MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON WEDNESDAY, SEPTEMBER 6, 2006 AT 1:00 P.M.

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order by President Denis P. Coleman at 1:00 p.m., on Wednesday, September 6, 2006, in the Town Council Chambers. On roll call the following elected officials were in attendance: President Denis P. Coleman, President Pro Tem Richard M. Kleid, Council Member William J. Brooks, and Councilman Allen S. Wyett. Council Member Markin arrived at 1:07 p.m.

II. PLEDGE OF ALLEGIANCE

President Coleman led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

The Agenda was approved through motion of Council Member Brooks, seconded by Council Member Wyett. On roll call, the motion carried 4/0, as Council Member Markin was not in attendance at time of motion.

IV. SITE PLAN REVIEW #14-2006 The application of Palm Beach Towers relative to property described as lengthy legal description on file; commonly known as 44 Cocoanut Row; located in the R-D(2) Zoning District. The applicant requested modification of site plan approval by Town Council to place an emergency power generator as an accessory structure and associated landscape buffer at the southeast corner of the existing site. The generator is approximately 21 feet in height from grade, 14 feet wide and 33 feet long. The proposal requires the elimination of seven (7) off-street parking spaces and re-striping the parking lot to capture those lost spaces.

Director of Planning, Zoning and Building Veronica Close commented as follows:

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- Site Plan Review #14-2006 was presented at the July 11, 2006, Town Council meeting, and was approved with the condition that the generator could only be tested between 11:00 a.m. and 2:00 p.m., Monday through Friday.
- At the August 8, 2006, Town Council meeting, a motion was made for the Town Council to reconsider Palm Beach Towers' generator as it related to an agreement with FPL.
- The applicant appeared at the August 23, 2006, ARCOM meeting and received conditional approval pending the outcome of today's meeting.

In response to President Coleman, Attorney Frank Lynch advised that the special FPL Agreement had been waived.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve Site Plan Review No. 14-2006.

Town Manager Peter Elwell asked, for the record, that the Town Council confirm that the initial conditions of approval were to remain.

At the request of President Coleman, Ms. Close reviewed the conditions of approval:

- Subject to the location as shown on the site plan.
- Subject to testing the generator between the hours of 11:00 a.m. and 2:00 p.m., Monday through Friday only, no holidays.

Ms. Close proposed that the Town Council consider adding the condition that, in the future, such agreements should not be entered into with FPL.

President Pro Tem Kleid suggested that, in the future, conditions should include that an agreement with any utility cannot be entered into with respect to generators.

On roll call, the motion carried 4/0, as Council Member Markin was not in attendance at time of motion.

V. PRESENTATIONS BY APPLICANTS FOR APPOINTMENT TO THE INVESTMENT ADVISORY COMMITTEE AND THE GENERAL EMPLOYEE RETIREMENT BOARD

The following applicants addressed the Town Council, requesting an opportunity to serve on the Investment Advisory Committee:

- Bill Mikus, 220 Ocean Terrace, advised that he was a Registered Investment Advisor with twenty-six years of experience.

President Coleman thanked Mr. Mikus for volunteering. He explained that this was an opportunity for the Town Council to get to know those individuals interested in volunteering their services on a Board/Commission.

President Pro Tem Kleid noted for the record that Mr. Mikus had gone through the Palm Beach Citizen's Police Academy.

- Bernard Panfel, 3456 South Ocean Boulevard, Member of the Investment Advisory Committee.

The following applicant addressed the Town Council, requesting an opportunity to serve on the General Employee Retirement Board:

- Robert Garvy, 200 Esplanade Way, Chairman of the General Employees Retirement Board.

President Coleman thanked Mr. Garvy for his past service as well as for volunteering to continue his service to the Town.

At the request of President Coleman, Mr. Garvy discussed his insights into investments and where they were headed; his thoughts regarding the challenge the Town faced in meeting its actuarial hurdle rate; and what the Town could end up doing with investment funds.

VI. SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS & VARIANCES - MODIFIED The application of Adam Schlesinger relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Boulevard (former Hilton Hotel); located in the R-D(2), B-A Zoning District. The applicant is requesting to convert this existing 134-unit hotel into a 107-unit condominium hotel. The building will be completely renovated, including the demolition and reconstruction of the entire interior and exterior walls, and the addition of a partially sunken 200-space parking structure to replace the existing 144-space surface parking lot. The swimming pool will be relocated to the interior of the building on the fourth floor, and tennis courts will be built atop the parking structure. The building is and will remain 5 stories over a basement. However, the entrance road will be ramped up and the lobby will be relocated from the basement to the first floor. The hotel already contains customary hotel accessory uses including a gift shop and two dining rooms. These uses will continue in the new hotel but will be reconfigured. Special Exceptions to change ownership of an existing hotel in the R-D(2) district; to allow tennis courts to be built on a structure (the parking deck); and, to expand existing accessory commercial uses in the hotel by enlarging the gift shop from 168 square feet to 436 square feet and adding a small tennis pro shop of 528 square feet. Variances requested for the following: to enlarge a nonconforming building which will be partially demolished and reconstructed by greater than 50% of its existing cubic volume; unenclosed structures over 15 ft. high are required to meet setbacks. The entrance portals at A-1-A will be 4 ft. from the north and south property lines in lieu of the 30 ft. minimum required by code, a variance of 26 ft; side yard setback for hotel building of 27.40 ft. in lieu of 30 ft. minimum required by code on the north side, and 26.00 ft. in lieu of 30 ft. minimum required by code on the south side; hotels in the R-D(2) district are required to have 35% minimum landscaped open space. This site will have 25.3%, requiring a variance of 9.7%. The existing site has 19.3% landscaped open space.; lot coverage of 53.3% in lieu of 22% maximum allowed by code for a five-story special exception structure. The existing site has 27.8% lot coverage.; a maximum east-west building dimension of 424.25 ft. in lieu of the maximum 150 ft. allowed by code; a porte-cochere dimension of 50 ft. x 68.75 ft. in lieu of the maximum 30 ft. x 30 ft. allowed by code.; a tennis pro shop (accessory commercial use) outside the main building, and with its own external entrance which is not permitted by code; variance to allow parking to be arranged so that a car must be moved before another car can enter or exit a parking space, for the mechanical and stacked parking; and, a variance to allow 200 parking spaces in lieu of the 324 required for a hotel with dining rooms and accessory commercial uses. There are currently 144 parking spaces on the property. *Deferred from the April 11, 2006, and June 13, 2006, Town Council Meetings.*

Ex-parte communication was declared by President Coleman with Attorney Brindell; President Pro Tem Kleid with Attorney Brindell and his clients; and Council Member Brooks via a telephone conversation with Ms. O'Sullivan, who spoke on behalf of the applicant.

Attorney Jim Brindell, on behalf of the applicant, advised that the entire team assembled for this project was present. He noted that it had been made clear, at the last meeting, that a number of meetings would be held due to the magnitude of the project, and the care required to evaluate the project. He explained that the building was 30 years old. The proposal was to reduce the number of units from 134 to 107, which would reduce traffic impacts by twenty percent, and to increase parking from144 spaces to 200 spaces.

Adam Schlesinger, owner of the Brazilian Beach Resort, commented:

- Ten months were spent working on a design to update the existing old Hilton Hotel, in the most attractive manner, indicative of a five star boutique resort.
- Positive responses supporting the application were received from the Four Seasons Hotel, the Citizen's Association, and some neighbors, after meeting to educate them on the proposed plans. Meetings with the neighbors took place in season.
- The applicant worked closely with the construction company to execute the construction plan.
- The team was assembled and was present to address concerns and answer any questions:

  - Oscar Garcia, Architect
  - Dennis Hickok, Landscape Architect
  - Joel Silverman, Construction Consultant

Oscar Garcia, Architect, addressed the Town Council, presenting his credentials. He used architectural renderings to discuss the proposed project and commented as follows:

- Design mission/theme of project used four elements to transform the existing structure into a piece of sculpture - earth, wind, fire and water.
- Project would use natural materials, organically, to soften the present hotel's box shape; accentuate the box with sculptural elements using copper, wood, glass, stone, concrete and stucco.
- Parking garage:
  - Partially sunken garage with tennis courts on top, surrounded by a hedge
  - Landscaped driveway that sloped toward the main entrance
  - Valet parking
  - Arrival sequencing
- Proposed building would be five stories over a basement.

In response to President Coleman, Mr. Garcia advised that the grade of the driveway was 5%.

Seth Yeslow, Project Manager, used architectural renderings to review the proposed project, and discussed the mechanics of entering the parking garage.

In response to Council Member Wyett, Mr. Yeslow advised that the front entrance could accommodate 10 to 15 cars, perhaps more could be placed down the ramp. He commented further:

- It would not be a convention hotel.
- A key element was the porte-cochere's three wide lanes.
  - Width of the lanes was critical to passenger drop-off, traffic flow, stacking of cars in parking garage, and taxis.
- Garage capacity would be approximately 200 vehicles. (Two-thirds of the spaces would be used for stackers)
- Dining room was between 4,000' and 5,000' with an occupancy of 175 - 200 people.

In response to President Pro Tem Kleid, Mr. Yeslow requested deferring his question regarding the height of the wall located at A1A until later in the meeting.

In response to Council Member Markin, Mr. Yeslow, advised that the mechanical nodes located in the parking garage would contain the cooling towers, the FPL vault, and might hold some small mechanical equipment.

In response to President Coleman, Mr. Garcia presented architectural renderings to explain the proposed parking plan. He responded to questions and concerns of Town Council Members as follows:

- Approximately 80 stackers.
- Approximately 40 employees.
- Most employees would car pool or use public transportation.
- The ramp was 15' wide.
- Mr. Wentzel of DKS Associates was present to discuss traffic and parking.
- Suggested a graphic be provided to show how many cars could be parked and stacked, from the beginning of the turn to the end, not taking the ramp into account.

Council Member Markin stated that they needed to provide a clear understanding as to the number of cars that would be stacked. She asked if the garage area was below sea level?

Mr. Garcia responded that the garage was below sea level, but there would be a way to pump water out.

Discussion ensued regarding the location of the mechanical equipment. Mr. Garcia advised that they were in the planning stages for dividing the space out. He noted that there was additional mechanical space within the basement of the building.

After further discussion regarding the number of employees as it related to the number of parking spaces, Council Member Wyett noted that there would not be enough parking relative to the requirements of the Town Code, and that parking would be grossly inadequate.

Jerry Wentzel, Professional Engineer and Principal with DKS Associates, a transportation consulting firm specializing in traffic and parking issues for major developments, discussed the traffic and parking design proposal. He advised that this was the first time he had come before the Town Council with a redevelopment project that generated less traffic and parking than what was currently there. He noted that they had submitted their studies to Palm Beach County, to the Town, as well as to the Town's traffic consultant. He advised that Palm Beach County issued a concurrency evaluation, which stated that since traffic was being reduced, there was no concurrency.

Mr. Wentzel presented the results of the parking analysis for the proposed Brazilian Beach Resort.

- The maximum number of spaces determined by the analysis, which followed the guidelines set forth by the Town of Palm Beach, was 188, and the proposal was for 200 spaces.
- The maximum number of spaces identified for employees was approximately 40, at any one time.
- The Town's consultant supported, as sufficient, the 200 parking spaces.

Mr. Wentzel compared the proposed parking system to one used at Pelican Beach Resort in Ft. Lauderdale, which he noted was the exact same system. He reviewed the operation of the parking garage and the reasons it worked so well.

- Valet parking only:
    - Valet operation should eliminate any impact on A1A.
- Enclosed garage protects equipment; visually pleasing.
- High ceiling - proposal for ceiling to be higher than 12' required.

- Simple mechanical system/elevator.
- Reviewed the typical operation:
  - Long Term Parking - a guest/employee there for a long period of time would have their car placed in the elevator position. Each space had a certain amount of retrieval time allocated to it.
  - Quick Turn - retrieval time estimated at about a minute and a half.
    - The longest retrieval time for a car in the upper position, on the inside, would be about four minutes.
  - Two managers to operate sophisticated system along with several runners:
    - One manager located at porte-cochere to communicate with the garage manager.
    - One manager inside the garage.
    - Typical operation would require two runners/four during peak times.
  - Porte-cochere had three lane approach.
  - Distance figured - about 25' of length for every vehicle.
  - Stacking identified, in proposal, appropriate for the size of the operation, for the number of seats in the restaurant, for the number of hotel rooms.

President Pro Tem Kleid had several questions:

- How many seats in the restaurant?
- Was there something wrong with the Town Code, because according to the Town's parking requirements, 324 spaces would normally be required?

The following responses were made by the applicant's team:

- 175 seat restaurant.
- The Town Code, relative to parking spaces, had always been on the high side.
- The Town Code was very conservative.

At the request of Council Member Markin, Mr. Wentzel reviewed the sequence of events that would take place when someone arrived for dinner and left their car with the valet.

Discussion ensued regarding the dining room, the meeting rooms, the amount of people occupying the meeting rooms, and the types of functions that would be held in the meeting rooms. The following responses were made relative to questions and concerns of Town Council Members:

- Two meeting rooms:
    - 1,060 square feet each.
    - One meeting room on the first floor, and the second meeting room on the third floor.
- The third floor meeting room would have a double height ceiling.
- The concept was to reserve the two function rooms for meetings with food and beverages.
- The meeting room could accommodate 50 to 100 people depending on how the room was setup. There was no exact answer.
- Dining Room:
    - The exact square footage of the dining room needed to be verified.
    - 20 square feet per person.
    - Location of only bar in hotel.
- Hotel would provide pool service.

In response to the following comments of Town Council Members, Mr. Schlesinger advised that they needed to come back to the Town Council with more specific answers, if there was to be a function at the hotel, it was likely the attendees would be staying at the hotel. He noted that not every meeting would maximize the space of the meeting room, because of the general business concept of the hotel. The hotel would only cater to those functions that had high end clientele, who could take advantage of hotel services.

President Pro Tem Kleid:

- The Town Council was trying to determine how the hotel would handle people leaving an event simultaneously. How would 200 cars mechanically parked be handled?

President Coleman:

- The Town Council did not want to hear about averages, but wanted to hear about capacity, and noted that the numbers did not compute.
- Rejected the assumptions of the applicant, but looked forward to hearing more detailed numbers.
- The ball was in their court to come back to the Town Council on that issue.

Council Member Wyett:

- Disagreed with the Mr. Wentzel.
- Advised that the 324 spaces would be needed as required by Town Code.
- Agreed with his colleagues and was extremely dubious about a 200-capacity garage, which would create traffic problems and the ability of it to properly function.

In response to Council Member Markin, Mr. Schlesinger advised that the concept of a hotel/condo was to sell the hotel rooms/keys. He noted that, for the most part, the buyer typically would close on the hotel key giving it back to the operator, who would then rent the room out on a nightly or weekly basis. If someone wished to stay for two weeks, those arrangements could be accommodated. The Brazilian Beach Resort would operate just like a hotel, with the only difference being, was that the hotel rooms/keys were for sale. He stated that he hoped all hotel rooms/keys would be purchased, but if not, it would still be a successful hotel owned by an operator. The operator would continue to rent out the rooms under the same process that any other hotel functioned.

Discussion ensued regarding the applicant's business plan relative to the percentage of units purchased versus those rented; the number of smaller units versus larger units; and how parking would be impacted. Council Member Markin reiterated that she was trying to get an understanding regarding utilization of parking spaces in order to understand the parking requirements. She noted that if there were larger units, there was the possibility the occupant would stay longer and would have more than one car.

