TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON OCTOBER 10, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting, was called to order on Tuesday, October 10, 2006, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald *(Mayor McDonald left at approximately 6:15 p.m.)*
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett

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

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

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RECYCLED PAPER

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

Mayor McDonald presented awards to Assistant Recreation Director Rod Gardiner and Golf Pro Manager Rick Dytrych recognizing the Par 3 Golf Course, which was recently recognized as one of the top short golf courses in the nation, with hole number four being one of the top 18 ocean front holes in the country.

IV. COMMENTS OF MAYOR JACK McDONALD

I AM PLEASED THAT THE ROYAL POINCIANA CHAPEL AND THE PRESERVATION FOUNDATION ARE NEGOTIATING TO KEEP SEA GULL COTTAGE WHERE IT IS. THAT LOCATION WAS ALWAYS OUR FIRST CHOICE AND I ASK THE COUNCIL TODAY TO DEFER ANY DISCUSSION ON THIS MATTER UNTIL NEXT MONTH'S MEETING TO ALLOW THE PARTIES TIME TO PURSUE AND CONCLUDE THEIR NEGOTIATIONS. FIRE PREVENTION WEEK IS THIS WEEK AND I ASK YOU WHAT IS THE LEADING CAUSE OF HOME FIRES? COOKING! IT IS ALSO THE LEADING CAUSE OF FIRE RELATED INJURIES. DO YOU KNOW THE MOST COMMON EXCUSE "I ONLY LEFT THE KITCHEN FOR A FEW MOMENTS," SO IF YOU LEARN ONE NEW THING WHILE I AM MAYOR LEARN THIS:

1. STAY IN THE KITCHEN WHEN YOU ARE FRYING, GRILLING, BROILING OR BOILING FOOD.
2. IF YOU MUST LEAVE TURN OFF THE STOVE.
3. WHEN YOU ARE SIMMERING, BAKING, OR ROASTING FOOD, STAY HOME AND USE A TIMER TO REMIND YOU.
4. IF YOU HAVE YOUNG CHILDREN, USE THE STOVE'S BACK BURNERS AND KEEP CHILDREN AND PETS AT LEAST THREE FEET AWAY FROM THE STOVE.
5. WHEN YOU COOK WEAR CLOTHING WITH TIGHT FITTING SLEEVES. (LIKE WHAT THE COUNCIL IS WEARING)
6. KEEP ANYTHING THAT CAN BURN AWAY FROM YOUR STOVE TOP.
7. CLEANUP FOOD AND GREASE FROM BURNERS AND STOVE TOPS.

FOR ALL THE COOKS IN OUR COMMUNITY I AM DESIGNATING OCTOBER 8-14 FIRE PREVENTION WEEK IN THE TOWN OF PALM BEACH. THIS WEEK FIREFIGHTERS

AND SAFETY ADVOCATES WILL BE SPREADING THE WORD "PREVENT COOKING FIRES: WATCH WHAT YOU HEAT. AND I ASK THAT YOU SUPPORT THE MANY PUBLIC SAFETY ACTIVITIES AND EFFORTS OF THE TOWN OF PALM BEACH FIRE-RESCUE DEPARTMENT.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Coleman:

Requested that the last item on the Agenda, Zoning In Progress, regarding generators and formula restaurants be accelerated on the Agenda.

President Pro-Tem Kleid:

Commented regarding the quality of the telephone hookup during meetings, and suggested that it be improved. He urged the Planning and Zoning Commission to study residential sites and other alternatives for cell phone antennas, for improved cell phone coverage throughout the Town as soon as possible.

Council Member Brooks:

Commented that the ARCOM decisions on September 27, 2006, approved the demolition of two residences on Via Viscaya. He suggested that the Town Council members drive the street to see the number of demolitions. He requested that Attorney Randolph also look at it. He noted that he had recommended, in the past, one demolition per block on the east/west streets; the second demolition could start after the Certificate of Occupancy (CO) was issued for the first one; on the north/south, 750 linear feet running north and south from the subject property.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

- Mr. Luis Neco commented regarding Starbucks.
- Former Mayor Marix commented regarding historical trees being demolished without confirmation that they were sick.
- Ms. Amy Shaughnessy commented regarding collective valet parking for businesses on Royal Poinciana Way. [Town Manager Elwell advised that the Town Wide Traffic and Parking Plan would be presented at the next Town Council meeting.]
- Mr. Leslie Evans commented regarding the light fixtures that were not in working

order for the past 11 months, on Royal Poinciana Way, between South County Road and Bradley Place. [Staff will contact FDOT to be present next month if the lights were not repaired by that time].

- Ms. Gertrude Maxwell presented a check in the amount of $30,000 to Palm Beach Cats.

VII. APPROVAL OF AGENDA

DEFERRED:

Item XII. D. 3. 9. - Site Plan Review #9-2006, The Villas, Inc., to November 14, 2006, Town Council meeting,

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve deferral of Item XII.D.3.9., Site Plan Review #9-2006, to November 14, 2006, Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED:

Item XII. D. 2. B. - Site Plan Review #17-2006, Desmond and Dorothy Ann Heathwood, 100 Royal Palm Way, to November 14, 2006, Town Council meeting.

Item XII. D. 2. C. - Site Plan Review #18-2006, 100 Royal Palm Way, Thomas J. and Carroll D. Swan, Jr. to November 14, 2006, Town Council meeting.

Item XII. D. 3. c. - Variance #25-2006, Thomas Longhurst, 228 Phipps Plaza, to December 12, 2006, Town Council meeting.

RELOCATED ON AGENDA:

Item XII.D.4.d. - Special Exception #7-2006, under New Business, to become Item XII. D. 3. 1., under Old Business.

ADDED:

Item XII. E. 2. - Frank and Maureen Wilkens vs. Town of Palm Beach et al - Request for termination of variance previously granted to the Gaines'.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve: deferral of Site Plan Reviews #17-2006, #18-2006, Variance #25-2006 to November

14, 2006, Town Council meeting; relocation of Special Exception #7-2006, to the Regular Agenda, Old Business; and the addition of Frank and Maureen Wilkens vs. Town of Palm Beach et al. On roll call, the motion carried unanimously.

ACCELERATED ON AGENDA:

Item XII.E.1. - Zoning in Progress: Generators and Formula Restaurants to become first item on the Agenda, immediately following Item IV.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve deferral of Item XII.E.1., Zoning in Progress. On roll call, the motion carried unanimously.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve the Agenda as amended. On roll call, the motion carried unanimously.

VIII. CONSENT AGENDA

A. MINUTES: SEPTEMBER 6, 2006
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES.

B. MINUTES: SEPTEMBER 6, 2006, 5:01 P.M.
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES- PUBLIC HEARING REGARDING TENTATIVE BUDGET AND PROPOSED TAX RATE.

C. MINUTES: SEPTEMBER 7, 2006
APPROVAL OF TOWN COUNCIL MEETING MINUTES.

D. MINUTES: SEPTEMBER 20, 2006, 5:01 P.M.
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES- FINAL PUBLIC HEARING REGARDING BUDGET AND TAX RATE.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON SEPTEMBER 27, 2006.

F. RESOLUTIONS

1. RESOLUTION NO. 69-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Annual Funding Application to the Florida Department of Environmental Protection, Beach Erosion Control Program.
[H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 70-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to General GMC Truck Sales for Supply and Delivery of One 6 CY Refuse Packer.
[H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 71-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Revised Statement of Investment Policy for the General Employee Board of Trustees of the Town of Palm Beach Retirement System Pursuant to Section 82-57(b) of the Code of Ordinances of the Town of Palm Beach and Providing an Effective Date.
[William C. Crouse, Director of Human Resources]

G. OTHER

1. Acceptance of State Historic Preservation Grant for Town Hall Roof Repairs.
[Veronica B. Close, Director of Planning, Zoning, and Building]

2. Approval of Medical Insurance Premium Rates For Calendar Year 2007.
[William C. Crouse, Director of Human Resources]

3. Authorization to Upgrade the Town's Secondary ISeries Server.
[Thomas G. Bradford, Deputy Town Manager]

4. Authorization to Execute Agreements for Annual Software Licensing and Maintenance for the Town's Usage of Microsoft Products.
[Thomas G. Bradford, Deputy Town Manager]

5. Authorization to Expand the Scope of the Town's Cooperative Mangrove Revegetation Projects with Palm Beach County.
[H. Paul Brazil, Director of Public Works]

6. Authorization to Purchase Nine Police Vehicles.
[Michael S. Reiter, Chief of Police]

7. Selection of Consulting Firm for Planning and Zoning Services. [Veronica B. Close, Director of Planning, Zoning, and Building]

This Item, VIII.G.7., was pulled from Consent Agenda and added to the Regular Agenda under New Business as Item X.B.9.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve the relocation of Item VIII.G.7. from the Consent Agenda to the Regular Agenda as Item X.B.9. On roll call, the motion carried unanimously.

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

IX. BOARD/COMMISSION ANNUAL REPORT

A. Medical Care Commission [Michael Dennis, M.D.]

Chair of the Medical Care Commission, Dr. Michael Dennis, recognized four colleagues that were present: Vice Chairman Friedman, Commissioners Furlaud, Goldblum, and Traverse. Commissioner Stein was delayed in attending the meeting. Dr. Dennis provided an overview of the Medical Care Commission's Annual Report. Following is a list of projects developed by the Commission:

1. Create and publish an informational brochure describing the range of services, primarily emergency care, locations, and transportation times.

2. Facilitate the creation of an academically based network of teaching hospitals in the region;

3. Plan a theme conference spotlighting Good Samaritan Hospital by asking the brightest minds to come forward with suggestions;

4. The anticipation of the possibility of similar facilities to those of urgent care centers on the island as early as February;

5. Plans for another theme conference on the physician and nursing crisis.

6. Tort-Reform was a key factor in the foregoing personnel crunch, and the residents

urged us to examine ways to influence the legislators;

7. Provide immediate access to acute stroke and cardiac centers, and guarantee that the existing centers to our south and north, as well as potential centers more centrally located, are reachable by the most advanced technological support system..

8. Obtain expert consultation on how to establish a foundation, possibly call it the Palm Beach Healthcare Foundation, to allow implementing recommended changes.

Dr. Dennis indicated that he would address the budget at the November 14, 2006, Town Council meeting.

X. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager Bradford provided a status report of the placement of overhead utility lines underground. The following recommendations were:

- Revisit the question of a general obligation bond issue versus a straw ballot for the February 6, 2007, referendum;

- Authorize an expenditure of up to $19,004 to pay the current shortfall in funding of the Municipal Underground Utilities Consortium (MUUC) study; and

- Authorize an expenditure of up to $12,000 to pay for hearings before the Public Service Commission (PSC) if necessary if the study proved favorable in seeking a greater credit than 25% offered by Florida Power & Light (FPL) for local government conversion project.

Legislative Update:

Mr. Bradford discussed the hardening issue, which was the ability of the utility infrastructure to withstand greater wind speeds, should the equivalent cost of overhead increase. He commented that the PSC proposed that the wind standard be a category three windstorm, which was

a significant improvement over today's infrastructure. As a result of the controversy between BellSouth Telecommunications and the cable television industry, the PSC created an infrastructure advisory committee to enable them to work through their differences; however, because they were not in agreement, the PSC was proposing to delegate the decisions to FPL to develop the hardening standards and the pole attachment requirements.

Mr. Bradford provided the following schedule on the rule of the hardening issue:

- Post hearing comments on October 2, 2006;
- PSC staff recommendations on October 12, 2006; and
- PSC Agenda Conference to vote on the rule on October 24, 2006.

Mr. Bradford indicated that there should be some action by the end of this month on the rule, but that it could be anticipated that it would be litigated by the Telcos.

Project Status:

Following were several of the items that were discussed:

- Project Management Timeline (PMT) was updated as needed and that assignments were emailed to staff and consultants;

- Power Services, Inc., was the recommended underground engineering expert, and a contract needed to be executed, to sit down at the table with the utility companies;

- Revisit the issue of conducting a referendum for a general obligation bond on February 6, 2007, or a straw ballot; and

- A straw ballot with a yes or no question to the voters that did not discuss the funding, as a general obligation bond would, required returning, in several years, to request the voters for the funds of the project. It was not recommended, as sections of the project would have been completed, and the people that had their underground lines in place would have to pay for undergrounding of other people;

- It is recommended that a request for a general obligation bond would be made for a smaller figure sufficient to carry the Town to year 2011, and then when drainage projects were done, divert that money to undergrounding.

Council Member Wyett stated that asking for a sum less than the full cost was deceitful to the public. He indicated that people wanted to know the full cost and if there would be any damage

to their property.

Council Member Brooks commented that the Town may get more than a 25% credit from FPL , which was an intangible; and that the hardening issue was vigorously opposed by the cable companies, which would impact the cost to the Town. He noted that he would like to have a referendum that provided a realistic figure, and he approved of mailing the survey. He asked that the survey delineate which respondents lived north or south of Sloan's Curve, because of the concern of any damage to their property.

President Pro Tem Kleid supported the referendum for the general obligation bond, as going through this process twice was non-productive. Input was necessary for costs and that the general obligation bond could be substantial enough to cover the funding, and allow reduction for the amount that was being drawn if less money was needed.. The PSC hearings could be delayed for months or years, and any amount received would be credited against the general obligation bond. The survey response would provide information similar to a straw poll. He stated that he did not know when the Council would have all the information that everybody requested.

Council Member Markin noted that the Council should inform the residents of what the cost per household would be, and the impact to their property. She added that she was in favor of addressing the voters one time. The wording on the referendum should be easy to understand.

Responding to President Coleman, Mr. Bradford stated that the earliest date in the ground was September/October 2007. President Coleman indicated that he was in favor of undergrounding, but that the Town did not know the answers to very important questions, such as the cost to place the utilities underground and the hardening issue of the cost for FPL to place the current standard underground, and he could not vote for it until the cost was known.

Mr. Bradford noted that at next month's Town Council meeting the current schedule required that the cost estimate authorized by an outside firm, would be presented, and the impact of hardening would be on the cost estimate. He added that between now and the November 14, 2006, Town Council meeting, or at least by Thanksgiving, the Town would receive the results of the survey.

President Coleman expressed concern that the PSC may decide not to harden, or allow the 25% credit by FPL, resulting in cost and time overruns.

Council Member Wyett commented that there was a demand by the citizens to protect the Town by placing utility lines underground. He added that the citizens were not concerned about the total cost, but the cost to their home, and that the credits may not be material to the vote. The earliest the ten-year project would start was October 7, 2007. From the time the Council decided to move forward and approve a bond issue, it would be two years of paperwork and planning before

the first shovel gets in the ground because of the paperwork, right-of-ways, and engineering.

President Pro Tem Kleid noted that if the Council decided on the general obligation bonds, there would be time to withdraw it, and that next month there would be more information, particularly the survey results. He stated that the Council would not ever be in a position to know all the costs, and should decide on the general obligation bonds.

Ned Barnes of the Palm Beach Civic Association requested delaying the referendum until the costs were known. The hardening and 25% credits could be substantial and could cause huge discrepancies in the final cost. The cost would need to be a responsible figure or it would be a hard sell at a referendum.

President Coleman commented that the 25% credit was the entire rate base of the utility cost of the state, not solely for the Town.

President Pro Tem Kleid expressed that if it was explained to the residents that the Town was obtaining approval for $100 million but it could be substantially reduced if over the period of time the Town received the hardening credits and the 25% credits, that the people would want to go ahead with the project, even if it may cost a little more money, in view of hurricanes.

Mr. Barnes commented that the Palm Beach Civic Association could launch a huge town wide campaign to educate the voters about the underground project.

President Pro Tem Kleid noted that when the survey was received next month, the Council would be in a better position to further discuss this question.

Town Manager Elwell commented that the general obligation bond was the prevailing opinion rather than straw ballot, and important information could be brought to the Council next month, and in December when faced with the final decision about language that would go on the ballot. A month from now, an updated cost estimate number from the consultants would be provided to the Council.

Motion made by Council Member Brooks to authorize an expenditure of an additional $6,000 for a town wide public opinion survey, to authorize an expenditure of up to $19,004 for Municipal Underground Utilities Consortium (MUUC) study by Power Services, Inc., and an expenditure of up to $12,000 to participate with other members of the MUUC in hearings before the Public Service Commission regarding a greater credit than the 25% offered by Florida Power & Light, allocated from the Underground Project account in the Fiscal Year 2007 budget.

President Pro Tem Kleid seconded the motion excluding the $6,000 amount as it was an amount that was not needed at this time.

Amended motion made by Council Member Brooks, seconded by President Pro Tem Kleid to authorize an expenditure of up to $19,004 for Municipal Underground Utilities Consortium (MUUC) study by Power Services, Inc., and an expenditure of up to $12,000 to participate with other members of the MUUC in hearings before the Public Service Commission regarding a greater credit than the 25% offered by Florida Power & Light. On roll call, the motion carried unanimously.

2. Options for Upgrade of Palm Beach Public School Landscaping. [H. Paul Brazil, Director of Public Works] Deferred from the September 7, 2006, Town Council Meeting.

Public Works Director Brazil provided an overview of six alternatives and presented slides of conceptual views of the options for the Palm Beach Public School Landscaping.

Nancy Murray of the Garden Club pointed out that there was only 18" between the wall and the sidewalk and there was a header for the big wall , so something with a root ball that would grow in a very minimal space was needed. The existing Cocoplum was doing very well, but needed someone to spread fertilization and keep an eye on the maintenance, which was done by the county. She stated that the Garden Club was in favor of Alternative #5, and that she had a discussion with the Town Arborist Bob Haley, in which he had suggested various palms for the different areas. Ms. Murray indicated that whatever alternative was chosen, maintenance should be considered.

President Coleman commented that he was in favor of the Royal Palms because the Town would be maintaining them, just as it did the Royal Palms on Royal Palm Way, and it would then fold into the Town's regular cycle.

Ms. Murray commented that the reason Royal Palms were not their choice was because the heads were so tall, that all you would see were the gray trunks, whereas the other heads of the trees were lower and the trunk had a more interesting line.

Ms. Murray responded to Council Member Brooks regarding the continuance of the symmetry of the Royal Palms on Royal Palm Way by noting that the double alley of the Palms gave it an appearance of an east/west direction. Mr. Brooks indicated that he liked Alternative #2, although there were Christmas Palms with the lethal yellowing problem, and Ms. Murray responded they could be substituted.

President Coleman suggested eliminating some of the alternatives, in order to narrow it down and return next month for an easier discussion.

Mr. Brazil suggested returning to Alternative #1, to begin eliminating the alternatives.

Council Member Wyett said that he agreed with Alternative #5, as Foxtails were compatible aesthetically with Royal Palms, and substantially less than cost, they are very durable and have good recovery after a hurricane. He noted that he was not in favor of the Royal Palms because he could not see the tops of them.

President Pro Tem Kleid suggested allocating a sum of money for the Garden Club to select and maintain the best, long-term trees and plants.

Council Member Markin concurred with President Pro Tem Kleid to allocate money for the Garden Club to handle the landscaping.

Council Member Brooks agreed with President Pro Tem Kleid, however, he indicated that he preferred the Silver Buttonwood as it was heartier than the Cocoplum.

Ms. Murray explained that it was a small space for the Silver Buttonwood for the size that was needed.

Motion made by Council Member Wyett, seconded by Council Member Markin to appropriate an amount not-to-exceed $10,000, to be allocated from the General Fund contingency account, requesting the Garden Club to use its best judgement for the final landscaping (using Alternative #5 as a guideline) and to replace the Christmas Palms with alternative Palms, and directed Town staff to maintain the landscaping for a period of time recommended by the Garden Club. On roll call, the motion carried unanimously.

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

Assistant Town Manager Hannah provided an update of the Palm Tran Bus Routes 41 and 42. The Palm Tran Service Board was considering reducing the number of trips traveling north of Publix on Route 41 and eliminating Route 42.

Council Member Wyett noted that at a previous meeting, a member of the public pleaded that Route 42 not be eliminated, as it was their only means of transportation. He suggested

recommending to Palm Tran that Route 42 not be evaluated for another year.

Council Member Brooks disagreed as it was a Palm Tran decision, which was currently in progress.

Mayor McDonald verified with Ms. Hannah that the two morning and two afternoon trips recommended by the Service Board would still turn around on Seminole Avenue.

President Pro Tem Kleid expressed concern that the Town had asked for Seminole Avenue to be eliminated, which had not been accomplished. It had been diminished, and he was concerned that the Town raised the specter of Route 42. He received several calls by people that utilize that Route, and were dependent on the public transportation. He suggested that the Town Council of the Town of Palm Beach support retaining Route 42.

Council Member Markin reiterated that at the meeting it was very clear that the Town was not recommending anything relative to Route 42. Palm Tran brought up the issue relative to Route 42, that out all of their routes in the county, it was the worst performing route; they were in desperate need of buses throughout the City of West Palm Beach, and wanted to accommodate those areas where the demand was the greatest. She stated that the Town specifically asked them to not utilize Seminole Avenue, and that she was surprised that it was still part of their route.

Council Member Wyett reminded the Council that the users of Route 42 were the year-round residents of the Town.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett to support the continued service of Palm Tran Route 42 for the Town of Palm Beach. On roll call, the motion carried 4-1, with Council Member Brooks dissenting.

Ms. Hannah noted that the Palm Tran Service Board would be meeting to review this possible proposal by the Palm Tran staff at their October 19, 2006 meeting.

Responding to President Coleman, Ms. Hannah stated that Palm Tran Service Board proposed reduction of service on Seminole Avenue, but not removing Seminole Avenue from the Route.

Responding to Council Member Markin's suggestion that a Council member attend the October 19, 2006 meeting, as it would aid in influencing the Palm Tran Service Board, President Pro Tem Kleid indicated that he planned to attend that meeting.

Yvelyne D. Marix, 1570 N. Ocean Boulevard, commented that by Palm Tran leaving out the

midday trip, it eliminated the possibility for anyone who wanted a maid part time, as many people had maids from 8:00 a.m. to 12:00 p.m., or in the afternoon from 1:00 p.m. to 5:00 p.m.

Town Manager Elwell suggested that the message brought to the Palm Tran Service Board meeting would be that because of the concern that this Council had for removing the buses from Seminole Avenue, Route 41 could be rerouted even when it was going to the end lap, that it could loop around in the opposite direction, which would add a few minutes to the Route. The bus could backtrack and come back south, go north on County Road, go west on Sunrise Avenue, south on Bradley Avenue, east on Royal Poinciana Way, and then head north to the inlet, which would avoid the logistical problem as the reason why the buses needed to use Seminole Avenue, since the turning radius was too tight coming back south.

President Pro Tem Kleid indicated that he would bring that message to the Palm Tran Service Board at their October 19, 2006 meeting.

4. Proposed Policy Regarding Abandoned and Derelict Vessels. [Peter B. Elwell, Town Manager] Deferred from the August 8, 2006, Town Council Meeting.

Town Manager Elwell provided information regarding staff's recommendation of the adoption of a policy authorizing the Town staff to remove certain vessels. The funding was an amount not to exceed $15,000 per boat, and $50,000 per year for vessel removal to be paid out of the General Fund Contingency. Staff also recommended that an ordinance be adopted requiring private property owners to remove any derelict or abandoned vessels from their property. Following were five categories of the abandoned and derelict vessels as defined by staff:

1. Unanchored vessels that posed a hazard to navigation;

2. Vessels beached in the surf that posed a hazard to navigation;

3. Vessels beached on Town public property;

4. Vessels beached on private property; and

5. Vessels damaged by hurricanes or other declared disasters.

Mr. Elwell explained the following:

- In categories one, two, and three staff proposed that the Town assume responsibility

for removal of the vessel, as fast action could be taken on these categories.

- In category four, there were significant liability issues for the Town entering private property for any purpose. The Town, however, could assist, but the removal resided with the private property owner.

- And finally, in the immediate aftermath of hurricanes, as the county was funded through state and federal funds, and had a program for the aftermath of hurricanes, the county should be allowed to do their intensive process of vessel removal and only when that removal slowed down should the Town assume responsibility.

- The recommended funding was up to $15,000 per vessel and up to $50,000 total in any given fiscal year under a policy where the Town would do the work immediately, as needed, so the necessary amount of funding could be appropriated after the fact from the General Fund Contingency account.

Responding to Council Member Brooks' question regarding the Town legally recovering costs from the boat's owner, Town Attorney Randolph stated that he did not know the answer to that, but that the Town would attempt to recover the cost, however, he did not know under maritime law what the Town's ability was to recover it.

President Pro Tem Kleid noted that the Town should recognize fiscal conservatism, and this may be a perfect example not to appropriate more funds out of the taxpayer's pockets. This should be done by the federal government, state, and county, as there was a program in process and the county should be allowed to do the job.

Mr. Elwell specified that the hurricanes were a different situation and that the funding and the authority recommended an increased Town role in the situation. If the Council authorized, it would be for non hurricane situations. The post hurricane removal of vessels should continue to reside with the County. The Town should watch that process and only intervene on a case by case basis.

Council Member Wyett commented on the word "beached," he assumed that it also included the lake where there was very little beach. He indicated that Council Member Markin noticed a barge in the vicinity of her home, and that he did not know if the Town had the means to meet the problem, and was not in favor of getting involved with it at this time.

Norman Goldblum, stated that, as past Commodore of Palm Beach Island Yacht Club, and Commodore of United States Naval Institute, when someone salvaged a boat, they had salvage rights to it, whether it was licensed or not. No one had rights to a boat anchored on the inland waterway

without a crew, as it was in public waters.

Council Member Markin clarified her intent was on the vessel issue. On the ocean side, there was concern about storms eroding the sea walls and damaging high-rise condominiums, and on the lake side, unmonitored vessels coming into residents' property. The state had recently changed the laws as to what a local municipality could do under these circumstances. It was important that if an abandoned or derelict vessel was about to cause harm to property, that the Town would be able to act quickly to rectify the situation.

Mr. Elwell explained that staff was responding to the desire of the Council to develop a program for review. Numbers one and two type situations would continue to go unaddressed, except when there was an immediate danger of harm to people rather than property.

It was the consensus of the Town Council to reaffirm the existing policy, which was to communicate these situations to other authorities, rather than to intervene.

5. Proposed Addition of Three Town Holidays and Proposed Change in Maximum Accrual of Vacation Leave.
[Peter B. Elwell, Town Manager]
Deferred from the June 13, 2006, Town Council Meeting and the July 12, 2006, Special Town Council meeting.

Town Manager Elwell indicated that a compensation study performed by the consultant hired by the Town recommended that three additional days of vacation leave be provided to the Town employees as part of the adjustment in pay and benefits. Staff recommended, for operational reasons, that there would be less impact on the public if the additional days were granted as holidays rather than vacation days. Presidents' Day was a holiday that was observed by almost all other governments, and on Christmas Eve and New Year's Eve there was very little demand for services in the buildings.

Mr. Elwell noted that changes in the maximum accruals of the existing vacation leave were proposed in order to reduce the Town's long term liability. Establishment of a new policy for all employees hired on or after the date of approval, would reduce the amount of the allowed existing accrual.

Council Member Wyett commented regarding that in private enterprise if the holiday occurred in the middle of the week, it would be observed on a Friday or Monday in order to give the employee a long weekend, or anytime a four-day holiday could be created would be preferred.

Mr. Elwell responded that a personal day could be used on a Friday to make a long weekend, and the Council could leave some flexibility in the implementation of it, for staff's review, but the basic recommendation would remain the same.

President Coleman expressed concern that Christmas Eve and New Year's Eve were unproductive days anyway, and creating more four day weekends was four days when the garbage did not get picked up, which would potentially create overtime.

Mr. Elwell noted, for the record, that if approved as recommended, it would include the appropriation of $150,000 from the General Fund Contingency for the overtime impact of the three additional holidays.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve the addition of three Town holidays.

Council Member Markin called attention to the approval of the two changes in the maximum accrual of vacation leaves.

Amended motion made by Council Member Brooks to approve the addition of three Town holidays, and the two changes in the maximum accrual of vacation leaves. President Pro Tem Kleid, as the seconder, agreed. On roll call, the motion carried unanimously.

B. New Business

1. Resident Request to Relocate or Replace a Historic/Specimen Tree at 324 Cherry Lane. [H. Paul Brazil, Director of Public Works]

Director of Public Works Brazil indicated that the property owners requested to relocate or replace a historic/specimen Mastic tree at 324 Cherry Lane, as it was prohibiting their ability to develop the property. The resident's representative, Sanchez and Maddux Landscape Architecture proposed the following four alternatives for consideration:

1. Relocate tree somewhere else on the property.

   Staff's concern was that the Mastic tree roots probably penetrated the rock layer below the surface in that area and that there was a 60% chance of surviving a move.

2. Relocate the tree to Bradley Park.

Staff's concern was the survivability of moving the tree and that Bradley Park was used annually on Arbor Day by the Garden Club and the school children to plant a tree, dedicating it to the Town.

3. Exchange it for two smaller trees of the same species on the property.

   If the tree was substantially smaller, it would not classify as a specimen tree.

4. The owners offered to donate $80,000 to the Town, which was equivalent to relocating the tree to Bradley Park or some other Town-owned property.

   The Garden Club had identified other opportunities to invest that money. However, staff's concern was that it would set a negative precedent for the program, and others in similar situations would make the same request.

Staff identified a fifth alternative, which was to leave the tree where it was.

Jorge Sanchez of Sanchez and Maddux of Landscape Architecture, introduced Mr. and Mrs. Minikes, the property owners, and noted that the tree in question was not a specimen tree, and in order to correct the error, the owners were willing to make a donation, which was the amount needed for the second Kapok Tree at the foot of the bridge. The species of the Mastic tree was common in south Florida, and not a rare tree. He introduced Professor Albert Will, landscape architect, ecologist, and horticulturist, who was well recognized in south Florida in his field.

Professor Will commented that he personally surveyed the tree and that in the last two years the hurricanes extensively damaged it. He noted that there was a cavity in the center of three trunks, which was not typical of a Mastic tree that normally had a single leader. Major roots on the tree had been cut some years ago. If transplanted, it would take a minimum of two years to establish itself, but in that time frame it could not withstand hurricane winds.

Responding to Mayor McDonald, Mr. Brazil indicated that the trees were inspected annually. There were no reports written on this tree of any roots that were cut. The last report noted some damage which required maintenance.

Mayor McDonald commented that this tree had been designated a specimen tree for 30 years, and no one had objected to it until today.

Town Manager Elwell responded to Mayor McDonald regarding the overall program. The Town initiated program provided maintenance of specimen trees throughout the Town at the request of the property owner. A letter was sent to the residents recommending action based on the condition

of the trees, while offering the opportunity to be a current subscriber to the program by paying the Town a small fee, which would ensure that the trees remain in good condition. About half the residents subscribed to the program, and half maintained their own trees. The condition of a tree could deteriorate, which was tracked from year to year, but maintenance was not enforced.

Responding to Council Member Brooks, Mr. Brazil commented that the property was recently sold and that these were new property owners. The site had been cleared of heavy vegetation for the new development.

Council Member Markin noted that she had recently walked the property, which was uninhabited for quite some time, and that she could not decipher which tree was under discussion. The tree was not in good shape and was a very poor example of a specimen tree.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to approve removal of the Historic/Specimen Mastic tree at 324 Cherry Lane from the Specimen Tree list. On roll call, the motion carried unanimously.

Ms. Murray commented that since she had served on the Mayor's Ad Hoc Bridge Committee in 1999, it was always their idea to have two Kapok trees. The first Kapok tree had been installed and the second tree would be installed on the north side of the bridge. It would be a smaller tree at installation, on Town property, and the Four Arts had no complaints about the tree. She said she would like to see the Mastic tree give birth to a Kapok tree.

Responding to President Pro Tem Kleid, Ms. Murray noted that the new Kapok tree would cost about $80,000, and the chosen alternative at the public school earlier today, saved approximately $35,000 from the more expensive choice and that Mr. Brazil indicated that there was $26,500 left over in the Florida Department of Transportation account, which was for the bridgehead landscaping.

Motion made by Council Member Wyett to approve a second Kapok tree of an appropriate size, of a cost not to exceed the donation of $85,000, and if the full sum was not expended, the moneys would be restored to the Town.

Council Member Brooks suggested that the presentation of the Kapok tree be on next month's agenda.

It was the consensus of the Town Council that the decision of the Kapok tree be decided next month.

Motion made by Council Member Wyett failed for lack of a second.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett to accept the donation of $85,000 from the property owner to be used for a beautification project in the Town of Palm Beach. On roll call, the motion carried unanimously.

2. Alternate Light Fixtures for A1A.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Brazil provided an update of the alternative decorative light fixtures along State Road A1A from Southern Boulevard to South County Road. During the permitting process, U.S. Fish and Wildlife had rejected the Town standard street light, as their concern was that any lights east of the Coastal Construction Control Line (CCCL) could impact sea turtles, even if the current fixture was shielded. They would only accept a recessed style of lighting, which met none of the Town's standards. As an alternate, staff recommended a set, which included the Town's standard pole and a standard arm, and a recessed fixture. This was aesthetically most in keeping with what the Council had already approved as the standard fixture. Staff was recommending approval of this on State Road A1A, east of the CCCL from Southern Boulevard to South County Road and any small segments in that area, that go west of the CCCL.

President Coleman noted that the standard would be changing on the coast, as there was no choice, which would result in three standards of street lights in the Town.

Motion made by Council Member Brooks to approve the installation of the alternative decorative light fixture for the Florida Department of Transportation (FDOT) sections of State Road A1A from Southern Boulevard to South County Road.

Mr. Brazil provided clarification to President Pro Tem Kleid's question regarding which lighting fixtures would be installed along State Road A1A on the southern end of Town. Mr. Brazil indicated that he anticipated that the Town would be faced with the same alternate fixture.

Mr. Elwell noted that if the alternate fixture was not required, the lighting would be the same as the ones on Royal Poinciana Way.

President Pro Tem Kleid seconded the motion. On roll call, the motion carried unanimously.

3. Suggestions for Updating Town Website to Make it More Informative and User Friendly for Town Residents.

[Jack McDonald, Mayor]

Mayor McDonald made the following recommendations for updating the Town website in order to make it more informative and user friendly for Town residents:

- All development review applications to be put on the website immediately as submitted, but not the attachments, in order to give a 30-day advance notice of the application to the residents;
- Provide e-mail alerts to the residents about particular issues that they had inquired about. Mr. Elwell noted that it was currently being done;
- Ability to register on-line for recreational courses, tennis court times, etc.
- Review police accident reports;
- Building permit applications. Mr. Elwell noted that it currently existed; and
- Audio availability approximately in December.

Town Manager Elwell noted that a staff report would be available in the near future.

4. Sea Gull Cottage. [Susan Markin, Town Council Member]

Council Member Markin requested that Reginald Stambaugh, Executive Director, Preservation Foundation provide an update of the Sea Gull Cottage.

Mr. Stambaugh commented that, on behalf of the Preservation Foundation, they were working with Royal Poinciana Chapel to fine tune an agreement, in order to keep it at its current location. He indicated that further details would be provided at the November 14, 2006, Town Council meeting.

5. Review of Prior Town Council Actions Regarding PB Cats, Inc. [William J. Brooks, Town Council Member]

Council Member Brooks provided a brief history of the feral cat situation. His discussion included the following:

- In the summer of 2002, there was a contentious Town Council meeting regarding feral cats with Catherine Bradley. He had approached Beth Pouncey at the conclusion of the meeting to request that she establish an organization with feral cats.

- On October 8, 2002, Ms. Pouncey submitted a proposal to form PB Cats, Inc., with a $30,000 stipend from the Town.

- On December 11, 2002, Ms. Pouncey held a seminar in Town Hall on the Trap/Neuter Release (TNR)Program, which was aided and abetted by former Mayor Smith.

- On February 11, 2003, the Council approved the establishment of PB Cats, Inc.

- On August 8, 2006, the Town Council voted to allocate $150,000 in tax payers dollars to PB Cats, Inc. Shortly thereafter, Council Member Markin announced a new board of directors for PB Cats, Inc., a 501(c)3 organization. The new board was composed of very accomplished citizens, who would greatly aid PB Cats, Inc., in becoming a most successful operation. In Ms. Markin's announcement of the new board, Catherine Bradley's name was not mentioned.

- On September 28, 2006, Mr. Brooks indicated that Ms. Pouncey was made an offer by Ms. Markin that she could not accept, and as a result she resigned as reported by the Palm Beach Daily News in its September 29, 2006 edition. In the same article, it was stated that Catherine Bradley was now a member of the PB Cat, Inc.'s board.

Mr. Brooks stated that, as a Council Member, he was deeply concerned about these developments. Last month he voted to use Town funds to support PB Cats, Inc. In light of what had happened, he said he now had serious reservations about that decision. He indicated that he was concerned that Ms. Markin had good intentions, but was in conflict of interest as a member of the Town Council and the board of PB Cats, Inc. He said that in his judgement it was inappropriate to be an elected member of a collegial body that was the Town Council and simultaneously to be lobbying that body with the taxpayers' dollars for PB Cats, Inc. He commented that he was deeply troubled by the presence of Catherine Bradley on the PB Cats, Inc., Board of Directors. The good news was that the new board seemed to be made up of wonderful, financially successful people with strong backgrounds in raising funds for political and other causes. The considerable fund-raising capability by the new board caused him to question the proper use of taxpayers' dollars. Therefore, the Council must reconsider their decision to provide Town support for PB Cats, Inc.

Motion made by Council Member Brooks that Town Council rescind its decision of August 8, 2006, providing financial support for PB Cats, Inc., in the amount of an additional $100,000.

President Coleman indicated that he was not at that meeting, but as a person who had been against the funding, he acknowledged that PB Cats, Inc., had since moved forward in serving the Town. Mr. Coleman commented that the Town had been unable to gain legal, moral, or any leverage up to now with Ms. Bradley. He said he was hopeful that the board, in which she wanted to cooperate, would be able to exercise restraint on her to comply with the rules of the Town, knowing that if PB Cats, Inc., were unsuccessful that the Council would be holding the board accountable and the funding would be put in jeopardy by her future actions. If it did not improve, he would be happy to explore discussions rescinding the decision.

Council Member Wyett commented that prior to making the changes, he had numerous conversations with Ms. Bradley, and was convinced that she would be an asset to the activities that PB Cats, Inc., were now doing. He had read the report, which had been encouraging. The $100,000 would be well spent, if the organization succeeded, rather than hearing citizens complain. He had no problem with Ms. Markin being on the Town Council and the PB Cats, Inc., board. She was ensuring that the job was being done, and that the Council should be thankful.

President Pro Tem Kleid noted that he agreed with Mr. Brooks that it was mistake to put Ms. Bradley on the Board, in view of all the problems that the Town has had with her, and it was a question of perception. However, since the Council started this going, he said it owed themselves an obligation to see how the new directors of PB Cats, Inc., pursued their objectives and the Council would have other opportunities as time goes on to determine whether further contributions would be made to this organization. With respect to Ms. Markin being on the board, he said that there was no legal obligation that she step down, but if it were a question of perception as to how other members of the community felt for occupying both positions, it would be her prerogative to retire from the board.

Council Member Markin stated that she respected Mr. Brooks' sensitivities to Catherine Bradley based on the history, and responded to several of his points:

- It was decided at a board meeting as to who would be on the board based on the volunteers. The entire board was announced all at the same time, and Catherine was one of those people. She volunteered to serve on the board, but not volunteer, contrary to a newspaper article, to be field director.

- It was a labor intensive charity, and that she did not enjoy spending as much time on cats as she had been doing, but was committed to this Council when they agreed to give funds to PB Cats, Inc. She would work for PB Cats, Inc., while they were restructuring and serve on the board only until the board was full with new volunteers, or that she could act as an advisor. She said she thought she had concurrence from the Council that they wanted her to participate, in lieu of no else wanting to do it. It

was an important asset to the community, as the amount of work was enormous that these individuals, including Catherine Bradley, had put into this organization in the last 45 days since it was restructured. Catherine Bradley was acting purely at the direction of the board, and was extremely cooperative, and working tirelessly. In the very beginning, the goal was to bring two disparate cat programs together under one umbrella. Ms. Bradley was the other cat group besides PB Cats, Inc.

Council Member Brooks responded that his problem was the use of taxpayers' dollars, and cited several examples of ongoing problem areas.

Motion made by Council Member Brooks failed for lack of a second.

Brian LaRue of PB Cats, Inc., commented that the board was well aware of Catherine Bradley's transgressions. He indicated that he had met with Catherine Bradley almost every day and that she was the most dedicated individual he had ever seen, and was very aware of Mr. Brooks' concern. The organization had been structured in that Ms. Bradley had been focused on the Trap/Neuter Release (TNR) Program. Under the drive of Ms. Bradley, the trapping increased to 409% over the production in January to August, and dramatically cut field directors expense by 48%, which netted 12% savings of the overall operating cost, which would go directly back into the budget. The new board consisted of passionate advocates for the feral cats, and they were considerate of the concerns of the residents.

Leslie Evans, 135 Seminole, commented that the Town should not be involved in putting money into this program. He had problems with Ms. Bradley and his properties, and on Seminole Avenue where he lived, cats were all over the place and he had not seen any change. He said he had seen Ms. Bradley recently feeding birds by the old Casablanca.

President Coleman indicated that he would ask PB Cats, Inc., to look into Ms. Bradley feeding birds.

6. Standard Acknowledgment Letter for Correspondence from the Public Regarding Town Council Agenda Items.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell referred to his detailed memorandum to the Mayor and Town Council, dated October 2, 2006, and included in the backup material, to explain the use of standard acknowledgment letters for correspondence received from the public regarding Town Council agenda items.

It was the consensus of the Town Council to approve the use of standard acknowledgment letters as presented by Town Manager Elwell.

7. Appointments to the Firefighters Retirement Board of Trustees. [William C. Crouse, Director of Human Resources]

President Coleman announced that Richard H. Krock had been reappointed as a Resident Member to the Firefighters Retirement Board of Trustees, for a term expiring September 2008.

President Coleman announced that R. Keith Elliott had been appointed as a Resident Member to the Firefighters Retirement Board of Trustees, for a term expiring September 2008.

8. Appointments to the Police Officers Retirement Board of Trustees. [William C. Crouse, Director of Human Resources]

President Coleman announced that James McCartney Wearn and Raymond W. Snow had been reappointed as Resident Members to the Police Officers Retirement Board of Trustees, for a term expiring September 2008.

9. Selection of Consulting Firm for Planning and Zoning Services. [Veronica B. Close, Director of Planning, Zoning, and Building]

President Pro Tem Kleid advised that he requested this item be pulled from the Consent Agenda as he believed the Town should try to obtain an internationally recognized leader to advise the Town with respect to community planning and visioning. He stated that he had no objection to contracting with Calvin, Giordano & Associates, Inc., and Iler Planning Group for five year terms since these organizations had been thoroughly researched by the Planning, Building, and Zoning Department.

President Pro Tem Kleid made a motion to direct the Planning and Zoning Commission to extend its search for other consultants who would work, in conjunction or in another capacity, with the two consultants selected by the Town in order that the Town have the best talent possible to work on projects.

Council Member Brooks requested clarification of the motion.

In response to Council Member Brooks, President Pro Tem Kleid stated that his motion would involve approval of staff's recommendation to award planning and zoning consulting services contracts agreements to both consultants mentioned and then obtaining an additional consultant with outstanding credentials who might work in conjunction with these two consultants, or outside of these consultants. He advised that he did not have a budget figure, and explained that the Commission would have to come back before the Town Council to advise what the costs would be. The Town Council, at that time, could decide whether or not they wanted to go forward with hiring an additional consultant.

After further discussion, it was the consensus of the Town Council to defer the recommendation made by President Pro Tem Kleid to the November 14, 2006, Town Council meeting.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks, to approve staff's recommendation to award planning and zoning consulting service contracts to both Calvin, Giordano & Associates, Inc., and Iler Planning Group for five year terms. On roll call, the motion carried unanimously.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 9-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 82, Personnel, Article Ii, Employee Benefits, to Include a New Division 3, Other Post-employment Benefits, Including Section 82-150, Definitions, Section 82-151, Statement of Purpose, Section 82-152, Establishment of OPEB Trust, Section 82-153, Administration of OPEB Trust, Section 82-154, Contributions to OPEB Trust, Section 82-155, Distributions from OPEB Trust, Section 82-156, Amendment of OPEB Trust, Section 82-157, Prohibition of Assignment of Interest, Section 82-158, Miscellaneous, Providing for the Establishment and Administration of a Post-employment Benefit Trust for the Benefit of Participating Retirees and Their Beneficiaries; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 9-06 by title, as printed above.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett, to adopt Ordinance No. 9-06. On roll call, the motion carried 4/0, as Council Member Brooks was temporarily out of the room.

2. ORDINANCE NO. 11-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 10, Animals, at Section 10-3, Number of Domesticated Pets; Section 10-10, Temporary Permits; Section 10-41, Registration, Inoculation; Section 10-42, Collar and Tag; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Sarah E. Hannah, Assistant Town Manager]

Town Attorney Randolph read Ordinance No. 11-06 by title, as printed above.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to adopt Ordinance No. 11-06. On roll call, the motion carried 4/0, as Council Member Brooks was temporarily out of the room.

3. ORDINANCE NO. 12-06 An Ordinance Of The Town Council of The Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 42, Environment, By Including New A Section 42-3, Making It Unlawful To Discard Foodstuffs, Seeds, Garbage or Organic Materials onto The Public Streets, Rights-Of-Way or Public Properties of The Town; Providing An Exception For Feral Cat Feeding Programs; Including A New Section 42-4, Relating To Penalties; Providing For Penalties; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.
[Sarah E. Hannah, Assistant Town Manager]

Town Attorney Randolph read Ordinance No. 12-06 by title, as printed above.

Motion made by Council Member Wyett, seconded by Council Member Markin, to adopt Ordinance No. 12-06. On roll call, the motion carried 4/0, as Council Member Brooks was temporarily out of the room.

B. First Reading

None

XII. DEVELOPMENT REVIEWS

A. Legal Obligations and Rights of Town Elected Officials When Considering Zoning Applications. [Denis P. Coleman, Town Council President]

Town Attorney Randolph touched on highlights of his report, which was provided to the Council relating to variances, special exceptions, and site plan reviews, as well as quasi-judicial matters. He explained the following:

- A variance was a variation from the strict regulations of the code, which caused the Council to be very strict regarding the conditions in the granting of a variance.

- A special exception was a permitted right as long as the applicant met all of the criteria set forth under the code relating to special exceptions. Case law indicated that the first burden rested with the applicant to address the allegation that they had met the Town's requirements. Once that was done the burden shifted to the Council to show why they may have not met those criteria. Decisions should always be based on the criteria based in the code.

- Variances, site plan reviews, and special exceptions were heard in a quasi-judicial setting. Quasi-judicial hearings (applying the law as it already existed) were heard on the basis of criteria set forth in the Town's code. It was the Town Council's job as judges to apply only those criteria. It was enumerated under the code and the applicant ought to be able to rely upon and make a presentation so that they could know what their task was in proving that they met those criteria.

- Legislative matters (making laws) were normally discussed in the morning sessions to make determinations as to how to make the law apply, such as regarding Town Hall and the adoption of ordinances, etc. Consultation with constituents could be done at any time to learn what they would like to see regarding those legislative matters. Talking to constituents regarding quasi-judicial matters was acceptable within certain parameters.

- In quasi-judicial hearings, where the Town Council were acting like judges, it was

required that: fundamental due process would have to be offered; notice was required; an opportunity to be heard; an opportunity to submit evidence; an opportunity for cross examination; the application of the specific criteria set forth in the code; and an opportunity to be heard by a fair and impartial decision maker. An impartial decision making process meant that there were no predisposed opinions regarding the case. You should make the case based on evidence, and wait until all the evidence was in before making a decision; not based upon what your constituents or friends would like you to do on an application, but on the code.

- In ex-parte communications, state law was changed to allow discussion with the applicants on the condition that the communication was revealed to the applicant and others at the public hearing. It gave the applicant an opportunity to address what was heard. Ex-parte should be as complete as possible, including oral communications, written communications, including e-mails, who took part in the discussion, the subject matter of communication, site visits, etc. After ex-parte communications were made, the Town Council members could remain fair and impartial, basing decisions upon the evidence heard at the public hearing.

B. Appeals

None

C. Time Extensions

1. Request for Extension of Work Hours at 240 Worth Avenue per letter dated September 27, 2006, from Dan Tschida of Four Corners Construction, L.P. [Veronica B. Close, Director of Planning, Zoning, and Building]

Dan Tschida, Four Corners Construction, stated that the applicant was requesting a thirty (30) day extension of work hours, to November 30, 2006, in order to finish the new construction project for Hermes, 240 Worth Avenue.

In response to President Coleman, Mr. Tschida advised that all work would take place indoors.

Motion made by Council Member Wyett, to approve the thirty (30) day request for extension of work hours at 240 Worth Avenue, to November 30, 2006. President Pro Tem Kleid seconded the motion with the following conditions.

- **Work hours are from 7:00 a.m. to 6:00 p.m. only.**
- **No work allowed on Sundays.**
- **No work allowed on Veteran's Day, November 10, 2006.**
- **No work allowed from Wednesday, November 22nd through Sunday, November 26th for Thanksgiving.**
- **Approval required from the Worth Avenue Merchants Association.**
- **No deliveries, parking or use of Worth Avenue right-of-way after 9:30 a.m. allowed.**
- **Any noise complaints may be grounds for revocation of the extension.**
- **All exterior work must be completed by October 31, 2006.**
- **Only interior work permitted during extension.**

On roll call, the motion carried 4/0, as Council Member Brooks was temporarily out of the room.

D. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #8-2006 The application of Rapunzel's of Palm Beach, Inc., Randi J. Evans, Vice President, relative to property described as Royal Park Addition, Lot 32, Block G; commonly known as 326 & 328 South County Road and 208 Brazilian Avenue; located in the C-TS Zoning District. Request for a special exception approval to add 1,437 square feet to an existing retail store (Rapunzel's Closet) for a total of 2,840 square feet which is located on the first floor with frontage on South County Road and Brazilian Avenue.

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

David Miller, on behalf of the applicant, stated that the application was for a request to expand an existing retail operation, Rapunzel's Closet, from 1,437 square feet to 2,840 square feet. He advised that Town-serving documentation had been provided.

Zoning Administrator Paul Castro commented that staff had understood that the applicant

would withdraw the portion of the application for a seating area and food service in the proposed expansion of the clothing store.

Mr. Miller responded that, at this point, it would just be a retail operation. The applicant would revisit the restaurant issue, with Town staff and the Town Council, if there needed to be any food service, in the future.

Mr. Castro confirmed that the applicant had provided staff with Town-serving documentation provided by a Certified Public Account.

In response to President Coleman, Mr. Castro advised that there would not be a restaurant and there was no food involved.

Council Member Wyett made a motion to approve Special Exception #8-2006 with the condition that in the event Rapunzel's ceased to operate, the space reverted to the original size. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

Mr. Castro requested the applicant provide staff, as part of their approval, with a modification of the plans, which were a part of their application, relative to the elimination of the seating in that space.

Mr. Miller stated that the applicant would provide that modification of the plans to staff.

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

Request for Deferral to the November 14, 2006, Town Council Meeting Per Letter Dated September 26, 2006, From Peter S. Broberg.

Deferred Site Plan Review #17-2006 with Special Exception and Variances to the November 14, 2006, Town Council meeting, under Item VII., Approval of the Agenda.

c. SITE PLAN REVIEW #18-2006 WITH SPECIAL EXCEPTION AND VARIANCES The application of Thomas J. and Carroll D. Swan, Jr. relative to property described as Condominium Parcel PH-4 ONE ROYAL PALM WAY CONDOMINIUM; commonly known as 100 Royal Palm Way, PH-4; located in the R-D(2) Zoning District. Site Plan Review for the awning. Special Exception to install one awning on a floor above three stories in height. Variances to install a 332.50 sq. ft. awning with a street side yard setback of 4 feet in lieu of 62.5 feet required; to install a 332.50 sq. ft. awning with a rear yard setback of 10 feet in lieu of 30 feet required; to install an awning on the 6th floor of a building in a District that allows 3 story buildings by right and 5 story buildings with a Special Exception; and, to install the awning at a height of 69.08 feet in lieu of the 62.5 feet maximum allowed. **Request for Deferral to the November 14, 2006, Town Council Meeting Per Letter Dated September 26, 2006, From Peter S. Broberg.**

Deferred Site Plan Review #18-2006 with Special Exception and Variances to the November 14, 2006, Town Council meeting, under Item VII., Approval of the Agenda.

d. SUBDIVISION CASE #01-2006 The application of Oakland Property, LLC for a replat of a portion of lots 129 and 130, Palm Beach Estates; commonly known as 2315 South Ocean Boulevard; located in the R-C Zoning District. The existing plat currently has four (4) parcels, three (3) lots of approximately 10,000 square feet and one (1) lot (known as "Parcel 1") which contains a total of approximately 21,650 square feet east of Ocean Boulevard. The applicant's proposal is to re-subdivide this 4-parcel property into 4 lots to accommodate the development of four (4) single-family homes.

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

Attorney James Brindell, on behalf of the applicant, advised that the request was for a proposed replat of the old Sea Lord Hotel property located on the east side of South Ocean Boulevard. He provided an overview of Subdivision Case #01-2006.

Zoning Administrator Castro provided the following staff comments:

- Subdivision had been signed off by all utility companies.
- Staff's concern related to the two most eastern lots relative to their size and their disposition.
  - Staff recommended a Developer's Agreement to address the applicant's intent to develop the two lots.
- The seawall issue had been resolved.
- Plat was in the process of being reviewed by the Town's surveyor who had advised staff that there might be some minor issues, which needed to be completed before the signing and recording of the replat.

Attorney Brindell addressed staff's comments relating to the size and disposition of the two lots. He noted that the initial intent was to resize the property to better fit four single family homes. He commented that he did not believe that the applicant, at that time, appreciated the ability to have two homes on each of those parcels, due to the density that was allowed because of the lot size. He suggested that the disposition of those lots should be left to whoever purchased them. The buyer would then have to come before the Town Council.

Council Member Wyett noted that since this was the third or fourth attempt to redevelop the property, the applicant should be given some flexibility as to the disposition of the property.

Mr. Castro advised that staff had recommended the applicant notice property owners within 300', even though there was no requirement that the Town advertise the subdivision. He explained that his only concern was that the notice that the Town sent out, which was prepared by the applicant, stated that the subdivision was for four single family dwellings.

After further discussion, Attorney Brindell suggested that the applicant would agree not to pursue the lots for more than four single family homes without coming back before the Town Council, subject to a re-notice.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve Subdivision Case #01-2006.

In response to Council Member Brooks, Attorney Brindell advised that the original approved plan was for eight units.

On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. SITE PLAN REVIEW #9-2006 WITH VARIANCES The application of The Villas, Inc., Leo Albert, President relative to property described as Lots 12 through 25 inclusive, a portion of Lot 26 and a portion of Lot 29, Block 13 of Royal Park Addition; commonly known as 425 Worth Avenue; located in the R-D(2) Zoning District. The applicant requests modification of site plan approval by Town Council to place an emergency power generator and screen wall at the Northeast corner of the existing site; variance for locations of generators and pool equipment: applicant seeks a variance to locate an accessory structure (emergency power generator) and screen wall within the street rear yard setback. The applicant seeks a street rear yard setback of 7 feet in lieu of 30 feet minimum as required by code for an accessory structure. The applicant seeks a variance to allow a screen wall at a height of nine (9) feet in lieu of six (6) feet maximum allowed in a street rear yard. *Deferred from the July 11, 2006, August 8, 2006, and September 7, 2006, Town Council Meetings.* **Request for Deferral to the November 14, 2006, Town Council Meeting Per Letter Dated October 3, 2006, From Francis X. J. Lynch.**

Deferred Site Plan Review #9-2006 with Variances to the November 14, 2006, Town Council meeting, under Item VII., Approval of the Agenda.

b. SITE PLAN REVIEW #12-2006 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Lessee: Starbucks, and Property Owner: Worth Avenue Associates LTD, by: Esplanade GP LLC, its General Partner, by: Goodman Properties Inc., Manager, by James R. Brindell, their attorney relative to property described as lengthy legal description on file; commonly known as 150 Worth Avenue - The Esplanade; located in the C-WA Zoning District. This is a request to partially replace an existing retail children's clothing store with a restaurant in Suite #110 of The Esplanade. Suite #110,

which totals 2,161 square feet, currently houses The Purple Turtle. The new proposed restaurant, known as Starbucks, will occupy 1,681 square feet. (The remaining 480 square feet will remain retail.) The restaurant is proposed to have 25 seats, including up to 9 seats outside in the Via. Twelve of the seats will come from the number of seats supported for purposes of parking by the retail space (equivalency). The other 13 seats are new. They also sell coffee makers, mugs, and related items. They will offer take-out as well as on-site seating. Hours of operation are proposed from 8:00 a.m. to 11:00 p.m., seven days a week. Site plan modifications are also sought to add a back door to the restaurant and a paved walk to connect the back door to the Esplanade's trash area. A restaurant requires a special exception approval in the C-WA District. The outdoor seating requires a special exception approval. A variance is requested to eliminate the requirement that this project provide five additional parking spaces required for the thirteen additional seats being requested for this restaurant. A variance is requested to allow the landscaped open space on this site to be reduced to 14.25% in lieu of the 15.1% existing and the 25% minimum required. The existing landscaped open space is 15.1%. The reduction is the result of the installation of a paved access way to connect the new back door of this restaurant to the trash loading area. *Deferred from the July 11, 2006, and August 8, 2006, and September 7, 2006, Town Council Meetings.*

Ex-parte communication was declared by Council Member Markin with many residents at a Worth Avenue Association breakfast meeting; residents at Winthrop House, 100 Worth Avenue; individual e-mails, letters; and phone calls.

Ex-parte communication was declared by President Pro Tem Kleid who had received and read many e-mails and letters; telephone conversations with people who expressed their position on Starbucks; met with the developer and his attorney; and looked at the site.

Ex-parte communication was declared by President Coleman via conversations with Attorney Brindell and his clients numerous times; via conversations with various members of the community; received various e-mails, which were part of the public record. He commented that there was a public record of any written communication that had been received.

Ex-parte communication was declared by Council Member Wyett who received and read many communications; his computer was loaded with e-mails, which he was behind in reading; via telephone conversation with Mr. Goodman.

Ex-parte communication was declared by Council Member Brooks who had read a substantial amount of e-mails, both pro and con, on this application; and via a meeting with Mr. Brindell, the attorney for the applicant.

Attorney James Brindell, on behalf of the applicant, advised that Murray Goodman, President of the Goodman Company, who was a thirty-three year resident of the Town of Palm Beach, was present today along with a number of other witnesses.

Attorney Brindell provided an overview of the modifications to Site Plan Review #12-2006 with Special Exceptions and Variances. He noted that the modifications had been made after the applicant appeared before the Town Council at the August 8, 2006, Town Council meeting.

Attorney Brindell presented to the Town Clerk, Attorney Randolph and the court reporter a binder containing seventeen exhibits relative to Site Plan Review #12-2006, and requested that the following exhibits be accepted into the record in support of the application.

1. Zoning Application - Site Plan Review #12-2006 with Special Exceptions and Variances
2. Location Plan of the Proposed Starbucks
3. Official Worth Avenue Association Map
4. Worth Avenue Chain Stores in the United States.
5. Letter with Enclosures dated August 1, 2006 from Attorney Brindell to Director of Planning, Zoning and Building Close providing Town-serving information.
6. Report from Richard G. Orman & Company, Inc. dated October 10, 2006, which contained a summary of the testimony he would present today. The conclusion being that it complied with the standards for special exception criteria.
7. Jenkins Appraisal Services, Inc., letter dated October 6, 2006, addressed the compliance of the application with several of the economic aspects of the special exception criteria.
8. Gould & Associates Report dated October 3, 2006, which addressed the Town-serving issue.
9. DKS & Associates Report dated October 9, 2006, which addressed parking and traffic impacts.
10. Letter dated October 2, 2006 from Jacqueline Rodriguez, New Store Development Manager, South Florida, Starbucks Coffee Company, to the Mayor and Town Council, which provided customer profile survey data developed in 2005, relative to their customers at the West Palm Beach Starbucks.
11. Letter dated August 3, 2006 from Worth Avenue Property Owners Association to the members of the Town Council supporting the application.
12. Letter dated July 10, 2006 from the Worth Avenue Association to the Town Council

supporting the application.

13. Interior photographs of a prototypical Starbucks.
14. Letter dated September 13, 2006 from Attorney Brindell to Zoning Administrator Paul Castro addressing the reduction of seats.
15. Letter dated September 18, 2006 from Attorney Brindell to Town Attorney Randolph regarding the recusal issue.
16. E-mail from Henry McIntosh dated September 8, 2006.
17. Letter dated October 5, 2006 from Attorney Brindell to Ms. Close regarding the reduction for the request of seats in the Via.

Attorney Brindell provided background information on the following persons, who would provide expert testimony:

- Richard G. Orman, Ph.D., AICP, President Richard G. Orman and Company, Inc.
- Diane Jenkins, MSA, State-Certified General Real Estate Appraiser, President of Jenkins Appraisal Services, Inc.
- Jack Gould, Gould & Associates, Retail Consultants
- Jerry Wentzel, P.E., Southeast Regional Manager, DKS Associates
- Robert Moore, Former Planning, Zoning, and Building Director for the Town of Palm Beach.

Attorney Brindell summarized the facts and addressed some of the issues that had been raised relative to this application.

The following persons provided expert testimony relative to this application:

Dr. Richard Orman, 4203 Oak Street, Palm Beach Gardens, on behalf of the applicant, explained that he had been given the task to evaluate the criteria for granting special exceptions, as set forth in 134-229 of the Town Code. He referred to his report, which was placed into the record earlier in the meeting, to provide expert testimony supporting his professional opinion that the Starbucks application met all the criteria for a special exception set forth in 134-229 of the Town's Ordinances.

In response to Council Member Wyett, Zoning Administrator Paul Castro advised that the entire tenant space was under 2,000'. He stated that it used to be a larger store, which had been split up into two separate tenant spaces. One was a smaller retail space which would be adjacent to the Starbucks location. The proposed Starbucks would be 1,681 square feet and not 2,111 square feet.

Mr. Castro explained that the reason the applicant was in front of the Town Council today was because the restaurant, no matter its size on Worth Avenue, in the Worth Avenue Zoning District,

was a special exception use along with the outdoor seating, which was a separate special exception use, and required the Town Council's approval.

In response to Council Member Markin, Attorney Brindell stated that under Town Code, Section 134.2439, there was the right to have a display window for tenants located inside a building to indicate the nature of that business. He explained that there were display windows on the street that were allowed, by the Code, but those display windows would count toward the allowable total signage for individual businesses in the building. The windows were discrete types of displays.

In response to Council Member Markin, Mr. Castro advised that staff was aware of the display windows, but noted that the applicant's Town-serving documentation, had represented that there would be no outside appearance of the Starbucks store from the Avenue itself. He advised that it was inconsistent with Section 12 of their application, under Special Exceptions.

Diane Jenkins, President of Jenkins Appraisal Services, on behalf of the applicant, advised that she had been in the real estate industry in Palm Beach County for thirty-two years. She explained that she had been requested to look at the Starbucks application to determine whether or not it would have any type of impact on surrounding real estate. She concluded that there was no detrimental impact from a Starbucks being in a location such as this.

Jack Gould, President of Gould & Associates, retail consulting firm located in Washington, D.C., on behalf of the applicant, advised that since he graduated from the University of Pittsburgh in 1958, he had conducted retail studies. He provided a brief history of previous retail market studies he conducted. He presented his expert testimony and stated that it was their considered opinion that Starbucks would not bring extra traffic or parking problems to Worth Avenue.

In response to President Pro Tem Kleid, Mr. Gould stated that he, too, understood that the developer would validate parking for Starbucks. He advised that he understood the developer would fund, for at least one year, a parking control person to patrol the Avenue to ensure there would not be any parking violations.

Attorney Brindell reported that a specific amount of $13,000 was offered, based upon the estimate they had received for a parking control officer, not a police officer, for five days a week. He explained that Mr. Moore had received that estimate from the Police Department.

Jerry Wentzel, a principle with DKS Associates, a transportation consultant, on behalf of the applicant, noted that their responsibility was to address the traffic and parking issues associated with the Starbucks store. He provided expert testimony related to parking and traffic concerns.

Robert Moore, consultant for the Goodman Company, on behalf of the applicant, provided

expert testimony stating that after reviewing the application for the special exception and the variances, he determined that it did meet the criteria as found in the Town Ordinance.

Attorney Brindell discussed the following provisions proposed by the applicant:

- Hours of operation:
  8:00 a.m. to 11:00 p.m., Monday through Sunday
- Valet Parking:
  - 8:00 a.m. to 11:00 p.m.
  - Validation of valet parking for Starbucks customers
- Request to locate 2 of the 19 seats at a table immediately outside of the store in The Esplanade Via.
- Town-serving documentation would be provided annually.
- All garbage, including glass, would be stored in the restaurant after 7:00 p.m. and would not be placed in the dumpster or glass crushing area until after 8:00 a.m. the next morning. Noted that this was the same condition the Town imposed on Trevini.
- Agreed to make a one time payment to the Town of $13,000 for the cost of a parking control officer to check for parking violations on Worth Avenue between 8:00 a.m. and 10:00 a.m., Monday through Friday.
- The Starbucks logo, to be placed on the store, would only be 1' in size. Historically the logo had been 2'. A rendering, to scale, of the logo was handed out.

Zoning Administrator Paul Castro provided a brief history of the application. He noted that staff had concerns regarding the following special exception criteria for the restaurant, that may not have been addressed:

- The fact that there was no clear service area or service corridor to provide for refuse or deliveries of perishable goods.
- Pedestrian activity and safety:
  - Staff was not sure, in terms of the location of Starbucks, how many people would actually use the garage.
  - Staff believed customers would use on-street parking during peak season, peak hours, during the winter time.
- Town-serving documentation:
  - Based on the original application, a key to the Town-serving nature of Starbucks would be its internal location within The Esplanade and that they would have no signage on the street facades of The Esplanade.
  - Due to the internal location of the store, it would be very unlikely that the restaurant would draw a substantial number of people who were not Town residents or employees, especially since there were already two Starbucks

located in West Palm Beach.

- In another portion of the application, it was noted that there would be some signage, which might attract drive-by traffic to stop at the store.

Mr. Castro noted that traffic and parking consultants were present to provide observations and information on other Starbucks stores relative to the proposed Palm Beach Starbucks. The consultants would also present findings related to trash, loading and unloading of goods and services, pedestrian and vehicular traffic.

Mr. Castro advised that if the Town Council approved the Starbucks store, staff requested that the following conditions be incorporated in that approval:

- The only restaurant equipment to be allowed in the store would be coffee machines and microwaves.
- Signage would only be interior to The Esplanade.
- The hours of operation would be 8:00 a.m. to 10:00 p.m., during the week and Saturday, and on Sunday 8:00 a.m. to 9:00 p.m.
- No trash outside before 9:00 a.m. or after 7:00 p.m.
- Validation of parking.
- Size of logo.
- Town-serving documentation within six months of opening and every year thereafter at the time of renewal of their occupational license.
- Hiring of a parking enforcement officer by the developer.

Brian Mirson, American Consulting Engineers, on behalf of the Town, noted that he would be wearing two hats, one as a traffic engineer and the other as a planner, to review the traffic circulation and parking report for the proposed Starbucks as well the study of Starbucks stores located on Clematis Street and Atlantic Avenue in Delray Beach. He discussed the study, as provided in the backup, to present his testimony and noted that American Consulting Engineers, basically, concurred with the findings of DKS Associates.

Council Member Wyett noted that he did not accept the comparison of the Clematis Street Starbucks to Worth Avenue, and discussed the following concerns:

- Increase in morning traffic;
- The design of The Esplanade as it related to this type of restaurant;
- Trash being taken to the dumpster during the day when pedestrians would be going back and forth;
- Traffic after the dinner hour, which would impact the residential buildings in that area.

Council Member Wyett advised that he had been charged with protecting the residents of the Town and explained that he was waiting to be convinced that he was wrong about Starbucks.

President Pro Tem Kleid noted that it appeared to be Mr. Mirson's testimony that American Consulting Engineers' findings were compatible with the findings of DKS as far as the analysis was concerned, and the amount of traffic that would be generated on the block.

Chief Reiter commented regarding enforcement, what he envisioned, and the practical aspects of this issue. He noted that, under the worst situation, it would be necessary to post a police officer or parking enforcement officer there, but did not believe, even if the traffic volumes that had been mentioned were accurate, a full time police officer or parking enforcement office would be required.

Chief Reiter discussed the costs for a parking enforcement officer five days a week, two hours a day. He noted that the figure mentioned earlier actually fell a bit short. He advised that the Police Department did not have a special assignment overtime program for parking enforcement officers, in the same way that they did for police officers. He stated that if they did, there would have to be a fee set. He reported that if the figure was based purely on paying benefits, it would cost approximately $15,000 a year, which was just pure reimbursement for average paying benefits. The costs for a police officer would be $60.00 per hour.

Council Member Markin requested Chief Reiter's response regarding safety concerns, since the potential venue for the Starbucks was inside The Esplanade, in a somewhat discreet location, and that they proposed to be open up to 11:00 p.m.

Chief Reiter responded that just from a theoretical viewpoint, he would have those concerns, but advised that they had not been born out with Trevini. He noted they had not, historically, encountered problems with the other businesses, over the years, that had been the lone business, which stayed open late at night in The Esplanade.

PUBLIC COMMENT:

Brian House, representative of Love Realty, read a letter into the record from Mr. Handelsman, President of Love Realty, in opposition of Starbucks.

The following persons commented in opposition of the Starbucks application:

Frank Benevento - 100 Worth Avenue
Adele Kahn - House of Kahn on Peruvian
Stuart Shulman - 2280 South Ocean Boulevard

Jere Zenko - 232 Tangier Avenue
Ron Johnson - 100 Worth Avenue/office, Palm Beach Today, 256 Worth Avenue
Peter Rock - 44 Cocoanut Row

The following persons spoke in support of the Starbucks application:

Orator Woodward - 251 El Bravo Way
Mitchell Slotkin - 200 Eden Road
Michael Phillips - owner Michael's Café, 240 Worth Avenue, Gucci Courtyard
Beverly Wilkes - 434 Chilean Avenue
John Maus - merchant at 321 Worth Avenue
Sherry Frankel - President of Worth Avenue Association
Dan McDonnell - 2784 South Ocean Boulevard

Council Member Brooks thanked the citizens for their participation. He advised that the Town Council had taken an oath to uphold the law and discussed the following observations:

- Some of the observations made today were very close to a violation of anti- trust laws, which was not acceptable.
- The law had to be upheld. Town Council was a quasi-judicial body and should not prejudge, but should listen to the citizens, the experts, discuss amongst themselves, and then a decision would be made.

President Pro Tem Kleid advised that he had given considerable thought to the Starbucks application and had attempted to analyze both the facts and the law as they related to this special exception request. He advised that he had come to the following conclusions and observations:

- Informal survey of the Worth Avenue merchants revealed that the majority looked upon Starbucks as an asset to the Avenue.
- Many customers requested a place where they could sit down to have a coffee or latte and rest during their shopping sojourns on Worth Avenue.
- Many stated that Starbucks would add to the ambience and shopping experience of Worth Avenue.
- The argument that Starbucks would bring a pierced crowd to Worth Avenue; or the argument of today, Starbucks, tomorrow Taco Bell, and that its presence would create traffic problems, failed, for him, to be persuasive. The profile of the typical Starbucks customer belied those statements.
- Starbucks agreed to validate parking at The Esplanade garage, which even on the busiest day of the year would be far from full.
- A traffic control person would be funded for a year.

- Starbucks would be Town-serving:
  - There would be no reason for a person to come to Palm Beach only for Starbucks as there were two locations in West Palm Beach and one in Lake Worth.
  - Customers, for the most part, would be Worth Avenue shoppers, employees, occupants of Palm Beach Hotels and Palm Beach residents.
  - Starbucks had agreed not to advertise its location in Palm Beach except in local publications.
  - Starbucks would be located in an interior space, and no signage would be allowed on Worth Avenue.

President Pro Tem Kleid commented regarding people who stated that the work on this application had been done in the stealth of the night, that it was done during the summer period. He stated that the business of the Town of Palm Beach went on for twelve months a year, elected officials, appointed commissioners, and staff worked the entire year. The Town publicized agenda items on its website, the Palm Beach Daily News covered, to some degree, the news which could be accessed on their website, and Town Council meetings could be listened to via the internet.

After reviewing the criteria for the granting of a special exception, President Pro Tem Kleid advised that after analyzing all the information, he was convinced, by the law, which must be applied to special exception applications, that Starbucks had complied with the special exception criteria. He stated that he did not believe the Town could meet its evidentiary burden, and for all the reasons previously enumerated, he planned to vote in favor of the Starbucks application.

Council Member Markin stated that she wanted it put into the record that she had been requested to recuse herself from this vote based on an e-mail that was sent out. She explained that the e-mail was written to encourage people to attend the Town Council meeting and speak their mind. She noted that it was very important for the Town Council to hear from both sides, and to have a healthy debate.

Council Member Markin noted that she had done some research relative to Ordinances and Codes and commented on the following concerns she had regarding this application:

- Special Exception Criteria -Point #8: parking convenience;
- Special Exception Criteria - Point #14: burden on public safety personnel;
- Enhancement of a higher end style design for the store;
- Possible renaming of the store;
- Scaled down hours of operation to avoid security risks, as well as concerns with responsible management of the store;
- Demographic profiles as they related to the Town-serving documentation.

Council Member Wyett commented regarding Sunday operations, late night operations, outdoor seating, and increased costs due to problems in that location. He stated that he would probably vote to decline the application, but could be convinced to change his vote if the applicant would consider changing their name.

After reviewing the criteria for the granting of a special exception, President Coleman advised that he would vote for approval since there had been nothing to persuade him otherwise.

In response to President Coleman, Council Member Brooks advised that he would vote for approval.

In response to Mayor McDonald, President Coleman advised that there was another special exception relative to the two outdoor seats and a variance, which the applicant had offered to withdraw, that had to do with paving an area to make garbage pickup more convenient for the Town.

Mr. Castro referred to the variance that the applicant had proposed to withdraw regarding the site plan for the back door. He noted that staff believed that variance was an integral part of the proposal. He stated that staff would recommend approval of that variance. The Town Council would still have to determine whether to accept the applicant's request to modify their application, to withdraw the variance for the off-street parking, which was no longer necessary, and to approve the request for two outside seats, which had originally been a request for eight seats.

Council Member Markin advised that she wanted to be certain that the Town Council addressed the inconsistency in the application relative to the signage, and the display window on Worth Avenue.

Mr. Reg Stambaugh, on behalf of the Preservation Foundation, requested an opportunity to address the Town Council regarding variance issues, if they were to be discussed. He advised that he had not addressed them during comments from citizens as he understood they would not be discussed today.

President Coleman advised Mr. Stambaugh that he would be given the opportunity to address those issues when the Town Council reviewed them.

In response to Council Member Markin relative to inconsistencies in the application, Attorney Brindell commented that there no inconsistencies relative to the window boxes. The application stated there would be no sign on the street facades of The Esplanade. The window boxes are 3' wide, 5' tall, and 3' deep, and were just little display boxes, and did not have a sign or logo. He advised that, according to Code, the applicant was entitled to use the display windows. Tenants inside a

building, who had no visibility outside, would use window boxes to make people aware that they were located there.

After further discussion, Mr. Castro stated that the definition of signs in the Town's Code was very broad. He advised that it was his interpretation, in terms of what the applicant had represented, that they were voluntarily committing not to have signage of any kind.

President Pro Tem Kleid suggested additional discussion regarding the contribution, fund-wise, for a parking control officer, and the period of time that it would continue. He commented that it could be for more than two hours, and extended for longer than a year. He noted that the Town might come to realize that it was not a problem at all, and there may be no reason to continue it.

In response to Mayor McDonald, Attorney Brindell stated that the applicant had offered to limit their advertising, noting that they typically did not do a lot of local advertising, and their national ad campaigns related to Starbucks as an entity. The Worth Avenue address would not be shown in any national publication, but noted that Starbucks would like to advertise in local magazines on the Island. He advised that they would advertise in local publications such as the Shiny Sheet and Palm Beach Magazine, but as a practical matter, most businesses did not advertise off Island since their market was not there.

Attorney Brindell advised that they did not have a problem adding another receptacle in response to Council Member Wyett's suggestion that trash containers be provided not only outside the store, but placed in convenient areas outside of The Esplanade.

In response to President Coleman, Attorney Brindell stated that he believed there were four people who daily did nothing but pickup trash in and around The Esplanade. He agreed to President Coleman's suggestion that trash from Starbucks would be retrieved not only up to South Ocean Boulevard but across Worth Avenue as well.

Mayor McDonald requested that Mr. Goodman, property owner of The Esplanade, ensure that the escalator worked on a more consistent basis. He noted that this request was unrelated to Starbucks.

Discussion ensued regarding the back door issue, President Coleman, and Council Members Wyett and Brooks advised that they would vote in favor of the variance.

President Coleman reviewed the issues discussed so far:

- Trash, which could be solved with a variance;
- Window displays;

- Contribution for Parking Control Officer, which the Town Council would, at their discretion, be able to continue.

Attorney Brindell requested that included in the condition for a parking control officer, the applicant would be provided an opportunity to return before the Town Council, at the end of the year, to determine whether a parking control officer should be continue or not.

After further discussion, the Town Council agreed on the following issues:

- The hours of operation, 8:00 a.m. to 10:00 p.m., seven days a week, would be reviewed when the applicant returned with their Town-serving statement, which would be six months after the first statement.
- Window display area would be allowed on Worth Avenue for a six-month period after the restaurant opened. The applicant would be required to revisit the window display area with the Town Council at the end of the six-month period.

Mr. Castro reviewed additional conditions and concerns relating to the operation Starbucks as follows:

- The use of coffee machines and microwaves, only. No grills.
- The hours for the pickup and take out of trash. Staff recommendation was not before 9:00 a.m. or after 7:00 p.m. for trash take out. (After discussion, it was decided that staff's recommendation for hours of pickup and take out of trash would stand at 9:00 a.m. to 7:00 p.m.)
- Validation of parking.
- Starbucks product line. (After discussion, it was determined the Town Council would not address that issue.)

In response to President Coleman, Town Attorney Randolph suggested they move forward with the two special exceptions to allow Starbucks, subject to the conditions that had been enumerated today, which needed to be identified by the Town Council.

Council Member Brooks made a motion to approve Site Plan Review #12-2006, with the agreed conditions, based upon the finding that the approval of the Site Plan would not adversely affect the public interest; and the Town Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangements have been made concerning Section 134 - 229. President Pro Tem Kleid seconded the motion.

Mr. Castro clarified, for the record, that because Starbucks was inside The Esplanade, and

Vias were considered streets, they were only allowed a 1' logo. He noted that this was a Code provision.

Attorney Brindell responded that the applicant had voluntarily agreed to that request.

On roll call, the motion carried 3/2 with Council Member Brooks, President Pro Tem Kleid, and President Coleman casting affirmative votes; Council Member Markin, and Council Member Wyett casting dissenting votes.

President Pro Tem Kleid made a motion to approve the Special Exception to operate a restaurant based on the finding that it would not adversely affect the public interest, and the applicable criteria set forth in Section 134-229 in the Town Code have been met, subject to all the conditions which were previously alluded to. Council Member Brooks seconded the motion. On roll call, the motion carried 4/1 with President Pro Tem Kleid, Council Member Brooks, Council Member Wyett, and President Coleman casting affirmative votes. Council Member Markin cast a dissenting vote.

President Pro Tem Kleid made a motion to approve the Special Exception granting two outside seating arrangements based upon the finding that the granting of it would not adversely affect the public interest, and the applicable criteria set forth in Section 134-229 of the Town Code have been met, subject to all applicable conditions, which were previously alluded to. Council Member Brooks seconded the motion. On roll call, the motion carried 3/2 with President Pro Tem Kleid, Council Member Brooks, and President Coleman casting affirmative votes; Council Member Markin, and Council Member Wyett casting dissenting votes.

Town Manager Elwell clarified that, for the record, the original application asked for twenty-five seats, which would have required another variance. The applicant had withdrawn that and had reduced the number of seats.

President Pro Tem Kleid made a motion to accept the withdrawal of the variance with respect to off-street parking. Council Member Brooks seconded the motion. On roll call the motion carried unanimously.

Reg Stambaugh, President of the Preservation Foundation, noted that he had believed all variance issues were off the table. He stated that the Town Council had done the right thing in their analysis for the special exceptions, and that they had properly applied the law to the facts. He stated that there were no variances in this application that were justified legally. He requested that the Town Council seriously consider their analysis on that point alone. He stated that he believed that staff would concur with his opinion.

Director of Planning, Zoning, and Building Close stated that staff did believe, under the site plan review, that a rear door to the restaurant should be provided. She advised that staff's comments relative to the hardship would be to demonstrate the hardship.

Mr. Castro advised that the Town did want that rear door variance approved, but the applicant requested withdrawing that part of the application. He explained that, under the criteria of the Code, the request was for a minimum variance that would make possible the reasonable use of the land, building, or structure. He noted that most buildings on Worth Avenue did not have those types of problems.

Council Member Wyett made a motion to approve the variance for the rear door based on public safety and sanitation. President Pro Tem Kleid seconded the motion, advising that he voted for this variance because he thought it was the better solution. On roll call, the motion carried unanimously.

c. VARIANCE #25-2006 The application of Thomas Longhurst relative to property described as lengthy legal description on file; commonly known as 228 Phipps Plaza; located in the R-C Zoning District. Request to modify a previously approved variance (Variance #23-79) to eliminate a condition of approval which allowed a 400 +/- square foot addition on the south side of the house with a 7.9 foot rear yard setback in lieu of the ten-foot minimum required at that time and the fifteen foot minimum required today. The request is to eliminate that condition of approval that requires said addition to be removed when the owner sells the property. The applicant, which is Trustee for the property, wants to leave the addition intact at the time of sale. *Deferred from the August 8, 2006, and September 7, 2006, Town Council Meetings.*

Deferred Variance #25-2006 to the December 12, 2006, Town Council meeting, under Item VII., the Approval of the Agenda.

d. MODIFIED VARIANCE #16-2006 The application of Gary R. Lumsden relative to property described as lengthy legal description on file; commonly known as 750 South County Road; located in the R-A Zoning District. Variances to allow the construction of exterior steps

for access to the existing front entry, at a distance of 31.5 feet from the west (front) property line, in lieu of the 35 foot minimum required; to allow landscaped open space of 37.5% in lieu of the 45.5% existing and 50% minimum required; and, to allow lot coverage by building of 28.3%, in lieu of the 24.1% existing and 25% maximum allowed. *Deferred from the September 7, 2006, Town Council Meeting.*

Ex-parte communication was declared by President Pro Tem Kleid with the architect; and Council Member Brooks with Attorney Paine.

Council Member Wyett stated that before Attorney Paine made his presentation, and if each member of the Town Council had met with staff from the Planning, Zoning and Building Department, and there was one hundred percent consensus of the Town Council, he would **move approval of Modified Variance #16-2006.**

Zoning Administrator Castro advised that staff had concerns with this proposal noting site visibility issues.

Attorney Jim Paine, on behalf of the applicant, provided an overview of the application. The hardship associated with the property had to do with the shape of the property. He presented architectural renderings and photographs to review the project.

Attorney Paine discussed the concerns of the Public Works Department relative to the ficus hedges along the driveways, which created the site visibility issues. He advised that his client was very concerned over the possibility of losing his hedges and he would not move forward if a condition of approval was that he tear down the hedges. He noted that he was working towards a compromise with Mr. Gauthier, Public Works Project Engineer, of the Public Works Department.

Mr. Castro reiterated that staff's main concern was site visibility. He reviewed the concerns of Mr. Gauthier's as follows:

- The driveway exits and entrances were unsafe.
- The radiuses were very tight.
- The nose and tail of the vehicle needed to be out on the street in order to view the street to get out of the driveway.
- The hedges were of such size that it was almost impossible to get out onto South County Road without getting hit by a vehicle.
- The shared driveway, as well, which was an access easement to the property on the ocean was unsafe, and could not be rectified due to a telephone pole and utility poles

in that location.

Town Engineer Bowser advised that the applicant had no control over the adjacent property. He explained that was a problem that the Town had with adjacent properties and why it was placed in the Code. He noted that if there was an existing condition that the neighbor could not or would not rectify, the applicant should rectify the situation on their own property.

Mr. Castro advised that the first time this issue came up was at ARCOM, and they liked the project. ARCOM did not want the applicant to remove the hedges, because they believed they were an integral part of the project. Staff questioned the hardship for the variances on the landscaped open space and lot coverage.

In response to President Pro Tem Kleid, Mr. Castro explained that a Zoning in Progress item was the intersection vision triangle for public and private streets, but it was not specifically a driveway issue. He stated that Mr. Bowser appeared before the Town Council today, because the Public Works Department enforced clear visibility triangles for driveways. He noted that issue could be found in the Public Works Right-of-Way Manual.

President Pro Tem Kleid noted that the applicant precipitated the problem when they applied for the variance.

Mr. Paine advised that in the Right-of-Way Manual, there was language regarding renovations, which stated that if the project was fifty percent more than the value, then certain conditions applied. It was not really clear if it applied to this vision triangle, but after checking further, at the request of President Pro Tem Kleid, language was found to that effect.

In response to Council Member Wyett, Mr. Castro advised that there was a solution, but the applicant did not want to follow the recommendation of the Public Works Department.

Mr. Paine advised that he had just spoken with Mr. Gauthier, who stated the applicant was not being requested to remove the hedges, but was being requested to pull them back 2', which they were willing to do. He noted that his client was very concerned that if the hedges were totally removed, the ugly double power pole would become visible.

Mr. Castro discussed the following issues:

- Undergrounding of wires to eliminate the double power poles.
- Eliminate a curb cut in front of the property on South County.
- The gravel driveway might not be needed by the applicant.

Mr. Bowser discussed the following issues:

- Double power poles - removal of one of the poles.
- Issue of aesthetics related to cutting back the hedges.
- Driveway to the south had some visibility; the real hazard was the northern driveway.

Mr. Paine advised that it would be very difficult to maneuver if the curb cut was taken away.

Council Member Markin suggested that the applicant replace the ficus hedges with podocarpus, which were thinner, provided a lot of screening, and would be much more durable in hurricanes. She noted that replacement of the hedge might provide the applicant with an additional 2' or so that could improve the site of vision.

After further discussion, President Coleman suggested that there be an agreement between the Town and the applicant. The applicant would receive a fine of $2,500 or $5,000, if the hedge was not maintained. The agreement would be self-policing.

President Pro Tem Kleid made a motion to approve Modified Variance #16-2006, as all the criteria applicable to this application as set forth in Section 134-201 (a), one through seven, have been met; and also provided that the applicant trim back the hedges 2' and maintain the hedges at 2'. The applicant would be fined $250 per day, if the hedges were not maintained.

Council Member Markin suggested that the applicant work with the Public Works Department to come up with a detailed, measurable plan for a hedge, whether it was the ficus hedge or a new hedge.

Attorney Randolph commented that he did not want to see the Town Council get into the code enforcement business. He suggested that rather than impose a fine as a condition of approval, the applicant should agree to the fine as part of the application.

In response to Town Manager Elwell, Mr. Paine agreed to the option of either cutting and maintaining the existing hedge two feet from the street or replacing it with a new hedge, and the imposition of a $250 per day fine if the hedge was not maintained.

Mr. Elwell commented as follows:

- The Code Enforcement Board would not get involved with this issue.
- An agreement would be entered into with the applicant and the Town of Palm Beach whereby if staff found the applicant to be in violation, a fine of $250 per day would be imposed until the violation was corrected.

Mr. Paine requested that the applicant be notified in writing that a problem existed, and if not corrected within a specific period of time, a fine would be imposed.

President Pro Tem Kleid amended his motion to approve Modified Variance #16-2006, with the condition that, at the applicant's discretion, he may select one of two options: either cut and maintain the existing hedge two feet from the street pavement, or plant a new hedge acceptable to the Public Works Department. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

e. MODIFIED SITE PLAN REVIEW #13-2006 WITH VARIANCES
The application of Il Lugano Condominium Association relative to property described as Il Lugano Condominium; commonly known as 300 Seminole Avenue; located in the R-D(2) Zoning District. Site Plan Review to modify a previously approved Site Plan to construct a 254 square foot accessory building to house a generator on the southeast portion of the site. This requires the re-striping of the current parking lot to add back one space and the addition of a new parking space on the east of the proposed generator accessory structure. A variance request to allow the construction of an accessory building to house a generator to have a 44 foot street side yard setback in lieu of the 65 foot minimum required in the R-D(2) Zoning District; a 10 foot rear yard setback in lieu of the 30 foot minimum required in the R-D(2) Zoning District; and, an increase in lot coverage to 30.15% in lieu of the 29.64% existing and the 22% maximum allowed in the R-D(2) Zoning District (an increase in 6/10th of a percent for the generator accessory building.). *Deferred from the August 8, 2006, and September 7, 2006, Town Council Meetings.*

Ex-parte communication was declared by President Pro Tem Kleid with Attorney Ziska..

Attorney Maura Ziska, on behalf of the applicant, noted that at last month's Town Council meeting, a deferral had been granted for the generator portion of the application. The applicant had originally proposed placement of the generator at the southwest portion of the Il Lugano property. She advised that their neighbor, the Park Regent Condominium, had objected to that location. She commented that a new location was being proposed today to place the generator at the southeast portion of the property, which was acceptable to the Park Regent.

Ms. Ziska discussed the variances required for the generator. She stated that, last month,

ARCOM unanimously approved the proposed location, and recommended approval of the variances. She noted that they liked the look of the accessory building.

Architect Ken Brower, Brower Architectural Associates, displayed and reviewed architectural renderings.

Zoning Administrator Castro explained that staff had a concern regarding the additional parking space the applicant picked up, which they had previously lost, located to the east of the generator. The applicant needed to address the variance criteria as well as the hardship.

In response to Mr. Castro's comment relative to fire lane access, Mr. Bower advised that issue had been worked out with Fire Marshal Pompos.

Discussion ensued regarding landscaped open space. Mr. Bower advised that there was a positive increase in green space due to the modification that was being proposed today.

In response to President Pro Tem Kleid, Mr. Castro advised that this particular proposal would not be acceptable if there was Zoning in Progress, which applied to this applicant.

Attorney Ziska advised that she had not seen the exact wording of the Zoning in Progress, but stated that she was not certain that a smaller generator would not need the same approvals.

Attorney Ziska stated that the hardship was that the size of the generator needed to power the entire building was larger than what could be placed inside the building. The constraints for finding a location outside of the property with all the greenspace requirements, parking requirements, easements, objections of the Park Regent, etc., made this the most feasible and acceptable location.

Attorney Ziska advised that the Zoning Code had changed since the Il Lugano had been built and converted into a condominium. The Code no longer allowed five story buildings and stated that they were up against the change of the Code with regard to the setbacks.

Mr. Castro advised that if the Town Council approved this request, staff recommended placement of the generator with the condition that the generator only be maintained or operationally maintained during the week at certain times of the day so as to limit its impact on the neighbors.

Attorney Ziska agreed to that condition.

Council Member Markin made a motion that Modified Site Plan Review #13-2006 be approved with the condition that the applicant be limited to operate the generator for maintenance between 11:00 a.m. and 12:00 p.m. or 3:00 p.m. and 4:00 p.m., Monday through

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

f. SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS & VARIANCES - MODIFIED The application of Adam Schlesinger relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Boulevard (former Hilton Hotel); located in the R-D(2), B-A Zoning District. The applicant is requesting to convert this existing 134-unit hotel into a 107-unit condominium hotel. The building will be completely renovated, including the demolition and reconstruction of the entire interior and exterior walls, and the addition of a partially sunken 200-space parking structure to replace the existing 144-space surface parking lot. The swimming pool will be relocated to the interior of the building on the fourth floor, and tennis courts will be built atop the parking structure. The building is and will remain 5 stories over a basement. However, the entrance road will be ramped up and the lobby will be relocated from the basement to the first floor. The hotel already contains customary hotel accessory uses including a gift shop and two dining rooms. These uses will continue in the new hotel but will be reconfigured. Special Exceptions to change ownership of an existing hotel in the R-D(2) district; to allow tennis courts to be built on a structure (the parking deck); and, to expand existing accessory commercial uses in the hotel by enlarging the gift shop from 168 square feet to 436 square feet and adding a small tennis pro shop of 528 square feet. Variances requested for the following: to enlarge a nonconforming building which will be partially demolished and reconstructed by greater than 50% of its existing cubic volume; unenclosed structures over 15 ft. high are required to meet setbacks. The entrance portals at A-1-A will be 4 ft. from the north and south property lines in lieu of the 30 ft. minimum required by code, a variance of 26 ft; side yard setback for hotel building of 27.40 ft. in lieu of 30 ft. minimum required by code on the north side, and 26.00 ft. in lieu of 30 ft. minimum required by code on the south side; hotels in the R-D(2) district are required to have 35% minimum landscaped open space. This site will have 25.3%, requiring a variance of 9.7%. The existing site has 19.3% landscaped open space.; lot coverage of 53.3% in lieu of 22% maximum allowed by code for a five-story special exception structure. The existing site has 27.8% lot coverage.;

a maximum east-west building dimension of 424.25 ft. in lieu of the maximum 150 ft. allowed by code; a porte-cochere dimension of 50 ft. x 68.75 ft. in lieu of the maximum 30 ft. x 30 ft. allowed by code.; a tennis pro shop (accessory commercial use) outside the main building, and with its own external entrance which is not permitted by code; variance to allow parking to be arranged so that a car must be moved before another car can enter or exit a parking space, for the mechanical and stacked parking; and, a variance to allow 200 parking spaces in lieu of the 324 required for a hotel with dining rooms and accessory commercial uses. There are currently 144 parking spaces on the property. *Deferred from the April 11, 2006, and June 13, 2006, Town Council Meetings, and September 6, 2006, Special Town Council Meeting.*

Attorney Jim Brindell, on behalf of the applicant, addressed the modifications made to the application. He noted that Adam Schlesinger, property owner, and several design team members, were present today for the purpose of determining whether the changes being made resonated with the Town Council; and if the applicant was headed in the right direction with a design that made sense for this site. He advised they were not here today for an approval of the application.

Adam Schlesinger, owner of the Brazilian Beach Resort, addressed the Town Council, to provide an update on the modifications made to the design as well as discuss the elimination of three variances. He displayed architectural renderings and a site plan to review those modifications. He noted that in trying to eliminate the "Las Vegas" stigma and provide a Palm Beach feel to the design, they planned to use glass and stone in place of copper. The stone would be on the entrance of the building and additional trees would be added to the front of the proposed building.

Mr. Schlesinger discussed the following three variances, which would be eliminated:

- The entry portals.
- The curved walls with the copper located in the front of the old building.
- Reduction in the size of the porte-cochere.

Mr. Schlesinger requested input from the Town Council relative to the modifications in order that the applicant could continue to move forward with this concept.

In response to Council Member Markin, Oscar Garcia, Architect, explained that the design was for a virtual glass waterfall. He advised that a local artist produced the handmade glass panels, which were stacked to produce the effect of water cascading down the facade of the building. He

noted that the stone was limestone.

Mr. Garcia, addressed the Town Council, presenting architectural renderings and a site plan review, to discuss the elements of the design.

In response to President Pro Tem Kleid, Mr. Garcia advised that the wall fronting on South Ocean Boulevard, which hid the garage, would remain and was seven feet tall.

In response to President Pro Tem Kleid, Mr. Schlesinger advised that their goal was to eliminate as many variances as possible, produce an attractive project, and then do what they could with the neighbors. He advised that there had not been any further discussions with the neighbors, because they wanted to get a design understanding with the Town Council first and then move forward. He noted that there were five variances.

Discussion ensued regarding the modifications to the design.

President Coleman commented regarding his concerns as follows:

- The length of time this iterative process was taking.
- The building was obsolete and had gone through its depreciable life.
- Not certain a hardship existed.
- Reduction in density, not only room density but entertainment density.
- Parking - stacking of cars

Mr. Schlesinger stated that it was their hope that the next Town Council meeting would be their last.

In response to Council Member Brooks, Attorney Brindell stated that they had previously eliminated three variances and would again eliminate three variances.

Council Member Brooks commented that he had concerns with parking and with density.

Mr. Schlesinger advised that at the next Town Council meeting they could present viable parking options.

Council Member Wyett asked if they had given further consideration to the request of the Royal Saxon relative to access to the beach.

Mr. Schlesinger responded that internally they had given consideration, but had not met with the Royal Saxon or any other neighbors, because they first wanted to address the design of the hotel

with the Town Council and receive feedback. He advised that they had some steps that they needed to follow: dealing with the neighbors, the Town Council and ARCOM. He was confident that they could work with ARCOM and put together an acceptable design that ARCOM would approve.

Mr. Schlesinger advised that he has heard the Council's comments, and he believed that when they met next time, which he hoped would be their final meeting, they would address the comments of the Town Council in order to make this work.

In response to Council Member Wyett, Mr. Schlesinger stated that they did not want to eliminate the tennis courts because they wanted to be competitive with other five star resorts.

Mr. Schlesinger advised that at the last meeting, Mayor McDonald had asked what benefits would the applicant provide to the Town, and he stated that they were trying to create a hotel that was Town-serving, that was a five star asset to the Town, a place that the Town and residents could be proud of.

Council Member Markin commented that parking concerns were her biggest concern in this facility. She stated that this particular design was creative, but felt it was still a little too avant-garde. She believed subtle elegance sometimes was more welcome in Palm Beach.

Mr. Schlesinger thanked Ms. Markin for her opinion and stated that he believed, speaking to all Council members, that there was an alternative plan for the parking. He stated that from what he had heard tonight he was actually very optimistic that at the next Town Council Meeting, they would actually be able to eliminate more variances and have a parking alternative that would be pleasing to everyone.

Director of Planning, Zoning, and Building Close advised that staff, at the Town Council's direction, purposely did not spend any time on this application last month. Staff did not have any comments, at this time, since this was just a cursory review.

Ms. Close noted that departmental comments meetings were held the Thursday after a Town Council meeting, She noted staff had some concern about timing and the ability to provide adequate staff comments if the applicant planned to come in with a fully modified application next month.

In response to Council Member Wyett's suggestion that they return to Town Council in December, Mr. Schlesinger responded that he preferred not to.

In response to Council Member Brooks, Ms. Close stated that the applicant should go back to ARCOM with the modified plan.

Timothy Anthony, 2840 South Ocean Boulevard, President of the Board of Directors of the Royal Saxon, addressed the Town Council, commenting on the three variances that were eliminated and the five remaining variances. He stated that it was his understanding that for Mr. Schlesinger to appear today, substantial changes would have had to been made to this project, and he did not see any substantial changes. He noted that Mr. Schlesinger did not address the concerns brought forward at previous meetings.

President Coleman advised Mr. Anthony that there was no action to be taken and that the purpose of the agenda was to put people on notice.

Council Member Brooks made a motion that Site Plan Review #5-2006 be deferred to the December 12, 2006, Town Council Meeting. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

   a. VARIANCE #34-2006 The application of Ms. Harriet Golding relative to property described as Revised Plat of Stotesbury Park, Lot 50 (less triangular tract in Southwest corner) and triangular tract in Northeast corner of Lot 51; commonly known as 361 Crescent Drive; located in the R-B Zoning District. Request a variance to place a 3 feet (36 inches wide), 5.92 feet (71 inches long), 2.46 feet (29.5 inches high), 20 KW generator in a required street rear yard with a setback of 10 ft. in lieu of the 25 ft. minimum required; and, a variance to allow a 5 ft. by 8 ft. cement pad for a generator to be constructed, thereby reducing the landscape open space from 44.5% existing to 44.498% in lieu of the 45% minimum required.

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

Zoning Administrator Paul Castro stated that there was a hardship relative to the shape of the lot and the configuration of the roadway. Staff recommended that an additional wing wall be placed on the south side of the generator to fully screen it. He noted that the screen would be for sight and noise. The applicant had only shown a wall on two sides of the generator.

Attorney Peter Broberg, using photographs, provided an overview of the applicant's request for a variance.

Council Member Wyett made a motion to approve Variance #34-2006 with the condition that there be an additional wing wall on the south side of the generator to fully screen it. Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.

b. VARIANCE #35-2006 The application of RENGLA, LLC, Robert Nederlander, Member relative to property described as Lot 8, Kawama Lane; commonly known as 270 Kawama Lane; located in the R-B Zoning District. Variance request to install an 80 kw generator providing a 15.33 ft. street side yard setback in lieu of the 25 ft. minimum required. The proposed generator is 9.6 ft. wide, 3.07 ft. long, and 4.6 ft. tall.

Ex-parte communication was declared by Council Member Markin with Mr. Nederlander, the owner of the property, via a conversation; Council Member Brooks with Attorney Hanlon via the telephone pertaining to this application.

Attorney Tim Hanlon provided an overview of the applicant's request for a variance. The hardship was running the piping a very long way, which would reduce the effectiveness of the generator.

Zoning Administrator Castro commented that staff questioned the hardship. The property was large enough to place the generator out of the street side yard setback. He noted that there was adequate space on the east side of the property. He advised that, in terms of the efficiency of the generator, the Town's electrical inspector had informed him that it did not matter where the generator was placed. The resistance would be based on the size of the cable that was used to serve the panel. The bigger the cable, the less resistance, and the more it cost.

In response to Council Member Markin, Mr. Castro stated that his concern was the hardship, because there was adequate space on the property to place a generator in a location where it did not require a wall. He noted that another concern of staff was based on the location they had placed the generator. He explained that there was a fence and hedge, but if it was allowed to remain in that location, a wall as high as the generator, but not more than 6' in height, would be required.

In response to President Coleman, Mr. Castro stated that the issue was the hardship, and staff did not see a hardship that required the placement of the generator in the street side yard 15' from North Lake Way.

Council Member Markin stated that the other side of the coin was that if it was on the other

side of the house, the neighbors could or would be affected.

Mr. Castro stated that they would have to meet the noise, decibel requirements in the Code, and typically, they would only hear the generator in an emergency situation other than for maintenance, which staff would request the generator be maintained during normal hours so it does not impact the neighbors. During a hurricane situation and after a storm, everyone would have their generators on and it would not be a big issue. The quiet source generators today run a lot smoother and a lot quieter than the small 7500 watt generators.

Council Member Markin made a motion to approve Variance #35-2006. Council Member Brooks seconded the motion.

Director of Planning, Zoning and Building Close recommended that if the Town Council approved the generator and wall in this location, a condition of approval would be that the generator was to be screened, in perpetuity, with a hedge that, at least, covers the wall.

Council Member Markin amended the motion to include the condition that the generator be screened, in perpetuity, with a hedge that at least covers the wall.

After further discussion, the applicant agreed to place a wall on the south side of the generator.

Council Member Markin amended the motion to approve Variance #35-2006, to include the condition that the generator be walled in on all three sides. Council member Brooks seconded the motion. On roll call, the motion carried 4/1 with Council Member Markin, Council Member Brooks, Council Member Wyett, and President Pro Tem Kleid casting affirmative votes; President Coleman casting a dissenting vote.

c. SITE PLAN REVIEW #16-2006 The application of Ritcon Properties, L.L.C. relative to Lots 40, 41, 42 and 43, Map of Floral Park; commonly known as 256 Sunset Avenue; located in the C-TS Zoning District. Request site plan approval of a standby generator placed at the back of Cucina Restaurant. The proposed generator is 130 kw and dimensions are 7.66 ft. in length, 5.58 ft. in height and 4.5 ft. in width.

No ex-parte communication was declared by the Town Council.

Attorney Peter Broberg, on behalf of the applicant, provided an overview of the site plan

review.

Council Member Brooks made a motion to approve Site Plan Review #16-2006.

Zoning Administrator Castro advised that staff had some very serious concerns relative to this application. He reviewed the concerns as follows:

- The applicant had not proposed to screen the generator.
- Could not have an accessory structure without having a principal structure.
- The applicant proposed placement of a generator on a piece of property that would serve another piece of property.
- There was no Unity of Title between the parking lot that served Cucina's and the restaurant itself. Town Code required a Unity of Title.

Mr. Castro stated that staff recommended the following conditions of approval:

- The applicant provide a Unity of Title Agreement to solidify that Code requirement.

- The applicant screen the generator and the entire back area of the property.

Attorney Broberg noted that the parking lot and the building were purchased together and that had not been a formal Unity of Title on record. He asked Town Attorney Randolph and the Town Council that if the applicant entered into a Unity of Title Agreement, could that agreement be broken if the building was sold; and something other than a restaurant was placed there; and the parking lot was sold for another purpose. He noted that the parking lot was located on a different street.

In response to Council Member Wyett, Attorney Broberg stated they would agree to move the generator.

Mr. Castro advised that most commercial properties in this Town did not have parking facilities. He explained that this would be an opportunity for the Town to have properties become more conforming with Town Code. He noted that if the applicant removed the generator to sell only the parking lot, they could then build something else there, losing the parking facility.

Attorney Broberg advised that they could not continue to have a restaurant because the tables were predicated on the number of parking spaces they have.

Mr. Castro advised, that from his understanding, there was nothing that tied the two properties together, and that was what the Unity of Title would do. It would ensure that the parking could not be severed from the building.

In response to Council Member Wyett, Attorney Broberg advised that he would not take a deferral.

Attorney Randolph stated that the Unity of Title would relate to the granting of a generator. He advised that often times when the Council granted a request and required a Unity of Title, they allowed that Unity of Title be dissolved in the event that what had been requested was no longer needed. He asked why a provision could not be placed into the Unity of Title, which would state that if the applicant agreed to remove the generator, at a later time, the Unity of Title could be dissolved.

Mr. Castro responded that once the property was made to be more conforming with the Code, you could not go back and make it more non-conforming. He advised that the Town had stopped using that type of language, and that he had not seen that type of language in over a year.

Discussion ensued regarding restaurant seating and parking requirements. Mr. Castro stated that a site history of the property, over the last thirty years, had not been provided, which was a concern, because the applicant was required to provide site history in the application.

Discussion ensued regarding the screening around the generator and the dumpsters. Attorney Broberg agreed to build a wall.

Council Member Brooks made a motion to approve Site Plan Review #16-2006 to include the following conditions:

- **Attorney Broberg provide to the Planning, Zoning and Building Department, at the earliest possible time, a site history.**
- **Applicant screen the generator and the dumpsters with a wall as high as the generator.**

After further discussion, **Council Member Brooks amended the motion to approve Site Plan Review #16-2006 with the conditions of screening, a site history be provided for the file, and a Unity of Title Agreement be executed and recorded, which unified the restaurant building with the parking lot. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.**

d. SPECIAL EXCEPTION #7-2006 The application of the Hebrew Academy of PB relative to property described as lengthy legal description on file; commonly known as 240 Cocoanut Row; located in the R-B Zoning District. A request for a Special Exception to allow a private academic pre-school ("Hebrew Academy of Palm Beach")

to operate at the old Palm Beach Public School Gymnatorium building at 240 Cocoanut Row with 16, 207 sq. ft. of gross leasable area. The applicant's proposed pre-school will start with 8 students and will not exceed a capacity of 30 students. There is a proposed fenced in recreation area of approximately 3,300 sq. ft. on the Northeast corner of the subject property.

Ex-parte communication was declared by Council Member Markin with many residents in the area in question, regarding this issue and via written communication; President Pro Tem Kleid with Attorney Ziska and Rabbi Scheiner; President Coleman with Attorney Peter Van Andel, a resident, and via written communication; Council Member Wyett via written communication; Council Member Brooks via written communication from neighbors in the surrounding areas.

Attorney Maura Ziska, on behalf of the Hebrew Academy, advised that Rabbi Scheiner, Dean of the Hebrew Academy, a private pre-school, was present today. She explained that at the August 8, 2006, Town Council meeting, the Hebrew Academy, had obtained conditional approval to open at the old Palm Beach Public School gymnatorium, with direction to come back in 60 days. The applicant did re-notice the neighbors within 300' regarding the play area on the north side of the building, and met with the neighbors last night to discuss some of their concerns.

Ms. Ziska advised that a major concern was the very bad traffic problem from Palm Beach Public School and the Palm Beach Day School. The addition of the Hebrew Academy was a concern to the public relative to traffic and parking issues in that area. She stated that the Hebrew Academy should not be held hostage due to a problem that currently existed. She noted that the Town was in the process of addressing this traffic problem as they were conducting a Town-wide traffic study to be presented to the Town Council in November.

Ms. Ziska advised that the goal of the Hebrew Academy was not to further exacerbate this situation, but to do everything possible not to negatively impact a traffic problem that currently exists. She explained that there were approximately 15 vehicles that would be dropping off and picking up children at the Hebrew Academy and that their current enrollment was twenty students. The drop off time was 9:00 a.m. and pick up time was 3:00 p.m. Parking if needed was in the Four Arts parking lot, which was to the west of the school. The Palm Beach Public School hours were 8:00 a.m. to 2:00 p.m. and Palm Beach Day School was 8:00 a.m. to 3:00 p.m., so there was no conflict between the drop off and pick up times. She noted that Hebrew Academy parents access the school via the Four Arts Plaza and do not use Seaview or Cocoanut Row.

Ms. Ziksa advised that the Town had hired a traffic engineer, who was present today, to see whether or not there were any traffic circulation problems. She noted that their conclusion was, other

than a few violators, it did not create any delay or traffic circulation problems in the area.

Ms. Ziska discussed the following suggestions that came out of the meeting with Town residents and neighbors of the Hebrew Academy:

- Placement of a "No Right Turn" sign at the exit of the Four Arts parking lot to redirect traffic.
- Possibility of making the 400 blocks of Seaview and Seaspray "Permit Parking Only" to protect residents of those streets. Suggested Police Chief Reiter review that request as there were no restrictions relative to parking at those locations allowing anyone to park there all day and all night.

Ms. Ziska discussed the outdoor play area, noting that the objection to the play area seemed to be more aesthetic. She advised that the applicant agreed to put up a 5' hedge around the fenced area, and perhaps some flowers and trees to enhance and beautify that area. She advised that they were willing to work with the neighbors and try to come up with a plan that would be aesthetically pleasing. She explained that the children would only go out into the play area one class at a time, and each class had four to five children, which would, hopefully, mitigate any noise concerns.

Ms. Ziska advised that Town-serving documents had been provided to staff.

Director of Planning, Zoning and Building Close discussed the concerns expressed by residents at the meeting held last night regarding traffic circulation and parking. She advised that the Town would be presented with a traffic plan in November, which would address this particular area. She strongly recommended residents contact the Town's traffic consultant and other Town staff people working on this report to provide their input as well as attending next month's Town Council meeting to be a part of the discussion, because it would directly affect their area.

Ms. Close advised that she had contacted the Chief of Police this morning and as she had suspected, the Town was not going to consider or do any studies related to a resident request for permit parking until after the traffic plan had been presented. She advised that staff believed it would be premature to address the serious concerns of parking throughout that area until the report had been reviewed.

Ms. Close commented on the following concerns:

- Staff would immediately contact the public school to ensure that school buses were dropping off the students and then proceed to travel north, off the north bridge as agreed to. She advised that it was staff's understanding that they were not presently doing that.

- Ensure that dumpsters were kept clean at both the Hebrew Academy and the public school. Staff would contact public school in that regard.
- Require the Hebrew Academy bring in all equipment during a hurricane.
- Four Arts parking lot signage.

Gareth Klotz, Traffic Consultant, American Consulting Engineers of Florida, LLC, on behalf of the Town of Palm Beach, referred to his letter dated October 6, 2006, and included in the backup material, to provide information and suggestions regarding traffic circulation along Seaview Avenue and Cocoanut Row in relation to the Hebrew Academy's operation of student pick-up and drop-off .

Peter Van Andel, 417 Seaview Avenue, commented in opposition to the project and discussed the traffic circulation and parking problems. He advised that he had a list with the names and addresses of twenty-one families who had contacted him advising that they would be sending letters to the Town to voice their opposition.

Norman Goldblum, 109 Everglade Road, advised that he had attended the two hour meeting held last evening regarding this application. He noted that it had been determined that the major issue was related to traffic and parking. He advised that his suggestion that a sign be placed at the second driveway to the north stating "No Right Turn" was satisfactorily received by the residents. Drivers would then have to make a left onto Royal Palm Way leaving all the traffic off of Seaspray. The second concern was the placement of a 5' hedge around the playground.

Mr. Goldblum advised that those were the only problems discussed with him last night during the two hour meeting and that he had informed the residents that he would work with them. He stated that the Hebrew Academy should not be held hostage because of the problems created by the Palm Beach Public School and the Palm Beach Day School.

President Coleman noted that the Town Council had done more than they had to in trying to work with all involved. The condition for going forward, as he understood, was that the applicant would have the enthusiastic support of the neighborhood, but they had waited until the twelfth hour to meet with the residents to address their concerns.

Discussion ensued between Mr. Goldblum and Mr. Van Andel regarding the concerns of the residents relating to traffic and parking and the aesthetics of the playground.

Attorney Ziska advised that the applicant had attempted to meet with the neighbors prior to last evening, but many of the representatives of the Hebrew Academy were in Israel as it was the High Holy season. She explained that the bigger picture here was the major traffic and parking problem created by all the schools.

Council Member Wyett noted that there were some major disagreements. He suggested that the Town Council put the parents on notice so that the concerns of the neighbors could be worked out and the problems related to the school teachers' parking should be addressed. He noted that the Palm Beach School Board had stated they would handle the parking situation, and that all teachers would park on the Four Arts property, which they were not doing. He advised that this was a problem that would require cooperation from all involved.

Council Member Wyett made a motion to allow the applicant an additional thirty days, to return to the November 14, 2006, Town Council meeting, with all sides involved presenting a solution. Director of Planning, Zoning and Building Close was requested to contact the Palm Beach County School Board to inform them that they had been contributing to a problem that needed to be solved. Both the School Board and The Four Arts Society should be brought into this situation to discuss representations they had made. Council Member Brooks seconded the motion.

Council Member Brooks advised Mr.Van Andel that the Town Council, as hard as it might try, could not solve all problems. He supported Mr. Wyett's suggestion that all involved sit down together to try to arrive at a solution that could be brought back to the Town Council.

Council Member Markin stated that the Hebrew Academy was an optional school that the Town Council had given conditional approval to, and they were in violation of that special exception. She advised that she had not read one letter or e-mail that was in favor of this school and did not know how the concerns and interests of the residents living in the immediate area could be ignored. She noted that she disagreed that the Town Council should revisit this issue again, as the residents had spoken their minds; and the school had the opportunity to adhere to the special exception requirements related to traffic and parking.

On roll call, the motion carried 3/2, with Council Members Wyett and Brooks, and President Pro Tem Kleid voting in the affirmative; Council Member Markin and President Coleman dissenting.

Rabbi Scheiner commented that, as he recalled from the meeting held sixty days ago, the main issue was the playground, which had not been included in the notification to the neighbors, who then had not had an opportunity to review that issue. Traffic and parking was not part of the discussion sixty days ago, and the parents had never been informed not to park on the side of the building as that had not been part of the conversation.

Council Member Wyett advised that Rabbi Scheiner was, in all likelihood, correct, because the public school and Palm Beach Day School were not yet in session, and some of these problems

were not apparent. He stated that a solution had to be found regardless of who was right or wrong.

Rabbi Scheiner advised that the parents would now be instructed that they were not to park on the side street or on the side parking lot.

Discussion ensued regarding the issues discussed previously.

Mr. Van Andel commented that, in his mind, the Town's traffic and parking problems were so much larger than had been realized, that there should not really be a use of this building. He noted that at the time it was abandoned, it was planned to be used again. He noted it has become a very sensitive issue, and would take some real expertise, traffic engineers, the Police Department, the Planning, Zoning and Building Department staff as well as many other people to figure out what to do. Those solutions were not going to be simple or quick in coming. He suggested constructing a parking garage on the flat lot that existed near the Seaview Avenue tennis courts, and then the Town Council could figure out whether or not activity could be supported in this particular building.

E. Other

1. Zoning in Progress: Generators and Formula Restaurants. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Close provided an overview of the study items concerning generators and fast food, "formula," take-out chain restaurants.

Town Attorney Randolph clarified that Zoning in Progress would be effective immediately after it was declared, but it would not be applicable to anything that had been filed prior to today.

Responding to President Pro Tem Kleid, Ms. Close explained that what was being proposed was a base outline for the purpose of declaring Zoning in Progress. Town staff would study the issues approved and modify the recommendations if necessary. The applications would be required to meet the restrictions, but would not be stopped.

President Coleman expressed concern regarding the restriction of hours of operation of the generators, as it could interfere with people's medical issues.

Responding to Council Member Markin, Ms. Close noted that deadlines had been established, and meetings had been scheduled for the Planning and Zoning Commission and the Town Council. The meeting schedule would be finalized next month after meeting with the planning firms, and would provide a clear indication as to when the issues would come back to the Council.

Motion made by Council Member Brooks declaring Zoning in Progress, effective October 10, 2006, for the zoning study items concerning generators and fast food, "formula," take-out chain restaurants.

Council Member Wyett suggested that the Planning and Zoning Commission schedule a special hearing with a special report to the Town Council concerning the generators, as the process of purchasing and obtaining approval for the generators was timely. He noted that the main use of the generators was the prevention of mold in houses damaged by the hurricanes, and that it was not practical to have a restriction of hours, in which to use the generators.

President Pro Tem Kleid seconded the motion declaring Zoning in Progress.

The maker and seconder agreed that the restriction of hours of operation for the use of generators would be eliminated.

Upon roll call, the motion carried unanimously.

2. Frank and Maureen Wilkens vs Town of Palm Beach, et al
Request for termination of variance previously granted to the Gaines'.
Request for Addition to the October 10, 2006, Town Council Meeting Agenda Per Letter Dated October 6, 2006, From John C. Randolph, Town Attorney.

Town Attorney Randolph advised that the Town Council had a letter before them from Attorney Critton, on behalf of Stanley and Gay Gaines. The Gaines wanted to resolve the litigation and agreed to abandon the variance previously granted them in regard to their property, and requested ratification of the abandonment of the variance by the Town Council.

Council Member Wyett made a motion to approve the request for termination of the variance previously granted to the Gaines.

Discussion ensued regarding the legal fees with both President Coleman and Council Member Wyett agreeing that those costs should not be the responsibility of the Town.

Town Attorney Randolph advised that he did not believe the Gaines were of the opinion that they had to have this ratified as long as they abandoned the variance. He stated that the Counsel for the other side wanted to have the abandonment ratified so that they could be assured that the Gaines would not be going forward.

President Coleman stated that he would agree to ratification subject to their agreeing to pay the legal fees.

Attorney Ron Kolins, on behalf of the Wilkens, stated that he understood how the Council felt regarding the legal fees. He provided an overview relative to the circumstances surrounding the approval Mr. and Mrs. Gaines received at the September 15, 2005, Town Council meeting, of Variance #23-2005, 1473 North Ocean Boulevard.

Attorney Kolins explained that presently there was a lawsuit relative to that variance. He noted that the Town was a party to that lawsuit, and unless the Town Council approved this issue today, the lawsuit would continue, subjecting the Town to additional legal fees. He noted that if the Town Council refused to ratify the abandonment of this variance for the reason of legal fees, or any other reason, he believed the problem would be compounded. The Gaines would not participate in the lawsuit, as it made no sense for them to do so, and the Wilkens would not drop the lawsuit, because the variance would remain, and they would not be able to challenge it later.

In response to President Coleman, Attorney Kolins stated that they were not willing to pay the Town's legal fees, and if necessary, the lawsuit would be pursued. He advised that there was no point in pursuing the lawsuit, and requested that the Town Council take action and ratify the abandonment. He stated that as to the legal fees, the Town Council could request that the Gaines paid them.

After further discussion, **President Pro Tem Kleid made a motion to ratify abandonment of the variance pursuant to the terms of the letter of October 6, 2006, from John C. Randolph, Town Attorney.**

Attorney Hanlon informed the Town Council that Mr. and Mrs. Gaines wanted to stress that they appreciated everything that the Town had done for them, but this was not a happy settlement. It was an unfortunate situation, and they were not happy with the result, but this was what they were asking for.

Council Member Brooks seconded the motion. On roll call, the motion carried 4/1 with President Pro Tem Kleid, Council Member Brooks, Council Member Markin, and Council Member Wyett casting affirmative votes; President Coleman casting a dissenting vote.

Attorney Kolins suggested Zoning Administrator Castro send a letter memorializing the action taken as soon as possible in order that the litigation can be resolved in the courts.

XIII. ANY OTHER MATTERS

Council Member Wyett requested that staff provide a report at the next month's Town Council Meeting regarding construction of the new supermarket located next to Greene's Pharmacy.

In response to Town Manager Elwell, Council Member Wyett advised that it did not need to be placed on the agenda as long as the Town Council was informed on the status of the project.

Town Manager Elwell stated that staff would provide a report.

XIV. ADJOURNMENT

There being no further business, the Regular Town Council meeting of October 10, 2006 was adjourned at 8:35 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk