TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON AUGUST 8, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting of August 8, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Charles Langley - Public Works Assistant Director
Edward J. Moran - Fire-Rescue Chief
Jim Palmer - Systems Analyst
Michael Reiter - Police Chief
Jane Struder, Finance Director
Sandy Tate - Coastal Projects Administrator
Robin Smith, Police Officer
Spencer Wilson - I.S. Manager
Susan Eichhorn - Town Clerk

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Robin Smith, Police Officer, Upon Her Retirement from the Town of Palm Beach After 26 Years and 5 Months of Service.

Mayor McDonald presented Robin Smith with a ring in honor of her retirement from the Town of Palm Beach.

IV. COMMENTS OF MAYOR JACK McDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Town Manager Peter Elwell announced that the regular Town Council meeting for September would be held on Thursday, September 7, 2006 instead of the usual second Tuesday of the month.

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

Bernard Wiles, Historian, commented that he hoped to start a worldwide Columbus Museum. He invited Council Members to visit the library at the Society of the Four Arts to view his Columbus artifacts that were on display.

Jack Cohen, 3450 South Ocean Boulevard, endorsed Commerce Bank. He requested that the Council seriously consider allowing Commerce Bank to locate at the former Washington Mutual site.

Timothy G. Anthony, President of the Board of Directors of the Royal Saxon, 2840 South Ocean Boulevard, objected to Site Plan Review No. 5-2006 regarding the proposed project for the former Hilton Hotel. He advised that he represented 140 unit owners in the Royal Saxon, a co-op building, located directly across the street from the former Hilton Hotel.

VII. APPROVAL OF AGENDA

The following changes to the Agenda were made:

DEFERRED Item XI.C.2.c., Special Exception #3-2006, Application of Pizza Alfresco/Arlene Desiderio and Via Mizner Associates, Limited Partnership, relative to the property at 8-14 Via Mizner, to the September 7, 2006, Town Council meeting.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to defer to the September 7, 2006, Town Council meeting, Item XI.C.2.c, Special Exception #3-2006, Application of Pizza Alfresco/Arlene Desiderio and Via Mizner Associates, Limited Partnership, relative to the property at 8-14 Via Mizner. On roll call, the motion carried unanimously.

DEFERRED Item XI.C.3.a., Site Plan Review #9-2006 with Variances, Application of The Villas, Inc., Leo Albert, President, relative to property at 425 Worth Avenue, to September 7, 2006, Town Council meeting.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to defer to the September 7, 2006, Town Council meeting, Item XI.C.3.a., Site Plan Review #9-2006 with Variances, Application of The Villas, Inc., Leo Albert, President, relative to property at 425 Worth Avenue. On roll call, the motion carried unanimously.

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

VIII. CONSENT AGENDA

A. MINUTES: JULY 10, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING (PART I OF THE MONTHLY MEETING)

B. MINUTES: JULY 10, 2006
APPROVAL OF MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION REGARDING TOWN OF PALM BEACH VS BARRY SMALL

C. MINUTES: JULY 11, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING (PART II OF THE MONTHLY MEETING)

D. MINUTES: JULY 12, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING BUDGET

E. MINUTES: JULY 12, 2006
APPROVAL OF MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION REGARDING POINCIANA MANAGEMENT VS TOWN OF PALM BEACH

F. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JULY 26, 2006

G. RESOLUTIONS

1. RESOLUTION NO. 48-06 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.
[Peter B. Elwell, Town Manager]

2. RESOLUTION NO. 50-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Equipment Replacement Reserve.
[Jane Struder, Director of Finance]

3. RESOLUTION NO. 51-06 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. [Jay Boodheshwar, Director of Recreation]

4. RESOLUTION NO. 52-06 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. [Jay Boodheshwar, Director of Recreation]

5. RESOLUTION NO. 55-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Performance Incentive Agreement Between the Town of Palm Beach and the Golf Pro-Manager, and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[Jay Boodheshwar, Director of Recreation]

6. RESOLUTION NO. 56-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Recreation Department Fees.
[Jay Boodheshwar, Director of Recreation]

7. RESOLUTION NO. 57-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving A Policy Release in the Matter of Palm Beach Theater Guild, Inc., Vs. Poinciana Management, Inc. and the Town of Palm Beach, and Authorizing the Mayor to Execute the Same on Behalf of the Town. [Peter B. Elwell, Town Manager]

H. OTHER

1. REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING ON JULY 10, 2006. [Peter B. Elwell, Town Manager]

The report is included below in its entirety:

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON AUGUST 8, 2006

REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING HELD ON JULY 10, 2006

I. CALL TO ORDER AND ROLL CALL

Chairman William J. Brooks called the meeting of the Public Safety Committee Meeting to order at 1:00 p.m., on July 10, 2006, in the Town Council Chambers. On roll call, the following members of the Committee were found to be present: Chairman William J. Brooks and Committee Member Allen S. Wyett. Also present for all, or a portion of the meeting were: Mayor Jack McDonald, Council Member Kleid, Council Member Markin, Town Manager Peter B. Elwell, Assistant Town Manager Sarah E. Hannah, Town Attorney John C. Randolph, Fire-Rescue Chief Edward J. Moran, Assistant Fire-Rescue Chief, Andrew Cox, Police Chief Reiter, Support Services Major Sallenbach, Communications Manager Bonnie Maney and Deputy Town Clerk Diane Kassover.

II. PLEDGE OF ALLEGIANCE

Chairman William J. Brooks led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

The Agenda was unanimously approved as printed.

IV. REVIEW OF PROPOSED CHANGE IN FIRE-RESCUE DISPATCHING AND PUBLIC SAFETY COMMUNICATIONS

Town Manager Peter Elwell explained that discussion today would address the proposed change in the Fire-Rescue Department's dispatching system and its implications for public safety communications in the Town of Palm Beach. He advised that for the past six months, a team including representatives of the Fire-Rescue Department, Police Department and Town Manager's Office had been investigating the pros and cons of this change. He referred to his detailed memorandum to the Public Safety Committee Members, William J. Brooks, Chair and

Allen S. Wyett, Member, dated June 7, 2006, and included in the backup material to discuss this proposed change. The items the Committee needed to consider before making a recommendation to the Town Council fell into three categories.

- Operational
- Intangible
- Financial

Town Manager Elwell noted that the issue would come down to a binary choice of:

- Creating a more regional Fire-Rescue linkage, with the Town losing a significant measure of local control; or
- The Town maintaining their independence in order to ensure that they control essential public safety communications with the citizens but losing an opportunity to increase interoperability with the Town's Fire-Rescue mutual aid partners.

In response to Councilman Wyett, Fire-Rescue Chief Moran advised that, as to service, the proposed change would benefit the residents of the Town. He commented further:

- The Town would require the assistance of their mutual aid partners if a significant incident occurred.
  - The closest partners were Palm Beach County, West Palm Beach, and Lake Worth.
  - Palm Beach County and Lake Worth operate on the Palm Beach County Fire-Rescue (PBCFR) radio system.
- The PBCFR would enable the Town to manage incidents more effectively without going through cumbersome switches or patches.
  - Communications between the Town's Fire-Rescue and all other Fire-Rescue Departments in Palm Beach County would be more direct than they were today.
- The Town did not have a significant number of large scale incidents, which had its good points and bad points.
  - The volume of incidents would be decreased, lowering the need for mutual aid.
  - When a system was not used regularly, a high possibility of error could occur.

- When it came time to create patches or necessary switches with other agencies during a significant incident, it would be more cumbersome and dangerous not only for the citizens, but the firefighters as well.
- The response to significant incidents would be better controlled when multiple agencies responded along with the Town.

- The solution would be to have all agencies on the same universal radio system providing all the services.
    - The Town of Palm Beach telecommunicators could stay on the line with local 911 callers while PBCFR telecommunicators serve those callers.
    - The Town of Palm Beach Police Department responds to every fire and EMS call. Since Police units usually respond from the field and Fire-Rescue units usually respond from their stations, the Police units arrive first at the scene.
    - The PBCFR radio system would eliminate the patches that would need to be created for transports to hospitals, outside of its immediate transport area, when the Town transfers to the Police Department's new radio system: the Maycom system.
    - The PBCFR radio system will be linked with a traffic light preemption system, which could reduce the Town's EMS units travel time when transporting patients to area hospitals.
    - The most important advantage of the proposed system would be the safety of the Town's firefighters, and ultimately, the citizens. The ability of the firefighters to speak to one another clearly, and to their mutual aid providers.

In response to Chairman Brooks, Chief Moran advised that the pending lawsuit filed by the Cities of Boca Raton and Delray Beach was an issue of double taxation. He noted that their position was that Palm Beach County collected taxes for the PBCFR radio system from their residents but provided no services to their cities. He explained that a significant premise of Palm Beach County's defense was that they were providing a real and substantial benefit if a large scale incident occurred and mutual aid was provided.

In response to Chairman Brooks, Chief Moran stated that he could not say that the Boca Raton and Delray Beach systems were better than the Town's, but the issues that Boca and Delray had were slightly different from the Town's. He advised that their staffing was a little bit heavier than what the Town had, and they had a dedicated fire dispatcher.

Chief Moran discussed the Town's current system, explaining that it was not uncommon, in the evening hours, for the same person taking 911 calls to also be the fire dispatcher. He noted that was troubling because providing dedicated, monitored, tactical channel in the evening hours would be very difficult, unless there was ample staffing available.

Discussion ensued regarding the operation of the Town's radio system and the PBCFR radio system as it related to 911 calls.

In response to Mr. Wyett, Chief Moran advised that he did not believe that Palm Beach County wanted to combine and control all fire departments located in Palm Beach County. He stated that the Palm Beach County Fire Chief reassured him that he had no intention of making any effort to take over the Town of Palm Beach Fire-Rescue services.

Chief Moran stated that the Town would have an Interlocal Agreement with Palm Beach County, which would clearly spell out the terms of what the Town would receive and what obligations the Town would and would not have. He advised that a centralized/regional communication system would assist in making everyone better prepared for natural or manmade disasters that required assistance from other communities. The Town would still retain their independence.

Mr. Wyett stated that it was his impression that the chief advantage to joining the PBCFR radio system would be in the event of catastrophic incidents or calls for major assistance and not for minor everyday incidents.

In response to Mr. Wyett, Chief Moran commented:

- An advantage to joining the PBCFR radio system was that a tactical channel was monitored continuously by a PBCFR officer who could radio for additional units or provide other assistance as needed. This would enhance firefighter safety and provide quicker relay requests for mutual aid or other external resources.
- The Town of Palm Beach Fire-Rescue Department would be the only Fire-Rescue Department on the Maycom system in the State of Florida; all other agencies on the system would be law enforcement agencies.
- The Town would not have direct communication with other

Fire-Rescue agencies or hospitals.

Mr. Elwell advised that either of the two alternatives could be made to function. He noted that what made this issue so complex was that there was not a clear preferable alternative from a technical point of view. It came down to more of the intangible issues and the values to the community. Staff needed policy direction from the Committee on how to proceed.

In response to Mr. Wyett, Chief Moran advised that the Town did not now have a traffic preemption system in place when they transported to JFK Hospital or Good Samaritan Hospital. He noted that under the proposed PBCFR radio system, the Town would have that capability.

Chief Moran advised that the City of West Palm Beach just signed onto the PBCFR system, separating from their police dispatching system. The City of Lake Worth joined the PBCFR radio system and Palm Beach Gardens, a community a little larger than the Town, had been transferring their calls to Palm Beach County for at least eight years. He explained that Palm Beach Gardens still had their own police dispatching system. The team studying this proposed change went on a site visit speaking with the Palm Beach Gardens' police communications manager who indicated that they did not have any issues with the system or with call transfers, and that there were no time delays.

Mr. Elwell reiterated that either system could work. He noted the following concerns he had when first considering the proposed change.

- Whether the alternative of moving to the County system would be adequate for the Town;
- Whether it would have operational down sides that would be unacceptable to the Town in terms of a delay;
- Other aspects of the system that the Town could not tolerate.

Mr. Elwell advised that both the Palm Beach County Fire-Rescue Dispatch Center and the Palm Beach Gardens Dispatch Center operations were found to be very professional during the Town's site visits. He noted that the PBCFR radio system did work for Palm Beach Gardens. He advised that he overcame his concerns and believed that either system could work.

Police Chief Reiter commented on the proposed change:

- Noted the approach of Fire-Rescue was very different from law enforcement.
- A major or significant incident would require other Fire-Rescue departments to be called in.
- The operation of the Town of Palm Beach Police Department was very different from other police departments. It was not reliant on neighboring police departments other than for a rare major incident.
- Communication centers in other cities operated very differently than the Town of Palm Beach.
- The Town's Police Department was the only police department that responded to all Fire-Rescue and EMS calls.
- Suggested the Committee look at this from the viewpoint of day to day operations as well as when a major emergency might occur. (In an emergency situation, there would be more of a need to have radio contact between the two agencies.)
- Advantageous for the Town to have local control. It was certainly advantageous to have a telecommunicator in the Town's dispatch center rather than one located outside of Town.
- The Town of Palm Beach communications center staff has knowledge of the Town of Palm Beach that cannot be matched by PBCFR telecommunicators serving a large geographical area.
- Residents of the Town may react unfavorably if they call 911 for a fire or EMS incident and have to be transferred from the Town's communications center to PBCFR.
- Suggested that the Committee act very cautiously as he had great concerns regarding this change.

In response to Mr. Wyett, Chief Moran advised that there were no time constraints other than those related to the implementation of the Maycom system.

Richard Kleid, 2660 South Ocean Boulevard, Town Council Member, commented that Town taxpayers currently pay $800,000 in taxes to Palm Beach County for the operation of the PBCFR radio system and dispatch center, even though the Town did not receive services. He questioned whether there would be savings to the Town of Palm Beach taxpayers relative to the Town's budget; $300,000 worth of equipment would be received from Palm Beach County.

Chief Moran advised that if the Town joined the PBCFR radio system, it provided the Town, at no charge, radios, pagers, and computer equipment worth approximately $300,000. The savings to the Town would be that no money was to be spent on equipment, maintenance, ongoing replacement costs or technological changes that would have to be made with the Maycom system years down the road.

Mr. Kleid asked, if it made sense for the Town to wait until the legal action taken by the Cities of Boca Raton and Delray Beach was settled before taking any steps?

Mr. Elwell responded that the Town was entering into the transition of radio systems within the Police Department that would occur regardless of the outcome of the lawsuit. The question before them was whether Fire-Rescue migrated to the new Maycom system with the Police Department or whether they instead joined the PBCFR radio system. He noted that if the cities win and the County's taxation practice was ruled illegal, the Town's taxpayers would be spared the $800,000 expense in future years. In the absence of a transition within the Police Department's Maycom system, the Town would certainly want to wait for the outcome of the litigation before deciding whether to join the PBCFR.

In response to Mr. Kleid, Mr. Elwell responded if the Town went with the PBCFR radio system, there would not be less of a need for telecommunicators. He noted that most of the calls handled by the communications center were Police calls. He advised that even if the communicators were no longer directly dispatching Fire-Rescue calls, they would still monitor and transfer those calls to Palm Beach County. He stated that there would not be an opportunity to reduce staff there.

Dan McDonnell, 2784 South Ocean Boulevard, commented on the Town's excellent response time to 911 calls.

In response to Mr. Wyett, Chief Reiter advised that the decision had been finalized for the Police Department to migrate to the Maycom system in about a year to eighteen months. The contract was recently signed, and the installation of the system would begin shortly.

Discussion ensued regarding when a decision would have to be made by the Fire-Rescue Department. Police Department Support Systems Major Sallenbach advised that the decision did not have to be made now. The current system would remain in effect for approximately three years from the time the Police Department transitioned over to the Maycom system, and Fire-Rescue could be phased in. He advised that they did not have a one year deadline.

Chairman Brooks stated that he believed that if there was a major incident, the Town would benefit from joining the PBCFR radio system, but apart from that somewhat unusual circumstance, the Town would be better off remaining with the existing system.

Mr. Wyett stated that he believed this needed to be studied further. The Town had the luxury of time since it could remain with the present system beyond the point of the legal decision. He noted that if the City of Boca Raton and the City of Delray Beach lost their case, an additional argument could be made for the Town to join the PBCFR radio system, above and beyond which service was better. It would also give the Town an opportunity to see how both the City of Lake Worth and the City of West Palm Beach did under the PBCFR radio system. He stated it was a matter of deferral, at this time.

Chief Moran reiterated his concerns regarding the Maycom system. He commented on the following issues:

- The quality of the Police Department telecommunicators was not the issue as they did an excellent job. The issue was with staffing, and under the makeup of the current system, as it stood, it was understaffed for what the needs were.
- The Police Department would be able to respond to every Fire-Rescue call regardless of which system the Town chose, since all calls come into the Town's 911 center.

In response to Mr. Wyett, Chief Moran responded that one of the points he was making was that no other Fire-Rescue Department was on the Maycom system.

Mr. Brooks stated that it would be to the Town's advantage if a decision was not made today. The Town should monitor both the technological evolution, and the legal situation brought forth by the City of Boca Raton and the City of Delray Beach.

Ms. Susan Markin, 1450 North Lake Way, Town Council Member, commented that the Town, in joining the PBCFR radio system, would become part of a much larger system and would not have the control they now had. She advised that, at present, the Town had control over response time, which put them in a much stronger position.

After further discussion, it was the consensus of the Public Safety Committee that a report would be provided to the Town Council at the August 8, 2006 Regular Town Council meeting with the following recommendations.

- **The Town continues to monitor this matter, and if at some point in the future, it was appropriate, it would be given additional consideration.**
- **The Town would monitor the evolution of the litigation that the City of Boca Raton and the City of Delray Beach filed against the County.**

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further business to discuss, the July 10, 2006, Public Safety Committee Meeting adjourned at 1:50 p.m.

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William J. Brooks, Chairman

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End of Report of the Public Safety Committee Meeting in its entirety

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H. OTHER - CONSENT AGENDA CONTINUED:

2. Public Employees Relations Commission Appointment.
[William C. Crouse, Director of Human Resources]

3. Approval of Florida Department of Transportation Request for Early Start of Construction, State Road A1A, Southern Boulevard to Royal Palm Way. [H. Paul Brazil, Director of Public Works]

4. Approval of Florida Department of Transportation Request for Early Start of Construction, State Road A1A, Lake Worth Road to Southern Town Limits. [H. Paul Brazil, Director of Public Works]

5. Authorization to Purchase Four Emergency Generators for Sanitary Sewer Pump Stations.
[H. Paul Brazil, Director of Public Works]

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks, to approve the Consent Agenda. On roll call, the motion carried unanimously.

IX. REGULAR AGENDA

A. Old Business

1. Placement of Overhead Utility Lines Underground.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell referred to his detailed memorandum to the Mayor and Town Council, dated July 24, 2006, and included in the backup material, to provide a status report regarding the burial of overhead utility lines. He advised that Deputy Town Manager Tom Bradford compiled a list of professionals to assist the Town in securing the services for the following:

- A negotiator for conversion contracts with affected utilities.
- A public relations firm to prepare the public education campaign.
- A technical advisor for review of utility designs.

Mr. Elwell discussed the following issues and requested that the Council provide staff with direction regarding the following:

- Whether or not to postpone the February 6, 2007 referendum since the Public Service Commission (PSC) would not have made a decision regarding the 25%

rebate/discount at the time the Town entered into the public education period for the referendum. The fundamental question was if the Council would consider heading toward the referendum with that as an unknown or would they want that matter settled prior to taking it to the voters.

Mr. Elwell's responses to President Pro Tem Kleid's questions were:

- The PSC would not hear this issue until October with a decision coming some months later, most certainly after the February referendum.
- The Municipal Underground Utilities Consortium (MUUC) Report would not be completed until November 2006.
- The PSC would not have available to them the Consortium Report information at their meeting in October 2006.

President Pro Tem Kleid recommended that the Town proceed to the February 6, 2007 referendum, despite the fact that the information regarding the tariff might not be available. He advised that if the Town had that information, at that time, the amount of expenditures would then be reduced.

Council Member Wyett concurred that the Town should proceed with the referendum. He noted that citizens were concerned with the cost and the effect the project would have on their property.

Council Member Brooks stated he believed the Town had to start the process. He noted that no matter when the referendum was scheduled, it would breakdown to things that were known; things that were not known; the time schedule.

Council Member Brooks suggested a bond of $65 million, but requested input from the other Council Members. He stated that if the decision regarding the 25% tariff had not been decided in time, the Town would be far enough down the road that they could then entertain pay as you go or look toward using other sums of money, such as funds from the drainage bond. The drainage bond would have expired by that time and funds would be available.

Council Member Markin commented:

- Concurred with all the previous statements.
- Agreed that the Town should move forward with the referendum barring any other unforseen issues or pieces of information that might come up between now and that point in time.

- Noted that the referendum was there primarily to get a feeling from residents as to whether they did or did not want this project.
- Noted that residents were not concerned if it cost 10% or 20% more or less.
- Agreed with Mr. Wyett's comments that residents were more concerned about what it was going to do to their particular piece of property.
- Information was not going to come from any decisions made from outside of the Council.

President Coleman commented:

- He was in favor of undergrounding utilities.
- He could not vote in favor of a bond issue when it was not known if it was correct.
  - Could not recommend, at this moment, to the citizens that they vote in favor a bond issue.
  - Hardships start when there was a rush to judgment and one did not have the ability, due to time constraints, to do the homework necessary for a project of this undertaking.
  - Afraid he would be giving the populous the impression that there was a relationship between the size of the bond issue and the cost of the project.
- He was in favor of a straw ballot to determine the sentiment of the community.
- He would be in favor of moving forward on a pay as you go basis.
- His guestimate was that the Town was going to spend somewhere around $5 to $6 million a year, which would be an increase in taxes of about 10%.
- Citizens' had control over the Council by being able to vote them in or out of office.

President Pro Tem Kleid responded to President Coleman's statements as follows:

- The only issue the Council was talking about was if they should wait to hear from Tallahassee as to whether or not they would receive the credit.
- If the Town did get a credit, how much would that credit be -- it could be 25%, or it could be less or more.
- The Town had to keep moving forward.
- Not sure if he was in favor of paying as you go.
- The bond issue spread out the cost to taxpayers.
  - Taxpayers who come along ten or more years from now would be the beneficiaries of this undergrounding; and therefore, should be obligated to pay part of the cost.

Councilman Wyett commented as follows:

- No one could tell what this project would cost.
  - The inflation rate in construction, historically, ran at 9%, and might accelerate.
  - At best, the Town might know what the costs were during the first few years, but from the time the Town decided to go ahead with this project, there would be close to two years of paper work that needed to be done and ten more years of construction.
- Clarified President Coleman's statement regarding the tax rate: it was 10% of the Town tax rate and not 10% of the total tax rate.
- The credit offered by FPL, which was to be debated by the Florida Legislature, was deceiving. It was not a gift but was an absorption into the electric bill over a long period of time.

President Coleman advised that the fact that two years of paperwork was needed made a wonderful argument for holding a straw ballot in February, and going to the voters for a bonding issue later. The Town would then know what they were doing after the paperwork was completed. He stated that if the money was not needed now, why should there be a rush to put it on the ballot this year.

Mr. Elwell clarified that it was his intent, in raising the question today, not to have the Council make a final determination about whether it would be a General Obligation Bond Referendum or a straw ballot, but whether to continue on the course of a February referendum question for the voter. The consensus of the Town Council was clear that staff should move forward, and obtain proposals from the professionals in order to stay the course for a February referendum. The exception was President Coleman who was in favor of a straw ballot.

Mr. Elwell stated, that next month or within the next few months, the Town Council would need to make a final decision as to whether there would be a GO Bond Referendum or a straw ballot. He advised that staff would provide what the exact deadline was for making that decision as well as providing the information that would assist the Council in making that decision.

President Coleman explained his reason for being specific was that he did not want to blindside anyone when it came time to talk about the nature of the proposal on the February ballot.

Council Member Brooks respectfully disagreed with President Coleman. He stated that it was time that the Town seized the day, and in order to get things moving, he would be in favor of a General Obligation Bond on the February ballot. He advised that there would still be some intangibles and some unknowns.

Discussion ensued among the Council Members regarding the placement of the bond issue on the February ballot. Council Member Markin stated it was critical, due to the magnitude of this project, that it be put in front of the voters whether it was a straw ballot or a referendum. It was up to the voters to decide and up to the Town Council to make sure the voters were as informed as they could be in order to make a decision in February.

Ned Barnes, President of the Palm Beach Civic Association, made the following comments:

- The Civic Association was very much in favor of this project but was anxious about presenting it to the voters without specific costs.
- Planned to address the Council today to request that they delay the referendum until the numbers were known, but it did not look as if the Council would delay it. The project would be a hard sell and would not sail through without having some idea regarding the 25% differential.
- Residents expressed concern over the cost and the effect it would have on their street and on their property.
- Noted concern regarding the numbers:
  - Previously suggested to the Council extrapolating Jupiter Island's numbers, and was advised that there was no way they could do that.
  - Suggested it might be helpful to bring on a key outside consultant such as Dr. Falcone.

Brian Reeves, The Citizen's Association of Palm Beach, echoed the comments made by Mr. Barnes. He stated that he did not know of anyone who viewed the undergrounding project negatively. He advised that before committing the voters to the project, he would like to know what the costs were.

Ralph Del Deo, 265 Fairview Road, stated that he was a member of the North End Association, and was not voicing the position of that association, which had not formally discussed this project. He believed Mr. Barnes' position made sense. He asked Mr. Elwell if it was decided to hold a straw ballot instead of a formal referendum, would the overall project be delayed?

In response to Mr. Del Deo, Mr. Elwell stated that if the Town held a straw ballot instead of a formal referendum, it probably would not delay the overall project, based on the estimates of the lead time necessary to begin the project, after the February referendum.

Mr. Del Deo recommended that the Council consider a straw ballot as it seemed the logical way to go if the Town did not have to make a full commitment.

In response to Council Member Wyett, Town Attorney Randolph stated that the Council was not bound to go forward with the undergrounding if voters authorized a GO Bond.

Council Member Wyett stated that he disagreed with Mr. Elwell noting that a straw ballot could cause up to a six-month delay. He advised the Council that he originally requested a straw vote two years ago, but the Council was not ready to proceed at that time. He explained that by holding a straw ballot more money would be spent in order to obtain additional information. The two-year project could not be started until there was authorization for funding; and a future Council, two years from today, might not believe it was a good idea and a lot of money would have been wasted. He explained that having the bond issue available and knowing that they could draw on that money to do the necessary paperwork and legal work, would be a commitment by the Town. He noted that the 25% credit was not guaranteed.

After further discussion, Mr. Elwell advised that a motion was not needed. He commented on the following:

- There was unanimity to proceed forward with a straw ballot and that was all staff needed for today.
- Staff would address the continued question of GO versus straw ballot beginning next month.
- Noted there were action items for discussion today.
- Clarified the 25% question noting that it was pending at the Public Service Commission (PSC) and was not a legislative item.

Mr. Elwell suggested that the Town Council authorize that Shef Wright request a deferral at the October hearing of the PSC until the Municipal Underground Utilities Consortium (MUUC) Study had been received. He explained he was not requesting any action be taken by the Council today, but was requesting direction from them since Mr. Bradford was on vacation and Attorney Wright was not present.

President Pro Tem Kleid made a motion to authorize the Town Council to formally request the Public Safety Commission (PSC) delay the October 17, 2006 hearing until the

Municipal Underground Utilities Consortium Report had been presented to the PSC.

In response to Council Member Wyett, Mr. Elwell advised he did not have the exact date that the Council could wait before authorizing the referendum. He noted that he would provide that date to Council in September, but explained that he believed a final decision had to be made about sixty days before the election.

The motion was seconded by Council Member Markin. On roll call, it carried unanimously.

Street Lighting:

Mr. Elwell discussed solar street lighting noting that it did not appear to be promising for this application. The Town would stay the course with traditional standard wiring for street lights.

Mr. Elwell stated that staff requested direction from the Town Council regarding each of the eight street lighting items, which were enumerated for formal action.

1. Shall the Town Council waive Section 106-46 of the Code of Ordinances? This section of the Code strongly implies that street lighting petitions are to be funded using special assessments that charge 1/3 of the cost to the property owners on either side of the street, with the remaining 1/3 borne by the Town. Should you prefer that the Town pay 100% of the cost, a waiver of this Code section may be in order. The informal preference expressed by the Town Council on 7/11/06 was "yes."

After discussion, **Council Member Wyett made a motion to approve waiving Section 106-46 of the Code of Ordinances. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.**

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2. Will the streetlighting go forward even if the Town voters reject the referendum to convert OH to UG? Town residents will ask us this question. The informal preference expressed by the Town Council on 7/11/06 was "yes."

Motion was made by Council Member Wyett, seconded by Council Member Brooks, to approve that the street lighting would go forward even if the Town voters reject the

referendum to convert overhead wiring to underground wiring. On roll call, the motion carried unanimously.

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3. To survey residents directly or to use intermediaries to collect signatures on a petition. The informal preference expressed by the Town Council on 07/11/06 was for the Town to survey directly.

Motion was made by President Pro Tem Kleid, seconded by Council Member Markin, to survey residents directly. On roll call, President Pro Tem Kleid explained that even though he had made the motion, he was reconsidering the issue, and withdrawing his motion. He noted that he was not sure that the Town should survey each individual street allowing the voters to determine if a street should opt out of having street lighting. He advised that year by year things change with people buying and selling homes on a street. He personally believed it was a Town Council decision, and the Council could survey all voters to see what their general consideration was with respect to this issue.

Council Member Wyett asked if the survey was done, was it being done to find out what streets did not want lighting?

Mr. Elwell explained that the purpose of the survey was to identify those streets that preferred the current condition rather than having street lights installed. He noted that the Town had a long history with people who did not want too much lighting on their street.

Council Member Markin commented:

- A Town-wide solution was needed.
- The streets on the north end were very dark noting that there was a safety issue there.
- The street lights that had been used, in the past, were the utilitarian florescent lights, which were offensive to many people.
- The new light posts being recommended had great ambient lighting and were not extremely bright.
- The issue of people not wanting street lights, was not the same issue as before, because lighting was much more palatable to many more people.

Mr. Elwell suggested incorporating four of the items: 3,4,5,8, all which pertain to the specifics on how to address this street by street.

President Pro Tem Kleid suggested that a broad survey be conducted of the Town to determine whether or not they want street lighting on the side streets, basically, the east/west streets.

Council Member Wyett agreed with Council Member Markin that there was a safety issue involved and advised that he found it difficult to believe that they would not get more than fifty-one percent of the residents on the side streets to agree. He believed that, in this day and age, anything to do with public safety was paramount. He stated that he did not find a need to have a survey.

4. Whether to use a "majority" (50%, plus 1) of property owners on a street, 66%, or some other level of indicated support to proceed with a street lighting project. There was no consensus on this issue on 07/11/06.

5. Shall the street lighting program entail the replacement of older non-decorative street
lights with new decorative streetlights in addition to providing decorative streetlights where streetlights of any kind do not currently exist? The informal preference expressed by the Town Council on 07/11/06 was "yes."

6. Shall the Town Council make a determination that arterial roadways be lighted and proceed to do so (without a resident survey) in conjunction with the UG project using a uniform streetlight design that exactly matches the streetlight design already approved for FDOT roads having a teardrop luminaire?

7. Shall residential streets be lighted using the acorn design streetlight standard established by the Town subject to a survey using the approved survey format (direct survey from town to resident) of the residents on each applicable street?

Town Manager Elwell explained that the teardrop luminaire had been recommended for the main road, and the acorn design had been recommended for the residential streets.

Discussion took place regarding improved cell phone service in Town, which may include placement of small antennas on top of the light posts.

Mr. Elwell responded that his point was well taken and this question could be deferred until next month.

President Coleman recommended that this item be brought forward next month when more information was available.

Mr. Elwell advised that a motion was not needed, because staff was not asking the Town Council to engage any of the consultants. He noted that if the Town Council was comfortable with the following recommendations, staff would proceed with obtaining proposals from those firms and individuals for discussion next month.

1. Updated Town-wide cost estimate - R.W. Beck, Inc.
2. FPL contract negotiations - Charles Falcone
3. Adelphia and BellSouth contract negotiations - Roy Young, Esq.

The following responses were made by Mr. Elwell to the members of the Town Council:

- Staff would not obtain RFP's but would request specific proposals from each individual entity that had been listed.
- Staff would provide next month a ballpark figure for what these services cost.
- Staff believed that using three different professionals would work because the individuals knew each other and were working together on the Jupiter Island project.

8. Shall staff wait an additional 90 days before issuing the survey letters to allow a preliminary streetlight design to be done of the north end streets affected by the Phase I UG work enabling the location of each streetlight to be depicted on a map of the street allowing the property owners to have an indication of the proposed streetlight locations on their specific street? The informal preference expressed by the Town Council on 07/11/06 was "yes."

Motion made by Council Member Wyett to eliminate all sections (3, 4, 5, 6, and 8), that had to do with surveys and proceed on to the other questions. Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.

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End of discussion on street lighting

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A. OLD BUSINESS - REGULAR AGENDA 2 - CONTINUED:

2. Status Report on Cell Phone Service in Town.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell referred to his detailed memorandum to the Mayor and Town Council, dated July 21, 2006, and included in the backup material, to provide a status report on cell phone service in the Town of Palm Beach. He commented on the following:

- Town Council did not have to take any action this month.
- Staff was in touch with all the different entities that provided services in Town, and they were all cooperative.
- Progress was communicative rather than substantive.
- Consideration should be given to amending the Zoning Ordinances to allow the placement of wireless antennas on buildings in Town where they were currently prohibited.

President Coleman advised that last month the Council had discussed expediting the process of installing cell phone service that would address the Town's safety concerns. He noted that it had been determined that even if the process was expedited, it would not expedite the arrival of cell phone service to eliminate those safety issues.

Mr. Elwell commented as follows:

- In September, the Council would have an emergency adoption of an amended Ordinance.
- The Town Council needed some time to look at this issue since the changes were widespread.
- Staff recommended that the Town Council accept the status report as presented and provide direction relative to future consideration of Zoning Code amendments that facilitate wireless antennas.

After further discussion, the consensus of the Town Council was for staff to continue to develop Ordinance changes.

3. Review of Palm Tran Usage Reports and Consideration of Requesting that Service be Discontinued.

[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her detailed memorandum to the Mayor and Town Council, dated August 2, 2006, and included in the backup material, to provide a report regarding further consideration of Palm Tran Bus Routes 41 and 42. She explained that at the July 11th Town Council meeting, the Town Council considered whether to remove Seminole Avenue from the two bus routes that went through Town, using Royal Poinciana Way as an alternative, requesting that Jeannie Taylor, Palm Tran Planning Staff, return this month to provide information on the number of riders on both routes.

Ms. Hannah introduced Chuck Cohen, Executive Director of Palm Tran, as well as Jeannie Taylor advising that they were present today to answer questions.

Chuck Cohen commented that the service Palm Tran provided to the Town of Palm Beach was important. He advised that of the two routes, Route 41 had the best service performance. He discussed the following three services that Palm Tran ran.

1. Route 41 - Downtown West Palm Beach to the northern end of the Island, the Inlet.
2. Route 42 - Downtown West Palm Beach to Lantana Beach.
3. Connection Service - Paratransit Service: Pursuant to the Americans with Disabilities Act of 1990, Palm Tran offered Palm Tran Connection a shared-ride, fixed route, door to door paratransit service for individuals with disabilities. Noted: if there was no fixed route service, there might not be ADA service.

Mr. Cohen advised that Palm Tran never had a community in Palm Beach County request that they remove service. He explained that he did not know what the answer might be regarding Palm Beach Connection service noting that there were approximately eighty Town residents who were registered for that service on any given day. He commented on the two fixed routes:

- Route 41 averaged between 100 and 120 customers on an average weekday; about 20 passengers per hour, which was right on for the system average for passengers per hour on Palm Tran.
- Route 42 performed poorly, averaging approximately 70 riders per day; about six to seven passengers per hour.

Mr. Cohen introduced Jeannie Taylor who managed Palm Tran's Service Planning. A map of Route 41 was presented to discuss, as requested by Town Council, a detailed survey of the Route 41, and the individual ridership of the stops. She commented as follows using the map to discuss the survey, which represented a one day ridership:

- Survey conducted one day in July.
- The yearly average was twenty passengers per hour.
- The average riders on that particular day were 17 per hour.
- Total of 110 riders on that day.
- Survey specifically looked to the ridership north of Seminole to the Inlet to determine the usage on those stops.
    - Forty stops were utilized that day, translating into twenty people getting on and off the buses.

Ms. Taylor advised that two weeks later another in-depth one day survey to validate this information was conducted, which provided the same information. She stated that Palm Tran did know that there was ridership using the stops north of Seminole to the Inlet.

In response to Council Member Markin, Ms. Taylor responded that the survey was conducted the entire day for all seven trips: three in the morning, four in the afternoon. She explained that she had supplied the average number for the entire day, but would review the individual survey data to provide more detail.

Council Member Markin requested that Ms. Taylor report how many people got on the bus on the different runs as opposed to averaging it per day. She requested that the report be very specific in order for the Council to see how many people were taking the bus to get to work in the morning and how many were taking it to leave the Island at the end of the day versus how many people were riding it throughout the day. She reiterated that the Council's question and goal was to see if it was possible to minimize the number of runs as opposed to eliminating the buses altogether, in order to appease everyone.

Ms. Taylor provided the following survey information:

- <u>6:35 a.m.</u>
    - Northbound: 18 stop usages (9 people getting on or off)
    - Southbound: no passengers

- <u>7:30 a.m.</u>
    - Northbound: 69 stop usages (35 people)
        - 35 people got on at Quadrille
        - 2 people got off at Okeechobee and Dixie

        - 1 person got off at Olive
        - 3 people got off at Cocoanut
        - 1 person got off at Hibiscus
        - 7 people got off on Royal Palm Way
        - 2 people got off on Seabreeze
        - 5 people got off at Sunrise and Bradley/Bradley and Park
        - 1 person got off at Seminole
    - Southbound: 3 passengers

- 8:35 a.m.
    - Northbound: 18/ 9 passengers getting on or off
        - 7 people got on at Quadrille
        - 1 person at Okeechobee and Dixie
        - 1 person at Cocoanut
        - 1 person at Royal Palm
        - 1 person at Seaview
        - 1 person at Seabreeze
        - 2 people at Breakers Row
        - 1 person at Sunrise and Bradley
    - Southbound: 2 passengers

In response to President Coleman, Ms. Taylor advised that all passengers do not necessarily get on at Quadrille, and the one person that went beyond Royal Poinciana Way could have gotten on after the bus was already on the Island.

- 1:35 p.m. (First trip in afternoon)
    - Southbound:
        - 1 person at Ocean and Indian
        - 2 people at Reef Road
        - 1 person at Plantation
        - 1 person at Seminole
        - 4 people at Seabreeze
        - 5 at Royal Palm Way and South County Road

After discussion, Ms. Taylor advised that the number north of Seminole was twenty people/40 stop usages for all seven trips. She noted that there were four afternoon trips.

- 3:00 p.m.
    - Southbound:

    - 1 person at Garden
    - 2 people at Kawama
    - 2 people at Canterbury
    - 2 people at Sunrise
    - 1 person Royal Palm and South County Road
    - 9 people in West Palm Beach

- <u>4:00 p.m.</u>
  - Southbound:
    - 1 person at Reef Road
    - 1 person at Mockingbird
    - 1 person at Fairview
    - 1 person at Miraflores
    - 2 people at Bradley and Park
    - 3 people at Sunrise and North County
    - 2 people at Royal Palm and County
    - 1 person at Cocoanut
    - 12 people in West Palm Beach

- <u>5:00 p.m.</u>
  - Southbound:
    - 2 riders at Bradley and Park
    - 1 at Sunrise
    - 1 at Breakers
    - 1 at Royal Palm and County
    - 1 at Hibiscus
    - 11 in West Palm Beach

Council Member Brooks addressed Mr. Cohen stating that a very easy way to resolve this situation, both from an environmental sense and economical sense, would be the use of vans. He suggested the type of vans used at the Breakers, which could easily accommodate the minuscule number of passengers reported by Ms. Taylor.

Mr. Cohen commented in response to Mr. Brooks:

- Palm Tran did not own any vans.
- The smallest vehicle they had was a 30' bus, which was what they typically used.
- Vans would not provide adequate capacity as the smallest vans typically held 18 passengers.

- Palm Tran Service Board had adjusted Route 41, about one year ago, removing half the trips.
- Buses cleaner regarding emission of diesel fumes.

The Mayor and Town Council commented as follows:

- Number of buses could be reduced by half to save money.
- Service was excessive north of Publix.
- Issue began as a result of Seminole Avenue residents.
- Smaller buses were needed, running the 30' buses was not the answer.

In response to the Mayor and Town Council, Mr. Cohen commented as follows:

- Agreed a compromise was needed so that service would not be eliminated from the Island.
- Palm Tran had been cooperative in the Council's desire to remove service from Seminole, and they were still willing to pursue that.
- Safety was paramount to Palm Tran, which was an issue, as many of the streets do not lend themselves to vehicles safely turning.
- Seminole Avenue had been used because it provided safe access to turn the buses, not because of the ridership.
- Noted that Palm Tran was willing to look at other streets and suggested Royal Poinciana Way.
- Chairman of Palm Tran's Service Board, Sid Dinerstein, had gone on record stating that when providing bus service primarily for a community, it should be the community that ran the service.
    - Mr. Dinerstein would advocate that the Town take over running vehicles, but that it not be a fixed route.
- If the Town ran their own service, it would impact the people who rely on Palm Tran Connection.
    - If there was no fixed route service, in all probability, there would not be any ADA service.
- Palm Tran was looking for a compromise in trying to find a sensible alternative.
- Not economically sound for Palm Tran to operate buses less than 30'.
    - If the Town Council recommended a reduction in service, he would bring that back to the Board for discussion.

Discussion ensued regarding Palm Tran's service in Town relative to the following:

- ridership
- survey
- bus size
- vans
- economics

Council Member Markin made the following comments:

- Recommended Palm Tran look at severely reducing the number of routes in Town.
  - Provide the Town with one route in the morning and one route in the evening to accommodate workers.
  - Noted that the bus drivers were speeding down Seminole Avenue and residents complained about them speeding.
- Palm Tran stopped at the Town's Publix, which they had advertised as a stop, with the engine running for 15 to 20 minutes while the bus driver went in to have lunch.

In response to President Coleman, Mr. Cohen commented:

- Ventured to guess that a new 30' passenger bus cost between $250,000 and $300,000; a new van, depending on the size, would cost between $75,000 to $150,000.
- The useful life of a bus was 12 years and a van 3 to 5 years.
- The cost of the capital acquisition was about $15,000 a year.

President Coleman stated that perhaps the Town should supply the van and Palm Tran would supply the driver adding $15,000 a year to the Town's budget.

President Coleman thanked Mr. Cohen and Ms. Taylor for appearing before the Council.

Public Comment:

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

- Noted that several bus passengers had informed her that there were approximately thirty to forty people that rode the bus to work in the morning, returning home in the evening.
- Noted the thirty to forty passengers reduced the number of cars parked on the

north end. The Council should give that serious consideration when discussing parking later on during the meeting.

- Noted that there were too many massive trucks in Town that were destroying the streets and polluting the air.
- Noted that many of the residents appreciated the fact that their help rode the bus, and did not bring cars into Town.
- Noted a compromise should be made, but in doing so, the Town should bear in mind parking, ecology, the savings on gas. The Town should look at this fairly, noting that the buses do good as well as harm.
- Asked how the Town could encourage more people to ride the bus, not to help Palm Tran, but to help traffic in Town.

Eleanor Brandman, 2773 South Ocean Boulevard, disapproved of conducting surveys in Town during the summer. She commented that surveys should be conducted during the season when more people were in Town who used the buses. She advised that she did not drive and depended on the bus to take her to the doctors, Publix, etc.

Discussion ensued regarding compromise, the possibility of reducing the number of trips on Route 41, and the use of a van donated by the Town with labor provided by Palm Tran.

Mr. Cohen commented:

- Palm Tran was amenable to looking at reducing the level of service, if that was the suggestion of the Council.
- Palm Tran would look at the performance of Route 41 and Route 42.
  - Noted that Route 42 was the poor performer of the two routes.
  - Noted that they had looked at combining the services of both routes, but at this point, had not found a service alternative that they liked and could suggest to the Council.

President Coleman stated that he had asked whether it would be possible for a van to be used on the Island, more frequently, in order to provide better service. The buses would be used as depots picking up passengers at the bridges, and then taking them to wherever they were going, and where there was more of a demand for service.

Mr. Cohen responded that he was not sure that could be done. He advised that Palm Tran tried to coordinate their service on a schedule that was compatible for transfer customers. Palm Tran's focus was their customers and safety. He noted that to do what was being suggested might allow for physically running the vehicle, but then passengers might miss the transfer connections that made Palm Tran such an easy alternative to use.

In response to Mayor McDonald, Mr. Cohen advised that Palm Tran Connection provided six different types of services, with the majority of services used for people with disabilities. He noted that typically six passenger vans were used to service those customers who could not use the fixed route buses. He reiterated that one of the reasons that Seminole Avenue was used was due to the safety of the turning movements required by the buses. He believed that there might be another street that could be used, but they have tried to err on the side of safety in their service planning efforts.

Mayor McDonald stated that Palm Tran had not been using the buses for disabled riders because the disabled riders used Palm Tran Connection service. He advised that if the bus stop was moved to Royal Poinciana Way, the space required for a bus stop to meet ADA requirements would not be needed because Palm Tran was not transporting those persons.

In response to Mayor McDonald regarding ADA requirements, Mr. Cohen advised that Palm Tran followed federal regulations for operating a bus, which required bus stops to meet certain ADA requirements.

Kathryn Jordan, 250 Bradley Place, agreed that the survey should have been conducted during the season. She stated that it was important to have services supporting the staff of Town residents. The question she asked was whether they had ever looked at the trends in traffic patterns. She maintained that it appeared the Town was positioned for expansion, and before eliminating the buses and incurring capital expenses, it should be determined if there would be an increase or decrease in the Town's traffic patterns.

Mr. Cohen responded that Palm Tran looked monthly at the trends. He noted that the trend on Route 42, over the last several years, had steadily declined. He advised that about a year and a half ago, changes had been made to both Route 41 and Route 42, reducing the frequency of service on both routes. He noted that since then Route 42 ridership had continued to decline and Route 41 ridership had stabilized. He explained that when schedules were established, people become more confident in that service. He stated that it was off-season for them, and they were not surprised that their numbers were a little down from what their yearly averages were.

Council Member Wyett advised Ms. Jordan that the Town was not expanding as it was fully built out. The number of registered voters was down and the population of Palm Beach remained stable.

Discussion ensued regarding average ridership for the year 2006, as provided in the backup. Mr. Cohen discussed the different performances measures that Palm Tran considered in particular the number of passengers per revenue hour.

Council Member Markin advised that the Council was there to look at the satisfaction of their residents, where they live, and the quality of their life. She maintained that was what was driving this conversation.

Joanne Warshaver, Seminole Avenue, suggested that bus service should be reduced to two trips a day: 7:30 a.m. and 5:30 p.m. She advised that if a third trip was found to be needed, it could be at 1:30 p.m. or 2:30 p.m. She maintained that there was no reason the bus drivers could not use Sunrise Avenue to safely make their turns, eliminating the use of Seminole Avenue.

Motion made by Council Member Wyett requesting that the administration of Palm Tran re-analyze the service in Palm Beach to reduce the number of bus trips each day; consider eliminating or reducing service north of Publix; eliminate service on Seminole Avenue.

President Pro Tem Kleid requested that they consider the elimination of using Seminole Avenue, use one of the other streets, and consider the idea of using vans.

Herbert Hoffman, 235 Seminole Avenue, commented that the residents of Seminole Avenue only wanted "SOS", Save Our Seminole. He stated that Royal Poinciana Way or Sunrise/Sunset should be considered as alternatives.

Clay Marston, 389 South Lake Drive, stated that buses could be donated by a benefactor as has been done with ambulances, etc. He noted that there were options available as to the types of buses that could be used. He advised that Blue Bird Bus Company from Winnipeg, Canada made five different buses.

The motion made by Council Member Wyett was seconded by Council Member Brooks.

Town Manager Elwell clarified what he believed the component pieces of Council Member Wyett's motion were, noting that there were four things that the Council was requesting the Palm Tran Board to consider:

1. Reduce the trips on Route 41.

2. No trips at all north of Publix.
3. Eliminate any stops on Seminole.
4. Consider the Council's concept of running Town purchased vans instead of Palm Tran purchased buses.

President Coleman advised that he did not believe that there was a consensus of the Council regarding Town purchased vans.

Council Member Wyett advised that his motion did not include Town purchased vans.

On roll call, the motion carried unanimously.

4. Proposed Model Program for Feral Cat Management.
[Sarah E. Hannah, Assistant Town Manage

Assistant Town Manager Sarah Hannah referred to her detailed memorandum to the Mayor and Town Council, dated July 28, 2006, and included in the backup material, to provide a report regarding the proposed model program for feral cat management and the proposed nuisance ordinances. She explained that, at the July 11th Town Council meeting, staff had been directed to:

- Supplement the feral cat management program proposed, at that meeting, by incorporating a consideration of euthanasia and relocation of feral cats.
- Propose an accountability system for any program that the Town might decide to fund.

1. Proposed Nuisance Ordinances

Ms. Hannah discussed the changes that Town Attorney Randolph had proposed at the June 13th Town Council meeting, as included in the backup material.

- Sec. 10-41. Registration; inoculation.

  Proposed deleting the last sentence:

  (b) "Cats shall not be required to wear a collar or tag but shall be required to be registered and inoculated pursuant to the provision of this article."

Proposed the addition of: cats more than four months of age in addition to dogs.

Mr. Elwell advised that Sec. 10-41 was a provision used in conjunction with Sec. 10-42, which required all cats in Town more than four months of age wear a collar with a tag denoting current effective registration and inoculation data.

- Sec. 10-42. Collar and tag.

President Coleman suggested that the Ordinance be modified to include that cats would be required to wear either a collar or a chip in order to identify domestic cats.

Ms. Hannah stated that what the proposed Ordinance suggested was that cats more than four months of age either wear a collar or have a chip implanted.

Discussion ensued with Mr. Brooks recommending that Sec. 10-41 state that dogs over the age of four months definitely wear a collar, but it should read that cats over the age of four months wear a collar and/or a chip. He explained that some cats do not like to wear collars and try to remove them.

Council Member Markin advised that it would be very difficult for the Town to enforce this Ordinance; she believed it was the responsibility of the owner to have an animal, in their home or otherwise, adequately identified.

Discussion ensued regarding enforcement of this Ordinance. Town Manager Elwell stated there would not be field enforcement of the Ordinance, but the Ordinance, as currently written, did not request cat owners to identify their animals. The Ordinance stated that dogs had to wear a collar including tags to show that they were registered, but cats did not. The proposed Ordinance would state that cats had to wear either a collar or a chip. It would be the owner's obligation to show that the cat had been registered.

Mr. Elwell stated that as a practical matter it might help to match up an owner with a cat, but if the Ordinance did not succeed in doing that, at the very least what it had done, was remove the onus of responsibility, so that it could not be suggested that the Town was negligent in protecting the domesticated cats.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve the proposed Ordinance amendments to Chapter 10 (Animals) of the Town of Palm Beach Code of Ordinances.

B. Mandatory Spaying and Neutering of Animals

Assistant Town Manager Hannah discussed the issue of the mandatory spaying and neutering of animals. She advised that Town Attorney Randolph's research found a couple of municipalities that had required spaying and neutering. The response received from the County was that they had previously proposed mandatory spaying and neutering, and the County Board of Commissioners turned it down stating that they would be willing to reconsider that issue in the future. She noted that several months ago the Council had requested Town Attorney Stirling Clarke look at mandatory spaying and neutering of homeowners' pets.

President Coleman questioned whether the Town had the right to do that and stated that before discussing whether the Town should do that, they should determine if they had the right to do so, not just in Palm Beach but in the United States.

Ms. Hannah advised that the Town Attorney informed them that under home rule, the Town might be able to institute mandatory spaying and neutering.

Council Member Wyett stated that he did not believe you could tell people they had to do that. He noted that there were many people who do not believe in spaying or neutering. He advised that there were pet owners who owned very valuable dogs and wanted to have their pups, which would be very valuable to them.

Ms. Hannah advised that the County had proposed exemptions such as if one wanted to breed their animal.

Council Member Markin commented:

- She did not believe this could be enforced with dogs.
- The issue in Town was relative to people who were feeding stray cats outside in their yards, not feral cats.
- She did not object to passing an Ordinance that stated, "If you have a cat that was kept outside, it should be mandatory that it be spayed or neutered."

Council Member Brooks commented:

- When adopting an animal, a cat or dog, it was automatically spayed or neutered.
- The Town cannot require mandatory spaying and neutering of dogs.
- An owner might have a champion dog they would like to use for a stud.
- The Town should make it mandatory that feral cats be neutered or spayed.

- Most domesticated cat owners have them either neutered or spayed.

Motion made by Council Member Markin, seconded by Council Member Wyett, to pass an Ordinance that made it mandatory for any cat that was kept outdoors must be neutered or spayed. [There was no vote taken and further discussion was held.]

President Pro Tem Kleid advised that he would vote yes, but he believed it would be very difficult to enforce.

After further discussion regarding the adoption and enforcement of an Ordinance that made it mandatory to spay or neuter any cat that was kept outdoors, **it was the consensus of the Town Council that a formalized Ordinance would be brought before them at the next Town Council meeting for first reading.**

Council Markin advised that there was an individual who kept cats outside refusing to have them spayed/neutered. Those cats were producing kittens, and at present, no one had the right to spay or neuter them. This Ordinance would provide the Town with the tool to do that, otherwise the entire program would be undermined.

Beth Pouncey of P.B. Cats, Inc. reviewed some facts that were covered by Palm Beach County law.

- No cat or dog could be allowed off an owner's property unless it was neutered or spayed and had a rabies shot. Asked if the Town Ordinance would supercede the County Ordinance.
- She advised that once an animal left its owner's property, it was fair game for any neighbor to trap and take to the County facility.
- P.B. Cats would vaccinate, clip the ear, microchip and then put the cat back where it had been found.
- The law further stated:
  - After contacting the County facility, an owner would have to pay an impound fee when picking up their pet.
  - Animal had to have rabies license when leaving the facility.

Ms. Pouncey advised that in order to tell if an animal was spayed or neutered, the vet would shave the stomach and the spay scar would be there. In the instance of male cats, a determination could be made as well.

President Coleman advised that the Town would not be doing anything wrong then, just conforming to County law, and passing Town Ordinances that they could enforce instead of relying on the County.

C. Reduce the Number of Domesticated Household Pets on Premises.

Town Manager Elwell noted that the next issue was whether to reduce to a number smaller than ten the maximum number of domesticated animals a person could keep.

Council Member Wyett commented:

- It would be very hard to enforce the number of pets allowed, especially if the animals did not roam.
- The Town arbitrarily chose ten animals as the number of pets allowed on one's premises.
- Discussed cat colonies as they related to the proposed Ordinance to limit the number of animals.

Mr. Elwell stated that the Council needed to determine if they were comfortable with a ten-animal maximum. He noted that, as a matter of enforcement, to insert into the Ordinance a distinction between in the house and roaming would be very difficult.

Council Member Wyett advised that he understood that cat colonies were self-determining and they usually had a lot more than ten cats. He advised that he was not advocating more than ten animals. The question he was proposing was how an ordinance limiting numbers would apply if someone was feeding a cat colony with a normal number of cats, determined to be between twenty and thirty, on their premises.

Council Member Markin advised that she did not want to confuse cat colonies with this Ordinance and noted that discussion of cat colonies would take place later on in the meeting. She explained that what they were talking about were domesticated pets that someone might have in their house. She noted that unless there was a nuisance, she did not think the Town wanted to try to enforce less than ten. It was the number the County used and was a viable number which was already in the Ordinance.

Council Member Brooks commented:

- Discussion pertained to domesticated household pets and not cat colonies.
- Supported reducing the number from ten to five.
- Town Attorney Randolph should eliminate the last five words, which referred to

fish in Section 10-3 of Chapter 10. Fish could not be considered domesticated pets.

Council Member Markin made a motion that the maximum number of pets should remain unchanged at ten, as was currently written in the Ordinance. The motion died for lack of a second.

Mr. Elwell advised that the Town Council did not have to take any action today, and in the absence of directing staff to take action, the Ordinance brought forth next month would not include this issue. Affirmative action would be needed if the Council wanted staff to include it in the Ordinance.

Council Member Brooks made a motion to amend the Ordinance to read that the number of domesticated animals allowed was not to exceed seven animals. Council Member Wyett seconded the motion.

Council Member Wyett advised that he seconded the motion noting because it was primarily an unenforceable situation. It was merely a weapon in case someone had in excess of seven animals and did not do the right thing by them allowing the Town to step in.

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

D. Temporary Animal Permits

Assistant Town Manager Hannah advised that staff recommended an additional exception be created to allow Temporary Animal Permits for animal displays used in conjunction with educational wildlife programs on Town property and on public or private school property within the Town. The Town's Temporary Animal Permit presently only included petting zoo type situations.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to approve creating an additional exception to the Ordinance on Temporary Animal Permits allowing for animal displays used in conjunction with educational wildlife programs on Town property and on public or private school property within the Town. On roll call, the motion carried unanimously.

E. Bird Feeding

Assistant Town Manager Hannah advised that Town Attorney Randolph had addressed the issue of feeding birds and other animals on public property by drafting a new section into the Town of Palm Beach Code of Ordinance, which would provide as follows:

> "It shall be unlawful to discard, place or throw foodstuffs, seed, garbage or organic materials of any kind onto the public streets, rights-of-way or public properties of the Town."

President Pro Tem Kleid proposed that a motion be made to approve the language provided by Town Attorney Randolph.

In response to President Coleman, Town Manager Elwell advised that the penalties fell under the normal range of penalties within the code enforcement provisions of the Town Code. He stated that it would go to Code Enforcement.

Council Member Markin stated that they should be very careful with this Ordinance because currently the Town had a TNR program, and the verbiage did not support or accommodate the TNR program. She noted that the pigeon issue, which she believed was the reason this issue was raised, had gone away. The person feeding the pigeons had agreed not to feed them any longer. She stated that she did not believe that an Ordinance should be passed for one particular incident that no longer existed. It could jeopardize a program that accommodated the residents who did not want cats being fed on their property.

Mr. Elwell advised that the Town of Palm Beach Code of Ordinances did have a provision in it that had language to the effect of excluding Town sanctioned animal management programs. He noted that between now and September 7th, staff could put a tag line on it, where prohibition of feeding pigeons/birds would be put in place, but it would exclude the Town sanctioned animal management feed program.

Connie Gasque, 167 Root Trail, commented that the pigeons continued to be fed daily on Root Trail. She stated that she would like the Town to enforce code violations related to Section 10-8 of the Animal Code, which addressed raising and boarding of animals. She maintained that the Ordinance was not being enforced.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, that there be no feeding of animals in public spaces with the exception of the Town program. On roll call, the motion carried unanimously.

Gertrude Maxwell, founder of Save-A-Pet, advised that she had worked with Palm Beach Animal Care and Control since 1978. She read a statement into the record in support of the feral cats, and commented as follows:

- The bottom line was money and she urged the Town to try to raise more money.
- Every time she had a fund-raiser, she would give the Town a portion of what was raised.
- Supported micro chipping.
- Against euthanasia.
- TNR was definitely the answer.
- Against limiting the number of animals to seven.

**********The luncheon recess was taken at 12:40 p.m.***********

**** The Town Council meeting of August 8, 2006, was reconvened at 2:00 p.m.*****

President Coleman stated that he was very appreciative of Mrs. Maxwell coming today and talking to the Council. He was very glad and heartened by her commitment of her organization Save-A-Pet to be financially contributive to the Town's project. He asked Ms. Hannah if she would report back to the Council next month on how significant that contribution was going to be to the Town's efforts.

Assistant Town Manager Hannah advised that they had addressed the Ordinances before lunch and now discussion would take place on the items that the Council had requested more information on at the July 11, 2006 Town Council meeting.

- What can the Town do to deal with the unwanted cats?
- How to hold accountable any feral cat management program the Town chose to fund?

Ms. Hannah stated that Greg Lunsford of ORCAT, mentioned last month the 10th Life Sanctuary, which had their corporate offices in Boca Raton, but the sanctuary was located in Clewiston. She reported that lifetime care charges were $400 admission per cat, and if the cat was healthy, spayed and neutered, and had all its shots, the fee would be $300. She explained that you had to apply for acceptance. She referred to a letter received from the Director of 10th

Life Sanctuary indicating that they were out of space, and if the Town did want to bring over a substantial number of Town cats, they would need to add onto the facility, which required additional funding.

Ms. Hannah advised that the cost to trap a cat, as previously mentioned at the last Town Council meeting, was $165 per cat. If a cat was to be trapped and taken to 10th Life, the cost would presumably be between $465 and $565 per cat.

Ms. Hannah discussed the issue of euthanasia reporting that Mr. Lunsford had advised that in the beginning of their program, in the mid 90's, ORCAT had to euthanize some of their cats. She noted that he later clarified that statement informing them that, in the beginning of their program, there were 2000 cats in their little area of four square miles, and they only euthanized the ones that were not healthy. She noted that the Town did not have nearly that many cats, and the Town's cats were mostly all healthy.

Ms. Hannah stated that she spoke with Animal Care and Control who charged $20 to euthanize a pet but did not charge for euthanizing a feral cat. She noted that when Animal Care and Control received a cat, they checked to see if it belonged to someone by checking to see if its ear had been clipped. If it did belong to someone, the owner was called and given the option of coming to pick up the cat. If the cat had not been picked up, they usually euthanized it because feral cats were unadoptable.

Ms. Hannah advised that a feral cat management program should be accountable to the Town because the Town was its primary funding source. She had contacted the United Way and viewed their website since they fund nonprofits based on their ability to fulfill the United Way's mission and goals. She explained that once a nonprofit received a grant from United Way, they had to produce periodic reports, and the grants were dependent upon these reports. The United Way made sure that the organization followed the mission and produced reports. The United Way gave their money in two different ways: monthly or one lump sum at the beginning of their fiscal year. The monthly installments allowed them to make sure that the nonprofit was keeping up with their reporting and the mission of United Way on a monthly basis. If the organization was not, United Way could immediately pull their funding. Those with a lump sum might get their money the first year, and if they were not producing, would not get it the next year.

Ms. Hannah stated that she proposed a compromise because she did not believe a monthly disbursement to the feral cat management program gave them the leeway and the opportunity to succeed and be effective. She advised that she believed that they needed more seed money to get started. She advised that she offered a proposition that if the Town chose to fund the program, the funds would be distributed three times per year. The first payment would be made October 1, 2006 which would give them the seed money to get started.

Ms. Hannah discussed the necessary criteria in order to receive each of the installments, as presented in the backup material. She noted that the first installment criteria, because it was known that they do not have any money, did not require any money and just required time and commitment of the Board of Directors.

In response to President Coleman, Ms. Hannah advised that she did not know how much money it would take to bridge them from now to October 1, 2006.

Ms. Hannah explained that in discussing the criteria, she did not mention a reduction of cats, because she believed some time was needed to organize and revamp before any substantial reduction in the cat population could be seen. She also recommended that the Council accept Council Member Markin's offer to serve on the Board of Directors for the cat management program and to help put together the Board of Directors. Town staff could help in the search of the director by working with the Board to put together a job description, advertising the job for them. The Town could allow them to use office space until the June 1, 2007 deadline, when they were required to have their own office space.

Ms. Hannah stated that as a reminder, she had proposed a $200,000 budget for a successful, effective model program. She explained that whether or not the Council chose to fund any portion of it, it was something that staff was asking Council to determine at this meeting.

President Coleman suggested that they hear comments from the Public before continuing on in the Council's usual manager.

Vicki Hunt, 161 Via Palma, commented in support of P.B. Cats and urged the continuation and enhancement of the feral cat management program. She noted that she had provided the Council with a book containing information as to why they were on the right track and urged the continuation and enhancement of the feral cat management program.

Allen Mason, President of P.B. Cats, read a prepared statement into the record, which was directed to staff recommendations only.

- Clarified that P.B. Cats provided humane living conditions for their homeless cats.
- Supported staff recommendations making three minor modifications:
    - Relocation: Did not recommend the idea of relocating cats to

10th Life or any other sanctuary type location as that concept had not been proven to be viable.

- Euthanasia: Not in support of euthanasia. Town-sponsored euthanasia would generate negative press both locally and probably nationally.
- Funding Installment Schedule:
  - Hire an executive director and two feeders as soon as possible. Noted their goal would be October 1, 2006.
  - Requested funding of $100,000 at that time.

Mr. Mason stated that other than the three modifications they were in accord and enthusiastic about the staff's recommendations and welcomed the opportunity to have Council Member Susan Markin work with them to elevate this program. He stated that their goal was to have a major and visible presence in Town as soon as possible and as early in the season as possible.

Mr. Mason read a note from Mrs. Maxwell into the record: "We should focus on the importance of the prevention of losing our natural wildlife heritage of feral cats. Knowing that there was a history of inhumane, wasteful exterminations, that cats play a necessary and beneficial part of the ecological system. Without them, out Island, the most beautiful, tropical place to live in the world would be overrun with rats."

President Coleman stated that this was a complicated and highly emotional issue. He reported that he supported Mayor McDonald's statement that the Town had a responsibility because the resident's quality of life was involved. He discussed the following:

- Expectation that the feral cats would still kill rats, while a feeding program was in place.
- Charitable endeavors of the residents as it related to the feral cat issue.
- Supported protecting residents' point of view.
- Supported Ms. Hannah's recommendations of real life benchmarks.
- Encouraged by commitment from Mrs. Maxwell's organization, Save-A-Pet and looked forward to hearing a dollar commitment in order to include that amount in the budget.
- The need for the Council to hear some hard numbers from Mr. Mason of P.B. Cats as it related to what they anticipated raising.
- Advised that he would be reluctant to go forward with the program, if the money was not achieved by P.B. Cats without going to some of the options previously discussed.

- The citizen complaint business was the Council's responsibility. The charitable side resided with the community. The solution was a partnership between the two.

President Pro Tem Kleid commented that the feral cat problem on the Island was as much of a Town problem as were beach renourishment, drainage and the burying of utilities. He stated that the Town must have a public/private effort in this matter. He advised that the project should be funded so it would work, and suggested attaching conditioned precedents to any funding by the Town, such as what was previously outlined. The hope was that if this project could get up and running with an effective board, the Town would be able to get that organization to raise money themselves, which would diminish the funding requirements of the Town. He reported that he would be in favor of funding this project on a yearly basis for the first year only. The Town could then see how much money was actually going to be raised by P.B. Cats, and the Council revisits this at another time. He stated that proper funding was the key to success.

Council Member Markin stated that from a business standpoint the Town had a choice. She stated that like it or not, it was a Town issue. She went on record as stating that she was not a cat lover, but she loved her dogs and loved animals. She noted that she was not spending her time and energy on this because she was a cat lover and wanted to take that out of the equation. The issue should be looked at from a business perspective, taking the emotion out of it. She commented further:

- Complimented Assistant Town Manager Hannah on spending the time over the last sixty days to come up with this detailed business plan.
- Noted that public/private sectors across the country had merged funds, efforts and resources to solve problems that could not be solved just by charitable donations or just by government entities.
- The Town had a choice:
  - Walk away from this program, which has been in place for the last three years; or
  - Set up their own animal control situation, which would easily cost the Town more than half million dollars, which from a business perspective did not make sense for the Town.
- Reviewed the proposed expenses as listed in the back-up. The $200,000 figure was realistic.
- Hire an executive directive, as soon as possible, effective October 1, 2006. Noted she had several people in mind who were very capable for that position.
- Five new people were willing to serve on the Board. All had committed to start serving immediately and were very capable, confident people who were willing to

put the effort, time and money into this program.

- Noted she would continue her commitment and agreed to serve on the Board for at least the first year.
- Agreed with spreading out the payments three times a year but recommended that the first payment be made September 1, 2006 as opposed to October 1st. The organization was out of money.
- The feeders would not continue without getting paid on an hourly basis.
- Hire two additional feeders.
- Suggested looking at the plan as presented in the backup and move the funding dates up from October 1st to September 1st; January 1st from February 1st, and May 1st from June 1st.
- Noted that in order to pull the organization together and get it going in a business way required up-front money. The Town must front load the money as much as possible, as far as funding. Noted the Council would be very pleased on the backside after seeing the kind of money that could be raised, and what kind of commitment they could get with the community.

In response to Council Member Markin, Ms. Hannah stated that she did feel the figures were accurate and advised that she got most of her numbers from what currently was being spent by P.B. Cats.

After reviewing the proposed expenses and adjusting several of the items, Council Member Markin commented that the initial cost would be a little over $67,000, which did not include trapping cages and the time it took to trap some of these animals. She recommended that the Council, when looking at how and if they want to fund this program, look at front end loading: major funding in the beginning with a commitment from the organization to comply with all the things recommended as far as reporting, hiring, and the commitment to fundraising.

Council Member Wyett stated that Council Member Markin did an excellent job in thinking this out and he endorsed most of the ideas. He noted that he agreed with the TNR. He suggested that once a figure was reached for funding the program, it be funded as follows:

- 1/3 up front effective August 1st, retroactive.
- 1/3 November 1st, which was three months forward.
- 1/3 on the date of the January Town Council meeting, provided that P.B. Cats performed to the guidelines that were set up, and providing that they had raised an agreed upon amount of money during that period of time or had a function planned.

Council Member Wyett expressed continued concern regarding the complaints of residents residing on Kawama Lane.

Motion made by Council Member Brooks that $75,000 be taken from the Unreserved Balance Fund and given to P.B. Cats, Inc. with the provision that it was a matching grant. $25,000 be moved retro to August 1st, $25,000 on October 1st, and $25,000 on December 1st.

In response to Assistant Town Manager Hannah, Council Member Brooks advised that he was not suggesting that the funding not be tied to the criteria as she laid out. He stated that Mrs. Markin did a nice job laying out where there would be up-front costs and where other matters could be divisible by three. He noted that he was looking to get $75,000 to P.B. Cats with the provision that there be a matching $75,000.

President Coleman asked Mr. Mason what the realistic expectation of a contribution was from the private sector, if this was to be a private/public partnership?

Mr. Mason stated that it would be over a period of time, not a long period of time.

President Coleman advised Mr. Mason that the Town was the underwriter and asked him to be specific. He noted that he wanted, on the record, some real numbers and some real time frames. He stated that he would be asking some hard questions regarding accountability.

In response to President Coleman, Mr. Mason stated it would take them until the middle of the season, before they got situated, sometime probably in February or March. He advised that the heart of the season started in January, and guessed that they would raise $70,000 by March.

In response to President Coleman, Mr. Mason advised that if they did not raise the $75,000, the organization would have to have emergency funding personally provided by the people on their Board. He noted that he did not know how much other people would contribute.

After further discussion regarding private sector funding, President Coleman asked Mrs. Maxwell how much money she believed Save-A-Pet would contribute to Palm Beach within the next twelve months?

Mrs. Maxwell responded that Save-A-Pet would contribute $20,000.

President Coleman made the following comments:

- It was not the Town's responsibility to start a long term cat feeding program.
- The Town's responsibility was to take care of the complaints received from Town residents.
- Respected that other people could have different points of view, and he would not be preempted in asking how much people would donate.

Council Member Markin stated that she viewed this project as a partnership between private citizens and the Town. The only way she would be willing to be on the Board was if the Town was committed to this program in a partnership way, in which they were equal partners. She advised that a realistic number to ask this organization to raise was $50,000 for the year.

President Pro Tem Kleid stated that the Council needed to get back to the fundamentals and that they really had to agree that this was a Town problem. The only way to solve this Town problem, for the satisfaction of both the P.B. Cat people and the people who were complaining about the cat problem, was to manage the feral cat population and hopefully, reduce it. He advised that if this was funded inadequately, it would be doomed from the inception. He added that the preconditions had to be included. The first year the Town would have to fund it, watch and monitor P.B. Cats to see that they did all the things they could to raise money. If the Town found that they were ineffective in this manner then it had to be revisited.

Mayor McDonald suggested to the Council that this year the Council approved $150,000 to fund this program, for the next year the amount be reduced by any amount over $50,000 that the organization was able to raise themselves. He noted that next year the Council would have the opportunity of budgeting nothing for the program, if it failed, but an alternative would have to be developed.

Council Member Wyett seconded the motion made by Council Member Brooks. He noted that he was seconding the motion with an amendment deferring the last payment to the January Town Council meeting.

Council Member Brooks clarified his motion that the $75,000 should be taken from the Undesignated Fund Balance giving a payment of $25,000 retroactive to August 1st, another $25,000 on October 1st, and the final payment in mid-January 2007. The $75,000 was to be matched by P.B. Cats during the 2006/2007 fundraising season. The Council would revisit the issue at the January 2007 Town Council meeting.

Mr. Elwell explained that because the first payment of $25,000 would occur during the current fiscal year, it would come from the Contingency Fund within the General Fund. The other two payments, as he understood the motion, would not be applied to the Town's tax rate, but would be transferred into the budget from the Undesignated Fund Balance in the amount of $50,000 to be expended in the amount of two $25,000 payments, if the markers the Council established were met.

Council Member Brooks stated that President Coleman made a very valid point and requested that Mr. Mason address at a later date, Mr. Coleman's observation that if the feeding of the cats continued, the cats would not chase the rats. He requested that they come up with a scientific approach to that.

Ms. Hannah requested clarification of the motion advising that she was not quite sure how the money would be matched.

After further discussion regarding funding of P.B. Cats, Council Member Wyett advised that he was withdrawing his second to the motion. He stated that he misunderstood the numbers explaining that he agreed with Ms. Markin that $75,000 would not be enough money. He noted that he had believed Council Member Brooks had authorized $150,000.

William J. Diamond, 220 Wells Road, asked if attached to the money, there were any requirements for a reduction in the number of cats on the Island? He stated that if there was such a requirement, the number of cats the Town started with would have to be determined and made part of the goals.

President Coleman responded that he had asked that question and was advised that would not be known until there was a process in place to find out how many cats the Town had. He stated that, in his point of view, the Town had too many cats otherwise they would not be sitting here talking, which meant the population should be reduced.

Mr. Diamond rhetorically questioned if that should not be a requirement of public monies being given for this purpose.

President Pro Tem Kleid advised that he agreed and wanted to add that requirement to the goals. He suggested that the colonies be counted in order to determine the optimum population required with an objective of possibly controlling the rat population. He stated that he also had to agree with Ms. Markin that the Town must fund this program correctly or it would be doomed for failure from the beginning. He noted that public financing needed to be put in place, and then hopefully, private financing would follow. He advised that underfunding this project was not the way to proceed.

Council Member Markin responded to Mr. Diamond stating that it was very much an objective of the program to minimize and diminish the number of cats on the Island. She noted that the main objectives the Board needed to figure out were:

1. How many cats were currently on the Island?
2. How many colonies?
3. How many cats in each colony?

Council Member Markin commented that the feeders would be trained to keep an inventory of the cats when feeding them, which was difficult, technical and time consuming.

Mayor McDonald commented:

- A unanimous solution was emerging.
- In response to Mr. Diamond's question, he explained that when the Town donated $200,000 a year to the Four Arts Library, the Town did not base it on how many books were checked out each year by residents.
- Acknowledged Mr. Brooks efforts to tie the funding to a bottom line of expenses.
- Government did not always invest to meet a bottom line of expenses, but invested to make a community better, which was the decision here, at least for the first year.
- The program had to be funded properly to make it work.

President Coleman stated that the Council gave $200,000 to the Four Arts because the Town's tax base in the County taxes would increase by $4.5 million. He noted that they were spending $200,000 so that the residents were not taxed $4.5 dollars and that was the only reason.

Motion made by Council Member Wyett that the Town Council appropriate $150,000: $50,000 to be provided immediately; $50,000 on November 1st, which was 90 days later; and $50,000 on the occasion of the January 2007 Town Council meeting, providing that the goals, objectives and some progress had been made to the satisfaction of the Council on that date. Council Member Markin seconded the motion. On roll call, the motion carried 4/1, with Council Member Wyett, Council Member Markin, Council Member Brooks, President Pro Tem Kleid casting affirmative votes; President Coleman cast a dissenting vote.

Mr. Elwell requested clarification regarding the January 2007 performance threshold that was to be met. He asked if the November 1st payment was tied to any specific written set of criteria.

Council Member Wyett responded that the November 1st payment was not tied to any specific written set of criteria, because P.B. Cats needed that funding in order to get started.

Mr. Elwell clarified that the first $50,000 would indeed be a contingency appropriation from this year's budget, the next $100,000 would be an expenditure item within the budget that the Council would be adopting in September. He explained that there was $50,000 there right now, and it would be increased by $50,000.

Discussion ensued regarding funding as it related to incremental payments, the funding source and the November 1st payment. Town Manager Elwell advised that the Council would not take action today to appropriate that last $50,000.

5. Further Consideration of Proposed FY 07 Budget.
[Peter B. Elwell, Town Manager]

a. Funding for Web-based Software Application.

Town Manager Peter Elwell referred to his detailed memorandum to the Mayor and Town Council, dated July 25, 2006, and included in the backup material, recommending FY2007 funds for web-based software systems in place of the Citizens Satisfaction Survey. He explained that at last month's Town Council meeting, the Town Council removed $30,000 from the budget for the proposed Citizen's Satisfaction Survey, indicating the survey might be conducted next year. The Town Council, at that time, agreed that they would welcome a proposal from staff to allocate those funds for the purpose of implementing additional interactive web-based applications to provide better communications for the Town residents.

Mr. Elwell discussed the two alternatives identified by staff. The two web-based software systems proposed could be implemented now and would work well in conjunction with the Town's five year software plan. He explained that one application cost a bit less than $30,000 while the other cost a bit more than $30,000. The options were as follows:

1. Creating and organizing the Town's minutes in a digital audio format.
2. Implement the ability to allow online inquiry and payments for parking tickets issued within the Town.

Mr. Elwell explained that either one of these applications would be an enhancement to communications between the Town and the public. He advised that, because these were one time expenses rather than operating expenses, it would be reasonable if funds were expended from the contingency rather than added onto next year's budget. He explained that the Town Council could authorize funding using FY2006 Contingency money.

Council Member Wyett made a motion to defer this action to next month's Town Council meeting, so that the Town Council could consider this matter further. The motion died for lack of a second.

Council Member Markin asked if staff knew how many hits or requests they have had on a monthly basis for the audio of Town Council meetings?

Mr. Elwell advised requests had increased as had the usage of the live audio of Town Council meetings. He noted that live audio had become available more than a year ago and there were people listening over the internet right now. He explained that presently the Town did not have the capability to provide recordings of Town Council meetings enabling people to go back and listen to portions of meetings. He stated that recently there had been requests to have that option available.

Mr. Elwell stated that over the years the Town had received many complaints regarding the inability to pay parking tickets over the internet. He noted that the complaints had increased since this type of technology had become available on the website of other municipalities.

President Coleman stated that he believed that, at a minimum, the Town should activate the ability to pay parking tickets on line, because there was a financial benefit. The Town would get marginal money that they would not otherwise receive.

Motion made by Council Member Brooks to approve the recommendation of staff and the $30,000 should come from the Contingency Fund. President Pro Tem Kleid seconded the motion.

In response to Town Manager Elwell, Council Member Brooks advised that his motion was to approve the two web-based software programs.

Mr. Elwell noted that both programs would cost approximately $60,000.

After further discussion, **Council Member Brooks amended his motion to approve the two web-based software programs in the amount of approximately $60,000, with funding**

from the FY2006 General Fund Contingency. President Pro Tem Kleid seconded the motion. On roll call, the motion carried unanimously.

b. Direction to Staff Re: Preparation of Documents for Budget Adoption in September.

Town Manager Peter Elwell referred to his detailed memorandum to the Mayor and Town Council, dated July 27, 2006, and included in the backup material, to provide an update on the Proposed FY 2007 Budget. He explained that he needed to alert the Council to three things:

1. The one change not included in the backup before the Town Council today was the decision made a few moments ago regarding feral cats: $50,000 more of expenditures and $50,000 more of tax revenue that would be reflected in the documents that would be presented to the Town Council in September for adoption.
2. Explained the funding of the Vacation Conversion Policy
3. The Ordinance to create a Health Trust would come before the Town Council at the September meeting.
   - The amount of money needed to be set aside initially to create the Health Trust was unknown.
   - If there was an increase over the amount that was reflected in the proposed budget provided by staff a month ago, the increase would be borne by Health Fund monies that had accrued over time.

Mr. Elwell advised that neither the Vacation Conversation Policy nor the Health Trust would have tax impacts because they were working off of existing reserves.

Mr. Elwell requested direction from the Town Council to staff to prepare the final documents for adoption without any additional changes other than what had been discussed.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to authorize staff to proceed with the preparation of documents for the FY2007 Budget adoption. On roll call, the motion carried 4/0 as Council Member Brooks was temporarily out of the room.

6. Further Consideration of Governmental Impact Review Panel Report and Recommendations.

[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her detailed memorandum to the Mayor and Town Council, dated July 28, 2006, and included in the backup material, to further consider the recommendations of the Governmental Impact Review Panel (GIRP). She noted that at the July 10th Town Council meeting, Council directed staff to gather more information and consult with Mayor McDonald about development of an "outreach program" recommended by GIRP in their final report. She noted that the Council discussed, at length, several items at the July 10th Town Council meeting:

- Seek membership on the Metropolitan Planning Organization (MPO), on the Aviation and Airports Advisory Board (AAAB).
- Seek volunteers in the community to serve as the liaisons to the agencies to which the Town could not legally obtain membership.
- Directed staff to continue monitoring activities, as the Town currently did, which did not meet the expectations as established by GIRP.

Ms. Hannah advised that Mayor McDonald wrote a letter to Commissioners Greene and Marcus requesting that he be appointed to the AAAB. She noted that he had heard from Commissioner Marcus who advised that she would be glad to appoint him when there was an opening.

Ms. Hannah explained that obtaining Town membership on the MPO was very unlikely. She noted that they had their maximum number of nineteen members serving on the MPO, at present. She stated that a municipality would have to give up their seat in order for the Town to serve. It had been discussed previously that Palm Beach form some sort of conglomeration of small coastal cities to obtain a seat, but even if the Town did do that, they would have to wait for a seat to open up. She advised that at a recent MPO meeting Chairman Koons asked if anyone would be willing to give up their seat and there was no response. The MPO advised that they would welcome a Palm Beach representative to join the Technical Advisory Committee, noting that Town Engineer Jim Bowser used to be the representative for the Town.

Ms. Hannah stated that another issue discussed at the July 10th Town Council meeting was using volunteers in lieu of hiring additional staff, whose sole purpose would be to maintain relationships between the different entities between Palm Beach, West Palm Beach, the MPO, AAAB, etc. She explained that both staff and the Mayor agreed that it would be difficult as well as challenging, because the job would require a great deal of administrative work and asking a volunteer to do that was sometimes difficult. She stated that if that was the route the Town

Council chose to take, the following was what she proposed:

- Mayor and Town Council identify (hand pick) or select, through an application process, two or three full time residents to serve on the Town's behalf, representing the interests of Palm Beach in the meetings with different agencies. She used the City of West Palm as an example.
- Mayor McDonald would notify Mayor Frankel that these residents were representing the Town so that they were recognized. Staff did not recommend that the Town recruit from a pool of volunteers, because the City should be aware of exactly who was representing the Town, and in order for the volunteer to effectively represent the Town, the same person needed to be present at all meetings and be fully knowledgeable about the issues.
- Due to the limited time and resources of staff and the Mayor and Town Council, oversight of the volunteers would be limited.
- If the Town was not able to get a seat on the AAAB, and probably would not get a seat on the MPO, the Town Council might wish to consider selecting volunteers to monitor those committees as well.
- Volunteers were the Town's first option. The second option would be that the Town Council chooses to continue on the present course. Staff would continue to monitor those actions, which they currently do regularly.

President Pro Tem Kleid stated that he was optimistic that they could get very capable people who were interested in serving and would do the requisite work. He suggested that they search out these people either by recommendations of the various organizations or by the Town Council, or the Mayor, but strongly believed that the logical organization to obtain volunteers through was the Citizen's Association. He discussed the expectations of a volunteer. He noted that he would also like to recommend that the Town establish a relationship with the City of Lake Worth.

Council Member Markin advised that she wanted to go on the record as stating that she was very disappointed that the MPO and the AAAB made no attempt to include the Town in their organizations. She stated that Commissioner Koons, rather than asking someone to give up their seat, in lieu of Palm Beach having a representative seat on that Board was a ludicrous attempt. She advised that a more appropriate question would have been to ask members of the Board if they would be interested in also representing the Town, so that Palm Beach had some representation there and would be able to meet with that representative and work with that representation. She noted there was a very good opportunity to get some citizens involved in some of these organizations so that the Town could get some sort of representation even at a committee level.

President Pro Tem Kleid made a motion that the Town seek out volunteer candidates to serve as liaisons to outside public agencies including the City of Lake Worth, and that the Town pursue this agenda.

In response to President Coleman who asked if this preempted the Mayor on Charter, the Mayor stated he did not think so.

Mr. Elwell advised that the Charter was clear that the Mayor had the authority to lead in intergovernmental relations and could delegate that authority as he deemed fit. He did not think that question needed to be answered today. He noted that if the Town Council chose to use volunteers as opposed to the other two options, the Mayor would need to make a determination as to how he wanted to proceed: whether he wanted staff to continue to work with him, or if wanted to make these assignments himself, or if he wanted to create a system in which he conferred with the Town Council.

Council Member Markin seconded the motion of President Pro Tem Kleid. On roll call, the motion carried unanimously.

7. Further Consideration of Staff Recommendations Regarding Boards and Commissions Procedures.
[Peter B. Elwell, Town Manager]

Town Manager Elwell provided an overview of the creation of the individualized application forms for each Town board and commission.

President Pro Tem Kleid noted that in the backup material on page 273, of the memorandum from Mr. Elwell dated August 3, 2006, a correction on the sixth line starting with "(Please be advised that members of the Architectural Commission must file *an* annual financial disclosure ....", the word *an* should be inserted. On the bottom of the page, "Citizen's Association South of Sloan's Curve" should be "Citizen's Association". On page 274, number 9, a comma should be inserted after the word *in*. On number 13, the word "plead guilty" should be "pleaded guilty". In the box of categories, instead of "Please check one in each category" should be "The following information is required by Florida Statute 760.80. Please check one". Some of the forms had it and some did not.

Mr. Elwell noted that he would confer with the Town Attorney on the word "plead" as it came straight out of some statutory language and that he would do whatever was correct.

Motion made by Council Member Brooks, seconded by Council Member Markin to accept the individualized application forms for each Town board and commission, with the corrections made by President Pro Tem Kleid. On roll call, the motion carried 4-0, as Council Member Wyett was temporarily absent.

8. Charter Review. [Peter B. Elwell, Town Manager]

Town Manager Elwell stated that he would present a list of items that were identified for potential Town Charter changes by the Town Council on July 10, 2006, Special Town Council meeting for discussion.

President Coleman recommended that the Council review the report for a month, which was prepared by those who had previously studied the Town Charter, and then bring it back for discussion.

Council Member Markin commented that the Charter Review was a major undertaking, and was not due to be addressed again; the timing was not appropriate, as the Council had many other issues that needed attention.

Council Member Brooks commented that a full review of the Charter was not his intention; that the Strategic Plan indicated that the Council could consider it in the year 2010. Mr. Brooks noted that his recommendations had been made for the purpose of competition in order to have public policy geared to acquiring talented men and women in the Town to run for public office.

Mayor McDonald clarified that when he previously raised the issue, it was in the context of the Council people running At-Large.

President Pro Tem Kleid stated that the decisions regarding the issues should not be decided solely by the Council because that would mean that they would be judging themselves. He added that, even though, the Town Charter was an important subject, there were more important problems before the Town and that the Council should follow the Strategic Plan and wait until the next Charter Review Commission in 2010.

Motion made by Council Member Markin, seconded by President Pro Tem Kleid to not study the Town Charter at this time, but at a future date. On roll call, the motion carried 3-1, with President Coleman, President Pro Tem Kleid, and Council Member Markin voting in the affirmative, Council Member Brooks dissenting and Council Member Wyett was temporarily absent.

9. Resident Response Time to Planning, Zoning, and Building Applications.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Director Close provided a report regarding the notice requirements of the existing deadlines for the Regulatory Reviews, the Architectural Commission (ARCOM), and the Landmarks Preservation Commission.

For applications heard by the Town Council, the deadline submission for the application was 45 days prior to the meeting. The first advertisement was placed 10 days prior to the meeting, and the second at least seven days after the first ad. The direct notice to residents within a 300 foot radius was at least 15 days in advance.

For applications heard by ARCOM, there was no requirement to advertise in the newspaper, but there was a requirement to provide direct notice to neighbors within 200 foot radius at least 10 days in advance.

For applications heard by Landmarks Preservation Commission, there was no requirement for a direct notice, except to the applicant. There was a requirement to place an ad in the newspaper at least 15 days prior to the meeting.

Staff reviewed the existing deadlines, in which the following practices were different than the requirements.

- Combination projects that came before the Town Council from ARCOM or the Landmarks Preservation Commission, notices were sent out 35 to 45 days in advance, but was not a code requirement; and

- ARCOM notices were sent out in advance.

In order to change the response time for the residents who had their mail forwarded in the summer, the following suggestions were made:

- Provide 20 days notice at the Town Council level.

- Instruct the applicant to issue the notices for ARCOM in order to reduce staff's time and allow more advance notice.

- No changes were recommended for the Landmarks Preservation Commission, as it was in the newspaper for the general public.

Mayor McDonald commented that at a minimum, the ARCOM notification should be sent by the applicants, allowing 20 days, rather than the existing 10 days. If the residents received 10 days notice, and they were not here, as was common in the summer, taking approximately a week through the U.S. Mail to forward the letter, it would seem as if they were not getting notice at all.

Council Member Markin stated that the onus be put on the applicant and extend only the ARCOM notice 20 calendar days.

After discussion;

Motion made by Council Member Wyett, seconded by Council Member Markin, to approve that applicants that come before the Architectural Commission would be responsible for noticing the residents, within 20 calendar days. On roll call, the motion carried unanimously.

10. Lakeside Park. [Peter B. Elwell, Town Manager]
Deferred from the June 13, 2006, and July 11, 2006, Town Council Meeting.

a. Beautification Project Proposed by Town Council President Coleman.

President Coleman indicated that this item should temporarily be removed and brought back at a later time.

b. Proposed Donation of Plaque and Fox Tail Palm Trees from the Silverbacks to Be Placed Near the Paul Ilyinsky Memorial Monument.

It was the consensus of the Town Council to hold this item for 90 days. Town Manager Elwell commented that he would notify Mayor Benjamin of the status.

11. Update on Construction Related Parking Issues.
[Veronica B. Close, Director of Planning, Zoning and Building]
Deferred from the July 11, 2006, Town Council Meeting.

Planning, Zoning, and Building Director Close provided an update on the report of the Construction Parking Survey.

Town Manager Elwell noted that this issue of on-street parking in the north end as it related to construction vehicles and all other vehicles would be addressed in the Traffic and Parking Improvement Plan this fall.

Mayor McDonald commented regarding the construction parking matter on Hi-Mount Road, whereby the attorney made a commitment that her contractor would not park on Hi-Mount again after that day, but he and Mr. Elwell found them parked on the street the next day. He noted that Dr. Kantor conveyed that there were numerous instances of illegal parking or improper parking in which the Town was not called, and incidents of altercations between the construction workers and the residents. The Mayor indicated that one person from Public Works to supervise and police all of the construction sites was not effective. The situation needed to be reviewed with more stringent requirements, and that the problem was worse than the report reflected.

President Coleman commented that periodic reports of complaints identifying the responsible contractor would make it difficult for them to proceed.

President Pro Tem Kleid offered two solutions to the problem: strictly enforce it, and limit the amount of construction permits on a given block. He recalled that there were discussions relative to increasing enforcement and creating a relationship among Code Enforcement, Public Works Department, and the Police Department, but there had not been any progress on it.

Mr. Elwell indicated that staff was due to report to the Council at the September 7, 2006, Town Council meeting, and was working on how to better address this and other code enforcement related issues.

Council Member Wyett stated that this was one of the rules and regulations that were not well enforced due to the lack of personnel. Code Enforcement and Public Works did not have enough personnel and the Police Department did not think it was their job. The Town Council indicated that there would be no additional employees this year, but there was a need to spend more money to enforce it or come up with some other solution.

Council Member Brooks commented that several years ago, he had requested that Town Attorney Randolph to research one construction permit per block, and was requesting it again, in order to alleviate the problem.

Yvelyne D. Marix, 1570 N. Ocean Boulevard, commented that the if the police officers enforced violations of anyone parked in a no parking street, and the construction vehicles were parked on site, as was done in the past, the problem would be eliminated.

Mr. Elwell responded to President Coleman that staff would return next month with a broader report than just construction related parking, as a major concern was to improve code enforcement in the Town.

Responding to Council Member Brooks' question regarding his request for legal counsel of one construction permit per block, Mr. Elwell replied that staff would provide him with a written legal opinion of it.

12. Conceptual Consideration of Delegating Town Council Development Review Authority to an Independent Board or Commission. [William J. Brooks, Town Council Member]
Deferred from the July 11, 2006, Town Council Meeting.

Council Member Brooks proposed that the Council Members submit comments pertaining to the consideration of delegating the Town Council Development Review Authority to be addressed in October or November, as outlined in the backup on page 415, in Ms. Closes's memorandum dated August 2, 2006. Several Council Members commented that they were in agreement to the concept.

B. New Business

1. Comprehensive Coastal Management Plan– Review of Implementation to Date and Plans for the Future.
[H. Paul Brazil, Director of Public Works]

Town Manager Elwell provided a brief history of the systematic approach to managing the beaches as the first line of defense for the entire Town, which was known as the Town Shore Protection Board in the late 1990's. Rather than addressing the individual projects mostly on an emergency or high-need basis as opposed to a border- to-border basis, the Town Council adopted a Comprehensive Coastal Management Plan in the year 2000.

Director of Public Works Brazil provided an overview of the Plan, and noted that it was founded on the concept of adaptive management, which allowed modifications to the Plan depending on conditions and necessity. There were three major elements that caused changes in the program:

1. Permitting issues;
2. Hurricanes in the years 2004 and 2005; and
3. Construction costs.

The major accomplishments to date:

- 2003 - placed 1.2 million cubic yards of sand in Reaches 3 and 4;
- 2005 - constructed emergency berm for Reach 8;
- 2006 - restored Reaches 3 and 4, Mid-Town Beach with Federal Emergency Management Assistance (FEMA) money;
- 2006 - reconstructed Reach 7 after many years of permitting;
- 2006 - dune rehabilitation in Reaches 7 and 8, which 90% was paid by Florida Department of Environmental Protection (FDEP);
- 2006-2007 - rehabilitation of the Sand Transfer Plant that the United States Army Corp of Engineers (USACE) had obligated $2 million in the upcoming Federal budget for Phase 1 of the project, and Phase 2 would be funded in FY08 budget of another $2 million. Phase 1 of the project was the rehabilitation of the Plant, and Phase 2 was extension of the discharge pipe and construction of a booster pump.

Mr. Brazil indicated that Reach 8 was in the process of being permitted. He noted that 3.1 million cubic yards of sand had been placed since 2003, and of that more than 2 million had been placed this year. The anticipated cost of $10.3 million had been reduced to $7.5 million. Information pertaining to the Summary of Expenditures of the Plan through FY06, the Revenue Available to the Program, and the Ten-Year Projected Expenses and Revenue is listed in his memorandum dated August 2, 2006, in the backup material, on page 434 contained additional information.

Mr. Brazil reviewed the proposed projects and requested that the Council consider the proposed modification to the long-term plan; staff would return for consideration of each of the individual projects as they were due.

Mr. Elwell noted that staff would continue to work on the implementation of the projects, but the funding would depend on the progress made on the permitting. At the appropriate time when the next substantial funding was needed for the implementation of the program, staff would be back to address it with the Council.

President Coleman noted that there was a makeup of deficiencies that had not been done of deferred maintenance, and now the Town was moving toward the long-term project which can be expected to continue.

Mr. Brazil stated that Reaches 1 and 8 were the last of the makeup deficiencies.

Responding to President Coleman, Mr. Elwell indicated that Public Works Department approach of combining pieces of the north, center, and the south areas was the most efficient way to accomplish the least, long-term cost to the Town.

President Coleman stated that the message to the residents was not whether to implement the Plan, but that it must be done at the physically, most responsible way as an ongoing expense.

In response to the Council Member Brooks question regarding the impact of the littoral flow on the southern reaches, Mr. Elwell indicated that it may increase the life of those down drift projects a bit but not enough to substantially change the scope of the plan.

Responding to Council Member Markin, Mr. Brazil indicated that the regulatory agencies first line of defense was to place sand on the beach, and if that was not effective, then a hardened structure would be allowed. Technology was continuously improving as the regulatory agencies were aware that it was a financial hardship to complete the projects.

Mr. Elwell responded to Council Member Markin saying that seawalls that were roadway protected were covered by a code provision that the Town could undertake improvement if it was determined that it was unsafe and charge back an appropriate proportional amount of the cost of the project to the property owner.

Council Member Markin requested that staff examine a the seawalls south of Worth Avenue beach.

Responding to President Coleman, Mr. Elwell stated that recommendations on the financing would be presented when it was relevant to permitting.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to approve the proposed adaptations of the Comprehensive Coastal Management Plan. On roll call, the motion carried unanimously.

2. Regulation of Vessels in the Intracoastal Waterway.
[Susan Markin, Town Council Member]

Council Member Markin expressed that in the past, derelict or abandoned vessels in the Intracoastal Waterway caused damage to private property during a hurricane, such as docks, breakwalls, and the shoreline on the intracoastal side of the island. The damage was costly to the property owners, as those items were uninsured. Her primary concern was who had the authority to regulate the removal of pre-hurricane and the status of removal of post-hurricane derelict and abandoned vessels.

Town Attorney Randolph pointed out that a local government may regulate a non-live-aboard vessel if it was a danger to navigation, or no longer in navigation. The County had jurisdiction over the removal of non-live-aboard vessels after hurricanes, and the ones that remained were because the funding was depleted. The Town had the authority under the law for removal of the barges, if it adopted an appropriate ordinance, but more detail was needed from the County before the Town exercised jurisdiction over the vessels.

Council Member Markin noted that the barges were lodged up against the breakwalls and seawalls for over a year, and that Michael Zeppetis of Liberty Maritime, Inc., owner of the barge, located at West Indiantown Road, Ste. 129, Jupiter, Florida, assured Ms. Markin that these barges would be removed by today.

Town Manager Elwell indicated that staff would return at the September 7, 2006, Town Council meeting with a full report of the removal of the abandoned and derelict vessels.

X. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 2-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Town Code of Ordinances at Subdivision III, Firefighters, Section 82-95, Amount of Pension, and Subdivision IV, Police Officers, Section 82-115, Amount of Pension, to Increase the Pension Multiplier from 3.25% to 3.5% Retrospectively for Payments Due Firefighters and Police Officers Who Were Actively Employed on and after October 1, 2005; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Town Attorney Randolph read Ordinance No. 2-06 by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to adopt Ordinance No. 2-06. On roll call, the motion carried 4-0, as Council Member Wyett was temporarily absent.

2. ORDINANCE NO. 7-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82, Article II, Employee Benefits, Division 2, Retirement, of the Code of Ordinances Relating to the Retirement System; Adding an Exclusive Benefit Provision to Section 82-51 General; Amending Section 82-52 Definitions to Provide That No Lump Sum Payments for Accumulated Leave Are Compensation for Calculation of Retirement Benefits; Restating Section 82-55 Military Service Credit Concerning Credit for Uniformed Service; Adding Subsection (5) to Section 82-67 United States Internal Revenue Code Qualifications Concerning Compensation Limits; Adding Section 82-72 Rollover Distributions to Provide for Rollover Distributions; Adding Section 82-75 Plan Termination to Assure One Hundred Percent Vesting in the Event of Plan Termination; Clarifying That, Under Section 82-139(d)(1) Deferred Retirement Option Program Drop Participants' Benefits Are Permanently Reduced; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[William C. Crouse, Director of Human Resources]

Town Attorney Randolph read Ordinance No. 7-06 by title, as printed above.

Motion made by Council Member Brooks, seconded by Council Member Markin to adopt Ordinance No. 7-06. On roll call, the motion carried 4-0, as Council Member Wyett was temporarily absent.

B. First Reading

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

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

Motion made by Council Member Brooks, seconded by Council Member Markin to approve on first reading Ordinance No. 8-06. On roll call, the motion carried 4-0, as Council Member Wyett was temporarily absent.

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

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

Motion made by Council Member Markin, seconded by Council Member Brooks to approve on first reading Ordinance No. 10-06. On roll call, the motion carried 4-0, as Council Member Wyett was temporarily absent.

XI. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

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

Ex-parte was declared by President Pro Tem Kleid, President Coleman, Council Members Wyett and Brooks with Attorney Maura Ziska.

Attorney Ziska, on behalf of the applicant, provided an explanation of the variance request.

Architect Harold Smith presented architectural renderings and described the project.

Zoning Administrator Paul Castro noted that the hardship related to the topography, the lay of the land, and the soil type. The only issue staff had was that Public Works Department told the applicant to remove the driveway, as it was not allowed on Slope Trail, based on the right-of-way manual, and the comments of the Town Manager's Office. Staff had a concern about the garage doors facing Slope Trail, but it was unrelated to the Variance.

Responding to Council Member Markin, Mr. Castro indicated that the existing house was at the same point of measurement as the proposed house and that the house was situated further back on the property. The concern of the Architectural Commission

(ARCOM) was that the location of the driveway be oriented toward Ridgeview Drive in lieu of Slope Trail to the east.

Council Member Wyett noted that as the design with the extra driveway was contrary to the manual, he would approve the point of measurement, but deny the right to build it as shown today.

Town Attorney Randolph clarified that if the Council approved the Variance today, it was not an approval for the driveway cut, as that would be addressed by the Public Works Department.

Council Member Wyett stated further that he was directing Public Works not to approve the driveway cut, as the Town Council approved the Public Works manual, and any changes were subject to the Council's approval.

Mayor McDonald stated that the right-of-way issues depended on the situation, as the Public Works Department needed to review it.

Council Member Markin asked why requests came before the Council for approval while there were other phases of the plan that still needed to be worked.

Responding to Council Member Markin, Mr. Castro explained that it had been the stipulation of ARCOM to eliminate the curb cut. If the point of measurement for the house was approved today, and tomorrow the issues were not able to be worked out with the Public Works Department; if the applicant returned to ARCOM, who still did not like the driveway cut, or the design of that garage to the driveway, and the house had to be redesigned, or they appealed to the Council, there was another opportunity. If it however, was not approved, or was approved or was deferred and redesigned, and was substantially different than the house that existed today, it would have to be renoticed, and readvertised, causing the applicant to lose time, and would still have to come back to the Council for approval. It is right for consideration today, as designed, but there may be some design changes that may further delay the project to bring back to the Council.

Motion made by Council Member Wyett to approve deferral of Variance #28-2006 to the September 7, 2006, Town Council meeting.

Responding to President Pro Tem Kleid, Mr. Castro indicated that the actual control was with the Public Works Department, as this was not a site plan review. The Public Works manual specified what could be done in the appeal process for a denial. ARCOM had the authority to require that the applicant revise the architecture or site plan.

President Pro Tem Kleid noted that Public Works could waive it, and ARCOM would look at the design facilities and that would be the end of it.

Planning, Zoning, and Building Director Close explained that the Public Works Department had the authority to tell the homeowner to re-orient their garage and driveway.

Motion seconded by Council Member Markin to approve deferral of Variance #28-2006 to September 7, 2006, Town Council meeting.

Mayor McDonald commented that the Variance was met, as the hardship was proven, and that it was not a site plan approval request, so approval should be granted.

Upon roll call, the motion to approve deferral of Variance #28-2006, carried 3-2, with Council Members Wyett and Markin, and President Pro Tem Kleid voting in the affirmative, and Council Member Brooks and President Coleman dissenting.

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

Ex-parte was declared by President Pro Tem Kleid, President Coleman, Council Members Wyett and Brooks with Attorney Maura Ziska.

Attorney Ziska, on behalf of the applicant, provided an explanation of the variance request. The hardship was that the property was nonconforming in size and width, and that a minimum of 10 feet was required in the R-B Zoning District, and only 6,125 feet exists. A minimum of 100 feet of lot width was required and only 50 feet existed.

Architect Rafael Saladrigas, Brower Architectural Associates, presented architectural renderings that displayed the location of the swimming pool on the existing and proposed site plan.

Brian Verdis, of Sanchez & Maddox, indicated that a small amount of landscaping would be done to the front of the house; the view of the garage door from the street would be removed; a wall fountain would be placed at the end of the pool to alleviate noise; an existing stairwell in the back would be replaced; would retain and move existing cocoanut palms; and add landscape to buffer the neighboring properties.

Zoning Administrator Castro indicated that a swimming pool was not a necessary entity on a property and that staff questioned the hardship relative to this request.

Council Member Wyett stated that it had been established outside the rules and regulations that lack of a pool in Palm Beach was a hardship.

Motion made by Council Member Wyett to approve Variance #29-2006.

Council Member Brooks commented that he did not see a hardship for the variance.

Council Member Wyett noted that the hardship was the narrowness of the lot.

President Coleman passed the gavel to second the motion. On roll call, the motion failed 2-3, with Council Member Wyett and President Coleman casting affirmative votes, and President Pro Tem Kleid, Council Members Brooks and Markin dissenting.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve deferral of Variance #29-2006 to September 7, 2006, Town Council meeting. On roll call, the motion carried unanimously.

Discussion ensued to provide the applicant with direction.

Council Member Markin suggested making the pool smaller, and moving it to the middle back of the property between the terrace off the main house and the guest house and moving the entrance of the guest house.

Architect Saladrigas noted that originally a variance was granted for that existing location and because of the cabana and the need for accessibility of the staircase and the terrace area was accessed from the French doors, it became difficult to place the pool in that location.

Architect Saladrigas indicated that they were unable to make any changes to the Variance, and as a result, President Coleman commented that direction could not given.

President Pro Tem Kleid noted that it was not a legal hardship, and it would not sustain itself in a court of law. The Council would need to be more rigid as there were 12 variances coming before the Council.

Attorney Ziska pointed out that precedents have occurred, as 20 variances for swimming pools have been granted.

Council Member Markin asked if there was consideration of an L-shaped pool, to go around the terrace off the main house, to adhere to the requirements for setback.

Architect Saladrigas responded that there had been discussion regarding it, but it would result in the appearance of a fountain instead of a swimming pool.

Council Member Markin explained that as there was no real hardship, it was difficult for the Council to approve the Variance. The Council would be approving a pool that was bigger than allowed by new houses that had been built on the same street. Variances were not generally approved on new construction.

Council Member Wyett suggested relocating the garage to the port co-chere and placing the pool east to west.

Attorney Ziska responded that the port co-chere was not large enough for the garage.

The discussion was concluded, as the Variance was deferred to next month's meeting.

c. <u>SPECIAL EXCEPTION #3-2006</u> The application of Pizza Alfresco/Arlene Desiderio and Via Mizner Associates Limited Partnership/Ian Kean relative to property described as lengthy legal description on file; commonly known as 8-14 Via Mizner; located in the C-WA Zoning District. To allow a special exception to convert a retail specialty foods store with takeout (C-108 S and C-109 S) and an existing adjacent art gallery space (C-107 S and C-106 S) into a restaurant with 57 seats, the area totaling 1,899 square feet.) Request to allow a special exception permitting outdoor seating in conjunction with the proposed restaurant, a maximum of 36 seats will be relocated from the interior of the restaurant, without any increase in the total capacity of 57 seats. **Request for Deferral to the September 7, 2006, Town Council Meeting Per Letter Dated July 19, 2006, From Ian M. Kean.**

Special Exception #3-2006 was deferred to September 7, 2006, Town Council meeting.

3. Old Business- More Than 15 Minutes

a. SITE PLAN REVIEW #9-2006 WITH VARIANCES The application of The Villas, Inc., Leo Albert, President relative to property described as Lots 12 through 25 inclusive, a portion of Lot 26 and a portion of Lot 29, Block 13 of Royal Park Addition; commonly known as 425 Worth Avenue; located in the R-D(2) Zoning District. The applicant requests modification of site plan approval by Town Council to place an emergency power generator and screen wall at the Northeast corner of the existing site; variance for locations of generators and pool equipment: applicant seeks a variance to locate an accessory structure (emergency power generator) and screen wall within the street rear yard setback. The applicant seeks a street rear yard setback of 7 feet in lieu of 30 feet minimum as required by code for an accessory structure. The applicant seeks a variance to allow a screen wall at a height of nine (9) feet in lieu of six (6) feet maximum allowed in a street rear yard. *Deferred from the July 11, 2006, Town Council Meeting.* **Request for Deferral to the September 12, 2006, Town Council Meeting Per Letter Dated July 21, 2006, from Francis X. J. Lynch.**

Site Plan Review #9-2006 with Variances was deferred to September 7, 2006, Town Council meeting.

b. SITE PLAN REVIEW #7-2006 with SPECIAL EXCEPTION AND VARIANCES - MODIFIED The application of Commerce Bank relative to property described as Lot 28 to 31, Block 10, Revised Royal Park Addition; commonly known as 380 South County Road; located in the C-TS Zoning District. Request for site plan modification to change the roof style and outside elevations, reconfigure driveway entrances and handicap space, eliminate the dumpster and reconfigure the interior space on both floors; request for approval of a Special Exception use to allow the continuation of a town-serving financial institution in the C-TS district on the northwest corner of South County Road and Peruvian Avenue; request for approval of a modification to the Special Exception to allow a town-serving business in excess of 2,000 square feet of gross leasable area in the C-TS district; request for approval of a modification to a Special Exception to allow a modification to the second story of a two-story building within the C-TS district; request for approval of a variance from the required front yard setback (South County Road frontage) to allow 5.27 feet in lieu of the existing 4.60 feet and the required 9 foot setback minimum required for a 22.16 foot high, two story structure; request for approval of a variance from the required ten-foot pedestrian walkway to allow a 9.31 foot wide sidewalk in lieu of the existing 9.64 ft. sidewalk along South County Road; request for approval of a variance from the requirement for a loading zone to allow the existing condition of no loading zone; request for approval of a variance from required landscaped open space requirement for two-story buildings to allow 15.6% in lieu of the 13.9% existing and required minimum of 25%; request for approval of a variance from required front yard landscaped open space to allow 13.8% in lieu of the existing 12.8% and the 35% minimum required; and, request for approval of a variance to allow demolition and renovation to a non-conforming structure that is in excess of 50% of its cubic footage by replacing the roof design and exterior windows. *Deferred from the June 13, 2006, Town Council Meeting.*

Ex-parte was declared by Council Member Markin with the Architect and Designer, President Pro Tem Kleid, President Coleman, Council Members Wyett and Brooks with Attorney James Brindell.

Attorney Bonnie Miskel provided an overview of the site plan review with the special exceptions and variances as modified.

Architect Harold Smith presented the architectural renderings and explained the modifications.

Planning, Zoning, and Building Director Close made the following comments:

- The applicant's goal from the June 13, 2006, Town Council meeting was to redesign the project to be more in keeping with the area of South County Road;
- The applicant appeared before ARCOM in June and in July ARCOM recommended approval of the variance requests; and
- The applicant was requested to return to ARCOM in August to address the entryway, as more information was needed.

Ms. Close reviewed the comments reported by staff.

Responding to Council Member Brooks regarding the parking spaces leased by Whitehall Foundation, Inc., Attorney Miskel indicated that the plan submitted met the parking requirements, which were based on square footage. She assured him that as if Whitehall Foundation, Inc., remained in the building, they would retain the two parking spaces.

Council Member Wyett noted that he had specifically requested that the building respect the tradition of the historic district, and as this building did not, he would be voting no.

Mayor McDonald stated that the building should reflect the character of the Town Hall district, and that they would need to redesign it. He questioned the applicant concerning the intended hours of business.

Responding to Mayor McDonald, Attorney Miskel stated that the hours would start at 7:30 a.m., and would end at 6:00 p.m., Monday through Friday, with same hours on Saturday if acceptable. A comparison study was done and since 1989, and 29 banks had been approved without restriction of hours or limitations. Only a drive-thru was limited to the same hours as the interior portion of the bank.

Mayor McDonald replied that the hours were an expansion of hours for any bank, and for business in the Town. The other banks had not requested a variance, and he did not agree with an expansion of business hours for this bank, as this Town was a residential community and there was no need for excessive business activity.

President Coleman expressed concern regarding the security in the outside lobby, as the ATM was shielded from the street. He stated that he had a difficult time noting the differences between this presentation and the last one.

Council Member Markin commented that other banks in the Town had not requested expanded hours, as the applicant had, and the Town may have to add a code to limit future requests. She indicated that she liked the outside lobby area for the ATM, she would like to see more softening in the front, as the planters seemed small compared to the massiveness of the building, and it was an improvement of the first design.

Ms. Close clarified that one bank opened on Friday only until 6:00 p.m., and four banks opened at 8:30 a.m., drive-in only.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve banking hours, from 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday.

Council Member Wyett commented that as banking was a service, the public would need the bank to be open at 8:00 a.m. going to and from work.

Attorney Miskel stated that they were receiving mixed direction, and asked for feedback, as she was not present at the last meeting.

President Coleman noted that he would like it more in keeping with the Historic District. He suggest that awnings be placed on the top windows to tone it down, as it appears too massive.

Upon roll call, the motion to approve the hours carried 4-1, with Council Members Brooks, Markin, President Coleman, and President Pro Tem Kleid casting an affirmative vote, and Council Member Wyett dissenting.

Council Member Wyett stated that a new face on the building in a traditional manner in keeping with the Historic District should not be difficult.

Attorney Miskel asked that the variance approvals be separated from the architecture.

President Coleman explained that once the variances were voted on, the project would proceed to ARCOM, and not return. The Council's only opportunity was to withhold the variances to ensure that it would come back to the Council.

Discussion continued regarding the architecture.

Paul Nye of InterArch, the design firm for Commerce Bank, commented that there were many elements taken from the District, and asked the Council to take a closer look at all the changes to the building.

Council Member Brooks and Markin stated that they would like to see a Mizner, Spanish style appearance.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve deferral of Site Plan Review #7-2006, with Special Exception and Variances - Modified to September 7, 2006, Town Council meeting, after applicant meets with the Architectural Commission, with direction to design a Mediterranean/Mizner style building. On roll call, the motion carried unanimously.

c. SITE PLAN REVIEW #12-2006 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Lessee: Starbucks, and Property Owner: Worth Avenue Associates LTD, by: Esplanade GP LLC, its General Partner, by: Goodman Properties Inc., Manager, by James R. Brindell, their attorney relative to property described as lengthy legal description on file; commonly known as 150

Worth Avenue - The Esplanade; located in the C-WA Zoning District. This is a request to partially replace an existing retail children's clothing store with a restaurant in Suite #110 of The Esplanade. Suite #110, which totals 2,161 square feet, currently houses The Purple Turtle. The new proposed restaurant, known as Starbucks, will occupy 1,681 square feet. (The remaining 480 square feet will remain retail.) The restaurant is proposed to have 25 seats, including up to 9 seats outside in the Via. Twelve of the seats will come from the number of seats supported for purposes of parking by the retail space (equivalency). The other 13 seats are new. They also sell coffee makers, mugs, and related items. They will offer take-out as well as on-site seating. Hours of operation are proposed from 8:00 a.m. to 11:00 p.m., seven days a week. Site plan modifications are also sought to add a back door to the restaurant and a paved walk to connect the back door to the Esplanade's trash area. A restaurant requires a special exception approval in the C-WA District. The outdoor seating requires a special exception approval. A variance is requested to eliminate the requirement that this project provide five additional parking spaces required for the thirteen additional seats being requested for this restaurant. A variance is requested to allow the landscaped open space on this site to be reduced to 14.25% in lieu of the 15.1% existing and the 25% minimum required. The existing landscaped open space is 15.1%. The reduction is the result of the installation of a paved access way to connect the new back door of this restaurant to the trash loading area. *Deferred from the July 11, 2006, Town Council Meeting.* **Request for Withdraw of Variance Per Letter Dated July 26, 2006, From James R. Brindell.**

Ex-parte communication was declared by President Coleman, President Pro Tem Kleid, and Council Members Brooks and Wyett with Attorney James Brindell.

Attorney James Brindell presented the site plan review, special exceptions, and variances. He provided a history of the background of the parking situation.

Planning, Zoning, and Building Director Close commented that staff had reviewed and determined that a variance was needed for parking and if the applicant disagreed, their appeal would occur at a later time.

Zoning Administrator Castro commented regarding staff concerns with parking, garbage and trash pick-up, and reduction in landscaped open space.

Town Attorney Randolph reminded the Town Council that if there was disagreement with the administrative official, in regard to anything, an appeal could be filed of that decision. That appeal had not yet been filed.

Public Comment:

Stuart Shulman commented that if Starbucks was approved, he wondered when McDonalds, KFC, and Burger King would be coming next.

Reg Stambaugh, Preservation Foundation, read his comments into the record:

> The Preservation Foundation of Palm Beach has formal objection to the variances requested by Starbucks Coffee Corporation. The variance requests are meritless, as there is no undue hardship, which is not self created by the proposed tenant. The prior tenant, the Purple Turtle, operated a viable retail business for many years, without the variance for outside seating. Starbucks is simply not the proper tenant for the space. Again, the law is very clear that variances should not be granted when the variance is self-created. Moreover, the National Trust for Historic Preservation's traditional main street guidelines frown upon franchising, or corporations such as this, when the franchise or corporate business takes away from the unique character of a town or threatens unique local proprietors. In the instant case, Starbucks will be taking business from local proprietors, such as Cucina, and Hamburger Heaven, and The Colony Hotel Coffee Shop, all unique to Palm Beach. Finally, a national chain should locate its business in a place where other national corporation businesses like this are well received; there are plenty of towns which promote and support Burger King, McDonalds, and the like, however, it is the Foundation's firm belief that there is no place for these type of national chains in our town. We just want to make a firm statement that this can turn into a trend, where Starbucks is essentially like the WalMart of coffee shops. Back in 1993-94, there were two coffee shops in West Palm Beach, that Bill Fountain, the then Development Authority Director, brought in – Havana Cuba Coffee Shop, and the Underground Coffee Works, both of which, in a matter of months, went under when Starbucks came in. That is about all that we have. We

think that Starbucks should be placed in a different place. Bottom line – variances are not needed, and this should be turned down. If you accept Starbucks, accept them without variances.

Thank You.

Beverly Wilkes, 434 Chilean Ave., commented in support of the Starbucks application.

President Coleman suggested that the applicant may be willing to contribute the first year's compensation for a code enforcement officer to ensure that illegal parking did not take place.

Council Member Markin commented that retail chains were quite different than fast food chains, and that fast food restaurants of any kind would take business from the existing restaurants in the Town. The Esplanade Parking Garage was 50% empty during the season, because the validation system being used was not adopted by many stores, because of the premium that must be paid in order to participate in the validation system.

Council Member Wyett noted that when Houston's wanted to operate in the Town, they had to change their name in order to be Town serving. There was a long history in the Town of resistance to chain retail stores, and it was the quality of the Town that was being preserved. He noted that he could not imagine that people would use valet parking in order to get a fast cup of coffee; in addition there were concerns with traffic and noise.

Council Member Brooks commented that Starbucks was a first class company, and could not be compared to fast food chains. The Worth Avenue merchants did not have a good year, and they needed traffic. This would be a relatively painless way of providing traffic to the merchants.

Gareth Klotz, American Consulting Engineers, commented that there were concerns of the period between 8:00 - 11:00 a.m. when customers wanting to shop at 10:00 a.m. would be parking in the front entrance of Worth Avenue, where extra parking spaces were not available. The majority of the customers going into Starbucks would be the pass by trips coming through the Town, and going to their next stop. The parking garage was usually half empty because of the parking fees.

Mr. Castro pointed out that employees on Worth Avenue may also be using street parking, rather than the parking garage. The garage was currently being underutilized.

Gus Garferriti (ph), with the Goodman Company, commented that some employees did utilize street parking, and that employees were encouraged, by virtue of a rate reduction, to park at 150 Worth Avenue in the garage. He noted that it was not the intent to jeopardize the success of Trevini's Restaurant in any way.

President Coleman commented that, instead of a code enforcement person, perhaps Starbucks should underwrite a parking control officer, at whatever level necessary, for a year or so.

Town Attorney Randolph noted that there were two things in question: a variance application which had not really been addressed – there had not been an appeal of the administrative official. The Town Council must decide whether it wanted to even act on the variance that was in question. He did not want the Town Council to confuse the variance request with the special exception request that was needed to open the establishment. The criteria for the special exception and site plan would allow consideration of issues such as traffic, etc.

President Coleman clarified that a special exception motion could be made, with the issue of the variance being left open.

Attorney Brindell commented that if the applicant needed to follow an appeal procedure, he would make that request, and the variance could be deferred if necessary.

Council Member Markin moved that the variances be denied, based on the fact that there is no hardship, other than what is being brought on by the entity itself. Council Member Wyett seconded the motion.

Attorney Brindell commented that the discussion had not been finished regarding the procedural status on the question of parking.

Town Attorney Randolph advised that the variance application had not really been addressed. All that had been addressed was the fact that there may not be the need for one, but the applicant had not filed an appeal of the decision of the administrative official.

Attorney Brindell commented that ff that was the procedure that the applicant needed to follow, that request would be made, and questioned whether there was a time limit on that filing.

Town Attorney Randolph replied that he believed that Attorney Brindell could get that filed and heard at the next meeting, however, he noted that he did not want to confuse the variance here with the special exception that was needed to open this establishment. Issues such as traffic, etc. would be considered under the criteria for the special exception and the site plan. He explained that there were several things in front of the Town Council; one was a variance, and an argument that it was not needed, and the other was the application for a special exception, which Attorney Brindell had addressed.

Council Member Markin clarified that her motion was to deny the request for the variance, since there was no hardship.

President Coleman commented that was where there was confusion, because he believed that the motion had to pertain to a special exception, because the applicant still have the right to come back and appeal the decision as to whether a variance was necessary.

Council Member Markin advised that she would amend the motion, making it a motion to deny the request for a special exception. Council Member Wyett seconded the motion. On roll call, the motion did not carry: Council Members Markin and Wyett casting affirmative votes; Council Member Brooks, President Pro Tem Kleid, and President Coleman casting dissenting votes.

Attorney Brindell advised that he would file the other matter.

President Coleman commented that an affirmative motion was now needed to grant or defer the special exception.

Council Member Brook made a motion in favor of the special exception, realizing that there was still the variance problem, and all of the other factors that we have discussed, the size of the logo, etc. President Pro Tem Kleid seconded the motion. On roll call, the motion carried 3/2: Council Member Brooks, President Pro Tem Kleid, and President Coleman casting affirmative votes; Council members Markin and Wyett casting dissenting votes.

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

Ex-parte communication was declared by President Pro Tem Kleid with Attorney Jim Brindell, by President Coleman with Attorney Brindell, by Council Member Wyett with Attorney Brindell, by Council Member Brooks with Attorney Brindell.

President Coleman suggested that an abbreviated overview take place today, since this project would entail further discussion and consideration.

Attorney Jim Brindell addressed the Town Council, explaining that the Hilton Hotel was about 30 years old, and was no longer a particularly attractive building. The proposal was to reduce the number of units from 134 to 107, which would reduce daily trips by 20%; there would be a 200 space partially sunken garage in place of the existing 144 surface space lot; parking would be by valet only; the landscaped open space would be increased from the current 19.3% to 25.3%; the swimming pool would re relocated to the interior part of the building; two tennis courts and a small tennis shop would be constructed on top of the parking facility; the ingress/egress points would remain essentially as they were today; the gift shop and two dining rooms would be increased; there would be no increase in the height of the building; there was a letter of support from the Citizens' Association of Palm Beach.

Dennis Hickok, Landscape Architect, addressed the Town Council, displaying and reviewing architectural renderings of the landscape plan.

Oscar Garcia, Architect, addressed the Town Council, referring to the architectural renderings, and reviewing the project.

President Pro Tem Kleid moved that the entire project be deferred until the Brazilian Court Hotel project was finished. The motion was seconded by Council Member Wyett.

Town Attorney Randolph advised that he believed a motion to defer was appropriate, however, not for the reason stated. Each project needed to be review on its one, as opposed to being tied into another project.

Council Member Brooks then made a motion to defer Site Plan Review #5-2006 to the next Town Council meeting. The motion was seconded by Council

Member Wyett. On roll call the motion did not carry: Council Members Brooks and Wyett casting affirmative votes, Council Member Markin, President Pro Tem Kleid and President Coleman casting dissenting votes.

Seth Behn, project manager, reviewed the project.

Public Comment:

Timothy Anthony, Board of Directors, The Royal Saxon, 2840 South Ocean Blvd., addressed the Town Council, in objection to the project, as the variances would affect the Royal Saxon, the way of life, the aesthetic outlook of Palm Beach, and thanked the Town Council for their wisdom in thoroughly reviewing the project.

Attorney Brindell suggested that a special day be set aside for review of this project.

President Pro Tem Kleid moved deferral of Site Plan Review #5-2006 to the September 7, 2006, Town Council meeting. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

After further discussion, President Pro Tem Kleid moved deferral of Site Plan Review #5-2006, to be heard at the Special Town Council meeting, at 1:00 p.m. on Wednesday, September 6, 2006. The motion was seconded by Council Member Markin.

4. New Business- More Than 15 Minutes

a. VARIANCE #24-2006 The application of Charlie Roberts, Brookshore Ltd. relative to property described as lengthy legal description on file; commonly known as 710 South Ocean Boulevard; located in the R-A Zoning District. To allow construction of a two story addition with a point of measurement to match the existing floor of 22.03 feet Nation Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 15.09 feet NGVD maximum allowed; and, a variance for a building height of 27.3 feet (starting from the 22.03' NGVD point of measurement which is the existing floor) in lieu of the 25 foot maximum height allowed in the R-A Zoning District.

Ex-parte communication was declared by Council Member Markin with the owner of the property, and through visiting the site; by President Pro Tem Kleid with Attorney Maura Ziska; by President Coleman with Attorney Ziska; by Council Member Wyett with Attorney Ziska and the adjacent neighbor; by Council Member Brooks with Attorney Ziska.

Zoning Administrator Paul Castro advised that staff comments related to applicant demonstrating a hardship. The applicant was requesting demolition of additions that were placed on the house after the house was originally constructed, and the additions that were proposed to be constructed were at elevations significantly higher than the street. The structure was landmarked, and the Landmarks Preservation Commission had recommended the approval of the proposed additions, as well as that the thought the variances were justified, relative to the architecture. Mr. Castro referred to a letter, dated August 8, 2006, from the Preservation Foundation expressing support for the variances being requested.

Council Member Wyett moved approval of Variance #24-2006. The motion was seconded by Council Member Markin. On roll call the motion carried unanimously

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

Ex-parte communication was declared by Council Member Brooks with Attorney Barry Curtain, relative to the application.

Attorney Barry Curtain, on behalf of the applicant, addressed the Town Council, stating that the applicant was requesting a variance from the requirements of a prior variance granted on June 12, 1979, requiring the removal of the addition of 267 square feet when the property was sold or conveyed. The property had subsequently been landmarked, and was now also in an historic district. The owner had passed away, and the corporation owns it as an asset of the estate, and were looking to sell the assets of the estate to satisfy the estate. The property had existed in its current state for 27 years; the problem was that removing the addition would reduce the unit to approximately 1,300 square feet, and left only one bedroom and one bathroom in a single family home. The amount of square footage and the single bathroom would make the unit a substandard dwelling unit by current residential living standards, which would be a hardship. A glassed in porch reduces the living area to approximately 1,000 square feet.

Attorney Curtain distributed illustrations related to the property, with the help of Rafael Rodriguez, Architect. He explained that the hardship was the uneconomic circumstance of a one bedroom, one bathroom unit.

Architect Saladrigas presented architectural renderings and reviewed the architectural issues.

Zoning Administrator Paul Castro advised that staff concerns were related to the conditions that were relevant today that were not relevant in 1979 when conditions were placed on the variance. The variance had then been granted to the owner of the property based on a medical condition, and the addition was required to be removed if the owner ever sold the property. Staff comments related to the landmarked house, were that if the addition were removed, the appearance of the original structure of the building would be improved. He explained that this was an unusual situation, because the structure was landmarked after the addition was approved, and that was why the applicant was before the Town Council today.

President Pro Tem Kleid pointed out that economic reasons were not a justification for a hardship.

Council Member Wyett moved that Variance 25-2006 be referred to the Landmarks Preservation Commission, to come back to the Town Council at the October 10, 2006, Town Council meeting. The motion was seconded by Council Member Brooks. On roll call, the motion 4/1, with Council Members Wyett, Brooks, Markin, and President Pro Tem Kleid casting affirmative votes; President Coleman casting a dissenting vote.

c. VARIANCE #26-2006 The application of Ronald E. Pack and Lisa J. Pack relative to property described as Lots 409, 411, 413 and 415, Poinciana Park 2nd Addition; commonly known as 252 Seaspray Avenue; located in the R-B Zoning District. Variance request to replace a flat roof with a hip roof on a non-conforming garage guest house with a rear yard setback of 2.5 feet in lieu of the 15 foot minimum required in the R-B Zoning District. The proposed roof would add an additional 4.5 feet of height at the peak in the required rear setback.

Ex-parte communication was declared by President Coleman with Attorney Maura Ziska; by Council Member Wyett with Attorney Ziska; by Council Member Brooks with Attorney Ziska regarding the application in question.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, stating that owner of the house had experienced a leaking roof over and over again, and was trying to replace the flat roof with a pitched roof, which would require a variance because of the increase in height, and the rear yard setback.

Architect Michael Johnson presented architectural renderings and photographs of the property, and reviewed the application.

Zoning Administrator Paul Castro advised that staff did not understand the hardship. Staff comments were as follows:

- The overhang was in a utility easement, and there was concern about drainage going off on a neighboring property.
- Public Works had commented that the overhang needed to be removed out of the area that encroached the utility easement.

- Staff had also advised that the design could be done in a manner that was closer to code compliance.
- The Town Manager had indicated that the proposed roof overhang should not be allowed to encroach in the utility easement south of the building.
- PZ & B had indicated that the roof overhang could be designed with minimal impact on the easement.

Attorney Ziska commented that it was important to change the roof line because of the roofing problem and the maintenance problems.

After further discussion: **Motion made by Council Member Wyett, seconded by Council Member Markin, to approve Variance #26-2006, with the condition that the roof line would be changed to the satisfaction of the Planning, Zoning and Building Department. On roll call, the motion carried unanimously**.

d. VARIANCE #27-2006 The application of Bradford W. Lovette and Ikuyo Ohigashi relative to property described as Lots 18, 20, 22 and 24, Poinciana Park; commonly known as 431 Seabreeze Avenue; located in the R-B Zoning District. A variance to demolish and rebuild a non-conforming portion of a one story guest house that is 145 square feet in area. The variance requested is to demolish and rebuild the same size room in the same footprint at an increased height in order to raise the finished floor elevation with a rear yard setback of 3.8 feet in lieu of the 10 foot minimum required. The raised floor would match the existing floor elevation of the rest of the guest house.

Ex-parte communication was declared by: Council Member Wyett, President Coleman, Council Member Brooks, and President Pro Tem Kleid.

Attorney Ziska provided an explanation of the variance request. Architect Michael Johnson displayed and reviewed the architectural renderings related to the variance request.

Zoning Administrator Castro indicated that staff questioned the hardship as there was adequate space on the property to design the addition in order to meet the code requirements for setbacks.

Attorney Ziska noted that the hardship was that the house was built in the 1920's, and the code had since changed. The applicants were attempting to correct a flooding problem, by raising the floor.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve Variance #27-2006. On roll call, the motion carried unanimously.

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

Ex-parte communication was declared by: President Pro Tem Kleid with Attorney Ron Kolins; Council Member Wyett with Bill Elias and Attorney Kolins; Council Member Brooks with Architect William Elias, Attorney Kolins, and he attended the Architectural Commission (ARCOM) presentation at the time the application was discussed.

Seth Behn, Land Use Planner for Greenberg & Traurig, on behalf of the applicant, provided an overview of two variances. He noted that ARCOM recommended approval with minor modifications that were agreed upon by Greenberg & Traurig.

Zoning Administrator Castro indicated that ARCOM recommended approval of the project under the condition that the finished floor point of measurement be the same elevation as Mr. Wyett's house. Staff saw no hardship to grant a variance to allow him a point of measurement to 7.5, and no hardship as it related to lot coverage.

President Coleman commented that he was sympathetic to the point of measurement and not to the lot coverage. The Council had decided to adhere to the ruling to abide by the existing codes in order to minimize variances for new construction.

Mr. Elias conveyed that the design of the house was about inspiration, designed with less impact on the street and the bike path, and was not a large house.

Mr. Behn indicated that the applicant was requesting a minor increase in the one-story portion of the house, in order to create a visually less intrusive design.

President Coleman commented that aesthetics were not grounds for hardship in the code.

Mr. Behn requested a deferral to next month's meeting.

Motion made by Council Member Markin, seconded by President Pro Tem Kleid to approve deferral to September 7, 2006, Town Council meeting. On roll call, the motion carried unanimously.

f. SPECIAL EXCEPTION #7-2006 The application of the Hebrew Academy of PB relative to property described as lengthy legal description on file; commonly known as 240 Cocoanut Row; located in the R-B Zoning District. A request for a Special Exception to allow a private academic pre-school ("Hebrew Academy of Palm Beach") to operate at the old Palm Beach Public School Gymnatorium building at 240 Cocoanut Row with 16, 207 sq. ft. of gross leasable area. The applicant's proposed pre-school will start with 8 students and will not exceed a capacity of 30 students.

Ex-parte communication was declared by President Pro Tem Kleid, President Coleman, Council Members Wyett and Brooks with Attorney Maura Ziska, and Council Member Markin with Attorney Peter Van Andel, a resident.

Attorney Ziska provided an explanation of Special Exception #7-2006, and noted that the state required a fenced outdoor recreation area, but since the school had 5,000 square feet inside the gym, it often would not be used. The time line of the school was very short, and in order to open in August 2006, the approval would have to be taken to the state tomorrow, an inspection would have to be done, and a fence installed.

Zoning Administrator Castro expressed concern regarding legal notice requirements to the public of the plans for a playground on the property, as it had not been identified in the application. Residents had written letters of concern about having a third school added that was within close proximity to them.

Responding to Council Member Wyett, Rabbi Scheiner, Dean of Hebrew Academy, commented that he could keep the playground activity to a minimum.

Council Member Wyett suggested that the Town Council allow a one-year temporary permission, because the school year was beginning in a few days.

Council Member Markin noted that she had a discussion with Attorney Van Andel who lived across from the school, and that he objected to the application because of the fenced in playground, which was omitted from the application. Additionally, there were too many schools on one corner. She stated that she was very concerned that the residents were not adequately notified.

Responding to Council Member Markin, Planning, Zoning, and Building Director Close confirmed that the construction offices on the second floor of the building were not being used.

Responding to Mr. Randolph's question regarding the necessity of all the details relating to the Special Exception being included in the legal notice, Mr. Castro replied that in the application, it was stated that there would be no physical change to the building.

Attorney Ziska replied that there was no change in square footage of the building, only that an existing area was being fenced in. She stated that if the applicant was conditionally approved, they could proceed to the state for approval, and at the same time, the applicant would notice the neighbors, providing them an opportunity to comment on the application.

Council Member Markin noted that the neighbors were uncomfortable that the landscaping had not been improved, the building was deteriorating, and that they wanted the right to comment on the school.

Town Attorney Randolph advised the Town Council that Attorney Peter Van Andel had indicated that he was prepared to file for injunctive relief unless he received certain and binding assurance that the recreation idea was permanently abandoned, and that he approve of a detailed landscaped plan. He suggested that, in order to help with the state requirement, the Town Council should give a conditional approval subject to this being noticed properly and have it brought back to the Council.

Attorney Ziska commented that they would not use the playground for 60 days, and that the installation of a fence would meet with approval by the state.

After discussion;

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve Special Exception #7-2006 conditionally for 60 days, and that staff properly issue notice. On roll call, the motion carried 4-1, with Council Member Markin dissenting.

Town Attorney Randolph clarified that relative to the motion, the risk was not only that an injunction may be filed; but after the hearing, and comments from the public, if the Town Council decided not to approve the Special Exception, the school would then have to be closed.

g. SITE PLAN REVIEW #13-2006 WITH VARIANCES The application of Il Lugano Condominium Association relative to property described as Il Lugano Condominium; commonly known as 300 Seminole Avenue; located in the R-D(2) Zoning District. Site Plan Review to modify a previously approved Site Plan by reconfiguring parking spaces and greenspace to provide a fountain at the drive through entrance and modify the turning radius for safer access in and out of the parking lot, and lastly to construct a 298 square foot accessory building to house a generator on the southwest portion of the site next to the pool area. In addition, a request to eliminate the previously approved dumpster location and relocate to an area within the building; variance request to allow the construction of an accessory building to house a generator to have a 5.16 foot rear yard setback in lieu of the 30 foot minimum required in the R-D(2) Zoning District; and, a variance request to allow an increase in lot coverage to 30.25% in lieu of the 29.64% existing and the 22% maximum allowed for the generator building in the R-D(2) Zoning District.

Ex-parte was declared by: President Pro Tem Kleid, President Coleman, and Council Members Brooks and Wyett with Attorney Maura Ziska, Attorney Ziska noted that deferral was requested for the variances of the generator, as ARCOM had requested deferral of the generator location, and that the Il Lugano Condominium Association was meeting with the neighbor of the Park Regent Condominium to discuss a more agreeable location.

Attorney Ziska requested approval, on behalf of the applicant, for the reconfiguration of parking spaces and green space that would provide a wider turning radius at the entrance for safer access. She added that approval was being requested for removal of an exterior dumpster for placement inside the building.

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

Zoning Administrator Castro asked that a condition of approval be that the applicant obtain the Public Works Department review and approval of the new location of the dumpster.

Jay Denger, of Park Regent Condominium, stated that they had no objection to that particular part of the request, but only with the generator.

Motion made by Council Member Markin, seconded by President Pro Tem Kleid to approve Site Plan Review #13-2006, with condition, and to approve deferral of the variance request. On roll call, the motion carried unanimously.

5. Other - None

XII. ANY OTHER MATTERS

A. Palm Beach Towers Generator

Planning, Zoning, and Building Director Close provided an update on the status report regarding Palm Beach Towers generator. She discussed the following issues discussed:

- The Architectural Commission (ARCOM) requested the applicant to return with landscaping alternatives; and

- The Planning, Zoning, and Building (PZB) Department would issue a conditional permit, if all of the concerns of the Town Council relative to the agreement between Florida Power & Light (FPL) and Palm Beach Towers were resolved.

President Coleman stated that although Palm Beach Towers Condominium Association received a 6% discount from FPL, it was not legitimate grounds for FPL to turn the generator on more often than absolutely necessary in order to have backup power, and that the agreement should be dissolved. He expressed concern that utilities would be using the island as backup or to off load.

Council Member Wyett indicated that Palm Beach Towers should pay the 6% cost, and not continue their agreement with FPL. If there was a fuel shortage, FPL could require the residents to give up a percentage of their power.

President Coleman commented that the approval of the site plan review was conditioned on the review of the agreement between Palm Beach Towers and FPL, which indicated that FPL was seeking more than backup generation.

Town Attorney Randolph commented that, in speaking with Attorney Schef Wright, there would not be an opportunity to frequently use the generator other than as backup. He suggested that a motion be made by one who was on the prevailing side for reconsideration to have the applicant return next month in order to discuss a condition of approval that the customers agree to limit the number of hours per year that it operated the backup generators.

President Coleman noted that he was the swing vote, and would make the motion to reconsider.

President Coleman passed the gavel, and moved reconsideration of the Palm Beach Towers generator. The motion was seconded by President Pro Tem Kleid to reconsider, at the September 7, 2006, Town Council meeting, the approval of Site Plan Review #14-2006 - Palm Beach Towers Request for Generator Placement. On roll call, the motion carried unanimously.

Responding to Ms. Close's clarification that, under those circumstances, the PZB Department would not issue a permit to place the generator, President Coleman commented that the applicant would be advised to return to the next Town Council meeting.

B. 2875 South Ocean Boulevard - Request for Demolition

Planning, Zoning and Building Director Close provided an update of the property at 2875 S. Ocean Boulevard. The applicant requested that it be declared uninhabitable space or that it be condemned. Town Attorney Randolph had advised the applicant that no action would be taken by the Town, and not to tell their tenants that there was any impending action.

President Coleman commented that the landlord was intending to use this condemnation proceeding to avoid under market rents. He urged the Council to be cautious as not to be used to accomplish that end.

President Pro Tem Kleid added that the applicant wanted to avoid his long-term leases.

President Coleman stated that the Town Council would deter the applicant from facilitating the avoidance of leases.

Council Member Wyett recalled that the existing building received special permission in order to be constructed. If the building was demolished, what could be rebuilt without a variance?

Zoning Administrator Castro responded that at the time the building was constructed, no retail use was allowed, only office space, including the first floor. The provisions of the code were: a maximum of two stories; with the second floor as multi-family, mixed use; and the first floor as commercial use.

President Coleman requested that at the next meeting, staff apprise the Council of the facts regarding the property, or send a memorandum listing the existing codes and what would be allowed under new construction.

Council Member Markin noted that, for the record, the Town Council should be cautious regarding condemning buildings that were being used as a strategy to redevelop beyond what was there, when it currently had a Town use.

Council Member Wyett indicated that there was a structural defect on the rear side of the building, which would be more costly to renovate the building, than to demolish it; regardless, the applicant was doing everything possible to demolish the building.

Council Member Brooks requested Ms. Close to research the hotel/condominium situation. Some municipalities were implementing ordinances as a result of the impact on the infrastructure, relative to demolishing hotels/condominiums.

Responding to Council Member Brooks question regarding staff researching the generators to present to the Council, Ms. Close indicated that in September, staff would submit a proposed generator type of a program.

XIII. ADJOURNMENT

There being no further business, the regular Town Council meeting of August 8, 2006, was adjourned at 9:28 p.m.

APPROVED:

Dennis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk