TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON THURSDAY, SEPTEMBER 7, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting of September 7, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
William Crouse - Human Resources Director
Charles Langley - Public Works Assistant Director

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Edward J. Moran - Fire-Rescue Chief
Jim Palmer - Systems Analyst
Michael Reiter - Police Chief
Jane Struder - Finance Director
Karen Temme - Risk Manager
Robert S. Walton - Chief Code Compliance Officer
Spencer Wilson - Information Systems Manager
Sue Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Ames Bennett, for Over 50 Years of Service on Town Boards and Commissions.

Mayor McDonald presented a plaque to Mr. Bennett, honoring his 50 years of service.

B. Recognition of John Nora, for Over 50 Years of Service on Town Boards and Commissions.

Mayor McDonald presented a plaque to Mr. Nora, honoring his 50 years of service.

IV. COMMENTS OF MAYOR JACK McDONALD

I WANT TO ADDRESS LAST MONTH'S STARBUCKS APPLICATION, NOT ON THE MERITS, BUT ON THE PROCEDURAL ELEMENTS OF THE GRANTING OF THE SPECIAL EXCEPTION. I DO NOT WANT AN AWKWARD ACTION TO BECOME A TERRIBLE PRECEDENT. A REVIEW OF THE RECORD INDICATES THE SPECIAL EXCEPTION WAS APPROVED WITHOUT CONDITIONS. I HAVE GRAVE CONCERNS ABOUT THE METHOD OF APPROVAL OF SUCH A CONTROVERSIAL APPLICATION. THE RECORD IS VAGUE AND CONFUSING REGARDING WHAT WAS APPROVED AND WHAT REMAINS TO BE DECIDED. THE APPLICANT

MAY BE IN A POSITION WHERE IF HE PREVAILS ON HIS APPEAL EITHER BEFORE THE COUNCIL OR ON A SUCCESSFUL WRIT OF CERTIORARI, AND WITHDRAWS HIS REAR EXIT VARIANCE REQUEST TO HAVE RECEIVED AN UNCONDITIONAL APPROVAL. THIS WOULD BE TROUBLING. THERE ARE DIFFERING OPINIONS ON HOW TO PROCEDURALLY RESOLVE THIS ISSUE. STAFF MADE IT CLEAR LAST MONTH TO THE COUNCIL THAT THERE IS A SEPARATE SPECIAL EXCEPTION BUT THE RECORD DOES NOT SUPPORT THAT POSITION.

THERE IS A DIFFERENCE OF OPINION ON HOW TO RE MEDIATE THIS SITUATION. WHETHER IT BE A MOTION FOR RECONSIDERATION TO ATTACH CONDITIONS OR CLARIFICATION THAT ALL SPECIAL EXCEPTIONS WERE NOT APPROVED AND THERE IS REMAINING A SPECIAL EXCEPTION TO BE CONSIDERED, NOT JUST VARIANCES AS THE RECORD INDICATES. PROSPECTIVELY IT IS ESSENTIAL THAT ALL SITE PLAN, SPECIAL EXCEPTION AND VARIANCE MOTIONS BE STATED PROPERLY AND CONTAIN LEGALLY SUFFICIENT INFORMATION TO SUSTAIN THEM. PROPER PROCEDURE, VIGILANCE AND CLARITY ARE EXTREMELY IMPORTANT WITH DEVELOPMENT REVIEW ITEMS AS THEY OFTEN BECOME LITIGIOUS MATTERS.

LAST MONTH I ATTENDED THE STATE LEAGUE OF CITIES MEETING IN JACKSONVILLE. THE PRESENTATIONS AT THE CONFERENCE MADE CLEAR THE CONTINUAL EROSION OF MUNICIPAL POWERS BY CHARTER COUNTIES SUCH AS PALM BEACH COUNTY. AS I DELIVER THESE REMARKS THE CITIES OF BOCA RATON AND DEFRAY BEACH HAVE SUED PALM BEACH COUNTY OVER THE ALLOCATION OF COSTS TO THEM BY THE COUNTY FOR FIRE RESCUE DISPATCH SERVICES ----- THEY DO NOT USE. OUR SHARE FOR THESE SAME SERVICES WE DO NOT USE IS APPROXIMATELY $800,000.00. WE NEED TO DEFEND OUR AUTHORITY TO MAKE GRASS ROOTS DECISIONS FOR OUR RESIDENTS AND CONTINUALLY RESIST ANY DEGRADATION OF THEM BY PALM BEACH COUNTY.

ON A HAPPY NOTE THE MAYOR AND TOWN COUNCIL WANT TO CONGRATULATE JOHN RANDOLPH ON BEING HONORED AS MUNICIPAL ATTORNEY OF THE YEAR BY THE FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

COUNCIL MEMBER MARKIN:

- Agreed with Mayor McDonald regarding Starbuck's approval and the precedent that it may set, and discrepancies in the action taken regarding Starbuck's as reported in the Minutes of the August 8, 2006, Town Council meeting.
- Commented that approval of the Hebrew School application may have set a precedent, because an approval was given with an incomplete application, much to the dismay of the residents that surround the area.

PRESIDENT COLEMAN:

- Requested that staff look into increasing the deductibles when considering insurance renewals.
- Requested that staff bring back a mechanism for acknowledging the comments from citizens, for review of the Town Council at the October 10, 2006, Town Council meeting.
- Commented regarding some of the communications received regarding Starbucks, especially those relating to changing the tone and culture of the town. Suggested that all communication should be at the level of healthy discourse and disagreement.

PRESIDENT PRO TEM MEMBER KLEID:

- Commented that the premium for the property insurance had risen 345%.
- Commented that many letters/communications regarding Starbuck's had mentioned chain stores in Palm Beach, and that right now there was no rule against chain stores, and that there were many chain stores in Palm Beach currently. Noted that PZ & B staff would be presenting a possible study regarding "formula" stores.

COUNCIL MEMBER WYETT:

- Commented that there was confusion regarding the action taken regarding

Starbuck's at the August 8, 2006, Town Council meeting. Suggested that those actions should be reconsidered.

COUNCIL MEMBER BROOKS:

- None.

TOWN MANAGER ELWELL:

- Commented regarding partial approval of development review applications, and the consideration of deferring those applications to the next Town Council meeting, where fuller information would be available.

- Commented regarding regulation of derelict and abandoned vessels; staff was continuing to work on the issue in order to construct a policy for the Town Council to consider.

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

- Pat Flynn, Palm Beach Theater Guild, commented regarding;
  - Funds raised for PB Cats.
  - Keeping the Poinciana Playhouse.
  - Landmarking/historical preservation of the Poinciana Playhouse and the Poinciana Plaza.

VII. APPROVAL OF AGENDA

DEFERRED to October 10, 2006, Town Council Meeting, Item XII.C.3.a., Site Plan Review #9-2006, With Variances, application of The Villas, Inc., relative to property at 425 Worth Avenue.

DEFERRED to October 10, 2006, Town Council Meeting, Item XII.C.3.d, Variance #25-2006, application of Thomas Longhurst, relative to property at 228 Phipps Plaza.

DEFERRED to October 10, 2006, Town Council Meeting, Item XII.C.3.f., Site Plan Review #13-2006, With Variances, application of Il Lugano Condominium Association, relative to property at 300 Seminole Avenue.

WITHDREW Item XII.C.3.e., Variance #30-2006, application of 1141 North Lake Way, Inc., relative to property at 1141 North Lake Way.

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: AUGUST 8, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING [Moved to Regular Agenda - New Business, Item No. 3].

This Item, VIII.A., was pulled from the Consent Agenda and moved to the Regular Agenda - New Business, X.B.3., for discussion.

B. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON AUGUST 23, 2006.

C. RESOLUTIONS

1. RESOLUTION NO. 46-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing and Directing the Mayor to Execute an Interlocal Agreement Between the Town of Palm Beach and Palm Beach County for the Operation and Maintenance of the Sand Transfer Plant at Lake Worth Inlet.
[H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 52-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Contractual Service Specialists Agreement Between the Town of Palm Beach and Randall L. Wolff, M.D., as Medical Director and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Edward J. Moran, Chief of Fire-Rescue]

3. RESOLUTION NO. 54-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the

Execution of a Joint Participation Agreement Between the Florida Department of Transportation and the Town of Palm Beach for Construction and Installation of Decorative Street Lights Along South County Road and South Ocean Boulevard. [H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 58-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Interlocal Agreement Between the Town of Palm Beach and Palm Beach County to Promote the Sharing of Geographical Information System Data and Authorizing the Mayor to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

5. RESOLUTION NO. 61-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Granting a License to the State of Florida Department of Transportation to Temporarily Use Town Properties to Construct or Improve State Road A1A, Item/Segment No. 2297491, Section No. 93060-2526 in Palm Beach County, Florida.
[H. Paul Brazil, Director of Public Works]

6. RESOLUTION NO. 62-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Designating Town Depositories for Fiscal Year 2007 Pursuant to Section 2-517 of the Town Code of Ordinances and Designating Parties to Sign Checks or Warrants on Behalf of the Town Pursuant to Section 2-36 of the Town Code of Ordinances.
[Jane Struder, Director of Finance]

7. RESOLUTION NO. 63-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Mayor and Town Clerk to Execute an Interlocal Agreement with the Municipalities of Ocean Ridge, Manalapan, South Palm Beach, and Gulf Stream for Coordinating the Payment of Fees for Intervening in the Action with the Florida Department of Transportation Opposing Five Foot Bike Lanes Along A1A; Providing for Severability; Providing for Repealer; Providing for an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

8. RESOLUTION NO. 64-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Joint Participation Agreement Between the Florida Department of Transportation and the Town of Palm Beach for Construction and Installation of Decorative Street Lights Along South Ocean Boulevard from 1,400 ft. South of Lake Worth Road to the South Town Limits.
[H. Paul Brazil, Director of Public Works]

9. RESOLUTION NO. 65-06 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 20 CY Refuse Packer and Three 6 CY Refuse Packers.
[H. Paul Brazil, Director of Public Works]

10. RESOLUTION NO. 66-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Agreement for Medical Services Between the Town of Palm Beach and Mohan Persaud, M. D., P.A., as the Town Physician and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[William C. Crouse, Director of Human Resources]

D. OTHER

1. Authorization to Execute New Town Docks Security Service Contract with Wackenhut.
[Thomas G. Bradford, Deputy Town Manager]

2. Authorization to Extend Street Sweeping Contract.
[H. Paul Brazil, Director of Public Works]

3. Authorization to Extend Lethal Yellowing Contract.
[H. Paul Brazil, Director of Public Works]

4. Authorization to Extend Turf Maintenance Contract.
[H. Paul Brazil, Director of Public Works]

5. Authorization to Extend Hedge Trimming Contract.
[H. Paul Brazil, Director of Public Works]

6. Authorization to Extend Compacted Garbage Contract.
[H. Paul Brazil, Director of Public Works]

7. Authorization for Mayor to Transmit a Letter to the United States Army Corps of Engineers Supporting the Lake Worth Inlet Sand Transfer Plant Upgrade (Including the Proposed Pipeline Extension).
[H. Paul Brazil, Director of Public Works]

8. Approval of Annual Insurance Coverages and Premiums.
[Thomas G. Bradford, Deputy Town Manager]

9. Authorization to Allow Supervised Removal of Minute Books from Town Hall to Facilitate Their Preservation.
[Susan A. Eichhorn, Town Clerk]

10. Investment Advisory Committee Appointments.
[Jane Struder, Director of Finance]

11. General Employee Retirement Board of Trustees Appointment.
[William C. Crouse, Director of Human Resources]

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

IX. PUBLIC HEARING

A. EASEMENT ABANDONMENT AND DEDICATION.
[H. Paul Brazil, Director of Public Works]

1. <u>RESOLUTION NO. 49-06</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Abandoning a Portion of a Two and One Half (2.5) Foot Utility Easement Lying Within Lots 4, 5, 6, and 7, Block "A," Revised Map of Royal Park Addition, and Dedicating a Ten (10) Foot Utility Easement Lying Within Lot 7, Block "A", Plat of Revised Map of Royal Park Addition and Government Lot 3, Section 22, Township 43 South, Range 43 East, Town of Palm Beach, Palm Beach County, Florida.

Public Works Director Paul Brazil referred to his detailed memorandum to the Mayor and Town Council, dated August 25, 2006, and included in the backup material. He advised that staff recommended approval of Resolution No. 49-06 abandoning and rededicating a utility easement on property at the Society of the Four Arts. He stated that if approved by the Town Council, the approval would include the condition that the property owner paid all fees related to implementing the abandonment, including, but not limited to, recording fees, and that the property owner would grant, in the future, a utility easement for the purpose of under grounding utilities within the Town.

Town Attorney Randolph read Resolution No. 49-06 by title, as printed above.

Motion made by Council Member Brooks, seconded by Council Member Wyett.

President Coleman asked if there were any comments from the public and there were none.

In response to Council Member Markin, Mr. Brazil stated that it was a swap of easements, abandoning one and reclaiming another. He advised that the Society of the Four Arts was flexible and there were no location issues relative to burying utility lines. The easements that were being abandoned and rededicated were within the property itself. He mentioned that future easements the Town might require for undergrounding would more than likely be adjacent to the roadways.

On roll call, the motion carried unanimously.

X. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager, Tom Bradford referred to his detailed memorandum to the Mayor and Town Council, dated August 28, 2006, and included in the backup material, to provide a status report regarding burial of overhead utility lines. He commented regarding:

- Legislative Update

- General Obligation Bond Referendum/Straw Ballot:

- The decision for a General Obligation Bond Referendum decided by the Town Council on April 11, 2006 was not irrevocable. If Town Council opted to change from GO Bond Referendum to straw ballot, they would need to advise staff as soon as possible, because the Town Attorney was going to commence drafting the resolution for presentation to the Town Council at the November Town Council meeting.

- Public Service Commission Hearing on the hardening of overhead facilities.

Mr. Bradford advised that there were three issues that needed action taken today related to professional services issues.

1. Approval of the recommended professional for utility negotiations:

   a. Roy Young - Lead Negotiator

Mr. Bradford advised that the first item had been labeled *lead negotiator*, which was both accurate and misleading. He stated that Mr. Roy Young, who was with Schef Wright's law firm, Young Van Assenderp, P.A. would be the Town's chief spokesperson coordinating all efforts. Staff would work closely with Town Engineer Jim Bowser, with engineers that had extensive experience with underground projects, with general contracting firms that construct under grounding, with legal professionals and, others. He explained that it would be a team approach with the Town leading the team, not Mr. Young.

In response to President Coleman, Mr. Bradford advised that all matters related to this issue would flow through Town Manager Elwell.

Mr. Bradford explained that it would be very difficult to estimate the cost to negotiate contracts with the three utilities. He noted that staff believed the negotiations with FPL would be fairly straightforward, but BellSouth and Comcast negotiations would be more complex. He stated that staff estimated 300 hours of time with the cost at $60,000 for Mr. Young's time spent during the negotiating process.

In response to President Coleman, Mr. Bradford clarified that it was not a flat rate but an hourly rate of $200, and that the 300 hours were a guestimate; the amount of dollars could go up or down.

2. Approval of a firm for the updated cost estimate:

   b. R. W. Beck- Updated Cost Estimate

Mr. Bradford mentioned that the first cost estimate conducted by an engineering firm was done in 2003, and had been updated twice for inflation and other factors. He explained that he had recently observed some evidence that the numbers for cable television might be 50% short of what they should be. He recommended that there be another professional engineering cost estimate of the entire project to ensure that the Town presented to the public good solid numbers, in today's dollars.

3. Selection of a public relations firm for the public education program associated with the February 6th referendum:

   c. Curley & Pynn- Public Education

Mr. Bradford discussed the credentials of the public relations firm of Curley & Pynn, based in Maitland, Florida. He recommended securing their services for the public education program associated with the February 6, 2007 referendum.

Mr. Bradford advised that the estimated budget for Curley & Pynn was $69,875 and reviewed the budget calculations, as presented in the back-up.

President Pro Tem Kleid agreed that the lead negotiator would probably be somewhat limited in negotiations with FPL, but requested reassurance that the engineering firm hired would be involved, from the inception, and would be a vital part of the team effort, sitting in on the negotiation sessions. He explained that the reason for this request was that it was in the design that the costs would be attributed, and this was the area where the Town could save or spend money.

Mr. Bradford advised that was what staff intended to do, noting that he was currently working with R.W. Beck to establish a separate budget for their involvement. He explained that depending on what R.W. Beck reported back to staff, he might request Town Manager Elwell add to the agenda of the September 20, 2006 Special Town Council meeting, a request to approve the use of their services. He mentioned that it was possible staff would sit down with the utilities prior to the September 20th meeting, and would retroactively seek the Town Council's approval. He stated that the Town would have professional representation from the beginning, whether it would be R.W. Beck or a local engineering firm.

In response to Council Member Markin, Mr. Bradford commented:

- Mr. Young's rate was $200 per hour at approximately 300 hours.
- R.W. Beck would have a set contract with a 10% contingency.
- 5% was added to the contract for the public relations firm for reimbursable business expenses: an added 10% contingency to that number plus the fees that they proposed to the Town.
- The figures were from beginning to the anticipated end date of February 6, 2007.
- If the Town went to a straw ballot, none of the figures or contracts would change.

Discussion ensued regarding the hardening issue. President Coleman stated that hardening would be a very significant part of what the Town would be facing.

In response to President Coleman, Mr. Bradford commented:

- The PSC indicated, by formal action, that the 25% credit would be retroactive to any project started on or after April of 2006, noting that he had not seen anything, in that regard, relative to the hardening question.

- The PSC would come to a determination in October 2006.
  - The process after a determination had been made included:
    - Determination sent to the Secretary of State
    - Twenty day window for challenges
    - Additional twenty day window
  - The length of the process was the reason for stating that any action resulting from the determination would occur toward the end of the year or first of the year, if there was no challenge.

President Coleman stated that he was in favor of a straw ballot. He urged the Town Council to consider the ballot. He noted that if, at some point, they moved toward a straw ballot, staff should be informed, so they could slow the process down.

Council Member Brooks commented that BellSouth and the Florida Cable Association would most likely file an appeal on the hardening process, which was true to their form. He noted that they would probably file the appeal late in the game to give them additional time, which would then set everything back. He noted that he would like this finalized, and perhaps, the Town Council should engage in another conversation relative to a straw ballot versus a General Obligation Bond referendum.

In response to Council Member Wyett, Mr. Bradford advised that it appeared that the Town of Jupiter was moving forward with a pilot project that was converting about two blocks of their Town to underground utilities.

Council Member Wyett commented as follows:

- The hardening issue and the 25% issue had to do with reduction of costs to the project, noting that these issues could take a year or more to resolve.
- Suggested that the Town should state, in the near future, what they believed to be the estimated costs, knowing that there was an inflationary cost of construction, and project that inflationary cost forward ten to twelve years, through the life of the project.
- Residents' concerns were:
  - When would the under grounding happen?
  - Requested that the under grounding get started.
  - What was it going to cost them?
  - What would it affect their property when doing the under grounding?
- The total cost was not the major issue, but how much per million dollars of assessment, as a taxpayer, it was going to cost.

Mr. Bradford responded that staff could structure the ballot that way, but the concern he had about a straw ballot was that it could run contrary to standard practice, of not going back to the voters twice on an issue.

Council Member Wyett advised that he was not suggesting a decision be made at this time to determine if there should be a straw ballot or GO Bond Referendum, as there was still some time to decide. He agreed that it was best not to go back to the well twice.

Mr. Bradford responded the Town Council did not have to make a decision today regarding a straw ballot versus a GO Bond Referendum. He noted that could be decided at next month's meeting.

Ned Barnes, President of Palm Beach Civic Association, commented that cost was an issue. He advised that critical to the passage of a GO Bond Referendum was to have the best possible grasp of the cost. He mentioned that there was some opposition from the public, which he believed was based on cost.

Town Manager Elwell referred to Mr. Wyett's comments relating to providing numbers that the public could digest and understand as to how they impacted them personally, would be an element of any educational campaign conducted by the Town. He noted that the framing of the actual question, for the residents to vote on, should a General

Obligation Bond referendum be chosen, needed to state by law, how much the Town was asking the voters to approve as the maximum amount of bonds. If it was decided to hold a straw ballot, there would be a lot more flexibility as to how the question was asked.

Mr. Elwell explained that staff was not requesting authorization of money, but to authorize staff to proceed. The money would be spent from the funding that had been previously authorized. He advised that the amounts staff proposed to spend exceeded his authority.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve the three recommendations made by staff, as set forth in the staff memo dated August 28, 2006, to the Mayor and Town Council, and included in the backup, requesting Town Manager Elwell to spend the funds required to secure the services of Roy Young, lead negotiator for the underground conversion contracts with the affected utilities; R.W. Beck, an engineering firm to update the town wide cost estimate; and Curley & Pynn, public relations firm to prepare the public education program for the February 6, 2007 referendum. On roll call, the motion carried unanimously.

2. Town Facilities [Peter B. Elwell, Town Manager]

   a. Space Planning Options for Town Hall

   b. Planning, Zoning, and Building Department Relocation to West Palm Beach

Town Manager Peter Elwell referred to his detailed memorandum to the Mayor and Town Council, dated August 31, 2006, and included in the backup material, addressing Town facility needs - new options for relocation of Planning Zoning and Building to West Palm Beach and for renovation of the Town Hall. He mentioned that the Town Council was divided on this issue. The current direction of the Town Council, subject to any change they might make, was to move Planning, Zoning, & Building off the Island to an appropriate location and do a renovation that was a less significant than what would be required at Town Hall if PZ&B remained.

Mr. Elwell advised that staff had located a building, which required some renovation, but was in good condition and met Town needs. He stated that staff recommended purchasing 444 Bunker Road in West Palm Beach, relocating PZ&B to that location. He discussed the reasons for that recommendation as set forth in his memo.

Mr. Elwell noted that it would not be in the best interest of the Town to have PZ&B remain in Town Hall as it would not meet all the criteria identified for making the decision of what would be in the best interest of the Town long term. He explained that the plan to renovate Town Hall was not intended to create space for future growth of staff. He noted that the plan was intended to catch up and put the proper facilities in place in order to allow staff to function. The Town was presently functioning in facilities that had long since been outgrown.

Mr. Elwell explained that a separate binder had been provided along with the back-up containing the Town Hall space analysis, which had been prepared by Mr. Centanni, of Astorino, an architectural firm. The report offered four options for allocating space within Town Hall. He noted that Mr. Centanni was present to address the report and answer questions.

Mr. Elwell commented on those options as follows:

- The Town's needs would not be met.
- The total amount of space sufficient for the Town to function had not been provided for.
- The problem would not be totally resolved, but it could reduce the amount of overcrowding allowing the Town to function better.
- The most important issue was related to the clientele of the department and to traffic and parking.
    - The customers of PZ&B were not residents, but contractors and other professionals who served the residents.
    - Relocation to West Palm Beach, would address those issues.
    - Remaining in Town Hall, would not address those issues.

Mr. Elwell stated that he was very enthusiastic about the property at 444 Bunker Road in West Palm Beach. He commented as follows:

- Building was of appropriate design and condition.
- 20,000 square foot building with 10,000 square feet on each of two floors:
    - 10,000 square feet to be used for PZ&B on first floor.
    - 10,000 square feet of leasable area, completely separate, on second floor.
- Provided the Town with an additional asset.
- Provided the Town with additional revenue from the leasable space of up to, in current market dollars, approximately $200,000 a year gross.
- Building 4 miles from Town Hall, ten minute drive, other than at rush hour.

In response to President Coleman, Mr. Elwell reviewed the costs related to relocating PZ&B to West Palm Beach as well as the costs related to renovating Town Hall. He noted the figures were guesstimates, and that they were dealing with concepts more than specifics. He noted that, as a Town Manager's order of magnitude and not as an engineer's cost estimate, his best ballpark figure was $9 million for the relocation of PZ&B, and the renovation of this building versus $7 million if a renovation was done keeping PZ&B in Town Hall. He commented as follows:

- The cost of renovating Town Hall would be reduced significantly if PZ&B was not kept at this location.
  - By moving staff out of Town Hall, a large vacant space would become available, within the building, providing an opportunity to phase the project.
  - Allowed staff to remain in Town Hall, moving them around within the building during construction work related to the renovation. Staff would not have to move offsite.
  - There would not be any relocation costs or leasing costs during the course of the project.

President Coleman stated that the question would be one of policy. He advised that if the Town was able to rent the 10,000 square feet at the Bunker Road building, that building would be almost self-financing.

After further discussion regarding costs, Mr. Elwell stated that he did not believe the financial aspect drove the decision. The question was whether the Town would be better off having PZ&B remain here on the Island, even if the Town did not get everything they were looking for out of a Town Hall renovation; or whether it would be better to have PZ&B move off the Island, and the Town got everything they were looking for out of a Town Hall renovation.

Council Member Brooks thanked staff for the work that had been done. He suggested staff come back in a month with more hard figures for consideration by the Town Council. He requested staff return with options for the following issues regarding Town Hall:

- Security
- Repair of the roof
- Rehab on the north end
- Rehab of the building

Council Member Brooks stated that his recommendation was to have, at the October

Town Council meeting, a presentation of a parallel track of comprehensive numbers that looked at the broad package.

Council Member Wyett commented as follows:

- The Town was not making the right decision by going off Island.
- 45% of the traffic coming into Town Hall was local.
- The trip to Bunker Road was more than ten minutes.
- The Southern Boulevard bridge, in the next five years, was due to be rebuilt, impacting traffic during that construction.
- Proposed Option D - the right thing to do was to keep the business of the Town of Palm Beach in Palm Beach.
- The dollars and cents was not that great of a differential whether it was $7 million or $9 million.

President Pro Tem Kleid stated that the new space plan analysis reaffirmed, as far as Options A, B, and C, that the Town could really not create enough space to handle PB&Z. It was a confirmation, he believed of the report of Digby Bridges, Marsh & Associates. He stated that with Option D, the Town could get close to what they wanted. He discussed the pros and cons related to this issue as follows:

- Pros
    - Sufficient space - 10,000 square feet
    - Property asset
    - Revenue producing piece of property
    - Reduced parking problems
    - Reduced traffic
    - No changes to a landmarked building
    - Less turmoil
- Cons
    - Cheaper in long run to build out Town Hall
    - Staff all under one roof, which would not be the case if PZ&B moved to Bunker Road
    - More space than actually needed
    - Did not believe in moving purely for investment purposes

President Pro Tem Kleid advised that it came down to, in the final analysis, whether the Town would get efficient space and enough space if Town Hall was bumped out, and what the related costs would be. He noted that Option D should be considered and requested that the Town Council receive firm numbers to confirm that. He suggested considering bumping the building out further than 30' and questioned whether it was necessary to have vehicular traffic access on that street.

Council Member Markin commented as follows:

- Agreed with everything said by Mr. Kleid.
- Critically and essentially important to keep PB&Z in Town Hall.
- A number of other departments could be moved off Island without affecting the way business was done in Palm Beach.
- Difficult to get volunteers to serve on PZ&B boards/commissions if required to travel to Bunker Road for meetings.
- Challenged 10 minute travel time.
- Salary breakdown for staff commuting between Bunker Road and Town Hall.
- Revenue stream: it was not the Town of Palm Beach's business to be in the real estate business.
- Amount of empty space and inactivity in Town Hall.
- Could not support moving a department with 3,000 to 4,000 square feet to 10,000 square feet when most departments were downsizing due to technology.
- The following could be reduced significantly if the approved computer systems were implemented: storage space, work space, number of trips made by contractors and residents to Town Hall.
- Parking was a logistical issue and the decision to relocate PZ&B should not be based on parking.
- The philosophy of what the Town did in Town Hall was more important as was the safety and contentment of the staff, and the perception of residents.
- Advised she had not spoken to a resident who was in favor of relocating PZ&B to West Palm Beach.
- Could never support moving PZ&B, or any department, if space could be made for them in Town Hall.

Council Member Markin discussed the report of Astorino stating they did an excellent job, in a very short time frame, for a modest amount of money, providing the Town with four options.

Council Member Markin reiterated it was more efficient to remain in Town Hall. She noted there would be better Town dynamics, and they could get up to 18,000 square feet in Town Hall through renovating the building in an efficient and prudent manner, which included bumping it out a little or a lot.

Council Member Brooks commented:

- Hard numbers were needed.
- Option D might be the best option, but figures were needed to support that.
  - Any obstacles would need to be addressed such as: could the Town do this unilaterally or did it require approval from the National Register of Historical Places.
- Recommended that next month, a presentation of a double track of figures that were as close as staff could get, realizing that they could not get totally hard figures.

Council Member Wyett commented:

- Cost was always important
- Suggested narrowing it down to one option with the decision based on the space needed in Town Hall.
- Requested knowing how many hours Veronica Close, Paul Castro and other members of PZ&B would spend commuting between Bunker Road and Town Hall.

Betty Marcus, 208 Sandpiper Drive, commented that the feelings of the citizens, who have had to wait months, years sometimes, to get their projects approved, had not been addressed. She suggested an office be opened, forgetting about the cost, where residents could get things done.

Juliette De Marcellus 357 Crescent Drive, commented in opposition to relocating Planning, Zoning & Building and suggested deferring all discussion until there were more residents in Town. She congratulated Council Members Wyett and Markin on their presentations.

Adele Kahn, 231 and 235 Peruvian Avenue, commented in opposition to relocating Planning, Zoning & Building and dividing staff, noting she was in favor of renovating Town Hall. She congratulated the Town Council for working hard on this issue.

Sam Boykin, 285 Jamaica Lane, commented that most of his constituents were out of Town and that he had received many calls requesting that he do something on this issue. He advised that he had written a letter, which he was submitting, in a positive manner, to cooperate and get the best possible solution for the Town. He read his letter into the record, which included a tentative proposal for the handling of this complicated issue. He suggested that the existing Town Hall building be enlarged in accordance with Option D, 3rd floor included. If after thorough study, that plan was not accepted, then the Town should proceed to purchase and renovate 444 Bunker Road.

Mr. Boykin advised that he had received a letter from Mr. R. Keith Eliott who had been a CEO of two major New York Stock Exchange corporations. He stated that Mr. Eliott was opposed to relocating Planning, Zoning, and Building. He noted that Mr. Eliott stated that relocating PZ&B to West Palm Beach was comparable to the State of Florida moving highway patrol headquarters to Atlanta, Georgia.

Yvelyne D. Marix, 1570 North Ocean Boulevard, commented as follows:

- Decision relative to the potential move of PZ&B was a serious matter and relocation would be irrevocable.
- Requested the Town Council operate within the spirit of the Sunshine Law.
  - Prior to all major decisions, public hearings should be held later this fall.
  - Public hearings would not cost the Town any money or bother since educational sessions were being planned regarding the underground issue. As part of those meetings, this subject could be aired too.

In response to President Coleman, Town Manager Elwell discussed the following:

- Logistics of bumping out Town Hall.
  - Sufficient space could be provided
  - Vehicular access
- Staff would determine for the next month's meeting whether other authorities might have to grant approvals, in particular the National Register of Historical Places.
- Landmark Preservation: The National Register of Historical Places designation of Town Hall might or might not be affected depending on the design that the Town undertook.

After further discussion, President Pro Tem Kleid requested that staff present at next month's Town Council meeting, the costs associated with Option D in order that a determination could be made.

Council Member Markin advised that it would be beneficial to hear from Mr. Centanni who spearheaded the study. She explained that it was her understanding that Option D provided everything the Town had asked for. She stated that the space planner looked at the existing footprint of Town Hall in order to come up with creative, technological ways to make the space as efficient as possible. She noted that, in doing that, he went from 11,000 square feet to 17,400 square feet, providing increases across the board to every department with the exception of Finance. She reviewed the four options:

a. Option A: Finance, Town Clerk, Human Resources and Risk Management would be moved to the vacated Fire-Rescue Station. All renovations were within the existing Town Hall space and vacated Fire-Rescue Station.

b. Option B: Finance, Human Resources and Risk Management moved into the vacated Fire-Rescue Station. All renovations were within the existing Town Hall space and the vacated Fire-Rescue Station.

c. Option C: North wall of vacated Fire-Rescue Station extended out 25' on first floor only. All of Finance and Town Clerk and some of PB&Z moved into the 1st floor vacated Fire-Rescue Station. Second Floor was the same as Option A. (No extension)

d. Option D: North wall of vacated Fire-Rescue Station extended out 25' on first and second floors (optional 3rd floor extension as well). All of Finance and part of PZ&B moved into first floor of vacated Fire-Rescue Station. Optional 3rd floor has shared or visiting office/storage space as well as more office space for Information Systems.

President Pro Tem Kleid noted that the Town Council was clearly zeroing in on Option D as presented, or an expanded Option D.

Mr. James Centanni, Jr., Architect and Principal-in Charge with Astorino, a national architectural planning and interior design firm, commented that it appeared to him from discussion of the Town Council and residents, that Option D was the option, at the present time, that looked the most favorable.

Mr. Centanni reviewed the Town Hall space needs analysis as provided in the back-up.

Motion made by Council Member Wyett that the Town Council authorize the Town Manager to proceed with Option D.

President Coleman suggested amending the motion to direct Town Manager Elwell to explore meeting the Town's needs by expanding the building north.

Council Member Wyett amended his motion to authorize Town Manager Elwell to engage, professionally, those people who would be able to advise how far out Town Hall could be expanded with and without invading the roadway; and if it was decided to go into the roadway, what would the roadway look like, whether it would have to be abandoned or made it into one lane, etc. Town Manager Elwell should report back to the Town Council so they could decide whether to keep the building to its present confines of the sidewalk or partially invade the sidewalk, or whatever would be practical.

Council Member Markin asked Mr. Centanni, what he felt was the optimum bump out on the north end to maximize the space to the liking of the departments and their needs?

Mr. Centanni stated that, at this particular time, he did not believe they needed a bump out more than 30' or 32'. He advised that by going to that extent they could still, with the reservation of looking at a survey, bump out the building about 30' - 32' and maintain the integrity of a roadway, which was what had been asked of them originally.

Council Member Wyett altered his motion to state that staff investigate the cost structures and practicalities of moving the building out to the maximum of 30' - 32'.

Council Member Markin seconded the motion.

President Coleman suggested giving Town Manager Elwell a free hand in order to come back with a plan to meet the requirements of bumping the building out north, consulting with architects.

Council Member Wyett advised that was his motion.

Town Manager Elwell noted there was an enormous amount of complexity to this issue no matter which way they were moving.

President Coleman advised that they were master planning going north.

After further discussion, Town Manager Elwell stated that he believed it was the consensus of the Town Council to expand Town Hall in order to keep everyone in the same location. He suggested keeping the motion as simple as possible.

Council Member Wyett clarified the motion to authorize Town Manager Elwell to explore the practicalities of the expansion of the Town Hall Building to the north, and to bring back a plan to the Town Council for consideration, not only showing the building expansion, but a new sidewalk area that would have to be provided, and how it related to the Memorial Fountain. Council Member Markin seconded the motion. On roll call, the motion carried 5/0.

B. New Business

1. Landscape Screening Opportunities at Palm Beach Public School.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Brazil presented screening opportunities at Palm Beach Public School, as concerns were raised regarding the view, which exposed the elevated parking, and the blank east wall. The School Board agreed to assume responsibility for the maintenance of the landscaping, but would be unable to participate in the purchase of the material. He discussed the four alternatives developed by the Public Works Department, as stated in his memorandum dated August 25, 2006, on page 285 in the backup material. Staff recommended the fourth alternative, as it was cost effective and provided an immediate impact, costing approximately $19,900, to be allocated from the General Fund Contingency Account.

Responding to Council Member Wyett, Mr. Brazil replied that the existing plantings would take approximately two years to screen the elevated parking, per the School Board. There were no plans for plantings along the east face of the building.

Responding to Mayor McDonald, Mr. Brazil indicated that the Garden Club preferred the third alternative, but that it would be cost prohibitive. Mayor McDonald commented that he would like to see sketches of the proposed landscaping.

Responding to Council Member Markin, Mr. Brazil noted that there was opportunity for buttonwood or ivy on both the south and east face of the elevated parking. Ms. Markin expressed concern regarding the buttonwood that during a storm, it could get wind beaten very easily. She indicated that she would also like to see sketches of the proposed landscaping.

Council Member Brooks stated that he liked the fourth alternative, as both vertical and horizontal landscaping was taken into consideration. He added that a sketch would be helpful in the Council's deliberations.

President Coleman indicated that sketches were needed and that he favored the third alternative.

It was the consensus of the Town Council to defer Item X.B.1. to October 10, 2006, Town Council meeting in order that staff could bring back sketches and address the questions that were raised.

2. Improving the Breadth and Intensity of Code Enforcement
[Peter B. Elwell, Town Manager]

Town Manager Elwell provided an overview of the report regarding staff's plan for committing more staff resources to the code enforcement function. Mr. Elwell indicated that the responsibility for the code enforcement function of the Planning, Zoning, and Building (PZB)

Department would be transferred to the Police Department during FY07.

President Pro Tem Kleid commented that the key to success of code enforcement would be the involvement of the Police Department. He said that he applauded the move.

Responding to Council Member Wyett, Town Manager Elwell indicated that the regulation of citing a building, constructing it properly, meeting the codes, and ensuring that it was safe to occupy, would stay in the PZB Department. The code enforcement or code compliance units, which was comprised of building inspectors, performed plan reviews and field work related to the physical construction of a building, including plumbing, electrical, and other similar functions. The code enforcement personnel were assigned to enforcing Town code ordinances, not the construction of buildings, but the maintenance of properties, the signage at commercial structures, and a variety of other things that relate to the use and maintenance of properties.

Council Member Wyett expressed concern regarding the dividing line between the functions of code enforcement and the police. He noted that some aspects of code enforcement were police functions, but not issues such as signage and lawn maintenance.

Town Manager Elwell explained that staff struggled with the functions performed by police officers, as opposed to functions that would be performed by the code enforcement unit. He noted that Police Chief Reiter and his team would define the implementation plan and that the police officers would not be enforcing basic core functions that were currently being done by code enforcement. The advantage of the code enforcement unit being part of a police department team was that situations requiring involvement of police officers would be an integrated group rather than two departments trying to set up ways to properly communicate, particularly after-hours communication, which had been the greatest challenge.

President Coleman noted that he was in favor of the centralization of management.

Responding to Council Member Markin, Mr. Elwell explained that moving the code enforcement operation to the Police Department would improve the comprehensiveness and intensity of code enforcement.

Council Member Markin expressed the following concerns:

- Was it the best use of resources for the Police Department to follow up on code enforcement issues on a daily basis as Police Chief Reiter indicated that their personnel was spread thin?
- Would a Code Enforcement Board continue to be necessary?

- Training police officers for code enforcement versus keeping the responsibility with the existing code enforcement personnel different?

Ms. Markin requested a list of the current violations. She indicated that priorities should be set to manage the code enforcement officer's time more efficiently. A police officer could issue citations while the code enforcement unit was located in PZB. She added that in most cases the code enforcement function was in PZB, where the codes were written, discussed, and implemented.

Town Manager Elwell noted that it was not unheard of to have the code enforcement function located within the police department. It was not the intent to make every police officer into a code enforcement officer other than in an unusual circumstance where involvement was needed. A police officer versus a civilian had more impact on the receiver of an enforcement action. Police officers were on duty after hours, and on weekends, versus the civilian core. A change of approach would be to encourage people to understand the code and resolve their code violations. As a last resort, stricter enforcement through the code enforcement board process should be applied. The Police Department would become the arm of code enforcement in the Town, rather than PZB.

Council Member Markin indicated that a list of all the code violations would be helpful. She expressed that she was not convinced that the Police Department had the manpower to enforce all the codes over and above what they had already been doing.

Council Member Brooks said that he supported the realignment of the Police Department's involvement in code compliance because in several weeks the ban on lawn maintenance on Saturday afternoons would begin; lower decibel standards would soon be implemented; and the ban on construction work that was being done on Sundays needed to be enforced. The police officers on regular patrol had a greater chance of observation than the code compliance officers, as their resources were limited due to the hours of operation.

President Coleman said he supported the transfer of Code Enforcement to the Police Department as it was a 24/7 challenge, and PZB was not a 24/7 department. This proposal was the result of complaints due to the lack of management on Saturdays, Sundays, and at night.

President Pro Tem Kleid reiterated that the Police Department had patrols out all the time and he was not sure that they were communicating as to where all the problems were located. Once the code compliance people were in the Police Department, there would be a shared responsibility resulting in more reaction between the various people involved and a better product.

President Coleman noted that the Council should defer to management holding police officers accountable, rather than being involved in the details of how it would be done.

Council Member Markin responded that the Council was being asked to look at a change in policy, that it affected the residents, and she would like to have a discussion about it. She said she was not dictating how to manage individuals.

Council Member Wyett expressed concern that the Police Department would rely on Code Enforcement's two and a half men to do the whole job, as it would not be enough. He said that he would rely on the police department to improve code enforcement.

Mr. Elwell indicated that the expected increased role of police officers would not be a daily part of every officer's routine. The goal could not be achieved without the Police Department playing a significant role in the additional effort made by Town staff. The responsibility of supervising needed to be in the Police Department, placing the Chief in the best position to make the decisions about the deployment of resources in a way that both tasks could be accomplished well. In order to improve performance in this area without adding resources, Code Enforcement would need to reside in the Police Department.

Mayor McDonald stated that the Town Manager was given objectives, made decisions, informed the Council, and that discussion of the details was a waste of time. The Council needed to deal with policy and not the details.

Police Chief Reiter commented regarding the role of the Police Department:

- Could solve the code enforcement issues;
- Not be without some reduction of the Department's other responsibilities;
- Carry a heavier hammer than where the code enforcement officers were currently located;
- Use criminal statutes and existing Town ordinances to prosecute repeat or blatant violators in county court; and
- Would be held responsible because of the hours of operation.

Council Member Markin commented that the dais was the appropriate place to have the discussion, and it was not her intent to discuss the management style or details of any function.

There was no further discussion regarding Town Manager Elwell's report on improving the breadth and intensity of Code Enforcement.

3. Minutes, August 8, 2006
Approval of the Minutes of the Town Council Meeting
[Removed from Consent Agenda for Discussion]

Council Member Markin stated that there was confusion in the minutes of the Town Council meeting of August 8, 2006, as to what was included in the Special Exception approval regarding Starbuck's. She noted that the conditions of approval had not been included last month when the project was presented. Based on that, she suggested that there be reconsideration of the motion for approval, because of the confusion.

Town Attorney Randolph advised that right now, the discussion was regarding the minutes prepared for the August 8, 2006, Town Council meeting. Any motion for reconsideration should be discussed when the subject of the Site Plan came up. He noted that it was his understanding that the application had involved two special exceptions and that the variance issue was deferred to this meeting. There was also a petition to appeal the decision of the administrative official regarding a deficiency of required off-street parking was to be heard.

Town Attorney Randolph explained that there was a Special Exception for the outdoor seating, and a Special Exception that the Town Council acted on last time, which did not have any conditions attached to it. It was his understanding that the applicant understood that there were special conditions that were going to be attached, and that he has no problem with re-visiting that to be sure that those conditions are attached; it was his understanding that the Town Council had approved the Special Exception.

Zoning Administrator Castro explained that there were two Special Exceptions and two Variances, and Site Plan Review was only attached to the Special Exceptions as one of the criteria. The Site Plan Review was for the back door with the sidewalk and the sidewalk triggered a variance for landscaped open space, because the proposal was to run a sidewalk across the back to take refuse and trash out. The applicant had submitted a letter requesting withdrawal of that variance application. The Site Plan Review was not approved either at that meeting. The Special Exception for the restaurant, because the restaurant is a special exception use in the CWA District, was approved, but there was no action taken to the outdoor seating and that had not been discussed. The other variance, which was deferred, was the variance for the five parking spaces, and that was deferred to give the applicant the opportunity to appeal the administrative decisions that they needed a variance for parking.

Town Manager Elwell commented that right now, the first thing to do was to determine whether the Town Council was satisfied with the minutes that were provided for last month's meeting.

President Coleman commented that he did not see how the issues were separable, practically speaking. A discussion of the minutes would really be a re-discussion of the entire issue.

Town Manager Elwell replied that the Town Council could consider approval of the minutes, and then proceed with a motion for reconsideration, so that it could look at the entire situation again, and make a good clear statement today of what had been intended.

The Town Clerk administered the oath at this time, to swear in all those who would be providing testimony relative to all development review items.

Attorney for the applicant, James Brindell, summarized what he thought had happened to date. His discussion included the number of seats allowed, the variance regarding the off-street parking spaces, which led to the issue of the appeal today, and the conditions that he had later provided to staff.

Council Member Wyett commented that he believed there were grounds for re-consideration.

Town Attorney Randolph commented that the Town Council did not have to approve the minutes from August 8, 2006, today. If there as confusion, and a transcript was needed before approval, the approval of the minutes could be deferred.

Attorney Brindell commented that the approval of whether there was to be a restaurant or not was clear. The operational conditions were something that the applicant was willing to come back and discuss today.

President Coleman noted that the conditions had not been nailed down, and questioned if the discussion today should start with whether there was an approval, and now the conditions should be discussed.

Council Member Markin commented that she believed that discussions should be started, as if there was not an approval, based on the fact that the conditions were received after the fact, and those technical issues should have been something that was discussed prior to an approval.

Mayor McDonald commented that the Town Council may wish to reconsider because conditions had not been attached at the last meeting, and that is what the Town Council would like to do not when the action was reconsidered.

President Pro Tem Kleid made a motion to reconsider Site Plan Review #12-2006 with Special Exceptions and Variances, and open it up for discussion and vote. The motion was seconded by Council Member Brooks. On roll call the motion carried unanimously.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 8-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's General Fund and Equipment Replacement Fund Budgets Adopted for the Fiscal Year Commencing October 1, 2005, Providing an Effective Date.
[Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 8-06 by title, as printed above.

Motion made by Council Member Wyett, seconded by Council Member Brooks to adopt Ordinance No. 8-06. On roll call, the motion carried 4-0, as President Pro Tem Kleid had temporarily left the dais.

2. ORDINANCE NO. 10-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Comprehensive Coastal Management Plan Budget Adopted for the Fiscal Year Commencing October 1, 2005, Providing an Effective Date.
[Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 10-06 by title, as printed above.

Motion made by Council Member Brooks, seconded by Council Member Markin to adopt Ordinance No. 10-06. On roll call, the motion carried 4-0, as President Pro Tem Kleid had temporarily left the dais.

B. First 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 OPBE 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 Council Member Wyett, seconded by Council Member Brooks to approve on first reading Ordinance No. 9-06. On roll call, the motion carried 4-0, as President Pro Tem Kleid had temporarily left the dais.

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 Council Member Brooks to approve on first reading Ordinance No. 11-06. On roll call, the motion carried 4-0, as President Pro Tem Kleid had temporarily left the dais.

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 A New 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 Brooks to approve on first reading Ordinance No. 12-06. On roll call, the motion carried 4-0, as President Pro Tem Kleid had temporarily left the dais.

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

**** The Town Council meeting of September 7, 2006, was reconvened at 2:00 p.m.*****

XII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Administrative Decision Regarding a Deficiency of Five Required Off-Street Parking Spaces at Starbucks Restaurant. [Veronica B. Close, Director of Planning, Zoning, and Building.

Attorney Brindell advised that he would like to move forward with the appeal today.

Council Member Brooks commented that the Town Council had not had the opportunity, sitting in the Sunshine, to discuss the matter fully, with input from counsel and the opposition input from Attorney Brindell.

Council Member Brooks moved to defer the appeal of the administrative decision regarding a deficiency of five required off-street parking spaces at Starbucks Restaurant. The motion was seconded by Council Member Markin.

Town Attorney Randolph explained that Attorney Brindell was attempting to bifurcate the issues so that he could get on with the primary issue that will be before the Council next month.

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

President Coleman advised that the appeal would then be heard today.

Attorney Brindell explained that in 1998, when the Neiman Marcus building came in, part of that building was to be built on a parcel that was tied to the Esplanade with a Unity of Title, which had been signed as a result of conditions attached to Town Council approval of a restaurant expansion in the Esplanade. At that time, there had to be a release of that Unity of Title. He referred to that Release, which was a recorded document, and which said in two places: "Whereas the purpose of the Unity of title, which was to accommodate additional parking, if needed, for the Esplanade, has been demonstrated to be unnecessary." Provision #2 said: "This agreement does not and shall not reduce the number of seats previously approved by the Town for restaurant uses on the Esplanade property,(i.e., 198 seats)." Attorney Brindell maintained that these two provisions were the derivation of this dispute. The staff had asserted that a scrivener's error had occurred in the document, mainly, that the reference in the parenthesis to 198 seats should have been 158 seats. The second assertion, which came up in recent documents from staff, was that a parking reservoir for the Esplanade was created north of Neiman Marcus on a lot that fronted Peruvian Avenue. Attorney Brindell advised that he was going to explain why he did not think there was a scrivener's error, and why this claim about another parking reservoir on the Neiman's lot was totally incorrect.

Attorney Brindell clarified that "i.e." had the meaning "that is," and was not "e.g.," which had the meaning "for example." He asserted that the clause, "i.e., 198 seats," made it absolutely clear as to the number of seats the parties were agreeing had been "previously approved." Staff now wanted to revisit the Agreement, however, he pointed out that they were not the parties making the agreement – it was the Town Council and his client.

Attorney Brindell explained why he believed there was no basis for the claim of a scrivener's error as to the 198 seats, and disputed the argument that there was a parking reservoir that had been created behind Neiman Marcus for the use of the Esplanade restaurants. He referred to the approval for Le Bateau, in 1995, which was referenced in the staff memo. That restaurant had come in with a request for 198 seats. The approval authorized initially 158 seats, with the right to come back for the remaining 40 after a showing was made of Town serving. The applicant was asking for more seats than had previously been there between Café L'Europe and Claudio's. One of the conditions in the Le Bateau approval talked about where the parking would be, which was in the covered parking garage and the park across the street.

Zoning Administrator Castro advised that staff was not confused with the language in the Agreement. Staff did believe however, that there was an error in the number that was in that Agreement, and in reviewing the applicant's history, found no approval of 198 seats. The reason why parking was never an issue was that there was a receiving area for all of the parking that would have been necessary if it would have been deemed a problem to build the parking on the other side of Worth Avenue. The applicant was told, at that time, that they could come back after six months and demonstrate the Town serving issue. Parking was not the issue, because parking was already in reserve in that reserve area across the street in the park.

Mr. Castro noted that when the applicant had come in to see him for the pre-application of this specific case, he had advised their representative that a variance was needed for the five parking spaces that were missing, based on the principle of equivalency. He stated that when reviewing the files staff found that in no case was there ever approval of 198 seats, and that staff had not prepared the document for release of the Unity of Title. He recommended that the Town Council uphold the determination of staff, in terms of that the applicant needed the variance, because there was nothing approving 198 seats in the Esplanade.

Town Attorney Randolph advised that he had written a memorandum in this regard. The purpose of the memo was not to side with staff or to side with Attorney Brindell, because he was representing the Council, as opposed to staff, in this kind of an application. He noted that he did not want anything he was saying to usurp the decision that the Council would come to, because the Council was the judge of this matter. He explained that the purpose of his memo was to identify the issues, and the key was the language of the Agreement. Attorney Brindell had indicated that he thought the parenthetical expression was very important because it identified what was in the record. Staff maintains that it was a mistake, because the record did not reflect 198 seats. Mr. Randolph noted that it seemed to boil down to the Le Bateau application, where 158 seats were approved, with 40 seats put in reserve if they wanted to come back and show Town serving in the future; what was previously approved in the Esplanade as of the date of this Agreement was of consideration, and if there were only 158 seats approved, then that was the number that the Council must deal with.

President Pro Tem Kleid commented that there was a principle of law that said that if there is an ambiguity in a document, it was construed against the person who drafted it., i.e., the applicant.

Town Attorney Randolph replied that was correct; if a judge were reviewing a document and there was an ambiguity, evidence would be reviewed regarding the wording, and the judge would look at who had drafted the document.

Council Member Wyett made a motion to uphold the decision of the Planning, Zoning & Building Department, and to deny the appeal. The motion was seconded by Council Member Markin.

Attorney Brindell maintained that the release did not purport to say that 198 seats could be instituted anywhere in the Esplanade without any further approvals; it was only about parking, and the Le Bateau approval, which was where this 198 seats came from. In 1998, the Town Council, knowing that, signed the release, saying that they were satisfied that the parking reservoir was not needed. He clarified that the determination of what the Agreement said was a court decision, and that the Agreement was not about anything other than parking for 198 seats.

On roll call, the motion to uphold the decision of the Planning, Zoning & Building Department, and to deny the appeal, carried 4/1, with Council Member Wyett, Council Member Markin, Council Member Brooks, and President Pro Tem Kleid casting affirmative votes; President Coleman casting a dissenting vote.

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. VARIANCE #28-2006 The application of John Flynn and Lee Flynn relative to property described as Lots 106, 107, 108 and the West 20 feet of Lot 105, Mark Rafalsky Tract; commonly known as 300 Ridgeview Drive; located in the R-B Zoning District. A variance request to allow construction of a new two-story residence with a point of measurement for cubic content, height and overall height of 21.5 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 15.72 feet NGVD maximum allowed, as determined by the Town. *Deferred from the August 8, 2006, Town Council Meeting.*

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

Attorney Maura Ziska provided an overview of the request of the variance. The hardship was related to the topography of the land.

Zoning Administrator Castro noted that there was a significant change in the topography from Slope Trail, up Ridgeview Drive to Hi-Mount Road, and that this property was much lower than the property directly due west. The Council deferred it in order to work with the Public Works Department to eliminate the access on Slope Trail or redesign the house to facilitate direct access only from Ridgeview Drive.

Motion made by Council Member Wyett, seconded by Council Member Markin to approve Variance #28-2006. On roll call, the motion carried unanimously.

b. VARIANCE #29-2006 The application of E. Burke Ross Jr. Trust u/a/d 12/19/02, Burke Ross, Trustee relative to property described as Lots 172 and 174 of Poinciana Park; commonly known as 163 Seabreeze Avenue; located in the R-B Zoning District. A variance request to allow the west side yard setback to be 5 feet 4 inches (5'4") for a swimming pool in lieu of the 10 foot minimum required in the R-B Zoning District. *Deferred from the August 8, 2006, Town Council Meeting.*

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

Attorney Ziska provided an overview of the request of the variance. The hardship was that it was a nonconforming lot.

Zoning Administrator Castro stated that the modification was that the pool was moved over and an area was created for a swim-out next to the patio area against the building, as was requested by the Town.

Motion made by Council Member Wyett, seconded by Council Member Markin to approve Variance #29-2006. On roll call, the motion carried unanimously.

2. New Business- Less Than 15 Minutes

   a. <u>VARIANCE #31-2006</u> The application of Joan Goodman relative to property described as lengthy legal description on file; commonly known as 911 North Ocean Boulevard, located in the R-A Zoning District. The applicant is proposing to demolish an existing guest house and replace it with a new wing which will be connected to the main house by an elevated hallway. This will require a point of measurement variance for the new wing so that it is at the same elevation and height as the existing main house. In this case, the building height for the residence abutting a low street is measured from 7.5 ft. National Geodetic Vertical Datum Mean Sea Level (NGVD). The applicant requests a point of measurement for height and overall height of 20.08 feet NGVD in lieu of the 7.5 foot NGVD required for a 7,500 square foot addition on the north side of the existing house.

No ex-parte was declared by the Town Council.

Attorney James Brindell provided an overview of the applicant's request for a variance.

Zoning Administrator Castro indicated that there was a significant topography change from the street, which was fairly low up to the existing finished floor of the guest house. There was a two-foot difference between the floor of the actual house and the floor of the guest house and staff questioned if the change was significant in order to warrant a hardship. Mr. Castro commented that the Architectural Commission was in favor of the project and recommended that the variance was merited.

Council Member Wyett moved that Variance #31-2006 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.

b. VARIANCE #32-2006 The application of Stacy Martone relative to property described as lengthy legal description on file; commonly known as 2310 South Ocean Boulevard; located in the R-C Zoning District. The applicant wishes to build a new residence on an existing non-conforming lot in the R-C district. A variance is requested to construct a new two-story single-family home on an existing lot 60 feet wide in lieu of the 75 feet minimum required and a lot area of 6,460 square feet in lieu of the 10,000 sq. ft. minimum required; a variance is also requested to construct the house with 33% lot coverage in lieu of the 30% maximum allowed. (an additional 180 sq. ft. of lot coverage.)

No ex-parte was declared by the Town Council.

Attorney Brindell provided an overview of the variance.

Zoning Administrator Castro stated that a single-family home was reasonable use of the property, and it met all of the lot yard and bulk requirements except lot coverage. The applicant needed to demonstrate to the Council that the hardship criteria for that lot coverage variance was being met.

President Pro Tem Kleid pointed out that every time there was new construction, the Council should carefully consider granting variances, as the buildings should be built in accordance with the zoning requirements. He commented that he was in favor of granting a variance in this respect.

Mr. Castro reported that the Architectural Commission agreed that new construction should meet the code requirements, but as a whole, it was approved. *Note: Mr. Castro later indicated that a condition of approval would be to encompass the easements for underground utilities.*

Council Member Wyett moved that Variance #32-2006 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

c. SITE PLAN REVIEW #15-2006 The application of 516 South Ocean Holdings, Inc., John F. Scarpa, President relative to property described as Lot 4 and the land East of A-1-A, Singer Addition; commonly known as 516 South Ocean Boulevard; located in the R-A Zoning District. Request for Site Plan Review approval to construct a new single-family, two-story home and one-story pool cabana on a non-conforming platted lot 100 feet wide in lieu of the 125 feet minimum required.

Attorney Brindell provided an overview of the site plan review.

Zoning Administrator Castro commented that a provision that easements for underground utilities on new construction projects would be needed by Public Works.

President Coleman indicated that a condition of that provision should be added for approval of the site plan review.

Council Member Markin moved that the Site Plan be approved with the condition of providing easements for underground utilities, based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certified that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11. Council Member Brooks seconded the motion. 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, and August 8, 2006, Town Council Meetings.* **Request for Deferral to the October 10, 2006, Town Council Meeting Per Letter Dated August 16, 2006, From Francis X. J. Lynch.**

This item, XII.C.3.a., was deferred to October 10, 2006, Town Council meeting, under the Approval of the Agenda.

b. SITE PLAN REVIEW #7-2006 with SPECIAL EXCEPTION AND VARIANCES - MODIFIED The application of Commerce Bank relative to property described as Lot 28 to 31, Block 10, Revised Royal Park Addition; commonly known as 380 South County Road; located in the C-TS Zoning District. Request for site plan modification to change the roof style and outside elevations, reconfigure driveway entrances and handicap space, eliminate the dumpster and reconfigure the interior space on both floors; request for approval of a Special Exception use to allow the continuation of a town-serving financial institution in the C-TS district on the northwest corner of South County Road and Peruvian Avenue; request for approval of a modification to the Special Exception to allow a town-serving business in excess of 2,000 square feet of gross leasable area in the C-TS district; request for approval of a modification to a Special Exception to allow a modification to the second story of a two-story building within the C-TS district; request for approval of a variance from the required front yard setback (South County Road frontage) to allow 5.27 feet in lieu of the existing 4.60

feet and the required 9 foot setback minimum required for a 22.16 foot high, two story structure; request for approval of a variance from the required ten-foot pedestrian walkway to allow a 9.31 foot wide sidewalk in lieu of the existing 9.64 ft. sidewalk along South County Road; request for approval of a variance from the requirement for a loading zone to allow the existing condition of no loading zone; request for approval of a variance from required landscaped open space requirement for two-story buildings to allow 15.6% in lieu of the 13.9% existing and required minimum of 25%; request for approval of a variance from required front yard landscaped open space to allow 13.8% in lieu of the existing 12.8% and the 35% minimum required; and, request for approval of a variance to allow demolition and renovation to a non-conforming structure that is in excess of 50% of its cubic footage by replacing the roof design and exterior windows. *Deferred from the June 13, 2006, and August 8, 2006, Town Council Meetings.*

Attorney Bonnie Miskel, on behalf of the owner, Commerce Bank, noted that at the previous meeting, the Special Exception was approved with conditions and provided an overview of the revised architecture of the Site Plan.

Architect Harold Smith presented the revisions that were made to the architecture.

Planning, Zoning, and Building Director Close provided the following staff comments:

- The hardship on the variances were in question, except for the change in architecture, particularly the roof;
- Concern whether the logo conformed with the Town's code;
- Provision of a sprinkler system; and
- Demonstration of any criteria for the expansion of the non-conformities for the hardship.

Responding to President Coleman, Attorney Miskel verified that underground utilities on the north side of the building were included in the plan.

Responding to Council Member Markin, Architect Smith explained that the decorative metal railing above the door of the three arched windows was to give the appearance of a balcony.

Council Member Brooks moved that Site Plan Review #7-2006 with Special Exceptions and Variances - Modified be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certified that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11. Council Member Wyett seconded the motion. On roll call, the motion carried unanimously.

Town Attorney Randolph noted that the Variances and Special Exception were to be approved separately.

Attorney Miskel indicated that the Special Exception was approved with conditions at the last meeting.

Council Member Brooks moved that the Variances contained in Site Plan Review #7-2006 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Wyett seconded the motion. On roll call, the motion carried unanimously.

c. 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, Town Council Meetings.*

After discussion, **Council Member Wyett moved to defer Site Plan Review #12-2006 to the October 10, 2006, Town Council meeting.**

Town Attorney Randolph clarified that Mr. Wyett wanted to see everything that was on the Agenda today, except for the appeal of the administrative decision, deferred to the next meeting. That would be a site plan review, a special exception, and a special exception that is under reconsideration now, and a variance, all of which would be deferred until next month. The administrative appeal, however, would be heard today.

On roll call, the motion carried unanimously.

d. 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, Town Council Meeting.* **Request**

for Deferral to the October 10, 2006, Town Council Meeting Per Letter Dated August 24, 2006, From J. Barry Curtin, P.A.

This item, XII.C.3.d., was deferred to October 10, 2006, Town Council meeting under Approval of Agenda.

e. VARIANCE #30-2006 The application of 1141 North Lake Way, Inc. relative to property described as Lot 54, Revised Plat Palm Beach Shores; commonly known as 1141 North Lake Way; located in the R-B Zoning District. Variance request to construct a new two-story house with lot coverage of 27.7% in lieu of the 25% maximum allowed for a lot in the R-B Zoning District over 20,000 square feet; and, a variance request to allow the point of measurement for the calculation of the Cubic Content Ratio of 9.0 feet National Geodetic Vertical Datum ("NGVD") for the garages and 10.5 feet NGVD for the house, in lieu of the 7.5 feet NGVD as required by the code. *Deferred from the August 8, 2006, Town Council Meeting.*

This item, XII.C.3.e., was withdrawn under Approval of Agenda.

f. 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 by reconfiguring parking spaces and greenspace to provide a fountain at the drive through entrance and modify the turning radius for safer access in and out of the parking lot, and lastly to construct a 298 square foot accessory building to house a generator on the southwest portion of the site next to the pool area. In addition, a request to eliminate the previously approved dumpster location and relocate to an area within the building; variance request to allow the construction of an accessory building to house a generator to have a 5.16 foot rear yard setback in lieu of the 30 foot minimum required in the R-D(2) Zoning District; and, a variance request to allow an increase in lot coverage to 30.25% in lieu of the 29.64% existing and the 22% maximum allowed for the generator building in the R-D(2) Zoning

District. *Deferred from the August 8, 2006, Town Council Meeting.* **Request for Deferral to the October 10, 2006, Town Council Meeting Per Letter Dated August 31, 2006,, From Maura Ziska.**

This item, XII.C.3.f., was deferred to October 10, 2006, Town Council meeting under Approval of Agenda.

g. SPECIAL EXCEPTION #3-2006 The application of Pizza Alfresco/Arlene Desiderio and Via Mizner Associates Limited Partnership/Ian Kean relative to property described as lengthy legal description on file; commonly known as 8-14 Via Mizner; located in the C-WA Zoning District. To allow a special exception to convert a retail specialty foods store with takeout (C-108 S and C-109 S) and an existing adjacent art gallery space (C-107 S and C-106 S) into a restaurant with 57 seats, the area totaling 1,899 square feet.) Request to allow a special exception permitting outdoor seating in conjunction with the proposed restaurant, a maximum of 36 seats will be relocated from the interior of the restaurant, without any increase in the total capacity of 57 seats. *Deferred from the August 8, 2006, Town Council Meeting.*

Ex-parte was declared by Council Member Brooks with the office of Attorney Ron Kolins.

Attorney Kolins provided an overview of the special exception application.

Responding to President Coleman, Attorney Kolins noted that public seating was also being provided.

Zoning Administrator Castro indicated that the seating capacity inside the restaurant would be required to support the outdoor seating by transferring seats from indoors to outdoors, reducing the inside seating. He noted the following comments by staff:

- The Fire-Rescue Department required that a meter be moved for the proposed dining area, and that an alarm and sprinkler systems within the building be provided;
- Planning Administrator Tim Franks indicated that public access may be reduced by private use in the public courtyard, as historically the area had been used by patrons of the pizzeria, and throughout the tenant spaces in that area, which caused concern relative to providing public seating; and

- Demonstration that the applicant would be Town-serving.

Responding to Council Member Markin, Attorney Kolins noted that the seating would not exceed 57, as the tables that would be used outside would be the same as the ones used inside, and would only have seating for 57 people. Attorney Kolins' second response regarding the public seating was that the number of seats for the public would remain the same and would include signage.

Responding to President Pro Tem Kleid regarding how to designate the public from the private seating, Attorney Kolins commented that they had not yet discussed the issue, but would address it. President Pro Tem Kleid indicated that it would need to be clear to the public as to which seating was public and which was private.

Responding to Mayor McDonald, Attorney Kolins indicated that the tables would be entirely different in order to distinguish the difference in the private and public seating. He indicated that there were four residential condominium units in the building, and one on the west side, as the Mayor expressed concern regarding their awareness of the application.

Responding to Mayor McDonald, Ian Kean stated that the owner of the condominium unit was on the board of the condominium association that voted in favor of the application.

Responding to Mr. Castro, Attorney Kolins clarified that tables and chairs of a certain type would be placed in the patio area on the east side of the Via, for the public, which was not where the Restaurant was located. On the Restaurant side, tables for dining would be from inside the Restaurant.

Council Member Wyett moved that Special Exception #3-2006 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

   a. <u>MODIFIED VARIANCE #16-2006</u> 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.

This item, XII.C.4.a.,was deferred to October 10, 2006, Town Council meeting, as the applicant was unavailable.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve deferral of Modified Variance #16-2006 to October 10, 2006, Town Council meeting. On roll call, the motion carried unanimously.

b. VARIANCE #33-2006 The application of Gary and Dawn Burkhead relative to property described as lengthy legal description on file; commonly known as 680 Island Drive; located in the R-B Zoning District. Variance to allow a generator with dimensions of 10 feet in length, 3.83 feet in width and 5 feet in height, within the side yard setback to exceed the overall maximum height limit required by code, because of a grade change from the adjacent property. Request is to permit a generator height of 8.8 feet as measured from the neighboring property owner's grade, in lieu of the maximum 7 feet in height permitted; and, variance to allow walls located within ten feet of the side property line at a height of 9.6 feet as measured from the lowest grade adjacent to either side of the property line, in lieu of the maximum 7 feet maximum height permitted to screen a 100 KW generator.

No ex-parte was declared by members of the Town Council.

Attorney Kolins provided an overview of the variance request. The hardship was that the basis of measurement for the height of the generator wall was the elevation of the property next door, which was lower than the applicant's property. He presented photographs as a visual aid.

Zoning Administrator Castro indicated that although the hardship was based on the change of topography, the applicant's property was large enough to select an alternative location that was not as close to the neighbor's property. No comments were received from the neighbor, although it was mentioned that they were often out of Town .

Responding to Council Member Brooks, Attorney Kolins replied that the generator could not be placed elsewhere without a variance, as it would destroy the property. It would not be allowed to be placed in front of the property, the other side would be even closer to a neighbor than the proposed side, and placing it anywhere near the pool, where it was hardscaped, would be destructive of the property. The requested location would not impact the neighbor as the generator was the quietest type available, the wall would be soundproofed, it would be far from the neighbors, and there was an enormous hedge.

Mr. Castro noted that if the location was approved, staff would recommend conditions to be placed on the operating hours of the generator in terms of its maintenance.

Council Member Brooks moved that Variance #33-2006 be granted with the condition that operating hours be placed on the maintenance of the generator and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Wyett seconded the motion. On roll call, the motion carried unanimously.

5. Other

a. Zoning Season Study Items.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Close indicated that on June 13, 2006, the Council reviewed the initial list of the Zoning Season Study Items, but that four of the following items remained to be reviewed in addition to a fifth item:

1. The recent trend of the conversion of hotels into condominium hotels;

2. The nightclub issue versus restaurants to determine an intermediate use for entertainment;

3. The location of telecommunications to allow antennas in multi-family residential districts;

4. Fast food, take-out chain food restaurants and the "formula" restaurants to regulate type of restaurant uses;

5. The location of underground utilities transformer boxes and the requirement of those by new applicants, in conjunction with the Council's actions related to underground utilities.

Town Manager Elwell responded to President Coleman's request that the general contractor assume the responsibility for the compliance of the subcontractors, in relation to the damage by cement trucks of the Everglades Island Bridge, by stating that the issue would be addressed while reviewing the degradation of the roads issue at the October 10, 2006, Town Council meeting.

Council Member Markin requested that the fast food item be discussed before the next month's Town Council meeting.

Motion made by Council Member Brooks to approve the additional items in the Zoning Season Study.

Council Member Wyett asked if a provision allowing telecommunication antennas to be placed on the top of lampposts or on roof tops to improve reception on every street could be added to the Zoning Season Study. The wireless cell phones may eliminate hardwired phones, and many homes had poor reception.

Planning, Zoning, and Building Director Close requested that it be included in the motion.

Responding to Council Member Wyett, Ms. Close indicated that there were code restrictions in restaurants for activities that would not be objectionable to anyone, for example, having piano music. Staff could study the kinds of uses allowed in a restaurant that did not approximate a nightclub but could be a relaxed code in a restaurant.

Council Member Wyett pointed out that if it were studied, it should be for restaurants that were not in the vicinity of residential areas.

Ms. Close noted that staff could recommend that the code would depend on the adjacent zoning districts.

Council Member Wyett seconded the motion to approve the additional items in the Zoning Season Study with the addition of telecommunication antennas for cell phones. On roll call, the motion carried 4-0, as President Coleman had temporarily left the dais.

XIII. ANY OTHER MATTERS

A. MINUTES: AUGUST 8, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve the August 8, 2006, Minutes of the Town Council meeting. On roll call, the motion carried 4-0, as President Coleman had temporarily left the dais.

XIV. ADJOURNMENT

There being no further business, the September 7, 2006, Town Council meeting was adjourned at 5:05 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk