Corps indicated that the Corps does have the contracts already awarded for the work now. Council

President Pro Tem Coniglio asked about the time-frame and Mr. Spinning responded that the proposed time frame minimizes the impact to the adjacent property owner. She asked if it was critical to perform the project during season.

Mr. Spinning indicated that the cracks are significant that are shown in the photos distributed. The project would rehabilitate and cap the project so that the Corps would not have to return anytime soon for further repairs.

Council President Pro Tem Coniglio asked about the Corps' status of funding. Mr. Spinning said there are supplemental funds and they have already awarded contracts, and the funding is starting to deplete. With supplemental funds, they are limited funds which has caused the Corps to modify construction methods. Council President Pro Tem Coniglio asked if the project is being pushed through so that the Corps does not lose its funding. Mr. Spinning reiterated that the contracts have been awarded and money is being paid to them. The need to utilize the beach is needed and the timing is critical to avoid turtle nesting season beginning April 30th.

Mr. Elwell asked Mr. Spinning if the Corps did not do the project this winter, so they need to delay until next winter. Mr. Spinning indicated that Mr. Elwell was correct. The line has to be flushed and cannot be placed in the water. The best scenario is to utilize the beach that is there with minimal impact.

Council President Pro Tem Coniglio asked if the work could be done from the inlet side and it cannot, due to the limited funding.

Council Member Coleman asked for further clarification on the well. Mr. Spinning indicated it is not a well, but a pit that remnant concrete material would be discharged into. Once the water is removed, and allowed to percolate, the corps will remove the concrete and take it off-site. This would occur on Federal property. Council Member Coleman asked what would happen to the jetty if the project is not done. Mr. Spinning responded that there would be a degrade of the jetty over the years, and the jetty is a part of the navigational feature. The cracks should be capped and repaired.

Council Member Coleman wanted to know what is the benefit to the Town by doing this project. It is a navigational feature for the inlet. Council Member Coleman indicated that the navigational feature is taking the sand away from the Town.

Mr. Elwell indicated that the existence of the inlet interrupts the movement of sand. The north jetty catches sand as it is moving south. Until it was sand-tightened a few years back, the south jetty was allowing sand that had been placed either bypassed by the sand-transfer plant or placed for the maintenance dredging, sand that was already on the south side of the inlet, and some of that was getting back through the jetty and into the

inlet. That was costing more to the federal government with the additional maintenance required to keep the inlet clear, and was detrimental to the beach immediately south of the inlet. The sand tightening was very important to the Town.

Council Member Coleman again asked what is in it for the Town. Mr. Spinning said that there is a place on the beach south of the jetty where everything north of that would be drawn back into the inlet. And everything south of that would move naturally south, approximately 2000 feet south.

Mr. Spinning sympathized with the Council's view of the Corps' process and vowed, since coming to the project three months ago, to work with the Town to form a better relationship. He provided an update on the 215 Agreement, and on August 12, 2008 the Special report and Addendum were sent to a higher authority within the Corps. On August 18, 2008, Assistant Secretary of the Army approved the Special Report and the Addendum and ordered the Corps to proceed with the 215 Agreement. On August 19,2008, the report and the request to use the 215 Agreement was sent to Congress, but first had to go through OMB (Office of Management and Budget) . There is now a process it must go through. Once it is out of the Secretary of the Army, you are outside of the Corps, and into other parts of the federal government. On October 28, 2008, the Jacksonville district Army Corps was notified that the project had cleared OMB, and it is on its way to the Appropriations Committee in Congress with a request to expedite. The approval for the use of the Agreement is in the Appropriations Committee of both the House and the Senate.

Council Member Coleman asked for a time frame and Mr. Spinning indicated it can depend on many factors, such as the changing administration. Council President Kleid asked if this would be an appropriate time to be contacting our Congressmen and our lobbyist to try and move this out of the Appropriations Committee.

Mr. Elwell indicated that staff and the lobbyist is already following the progress but indicated he can notify the lobbyist to make a push out of Committee. He mentioned that it may be January before anyone takes a look at the item.

Mr. Spinning informed Council Member Coleman that if the Town said no to the waiver, it would have no bearing on the 215 Agreement since that is in Congress and out of the Corps' jurisdiction.

Council President Pro Tem Coniglio asked if there is any negotiation about where to place the sand that is dredged. Mr. Spinning indicated that is the next item and that everything is inter-related. Council President Pro Tem Coniglio indicated she would like to see the sand placed closer to the beach as opposed to the near shore.

Mr. Elwell indicated that they would combine the two items (XII B 1 and 2). Staff's recommendation to Council regarding the dredging item is that related to the Town's own need for using existing funds for other purposes, we are recommending that the Town not pay the differential and place the sand on the near shore area rather than on the beach. Mr. Elwell asked Mr. Spinning if there is any way to get the sand onto the beach without paying a differential? Mr. Spinning said he did not have the authority to do that.

The strategy for the inlet and Palm Beach Harbor has changed and that is to dredge twice a year in an attempt to utilize the funding. Because of that, and because of the way the funding is now being allocated, if the Corps dredges twice a year to maintain the design depth of the inlet, then the monies would be needed to keep the inlet open, which is what the Corps is mandated to do. As far as the placement of sand on the beach, they do not have the extra funding.

Council President Pro Tem Coniglio praised Mr. Spinning for twice a year dredging for keeping the inlet navigable. Mr. Elwell indicated that the twice a year dredging isn't so meaningful because one time of the year is during turtle nesting season, the sand will have to go in the near shore, and only during the winter dredging would the sand be allowed to go on the beach. Near shore is in 17 feet of water and south of the jetty.

Mr. Spinning indicated he is restricted by DEP permits as to where they can place sand. Mr. Brazil clarified that the area of water depth that the Council is talking about is near the end of the south jetty. It is also a similar distance east. The intent is that sand naturally flows from north to south is to get it into the flow. As it goes south, with the right wave currents, it will eventually get pushed up onto our beaches. If not, it certainly helps to tow it in. It isn't as good as putting sand on the dry beach, but it is better that taking it offshore and dumping elsewhere.

Mr. Elwell stated that the sand cannot be placed in the near shore area and then be dredged, because it is in an area where the wave action is beneficial and moves the sand. The depths of dredging that are permitted are in deeper waters where the sand is not part of the system.

Council Member Rosow asked what the impact would be if the jetty was repaired and not place a cap on it. Would it reduce the project time? Mr. Spinning said the proposal did not evaluate a partial repair. Council Member Rosow is concerned that the newly paved roads would be damaged by the heavy trucks. Mr. Brazil assured the Council that he would monitor the road conditions. Mr. Spinning indicated that there would be a staging area for the large trucks. Council Member Markin agreed with the concerns about the damage to the newly paved roads.

Council Member Rosow mentioned the Port of Palm Beach and asked Mr. Spinning if he could do anything to stop the expansion of the port since the Corps is also involved with that project. Mr. Spinning indicated he could not assist as the Port is a Partner. He again is trying to improve the relationship between the Town and the Corps.

More discussion ensued regarding the process and lack of cooperation. Mr. Spinning informed her that he could get copies of the House and Senate Reports and would send them to Mr. Elwell for distribution. He also indicated that he would come back to the Council more frequently to keep the Council better informed.

Council Member Coleman made a Motion, seconded by Council Member Markin to grant request of waiver, mobilization in late December, to start prep work in the middle of January (with the first concrete pour, out of a total of eight, to begin in last week fo January); work to end by the end of March; work to be done as fast as possible to accomplish the repairs to the south jetty of the Lake Worth inlet. The Motion passed unanimously.

a. Upcoming Maintenance Dredging of Lake Worth Inlet by the U.S. Army Corps of Engineers.
[H. Paul Brazil, Director of Public Works]

MOVED, on Page 12, Item XIV.B.6., Upcoming Maintenance Dredging of Lake Worth Inlet by the U.S. Army Corps of Engineers, to Page 5, as Item XII.B.1.a., immediately after the South Jetter Repair issue.

The Council agreed to the recommendation of staff not to pay to place the Lake Worth Inlet Harbor Maintenance Dredging sand on the dry beach south of the Lake Worth Inlet.

2. Request for Modification to the Approved Construction Management Agreement for 215 Brazilian Avenue (Per Letter Dated September 15, 2008, From Maura Ziska).
Deferred from the October 13, 2008, Town Council Meeting.
Request for Withdrawal Per Letter Dated October 17, 2008, From Maura Ziska.

Ms. Ziska appeared before Council last month to ask for a change in the construction schedule. She has since modified the construction schedule to meet the

confines of the originally approved construction management agreement, and no longer need the change.

Council Member Rosow asked Ms. Ziska how she was going to be able to financially perform on the project. Mr. Elwell indicated that the item was on the agenda because the Council did have concerns about the financial situation to ensure the community that this project would be completed, once it was started. When the request came in for a withdrawal, after having been deferred previously, Mr. Elwell decided to bring the item to the Council for a decision.

Council President Kleid indicated that an agreement was drafted and now the party is willing to sign it.

Council President Pro Tem Coniglio made a Motion and was seconded by Council Member Markin to Approve the Withdrawal . The Motion passed with Council Member Rosow dissenting.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

Town Clerk Eichhorn swore in all of the persons providing testimony.

a. VARIANCE #18-2008 The application of Evangelos G. Kanaris; relative to property described as Lots 28, 29, 30, 31, 32 and 33, Block 15, ROYAL PARK, according to the Plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; commonly known as 205 Worth Avenue, Suite 203-204; located in the CW-A Zoning District. The applicant requests a variance to allow a 2nd floor office space to become retail space without having to provide one (1) additional off-street parking space required to make the conversion based upon the principal of equivalency. [Attorney: Peter S. Broberg]

There was no ex-parte communication.

Mr. Broberg hoped that in future an item such as this could be handled administratively. Council President Kleid indicated that this was to be a study item. Mr. Castro indicated that the property owners of Royal Poinciana Plaza submitted this item as a study item. Staff comments recommend that the applicant demonstrate the hardship. Mr. Broberg explained the situation.

Council President Pro Tem Coniglio made a Motion to Approve seconded by Council Member Markin and the Motion passed unanimously.

b. VARIANCE #20-2008 The application of Alexander and Nicole Fanjul; relative to property described as Lot 2 and 4, CHATEAU ENCHANTE, according to the Plat thereof as recorded in Plat Book 29, Page 158, Public Records of Palm Beach County, Florida; commonly known as 110 Chateaux Drive; located in the R-B Zoning District. The applicant requests a variance to construct a 1,149 square foot one story addition with an east side yard setback of 18.01 feet in lieu of the 30 foot minimum required in the R-B Zoning District for a lot over 20,000 square feet in area and in excess of 200 feet in width.

[Attorney: Maura A. Ziska]

[ARCOM Recommendation: Approval of the variances subject to unity of title agreement carried 7-0.]

There was no ex parte communication.

Ms. Ziska indicated that typically this would be administratively approved but there was an objection by a neighbor which brings it before Council. The hardship is that the setback is extreme and the house is located on one end of the property and could potentially split the property and be allowed a smaller setback. The neighbor that protested was not present.

Motion was made by Council Member Coleman and seconded by Council President Pro Tem Coniglio. The Motion passed unanimously.

b. SPECIAL EXCEPTION #14-2008 The application of Reback Realty, Inc, Paul D. Reback, President; relative to property described as Lots 44 to 47 inclusive, Block 10, Royal Park Addition; commonly known as 235 Peruvian Avenue; located in the C-TS Zoning District. The applicant requests a special exception to have an office on the ground floor because more than 50% of ground floor uses in the building and within 300 feet on either side of this space are used for office purposes. The proposed office is 1,046 square feet. [Attorney: Peter S. Broberg]

There was ex parte communication with Council Member Rosow.

Mr. Broberg explained that this is an arithmatic code requirement.

A motion was made by Council Member Markin and seconded by Council Member Coleman to approve the exception with the condition that Town-serving documentation be provided in six months. The motion passed unanimously.

c. SPECIAL EXCEPTION #15-2008 The application of Seaside National Bank & Trust; relative to property described as Lot 51, Block C, Royal Park Addition, Plat Book 11011, Page 0182, Public Records of Palm Beach County, Florida; commonly known as 420 Royal Palm Way; located in the C-OPI Zoning District. The applicant requests a special exception to operate a private bank in 2,023 square feet on the second floor of 420 Royal Palm Way. There will be no tellers or other retail banking services. This location will focus on estate planning and private wealth management. Town-serving is required to be demonstrated as part of the Special Exception request. [Attorney: James R. Brindell]

There was ex-parte communication with Council Member Markin via voice mail., and Council President Kleid, Council President Pro Tem Coniglio, and Council Member Rosow spoke with Mr. Brindell.

A motion was made by Council Member Rosow and seconded by Council Member Markin to approve the exception with the condition that Town-serving documentation be provided in one year. The motion passed unanimously.

d. SPECIAL EXCEPTION #16-2008 WITH SITE PLAN REVIEW The application of John and Melissa Ceriale; relative to property described as Lot 826, Poinciana Park, Third Addition, Plat Book 8, Page 72; commonly known as 230 S. Ocean Blvd.; located in the R-B Zoning District. The applicant requests a special exception with site plan review request to construct a 349 square foot beach cabana in the Beach Area zoning district of a lot which is 136 feet wide. [Applicant's representative: Jose A. Gonzalez]

There was no ex parte communication

Mr. Gonzalez indicated that they have been to ARCOM and received unanimous approval. Staff recommends that the vista be maintained as the Unity of Title Agreement with the property across the street. It meets all of the other criteria.

Motion was made by Council Member Coleman and seconded by Council Member Rosow to approve the exception with the conditions that the ocean vista is maintained, and that a unity of title is provided. The motion passed unanimously.

3. Old Business- More Than 15 Minutes

a. VARIANCE #11-2008 The application of William A. Miller, As TRUSTEE of the William A. Miller 2005 Trust; and, Elaine G. Miller, As TRUSTEE of the Elaine G. Miller 2005 Trust; relative to property described as Lots 37, 39 and 41 POINCIANA PARK, according to the Plat thereof recorded in Plat Book 6, Page 1, of the Public Records of Palm Beach County, Florida; commonly known as 410 Seabreeze Avenue; located in the R-B Zoning District. The applicant requests a variance to permit a Cubic Content Ratio of 4.77 in lieu of the 4.29 existing and 4.08 maximum permitted by code, to allow the construction of a 422.98 square foot second story addition to

accommodate a new bedroom and 67.54 square foot addition on the first floor to accommodate an expansion of the living room; a variance to allow the 67.54 square foot addition on the first floor consistent with the existing east side yard setback of 11.39 feet, in lieu of the 12.5 foot minimum required; a variance to allow the 422.98 square foot second story addition, with a second story west side yard setback of 9.6 feet, in lieu of the 15 foot minimum required. [Attorney Maura Ziska]
[ARCOM Recommendation: Approval of the variances to the Town Council carried 7-0.]
Deferred from the September 8, 2008, and October 13, 2008, Town Council Meetings.

There was ex parte communications with Council Member Markin, Council President Kleid, Council President Pro Tem Coniglio via voice mail, and Council Member Rosow.

Attorney Ron Kolins presented and he stated that the owners worked with the architectural commission, appearing before them several times, and did receive unanimous approval. The hardship is the age of the home and the size of the lot, which is undersized.

Motion to approve was made by Council Member Markin, and seconded by Council Member Coleman. The Motion passed unanimously.

CORRECTION, on Page 7, Item XII.C.3.a, Variance #11-2008, Attorney Maura Ziska should be Attorney Ron Kolins.

b. VARIANCE #17-2008 The application of Darrel Ross and Susan S. Ross; relative to property described as Lot 10, of the Plat of POLMER PARK, according to the plat thereof as recorded in Plat Book 27, Page 53, of the Public Records of Palm Beach County, Florida; commonly known as 300 Polmer Park; located in the R-B Zoning District. The applicant requests a variance to permit lot coverage of 31.74% in lieu of the 30.97% existing, and the 30% maximum permitted by code for a two-story house, for the construction of a 138.4 square foot addition on the first floor; a variance to allow the point of measurement for the purposes of calculating cubic content ratio of 17.5 feet

National Geodetical Vertical Datum (NGVD) in lieu of the lowest floor slab of 14.5 feet NGVD as required by code.
[Attorney: Ronald Kolins]
[ARCOM Recommendation: Approval of the variances to the Town Council carried 7-0.]

Deferred from the October 13, 2008, Town Council Meeting.

Ex parte communication by Council Member Markin, Council Member Rosow, Council President Kleid, and Council President Pro Tem Coniglio received a voice mail.

Motion to approve was made by Mr.Rosow, and seconded by Council Member Coleman. The Motion passed unanimously.

4. New Business- More Than 15 Minutes

a. VARIANCE #19-2008 The application of John R. Raese and Elizabeth S. Raese; relative to property described as Lot 24 and the East one-half of Lot 25, Plat of JAMAICA LANE, according to the Plat thereof as recorded in Plat Book 18, Page 93, Public Records of Palm Beach County, Florida; commonly known as 286 Jamaica Lane; located in the R-B Zoning District. The applicant requests a variance to construct a one-story enclosed accessory structure with a point of measurement of 21 feet National Geodetic Vertical Datum (NGVD) in lieu of the 17.14 feet NGVD required.
[Attorney: Peter S. Broberg]
[ARCOM Recommendation: Defer to the November 21, 2008, Architectural Commission meeting.]
First Request for Deferral to the December 8, 2008, Town Council Meeting Per Letter Dated November 3, 2008, From Peter S. Broberg.

DEFERRED, on page 8, Item XII.C.4.a., Variance #19-2008 to the December 8, 2008, Town Council meeting.

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

the 4 foot maximum allowed by code; (o) to allow the parking spaces to be situated in contradiction to the maneuvering requirements in Section 134-2172; that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The applicant is proposing 11 stacked parking spaces which requires the shuffling of vehicles in order to remove vehicles from required parking spaces.
[Attorney: Maura A. Ziska]
[Architectural Commission Recommendation: Defer to the November 21, 2008, Architectural Commission meeting.]
First Request for Deferral to the December 8, 2008, Town Council Meeting Per Letter Dated October 22, 2008, From Maura A. Ziska.

DEFERRED, on Page 8, Item XII.C.4.b., Site Plan Review #10-2008 with Special Exception and Variances to the December 8, 2008, Town Council meeting.

D. Other

1. Performance Guarantees for Development Projects.
[John C. Randolph, Town Attorney]
Deferred from the October 13, 2008, Town Council Meeting.

Town Council discussed various options for building projects that run out of funding, or are incomplete. Council Member Coleman suggested demolishing the structure or else requiring hiring standards and proof of financing before projects are approved. Town Attorney Randolph had contacted several other municipalities and State Statutes.

Bill Diamond, 220 Wells Road, spoke of the Town being able to use Police Power, as in NY to declare a building unsafe and demolish it.

Town Attorney was directed to provide alternatives for development of a Town policy for performance guarantees for development projects on commercial properties.

XIII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 16-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 42, Environment, Article V, Noise, Section 42-230 Relating to Lawn Maintenance Equipment Noise; Providing For Severability; Providing For Repeal of Ordinances in Conflict; Providing For Codification; Providing an Effective Date. [Michael S. Reiter, Chief of Police] **TIME CERTAIN: NOVEMBER 12, 2008, 4:30 P.M.**

Mr. Elwell indicated this was the second reading of Ordinance No. 16-08and the effect of it would be to add a prohibition of commercial use of power lawn equipment on Saturdays in season parallel with the construction work restrictions in season. If adopted, it would go into effect this season on Dece,ber 1, 2008.

Mr. Randolph read Ordinance No. 16-08 by Title.

Public Comments in Opposition:

Scott Lewis indicated he was not aware of the First reading and feels this would dramatically impact the pricing of landscaping by eliminating Saturdays. Mr. Elwell clarified that this was deferred from May and was read on First Reading at the October Council Meeting. He brought with him about 20 companies that also oppose the ordinance. This will impact their earning potential and have complied with the Council's restrictions and purchasing the new lower amp blowers at a cost to the companies. There have been few citations over the past 11 months for leaf blower violations. There were more valet parking violations. He suggested that the residents call the police department if there is a violation and have them shut down at the time of the incident.

Council Member Markin clarified that she was not the only resident that complained. The individuals that appeared before council are not the violators. The landscapers that were not present and have not upgraded their equipment are most likely the ones causing the problem.

Mr. Elwell clarified the hours of operation in the Ordinance and that appropriate notice was given.

Mr. Earl McBride, a worker in Palm Beach since 1959 opposes the Ordinance and began his landscaping career in Palm Beach. By eliminating the Saturdays is predjudiced against the mom and pop businesses. Many residents need the landscapers to prepare for

parties on Saturdays. He suggested raising the fine for the violators and not punish those who are in compliance.

Mr. Bruce Armstong, Armstong Landscape & Design Group, has also worked on the island for 53 years. There are many jobs that he cannot do during the week and MUST do it on Saturdays. This Ordinance would greatly impact his business.

Mr. Kenneth Gray, Henry's Landscaping, has been working on the Island since 1964 and the Ordinance would impact his business and other smaller businesses. He has expended a lot of money to comply with last year's ordinance in upgrading their equipment.

Mr. Phil Maddox, Sanchez and Maddox Landscape Architecture, opposed the Ordinance and indicated that it would be a hardship on the residents and the workers.

Council President Pro Tem Coniglio indicated that this Ordinance was not created to harm them, but was in response to resident complaints. She was opposed to the Ordinance and hopes there is some other compromise.

Council Member Coleman indicates that he will vote against it and said last month there was no public comment. He suggested that the residents should call the police when there is a violation.

Council Member Markin indicated that the Ordinance will allow work to be done on Saturdays- just not loud equipment. Mr. Elwell clarified that it is loud power equipment that is prohibited. She suggested modifying the hours.

Council Member Rosow indicated that the issue seems to be in the North End, particularly the residents in apartment buildings next to commercial buildings.

Mr. Scott indicated that the violators are not within the allowable hours.

Council Member Coleman suggested raising the fine to $250 for the violators and leaving the hours the way they are. Mr. Lewis liked that proposal.

Council President Kleid indicated that the Ordinance died and that a new Ordinance will be drafted for First Reading next month that will increase the fine to $250 for violators.

2. ORDINANCE NO. 25-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter

78, Peddlers and Solicitors; Article III, Charitable Solicitations, at Section 78-77, Definitions, by Deleting the Definition of Canister and Amending the Definition of Solicit and Solicitation; Amending Section 78-102, Application, So as to Delete Paragraphs 12, 13 and 17 Thereunder and Renumbering the Paragraphs; Amending Section 78-103, Relating to Information Contained in Application to Be Public; Rescinding Section 78-104, Investigation of Application; Amending Section 78-105, Relating to the Issuance of the Permit; Amending Section 78-106, Relating to Fees, by Providing for an Administrative Fee of $460.00 for Applications; Amending Section 78-107 So as to Provide That There Be Two Events During a Twelve Month Period of a Permit and Exempting Organizations Which Receive Financial Support from the Town Through its Budgeting Process from Said Limitation; Rescinding Section 78-110, Relating to Solicitation Through Media; Rescinding Section 78-113, Relating to the Requirement of Reports; Rescinding Section 78-114 Relating to Use of Canisters; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Motion was made by Council Member Markin, seconded by Council Member Rosow, and the motion passed unanimously.

3. ORDINANCE NO. 27-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 18, Buildings and Building Regulations, of the Town Code of Ordinances at Article IV, Section 18-242, So as to Modify Section 18-242, Providing Amendments Related to the Adoption of Fees in the Manner and Form Attached; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John S. Page, Director of Planning, Zoning, and Building]

Motion was made by Council Member Rosow, seconded by Council Member Markin, and the Motion passed unanimously.

4. ORDINANCE NO. 28-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 46, Fire Prevention and

Protection, Article III, Fire Prevention Code, Section 46-66, Codes Adopted, Copies on File, So as to Adopt by Reference the Florida Fire Prevention Code, 2007 Edition, NFPA 1, 2006 Edition, and the National Fire Protection Association (NFPA) Life Safety Code, 2006 Edition; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Herewith; Providing for Codification; and Providing for an Effective Date. [William Amador, Fire-Rescue Chief]

Motion was made by Ms. Coniglio, seconded by Council Member Markin, and the motion passed unanimously.

5. ORDINANCE NO. 29-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, Article III, Parking, Stopping and Standing, at Section 118-95, Responsibility for Violations, Authority of Police to Immobilize Vehicle, Item (B) (2), So as to Amend Said Section to Specify a Charge for the Removal of the Immobilizing Device; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Motion was made by Council Member Markin, seconded by Ms. Coniglio, and the motion passed unanimously.

B. First Reading

None

XIV. REGULAR AGENDA

A. Old Business

1. Potential Charter Amendments to Create Term Limits for the Mayor and Town Council. [John C. Randolph, Town Attorney] *Deferred from the May 13, 2008, Town Council Meeting.*

Former Mayor Marix asked to delay this item until more residents were present. Item had been previously deferred and item was heard as scheduled. There is value in having members serve as they know the Town.

Discussion by Council, no action taken.

2. City of West Palm Beach Presentation Regarding Opposition to the Proposed Expansion of Palm Beach International Airport. [Sarah E. Hannah, Assistant Town Manager]
TIME CERTAIN: 9:30 A.M. NOVEMBER 13, 2008

Ms. Hannah indicated at the Last Town Council meeting, the Council had voted to oppose the expansion of the airport and directed staff to research what the City of West Palm Beach and others were doing and if the Town could become involved, and at what costs, in a collaborative effort.

Alex Hanson and Charles Wu from the City of West Palm Beach Planning Department were present. They are the City Representatives and also the neighborhood associations
liaisons.

Mr. Hanson indicated that the City has been working in opposition for the expansion for the past few years. The proposal would create significant harm to many City neighborhoods and decrease the quality of life for the residents. The FAA and the Department of Airports is looking to build a new east/west runway in addition to the one that is functioning today. Today, the airport currently has an east/west runway, as well as a crosswind runway. This runway has a northwest/southeast alignment. The airport has determined they would like to replace that runway with east/west runway. The new runway would be built 800 feet to the south of the existing east/west runway. The other alternative would be to build the east/west runway 800 feet to the north of the existing runway. Both alternatives are proposing two east/west runways. Right now, 21% of all flights out of PBIA are using the crosswinds runway. All residents to the west and east of the airport are receiving 79% of the flights. With the new proposal, they would be receiving 100% of all flights, noise and pollution. This includes neighborhoods in both the City of West Palm Beach and the Town of Palm Beach.

Mr. Hanson also expressed that the City feels the expansion is totally unnecessary. The primary justification for the project is that PBIA is going to be increasing air traffic over the next 5-10 years. The data indicates that over the past 30 years, the activity of landings and departures has been decreasing. In,1979, there were 273,000 operations and today, the most recent figures show 179,000 operations, a

decrease of 90,000 operations in the last 30 years. There have been peaks and valleys over the years, but overall, the operations have decreased. The forecast that has been prepared by the FAA consultants, show that the airport will have increased activity and that will lead to significant delay if there is no expansion. Currently there is an approximate 5 minute delay for every flight and that would expect to double if there is no expansion within 5 years and quadruple in the next 10 years. The City has concerns about the accuracy of the FAA Department of Airports' projections.

There is an Environmental Impact Statement (EIS) draft that was released a few weeks ago, significantly overestimates the activity at PBIA. Mr. Hanson stated that the EIS is based on a forecast from projections from 2006, but the numbers were not accurate and based on projections and not accurate numbers. The actual numbers for 2006 were much less. There is a 20% discrepancy between the numbers.

The City has signed an interlocal agreement with Mar A Lago to fight the expansion. They are sharing the cost of hiring an aviation consultant to review the technical aspects of the plan. The Morgan Bearn and Agnew firm is from Washington, D.C. and have worked on numerous projects in the United States and throughout the world. They are reviewing activity for other areas in the nation to evaluate nationwide trends. The initial contract was fo r$15,000 for Phase I. Based on the results of the final EIS, the City will most likely contract into Phase II with the firm. Copies of the City agreement with Mar A Lago and the consultant agreement were provided to staff.

Council Member Coleman asked if the EIS will produce predetermined results and what can the City do to protest the results. Mr. Hanson indicated that there is a period of comments that can be provided to FAA over the next couple of weeks. It is important to establish why you think the project is flawed, and use that information in front of a judge at a later date. Mr. Hanson agreed that most EIS do have predetermined outcomes. He ahs not ever seen an EIS overturn an FAA's intent.

Council Member Coleman then asked if the FAA is required to answer the comments. Mr. Hanson indicated that there is a section of the EIS that addresses the comments. It is estimated that the final EIS will be released in late summer early fall of 2009.

Council Member Rosow asked who owned the airport and who sponsored the project. Mr. Hanson replied that it was Palm Beach County. He then asked who would be paying for the project and was told that the cost could be anywhere from $30 million to over $700 million with some funds provided by FAA but the majority would be paid by the County through taxpayer dollars. Council Member Rosow asked if they are a taxing District and was informed that they are a county department and not a taxing

district. He asked if this was a similar project like the Port where they are losing money, so they decide to expand.

Council President Pro Tem Ms. Coniglio indicated that there was a meeting the night prior where 50 residents spoke against the projects. She feels the Town should oppose the project and whether that commitment is financial or not, it should be on the record. Mr. Hanson clarified that there were several hundred people at the meeting and only one person spoke in support of the project.

Council President Kleid stated he also opposes the expansion but does not want to expend any monies towards it. The City and Mar A Lago have deep pockets and are spending the money on attorneys and lobbyists and the Town is spending money on many other projects and should not commit any funds at this time.

Mayor McDonald mentioned the I-95 overpass, where the costs were many millions of dollars and with the diminishing numbers at the airport, the Town may prevail. He suggested that this issue is not going to go away.

Council Member Markin indicated she agreed with the Mayor and that the airport is a major contributor to the community to our area and a degradation to the community both in sound and in pollution. She lived for many years in the flight path and cannot imagine the impact of increasing the number of lights over and above what they have now. The peak times are flights every three minutes. She has difficulty understanding why the government entities are moving forward with the project when they are using old numbers and the actual flights are decreasing. She feels the environmental arguments are not as strong as the financial arguments, and with this economy, the government should be looking for reasons to cut certain projects. She supports the opposition of the expansion. She asked Mr. Hanson what the commitment in dollars is. He responded that the total commitment is $ 40,000.

Council Member Markin suggested that the Town should contribute monetarily, not as much as West Palm Beach, because they are a larger City, but the Town should stand behind its commitment.

Council Member Rosow asked when Phase II was set to begin and was told that it would be in a few months after the EIS is reviewed and see how the FAA changes the EIS in response to the comments.

Council Member Rosow made a Motion to contribute$10,000 to the effort and find the monies within the operations budget. Mr. Elwell proposed using the general fund contingency as an appropriate place. Council Member Rosow stated that many of

the residents are not aware of what really is being proposed. The Town should make certain they communicate with the residents and the expansion directly effects them.

Council President Kleid indicated that there was a motion and asked for second. Council Member Markin seconded the motion. Council President Pro Tem Coniglio stated she would oppose the expansion but asked if the Town could submit a written opposition to this and at the time that the City begins Phase II, the City come back to the Town at that time for a financial commitment.

Council Member Coleman stated that an alternative to the second runway may be fanning, which has a different effect. Right now, the flight path is fanned to the north. He suggested no increase in fanning, as that would effect more Town residents. He warned that the Council needs to know the history and he is the only one on the dais that knows the history.

Council Member Markin stated that any growth of the airport is detrimental to the Town. She feels that the airport should be looking at building an airport between Palm Beach and Orlando. Council Member Coleman interjected that would never happen. Council Member Markin said it would never happen if everyone allows PBIA to keep expanding. She reiterated that she wants to oppose expansion and that is in the best interest of the Town. She feels that they should commit dollars because it makes a stronger statement.

Council Member Rosow indicated that he had an airplane at the airport for many years, and the fanning that occurs does not occur on the island, but happens after they are over the sea and then they turn. Council Member Coleman indicated that was true. The fanning is an excuse and an accommodation to Mr. Trump. He agrees to prevent the fanning, but more importantly opposes the expansion.

Council Member Coleman indicates that fanning saves two minutes of fuel consumption. Fanning does occur over the island, and he has obtained maps of the plane tracks, and they do fan. He is all for opposition of the expansion but suggested that the rest of the Council get educated on the subject.

Council President Pro Tem Coniglio again stated her opposition and offered a substitute motion. Her motion was to oppose the total expansion of the airport, as a Town commit $1000 at a future date when Phase II begins, and the Council will make a new decision.

Council President Kleid asked if he wanted to vote on his motion, or withdraw it. Council Member Rosow indicated that he preferred to vote on his motion.

Council Member Markin interjected that she felt that $1000, would be a negative effect because the amount is so minimal.

Council President Kleid then asked if anyone from the public would like to speak on the subject.

Ms. Joyce Gould stated she lives under the flight path and is opposed to the expansion and was glad the Council is going to take action.

Mr. Stanley Rumbaugh, Chairman of the Civic Association also opposed the expansion and indicated that the flight patterns will be important.

Council Member Coleman informed the Council that three years ago the Council hired an attorney to research the airport issues.

The Motion to oppose the expansion and allocate $10,000 to the initial phase of the study.

Council Member Markin indicated that if you look at it as a monetary issue, and as a taxpayer who opposes the project, does not want to pay for the project. She cited the US Open in NY and how the threat of loss of dollars, prompted the airport to change the flight patterns. It's all about dollars and how to fight it.

Council Member Rosow asked the Mayor if the new Let Us Vote legislation that was just passed could prevent the expansion. The Mayor responded that the airport would not need municipal approval.

Roll Call:	**Council Member Rosow**	**Yes**
	Council Member Markin	**Yes**
	Ms. Coniglio	**No**
	Council Member Coleman	**Yes**
	Council President Kleid	**No**

The Motion passed 3/2.

Ms. Hannah asked for clarification for which phase the money should go to- Council President Kleid said first phase and Council Member Rosow said Phase II. Mr. Elwell indicated that the money has not been appropriated, but when the Phase II scope of work is provided, the Council can make a decision on how much to be spent. Staff will also submit a letter to the FAA for their comments. Ms. Coniglio asked for clarification on when the money will be allocated. Council Member Rosow indicated that they will see how much Phase II is. Mr. Elwell indicated that the Council will have

the opportunity at a later date to determine how much to contribute.. Ms. Coniglio indicated she had misunderstood the motion and wanted to changer her vote. Council President Kleid indicated he would change his vote as well since it would be coming back to the Council for a monetary decision.

Council Member Coleman asked for reconsideration.

Roll Call:	Council Member Coleman	Yes
	Council Member Markin	Yes
	Council Member Rosow	Yes
	Ms. Coniglio	Yes
	Council President Kleid	Yes

The Motion passed unanimously.

In addition, Mayor McDonald suggested, that since Council Member Coleman announced he would not be seeking re-election, that another Council person be appointed to serve on the CCAN commission. Council President Kleid indicated he would be happy to serve on that commission.

B. New Business

1. Strategic Plan Update.
   [Sarah E. Hannah, Assistant Town Manager]

Ms. Hannah presented the five-year propose update. Staff was instructed in February to prepare the update and it is not a re-write of the plan, but a revision to be more current with policies. This is a citizen involved process as well. Staff was directed to collect public comment and bring the item back to the Council at the February Council Meeting and will also post it on the Town website.

A Motion was made by Council Member Rosow and seconded by Council President Pro Tem Coniglio to accept the plan. The Motion passed unanimously.

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

Ms. Struder indicated that staff is recommending approval to write-off uncollectable EMS charges if $41,303, and parking tickets and penalties from FY 05 $227,859.

Council President Pro Tem Coniglio asked if the delinquent Code Enforcement liens are ever advertised, and they are not. Many are repeat offenders. Council Member Rosow felt it was a great suggestion and public embarrassment and peer pressure is a good way to collect the monies. Capt. Kirk Blouin indicated that many of the larger fines are people that may be mentally incapacitated.

Council Member Rosow inquired about 151 Chilean, Mr. Gilbertson's property and asked if his property was homesteaded. Capt. Blouin verified with the Palm Beach County Property Appraiser's office that the property is homesteaded. Council Member Rosow indicated for the public that Mr. Gilbertson owes the town over $180,000 dollars. The Town already has placed a lien on the home, but is unable to foreclose as it is homesteaded.

Town Attorney Randolph indicated that they are doing all that they have done all that they can legally do. If they file a foreclosure suit, and he proves he is homesteaded, the most you would get is a summary judgement. Council Member Coleman indicates that he wants to file foreclosure on these homes and then also be able to collect interest on all delinquencies. Mr. Elwell will have staff research the Statutes to see if interest can be collected on the debts.

Mr. Elwell clarified that the staff is not requesting write-off of the Code Enforcement fines, only EMS and parking violations. The Council directed staff to send a letter to all delinquencies, and then after 30 days, publish their names in the newspapers for the Code Enforcement cases.

Council Member Coleman made a Motion, seconded by Ms Markin, to send notices to all delinquents, and then 30 days (mid December) later publish names in the Shiny Sheet. The Motion passed unanimously.

Council Member Rosow made the Motion, seconded by Council President Pro Tem Coniglio to write off the EMS and Uncollectable Parking fees. The motion passed unanimously.

3. RESOLUTION NO. 98-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Planning, Zoning & Building Department Fees.
[John S. Page, Director of Planning, Zoning, and Building]

A Motion was made by Council Member Markin and seconded by Council Member Coleman. The Motion passed unanimously.

4. RESOLUTION NO. 92-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase of One Pierce 100' Velocity Platform Rear Mount Spec #8 Purchase In Accordance With Florida Sheriff's Association Bid 07-07-0828 with NFPA Department Aerial Required Equipment.
[William Amador, Fire-Rescue Chief]

A Motion was made by Council Member Coleman and seconded by Council Member Markin. The Motion passed unanimously.

5. Responses to Town's Request for Qualifications From State and Federal Lobbyists. [Peter B. Elwell, Town Manager]

After Council discussion, staff was directed to narrow the list of lobbyists to five each, State and Federal, and invite them to come back to the Council next month. Council also asked staff to contact the current lobbyist to determine why they did not submit a proposal.

6. Upcoming Maintenance Dredging of Lake Worth Inlet by the U.S. Army Corps of Engineers.
[H. Paul Brazil, Director of Public Works]

Item was heard with item XII.B.1.a. Consensus of Council was to agree to make a recommendation of staff to not pay to place the Lake Worth Inlet Harbor Maintenance Dredging sand on the dry beach south of the Lake Worth Inlet.

7. Discussion Regarding the October 30, 2008, Joint Meeting With the Port of Palm Beach and the Town of Palm Beach Shores. [Denis P. Coleman, Town Council Member]

After Council discussion, staff was directed to prepare a letter for the signature of Mayor McDonald, representing the expression of the Town Council to seek an enforceable contract, to which the Port of Palm Beach would commit the following:

- There would be no increase in storm surge
- No ships greater than 700' in length
- The Channel would be no deeper than 38'
- All beach compatible sand from any dredging in the Inlet or the turning basin would go onto the Town beaches.
- To work with the Town regarding the issues with the U.S. Army Corps of Engineers with respect to the Sand Transfer Plant, and the placement of sand on Town beaches.
- No blasting.
- Extend the boundaries of the Feasibility Study to the distance advised by the Public works Director Paul Brazil.

Ned Barnes, Civic Association suggested putting together a packet and give it to the legislators, lobbyists and the Port to block the feasability study.

A Motion was made by Council Member Rosow and seconded by Council President Pro Tem Coniglio to prepare and send a letter to the Port. The Motion passed unanimously.

8. Cooperative Efforts with Palm Beach County Regarding Coastal Issues. [Gail Coniglio, Town Council President Pro Tem]

It was announced that there is a Countywide Coastal Council Meeting on November 21st. Council Member Rosow represents the League of Cities at their Coastal Group. There was discussion regarding the importance of cooperative efforts with Palm Beach County.

9. Appointment of a Town Representative and Alternate(s) to the Palm Beach County Coastal Council.
[Peter B. Elwell, Town Manager]

Council President Pro Tem Coniglio was appointed to serve as the Town Representative on the Palm Beach County Coastal Council, and Paul Brazil, Director of Public Works as an alternate and Robert Weber as a second alternate.

A Motion was made by Council Member Coleman and seconded by Council Member Markin. The Motion passed unanimously.

10. Letter Dated October 14, 2008, From Attorney Ron Kolins Regarding Town Council Meeting Procedures.
[Jack McDonald, Mayor]

The Council discussed the length of recent meetings and decided that beginning with the January 2009 Council meeting, Development Review will be heard as the first item on the second day of meetings. The Town Council Meetings will be held on the second Tuesday and Wednesday of the month, with two separate agendas, with Development Review items heard on Wednesday. Whichever items are leftover from the day one agenda, will be heard after the Development Review items are heard.

11. Timing of Street Paving. [David A. Rosow, Town Council Member]

Discussion took place regarding paving in the summer months, with the suggestion that the next budgeting planning session include review of street paving in the summer months.

XV. ANY OTHER MATTERS

The Council discussed the length of meetings, and made suggestions as to how the time could be reduced.

XVI. ADJOURNMENT

There being no further business, the Town Council Meeting of November 12, 2008, was adjourned at 8:00 p.m., to reconvene at 9:30 a.m. on November 13, 2008, which meeting adjourned at 4:30 p.m. on that date.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

01/29/2010