Mr. Schlesinger stated that in their experience, at the Brazilian Court, no requests had been made to leave a car on site and no cars had been left permanently. He noted that DKS Associates had conducted a study on that question, and Mr. Wentzel could respond to that question.

Discussion ensued regarding the DKS Associates study relative to the number of cars left permanently at a hotel/condo. President Coleman stated that what the Town Council was being told was there was zero marginal demand for hotel/condo owners to leave their vehicles there when they were not in residence.

Mr. Wentzel noted that the averages come out to be the same regardless of whether someone left their car, had two cars or did not have a car at all. The average car per unit still came out to be the same as a regular hotel.

In response to President Pro Tem Kleid, Mr. Schlesinger advised that unit owners would have signing privileges, which would allow a unit owner at the Brazilian Court, if they were in residence, to have the ability to go over to the Brazilian Beach Resort, experience the Brazilian Beach Resort, and sign for any purchases.

Mr. Wentzel advised that they had not factored in the combination of people going from one hotel to another, and they were not certain what impact that would have on parking.

After further discussion, Council Member Wyett advised that the parking situation was grossly understated, and the Town's parking requirements were closer to the mark. He stated that one of the flaws with the applicants parking numbers was that peak parking would occur every time there was a major function. He advised that with the type of parking planned there, cars would be parked on the street.

Mr. Wentzel commented that it was obvious that the applicant had not satisfied the concerns of the Town Council related to parking. He stated that they would come back with numbers to show how they arrived at their figures.

At the request of Council Member Markin, Mr. Yeslow, used architectural renderings to review the interior layout of the proposed hotel/condo.

- The dining room was on the first floor, east end of the building and was the only dining area.
- There was no retail within the hotel.
- The majority of the units were the standard hotel size units - 80%.
    - The east end of hotel would have one bedroom suites.
- All rooms would have kitchenettes.
- The two meeting rooms were just under 1,100 square feet.
- Occupancy calculations included the outdoor dining area in front of the dining room.

Mr. Garcia stated that he did not believe all the rooms presently had kitchenettes.

Council Member Wyett noted that he had received numerous letters from residents who expressed concern that they would lose their beach access that they have had use of since 1977.

Mr. Schlesinger advised that there was nothing official that he was aware of that allowed them to have access rights. He stated that there were no plans to mollify them and grant access to the beach.

Council Member Wyett advised that if he was one of those residents he might bring suit and stated that the Town could not grant a variance because there were no hardships. He suggested that before the next meeting, they should take that into consideration. He advised that he did not see any hardships and stated that any variance the Town might grant, could be voided in court.

Mr. Schlesinger advised that he would let his counsel respond to that.

Attorney Brindell stated that the applicant has heard the Town Council's comments.

Council Member Wyett advised that precedents had been set relative to beach access explaining that Ritz Carlton had not only granted beach access but residents had also received club access for a year.

President Pro Tem Kleid asked if there was any actual recorded easement or any easement by proscription?

Attorney Brindell replied that he had not done the title work on this property and would confirm for the Town Council if there were any recorded easements, as he was not aware of it. He did not believe so.

Dennis Hickok, Landscape Architect of Beverly Hills, working with the local firm of Environmental Design Group, presented his credentials to the Town Council. He provided architectural renderings to discuss the landscape and planting plans.

In response to President Pro Tem Kleid, Mr. Hickok advised that the height of the wall was 7' tall with a planter, which was 4' or 5' wide with plantings on the inside of them that cascaded over the front of it. The height of the entrance way was 15' tall with an opening of 12'.

Mr. Hickok responded to President Pro Tem Kleid's concerns that the wall would look massive as one drove along South Ocean Boulevard. He explained that it was not a very large wall. The materials, plant materials and the palms, which were proposed out front, enhanced the visual, driving experience. He used a graphic depiction of the planting out in front of the wall, to explain the dimensions. He advised that it, basically, was further back than what was presently existing there.

In response to Council Member Markin, Mr. Hickok, using presentation boards, explained the proposed landscape and plantings for the tennis court area.

Discussion ensued regarding the tennis courts and the plantings proposed for them.

Mr. Hickok advised that the entrance openings would facilitate all types of vehicles including emergency vehicles.

In response to Fire-Rescue Chief Moran, who advised that a hook and ladder truck needed 13.5', Mr. Hickok clarified that it was 14', which would accommodate rescue vehicles.

In response to comments of Town Council Members, Mr. Hickok stated that architecture was very subjective; and Mr. Garcia advised that it was not their mission to blend into the architecture of Palm Beach.

Discussion ensued regarding the proposed architecture with the following comments from Town Council Members:

- The proposed architecture looked like it belonged in Las Vegas.
- The structure was massive.
- Concerns with front location of tennis courts and tennis pavilion.
  - The Town owned tennis courts located up the street could be used by hotel guests.

Council Member Brooks stated, as a point of information, that all of the discussion relative to the site plan review that had occurred might be academic if the many variances requested were not approved.

Council Member Markin stated that she liked the seamless idea of the movement into the dining room from the outside. She asked if there was a drop from the floor surface, on the outside terrace, to the ocean, and questioned what would occur there.

Mr. Hickok responded as follows:

- The existing seawall would remain.
- Basic beach activities would occur.
- Some units would have private gardens.

Public comments:

Roger Lambert, on behalf of Mildred Hayden, a resident for the last sixteen years of the Palm

Worth Condominium, 2850 South Ocean Boulevard, Unit 109, commented as follows:

- The primary concern was related to the proposed ingress and egress. The current below ground level location was proposed to change to a gently ramping wall that would rise up to 17' above sea level.
- Noted concern related to the noise, lights, fumes from vehicles, including buses, coming up the ramp entering the building, which could affect most of the fourteen units of the Palm Worth Condominium; in particular, the adjoining properties. The entrance road seemed to be virtually on the property line, when looking at the site plan.
- Noted that there had not been any real discussion as to whether or not hardships existed, and whether or not this was really a reasonable alternative to existing Town Ordinances.
- Requested consideration be given to the people on both sides of this property.
- Requested that, if consideration was given to the applicant, a condition of approval be included requiring the maintenance of sufficient vegetation/hedging in order to keep lights and fumes from coming into their property.

In response to Council Member Markin, Mr. Lambert advised that his client lived south of the project.

Ed Shipek, Royal Saxon Condominium, 2840 South Ocean Boulevard, located directly across South Ocean Boulevard, commented as follows regarding the proposed project.

- The Town Council should not allow, based on past performance, the applicant to start another project, unless previous projects had been completed. This statement was based on public financial information.
- The Town should put some safeguards in place such as requiring a bond to secure that this project was completed in a timely manner.
- The project was not in keeping with the Town of Palm Beach, but more in keeping with Las Vegas.
- The Town should require that an environmental impact study be conducted on the feasibility of the underground parking and stacking of cars. This type of parking did not seem practical in a hurricane flood zone, and could affect the residents of the Royal Saxon as a direct abutter.
- The stacking of cars would constitute a fire hazard by having to move one car at time.
- The variances being requested were flagrant to the rules of the Town of Palm Beach.

Ms. Amico of the Royal Saxon Condominium, 2840 South Ocean Boulevard, advised that they were a direct-abutter. She commented as follows:

- Thanked Mr. Wyett for reading the letters from residents of the Royal Saxon.
- Noted that residents spoke with Mr. Schlesinger regarding beach access concerns.
    - Requested that he look at the way the Four Seasons handled that problem when their hotel was built, which had affected the residents of The Cove.
    - Advised that the Four Seasons handled that situation well, with everyone happy.
- There were no valid hardships cited to warrant all the variances being requested relative to the parking garage.
    - The parking structure should never have been entertained.
- The variances requested by the applicant were exceptional and unreasonable. If granted it would make a shambles of the Town's zoning laws, setting a precedent for other developers. The beauty and the ambiance of Palm Beach were due to the foresight of earlier Town Councils and officials, and these laws had served their purpose and had served the Town well.

Council Member Brooks stated that he did not believe the Town Council would have enough time to go through all of the variance requests today, and they could be discussed at a future date.

Discussion ensued regarding hearing the variance requests today. President Coleman advised that he did not see any hardships.

Mayor McDonald asked Mr. Brindell what the benefits this project would provide to the neighborhood and the community, aside from the architectural challenges?

In response to Mayor McDonald, Attorney Brindell discussed the benefits as follows:

- Renovated building that would be more appropriate for Palm Beach than the current building.
- Superior landscape plan.
- Aesthetic improvements.
- Retain hotel units.
- Major improvement to the property.
- Financial benefits:

- Ad valorem taxes

Discussion ensued and Mayor McDonald stated that it was the Town Council's decision to determine whether it was worth the tradeoff to eviscerate the building Code in order to approve the number of variances requested.

Attorney Brindell stated that was ultimately the question they had to deal with. He noted that he was not sure the Town Council wanted to review all the variances before them today. He stated that the applicant would like to assimilate and digest the comments made today. He noted that they have heard what the Town Council had to say about the architecture and that architecture drove a number of the variances.

Mayor McDonald responded that the traffic and parking were paramount. He noted that he was on the Town Council when the Four Seasons had been approved. He advised that, today, he realized a mistake had been made with that property, because overflow parking was out in the front on the grassy area along A1A, which was deplorable. He stated that he could see the same kind of condition happening here.

Attorney Brindell advised that the team had taken notes relative to questions concerning parking and traffic, and they would like to come back before the Town Council to address those concerns.

Council Member Wyett commented as follows:

- Noted that in some other location this would be a wonderful project. It was not a project for Palm Beach, in general, or for this location.
  - The building should not be offensive to its neighbors.
  - The building was in a very tight spot, was much too big.
  - The project would never be approved under current Zoning Codes, and in trying to salvage the building and keeping the footprint, many concessions would have to be made or they would not get any consideration.
- The Town Council had been consistent in their comments.
- Backed up Mayor McDonald's comments relative to the Four Seasons.
- Discussion of variances should not take place today, because some of those variances would change as the project was rethought.

In response to Attorney Brindell, Council Member Wyett advised that it was a very good imaginative project, but was wrong for that location. He stated that he was not saying that a contemporary building could not be placed there. It was just this particular building was not for Palm Beach.

President Pro Tem Kleid stated that his concern was with the Town's Zoning Code. He noted that variances had been given when there were additions and alterations, etc., but in this case, they were, in essence, starting from scratch to a large extent. He advised that he did not understand why it could not be planned in accordance with the Town's present Zoning Code, instead of the proposed project that required myriad variances.

Council Member Markin commented as follows:

- Complemented the team on their creativity.
- The proposed plan was an improvement, but may not be enough of an improvement relative to the parking.
- The parking with the stacking system realistically would not function when there were events of any kind even if it was just a meeting of 100 or 50 people.
- Parking was a problem.
- The architecture was very creative, but at the same time it was, probably, a little over the top for the Town.
- Concurred with President Pro Tem Kleid's comments regarding variances.
- Noted that as far as the parking and architecture, she would have to look at the Zoning Code.
- Parking spaces needed rather than tennis courts. Applicant should review whether those spaces were needed for tennis courts.
    - Tennis courts empty 95% of the time in most resorts.
- Expressed a great deal of concerns regarding the neighbors.
    - The rendering did not show neighbors on either side.
    - The proximity of the hotel to the neighbors was so close that they had to take into consideration their concerns, in particular, the building on the south side of the project.

Zoning Administrator Paul Castro discussed the application, and noted that site plan modifications and some special exceptions had been requested. He explained that one of those special exceptions was to allow the applicant to operate under a new entity. He stated that they had been operating, for almost a year now without that special exception approval, as The Ocean Club Beach Resort (The OC), the soon to be Brazilian Beach Resort. He advised that the applicant did need approval of that special exception. He noted that an additional special exception would be needed for the elevated tennis courts that were proposed to be located above the parking garage.

He discussed the following staff comments:

- Planning, Building and Zoning:
  - No hardship seen by staff. Applicant needs to demonstrate the hardship for the ten variances requested.
  - Plan seriously deviated from current code provisions. The intent of applicant was to demolish more than 50% of the building.
  - Applicant noted there would be 175 seats in the dining room, but their analysis spoke to 275 seats in the dining room.
  - Kitchenettes:
    - Cooking facilities, other than a small microwave and a small refrigerator, were not allowed
  - Traffic and parking concerns:
    - Parking garage.
    - Valet parking/valet management.
    - Traffic circulation.
    - Employee numbers as it related to parking.
    - The Town's consultant from American Consulting Engineers was present.
  - In 1974, provisions were put in place, in the Town Code, to eliminate many of the types of buildings seen along South Ocean Boulevard from being built again.
    - The amount of density.
    - The height.
    - The coverages.
- If building a hotel today, they could build 66 units and most of the accessory uses would be driven by the amount of parking that they could provide onsite for those accessory uses.
- How could the hotel could operate during peak season, peak hours with all the uses being used, at the same time, and provide enough parking as well as enough staff to get people in and out of the building during special events?
- Requested a strong Declaration of Use Agreement to address the issues of hotel use, the operational aspect, ARCOM's issue that the applicant ensure that the water

features were continually operating, and construction issues.

- Staff had major concerns regarding construction activities that needed to be addressed such as dewatering.
- Concerns regarding drainage of the parking garage.
- Concerns as how they would service disposable refuse located in the parking garage.

Fire-Rescue Department:

- Building/structure needed to be brought up to Fire & Life Codes:
  - Fire Alarm System.
  - Fire Sprinkler System.

Police Department:

- South Ocean Boulevard would be under construction starting April 2007.
- The hotel and FDOT project would occur at the same time.
  - Construction traffic would impact the road widening project which would impact the ability for staging of hotel construction equipment and materials.

President Coleman commented as follows:

- The Town Council had before them a false choice, because the present building would not remain as is regardless of what the Town Council did.
- There was no hardship.
- The building was old, it had been depreciated, it had been acquired, and even if the Town Council would like something nicer, it should not be done at the cost of eviscerating the Code.

In response to Council Member Wyett, Mr. Castro advised that if the applicant demonstrated that they had met all six of the criteria set by the Code in Chapter 134, the Town Council could grant a variance if the building was going to be demolished more than 50%. He explained that by granting that variance, other variances would be triggered that would be necessary relative to those regulations. He advised that if the hotel was demolished, 33 condominium or multi family units, 26 town home units or 66 hotel units could be built.

Council Member Wyett stated that it would make it difficult for him to grant the variances, especially with the numbers provided. He noted that it may be difficult for the applicant to receive

Town Council approval, because there may be more objections to not granting the variances since the Town Council was tightening up on granting variances that they did not think were necessary.

Mr. Brindell reiterated that they had heard what the Town Council had to say. The applicant needed to get the team back together to assimilate and discuss the options in order to appear before the Town Council.

Mr. Castro requested that this item be deferred to a date certain.

Discussion ensued regarding setting a time and date for this item to be heard. Mr. Castro advised that staff was not sure that October 10th would give them enough time. He noted that staff would like the Town's traffic consultant to have an opportunity to address some of the outstanding issues.

Mr. Brindell suggested that the Town Council defer this to the October meeting. The applicant would advise staff if they were unable to attend that meeting. He noted that he would get back to staff, in advance.

President Coleman advised that the Town Council would place the applicant on the calendar for October, but advised that staff would spend minimum resources with them.

Mr. Brindell responded that they understood and appreciated that very much as well as the time spent today.

In response to President Coleman, Attorney Randolph stated that all that was now required was a motion to defer to the regular meeting of the Town Council in October.

President Pro Tem Kleid made a motion to defer Site Plan Review No. 5-2006 to the Regular Town Council Meeting of October 10, 2006. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

There being no further business, the Special Town Council meeting of September 6, 2006, was adjourned at 3:55 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk