TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON AUGUST 9, 2005

I. CALL TO ORDER AND ROLL CALL

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

Mayor Jack McDonald
President William J. Brooks
President Pro-Tem Norman Goldblum
Councilman Denis P. Coleman
Councilman Richard M. Kleid
Councilman Allen S. Wyett

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

Town Manager Peter Elwell
Deputy Town Manager Thomas Bradford
Assistant Town Manager Sarah Hannah
Town Attorney John Randolph
William Amador - Fire Marshall
Russ Bitzer - Recreation Director
Charlie Boggs - Purchasing Agent
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Assistant Director of Planning, Zoning & Building
Andrew Cox - Assistant Fire Chief
William Crouse - Human Resources Director
Jane Day - Historic Preservation Consultant
Tim M. Frank - Planning Administrator

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Ellen Grupp-Brenner - Firefighter
Frederick Hess - Police Sergeant
Jon Luscumb - Dock Master
Robert Moore - Director Planning, Zoning & Building
Michael Reiter - Police Chief
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Ellen Grupp-Brenner, Firefighter Paramedic/Driver-Engineer, Upon Her Retirement from the Town of Palm Beach After 20 Years and 6 Months of Service.

Mayor McDonald presented a ring to Ellen Grupp-Brenner in recognition of her retirement from the Town of Palm Beach.

IV. COMMENTS OF MAYOR JACK McDONALD

Last month I spent time with two Town departments. First, I was with Joe in Planning, Zoning, and Building. We are fortunate to have helpful employees who accomplish so much in cramped and inadequate office space. We need to conclude quickly our off island office arrangements in order to provide them with a modern office environment. The next day I was in Public Works riding the sanitation and yard trash trucks. Kudos to such devoted crews who work a dangerous job, often 7 days a week, inside and outside without air conditioning during these brutal days of summer. I am very impressed with their dedication, hard work, and smiling faces.

I want to recognize Palm Beach Cats for the excellent job they are doing with the feral cat program and emphasize that we need to increase our support for this valuable town service.

The last item is the Palm Beach Public School. The school district offered us a project, a building that we accepted, and unfortunately that building was not built. To dwell on the unilateral changes that subsequently occurred is nonproductive, but those modifications leave us with deficiencies that must be corrected. This public school occupies a very visible site near the main entrance to Palm Beach and is adjacent to landmarked structures. The school district MUST make revisions and not proceed to leave a building that will disgrace the location on which it sits as a monument to poor design. Town residents will live with this building for many years and it should reflect the architectural character and charm that is synonymous with Palm Beach, not the industrial building it has become. We made a deal and the school district needs to accept responsibility for the unapproved and unacceptable changes and move forward to make it right. Truly, the nation is looking at this building, it needs to PASS THE TEST.

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DELETE Request to Erect a Statue of Henry Flagler at Memorial Fountain Park

Motion made by President Pro Tem Goldblum and seconded by Councilman Kleid to delete Item VIII. B. 3. - Request to Erect a Statue of Henry Flagler at Memorial Fountain Park. On roll call, the motion carried unanimously.

WITHDREW Special Exception #7- 2005 With Site Plan Review - 150 Worth Avenue

Motion made by Councilman Wyett and seconded by Councilman Coleman to withdraw Item XI. C. 1. a. - Special Exception #7 - 2005. On roll call, the motion carried unanimously.

WITHDREW Variance #30-2005 - 265 Everglades Avenue

Motion made by President Pro Tem Goldblum and seconded by Councilman Wyett to withdraw Item XI. C. 2. c. - Variance #30-2005. On roll call, the motion carried unanimously.

DEFERRED to September 13, 2005, Town Council Meeting - Site Plan Review #7-2005 With Variances at the Plaza Inn - 215 Brazilian Avenue

Motion made by Councilman Wyett and seconded by Councilman Kleid to defer Item XI. C. 2. f. - Site Plan Review #7-2005 With Variances to the Town Council Meeting of September 13, 2005. On roll call, the motion carried unanimously.

DEFERRED to the Town Council Meeting of September 13, 2005, the review of Town Serving Documentation Submitted by Coco Palm Beach, for Outdoor Dining, per Staff's recommendation.

Motion made by Councilman Wyett and seconded by Councilman Coleman to defer Item XI. C. 3. a. - The Review of Town Serving Documentation Submitted by Coco Palm Beach. On roll call, the motion carried unanimously.

Motion made by Councilman Coleman and seconded by Councilman Wyett to approve the Agenda as amended. On roll call, the motion carried unanimously.

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

Mrs. Yvelyne Marix, 1570 North Ocean Blvd., expressed concern about construction parking matters. She requested a return to the former restriction of requiring on-site parking, car pooling, or busing on the no-parking streets. Mrs. Marix submitted documentation to the Town Clerk.

Amy Shaughnessy, 44 Cocoanut Row, commented on the redevelopment of Royal Poinciana Plaza, the preservation of the Royal Poinciana Playhouse, and construction of the Synagogue and Jewish Learning Center on Sunrise and Sunset. Ms. Shaughnessy indicated that there was a lot to be gained by redeveloping the Royal Poinciana Plaza.

Catherine Bradley, 165 Root Trail, president of Palm Beach Cat Rescue and Humane Society, stated that in the past she received numerous citations, which were later dismissed. She added that she was giving fair warning that she would not be victimized again.

Samuel McLendon, 300 South Ocean Blvd., said he was interested in the Sand Transfer Plant in order to get sand transferred to the Town's beaches. He added that the Port of Palm Beach should be an active participant to help with the funding. Mr. McLendon also noted that the turtle nesting on the beaches affected construction.

VII. CONSENT AGENDA

A. MINUTES: JULY 11, 2005
APPROVAL OF MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING REGARDING FY2006 BUDGET.

B. MINUTES: JULY 12, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES.

C. MINUTES: JULY 12, 2005
APPROVAL OF MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION REGARDING POINCIANA MANAGEMENT, INC., VS TOWN OF PALM BEACH.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON JULY 27, 2005.

E. RESOLUTIONS

1. RESOLUTION NO. 49-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Palm Beach Fire-Rescue Department to Charge for Emergency Medical Services Transport of Patients to Area Hospitals; Amending the Fee Schedule to $390 for BLS Transports, $408 for ALS 1 Transports, $513 for ALS 2 Transports, and $8 per Mile for Mileage; Providing for an Effective Date. *Deferred from the July 12, 2005, Town Council Meeting.*
[Edward J. Moran, Fire-Rescue Chief]

2. RESOLUTION NO. 55-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Recreation Department Fees, Effective October 1, 2005. *Deferred from the July 12, 2005, Town Council Meeting.*
[Russell E. Bitzer, Director of Recreation]

3. RESOLUTION NO. 58-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing Dock Rates for Annual, Seasonal and Winter Transient, Summer Monthly, and Summer

Transient Leases. *Deferred from the July 12, 2005, Town Council Meeting.* [Thomas G. Bradford, Deputy Town Manager]

4. RESOLUTION NO. 62-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving A Concession Agreement for the Palm Beach Municipal Tennis Courts Between the Town of Palm Beach and the Tennis Pro and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Russell E. Bitzer, Director of Recreation]

5. RESOLUTION NO. 63-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving A Concession Agreement for the Palm Beach Municipal Golf Course Between the Town of Palm Beach and the Golf Pro and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Russell E. Bitzer, Director of Recreation]

6. RESOLUTION NO. 64-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Town Staff and Equipment to Clear Debris from Private Roads. [H. Paul Brazil, Director of Public Works]

7. RESOLUTION NO. 65-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing and Directing the Mayor to Execute the Third Amendment to the 1994 Interlocal Agreement Between the Town of Palm Beach and Palm Beach County for the Operation and Maintenance of the Sand Bypassing Plant at Lake Worth Inlet.
[H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 69-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract for the Phipps Ocean Park Tennis Court Construction, Phase 4, to Welch Tennis Courts, Inc.
[H. Paul Brazil, Director of Public Works]

9. RESOLUTION NO. 70-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Portion of a Five (5) Foot Utility Easement Over the Southern Portion of Lot 1, Block 2, Ocean Park H.W. Robbins Addition and a Portion of a Five (5)

Foot Utility Easement Over the North Portion of Lot 34, Block 2, Ocean Park H.W. Robbins Addition on Property Commonly Known as 101 Seminole Avenue, Palm Beach, Florida.
[H. Paul Brazil, Director of Public Works]

F. OTHER

1. Authorization of Funding from the Leisure Services Enterprise Fund Contingency Account to Purchase a Replacement Playground Slide at the Seaview Park Tot Lot.
[Russell E. Bitzer, Director of Recreation]

2. Authorization of Additional Funding for PB Cats from the General Fund Contingency Account. [Jane Struder, Director of Finance]

Motion made by Councilman Wyett and seconded by Councilman Goldblum to approve the Consent Agenda. On roll call, the motion carried unanimously.

VIII. REGULAR AGENDA

A. Old Business

1. Status Report Regarding Potential Townwide Program for Placement of Overhead Utility Lines Underground.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford reported that the Town had reached a significant milestone in the Project Management Timeline established for the Town's underground utilities. A key component in the decision making process was in the cost estimating that was done. Mr. Bradford requested that Director of Public Works Brazil discuss his findings on the first item relative to costs versus proposals by Florida Power & Light (FP&L).

a. Royal Poinciana Way Demonstration Project.
[H. Paul Brazil, Director of Public Works]

Mr. Brazil provided an overview of the cost estimate for the project, which was contained in his memo dated August 5, 2005. Councilman Wyett stated that according to Mr. Brazil's report, there would be no real savings, and it would be better for FP&L to do the project. He added that he would not vote today to spend $500,000 for the project, before the voters say yes in a referendum.

Councilman Goldblum noted that he did not see a bonus or charge for finishing ahead of time, which was usually in the contract.

Mr. Brazil, responded that it was not applicable because C.R. Dunn, Inc., was an hourly rate contractor.

Councilman Kleid questioned why there had been no discussion about penalties, bonuses, or finishing early or late, in the construction contract with FP&L or C.R. Dunn, Inc. Mr. Bradford replied that with FP&L there was no need for a contract, because a tariff approved by the Public Service Commission sets forth the manner of calculating cost.

Town Manager Elwell noted that the Town was functioning as a general contractor, with C.R. Dunn, Inc., as a sub-contractor, and that was why there was no penalty clause or a timetable attached to it.

Councilman Kleid noted that Adelphia Cable Communications required payment in full within 30 days after signing the agreement. He expressed concern about the risk associated with paying up front before the work was completed.

President Brooks responded that it was possibly because of Adelphia's bankruptcy and imminent transfer of its franchise.

Councilman Kleid then suggested adding language to the agreement that whoever succeeded in the project would be bound by the agreement.

Councilman Coleman commented that he was opposed because the demonstration project was already a success, and the Council's questions had been answered. He stated that he wanted to explore owning an underground system, otherwise the Town would pay twice to FP&L for a system already installed.

Councilman Wyett agreed with the concept of exploring the aspects of ownership of underground lines, because the power companies were considering running internet lines over its power lines. For the record, Councilman Wyett said, he did not want to pay for Adelphia or Comcast wires. He indicated that the Town needed to decide if the entire island would be done or just the north/south access. The Town would also need a ballpark figure of the total cost in order to inform the voters for the referendum. He suggested, with the Council's concurrence, that the

Council reject the idea of doing Royal Poinciana as a separate pilot project and do it as a part of a major project.

Councilman Kleid said that the Council should go forward with the demonstration project as planned because it would provide valuable information. He said that he also agreed with having the referendum.

Samuel McLendon responded to Councilman Coleman's concern regarding paying twice for FP&L's underground utilities. Mr. McLendon explained that the Public Service Commission (PSC) would not allow utilities to put materials that they have not paid for in a rate base; they own it, and have to maintain it, but were not allowed to make a return on it.

Councilman Coleman expressed concern about putting in $50 million and still paying the same rate base that the PSC prescribed. He said he wanted to consider acquiring it, so as not to pay FP&L for the money that was already spent. If the demonstration project was done, the Town would spend a half a million dollars to transfer assets to them, and if the Town ever wanted to re-acquire the system, the half-million dollars would be paid again.

Samuel McLendon said that he did not ever see the Town owning a utility system - but the rate of return was about 11 %, which was good.

Councilman Coleman noted that FP&L's cost of capital was significantly more than ours, their rate of return was after tax, the Town's cost was pre-tax, and probably the business in this community was more profitable for FP&L because they get more dollars per foot than 15 miles west.

President and Chief Operating Officer of the Palm Beach Civic Association Ned Barnes, communicated that Charles Falcone, had been commissioned to do a study in order to answer questions relating to ownership of an underground system. Mr. Falcone was currently meeting with the City of Winter Park officials to discuss the processes required when acquiring a system. Mr. Barnes indicated that the study would be completed in the Fall.

President Brooks stated that the Council was not prepared today to approve the demonstration project.

Motion made by President Pro Tem Goldblum and seconded by Councilman Wyett to defer consideration of the Royal Poinciana Project to a later date, until the Town received more information, and to rebid it for better prices.

President Brooks indicated that the motion needed to be refined. Town Attorney Randolph added that the motion sounded like the Council was not setting aside the idea of a demonstration project but putting staff back to work to get additional bids.

Councilman Wyett withdrew his second.

President Pro Tem Goldblum clarified that a demonstration project would not be necessary with FP&L, because nothing new would be seen, but the Council should go out and get more competitive bids, and then test it.

Amended motion made by President Pro Tem Goldblum and seconded by Councilman Wyett to not undertake the demonstration project at this time.

Mr. Elwell noted that if the motion was approved, he requested the words "at this time" be added; and that the issue of the one million dollar transfer to the capital fund be addressed.

On roll call, the motion carried unanimously.

Councilman Coleman commented that another motion giving direction for a February referendum, may be necessary.

Mr. Elwell pointed out that Mr. Bradford provided a timeline with the necessary steps in order to have a February referendum. There were new questions raised today, and a prospect of the report from the Civic Association arriving in a few months.

President Brooks interjected to say that it could be solved by Mr. Wyett amending his motion with words such as, "with a view, if at all possible, to a February referendum". It would be fine to begin the work even if it had to be on the November 2006 ballot, he noted.

Mr. Elwell advised that there was no need to adopt an additional motion because staff was already on a path that called for certain things to be achieved by the next meeting on September 13, 2005.

Deputy Town Manager advised that no one could touch FPL's system, unless it was an FPL approved contractor, and no one could touch Adelphia's system unless it was an Adelphia approved contractor, so the universe was limited in terms of who could do the work.

b. ORDINANCE NO. 15-05 An Emergency Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2004, Providing an Effective Date.
[Jane Struder, Director of Finance]

Town Manager Elwell noted that Ordinance No. 15-05 was now eliminated from the Agenda. He explained that, due to earlier discussion, the $1 million that would have been transferred through that ordinance would now be incorporated into Ordinance No. 14-05, which would be heard later in the meeting.

c. RESOLUTION NO. 66-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Underground Facilities Conversion Agreement for the Royal Poinciana Way Demonstration Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

There was no need for consideration of Resolution No. 66-05, as a result of the decision not to undertake the underground wiring demonstration project at this time.

d. RESOLUTION NO. 67-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Adelphia Letter of Agreement for the Royal Poinciana Way Demonstration Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

There was no need for consideration of Resolution No. 67-05, as a result of the decision not to undertake the underground wiring demonstration project at this time.

e. RESOLUTION NO. 68-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Construction Contract with C.R. Dunn, Inc. of Lake Worth, Florida, for the Royal Poinciana Way Demonstration Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[H. Paul Brazil, Director of Public Works]

There was no need for consideration of Resolution No. 68-05, as a result of the decision not to undertake the underground wiring demonstration project at this time.

2. Further Review of Landscape Plans for the Eastern Approach to the Royal Park Bridge, Including Recommendations from the Town's Landmarks Preservation Commission.
[Robert L. Moore, Director of Planning, Zoning and Building]

Director of Planning, Zoning & Building, Robert Moore, advised that there was an issue related to the trees planned for the eastern approach to the Royal Park Bridge. He explained that the Beautification Committee had recommended the Kapok Trees when the state was unable to obtain specimen Live Oak Trees; the Green Buttonwood Tree had then been recommended. Today, Landmarks Preservation Commission (LPC) Chairman Gene Pandula was present to address the issue.

Gene Pandula, Chairman of the LPC, recalled that there was an approval in place for the Live Oak Trees for the eastern approach to the Royal Park Bridge. The Kapok Trees had now been forwarded as a possible alternative. He stated that he understood that the Kapok Trees were much more majestic, however, the technical data presented to the LPC had indicated that they had a shallow root system, and may lose all of their leaves during the dry season. He stated that it was the consensus of the LPC to leave the Live Oak Trees in place.

Jorge Sanchez, President of Sanchez & Maddox Landscape Architects, addressed the Town Council, stating that he was a tree expert, and referred to the letter, dated August 1, 2005, that he had forwarded to the Town Council. He stated that the Bridge Beautification Committee that was formed over five years ago took its job extremely seriously. Many changes had been done to the original drawings of the bridge. The landscaping had been widely discussed, and the thought had been to frame the Royal Palms as people drove into Palm Beach.It II'm go After describing the Ceiba pentandra (Kapok) he urged that they be selected as the trees for the eastern approach to the Royal Park Bridge.

Mayor McDonald commented that the Bridge Beautification Committee had done their job, and made their recommendations; there was no reason not to follow their recommendations.

Mrs. Nancy Murray, of the Garden Club, commented that landscaping was like painting, and was a very creative process. She noted that the Committee had spent a great deal of time discussing various alternatives, and that it was very important that staff could go ahead and obtain the money for the joint project, so that the trees could be purchased.

Councilman Coleman thanked Mr. Sanchez and Mrs. Murray for their involvement in this process, and moved to accept the proposal of the Ceiba pentandra (Kapok). The motion was seconded by Councilman Wyett.

In response to President Brooks, Mr. Sanchez advised that the trees had been selected and were ready to go; the difficulty was that by Florida Statute, the FDOT contractor and the Town of Palm Beach must wait until the contract had expired, which would not be until late in the fall. That was not a good time for planting, and it would be best to plant in early May.

In response to President Brooks, Mr. Pandula agreed that, since Mr. Sanchez had addressed the concerns, everyone was now in agreement.

On roll call the motion carried unanimously.

3. Alternative Designs for the Southern Boulevard Traffic Roundabout. *Deferred from the June 14, 2005, and July 12, 2005, Town Council Meetings.*

[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil reported that Mr. Fred Schwartz, Kimley Horn & Associates would provide a presentation of alternatives for the Southern Blvd. traffic circle. He reminded all that the designs were purely conceptual, and were not final by any means. Cost estimates were very preliminary in nature, and were for comparative purposes only, and were based on the assessed value of the properties that would be impacted. Additionally, there may be a global problem in that there were two lane roads going into and out of the traffic circle, as well as the Southern Blvd. bridge. No matter what was done in the intersection, it was possible that impacts from other areas would be reflected in the traffic circle sometime in the future.

Mr. Schwartz provided a presentation of the alternatives for the Southern Blvd. traffic circle. He reviewed the demand of traffic going through the intersection, and proceeded to review the six concepts included in the presentation.

Councilman Kleid commented that Mr. Schwartz had been asked to provide alternatives, without asking him what it would cost or what potential problems there would be. He stated that it appeared that the project would be very costly, and with that in mind, he suggested that the intersection be left as it was right now.

President Pro Tem Goldblum agreed with Mr. Kleid, and suggested that the FDOT alternative may work best; he also suggested that the traffic lights going west were a concern. He pointed out that perhaps traffic on the bridges was also currently being impacted by the rebuilding of Dixie and Olive.

President Brooks agreed with Mr. Goldblum and Mr. Kleid, and also pointed out that the Southern Blvd. bridge would sooner or later be rebuilt.

Public Comment:

A resident commented that it would be helpful to lower the landscaping so that traffic could be seen on the other side of the intersection.

Councilman Wyett commented that the traffic had steadily gotten worse, and since the largest costs were land acquisition he suggested that both of the two major land owners in the area (Bath & Tennis Club, and Mr. Trump) donate to the plan, since it would improve traffic to their premises.

In response to Mayor McDonald, Mr. Schwartz advised that over the last few years the traffic counts that the Town does annually have decreased. He suggested that when the Royal Park Bridge was fully opened and operational, there would be some relief to the Southern Blvd. bridge and to the intersection. He advised that the bridge being rebuilt may affect traffic if it resulted in carrying more westbound traffic in the afternoon, which would make that route more attractive to use. He stated that the current delays were a result of traffic signals west of the bridge, or the bridge opening. The suggestions of how to make the round-about work better were all focused on the morning peak hour – the east bound traffic, which was not affected as much by the bridge as the afternoon traffic.

Mayor McDonald suggested that the project needed to be looked at to explore moving forward with it, since this would provide an opportunity to make the level of service better.

In response to Councilman Coleman regarding rush hour traffic crossing through a traffic circle, versus having a traffic light in place, Mr. Schwartz replied that there was a difference, however, analysis had indicated that both slip lanes being added carried about as much as a traffic signal could carry.

Councilman Kleid commented that there were other things that severely impact traffic, such as the traffic signal on the west end of the bridge – he suggested that there should be a specific "no left turn" there, and perhaps photo ticketing as well. He also suggested that the Town work with either the City of West Palm Beach or FDOT, whoever is responsible, to synchronize the lights; also he suggested directing the Police Department to assign a committed policeman to the intersection during the peak hours and peak uses of the intersection.

Councilman Wyett commented that a high-rise bridge and a four lane bridge would also bring in traffic faster, and get rid of traffic faster, but it was still slowed by the circle. He also suggested that in twenty years there would be much greater development in the Southern Blvd. area west of the bridge, which would also impact the traffic.

Mayor McDonald agreed that a police presence at the intersection may help with the perception that traffic is moving better, and he suggested that Chief Reiter take the suggestion under advisement. He also noted that the sign on the west side was blown down, and was now finally back up.

Town Manager Elwell noted that photo ticketing was not legal in the State of Florida, and the traffic signal on the west end of the bridge was in the jurisdiction of the City of West Palm Beach. He pointed out that intergovernmental communication was ongoing, and staff would express concerns with the traffic signals to the City of West Palm Beach.

Councilman Coleman made a motion to go ahead with the FDOT alternative for the Southern Blvd. traffic circle. The motion was seconded by President Pro Tem Goldblum.

Mr. Brazil commented that as traffic grows over the next 20 years, the slip lanes could be added to the FDOT configuration.

In response to Councilman Kleid, Mr. Schwartz explained that the FDOT proposal was a classic roundabout; everyone would go into the roundabout in order to go one spoke or two spokes around.

Councilman Kleid replied that would favor people going east/west, as opposed to people going south to north, and he therefore proposed that nothing be done and that the roundabout be left as is.

In response to Mayor McDonald, Mr. Brazil replied that the Garden Club was helping with re-landscaping inside of the traffic circle, and there was the opportunity for a grant next year for the area west of the circle.

Police Chief Reiter commented that, from a law enforcement prospective, the Police Department dealt with the symptoms of the traffic problems. He stated that the FDOT alternative, in his opinion, was worse than the current situation, exactly for the reason suggested by Councilman Kleid.

Councilman Coleman commented that it was his impression that the FDOT proposal had to do with more than just who had the right of way in the circle.

Mr. Schwartz replied that it could be characterized that way from an operational standpoint.

Mr. Brazil explained that the FDOT proposal included a completely new infrastructure, drainage improvements, raised curbs, new asphalt – basically, a new roadway.

Town Engineer Jim Bowser explained that the FDOT project was to put in the roundabout per their new design. When a vehicle came up to the roundabout, it would yield to whoever was in the roundabout. He suggested that FDOT could be asked to mill and resurface the roadway, and put the drainage in per the plan, and keep the current right-of-way procedure. If they did not go along with that, there was the possibility that staff could do a joint project agreement in order to capture all of the money that the State would spend on that area, which would then allow the Town to initiate a project.

Town Manager Elwell explained that the FDOT roundabout required yielding to get in, but the right-of-way to get out was the standard design. The Southern Blvd. roundabout was a unique situation.

Councilman Coleman commented that the only reason the present design of the roundabout would be changed was so that FDOT could standardize it, and then the right-of-way would be given up.

Councilman Coleman withdrew his motion to approve the FDOT project proposal.

Ms. Nancy Murray commented that originally, the Garden Club was asked to give input regarding the landscaping, and the Garden Club had offered to pay half of the feasibility of what the other alternative were, because there were so many people saying that a study had been done 10-12 years ago, and members of the Council, at that time, had agreed that the current configuration handled traffic as well as anything. The Garden Club had suggested consideration of the alternatives, and was now finding that the FDOT project was not as great as it was first thought to be.

Councilman Kleid moved that the current configuration be kept in place, and that staff attempt to obtain the cooperation and money from FDOT. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried 4/1, with Councilman Kleid, President Pro Tem Goldblum, Councilman Coleman and President Brooks casting affirmative votes; Councilman Wyett casting a negative vote.

President Pro Tem Goldblum suggested that a police officer be stationed at the roundabout, at least in the morning, to direct traffic.

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

The regular Town Council Meeting of August 9, 2005, was reconvened at 2:10 p.m.

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President Brooks called for public comment:

Attorney Ron Kolins requested reconsideration of Site Plan # 6-2005, which was heard at the July 12, 2005, Town Council Meeting. He explained that he was asking for reconsideration of the matter, because of a difference of opinion in the interpretation of the decision made by the Town Council at the July 12, 2005, Town Council Meeting.

Mr. Kolins explained that a request had been made to allow balconies on the building in question, which was denied. The interpretation that staff was now giving to that denial would deprive the applicant of certain things beyond the application.

Zoning Administrator Paul Castro advised that the Town Council can place any conditions on a Site Plan approval, including any conditions that may be over and above code requirements. In this case, it was his understanding that it had been the direction of the Town Council not to allow any type of balcony or balcony architectural features on the building in question.

Attorney Kolins commented that the Town usually allowed for balconettes, which were narrow balcony architectural features, which could not be accessed by doors.

Town Attorney Randolph suggested that Attorney Kolins appeal the decision of the administrative official.

Zoning Administrator Castro responded that it had been quite clear in the motion that the Town Council hd specifically denied any type of balcony type feature.

Councilman Wyett commented that usually architectural features were an issue for consideration by the Architectural Commission (ARCOM).

Town Attorney Randolph advised that a motion to reconsider could be made, and the subject would be addressed at the next meeting.

Mr. Kolins clarified that this was not a question that was presented for decision by the Building Official. This was the Building Official's interpretation of the action of the Town Council. He noted that the applicant should not have to hold the project up because of the interpretation of a decision.

Zoning Administrator Castro commented that a typical balcony feature is in an inoperable window or door situation as an architectural feature, and in this case the motion was so strong on the balconies, that staff felt uncomfortable allowing balconettes with windows that opened onto them. He stated that he had indicated to Mr. Kolins that he would need clarification so that staff could understand direction to allow balconettes, only with windows and not French doors opening up onto the 2' balconettes, and that balconies would not be allowed.

Mr. Kolins responded that the fact that the windows would be able to open was a requirement of the building code, and was an egress issue.

Harry Ackerman, Assistant Building Official commented that the particular building in question was a fully sprinklered building and as such, there was not a requirement to have the windows able to open.

Councilman Coleman made a motion to clarify the action taken at the July 12, 2005, Town Council Meeting regarding Site Plan: that the motion was to deny the balcony variance, and anything else entailed with that project belonged with the Architectural Commission (ARCOM) and with the Building Department process. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

4. Clarification of Town Council Intent in Enacting Prohibition of Construction Work on Saturdays.
[Robert L. Moore, Director of Planning, Zoning and Building]

Director of Planning, Zoning & Building Robert Moore reported that staff had met with the lawn maintenance business owners, and staff was planning on submitting some suggestions at the September 13, 2005, Town Council meeting concerning making some changes in the elimination of leaf blower machinery on Saturdays. He explained that the ordinance that was actually adopted included the prohibition of construction year-round on Saturdays, and staff did not believe that had been the intent. In addition, clarification was needed on noisy construction versus non-noisy construction (such as painting). He noted that non-noisy construction had historically been permitted on Saturdays and even on Sundays.

After discussion, Councilman Wyett moved that Ordinance No. 10-05, would be modified to include clarifying language that the prohibition of noisy work on Saturdays was on a seasonal basis only (December 1st through April 30th), and would allow for non-noisy work to be done *within* premises all year round. The motion was seconded by Councilman Coleman and carried unanimously on roll call.

Director of Planning, Zoning & Building Robert Moore explained that the ordinance would be modified and brought back to the Town Council for modification.

5. Further Review of Proposed FY06 Town Budget.
[Jane Struder, Director of Finance]

Finance Director Jane Struder addressed the Town Council, reporting that Town Council action would be required on three items:

- Additional funding of $12,000 for the Four Arts Library

It was the consensus of the Town Council to defer discussion of the additional funding for the Four Arts Library to the September 13, 2005, Town Council Meeting.

- Police Radio purchase

Finance Director Struder explained that staff had done further research and now recommended purchase, rather than lease, of the police radio system. Staff recommended purchase of the police radio system in the amount of $560,000, to be added funding to the FY2006 budget from the General Fund - Undesignated Fund Balance.

President Pro Tem Goldblum moved approval of the purchase of the police radio equipment in the amount of $560,000, to be included in the FY2006 budget, with funding from the General Fund - Undesignated Fund Balance. The motion was seconded by Councilman Kleid and on roll call, carried unanimously.

- Finance Director Struder noted that the increased revenues and the expenditure cuts made in the proposed FY2006 budget generated $258,752 to date. She recommended that those savings be transferred to the Capital Improvement Fund.

Councilman Wyett moved approval of the transfer of savings generated by the cuts and increased revenues in the FY2006 budget to the Capital Improvement Fund. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

Councilman Wyett suggested that the Town Council instruct staff to find $300,000 in budget cuts, before final approval of the budget.

Councilman Coleman commented that he had been in favor of adding the two Fire-Prevention officers, as approved at the FY06 proposed budget meeting on July 11th. He noted that public comment had been made at that meeting by Mr. Walter Ross, suggesting the training of current fire personnel as Fire-Prevention Officers, and Mr. Coleman remarked that may be a more efficient way to address the issue. In that case, rather than hiring two Fire- Prevention Officers, it may require a very good administrative/secretarial person to organize the inspections, etc. He stated that he was raising these points now, so that training of current personnel could be considered on a long term basis. He stated that he thought there could have been further consideration given to *not* adding the two additional positions.

President Brooks suggested that the Code Compliance Officer position could be part-time, with no benefits, which would also save a capital expenditure for a vehicle. He suggested the consideration of only one Fire-Prevention Officer position, without the hiring of a Fire-Prevention office assistant. He noted that further discussion could take place when Fire-Rescue Chief Moran was present at the upcoming future budget meetings.

Town Manager Elwell advised that he would review all comments made today regarding the Fire-Prevention program with Fire-Rescue Chief Moran; additional back-up would be provided for the September 13, 2005, Town Council Meeting.

Director of Planning, Zoning & Building Robert Moore commented that currently the Police and Fire Departments help with code enforcement in the evenings and on weekends, which was traditionally not a part of their work. He pointed out that if additional enforcement was desired seven days per week, an additional person would be required. He noted that there was revenue involved, based on the code enforcement fines, and based upon funds received for building permits.

Mr. Moore also pointed out that the Fire-Prevention Officers would also help with the education of the public in regard to the building and fire codes. These positions would also be paid for by building permit dollars.

Town Manager Elwell clarified that further information would also be provided at the September 13th meeting regarding the Code Enforcement Officer. He observed that staff had identified the areas where expansion of services was being proposed, explicitly so that the Town Council could decide whether the additional services to the community were worth the investment necessary. He noted that there may have to be some decrease or adjustments of level of service in order to achieve additional budget savings.

NOTE: Second public hearing date changed to Thursday, September 29, 2005, at 5:01 p.m.

B. New Business

1. Palm Beach Public School Design Modifications.
[Sarah E. Hannah, Assistant Town Manager]
THIS ITEM WILL BE HEARD AT 10:00 A.M. OR AS SOON THEREAFTER AS POSSIBLE.

Assistant Town Manager Sarah Hannah noted that there had been changes to the Public School since the plan was originally approved by the Town Council and Landmarks Preservation Commission. Ms. Hannah introduced Kris Garrison, Planning Director of the Palm Beach County School Board.

Planning Director Garrison, noted that Vice-Chairman of the School Board William Graham, their Project Manager, for both the School District and Construction Company, and others on the team were present. Ms. Garrison commented that changes were made to the plan as a result of code requirements. Because the Town had concerns regarding the architectural appearance of the building, said Ms. Garrison, Young Song & Associates, their architect was directed to prepare an analysis of changes being made to the building. The school district identified three of the main concerns of the Town. The chiller on the roof, the south elevation replaced with scored window openings, and the student drop-off that was added to the south elevation.

Ms. Garrison presented the following changes in the drawings:

- In the south elevation, glazed openings were replaced with a scored, faux window type architectural element because of code requirements. Plans were to add oriental glazed openings that looked like windows;
- Softening of the architectural appearance of the south elevation by adding a barrel tile roof, a hedge along the roadway, and a landscape island in the parent drop-off area;
- In the west elevation, Montgomery Palms replaced the Royal Palms to complement the roadway;
- The chiller on the roof, modeled after the Brazilian Port approach, matched architectural appearance of the building;
- The covered walkway had a barrel tile roof added to it;
- The medallion was preserved and placed exactly where it was previously on the new building;
- Upgraded landscaping on the north elevation; and
- Moved mechanical and electrical entrances to the east side of the building for

appearance.

Chairman of the Landmarks Preservation Commission Eugene Pandula suggested waiting a year or two, after the landscaping had taken place, and then make modifications if needed.

Public Comment:

Susan Gibson, 226 Pendleton, asked how many schools Young Song & Associates had designed for the school district? The architect should have been aware of the code compliance restrictions at the time the original architectural design was rendered , she said, and now it was too late to do anything.

Young Song & Associates had designed many schools for the School District, replied Ms. Garrison, but not with as many changes as this school.

Director of Planning, Zoning, and Building Robert Moore explained that the State adopted the Florida Building Code, changing from the Uniform Building Code approximately at the same time that the project was introduced. There were several adjustments that had to occur among the Architect's office, the School District's Building Department, and Internal Planning Department, so business was not as usual.

Councilman Coleman addressed Ms. Garrison's comment that the School Board did not have an opportunity to show the drawings at the Landmarks Preservation Commission meeting. Councilman Coleman requested that staff remind the Town's commissions that their role was to represent the community and that they were not there in their own right to lecture counter-parties, since policy was set by the Town Council.

Councilman Wyett said he concurred with all of Councilman Coleman's expressions. He apologized on behalf of the Town for the lack of courtesy given to the School Board, although he was not happy with the design of the school, because it was overbearing and oversized. He then moved approval of the design as presented.

In response to Councilman Coleman regarding the opportunity for future landscaping in the next several years, Ms. Garrison replied that the project budget would be closed out at that point, unless the community participated in a cooperative venture toward that effort.

President Pro Tem Goldblum pointed out that the School District was not subject to the Town's local building codes. The School District listened to the Town's complaints and made improvements. He stated that he would second the motion of approval by Councilman Wyett.

Councilman Kleid agreed that the modifications of the School should be accepted in order to open the school for the children.

Mayor McDonald asked Mr. Pandula if there was anything that could be done to better the plans, or should they be accepted as they were?

Mr. Pandula responded that they had done the best they could and suggested that staff take another look at the changes. He indicated that there were opportunities to embellish the School, but it would add time and money to the project.

Motion made by Councilman Wyett and seconded by President Pro Tem Goldblum to approve the design modifications for the Palm Beach Public School, as indicated in renderings presented by representative of the Palm Beach County School Board. On roll call, the motion carried unanimously.

2. Proposed Lakeside Park Landscaping Improvements for the Mayor Paul Ilyinsky Memorial. [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil reported that the Civic Association had developed a plan for some minor landscaping improvements in the Lakeside Park for the Ilyinsky Memorial. Staff proposed that the donations should be put into a Donation Account, and the Public Works staff would help the Civic Association with the purchase of the material and any contract management necessary to get the work accomplished.

In response to Councilman Wyett, Ned Barnes, President and CEO of the Civic Association, commented that Mayor Smith had served on the Kunkel Foundation, and the idea was generated from there.

Councilman Kleid moved approval of the landscaping improvements in Lakeside Park for the Ilyinsky Memorial, according to the plans presented by staff, and to be funded through donations. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried unanimously.

3. Request by the Flagler Museum for Permission to Erect Statue of Henry Flagler at Memorial Fountain Park.
[John Blades, Director, Flagler Museum]

This item was deleted from the Agenda.

4. Proposed Memorial Plaque for Town Employees at Memorial Fountain Park.
[Peter B. Elwell, Town Manager, and Sgt. Fred Hess, President, Lodge #19, Fraternal Order of Police]

Town Manager Elwell advised that staff was requesting conceptual approval to allow staff to move forward to obtain a sketch and cost estimate in order to provide a memorial to Town employees who had fallen in the line of service to the Town. He recalled that there were two curved walls at Memorial Fountain Park with existing plaques on the right hand side recognizing all of the residents of the Town who had served in the U.S. military during World War II. Sergeant Fred Hess, on behalf of the Fraternal Order of Police, had proposed recently that the left wall be used to provide proper recognition to Town employees who had fallen in the line of service.

President Pro Tem Goldblum suggested adding Town employees who had fallen in the line of duty during service to the armed forces during conflicts.

Councilman Kleid agreed that the recognition should be expanded to Town residents or employees who fell in the line of duty during service in the armed forces from World War II forward.

Town Manager Elwell indicated that staff would work with the concept to determine the design, to include the suggestions of the Town Council.

5. Letter Dated June 27, 2005, from Scott Porten, President, Porten Companies, Inc., Proposing to Purchase Town-owned Property at 5976 Okeechobee Boulevard, West Palm Beach.
[Town Council President William J. Brooks]

President Brooks advised that the Town owned 19 acres on the west side of Okeechobee Boulevard, and his purpose for adding this item to the agenda, was to obtain an appraisal on the property.

Councilman Wyett commented that land values were rising rapidly, and the costs for appraisal today, without the intention to sell, may not be beneficial.

In response to Councilman Kleid, Finance Director Struder advised that property is carried on the books at cost.

Town Manager Elwell advised that the manner of accounting for Town-owned property was in full compliance with government accounting.

It was the consensus of the Town Council not to have an appraisal done at this time.

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

Deputy Town Manager Tom Bradford reported that Mike Jenkins, Applied Technology and Management, Inc. (ATM) was present to provide a summary of the conceptual master plan for the Town Docks. In critiquing the facilities, and receiving feedback from the customers, the following items were found to be needed:

- Improve on-site facilities for customers, such as a business center.
- Improve rest room and shower facilities.
- A ship store to service only customers at the facility.
- A separate dock facility for public safety purposes.
- Expand Brazilian and Peruvian docks westward.
- Improve on-site parking.
- Improve on-street parking.
- Improvements to protect docks and boats from wake damage.

Mr. Jenkins reported that the back-up material provided for this subject included an outline of the goals that were identified in coordination with Town staff, the options that were currently available, and the pros and cons of those options.

After discussion, President Pro Tem Goldblum moved approval of the conceptual master plan for the Town Docks. The motion was seconded by Councilman Kleid. On roll call the motion carried unanimously.

Town Manager Elwell noted that by giving conceptual approval, elements of it could be brought along for policy decisions on an individual basis.

7. Standardized Traffic Signal Support Structure Alternatives.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil reported that as the Florida Department of Transportation (FDOT) project regarding upgrades to State Road A1A was ongoing, there was the opportunity to replace some of the existing traffic signal poles. He explained that photographs of the options were included in the back-up material provided. He noted that in the past, the Town had paid for upgrade costs in FDOT projects, and the anticipated costs to the Town in this instance would be $21,000 to replace 7 poles. If it was desired, a long term capital project could be started, to replace the other 38 existing traffic signal poles. Over a five-year period, the estimated cost was $250,000 per year, with a total project cost of $1,250,000. Another possibility was to replace the traffic signal poles as the opportunity presented itself, using an established standard pole.

Councilman Coleman moved that staff go forward with the 7 decorative traffic signal poles, funding to come from the Capital Improvement Fund Contingency in the amount of $21,000. This standard would be established as the standard which would be applied opportunistically in the future. The motion was seconded by Councilman Kleid. On roll call the motion carried unanimously.

Mr. Brazil advised that representatives of FDOT were present to provide an update of the landscaping improvements that may be possible in conjunction with the upgrades to the State Road A1A project.

A representative of Swanson Group International, who was doing the design work for FDOT on the A-1-A project, provided a report on the design and landscaping for the project He summarized that he would continue to work with Town staff, and that the intent was to conduct a public hearing in September to gather input before the plan was finalized, and then return to the Town Council with an official presentation.

Director of Planning, Zoning & Building Robert Moore noted that the area involved was an historic district, and he suggested scheduling a hearing with the Landmarks Preservation Commission (LPC) so that they could give input, and make recommendations to the Mayor and Town Council. He noted that he and Mr. Brazil would work out the arrangements.

8. Building Board of Adjustments and Appeals Appointments. [Robert L. Moore, Director of Planning, Zoning and Building]

After casting ballots, the Town Council appointed as regular members: Vance Carpenter and Sanford J. Klion; appointed as an alternate member: Timothy Benitz

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 12-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Code of Ordinances Relating to the Retirement System; Amending Section 82-64 to Add Subsection (7) Limiting the Purchase of Benefits by Firefighters to Be Based upon Prior Service as a Firefighter or in the Military and Limiting the Purchase of Benefits by Police Officers to Be Based upon Prior Service as a Police Officer or in the Military, Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Peter B. Elwell, Town Manager]

Town Attorney Randolph read Ordinance No. 12-05 by title, as printed above.

Councilman Wyett moved adoption of Ordinance No. 12-05, on second reading. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried

unanimously.

B. First Reading

1. ORDINANCE NO. 13-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 46, Fire Prevention and Protection, Article III, Fire Prevention Code, at Section 46-67, Permits, and at Section 46-68, Annual Fire and Life Safety Inspections; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
Deferred from the July 12, 2005, Town Council Meeting.
[Edward J. Moran, Fire-Rescue Chief]

Town Attorney Randolph read Ordinance No. 13-05 by title, on first reading.

Councilman Wyett moved approval of Ordinance No. 13-05, on first reading. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried unanimously.

2. ORDINANCE NO. 14-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2004, Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 14-05 by title, on first reading, as printed above. He noted that Ordinance No. 14-05, as included in the Agenda back-up, had now been changed to include a fifth "WHEREAS" clause:

> "WHEREAS, due to significant yet unknown funding required to enable the conversion of aerial facilities to underground, additional funds are necesseary to be budgeted for said projects."

Attorney Randolph also noted that the exhibits included with the Ordinance had been changed so as to include the additional $1 million tentative proposed expenditure for the underground wiring project.

Councilman Kleid expressed concern regarding the transfer of funds, since it had been decided earlier in this meeting that the underground demonstration project would not be done. He questioned the transferring of money back and forth prior to a referendum on this issue.

Town Manager Elwell advised that this was purely a policy decision, and that it was a perfectly appropriate thing to set the money aside as the beginning of funding necessary for the long term underground wiring project, and the money would be earmarked for that within the Capital Fund. It would be equally acceptable to leave the money as part of the Undesignated General Fund Balance for a later transfer.

Councilman Wyett moved approval of Ordinance No. 14-05 on first reading. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 4/1 with Councilman Wyett, President Pro Tem Goldblum, Councilman Coleman and President Brooks casting affirmative votes; Councilman Kleid casting a dissenting vote.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Kleid commented that discussion had been held last month regarding guidelines that would limit presentations given at Town Council Meetings, and he inquired as to the status of that issue.

Town Manger Elwell responded that an outline of the steps for the consideration of quasi-judicial matters had been provided to President Brooks, and a copy would be distributed to each Council member. In addition, staff had approached each applicant to determine whether anyone would be willing to limit themselves to 15 minutes or less for their presentation, in order to then be put at the front of the line this afternoon. He noted that there had been no takers for that opportunity, however, staff would continue to offer that option.

XI. DEVELOPMENT REVIEWS

Town Clerk Eichhorn administered the oath to all those who would be providing testimony in the Development Review matters.

A. Appeals

None

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. SPECIAL EXCEPTION #7-2005 WITH SITE PLAN REVIEW The application of Paolo Della Puppa relative to property described as lengthy legal description on file; commonly known as 150 Worth Avenue; located in the C-WA Zoning District. This is a request to replace an existing retail children's clothing store with a restaurant in Suite #110 of the Esplanade. Suite #110, which totals 2,161 square feet, currently houses The Purple Turtle. The new restaurant, known as Via Quadronno, will occupy the same 2,161 square feet. The restaurant proposes 71 seats, including up to 16 seats outside in the Via which also requires a special exception. Twenty-four of the seats will come from the number of seats supported for purposes of parking by the retail space (equivalency). The other seats are new. Per Sec. 134-1159(6), a restaurant requires a special exception approval in the C-WA district. Per Sec. 134-1161, the outdoor seating requires a special exception approval. Per Sec. 134-2182, a special exception for shared on-site parking is requested because the new use will have an increased parking demand of 16 more spaces than the former use. *Deferred from the March 8, 2005, April 12, 2005, and June 14, 2005, Town Council Meetings.*

WITHDREW Special Exception #7-2005 with Site Plan Review from Agenda.

b. MODIFIED VARIANCE #19-2005 The application of James W. Harpel relative to property described as lengthy legal description on file; commonly known as 1102 North Ocean Boulevard; located in the R-B Zoning District. Applicant requests a variance to construct two and three story additions onto a nonconforming three story residence (the Code permits only a two story maximum), as described in this application; applicant requests a variance of 6.91 feet to construct a three story addition totaling 3,852.5 square feet on the north wing of the house, with a building height of 28.91 feet in lieu of the 22 feet maximum permitted by Code; a variance of 2.4 feet to construct a second story addition at the southwest corner of the home, totaling 599.52 square feet with a building height of 24.4 feet in lieu of the 22 feet maximum permitted by Code; and, a variance of 3.91 feet to permit construction of said 3,852.5 square foot three-story addition with a maximum overall building height of 33.91 feet in lieu of the 30 feet maximum permitted by Code. *Deferred from the July 12, 2005, Town Council Meeting.*

Attorney Frank Chopin, on behalf of Mr. and Mrs. Harpel, stated that, as requested at the June 14, 2005, Town Council Meeting, the applicant re-advertised the revised plans and appeared before the Landmarks Commission to present those plans. The Landmarks Commission suggested that they make some modifications. He stated that a majority of the Commission members recommended this project to the Town Council and asked that the Town Council approve this application.

Zoning Administrator Paul Castro advised that the Landmarks Commission recommended approval of this project with the modifications proposed in the revised plans. He stated that staff reviewed the plans, and questions the hardship relating to the third story of this residence.

In response to Councilman Kleid, Mr. Chopin stated that he did believe that the applicant had complied, in every respect, with the requirements of the variance section in the Zoning Code.

In response to Councilman Kleid, Attorney Randolph stated that it was a policy decision to determine whether or not the requirements of the variance had been met, based upon the uniqueness of the property. He noted that the Town Council would have to look at the following two issues:

1. The variance was the minimum variance allowable to make reasonable use of the property;
2. The need for the variance was not caused by the applicant.

Attorney Randolph explained that he had not analyzed this to make that policy decision.

President Brooks added, as a third issue, that the property was landmarked.

Councilman Coleman stated that by landmarking a property, a hardship that runs with the land had been imposed. He moved for approval.

Councilman Coleman made a motion to approve Modified Variance #19-2005. The motion was seconded by President Pro Tem Goldblum.

Councilman Wyett explained the problems he had relative to three-story buildings, and his suggestion for a solution to three-story buildings.

Attorney Chopin responded that it was unfortunate that Councilman Wyett did not have an opportunity to view the building. He discussed the inconsistencies of zoning in that area, as well as the hardships they faced, and the various options they considered. He stated that they have arrived at the best solution for this landmarked house, with a minimum variance. He advised that the third-story was actually a garage that was entirely landscaped.

In response to Councilman Wyett, Attorney Chopin stated that there would be a wall on Queens Lane and a hedged type of archway that would landscape out much better than what was there presently. Attorney Chopin stated that they do have landscaping plans, but they have not been approved, as yet. He advised they would be going back to the Landmarks Commission with those plans.

On roll call, the motion to approve modified Variance #19-2005 carried 4/1, with Councilman Coleman, President Pro Tem Goldblum, Councilman Wyett, and President Brooks casting affirmative votes. Councilman Kleid cast a dissenting vote, explaining that he was not in favor of the harsh requirements of Section 134-201, which sets forth the variance criteria under the Town's Zoning Code. He stated that Siemon and Larson, along with the Town's staff, were presently working on ways to soften this; but when looking at this particular provision, he could not find that it met the legal requirements of granting a variance.

c. VARIANCE #23-2005 The application of Stanley N. Gaines and Gay H. Gaines relative to property described as lengthy legal description on file: commonly known as 1473 North Ocean Boulevard; located in the R-A Zoning District. Variance to permit construction of a two-story 10,000 square foot main residence using a point of measurement for height and overall height of 17.33 feet National Geodetic Vertical Datum Mean Sea Level (NGVD) in lieu of 7.5 feet maximum permitted. *Deferred from the July 12, 2005, Town Council Meeting.*

Attorney Tim Hanlon, on behalf of the applicant, requested a deferral. He explained that Mr. Gaines, who had planned to attend today's Town Council Meeting, was injured in a car accident.

Councilman Wyett made a motion to defer Variance #23-2005 to the September 13, 2005, Town Council Meeting. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

d. VARIANCE #25-2005 The application of 210 West Indies, LLC, Paul Birmingham, Manager relative to property described as Lot 1, Brams Addition to the Town of Palm Beach; street address not assigned; located in the R-B Zoning District. Variance requested to build a two-story house on a non-conforming lot with a 95.67 foot width in lieu of the 100 foot minimum required in the R-B Zoning District. *Deferred from July 12, 2005, Town Council Meeting.*

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Ziska on this petition; Councilman Wyett with Attorney Ziska; and Councilman Coleman with Mr. Guttman.

In response to Councilman Coleman, Attorney Ziska advised that she had ordered the court reporter.

Attorney Maura Ziska, on behalf of the applicant, explained that the subject parcel was a platted parcel that was purchased by Paul Birmingham from Guy Henderson in March 2005. She, presented architectural renderings, to point out the parcel belonging to Guy Henderson along North County Road as well as the subject parcel.

Attorney Ziska advised that when she applied for a Site Plan Review, she was told that a variance was required. She stated that she was completely perplexed as to why she needed a variance, but thought it might have to do with the section of the Code which states that the owner of adjacent vacant land cannot sell off a parcel without getting a variance.

Attorney Ziska stated that the applicant tried to get an additional 4' from Guy Henderson in order to make the lot conforming, but there was a Unity of Title that tied his property together. She noted that there was a provision in the Unity of Title Agreement, which was reviewed with Town Attorney Randolph, that stated the owner could not parcel off any section of their property. She advised that they were in front of the Council today asking for a variance to build on a non-conforming lot, when they should be requesting a Site plan review.

Attorney Ziska reviewed the Zoning Application for Variance #25-2005 with Site Plan Review and the Memorandum of Law in Support of Granting Variance #25-2005, which she introduced into the record.

Attorney Ziska stated that she was not conceding that a variance was needed, and since staff insisted on requiring a variance, then the Town Council should grant this variance. She noted that the project meets the criteria for authorizing a variance.

Zoning Administrator Paul Castro discussed the history of the property located at 210 West Indies Road and 650 North County Road. He advised that there had been some debate between staff relative to the interpretation of the Code, as well as, what the definition of a lot in that section of the Code was. He noted that, during that time, the Town retained Siemon and Larson to obtain an opinion regarding what constitutes a lot in the Town's Zoning Code.

Mr. Castro stated that 210 West Indies Road and 650 North County Road constitute one lot in the Zoning Code. He said that to sever them would require a variance, because 210 West Indies Road does not meet the minimum width requirements. He advised that was the reason the applicant was before the Council today. He stated that staff questions the hardship as it relates to the criteria in the Code. He explained that the previous owner split the property, creating a lot that does not meet the minimum lot width.

Attorney Todd Messenger, Siemon and Larsen, 433 Plaza Real, Boca Raton, Florida, addressed the Town Council, stating that the purchaser of the lot was aware of the section of the Code addressing non-conforming lots, and that a Site Plan Review was required. He reviewed the remaining section of the Code, which stated that the owner of such lots shall not own any adjacent vacant land which would create a conforming lot, if the vacant land was combined with the lot deficient in area. He advised that he supported staff's position that 650 North County Road lot was actually a front yard, and the 210 West Indies lot was actually a backyard.

Attorney Messenger discussed the Code further, and commented that the applicant should have had a due diligence period, with staff, to discuss the purchase of this lot. He explained the lot previously had been a platted lot, which made no difference under the Code; the hardship was a self-inflicted wound, and that it was a speculative purchase. He maintained that the applicant was expecting a variance and the Town should not grant one.

Attorney Messenger presented, into the record, a deed of the Guttman property, and an exhibit, which outlined the Henderson lot. He noted that the exhibit showed 210 West Indies as the Henderson lot backyard and explained that the exhibit was not to scale. He reiterated that the Town Council should deny the variance. He explained that a deferral was requested and granted last month by the applicant; Ms. Ziska told the Council that she needed time to meet with the neighbors, and the neighbors had not been contacted, at all, by the applicant. He advised that, for the record, the neighbors remain willing to work this out. He stated that, in terms of the merits of this petition, it was highly questionable; and that he supported staff's position, as a matter of law.

Attorney Ziska responded, to Mr. Castro, explaining that her title search revealed that the properties discussed, all had separate deeds, and separate parcel control numbers, which had been received at separate times. She stated that the lots were in Mr. Henderson's name, and he could have placed them either in an LLC or in his wife's name; and then they would not have had to come before the Council. She noted that it was questionable as to whether it was a rear yard or not, especially with the change of title, and the way the deeds were conveyed.

Attorney Ziska addressed the section of the Code regarding any adjacent vacant land, informing the Council that Mr. Birmingham does not own any adjacent vacant land, which could create a conforming lot, if the vacant land was combined with the lot deficient in area. She stated that they were not talking about a lot deficient in area, and that they met the area requirement. She noted there was 14,000 square feet, and they were short 4' in the width. She advised that they met all the other criteria regarding the Code.

Attorney Ziska stated that it was not a self-created hardship referring back to the case law cited earlier. She advised that it was a very unique hardship as there was no other use for this land. She stated that if Mr. Birmingham could not build a house, there was no reasonable use, there was nothing else he could do with the property. A denial of use of the owner's property was an extreme hardship.

Mrs. Ann Vanneck, 217 West Indies Drive, stated that she and her husband were one of the few residents on that street that remained in Town this time of the year. She noted that four of the residents of West Indies Drive have sent letters either to the Council or to the Architectural Review Commission (ARCOM) complaining about the two-story spec house the applicant wants to build.

She advised that several other residents of West Indies Drive have expressed their dismay about this variance application, as well.

Mrs. Vanneck noted that West Indies Drive was one of the loveliest streets on the near north end, lined with Royal Palm trees, divided into nearly equal lots with nearly predominately, one-story, Bermuda style homes. She explained that, in the past, when a house had changed ownership it was either raised and replaced with another one-story home or given extensive updating inside and out.

Mrs. Vanneck commented that last spring Guy Henderson, who lives on the corner of North County Road and West Indies Drive sold a substantial parcel of his backyard to real estate brokers with The Corcoran Group who intend to build a massive two-story chateau complete with cupola and minaret type chimney. It would be a jarring addition to this low-keyed street which has remained a peaceful oasis of harmonious houses. She advised that, at the July 12, 2005, Town Council Meeting, some of the Council people encouraged Ms. Ziska to sit down with her clients and their neighbors to try to reach an agreement on the physical characteristics of the house her clients want to build, and that to date, the silence has been absolutely deafening. She stated that she strongly supports Mr. Messenger's argument that the variance should be denied outright; if the Town Council was inclined to grant this variance request, she urged them to grant it only as a conditional variance.

Zoning Administrator Paul Castro stated that if one used Ms. Ziska's argument and brought it to a logical conclusion, then any person could sell off 45' of a lot, and the new owner of that lot could come before the Town Council to request relief in order to develop that property. He explained that the point he wanted to make was that there were 25' strips of land all throughout the Town, but whether one could develop that property was another story.

Attorney Messenger advised that previously, Ms. Ziska, introduced some case law into the record dealing with the issue of self-imposed hardships. He discussed case law as cited in the Siemon and Larson Variance Report, submitting those cases to the Town Council for consideration.

Attorney Ziska responded to Mr. Castro's analogy of a 45' lot, advising that the subject lot was not a 45' platted lot but was a 97' platted lot. She stated that she agreed with him that you could not just carve off 20' or 40' and think one could build on the lot. She said the subject lot was like every lot on the street.

Attorney Ziska responded to Attorney Messenger advising that she had read the cases cited. She noted that there was Florida Law supporting the granting of this variance, especially with the self-created and economic expectations of the buyer. She said, in this case, the unique hardship was not the loss of a better or more profitable use, but rather a complete denial of the use of the owners property, which does warrant the granting of a variance.

Planning, Zoning, and Building Director Robert Moore stated that an important issue, relevant to this application had not been brought forward. He advised that it had been pointed out to both Attorney Ziska and Attorney Messenger that the owner of 650 North County Road, who had sold the lot to the applicant, could rectify the current situation by asking for a release of the Unity of Title at 650 North County Road. The parties had refused to do this, and so the Town Council was being asked to settle an issue by way of a variance instead of a site plan review.

In response to Councilman Kleid, Attorney Ziska responded that she did not know if there were any relevant representations made in the Contract of Sale, or if there were any relevant condition precedents to the consummation of the sale, as she did not represent the applicant in the purchase transaction. She stated that she did not see the contract, and she became involved in this matter after the closing.

Councilman Kleid stated that in normal circumstances it would have been taken care of that way. There were normally representations in a Contract of Sale as to to building or condition precedents or due diligence that should have been followed. He noted that if that had been in the contract, they would not be here today.

President Brooks advised Attorney Ziska that she was asking the Town Council to solve a problem that Mr. Birmingham and Mr. Henderson should be settling, whether in a court of law or with a gentlemen's agreement.

Councilman Wyett stated that there were some solutions. He noted that the first solution would be between the seller of the land and the buyer of the land, as suggested by Mr. Moore, to vacate the restriction. He noted that, at that point, a variance would not be required because there would be a legal lot.

Attorney Ziska advised that she could not speak for Guy Henderson or his attorney, and that she had requested that he be present today. She noted that Mr. Henderson told her that he could not imagine that the Town could force him to do that. She advised that she was willing to take the additional 4' to make a conforming lot, and willing to work with the neighbors. She added that Mr. Birmingham stated that he would meet with the neighbors, but his partner was in Europe until August 14^{th} or 18^{th}. Upon his return, they would sit down with the neighbors.

Attorney Ziska stated that rather than go through a two year litigation process to appeal this to the Circuit Court, and have them determine if there was sufficient criteria to grant a variance under the Bernard Case Law, this issue could be dealt with as a variance request, approved by the Council, and put behind them. The applicant could move on to the next issue of whether they could build a one-story or a two-story home. She stated that the Council has the opportunity to help resolve this very unique issue, and move on with the designs, allowing the owner to build a house on this 14,000 square foot lot, or end up in court.

President Brooks advised that the Council has the obligation to follow the law. The Town Council was not forcing Mr. Henderson to come to this meeting and that would be up to Mr. Birmingham and Attorney Ziska to ask him to attend the meeting.

Attorney Ziska in response to Councilman Coleman, responded that the buyer had been represented by professional, real estate counsel, at the purchase.

Councilman Coleman stated that the buyer was aware that a Site Plan Review was required, and asked if he was aware that a variance was required?

Attorney Ziska responded that Paul Birmingham was not aware that a variance was required.

Councilman Coleman made a motion to deny Variance #25-2005. President Pro Tem Goldblum seconded the motion.

Councilman Wyett stated that the Town Council was being put in a position that they should not be placed in, and that the Council would be better advised not to make a decision and defer this item. The parties should be instructed to try to solve this problem outside of the Council, so that the Town would not get involved in a future lawsuit.

Councilman Coleman responded that he did not think they could take that position because then the Council would give the parties the right to deal with variance issues when what they were objecting to were Architectural Review Commission (ARCOM) issues.

President Brooks, responding to Councilman Wyett's statement, said that it was his belief that one had to follow the law, and if that meant a lawsuit would be filed, so be it.

Town Attorney Randolph stated that the law had to be followed. He explained that it was his opinion that 99% of the variances that had been approved, in the past, would probably be overturned by a court of law, because not many can meet all the criteria set forth in the Code. This request presented a very unique circumstance and presented a very different situation than 99% of the variances.

Town Attorney Randolph noted that the applicant was coming before the Council representing that they did not know that they needed a variance when they purchased this property. They looked at the Code which said they only needed a Site Plan Review if they had an undersized lot. He stated that they have a lot on which they cannot build, and that this subject would be good grist for an appellate panel to review, because there were cases that go both ways on this issue. He noted that Attorney Ziska had pointed out, very persuasively, a case in which the court made a determination that one was not creating their own hardship, simply because they knew of a non-conformity when they purchased the land, but had not created that non-conformity. He noted that the same case did indicate that they may have been entitled to a variance, which may be a different situation. He stated that cases go both ways on the issue of whether or not it is creating your own hardship to purchase a piece of property, knowing of the need for a variance. He cited case law that had not been cited previously where it states that when a person purchases a property and does not know of the need for a variance, that was not a self-created hardship.

Councilman Coleman stated that the Town Council was the court of last resort. He advised that if the applicant comes back before the Council, after litigating with the seller, and they were defeated, then they now have a true hardship. The Council was supposed to grant a variance when there was nothing left to do. He advised that he did not believe that the applicant was particularly aggressive in pursuing the seller. He stated that it was his belief that there was more than meets the eye especially, by virtue of the fact that the seller did not want to appear here today.

In response to Mayor McDonald, Attorney Ziska stated that they do have Title Insurance. She advised that the attorney who represented the applicant thought this was a platted lot and all that would be required was a Site Plan Review like any other platted lot. She asked where the Code said a variance was required? She advised that it was an ambiguous determination.

In response to President Pro Tem Goldblum, Attorney Ziska replied that Mr. Birmingham had built four homes in Palm Beach.

President Pro Tem Goldblum noted that Mr. Birmingham was a professional developer in the Town of Palm Beach, and he should know what he was buying.

Councilman Coleman stated that he wanted to qualify the motion to deny.

Attorney Randolph stated that when a motion was made, the Council should substantiate the motion with the facts. He said the reason, in this particular case, as he understands it, was that the applicant had not met all of the criteria for the granting of the variance.

President Brooks stated that the Council must stand on principle, and if the Council follows the law, and they are sued, then so be it.

Councilman Wyett stated that there was a difference. He explained that, normally, if someone wants to sue the Town on a standard issue, then that would be pretty well understood; but this issue was so complicated that the Town could be dragged into several courts, as they go up the line. He stated that the property was large, there was a lot of money at stake, and the parties should be given a chance to come together without the Council taking a position. He advised that the Council could always deny it or approve it at some other time.

In response to President Brooks, Attorney Messenger advised that he would fax copies to the Town this afternoon of the case law he had cited.

On roll call, the motion to deny Variance #25-2005, carried 4/1, with Councilman Coleman, President Pro Tem Goldblum, Councilman Kleid, and President Brooks casting affirmative votes. Councilman Wyett cast a dissenting vote.

2. New Business

a. VARIANCE #28-2005 The application of Gary Erlbaum relative to property described as Eden Properties, Lot 54; commonly known as 322 Eden Road; located in the R-B Zoning District. To allow a cubic content ratio of 4.11 in lieu of the 3.67 existing and the 3.96 maximum allowed to add a 648 sq. ft. second story addition onto a one-story portion in the rear of a two-story house.

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Ziska; President Brooks with Mrs. North, a neighbor of the applicant, who expressed her opposition to Variance #28-2005; Councilman Kleid with Mr. North; and Councilman Wyett with Mr. North regarding his objections.

Attorney Maura Ziska, on behalf of the applicant, stated that the variance request was to allow an in-fill addition to the rear of house which would increase the CCR to 4.11' in lieu of the 3.96' maximum. She advised that the lot was 14,025 square feet and was over on green space and under on lot coverage. She noted that it was not a maxed out lot, and the proposed addition was only 648 square feet to add two small bedrooms. She explained that the proposed addition would be over an existing one-story section of the house and the setback to the neighbors was 18.5' where the Code requires a minimum of 15'.

Attorney Ziska advised that Mr. and Mrs. North, have withdrawn their objection. She informed the Council that a letter was received from Mr. and Mrs. North's Attorney, Peter Broberg, requesting two conditions of approval, if the Council approved the application.

1. Placement of the windows on the alley side;
2. Site screen the property line with landscaping.

Attorney Ziska stated that the hardship, which runs with the land, was that since the applicant purchased the property, the Zoning Code had changed. She noted that the cubic content ratio (CCR) had been at 4.5' and now has changed to 3.96'. She advised that the request was de minimus; it would not adversely impact the neighborhood; it won't be seen from the street; it was in the rear of the property; and it was an in-fill over an existing building.

Zoning Administrator Paul Castro explained that staff seriously questioned the hardship that would allow a cubic content ratio that was above what was allowed by the sliding scale cubic content ratio in the Code in the R-B District. He advised that staff questions the hardship as it relates to Section 134-201.

Architect Gene Pandula, presented architectural renderings, explaining in detail the variance request.

Councilman Kleid asked if the present owner was the owner at the time the building was constructed?

In response to Councilman Kleid, Mr. Pandula stated that the present owner was not the owner at the time the building was constructed. He explained that the original building was constructed, he believed, in the 1940's in the British Colonial style. He noted that additions and renovations were done approximately ten years ago for a previous owner. He stated that there have been several owners over the years.

In response to Councilman Kleid, Attorney Ziska replied that the Zoning Code does not say that when a zoning change occurs, which creates a hardship, a variance was allowed. She noted that it was stated in case law, but she did not know the case, at this time.

Councilman Wyett stated that a hardship would be a defect with the land, and in this case, there was no defect with the land. He advised that on general principles, he was going to vote for denial.

Councilman Wyett made a motion to deny Variance #28-2005. Councilman Kleid

seconded the motion. On roll call, the motion carried 4/1, with Councilman Wyett, Councilman Kleid, Councilman Coleman, and President Brooks casting affirmative votes. President Pro Tem Goldblum cast a dissenting vote.

b. VARIANCE #29-2005 The application of Robert D. and Jane Shipman relative to property described as Lots 309,311 and 313, and 16 feet by parallel lines off the entire East side of Lot 307, Poinciana Park Second Addition; commonly known as 442 Seaspray Avenue; located in the R-B Zoning District. Variance requested to increase the existing non-conforming Cubic Content Ratio ("CCR") from 4.74 to 4.84, in lieu of the maximum CCR permitted of 3.99 to add 1st and 2nd story additions onto the house.

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Kolins; President Brooks with Attorney Kolins relative to Variance #29-2005; and Councilman Wyett stated that he had been asked what time the case would be heard, and he responded around 3:00 p.m. or 4:00 p.m.

Attorney Ron Kolins, on behalf of the applicant, stated that this house was built in the 1920's and was voluntarily put up for landmarking by Mr. and Mrs. Shipman. He noted that this case was heard by the Landmarks Commission who unanimously approved what was being requested. He explained that landmarked properties tend to be more complex in development than other properties, and so they have hardships.

Zoning Administrator Paul Castro stated that the property was up for landmark designation, and staff does see a hardship relative to allowing a landmarked property to have a more useful life. He stated that, in this case, staff had no objection to the applicant putting back the same amount of cubic volume that was there before. He explained that the petitioner was not requesting the addition of any more square footage and advised that would be more than the Code allows. He stated that the reason for that was the extent of the ceiling heights and the tie beams that were being put in on this addition. He explained that staff questioned the hardship of going over the existing cubic volume; staff did not have a problem with the shifting around and making the house more useable, but questioned the hardship related to the CCR over and above what was there before, which was over and above what the Code was today.

Councilman Wyett questioned if there was any way the design could be reduced from the

4.84 to 4.74 to justify violating the hardship rule?

Architect Gene Pandula explained that they were 1/10th of 1% higher in the CCR swap. He noted that they tried to keep it as close as possible. He presented architectural renderings, to explain the details of the variance request and its intent.

Attorney Kolins stated that he was asking that the Council approve this de minimus request, and there were many trade-offs, which would make this application a benefit to the Town.

President Pro Tem Goldblum made a motion to approve Variance #29-2005. President Brooks passed the gavel and seconded the motion.

In response to Councilman Wyett, Architect Pandula advised that they were providing 2" drainage retention.

Attorney Kolins commented that the house was going to be landmarked, and when that occurred there will be very little that could be done with the property. He noted that they would like to do what little they could, and they were willing to settle for this.

On roll call, the motion carried unanimously.

Councilman Kleid explained that he voted to approve this variance because they were eliminating many of the non-conformities, which makes for a better project, and the difference was de minimis.

c. VARIANCE #30-2005 The application of Borden W. Stevenson, as Trustee of the Borden W. Stevenson Revocable Trust dated October 4, 1996, as amended, relative to property described as the West 52 feet of the East 54 feet of Lot 15, Addition No. 1 Ocean Park a/k/a Unit 1E of L'Ermitage Palm Beach Townhouse; commonly known as 265 Everglades Avenue; located in the R-C Zoning District. Variance requested to allow an existing lattice fence to remain at an extended height of 15 +/- feet in height in lieu of the 7-foot maximum allowed; and, variance to allow said lattice fence extension within 2.0 feet of a public utility easement in lieu of the 2.5 foot minimum required.

WITHDREW Variance #30-2005 from the Agenda.

d. SPECIAL EXCEPTION #17-2005 WITH SITE PLAN REVIEW AND VARIANCES The application of (restaurant site)Via Mizner Associates Limited Partnership, a Delaware Limited Partnership; Ian M. Kean, President of general partner, and (parking site) Love III, LLC; Burton Handlesman, Manager, relative to property described as (restaurant site) Unit Nos. C-106N, C-107N, C-108N, and C-111 in Via Mizner North, together with the patio area adjacent to and lying between said units C-106N, C-107N, and C-111N; and, (parking site) Lots 13 through 16, Block 14, Revised map of Royal Park Addition; commonly known as 87 Via Mizner; located in the C-TS Zoning District. Site plan review to permit construction of a 635 square foot retractable awning to supplement existing umbrellas and replace smaller awnings in the courtyard where outdoor seating currently exists. Variance to increase outdoor seating during evening hours by 47 seats over and above the inside capacity which is not permitted by the outdoor seating conditions in the Code. Special Exception requested to modify existing Special Exceptions (Nos. 5-89 and 6-91) to increase seating for the restaurant during evening hours (after 6:00 p.m.) from 111 seats, of which 24 are outside, to 158 seats, of which 84 are outside, for a total increase of 47 seats as follows: During periods of good weather, all 47 proposed additional seats will be located outside and 13 seats will be relocated outside from the adjacent east dining room. Applicant requests flexibility so that during periods of inclement weather, 29 of the proposed additional seats may be moved into the adjacent east dining room. Variance to eliminate the 16 required off-street parking spaces for the 47 additional seats and provide 19 supplemental shared parking spaces. Special exception to permit the additional 19 supplemental "shared" parking spaces to be located immediately adjacent and to the east of the restaurant at 330 Peruvian Avenue.

Ex-parte communication was declared by Councilman Kleid with Mr. Atterbury in which Mr. Atterbury tried to convince him of the merits of this case; President Brooks via a conversation with Mr. Atterbury pertinent to this petition at Renato's Restaurant; Councilman Coleman with Mr. Atterbury.

Attorney Atterbury, on behalf of the applicant, stated that the request was for 47 additional outside seats, in the evening only, when weather permitted. He advised that they were asking for site plan approval for a 635' retractable awning to be used during periods of inclement weather. He added that there was a parking agreement with the owner of the neighboring property to the east for 19 parking spaces, which was more than the 17 parking spaces required by Code.

Attorney Atterbury stated that the hardship for the variances was that Via Mizner was a landmarked, historic building with no onsite parking. The additional hardship was the demand from restaurant customers, many of whom were European, and many of whom were smokers, that request outside seating.

Attorney Atterbury, presented architectural renderings, to explain the orientation of the restaurant, and discussed the plans relative to the seating arrangements for the restaurant. He advised that they were not changing any of the seats in the west dining room but were asking to increase the outside seating to 84 seats; 47 new seats were being requested plus 13 seats that would be moved from the east dining room. He noted that the plan was approved by the Police Department and the Fire Marshall. Parking would be by valet only, and there was an agreement with Palm Beach Parking Service for valet parking; the applicant was prepared to hire any additional valet parkers that might be required.

Attorney Atterbury reviewed the history of Renato's and stated that the operation of the restaurant would not change, if this application was approved. He added that they had received three letters of support from owners of residential units in the Via.

Zoning Administrator Paul Castro stated that the Code allows for outdoor seating through Special Exception provided that the seating capacity was being moved from the inside to the outside. He explained that the applicant was asking to provide more seating than their capacity for both of the inside spaces they currently operate. He said they were also asking for a retractable awning. He advised that all of their requests were tied into the required parking; the seats for the restaurant generate the demand for the parking in the Town Code stating that shared parking cannot be used as required parking within the Town of Palm Beach. He explained that they were requesting a variance relative to the required parking issue, which would allow for shared parking on the lot immediately adjacent to the east for the spaces that would be necessary for the requested outdoor seating, whether it was inclement weather or good weather.

Mr. Castro advised that the applicant submitted a Traffic Circulation Plan for the valet parking. He stated that staff was recommending that approval of this application should be subject to several conditions.

1. The hours of operation should be reviewed;
2. The parking lot should be upgraded to meet the striping, pavement and drainage requirements of the Town Code;.
3. The applicant should be required to enter into a Tri-Party Agreement with the Town. The agreement should state that if they ever loose parking space, the applicant would have to return to Council with a Special Exception Application requiring them to either find additional parking elsewhere or eliminate the seating that was allowed by this application, based on the parking next door.

Attorney Atterbury stated that the applicant does not have any issues with the first and third points. He advised that regarding the upgrading of the parking lot, the applicant had a one year parking agreement for the use of that lot. He explained that it would be a burden to incur the expense of paving and landscaping for a parking lot that was used part-time, in the evening only. During the day, the parking lot was used by other tenants.

Councilman Kleid advised that he went to the restaurant and was perplexed by the outdoor seating. He asked if it would go as far back as the gate that was on Via Mizner East?

Attorney Atterbury advised that the seating would not be closer to the gate than it was today. He explained that there were two existing canopies that sit against the wall, and the plan was to remove them and try to use the same structural holes. He stated that the wood type awning would be removed so that the retractable awning would extend that distance. He noted that in bad weather it would come down.

Councilman Kleid asked if the tables would be extended out to that area? The area that was under what now was the existing wood structure.

Attorney Atterbury replied that was correct and double tables would be placed there.

Mayor McDonald stated that he agreed with the applicant that the second condition was onerous, but added he did believe it was good that Mr. Castro brought it up. He reported that he had been to the restaurant many times, and the valet parking was excellent. He advised that to require them to improve the parking lot when they only have a one year agreement with the owner, and a shared parking arrangement, was too much to request, under this situation. He stated that the application met the hardship requirements.

Councilman Coleman stated he was in favor of this application, but if the one year parking agreement was extended year after year, he would add an addendum regarding the parking lot. He advised that his concern was where the Town would stand on paving and landscaping, if the agreement was extended into a five or ten year agreement.

Mayor McDonald suggested adding a condition to the approval of this application, that if the parking lot lease agreement was renewed for any period longer than a year, the applicant would have to come back to Council.

Mr. Castro advised that the applicant was renting the spaces from Mr. Handelsman, and it would not be incumbent upon the applicant only to make the improvements. Mr. Handelsman was a joint applicant in this application, because his permission was required for the applicant to come to Council, in order to use the lot. He noted that if Mr. Handelsman does not agree to make the improvements along this line, then he would not be able to lease the lot to them. He stated that it was not just incumbent upon Renato's to provide the paving, but the land owner.

Councilman Coleman asked if it would be feasible to suggest that if the parking agreement was renewed then the paving and landscaping would have to be taken care of? He said that it would be a business arrangement; and in a year, it would be determined if that was worthwhile or not, or alternate parking could be found.

Mayor McDonald stated that rather than imposing that, it would be better for the applicant to come back before the Town Council, if there were concerns relative to that issue.

Attorney Atterbury clarified the earlier discussion on the wood awning, on the north side of Via Mizner, advising that it was not being removed, but was staying.

Councilman Wyett discussed several points that he had concerns with.

1. The Council should take into account that, perhaps, they were allowing too many seats, and perhaps, a new precedent was being established that seats do not have to be moved from the inside to the outside.
2. If additional parking was lost, he did not want to see Code Enforcement brought into the picture. He advised that if the applicant loses the parking, then they lose the dining spaces. He noted that the onus was on the applicant to replace the spaces or not lose it.
3. He stated that he liked the hours of operation, of only two seatings. He asked if the applicant had permission, by the virtue of their grandfathered license, to have a nightclub, if they ever wanted to change?

Zoning Administrator Castro stated that the applicant only had a restaurant license and would need a special exception to ask for a nightclub license.

Planning, Zoning and Building Director Robert Moore addressed the concerns of Councilman Wyett. He noted that the structure in Via Mizner was a landmarked building and there was no room for it to expand. He discussed the history of the restaurant and what they had been granted in the past relative to outside seating. He advised that the applicant was not asking for more than other restaurants, citing BICE as an example. He advised that in inclement weather, and noted that Councilman Wyett was correct, there would be tables that could not be serviced; he noted that would be the restaurant's problem and not the Town's problem.

Mr. Moore stated that Councilman Coleman had a excellent point with regard to acquiring other parking spaces, in the future, such as in the Apollo lot. He said that if they could get those spaces in the Apollo lot, then the other lot would be a moot point. The Tri-Party Agreement with the Town would need to be changed to include the Apollo lot.

Councilman Wyett reiterated his concern over setting a precedent by expanding the seating.

In response to President Brooks, Mr. Atterbury stated they had no objection to the request for outside sprinklers.

Discussion ensued regarding the distinction between Renato's and Coco's requests. President Brooks noted that was the reason the Council reviewed these issues on an individual basis.

President Pro Tem Goldblum made a motion to approve Special Exception #17-2005, with the following conditions:

- **Applicant to provide Tri-Party Off-Site Parking Agreement, between Renato's Restaurant, the owner of the parking lot, and the town.**

- **Applicant to return to Town Council within one year to discuss the parking and parking lot issues, specifically as related to the length of time of the off-site parking agreement.**

- **Applicant to provide Town-serving documentation each year when the occupational license was renewed.**

The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

e. SPECIAL EXCEPTION #18-2005 WITH SITE PLAN REVIEW AND VARIANCES The application of JV Associates (Lyon Sachs, President/50% ownership) relative to property described as lengthy legal description on file; commonly known as 2800 South Ocean Boulevard; located in the R-D(2) Zoning District. Special Exception with Site Plan Review to further modify a previously approved special exception with site plan review which provided for a 2,500 sq. ft. mezzanine in the north garage to be used for children's playroom and storage, and a 2,400 sq. ft. addition to the basement of the west building to allow for an increase in area of the existing spa. The applicant is requesting a modification to allow (i) construction of an 1,150 sq. ft. (MOL) mezzanine in the north and south garages instead of the previously approved 2,500 sq. ft. mezzanine in the north garage; and (ii) to revise the location of the spa by relocating 30 employee parking spaces from the north garage to one of the three tennis courts. There would be 35 new off street parking spaces provided and the existing entrance/exit on the north side of the building would be eliminated. The north garage would be used for the new spa location and the south garage for the playroom and storage. The west building basement enlargement would be abandoned. Variance requested to allow the remaining south entrance/exit driveway into the basement garage at a width of 12 feet in lieu of the 20 foot minimum width required for two way drive aisle access.

Ex-parte communication was declared by President Pro Tem Goldblum with Attorney Ziska regarding the driveway; and Councilman Wyett with Attorney Ziska relative to the driveway.

Attorney Maura Ziska, on behalf of The Four Seasons Hotel, stated that a Special Exception to revise the Site Plan had been granted by the Council in March, 2005 allowing a spa addition. She noted that the spa was in the south building, and the wall of the west section of the hall was to be bumped out to enlarge the spa with another addition within the mezzanine level. She advised that further modification was being requested, keeping the improvements entirely within the footprints of the hotel but adding another level in the north and south garage. She explained that to be able to accomplish this, they need to remove about 30 parking spaces from the north side of the garage placing them outside where a tennis court currently exists.

Attorney Ziska advised that they met with Fire Marshall Tim Pompos, and he had no fire or safety issues concerning the remodeling of the hotel. She noted that a letter was received from Mr. Pompos to that effect, which she submitted into the record.

Lyon Sachs, President and Co-owner of The Four Seasons Hotel, presented architectural renderings, explaining the applicant's request for further modifications to the Site Plan granted in March, 2005.

Zoning Administrator Paul Castro stated that the variance was for the drive aisle width. He advised that he did not know of any standard that would allow for a two way drive aisle to be 12' wide, especially when there were 125 cars underneath a five story building. He advised that from staff's standpoint, the traffic circulation that exists there was minimal in terms of the narrow drive aisle on the north and south sides of the building. He explained that staff's concern was viable, safe traffic circulation for the parking garage. He advised that the recommendation was for 10' wide on either side, for in and out, and the applicant cannot provide that. He stated that staff questioned the hardship related to the variance.

Councilman Coleman stated that he was in favor of the variance, accepting Mr. Sachs representation. He noted that he was willing to accept Mr. Sachs analysis because he would be the only one to suffer.

Councilman Kleid attested to the fact, as a former owner of an apartment located to the north of the hotel, that The Four Seasons had been an excellent neighbor and very considerate to the unit owners at that condominium.

In response to President Pro Tem Goldblum, Mr. Sachs stated they could not place a driveway at the location referred to in the renderings. He explained that he disagreed with Mr. Castro and advised that they have a 25' driveway aisle. He stated that they do not have a 12' or 20' driveway aisle.

Mr. Castro responded that it was an entrance into a commercial garage, two-way commercial parking lot concern.

Councilman Wyett made a motion to approve Special Exception #18-2005. Councilman Coleman seconded the motion.

In response to Mayor McDonald, Mr. Castro stated that he could not explain why they have a 12' wide driveway aisle. He said that it was probably intended to be one way in and one way out. He stated that by closing off the one, the one south entrance into the garage becomes both in and out.

In response to Mayor McDonald, Ms. Ziska stated that there was only one objection of record.

Mayor McDonald advised that he did see the hardship because the columns are on tiles that cannot be expanded.

Planning, Zoning and Building Director Moore explained that the reason for the 12' driveway was that when the original Site Plan Review occurred, they did have a two-way entrance, one in and one out. He advised that Mr. Sachs offered a safety solution of putting a warning and caution light at that location. The light would be triggered by the weight of the car moving.

On roll call, the motion to approve Special Exception #18-2005 carried unanimously.

f. SITE PLAN REVIEW #7-2005 WITH VARIANCES The application of Ajit Asrani TR, Ajit Asrani Trust relative to property described as Lot 5 and the west 85 feet of Lot 6, Block E, Royal Park Addition; commonly known as 215 Brazilian Avenue; located in the R-C Zoning District. Site Plan Approval requested for a modification to the site plan of the Plaza Inn, to construct a 3-story hotel with a total of 50 rooms, to add a 90-seat function room/44-seat dining room (same room with 13 bar stools), to reconfigure the site plan by relocating and redesigning the swimming pool and associated deck, and adding a 59 car parking garage under the structure in lieu of the surface parking lot previously approved. This increased the number of parking spaces available to 59 from the approved 36 plus 6 valet spaces. Variance requested for a front setback of 25 feet in lieu of the 28.4 feet required because of building height. Variance for a rear setback of 5 feet in lieu of the 30 feet required by code, a variance of 25 feet. Variance for a lot coverage of 38.09% in lieu of the maximum 34.7% previously approved by variance and 30% allowed by code. Variance for landscaped open space of 16.25% in lieu of the minimum code requirement of 35%, and previously approved variance of 21.1%. Variance to allow a reduction in parking stall width to 8.5 feet in lieu of the 9 feet required by code for spaces number 39 and 40 on the accompanying parking garage plan. Variance for a building height of 28.4 feet from zero datum in lieu of the maximum 23.5 feet allowed by code for a two story building, a variance of 4.9 feet. Variance for an overall building height of 36.4 feet from zero datum in lieu of the 31.5 (w/sloped roof) feet allowed by code, a variance of 4.9 feet. Variance related to sub-basement off-street parking facilities so that the roof of such sub-basements may be hardscaped areas in lieu of being "sodded, landscaped and maintained" as required by code. Variance related to sub-basement off-street parking facilities so that visible evidence of such underground use (the ramp) can be seen from public street in lieu of no visible evidence of such facilities from a public street as required by code. Variance related to sub-basement off-street parking facilities so that storage areas, as indicated on the parking plan, can exist under required yards in lieu of only parking facilities.

Deferred Site Plan Review #7-2005 to the September 13, 2005, Town Council Meeting.

3. Other

a. Review of Town Serving Documentation Submitted by Coco Palm Beach, for Outdoor Dining. *Deferred from the July 12, 2005, Town Council Meeting.*
[Robert L. Moore, Director of Planning, Zoning and Building]
Staff recommends deferral to the September 13, 2005, Town Council meeting, per memorandum dated August 2, 2005, from Robert L. Moore, Director of Planning, Zoning and Building.

DEFERRED to the September 13,2005, Town Council Meeting, as requested by staff.

b. Modified Zoning Calendar and Study Item List for 2005-2006 Zoning Season. *Deferred from the July 12, 2005, Town Council Meeting.*

[Robert L. Moore, Director of Planning, Zoning and Building]

Zoning Administrator Paul Castro referred to the memorandum dated July 29 (see below) and explained that the Town Council, at its July 12, 2005 meeting, had requested modifications to the Zoning Season list of Study Items and Calendar. Staff had removed some minor items from the list of study items, and was requesting direction today regarding several other items:

- Redistricting of the R-B Districts in a three-year process, rather than a two-year process.
- Extend the community meetings to November, December and January
- Defer Phase III of the Intersection Vision Study for a period of one year, or consider engaging outside consultants for this phase of the work.

Proposed 2006 Zoning Season Study Items
July 29, 2005

1. Study a neighborhood CCR index for streets in the R-B zoning. Also as part of that study, look at aggregation of lots and its affect on building size/ratio and investigate the possibility of creating regulations for bonus zoning ***(Town Council and Planning and Zoning Commission Request)***

2. Study and provide a recommendation to rezone the R-B zoning district into separate homogeneous zoning districts based on neighborhood characteristics. ***(Town Council and Planning and Zoning Commission)*** <u>(Change from two to three year process)</u>

3. Evaluate the lot, yard and bulk regulations in the R-B zoning district and the special exception use regulations and site plan regulations within all zoning districts in an attempt to alleviate some of the de minimus zoning application requests. ***(Town Council Request and Planning and Zoning Commission request)***

4. ~~Complete the intersection vision study by developing a plan to address the removal of obstructions and lowering the heights of walls and landscaping within rights-of-way and private property. Develop a timing plan and implementation strategy.~~ ~~***(Town Council request)***~~ ***or alternatively, retain the Town's traffic consultant to continue this phase of work.***

5. Study a provision which would create a requirement for a Lake vista on Lake Trail similar to the Ocean vista in the Beach Area zoning district. ***(Town Council request)***

6. Study raising the height of wall within 25 feet from Lake Trail to a height higher than the four feet maximum currently allowed. ***(Town Council request)***

7. Continue to study a proposal to provide uniform street signage. ***(Planning and Zoning Commission request)***

8. Prepare the evaluation and appraisal report of the comprehensive plan. ***(Staff request)***

9. Modify the time limits for renovation and reconstruction of nonconforming buildings and structures to be consistent with the new time limits in the building code. ***(Staff request)***

10. ~~Study a modification of the definition of sub-basement to allow it to be outside the confines of the building above it. ***(Staff request)***~~

11. ~~Review the write-ups in the Supporting Documentation of the Comprehensive Plan for the eight physical Planning Areas and confirm the future desired character of each. Emphasis should be given to the areas zoned R-B, particularly in the north end. ***(Staff Request)***~~

11. ~~A housekeeping item to adopt an official zoning and future land use map in a digitized format. ***(Staff Request)***~~

12. Housekeeping items making minor corrections and clarifications to code language. ***(Staff Request)***

13. ~~Study the nonconforming section to allow more than 50% demolition and reconstruction of nonconforming structures without bringing into compliance with the Zoning Code (***Planning and Zoning Commission Request***)~~

Councilman Wyett moved approval of all suggested deferrals, as presented by staff, and moved that no outside consultants are hired. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried unanimously.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business, the regular Town Council Meeting of August 9, 2005, was adjourned at 5:50 p.m.

William J. Brooks
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk