TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON OCTOBER 11, 2005

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting of October 11, 2005, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Denis P. Coleman (excused from meeting at 3:32 p.m.)
Councilman Richard M. Kleid - Excused Absence
Councilman Allen S. Wyett

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

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

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Russ Bitzer, Director of Recreation, Upon His Retirement from the Town of Palm Beach After 30 Years and Three Months of Service.

Mayor McDonald acknowledged and thanked Mr. Bitzer for his dedication to the Town of Palm Beach.

Mr. Bitzer thanked everyone for a wonderful career and stated that he was proud to have been an employee of the Town of Palm Beach.

IV. COMMENTS OF MAYOR JACK McDONALD

As some of you may know, this is National Fire Prevention Week, and homes are locations where people normally suffer risk in their houses. There has been a significant increase in candle fires. This is a candle (displayed) and you need to be very careful with these candles in your house, and you need to take care of them, because they have a very positive effect on positive fire prevention. So, remember the motto for this week: Use candles with care, and when you go out, blow out!

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED to November 8, 2005, Town Council Meeting, on the Regular Agenda, Item VIII. B. 7., BellSouth Request to Locate a New Box to Provide DSL Service to the Northerly 16 Blocks of the Town.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum to defer Item VIII. B. 7., BellSouth Request to Locate a New Box to Provide DSL Service to the Northerly 16 Blocks of the Town, to the Town Council Meeting of November 8, 2005. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

DENIED request to defer to November 8, 2005, Town Council Meeting, Item XI. C. 1. a., Variance #32-2005, 123 Kings Road.

President Brooks noted that Variance #32-2005, would remain on the Agenda, denied for deferral, and would be voted on under the Item.

DEFERRED to November 8, 2005, Town Council Meeting, Item XI. C. 3. a., Modified Site Plan Review #4-2005, with Special Exceptions, 235 Sunset Avenue to construct a new two-story synagogue.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum to defer Item XI. C. 3. a. - Site Plan Review #4-2005, with Special Exceptions, 235 Sunset Avenue to the Town Council Meeting of November 8, 2005. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

DEFERRED to November 8, 2005, Town Council Meeting, Item XI. C. 3. b., Site Plan Review #7-2005 at 215 Brazilian Avenue, the Plaza Inn.

Motion made by President Pro Tem Goldblum, seconded by Councilman Wyett to defer Item XI. C. 3. b., Site Plan Review #7-2005, With Variances, 215 Brazilian Avenue to the Town Council Meeting of November 8, 2005. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

WITHDRAWN Item XI. C. 4. a., Variance #35-2005 - 5 Middle Road.

Motion made by President Pro Tem Goldblum, seconded by Councilman Wyett to withdraw Item XI. C. 4. a., Variance #35-2005, at 5 Middle Road. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

DEFERRED to December 13, 2005, Town Council Meeting, Item XI. C. 5. a. and i., Plat Abandonment of 513 North County Road and Resolution 71-05.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum to defer Item XI. C. 5. a. and i., Plat Abandonment of 513 North County Road and Resolution 71-05 to December 13, 2005, Town Council Meeting. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

MOVED Item VII. E. 1., Resolution 81-05 approving a Policy Release Agreement from the Consent Agenda to the Regular Agenda, Item VIII. B. 11.

Motion made by President Pro Tem Goldblum to approve moving Resolution 81-05 from the Consent Agenda to the Regular Agenda. President Brooks passed the gavel to second the motion. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

Motion made by Councilman Coleman, seconded by Councilman Wyett to approve the Agenda as amended. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

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

Mr. Lesley Evans, 135 Seminole, stated that he had problems with cats around his house. He commented that instead of the Town allowing 10 cats or animals per house, the law should be changed to two cats or animals per house. Mr. Evans related that he had problems with a resident concerning the cats. President Brooks suggested that Mr. Evans consider filing a civil lawsuit.

President Pro Tem Goldblum suggested that Mr. Evans could try an electronic ultra sounding device, which resolved a pigeon problem. He noted that sound decibels on the device could be

changed for different animals.

Ms. Beth Pouncey of PB Cats, Inc., responded to Mr. Evans concerns, explaining that PB Cats, Inc., delivered 402 microchips for sterilizing cats, found homes for some of the cats, and others were removed to colonies. Ms. Pouncey noted that the resolution adopted by the Town of Palm Beach, was a scientific approach to a pro-active workable solution. The problem would never totally be resolved, but could be successfully managed.

Responding to Councilman Wyett's question about the Council reducing the number of animals that could be held in one household from 10 to 2, Ms. Pouncey said that it would never be accepted in Palm Beach. She explained that people would go underground and disobey the law. Ms. Pouncey stated Mr. Evans's situation could be remedied by the removal of those cats from that piece of property in a humane way and placed somewhere else.

Mr. William R. Miller, stated that he was the president of a 23-unit condominium at 330 Cocoanut Row, and spokesman for 10 other buildings within the boundaries of Lake Way, Cocoanut Row, Brazilian Avenue, and Worth Avenue. Mr. Miller expressed that the condominium residents were opposed to the expansion of the Town Docks and that this matter should be put to a referendum of the voters.

Mr. Robert Eigelberger, a member of the Landmark Preservation Commission, suggested that Seagull Cottage be placed at the Dock, instead of Bradley Park. He commented that it could be incorporated into the overall planning of the new dock, as a Dock's Master House, or a Ship's Store.

Mr. Reg Stambaugh, on behalf of the Preservation Foundation noted, for Mr. Eigelberger's benefit, that on today's Agenda there was an issue about scheduling a Workshop to discuss the alternatives for the Seagull Cottage and the Dock.

VII. CONSENT AGENDA

A. MINUTES: SEPTEMBER 13, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES.

B. MINUTES: SEPTEMBER 13, 2005, 5:01 P.M.
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES- PUBLIC HEARING REGARDING TENTATIVE BUDGET AND PROPOSED TAX RATE.

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON

SEPTEMBER 28, 2005.

D. MINUTES: SEPTEMBER 29, 2005, 5:01 P.M.
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES- FINAL PUBLIC HEARING REGARDING BUDGET AND TAX RATE.

E. RESOLUTIONS

1. RESOLUTION NO. 81-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Policy Release Agreement in the Matter of Stanley L. Clark and Edward F. Hines, Jr., as Trustees of the Goodrich Florida Realty Trust II Under Agreement Dated April 20, 2001, v. 1300 South Ocean Boulevard Revocable Trust Under Agreement Dated September 30, 2004, c/o Sherie Sklorman and Town of Palm Beach and Authorizing the Mayor to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager]

MOVED to Regular Agenda, New Business, VIII. B. 11.

F. OTHER

1. Authorization to Purchase a Police Vehicle In-car Camera Video System. [Michael S. Reiter, Chief of Police]

2. Approval of Medical Insurance Premium Rates For Calendar Year 2006. [William C. Crouse, Director of Human Resources]

3. Authorization to Contract with C3TS in the Amount of $225,000 for the Design of the D-2 (Palmo Way) Storm Water Pump Station. [H. Paul Brazil, Director of Public Works]

4. Authorization to Contract with Kimley-Horn and Associates in the Amount of $214,000 for the Design of the D-10 (Via Marila) Storm Water Pump Station Upgrade.
[H. Paul Brazil, Director of Public Works]

5. Approval of 2005 Street Resurfacing Program.
[H. Paul Brazil, Director of Public Works]

6. Approval of Akerman Senterfitt Hourly Rate Increase.

[Peter B. Elwell, Town Manager]

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum to approve the Consent Agenda as Amended. On roll call, the motion carried 4-0, as Councilman Kleid was not in attendance.

VIII. REGULAR AGENDA

A. Old Business

1. Placement of Overhead Utility Lines Underground.

a. Status Report Regarding Potential Townwide Program. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford provided a status report regarding the Townwide Program of placing the utility lines underground. In order to move forward, Mr. Bradford indicated the following:

- To convert all of the Town's north/south roads and all State roads to underground service, voter approval was required for using general obligation bonds, or revenue bonds.

- The property owners could choose to provide a petition of at least 66% of their neighborhood to convert to the underground service, using special non ad valorem assessments appearing on their tax bill for 15 years, or could pay the assessment in full at the beginning of the assessment process.

- A Special Town Council meeting should be held before the November 8, 2005, Town Council meeting to allow sufficient time for discussion of each issue.

Councilman Wyett recommended that the entire Town be converted to underground wiring, not just the north/south roads, because it was unfair to those who lived on east/west roads.

Town Manager Peter Elwell informed the Council that November 7, 2005, had been allotted for the Seagull Cottage Special Meeting and for discussing the placement of underground wiring in the Town.

President Pro Tem Goldblum noted that previously he was a proponent for placing

underground wiring on north/south streets, but had since discovered that the Town would be evacuated three days before a hurricane. It was not feasible, he noted, for Florida Power & Light (FP&L) to put the assessment amount on the homeowners' bill each month because there was no recourse of collecting that money. He said he would like to have all answers before going to a referendum.

Councilman Coleman pointed out that by placing utility lines underground, the Town would spend $25 million to $75 million to put assets in the ground, which would be owned by FP&L. He said he was against going to a referendum until there was more information.

Ned Barnes, President and Chief Operating Officer of the Palm Beach Civic Association, expressed the following points to be considered:

- Obtaining a binding engineering cost estimate that would allow forward movement with the project;
- Extensive research indicated that the costs were decreasing over time instead of increasing;
- An engineering estimate from FP&L would be advantageous in order to determine cost; and
- A new schedule to keep the citizens informed of the progress.

President Brooks requested that Town Manager Elwell incorporate the Town Council's questions in the preparation of the November 7, 2005, agenda and invite Jupiter Island's Council Member, Mr. Falcone, as a source of information.

Mr. Elwell commented that the Town Council's direction about the February ballot was necessary in order to prepare for it.

Discussion ensued among the Town Council, with the following issues brought forward regarding the placement of underground utilities:

- More information was needed for the February ballot;
- Recommendation of using the straw vote for a February ballot, to confirm that the majority of the citizens were in favor of the project;
- The Town had no leverage with FP&L, and no basis for reacquisition;

- The Public Service Commission (PSC) was the next order of business;
- The Town may spend money and not get what it wanted anyway;
- Power outages also resulted from above line grounds located off the island that were interconnected to the island, so placing underground utilities would not be the answer; and
- Inform homeowners of the cost of placing the underground utilities before voting on it.

Mayor McDonald noted that Mr. Macon from FP&L was in the audience and would answer any questions.

President Brooks noted that there was enough information provided for an agenda on November 7, 2005, and requested Mr. Elwell to invite Mr. Macon of FP&L to the meeting.

Mr. Elwell recapped that it was a consensus that there would not be a ballot question of any type for February, and that the discussion would be structured for a future time.

b. Request to Place Underground Power Lines on the North Side of the 300 Block of Atlantic Avenue and the South Side of the 300 Block of Dunbar Avenue Through a 15 Year Non Ad Valorem Special Assessment.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford reported that Lake Towers Condominium Association located at the north side of the 300 Block of Atlantic Avenue and the south side of the 300 Block of Dunbar Avenue indicated that it wanted to move forward with the placement of underground power lines for safety reasons. Staff recommended authorization of the Town Council to provide cost estimates for the conversion of aerial utility lines by special non ad valorem assessments to recoup the costs over 15 years as a special assessment appearing on their annual property tax bill. However, the property owner would have the option of paying a lump sum.

If approved, the following items would be necessary to accomplish the project:

- Contact each applicable utility for cost estimates;
- Determine location of the properties and existing easements;
- Divide cost estimates among property owners;
- Determine feasibility of internal borrowing versus financial institutions;
- Amortize estimated costs based on a 15-year repayment schedule;
- Outline an assessment process and proposed construction schedule; and
- Coordinate construction process for Town ordinance compliance and recording of costs.

Councilman Coleman suggested that the Town represent the people, rather than the process being between the people and FP&L.

Councilman Wyett commented that he opposed the Town Council being involved in collecting taxes and administrating this private project.

Responding to the Town Council's concerns, Mr. Bradford replied as follows:

- The Town's involvement was necessary in order for the property owners to access the financing mechanism on the power bill or as a Special Assessment on the property tax bill;
- Each of the utilities would do their own work, and the Town would gather all the cost data;
- The Town would not be supervising the project
- The Town would ensure the costs of the job were billed properly;
- The utility company that constructed the work would be responsible for correcting any problems;

- The Town would not be sending out the bids to do the project.

Responding to Councilman Coleman's concern about underground lines installed independent of the Town, Mr. Elwell explained that FP&L currently owns all of the underground lines, and in the future the Town would seek to acquire all of it.

Motion made by Councilman Coleman, seconded by President Pro Tem Goldblum to approve staff recommendation to provide cost estimates for the conversion of aerial utility lines on the north side in the 300 Block of Atlantic Avenue and on the south side of the 300 block of Dunbar Road.

Mr. Bradford related that the Palm Beach Country Club found a way to finance their underground lines internally. However, Lake Towers made a decision not to finance internally.

President Brooks asked if staff was recommending that the Town Council take no action now and move the issue to November 7, 2005, despite the motion.

Mr. Elwell suggested that the motion could be adopted and staff could get the process started to get the quotes in, but that substantively the issue should be discussed on November 7, 2005.

UPON ROLL CALL, the motion carried 3-1; with affirmative votes from Councilman Coleman, President Pro Tem Goldblum and President Brooks; Councilman Wyett opposing, and Councilman Kleid not in attendance.

Councilman Wyett commented that he opposed the motion because he said the issue should be deferred to November 7, 2005, to be addressed in a comprehensive matter.

2. Town Docks Conceptual Master Plan.
[Thomas G. Bradford, Deputy Town Manager]

Town Manager Elwell noted that Deputy Town Manager Bradford would present an overview of the conceptual plan. Mr. Elwell reassured everyone that the idea of the Master Plan was to lay out an array of projects that could be constructed over a period of time, so that if any were approved it would be in context and not piecemeal. If every single one of the recommended pieces of the Master Plan were approved, there would be little to no change in the appearance of the facilities and the green space. The motivation for the plan, continued Mr. Elwell, was to improve the aging facility. The costs would be incurred by the users of the facility to pay the fees, he noted. None of the expenses would be paid by the Town's taxpayers.

Mr. Bradford provided a PowerPoint presentation of the plan and discussed the following items:

- The dock generated $2.7 million in annual gross revenue in FY2005;
- Transient boaters represented 20% of the total revenue;
- Currently, there were 83 slips, 81 were annual leases, and two were seasonal leases and serviced transient boaters on average;
- Interior square footage for all three dock facilities was a grand total of 789 square feet; and
- There were only 52 square feet of non-air conditioned, heated shower facilities for customers and employees.

- Amenities were:
  - Some on-site parking;
  - Cable television, restrooms, and showers;
  - A sewage pump out system;
  - Thirty, 50 and 100 amp electrical service; and
  - Vessels from 50 to 262 feet in length were berthed.

In response to Councilman Wyett's comment about the plan for the parking spaces, Mr. Bradford replied that if the parking could not be resolved, the dock expansion would not be attempted.

Jeff Cloninger, 411 Brazilian Avenue, reiterated his opposition to the Town Docks Conceptual Master Plan. He stated that he was not opposed to any enhancements, but was strongly against any enlargement or new construction at the Docks. Mr. Cloninger read from a copy of the letter that he had sent to the Mayor and the Town Council regarding other residents, who were also strongly opposed to the Plan, because of the construction hassles and the negative feelings that would be created.

President Brooks pointed out to Mr. Cloninger that the Dock, Tennis Courts, and the Golf Course were for the citizens of Palm Beach.

Mr. Bradford responded to President Pro Tem Goldblum's inquiry that the parking spaces on Worth Avenue were rented out on a quarterly basis.

Royall Victor III, 208 Via Tortuga, commented that the plan was very exciting for that part of the Town. He suggested revisiting the current location of the maintenance facility just south of the middle bridge, and consider moving it elsewhere to provide a significant amount of additional space, which could be added either to the green space coefficient or for some other purpose.

Attorney Maura Ziska addressed the Town Council, on behalf of Steve Meyers, 460 Worth Avenue, the owner of the house at the end of Worth Avenue, closest to the dock. Ms. Ziska noted that Mr. Meyers had concerns about the entire project and objected to the unattractive orange wave attenuator. She added that he was willing to see what the Town had planned and did not object to giving the Marina a face lift.

Beverly Wilkes, 434 Chilean Avenue, indicated that in five seasons of observing the parking situation, she had never seen any material problem. She requested that the project be put to the vote of the Palm Beach citizens.

Mr. Cloninger noted that if there were ever any major expansion of the Dock areas, the property could possibly revert back to the original donor. He suggested that the Town investigate further. Mr. Elwell replied that staff would research the matter.

Adele Kahn, of the House of Kahn, stated that she did not want to see the tranquility of the Town spoiled by the Master Plan improvements of the Dock.

A representative of 315 South Lake Building stated that they were 150% against the Plan.

Mr. Elwell clarified that today's vote would be to move forward systematically to examine each of the individual pieces of the Master Plan and bring each back to the Town Council for final approval.

Councilman Wyett said he was opposed to the Master Plan until an acceptable parking plan was in place.

Motion made by Councilman Coleman, seconded by President Pro Tem Goldblum to reaffirm the conceptual approval of the Town Docks Master Plan, made by the Town Council on August 12, 2005. On roll call, the motion carried 3-1, with Councilman Coleman, President Pro Tem Goldblum and President Brooks voting affirmatively, Councilman Wyett opposed, and Councilman Kleid not in attendance.

3. Staff Report Regarding North End Parking.
[Peter B. Elwell, Town Manager]

Town Manager Elwell reported that the parking issue involved the residential streets throughout the Town, and was a Townwide concern. Staff concluded that it would be in the Town's best interest to examine the issue in the full context of traffic and parking, and recommended that action on this matter be deferred until the Townwide Parking and Traffic Improvement Plan was completed.

Councilman Coleman moved approval of deferring action until the Townwide Parking and Traffic Improvement Plan was completed. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried 4/0, as Councilman Kleid was not in attendance.

A. Business

1. Acknowledge Receipt of the Petition From Former Mayor Marix for a Town Charter Amendment Pursuant to Section 5.07 of the Town Charter. [Susan A. Eichhorn, Town Clerk]

Town Clerk Eichhorn acknowledged receipt of the petitions submitted by Mrs. Marix for a Town Charter Amendment pursuant to Section 5.07 of the Town Charter. Mrs. Eichhorn verified that the petitions had been submitted to the Supervisor of Elections for verification of signatures, and that 802 signatures had been verified, which met the ten (10) percent of the electors requirement, as stated in the Town Charter.

Mrs. Marix addressed the Town Council, formally presenting the petitions to place an amendment to the Charter on the ballot for the February 7, 2006, municipal election. The amendment language is as follows: "To amend the Town Charter to provide that the power of the

Town Manager under Section 4.04 of the Town Charter to appoint, suspend or remove appointed administrative officers (as defined in Section 2-126 of the Town Code) shall be exercised by the Town Manager subject to review and approval by the Town Council."

Councilman Wyett made a motion to receive the petitions as submitted by Mrs Marix. The motion was seconded by Councilman Coleman. On roll call, the motion carried 4/0, as Councilman Kleid was not in attendance.

2. Grant Request for History of Royal Poinciana Playhouse. [Patrick H. Flynn, President, Palm Beach Theater Guild, Inc.]

Mr. Patrick Flynn, President Palm Beach theater Guild, Inc., requested a grant from the Town in the amount of $35,000 to defray the cost of researching, writing and publishing a history of the playhouse.

The Town Council received the report of Mr. Flynn, and took no formal action at this time.

3. Request for Use of Town-owned Property on Quadrille Boulevard, by Toward a More Perfect Union for the Temple Beth Israel. [Bill Rothchild, Executive Director, Toward a More Perfect Union]

Mr. Todd Bonlarron, Chair of the Temple Beth Israel Task force, addressed the Town Council, requesting that the Town consider providing a temporary or permanent home for the historic original Temple Beth Israel structure.

Discussion took place regarding other options for the location of the structure.

Town Attorney Randolph advised that taking no action would, in effect, deny the request. There was then no action taken by the Town Council.

President Brooks commented that it was important to preserve this wonderful piece of history, and thanked Mr. Bonlarron for his very well done presentation.

4. Scheduling of Special Town Council Meeting to Consider Details of Proposed Move of Seagull Cottage to Bradley Park

Town Manager Elwell announced that a Special Town Council meeting would be set for November 7, 2005, one session in the morning at 10:00 a.m. and one session at 1:30 p.m. to discuss both the underground wiring issue and the Seagull Cottage issue. Mr. Elwell would determine, with the input of the parties involved, which issue would be in the morning and which would be in the afternoon. He confirmed that the Landmarks Preservation Commission (LPC) would be invited to attend.

Mr. Gene Pandula, Chairman of the Landmarks Preservation Commission commented that the LPC had received the initial schematic thoughts on the relocation of the Seagull Cottage at its last meeting. He indicated that the LPC was unanimously in favor of saving the building, and had been in favor of the Bradley Park location. He noted that discussion had taken place in the intervening weeks regarding Lakeside Park as an equally good location for Seagull Cottage, and he suggested that the pros and cons be discussed at the upcoming meeting on November 7, 2005.

5. Proposed Landscape Plan for Open Space beautification at Tangier Avenue and North County Road [H. Paul Brazil, director of Public Works].

Public Works Director Paul Brazil reported that Patty Dean and Park Miller had graciously donated $25,000 to the Town for landscape improvements on the Tangier Avenue Town-owned property. The Town Council had accepted that donation at the March 8, 2005, Town Council Meeting. Since that time, a landscape plan had been prepared for improvement in the area, with the help of the donors and the Garden Club. He discussed the proposed landscape improvements; the plan also allowed for the ability to add recreational facilities in the future, if that was ever a consideration. The Recreation Advisory Commission had also been given a copy of the plan.

Councilman Coleman moved authorization for staff to accomplish the proposed landscape improvements at Tangier Avenue Park (Lots 15 and 16 of Tangier Estates) based upon the donation funding in the amount of $25,000. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as Councilman Kleid was not in attendance.

6. Update on Townwide Coastal Protection Program [H. Paul Brazil, Director of Public Works].

Public Works Director Paul Brazil reported that staff would return to the Town Council in the coming months with a more detailed report and some specific action items. He noted that the overall program may be modified as required in the adaptive management approach to the comprehensive coastal management program. He provided a brief summary of ongoing coastal work including:

- Sand Transfer Plant

  Staff will meet with the tri-party group, the Town, Palm Beach County, and the Port of Palm Beach, as well as Florida Department of Environmental Protection (FDEP), and a few other consultants who have a vested interest. Staff will discuss the plans for the upgrade with the Army Corps of Engineers. Staff will also pursue supplemental monies from FDEP and FIND for maintenance and repairs.

- Inlet dredging

  Federal funding is drying up for these projects. The Army Corps of Engineers is bound to do the projects in a least cost method. Staff would pursue supplemental funds from FDEP and FIND to ensure that sand is dredged

- Reach 2

  A total of 18 out of the 23 necessary upland easements had been obtained.

- North Ocean Blvd. seawall

  Staff monitors the seawall daily, and had not seen any signs of imminent failure. A local contractor has limestone boulders obligated to the Town if needed. FDEP has issued a second request for additional information. The Army Corps of Engineers is also involved in this permitting. They have no clock on their permit application. Staff has an emergency plan in place.

- Reach 3 and 4 (midtown)

  Army Corps of Engineers permit is in hand. FDEP requested some additional information. It is anticipated that approximately 750,000 to 850,000 cubic yards of sand will be placed.

- Reach 5

  Feasibility study done. Reach 5 has benefitted greatly from the previous mid-Town work. Staff will re-evaluate Reach 5 and come back to the Town Council.

- Reach 6

  No work planned.

- Reach 7

  All permits are in hand to do the work. Staff is requesting that FDEP modify their existing permit, so that the monitoring section of that permit more closely mimics what staff had from the Army Corps of Engineers. There is the possibility of placing 1.1 million cubic yards of sand in the area.

- Reach 8

  Staff has submitted all information to the regulatory agencies. Easements must be returned from condominium owners; an ECL workshop and hearing will need to be set after easements are received; the Bureau of State lands must record the ECL; U.S. Fish and Wildlife must review the biological opinion which has been submitted to them. FDEP must issue a permit and a notification to proceed. Regardless of the permit, staff is continuing with the dune work that covers both Reaches 7 and 8.

Mr. Brazil summarized that this winter there was the ability to place anywhere from 2.7 to 3.2 million cubic yards of sand on the beach, representing 82% of the volume outlined in the CCMP. Staff is faced with regulatory and financial challenges with the Sand Transfer Plant, future dredging projects, and permitting for the North Ocean Blvd. seawall, and permitting in Reach 8. As required by the CCMP, the adaptive management of the project is a necessity. Staff will return to the Town Council in future months to address specific items as they arise.

7. BellSouth Request to Locate a New box to Provide DSL Service to the Northerly 16 Blocks of the Town.

This item was deferred to the November 8, 2005, Town Council Meeting.

8. Town Hall Renovation and Related Facility Issues

a. Status Report on Relocation of Planning, Zoning, and Building Department. [Peter B. Elwell, Town Manager].

Town Manager Elwell reported that the first and second floors of the north end of Town Hall had been freshened up, and the construction inspectors, and code compliance officers from Planning, Zoning & Building (PZ & B) had been moved into that space. Progress has been made as to the relocation of PZ & B to West Palm Beach, and it was hopeful that a more definitive recommendation can be made at the November 8, 2005, Town Council Meeting. Proceeding with the renovation of Town Hall for the remainder of Town staff would be the next step.

b. Request for Authorization to Proceed with Renovation of Information Systems Offices [H. Paul Brazil, Director of Public Works].

Councilman Wyett moved approval of the use of $10,000 from the Town Hall Renovations project account, to accomplish renovation work on the third floor of Town Hall to accommodate the return of Information systems staff to their permanent location. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried 4/0, as Councilman Kleid was not in attendance.

9. Request to Allow Sunday Construction Work to Expedite Completion of the D-8 (Country Club Road) Storm Water Pump Station. [H. Paul Brazil, Director of Public Works].

Public Works Director Paul Brazil reported that work should be completed by December 1, 2005. Staff recommended that the Town Council authorize work on Sundays at the D-8 Storm Water Pump Station for the months of October and November 2005, if it becomes necessary.

Councilman Wyett moved approval of Sunday work, for the months of October and November 2005, if necessary. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried 4/0, as Councilman Kleid was not in attendance.

10. Consideration of Referendum to Amend the Town Charter Regarding the Mayor's Right to Vote Under Section 3.05(h). [Jack McDonald, Mayor].

Mayor McDonald requested removal of the Mayor's power to vote, in order to break a tie vote, under Town Charter 3.05(h). He stated that the proposed change would decrease, not increase, the Mayor's power under the Charter. He stated that he did not presume that there was any support for this change by the Town Council, and although the 1999 Charter Review Commission recommended the change, the Town Council rejected it. Their recommendation was "this proposal is meant to promote more effectiveness and efficiency in governmental operations, as well as the frank and substantive exchange of ideas between the Mayor and the individual Council members on major public policy matters. The recommendation had merit at that time, and Mayor McDonald stated that he was convinced, after serving as Mayor, that it still had merit.

Mayor McDonald noted that in many municipalities, the Mayor was a full voting member of the Council, with the same communication restrictions as members of the Council. The power to vote in the case of a tie has been rarely used in Palm Beach. He maintained that the right to vote was an issue that was keeping him from performing his job as a Mayor, as the communication restrictions hampered him from doing the job as well as he wanted, and as well as the residents deserved. He explained that currently he must wait until the public meeting monthly to talk to the Council about ideas and matters of concern to the Town, and that it would be better for the community if he could give up his severely limited voting power, because he would then be free from communication restrictions.

Mayor McDonald stated that he believed that this was an issue for the voters to decide next February, and time was of the essence.

President Brooks expressed concern with the referendum route when it affected the governance of the Town, although he supported the referendum route when it involved citizen tax dollars, or impacted green space. He suggested that some thought be given in a year or so to a Charter Review Committee to discuss:

- The suggestion of Mayor McDonald regarding the mayoral vote.
- Making the Mayor the presiding officer of the Town Council.
- Leaving things the way they currently are.
- Evaluate the method of choosing the Town Council President; consider that the position rotate, with the right of an individual Council member to turn the position down.
- Consider a more competitive election process.

Councilman Coleman commented that the Mayor's suggestion was part of a larger agenda,

as far as the governance of the Town. In addition, he stated that he was not sure that the Mayor should have less power, and did not support putting the Mayor's suggestion on the ballot at this time.

Councilman Wyett commented that the Town Council should have the opportunity to consider such a change in governance over a period of time. He stated that he looked forward to hearing the opinions of residents.

Mr. Bill Diamond, 220 Wells Road, commented that the focus should be on anything that would achieve the goal of a more effective Mayor.

Councilman Wyett moved deferral of the consideration of a referendum to amend the Town Charter regarding the Mayor's right to vote to the November 8, 2005, Town Council Meeting. The motion died for lack of a second.

Town Attorney Randolph advised that Mayor McDonald had requested an affirmative response, and if that was not heard, there was not necessarily a denial of the request, but an opportunity to ruminate on what had been requested. There was no further action that needed to be taken at this time.

**********The luncheon recess was taken at 12:30 p.m.**********

**** The Town Council Meeting of October 11, 2005 was reconvened at 2:00 p.m.*****

11. RESOLUTION NO. 81-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Policy Release Agreement in the Matter of Stanley L. Clark and Edward F. Hines, Jr., as Trustees of the Goodrich Florida Realty Trust II Under Agreement Dated April 20, 2001, v. 1300 South Ocean Boulevard Revocable Trust Under Agreement Dated September 30, 2004, c/o Sherie Sklorman and Town of Palm Beach and Authorizing the Mayor to Execute the Same on Behalf of

the Town. [Thomas G. Bradford, Deputy Town Manager]

Mayor McDonald suggested that when people are notified of Development Review items by mail, that the residents on either side of the applicant, and across the street and behind the applicant, be notified by certified mail, so that there was no doubt that they receive proper notice.

Town Manager Elwell advised that certified mail for the immediate contiguous neighbors would be perfectly appropriate, and the certificate of mailing would be done for the remainder.

Councilman Wyett moved approval of Resolution No. 81-05. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 4/0, as Councilman Kleid was not in attendance.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 16-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 18, Buildings and Building Regulations, Rescinding Article IV and Adopting a New Article IV Entitled Florida Building Code 2004, Including the Florida Building Code 2004, the National Electric Code 2002 Edition; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning and Building Veronica Close read Ordinance No. 16-05 by title, as printed above.

President Pro Tem Goldblum moved adoption of Ordinance No. 16-05 on second reading. The motion was seconded by Councilman Wyett. On roll call, the motion carried 4/0, as Councilman Kleid was not in attendance.

B. First Reading

None

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Coleman:

Commented regarding lighting in front of Palm Beach Public School that had not been on the plans. *[Town Manager Elwell indicated that the height and style of the lighting were in question and staff would contact the Palm Beach County School Board].*

President Pro Tem Goldblum:

Commented regarding placement of the four windows on the south side of the Palm Beach Public School building.

Town Manager Elwell:

Commented regarding the donations of Town staff toward the relief efforts for the victims of Hurricane Katrina and Hurricane Rita; 51 employees participated, contributing over $21,000 worth of time to be given to the Red Cross.

XI. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Premier Palm Beach, LP (Bellaria Condominium)- Request for Extension of Work Hours at 3000 South Ocean Boulevard. [Veronica B. Close, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by Councilman Wyett stating he met Mr. Decklebaum, in passing, on the way to lunch.

Mr. Decklebaum, Premier Palm Beach L.P., requested that the work hours be extended during construction of the Bellaria Condominium located at 3000 South Ocean Boulevard from 8:00 a.m. until 6:00 p.m. Monday through Saturday. He explained what the scheduled primary activities were to be during the extended period.

- The structural completion of the north building adjacent to the Lake Worth parking area;
- Site work to include brick pavers and landscape;
- Exterior finishes on the south building such as stucco and precast stone.

Mr. Decklebaum noted that Premier Palm Beach had been a very good corporate citizen; and they had worked together, in the past, with the Town Council to develop a project at the south end of Town that was pleasing to everyone.

Director of Building, Zoning and Planning Veronica Close advised that staff recommends approval of this request with the following conditions:

- No work on Saturdays or Sundays;
- No work on Town observed holidays from December 1st through April 30, 2006;
- Work hours should be from 9:00 a.m. to 7:00 p.m. from December 1st through April 30, 2006;
- Any noise complaints would cause work to stop.

In response to President Pro Tem Goldblum, Mr. Decklebaum stated that he did not know the number of hours required to complete the outside work they needed to complete.

In response to President Pro Tem Goldblum, Ms. Close advised that what Mr. Decklebaum was trying to explain was that, at this point in the project, there was no way to restrict the work to interior work, only. She noted that Premier Palm Beach was doing very well with their time lines, and staff did not anticipate that they would go over their required time limit. She clarified that the applicant was asking for an extended hour of work and two extended hours

of quiet work. She stated that staff does not have a problem with that, but just asks that it be moved back an hour.

In response to Councilman Coleman, who noted that, in the winter, it was dark at 7:00 p.m., Mr. Decklebaum stated that it would not be practical to work until that time. He explained that the workers started at 7:00 a.m. on most other sites. If the workers were told, they had to start at 9:00 a.m. working until 7:00 p.m., they would have a severe problem with those hours.

Councilman Coleman stated that it was his inclination to be more flexible than staff, subject to the caveat that if there were noise complaints, the applicant would have to immediately come back to Council. He said he would go along with the applicant's request for the extended hours and to allow work on Saturday.

In response to Councilman Wyett, Mr. Decklebaum stated the starting hours, in season, was 9:00 a.m. to 6:00 p.m. and no work on Saturday. He advised that their request was for 8:00 a.m. to 6:00 p.m. and to work on Saturday. He noted that the request was written before it was known that work would not be allowed on Saturday.

Councilman Wyett stated that he did not want to have the hours extended during the Christmas holiday period of December 19, 2005 through January 3, 2006.

Mr. Decklebaum responded that they agreed to that, and they would be respectful of days such as the Friday after Thanksgiving.

Mayor McDonald questioned approving working on Saturday, and if there was a conflict with the Ordinance that had just been passed by Council? He wanted to know if the Ordinance needed to be revised to allow Saturday work?

Town Attorney John Randolph advised that, in the past, extensions had been allowed. He noted that, if this was approved, an extension would be granted immediately after adopting this Ordinance. He explained that this issue would be addressed and, at that time, a specific provision within the Code allowing for extensions should be considered.

Councilman Coleman made a motion to approve the request for extension of work hours at 3000 South Ocean Boulevard (Premier Palm Beach, LP - Bellaria Condominium) with the following conditions:

- **Permission to work between the hours of 8:00 a.m. to 6:00 p.m., including Saturdays.**
- **No work on Town observed holidays from December 1, 2005, through April 30, 2006.**
- **Approved extended work hours will not apply during the holiday period of December 19, 2005 through January 3, 2006.**

- **Any noise complaints will cause work to stop.**

The motion was seconded by President Pro Tem Goldblum.

President Brooks stated his objection to Saturday work hours, particularly in light of the Ordinance that was forthcoming. He advised that he was willing to work out a compromise, and agreed with granting the request for 8:00 a.m. to 6:00 p.m. work hours.

Mayor McDonald stated that he was wary of going against the Ordinance, at this time. He commented on Councilman Coleman's recommendation that if there were noise complaints, the applicant would be required to come back to Council, a process which could take four weeks to occur.

Town Manager Peter Elwell explained that by adding the noise condition, staff would be empowered to take away the privileges of the developer. He stated that it would not have to come back to the Council.

Councilman Coleman explained that he was trying to work with the developer until such time it impacts upon the community.

On roll call the motion carried, 3/1, with Councilman Coleman, President Pro Tem Goldblum, and Councilman Wyett casting affirmative votes. President Brooks cast a dissenting vote because of the Saturday work schedule. He stated did not believe the Town could operate from a defective principle. Councilman Kleid was not in attendance.

2. Oliver, Glidden, Spina, and Partners- Request for Extension of Work Hours at 209A Worth Avenue.
[Veronica B. Close, Director of Planning, Zoning, and Building]

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

Mr. Keith Spina, Oliver, Glidden, Spina, and Partners, requested a two-week extension of work hours for Laura Munder Fine Jewelry, 209A Worth Avenue. He advised that just the final finishes inside the store needed to be completed. He explained that the request was for a 15-day extension, Monday through Saturday, with the work hours of 9:00 a.m. to 6:00 p.m. He noted that

they would be willing to begin work at 7:00 a.m. since there were no residences on Worth Avenue.

Director of Planning, Zoning and Building Veronica Close recommended approval of the request for waiver of work prohibition on Worth Avenue with the following conditions:

- Work hours should be from 8:00 a.m. to 5:00 p.m.;
- Any noise complaints will cause work to stop;
- Exterior work needs to be completed by October 31, 2005.

Ms. Close noted that staff had received a letter from the Worth Avenue Association encouraging the Town to grant the extension of hours requested by Oliver, Glidden, Spina, and Partners.

Councilman Wyett stated that he would be amenable to their beginning work at 7:00 a.m. as there were no residences being affected.

Councilman Wyett made a motion to approve extended construction hours for fifteen days, until November 15, 2005, with the following conditions:

* **Monday through Saturday from 7:00 a.m. to 5:00 p.m.**
* **Any noise complaints will cause work to stop**
* **Exterior work to be completed by October 31, 2005.**

The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 4/0, as Councilman Kleid was not in attendance.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. VARIANCE #32-2005 The application of Robert E. Jackson, Jr. relative to property described as Lot 3 Boulevard Estates; commonly known as 123 Kings Road; located in the R-A Zoning District. This request is to renovate and add addition to an existing non-conforming building requesting the following variances: building height plane variance to construct a 45 ft. high observation tower above a proposed master bathroom on the second floor

having a front setback of 43.83 ft. in lieu of the 90 ft. minimum required; variance to construct an observation tower and master bathroom having a rear setback of 5.82 ft. in lieu of 15 ft. minimum required; and, variance to construct a 173.81 sq. ft. observation tower which has covered area of 2% of square footage of entire structure in lieu of 1% maximum allowed. *Deferred from the September 13, 2005, Town Council Meeting.*

Discussion took place regarding the request for deferral by the applicant, and the concerns expressed by Councilman Wyett regarding residents, who opposed this variance, and had flown in from out of Town to be present today.

Attorney Peter Broberg, on behalf of the applicant, advised that a deferral had been requested in order to further refine his presentation.

Discussion took place regarding notice to surrounding property owners. Councilman Coleman suggested that both sides be heard without the Town Council taking a vote today, notices could then be issued, and a vote taken at the next meeting.

Town Attorney Randolph advised that notice had been given for this meeting, and there was no reason Council could not go forward with this item today and take a vote.

Ex-parte communication was declared by Councilman Coleman with Attorney Broberg and Attorney Ziska; and Councilman Wyett with Attorney Broberg and Attorney Ziska.

Attorney Broberg requested the record show that the first Architectural Review Commission (ARCOM) meeting the applicant attended was informal. Notice was either not given or it did not go out properly and what was said or recommended by ARCOM was an informal recommendation.

Attorney Broberg explained that the first deferral granted by the Town Council was because the applicant had to return to ARCOM before they could make their presentation to the Council. He noted that they returned to ARCOM with a revised project, but nothing had changed with regard to the number of variances. He reported on the history of Kings Road as well as the history of the subject property.

Architect Robert Bell presented photographs, architectural renderings, and a site plan to discuss the merits of this case.

Mr. Bob Jackson, applicant, advised that he has been a resident of Palm Beach County all his life, and a property owner in Palm Beach for more than thirty years. He noted that he and his

wife have owned this house for more than six years, and it had previously belonged to his Sunday school teacher. He said he had been visiting the house for more than forty years.

Mr. Jackson stated that they had spoken with the neighbors on the north, east and west side of the house. The proposed tower was to be in the northeast corner of the property, as they were placing it where it would be the least intrusive to any of the neighbors. He explained that when first planning the tower, the Weissman house was for sale. He stated that he did not believe it mattered because it was north and east of the Weissman property. He continued that they thought the house would be sold, and the Weissman's would not have any objection.

Mr. Jackson explained that the tower mass was reduced, as requested by ARCOM, and was approved at the second ARCOM meeting. He stated that he believed the tower would enhance the street and would provide balance between the north and south side of Kings Road. He said that he did not think it would be a detriment to any of their neighbors and hoped the Town Council would approve it.

Attorney Maura Ziska, on behalf of Mr. and Mrs. Weissman, advised that the Weissmans live across the street from this project and were present today. She explained that the project does effect the streetscape. The Weissmans object to the massing of this addition and the streetscape. She stated that the bottom line was that there was no hardship. It was not a necessity, it was not a necessary addition, and it was an unnecessary hardship request. She discussed the Bernard Standard and stated that the land was not valueless if this variance was not granted, and that it should be denied.

Mrs. Jody Weissman read a statement into the record expressing her objections to the proposed project.

Director of Planning, Zoning and Building Veronica Close reviewed the history of this project for the Council to consider.

Zoning Administrator Paul Castro advised that the application before the Council today was slightly smaller in scale, by a couple of feet, than the original proposal that went to ARCOM in August. He discussed the reason behind staff's belief that there was no hardship, and noted that staff questioned the hardship criteria addressed in the application.

Attorney Broberg rebutted Mr. Castro's statements relative to the question of whether there was any hardship. He stated that the applicant was being denied a right, others had been granted, because of the property and its configuration. He noted that was the very nature of a hardship, and that, for the record, it was decided law in Florida that neighbors do not have a legal view over someone else's property.

President Brooks stated that historically the Council has entertained, respectfully, the comments of the neighbors and realized that the neighbors cannot decide the outcome of a project. He advised that he did not see a hardship.

Councilman Wyett stated that he did not see a hardship and that it was a situation of want rather than need.

Attorney Broberg asked if a deferral could be granted so that the applicant could rethink the whole project?

President Brooks stated that he was not happy with that request, and the variance should stand on its own merits.

President Pro Tem Goldblum advised that he also did not see a hardship.

Attorney Broberg explained that whether they see the hardship or not, one does exist because they would not be able to use the land.

Attorney Randolph advised that it had been decided not to entertain debate after rebuttal and now a motion should be made to either approve or deny.

President Pro Tem Goldblum made a motion to deny Variance No. 32-2005. The motion was seconded by Councilman Wyett.

Councilman Wyett explained the reason he was denying this variance, as he believed the house would be over-utilizing the land.

On roll call, the motion carried, 3/1, with President Pro Tem Goldblum, Council Wyett and President Brooks casting affirmative votes. Councilman Coleman cast a dissenting vote. Councilman Kleid was not in attendance.

2. New Business- Less Than 15 Minutes

   None

3. Old Business- More Than 15 Minutes

   a. <u>MODIFIED SITE PLAN REVIEW #4-2005 WITH SPECIAL EXCEPTIONS</u> The application of Sunset Avenue Corp., Brad

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

DEFERRED Modified Site Plan Review #4-2005 to November 8, 2005, Town Council Meeting.

b. SITE PLAN REVIEW #7-2005 WITH VARIANCES The application of Ajit Asrani TR, Ajit Asrani Trust relative to property described as Lot 5 and the west 85 feet of Lot 6, Block E, Royal Park Addition; commonly known as 215 Brazilian Avenue; located in the R-C Zoning District. Site Plan Approval requested for a modification to the site plan of the Plaza Inn, to construct a 3-story hotel with a total of 50 rooms, to add a 90-seat function room/44-seat dining room (same room with 13 bar stools), to reconfigure the site plan by relocating and redesigning the swimming pool and associated deck, and adding a 59 car parking garage under the structure in lieu of the surface parking lot previously approved. This increased the number of parking spaces available to 59 from the approved 36 plus 6 valet spaces. Variance requested for a front setback of 25 feet in lieu of the 28.4 feet required because of

building height. Variance for a rear setback of 5 feet in lieu of the 30 feet required by code, a variance of 25 feet. Variance for a lot coverage of 38.09% in lieu of the maximum 34.7% previously approved by variance and 30% allowed by code. Variance for landscaped open space of 16.25% in lieu of the minimum code requirement of 35%, and previously approved variance of 21.1%. Variance to allow a reduction in parking stall width to 8.5 feet in lieu of the 9 feet required by code for spaces number 39 and 40 on the accompanying parking garage plan. Variance for a building height of 28.4 feet from zero datum in lieu of the maximum 23.5 feet allowed by code for a two story building, a variance of 4.9 feet. Variance for an overall building height of 36.4 feet from zero datum in lieu of the 31.5 (w/sloped roof) feet allowed by code, a variance of 4.9 feet. Variance related to sub-basement off-street parking facilities so that the roof of such sub-basements may be hardscaped areas in lieu of being "sodded, landscaped and maintained" as required by code. Variance related to sub-basement off-street parking facilities so that visible evidence of such underground use (the ramp) can be seen from public street in lieu of no visible evidence of such facilities from a public street as required by code. Variance related to sub-basement off-street parking facilities so that storage areas, as indicated on the parking plan, can exist under required yards in lieu of only parking facilities. *Deferred from the August 9, 2005, and September 13, 2005, Town Council Meetings.*

DEFERRED Site Plan Review #7-2005 to November 8, 2005, Town Council Meeting.

c. VARIANCE #34-2005 The application of Neeta and Anand Khubani relative to property described as Lot 7 and 8 El Mirasol; commonly known as 111 El Mirasol; located in the R-B Zoning District. Variance requested to allow a conforming lot to be subdivided into two lots, one of which requires a variance for a minimum lot width of 56.51 feet in lieu of the 100 foot minimum required. *Deferred from the September 13, Town Council Meeting.*

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Kolins and with the owner of the property; Councilman Wyett with Attorney Kolins and with the residents of the street; Councilman Coleman with the applicant and with the objectors; and President Brooks with Attorney Kolins, with the objectors, and he walked lots 7 and 8.

Attorney Ron Kolins, addressed the Town Council, first congratulating Ms. Close on her new appointment as Director of Planning, Zoning & Building, wishing her the best of luck.

Attorney Kolins, on behalf of the applicant, explained that there were two lots on El Mirasol, lot 7 and lot 8, which were commonly owned. He noted that lot 7 did not have the required 100' of frontage in the R-B Zoning District. The lots which were in the R-B Zoning District were large and on the ocean. Development standards, in large measure, did not require lots to be in the R-B District because of their lot size, but they were considered in the R-A or R-AA District.

Attorney Kolins presented architectural renderings to show the present configuration of the cul-de-sac. He pointed out that lot 7 has a frontage of 56.51', 35' back from the street, which was the applicable front setback, leaving it short 43 or 44 some odd feet to make it 100'. He noted that the applicant asked for 47' variance. He explained why they were, today, requesting a reduction in that variance from 47' to 33'. He stated that the entire cul-de-sac would be symmetrical. The two corners of the cul-de-sac would have exactly the same amount of frontage with lot 8, in the middle, lying in a direct line down the middle of the cul-de-sac.

Attorney Kolins noted that the lots had been platted since 1964 with the expectation that they would be developed, as discussed today. He explained that they would have been be able to develop them, as shown, using a site plan review except for the fact that the two lots were owned by one person, which requires the applicant to request a variance instead of just a site plan review.

Attorney Kolins advised that he was asking the Town Council to grant the 33' variance so they could be equidistant on both sides. He explained that would not change the way the street was designed to be developed, a house on lot 7 and a house on lot 8. The houses placed on these two lots would be consistent in size, between 7,000 and 8,000 square feet. He explained that Mr. Khubani, the owner of the property, planned to build one of the homes for himself, living on lot 8, and he would sell lot 7 or build a spec home on that lot.

Attorney Kolins stated that this was the quintessential hardship, explaining that it was a lay of the land hardship. He advised that on a cul-de-sac, you were required to have a certain amount of frontage, which many lots did not have. The natural function of a cul-de-sac was that it was semicircle in the way it was designed. He noted that lots 9 and 7 would both be at 66.76' of frontage, and lot 8 would become 123.28'.

Attorney Kolins reiterated that he was requesting a reduction of the variance to approximately 33'. He explained that the total frontage for both lot 7 and lot 8 combined was 190', pointing out that some variance would be required to put homes on them, as contemplated. He stated that he previously believed that collectively they had 200', but they did not. He advised that without some assistance from the Council, the property could not be developed that way. He said that if the variance was granted, one lot would be conforming and one would be non-conforming.

Attorney Maura Ziska, on behalf of several neighbors, stated that the neighbors opposed this variance request. She informed the Council that the subject parcel had one house on it when purchased by the applicant, and the parcel consisted of lots 6, 7, and 8. She advised that lot 6 was sold and was to be developed. She stated that now they wanted to split the lot further resulting in the development of three lots. She explained that the neighbors were concerned about the intense use of this property as well as concerned that three houses would create traffic, parking congestion, and additional noise in the neighborhood.

Attorney Ziska stated there was no hardship for this applicant since he could build one house on the parcel. The hardship was self-created. She reported that he could build a house without a variance, but could not split the property without one.

Attorney Ziska advised that the neighbors had not seen any of the plans for the development of these houses, which made it very hard for them to make any decisions. They want to object to any further division of this parcel.

Mr. Larry Schlager, 125 El Mirasol, stated that he had built his home on El Mirasol twelve years ago, and most of the homes on the street were one-story. He requested that the Council deny the variance in order that the neighbors could review the plans to see what size houses were being proposed, and how they were to be positioned on the property. He noted that there were five cul-de-sac streets, and of those five streets, there were only two houses at the end of the cul-de-sacs.

Mr. Schlager advised that what had not been mentioned today was the coastal zone setback. He also questioned the parking situation, if two-story, 8,000 square foot homes were built; he noted that the proposed homes would have to come forward more than usually permitted.

Zoning Administrator Paul Castro stated that, at one time, there were three lots with one estate. He pointed out, using presentation boards, the lot sold off by the applicant. He advised that all of the lots could have had conforming lot widths, at one point in time. He explained that what he heard for the first time today was that now no matter how the lots were split up, even if you were to split them up evenly, there would be two nonconforming lots to width. He stated that

Attorney Kolins told him that if the lots were split, there was no way both of these lots could be 100' wide. He asked Mr. Kolins if that was correct?

Attorney Kolins responded that was correct and explained the misunderstanding. He stated that if the lots were split in half, taking 190', each lot would be 95'. He said that the question was could it be done so one was conforming and one was not, and the answer was yes. He stated one lot would be at or over 100', and the other lot would be nonconforming.

Mr. Castro stated that there was some hardship, because it was on a cul-de-sac. Typically, when an engineer divides property on a cul-de-sac, there would be no way to get the minimum widths that were required in the Code. He said that from a geometrical standpoint, they were split center line as seen on the north lot. He stated that it was a typical subdivision design. He noted that both of the lots exceed 20,000 square feet. He explained that was somewhat of a hardship in that they far exceed the minimum area requirements in the R-B District.

President Brooks asked if the hardship was self-imposed, because the owner sold the lot immediately to the west of the existing petition?

Mr. Castro stated he could not answer that and would refer the question to the Town Attorney.

President Brooks replied that he thought Mr. Castro had stated that if the applicant still owned all three, then they would all become conforming.

Mr. Castro replied that President Brooks was correct. He stated that he had given similar advice to other property owners who owned three lots in a cul-de-sac. The advice was to realign the position of the property lines so that each lot was 100' wide even though they far exceeded the minimum area requirements. He said that staff does question the hardship as to lot width and asked Attorney Kolins how large the two remaining lots were on each side, lot 7 and lot 8?

Mr. Castro advised Council that if they considered approving this, they should note that there was a house, that had been there for many years, that splits this property. He stated that the neighbors were very concerned about how the new houses would be laid out within this subdivision.

Mr. Castro advised that staff would require the applicant to return for site plan approval even if the variance was granted to split these properties. He said staff believed it would be helpful to the Town, as well as the applicant, to have ARCOM approval; and for the applicant to come back before Town Council with a site plan review, because they would need a variance for

point of measurement. The variance for point of measurement was needed because the crown of the road was much lower in some cases than the dune higher up to the east.

In response to President Brooks, Mr. Castro stated that the variance being requested today would not be the last petition for a variance, and that they would need another variance.

Attorney Kolins, in his rebuttal, stated that this was not a self-created hardship. He advised that he wanted to talk about the phrase "splitting up," and stressed that the applicant was not splitting up this property. The subject property had been platted and split up in 1964. He noted that his client bought the three lots, closing on them in June of this year, and then realized he had a frontage problem. He explained that lack of information was as much his fault as his client's fault. He reported that his client tried to buy back lot 6 when he found out he had a frontage problem, but was unable to. He explained that these were separate properties, not one property, except for the legal fiction the Town created, which was known as the Kings Road Doctrine. He stated that the doctrine talks about two properties owned by one person, which would be looked at as one property. He reiterated that they were not splitting the property up, and the sale of lot 6 was lawful. The nonconformity that attends that portion of the situation would be removed. There was nothing improper about it.

Attorney Kolins addressed the lot sizes and explained that between the two lots they did not have 200', but frontages could be created to allow one of them to be perfectly conforming to the R-B rules and one of them somewhat short depending on the size of the variance of those rules. He stated that they do not have to, were not requesting, and they should not be divided down the middle as it does not make sense.

Attorney Kolins stated that the proposed variance would make the street perfectly symmetrical, which they believe would be in the best interest of the Town, the neighborhood and the applicant. He stated that, if necessary, a lesser variance could be obtained and still leave one conforming and one not so conforming lot. He explained that the frontage on lot 8 was about 133', and the applicant could take up to the entire 33' and put that onto lot 7, thus asking for the minimum variance possible in this circumstance, which was 10.25'.

In response to Councilman Coleman, Attorney Kolins stated there was no question of hardship, and that it was the quintessential hardship because of the cul-de-sac. He explained that the hardship was due to the subject property being on a cul-de-sac. The alternative, if nothing was granted, was that the property would be treated as one large lot, about 45,000', on which a huge home would be built.

President Brooks stated that the concern today was if there was a hardship and not whether a huge home would be built, if the variance was not granted. He commented that it was not related to the question at hand.

Attorney Kolins stated that it was germane.

In response to Councilman Wyett, Attorney Kolins stated that if the lot lines were manipulated, both lots could not be made legal. He stated that he could make one lot at 100' which was legal, and the other at 90.75' leaving it 9.25' shy. He noted that was the best that could be done.

Councilman Coleman stated that he did believe there was a hardship, but in deference to the neighbor, if the applicant comes back for a variance on either of these two properties, he would vote no. He said that if there was an issue about back-up parking or anything else, as it pertained to the difficulty that would be encountered due to the coastal line or the measurement to the elevation of the road, he would vote no. He suggested the applicant think carefully about what they do. He stated that he was going to take a very hard line on progressive variances.

Councilman Wyett stated that the opposition made the premise that this was the only cul-de-sac to have more than two houses on it. He said that it was hard to make a judgement on this application, and Mr. Kolins might want to take a deferral to work out the issues with those opposing the application to try and see if an amicable solution could be reached. He stated that he believed that the Council had a problem with this application.

Attorney Kolins stated that he would agree to take a deferral if the Council would grant it. He advised that he tried to meet with the opposition, unsuccessfully, but if a deferral was granted, he had a month and would do everything he could to meet with them.

President Pro Tem Goldblum made a motion to defer Variance #34-2005. The motion died for lack of a second.

President Brooks respectfully disagreed with Councilman Coleman regarding the hardship. He stated that if there was hardship, it was self-imposed because the applicant had sold off lot 6. He did not see a hardship and did not think the applicant was entitled to a deferral. If a motion was made to deny, he would support it, but if there was a motion made to grant it, he would deny it, vote against it.

President Pro Tem Goldblum made a motion to deny Variance #34-2005. President Brooks passed the gavel to second the motion. On roll call, the motion carried 3/0, with President Pro Tem Goldblum, President Brooks, and Councilman Wyett casting affirmative

votes. Councilman Coleman cast a dissenting vote. Councilman Kleid was not in attendance.

4. New Business- More Than 15 Minutes

a. VARIANCE #35-2005 The application of Avram and Jill Glazer relative to property described as Lots 35, 37, 38 and 39, Singer Addition to Town of Palm Beach; commonly known as 5 Middle Road; located in the R-A Zoning District. Variance requested to allow a 12.33 foot setback for a driveway gate (exit only) in lieu of the eighteen (18) foot minimum required by code.

WITHDREW Variance #35-2005 from Agenda.

b. VARIANCE #36-2005 The application of Seminole BD, LLC, Patrick DiSalvo, Principal relative to property described as Lots 47 and 48, except the East 10 feet of Lot 48, Block 5, Ocean Park, H.W. Robbins Addition to Palm Beach; commonly known as 214 North County Road (proposed 201 Seminole Avenue); located in the R-C Zoning District. Variance requested to allow construction of a new two story residence on a lot with an area of 9,668 square feet in lieu of the 10,000 square foot minimum required in the R-C Zoning District.

Ex-parte communication was declared by President Pro Tem Goldblum via a letter received from Mr. Leslie Evans; Councilman Wyett via a letter received from Mr. Leslie Evans; Councilman Coleman via a letter received from Mr. Leslie Evans; and President Brooks via a letter received from Mr. Leslie Evans.

Councilman Coleman excused himself from the meeting at 3:32 p.m.

Attorney Maura Ziska, on behalf of the applicant, stated that the property, 201 Seminole Avenue, was located at the corner of Seminole and North County Road across the street from the synagogue. She explained that it was a nonconforming lot, 9,668 square feet in lieu of the 10,000 square feet required in the R-C District. She advised that the request before them was a variance

request to build a house on a nonconforming lot in the R-C District noting that it would be treated as a site plan review. She said that the house meets Code, in all respects, meets all setbacks, green space, lot coverage, and height requirements.

Architect Harold Smith, Smith and Moore Architects presented architectural renderings to discuss the merits of this case. He noted that the Architectural Review Commission (ARCOM) approved the demolition of the existing duplex, which was non-conforming in its setbacks.

In response to President Brooks, Mr. Smith advised that he did not know the total square footage of the home to be demolished. He stated that the air-conditioned square footage on the proposed home was 5,486 square feet, the total square footage was 6,413, and the landscaped open space was 45.5%. The lot coverage by building was 34.4%, 25' setbacks on the front yard, and the street side yard, a 14' setback in the rear and a 10' setback on the west side.

In response to President Pro Tem Goldblum, Ms. Ziska advised that no variances were required for the building itself.

Ms. Ziska reiterated that the request before them was a site plan review although called a variance for a nonconforming lot. She advised that it was a unique situation, and that the lot was large and should be considered along with the homes on County Road. She noted that it had two 25' setbacks making it difficult for the architect to design in that footprint. She stated that, at one time, it would have been a conforming lot, but at some point, a portion of the property was dedicated to enlarge County Road.

In response to President Brooks, Ms. Ziska explained that, in the R-C District, when there was a nonconforming lot, it was called a variance, although all the Zoning Codes were met.

Attorney Leslie Evans, on behalf of Helen Barberian, stated that Ms. Barberian has lived at 209 Seminole since 1983.

Discussion took place regarding the change of address from 210/214 North County to 209 Seminole. President Goldblum advised that when building a new house the address changes according to where the front door was located.

Attorney Evans stated he lives at 135 Seminole and was familiar with the neighborhood. He advised that the application states "the general intent and purpose of this ordinance would not be injurious to the neighborhood." He noted that they have a couple of problems with the statement.

- Changing the existing driveway located on North County to Seminole Avenue exacerbates an already horrendous traffic situation and creates a public safety issue. The temple was directly across the street from the subject property and Mrs. Barberian's home. The north side of Seminole Avenue (by both 209 and 201 Seminole) had been used to drop off people going to the temple and to pick up people leaving the temple. The addition of a driveway would cause it to be virtually impossible for Mrs. Barberian to pull out of her driveway or access her property.

- Proposed driveway on Seminole Avenue where there was an existing public bus stop. The stops were on the south and north sides of Seminole creating a public safety problem.

- The applicant's argument that it would reduce density was incorrect. The existing building was a duplex with two very small bedrooms. He explained that the proposed upstairs was bigger, he believed, than the current existing whole building. He stated that there were fewer units but bedrooms and bedroom sizes would accommodate a lot more people.

- The proposed two-story home would be placed only 10' from the property line of Mrs. Barberian. There would be air-conditioning units on the west side as well as windows that would be looking down on the privacy of Mrs. Barbarians courtyard.

- The screening was not adequate to secure the privacy.

Mrs. Barberian addressed her concerns regarding this application.

- Her grandson was a CP baby, who was wheelchair bound. The outdoor courtyard was the only place for him to play safely. The changes in her neighborhood have compromised her life. She noted that she has no objection to a beautiful house going on her corner, but objects to the fact that people would be able to look down on her courtyard from the second story and watch her grandchildren play.

- Placement of the proposed home's driveway on Seminole Avenue would affect the quality of life for her family and herself. The driveway was an issue because there were bus stops on both corners, on the north and south.

- For years, she never objected to anything in her neighborhood because she believed in being a good neighbor and getting along. She never complained when the temple expanded, and believed it was continuing to expand. The temple has many wonderful things occurring, but they do impact her life. She reported she was not objecting to that,

but she should have and she let things go along because she did not want to appear anti-Semitic, which she was not.

- She suggested that the Council come to her patio to sit there before services to see what occurs particularly during the High Holy Days. Cars were parked on both sides of her driveway. She had to contact the Police to help her out.

- Objected to the four separate air-conditioning units to be placed on the property with two of them located on her side. There was only 10' between the back of the proposed home and the beginning of her courtyard.

- Concern over the loss of privacy hedges.

Zoning Administrator Paul Castro stated that a variance was required because the lot does not meet the minimum area requirements in the R-C District, but the house does meet all other lot, yard and bulk requirements. He reviewed some of the issues that had been discussed earlier.

- There was a Public Works policy that whenever possible, driveway entrances should be eliminated from major arteries such as North County Road. The applicant was encouraged to locate on Seminole Avenue, in this case.

- The issue relating to the synagogue and the valet parking could be remedied by the Police Department.

- The bus stop might have to be relocated, and a study may have to be conducted relating to that.

- The location of the driveway was fairly far enough away from the intersection that it did not pose a traffic safety problem.

Mr. Castro noted that he spoke with Ms. Barberian regarding the project, and they discussed the issues she was requesting to be mitigated or resolved. He noted that the plan proposed a row of Areca palms and Traveler palms to provide some higher foliage and to try to screen the property. He said that the pool area was proposed to have a chain link fence.

Mr. Castro stated that the 10' setback does meet the Code requirements. The bay window was permitted by Code and was only for the dining room area. Some of the main objections to the proposal were the A/C units mentioned earlier. He suggested that a study could be conducted regarding proposed locations for the A/C units. He advised that these were ARCOM issues, and

when they were reviewed by the ARCOM, the Commission would be sensitive to them. He stated that Mrs. Barberian was asking for some consideration.

Mr. Castro stated that the application does meet all of the lot, yard, and bulk requirements, and in fact, was a foot shorter than the Code maximum. He advised that staff had no objection to the proposal as provided to the Council today.

In response to President Brooks, Mr. Castro stated that, typically, when there were no variances on the home itself, and the variance was for lot size only, it was staff's policy not to send the applicant to ARCOM first because it met all of the Code requirements. He noted that if Council chooses to change that policy, staff would be glad to take it to ARCOM first.

Mr. Castro noted staff does have a requirement for a retention wall on the west side and north side of the property. He explained that it might impact the size wall or fence material they could place there and they would have to do some drainage and paving in that area.

Councilman Wyett stated that he thought the architecture could have been much more sensitive to the site relative to the neighbors. He said he could see many ways to improve it and had a problem with placing the garage in the front of the house. He noted that the A/C units could all be moved to the rear of the property. He said that he could not vote to approve this, and therefore, the application was dead, because they elected to go before three people, needing all three votes. He suggested that the house be redesigned. The design should be much more sensitive to the neighbor and it should be moved away from the neighbor to the east. The garage should be redesigned so it does not monopolize the house; the house design did not add to the streetscape or the quality in Palm Beach. He said that he knew he was addressing an ARCOM issue, but he could not avoid it and was voting no.

President Pro Tem Goldblum stated that, presently, at that location, there were two old shacks with cars in the courtyards, not in garages. He advised that the house, as designed today, would enhance the neighborhood. He believed that it met all the variances, and none were needed. He said that he would approve the application. He stated that the bus stop could be changed. He advised that parking situation was bad there, but it had been squared away with the valet services; and if there were problems, those could be corrected.

President Brooks stated he agreed with Councilman Wyett. He said he would like to know what the square footage was of the two little bungalows? He advised that the law was the law was the law, but you had to be sensitive to the neighborhood. He said they were talking about a 6,300' home on a lot that was under 10,000'.

President Brooks said he was asking President Pro Tem Goldblum and Councilman Wyett if ARCOM should be a part of this?

Attorney Randolph stated that, in light of the fact, there were only three Council members present, and because a prevailing vote requires 3/5's of the Council, the applicant might wish to take a deferral, if they felt prejudiced. He added the Mayor could make up the 3/5's vote.

Mayor McDonald stated that when he was President of the Council and this situation occurred, the applicant was always given the choice to defer.

In response to Mayor McDonald, Attorney Randolph stated that it was not announced in the beginning of the applicant's presentation. He advised that he was going to announce it when there were only three Council people present, but then the Mayor came back into Chambers. He saw there was a possibility then to get all of the required votes. He thought that, in light of the comments, a deferral might be requested.

In response to Attorney Randolph's suggestion, Ms. Ziska stated that they have gotten into the merits of this case, and if they could get some direction, and it does become a deferral, she would be happy to meet with the neighbor to address her privacy. She said it would either be that or have the issues addressed at ARCOM, which usually gets into the guts of massing.

President Brooks asked Ms. Close if the applicant takes a deferral, could the Council recommend that they go before ARCOM? He said he did not believe it was fair that it comes to Council when there was an Architectural Review Commission.

Director of Planning, Zoning and Building Veronica Close stated that it would be appropriate. She stated that she wanted to remind Council why this was a variance and explained that a variance was a more difficult test, which gave the Council the right, instead of a site plan review, to attach any conditions they wanted to the granting of that variance. This would include whether or not Council thought it was the minimum variance necessary. She said that if the Council wanted to refer this back to ARCOM, they could; and then Council would retain the right to attach any conditions they recommended.

In response to President Brooks, Ms. Ziska stated she would be willing to take a deferral and go to ARCOM before they come back to the Council. She noted that would help resolve many of the neighbor's issues.

Councilman Wyett stated strongly that he would like to see a redesign of this property. He noted that if it came back from ARCOM, in the present form, they would have at least one no vote. He advised that the house was too big; it was overbearing on the neighbor; it was not

sensitive to the neighbor's property where it could be; and it could be designed so that the garage was not overpowering the front of the house. He stated that he does not know how ARCOM would rule, but that he would rather deny it and force a redesign, since they could not come back with the same project twice.

President Brooks suggested to Mrs. Close that the Council's comments accompany this petition to ARCOM, incorporating Mr. Wyett's comment's, President Pro Tem Goldblum's comments and his comments/

Councilman Wyett addressed President Pro Tem Goldblum's comments stating that he did not like this house, but it was a lot better than what was there; but that was not the justification for approving something that you would live with for fifty to a hundred years.

Councilman Wyett made a motion to defer Variance #36-2005 to the November 8, 2005, Town Council Meeting; applicant to return to ARCOM with the comments of the Town Council. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 3/0. Councilman Kleid and Councilman Coleman were not in attendance.

Councilman Wyett requested that the minutes reflect the full conversation.

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

Attorney Randolph made the announcement that in order to prevail on a Special Exception application, a 3/5's vote was required. There were only three Council members present, and the applicant would need a unanimous vote. The applicant, in this instance, was given an opportunity, if they wished, to defer. He noted that if the applicant goes forward with their application and gets a hint that things were not going well, the Council would not look kindly on deferring the application, at that time.

Attorney Maura Ziska stated that the applicant would like to proceed.

Ex-parte communication was declared by President Brooks who spoke with the owner, Mr. Richard Day, who was present today, and with Attorney Ziska relative to this petition.

Attorney Maura Ziska, on behalf of the applicant, stated the restaurant was asking for two special exceptions. One to expand a 4,300 square foot/150 seat restaurant to 4,980 square feet/154 seat restaurant, and the other to relocate twenty seats to the proposed seating area on Australian Avenue. She presented architectural renderings to discuss the merits of this case. She advised that Mr. Day reconfigured the layout of the restaurant in order to have a meeting/party room, and relocate twenty seats, five tables with four seats each, to the outside along Australian Avenue. She noted that it would not adversely impact the neighborhood, and the restaurant had been Town serving since it had opened; Town-serving documentation was provided upon renewal of its Occupational License.

Councilman Wyett stated that when Amici had petitioned to get additional space, which Island Palm now used as a lounge, there had been a comment that there would have to be a re-application for that section, if the restaurant ever closed or moved. He noted that the Building Department did not request that when the Island Palm Restaurant came in; Island Palm received that without any discussion. He asked where that space had come from, as it does not seem that there was any access on the street? He also asked where the additional space, they were requesting, was?

Attorney Ziska responded that the space was already there and was used for storage.

Councilman Wyett addressing the outdoor seating, stated that he would vote no, because it was a hazard and was not a natural space for outdoor seating. He noted that he walked that space after lunch to review the space.

President Pro Tem Goldblum stated he would vote for it, and asked if there were going to be awnings over the outdoor seats?

Richard Day, owner of the Island Palm, responded that there were awnings there, but they would not extend over the tables. He stated that the sidewalk, on that particular section of the street, was particularly wide, compared to the rest of the street. He noted that they would still have approximately 10' of area between the table and the curb.

Zoning Administrator Paul Castro stated that the area requested for outdoor seating was fairly narrow; there was the parkway there with 6.5' between the tables and the parkway, and the tables would be close together. The Fire Marshall commented that they have to meet the minimum seating separations outside as well as inside, which did not appear to be met at this time. In addition, the proposed private room needed two means of egress which it currently did

not have. He stated that staff believed that if outdoor seating was allowed, there should be limited hours of operation, and no outdoor music. He advised that a Declaration of Use Agreement entered into with the tenant might be required, which would make it known that approval was for this tenant only, requiring any other applicant to have all new approvals, not only for outdoor seating but for this extra area.

President Brooks passed the gavel to make a motion to defer Special Exception #19-2005 to the November 8, 2005, Town Council Meeting. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 2/1, with President Brooks and President Pro Tem Goldblum casting affirmative votes. Councilman Wyett casting a dissenting vote. Councilman Kleid and Councilman Coleman were not in attendance.

3. Other

a. PLAT ABANDONMENT The application of Trump Properties, LLC, relative to property described as the Plat of Reef Estates, Plat Book 28, Page 55, of the Public Records of Palm Beach County, Florida, commonly known as 513 North County Road, located in the R-AA Zoning District. Request to abandon the subject plat, including all right-of-way and easements.

Deferred to the December 13, 2005, Town Council Meeting, per Memorandum Dated October 5, 2005, from Veronica B. Close, Director of Planning, Zoning and Building.

i. RESOLUTION NO. 71-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Vacation and Annulment of the Plat of Reef Estates, Plat Book 28, Page 55, Public Records of Palm Beach County, Florida; Providing an Effective Date. *Deferred from the September 13, 2005, Town Council Meeting.*

DEFERRED Plat Abandonment and Resolution No. 71-05 to December 13, 2005, Town Council Meeting.

XII. ANY OTHER MATTERS

None.

XIII. ADJOURNMENT

There being no further business, the Town Council Meeting of October 11, 2005, was adjourned at 4:12 p.m.

William J. Brooks
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk