

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON AUGUST 14, 2007

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, August 14, 2007, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

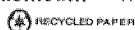
Mayor Jack McDonald
President Richard M. Kleid
President Pro Tem Denis P. Coleman
Council Member William J. Brooks
Council Member Gail Coniglio
Council Member Susan Markin

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
William Amador - Acting Fire-Rescue Chief
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Planning, Zoning and Building Director
Paul Castro - Zoning Administrator
William Crouse - Human Resources Director
Charles Langley - Public Works Assistant Director
Michael Reiter - Police Chief
Gary Sallenbach - Support Services Major, Police
Jane Struder - Finance Director
Lynda Venne - Purchasing Manager
Susan Eichhorn - Town Clerk
Diane Kassover - Deputy Town Clerk

8-14-07 TC Mtg.

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Walter Lovett, Town Buyer, Upon His Retirement from the Town of Palm Beach After 32 Years and 11 Months of Service.

Mayor McDonald recognized Walter Lovett, Town Buyer, Purchasing Department, for his years of service.

IV. COMMENTS OF MAYOR JACK MCDONALD

On April 2007 along with Rampell and Rampell, certified public accountants, we formed a Political Action Committee to obtain petitions to place the issue of municipal home rule on the ballot. The first objective was to solicit resolutions and funds from the 38 municipalities in Palm Beach County. As of today, 34 municipalities and the Palm Beach County League of Cities had passed the resolution and we have raised \$207,000 in funds.

The second objective was to collect enough petitions to place the issue on the ballot or to persuade the County Commission to voluntarily place it on the ballot. Initially, I was not successful in having it voluntarily placed on the ballot, so after collecting approximately 20,000 petitions, the County Commission agreed that if we would stop our petition drive, revise the language and move the referendum date, they would voluntarily place it on the ballot. I invited them to revise the language, which they did, and it was approved by our Council and Mr. Randolph. The matter was considered and approved by the County Commission on July the 10th for a public hearing on an ordinance, which will be heard on September 11th. I anticipate the ordinance will be approved, the only public opposition is from Commissioner Marcus, who is not in favor of allowing the electorate to vote on the issue. Although the County Commission can always reverse their approval, I am cautiously optimistic that will not happen.

The third objective is to persuade Palm Beach County voters to approve amending the County Charter to provide for municipal home rule. There is a great deal ahead to accomplish that objective. I want to thank Town Manager Peter Elwell for his initiative and vision in bringing this issue forward. I want to commend and thank this Town Council in being the first in Palm Beach

County to pass and fund the resolution. This Council was the first municipal government to stand up and take a leadership role on an issue of great importance to Palm Beach County. When it passes next year, it will mean that the County could never dictate to the Town on matters of local interest. It will, by charter, ensure that our Town will determine its own destiny. That will be this Council's legacy.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Markin announced that the University of Miami Miller Medical School had reached an agreement and a site for an urgent care center at 250 Royal Palm Way. A 12,000 square foot facility would be leased for eight years, and emergency trained doctors would be staffed seven days a week from 7:00 a.m. to 10:00 p.m.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Sam Boykin, 285 Jamaica Lane, commended the Town Council and staff on their superb work. He indicated that he was not in favor of the Town building new offices in West Palm Beach.

Yvelyne D. Marix, 1570 N. Ocean Boulevard, inquired as to the findings of zoning for employee parking regarding a large piece of property located across from the Flagler bridge.

Town Manager Elwell responded that on next month's agenda those properties would be explicitly discussed with the possibility of a land swap and sale involving property owned by Scott Lewis.

Ms. Marix asked that the question of the use of that property could be settled before going into discussions.

President Kleid noted that staff would look into it and that it would be discussed in next month's meeting.

William Diamond, 220 Wells Road, commented that the City of West Palm Beach had a new master plan that changed their method of impacted real property by using the floor ratio standard, which could lead to re-balancing the densities within any building, allowing taller buildings in the development areas, including the waterfront. Properties outside development areas could be down-zoned. He suggested that the Town check the effect of using the floor ratio standard on its properties in West Palm Beach.

President Kleid directed staff to add to next month's discussion the effect of the floor ratio standard by West Palm Beach.

Floyd Wideman, El Dorado Lane, requested that a clear statement of savings in taxes from the budget cuts be published in the paper.

President Kleid indicated that the Town was in compliance with the State mandate, and the taxes were rolled back to the amount specified by the State.

Town Manager Elwell noted that the total property taxes paid by the property owners in the coming year would be approximately \$2 million less than paid in the current year. The detailed information was posted on the Town's website in the proposed FY08 budget.

VII. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

DEFERRED Item XII.C.3.a., Variance #22-2007 [400 Seabreeze Avenue] to September 11, 2007, Town Council Meeting.

DEFERRED Item XII.C.3.b., Special Exception #9-2007 with Site Plan Review and Variances [216 Colonial Lane] to October 4, 2007, Town Council Meeting.

DEFERRED Item XII.C.4.c., Site Plan Review #14-2007 with Variances & Special Exception [425 Worth Avenue] to September 11, 2007, Town Council Meeting.

DEFERRED Item XII.C.4.d., Site Plan Review #15-2007 with Variances [230 Everglades Avenue] to September 11, 2007, Town Council Meeting.

President Kleid pointed out that there would be three Time Certains: 10:00 a.m., Palm Beach Day Academy; 10:30 a.m., the Florida Department of Transportation; and 11:00 a.m., the Feral Cat Issue.

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

VIII. CONSENT AGENDA

- A. MINUTES: JULY 10, 2007
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING
MINUTES
- B. MINUTES: JULY 11, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL
MEETING
- C. MINUTES: AUGUST 6, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL
MEETING
*(Removed Minutes for August 6, 2007 and deferred to the September 11, 2007 Town
Council Meeting.)*
- D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE
ARCHITECTURAL COMMISSION AT ITS MEETING ON JULY 25, 2007
- E. RESOLUTIONS
 - 1. RESOLUTION NO. 33-07 A Resolution of the Town Council of the Town
of Palm Beach, Palm Beach County, Florida, Approving Amendment No. 1
to FDEP Contract No.06PB4, Between the State of Florida Department of
Environmental Protection and the Town of Palm Beach under the Bureau of
Beaches and Coastal Systems Florida Beach Management Funding
Assistance Program for the Mid-town Beach Nourishment Project, and
Authorizing the Town Council President to Execute Same on Behalf of the
Town.
[H. Paul Brazil, Director of Public Works]
 - 2. RESOLUTION NO. 37-07 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.
[William Amador, Acting Fire-Rescue Chief]

3. RESOLUTION NO. 38-07 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 the Purchase of One Diesel Dump Truck, Sealed Bid No. 2007-18.
[H. Paul Brazil, Director of Public Works]
4. RESOLUTION NO. 40-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Sanford Golf Design for a Golf Course Master Plan for the Palm Beach Par 3 Golf Course, RFP No. 2007-15.
[Jay Boodheshwar, Director of Recreation]
5. RESOLUTION NO. 41-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Granting an Easement Across Town Property to Florida Power & Light Company for Electrical Conduits and Transformer That Service the D-2 Storm Water Pump Station and Control Building.
[H. Paul Brazil, Director of Public Works]

F. OTHER

1. Approval of a Homeland Security Grant for the Installation of a Plymovent Vehicle Exhaust Removal System at the Central Fire-Rescue Station and the Mechanics Bay at the South Fire-Rescue Station. [William Amador, Acting Fire-Rescue Chief]
2. Approval of Charitable Contributions Pursuant to Terms of Settlement Agreement Between Mar-a-Lago, LLC, LC and the Town of Palm Beach. [John C. Randolph, Town Attorney]
(Item VIII.F.2., was removed from the Consent Agenda and added to the Regular Agenda as Item X.B.9.)
3. Authorization of an Increased Hourly Rate for Labor and Employment Legal Services. [Peter B. Elwell, Town Manager]

Motion made by Council Member Brooks, seconded by Council Member Markin to approve the Consent Agenda as amended. [Item VIII.F.2 - Approval of Charitable Contributions Pursuant to Terms of Settlement Agreement between Mar-a-Lago, LLC, LC and the Town of Palm Beach, was removed from the Consent Agenda and added to the Regular Agenda as Item X.B.9.] On roll call, the motion carried unanimously.

IX. COMMITTEE REPORTS

- A. Ordinances, Rules, and Standards Committee Meeting of August 1, 2007. [Gail Coniglio, Town Council Member]

Council Member Coniglio provided an update with the following recommendations:

- Modify the amount of time for construction and create additional categories by square footage;
- Increase the penalty for working without a permit;
- Revoke or terminate the permit requiring the applicant to reapply, and pay additional fees in accordance with the construction value of remaining work, which was modified not as a penalty but a construction agreement;
- Parking Issues - "3 strike rule" would be modified, a three-prong task force would be used to fine parking per employee per construction site and the fines had not been finalized.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve the recommendations of the Ordinance, Rules, and Standards Committee. On roll call, the motion carried unanimously.

X. REGULAR AGENDA

- A. Old Business

1. Florida Department of Transportation Update on A1A Projects.
[Paul Blanchard, Construction Manager]
TIME CERTAIN: 10:30 A.M.

Paul Blanchard, Florida Department of Transportation, Palm Beach Operations, introduced Stephen Stokes, project administrator, who provided an update of the revetment project.

Responding to President Kleid, Mr. Stokes noted that along the road, the visible wall that appeared as big concrete blocks would be replaced.

Responding to Mayor McDonald, Mr. Stokes commented that in order to improve the traffic conditions, changes had been made in the setting of the wall; an option was to extend the lane closure for a longer length of lineal feet and placing a stop sign / stop paddle and flag men on either end. The coordination would be from one end to the other and would queue up more cars waiting to get through. He said that the wall process was changed by replacing the crane with a front end loader, and that the barrier wall would be completed in about 15 working days. The stone work would be completed by the end of the month, and immediately following that the drainage portion would begin and would require similar lane closures to do the outfall structures.

Responding to Mayor McDonald, Sandy Daniel, senior project engineer for the section between Sloan's Curve and Widener's Curve, indicated that the project would be completely finished within 90 days. Asphalt work would begin at Southern Boulevard coming north on August 27, 2007, which would take about a week. He noted that the manholes and valve jackets had been adjusted and Southern Boulevard to Worth Avenue south to State Road 80 would be paved. He provided an update of the remaining work, and noted that by the time the Town Council met at the next regularly scheduled meeting, the work would be substantially complete except for some minor work on State Road A1A.

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

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated August 3, 2007, and included in the backup material, to provide a status report regarding burial of overhead utility lines.

Mr. Bradford advised that staff recommended the Town Council approve an additional funding allocation of \$44,660 for September 2007 through January 2008, for a dual education program for the two referendums currently scheduled for December 18, 2007 (beach and drainage projects), and January 29, 2008 (underground project). He explained that the funding requested was in addition to the \$26,000 that had been left unspent in the prior six months. The total cost for the dual education program was \$70,660, but because the Town had \$26,000 on hand, staff was only requesting an additional \$44,660.

Mr. Bradford noted that Palm Beach Civic Association Chairman Stanley Rumbough had sent a letter to the Mayor and Town Council dated July 28, 2007, provided in the Town Council backup, requesting that the undergrounding referendum be withdrawn, and that the Town should investigate other plans to bury overhead utility lines and lobby the (Public Service Council) PSC to extend the October 2008 deadline for receipt of the 25% credit.

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Dr. Michael Dennis, 1231 North Lake Way, on behalf of the Palm Beach Civic Association, commented in opposition to the undergrounding referendum. He noted that after extensive discussion, the Executive Committee of the Palm Beach Civic Association voted, and by a ratio of 4/1, the motion was made to request the Town to withdraw the undergrounding referendum. He discussed the factors that influenced their decision noting that Civic Association strongly supported undergrounding, but they believed that the timing of the referendum was wrong considering the new property tax reform, the December vote on beach and drainage issues, which took priority, and because residents had strongly expressed that this was a time for cutting expenses. The Civic Association believed that a strong argument would be made for the PSC to extend the 25% credit beyond the October 2008 expiration date, and the Association would assist in seeing that happened.

Dr. Dennis noted that this issue allowed the Civic Association to fulfill its obligation to act as an educational body providing the residents with an explanation of the undergrounding process with its costs, including debt service and other long term issues, and to promote alternative options that might be applicable to this situation. He advised that it was the Civic Association's hope that the Town would bring forth these options at a future date, and the Civic Association stood ready to serve the community for the benefit of everyone.

President Pro Tem Coleman responded that while he appreciated Dr. Dennis' comments, he respectfully disagreed, noting that the Town Council had debated this issue for at least two and a half years, and he believed it was time to let the voters decide. He advised that if the referendum did not pass, the margin of the vote would provide a strong indication of where the issue stood.

President Kleid noted that he was very appreciative of the work that the Palm Beach Civic Association did, noting that he has been an active member. He questioned whether the Civic Association was requesting that the Town Council not postpone the referendum but withdraw it, which meant that all work on undergrounding be stopped including the work of the negotiators, terminate employment of the Town's outside consultant, withdraw from the consortium, (which the Town had initiated and was a major player in), and that Mr. Elwell relieve Mr. Bradford of any more work with respect to undergrounding.

Dr. Dennis responded that President Kleid was correct, and withdrawing meant exactly that, at this point in time, but undergrounding would be redetermined at a future date in terms of its viability.

President Kleid commented that the Civic Association did not have any date in mind, and in essence, the Civic Association was suggesting that the Town stop, cease and desist right now, and if at a later date, the occasion arose, the Town would then resume. He questioned whether that was a fair characterization of what the Palm Beach Civic Association was requesting.

In response to President Kleid, Dr. Dennis reiterated that it was the opinion of the

Association that undergrounding should be reconsidered at a future date.

William Diamond, 220 Wells Road, member of the Executive Committee of the Palm Beach Civic Association, noted that speaking as a private citizen and not as a member of the Executive Committee of the Palm Beach Civic Association, he was opposed to withdrawing the referendum.

President Kleid commented that he believed undergrounding was very important to the quality of life in the Town of Palm Beach, it was indicative of market value, and he believed that elected officials needed to look toward the future. He noted that he was not afraid of what the voters would say on this issue, and if a good educational program was presented, the residents would recognize the merits of the project and see that the Town had to plan for the future. He believed that it should be left up to the voters, and if they defeated it, overwhelmingly, then it would be known that this was not a project the Town should go forth with.

After further discussion, it was the consensus of the Town Council that the January 29, 2008 referendum should go forward, and the voters should be allowed to decide this issue.

Council Member Markin expressed concern over the Town increasing their debt during suspect economic times, and on how the Town could educate the residents on the many logistical and financial issues, before January. She concurred with the other Town Council Members that the decision should be left up to the voters, but supported waiting a year to ensure that the voters were extremely well informed on the pros and cons of the project.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio, to appropriate funding in the amount of \$44,660 for September 2007 through January 2008 • multifaceted education programs for the two referendum dates currently scheduled for December 18, 2007 (beach and drainage projects), and the January 29, 2008 (underground project). On roll call, the motion carried 4/1 with Council Member Markin dissenting.

**3. Comparison of Proposals for Feral Cat Programs.
[Sarah E. Hannah, Assistant Town Manager]
TIME CERTAIN: 11 A.M.**

Assistant Town Manager Hannah provided a comparison of proposals for feral cat programs between PB Cats, Inc., which was the current Town sanctioned feral cat program, and Palm Beach Philanthropic Trust (PBPT). Brian LaRue, chief financial officer of PB Cats, Inc., provided a presentation of the report submitted to Ms. Hannah.

Responding to the questions by the Town Council, Mr. LaRue made the following

comments:

- The cost of sterilization was higher than the PBPT because it included the trapping, transportation, and the veterinary cost;
- Ms. Gertrude Maxwell would be forthcoming in the future to contribute to PB Cats, Inc.;

Council Member Markin displayed a uniform tee shirt that the Town's sanctioned feral cat program would be wearing in order to recognize them when they were around Town.

Gerald Beebe, executive director of Palm Beach Philanthropic Trust provided a PowerPoint presentation of the report submitted to Ms. Hannah.

Responding to the questions by the Town Council, Mr. Beebe made the following comments:

- PBPT could not be supportive of PB Cats, Inc., or work with them, as PB Cats, Inc., did not have the skills to catch the cats;
- As compared to PB Cats, Inc., costs that encompassed everything, PBPT's costs included everything and utilized not-for-profit veterinarians;
- PBPT's relationship with Purina would allow Purina to put out press releases that the Town of Palm Beach's Palm Beach Cat Rescue and Humane Society and Palm Beach Philanthropic Trust (PBPT) fed the cats Fancy Feast cat food;

Responding to President Pro Tem Coleman, Town Manager Elwell indicated that the ordinance restricted or prohibited feeding on public property only to groups that were sanctioned by the Town of Palm Beach. Feeding on Town owned spaces, streets, and sidewalks in the Town would be allowed only by PB Cats, Inc.

President Pro Tem Coleman commented that if PBPT had been supplementing the feeding of the cats in the Town, they would be in violation of the ordinance.

Responding to Council Member Brooks, Mr. Beebe stated that the PBPT had been established a month and a half ago. He indicated that their mission statement of the PBPT was to bring aid and comfort to the needs of the Town of Palm Beach, one of which was the feral cat colonies in the Town.

Council Member Coniglio noted that she learned of the PBPT's veterinarian operations and that Safe Harbor charged \$55.00. The Island Animal Hospital also charged \$55.00, which created

a shortfall for them. She discussed the following differences between the two organizations:

- The spay and neuter costs observed by PB Cats, Inc., seemed large;
- Not confident that the amount from PBPT included the salaried employees that had not been chosen, nor been costed, nor the end lease of the property on Dixie Highway;
- PBPT had a great board;
- PB Cats, Inc., board was too small;
- PB Cats, Inc., seemed to abide by the rules respecting personal property and the residents' privacy;
- Received several resident complaints and letters, which caused concern in passing the baton to PBPT; and
- Whichever group was sanctioned, would have to find their own money, as the money from the Town would not be enough to support it.

President Kleid commented that it was his understanding that PBPT planned to fund the entire project by philanthropic needs and the only reimbursement they were seeking from the Town was \$77,000, which was attributable to every time a cat was spayed or neutered, the Town would be billed for it, and PBPT would verify it.

Responding to Council Member Markin, Mr. Beebe indicated that PBPT was using funds, \$100,000, from Palm Beach Cat Rescue and Humane Society. Mr. Beebe stated that he was not aware that there were debts with that organization with the Town's local veterinarian.

Council Member Markin commented that the duplicate feeding of the cats was counterproductive and interfered with the success of the spay and neuter program.

Responding to Council Member Markin, Mr. Beebe made the following comments:

- A professional organization prepared their presentation;
- The field director had not been identified yet;
- The space for housing the cats would be sanctioned by Palm Beach County;

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- A building, located on Dixie Highway, would be leased if PBPT were sanctioned by the Town; and
- Two feeders, Catherine Bradley and Rosa Lopez, would be paid \$13.00 per hour.

Mr. Elwell noted that the ordinance that he previously described was correct and that it should be made clear that whoever was not sanctioned was not authorized to feed the cats in any public spaces in the Town, and only in private spaces at the consent of the owner.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to consider funding the existing Town sanctioned organization and any other organization that attempted to feed the cats on public property would be cited according to the Town's ordinance. On roll call, the motion carried unanimously.

Ms. Hannah stated that PB Cats, Inc., requested a total of \$100,000, \$50,000 immediately, in this fiscal year, and \$50,000 in November.

Responding to Council Member Coniglio, Ms. Hannah noted that if the \$50,000 were given immediately to PB Cats, Inc., it would total \$150,000 for FY2007.

Council Member Brooks stated that he could not support that, in light of the Town's economic downturn, but he would be open to something far less to help them, tied in with increased fundraising activities.

President Pro Tem Coleman indicated that he would be willing to have a bounty of each one spayed or neutered of \$400, which would pay the cost of \$378.

Council Member Markin suggested paying the amount per cat that had previously been paid and continue from year to year, as the goal was to increase their fundraising.

Mr. LaRue said that 200 cats were spayed and neutered last year, which was their target for this year. He said that he was unable to project more than that, as he did not know how many cats there were. Right now, there was \$30,000 in their fund, which would take them into next month. It would take until January to produce results for fundraising, as they were in the low point for the summer. The University of Florida requirements on what to feed the cats were being adhered to. Last year \$11,000 was spent on boarding, and this year \$18,000 was spent to correct the record. He noted that \$13,000 was saved by cutting back on expenses, and he would be saving money on food as the expenses were going down.

Responding to President Pro Tem Coleman, Mr. LaRue stated that the estimated all inclusive cost of the cats were \$386 based on 200 cats, for trapping, transporting and the veterinarian cost.

