TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON OCTOBER 12, 2004

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting of Tuesday, August 10, 2004, was called to order by President Allen Wyett at 9:30 a.m. in the Town Council Chambers. On roll call the following elected officials were found to be in attendance:

Mayor Lesly Smith
President Allen Wyett
President Pro-Tem Samuel McLendon
Councilman William Brooks
Councilman Jack McDonald

Councilman Norman Goldblum was absent from the entire meeting

Others in attendance were:

Town Manager Peter Elwell
Assistant Town Manager Thomas Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John Randolph
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Alan Brown - Supervisor II, Recreation
Paul Castro - Zoning Administrator
Veronica Close - Assistant Director of Planning, Zoning & Building
William Crouse - Human Resource Director
Andrew Cox - Acting Fire-Rescue Chief
Jim Hay - Tennis Pro

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Robert Moore - Director of Planning, Zoning & Building
Michael Reiter - Police Chief
Jane Skittone - Finance Director
Sandy Tate - Coastal Management Coordinator
Spencer Wilson - Information Systems Manager
Mary Pollitt - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President Wyett led the pledge of allegiance.

III. PRESENTATIONS

A. Recognition of John J. DeIorio Upon His Retirement from the Town of Palm Beach After 20 Years and 1 Month of Service.

Mayor Smith recognized John DeIorio's twenty years of service and presented a watch to him.

IV. COMMENTS OF MAYOR LESLY S. SMITH

I hope this is the last time that a hurricane recovery is going to be a topic of conversation. Forecasters appear confident that we will not be going for a record five hurricanes, and as much as Palm Beach likes to excel as the best and the most, it would be a relief when this lousy season is finally over.

The work of cleaning up and repairing and re-enforcing is still going on, and we are back at the drawing board with some new measures to prepare and protect us in the future. One last big thank you goes to our extraordinary Town staff, to our unflappable and unstoppable department heads, and to all of the residents of the Town who weathered the storm with patience and good humor. God bless you all. We could not have done it without you.

This morning is continued discussion of the potential of burying overhead utility lines. In view of our hurricane experience, this becomes one of our most critical decisions. During Hurricane

Frances, the areas of Palm Beach County with buried lines, City Place for example, sustained far fewer power outages than areas like ours that have overhead lines.

In speaking with mayors from the coastal communities last week, I found that cities that invested in underground lines and therefore remove the danger of falling trees interfering with overhead lines, have more reliable service especially during storm conditions. I also found that there are also a number of creative ways for funding and cost sharing which I trust we would explore before making a commitment.

The other day I discussed with Jeff Atwater the possibility of the Florida Legislature taking action during the next session to mandate underground power lines for the entire State. This was the thought that would be the only way to overcome the very powerful lobby of FP&L in Tallahassee. In the meantime the opportunity for a demonstration project along Royal Poinciana Way is one that we should seize.

I hosted last week my annual luncheon for Mayors and Managers of the coastal communities and West Palm Beach, and while much of our discussion centered on the hurricanes, a number of interesting ideas emerged. One of them was Boynton Beach's operation of its own radio station which during the storm emergencies was able to broadcast 24 hours a day with valuable information for residents. I think that this is something that we should look into, actually we are already looking into it, and which could be used to disseminate other kinds of information as well.

I am pleased to report that despite statements to the contrary last month, the Army Corps of Engineers has agreed to deposit in our borrow area the sand that it is dredging from the Inlet which accumulated due to the hurricanes. I can only hope that this is the beginning of a better relationship with the Corps and better news for our beaches. Also, I am meeting later this month with Congressman Mark Foley who is introducing a bill in Congress for funding of Florida beach restoration. This is an issue that has literally been stuck in the sand for months and months, and I am determined to get it moving again.

Our next regular Town Council meeting will be after the November 2nd elections. So, here goes my usual pitch for not only voting but getting involved with the electoral process. There is a lot of emphasis this year on what they called 'election protection' to make sure that eligible, registered voters are not turned away from the polls, and that every vote is counted. I know that some of the Palm Beach residents have volunteered to work as precinct workers with the Supervisor of Elections office, but many candidates, national, state, and local, are looking for volunteers to help at the polls. There are three areas of potential confusion where volunteers could be useful: first, by making sure that precinct election officials are providing adequate help to those who are having trouble with the new electronic voting machines; second, by informing voters who are turned away that they can cast provisional ballots which can be verified later; there is a very good editorial on this in the Palm Beach Post this morning of the options that you have; and third, by giving voters telephone numbers to contact -- the Supervisor of Elections office for legal help if they feel their voting rights have been violated.

I am really offended by former President Jimmy Carter's contention that we cannot meet the voting standards of even third world countries. This election is an opportunity for all of us to help disprove the notion that democratic elections cannot be conducted in Florida. So, please vote.

Thank you very much.

V. APPROVAL OF AGENDA

The following changes were made to the agenda:

DEFER item VII.D.2 Annual Report on Unpaid Assessments, Fines and Fees, to the November 9, 2004, Town Council meeting;

Councilman Brooks moved deferral of item VII.D.2 to the November 9, 2004, Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

DEFER item VIII.A.1. Palm Beach Public School, a. Proposed Plan of Action Regarding Structural Issues in the 1921 Portion, and b. Request for Extended Hours of Work, to the November 9, 2004, Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer item VIII.A.1. to the November 9, 2004, Town Council meeting. The motion carried 4/0 on roll call, as Councilman Goldblum was absent from the meeting.

DEFER item VIII.A.3. Peruvian Park Upgrade, to the November 9, 2004, Town Council meeting;

Motion made by Councilman Brooks, seconded by President Pro-Tem McLendon to defer item VIII.A.3., to the November 9, 2004, Town Council meeting. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

DEFER item XI.C.1.f. Site Plan Review No. 12-2004 with Variances, Il Lugano, to the November 9, 2004, Town Council meeting;

Motion made by President Pro-Tem McLendon, seconded by Councilman Brooks, to defer item XI.C.1.f., to the November 9, 2004, Town Council meeting. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

MOVE item VII.C.3. Resolution No. 59-04, Awarding a Contract for the Construction of the Phipps Park Tennis Facility Maintenance Building, from the Consent Agenda to the Regular Agenda as item VIII.B.8.;

Motion made by Councilman McDonald, seconded by President Pro-Tem McLendon, to move item VII.C.3. from the Consent Agenda to the Regular Agenda as item VIII.B.8. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

MOVE itemVII.D.1. Authorization to Waive False Alarm Charges During Hurricane Frances and Hurricane Jeanne, from the Consent Agenda to the Regular Agenda as item VIII.B.9.

The gavel was passed by President Wyett, who moved that item VII.D.1. be moved from the Consent Agenda to the Regular Agenda as item VIII.B.9. The motion was seconded by Councilman Brooks, and carried 4/0 on roll call, as Councilman Goldblum was absent from the meeting.

Motion made by Councilman Brooks, seconded by President Pro-tem McLendon, to approve the Agenda as amended. On roll call, the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Mr. Bill Guttman, 216 W. Indies, congratulated the staff on the handling of the hurricanes and the clean-up afterwards.

Mr. Guttman reported the study regarding variances granted by the Town paid for by the Civic Association was completed and recommendations by the consultant will be offered in 75% of the studied cases. He said the Town's study of special exceptions during the same period has not been completed but Director of Planning, Zoning and Building Robert Moore said it would be completed by October 31, 2004, and two weeks will be required by the consultant after that date for evaluation which means it will not be finished for the mid- November workshop. He mentioned that few of the variances reviewed met the hardship requirement for granting variances.

Ms.Candace Cohen, owner of the book shop on Royal Poinciana Way, spoke on the issues related to the contractor, Weekly's, doing the work on Royal Poinciana Way. Ms. Cohen stated the contractor was not working in a timely manner, including not working nights or doing work in August when some of the shops were closed as promised, and the construction will interfere with business as the completion date is expected to be Thanksgiving.

Mr. Rob Cables, Florida Department of Transportation, confirmed Weekly's work should be finished by Thanksgiving, and he has written several letters to the contractor without much success. He said he would continue to work with the contractor and their bonus situation for finishing early expires the end of October.

Mrs. Gail Coniglio, owner of Cucina del Arte, stated she also had problems with Weekly's as water lines were disconnected and not reconnected as promised causing problems with her restaurant operation. Mrs. Coniglio complimented the staff for their efforts during the two hurricanes. She also urged the rebuilding of the Sand Transfer Plant and denying the request of the School Board to demolish the 1921 portion of the public school.

President Smith thanked Mrs. Coniglio for all of the food she provided for Town staff during the hurricane events. Mrs Coniglio received a round of applause from the audience.

Town Manager Elwell said the issue of Royal Poinciana Way construction will be an agenda item for the November 9th Town Council meeting.

VII. CONSENT AGENDA

A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING- BUDGET HEARING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING OF SEPTEMBER 30, 2004.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING OF SEPTEMBER 22, 2004.

C. RESOLUTIONS

1. RESOLUTION NO. 57-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding the Town Contract to Replace the Main Ibm Iseries Computer System to Midrange Support & Service, Inc. of Delray Beach, Florida, and Authorizing the Town Manager

to Execute the Necessary Contractual Documents to Effectuate Said Purchase on Behalf of the Town.
[Spencer D. Wilson, Information Systems Manager]

2. RESOLUTION NO. 58-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Renewing a Contract to Laro Service Systems, Inc. for Town of Palm Beach Janitorial Services for Fiscal Year 2005, First Year Renewal of Sealed Bid No. 2003-09.
[H. Paul Brazil, Director of Public Works]

Moved to Regular Agenda

3. RESOLUTION NO. 59-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to E.W. Kelson Builders, Inc. for the Construction of the Phipps Park Tennis Facility Maintenance Building.
[H. Paul Brazil, Director of Public Works]

D. OTHER

Moved to Regular Agenda

1. Authorization to Waive False Alarm Charges During Hurricane Frances and Hurricane Jeanne.
[Jane Skittone, Finance Director]

Deferred

2. Annual Report on Unpaid Assessments, Fines and Fees.
[Jane Skittone, Finance Director] **Request for Deferral to November 9th Town Council meeting per memorandum dated October 4, 2004, from Jane Skittone, Director of Finance.**

The Consent Agenda was approved, as amended, through motion of Councilman Brooks, seconded by President Pro-Tem McLendon, and carrying 4/0 on roll call, as Councilman Goldblum was absent from the meeting.

VIII. REGULAR AGENDA

A. Old Business

1. TIME CERTAIN 10:00 A.M. Palm Beach Public School.
Request for deferral of both a. and b. below to the November 9th Town Council meeting, per e-mail dated October 7, 2004, from Kristin Garrison, Planning Director, School District of Palm Beach County.

a. Proposed Plan of Action Regarding Structural Issues in the 1921 Portion.

b. Request for Extended Hours of Work.

THE TOWN COUNCIL DEFERRED THIS ITEM EARLIER IN THE MEETING.

2. Continued Consideration of Potential Project(s) to Bury Overhead Utility Lines. [Thomas G. Bradford, Assistant Town Manager]

a. Townwide Program

b. Royal Poinciana Way Demonstration Project

Assistant Town Manager Thomas Bradford requested direction regarding two issues concerning underground utilities. The first had a deadline of tomorrow, which was the Royal Poinciana Way Demonstration Project; staff also would be requesting direction and input on the Town-wide underground utilities, however, that had been put off until the November Town Council meeting.

Mr. Bradford explained that the Royal Poinciana Way work would cost approximately $418,000, which would include Florida Power & Light (FPL) work being done by FPL, as well as the cost of undergrounding the Adelphia facilities on the south side of the road. The deadline that was originally given in April was tomorrow (10/13/04), to either accept or reject the binding cost estimate that was provided. Just this morning, an e-mail had been received from FPL indicating that, in light of the extenuating circumstances, they had extended the deadline until the day after the November Town Council meeting to allow additional time to consider their cost estimate versus that which was received from the engineering consultants contacted by the Palm Beach Civic Association.

Mr. Bradford reported that staff was of the opinion that the Public Service Commission (PSC) rules would allow the Town to do the underground work with its own forces, as long as the standards of FPL were met. What was not known was if FPL agreed with that interpretation of the Florida Administrative Code. If there was a dispute between FPL and the Town, a petition would have to be filed with the PSC in Tallahassee for them to render an opinion relative to the matter. FPL officials had indicated that they anticipated in getting an answer from upper management in about one week, as to whether they agreed with the Town interpretation of the PSC rules.

Mr. Bradford noted that there was a big discrepancy between what FPL proposed to charge for undergrounding Royal Poinciana Way, and the numbers submitted by the electrical engineer working with the Palm Beach Civic Association.

Mr. Bradford recalled that he had done a report in February that indicated costs of approximately $54 million to underground all of the roads in Town, excluding the secondary service costs (the costs of providing a line from the primary line to the home or building receiving service). Therefore, on a Town-wide basis, the costs were estimated at approximately $70 million to do every aspect of placing utilities underground. If a Town-wide project was considered, methods of financing would also have to be considered; staff would require another or month or so to study the financing in order to provide options. He requested Town Council input and direction relative to the Town-wide project; staff was willing to go forward with staff doing Royal Poinciana – he pointed out that since an extension had been received, staff could wait another month to get more details on that if the Town Council was so inclined.

In response to Councilman Brooks, Mr. Bradford explained that in late spring, FPL had provided a depreciation schedule, however, it had no specificity in it whatsoever relative to the useful life of a specific facility at a specific location – they had simply provided a schedule that had been approved for different items by the PSC. Prior to Hurricane Frances, FPL had been reminded that the Town needed more specificity; the hurricanes then occurred and FPL had not yet been able to provide the information.

Councilman Brooks commented that FPL would allege that even underground utilities could suffer outages, however, the number of incidences versus overhead wires going out were very small. Additionally, the technically and transmission of electrical power explodes exponentially, and they would talk about perhaps a 1980 type delivery system, which would be totally unacceptable to the Town.

President Wyett commented that Adelphia should pay for its own underground wiring, and expressed concern regarding the $54 to $70 million for Town-wide underground wiring. He noted that many homes already had underground wiring from the home to the street, and if the Town assumed the responsibility of going from the street to the home, all of those homes already having the wiring would be penalized; he suggested that, in the Town-wide project, it be the responsibility of the homeowner to decide whether they wanted to go from the street to their homes.

Director of Planning, Zoning & Building Robert Moore advised that new homes were required to put the power underground, as required by the Zoning Ordinance and Electrical Code.

Mayor Smith suggested that homeowners review their electric bills for the period involving the recent hurricanes, to be sure that credit is received for the time that they were without electricity.

Mr. Bill Guttman, Palm Beach Civic Association, suggested that a letter be written to FPL concerning allowing an independent contractor to bury the overhead lines along Royal Poinciana Way, with a demand for the depreciation schedule, and describe that the information furnished to date has not been adequate. If a positive response was received regarding an independent contractor, the Town may be in the position to get an even better bid from an independent contractor than the one reflected in Mr. Bradford's memorandum. He also suggested that if FPL disagreed that he Town had the prerogative to use an independent contractor, the Town Council authorize the hiring of appropriate counsel in Tallahassee, along with staff, to appeal to the PSC for a ruling. He urged the Town Council to have all of the appropriate information before making any decision.

President Pro-Tem McLendon commented that he believed that if the Town was not in agreement with FPL, the permission of the PSC would be required to do any work by an independent contractor.

Mr. Bradford replied that, as he understood the Florida Administrative Code, that the requestor had the right to construct facilities at their expense at the utility provider specifications, and that the utility provider must accept it and operate, with the caveat being that the whole aspect of doing that could not cause an increase in costs to the other rate payers of the utilities.

Mayor Smith commented that the Mayors of the Coastal Communities had discussed that the communities should unite and get legislators in Tallahassee interested in the underground wiring project. She stated that she would write to the Mayors to inform them of what action the Town was taking, asking them to join with the Town in the process of pursuing the underground wiring of utilities.

Councilman Brooks moved approval of the recommendation of staff that the Town Council approve Town staff notifying FPL of the Town's rejection of the FPL binding cost estimate for utility line conversion work on Royal Poinciana Way, and authorize staff to proceed with design and ultimately construction with a reputable contractor chosen by way of the Town's approved selection process; that the Town again request the receipt of the depreciation schedule; put FPL on notice as to what the Town planned to do, and be prepared

to appeal the decision of FPL to the PSC for a ruling; in addition staff would be authorized to open discussions with Adelphia regarding payment of their underground wiring. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

3. Peruvian Park Upgrade.
[H. Paul Brazil, Director of Public Works]
Request for Deferral to November 9th Town Council meeting per memorandum dated October 5, 2004, From H. Paul Brazil, Director of Public Works.

THE TOWN COUNCIL DEFERRED THIS ITEM EARLIER IN THE MEETING.

4. D-3 (Tangier) Pump Station - Reconsideration of Construction Schedule. [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil reported that it had been decided at the October 1, 2004, Town Council meeting that construction at the D-3 (Tangier) Pump Station would be halted for the holiday season, and resumed during the 2005 construction season. Subsequent to that, two of the three most affected residents had requested reconsideration of that schedule, requesting that the work continue on through the holiday season. The third resident (Mr. George Ross) had forwarded a letter requesting that the decision to stop work during the winter season be upheld, and Mr. Brazil read the letter into the record.

President Pro-Tem McLendon moved approval of moving ahead with the D-3 (Tangier) Pump station construction during the winter months. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/1, as Councilman Goldblum was absent from the meeting; President Pro-Tem McLendon, Councilman Brooks, and President Wyett casting affirmative votes; Councilman McDonald casting a dissenting vote.

5. RESOLUTION NO. 46-04 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Revision of the Settlement Authority Policy, Providing an Effective Date. [Peter B. Elwell, Town Manager, and Karen Temme, Risk Manager]

Town Manager Elwell advised that Councilman McDonald had requested further data regarding this resolution, which had been provided via memorandum, dated October 7, 2004, from Town Manager Elwell to the Mayor and Town Council.

Town Manager Elwell read Resolution No. 46-04 by title, as printed above.

Councilman Brooks moved adoption of Resolution No. 46-04. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

B. New Business

1. Four Winds Matter

   a. Oral Report by the Four Winds Investigative Panel.
   [Bruce A. McAllister, Chair, Four Winds Investigation Panel]

   b. Property Owner's Appeal of the Town's Intent to Revoke Building Permit #8068876. [Maura Ziska, Esq.]

Chairman Bruce McAllister, Four Winds Investigation Panel, made the following statement:

We heard many of the owners' representatives, including the owner himself. We heard from many of the PZ&B staff, many of the members of the Landmarks Preservation Commission, including the Chairman, and we heard a full presentation from the Preservation Foundation. We believe we had all of the information we needed to reach the following determination.

Whether the owner and his representatives responded with accurate information to every request from the Town and whether the owner and his representatives complied with the Town's ordinances and policy concerning preservation as communicated to

them by the Town staff and by the Commission. Our finding is that the owner and his representatives did respond as required and did comply as required.

That's our full report at this point.

Mr. McAllister noted that another Four Winds Panel meeting was scheduled for Friday, October 22, 2004, for further consideration of the policy and procedures that had been followed in this matter.

Mayor Smith thanked the members of the Four Winds Panel for their diligent work.

Councilman Brooks moved that the stop work order be revoked on the Schwarzman property, at 1768 South Ocean Blvd., and that the work be allowed to continue according to the requirements of the Building Department. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

2. Staff Update and Town Council Policy Direction Regarding Emergency Shoreline Protection Measures.
[H. Paul Brazil, Director of Public Works]

After hearing a report on the condition of the shoreline, the Town Council scheduled two meetings:

November 1, 2004	**10:00 a.m.**	**Meeting to discuss the critical erosion problems**
November 18, 2004	**10:00 a.m.**	**Public Hearing to address the financial solutions for the erosion problems**

Town Manager Elwell recalled that at the October 1, 2004, Town Council meeting, a number of residents addressed the critical erosion caused by the two hurricanes; at that time staff had indicated that plans were being developed and the appropriate regulatory agencies and contractors were being contacted in order to move forward with emergency protective measures to shore up dunes and structures in some cases, to prevent further damage from being done in similar storm conditions. He explained that the issue of protecting private property versus public infrastructure, or public property had arisen during development of the plans, which issue he would discuss under this item as well.

Lake Worth Inlet Sand Transfer Plant:

The Lake Worth Inlet Sand Transfer Plant needs to continue to by-pass sand onto the northend beaches in Town so that can be beneficial to the remainder of the Town. Staff was working with Palm Beach County towards the restoration of the functioning of the plant; the plant was significantly damaged by the sea waters that flooded the building during the recent hurricanes. There was a tremendous amount of work to be done, and there was not a specific date as to when the plant would resume operation; the operation of the plant would be restored as quickly as possible in its current configuration, while working towards trying to speed up the process.

Mid-Town beach nourishment project area & Phipps Ocean Park:

This area was the area most likely to receive Federal Emergency Management Agency (FEMA) funding reimbursement was the mid-town beach, to restore sand that was lost during the two hurricanes. He noted that the mid-town area was protected by the mid-town beach project, and the project performed well; there was a plan to do several more to protect the larger shoreline of the Town. The Phipps Ocean Park Permit was in the appeal process, however, after receiving voluminous materials supporting the Town's case, the Army Corps of Engineers had now proffered a permit that had made some movement towards the Town's position. Continued conversations would continue with the Army Corps of Engineers Jacksonville District while the permit was being appealed; there MAY be the possibility of a resolution at the district level, without having to take the appeal to Atlanta.

How to address critical erosion:

The majority of the protective work needed was so critical almost continuously south of Sloan's Curve that the expectation was that the next time there were waves of high magnitude there would be loss of public infrastructure and/or private property. Most of the work contemplated was going to be landward of the mean high water line – essentially dune restoration. In a few locations there would be something even more substantial required, and staff was currently working through ow to expedite permitting and deal with the logistics in that regard. The work necessary landward of the mean high water line would not require permits, as long as sand was not put into the water. The more difficult part of the issue was that because the work would be almost exclusively landward of the mean high water line, it would also mean placing sand on some private property for the protection of the structures that were on private property. The Town staff would need policy direction from the Town Council in that regard. The question was whether it would be appropriate, at this point, as an emergency measure, as part of the overall beach project, which is funded on a Town-wide basis, to proceed and build a large scale dune restoration project with something more substantial in isolated locations, and do that out of the funds that are available in the beach management program. Or, would it be more appropriate, because of the emergency expected temporary nature of these particular improvements to save those Town-wide funds for the purposes they were originally set aside for, and to proceed with the emergency work at Town cost, whether it was protecting public infrastructure or protecting Town property and where there would be an arrangement that would need to be made with the private property owners as to their participation and private funding of the improvements in front of their own property. The Town could play a major role both in facilitating both the completion of the work and the financial arrangements. He noted that the buildings that were most critically in need of protection were those that were so exposed that the addition of sand to build up a dune would not address their problem.

In response to Mayor Smith, Director of Public Works Paul Brazil explained that it was physically possible to put revetments in front of the buildings in critical need of protection, however, that would involve the Army Corps of Engineers. He estimated that there were 20 private properties affected; 5 of those meet the description of critically eroded, where sand would not solve the problem.

Mr. Elwell advised that if the Town Council was inclined to approve public funding of the private areas, staff would recommend that the Town follow the non ad-valorem assessment process. A formula would need to be created that would fairly distribute the costs of the project, then conduct a public hearing process, and the Town Council would then adopt a tax roll specific to the project, and approve the non-ad-valorem assessment which would be added to the property tax bill.

In response to Councilman Brooks, Mr. Elwell estimated that in approximately two weeks, a more definitive conversation could take place regarding the design of the project and the costs of the project. If the Town Council did ultimately determine that the private property owner should pay for some percentage of the portion that would go in front of their private property, staff believed the non ad-valorem assessment process was the way to do that. In order to position staff to be able to move forward with approving proceeding with the work and using the non ad-valorem assessment process, several things would be necessary: a special Town Council meeting to address the detailed project information and cost estimates; in the meantime, staff would need authorization to go forward with the advertising process that was required by State Statute regarding the non ad-valorem assessment. At that point a second special Town Council meeting would be necessary to actually move forward with the non ad-valorem process.

Mr. Elwell pointed out that in any of the affected locations, if there was a building that wished to move forward faster than the Town was able to move, the Town would assist them to do their own project; if there was a building that wanted to move forward to protect its own property, staff would put them in touch with people where they could make their own decision about the liability they would be taking on by doing a project in that manner.

Councilman Brooks moved approval to authorize staff to move forward with the formal notification process for the public hearing. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

Mr. Jerry Frank commented that, in this particular situation, there was some confusion about what was public property and what was private property. He stated that there were access areas to A-1-A, and that he did not think that property owners should be asked to contribute to the costs of repairing the beaches. He considered that residents contribute through taxes, and that the process of beach restoration was a Town project, as discussed in the past. He suggested that if the permit had been obtained for Reach 7, the dune area would not need sand at this point, because it would already have been filled in; to separate the private and public property lines at this point was difficult to understand.

Dr. Sanford Kuvin commented that he had been asked to address the purpose of the piece in the Palm Beach Daily News on Sunday relating to the beach, which discussed the enormous waste of emergency sand that was being put in the borrow area. He stated that he would have preferred that the Army Corps of Engineers had put the sand where it was legally supposed to put it, or dump it on the nearshore. Both of those options would have addressed the emergency aspect of 250,000 cubic yards of free sand that could have been put in critically eroded areas. The article also addressed the restoration of the Sand Transfer Plant, and the easement rights from property owners. He noted that the Town had not been aggressive in seeking those permissions, and that he hoped there would now be a more proactive attempt to obtain those easements, explaining it to the owners properly.

Mr. Harold Nectow commented that he believed it would be a mistake to approach the residents to pay for the repair of the beaches.

The Town Council specified the following meetings:

November 1, 2004 @10:00 a.m. - Special Town Council Meeting to discuss the critical erosion problems. Staff would provide more details on the design and costs of the project.

November 18, 2004 @ 10:00 a.m. - Public Hearing to address the financial solutions for the erosion problems.

Town Manager Elwell advised, that, in the absence of direction to the Town Council to the contrary, staff would continue to go full steam ahead to do all of the things that were needed in front of public infrastructure and public property. It may be that it would make sense to hold back on what would be done in front of Phipps Ocean Park and Par 3 Golf Course, because that would be integrated with the overall decision that would be made, however, there were other areas in Town where the measures needed to be taken immediately. He clarified that there would be work being done regarding emergency protective beach actions that would continue currently, because they did not relate to the question of public and private property.

Former Mayor Yvellene deMarcellus Marix commented that even before he hurricanes hit, waves were splashing over North Ocean Blvd., and if that roadway washed out it would be extremely serious for a tremendous number of people that live at the northend.

Town Manager Elwell replied that it was the Town's responsibility to maintain that seawall, which was why that was on the list of things that would not wait for the further decision making about public and private issues. The seawall and the roadway would be completed as quickly as staff could get it done.

3. Proposed Special Town Council Meeting Regarding the Strategic Plan and the FY 2006 Budget on Tuesday, February 22, 2005.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum of October 7, 2004, to the Mayor and Town Council, regarding the recommendation to hold a Special Town Council Meeting regarding the Strategic Plan and the Proposed FY2006 Budget on Tuesday, February 22, 2005. He recalled that conversations had been held in the spring about how to more efficiently and effectively bring the public into the process of reviewing he Strategic Plan and beginning the preparation of each fiscal year's budget. His memorandum addressed the method in which the processes could be improved in that regard.

Councilman Brooks moved approval of a Special Town Council meeting regarding the Strategic Plan and FY2006 budget on Tuesday, February 22, 2005. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

4. Review of Planning, Zoning, and Building ISO Audit.
[Jack McDonald, Town Council Member]

Councilman McDonald commented that he was interested in a response from management regarding the Planning, Zoning & Building ISO audit, and also had some comments relating to the insurance aspects of it.

Town Manager Elwell advised there was a recommendation of potential additional staff being added to the Planning, Zoning & Building Department in order to maintain a proper level of service for the industry and the community. The recommendations regarding the potential additional staff had not been addressed in any substantive way at this point because of the space limitations of the existing department; it was the intent to address the potential of some additional staff members for the purposes that were recommended in the ISO report, through the funding of future years' budgets, as the Town Hall restoration project was pursued. When the department was then moved into its larger space, then he would be in the position to speak substantively to the staffing question; what would be the optimum staffing level, costs, etc. He explained that the pros and cons of adding staff would be discussed during budget considerations for next year. The other, more functional details of the report would be addressed by Director of Planning, Zoning & Building Robert Moore.

Director of Planning, Zoning & Building Robert Moore advised that in the memorandum sent to the Mayor and Town Council on July 29, 2004, he had identified methods of improving the rating score. The greatest loss of points was in the training and education area – one of the problems associated with that is the staffing problem experienced when staff members are away for training. He advised that approximately 7,000 permits were done per year.

In response to Councilman McDonald, Mr. Moore advised that there was an insurance premium relationship between the rating scores and homeowners paid in their insurance. He explained that he was not aware of the actual cost.

Councilman McDonald commented that since that was something that would affect the premiums of every landowner in Town, the training and education deficiencies should be addressed.

Town Manager Elwell commented that money had been added to this year's budget to increase the amount of training for the Planning, Building & Zoning department (the current fiscal year had just begun on October 1, 2004).

Mr. Moore advised that he would obtain information on the insurance impacts as soon as possible.

Mr. Elwell clarified that the staffing issue was a separate issue that would be addressed in the coming months as the budget was prepared, however, the other two items on the ISO were being addressed, and additional training money had already been authorized for this year; there were already steps being taken to improve the distribution of public information documents to make sure that public education as done with a greater intensity than it has been done in the past.

5. Phipps Park Tennis Court #4 Update Report.
[Jack McDonald, Town Council Member]

Councilman McDonald commented that he had put this item on the agenda because he had played tennis last week at Phipps Park, and other players harangued him about the condition of court four.

Director of Public Works Paul Brazil advised that the contractor had been notified; the original court condition design was also involved, and the contractor was coming back to do a repair; neither the designer nor the consultant could accurately describe what might be going on with the water that was on the surface of one side of the court.

6. Appointment to the Public Employee's Relations Commission (PERC).
[William C. Crouse, Director of Human Resources]

After casting ballots, the Town Council appointed Alec Flamm to the Public Employee's Relations Commission (PERC).

7. Appointments to Town of Palm Beach General Employees Retirement Board of Trustees.
[William C. Crouse, Director of Human Resources]

After casting ballots, the Town Council re-appointed Robert Garvey, and appointed James

A. Karman to the General Employees Retirement Board of Trustees.

8. Resolution No. 59-04, A Resolution of the town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to E. W. Kelson Builders, Inc. for the Construction of the Phipps Park Tennis Facility Maintenance Building.
(H. Paul Brazil, Director of Public Works)

In response to Councilman McDonald's concerns regarding the huge difference in the bid, Director of Public Works Paul Brazil reported that the design consultant had estimated that the construction would be on the order of $35,000. The lowest bid received was $47,280. Only two bids were received – the other one was $67,280. He suggested that the recent two hurricanes had influenced the availability of contractors to do work.

Mr. Elwell remarked that the project could be simplified from what had been originally directed.

Town Engineer Bowser advised that in order to cut out anything that could not be seen from the street would involve making the building radically different and not in keeping with the character of the park. He explained that the interior of the building was not an expensive design.

Mr. Elwell noted that staff had discussed the issue, which had been of concern to them as well, however, decided to bring it forward for discussion. What caused staff to do that was that the current construction climate continued to afford limited and inconsistent availability of cement products, and contractors were already occupied with hurricane reconstruction. He noted that the issue could be deferred until a later date, with a contingency plan being used in the meantime.

Councilman McDonald moved deferral of Resolution No. 59-04, and to reject all bids at this time. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

9. Authorization to Waive False Alarm Charges During Hurricane Frances and Hurricane Jeanne.
(Jane Skittone, Finance Director)

President Wyett recommended waiving the false alarm charges through October 10, 2004.

President Wyett passed the gavel and moved approval of waiving all false alarm charges from September 1, 2004 through October 10, 2004. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

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The meeting was adjourned for the luncheon recess at 12:30 p.m.

The regular Town Council Meeting of October 12, 2004, was reconvened at 2:00 p.m.

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IX. ORDINANCES

A. Second Reading

1. None

B. First Reading

1. <u>ORDINANCE NO. 22-04</u> An Ordinance of the Town Council of The Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 22, Business, at Section 22-58; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 22-04 by title, as printed above.

President Pro-Tem McLendon moved approval of Ordinance No. 22-04 on first reading. The motion was seconded by Councilman Brooks. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

2. ORDINANCE NO. 26-04 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach, County Florida, Amending Chapter 10, Animals, At Section 10-10, Temporary Permits; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 26-04 by title, as printed above.

President Pro-Tem McLendon moved approval of Ordinance No. 26-04 on first reading. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Pro-Tem McLendon thanked the Town Staff for the their efforts during Hurricanes Frances and Jeanne.

Councilman McDonald requested the Architectural Commission minutes be attached to any variance requests reviewed by the Town Council if ARCOM has reviewed the variance prior to the Town Council presentation.

Councilman McDonald also requested that Department Directors provide complete information or support data for the conclusions/recommendations provided to the Town Council members regarding items on the agenda.

XI. DEVELOPMENT REVIEWS

A. Appeals

1. None

B. Time Extensions

1. None

C. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Pollitt administered the oath to all those who would be providing testimony in the Development Review items.

1. Old Business

a. VARIANCE #19-2004 The application of Frederick R. Adler and Catherine G. Adler relative to property described as lengthy legal description on file; commonly known as 1520 South Ocean Boulevard; located in the R-A Zoning District. To allow the enclosure of an existing deck, which is partially a second story and partially a third story, for construction of an addition for staff quarters. The first variance is to increase the building non-conforming 3rd floor element and the second is to provide a side yard setback of 10.91 ft. in lieu of the 15 ft. minimum required. *Deferred from the August 10, 2004, and October 1, 2004, Town Council Meetings.*

It was noted by Councilman Brooks and President Wyett that they had partaken in ex-parte communication over a year ago on the subject property, however, not in connection with this current request.

Attorney Greg Young, on behalf of the applicants, addressed the Town Council, stating that the hardships for the request were as follows: for a home and property of this size, the existing residence was without sufficient staff quarters; the location and design of the existing residence dictate that the construction of the staff quarters be proximate to the service side of the home, which was on the north side of the property; the setback and lot coverage requirements in the Zoning Code had become more restrictive since this property was built. Mr. Young provided photographs of the subject property as well as the property to the north and a site plan. He explained that the proposal was to enclose an existing habitable space; the applicant had agreed with the owner of the property to the north to remove the property line encroachment on the roof over hang; the representatives of the neighbor to the north had no objections.

Mr. Young presented a listing of all of the variances for side and rear yard setbacks in R-A, R-AA, R-B, and R-C zoning districts from January 1997 to present; there were a total of 150 variances requested, 132 approved, 9 denied, and 9 withdrawn. He noted that was an 88% approval rate for these types of variances.

Zoning Administrator Paul Castro advised that a similar variance was heard approximately one year ago, and at that time the same argument was made relating to the condition of an approval in the early '80's relative to maintaining the landscaped open space. He advised that was a condition that could be modified by the Town Council. Staff did not believe that there was a hardship, as it related to the strict criteria in the Code. In addition, an approval for this variance would be conditioned by he request from the Fire Marshal to provide a sprinkler system per the Town Code. Staff believed there was room to put an addition on the property for servant quarters without putting it on top of a second floor.

Attorney Young responded that there was a much a hardship in this particular application as there had been in many of the approvals that were set forth today. He maintained that the request in this application was similar to many of those that were approved over the past six or seven years.

In response to the request of President Wyett regarding the number of variances requested on this property, Attorney Young advised that there were variance requests in 1975, 1981, 1992, 1993, totaling six variances.

Councilman Brooks commented that he did not see a hardship; the property had an abundance of space, and the fact that the staff may have to walk to get to the house was not a hardship.

Councilman Brooks moved denial of Variance #19-2004. The motion was seconded for discussion by Councilman McDonald.

Referring to the list provided by Attorney Young, Director of Planning, Zoning & Building Robert Moore asked how many of the properties on the list were in R-A zoning districts, that involved zero lot line setbacks, that involve expansion of a third story.

Attorney Young replied that this was not a zero lot line setback that was being requested – an encroachment of 4.9' on the existing application. He further explained that there were one or two variances on the list that involved a third floor. There were approximately one dozen that involved expanding a second floor non-conforming structure. He further explained that there were not more than several variance requests in the R-A district that involved both an encroachment of an existing nonconforming structure and a third floor – there were some that had to do with one or the other, or a further encroachment of an existing nonconforming structure in the second floor.

Mr. Moore advised that each variance request must be looked at on an individual basis; the list presented should not be relevant in the decision today, unless there was an exact duplication of a request that had gone before the Town Council.

Zoning Administrator Paul Castro advised that he had scanned through the list briefly, and there was only one case where a third floor addition was allowed in the R-A district with a setback closer to the property line, and that was at the end of Parc Monceau for an elevator shaft.

Attorney Young advised that the hardship was that for a home and property of this size the residence was without sufficient staff quarters. The location and the design of the existing residence dictate that the construction of staff quarters be at the service side of the property, which was on the north side of the property. The setback and lot coverage requirements of the zoning code have become more restrictive since the construction of the home and created nonconformities on the property. The restriction of any further development of open landscaped area.

Zoning Administrator Paul Castro remarked that the applicant had not stated how any of the criteria in the code for granting a variance had been met, based on Section 134-201.

President Pro-Tem McLendon commented that he looked upon this as an improvement to an existing condition, to get rid of the overhang on the property to the north, without making any other encroachments into the setback beyond what was existing.

Attorney Young advised that the application itself addressed satisfaction of all of the requirements of Section 134-201.

On roll call the motion to deny Variance #19-2004, on the basis that the applicant did not meet all of the criteria as set forth in the Code, carried 3/1, with Councilman Brooks, Councilman McDonald, and President Wyett casting affirmative votes; President Pro-Tem McLendon casting a dissenting vote; Councilman Goldblum was absent from the meeting.

b. VARIANCE #20-2004 The application of 171 Royal Poinciana, LLC, Lynn Min, Member relative to property described as Lot 7, Floral Park Add. No.2; commonly known as 171 Royal Poinciana Way (a.k.a. Main Street); located in the R-C Zoning District. To allow the renovation and addition to an existing non-conforming building. Variances requested are as follows: to build new single family home on a platted lot that has a width of 25 ft. in lieu of the 75 ft minimum; to have a lot area of 2,500 sq. ft. in lieu of 10,000 sq. ft. minimum required; to provide a front setback of 7.1 ft. in lieu of 25 ft. minimum required; to provide east and west side yard setbacks of 2.5 ft. in lieu of 10 ft. minimum required; to provide lot coverage of 59% in lieu of 35 % maximum allowed; to provide landscape open space of 22% in lieu of the 35% minimum required; to provide landscape open space of 12% in front yard in lieu of 35% minimum required; to build a swimming pool with a 3 foot side yard setback on the east and west in lieu of 10 ft. minimum required; to build a pool with a 3.66 ft. rear yard setback on the north in lieu of 10 ft. minimum required; and, to have 4 dormer window openings in the roof above the maximum building height which opens into habitable space where no windows are allowed in the roof into habitable space. *Deferred from the August 10, 2004, and October 1, 2004, Town Council Meetings.*

Zoning Administrator Paul Castro advised that staff was requesting that Variance No. 20-2004 be deferred, as the applicant needed to file a modification to their request.

Councilman Brooks moved deferral of Variance No. 20-2004 to the November 9, 2004, Town Council Meeting. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

Henry Burrellic, neighboring property owner, questioned the time constrictions on the filing of a modified application.

Zoning Administrator Castro replied that he had spoken with Attorney Peter Broberg this morning, and all of the notices were being prepared to go out as soon as possible. The notices must be out at least 15 days before the next meeting, and in the newspaper as well.

c. VARIANCE #22-2004 The application of Richard P. Richman and Ellen S. Richman relative to property described as Lots 2 and 2A, East Shore Addition; commonly known as 615 Crest Road; located in the R-B Zoning District. To allow construction of a portion of the residence containing a living room on the west side of the house with a width of approximately 32'8" having a height of 23.0 ft. in lieu of the maximum permitted height of 22.0 feet; and, to permit construction of a residence with cubic content ratio of 4.10 in lieu of the maximum permitted cubic content ratio of 3.81. *Deferred from the October 1, 2004, Town Council Meeting.*

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

Attorney Doyle Rogers, on behalf of the applicants, addressed the Town Council, along with Architect Mark Marsh.

Architect Marsh exhibited the site plan and reviewed the proposed construction.

Attorney Rogers advised that all of the neighbors had been contacted, and all had approved, or did not object to this request. He read a response of no objection from neighboring property owner Raymond Floyd into the record.

Attorney Rogers advised that the property was unique and that the hardship ran with the land. He read comments of Zoning Administrator from the March 12, 2002 Town Council meeting, wherein he had commented that the adjacent property of Mr. Floyd was very unique, fronting on a very narrow portion of Plantation Road, with the bike trail to the west, and access to the bike trail on the north and south sides of the property. He noted that the property in question had the bike trail on the south side of the property. He also noted that there was a letter of March 26, 2002 from Zoning Administrator Castro wherein the parties south of the Floyds had entered into an agreement. Attorney Rogers read from that letter, sixth paragraph of the agreement: "The Floyds, or their representatives shall represent to the Town Council at the March 12, 2002 Town Council meeting, that this hardship faced by the Floyds regarding the Town's point of measurement requirement, is also faced by the other lake front properties in the Plantation and Crest Road areas. That variances likely will be needed by those properties, and that such variances should be granted. The Floyds agree that they would not object to a point of measurement request by the Finkelsteins, which is comparable to the variance sought by the Floyds."

Attorney Rogers advised that all criteria for a variance request had been met, as set forth in the application.

Zoning Administrator Paul Castro advised that this application was different than the Floyd's application, as they had been concerned about the flooding from Crest Road; that lot was not considered a through lot, and therefore did not have to meet the criteria as it related to half the lot, point of measurement being Crest Road, the other half being the bike trail. In this case, the lot was a through lot, and the intent of the Code was that the front half of the lot should be measured by the highest crown of the road, which is Crest Road, and the back half by the bike trail. In this case the elevation of the house was not changing the top elevation; they were simply lowering the floor a foot, but it was making the house a foot taller than was allowed in the R-B District. He noted that he had advised in the past that certain situations on the bike trail and possibly on the ocean that staff needs to look at how those lots are treated, because those are R-A size lots, and the construction guide is much higher. From that standpoint, there is some merit to the case, however, in terms of meeting the criteria in the Code for a variance, that was the question of staff as it related to this matter.

Director of Planning, Zoning & Building Robert Moore advised that had met with Attorney Tim Hanlon and Architect Marsh and had told them that they certainly did meet the intent of the code, because this lowering of the floor was not visible. The intent of the cubic content ordinance was to address the massiveness, and how it would appear to the public from the public right-of-way and neighboring property owners. He noted that the Architectural Commission (ARCOM) did not have a problem with this request.

After further discussion, **President Pro-Tem McLendon moved approval of Variance #22-2004. The motion was seconded by Councilman McDonald for discussion.**

Mr. Moore advised that the property in question was high on the east end and low on the west end, and the property had a complete frontage across Crest Road, which was unique.

Zoning Administrator Castro replied that in reality the properties discussed were similar, but in construction of the Code they were not.

After further discussion, on roll call the motion to approve Variance #22-2004 carried 4/0, as Councilman Goldblum was absent from the meeting.

d. VARIANCE #23-2004 The application of Dr. G. Alexander and Stephanie B. Carden relative to property described as Lot 6 Eden Properties; commonly known as 211 Garden Road; located in the R-B Zoning District. To allow construction of a partial second story addition on a one-story house which will have a 31.3% lot coverage in lieu of the 32.2% existing and the 30% allowed for a two-story house; and, a flood variance to do a major renovation and maintain the existing finished floor elevation of 7.3 feet NGVD in lieu of the 7.5 feet NGVD minimum finished floor elevation. *Deferred from the October 1, 2004, Town Council Meeting.*

Ex-parte communication was declared by Councilman Brooks via a telephone message from Attorney Jim Brindell, by President Wyett via a casual conversation with no details.

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, along with Architect Jacquie Alberran. He reviewed the proposed construction, and provided architectural drawings of the property in question. He noted that there were a number of houses in the neighborhood with partial or full second stories, so this property was not out of context with the neighborhood. He noted that there were 11 surrounding properties, 8 of which had lower finished floor elevations. He referred to a letter from the neighbor immediately to the east, in support of the project. He was not aware of any letters of objection. He stated that the hardship was the existing location of the house, and the request was diminimus.

Zoning Administrator Paul Castro questioned the hardship; he reviewed the comments of the staff relative to this project: Public Works: believed that applicant should meet Code requirements; Comprehensive Plan: hardship has not been demonstrated; Planning & Zoning: demonstrate hardship for addition; no comment on flood variance.

Councilman McDonald stated that he found the hardship to be diminimus and based upon the shape of the lot, moved approval of Variance #23-2004, with the condition that a hold harmless agreement was executed regarding the flood variance. The motion was seconded by Councilman Brooks, carrying 4/0, as Councilman Goldblum was absent from the meeting.

e. SPECIAL EXCEPTION #25-2004 The application of Worth Avenue Associates, Ltd. relative to property described as lengthy legal description on file; commonly known as 150 Worth Avenue, Suite 136; located in the C-WA Zoning District. To allow an apparel and accessories business (a permitted use in the C-WA Worth Avenue district) which currently occupies 1,994 square feet of an existing gross leasable area of 3,425 square feet to expand into the remaining

1,431 square feet adjacent space which was closed off and not being used, thereby allowing the business to occupy the entire existing gross leasable area of 3,425 square feet as an exception to the maximum of 2,000 square feet gross leasable area in the C-WA Zoning District. *Deferred from the October 1, 2004, Town Council Meeting.*

Ex-parte communication was declared by Councilman Brooks via a telephone conversation with Ms. Small relative to Special Exception #25-2004; by Councilman McDonald via a telephone conversation with Ms. Small; by President Wyett via a telephone conversation with Ms. Small.

Attorney Lisa Small, on behalf of the applicant, addressed the Town Council. stating that the applicant would like to make use of the space that had been previously used by Martha Phillips, which would allow the business to occupy the entire space of 3,425 sq. ft. The expansion would be very simple, and the application met the criteria for special exception as set forth in the Code. She noted that there was one objection submitted by the Winthrop House Condominium.

Zoning Administrator Paul Castro commented that staff had received a letter of objection from the Winthrop House, which was not pertinent to this application. Staff believe that the applicant had met the criteria in the Code and would request adequate Town-serving documentation if Special Exception #25-2005 was approved.

Councilman Brooks moved approval of Special Exception #25-2004, with the condition that the adequate Town-serving documentation be provided. The motion was seconded by President Pro-Tem McLendon, and carried 4/0, as Councilman Goldblum was absent from the meeting.

f. SITE PLAN REVIEW #12-2004 WITH VARIANCES The application of Il Lugano Condominium Association Inc. relative to property described as Lots 20, 21, 22, 23, and 24, Block 4, Ocean Park H.W. Robbins Additions to Palm Beach; commonly known as 300 Seminole Avenue; located in the R-D (2) Zoning District. Site Plan Review to permit installation of awning over existing parking at rear (south) side of multi-family property; variance to permit installation of awning at rear (south) side of property to cover existing parking spaces within 2 feet of rear yard setback in lieu of 30 feet minimum required; and, variance to allow said installation with a lot coverage of 32.17% in lieu of the 31.14% existing and the 22%, plus 3% for awning, lot coverage maximum allowed. *Deferred from the October 1, 2004, Town Council Meeting.*

This item was deferred earlier in the meeting.

2. New Business

a. VARIANCE #27-2004 The application of the Palm Beach Day School Inc. relative to property described as lengthy legal description on file; commonly known as 241 Seaview Avenue; located in the R-B Zoning District. To allow the erection of a 6 square foot sign, in addition to the existing 39 square feet on the north side of Seaview Avenue, and in lieu of the 6 square feet allowed by code; and, to allow the erection of a sign fronting Seaview Avenue, in addition to the existing 4 signs, and in lieu of the one sign per road frontage allowed by code.

Ex-parte communication was declared by President Wyett with Attorney Jim Brindell.

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, providing photographs of the property in question, and stating that an additional sign was being requested in order to provide a distinction between the buildings for students, parents, and public safety personnel.

Zoning Administrator Paul Castro commented that several years ago staff had reviewed creating a separate institutional type of zoning, and at that time it had not moved forward. The school had already received variances in regard to signage; staff was attempting to understand the hardship.

Attorney Brindell advised that the hardship was the 750' long building.

Mayor Smith commented that the hardship could be the configuration of the building, and the fact that the fine arts building would be set 50' off of the street, and could not be seen from the street unless there as signage over the door.

Director of Planning, Zoning & Building Robert Moore advise that Mr. Castro was providing the technical end of the matter, and that there were only two schools in Town, one public and one private, and the public school governs themselves; this situation was unique and staff did not see that much of a problem.

Councilman Brooks moved approval of Variance #27-2004. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

b. VARIANCE #28-2004 The application of 159 Sunset Avenue, LLC, Bud Palmieri, Managing Member relative to property described as Lots 158 and 159, Floral Park; commonly known as 159 Sunset Avenue; located in the R-C Zoning District. Variance to allow the construction of a new two story residence on a lot with a width of 50 feet in lieu of the 75 foot minimum required and a lot area of 8,700 sq. ft. in lieu of the 10,000 sq. ft. minimum required in the R-C Zoning District; to allow the west side yard setback to be 5 feet for the garage in lieu of the 10 foot minimum required in the R-C Zoning District; and, to allow construction of a new two story residence with a point of measurement of 12 feet mean sea level National Geodetical Vertical Datum ("NGVD") in lieu of the 9.1 feet NGVD (crown of road) maximum allowed.

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Ziska to review the application in question; by President Wyett via telephone conversation with Attorney Ziska relative to the merits of the case; by Councilman Brooks with Attorney Ziska, however, he was not able to respond at that time.

Town Attorney Randolph advised that the general purpose of ex-parte communication was to allow people to know whether the person talked to was trying to get the council person to vote in favor of the application, or whether the council person talked to a neighbor requesting a particular action, etc.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, explaining that the request was to allow construction of a new two story house on a nonconforming lot, as well as a point of measurement variance, and a west side yard setback. She explained that the hardship ran with the land, and regarding the point of measurement variance, the grade of the property was three feet higher than the road. The garage variance was requested in order to put the garage in back, rather than having a front loading garage on a very narrow lot.

Architect Pat Seagraves exhibited an architectural plan of the project, as well as photographs of the property in question. He reviewed the proposals as indicated on the plan.

Zoning Administrator Paul Castro requested that the hardship be demonstrated as it related to the point of measurement variance and their side yard variance.

Attorney Ziska replied that the point of measurement hardship was related to the change in grade from the crown of the road; with regard to the garage in the back, it was being requested in order to have enough turn around space in the back of the lot.

President Wyett recommended that the second floor on the garage be eliminated in order to provide privacy in the neighborhood and to reduce density.

Attorney Ziska responded that the second floor backs up to the Sun & Surf restaurant kitchen and the property on the west already sits substantially higher, and there is lush landscaping between the two properties.

After substantiating that there were no windows on the side facing the pool of the neighbor, President Wyett withdrew his suggestion.

In response to Mayor Smith, Architect Seagraves replied that the garage and house together was 4,500 sq. ft.

President Pro-Tem McLendon moved approval of Variance #28-2004. President Wyett passed the gavel to second the motion. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

c. SPECIAL EXCEPTION #27-2004 The application of Visual Delight, LLC d/b/a Phillips Galleries-Too and Art-A-Glow, Inc. d/b/a Phillips Galleries relative to property described as a portion of Lots 1-18, Block 19, Royal Park Addition; commonly known as 318-320 Worth Avenue; located in the C-WA Zoning District. Special Exception by a related entity to occupy a new tenant space at 320 Worth Avenue (1600 square feet) in addition to the existing tenant space at 318

Worth Avenue space (3400 square feet) for a total of 5000 square feet.

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

Attorney David Shaw, on behalf of the applicant, addressed the Town Council, stating that the application concerns a new business with a related entity to occupy a new tenant space at 320 Worth Avenue. He stated that the application met all the special exception requirements, and that the current Town-serving documentation was in place.

Zoning Administrator Castro advised that all Town-serving documentation must be submitted at the time of renewal of the occupational license.

Councilman Brooks moved approval of Special Exception #27-2004. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

d. SPECIAL EXCEPTION #28-2004 WITH SITE PLAN REVIEW The application of the Michael R. McCarty Restaurant Group, LLC relative to property described as lengthy legal description on file; commonly known as 50 Cocoanut Row, #101; located in the C-PC Zoning District. Special Exception and site plan approval to permit outdoor restaurant seating containing forty (40) seats. The overall seating for the restaurant will not increase because when the outdoor seating is used all forty (40) seats will be removed from the allowed indoor seating. Total seating will remain 151.

Ex-parte communication was declared by Councilman Brooks via a conversation with Michael McCarty in regard to the application.

Attorney Doyle Rogers, on behalf of the applicant, addressed the Town Council, stating that the request was for the creation of 40 outdoor seats in connection with the existing restaurant operation; the overall seating for the restaurant would not increase because when the outdoor seating is used all 40 seats will be removed from the allowed indoor seating; total seating will remain at 151.

Architect Noe Guerra presented and reviewed the site plan of the property in question.

Zoning Administrator Paul Castro advised that an issue with staff was that staff pavers would be substituted for what was previously landscaped areas; the other issue was width of the proposed seating area.

Mr. Guerra replied that for as long as he could remember the pavers had been existing, and he could not go back in history to ascertain whether or not there was landscaping at one time.

Zoning Administrator Castro advised that there would be no music outside, and suggested that the hours of operation be limited for the outdoor seating; the Fire-Rescue Department requested fire sprinklers.

In response to Councilman Brooks, Attorney Rogers advised that Mr. McCarty had approval of the landlord except for the portion facing Cocoanut Row, and that area was in discussion. If it was not approved it would not be used.

Councilman Brooks moved approval of Special Exception #28-2004, with the conditions that the hours of operation outside be limited with the same restrictions that had been applied to Amici's - no alcohol service after 11:00 p.m.; fire sprinkler the area recommended by the Fire-Rescue Department; come back to the Town Council in six months for review to determine if there were any noise complaints. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

Zoning Administrator Castro noted that all conditions of approval would be specified in the letter that would be forthcoming to the applicant.

e. SPECIAL EXCEPTION #29-2004 The application of JLR Ventures Inc. (James L. McCann) relative to property described as Lots 41 through 45, inclusive, Block 11, Revised Map of Royal Park Addition to Palm Beach; commonly known as 333 Peruvian Avenue; located in the C-TS Zoning District. Special Exception to allow a real estate brokerage office, which would be town-serving, that is greater than 2,000 square feet (4,365 square feet) to continue to operate a new real estate business at this location which is in the C-TS Zoning District.

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

Attorney Guy Rabideau, on behalf of JLR Ventures, Inc., who is the fee simple owner of the property in question, and also the Corcoran Group, the tenant of the property. For 11 years the property had been used as a real estate office, which was recently bought out by the Corcoran Group; the use of the property remained the same; the principals of the business remained the same; the business was 90% Town-serving.

Councilman Brooks moved approval of Special Exception #29-2004, with the condition that the Town-serving documentation be provided. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Goldblum was absent from the meeting.

f. SPECIAL EXCEPTION #30-2004 The application of Baltic Estate Inc, Dean Vegosen, President relative to property described as Lot 13 of Boulevard Estates; commonly known as 160 Kings Road; located in the R-A Zoning District. Special Exception to allow two sets of driveway gates to be set back 5.5 feet from the street pavement for a property located on a dead-end street in lieu of the 18 foot minimum required.

Ex-parte communication was declared by President Pro-Tem McLendon via a meeting with Attorney Ziska to review the application; by Councilman McDonald via a site visit to the property in question, at which time the resident discussed the application, however, he did not respond; by President Wyett via discussion with Attorney Ziska; by Councilman Brooks via discussion with Attorney Ziska regarding the discussion.

Attorney Maura Ziska, on behalf of the property owner, Zack Ciomek, addressed the Town Council, requesting a special exception to allow two sets of driveway gates to be set back 5.5 feet from the street pavement for a property located on a ded-end street in lieu of the 18 foot minimum required. She explained that the gate was desired by the property owner for privacy, because people used his driveway as a turn-around at the cul-de-sac.

Architect Pat Segraves exhibited an architectural renderings of the house, reviewing the location of the gates.

Zoning Administrator Paul Casto advised that staff requested that automatic door openers be provided for the owners of the property.

Councilman McDonald moved approval of Special Exception #30-2004. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, with Councilman McDonald, President Pro-Tem McLendon, and President Wyett casting affirmative votes; Councilman Brooks was temporarily out of the room; Councilman Goldblum was absent from the meeting.

g. SITE PLAN REVIEW #13-2004 WITH VARIANCE The application of 1075 NOB, LLC, Peter Burt, Managing Member, relative to property described as Lot A of New Siears Tract; commonly known as 1075 North Ocean Boulevard; located in the R-A Zoning District. Site Plan Review to allow the construction of a two story, single family residence on a non-conforming parcel that is 120 feet in width in lieu of the 125 foot minimum required in the R-A Zoning District; and, variance to allow construction of a two story residence with a point of measurement of 18 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 7.5 feet NGVD maximum allowed.

Ex-parte communication was declared by President Pro-Tem McLendon, via a meeting with Attorney Maura Ziska to review the plans for he proposal; by President Wyett via a conversation with Attorney Ziska relating to the merits of the application.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that the previous residence was owned by Mollie Wilmot, and the proposal today was to allow the construction of a two story, single family residence on a non-conforming parcel that is 120 feet in width in lieu of the 125 foot minimum required, and for a point of measurement of 18 feet in lieu of the 7.5 feet required.

Architect Tom Kirshoff displayed the site plan and reviewed the proposal.

Zoning Administrator Paul Castro pointed out that one of the zoning study items related to the point of measurement, and ways to eliminate some of the variances to meet the Florida Department of Environmental (FDEP) standards.

Mr. Castro advised that this was site plan review, and as such, the Town Council could look at any of the elements of the house in terms of modifying to have less impact on the neighbors. At the Architectural Commission (ARCOM) meeting there was concern from some of the residents, and one of those concerns was related to the tower feature and the height and its impact to the neighbor on that side. ARCOM approved the project with modification assist related to the curb cuts, eliminating one of the curb cuts so that it would not be right in front of the garage doors. The letter from FDEP stated that it did not meet the Code requirements as related to the coastal construction control line. While the house was set back fairly far from the street, it was a large house, and was on the ocean, and he requested that the streetscape elevation be put up for the review of the Town Council. He stated that there was somewhat of a hardship as it related to the point of measurement variance on the lot. He stated that it was the recommendation of staff that an approval of the Town Council incorporate a deed restriction related to the agreed upon landscape buffer, that would protect the neighbor to the north.

After discussion related to the tower which was incorporated into the project, Attorney Ziska stated that the applicant would give up the tower, if the Town Council felt strongly about it.

Councilman McLendon moved approval o Site Plan Review #13-2004 withot the tower. The motion was seconded by Councilman Brooks.

Mr. John Leonard, 1076 North Ocean Blvd., commented that there was an 8 foot wall in the easement going to the beach, and he suggested that the construction might mitigate the strength of that wall; the easement was a 6' easement that was deeded to the homeowner on Orange Grove Road. Another concern was that the 6' easement 100' seaward was now 5', and Australian Pines, that were trashed by the hurricanes, were on the other side of the wall, and their removal would even more mitigate the strength of that wall. He suggested that the approval should include an engineering study of the wall to determine its strength and safety for people using the easement. He continued that the parking problem along the road was exacerbated, since there were three houses coming into construction at the same time period; additionally there was a semi-commercial operation going on for the benefit of charity at the Castle home, which held about 20 benefit parties per year there. He stated that he lived directly west of the property in question, and from his second floor he would be looking at another 24' of structure to the top of the roof, without the tower – his vew would be taken from him. He suggested that the size of the house was massive and that he did not see the hardship for granting a variance for making the house higher.

In response to Councilman McDonald, Attorney Ziska replied that there was a 3' easement on the applicant's property, and he was obligated to maintain the wall. The easement was 6', and the property to the south was responsible for that. With regard to the wall, the applicant would be happy to undertake engineering studies to determine its condition. The owner did not plan to remove any of the Australian Pines.

Ms. Jodie Booth, speaking for several residents on Orange Grove Road, stated that the house was massive, and that the house being built at 1091 North Ocean would give a good idea of the massiveness on this size lot. She maintained that it was out of keeping with the size of the neighborhood, and would like to see the size reduced.

In response to Councilman Brooks, Mr. Kirshoff replied that the first floor was 7,390 sq. ft., and the second floor was 4,357 sq. ft., with the garage it totaled 12,876 sq. ft.

Councilman Brooks commented that staff was aware of the parking problems associated with the charity events, and the issue was being reviewed.

Mr. Paul Rampell, on behalf of John and Marion Castle, the owners of 1095 North Ocean Blvd., the former Kennedy estate. He stated that certain features of the Castle estate had been landmarked, and there were rooms of historic consequence that had been preserved, such as the room where President-elect Kennedy selected his cabinet. Also, the Castles had gone to great lengths to preserve the lawns in the back of their house to preserve them in the same manner as had the Kennedys. He stated that the Castles did not object to the project in question, because the applicants had given great assurances that they would plant landscaping in-between their property and the Castle property that would create a dense, visually impenetrable barrier.

Councilman Brooks withdrew his second on the motion made earlier, for approval, by President Pro-Tem McLendon.

President Pro-Tem McLendon continued his motion of approval.

The motion died for lack of a second.

Director of Planning, Zoning & Building Robert Moore commented that ARCOM had reviewed this request, and found that the variance complying with the FDEP was not of concern. He suggested that because ARCOM had granted approval, he suggested that this matter be deferred so that Attorney Ziska and the architect could re-study the project.

Councilman Brooks moved deferral of Site Plan Review #13-2004. The motion was seconded by Councilman McDonald. On roll call, the motion carried 4/0, as Councilman

Goldblum was absent from the meeting.

3. Other

a. Extension of Construction Hours Due to Hurricanes.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Director of Planning, Zoning and Building Robert Moore referred to his memorandum to the Mayor and Town Council o October 6, 2004, with the recommendations for the following conditions regarding extensions of construction hours due to hurricanes:

1. Extend the construction deadline and parking permits for Worth Avenue from October 31, to November 24, 2004.

2. Permission to drive piles or sheetpiles for docks and seawalls through the season in consideration of the shortage of contractors available to do the work needed to correct the damage caused by the hurricanes.

3. Extend the one-year implementation dates for Town Council, ARCOM, and Landmark Preservation Commission approvals by one month.

4. Relax the provisions of the code relating to allowable noise by one month to allow jackhammers, gunite installation and pile driving.

5. Extend the time periods for completion of construction of major projects by one month.

Town Manager Elwell requested that right-of-way permits also be allowed to be extended, with Public Works Director Paul Brazil and himself to exercise discretion to approve what was considered reasonable for the use of the rights-of-way through January 31, 2005. Anything that was thought to have a too much impact would be brought back to the Town Council for consideration.

Councilman Brooks moved approval to approve the five items recommended by Director of Planning, Zoning & Building (as enumerated above), as well as the recommendation

of Town Manager Elwell to extend right-of-way permits through January 31, 2005. The motion was seconded by President Pro-Tem McLendon, and carried 4/0 on roll call, as Councilman Goldblum was absent from the meeting.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

The meeting was adjourned at 5:00 p.m.

Allen S. Wyett
Town Council President

Mary A. Pollitt
Town Clerk