TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, JULY 10, 2007

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, July 10, 2007, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
William Amador, Acting Fire-Rescue Chief
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Director of Planning, Zoning and Building
Paul Castro - Zoning Administrator
Tim Frank - Planning Administrator
Carla Kneipp - Human Resources Assistant Director
Jon Luscomb - Dock Master
Charles Langley - Public Works Assistant Director
Michael Reiter - Police Chief
Gary Sallenbach - Support Services Major, Police
Jane Struder, Finance Director
Susan Eichhorn - Town Clerk

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

There were none.

IV. COMMENTS OF MAYOR JACK McDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Brooks commented regarding reductions to the budget, noting suggestions that would be brought forth at the Special Town Council Meeting on July 11, 2007.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Sam Boykin, 285 Jamaica Lane, commented that members were present today from a group, primarily composed of successful, experienced business people that had an interest in ensuring that the dignity, taste and beauty of the Town were maintained. He commented on budget matters, and on the creation of an independent financial oversight committee.

Ralph Del Deo, 265 Fairview Road, commented in support of the comments of Mr. Boykin and Council Member Brooks. He commented on budget matters noting that the Town could not allow costs to keep escalating; on parking matters in Town; on the importance to concentrate on the infrastructure in order to keep the Town a residential community, and not succumb to the pressure of the great density occurring around the Town.

Stephen Hall, 230 El Dorado Lane, commented that it was incumbent on the Town to keep spending under control, which would assist in reducing taxes. He supported the formation of a blue ribbon committee that had a strong financing and budgeting background as suggested by Mr. Boykin.

Sten Lilja, 1330 North Ocean Boulevard, presented written comments to the Town Council on the past performance of the Coastal Construction Management Plan (CCMP). He suggested that the CCMP has been a technical and financial disaster, and that different and better ways must be found.

Elizabeth Murphy, 265 Park Avenue, read a statement into the record urging the Town Council not to drop the Royal Poinciana Area Study and to sanction a study for that area, but if limited due to budget cuts, she requested that community meetings would be scheduled.

Leslie Evans, 135 Seminole Avenue, congratulated Mr. Brooks on his statement today, and thanked Mr. Boykin for his suggestion to form a citizen's committee. He commented on vacant properties located on South County Road and Royal Palm Way, and suggested offering tax breaks to landlords/stores to occupy these empty properties. He proposed a public/private venture to build a parking garage on the lot behind Gray's gas station.

Jere Zenko, 232 Tangier Avenue, commended Council Member Brooks for his cogent remarks. She requested that the following information be supplied at tomorrow's Special Town Council Meeting: the total number of employees and dependents including spouses and children that were covered under the Town's health insurance policy; the total number that the Town spent on health insurance; and the percentage or number of reimbursement by the employees.

VII. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

DEFERRED Item XII.C.4.a., Variance #22-2007 [400 Seabreeze Avenue] to August 14, 2007, Town Council Meeting.

DEFERRED Item XII.C.4.b., Special Exception #9-2007 [216 Colonial Lane] with Site Plan Review and Variances to August 14, 2007, Town Council Meeting.

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

VIII. CONSENT AGENDA

A. MINUTES: JUNE 18, 2007
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

B. MINUTES: JUNE 19, 2007
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JUNE 27, 2007.

D. RESOLUTIONS

1. RESOLUTION NO. 31-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving FDEP Contract No. 01PB1 Between the State of Florida Department of Environmental Protection and the Town of Palm Beach for the Town-wide Sand Search, and Authorizing the Town Council President to Execute Same on Behalf of the Town.
[H. Paul Brazil, Director of Public Works]

E. OTHER

1. Designation of Town Attorney Randolph as the Town's Defense Attorney in Litigation Appealing Town Decisions and Seeking No Monetary Damages.

a. RESOLUTION NO. 27-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Policy Release Agreement in the Matter of L'Ermitage Condominium Association vs. Town of Palm Beach, Case No. 50-2007-CA-008970 XXXX MB AY; and Authorizing the Town Mayor to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

b. RESOLUTION NO. 28-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Policy Release Agreement in the Matter of Royal Poinciana South vs. Town of Palm Beach, Case No. 50 2007 CA 009625 XXXX MB AY; and Authorizing the Town Mayor to Execute the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]

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

IX. PUBLIC HEARING

A. COMMERCIAL SOLID WASTE FEE ASSESSMENTS FOR FY08.
[H. Paul Brazil, Director of Public Works]

1. RESOLUTION NO. 29-07 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 referred to his memorandum to the Mayor and Town Council dated June 27, 2007, and included in the backup material, to discuss Commercial Solid Waste Fee Assessments for FY08. He advised that staff recommended approval of Resolution No. 29-07, which would finalize the Commercial Solid Waste Fee Assessments.

President Kleid asked for Public Comment and there was none.

In response to Council Member Markin, Town Manager Elwell explained that if the Town reduced the frequency of commercial solid waste collection, the Town's costs would be reduced, but the definition of what was low, medium or high volume, etc., would not be changed. If the Town lowered the level of service and collected less frequently, the lower overall cost would be spread across the whole schedule, using the same formula, and everyone would save money.

Town Attorney John Randolph read Resolution No. 29-07, by title, as printed above.

Motion made by Council Member Brooks, seconded by Council Member Markin, to approve Resolution No. 29-07, establishing the Non-ad Valorem Assessment Rates for Commercial Solid Waste Collection. On roll call, the motion carried unanimously.

X. REGULAR AGENDA

A. Old Business

1. Coastal Management Issues

   a. Long Term Planning and Funding
   [H. Paul Brazil, Director of Public Works and Jane Struder, Director of Finance]

Director of Public Works Paul Brazil referred to his memorandum, to the Mayor and Town Council dated July 5, 2007, and included in the backup material, which outlined options that the Public Works Department had prepared as financing alternatives for the Coastal Protection Projects. He provided an explanation of the alternative programs listed below noting that they had been prepared due to the recent tax reforms.

1. The "Current Program" was the program approved in August 2006.

2. The "Minimum Cost Program" illustrated the program elements the Town had already committed to, or was required by permit conditions of a previous project. These elements must be funded for the Town to remain in compliance with said commitments.

Discussion ensued and Town Manager Elwell explained that the Minimum Cost Program was the legally required plan, where the Town met its legal obligations plus it addressed the Sand Transfer Plant, Reach 1, and the Seawall.

Mr. Brazil clarified that it was an eleven-year plan, current year plus ten in the future, and that it was a guesstimate.

3. The "Scaled Back Program with Feeder Beaches" represented a middle of the road program.

Mr. Brazil explained that the legal minimum project could be done as a pay-as- you-go, which might minimize some of the financing discussion; Reach 8 could not be done this year if the assessment option was to be considered; and the Town might be able to proceed with Reach 8 depending on when the GO Bond Referendum was scheduled, if the Town Council chose to have Reach 8 done this year.

Mr. Brazil advised that President Kleid had suggested a fourth alternative for consideration by the Town Council. He noted that there were many variations that could be put together from these basic alternatives.

President Kleid read into the record a letter he wrote to the Mayor and Town Council regarding future Coastal Protection Projects under the Comprehensive Coastal Management Plan. The letter described a fourth alternative, which would have the Reach 8 Beach Restoration Project stand by itself. The project would be financed by a General Obligation Bond in an amount not to exceed $16 million pursuant to a referendum to be held in early December 2007, with the expectation that the Town would receive some reimbursement from government agencies for the money expended.

President Kleid presented the following reasons for scheduling the referendum for the General Obligation Bond in early December 2007, rather than on January 29, 2008, or February 5, 2008:

1. There needed to be sufficient time to obtain competitive bidding, if work was to commence this winter. If the referendum did pass, the bidders would know there was funding, and the Town could expect more competitive bids.

2. There would be a large window for the potential period of the work, which would allow sufficient time to marshal the work force and to complete the work prior to the prohibited turtle nesting season.

President Kleid reiterated that he recommended, based on the assumption that the Town would receive timely, proper permitting for the Reach 8 Beach Renourishment Project, the scheduling of a referendum for early December to authorize the issuance of a General Obligation Bond in an amount not to exceed $16 million.

Director of Finance Jane Struder referred to her memorandum to the Mayor and Town Council dated July 2, 2007, and included in the backup material, to discuss financing alternatives for the Coastal Protection Projects and to briefly provide background on the history of the Coastal Protection Projects.

Ms. Struder advised that staff was requesting guidance as to which program the Town Council wanted to pursue in order to bring back more detailed information on the financing method that related to the program selected. She noted that Rick Miller, Bond Counsel, was present to answer questions.

Mr. Elwell explained that if a General Obligation Bond was approved by the voters that debt would be paid by all taxpayers of the Town, but a Special Assessment Program was a more particularized formula on how to disburse the costs, which included properties that benefitted more from a capital improvement to pay a greater share of the costs. There were certain elements, in the law, in terms of the timing, as to how the process for a special assessment was set into place that precluded the Town from proceeding with the Reach 8 Project in order for work to occur during this upcoming winter. It was an option that was very much available for the longer term financing of these projects.

President Pro Tem Coleman advocated placing costs that were non-discretionary into the Town's operating budget. The discretionary costs on whether to spend more money should be voted on, and he noted that the Town was in a transition period as it had planned to fund Reach 8, which was presently labeled as discretionary.

President Pro Tem Coleman suggested that the North-end Drainage Project, which would be discussed at tomorrow's Special Town Council Meeting, be included as part of the referendum for Reach 8. He noted that both programs were capital projects the Town had been paid for as pay-as-you-go.

Council Member Brooks advised that he was not certain there was enough time to digest placing the Reach 8 Project and the North-end Drainage Project on the referendum.

Town Manager Elwell clarified further that state law, on General Obligation Bond referenda, required that the question before the voters be a single purpose question. He advised that if the Town Council decided that they wanted to do this, it would not be an additional sum of money into the same bond, but it would be two separate questions on the same ballot or perhaps on different ballots depending on what was decided.

In response to President Pro Tem Coleman, Mr. Elwell advised that there was about $12 million remaining to complete the entire North-end Drainage Project adopted in 2001 or 2002. He noted that the reimbursement for Reach 8 would be $16 million gross, netting approximately $12 million, both projects were about the same.

Council Member Markin questioned what would happen if the referendum on Reach 8 did not pass. She requested a comparison of a referendum to aassessments. She noted that there were 29 buildings, 3,000 units on the south end affected by beach renourishment on a regular basis and suggested a combination referendum/special assessment in order to get voter support. She expressed concern about going to a referendum without understanding the assessment potential.

Mr. Elwell commented as follows:

- The assessment program was a much more complicated question, but staff could provide that information to the Town Council for discussion at a future date.
- It had been a priority of this Town Council to do Reach 8 this coming fiscal year and staff was trying to bring options to them, which would include how that goal might be accomplished in the time frame they had established.

- If the Town Council wanted to entertain assessments, they could be entertained as either the first line option weighing directly with the General Obligation Bond choice, before the Town Council today, or it could be weighed as a secondary source of funding for future projects later on.

- If the Town Council considered the assessment option as the first line option and moved forward with that method of funding, then that project could not be constructed in the upcoming year.

  - The time necessary to set in place that kind of a system was such that the Town would be looking at FY09, the winter of 2008/2009 as the construction target, which was the main reason it was not before the Town Council today.

- If, as a group, the Town Council requested additional information about the assessment option and that option was weighed with the GO Bond option at the August Town Council Meeting, staff could bring more information to the Town Council for discussion.

President Kleid commented in opposition to the use of special assessments noting that the Town Council chose Reach 8 as a high priority of the Town.

President Pro Tem Coleman commented that he was aware of the importance of the time frame for Reach 8 but believed that there would be more information available in six to 12 months.

Council Member Brooks noted that Reach 8 was in deplorable, unsafe condition and commented in support of a separate GO Bond for Reach 8.

Council Member Markin commented that she was in agreement with what was being said, but she questioned what the Town would do, if the referendum failed.

Council Member Coniglio commented that she was in agreement with President Kleid that a $16 million bond referendum in December with a minimal project was needed.

Mr. Elwell advised that he had been advised by Town Attorneys that there was a possibility that both capital improvements could possibly be linked on a referendum, but additional research had to be done. He noted that the cleanest reading of the law stated that they would have to be separate questions, but there was a possibility they might be able to put it into one question.

Rick Miller, Bond Counsel with Edwards, Angell, Palmer and Dodge, stated that he believed this question deserved research. The two projects were capital improvement projects related to water, related to environmental aspects, and it might be a rubric could be formulated that incorporated them both. He did not want to be definitive, at this time, but might be able to report back by tomorrow when the Town Council discussed this issue.

Gilbert Levin, 3170 South Ocean Boulevard, an Environmental Engineer, commented on behalf of protecting the turtles, and urged renourishing Reach 8 by the swiftest, most practical means possible. He noted that it was his belief that condo residents would not object to some special assessment, in that behalf, because property values had been affected.

Gerry Frank, 2784 South Ocean Boulevard, commented that Reach 8 needed to be renourished as it had been deteriorating for many years. He commented that it would be a terrible step backward for the Town to go to special assessments.

Sam Boykin, 285 Jamaica Lane, submitted a letter and photographs to the Town Clerk that he had just received from a constituent. He advised that he did not necessarily approve of all that was said in the letter, which related to the poor condition of the streets on the north end.

Jack Maxey, 244 Nightingale Trail, commented in favor of beach replenishment. He advised that the residents on Nightingale Trail had received a letter informing them that the vegetation on Ocean Drive needed to be cut back, and that they would be fined if the trimming of the Seagrapes had not begun by May 29th. He noted that he had never received a response to a package he forwarded to the Town regarding federal and state laws on this issue. He expressed concern over the money spent by the Town on an expert in that regard; and questioned what the obligation of the Town was in terms of maintaining dune plants within the Coastal Construction Zone.

Mr. Elwell advised that he would check with Mr. Maxey to see to whom the letter was addressed and would provide him the answers to the questions he raised.

Ned Barnes, Palm Beach Civic Association, on behalf of Mr. Rumbough and the Civic Association, commented in support of Mr. Frank's statements, the renourishment of Reach 8 and Mr. Kleid's plan.

Motion made by Council Member Brooks to set a December date for a General Obligation Bond Referendum in the amount of $16 million for the restoration of Reach 8, and a bond issue covering the drainage program scheduled primarily for the north end for $12 million, upon advice and consent of the Town's Bond Counsel/Attorney.

President Pro Tem Coleman suggested amending the motion to ask Counsel to draft a General Obligation Bond Resolution for both the North-end Drainage Project and the south end

Reach 8 Renourishment with an upset price of approximately $28 million subject to the approval of Bond Counsel.

President Pro Tem Coleman seconded the motion, with the amendment, to request that the Town's Counsel draft a General Obligation Bond Resolution for both the North-end Drainage Project and Reach 8 Renourishment with an upset price of approximately $28 million subject to the approval of Bond Counsel. The referendum would be held on December 18, 2007. The maker of the motion agreed to the amendment. On roll call, the motion carried unanimously.

Mr. Brazil advised that staff was requesting direction between the three other alternatives noting that the two alternatives, which included Reach 8, would be modified to exclude Reach 8, if they were treated independently.

President Pro Tem Coleman questioned whether they were able to table this discussion for 90 days. He suggested that if the discussion was tabled, there would be a lot more information available after the 90 days.

Mr. Elwell clarified that Reach 8 was the critical path, at this point, and it had been addressed today. He commented that other than continuing on with monitoring, the Town was not into an active planning and design mode for the rest of the project, because Reach 8 was such a top priority. The discussion for long term planning could be tabled for 90 days.

It was the consensus of the Town Council to table discussion of the three financing alternatives until after the season: Current Program, Minimum Cost Program, Scaled Back Program with Feeder Beaches. The plans would be modified to exclude Reach 8, if treated independently.

b. Reach 8 Emergency Dune Restoration Project.
[H. Paul Brazil, Director of Public Works]

i. RESOLUTION NO. 26-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Declaring that an Emergency Situation Exists with Respect to Rebuilding the Dunes in Reach Eight South of Lake Worth Pier. *Deferred from the June 18, 2007, Special Town Council Meeting.*

Director of Public Works Paul Brazil referred to the memorandum to the Mayor and Town Council dated July 2, 2007, and included in the backup material, to discuss the possible project of emergency dune restoration in Reach 8 south of the Lake Worth Pier.

Mr. Brazil advised that he had presented this to Council as a possible project last month, and described very briefly that the Town was presently in a permitting quagmire. The project would take advantage of the emergency order issued by the Florida Department of Environmental Protection (FDEP), for placing sand as an emergency berm. The anticipated project cost was $2.1 million. The reserves that were now in the bank were $2.2 million. He noted that some of the funding might be reimbursed by FDEP, but, that would not be known until issuance of the permit.

Mr. Brazil advised both Senator Atwater and Congressman Klein expressed an interest in assisting with the coastal items, and that a conference call was scheduled with both of them, the Army Corps of Engineers, FDEP, and staff. He noted that staff was not optimistic.

Mr. Brazil, at the request of President Kleid, explained the "Catch-22" the Town was in, noting that the permitting situation involved federal law, because in order to do work during sea turtle nesting season, permission was needed to relocate sea turtle nests and to do that, a federally issued biological opinion was needed. The Army Corps of Engineers was the only agency that could make the request for the biological opinion from U.S. Fish & Wildlife. In order for the Corps to stay involved, and for the biological opinion to stay in effect, the Town would have to place sand seaward of the mean high tide. He advised that the emergency order issued by FDEP involved placing sand only above mean high tide. The Town was caught between mean high and mean low, between the state and federal regulations. He noted that there was no way that the work could be done without disturbing the sea turtle nests. The only approach that was available to the Town was the full permit application, similar to what was being done with the Reach 8 Beach Renourishment. He noted that both the Army Corps and FDEP had tried to find a solution, as well as attorneys and politicians, and to date, no one has been able to find a solution to date.

In response to President Kleid, Mr. Brazil explained that Palm Beach County had been working on the projects located on Singer Island and in Manalapan/South Palm Beach. He noted that previously, FEMA had been involved in both of those areas, and FEMA had been able to be the federal trigger for the biological opinion in those cases. FEMA had never been involved in Town projects, and because the Town did not have an open FEMA work order, their assistance could not be requested — the Army Corps of Engineers was the only available federal agency.

Mr. Elwell noted that the federal law also placed downgrades on what the Army Corps of Engineers could approve under certain circumstances, whereas FEMA dealt with the emergency situation, and were not constrained by those same boundaries.

President Kleid commented that staff was directed to report back after the conference call. If the outcome was positive, the Town Council could then make a determination as to whether they wanted to move ahead with the Dune Restoration Project.

Mr. Elwell clarified that if there was any kind of breakthrough tomorrow, staff would call the Town Council back into session to inform them of what occurred in order that a determination could be made, as a group, on how to proceed. If there was no breakthrough that would be the end of it.

Mr. Elwell clarified that in the absence of action regarding the long term plan, the Dune Restoration Project would remain indefinite and not specifically for 90 days, and the item would come back to the Town Council only as necessary or appropriate.

It was the consensus of the Town Council to direct staff to report back after the conference call with the Florida Department of Environmental Protection (FDEP), Senator Atwater and Congressman Klein. If permitting could not be obtained, the Dune Restoration project would not be pursued.

c. Reach 8 Beach Restoration Project.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil referred to the memorandum and three exhibits to the Mayor and Town Council dated July 2, 2007, and included in the backup material, to provide an informational update on the permitting status on the Reach 8 Beach Restoration Project.

The Town Council accepted the report, as presented, by Mr. Brazil and no further action was required at this time.

President Kleid thanked Mr. Brazil for his excellent report.

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Royal Poinciana Plaza Court Case

President Kleid announced that the Town had just received important information regarding the judgement of the Court for the Royal Poinciana case.

Town Attorney Randolph read the following last few lines of a 12-page order entered by the Court and received by the Town within the last 15 minutes:

Therefore it was considered ordered and adjudged as follows:

1. The terms, conditions, covenants and restrictions set forth in the 1979 Agreement as well as the subsequent amendments, thereto, are in full force and effect and binding upon the plaintiff.

2. The 1979 Agreement in paragraph 2E and F, specifically, requires that the Poinciana Theater located in the Plaza be maintained and operated as a theater of the performing and/or of the visual arts and for lectures or other special events and prohibits its use for any other purpose.

3. Plaintiff as successor and assignee to the 1979 Agreement does not have the right to demolish the Poinciana Theater.

4. Judgement is hereby entered in favor of the defendant with the court reserving jurisdiction to award costs upon proper motion.

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2. Continued Consideration of Referendum Date for Project to Place Overhead Utility Lines Underground.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford referred to his memorandum to the Mayor and Town Council dated July 2, 2007, and included in the backup material, to provide a status report regarding burial of overhead utility lines. He noted that staff recommended the following two items:

1. Funding in the amount of $60,000 to continue the work of Roy Young of the firm Young Van Assenderp, P.A. to continue the utility negotiations, primarily with the telecommunications companies.

2. The use of January 29, 2008. the Presidential Preference Primary, as the date for the Undergrounding Referendum.

In response to President Kleid, Mr. Bradford advised that if the Town Council approved funding $60,000 for the services of Young Van Assenderp, P.A., as lead negotiators for the underground conversion contracts, the money would come from an account in the capital improvement fund the Town Council had set aside, some years ago, an undesignated fund balance within that account to allow money to be spent that was needed upfront, in advance of any referendum that may be held for undergrounding. The Town had spent $320,000, to date, from that account, on attorneys, engineering, etc.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, to approve funding in a not-to-exceed amount of $60,000 for the services of Young Van Assenderp, P.A., as lead negotiators for the underground conversion contracts. On roll call, the motion carried unanimously.

Motion made by Council Member Coniglio, seconded by Council Member Brooks, to approve the recommendation of placing the Underground Utility Referendum on the ballot on January 29, 2008. On roll call, the motion carried unanimously.

Discussion ensued regarding holding three elections: December 18, 2007, January 29, 2008, and February 5, 2008. Town Council Member Markin commented that it would be difficult to get people to come out on three different occasions to vote on the referendums and a general election.

Jere Zenko, 232 Tangier Avenue, spoke in opposition to holding three elections.

3. Florida Department of Transportation Update on A1A Projects, Including Request to Allow Nighttime Work During the Milling and Resurfacing of South County Road Between Worth Avenue and Royal Palm Way.
[Melvin Pollock, P.E. West Palm Beach Operations Engineer]
TIME CERTAIN: 10 A.M.

Melvin Pollock, Florida Department of Transportation (FDOT) noted that the first item for discussion today was a request for night work on South County Road. He introduced Sandy Daniel, FDOT Senior Project Engineer for A1A who would address this request.

Mr. Daniel explained the benefits of the request to conduct milling and structural paving along South County Road from 8:00 p.m. to 6:00 a.m. from Worth Avenue to Royal Palm Way. The work would occur within a total of two (2) construction periods of approximately one (1) week each starting on Sunday night, July 15, 2007, through Thursday night; and then about thirty to forty-five days later, the final layer of asphalt would be applied. It was anticipated that the project would be completed about the second week of September.

Motion made Council Member Markin, seconded by Council Member Brooks, to approve the request of the Florida Department of Transportation (FDOT) to conduct milling and structural paving work along South County Road between Worth Avenue and Royal Palm Way beginning July 11, 2007, between the hours of 8:00 p.m. and 6:00 a.m. The project will

occur over a total of two (2) construction periods of approximately one (1) week each. On roll call, the motion carried unanimously.

Stephen Stokes, FDOT Senior Project Administrator, provided an update on the Revetment Project, noting that the project was expected to be completed near the end of October.

4. Potential Noise Ordinance Amendments Regarding Lawn Maintenance Equipment, etc.
[Michael S. Reiter, Chief of Police]
Deferred from the June 18, 2007, Special Town Council Meeting.

Gary Sallenbach, Support Services Major, Police Department, referred to the memorandum to the Mayor and Town Council dated July 2, 2007, and included in the backup material, to discuss revisions to the Town of Palm Code of Ordinances Section 42-230, Lawn Maintenance Equipment Noise. He noted that the Town Council had previously recommended that the Police Department meet with Scott Lewis of Scott Lewis Gardening and Trimming, Inc., to discuss any conflicts that might have occurred between the lawn maintenance ordinance, and the construction noise ordinance. He advised that it was found, during these meetings, that there were very few conflicts, but there were other issues discovered that would be discussed separately with Mr. Lewis.

Major Sallenbach advised that as a result of the review, staff recommended the following minor modifications to Section 42-230:

- The lawn maintenance equipment noise ordinance be modified to clarify the decibel level of leaf blowers as established at 65 dba and remove previous language concerning compliance dates.

- The removal of the exemption for the operation of leaf blowing equipment on properties of a size greater than three acres.

In response to President Pro Tem Coleman, Major Sallenbach advised that the Town's Ordinance used both distance and decibel measurements; and the ordinance was presently written with a requirement of 65 db at 50'.

Scott Lewis, President of Scott Lewis Gardening & Trimming, Inc., on behalf of lawn maintenance providers, noted that the ordinance had been cleaned up, but his suggestion for a voluntary decal program, which would easily identify leaf blowers that complied with the requirements of the Town, was still an issue open for discussion. He noted that 80% to 90% of the leaf blowers in Town were in violation. The charge for the decals could be minimal, perhaps $5 each, to underwrite the costs associated with a decal program.

President Kleid and President Pro Tem Coleman recommended that Mr. Lewis continue discussion with staff regarding the implementation of a decal program and return to the Town Council with a proposal.

Mr. Lewis explained that he, Town Attorney Randolph, and staff needed to discuss the definition of holidays. The lawn maintenance workers could not afford to have four or five straight days off where they could not work on holiday weekends, such as Thanksgiving.

President Pro Tem Coleman advised that he did not have a problem allowing staff the discretion to wave a holiday requirement, instead of having to return before the Town Council.

Town Manager Elwell commented that if the majority of the Town Council believed as President Pro Tem Coleman did, staff could write some language into the ordinance that would provide that kind of discretion. He noted that the four day weekends at Thanksgiving, Christmas and the New Year were what was at issue, because they went from potentially a Wednesday to a Monday, and blacked out work on the four days in between. In order to treat the construction industry and the service providers the same, the blackout was for the entire holiday weekend. Thanksgiving traditionally was something that prior Town Councils had looked at, and repeatedly, affirmed the fact that they wanted the Town to be peaceful and quiet over the Thanksgiving weekend. Staff needed the Town Council's direction on whether the same principal held for the other two holiday weekends.

Discussion ensued and Mr. Elwell noted that staff would continue to review the decal requirement for leaf blowing equipment issue and return next month before the Town Council.

Motion made by Council Member Brooks, seconded by Council Member Coniglio, to approve the modifications suggested by staff and return with an Ordinance for first reading at the August 14, 2007, Town Council Meeting, which would reflect those policy level changes.

Council Member Markin commented on holidays schedules and that it was not just a matter of lawn maintenance crews and trucks around Town, but it was also a matter of traffic. The Town already had an enormous amount of increased traffic and parking problems on a holiday weekend.

5. Traffic and Parking Improvement Plan.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated July 2, 2007, and included in the back up material, to provide a report on staff follow-up of the Town Council's action on the Preferred Strategies for the Royal Poinciana Way Commercial Area, Residential Parking Strategies and Townwide Traffic and Parking Strategies within the Traffic and Parking Improvement Plan as presented on June 18, 2007. He reviewed those actions that required follow-up along with a status on each.

- **Approved in concept the idea of modifying the Gainesville Plan to allow temporary permits or passes for service vehicles and visitors.**

  Mr. Randolph had been requested to prepare the ordinance, and then return the ordinance to staff for review to ensure that the Police Department was comfortable with the details of the changes since they would be the ones to enforce it.

  Mr. Bradford requested feedback from the Town Council as to whether Mr. Randolph should pursue making the same modifications to the Arlington Plan permit parking areas as were being made to the Gainesville Plan ordinance so that all residential permit areas would be treated equally.

  The consensus of the Town Council was for staff to return with an ordinance that addressed both the Gainesville and the Arlington Plan.

- **Approved selling 10 parking placards for the 100 block of Royal Palm Way on a trial basis.**

  A news release was issued on June 27th advising that the effective date of the placard program was July 2nd.

- **Staff was directed to research incentives/tax abatements for the owner of the vacant commercial lot east of Publix, as well as other property owners that own parking garages in the area with empty space on both a short term and long term basis and return at the July 10th Town Council Meeting with further information.**

  Staff advised that they required additional time for this item.

- **Staff was directed to provide the specific number of parking spaces on Worth Avenue and how many employees utilize parking on Worth Avenue.**

Mr. Bradford noted that there were 149 usable parking spaces on Worth Avenue as opposed to the entire commercial district. He noted that staff was working with the Worth Avenue Association to determine the actual number of employees parking on the street.

- **It was the consensus of the Town Council to implement electronic chalking. Staff was directed to provide financial information regarding electronic chalking at the July 11, 2007, Special Town Council Meeting.**

  Mr. Bradford noted that this item would be before the Town Council at tomorrow's Special Town Council Meeting on the budget. He advised that the cost for three electronic chalking units was $210,000;

  Mr. Bradford commented that no final decision had been made regarding the one-way pairing of Sunrise/Sunset Avenues and that the dollar amount was $29,231. He stated that the decision could be made either today or tomorrow.

- **Staff was requested to prepare an ordinance regarding parking zones for first reading at the July 10th Town Council Meeting.**

  Mr. Bradford advised that the ordinance regarding parking zones was on the Agenda today for first reading.

- **Staff was directed to begin collecting information regarding employee parking on zoning applications.**

  The Planning, Building and Zoning Department (PB&Z) had been requested to create a plan to collect information regarding employee parking on zoning applications. PB&Z would implement this shortly and data would begin to appear on applications at the September Town Council Meeting.

- **Staff was directed to implement a proactive plan to deal with illegal parking by school employees in the Palm Beach Public School and the Palm Beach Day Academy area and to review alternate parking spaces that may be available.**

  Mr. Bradford noted that the new Head Mistress at Palm Beach Day Academy was to begin work on July 2nd, and that he planned to set up a meeting with her, Jay

Boodheshwar and himself. He noted that she would be informed of the forthcoming one-way east bound direction for Seaview Avenue, which would be implemented prior to the start of the school year. Arrangements had to be made to provide off-street parking for an estimated 14 school teachers at her facility as soon as possible, because the Town intended to ticket and, if necessary, tow cars illegally parked effective with the one- way change.

- **Kiosks.**

  Mr. Bradford noted that the Town Council had discussed, at their meeting of June 18, 2007, the subject of kiosks, specifically the need for staff to identify the payback period if kiosks were purchased Townwide. Staff had recommended that the rates be increased to $1.25 per hour from the current $1.00 per hour, and the overtime parking penalty rise from $25 to $30.

President Kleid suggested that the Town Council take separate action on the following three items:

1. Request for funding in the amount of $29,231 to be expended from the FY07 General Fund contingency to complete the one-way pairing of Sunrise/Sunset Avenues.

   Council Member Coniglio commented in opposition to spending the $29,231 at this time.

   Council Member Markin advised that she would make a motion, unless there were additional comments, that the Town Council not fund the one-way pairing of Sunrise/Sunset Avenues in the amount of $29,231. She agreed with Council Member Coniglio that it was an undue expenditure at a time when the Town Council did not want to have undue expenditures. She noted that she has heard a lot of negative feedback on this item.

   Council Member Brooks commented in favor of funding the $29,231 to be used to test turning Sunrise/Sunset Avenues into one-way pairings.

Motion made by President Pro Tem Coleman to fund the one-way pairing of Sunrise/Sunset Avenues in the amount of $29,231. Council Member Brooks seconded the motion.

Norman Goldblum, 109 Everglade Avenue, commented in opposition to funding $29,231 for the one-way pairing of Sunrise/Sunset Avenues, and if it did not work, spend the same to undo the one-way pairing.

President Pro Tem Coleman advised that to put it into context, the $29,231 was to save $150,000 or $250,000, and that was the alternative to spending a great deal more.

Council Member Markin noted that she believed it was better to err on the side of caution, and urged the Town Council not to fund the one-way pairing.

Dorothy Engels-Gulden, owner and broker of Gulden Real Estate at 220 Sunrise Avenue, commented in opposition to the one-way pairing of Sunrise/Sunset Avenues. She submitted letters from many business owners who opposed this as well. She stated that it was very cavalier of the Town Council to do this without listening to the people who were directly impacted and hoped that the Town Council did not vote in favor of it.

President Kleid responded that there had been several public meetings to discuss this very specific item and that the Town had a professional outside management consulting firm who made these suggestions.

On roll call, the motion to fund $29,231 for a one-way configuration of Sunrise/Sunset Avenues failed:

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

2. Funding up to $210,000 to purchase up to three electronic chalking devices for electronic chalking devices.

Motion made by Council Member Markin to fully support and fund the purchase of the electronic chalking equipment. The motion was seconded by Council Member Brooks.

Leslie Evans, 135 Seminole Avenue, commented in opposition to funding the purchase of electronic chalking equipment. He suggested that instead of spending $210,000 on electronic chalking devices, the Town should construct parking garages.

Mr. Elwell advised that funding of this item could be done either by a budget amendment or by use of fund balance in the FY08 budget. He suggested that the funding be appropriated from the fund balance in the FY08 budget.

On roll call, the amended motion [amendment accepted by motion maker and seconder] to approve funding of up to $210,000 for three electronic chalking devices to be appropriated from the fund balance in the FY08 Budget, carried unanimously.

3. Funding the purchase of 40 kiosks at a cost estimate of $500,000.

Mr. Elwell recommended funding for the kiosks should be appropriated from the fund balance in the FY08 budget.

Council Member Markin discussed her concerns regarding the kiosks and commented that it was her understanding from prior Town Council discussions that the Town would first implement electronic chalking to determine if some of the issues could be reduced or alleviated, and kiosks would be entertained after the Town Council had received feedback.

Mr. Bradford explained that it was thought electronic chalking would be done on a trial basis before the Town purchased the total number of units that would be needed. The reason only three electronic chalking devices were being asked for was to see what the impact would be before coming back before the Town Council and asking for all the units staff believed were needed.

Mr. Elwell noted that the kiosks were a separate issue, because electronic chalking would be used only in those areas where people did not pay to park. The kiosks would be implemented only in places where there were currently meters, and the meters would be removed.

President Pro Tem Coleman noted that the kiosks would primarily be placed on South Ocean Boulevard.

In response to Council Member Coniglio, President Pro Tem Coleman noted the following advantages to using kiosks:

1. Aesthetics;
2. The rates could be raised;
3. The Town would have more control over people who visited the ocean;
4. No coin collection.

President Kleid noted that a fifth advantage of a kiosk would be the use of credit cards, which would overbook.

Leslie Evans, 135 Seminole Avenue, noted that when using credit cards a 3% fee usually had to be paid to the credit card company. He questioned whether the Town had looked at those costs; if all costs had been reviewed including what the maintenance costs would be as compared to what they were now; and if there was an alternative that was less expensive.

Mr. Elwell noted that the Town was aware of the processes involved with using kiosks as there were some located at Phipps Ocean Park that took credit cards. The systems were in place, and the Town would build on what already existed. He commented on the efficiencies and benefits that could be achieved by moving to kiosks, noting that the mere collecting of the cash from hundreds of meter heads was a labor intensive process.

Amy Shaughnessy, 226 Australian Avenue, commented that one of the big benefits of kiosks over parking meters was that they provided an opportunity for doing demand pricing. She noted that without having to replace machines and without having to change the calibration, demand pricing could be put into effect so that the Town could even do higher prices for parking in season than out, higher pricing from 9:00 a.m. to 5:00 p.m., and lower pricing in the evening, etc. She advised that all of those things could be fixed at a distance by electronic controls and would permit enormous flexibility.

President Kleid thanked Ms. Shaughnessy, noting that she had made a good point.

Motion made by President Pro Tem Coleman to approve funding $500,000 for forty kiosks to be appropriated from the fund balance in the FY08 Budget. Council Member Brooks seconded the motion with the understanding that the fees would be discussed at tomorrow's Special Town Council Meetings on the budget. On roll call, the motion carried unanimously.

6. Lake Drive Park Master Plan.
[Jay Boodheshwar, Director of Recreation]

Director of Recreation Jay Boodheshwar provided an update of the Lake Drive Park Master Plan. He recapped the direction given by the Town Council and the action taken to date. His discussion included:

CLEAN-UP AND MAINTENANCE

- Conducting improvements of the facade of the buildings or drastically improving the buildings both internal and external;

MINOR IMPROVEMENTS

- Painting of D-15 pump station, which was a large facility adjacent to the Australian Dock, at a cost of $3500 from the General Fund;
- Construction of a consolidated oil containment facility, located near the Australian Dock, at a cost of $35,000 from the Recreation Enterprise Fund;
- Consolidation of all the containment sites at Brazilian and Peruvian Docks and removal of the toilet facility, storage box, and other unsightly items adjacent to the Brazilian parking lot; removal of hedge material to create a better view of the Intracoastal from the street.

MAJOR IMPROVEMENTS

- Extension of the docks
  - Increase revenue for funding of additional park projects;
  - Two options with pricing contingent on obtaining the necessary state and federal approvals and did not include permitting and potential mitigation costs, which could easily exceed $50,000;
    - **Option #1** - minor expansions to the Brazilian and Peruvian Docks by adding three slips at each dock totaling S1.2 million and using a 4% annual fee increase calculation that would yield a return on the investment within five years. Staff expected challenges with permitting this option specifically at the Brazilian Dock, as its close proximity to the Intracoastal could cause concern;
    - **Option #2** - Peruvian Expansion Only would provide seven slips for $1.2 million and a return on the investment within five years;
      - Adding more slips would increase the need for more parking; staff identified two options for parking and maintaining the current 1.3 parking space per slip ratio:
      - Expand the Peruvian parking lot and mitigate the loss of green space by replacing it on non-essential blacktop identified at the Brazilian Dock; or
      - Designate 10 on-street parking spaces for Marina use only - the Marina fund would pay for cost associated with those spaces as there would be no loss to the General Fund.

RENOVATION OF DOCK BUILDINGS

- The total estimated cost of the three facilities was $440,000, and did not include the additional square footage, major foundation work, or structural changes.
- As a definitive scope of improvements was identified, the modified numbers would be provided.

SLIP REVENUE FOR PARK MAINTENANCE

- After the payback period of five years was completed for the new slips, an estimated $295,000 could be generated annually for funding of park related maintenance/improvements.

Responding to President Pro Tem Coleman, Mr. Boodheshwar noted that staff juggled cars during the season attending to the needs of the leaseholders; as there were no parking spaces for service vehicles in the parking lots, the service vehicles were parked on the street, which was a concern of the residents. He stated that additional parking spaces would be needed if slip extensions were added.

Responding to President Kleid, Mr. Boodheshwar indicated that the Recreation Enterprise Fund required $4700 for painting the dock buildings and $35,000 to construct the consolidated oil containment system.

Yvelyne D. Marix commented that in view of the current financial considerations, and because many residents were not here, this was not the time to discuss adding slips and reducing the parking.

President Kleid noted that the only item on the table was the minor repairs of $61,200, which included the landscaping.

Responding to Leslie Evans, Mr. Boodheshwar indicated that the suggested parking spaces would be for Marina use only, contained within the park. The street parking would be a different use of existing inventory. He added that, as far as competition with West Palm Beach, the reality in the market was that the Town's pricing was not at the top, and the Town could continue to ask for the 4% annualized increase, considering the waiting list of interested leaseholders.

John Ripley, Preservation Foundation of Palm Beach, urged the Town to go forward with the minor considerations. The consolidation of the oil containment facility would remove several eyesores from the park, and a strong visible example that planning and the use of consultants had positive benefits.

Responding to Council Member Markin, Mr. Boodheshwar noted that the previous statement, *the payback period was five years for the new slips at $295,000 a year,* related to Option 2, not both options.

Council Member Markin commented that private funding for the small, pristine greenspaces in the parks may allow them to be designated for resident use only.

Council Member Coniglio thanked the Preservation Foundation for providing the funding for the Lake Drive Park Master Plan. She commented that many neighbors near the Park were in favor of Park improvements.

Motion made by Council Member Coniglio, seconded by Council Member Brooks to move forward with the minor improvement plan as presented.

Mr. Elwell provided clarification for the sources of the funding for the motion: in the Recreation Enterprise Fund, the two items totaling $39,700 would be from this year's Enterprise Fund Contingency Account, and that the two items coming from the General Fund, totaling $21,500 would be from the fund balance in the FY08 budget.

The maker and seconder agreed.

Upon roll call, the motion carried unanimously.

Motion made by President Pro Tem Coleman to approve Option 2, the Peruvian Dock, which would provide seven slips for $1.2 million and a return on the investment within five years. Council Member Brooks seconded the motion.

Responding to Council Member Coniglio, Mr. Boodheshwar noted that funds had been earmarked over the last several years based on the original Master Plan and that there were funds in place to begin the process.

On roll call, the motion carried 4-1, with Council Member Markin dissenting.

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At this time, 12:10 p.m., the meeting was adjourned for the luncheon recess.

The Town Council Meeting of July 10, 2007, was reconvened at 2:10 p.m.

****

President Kleid announced that Mayor McDonald would not be present for the afternoon session of the meeting, as he was at a meeting with the Palm Beach County Commissioners working for the passage of the "Let Us Vote" amendment.

Jeff Cloninger, 411 Brazilian Avenue, commented that he and others in the audience were not in favor of the $1 million plus dock expansion, and that he had received two calls from board members of the Royal Park Homeowner's Association that were also against it.

Stan Rumbaugh, 655 Island Drive, commented that, speaking as an individual, he spoke to 10 people at lunch and none of them were in favor of the dock expansion. He said he hoped that the Council would revisit the issue.

Sam Boykin, Jere Zenko, and John Wannamaker-Leas commented that they were not in favor of the dock expansion.

Council Member Coniglio commented that within five years, the return on the investment would be $300,000 per year, which would work toward some of the major capital improvements within the park, or it would have to be placed into a long term capital improvement project.

President Pro Tem Coleman commented that in order to reduce the budget, and retain services, the money would have to come from somewhere. The return on the dock expansion would underwrite a significant part of the expense in Lake Drive Park.

Council Member Markin indicated that she voted against it, as there was a supply and demand situation at Town docks. She suggested raising the cost of the slips more than the 4% annual increase, and that there would still be a waiting list, as it was a premier location.

President Pro Tem Coleman commented that the Recreation Director provided a professional assessment of the market substantiating the dock expansion. He indicated that those who were not in favor of it had not provided any statistical data, only their opinion.

B. New Business

1. PB Cats, Inc.,. Status Report and Request for Funding.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah provided an introduction of PB Cats, Inc., and Palm Beach Cat Rescue & Humane Society. She noted that PB Cats, Inc., report was through May 31, 2007, and that they would be requesting additional funding.

Brian LaRue, 214 Chilean Avenue, chief financial officer of PB Cats, Inc., provided a PowerPoint presentation outlining financial statistical data related to the operation of PB Cats, Inc., and noted that at the end of the year there would be a deficit of approximately $72,000.

Jeffrey Cloninger, 411 Brazilian Avenue, chair of PB Cats, Inc., commented on the operation of the corporation. He noted that without the financial support from the Town, it would be impossible to continue the work.

Responding to President Kleid, Mr. Cloninger indicated that PB Cats, Inc., would need a definite commitment for another year of funding. After one to one and a half years, the expenses would decrease significantly. Eighty percent of the cats had been sterilized, and to stop the program now would be a disaster.

Mr. LaRue responded that approximately $100,000 per year was the amount needed for funding from the Town, and the remaining amount could be garnered through grants and the public.

Council Member Markin, as an advisor to the board of PB Cats, Inc., said she applauded everyone involved that tried to make the program successful. She urged the Council to give the program another year, as all cats would be sterilized, with only a feeding cost remaining. She stated that the cost would go down to one-third of what it was now. The numbers were known and every dollar had been spent very judiciously.

Council Member Brooks congratulated PB Cats, Inc., as they had a successful program. He suggested concentrating on feeding the animals that had been neutered. He also suggested hiring a professional trapper and moving the animals to a humane area.

President Pro Tem Coleman said he would continue to support the money that was segregated for the neutering of cats.

President Kleid commented that at the start of the program he hoped that there would have been more fund raising from the community than actually occurred.

Council Member Markin indicated that many people had donated to the program, but not in the high amounts as in other charities. All the controversy perpetuated with the program did not make it any easier to acquire donations. Just feeding the cats would not solve the problem, as they propagate and within six months to a year, the problem would be back to where it was a couple of years ago, with an increase in numbers.

Responding to President Kleid, Mr. LaRue noted that, in the past six months, the funds used just for spaying and neutering were $10,000 for veterinarian's fees. It did not include the trapper's fees, the boarding fees for recuperation, and $30,000 miscellaneous fees. He added that approximately 95 cats were spayed and neutered.

President Pro Tem Coleman suggested that, in order to defray the costs of managing the feral cats, the Town pay a bounty to trap the animals plus a 20% premium on the cost for each cat that was sterilized. He noted that the Town would benefit by reducing the cat population.

Responding to President Pro Tem Coleman, Mr. LaRue noted that at the end of September, PB Cats, Inc., would be out of money; in two months, PB Cats, Inc., would return with a definitive amount needed to spay and neuter the cats.

Gerald Beebe, of Palm Beach Cat Rescue & Humane Society, said he spoke on behalf of Lillian Russo, of 710 County Road, and Mr. Leas. Mr. Beebe presented their observations and proposed solutions to the increasing problems of the feral cat program. He indicated that funds would be raised under the name of Palm Beach Philanthropic Guild.

Responding to President Pro Tem Coleman, Mr. Beebe explained that any additional fund raising that did not include the feral cats, would be done with their own 501c3 designation.

President Pro Tem Coleman noted that the Town would not provide an imprimatur to Palm Beach Cat Rescue & Humane Society to represent the Town on a 501c3 basis and that there would not be any confusion on the part of the public that the Palm Beach Philanthropic Guild was anything but an independent agency desirous of operating that way.

In light of Mr. Beebe's presentation of Palm Beach Cat Rescue & Humane Society, Mr. LaRue of PB Cats, Inc., responded regarding the Certificate of Deposit (CD) that was invested, the feeding of the cats, and the fund raising.

Mr. Wannamaker-Leas, Phipps Plaza, commented that selecting an organization to manage the cats should follow a procurement process that required measurable deliverables, and be put up for bid for a small Request For Proposal (RFP) process; there should be a standardized feral cat management methodology that was documented and followed, and a long term commitment by the Town.

President Kleid stated that staff would report back in August with the cost of spaying and neutering of cats and the proposals of each of the two organizations: PB Cats, Inc., and Palm Beach Cat Rescue & Humane Society.

Town Manager Elwell noted that, because of the unique nature of the service, staff was not in a position to judge the performance qualifications of the two organizations, but staff could provide their cost and services.

President Kleid indicated that staff would determine what each organization was willing to do, and what their cost would be, in order for the Town Council to make a decision.

2. Proposed Claim Settlement; Weston vs Town of Palm Beach.
[John C. Randolph, Town Attorney]

Town Attorney Randolph provided an overview of the Weston vs Town of Palm Beach Case No. 50 2004 CA 5757 XXXX MB AG concerning access to the property on Laurie Lane and the adjoining property. He recommended that consideration be given to the acceptance of the settlement agreement that had been proposed.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve the Claim Settlement Weston vs Town of Palm Beach. On roll call, the motion carried unanimously.

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

President Kleid announced that the following candidates had been elected to the Building Board of Adjustments and Appeals:

Reappointed as a Regular Member: Jeffrey W. Smith
Appointed as Regular Members: John C. Cassidy
Timothy Benitz

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 12-07 An Ordinance Relating to the Provision of Services, Facilities, Programs and Local Improvements in the Town of Palm Beach, Florida; Authorizing the Imposition and Collection of Assessments Against Property Within the Incorporated Area of the Town of Palm Beach; Providing Certain Definitions and Defining the Terms "Assessment," "Service Assessment," and "Capital Assessment"; Providing for the Creation of Assessment Areas; Providing Certain Legislative Findings Relating to the Assessments and the Exigent Circumstances Requiring the Immediate Adoption of this Ordinance as an Emergency; Establishing the Procedures for Imposing Assessments; Establishing Procedures for Notice and Adoption of Assessment Rolls; Providing That Assessments Constitute a Lien on Assessed Property upon Adoption of the Assessment Roll; Providing That the Lien for an Assessment Collected Pursuant to Sections 197.3632 and 197.3635, Florida Statutes, upon Perfection Shall Attach to the Property on the Prior January 1, the Lien Date for Ad Valorem Taxes; Providing That a Perfected Lien Shall Be Equal in Rank and Dignity with the Liens of All State, County, District, or Municipal Taxes and Assessments and Superior in Dignity to All Other Prior Liens, Mortgages, Titles, and Claims; Creating the Town of Palm Beach Municipal Services Special District and Providing for the Authority and Functions of Said Special District, Including the Authority to Levy Special Assessments and Ad Valorem Taxes; Providing Procedures for Collection of Assessments; Providing a Mechanism for the Imposition of Assessments on Government Property; Authorizing the Issuance of Obligations Secured by Assessments and Providing for the Terms Thereof; Providing That the Town's Taxing Power Shall Not Be Pledged; Providing Remedies; Deeming That Pledged Revenues Shall Be Considered Trust Funds; Providing for the Refunding of Obligations; Providing for Severability; and Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read the title of Ordinance 12-07, as printed above.

Responding to Town Attorney Randolph's statement that the following excerpt from the above title in Ordinance No. 12-07 was not in the actual title: *Providing Certain Legislative Findings Relating to the Assessments and the Exigent Circumstances Requiring the Immediate Adoption of this Ordinance as an Emergency*, Mr. Elwell noted that this was a typographical error and the Ordinance was not being adopted as an emergency ordinance, and that none of the fees enabled by this Ordinance would be adopted without a subsequent specific action.

Motion made by Council Member Brooks, seconded by Council Member Markin to adopt Ordinance No. 12-07. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 13-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 10, Animals, Article I, in General, Section 10-6, Animals Creating Nuisances; Amending Chapter 10, Animals, Article II, Dogs and Cats, Adding a New Section 10-45, Dangerous Dogs; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance 13-07 by title, as printed above.

Motion made by President Pro Tem Coleman, seconded by Council Member Markin to adopt Ordinance No. 13-07. On roll call, the motion carried 4-0, as Council Member Brooks was temporarily absent from the meeting.

Beth Heath, 2830 Wilderness Road, West Palm Beach, thanked the Town Council for adopting Ordinance No.13-07.

B. First Reading

1. ORDINANCE NO. 14-07 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, to Include a New Article VII and Sections, Titled "Parking Zones"; Providing for the Establishment of Parking Zones; Providing for Time Limits to Park in Parking Zones; Making it Unlawful to Overtime Park in Parking Zones and Authorizing Penalties; Making it Unlawful to Relocate a Vehicle Within the Same Parking Zone; Providing for the Penalty for Overtime Parking in a Designated Parking Zone; Amending Section 118-92 to include a penalty for overtime parking in a designated parking zone; Amending Section 118-127 to Reference Penalties in Section 118-92; Providing for Severability; Providing for Repeal of Ordinances in Conflict;

Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford noted that Town Attorney Randolph advised that the following language needed to be added to the Ordinance: *Amending Section 118-92 to include a penalty for overtime parking in a designated parking zone.*

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

Motion made by President Pro Tem Coleman, seconded by Council Member Markin to approve Ordinance No. 14-07 on first reading as amended. On roll call, the motion carried 4-0, as Council Member Brooks was temporarily absent from the meeting.

XII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. VARIANCE #15-2007 The application of James A. Palmer relative to property described as Lot 12, WALTON ADDITION, Revised Plat, according to the Plat thereof filed in Plat Book 18, Page 83 in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida. INCLUDING the south 4.00 feet of Lot 4, Kawama Lane, according to the Plat thereof, as recorded in Plat Book 27, Page 56, of the Public Records of Palm Beach County, Florida, LESS the East 56.66 feet; commonly known as 239 Sanford Avenue; located in the R-B Zoning District. A variance request to construct a 442 square foot second story addition over an existing non-conforming garage with side yard setback of 5.93 feet in lieu of the 15 foot minimum required in the R-B Zoning District. *Deferred from the June 19, 2007, Town Council Meeting.*

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

Attorney Ziska, indicated that she represented applicant, Jim Palmer, and was accompanied by Architect Harold Smith. She provided an overview of the variance request.

Architect Smith presented architectural renderings of the variance.

Staff Comments:

Zoning Administrator Paul Castro made the following comments:

- This request was deferred last month and the Architectural Commission deferred it the previous month in order for the applicant to restudy the roof;
- The Architectural Commission recommended the applicant's changes to the Council, as the variances were in keeping with the architecture for the home;
- From staff's standpoint, the side yard setback was not a hardship simply because the code had changed;
- The setback was only five feet from the property line and the code required 15 feet; and
- The applicant had to demonstrate to the Council that they met the other criteria in the code to be granted a variance.

Attorney Ziska noted that the hardship was that the lot was non-conforming in width and in area where the code required 100 feet and it was 80 feet, and the encroachment was already there with the garage; it was closer to the six-foot setback and that they were building on top of an existing structure, as was with many of the other houses on Sanford Avenue.

Motion made by President Pro Tem Coleman, seconded by Council Member Markin to approve Variance #15-2007. On roll call, the motion carried unanimously.

2. New Business- Less Than 15 Minutes

   a. VARIANCE #18-2007 The application of FJK Properties, Inc. (Frederick J. Keitel), relative to property described as South 134 feet of Lot 17, Block A, revised map of Royal Park Addition to Palm Beach, Florida, according to the map or plat thereof as recorded in Plat Book 4, Page 1 Public Records of Palm Beach County, Florida; commonly known as 230 Royal Palm Way; located in the C-OPI Zoning District. Request a variance to allow an individual business identification sign on an existing building above the first floor to be at a height of 15.6 feet in lieu of the 15 foot maximum allowed on a multi-story building.

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

Attorney Ziska handed out a reduced set of plans that were previously submitted, and provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The location of the sign, which was located just above to the left of the driveway entrance to the back of the building, was shown on the elevations when it came to Town Council for approval, and it did meet code;

- At some point in time, the applicant, through the Architectural Commission, made a decision that the changes would include a sign over the front door entry;

- The applicant was now requesting that the sign be located above the maximum height on an entirely redesigned building, which would not meet code;

- The code changed several years ago, so when an applicant requested to change a sign on an existing building, if it was located above 15 feet or on the first floor, the Town would allow the sign; however, this was an entirely redesigned facade; and

- Staff questioned the hardship and would like to stress that it was aesthetically pleasing at this location over and above the other.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve Variance #18-2007. On roll call, the motion carried unanimously.

b. VARIANCE #19-2007 The application of Mar-a-Lago, LLC, LC, Donald J. Trump, Manager, relative to property described as lengthy legal description on file; commonly known as 1100 So. Ocean Blvd.; located in the R-AA Zoning District. Request a variance to construct a seventy foot high flagpole in lieu of the forty two foot maximum allowed by code.

Ex-parte communication was declared by President Kleid, President Pro Tem Coleman, and Council Member Brooks with Attorney Ray Royce.

Attorney Ray Royce, on behalf of the Mar-a-Lago Club, provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The applicant did speak to the hardship and the settlement agreement; and
- Staff requested that the applicant obtain a building permit for the construction of the flagpole.

Attorney Royce agreed to obtain a permit for the construction of the flagpole.

Responding to President Kleid, Town Attorney Randolph indicated that the height of the flagpole was being reduced to 70 feet because of the unique nature, size, and set back of the property, and that a motion could contain a finding that there was a hardship, and that this met the criteria for the granting of variances.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve Variance #19-2007, because of the unique nature, size, and set back of the property, the flagpole would be constructed at 70 feet.

Responding to Council Member Markin, Mr. Castro noted that staff concurred that the new location of the flagpole was what had been agreed upon in the settlement by the Town Council.

Upon roll call, the motion carried unanimously.

c. VARIANCE #20-2007 The application of Joan Goodman, relative to property described as lengthy legal description on file; commonly known as 911 North Ocean Blvd.; located in the R-A Zoning District. Request a variance per Sec. 134-2, building height for a residence abutting a low street is to be measured from 7.5 feet National Geodetic Vertical Datum Mean Sea Level (NGVD). The applicant requests a point of measurement for height, overall height and building height applicable to lots or portions of lots east of the State of Florida Coastal Control Line (CCCL) of 21.61 feet NGVD in lieu of the 7.5 foot NGVD required for a 8,796 square foot addition on the north side of the existing house. This application is a modification of Variance No 38-2006 which was approved by the Town Council on December 12, 2006. The purpose of this modification is to revise the plans for the new addition to reflect that the new wing is now proposed to be 8,796 square feet in area and located 31 feet from the north property line. The previous plans showed a 7,109 square feet addition located 46.5 feet from the north property line. The actual point of measurement variance (21.61 feet NGVD in lieu of 7.5 feet NGVD) is not changing.

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

Attorney Brindell provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made the following comments:

- A new provision in the code had recently been adopted to allow the point of measurement of 17.4 NGVD, and the request was for 21.61 feet in lieu of the 17.4 feet;

- This application was approved within the last year to provide an addition to the house; the applicant had returned to make the addition to the guest wing larger and was seeking the same relief and same plane of the first floor in order to accommodate it;

- Subsequently, they had eliminated the manager's house on the north side, which helped reduce some of the non-conformities; and

- They had addressed the hardship.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to approve Variance #20-2007. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

   a. VARIANCE #17-2007 The application of Premier Holding Group LLC (Susan D. Hudson, Manager), relative to property described as lengthy legal description on file; commonly known as 601 Island Drive; located in the R-B Zoning District. Request for variance to permit construction of a two-story 7,129 square foot residence using a point of measurement for height and cubic content ratio of 9.0 feet National Geodetic Mean Sea Level (NGVD) in lieu of 7.5 feet NGVD maximum allowed. *Deferred from the June 19, 2007, Town Council Meeting.*

Ex-parte communication was declared by Council Member Brooks who had walked the property.

Attorney Timothy Hanlon, on behalf of the applicant, Premier Holding Group LLC, provided an overview of the request.

Architect Gene Lawrence provided a visual presentation of photographs.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The applicant was tying the point of measurement into the existing pool and deck located in the seawall;

- Staff was not sure what the hardship entailed;

- Staff questioned that the point of measurement was 7.5 feet, and that the street was lower than 7.5 feet; and

- Staff recommended that if the Council consider approval of the application, that the applicant enter into a restrictive covenant or some type of condition to ensure that the hedge was maintained at the height that was acceptable and that the applicant build the retaining wall that was promised to the neighbors.

Architect Lawrence commented that he had a letter from 1965 indicating that when the pool was built, the rock was at 7 feet below grade, which was where the bottom of the pool was now. Tests indicated that it was very hard rock and would take jack hammering or blasting to remove it.

Responding to President Kleid, Mr. Lawrence agreed to the restrictions mentioned by Mr. Castro.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to approve Variance #17-2007 with the condition of a Restrictive Covenant or some other type of covenant regarding the hedge and retaining wall.

Responding to Council Member Markin, Mr. Lawrence indicated that there would not be any blasting.

Upon roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

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

893(a)(13)a.1 - Cubic Content Ratio - Request a Variance to allow a CCR of 4.7 in lieu of 4.0 maximum allowed for lots under 10,000 square feet. Sec. 134-891(b)(1) - Accessory Structures - Request a Variance to allow a two-story unattached garage/guest house in lieu of one-story required for lots under 20,000 square feet. Sec. 134-1757 - Swimming Pools - Request a Variance to allow a street side yard set back of 10 feet in lieu of the 15 foot minimum required. *Request for Deferral to the August 14, 2007, Town Council Meeting Per Letter Dated June 27, 2007 From Peter S. Broberg.*

Deferred to August 14, 2007, Town Council Meeting.

b. SPECIAL EXCEPTION #9-2007 WITH SITE PLAN REVIEW AND VARIANCES The application of Andrew N. Adler, relative to property described as lengthy legal description on file; commonly known as 216 Colonial Lane; located in the R-B Zoning District. Request for special exception with site plan approval for a new two story single family home of 2,793 square feet, on existing portions of platted lots that total 6,150 square feet in area in lieu of the 10,000 square foot minimum required by the R-B zoning district. Variance request to permit a front yard setback for the first story of 21.83 feet in lieu of the 25 foot minimum required. Variance to permit a one car garage in lieu of the two car garage required. Variance request to permit a swimming pool with a rear setback of 4.33 feet in lieu of the 10 foot setback required.
Request for Deferral to the August 14, 2007, Town Council Meeting Per Letter Dated June 27, 2007, From Ronald K. Kolins.

Deferred to August 14, 2007, Town Council Meeting.

c. SITE PLAN REVIEW#12-2007 WITH SPECIAL EXCEPTION AND VARIANCES The application of Il Lugano Condominium Association, relative to property described as All of the "Marina Unit", as same is defined, described and identified by the Declaration of Il Lugano, a condominium, recorded in Official Records Book 13642, Page 1824 of the Public Records of Palm Beach County, Florida and as specifically described in Exhibit "2" to said

Declaration, found in Official Records Book 13642, pages 1861 through 1884, inclusive; commonly known as 300 Seminole Avenue; located in the R-D(2) Zoning District. Site Plan Review to: (I) construct a dock facility with 7 slips to accommodate larger boats and avoid sea grass beds; and (ii) convert the "emergency only" access on Bradley Place into an exit "right turn only" means of egress for the Il Lugano residents. Special Exception to modify the previously approved special exception on the subject property as identified above. Variance request to construct the dock and associated appurtenances a maximum of 183 feet west of the U.S. Bulkhead line in lieu of the 150 foot maximum allowed. Variance request to construct dolphin piles 15 feet west of the U.S. Pierhead line where they are not permitted.

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

Attorney Ziska, representing Il Lugano Condominium Association, provided an overview of the request.

Ray Golden, president of Il Lugano's board, commented that the parking area was extraordinarily tight, and because the garages were also tight, the larger vehicles could not fit into the garages and thus were parked in the parking areas. Emergency vehicles were unable to access the entry way of the porte cochere, as it was impossible to make a turn around without hitting the building or another vehicle. He noted that it was virtually impossible to allow any commercial vehicles into the parking space; extended vehicles, such as Chevy Suburbans, would not be able to exit the parking area.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The dock had been redesigned to accommodate the concerns of the neighbors;
- A variance was needed west of the U.S. Pierhead line and more than 150 feet from the bulkhead line;
- The dock was modified from its original design of two parallel slips, which mitigated the neighbor's concerns;

- Staff still questioned the hardship; they had discussed the seagrass beds, but there was no guarantee that seven slips should be allowed on any property. It was the matter of the number of slips desired and putting the residents of that building on notice, as it was only for the residents of that building, or their guests that were staying in their accommodations; the slips could not be leased to anyone outside the condominium.

- The Fire-Rescue Department had no concerns with the site plan relative to eliminating "emergency only" access;

- The Fire-Rescue Department had no problem with the layout of the parking on Seminole Avenue;

- The Public Works Department recommended that a parking space not be created, as once the vehicle comes to the end of the drive, it would be very difficult to turn around;

- Public Works Department also recommended that if Bradley Place was an exit, "right turn only", that the elimination of two parking spaces were necessary in order to create a clear and safe site visibility; and

- The traffic circulation would improve as it exited onto Seminole Avenue; it was a safe turn movement with the elimination of the two parking spaces.

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

- The hardship was the seagrass beds and was one of the unique areas in Town; most people would be able to have their slips closer to the bulkhead. It was an existing condition that the U.S. Army Corp of Engineers and the Florida Department of Environmental Protection (FDEP) governed, which they had no control over.

- The commercial dock of 14 slips, was the original dock, in which seven slips were being proposed for the owners of the Il Lugano; and

- Regarding the Bradley Place exit, two parking spaces on Bradley Place were being relocated to Seminole Avenue, but if the Public Works Department determined that one of them was not safe, it would be eliminated.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve Site Plan Review #12-2007 with Special Exception and Variances. On roll call, the motion carried unanimously.

d. SITE PLAN REVIEW#13-2007 WITH SPECIAL EXCEPTION AND VARIANCE The application of William E. Schockett, Vice President of City National Bank of Florida, as Trustee of Land Trust Agreement dated 9-20-205 known as Trust Number 2401-2301-00, relative to property described as lengthy legal description on file; commonly known as 2842 S. Ocean Blvd.; located in the R-D(2), Beach Area Zoning District. Variance from Sec. 134-419 to allow a height increase for the entry awning on the front of this non-conforming building. The existing awning is 9.5' high at the lowest point and 13' high at the highest point; the proposed structure will be 14' high at the lowest point and 23' high at the highest point.

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

Attorney Brindell, on behalf of the Brazilian Beach Resort, currently known as the OC Beach Resort, provided an overview of the request. He commented that the hardship was that emergency vehicles were unable to pass under the entry awning to access the front door for the safety of the hotel guests.

Architect Les Beilinson presented photographs of the elevations and the site plan.

Staff Comments:

Zoning Administrator Castro made the following comments:

- The application was changed from what was approved earlier in the year;
- The previous plan needed many variances, because more than 50% of the building would have been demolished.
- The sliding windows would be changed from 6' to 8';
- The front facade was within the framework of the existing building;

- The applicant chose to move forward with the existing awning feature rather than the hard construction on the front entry because it would have required another variance and the applicant needed to move forward on the project;

- The awning over the porte cochere did not require a variance, as it was not considered lot coverage, making it possible for the applicant to move forward with the project and return later to the Council and request a variance for a hard construction;

- Staff distributed the draft of the Declaration of Use Agreement and the Construction Agreement from the previous approval;

- The conditions of the draft were modified in relation to the application;

- The seating would remain at 276, rather than the requested 225; the applicant was not proposing any outdoor seating at this time, but may sometime in the future;

- Condition #5 was modified because the pool deck was no longer proposed on the 4th floor and would not be screened by the building; there was concern relative to the hours and background music.

- Item #10 on the application did not require any more parking than what was there today as they were not demolishing more than 50% by cubic feet; based on the principle of equivalency of what was existing could be retained as it related to the parking.

- The previous application triggered a 100 parking space variance because of the requested changes. An off site - off island location for employee parking was being proposed in order to mitigate the situation, and now it was no longer required.

- The pool deck area and the amenity to the deck were being improved;

- The parking as it existed today would be eliminated and stacked parking would be provided, which triggered valet parking only, which was why staff recommended that the first two conditions should remain;

- The Declaration of Use Agreement related to the operation of the hotel, and the mitigation of any impacts it may have to the neighbors, relative to some of the changes; and

- The Construction Agreement ensured that the project was completed on time and that it did not create an impact to the neighbors.

Responding to President Kleid, William Shockett, the applicant, deferred to Adam Schlesinger, who indicated that he felt neutral about making provisions for access for the neighbors to the beach. The pool would be located on the west side of the property, making it necessary for the hotel guests to access the pool from the beach by walking through the lobby in their swim wear, and it would be difficult to differentiate between the hotel guests and the neighbors. He said he was not against it, but if the neighbors were respectful there should not be a problem.

Responding to Council Member Markin, Mr. Schlesinger indicated that the applicant desired a permanent porte cochere, but it exposed the application to a possible appeal from a neighbor(s), which could hold up the application. He said he was satisfied with the hardship for the variance and would like to return at a later date, independently, without making it a condition of approval today.

Responding to Council Member Markin, Attorney Brindell explained how an approval with conditions could affect an appeal from the neighbors.

Responding to President Pro Tem Coleman, Mr. Schlesinger noted that the noise generated from the wave runners was a factor more for homes on a lake as opposed to the ocean, as the natural noise from the ocean was loud even without wave runners.

Council Member Markin commented that the exterior of the building had a good appearance, but the canopy appeared cheap and it was not safe in a high wind area.

Attorney Brindell replied that in the event of a hurricane the canvas on the porte cochere would be cut down for safety reasons.

Mr. Schlesinger explained that the new awning over the porte cochere would be canvas that was clad over wood, which was a very expensive process.

Attorney Brindell commented that the courts had the ability to review the hardship test, and that the emergency vehicle was a clear safety issue, which would be very surprising if the court overturned it. He indicated that he did not want to come back for a variance for the hard construction on the porte cochere.

Responding to Council Member Markin, Attorney Brindell indicated that the applicant would return and file for a permanent, hard cover on the porte cochere in 90 days.

Motion made by President Pro Tem Coleman to approve Site Plan Review #13-2007 with Special Exception and Variance.

Responding to President Pro Tem Coleman, Attorney Brindell noted that there was no problem with the Construction Management Agreement, and there were no details that needed to be changed to reflect the current application. He stated that they did not have a problem with the Declaration of Use Agreement considering staff's comments regarding the principle of equivalency; the application numbers would need to be changed, otherwise the provisions were the same. He said that he hoped that the Town Council would provide authorization to make the editorial changes, which would need to be signed by President Kleid and Mayor McDonald. If for some reason, there was divergence on what had been agreed on, subject to the editorial changes, it would come back. Otherwise, it could be executed. He commented that Mr. Elwell was authorized to execute the Construction Management Agreement and there were hardly any changes in it.

Responding to President Pro Tem Coleman, Attorney Brindell explained that in the Construction Management Agreement, under the provision regarding the remedies for violations, the applicant would have a set time under the code for completion. This was an independent provision regarding violations that had been added by the Town, including the previous one, which would not change; that same enforcement provision was in the Declaration of Use Agreement.

Zoning Administrator Castro commented that a timeline was required that would be submitted for the Building Official to review to ensure that it could meet the deadline as related in the code. Staff would track their progress in order to report back to the Council if there was any delay or problems based on the schedule accepted by the Building Official.

Attorney Brindell added that the schedule was one of the exhibits in the Construction Management Agreement.

Responding to Mayor McDonald, Mr. Schlesinger indicated that the beneficiary of the Trust was CSCPB Beach Limited, and that he was the president of that entity, which was formed at the time the hotel was purchased. He added that the hotel was originally purchased in the Trust, with the entity being the beneficiary.

Council Member Brooks seconded the motion to approve Site Plan Review #13-2007 with Special Exception and Variance. On roll call, the motion carried unanimously.

5. Other

    a. Royal Poinciana Area Study- Consideration of Recommendation of the Planning and Zoning Commission (Acting as the Consultant Selection Committee). [Veronica B. Close, Director of Planning, Zoning, and Building] *Deferred from the June 19, 2007, Town Council Meeting.*

Planning, Zoning, and Building Director Close provided a report about the Royal Poinciana Area Study.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve the rejection of all proposals and terminate the planning consultant selection process for the Royal Poinciana Area Planning Study. On roll call, the motion carried unanimously.

Responding to President Kleid, Ms. Close noted that staff would meet with Treasure Coast Regional Planning Council's Urban Design and Town Planning Studio, outline the concerns of the Planning and Zoning Commission, develop a program with fee amounts, proposed funding, and a timeline, to present to the Planning and Zoning Commission, as soon as possible, and ultimately bring their information and staff's to the Council for further action.

Responding to Council Member Brooks, Ms. Close indicated that Royal Poinciana Area Planning Study would begin in this zoning season and it would not be deferred to the 2008 - 2009 series.

President Kleid commented that the Council could authorize the study and appropriate a limited amount of money to get a program started. He noted that several Planning and Zoning Commissioners never expected to be called back until the start of the Zoning Season. There may be problems acquiring a quorum, and presently there was a rule that a member could not participate by telephone communication.

Responding to Council Member Brooks, Ms. Close indicated that the Treasure Coast quoted approximately $80,000, and depending on how many consultants were needed, up to an amount of $125,000. Staff added an additional $10,000, as there would be public meetings and other costs. The original proposal included an economic consultant, and the Town would obtain funding from the state for the construction of the new bridge.

Motion made by Council Member Brooks to approve a not-to-exceed amount of $135,000 to engage the services of the Treasure Coast Regional Planning Council's Urban Design and Town Planning Studio and inform the Planning and Zoning Commission of the Town Council's decision. Council Member Coniglio seconded the motion.

Responding to President Kleid, Ms. Close commented that it could be possible to hire Treasure Coast to do the preparatory work this summer and revisit it again either through the Planning and Zoning Commission in October or to return to the Town Council to make a decision as to whether the Town would want to engage them for the full study. She indicated that the Town's planning consultants could do the preliminary part, if it comprised of data collection and an assessment of the current code.

Council Member Markin commented that she agreed with the motion that had been made, and would like to add that work objectives be provided to Treasure Coast. She suggested that the motion include up to $135,000 with a specific scope of work inclusive of some work objectives.

Amended motion to approve a not-to-exceed amount of $135,000 to engage the services of the Treasure Coast Regional Planning Council's Urban Design and Town Planning Studio, inform the Planning and Zoning Commission of the Town Council's decision, and provide a specific scope of work inclusive of work objectives.

Council Member Brooks noted that he could add it, but that it was inherent in the whole proposal. He suggested that the Breakers Hotel PUD could be left out and the Town Council could concentrate on Royal Poinciana, Royal Poinciana Plaza, and the bridge, which would encompass Ms. Markin's recommendation of a work objective.

Council Member Coniglio commented that she did not have any problem with that addition, but wanted to add that the proposed study items for 2007-2008 on page 96 of the backup material clearly indicated that number two was Royal Poinciana Area Planning and Study. It gave full permission from the Planning and Zoning Commission to move forward, make a decision, and have a vision and a plan put in place.

The maker and seconder agreed.

Responding to Mr. Castro, Council Member Brooks stated that he did not amend his motion by taking the Breakers Hotel out of the study area, but that it could be discussed.

Responding to Ms. Close, Council Member Brooks indicated that the funding could be discussed in the Special Town Council budget meeting.

On roll call, the motion carried unanimously.

b. Consultant Services Contract for Comprehensive Plan Amendments Based on Approved Evaluation Appraisal Report (EAR).
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Close recalled that last year the Town Council adopted the Evaluation, Appraisal Report (EAR) for the Comprehensive Plan. She indicated that she had obtained an estimate of $43,000, which had been budgeted in FY07 to update the Comprehensive Plan, as required by the state statute. The balance of the amount was being proposed in FY08. Staff's recommendation was to authorize the project, as there was a 12-month time frame under the state statute to complete it.

Council Member Markin indicated that she would like to see a complete list of state mandated items before approving the project.

Responding to President Kleid, Ms. Close stated that there was a 12-month time limit, with an automatic extension to 18 months if needed.

Responding to Council Member Coniglio, Ms. Close noted that the Comprehensive Plan amendments or zoning changes could not be processed without the amendments.

Responding to President Kleid, Council Member Markin indicated that if there was no hurry to do it, she would prefer to wait on it, as a report would be provided momentarily anyway, It did not hurt the Council to wait on it, even for 30 days, as it was important that the Town and its residents were aware of what was mandated from the state.

Motion made by Council Member Coniglio, seconded by President Pro Tem Coleman to authorize staff to engage Iler Planning Group (IPG) for completion of the Evaluation and Appraisal Report (EAR) based amendments to the Comprehensive Plan, in the amount of $43,500 (Partial funding of $20,000 in FY07 budget; $23,500 included in FY08 budget). On roll call, the motion carried 4-1, with Council Member Markin dissenting.

President Kleid directed staff to provide a report of all state and county mandates in this regard.

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

Zoning Administrator Paul Castro presented the Zoning Season Study Items for 2007-2008, located in the backup material in Ms. Close's memorandum dated June 29, 2007. He prioritized the items staff believed the Town should proceed with first, noting that staff was not giving up the other items but would be looking to work on those during the following Zoning Season. He explained that the reason for that had to do with the issue of funds and being able to complete some of the projects which were fairly extensive. He reviewed the items that staff proposed to leave out this year.

In response to President Kleid, Mr. Castro advised that staff definitely wanted to go back and look at user fees as it was believed that the Town was not recouping all of the costs that were incurred with the development review applications. Staff would like to restudy that issue as well as the content portion of the Town's sign code, and the regulations on flagpoles and flags.

Mayor McDonald questioned whether staff had considered allowing food establishments on Worth Avenue to have outside dining without requiring a variance.

Mr. Castro responded that a variance was necessary if the business simply wanted to add more seats on the outside, which triggered a parking variance, but outside seating was allowed on Worth Avenue by special exception provided that inside capacity was moved to the outside.

Mayor McDonald commented that it might be good for Worth Avenue if that restriction was reduced as it might produce some night life and activity there.

Mr. Castro responded that there was a provision for the smaller take out and smaller restaurants to have seating over and above the capacity, but staff could go back and look at that and come back with another proposal if the Town Council so chooses.

Mayor McDonald remarked that he believed it would be positive for Worth Avenue.

After discussion, it was decided that staff would incorporate outside dining on Worth Avenue as an ancillary part of the study items.

Mr. Castro reviewed the recommendation of the Planning and Zoning Commission that they meet monthly after October 2007, the first Tuesday of every month including the summer. He advised that if the Town Council approved same, staff had added an additional \$15,000 for administrative support as well as planning support for a meeting every month. He explained that the Planning, Zoning and Building Department did not have sufficient resources to support a monthly meeting and the associated workload.

In response to President Kleid, Planning, Zoning and Building Director Veronica Close advised that it had not as yet been determined who would be paid the \$15,000, which depended on what the Planning and Zoning Commission requested. She noted that the funds might be used for data collection, and to provide some secretarial assistance to the Commission.

President Kleid commented that since the Town Council had recommended the meeting of the Planning and Zoning Commission once a month, they should stand by the request and approve same.

In response to President Kleid, Ms. Close acknowledged that the motion for approval would include the \$15,000 for administrative and planning support for the Planning and Zoning Commission if they meet every month.

Motion made by President Pro Tem Coleman to approve the Zoning Study Items recommended for study by staff and directed staff to proceed with those items and to incorporate outside dining on Worth Avenue as an ancillary portion of the restaurant uses as a study item. Council Member Coniglio seconded the motion. On roll call, the motion carried 4/0; Council Member Brooks was temporarily out of the room.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the Town Council Meeting of July 10, 2007, was adjourned at 4:55 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

~~Susan A. Eichhorn~~ DIANE KASSOVER
ACTING Town Clerk