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Mr. Elwell noted that on a fiscal year basis, \$50,000 would be paid in November, presuming that what was proposed was based on the Town's fiscal year and not PB Cats, Inc., calendar year. If PB Cats, Inc., thought that next year they would be facing the same financial situation, the Town would need to plan for it.

President Kleid indicated that the Town was currently budgeted for \$100,000 for the fiscal year.

Mr. Elwell noted that the requested \$50,000 immediately was not budgeted and would have to come from contingency.

Responding to Mr. Elwell, Mr. LaRue indicated that he would need \$100,000 for the next 14 months, through September 30, 2008.

Council Member Brooks suggested a combination that the taxpayer could see that the Town was spending a certain number of dollars for the actual sterilization of the animals, and provide some monies to tie PB Cats, Inc., for a period of time, with the plea for a push on fundraising.

Council Member Markin commented that the first \$50,000 paid to PB Cats, Inc., from the Town this year went toward paying the debts of the past organization.

Mr. LaRue responded to Norman Goldblum, 109 Everglades Avenue, indicating that the veterinarians that PB Cats, Inc., used provided a service during the day for spaying and neutering, and that an emergency service was also provided to the feral cat population. Safe Harbor required certain criteria such as: a minimum of 10 cats and testing of every cat, which could cause legal and political problems; an increase in transportation expenses. The other veterinarians did not do testing unless the cats were adopted.

Council Member Markin noted that the veterinary costs of Dr. Brad Ochstein were exactly the same as the not-for-profit costs quoted earlier. The problem with using Dr. Ochstein on each animal was that during the season, an appointment had to be made for every cat. Dr. Morales would perform sterilization on all 10, which would not have to be boarded while waiting for an appointment.

Motion made by Council Member Markin, seconded by Council Member Brooks, to approve that the Town grant \$50,000 immediately to PB Cats, Inc., on the premise of returning with specific fundraising plans and specific additions to the Board that would specialize in fundraising.

Council Member Coniglio asked if the Town Council could revisit the other \$50,000 in November.

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Council Member Markin replied that she could amend the motion to include it.

Council Member Brooks noted that they could discuss it in November in order to get a better handle on how that year was evolving.

President Pro Tem Coleman commented that if PB Cats, Inc., had \$30,000 currently in the bank, how could \$80,000 in 10 weeks be spent, as there were five 10-week periods in the year, what about the other four periods. He said that the numbers were not realistic.

Mr. LaRue stated that they were asking for money up front, as normally income was generated from the public. He said \$50,000 was needed to cover them to November. They were spending approximately \$18,000 to \$20,000 per month.

Council Member Markin indicated that there would be an increase in expenses for fundraising. She noted that even the mailers that were sent out last year cost \$7,000 for printing.

President Kleid pointed out that if the motion was passed, the money would come from one of the funds, as additional funds were not budgeted for this amount.

Town Manager Elwell indicated that whatever amount was authorized today would come from the General Fund Contingency, and that when this matter was finished, he would like to address the relationship between the decision and the budget.

Council Member Coniglio stated that she wanted to sanction the group, but \$50,000 was too much in light of the budget cuts.

Upon roll call, the motion of Council Member Markin failed 2-3.

Council Member Markin:	Yes
Council Member Brooks:	Yes
Council Member Coniglio:	No
President Pro Tem Coleman:	No
President Kleid:	No

Motion made by Council Member Brooks to approve allocation of \$25,000 taken from the General Fund Contingency with the qualifier that PB Cats, Inc., made an effort to raise funds as soon as possible. Council Member Coniglio seconded the motion. On roll call, the motion carried unanimously.

Mr. Elwell addressed the FY08 budget implications, and noted that if the proposal was accepted for the purposes of having further conversations, and the Town was not committing to funding beyond the \$25,000 that was funded today; if this was accepted as reasonable information that would be used as a benchmark as going through the year. Continued reports would be received from PB Cats, Inc., and additional funding decisions would be made in the coming months. Seventy-five thousand dollars (\$75,000) should be placed in the budget because of the representation. PB Cats, Inc., needed \$100,000 to carry them through from now until September 30, 2008. The amount of funding should be reduced for feral cats in the FY08 budget from the \$100,000 to \$75,000. He inquired if that would meet the Council's expectation when it came time to adopt the budget?

Responding to Mr. Elwell, President Kleid commented that it would be acceptable, as next year the same things could be done and the money appropriated over and above that, and that they should budget for \$75,000. Advance was given on \$100,000 budgeting for 2008.

Mr. LaRue thanked the Town Council for everything that was done today and their confidence in PB Cats, Inc., and that they would be diligent in putting a fundraising committee together.

4. Police Dock. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil reported that because of an unexpected increase in construction costs for a three slip dock for the Police Department, staff recommended that all the bids be rejected.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to reject all bids.

Council Member Coniglio stated that she appreciated the comments of the Public Works Department and the Police Department, and that she appreciated the concern that Police Chief Reiter had shown the taxpayers.

Upon call roll call, the motion carried unanimously.

5. Additional Consideration of Alternatives for Town Hall Renovation. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated

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August 8, 2007, and included in the backup material, to discuss the correction regarding financing alternatives for Town Hall Renovations. He explained that at the August 6, 2007, Special Town Council Meeting, the Town Council had approved Option A to renovate Town Hall and construct a separate facility in West Palm Beach for the Human Resources Department and the Office of Information Systems. The Town Council made that decision based on numbers presented in error, and that the magnitude of the correction was approximately \$80,000 higher. Staff was requesting that the Town Council consider further Town Hall Renovation alternatives based upon the corrected information, and direct staff on which option to pursue.

President Kleid clarified that Option A would cost the taxpayer \$21.00 per year per million dollars worth of assessment; and if the Town chose Option B, which would keep all departments in Town Hall, the cost to taxpayers would be \$13.00 per year per million. The difference was \$8.00 per year per million dollars worth of assessments between moving out of Town and remaining in Town.

In response to President Kleid, Finance Director Jane Struder advised that the figures were per year over a 30-year period.

Council Member Brooks commented that he had previously voted for Option B, and continued to support that option.

Council Member Markin commented in opposition to Option A, noting that the Town would be constructing a two-story building for less than ten people. She suggested that the Town put this on as a referendum and let the voters decide.

After further discussion, **President Pro Tem Coleman made a motion, seconded by Council Member Coniglio, to adopt Option A: Current Approved Plan. On roll call, the motion carried 3/2:**

President Pro Tem Coleman:	Yes
Council Member Coniglio:	Yes
President Kleid:	Yes
Council Member Brooks:	No
Council Member Markin:	No

Several hours after voting in favor of Option A, to renovate Town Hall and construct a separate facility in West Palm Beach for the Human Resources Department and the Office of

Information Systems, President Pro Tem Coleman made a motion to reconsider the selection of Option A *[to renovate Town Hall and construct a separate facility in West Palm Beach for the Human Resources Department and the Office of Information Systems]* in favor of Option B *[to renovate Town Hall and keep all Town offices in that location]*.

At the request of President Kleid, President Pro Tem Coleman explained that the reason he had reversed his decision from Option A to Option B was that the Town would be constructing a 3,000 square foot building for eight to ten people at a cost of \$3 million.

In response to Attorney Randolph, President Pro Tem Coleman advised that he did vote on the prevailing side earlier and that it had been his motion to adopt Option A.

Attorney Randolph advised that the Town Council should first vote on whether or not to reconsider the earlier vote.

Council Member Coniglio seconded President Pro Tem Coleman's motion to reconsider the earlier vote, which adopted Option A, to renovate Town Hall and construct a separate facility in West Palm Beach for the Human Resources Department and the Office of Information Systems. On roll call, the motion carried unanimously.

Council Member Brooks made a motion to adopt Option B to renovate Town Hall and keep all Town offices in the current Town Hall location. Council Member Markin seconded the motion. On roll call, the motion carried unanimously.

Council Member Coniglio clarified that she was now voting in favor of Option B based on the fact that it was not the quantity of numbers, but at this point, it was the quality of the numbers and she believed that they could work within Option B.

President Kleid clarified that he voted for Option B due to the financial climate. He noted that he did not believe that the \$8 difference was significant, but he did believe that the perception of spending \$3 million or more for Option A was not in the Town's best interest.

B. New Business

1. Palm Beach Day Academy.
[William J. Brooks, Town Council Member]
TIME CERTAIN: 10 A.M.

Attorney James Brindell, on behalf of the Palm Beach Day Academy, introduced Dr.

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Rebecca van der Bogert, the Academy's new Head of School, and expressed concerns regarding the reversing of the one-way direction on Seaview Avenue. He identified several safety concerns that impacted the students and traffic. He requested that the re-direction of Seaview Avenue be delayed for 60 days in order for him and Dr. van der Bogert to meet with staff and review the issues. He also suggested allowing the Academy to purchase an additional 10 parking space placards increasing the amount from 10 to 20. He noted that they were working on interim parking solutions and would be bringing back a long-term solution to the Town Council.

Dr. van der Bogert introduced herself and commented that the Academy needed more time to discuss the parking issues, as she had only been here for a few weeks.

Council Member Brooks indicated that the Town paid consultants a significant amount of money to study the parking situation, which impacted Seaspray and Seaview Avenues. He noted that the Academy had a superb security officer, and that he was not in favor of reversing the decision to one-way Seaview Avenue.

President Kleid commented that the decision to reverse the one-way direction on Seaview Avenue was not a quick decision and there were many discussions and public meetings that had occurred.

Brian Mirson, principal of American Consulting Engineers of Florida, Inc., (ACE) stated that the reason for the reversal of the one-way direction was safety. It had been indicated by Jack Thompson, the former Head of School, that the Academy's preference was the south side of the road. He added that reversing the direction on Seaview Avenue allowed solutions for vehicle capacity, backing up, and turning movements.

Responding to Council Member Markin, Mr. Mirson recalled the key points of the parking and traffic study.

Council Member Markin suggested having a cross-walk attendant at the Academy. She commented that the amount of placards were initially discussed and that the Academy was limited to 10, and that the businesses could utilize the peripheral parking spaces for their employees. She said that she was against using additional placards for the Academy and inquired if Wachovia and the First National Bank were contacted to utilize their excess parking spaces. She indicated that her preference was to have buses and shuttles pick up students and teachers in West Palm Beach in order to reduce the cars from queuing.

Responding to Council Member Markin, Attorney Brindell indicated that the first response from Wachovia was negative, and that other methods were being tried. There was an excess of parking spaces, which would be needed to meet parking for a future redevelopment plan; Wachovia was being contacted to utilize the spaces for short-term use. The Academy would be returning to

the Council with a long-term plan for on-site parking at the west end of the school, similar to what was approved on the east side.

Responding to Council Member Markin's request to provide the total number of students that attended Palm Beach Day Academy five years ago, the existing number today, and a projected number of two years from now, and the number of students that resided in Palm Beach, Attorney Brindell noted that the total number of students would be reduced as the lower grades were being relocated. Kindergarten was moved across the lake this year, next year first grade, and then second grade.

Council Member Brooks recommended that Dr. van der Bogert meet with Will Matthews, a strong supporter of the Academy and Tommy Mayes of Wachovia to discuss the surplus parking situation.

Responding to Council Member Brooks, Dr. van der Bogert indicated that the Academy had 11 parking spaces, but six were utilized by the buses, so in actuality there were only five spaces. Mr. Brooks called attention to the issue of green space and how valuable it was to the Town.

Attorney Brindell indicated that Mr. Mirson stated, that according to Jack Thompson's comments, it was his understanding that a crossing guard could not direct traffic but only guide crossings and suggested a uniformed police officer direct traffic at the cross walk in addition to the end of the street. He said he did not know if that was legally correct.

Responding to President Pro Tem Coleman, Dr. van der Bogert commented that the Academy had 79 staff members that drive, and about 39 available spaces.

Town Manager Elwell responded to President Pro Tem Coleman that as of yesterday, there had been no requests by the commercial area of the Town for placards. It was staff's understanding that the Academy intended to purchase the 10 that were available.

Council Member Coniglio welcomed Dr. van der Bogert, and commented on the importance of green space.

Responding to Council Member Coniglio, Police Chief Reiter made the following comments regarding parking at the Academy:

- A parking enforcement officer crossed the children at the intersection;
- The change of direction of the street would require a police officer or parking enforcement officer to direct traffic at the intersection of County Road;

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- The cost of the use of a police officer would be approximately \$60 per hour, but he did not envision the necessity in the afternoon, but very likely in the morning;
- An officer would be needed in the morning and afternoon and one at mid-block to ensure no one parked on the sidewalks;
- At the request of the school, the parents would be asked not to walk their children in, unless they have a parking space; and
- A westbound traffic flow with no parking on the sidewalk, would present a better traffic situation than what currently existed.

Responding to Council Member Coniglio, Mr. Mirson made the following comments:

- Parking was being modified on Seaview Avenue to allow for student drop off, and the number of spaces remaining would be relative to what was there previously;
- Eliminating three spaces on County Road at the intersection; and
- The recommendations were the result of the study and consultation with the various departments and meetings with the public.

Council Member Markin commented that when electronic chalking of the tires was implemented, the businesses would be scrapping to obtain secured parking spaces. She suggested an annual placard auction day, to build it up as a marketing theory, in order to bring awareness to the businesses about the availability of the peripheral package for their employees. She indicated that it was not the Town's responsibility to provide parking for the Academy's employees.

Patricia Sands, president of South County Road, commented that she had lost three parking spaces on South County Road, which impacted the business community. The placards were needed for the employees and the patrons, as currently there was limited parking. The businesses were not aware of placards being available for purchase. She noted that a placard day sounded like a fun event and that the business community needed those parking spaces just as much as the school.

Responding to Council Member Coniglio, Ms. Sands indicated that she would like the last ten spaces open to the public.

Discussion ensued regarding the placard parking. Mr. Elwell explained as follows:

- Placards would need to be purchased in order to designate on-street parking one quarter at a time, as being the place where a particular store expects their employees

to park;

- The placard entitled the person the convenience of parking in the space without paying daily for it;
- The placard was not a guarantee that the space would be available for them, as it was first come, first serve; and
- The placard would entitle a person to park in the space, hang their placard, and park there for the day.

Deputy Town Manager Bradford explained the timed parking as follows:

- The 100 block of Royal Palm Way had 20 spaces, one-hour parking, and he recommended that all 20 spaces be made placard and the Town Council chose to limit it to 10.
- A press release was issued notifying everybody that the placards were available; and
- None had been sold, except as of yesterday, 10 were purchased by the Academy.

Responding to Council Member Coniglio, Mr. Bradford noted that the one-hour parking was time limited only parking.

Council Member Coniglio commented that an employee could not go out and trade that spot and that it would be a one-hour turnover. If the business community would rather have it as a placard, it was their option, and that there were 10 spaces left.

Ms. Sands indicated that she would go back to the business community to have a meeting and ask them what they would like to do.

President Kleid responded to Ms. Sands that she could bring the business community's response back to the next meeting.

Motion made by President Pro Tem Coleman to approve that the second ten spaces were available for parking placards on Royal Palm Way and that subscriptions would be taken for two weeks; if there was an allocation question, the Town Council would revisit the issue at the September 11, 2007, Town Council meeting.

Responding to Town Manager Elwell's question that if the motion was adopted, and there was less than 10 subscribers during the two weeks, the Town would issue placards to those people

and if there were more than 10 subscribers, the issue would be revisited in September, President Pro Tem Coleman indicated that was correct and that nothing would be done until after two weeks had ended.

Council Member Markin commented the idea behind the placard was to isolate and dedicate spaces for the employees of the businesses. A two week time period to get the businesses to ante up on these placards was tight and she would like to see it expanded to 20 placards for the employees and a good month of business meetings.

Amended motion by President Pro Tem Coleman to approve expanding parking placards on Royal Palm Way from 10 to 20 with a cutoff date for subscriptions on the Friday before the September 11, 2007, Town Council meeting; if there was an allocation question, the Town Council would revisit the issue at the September 11, 2007, Town Council meeting. Motion seconded by Council Member Markin. On roll call, the motion carried unanimously.

2. **Proposed Interlocal Agreement with Palm Beach County School District for Landscape Improvements at Palm Beach Public School. [H. Paul Brazil, Director of Public Works]**

Public Works Director Brazil stated that staff recommended that the Town Manager be authorized to enter into an Interlocal Agreement with Palm Beach County School Board to install and maintain landscaping improvements at the Palm Beach Public School. He indicated that the purpose of the landscaping was to improve the screening on the east facade of the building. Staff had been working with the School Board and the Garden Club of Palm Beach to refine the plan to ensure everyone's needs were met. Mr. Brazil discussed the modified plan in detail, which would be done in September.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve that the Town Manager be authorized to enter into an Interlocal Agreement with Palm Beach County School District for landscape improvements at Palm Beach Public School. On roll call, the motion carried unanimously.

Dr. Steven Rose, 163 and 165 Seminole Avenue, commented that he requested that a certain feeder of PBPT to no longer feed cats on his driveway, but continued to feed them on the edge of the sidewalk, which was 10 feet away from his driveway. He requested that the Town Council ask the Police Department to help him with this issue.

Responding to Mr. Rose, President Kleid noted that the Council elected to continue with PB Cats, Inc., and reject PBPT and that the Town intended to enforce the ordinance, which said only

one organization that was sanctioned was permitted to serve food on public property.

Police Chief Reiter told Mr. Rose to come to the Police Department and they would assist him.

**3. Proposed Landscape Improvements at Ibis Isle Park.
[H. Paul Brazil, Director of Public Works]**

Public Works Director Brazil noted that Terry Levine, a resident of Ibis Isle, generously offered to assist the Town in developing a park. The Town currently owned the existing parcel, which was not irrigated, nor was it an attractive park. Mr. Levine developed a plan with his landscape architect, to develop that area. Nancy Murray of the Garden Club of Palm Beach offered to help the Town in this process, if the Council chose to go forward with it.

Mr. Brazil commented that the proposed installation was estimated at a cost of \$75,000. Mr. Levine offered to donate \$25,000 toward the initial installation, but the Town would need to contribute \$50,000. Mr. Levine offered to contribute \$3,000 of \$23,000 to the annual recurring maintenance cost. The Town cost annually of \$20,000 was not currently proposed in the budget.

President Pro Tem Coleman noted that the run rate should not be increased by \$20,000, until the total review of the budget.

Terry Levine, 2250 Ibis Isle Road, stated that he was the originator of the plan and that there were certain items staff wanted added to the proposal, which brought it up to \$86,000. The residents would be prepared to split the costs by one-third of the \$86,000, which would be approximately 26,800, rather than \$25,000. He stated that he could get the maintenance cost down to \$15,000 and he would donate \$3,000, bringing the ongoing maintenance cost down to \$12,000. He had a number of letters from residents supporting the plan.

Council Member Markin inquired if a plan existed in order for residents to designate their donations for a specific park, and if not, could one be developed.

Mr. Brazil replied that there was a beautification fund which accepted donations and was managed by the Public Works Department who could obtain lower costs for landscaping.

Council Member Markin inquired if the Garden Club diligently helped that fund grow and were there any other things, such as: bed taxes, and flip taxes, that other communities put back into land trusts funds.

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Responding to Council Member Markin, Mr. Elwell commented that there had been emails about communities having different types of transactional fees, but it was not legal in the State of Florida for municipalities to charge for them. If the Town could put a local town fee on real estate transactions, as in other states, a significant amount of money could be raised, but it was not legal in Florida.

Mr. Brazil pointed out that the Garden Club of Palm Beach and other individuals and groups had historically donated to individual areas for individual projects, such as the Kapok tree. Public Works did not have an active effort in raising donations.

Council Member Markin suggested a formal approach to establishing the greenspaces. A joint/private government funding could reduce the Town's overall costs.

Mr. Levine offered \$7,500 annually toward the \$15,000 maintenance.

Ms. Murray commented that the Garden Club had always donated to specific areas and projects, such as the famous Peruvian Avenue Park. Rather than donate to a greenspace fund, people preferred to specify a particular area that they wanted to beautify.

Council Member Markin noted that by expanding it to more than a specific space, an ongoing fund raising program would be on a much larger scale that could affect more greenspaces across the Town.

Council Member Brooks supported beautifying this area, but cited the problem of the state cutting \$1.4 million. He suggested reviewing it in 2009.

Responding to President Pro Tem Coleman, Mr. Brazil indicated that the plan would initially take water to get established, but over time it would take less water than other plantings.

David Denton, Denton Pond and Landscape, noted that a significant amount of sod would be required, which would have to be watered no matter how long it had been there; the plantings definitely would decrease in water requirement, and the zones in the watering system could be adjusted so that the grass was maintained more often than the other plants.

Attorney Howard Rudolph commented that he lived across the street from the space, which was one of the worst greenspaces in Palm Beach. It was a disaster, and to wait until 2009, he said was inappropriate, especially as the residents of the community were prepared to contribute as a result of the budget cuts.

Council Member Brooks commented that the Town could at least clear the park and sod it, and as early as possible in 2009 do the plants and beautification of the plan.

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Responding to President Kleid, Mr. Levine indicated that the cost to clear, sod and irrigate the site would be \$24,000.

Mr. Brazil noted that the largest effort would be to prep the site and install irrigation.

President Pro Tem Coleman commented that he would support it if, going forward, 50% of the operating costs were borne by the residents.

Responding to President Kleid, Mr. Levine said that he would pay 50% of the cost of the installation and 50% of the cost of future operations.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve funding of the landscaping improvements at Ibis Isle Park from the General Fund Contingency for \$37,500 for installation and \$11,500 for annual maintenance to be added to FY08 Budget to be matched by the residents of Ibis Isle.

Mr. Elwell brought the Town Council up to date as to the status of the General Fund Contingency.

Responding to President Kleid, Mr. Levine affirmed that the annual maintenance was a five-year commitment, and at the end of five years, it would revert back to the present state.

Amended motion to approve funding of the landscaping improvements at Ibis Isle Park from the General Fund Contingency for \$37,500 for installation and \$11,500 for annual maintenance to be added to FY08 Budget to be matched by the residents of Ibis Isle; the Town would continue to contribute to the maintenance only as long as it was matched by the residents.

The maker and seconder agreed.

President Kleid directed that staff provide an inventory of all Town-owned greenspaces.

Upon roll call, the motion carried unanimously.

At this time, 12:48 p.m., the meeting was adjourned for the luncheon recess.

The Town Council Meeting of August 14, 2007, was reconvened at 2:35 p.m.

[Due to the inclement weather, the meeting began at 2:35 p.m. with a quorum consisting of President Kleid, President Pro Tem Coleman, Council Member Coniglio. Town Attorney Randolph was also present.]

4. Response to RFP for Purchase or Lease of Town-owned Property at 5976 Okeechobee Boulevard.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her memorandum to the Mayor and Town Council dated August 7, 2007, and included in the backup material, to discuss the response to the Request for Proposals (RFP) for purchase or lease of Town-owned property at 5976 Okeechobee Boulevard. She advised that the only proposal received was from Suburban Collection for \$4.25 million, which was revised, at the Town's request, based on the significant difference in price between the Town's appraisal and Suburban's initial offer. The revised offer was \$5.1 million for the 11 plus acres with a request to lease approximately 40,000 square feet for \$120,000 annually.

Ms. Hannah advised that the \$5.1 million being offered for the 11 plus acres was \$1.5 million less than the property appraisal. She noted that, based on the advice of the Town's appraiser, the Town should be getting six to 10 percent of the value annually, which calculated to \$31,000 to \$52,000 per year, and the Town was being offered \$120,000 per year through 2019.

In response to President Kleid, Town Manager Elwell advised that the Town did not have any specific use for that land in the future.

President Kleid commented on Suburban's appraisal and that he believed some interesting points had been made relative to the Town's appraiser selecting the highest and best use of the property to be multi-residential, with a higher density. He noted that there were some implications that area would never be residential and certainly not at that density.

Ms. Hannah responded that Suburban's appraiser had said that with traffic concurrency, etc., it would probably not be realistic to get more than five units an acre, and the Town's appraiser had reported twelve units an acre.

President Kleid commented that Suburban Collection had made a good argument and questioned whether the Town should get a third appraiser with this in mind, or if the Town should go back to its own appraiser and request that he reconsider his position that the highest and best use

was for multi-residential.

Ms. Hannah responded that to satisfy these ambiguities the Town should obtain a third appraisal.

President Pro Tem Coleman commented that he would prefer entering into a long term lease rather than sell the property.

Council Member Brooks expressed concern relative to traffic concurrency. He commented that a third appraiser should look at the property from a commercial point of view.

Attorney James Brindell advised that he represented Suburban Collection, and was accompanied by David Fisher, Jr., a member of the family who owned Suburban Collection, a collection of some forty dealerships in Michigan and Florida.

Mr. Fisher thanked the Town Council and staff for their time and consideration. He responded to questions from Town Council Members noting that he could not speak to other locations for a car dealership on Okeechobee Boulevard, other than the subject property; there were some traffic issues related to this location, and even though it was a massive piece of property, they could only build a relatively small car dealership; and that the current plan was for approximately 20,000 square feet for the proposed project.

President Pro Tem Coleman commented on the following:

- The appraisal as it related to residential housing was not the relevant issue.
- The Town could make a better deal with a lease agreement, which was what he preferred.
- It was not necessary for the Town to obtain a third appraisal.
- The property could easily be worth \$10 million to a commercial entity, instead of \$5 million. The number was meaningless because it depended on the commercial use of the land.
- The property was located right at the Florida Turnpike interchange.

Attorney Brindell responded as follows:

- The concurrency issue was a serious problem, as concurrency was very tight on Okeechobee Boulevard and had been for a long time.
- The 20,000', for the proposed project, was what the planning consultants, Land Design South, believed would be allowed under the existing traffic capacity availability.
- Relative to the Town's appraisal, it was assumed that the entire property could be

developed at 12 units to the acre. The front part of the property, which was designated commercial had an underlying residential of only eight units, and a request to the County would have to be made to increase the density on a road that had concurrency problems. It would not be very likely that the County would agree to do that.

Council Member Markin commented that the Town did not need to have a third appraisal because of the many changes occurring in Town, and that it was unknown whether the Town would have use for that land in the future. The Breakers was about to change their whole configuration on Cocoanut Row, where the Town had a compost plant, and she did not know if they would be able to keep the compost plant at that location; the property on Okeechobee would be a perfect location for a compost plant. The property could also be used for off-site parking, or to run shuttle busses or school busses for pickup and drop-off.

Council Member Markin noted that she agreed with Mr. Coleman that it was a very small price to pay for the ultimate benefit that this particular client would receive. The bigger factor was that not only was the population growth increasing in this area, but everything was moving west because they were running out of land here. She noted that the Town had a nice piece of land, and absent of getting a very rich price for it, she was not interested in selling or leasing it long term.

Mr. Fisher commented that the property of the current dealership was "L" shaped and that Suburban had acquired two houses to round out that parcel, spending about \$100,000 to try to get it rezoned. The current dealership was intact, was not space constrained, and was actually selling less cars than in the past. He noted that the purchase of this property would be an opportunity for the future, noting that there was not yet a franchise for this new dealership and it would have to be acquired. He commented that Mr. Coleman had mentioned a half million dollar mark for the land, and he knew, on the commercial high portion, the northern section of the property, their appraisal was well above that half million dollar mark, which Suburban would be happy to pay. He advised that if there was an interest in retaining more land, then perhaps a lease agreement could be arranged.

President Pro Tem Coleman advised that the Town would be happy to enter into a thirty-year lease, the depreciation of a building was thirty-three years, and so the Town would enter into a thirty-three-year lease. He noted that the Town would financially get a better deal on a lease, as Suburban had the advantage, because the Town was not generating any revenue from that property.

In response to Council Member Coniglio, Mr. Elwell advised that the total square footage of the entire piece of property was 28 acres and explained how the property was parceled off as follows:

- The Fraternal Order of Police had a long term lease for the rectangle at the back of the property.
- The vertical rectangle was where the yard trash activity occurred and that needed to be maintained.
- The "L" shaped area toward the front was the part of the property being considered for an annual lease.
- The larger "L" shaped portion to the left was the part of the property being considered for purchase.
- Staff believed that the subject properties were surplus lands that the Town did not have a foreseeable use for. The other pieces of property need to remain in control of the Town and the Fraternal Order of Police.

Discussion ensued and it was pointed out that the Palm Beach Day School eliminated consideration of this property for building a high school.

Attorney Brindell questioned whether it would be possible, since they had not evaluated the prospect of entering into a long term lease, if Suburban Collection could discuss a lease proposal among themselves and with staff.

Council Member Brooks stated that the Town should narrow their focus and come up with a fair and equitable business proposition, whether as a lease or purchase and lease.

Motion made by President Pro Tem Coleman to reject the offer of Suburban of Palm Beach, LLC of \$5,100,000 to purchase 11+ acres. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

Motion made by President Pro Tem Coleman suggesting that Suburban of Palm Beach, LLC consider returning to the Town Council with a plan to negotiate net lease with the Town.

Attorney Brindell reiterated that they would be happy to do so but needed to work with Town staff.

The motion was seconded by Council Member Coniglio. On roll call, the motion carried 4/1 with Council Member Markin dissenting.

Mr. Fisher asked if it would be possible for Suburban to explore a purchase option or lease with the intent of leasing as much as possible and then perhaps buying as little as they could and keeping a purchase option on the table.

In response to Mr. Fisher, who questioned whether Suburban could return with a plan to negotiate a lease option as well as a plan to keep the purchase option on the table, President Kleid

advised that the Town Council was stating that they did not want to sell that large piece of land for \$5,100,000, and they were willing to accept other offers; anything Suburban could come up with the Town Council would consider.

5. Proposal to Site Reach 8 Mitigation Reef in Reach 5.
[H. Paul Brazil, Director of Public Works]

Public Works Director Brazil referred to his memorandum to the Mayor and Town Council dated August 9, 2007, and included in the backup material, to discuss the proposal to site Reach 8 Mitigation Reef in Reach 5. He provided a visual presentation using slides to review three possible mitigation sites for the Reach 8 Beach Renourishment Project. He noted that staff was requesting direction by the Town Council to allow continued exploration of the three possible mitigation sites and to authorize construction of an artificial mitigation reef required by the Reach 8 Restoration Project to be placed offshore of Reach 5.

Town Manager Elwell clarified that the Town would be exploring the three sites with the two regulatory agencies, the Florida Department of Environmental Protection (FDEP) and the United States Army Corps of Engineers (USACE). He explained that it was extremely challenging to get these agencies to agree, but if through continued exploration, both agencies agreed on one of the three sites, staff would take the Town Council's action today as acceptance of that outcome unless staff was directed to move more cautiously.

Motion made by Council Member Brooks, seconded by Council Member Markin, to authorize construction of an artificial mitigation reef required by the Reach 8 Restoration Project to be placed offshore of Reach 5. On roll call, the motion carried unanimously.

6. Storm Drainage Improvement Plan Update.
[H. Paul Brazil, Director of Public Works]

Public Works Director Brazil referred to his memorandum to the Mayor and Town Council dated August 9, 2007, and included in the backup material, to provide an update on the 10-Year Storm Drainage Improvement Plan. He outlined the work to be included through a general obligation bond, if approved by the voters in a December 18, 2007 referendum as well as the projects that needed to be completed right now with existing accrued funds.

In response to Council Member Markin, Town Manager Ewell explained that the Town was halfway through with both spending and construction of the 10-year plan, but there was work that

had been done prior to the approval of the 10-year plan in the immediate aftermath of the flooding in 1999 and 2000. He noted that about \$10 million out of the \$20 million had been spent on the 10-year piece and that there may have been as much as \$6 to \$8 million more that had been previously spent.

In response to Council Member Markin, Mr. Brazil commented as follows:

- The work that had already been done would not be negated in any way if the referendum was turned down by the voters.
- The Town would not have projects out there that were undone, but there would be areas where the level of service had not been improved.
- The Town did have warranty schedules for all the work that had been done thus far. The Town had acted upon warranty situations on several occasions and never had a problem collecting.
- Staff was comfortable and confident that some of the large properties on North Lake Way were retaining the water amount requested by the Town. The Town reinspected the properties annually to ensure that the drainage systems had remained in place and had not been altered.

Motion made by Council Member Brooks, seconded by Council Member Markin, to approve the amended 10-Year Storm Drainage Plan as presented by staff. On roll call, the motion carried unanimously.

7. Tennis Center Projects

- a. Phipps Ocean Park Tennis Center Court #6.
[Jay Boodheshwar, Director of Recreation]

Director of Recreation Jay Boodheshwar provided an update on the playability issues for Phipps Ocean Park Tennis Center Court #6. He recommended, based on information provided by Director of Public Works Paul Brazil, that no additional Town funds be expended for remediation or reconstruction work on court #6.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio, that no additional Town monies be used to perform reconstruction work on Phipps Ocean Park Tennis Center Court #6 at this time. On roll call the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

- b. Seaview Park Tennis Center Renovation Project.
[Jay Boodheshwar, Director of Recreation]

Director of Recreation Jay Boodheshwar provided an update on the Seaview Park Tennis Center Renovation Project. He requested that the Town Council grant final authorization to proceed with the necessary plan revisions and the required bidding procedures for the at-grade renovation of the Seaview Park Tennis Center.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio, to grant final authorization to proceed with the necessary plan revisions and the required bidding procedures for the at-grade renovation of the Seaview Park Tennis Center. On roll call the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

8. Hiring Freeze. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated August 8, 2007, and included in the backup material, to provide a status report on the hiring freeze. He commented as follows:

- Twenty-two positions were vacant and six of those would be filled;
- No position that became vacant would be filled unless requested by a department head to do so;
- The Town Council would be provided information on positions that had been filled to keep them informed of what exceptions had been made during the freeze;
- The Town Council would be provided a monthly list of all vacant positions by the Town Manager.

The Town Council accepted the status report on the hiring freeze as presented by Mr. Elwell.

9. Approval of Charitable Contributions Pursuant to Terms of Settlement Agreement Between Mar-a-Lago, LLC, LC and the Town of Palm Beach.
[John C. Randolph, Town Attorney]
(Item VIII.F.2., was removed from the Consent Agenda and added to the

Regular Agenda as Item X.B.9.)

Town Attorney Randolph referred to his memorandum to the Mayor and Town Council dated August 2, 2007, and included in the backup material, to discuss Donald Trump's selection of charities to split the \$100,000 donation, which was part of the settlement agreement of his lawsuit. He noted that Mr. Trump agreed to pay \$50,000 to the Fisher House, which was the Town's choice, but wanted \$25,000 to be paid to Disabled Veteran's Life Memorial and \$25,000 to Veteran's of America.

President Kleid passed the gavel to President Pro Tem Coleman to comment in opposition to the two charities suggested by Mr. Trump, noting that both were very good charities, but he did not believe it was within the spirit of the type of charitable contribution discussed by the Town Council. The contribution to the Disabled Veteran's Life Memorial did not directly help war veterans, and he advised that he viewed the Veteran's of America as a political lobbying group and was not certain the Town should be associated with an organization of that nature. He suggested that Mr. Trump contribute all of the \$100,000 to the Fisher House, since both the Town and Mr. Trump had agreed it was an acceptable charity.

Motion made by President Kleid to reject Donald Trump's selection of charities to split the \$100,000 donation as part of the settlement agreement of his lawsuit and requested that Mr. Trump contribute all of the \$100,000 donation to the Fisher House. On roll call, the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

PUBLIC COMMENT:

Yvelyne D. Marix, 1570 North Ocean Boulevard, presented to the Town Council, for their review, a 1989-1990 Town of Palm Beach Annual Report, which she believed might be of interest to them. She presented as well, a picture of the beach from 1950, which had groins that were later removed. She suggested that the Town consider placement of groins once again.

President Kleid noted that groins were controversial and the Army Corps of Engineers was not in favor of them.

Ms. Marix responded that she had been following the issue of groins, and they were not quite as controversial as they had previously been.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 14-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, to Include a New Article VII and Sections, Titled "Parking Zones"; Providing for the Establishment of Parking Zones; Providing for Time Limits to Park in Parking Zones; Making it Unlawful to Overtime Park in Parking Zones and Authorizing Penalties; Making it Unlawful to Relocate a Vehicle Within the Same Parking Zone; Providing for the Penalty for Overtime Parking in a Designated Parking Zone; Amending Section 118-92 to Include a Penalty for Overtime Parking in a Designated Parking Zone; Amending Section 118-127 to Reference Penalties in Section 118-92; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 14-07, by title, as printed above.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio to adopt Ordinance No. 14-07. On roll call, the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

B. First Reading

1. ORDINANCE NO. 15-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 42, Environment, Article V, Noise, Section 42-230 Relating to Lawn Maintenance Equipment Noise; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Michael S. Reiter, Chief of Police]

Town Attorney Randolph read Ordinance No. 15-07, by title, as printed above.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio, to approve Ordinance No. 15-07 on first reading. On roll call, the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

2. ORDINANCE NO. 18-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 38, Emergency Services, at Article II, Alarm Systems; 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. 18-07, by title, as printed above.

Mr. Randolph passed out an amended Ordinance No. 18-07, noting the slight changes made to Section 38-35 at the top of page 3.

Motion made by Council Member Coniglio, seconded by President Pro Tem Coleman, to approve Ordinance No. 18-07, on first reading. On roll call, the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

3. ORDINANCE NO. 19-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles at Section 118-92, So as to Increase the Penalties for Violating Parking Regulations; 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. 19-07, by title, as printed above.

Motion made by Council Member Coniglio, seconded by President Pro Tem Coleman, to approve Ordinance No. 19-07, on first reading. On roll call, the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

4. ORDINANCE NO. 20-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 18 of the Code of Ordinances Entitled "Buildings and Building Regulations"; Providing for Amendments to Section 18-242 Relating to "Amendments" at Subsection 104.6.4 Fees - Schedule of Permit Fees; Providing a New

Schedule of Permit Fees; Providing for Severability; Providing for Repeal of All Ordinances or Parts of Ordinances in Conflict; Providing for Codification; and Providing an Effective Date.

[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 20-07, by title, as printed above.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio, to approve Ordinance No. 20-07, on first reading. On roll call, the motion carried 3/0, as Council Member Brooks and Council Member Markin were temporarily absent from the meeting.

XII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Request for Extension of Work Hours at 301 Worth Avenue per letter dated July 25, 2007, from Dan Harrington.
[Veronica B. Close, Director of Planning, Zoning, and Building]

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

Planning, Zoning, and Building Department Director Close reviewed the request made by Dickinson Cameron Construction on behalf of Chanel, Inc., 301 Worth Avenue. She noted that Mr. Wally Holmes was present to address this request.

Ms. Close advised that staff recommended approval of the extension of work hours from the period of time beginning September 3, 2007 and ending October 31, 2007, with the conditions as listed below:

- Extended hours from 7:00 a.m. to 8:00 p.m., Monday through Saturday;
- No work to be performed on Sundays or legal holidays;
- Extended hours to apply to interior millwork and related trades only;

- No deliveries and other work to be performed during the extended hours;
- Any verified complaints from neighbors will revoke the extension of hours;
- Quiet work only before 9:00 a.m.

Motion made by President Pro Tem Coleman, seconded by Council Member Coniglio, to approve the extension of work hours at 301 Worth Avenue, per the recommendations of staff. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

- a. **FLOOD VARIANCE #1-2007** The application of Desmond Heathwood and Dorothy Ann Heathwood, relative to property described as Lots 67 and 68 of PRIMAVERA ESTATES (MIDDLE SECTION), according to the Plat thereof as recorded in Plat Book 7, Page 39, of the Public Records of Palm Beach County, Florida; commonly known as 300 Clarke Avenue; located in the R-B Zoning District. Request a variance to construct substantial improvements to connect existing residence at a base flood elevation of 7.28 feet National Geodetic Vertical Datum (NGVD) to an existing two-story garage/guest house in lieu of the minimum base flood elevation of 7.5 feet NGVD required by Town Code.

Ex-parte communication was declared by Council Member Coniglio and Council Member Brooks via a conversation with Attorney Hanlon.

Attorney Timothy Hanlon, on behalf of the applicants, Desmond and Dorothy Heathwood, provided an overview of the request for a flood variance.

Zoning Administrator Paul Castro commented that staff recommended if the Flood Variance was approved by the Town Council, the applicant enter into a standard hold harmless agreement with the Town, which was a requirement of the code.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, to

approve Flood Variance #1-2007, with the condition as stated by staff that the applicant enters into standard hold harmless agreement with Town as required by Town Code. On roll call, the motion carried unanimously.

- b. VARIANCE #23-2007 The application of George D. Milidrag, Trustee, relative to property described as Lot 29, of EDEN PROPERTIES, according to the Plat thereof, as recorded in Plat Book 18, Page 49, of the Public Records of Palm Beach County, Florida; commonly known as 232 Garden Road; located in the R-B Zoning District. Request a variance to allow the addition of a new 1-story garage resulting in an overall Cubic Content Ratio for the residence of 4.13 in lieu of the 3.96 maximum allowed.

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

Attorney Frank Chopin, on behalf of the applicant, presented architectural renderings, to provide an overview of the variance request.

Zoning Administrator Paul Castro commented that the hardship must be demonstrated.

Motion made by Council Member Markin, seconded by Council Member Brooks, to approve Variance #23-2007. On roll call the motion carried unanimously.

- c. VARIANCE #24-2007 The application of Queens Lane LLC (Edward Henkin, Manager), relative to property described as lengthy legal description on file; commonly known as 270 Queens Lane; located in the R-B Zoning District. Request a variance to construct a 1,680 square foot guest house/cabana with a street rear yard setback and building height plane setback of 25 feet in lieu of the 35 foot minimum required in the R-B Zoning District for a through lot that is greater than 150 feet in depth.

Ex-parte communication was declared by President Kleid, President Pro Tem Coleman, Council Member Coniglio, and Council Member Markin with Attorney Maura Ziska.

Attorney Maura Ziska advised that she represented applicant Edward Henkin, and was accompanied by Architect Michael Perry. She presented architectural renderings to provide an overview of the variance request.

Zoning Administrator Paul Castro made the following staff comments:

- The Public Works Department requested the removal of the trees and hardscape located in the utility easement.
- The applicant had to demonstrate the hardship for less of a setback on Colonial Lane as there did not appear to be one.

In response to President Kleid, Mr. Castro advised that staff did not plan to study the through streets this year, but would eventually do so.

In response to Council Member Coniglio, Attorney Ziska advised that a Unity of Title was included, and the neighbor who voiced opposition to the driveway had not reappeared.

Motion made by Council Member Markin, seconded by Council Member Brooks, to approve Variance #24-2007. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

- a. VARIANCE #22-2007 The application of Elizabeth B. Lowe, relative to property described as Lots 47 and 49, POINCIANA PARK, Plat Book 6, Page 1, Public Records of Palm Beach County, Florida; commonly known as 400 Seabreeze Avenue; located in the R-B Zoning District. Sec. 134-326 - Site Plan Review to construct a new two-story house (2,293 square feet) and two-story garage/guest house (845 square feet) on two non-conforming platted lots which total 50 feet in width in lieu of the 100 foot minimum required and 6,125 square feet in area in lieu of the 10,000 square foot minimum required. Sec. 134-1576(a) - Corner Lots - Request a variance to allow a street side yard set back of 9 feet in lieu of 30 foot minimum required for a new house, and 5 feet in lieu of 30 foot required for a garage/guest house. Sec. 134-893(a)(9) - Rear Yard - Request a Variance to allow a rear yard set back of 5 feet in lieu of 15 foot minimum required for a new garage/guest house. Sec. 134-893(a)(13)a.1 - Cubic Content Ratio - Request a Variance to allow a CCR of 4.7 in lieu of 4.0 maximum allowed for lots under 10,000 square feet. Sec. 134-891(b)(1) - Accessory Structures - Request a Variance to allow a two-story unattached garage/guest house in lieu of one-story required for lots under 20,000 square feet. Sec. 134-1757

- Swimming Pools - Request a Variance to allow a street side yard set back of 10 feet in lieu of the 15 foot minimum required. *Deferred from the July 10, 2007, Town Council Meeting.*

Deferred Variance #22-2007 to the September 11, 2007, Town Council Meeting.

- b. **SPECIAL EXCEPTION #9-2007 WITH SITE PLAN REVIEW AND VARIANCES** The application of Andrew N. Adler, relative to property described as lengthy legal description on file; commonly known as 216 Colonial Lane; located in the R-B Zoning District. Request for special exception with site plan approval for a new two story single family home of 2,793 square feet, on existing portions of platted lots that total 6,150 square feet in area in lieu of the 10,000 square foot minimum required by the R-B zoning district. Variance request to permit a front yard setback for the first story of 21.83 feet in lieu of the 25 foot minimum required. Variance to permit a one car garage in lieu of the two car garage required. Variance request to permit a swimming pool with a rear setback of 4.33 feet in lieu of the 10 foot setback required. *Deferred from the July 10, 2007, Town Council Meeting.*

Deferred Special Exception #9-2007 with Site Plan Review and Variances to the October 4, 2007, Town Council Meeting.

4. **New Business- More Than 15 Minutes**

- a. **VARIANCE #25-2007** The application of 101 El Bravo, LLC (Dan Swanson, Manager), relative to property described as East 255 feet of Lot 1, EL BRAVO PARK, a subdivision of the Town of Palm Beach, Palm Beach County, Florida, according to the Plat thereof, on file in the Office of the Clerk of the Court in and for Palm Beach County, Florida in Plat Book 8, Page 9 and Plat Book 9, Page 9; commonly known as 101 El Bravo Way; located in the R-A Zoning District. Request a variance to allow construction of a new 16,790 square foot, two story residence with a point of measurement of 20.39 feet National Geodetical Vertical Datum mean sea level (NGVD) in lieu of the 17.4 feet NGVD maximum allowed, as determined by the

Town. Request a variance to allow the maximum overall height for the proposed new house at 33 feet in lieu of the 30 foot maximum allowed due to the architectural design having portions of the pitched roof with parapets above the maximum height allowed by code. In addition, the variance is to also allow architectural pediments above the maximum height which is not permitted by code.

Ex-parte communication was declared by Council Member Markin via a conversation with Attorney Maura Ziska and Dan Swanson, property owner; Council Member Coniglio and President Kleid via a meeting with Attorney Maura Ziska and Dan Swanson, property owner; and President Pro Tem Coleman via a conversation with Attorney Maura Ziska.

Attorney Maura Ziska advised that she represented the applicant, Dan Swanson, noting that he was present today. She noted that there had been two variance requests before the Town Council, but the request to allow architectural pediments above the maximum height was now being withdrawn. She explained that the project had been reviewed last month at the Architectural Review Commission Meeting (ARCOM). The Commission deferred the architecture, and by a 4/3 vote, did not recommend the variance. She advised that the applicant was requesting that the Town Council approve the placement of the finished floor at 20.39 feet; and if granted, the applicant would return to ARCOM later this month to finalize the design of the architecture.

Attorney Ziska presented architectural renderings to provide an overview of the variance request and commented as follows:

- The previous house was designed by Architect Jeff Smith, who voted to recommend the variance to the Town Council at last month's ARCOM meeting.
- The streetscape showed that all properties had finished floors around 20'-21' National Geodetical Vertical Datum (NGVD), and to place the finished floor at 17.4' as allowed by Town Code would put this house in a hole.
- The hardship was the topography of the land, which was substantially higher than the Town's point of measurement.
- The variance request was to match the existing floor of the previous house, the topography of the land, and to match the neighboring properties finished floor elevations and overall heights.
- There was a Florida Department of Environmental Protection (FDEP) hardship. The FDEP advised that anything that was east of the Coastal Construction Line could not

be removed from the property.

Zoning Administrator Paul Castro made the following staff comments:

- Staff had researched the home previously built there, and could not explain how it was built at an elevation of 20', based on the fact that the code at the time that the house was built had a similar provision that it had today, which was that a point of measurement for a home was measured based upon the averages of the streets.
- The numbers, in comparison to the other houses, were accurate in terms of the finished floors.
- ARCOM, by a split vote of 4/3, recommended not to approve the point of measurement, noting that the house could be built without the necessary variances being requested.
- The applicant withdrew their variance application to restudy, then filed again, and brought back different architectural embellishments on the existing home with the point of measurement variance as stated by Attorney Ziska.
- Staff questioned the hardship and did not believe that this house would be built in a hole, but would be built approximately 2.5' above South Ocean Boulevard instead of 5' above South Ocean Boulevard.

Attorney Ziska responded to Mr. Castro's comments:

- She noted that because El Bravo Way sloped down, the house would be built about 6' above the road on El Bravo Way if the applicant was forced to build at 17.4'.
- She noted that, with regard to their point of measurement variance, all of the properties had variances or did not need variances to place the finished floors at existing grade, which were all about 22' to 19.5', and it would be very unfair to force this property to be 3' lower than what the grade was.

In response to Mr. Castro who questioned when those other homes were built, which did not need variances, Attorney Ziska responded that many of the homes did require variances, and many of the variances were granted over the last ten years or so for the same reason, because the topography was much higher than the Town's point of measurement.

After further discussion, Mr. Swanson advised that they would compromise to a point of measurement to 20', noting that presently they were 33' above finished floor with their roof, and the

allowable was 35'.

In response to President Kleid who noted that the applicant would be dropping the point of measurement from 20.39' to 20', Attorney Ziska advised that they would be reducing the overall height by another foot.

In response to Council Member Coniglio, Mr. Castro noted that the applicant stated that their hardship was that they could not move fill west of the line, which they could not do. The property sloped to an elevation of 16' all the way across the front of the property, and basically came up from the road and sloped up, and there was the ability to move soil forward without compromising the coastal construction control line.

After further discussion, Mr. Swanson, in response to Council Member Markin, advised that the finished ceilings on the first floor would be either 11' or 12' and 10' or 11' upstairs, which was the most they could get by with using the slab system that was in between floors.

Council Member Markin commended Mr. Swanson for building a solid home and putting the slab in the middle, which did cost them some height issues with the ceiling heights.

In response to Council Member Coniglio, Attorney Ziska advised that there had not been any complaints from neighbors.

Mr. Castro clarified that the granting of a variance or relief was not based upon the disposition of neighboring properties. He commented that the code had changed over the years to try to eliminate some of the problems previous Town Councils and staff had seen relative to the massing and the sizes of homes. He advised that was the reason staff protected the Zoning Codes, noting staff looked to modify that code yearly. Staff wanted to be very clear that when granting a variance, it was not based upon neighbors on either side and their finished floors or their heights, because those homes were built at different times, under different scenarios, and under different cases.

Motion made by Council Member Brooks to approve Variance No. 25-2007, with the applicant agreeing to a point of measurement of 20' and an overall height of 52'. Council Member Markin seconded the motion. On roll call, the motion carried 3/2:

Council Member Brooks:	Yes
Council Member Markin:	Yes
Council Member Coniglio:	No
President Pro Tem Coleman:	Yes
President Kleid:	No

- b. VARIANCE #26-2007 The application of Marion Hugh and Penelope F. Antonini, relative to property described as Lot 4, Plan of Golf View, according to the map or plat thereof as recorded in Plat Book 7, Page 69, Public Records of Palm Beach County Florida. Parcel Identification Number: 50-43-43-26-02-000-0040; commonly known as 4 Golfview Road; located in the R-A Zoning District. Applicant requests a variance to allow the placement of a swimming pool with a front yard setback of 9.33 feet in lieu of the 35 foot minimum required.

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

Attorney Frank Chopin, on behalf of the applicant, advised that he was accompanied by Architect Jeff Smith. He presented architectural renderings to provide an overview of the variance request. He noted that the applicant was requesting that the Town Council grant the variance to remove the cabana and reconfigure the pool, noting that the present hardship was twofold and commented as follows:

1. The house was landmarked, and landmarked houses were entitled to special consideration because of the limitations that were placed upon its use.
2. In the rear of this particular property, there was a private alley, which Town Code did not allow building on. If not for that provision, the rear of the property might be used for the construction of a swimming pool area, but the applicant was precluded from being able to do so because of the existence of the alley.

Zoning Administrator Paul Castro provided staff comments as follows:

- Attorney Chopin was correct that Town staff and the Town Council, when looking at landmarked properties, did attempt to provide some flexibility as it related to the interrelationship of not only the house, but the outside living areas, and the amenities.
- Staff questioned the hardship as it related to allowing the swimming pool closer to the front property line than the code allowed, and as it related to the amount of relief being requested.
- The Landmark Preservation Commission had voted that the swimming pool would not interfere with the integrity of the landmarked structure.

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Attorney Chopin addressed several of Mr. Castro's comments:

Mr. Castro was correct that the pool was within the setback. The key was the cabana, which was 4' from the front property line and was clearly visible. It was an accessory building built within the front yard setback, which was a part of the pool complex. The applicant proposed to eliminate the cabana, which would reduce the amount of the encroachment within the front yard setback.

Council Member Brooks commented that he could not support this request and that what was being put forth was totally created by the owners of the property and was not a hardship.

Responding to Town Council Members, Attorney Chopin advised that the pool could be moved back 2'. He noted that the applicant was improving the aesthetics of the property and would be removing the cabana, which was an eyesore and could be seen from the street.

Mayor McDonald commented that he believed that if the cabana was removed and the streetscape was improved, it might be a reasonable tradeoff.

Mr. Castro commented on the following:

- The cabana never showed up in the plans he received and that he presented to the Town Council when meeting with each of them.
- Staff had no record of the cabana ever being permitted, or of variances being granted in the last thirty-years.
- The cabana was not in the site history and he was unaware of when or how the cabana was placed there.

In response to members of the Town Council, Attorney Chopin advised that the applicant owned the property for one year; the cabana was in their site history; the cabana was on the property in 1970; and a variance had not been required.

Mario Nievera, Landscape Architect, provided architectural renderings, and discussed the design, noting that if the pool was moved further to the east, it would be off the center point, and the walkway would need to be relocated.

Council Member Markin commented that the walkway was keeping them from moving the pool eastward and northward. She stated that the applicant needed to compromise, otherwise she would have a difficult time approving this request.

Council Member Brooks recommended that the Town Council deny the application as there

was no hardship and any slight hardship was self-imposed for the owner's desire for a view.

Motion made by Council Member Brooks to deny Variance #26, 2007.

In response to Attorney Chopin, President Kleid advised that the applicant could withdraw the variance request.

Amended motion made by Council Member Brooks, seconded by Council Member Coniglio, to allow Attorney Chopin to withdraw Variance #6-2007. On roll call, the motion carried unanimously.

- c. SITE PLAN REVIEW #14-2007 WITH VARIANCES & SPECIAL EXCEPTION 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, as recorded in Plat Book 4, Page 1 of the Public Records of Palm Beach County, Florida; commonly known as 425 Worth Avenue; located in the R-D(2) Zoning District. Request a modification to the Villas' site plan to construct a 515 square foot building located at the northeast corner of the subject property to house a 350 kilowatt generator. The proposal includes the elimination of two (2) off-street parking spaces. The applicant seeks a variance to eliminate two (2) required off-street parking spaces. The applicant requests a special exception to provide two (2) supplemental off-street parking spaces located on a property approximately 75 feet west of the subject property. The applicant seeks a variance to locate an enclosed building and 350 kilowatt emergency power generator within the street rear yard setback. The applicant seeks a street rear yard setback of 5.4 inches in lieu of 30 foot minimum required by code for an enclosed building and 350 kilowatt emergency power generator. **Request for Deferral to the September 11, 2007, Town Council Meeting Per Letter Dated August 7, 2007, from Francis X. J. Lynch.**

Deferred Site Plan Review #14-2007 with Variances & Special Exception to the September 11, 2007, Town Council Meeting.

- d. SITE PLAN REVIEW #15-2007 WITH VARIANCES The

application of Villa D'Este Condominium Association, Inc., relative to property described as Lots 7 and 8 and the east 22 feet of Lot 9, Block 5, H. W. Robbins Addition, Ocean Park, in the Town of Palm Beach, Florida, according to the records on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida as recorded in Plat Book 6, Page 78; commonly known as 230 Everglades Avenue; located in the R-C Zoning District. The applicant requests a modification to the Villas D'Este site plan to place a 100 kilowatt emergency power generator and a 9.72 foot tall wing wall located at the Northeast corner of the existing site. Applicant seeks three (3) variances to construct the wing wall (three-sided wall) and emergency power generator (100 kilowatt) within the front yard setback, side yard setback and exceeding maximum wing wall height; a variance to locate a 100 kilowatt emergency power generator and wing wall within the front yard setback requirement. The applicant seeks a front yard setback of 4.58 feet in lieu of 25 feet minimum as required by code; a variance to locate a 100 kilowatt emergency power generator and wing wall within the side yard setback requirement. The applicant seeks a side yard setback of 3.58 in lieu of 20 feet minimum as required by code. The applicant seeks a variance to construct the wing wall at a height of 9.72 feet in lieu of the six foot maximum allowed by code in the front setback.

Deferred Site Plan Review #15-2007 with Variances to the September 11, 2007, Town Council Meeting.

5. Other

- a. Additional Study Items for the 2007-2008 Zoning Season. [Veronica B. Close, Director of Planning, Zoning, and Building]**

Director of Planning, Zoning, and Building Department Veronica Close referred to her memorandum to the Mayor and Town Council dated August 7, 2007, and included in the backup, to present additional Zoning Study Items for the 2007-2008 Zoning Season. She advised that staff had been presented with additional evidence which led them to believe that the study of the "condohotel" issue, and the study of outdoor table and seating issue with respect to special exception for outdoor seating to clarify the code should be undertaken. She noted that the outdoor seating item would be studied in-house and the "condohotel" item would be studied by a consultant. She advised that there were sufficient funds in the FY08 Budget to cover these additional items.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, to approve the two items recommended for study by staff:

- 1. The study, by an outside consultant, of the “condohotel” issue.**
- 2. The study, in-house, of the outdoor table and seating issue with respect to special exception for outdoor seating.**

Council Member Coniglio stated that she agreed with the concept but expressed concern that it would restrict what the Town was trying to accomplish in the business districts.

Council Member Markin commented that she had difficulty understanding why the Town went through the process of approvals, in terms of being flexible to any restaurant, let alone a fast food-related restaurant, granting a certain number of outdoor seats, which they then abused by stretching the interpretation. The Town now had to study that issue to set it right. She noted those restaurants were not playing by the rules and were not playing in good faith. She advised that tables currently existing in those areas could easily be blown away or picked up and thrown through a window. She suggested that attractive heavier cement type benches were appropriate.

On roll call, the motion carried unanimously.

Ms. Close advised that staff had received a request, included in the backup, from Attorney James Brindell asking the Town Council to reconsider their decision not to study the rezoning of the lakefront properties along Lake Worth from R-B to R-A.

Attorney James Brindell advised that he was present today with Franklyn De Marco, one of the property owners along Lake Worth, who initiated the request back in August 2005, to rezone those properties from R-B to R-A. He noted that the Town Council in April 2007, decided not to study this item, and he believed that decision was made due to financial constraints. He advised that Mr. DeMarco was committed to pay the cost of \$20,000 for the study, which would provide the Town with the data and analysis needed.

In response to President Kleid, Mr. Brindell stated that they were requesting that this would just be a Zoning Study Item, and that they were willing to fund part of the cost. The item would go before the Planning and Zoning Commission for their recommendation and then come before the Town Council.

Motion made by Council Member Brooks to accept the request of Attorney Brindell to reconsider the Town Council’s decision not to study the rezoning of the lakefront properties along Lake Worth from R-B to R-A. *[The motion died for lack of a second at a later point in the meeting.]*

President Kleid commented that having to have residents pay for this study might not be wise. He noted, in response to Attorney Brindell, that staff already had a very exhaustive study season and whether to put this item on their plate was a question.

Ms. Close commented that staff was concerned about this request for the following reasons:

- Funding was not available at the present time.
- The appearance of a study being funded in whole, or in part by an individual or group of individuals, who might ultimately benefit from the study.
- Staff was concerned that the Town's consultant as well as staff would have to review the data and would have to conduct almost the same study spending a great deal of time reviewing the information as it came in.
- Public participation would be needed in that area.

Council Member Markin commented as follows:

- She expressed concern over having another entity pay for a study that they could ultimately benefit from or be perceived to be benefitting from, which was a dubious precedent.
- She believed that the study would be an extensive, detailed study, and she was not certain as to whether staff could be expected to conduct it this year with all the other items on their plate, and given the Town's budget constraints.

Council Member Brooks commented that his motion failed for lack of second.

Attorney Brindell responded that the consultant they planned to use was Wes Blackman, a very experienced planner, who would obtain the data, property by property, and confirm dimensions, setbacks, lot coverage, and the landscape open space for each property. He noted that they already knew the parcel sizes. He explained that was the key thing the Town needed to know about; his client was willing to pay for it, and that collecting that data was not any worse than the data that they present to them all the time on all kinds of projects.

President Kleid commented that what Attorney Brindell was suggesting was that all they were doing was being collectors of data, noting that was only one part of the equation. The other part of the equation was whether or not staff had sufficient time to study this in view of the fact that they currently had a full plate.

Attorney Brindell advised that he believed the Town Council had overstated the complexity of this issue.

Ms. Close commented that she did not believe that studying seventy properties was a small

Zoning Study Item, and it was one of the largest studies that staff would undertake. She expressed concern about staff time and expense involved in this study.

President Kleid clarified that the motion made by Council Member Brooks died for lack of a second.

Council Member Markin made a motion to deny the request made by Attorney Brindell [on behalf of property owners along Lake Worth], at this point in time, to reconsider the previous decision of the Town Council not to study rezoning the lakefront properties in Town from R-B to R-A, as the Town Council has determined this year's study list; it should be considered for next year's study items. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

In response to Attorney Brindell, President Kleid responded that the Town Council did not have a problem with the data being gathered by him, because he believed that the time would come when the Town would conduct this study, but it was just not this year.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the Town Council Meeting of August 14, 2007, was adjourned at 5:45 p.m.

APPROVED:



Richard M. Kleid
Town Council President

ATTEST:



Susan A. Eichhorn
Town Clerk