# TOWN OF PALM BEACH

Office of The Town Clerk

## MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JULY 11, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting of July 11, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Harry Ackerman - Assistant Building Official
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
Andrew Cox - Assistant Fire Chief
Charles Langley - Public Works Assistant Director



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Michael Mason - Law Enforcement Major
Edward J. Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Tim Wright - Chief Electrical Inspector
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Pamela Hoffpauer, Code Enforcement Board, From June 2001 Through May 2006.

Mayor McDonald presented a plaque to Pamela Hoffpauer for her service on the Code Enforcement Board from June 2001 through May 2006.

B. Recognition of Bill Bone, Recreation Advisory Commission, From May 2002 Through April 2006.

Mayor McDonald presented a plaque to Bill Bone in recognition of his service on the Recreation Advisory Commission.

C. Recognition of Leander Brown, Jr., Streets Supervisor I, for 25 Years of Town Service.

Mayor McDonald recognized Leander Brown, Jr., for 25 years of service with the Town.

D. Recognition of Lisa S. Gorman, Police Planner and Accreditation Manager, for 20 Years of Town Service.

Mayor McDonald recognized Lisa S. Gorman, for 20 years of service with the Town.

IV. COMMENTS OF MAYOR JACK McDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Pro Tem Kleid commented that the true wealth of the Town lay in the quality of the people who lived here and their willingness to devote their time and service to the community.

President Coleman indicated that ex-parte communication was necessary regarding Zoning Variances and Special Exceptions because it allowed an opportunity for individuals to resolve issues informally, prior to addressing the Council. He stated, however, that he welcomed anyone's right to come before the Council.

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

Yvelyne D. Marix, 1570 N. Ocean Boulevard, commented that in preparation of a hurricane, she received a violation for placing an eight-foot by six-inch log for trash pickup. She indicated that it should be clear to the residents as to what was permitted in preparing for a hurricane, and if no logs were allowed, what the residents should do about it.

Leslie Evans, 135 Seminole Avenue, commented that:

- There were only three working streetlights out of ten on the north side of Royal Poinciana Way, and only six out of ten working on the south side, which he complained about three months ago;

- At 251 Royal Poinciana Way, a tree had not been replaced for over two years, and the street was being neglected;

- The consultants should involve the citizens in the traffic and parking studies; and

- The cats continued to bother him.

Jorge Sanchez, 239 Southland Road, commented that the Planning, Zoning, and Building (PZB) Department should be kept contained and not moved.

Sam Boykin, 285 Jamaica Lane, read and submitted a letter for the record, which indicated that he was not in favor of relocating the PZB Department to the City of West Palm Beach or Riviera Beach.

VII. APPROVAL OF AGENDA

The following changes to the Agenda were made:

**ANNOUNCED** that on Item VIII.B.1., Resolution 44-06, the wording in the title on the Agenda itself was incorrect, but in the backup material it was correctly printed; it would be properly read when this item was considered.

**ANNOUNCED** that Item IX.A.3., Old Business, Proposed Model Program for Feral Cat Management would be heard at a Time Certain of 11:00 a.m., today.

**ADDED** as the first item under IX. New Business, the further consideration of the Town Council of the Town of Palm Beach versus Barry Small litigation, as the first item under New Business, prior to the consideration of the Palm Tran request.

**DEFERRED** Item XI.C.1.a., Special Exception #3-2006, Application of Via Mizner Associates, Limited Partnership, relative to the property at 8 - 14 Via Mizner, to August 8, 2006, Town Council meeting.

**DEFERRED** Item XI.C.4.b., Site Plan Review #9-2006 with Variances, Application of the Villas, Inc., relative to the property at 425 Worth Avenue, to August 8, 2006, Town Council meeting.

**DEFERRED** Item XI.C.4.c., Site Plan Review #12-2006 with Special Exceptions and Variances, Application of Starbuck's of Worth Avenue Associates, Limited at 150 Worth Avenue, to August 8, 2006, Town Council meeting.

**Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve the Agenda as amended. On roll call, the motion carried unanimously.**

VIII. PUBLIC HEARINGS

A. COMMERCIAL SOLID WASTE FEE ASSESSMENTS FOR FY06.
[H. Paul Brazil, Director of Public Works]

1. RESOLUTION NO. 43-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing the Non Ad Valorem Assessment Rates for Commercial Solid Waste Collection; Providing an Effective Date.

Director of Public Works Paul Brazil noted that Palm Beach County collected commercial solid waste fees as a property assessment and transferred the money to the Town. He reported the final non-ad valorem assessment rates for commercial solid waste collection as stated in the memorandum dated June 26, 2006 in the backup material on page 216.

Town Attorney Randolph read Resolution No. 43-06 by title as printed above.

Public Comment: None

**Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve Resolution No. 43-06, establishing the non ad valorem assessment rates for commercial solid waste collection. On roll call, the motion carried unanimously.**

B. EASEMENT ABANDONMENTS AND DEDICATION.
[H. Paul Brazil, Director of Public Works]

1. RESOLUTION NO. 44-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Portion of a Two and One Half (2.5) Foot Utility Easement Lying Within

Lots 75, 88 and 93 in the Revised Plat of Lake Front Addition to Boca Ratone Company's Inlet Subdivision on Property Commonly Known as 318 Caribbean Road, Palm Beach, Florida.

Mr. Brazil stated that staff recommended Town Council approval of the resolution to abandon and rededicate the utility easement at 318 Caribbean Road, with the condition that the property owner pay for all fees related to implementing the abandonment.

Council Member Markin expressed concern about abandoning an easement at a time when easements were needed in order to bury Florida Power & Light (FPL) utility lines.

Mr. Brazil responded that the easement was internal to the property and served only that property. An additional easement had already been rededicated to FPL adjacent to the property line.

Council Member Wyett suggested that all requests for easements should have the provision that the party would grant an equal easement on the front of their property for underground utility purposes if needed, that the Town not grant any easements in the future until easement needs for undergrounding had been determined.

Attorney Tim Hanlon, representative for the property owners, commented that the property owners had no problem committing to a future easement for underground utilities. He stated that a new easement had been recorded to FPL, at their request.

President Coleman requested that staff prepare a proposal that easement requests anticipate prospective undergrounding.

Town Manager Elwell indicated that as a condition of approval, an additional easement would be granted to the degree required by staff. Staff would make that determination with FPL as a conservative easement, and if it was not needed, could seek an abandonment later.

**Motion made by Council Member Wyett, seconded by Council Member Brooks to approve Resolution No. 44-06 with the condition that an additional easement for underground utilities would be granted as needed.**

Town Attorney Randolph read Resolution No. 44-06 by title, as printed above.

Attorney Tim Hanlon stated for the record that the property owner was in agreement with the discussions agreed upon between the Town and FPL based on the needs for facilities.

Town Manager Elwell clarified that at this time the Town did not know what facilities were needed, but would take a conservative approach to defining the boundaries of a maximum easement that might be needed for the undergrounding project.

**Upon roll call, the motion to approve Resolution No. 44-06 with condition, carried unanimously.**

2. RESOLUTION 45-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Portion of a Five (5) Foot Utility Easement Lying Within Lot 9 of Lagomar Park No.1 and Lot 5 of Ocean View, on Property Commonly Known as 128 Ocean View Road and Lot 9 of Lagomar Park No. 1, Town of Palm Beach, Florida.

Director of Public Works Brazil stated that staff recommended approval of the resolution abandoning the utility easement at 128 Ocean View Road and Lot 9 of Lagomar Park No. 1, and that the property owner would pay all fees related to the implementation of the abandonment.

President Coleman added that this Resolution would also contain the proviso, as did Resolution No. 44-06 ,of granting an additional easement for underground facilities.

Attorney Steve Brannock as representative of the petitioner, stated that the property owner was in agreement with the condition specified.

Town Attorney Randolph read Resolution No. 45-06 by title, as printed above.

**Motion made by Council Member Brooks, seconded by Council Member Wyett to approve Resolution No. 45-06, with the condition of granting an additional easement for the underground utility project as needed. On roll call, the motion carried unanimously.**

IX. REGULAR AGENDA

A. Old Business

1. Placement of Overhead Utility Lines Underground.

[Thomas G. Bradford, Deputy Town Manager]

a. Monthly Update.

Deputy Town Manager Bradford requested that the Council provide staff with feedback on the following:

- The proposed survey, or petition, for streetlights on those streets being considered for underground conversion in Phase 1;

- The suggestions made on reducing cost of eminent domain;

- The Civic Association's suggestion that the Town secure the services of a qualified outside negotiator to deal with Adelphia, and other utilities relative to the construction agreements; and

- That the Town retain an outside consulting firm to plan a comprehensive educational campaign for the anticipated referendum.

Deputy Town Manager Bradford provided a status report regarding the burial of overhead utility lines and discussed the following issues:

- Governor Bush signed SB888 into law, which now required the Public Service Commission (PSC) to conduct a review to determine what should be done to enhance the reliability of Florida's transmission and grids during extreme weather events with considerations including recommendations for promoting and encouraging underground electric distribution for new service or construction, and the conversion of existing overhead distribution facilities to underground;

- The Town was in possession of Florida Power & Light's (FPL) guidelines for use of right-of-way (ROW) and the proposed ROW Agreement for Underground Conversions;

- A letter was written to Adelphia/Comcast regarding their failure to provide a requested draft of an agreement between the parties for conversion of overhead to underground facilities. Adelphia indicated that they would provide a draft memo of understanding related to any aerial to underground conversion project approved by the Town residents in February;

- A form of agreement was received from BellSouth relating to the terms and conditions of the underground conversion, which would be discussed further;

- The Municipal Underground Utilities Consortium (MUUC) had been implemented with $99,485 committed for the study, with more than 29 cities participating. The Town would have the necessary funds to complete the study, which would be important for the PSC hearings in the fall.

b. Survey of North End Residents Regarding Street Lighting.
*Deferred from the June 13, 2006, Town Council Meeting.*

A sample streetlight survey/petition, with cover letter, was attached for the Town Council's consideration, which was sent to the North End Property Owner's Association for review. There was a list of additional items that were discussed related to street lighting, in the backup on page 256 of Mr. Bradford's memorandum dated July 3, 2006.

President Coleman suggested that, due to the time constraints, the Council determine which items were of a consensus and which items could be addressed at next month's meeting.

Council Member Wyett suggested the use of solar lighting because it conserved electricity; after a storm it did not depend on the restoration of electricity, and was ecology friendly. He said he would like staff to investigate the practicality of it with the Council's concurrence.

Mr. Bradford responses to Council Member Wyett's questions were:

- It would be less expensive to install the streetlights during the implementation of the underground project and it would avoid disruption to the residents on multiple occasions; and

- A streetlight could be eliminated out of several on a street, however, screening and black out could be done to shield the back side of the lamp so the light did not disperse into the resident's home.

Mr. Bradford's responses to Council Member Markin were:

- A total cost factor had not been done relative to an FPL streetlight versus the Town's choice of a streetlight; a report prepared by Public Works brought street lighting up to a uniform standard level in the mid '90's costing $3.5 million Town wide;

- The amount of light from a decorative streetlight versus a cobra institutional type of streetlight was within the standards of roadway lighting. There were different lumen that could be installed in the luminaries, as long as it was within street lighting guidelines; and

- A streetlight on an arterial street was typically higher for greater light dispersion, versus a shorter height on a residential street.

Council Member Markin noted that the north end residents wanted consistency in the street lighting, as in the stem of the pole being consistent with the shorter ones that go on the side streets. She stated that the north end residents would prefer to move forward with the street lighting rather than waiting for the underground project to be implemented.

President Pro Tem Kleid commented that:

- There should be a survey;

- The survey should be done by the Town and not by the Association;

- A 90-day delay would provide the residents sufficient information as to the types of street lighting and exact location;

- The same lighting should be installed on the arterial streets as the side streets for consistency;

- Approval of the streetlights should require more than a majority of the people that reside on a street; and

- The Town should move forward with the street lighting installation in the north end, regardless of the undergrounding project,

Responding to President Coleman, Mr. Bradford indicated that he would meet with Public Works to obtain the data regarding solar lighting and the approximate cost.

Town Manager Elwell responded to President Coleman, that the information regarding solar lighting would be provided to the Council at next month's meeting.

It was the consensus of the Town Council to:

- Waive the Code Section 106-46 that implied or regarding funding for street lighting;
- Move forward with the street lighting project even if the Town voters rejected the referendum;
- Survey the residents directly;
- Discuss at the next meeting whether to use a majority (50% plus 1) or more than a majority of property owners on a street to proceed with the streetlights;
- Discuss the use of decorative streetlights at the next meeting;
- Allow the Town to make the decision of the streetlights on the arterial roads in order to avoid inconsistency; and
- Grant staff an additional 90 days before issuing the survey letters.

Ned Barnes, President of the Palm Beach Civic Association, commented that Jupiter Island, who was also implementing an underground project, had created a steering committee of six residents who had unique qualifications. The group met regularly in the Sunshine, in subgroups to address all the issues. Their Town Council members attended the meetings in order to obtain the best possible package to present to the voters. Mr. Barnes expressed concern that in the Town of Palm Beach, the responsibility belonged solely to the staff. He urged the Council to consider obtaining outside help, creating these types of committees, and doing whatever it takes to make it happen.

Council Member Wyett noted that the citizens were concerned with the costs and the effect on their property. It would be a long time before the implementation begins.

Mr. Barnes stated that he did not know how the Council could go to a referendum without having the answers to all the questions.

Discussion ensued among the Council Members regarding obtaining expert assistance for the Town staff and a person to negotiate with FPL, considering the magnitude of the project.

President Coleman stated that it was not possible for the Town to have all the answers for the residents and that there would be many mid-course corrections. He conveyed his financial outlook of the project, and suggested borrowing the money for the next four years, and afterward have a pay as you go policy.

President Pro Tem Kleid indicated that the residents would be reluctant to vote for a referendum that said one-third of the Town in a four-year period would have underground facilities, without assurance that they would have it in their area.

Council Member Markin commented that the residents' questions needed to be addressed, and that they needed to be educated before voting on the referendum. She asked if there would be a committee or a staff person responsible for answering the residents' questions.

Discussion ensued among the Council Members regarding the funding and whether all the issues and questions would be ready in time for the referendum. Council Member Wyett noted that the residents primarily wanted to know when the undergrounding would begin and what would be the cost of the project.

Deputy Town Manager Bradford resumed the discussion regarding eminent domain, and recommendations from the Civic Association to hire a negotiator and a public relations firm for developing an education campaign for the residents.

President Coleman directed that staff return with a plan for hiring a public relations firm for developing an educational outreach of the residents, and acquiring outside resources, such as a negotiator, to assist the Town with the project.

Council Member Wyett made the following comments:

- By providing the public with too much information, it could cause confusion;
- A negotiator would not be needed until after the results of the referendum;
- The legal side relative to the residents right-of-ways would take considerable time;
- It was FPL's function to decide where the wires would be buried; and
- Consultants would be needed later when there was more information.

President Coleman replied that the Town had not commissioned FPL to provide the plan, as the results of the referendum would have to be known first.

Council Member Wyett discussed the bond issue and whether authorization of the amount could legally be worded as "up to" and "not to exceed."

Mr. Bradford stated that the plan within the next couple of weeks, was to sit down with FPL regarding a right-of-way agreement with terms and conditions for Phase 1 of the project. It was the same situation with BellSouth, but was a more complicated agreement than FPL. Adelphia would have an agreement to the Town by the end of month. The time was approaching to negotiate terms and conditions in these three agreements that would create a model for the other 9 to 10 phases going forward.

Responding to Council Member Wyett, Mr. Bradford noted that according to PSC tariffs, the Town would be required to pay BellSouth to place their utility lines underground as well.

Council Member Wyett disagreed with President Coleman's suggestion to fund the next four years on a pay as you go policy, because he indicated that some of the taxpayers may never use the system and that it was a capital asset, which should be bonded forward for people to pay equally as they resided in the Town.

President Coleman replied that he did agree with Mr. Wyett's philosophy, but the populace would be more comfortable with "pay as you go" funding, which would assure a 51% referendum vote.

President Pro Tem Kleid noted that the bonding issue was a separate issue to be discussed at another time.

**Motion made by President Pro Tem Kleid to approve the hiring of a public relations person to assist the Town in educating the public with respect to the referendum.**

Council Member Markin commented that she could not vote on the motion without knowing the cost or the job description.

Mr. Bradford explained that it was only an indication by the Council of staff's direction. The date would be input into the Project Management Timeline, and be brought before the Council with an outline and proposed cost.

President Coleman directed staff to come back with a plan for educating the residents regarding the pros and cons of the anticipated bond issue in which to vote.

President Pro Tem Kleid added that the plan should include a public relations person.

**Amended motion made by President Pro Tem Kleid, seconded by Council Member Wyett that at the August 8, 2006, Town Council meeting, staff would bring a proposed plan of action related to the public education element, in preparation of the referendum, and the selection and cost of engaging a public relations professional to design the plan and assist the Town. On roll call, the motion carried unanimously.**

Council Member Wyett proposed that the Town Manager be authorized to advertise and seek out advisors necessary for each stage of the underground utility process, which would include an engineer to review FPL's work, the proper legal counsel to review the contracts for FPL, and the other entities, and any other consultants that the Town Manager should bring to the Council's attention that were needed.

Town Manager Elwell, noted that on the technical side, the Town already had an adequately able advisor to review the proposed plan, who prepared the initial cost estimates both for Townwide and for state roads, and that there would be an independent review by the Town's consultant engineer of the FPL plan.

Deputy Town Manager Bradford expressed concern regarding the use of local consultants (within Florida) to critique the designs of this project, since FPL was the biggest provider of jobs in the market.

It was the consensus of the Town Council that staff return next month with a report on the advisor that would have an independent ability to critique and improve the system; and a negotiator and an attorney to sit at the table with FPL to discuss the terms and conditions of the contract.

c. Direction Relative to Eminent Domain Issues.
*Deferred from the June 13, 2006, Town Council Meeting.*

Mr. Bradford noted the following five options to consider in the reduction of the potential use of eminent domain:

1. Underground conversion along all State Roads and all major north/south Town roads, for less cost than the conversion of the whole Town. Side streets could be done by the property owners through the use of non ad valorem assessments;

2. Offer the property owner abandonment of existing easements on their property as an inducement to provide all new easements for free to the Town, where possible;

3. Maximize the use of right-of way for utility facilities through the adoption and approval in Tallahassee with the PSC;

4. In areas where right-of-way was inadequate, provide a choice to the homeowners to work with the minimal amount of easement needed or not to convert to underground and instead use the hardening of the overhead facilities; and

5. The Town could adopt an ordinance that would allow special non ad valorem assessments to be used to generate the funds to acquire property for easements. The question to be determined was that by using special non ad valorem assessment for an eminent domain could the Town limit eminent domain costs to those that caused the Town to incur those costs? As soon as that answer was obtained, he would request direction in the preparation of the ordinance.

d. Direction Relative to Copper Wire vs. Aluminum Wire.

Mr. Bradford indicated that property owners should bear the cost of converting secondary service lines, which runs from the various utility companies' primary service lines to the structures located on each parcel of land. The Town had a copper requirement in its code that did not allow the use of aluminum wiring by FPL from the transformer to the meter box. The local amendments were no longer allowed according to the Florida Building Code. If the homeowner's chose to use the FPL aluminum standard, there would not be a cost. If copper was chosen, which was considered a better material, the homeowners would have to pay a secondary service cost.

2. Status Report on Cell Phone Service in Town.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford provided a status report on the cell phone service in the Town. He discussed the problems that were identified and following was the action plan to resolve the issues:

- A proposal had been secured from the Town's wireless telecommunications consultant (CompComm), to identify every dead zone in Town of every major wireless telecommunications service provider and to make recommendations for mitigating documented problems, if necessary;

- Mayor McDonald had written to the chief executive officer of every major wireless carrier advising them of the problems encountered and to take action on it;

- In the event that any major carrier did not respond within a reasonable period, staff would seek authorization for hiring the consultant to identify the dead zones and make recommendations; and

- Depending upon the recommendations of the consultant, this documented information could be transmitted to the service providers and if there was no response within a reasonable amount of time, the Town would file a formal complaint with the Federal Communications Commission (FCC).

Mr. Bradford noted that since the Mayor had sent the letters, all the carriers had responded except for MetroPCS. He discussed the following:

- Cingular was the Town's largest cellular provider in the Town, and Verizon was next;

- He was meeting with T-Mobile on Friday to review the network needs and Town sites and to review a slim line cell site concept;

- Cingular indicated that they had acknowledged the problems, were willing to meet with him, and would like to discuss the feasibility of using mobile temporary cell sites to resolve the problems while they were addressing a long term solution, which meant more permanent cell sites on the island;

- The Public Safety Answering Point (PSAP) problem would only partially be repaired if cell sites were actually on the island. The Town was on the periphery of every service area by every provider. The problems would only get solved if there were more cell sites on the island.

Mr. Bradford stated that he would continue to meet with all of the carriers and would keep the Council informed until there was a solution.

John Heavey, Real Estate and Construction Manager for Cingular Wireless, stated that they were investigating alternate sites within the Town, and would address any coverage issues or explain in detail the existing network on the island and any limitations that currently exist. He would like the Council to consider a multi carrier facility at The Breakers Hotel, as an alternate cell site location would be needed.

President Coleman indicated that the greater the improvement in cell phone service, the greater the flexibility of the Town.

Responding to Council Member Markin, Mr. Heavey indicated that Cingular had presented a proposal with The Breakers, and eventually a multiple carrier site was desired. The Breakers were entertaining offers from other carriers in order to jointly come to the Town with one solid proposal at that location.

Responding to President Coleman, Mr. Heavey stated that Cingular was trying to pick up every bit of coverage possible that was considered a dark spot, and that a test would be conducted from the facility at the actual height and location of the site within 9 to 12 months.

Responding to Council Member Wyett, Mr. Heavey commented that the testing was merely for coverage for the phone, and that equipment could be built to support whatever capacity was needed.

Responding to Council Member Markin, Mr. Heavey indicated that the support of the Town was most important in order to expedite the process to apply for zoning, and to work with the state.

Mr. Bradford replied that he had only dealt with the state one time, and it took months, but there were errors then, so it could be faster now.

Mr. Heavey responded to President Coleman that if the Town could show proposed locations for temporary sites, Cingular could make an analysis to see what benefit it would be for the schools.

Town Manager Elwell explained that staff would do as much as possible in advance of Cingular submitting a zoning application. It would take about three months, because of the advertising requirements and for Cingular to obtain approval for a special exception.

Mr. Heavey responded to President Pro Tem Kleid that by installing the service at The Breakers, the 9-1-1 calls would serve the Town of Palm Beach directly, without going through West Palm Beach first.

Mayor McDonald suggested revising the ordinance in order to allow temporary, alternate sites for next month's meeting.

Town Attorney Randolph responded to President Coleman that amendments to the Zoning Ordinance could only be made during the season.

Mr. Elwell stated that the first and second readings would be October and November.

President Coleman thanked Mr. Heavey for attending the meeting and that the Town appreciated Cingular's responsiveness.

**Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to send a letter of appreciation to Cingular Wireless for their cooperation. On roll call, the motion carried 4-0, as Council Member Wyett temporarily left the meeting.**

Town Attorney Randolph indicated that he would research the possibility of enlisting an ordinance outside of the Zoning code in relation to Public Safety in order to expedite temporary cellular service.

3. TIME CERTAIN - 11:00 A.M. - Proposed Model Program for Feral Cat Management.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Hannah, provided a report of a proposed plan of a model PB Cats program and an estimated cost of the necessary resources. Following were the recommendations for the Council to consider:

- To review the proposed the plan and provide further direction regarding implementation;
- Create animal and bird nuisance ordinances as initially proposed by Town Attorney Randolph;
- Obtain advice from Town Attorney Randolph regarding requirements of spaying or neutering pets; and

- Provide an additional $30,000 for FY 2006 to fund PB Cats for the remainder of the fiscal year.

The issues of concern for the model program were discussed as follows:

- Record keeping was inadequate, and it was unknown how many cats lived on the island. The cat colonies were not registered with the County, and proper financial information had not been provided to the Town by PB Cats, Inc.;

- There were no formal procedures for dealing with complaints regarding the cats;

- There was a high population of kittens born from feral cats, which cost more than $34,000 in boarding cats at Island Animal Hospital in Palm Beach;

- Fund-raising attempts produced unsatisfactory results; and

- Community education about the Trap-Neuter-Release (TNR) Program was lacking, resulting in a lack of support from the community.

The recommendations to mitigate the concerns were:

- To hire an administrative/executive director, a full time field director, four part-time feeders, and solicit volunteer help if needed;

- To acquire an office space with a fax, email, and telephone with voicemail; office space was needed, along with space to shelter more cats in order to save thousands of dollars on boarding costs, and Council Member Markin suggested using space at the old Purchasing building;

- To register the cats into colonies with the County, and notify the residents in the neighborhoods of the location of the colonies;

- To provide financial reports related to the money provided by the Town for the program;

- To lend more community recognition to the program by establishing a formal feeding program;

- To establish formal procedures to deal with complaints;
- To create an organized approach to fund-raising;
- To educate the community about the program; and
- To focus efforts on a program to eliminate or greatly reduce new litters of kittens born to feral cats.

Ms. Hannah indicated that the proposed budget was about $200,000. She emphasized that she was not suggesting that the Town Council approve funding for the entire amount. The Ocean Reef Community Association (ORCAT) paid for their full time employees, but the remainder was covered by donations and fund-raising.

Responding to President Coleman, Ms. Hannah stated that PB Cats, Inc., spent more than $50,000, and that they had raised money, and within a 12-month period $34,000 was spent on boarding. The other $34,000 was spent on spaying and neutering. Beth Pouncey of PB Cats, Inc., interjected that more than 500 cats had been spayed and neutered.

Dr. Robert Lee, 369 S. Lake Drive, stated that there was a disease from feral cats that caused infections and miscarriages, and that six months out the year testing should be done for any diseases that feral cats carry, which should be in the expense budget.

Leslie Evans mentioned that cats on his street were a nuisance, and he had a problem with PB Cats, Inc., deciding how to spend the taxpayers money on cats that should not be there in the first place. People have tripped on his property because someone had put plastic containers of food for the cats, and the rats also eat the food.

Greg Lunsford, Vice Chairman of ORCAT, provided a history of ORCAT and discussed the operation of the program.

Responding to Council Member Wyett, Mr. Lunsford indicated that at the beginning of their program they did have to euthanize some cats to arrive at the number of 500 cats from 2,000 within three years.

Responding to President Coleman, Mr. Lunsford stated that one of the reasons to keep the cats was because of the rat problem. At ORCAT the cats were too well fed to be any good at rodent control.

Council Member Markin noted that there was a huge rat problem in the City of West Palm Beach and Jupiter Island since they had almost eradicated their cat problem. The Town should think twice about eradicating the feral cats, as they posed a purpose when in balance.

President Coleman addressed the issue that ORCAT euthanized 75% of the cats in order to jump start the stabilization program.

Council Member Markin commented that the first point in addressing the issue was the number of cats there were in the Town, which was unknown. She suggested that having a better program than what currently existed would be the first step in solving the problem.

President Coleman indicated that the Town would have to be willing to include euthanasia as a possibility of solving the problem.

Council Member Markin commented that the cats could be placed in a holding pattern, while finding homes for them, and if homes could not be found, then alternatives could be considered. She said that eventually the cat population would decrease.

Council Member Wyett commented that he would like to defer to the citizens to determine what it was that they wanted.

Marion Albergo, 642 N. County Road, commented that the program needed to be enhanced.

Sara Goodwin, 245 Osceola Way, commented that her dog died because of a resident that laced cat food with Freon, and several other dogs and cats died also. She noted that education was vital to this issue in order to protect the animals.

Connie Gasque, 167 Root Trail, commented that there were 30 cats in a house and the Town could begin to solve the problem by standing by the code that there were no more than 12 animals allowed in a house.

Mr. Lunsford stated that ORCAT did euthanize cats in the beginning, but they had a crisis with 2,000 cats in a smaller area than the Town. ORCAT had not euthanized any cats in several years, and was against it. In the short term, it would solve the Town's problem.

Council Member Brooks discussed the successes of Beth Pouncey of PB Cats, Inc. He said he could not justify spending $200,000 of taxpayers money. He advised Ms. Pouncey to elevate her fund-raising efforts.

Responding to Council Member Brooks, Ms. Pouncey noted that Gertrude Maxwell contributed a small four figure sum to the program.

**Motion made by Council Member Brooks to maintain the funding level that had been established.**

Council Member Markin stated that the Town paid $50,000 to PB Cats, Inc., and another $30,000, and now another $30,000 was on the table, which would have to be granted as there were bills outstanding to Mr. Brad Ochstein for boarding, which meant that the Town had already committed $110,000.

Mr. Elwell interjected that the $30,000 supplemental was last year at this time, and in this fiscal year, there had been $50,000 provided and PB Cats, Inc., were requesting an additional $30,000 at this time.

She continued that the even the $80,000 amount was not enough for the program, and to continue the same process was frustrating. She asked if it could be enhanced to $150,000 and the last $50,000 could be a matching program to the organization as a fund-raising event.

Council Member Wyett indicated that the Town was not moving fast enough to reduce the excess number of cats.

President Coleman stated that in order for him to vote for this program there would have to be management at the Town level, and a commitment to solve the problem, which meant including euthanasia if necessary.

President Pro Tem Kleid expressed concern about spending $150,000 and he was not sure that it would solve the problem because even the $200,000 amount did not include shelter and office space. The Town would have to give $30,000 to move the program and more involvement was needed from the Town, even if it required Sarah Hannah to be given an additional job of administrative head of PB Cats, Inc., not to increase the staff, but as another job. The Finance Department may have to handle the accounting aspect of PB Cats, Inc. He said he was not afraid of euthanasia, because the population would need to be maintained to handle the rat problem.

Mayor McDonald advised that the Town needed to assume the problem and take care of it.

Town Manager Elwell stated that it was a long range plan and a transitional process. The plan did not include any consideration of the euthanasia issue or any of the items that President Pro Tem Kleid said it did not include, which were major elements in addressing the overall program that needed to be resolved. The Town had the responsibility to ensure that the plan was succeeding. If the Town's role was to become the hands on administrators and/or performers of services, it was into an entirely different realm than anything considered today. It would be much more expensive, which could not be done without hiring more staff. There were no manpower, or hours that could be committed to managing animals somewhat domesticated and wild, without significantly sacrificing levels of service in other areas. The Town did not have the expertise to do the work. The primary element, was hiring an administrator to get the program in order.

Responding to President Coleman, Mr. Elwell stated that because it was a voluntary 501C3 nonprofit organization, there would be an expectation upon PB Cats, Inc. to hire a proper person to run the program, unless a Town Animal Management Program was set up, where Town staff would be running the program.

Mayor McDonald repeated that the Town had to assume the responsibility, and it was not Beth Pouncey's problem, it was the Town's problem.

Council Member Markin commented that the proposal was very simple, and that the organization in place had done a great job on a shoestring budget. Other municipalities had spent two to three times of what the Town had spent. According to the plan, the Town would fund the organization to a certain degree and allow PB Cats, Inc., to hire an executive director, with Beth Pouncey as a field director. She indicated that she and several other people had volunteered to be on the board. A total structure had been recommended and proposed, at a cost of $200,000.

**President Pro Tem Kleid seconded Council Member Brooks motion to maintain the funding level that had been established. On roll call, the motion was defeated 3-2, with Council Members Wyett and Markin, and President Coleman dissenting, and Council Member Brooks and President Pro Tem Kleid casting affirmative votes.**

Council Member Wyett stated that the motion did not provide for the total solution to the problem.

President Coleman said that he would not support the motion because there was not a strong consensus that euthanasia may become part of the solution, and he would only vote for more funding if there was commitment by the Council to solve the problem.

**Motion made by Council Member Markin to approve funding $150,000 toward the program in order to organize the organization, with a potential of a matching $50,000 based on fund-raising, for a total program that allowed for trapping, neutering, releasing, adoption, and potential euthanasia if the surplus of boarding animals became a problem.**

**Motion died for lack of a second.**

**Motion made by President Pro Tem Kleid to approve an additional $50,000 with the hope that there would be matching funds from volunteers and fund-raising efforts, and that the Town Council approve euthanasia, if required.**

Council Member Wyett commented that euthanasia was inappropriate to those who were worked in the program and would have to make the decision as to which cats would live. There was no incentive in the motion to rapidly reduce the surplus of the cats, and that decision should be made today.

Council Member Markin noted that the issue of whether or not to enhance the program could be discussed at a time certain when it was known how many cats were on the island, and a decision could then be made as to how to deal with it.

**Motion died for lack of a second.**

**Motion made by Council Member Markin to approve an additional $50,000 over and above the $80,000 that had been provided to the program, and within six months a time certain for the organization to come back with an inventory of the cat population on the island.**

President Coleman explained to Council Member Markin that not $80,000, but $50,000 had been given, and an additional $30,000 had been on the table as a request from PB Cats, Inc.

**Motion died for lack of a second.**

Town Manager Elwell suggested authorizing that staff hire the executive director only, not from an agency, but by contracting an individual as a direct day to day oversight of the voluntary operation.

**Motion made by Council Member Wyett to approve an additional $30,000 to fund PB Cats, Inc., for the remainder of FY06, with provisions to return by November with a plan on how to control the cat colony in the Town of Palm Beach in order to eliminate complaints from the neighbors, within reason.**

President Coleman indicated that the money could not be appropriated unless PB Cats, Inc., were able to meet the requirements, and were willing to agree that certain cats would have to be eliminated.

Mayor McDonald commented that the Town did not invest in Shore Protection, Police, or the Four Arts Library to match a bottom line of expenses. It was necessary to spend the money required in order to improve the community.

Responding to Council Member Wyett, Beth Pouncey stated that the boarding costs for the cats were $30.00 per night, which were boarded because they needed to be cured of parasitical conditions in order to be adopted.

**President Pro Tem Kleid seconded the motion to approve the additional $30,000 to fund PB Cats, Inc., for the remainder of FY06, with provisions to return by November with a plan on how to control the cat colony in the Town of Palm Beach in order to eliminate complaints from the neighbors, within reason. On roll call, the motion was defeated 3-2, with President Coleman, Council Members Brooks and Markin dissenting, and President Pro Tem Kleid and Council Member Wyett casting affirmative votes.**

Discussion continued regarding the management of the feral cat issue.

Town Manager Elwell suggested that staff review the issues and return with additional recommendations at the August 8, 2006 Town Council meeting.

After further discussion relative to the outstanding invoice of Veterinarian Brad Ochstein; **Motion was made by Council Member Markin, and seconded by Council Member Wyett to resolve the outstanding bill of $30,000 to PB Cats, Inc., specifically an invoice due to Island Animal Hospital. On roll call, the motion was defeated 3-2, with President Coleman, President Pro Tem Kleid, and Council Member Brooks dissenting, and Council Members Markin and Wyett casting affirmative votes.**

It was the consensus of the Town Council to address the feral cat issue and the animal ordinance at the August 8, 2006, Town Council meeting.

4. Lakeside Park. [Peter B. Elwell, Town Manager]
*Deferred from the June 13, 2006, Town Council Meeting.*

   a. Beautification Project Proposed by Town Council President Coleman.

   b. Proposed Donation of Plaque and Fox Tail Palm Trees from the

Silverbacks to Be Placed Near the Paul Ilyinsky Memorial Monument.

**Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve deferral to August 8, 2006, Town Council meeting of Item IX.A.4.a. and b, Lakeside Park. On roll call, the motion carried unanimously.**

5. Update on Construction Related Parking Issues.
[Veronica B. Close, Director of Planning, Zoning and Building]

**Motion made by Council Member Wyett, seconded by Council Member Markin to approve deferral to August 8, 2006, Town Council meeting of Item IX.A.5. Update on Construction Related Parking Issues. On roll call, the motion carried unanimously.**

**********The luncheon recess was taken at 12:55 p.m.***********

**** The Town Council Meeting of July 11, 2006, was reconvened at 2:23 p.m.*****

Immediately following the luncheon recess, Town Attorney Randolph advised that he would need advice in regard to the following case: Poinciana Management, Inc., vs. Town of Palm Beach, Case No. 50 2005 CA 5585 XXXX MB AO Fifteenth Judicial Circuit Court, Palm Beach County, Florida. He therefore requested an attorney/client closed-door session, pursuant to F.S. 286.011(8), allowing the Mayor, Town Council, and the Town Manager to meet in an attorney/client closed-door session for the purpose of discussing strategy related to litigation.

B. New Business

1. Schedule Closed Door Attorney/Client Session: Poinciana Management, Inc., vs. Town of Palm Beach, Case No. 50 2005 CA 5585 XXXX MB AO Fifteenth Judicial Circuit Court, Palm Beach County, Florida.

**Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve the scheduling of the Closed Door Attorney/Client Session: Poinciana Management, Inc., vs. Town of Palm Beach, for July 12, 2006, to commence between 2:00 p.m. and 4:00 p.m.**

**On roll call, the motion carried unanimously.**

* * * * * * * *

In addition, Town Attorney Randolph read a statement into the record regarding the case against Barry Small concluding that there would be no further need to continue the lawsuit against Barry Small and requested that the Town Council authorize him to file a notice of voluntary dismissal without prejudice of the pending case for injunctive relief. The statement that was read into the record follows:

> On April 7, 2006, the Town filed a verified complaint for injunctive relief against Barry Small contending among other things, that Mr. Small had without justification or privilege, interfered with the Town's negotiations for a contract between the Town and the contractor with whom the Town was negotiating, to move 90,000 cubic yards of sand onto the beach located adjacent to 3200 S. Ocean Boulevard using easements legally provided across common property of condominium associations. The Town further alleged that as a result of the defendant's threats against the contractor, the contractor withdrew from negotiations with the Town. As a result of these negotiations being terminated, the Town had to go to extraordinary efforts and spend extraordinary time, resources, and manpower in order to attempt to complete the delivery of sand in a timely manner so as to protect the condominiums abutting the beaches from the effects of storms and hurricanes. To attempt to assure its ability to move forward without further interference from Mr. Small, the Town filed a suit for injunctive relief requesting that the court enter a temporary and permanent injunction restraining Mr. Small from further threats or interference with the Town's actions for implementing its beach restoration project. Happily, due to the Town's extraordinary efforts and the assistance of many residents, legislators, and state and federal agencies, the beach project had been successfully completed. As a result, there appeared to be no further need to continue the lawsuit, which was filed requesting the court to enjoin Mr. Small from further threats or interference with the Town's actions for implementing the beach restoration project.

**Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to approve the Town Attorney's request authorizing him to file a notice of voluntary dismissal without prejudice of the pending case for injunctive relief. On roll call, the motion carried unanimously.**

2. Proposed Recommendation to Palm Tran to Change Bus Route.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Hannah provided an overview of the proposed recommendation to Palm Tran to change the Bus Route. Following were several of the issues discussed:

- The Town received complaints from residents regarding bus travel on Seminole Avenue;
- There were two routes in the Town, which stop on Seminole Avenue, a residential street, for a total of 26 stops a day;
- The most viable alternative was Royal Poinciana Way;
- The Town did not have the authority to change the route, but could recommend a change to Palm Tran;

Jeannie Taylor, Senior Planner with Palm Tran, provided a brief presentation regarding the bus routes. Following were several of the items discussed:

- Route 42 operated all day;
- Route 41 averaged about 20 people an hour and Route 42 averaged about seven people an hour;
- Route 42 would be eliminated in a short period of time because of low ridership;
- Both routes used Seminole Avenue because they served the Publix shopping center;
- If Route 42 was eliminated, Route 41 would be the only route on Seminole Avenue, which was three trips in the morning and four trips in the afternoon;
- Moving the Route to Royal Poinciana Way presented bus stop challenges for Palm Tran, as ADA regulations required new bus stops consisting of a concrete pad from the curb to the sidewalk and needed approximately 100 feet, which was roughly five parking spaces, in order to bring the bus over to the concrete pad on the bus stop;

- A stop was needed on both sides of the road, but it would be easier to put a stop in the eastbound direction;

- In the westbound direction, the bus made five stops in front of Testa's, one of which was a disability space, and another was a striped off area, accessing a gas station, which a new bus stop would utilize all of those spaces; and

- A bus stop could be placed in the right turn lane for the bus, using up about three quarters of the turn lane, and leaving enough room for maybe two cars in front of the bus.

Ms. Taylor's responses to the Council Members' questions were:

- Route 41 averaged 20 people an hour;

- Palm Tran recommended keeping the bus route where it was because customers ride in two directions; if they exited on Seminole Avenue and wanted to return, they would need to cross the street to get the bus, as a residential street was easier to cross, than a commercial street as Royal Poinciana Way; and the route on Seminole Avenue was less disruptive to commercial traffic;

- There were 26 seats plus 13 standees on a bus;

- The ridership averages were derived from the hours of service offered in a day on that bus divided by the actual ridership counts from the fare boxes; and

- A report would be provided reflecting the ridership averages;

Council Member Markin stated that the buses were overkill in the Town relative to the size, capacity, and number of routes.

Council Member Brooks suggested using vans instead of buses, such as the Palm Tran Connection, or something similar to what The Breakers used to ferry their employees to and from a parking lot. The use of buses in the Town did not make any economic sense.

Ms. Taylor indicated that the Palm Tran Connection system was a paratransit service that was available on the island for the residents that were eligible for that kind of service. She mentioned that there were cities that had their own public transit service and connected to Palm Tran at transfer stations, while Palm Tran remained on the major corridors.

Responding to Mayor McDonald, Ms. Taylor stated that there were many people using the bus to go to Publix. There were many customers from West Palm Beach, the St. James residence, that regularly ride the bus and go to Publix. Palm Trans' experience was that seniors who no longer drive, rode buses to the grocery store and post office.

Ms. Taylor responded to Council Member Wyett that from observation there was a domestic clientele that traveled north toward the inlet every day. A request by the Town Council to the Palm Tran Service Board was required in order to eliminate the bus service entirely, but Palm Tran would rather work with the Town to have their own community service that connected to the transit system so the residents would have transportation throughout the whole county.

Ms. Taylor responded to President Coleman that at the bus stop on Royal Poinciana Way and Bradley Place only two cars could be allowed in the turning lane in front of a bus making a stop.

Council Member Markin commented that in order to make a decision as to what kind of bus service was needed in the Town, she would need to see the reports and the run times on all the buses in the Town.

Ms. Taylor stated that she would provide this fiscal year's spreadsheets that had the information containing the monthly ridership of Routes 41 and 42, which would be nine months' worth, and the same for riders per revenue per hour. She added that there was random survey information also available, for those routes on individual stop data.

President Pro Tem Kleid noted that the Town received a letter from Attorney Frank Lynch, indicating that there were two existing bus stops along Royal Poinciana Way; one at the northwest corner of Royal Poinciana Way and Bradley Place, and the other south of the southwest corner of Royal Poinciana Way and North County Road.

Ms. Taylor explained that the objective criterion for a sufficient amount of stops was to have a bus stop every two blocks, allowing the customers to frequently get on or off the bus, otherwise people would run in the road and try to flag the bus.

Attorney Frank Lynch, on behalf of Testa's, commented that most of the concerns had been identified except the fact that Testa's owned Palm Beach Shell, which operated a service station and a convenience store, causing considerable activity on that property. If there was a bus stop in front of Testa's, visibility would be a potential safety hazard at the service station.

Public Comment:

Herbert Hoffman, 235 Seminole Avenue, commented that in observing the buses driving on Seminole Avenue, most of the time there were only a few people on the bus, or the bus driver was alone. The buses caused pollution and noise and were a safety concern when backing out of the driveways.

Pamela DesLauriers, 247 Seminole Avenue, commented that the noise from the buses was awful, that she had not seen anyone on the buses, and that she was not in favor of the buses that traveled on Seminole Avenue.

Joanne Warshaver reiterated that there was no one on the buses. She said that there may be a few housekeepers on the bus going north, but that the individual person should pay to take the housekeeper from Publix to their home. She said that the Town did not need the buses. She requested that an individual survey be done regarding the riders on the bus from Publix going north. Ms. Warshaver said she attended a Palm Tran meeting and found it to be very uncooperative.

Mayor McDonald indicated that on next month's Agenda, the Town would review the matter to request that the County consider discontinuing bus service in the Town.

Ms. Taylor stated that she would have the reports ready in time for the August 8, 2006, Town Council meeting, and responded to Ms. Warshaver that Route 42 had been remediated to keep it to the two-hour service last year, and the normal thing would be to keep it operating to see if there was any improvement. It would probably be recommended for elimination at the end of the fiscal year.

3. Proposed Relocation of Planning, Zoning and Building Department to West Palm Beach.
[Peter B. Elwell, Town Manager]

Town Manager Elwell provided an overview of the proposed relocation of Planning, Zoning, and Building (PZB) Department to the City of West Palm Beach. He reported several of the following challenges encountered:

- The transitional nature of the northern side of downtown West Palm Beach;
- Increase in property values within that area;
- Difficulty in finding a space that was affordable; that would meet the needs of the Department; that could be occupied quickly without an expensive renovation; and

that had sufficient parking; and

- Building on the Town's own properties was the difficulty in meeting the City of West Palm Beach's zoning requirements and the use of a very valuable piece of land for a municipal office purpose.

Council Member Brooks stated that he would like staff to revisit the Southern Boulevard property.

President Pro Tem Kleid commented that he also thought the area south of Southern Boulevard bridge should be revisited.

Council Member Wyett indicated that the area in West Palm Beach near Good Samaritan Hospital had an extreme safety and security problem and that the southern end location was not a safe area either. He stated that the Town Hall building should be renovated.

Council Member Markin indicated that PZB Department was the heart of the Town's activity in the Town Hall. She discussed the problems of the space planning study that was done four years ago. There were many issues that currently needed consideration in the study. The key people in the PZB Department commuting to and from the Town Hall for Commission and various other meetings, based on their salaries, would cause an increase in costs.

William J. Diamond, 220 Wells Road, spoke on behalf of his cousin, Mrs. Betty Marcus of 208 Sandpiper, and commented that it would be an inconvenience to many residents of the Town to move the PZB Department off the island.

Sam Boykin commented that he was in favor of the PZB Department remaining in Town Hall.

Mr. Elwell related the history of the plans of relocating the PZB Department, and commented that a decision was made several years ago, based on the high cost of renovating the building, to consider alternatives.

Council Member Wyett noted that the Town Council did not know how high the cost would be for PZB Department to relocate to another building plus the cost of renovating it. He said that relocating to the area near Southern Boulevard was not in the interest of the Town.

**Motion made by Council Member Brooks to advise staff to pursue the building on Dixie Highway near Southern Boulevard.**

Responding to President Coleman, Council Member Markin commented that a space study cost .40 to .50 a square foot, and would take 30 to 45 days.

Mr. Elwell responded to President Coleman that while the space planning study was being performed, the real estate market in the southern area could be researched.

**Motion seconded by President Pro Tem Kleid to pursue the building on Dixie Highway near Southern Boulevard.**

**Amended motion to advise staff to pursue the building on Dixie Highway, to research more broadly than just the one building, and to bring back the best building that could be found. The maker and seconder agreed. On roll call, the motion carried 4-1, with Council Member Wyett dissenting.**

**Motion made by President Pro Tem Kleid, seconded by Council Member Wyett to engage a space planner not to exceed $20,000 and to report back within sixty days as to the feasibility of keeping all the Departments within Town Hall and if more time was needed, it would be amended.**

Town Manager Elwell noted that inclusively of transforming the old fire station into office space, the entire Town Hall building would need to be reconfigured.

Responding to Mr. Elwell, Council Member Markin indicated that the previous design could be used as a base line for the new design, as it outlined each department's individual space requirement needs.

Council Member Wyett suggested that the Council invite Mr. Mark Marsh to make his presentation regarding the renovation of the building for those who had never heard it and as a refresher for the other people.

**Upon roll call, the motion to engage a space planner for a fee of $20,000 carried unanimously.**

4. Status Report on North Ocean Boulevard Seawall.
[Mayor McDonald]

Director of Public Works Brazil provided a brief summary of the existing condition of the seawall on North Ocean Boulevard and the permit status. He discussed several of the following issues:

- The seawall was not in danger of immediate failure and had survived three hurricanes;
- The seawall was monitored regularly;
- The seawall needed repair; one of the alternatives was a full replacement, which was expensive and required a long term closure of the roadway; or another alternative was to place rip rap revetments (large limestone boulders) at the waterward face of the seawall;
- The U.S. Fish and Wildlife Service (USFWS) would need to issue a biological opinion in regard to the turtle nesting habitat in order to obtain a Joint Coastal permit from the Florida Department of Environmental Protection (FDEP) and the U.S. Army Corps of Engineers (USACE) to do the work; and

Mr. Brazil noted that a local contractor owned and secured rip-rap (large pieces of hard rock up to one cubic yard in size) that could be provided to the Town on short notice before or after a storm event to secure or repair an existing seawall, or open a roadway if necessary.

Mr. Brazil's responses to Council Member Markin were:

- Rip-rap work on a wall could be done the day after the storm event, when it was safe for a contractor to be out in the field; and
- Country Club Road would be used as an alternate route.

Mr. Elwell explained to Council Member Markin that if there were any signs of weakening in the wall, which was inspected on a weekly basis, and daily if there were storm conditions, the emergency plan would be activated before the weather had done any serious damage to the wall. It would be in violation of federal and state law to repair the wall without any permits or documentation to justify it. There was a potential of a worst case scenario, but the reports were that the wall was not showing any signs of weakening or imminent failure. A plan was in place to implement a mid term to long term solution that was the same approach to the Midtown project before the restoratio.

Yvelyne Marix commented that two years ago, the seawall problem was being treated as an emergency and was going to be remediated as soon as possible. She expressed concern that because the condition of the seawall was dangerous, the people who lived near the seawall would have no way out if it were to fail. She related that when the Midtown beach permits were being delayed, then President Pete Widener of the Council went to Tallahassee to expedite the permit. She maintained that t ahe Town had not taken every step possible to obtain the permit to install the rip-rap immediately on this seawall.

President Coleman stated that as President of the Town Council, he was not going to Tallahassee because the professional engineers informed him that the Town was not in a state of emergency. He said he would not condone breaking federal and state law, and that he was supportive of doing everything possible to accelerate the remediation of the seawall.

Responding to Mrs. Marix, Mr. Elwell noted that the approach of federal and state agencies to the environment of regulatory permitting today was more stringent making it more difficult to acquire special permission. Two years ago, the Town aggressively pursued emergency permitting for the seawall, but it was denied by the state and federal government, because the seawall was solid enough. The Town immediately filed the proper paperwork to proceed with the normal process.

Mrs. Marix implored the Council to escalate the permit issue because there were many residents that did not feel secure.

Mr. Brazil conveyed that a structural and a marine engineering firm, which were both Professional Engineers (P.E.), inspected the seawall.

Responding to Council Member Markin, Mr. Brazil clarified that as soon as the permit was obtained, the work would be expedited.

Mr. Elwell explained that the U.S. Fish and Wildlife Service biological opinion was expected by the end of July, which would free up the permitting process for staff to obtain the permits from the federal and state agencies.

5. Resident Response Time to Planning, Zoning, and Building Applications. [Mayor McDonald]

Mayor McDonald indicated that he had received several calls from residents that the 10 days notice period regarding the applications that would appear before the Architectural Commission (ARCOM) was insufficient, especially if their mail was forwarded.

Planning, Zoning and Building Director Close requested 30 days for staff to analyze expanding the notices of ARCOM applications up to 20 days in advance.

Council Member Wyett noted that 30 days would be better because people travel.

Council Member Brooks recommended that this item dovetail with item IX.A.5., Update in Construction Related Parking Issues, which had been deferred today until next month.

It was the consensus of the Council that Item IX.B.5., Resident Response Time to Planning, Zoning, and Building Applications, be deferred to August 8, 2006, Town Council meeting for staff to provide a report after analyzing notification time of ARCOM applications to the residents.

6. Building Board of Adjustment and Appeals Appointments.
[Veronica B. Close, Director of Planning, Zoning, and Building]

President Coleman announced that two Regular Members, Ames Bennett and John Nora had been reappointed to the Building Board of Adjustment and Appeals, for a term expiring in July 2009.

7. Code Enforcement Board Appointments.
[Veronica B. Close, Director of Planning, Zoning, and Building]

President Coleman announced that Harris Fried had been appointed to the Code Enforcement Board as a Regular Member, for a term expiring in April 2007. President Coleman announced that Madelyn Greenberg had been appointed to the Code Enforcement Board as an alternate member.

X. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 4-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2005, Providing an Effective Date.
[Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 4-06 by title, as printed above.

**Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to adopt Ordinance No. 4-06. On roll call, the motion carried unanimously.**

2. ORDINANCE NO. 5-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 18, Buildings and Building Regulations, Article III, Architectural Review, Division 2, Architectural Commission, Section 18-177, So As to Provide for a Period of Forty-five Days from Filing for the Town Council to Decide an Appeal; Providing That Appeals Shall Be Based on the Record of the Proceedings Below and Shall Not Be a De Novo Hearing; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read Ordinance No. 5-06 by title, as printed above.

**Motion made by Council Member Brooks, seconded by Council Member Markin to adopt Ordinance No. 5-06. On roll call, the motion carried unanimously.**

3. ORDINANCE NO. 6-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 54, Historical Preservation, at Article II, Landmarks Preservation Commission, Section 54-41, So As to Provide for a Period of Forty-five Days from Filing for the Town Council to Decide an Appeal; Providing That Appeals Shall Be Based on the

Record of the Proceedings Below and Shall Not Be a De Novo Hearing; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read Ordinance No. 6-06 by title, as printed above.

**Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to adopt Ordinance No. 6-06. On roll call, the motion carried unanimously.**

B. First Reading

1. Procedural Reconsideration of Ordinance No. 2-06. [Susan A. Eichhorn, Town Clerk]

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 Manager Elwell noted that Ordinance No. 2-06 was being reread for first reading and that next month it would be read for the second reading. This Ordinance amended the retirement program for the Police Officers and Firefighters of the Town, which was previously approved earlier this year. The correct Ordinance was read and signed at the meetings but was not advertised correctly. In order to make it procedurally correct, the Ordinance needed to be reread.

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

**Motion made by Council Member Wyett, seconded by Council Member Brooks to approve Ordinance No. 2-06 on first reading. On roll call, the motion carried unanimously.**

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 100% 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 Wyett, seconded by Council Member Markin to approve Ordinance No. 7-06 on first reading. On roll call, the motion carried unanimously.**

XI. DEVELOPMENT REVIEWS

A. Appeals

1. None

B. Time Extensions

1. Request for Extension of Work Hours at 38-48 Via Mizner and 8-14 Via Mizner Per Letters Dated March 31, 2006, and May 18, 2006, from Ron Kolins.
[Veronica B. Close, Director of Planning, Zoning and Building] *Deferred from the June 13, 2006, Town Council Meeting.*

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

Attorney Ron Kolins stated that he agreed with staff's report.

Planning, Zoning, and Building Director Close recommended that:

- Construction hours be extended through April 30, 2007;
- Work hours would be from 8:00 a.m. to 5:00 p.m., with quiet work only between 8:00 a.m. and 9:00 a.m.;
- No work would be allowed in season during Saturdays, Sundays, and the Town of Palm Beach's legal holidays, including the Friday after Thanksgiving and the week between Christmas and New Years;
- Approval of the Worth Avenue Merchants Association; and
- All deliveries, workers, and parking for same shall be from Peruvian Avenue.

**Motion made by Council Member Brooks, seconded by Council Member Wyett to approve the extension of work hours at 38-48 Via Mizner and 8-14 Via Mizner, per the recommendations of staff. On roll call, the motion carried unanimously.**

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #3-2006 The application of 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 27 seats, the area totaling 1,899 square feet. *Deferred from the May 9, 2006, and June 13, 2006, Town Council Meetings.*

Item XI.C.1.a., Special Exception #3-2006 was deferred to August 8, 2006, Town Council meeting.

2. New Business- Less Than 15 Minutes

a. VARIANCE #22-2006 The application of Tracey E. Whitesell, James K. Whitesell, and Evan W. Heitzman relative to property described as lengthy legal description on file; commonly known as 318 Caribbean Road; located in the R-A Zoning District. Applicant proposes to split an existing lot in order to provide more lot area for an adjoining lot at 400 Caribbean Road, which they also own. This requires a variance from the lot that is being reduced in area. The variance requested is to allow a lot width of 90.1 feet in lieu of the 125 foot minimum required for the R-A zoning district.

Ex-parte communication was declared by Council Member Brooks with Attorney Tim Hanlon.

Attorney Tim Hanlon, on behalf of the applicant, provided a presentation regarding the property at 400 Caribbean Road. He noted that the hardship was the irregular shaped parcel combined with the safety hazard of ingress and egress to the property. This was a legally recognized hardship within the State of Florida.

Zoning Administrator Paul Castro stated that from a planning perspective, it did make sense because it was a very narrow lot. He recommended that if approval was granted, the conditions should be that all the structures be removed prior to the reconfiguration, and that the applicant or successors not ask for any setback or lot coverage variances because of the new configuration of the lot in the form of a deed restriction, for a restrictive covenant.

President Coleman clarified that having created a non-conforming lot, the Council would not want to be in the position of having the applicant come back, in a couple of years, and ask for variances.

**Motion made by Council Member Wyett to approve Variance #22-2006 with the conditions that all structures on 318 Caribbean be removed prior to reconfiguration and that the applicant or successors would not be allowed to request any setback or lot coverage variances.**

Council Member Markin asked if all the buildings would be torn down, not just the one on the lot.

Responding to Council Member Markin, Attorney Hanlon stated that the home at 400

Caribbean Road would remain, and that all the structures on the 318 parcel would be demolished.

**Council Member Markin seconded the motion. On roll call, the motion carried unanimously.**

b. VARIANCE #23-2006 The application of Donald C. and Nancy Carter relative to property described as Lots 5 and 6, Lagomar Park No.1; commonly known as 6 Lagomar Road; located in the R-A Zoning District. Variance requested to allow a side door-covered entry feature to extend 5 feet 8 inches into the required 15 feet minimum side yard setback (9 feet 4-inches side yard setback as opposed to 15 ft. required).

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

Attorney Greg Kino, on behalf of Donald and Nancy Carter, presented an architectural rendering and handouts to the Council regarding the requested variance. The hardship was that it was an irregular shaped lot.

Zoning Administrator Paul Castro stated that there was an existing awning that covered the doorway that led to the garage, for which a building permit had never been issued. According to Attorney Kino, the awning was there before the owners purchased the property. Staff requested that if a variance was for an expansion on the entry feature, that the location of the landscaped open space be shown on the property. The applicant would have to speak to the hardship relative to the odd configuration of the lot, as well as the house placed on that lot.

**Motion made by Council Member Wyett, seconded by Council Member Markin to approve Variance #23-2006. On roll call, the motion carried unanimously.**

c. SITE PLAN REVIEW #10-2006 The application of 1275 S County, LLC, Dan Swanson, Manager relative to property described as Lot 9, Replat of the Blossom Estate; commonly known as 1275 South Ocean Boulevard; located in the R-AA Zoning District. Site Plan Review to allow the construction of an new two-story single family residence on a non-conforming platted lot which is 43,419 square feet in area in lieu of the 60,000 square foot minimum required in the R-

AA Zoning District.

Ex-parte communication was declared by President Pro Tem Kleid with Attorney Maura Ziska.

Attorney Maura Ziska, on behalf of the applicant, provided an overview of the Site Plan Review and Architect Lynn McCall presented architectural renderings.

Zoning Administrator PaulCastro expressed concerns relative to the roof system design, which was flat with high ceiling heights, shown as attic space. Mr. Castro said that he questioned what type of stairs led up to the attic space, and how the roof system was designed relative to the attic space.

Architect McCall responded to Mr. Castro that it was a truss roof system, and that the dormers were decorative only, and that there was not any living space in the attic, nor stairs.

**Motion made by President Pro Tem Kleid, seconded by Council Member Markin to approve Site Plan Review #10-2006. On roll call, the motion carried unanimously.**

d. SITE PLAN REVIEW #11-2006 WITH VARIANCES The application of Lucky Seagull, LLC (Hashem Khosrovani) relative to property described as Sun & Surf One Hundred Condominium Unit PH-4; commonly known as 100 Sunrise Avenue PH4; located in the R-C Zoning District. A site plan modification with variances to allow four (4) retractable awnings totaling 650 square feet over the terrace on the seventh floor of a seven-story condominium building. The first variance request is to allow the awnings at a height of 58.4 feet in lieu of the 23.5 maximum height allowed in the R-C Zoning District. The second variance request is to allow the awnings on the existing seventh floor penthouse of a seven-story building in lieu of the two story building maximum allowed in the R-C Zoning District.

Ex-parte communication was declared by: President Pro Tem Kleid with Attorney Maura Ziska; President Coleman with Mr. Khosrovani. Council Member Brooks stated that he was at the Architectural Review (ARCOM) meeting when it was discussed.

Attorney Maura Ziska, on behalf of the applicant, provided an overview of the Site Plan Review with Variances.

Zoning Administrator Paul Castro indicated that ARCOM recommended approval, and that the site plan with variances was necessary because seven story buildings were no longer allowed in the area.

**Motion made by Council Member Brooks, seconded by Council Member Markin to approve Site Plan Review #11-2006 with Variances. On roll call, the motion carried unanimously.**

3. Old Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #5-2006 WITH SITE PLAN REVIEW The application of 11 Via Vizcaya, LLC/Bruce Malasky, Mgr. relative to property described as lengthy legal description on file; commonly known as 11 Via Vizcaya; located in the R-A Zoning District. Request is to amend previously approved Special Exception #27-2003 with Site Plan Review to construct a new two story house on a lot with a width of 109.5 feet in lieu of the 125 foot minimum required. Applicant seeks to eliminate Condition #1 to allow the demolition and construction of the house on this lot, prior to the issuance of the Certificate of Occupancy on the adjacent house currently under construction. Condition #1 currently stated "The applicant shall demolish one house at a time. In addition, demolition of the second house can only occur after the first house has received a certificate of occupancy."

Ex-parte communication was declared by: President Pro Tem Kleid with Attorney Ron Kolins; Council Member Brooks received letters and telephone calls in opposition to the Special Exception and had driven to the site within the last two weeks; Council Member Wyett with Mr. Kolins; Council Member Markin with several residents on the street; and President Coleman was contacted by residents.

Attorney Ron Kolins, on behalf of the applicant, commented that the Special Exception had been contentious relative to the construction on the street. He displayed presentation boards and provided an overview of the Special Exception with Site Plan Review request.

Zoning Administrator Paul Castro indicated that the original conditions of approval limited demolition and reconstruction on that lot until the house was issued a Certificate of Occupancy (CO). Staff's position was different today, in that, if the demolition of the house was allowed, with proper erosion control in place, the contractors would be able to park their construction vehicles off the street until both of the houses were issued COs.

Lillian McHugh, 14 Via Vizcaya, requested that the Town Council respect what was restricted in the past, and not revisit this issue until the CO was received.

Council Member Brooks stated that he could not support this petition, as he had visited the site in the last two weeks, and there was substantial landscaping work that would remain.

Council Member Wyett commented that, the client had to live with the previous condition of approval, and that he could not support the petition.

President Coleman expressed concern that the applicant would demolish the house leaving the surrounding areas unsecured during a hurricane season. If the site was not cleaned within a week, he would delay issuing a building permit.

Council Member Markin asked Ms. McHugh if the residents saw an advantage of having additional parking in the lot that would be available when the house was demolished?

Ms. McHugh responded that they would not see an advantage, as the work was almost finished and the parking problem would diminish anyway.

Council Member Markin commented that she had driven down this street, which was shaped like a horseshoe, several times and was unable to get out because there were trucks on either end. She added that when, in the finishing modes of a house, there would be even more trucks with plumbers, electricians, and painters. The client needed an incentive to work harder to complete the work and obtain the CO.

Attorney Kolin's responses to the comments made by the Council and Ms. McHugh were:

- That the residents' major complaint was the trucks on the street, but not all the trucks were the applicants;
- It made no logical sense to say that the applicant could not maximize their ability to get the trucks off the street;
- The request was to make more room for parking on their lot; and
- The applicant could commit to demolishing the house and clearing the lot within a week, in order to have a place for the trucks.

Council Member Brooks commented that the applicant, Mr. Malasky, had not been neat, or respectful of the neighbors.

Council Member Wyett stated that the residents relied on the Council's previous condition of approval and were entitled to have it enforced.

Council Member Markin suggested limiting the number of construction sites permitted on a street, at a time.

**Motion made by Council Member Brooks, seconded by Council Member Wyett to deny Special Exception #5-2006 with Site Plan Review. On roll call, the motion carried unanimously.**

4. New Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #6-2006 The application of Three seventy five South County Associates relative to property described as Royal Park Addition, Lots 1 to 4 inclusive (less road right-of-way), Block 9 and Royal Park Addition, West 22 feet of Lot 66 and Lots 67 to 69 inclusive, Block 9; commonly known as 375 South County Road; located in the C-TS Zoning District. This Special Exception request is to allow a "nightclub" use within the inside area of the establishment currently approved as a restaurant. The use will occupy only the interior space of Amici's. If this request is approved it will modify Condition #5 of Special Exception #16-95 which states, "No live music (other than a piano) shall be allowed.", nullifying the condition only during those times that the "nightclub" is permitted to operate.

Ex-parte communication was declared by: President Coleman with several of the neighbors; President Pro Tem Kleid with Attorney Ron Kolins.

Attorney Ron Kolins, on behalf of Maurizio Ciminella, owner and operator of Amici's Restaurant, indicated that according to the Code, the request for an occasional event involving dancing and music was considered a nightclub. He said that Mr. Ciminella did not desire to operate a nightclub at Amici's Restaurant. He requested that six events be allowed in season and four events off season per month, inside the restaurant, which would include music and dancing, and would not exceed the present seating capacity. Secondly, he requested that the use of a microphone and speakers be allowed on the patio area, on rare occasions, to present awards. Attorney Kolins presented architectural renderings to display the areas that would be utilized.

Zoning Administrator Paul Castro advised that the nightclub legislation was put into the Town Code in 1996 and 1997, in order to mitigate the impact of loud music and DJ's. Staff's concern was regulating the events, parking, traffic, and noise that emanated from the restaurant especially when the east side doors were opened for any reason. Another concern was the "last call" condition of approval of 1:00 a.m. Staff was actively pursuing code compliance issues as well as working with the Police Department relative to other restaurants in the Town conforming with regulations.

Planning, Zoning, and Building Director Close added that staff recognized that there was limited availability in the Code for these types of events. There was a restaurant and nightclub definition, but that staff would research acquiring another type of Code to handle requests that were in between the two.

Alan Stanberg, Everglades Plaza Condominium Association President, commented that he opposed the application because of the noise factor, and that Amici's was situated in a residential area.

Dr. Cindy Lookabaugh, commented that she lived immediately next to Amici's Restaurant, and opposed the Special Exception request because of the noise, rodents, and odors. She stated that the restaurant had not acted responsibly.

Council Member Brooks agreed that the label of a nightclub was misleading. This was the only restaurant that was immersed in a residential area, which made it difficult for him to support the petition.

Council Member Wyett indicated that because of the neighbors' complaints, Amici's Restaurant was becoming a nuisance. He said he could not support the petition because it was located in a residential area.

President Pro Tem Kleid commented that this was not a proper place to have music playing when the restaurant was enmeshed in a residential area.

Council Member Markin indicated that staff did not have the ability to monitor a restricted nightclub license. It was difficult enough to monitor the business as a restaurant.

Attorney Kolins stated that they would withdraw their application.

**Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve withdrawal of the application of Special Exception #6-2006. On roll call, the motion carried unanimously.**

b. 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. **Request for Deferral to the August 8, 2006, Town Council Meeting Per Letter Dated July 3, 2006, From Francis X. J. Lynch.**

Item XI.C.4.b., Site Plan Review #9-2006 was deferred to August 8, 2006, Town Council meeting.

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.

Item XI. C.4.c., Site Plan Review #12-2006 With Special Exceptions and Variances was deferred to August 8, 2006, Town Council meeting.

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

Ex-parte communication was declared by: President Pro Tem Kleid with Attorney Frank Lynch and the Manager of Palm Beach Towers; President Coleman with the Manager of Palm Beach Towers; Council Member Markin with Attorney Lynch.

Attorney Frank Lynch provided an overview of the applicant's request. He noted that in the event that the Town wanted to install a cell phone tower on top of the building, Palm Beach Towers would have the ability to provide power during an emergency. It was not a landmarked structure.

Zoning Administrator Castro indicated that staff had worked with the applicant to find the best location for the generator, which would be situated next to The Breakers' commercial building. He understood that The Breakers was not opposed to the application, and that the applicant had met all the criteria relative to mitigating the impacts it might have. One of staff's concerns was the operation of a large generator at this location.

Planning, Zoning, and Building Director Close noted that staff would be proposing a list of study items in order to develop generator guidelines for projects like this in the future.

Harris Fried, 44 Cocoanut Row, commented that he had reservations regarding the proposal as the generator was very large, and could pose environmental issues, such as noise. There was no documentation that indicated which direction the fumes would blow. He noted that on the south side of Palm Beach Towers, there was a unit that overlooked the generator, and there was no way to obscure it. He was concerned that the installation of the large generator would set a precedent.

Responding to Council Member Brooks, Attorney Lynch indicated that the generator had been purchased, and submitted a letter for the record.

Responding to President Pro Tem Kleid, Attorney Lynch stated that the decibel rating would comply with Town Code at 60 decibels or less, and had been approved by the Condominium Association.

President Pro Tem Kleid commented that the Town was sending out a message that the Town should be evacuated in the event of a hurricane. The installation of a large generator was sending a contrary message to the residents that it was safe to stay here.

Council Member Markin stated that Mr. Fried summarized every issue that could be specified and complimented him for doing his homework. She noted that her concerns were the false sense of security, and the precedent that was being set relative to supporting huge types of installations.

Council Member Wyett expressed concern regarding noise and asked that the fumes be addressed by Attorney Lynch. Palm Beach Towers had many elderly residents that did not want to evacuate, which was their choice. Many homes have generators, and apartments should also be allowed to have them.

Responding to President Coleman, Attorney Lynch commented that no, they did not have an agreement with FPL to supply them with electricity. If there was a brown out situation, the power to the building would be cut off and their generator would begin operation and run the building.

President Coleman stated that Palm Beach Towers was providing reserve capacity for FPL.

Council Member Wyett commented that it was alleviating a power demand on the premises in the event of a brown out.

Responding to President Coleman, Ms. Close indicated that there were no overhead wires that served the building.

President Pro Tem Kleid commented that he read his letter, and the basis was that they were led along a path by the Town, and based on good faith, purchased the machinery. There seemed to be an implication that the Town might be facing a lawsuit.

Responding to President Pro Tem Kleid, Attorney Lynch stated that it was not the intent of the letter. Staff advised the applicant as to the location of the generator in order to meet Code. They had submitted plans to the Town and were told that their permit was ready. Based on that, the generator was purchased.

John Grosskauf, General Manager of Palm Beach Towers addressed the Town Council. He stated that it was pertinent to keep the power on after a hurricane, as the mold and mildew that occurred were obstacles when filing claims to the insurance companies. Mr. Grosskauf noted that he met with a Town representative, three engineers, three staff people from FPL, a board member, the head of the maintenance department, and the head electrician, to select a location. There was one generator in the United States that could be made, that FPL was able to acquire. Palm Beach Towers was spending more than $200,000 to install a muffler on the generator in order to meet the 60 decibels, which would not be as noisy as their neighbor's air conditioning system. He indicated that he had the impression that it was approved and sent a deposit to order the generator. Otherwise, it would be 50 to 60 weeks to acquire a new generator. He said he would have brought the issue before the Town Council, had he known it was required.

Council Member Markin stated that she would have known to come before the Town Council for approval of a generator even if it was one one-hundredth the size of Palm Beach Towers' generator.

Responding to Council Member Markin, Ron Bartnick(ph), FPL Manager of Development and Construction, noted that the 13,500 gallon tank was powered through diesel, and was approximately 4 ½ feet tall. The size of the base of the generator was approximately 10 feet wide x 35 feet long. All safety requirements had been met, which had been reviewed by the Town.

President Coleman indicated that there seemed to be a business relationship between FPL and the Association that did not exist with a homeowner. He expressed concern that the Council did not understand all the nuances of what was involved in the relationship.

Council Member Wyett commented that the Council was apprehensive because of the size, scale, and lack of advance notice. He said he was not concerned about the relationship between the Association and FPL, as it was usual in industry. The generator would be beneficial by allowing more electricity to be available to other parts of the Town.

**Motion made by Council Member Wyett to approve Site Plan Review #14-2006.**

President Coleman requested that Council Member Wyett consider moving approval and allowing the Council more time to discuss the agreement between FPL and the Association. He indicated that although an agreement like this was usual in the industry, it was unusual to the Town, since it did not currently exist.

Council Member Wyett stated that, as it was unusual in the Town, the generator would not have been purchased if there were not three hurricanes last year.

Mr. Bartnick explained that there were two issues:

- The installation of the generator was not linked to the low control tariff, as many homeowners have a load control device, which shuts off your water heater and/or your air conditioner in order to prevent capacity shortage; and
- Larger consumers had a utility rate instead of a low control tariff, which discounted their bill for having a generator available, should the utility require it.

Responding to President Coleman, Peter Bloch, FPL representative, stated that the savings for using the generator was approximately 6% of the total bill. He said that the main purpose of the generator was in case of a hurricane or storm.

Mr. Grosskauf responded to President Coleman that the generator was turned on for the convenience of FPL when there were brown outs, which according to the last reading, there was one brown out in the last three years in this area. During that brown out, the power could have been diverted from Palm Beach Towers to other locations.

Council Member Brooks expressed concern regarding setting a precedent.

President Coleman agreed about setting a precedent and that the Town was moving toward co-generation, as there were several businesses that were co-generating, along with running a power plant on the island. He was also concerned about hundreds of thousands of gallons of diesel fuel spilling onto the Island. He said he was in favor of backup power, but that this was more than just backup power, and he needed to know where to draw the line.

Attorney Lynch replied that Town Attorney Randolph would receive a copy of the agreement and documentation first thing in the morning.

Ms. Close commented that:

- If it was approved, a condition should be that the generator could only be tested during certain times of the day, perhaps Monday through Friday, between 11:00 a.m., and 2:00 p.m., and no holidays.

- FPL was advised, at the time of the site visit, that staff would request to study the generator issue, and that it was likely that staff would not support this size of a generator in the future. Staff had requested that FPL not indicate to other clients that this size generator was acceptable until after the study was completed.

**President Pro Tem Kleid seconded the motion to approve Site Plan Review #14-2006, with the condition that it was subject to review of the business agreement with Florida Power & Light. On roll call, the motion carried 3-2, with Council Member Wyett, President Pro Tem Kleid, and President Coleman voting affirmatively, and Council Members Brooks and Markin dissenting.**

5. Other

   a. Consideration of the Proposed 2006-2007 Zoning Season Calendar and Tentative List of Study Items.
   [Veronica B. Close, Director of Planning, Zoning and Building]
   *Deferred from the June 13, 2006, Town Council Meeting.*

President Coleman suggested that, for expediency, the Council select the Study Items that they wanted to discuss.

Council Member Wyett noted that there were twenty-four (24) 2006-2007 Study Items, and suggested setting a goal of cutting the list in half.

President Pro Tem Kleid pointed out that staff had selected the items to be studied, which were in bold case.

Council Member Markin requested that this item be discussed next month in order to devote the time needed to address it.

Planning, Zoning, and Building Director Close stated that this item had been on the Agenda last month, and was deferred to this month. The time was running short and the items were typically studied in the summer months according to the calendar.

Responding to Council Member Markin, Ms. Close indicated that the items were not in the order of priority, and suggested that the Council address which of the bold ones to study, and the remaining ones could be studied next month. This would allow staff the ability to study the items that Council agreed upon.

It was the consensus of the Town Council to move forward with the list of study items.

The following Study Items, located in the backup material in Ms. Close's memorandum dated June 23, 2006, listed on page 422, to be included in the 2006-2007 Zoning Season were:

1. Study redistricting a portion of the R-B zoning district;
2. Review the variance criteria to consider additional categories;
3. Study the C-PC zoning district and its relation *to Royal Poinciana Way but not to Royal Poinciana Plaza*;
4. Study the point of measurement for height, overall height and cubic content ratio on lots along the Atlantic Ocean and Lake Worth;
5. Complete the Evaluation and Appraisal Report of the Town's Comprehensive Plan and begin the amendment to the Comprehensive Plan;
10. Study the provision which prohibits office uses on the first floor in the C-TS zoning district;
13. Clarify the angle of vision in the R-B zoning district;
14. Study the zoning regulations for generators;
18. Study delegating the authority to consider and decide on variances to another board or commission - *Moved to Council discussion*;
21. Study the establishment of regulations regarding home use licenses;
22. Study the recent trend in conversion of hotels into condominium hotels; and
24. Study housekeeping items to rectify unforeseen discrepancies in the Zoning Code.

Attorney Jim Brindell noted that relative to Study Item No. 1, 41 properties on the lake front between Dunbar and Reef Roads, were R-A size lots, but were zoned R-B size lots. The 41 property owners signed petitions to be rezoned to R-A size lots, as it was a segmented area and consistent with areas north that were R-A zoned. Staff would be provided with data and analysis to assist in evaluating this request during the zoning season.

Council Member Wyett disagreed as there was a specific house 19 years ago that came under heavy criticism by the Town Council and neighbors, as it was oversized. The property owner currently had indicated that he would be adding onto the oversized house again, which would be permissible by rezoning from R-B to R-A. Most of the lots were narrow, but deep; in square footage they may be closer to R-A, but there was more of a relationship to R-B. He stated that there was no need for this study item.

President Coleman stated that he was opposed to the properties being rezoned as R-A. He did not mind that it was studied as a de novo issue, but with sensitivity to everything that was going on in the center. A case may be made for a separate zone that was not R-A, from the point of view, that it was all a neighborhood and they would interrelate.

Council Member Markin noted that changing anything in the R-B district would not be simple, as the residents would be opposed to subdividing the R-B district. To do so would raise a level of distrust.

Council Member Wyett commented that there was an agreement with the North end Association and the Town that there would be no changes north of Dunbar Road.

Council Member Brooks indicated that there were instances where a house was zoned R-A, the Town would not have had the numerous variance requests. There were some occasions where an R-A zone would be helpful.

Attorney Brindell concluded that the Code was changed in 1980, which required the residents to obtain variances and have public hearings. He did not agree that the Town granted too many variances, as the code was out of sinc with 90% of the lots and properties in Town.

b. Conceptual Consideration of Delegating Town Council Development Review Authority to an Independent Board or Commission. [William J. Brooks, Town Council Member]

It was the consensus of the Town Council to defer this item to the Regular Agenda for either August 8, 2006, or September 7, 2006, Town Council Meeting for conceptual discussion.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business to discuss, the Regular Town Council Meeting of July 11, 2006, was adjourned at 8:10 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk