TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, JUNE 19, 2007

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, June 19, 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
Jay Boodheshwar - Recreation Director
Paul Brazil - Public Works Director
Veronica Close - Planning, Zoning, and Building Director
Paul Castro - Zoning Administrator
Cindy Delp - Planning, Zoning, and Building Office Manager
Charles Langley - Public Works Assistant Director
Liz Nowacki - Fire-Rescue Firefighter/Paramedic
Michael Reiter - Police Chief
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5416 • Facsimile (561) 838-5417
E-mail: townclerk@townofpalmbeach.com • Website: www.townofpalmbeach.com

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. $3,000 College Scholarship Provided by the Palm Beach Civic Association and the Citizen's Association of Palm Beach to Benefit a Child of a Town Employee, Presented This Year to Jennah Delp, Daughter of Cindy Delp of the Planning, Zoning, and Building Department.

Mayor McDonald, as representative of the Palm Beach Civic Association and Citizen's Association of Palm Beach, presented a $3,000 College Scholarship to Jennah Delp, daughter of Cindy Delp of the Planning, Zoning, and Building Department.

B. $3,500 College Scholarship Provided by the Palm Beach Country Club Scholarship Presented to Emily Nowacki, Daughter of Elizabeth Nowacki of the Fire-Rescue Department.

Mayor McDonald presented a $3,500 College Scholarship by the Palm Beach Country Club to Emily Nowacki, daughter of Elizabeth Nowacki of the Fire-Rescue Department.

IV. COMMENTS OF MAYOR JACK MCDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Floyd Wideman, El Dorado Lane, commented that he was not in favor of outsiders planning the Royal Poinciana area, as the Town had an Architectural, Planning and Zoning, and Landmarks Preservation Commission, and that the area was functional and provided many of the needed services of the Town.

Pat Flynn, president of the Palm Beach Theater Guild, commented regarding the renovations to the Royal Poinciana Theater.

Jere Zenko, 232 Tangier Avenue, commented regarding school related parking on Seaview Avenue, and public safety access.

Responding to the inquiry of Ms. Zenko, Mr. Elwell indicated that the $25,000 was never paid to the contractor for work on the Town Hall building; it had been allocated and then returned to fund balance. The funding was available within the fund that existed for Town Hall and facilities projects, which would be addressed in great detail on July 11, 2007.

VII. APPROVAL OF AGENDA

The following modifications to the Agenda were made:

WITHDREW Item X.C.2.a., Variance #14-2007.

DEFERRED Item X.C.2.b., Variance #15-2007 to July 10, 2007, Town Council Meeting.

DEFERRED Item X.C.4.b., Variance #17-2007 to July 10, 2007, Town Council Meeting.

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

VIII. BOARD/COMMISSION ANNUAL REPORT

A. General Employee Retirement Board. [Robert Garvy, Chair]

Robert Garvy, chairman of the General Employee Retirement Board, provided the annual report and summarized the important elements. He noted that the Board restructured the investment policy statement for the General Retirement Plan. The implemented changes in 2006 and 2007 would allow the Board to meet the actuarially required rate of return over the long term.

President Kleid thanked Mr. Garvy, on behalf of Mayor McDonald and the Town Council, for his and the other Board members' service.

B. Police Officer Retirement Board. [Raymond Snow, Chair]

Raymond Snow, chairman of the Police Officer Retirement Board of Trustees, presented the Police Officer Retirement Board of Trustees of the Town of Palm Beach Retirement System plan. He indicated that the plan administrator satisfactorily amended all procedures to meet the management letter received by the auditor, and that they had a very diversified portfolio, which provided greater financial stability and low risk.

Responding to Council Member Coniglio, Mr. Snow indicated that with 5.9% for the first six months, and a very strong April/May, they would anticipate meeting the 8% goal by the end of the year, unless there was an untoward, unexpected calamity.

President Kleid thanked Mr. Garvy, on behalf of Mayor McDonald and the Town Council, for his and the other Board members' dedicated service to the community.

IX. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager Thomas Bradford provided a legislative update and status of the project regarding the placement of overhead utility lines underground. Mr. Bradford made the following comments:

- Florida Power & Light (FPL) filed its hardening plan with the Public Service Commission (PSC) in May;

- The Town and Jupiter Island filed comments and a Petition to Intervene;

- If the voters did not approve the referendum for undergrounding, the hardening standard would become important, as it would help determine the reliability of the overhead infrastructure that would ultimately be changed out;

- Several of the comments that were made to the PSC were:

  - Improvements should be made to the plan including more active pursuit of undergrounding as a hardening measure;
  - Encouragement and commitment of using rights-of-way to the maximum extent feasible to the placement of underground facilities and support of submersible undergrounding equipment;

  - FPL was requiring everyone, who intended to use the right-of-way for an undergrounding project, to sign an agreement, shifting 100% of the liability for the facility in the right-of-way to the cities.

  - Mayor McDonald wrote a letter on behalf of the Town to the President of FPL regarding the right-of-way agreement; and

  - An FPL representative contacted the Town saying that they were going to back off of their position on the right-of-way agreement, if not, a petition would need to be filed with the PSC to keep the liability from being shifted to the Town.

Mr. Bradford recommended updating a project cost estimate of the underground conversion work at this time. He provided a list of cost related issues in his memorandum dated June 1, 2007, to the Mayor and Town Council, which could be found in the backup material on page 28.

Mr. Bradford noted that Jupiter Island used waterproofed underground vaults for switch cabinets in their pilot project. The Town would need to know if FPL would allow that to be a standard, and the cost differential of that type of equipment. He added that R. W. Beck's proposal was $35,900 for the detailed update of the cost estimate including the new items, and Town Council's approval was needed.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman to approve expenditure of $35,900 to consultant R. W. Beck, Inc., (PSA Amendment 3). On roll call, the motion carried unanimously.

Mr. Bradford indicated that the Florida Presidential Primary on January 29th, would be an available date to hold the referendum at no cost. The positive side would be that voter turnout would be high, and that the date was guaranteed; while there was no assurance that there would be a municipal election. He pointed out that the Legislature wanted any constitutional amendments necessitated by the Special Session on property tax reform to be held on this date. He wondered if it was wise to ask voters to pay for undergrounding on the same day that they were being asked to cut their property taxes.

President Kleid commented that it was important to get the maximum amount of people out to vote on this, in order to obtain a consensus of opinion, and that he was in favor of the January 29, 2008, date.

Ned Barnes, Palm Beach Civic Association, thanked Mr. Bradford for all his work. He urged the Council to wait to make a date for the referendum in order to allow time for research.

Council Member Brooks recommended Consultant Susan McManus, a professor at the University of South Florida, to assist with the referendum question, as she has had many years of experience in Florida elections.

President Pro Tem Coleman commented that the Council should put forth the best information on undergrounding as possible, and allow the voters to make the decision.

Responding to Ms. Coniglio, Mr. Barnes noted that there was great value in moving the referendum to January, although the Palm Beach Civic Association was concerned that it could cause confusion. A case could be made for presenting it in February with everything else cleared off the ballot.

Council Member Markin asked if there was any way possible to merge the municipal election with the primary, as the voters may not come back the second week.

Responding to Council Member Markin, Mayor McDonald read the section from the charter that stated, two Town Council members shall be elected at the general election held on the first Tuesday after the first Monday of February in each odd numbered year.

Motion made by Council Member Brooks, seconded by Council Member Coniglio to approve deferral of the discussion of the referendum date to the July 10, 2007, Town Council meeting. On roll call, the motion carried unanimously.

B. New Business

1. 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]

Planning, Zoning, and Building Director Close provided a report regarding selection of a consultant for the Royal Poinciana Area Study by the Planning and Zoning Commission. Four candidates that responded to the Town's Request For Proposal (RFP) were interviewed. Ms. Close discussed the following items:

- The Planning and Zoning Commission requested additional time in order to consider the Treasure Coast Regional Planning Council as a consultant, before making a final recommendation;

- Treasure Coast Regional Planning Council did not participate in RFP's;

- The final recommendation would be made only to the Town Council, and was dependent on available funding;

- The Planning and Zoning Commission would convene on Thursday, June 21, 2007, to consider any other information that could be provided by staff;

- The Treasure Coast Regional Planning Council was unable to attend this meeting; and

- Staff recommended deferral of this consideration until the next meeting.

President Pro Tem Coleman said he supported the deferral, as he had great reservations about the money, and he believed that Treasure Coast Regional Planning Council was significantly less expensive. He suggested that the Planning and Zoning Commission consider that the amount of funding may become an issue, if it happened at all.

Motion made by President Pro Tem Coleman to approve deferral to the July 10, 2007, Town Council meeting of the Planning and Zoning Commission's consideration of recommendations of the consultant selection for the Royal Poinciana Area Study. Motion seconded by Council Member Coniglio. On roll call, the motion carried unanimously.

The Town Council discussed several of the following issues regarding the Treasure Coast Regional Planning Council:

- Less than a week was not enough time to prepare for a presentation with the Planning and Zoning Commission;

- A presentation could be made if the Planning and Zoning Commission wanted to forego the four private firms;

- It could not participate during an RFP process, as its bylaws indicated that it could not compete with the private sector;

- Consulting services could be provided to the local municipalities, by request only;
- It was form based and the Town Council voted on a land use, not a form based proposal;
- Many land use and zoning studies had been conducted, and architectural guidelines would be developed if requested by a local municipality or a county;
- Approximately $80,000 was its fee base, which could go up to $125,000, depending on how many consultants were brought in;
- The Planning and Zoning Commission may obtain private funding for $80,000 versus $300,000;
- It was a viable alternative in order to provide direction and a planning process without the exorbitant cost;
- It would be a six to twelve month process, regardless of which consultant was chosen;
- Staff would convey to the Planning and Zoning Commission that the Town Council was cognizant of the cost and the controversy between private enterprise and the public, and the way to get it back on track if needed;

Council Member Markin commented that there was no guarantee that other property owners would not make requests outside of the results of a study. She noted that the consultants had not received any direction from the Town to assist in the development of a plan, and that she would support input from the residents.

President Kleid commented that each one of the consultants that came before the Planning and Zoning Commission discussed having charettes. The consultants intent was to hold meetings in order to obtain opinions from stakeholders, including all organizations within the Town, the residents, and commissioners.

2. Discussion Regarding Schedule for Future Town Council Meetings. [Peter B. Elwell, Town Manager]

Town Manager Elwell requested whether the Town Council would return to one day per month Town Council meetings or would continue the practice of meeting on two days each month.

President Pro Tem Coleman and President Kleid commented that they would prefer to return to one day per month Town Council meetings.

Council Member Markin indicated that she preferred two days each month, with the second meeting day on Wednesdays.

Council Member Brooks commented that beginning in October, the Council could meet for two days, with Tuesday for public policy, and Wednesday and Thursday for variances and special exceptions.

Mayor McDonald indicated that utilizing the existing committees provided the residents greater input into the subject, as they were not under the time constraints as the Town Council members were in their meetings. The Town Council meetings could be completed in one day, by using the committee system that was in place.

Council Member Coniglio said she supported meeting on the second Tuesday of the month. She noted that from July to October, there were eight meetings in the next three months, and that this decision could be made today or in September.

Mayor McDonald pointed out that in the past, Town Council members did not attend committee meetings.

Mr. Elwell suggested that rather than force it to any particular date in the future, that no action be taken today, and in August, return to the second Tuesday of the month; if two days were desired, it could be requested to be brought back at a future Council meeting.

Discussion occurred regarding the Town Council Members attending past committee meetings.

President Kleid noted that, as there was no consensus by the Council, the meetings would be left as is, with a return to the second Tuesday of the month, and if someone felt strongly about it, could request it to be revisited.

3. Evaluation of the Performance of Town Manager Peter B. Elwell.

   a. Potential Salary Adjustment Based on Evaluation of Performance for 2006-2007.

Town Manager Elwell thanked the Mayor and the Town Council for the feedback provided for his performance evaluation. He indicated that normally a salary increase would be considered according to the employment agreement. He requested in his June 14, 2007, memorandum to the Mayor and Town Council to not authorize a salary increase this year, as it would be inappropriate while embarking on the uncertainty of the budget work that would be done.

President Pro Tem Coleman commended Mr. Elwell on his generous offer, but he would still like to see the compilation to be placed in the book for information purposes only. He thanked and congratulated him.

Council Member Brooks thanked Mr. Elwell for showing great leadership by refusing to accept a salary increase, which sent a wonderful signal and a most cooperative spirit.

President Kleid thanked him, on behalf of the Mayor and the Town Council, for the excellent service that he had provided; he hoped to continue with him, and said it was the most gracious offer not to accept his salary increase.

b. Adoption of Annual Performance Goals for 2007-2008.

Town Manager Elwell indicated that there were three goals with a set of three to five specific objectives within each goal, as listed below.

Goal 1: Address impacts of statewide property tax reform.

Goal 2: Ensure effective transition of leadership in Fire-Rescue and PZ&B Departments.

Goal 3: Achieve Mayor and Town Council's five top priority goals for FY08:

1. Construct the Reach 8 Beach Restoration Project.

2. Commence construction of the upgraded sand transfer plant at Lake Worth Inlet.

3. Hold undergrounding project referendum in early 2008 and lead up to that with a broad and detailed public information campaign.

4. Commence Town Hall renovations and finalize plans to relocate the Human Resources Department and the office of Information Systems to West Palm Beach.

5. Continue to improve the breadth and intensity of Code Enforcement.

President Kleid noted that the underground project may be held in January rather than February.

Motion made by Council Member Coniglio, seconded by Council Member Brooks to adopt the Annual Performance Goals for 2007-2008 as presented. On roll call, the motion carried unanimously.

X. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

1. Request for Extension of Work Hours at 548 North County Road Per Letter Dated May 22, 2007, from Maura A. Ziska.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Close addressed the request for extension of work hours and noted that because of the size of the property, the neighbors would not be immediately impacted. Construction vehicles on the road would be an impact in the evenings from 6:00 to 8:00 p.m. Staff recommended: the extension of work hours not be considered, as there was no benefit to the neighbors; the contractor could limit the size of the vehicles on the road in the evening hours. She added that the contractor would address any concerns of the neighbors.

Attorney Maura Ziska provided an overview of the request for the time extension.

Council Member Coniglio asked what was the precedent of granting a time extension for a project falling within normal work procedures, as the request was only for the convenience of the owner; if it were all interior work, could it not be expedited with additional workers during regular business hours?

Ms. Close answered that more personnel could be added to the site. She noted that she was not aware of any requests that did not involve trying to meet a particular deadline, or completing the work by the start of the season, so as not to impact any neighbors.

Attorney Ziska responded that certain items submitted in the construction schedule could cause additional workers to wait around for things to dry or flooring to be laid; the request was about extending two hours a day to allow work to be finished up that day, allowing more lead time.

Responding to Council Member Brooks, Attorney Ziska indicated that the request was owner driven and there were delays in receiving materials.

Jere Zenko commented that the house was used very little, and that this type of request should not have been considered.

Motion made by Council Member Brooks to deny the request for the extension of work hours at 548 North County Road. Motion died for lack of a second.

Council Member Markin commented that, according to the nature of the property, no one should be disturbed by the request. She suggested approving the request with the condition that if there were any valid complaints it would be pulled.

Motion made by Council Member Markin to approve the request for the extension of work hours at 548 North County Road with the condition that there were no valid complaints regarding traffic, noise, or after hour operations. Motion died for lack of a second.

Ms. Close suggested that the applicant could be requested not to have any trucks over one ton or three axles on the road after 6:00 p.m.

Council Member Coniglio questioned whether the Council would be able to offer the same solution to other homeowners on the same basis.

Responding to Council Member Markin, Attorney Ziska noted that the request was from 8:00 a.m. to 8:00 p.m. until the completion of the project, which was estimated at the end of September or beginning of October 2007.

Responding to Council Member Coniglio, Mayor McDonald indicated that this exception, to extend the work by two hours, could be made for anyone that owned property in the Town, and that he did not see it as a big impact.

Motion made by Council Member Markin to approve the request for the extension of work hours at 548 North County Road.

Council Member Coniglio seconded the motion, with the stipulation that the construction vehicles have reduced weight, as was suggested by Ms. Close.

Amended motion made by Council Member Markin, seconded by Council Member Coniglio to approve the request for the extension of work hours at 548 North County Road,

with the condition that no trucks over one ton or three axles be allowed on the road after 6:00 p.m., and if there were any valid complaints, the extended work hours would be rescinded. On roll call, the motion failed 3-2:

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

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #14-2007 The application of 101 El Bravo, LLC (Dan Swanson, Manager), relative to property described as East 255 feet of Lot 1, EL BRAVO PARK, a subdivision of the Town of Palm Beach, Palm Beach County, Florida, according to the Plat thereof, on file in the Office of the Clerk of the Court in and for Palm Beach County, Florida in Plat Book 8, Page 9 and Plat Book 9, Page 9; commonly known as 101 El Bravo Way; located in the R-A Zoning District. Request a variance to allow construction of a new 16,970 square foot, two story residence with a point of measurement of 20.39 feet National Geodetical Vertical Datum mean sea level (NGVD) in lieu of the 17.4 feet NGVD maximum allowed, as determined by the Town. *Request for Withdrawal Per Letter Dated May 29, 2007, from Maura A. Ziska.*

Variance #14-2007 withdrawn.

b. 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. *Request for Deferral to the July 10, 2007, Town Council Meeting Per Letter Dated May 23, 2007, From Maura A. Ziska.*

Variance #15-2007 deferred to the July 10, 2007, Town Council Meeting.

c. SPECIAL EXCEPTION #6-2007 WITH SITE PLAN REVIEW
The application of The Society of the Four Arts, Inc., relative to property described as lengthy legal description on file; commonly known as Four Arts Plaza and 2 Four Arts; located in the R-B Zoning District. Request Special Exception with Site Plan Review to place generators on the subject property. Two 150 kilowatt generators are proposed for the south side of the property within a fully enclosed building. The third 100 kilowatt generator is on the northeast side of the property, on the north side of the library.

Attorney Herbert Gibson, on behalf of The Society of the Four Arts, Inc., provided an overview of the request.

Architect Don Scanlon presented the location of the existing mechanical areas of the proposed generators.

Staff Comments: Zoning Administrator Paul Castro made the following comments: there were no variances being requested; it was a site plan approval that met the existing generator ordinance; the generators located by the O'Keefe building were within a building; the applicant would need to meet with the Landmarks Preservation Commission regarding the roofing structure; there were no issues related to setbacks; staff had no issues with the 100 kilowatt generator located on the north side of the library, as it was physically separated from the single family homes.

Motion made by Council Member Coniglio, seconded by Council Member Brooks to approve Special Exception #6-2007 with Site Plan Review. On roll call, the motion carried unanimously.

d. SPECIAL EXCEPTION #7-2007 The application of Sidney Spiegel, Trustee (Property Owner); The Michael R. McCarty Restaurant Group, LLC (Tenant and Applicant), relative to property described as lengthy legal description on file; commonly known as 50 Cocoanut Row, #101; located in the C-PC Zoning District. Request for modification to Special Exception 11-2006 to permit conversion of 611 square feet of space currently used for office and storage to use as banquet seating and bar area containing twenty (20) seats. The overall seating for the restaurant will not increase because when the banquet seating is used all twenty (20) seats will be removed from the allowed indoor and outdoor seating. Total seating will remain 151. There are two intended modifications to the Special Exception approved in 2006. One, there will be three doors located in the wall separating the banquet room from the main restaurant. Two, the office will be re-located from the banquet room to an area in the southwest portion of the restaurant in space formerly used for storage. This will allow the twenty (20) seats in the banquet room to be placed on both sides of the service/banquet bar.

Ex-parte communication was declared by President Kleid, President Pro Tem Coleman, and Council Member Markin with the applicant, Michael McCarty, and Council Member Brooks with Michael McCarty and Attorney Tim Hanlon.

Attorney Tim Hanlon, on behalf of the applicant, provided an overview of the request.

Staff Comments: Zoning Administrator Castro commented that the reason the application was brought back to the Council was that the banquet room facility was being opened up, which would be needed for the placement of windows. It also provided an opportunity to open up the banquet bar area. Two of the banquet tables were changed into banquettes, providing more opportunity for people to congregate around the bar area, and causing staff concern about the intensity usage. Staff recommended that it and the necessity of the three doors in the banquet room be reviewed.

Attorney Hanlon indicated that the doors were addressed with large planters, which would be roped off, preventing pedestrian access. It was noted on the site plan that was presented in the application.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve Special Exception #7-2007. On roll call, the motion carried unanimously.

e. SPECIAL EXCEPTION #8-2007 WITH SITE PLAN REVIEW AND VARIANCES The application of Palm Beach Country Club, relative to property described as lengthy legal description on file; commonly known as 760 N. Ocean Blvd.; located in the R-A Zoning District. Approval of application for Special Exception with Site Plan Review for a new concrete vault enclosing a back-up diesel generator and fuel tank to be constructed within a private country club which occupies a lot exceeding four times the minimum lot size for the R-A district. Variance to allow a new 7 feet 6 inch tower to be constructed on the flat roof of the existing non-conforming structure. The tower would have a maximum building height of 36 feet in lieu of the 35 foot maximum allowed (requiring a variance of 1 foot). The variance would also allow the tower to be used for mechanical equipment in lieu of an observation tower. In addition, the tower would be for a Private Club in lieu of a single-family home as provided in the code. Variance to allow the placement of new A/C units on the flat roof of the existing non conforming structure with the largest unit having a height of five feet 8 inches in lieu of the 4 feet maximum allowed. The A/C units would be below the existing parapet and not visible.

Attorney Frank Chopin, on behalf of Palm Beach Country Club, provided an overview of the request.

Staff Comments: Zoning Administrator Castro stated that the application did need variances; the air conditioning equipment exceeded 4' high on the roof and would be screened from the street by an 8' high mansard parapet; the generator met the code requirements; it was out of the front setback; it was within a building, which was almost completely screened from the street.

Motion made by Council Member Markin, seconded by Council Member Brooks to approve Special Exception #8-2007 with Site Plan Review and Variances.

Council Member Markin commented that, a wall at the Country Club at the corner of the coral cut along North Lake Way, had a severe crack in it with structural problems that presented an unsafe condition for the public.

Attorney Chopin stated that he would notify the appropriate people at the Country Club about the condition of the wall.

Upon roll call the motion carried unanimously.

f. <u>SITE PLAN REVIEW #9-2007 WITH VARIANCE (MODIFYING SITE PLAN REVIEW #3-2007)</u> The application of Cheryl Minikes, relative to property described as lengthy legal description on file; commonly known as 324 Cherry Lane; located in the R-B Zoning District. A request for modification to a previously approved site plan (SPR#3-2007) to reduce the size of the house by four feet to allow four feet of planting on the north property line of the property. A request for variance to allow a retaining wall that varies in height for the driveway down ramp to be a maximum height of 12 feet at its highest point in lieu of the 7 foot maximum allowed.

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

Attorney Ziska, on behalf of Mr. and Mrs. Minikes, provided an overview of the request.

<u>Staff Comments:</u> Zoning Administrator Castro made the following comments: the Architectural Commission recommended approval and that the variance would not cause a negative architectural impact on the subject property; a variance was needed for the retaining wall; the applicant met with the neighbors to the north, as there was some concern relative to the structural integrity of the wall; the neighbor had been satisfied, subject to obtaining the proper engineering, which was required for a building permit; the width of the house had been reduced in order to provide a wider landscaped strip to the north to buffer from the neighbor.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve Site Plan Review #9-2007 with Variance (Modifying Site Plan Review #3-2007). On roll call, the motion carried unanimously.

g. <u>SITE PLAN REVIEW #10-2007</u> The application of 200 Emerald Beach Way, Inc., William Elias, President, relative to property described as Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, page (s) 177, of the Public Records of Palm Beach County, Florida; commonly known as 200 Emerald Beach Way; located in the R-AA Zoning District. Request for site plan approval for a new 13,789 square foot single family home, on an existing platted lot that is less than the minimum area required by the R-AA zoning district.

Attorney Ron Kolins, on behalf of William Elias, provided an overview of the request.

Staff Comments: Zoning Administrator Castro made the following comments: there was an existing 10' utility easement across the rear of the property; the site met all of the lot yard bulk requirements at this location; staff's concerns were existing Areca palms across the back, in which the Public Works Department recommended removal and that no landscape material be within the 10' wide utility easement; an easement would need to be provided for undergrounding if necessary in the future; the applicant provided a location for a generator.

Attorney Kolins indicated that the applicant was in agreement with all of staff's recommendations, as stated by Mr. Castro.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve Site Plan Review #10-2007. On roll call, the motion carried unanimously.

h. SITE PLAN REVIEW #11-2007 The application of Jeffrey E. Giangrande, as Trustee, relative to the property described East one-half (½) of Lot 41, SINGER ADDITION of the Town of Palm Beach, according to the Plat thereof, recorded in Plat Book 8, Page 81, of the Public Records of Palm Beach County, Florida; commonly known as 115 Gulfstream Road; located in the R-B Zoning District. Request for site plan approval to permit construction of a two-story 4,275 square foot residence on a lot that is 75' wide in lieu of 100' minimum required.

Ex-parte communication was declared by Council Member Brooks with Attorney Tim Hanlon and he said that he had walked the property.

Attorney Hanlon, on behalf of Jeffrey Giangrande, as Trustee, provided an overview of the request.

Staff Comments: Zoning Administrator Castro stated that staff's request was that landscape material in the rear utility easement be removed; a utility easement would be dedicated to the Town for undergrounding in the future; a landscape staging area be provided on the front of their property in order to keep trimmings off the street.

Mr. Hanlon noted that the applicant was in agreement with staff's recommendations.

Motion made by Council Member Markin, seconded by Council Member Brooks to approve Site Plan Review #11-2007. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

   a. VARIANCE #10-2007 The application of Lewis & Alice Sanders relative to property described as lengthy legal description on file; commonly known as 615 North County Road; located in the R-AA Zoning District. Applicant requests a variance to construct a new two story house including the wind screen wall on the southeast side of the house with a point of measurement for height and overall height of 23 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD required. Applicant requests a variance to construct a retaining wall with an overall height of 17 feet in lieu of the 10 feet maximum allowed. Applicant requests a variance of 17.5 feet to place a wall 12.5 feet from the side property line in lieu of the 30 feet minimum allowed. Applicant requests a variance to allow the maximum overall height for the proposed new house at 39 feet in lieu of the 35 foot maximum allowed. *Deferred from the April 10, 2007, Town Council Meeting.*

Ex-parte communication was declared by President Kleid with Attorney Frank Chopin and Architect Smith; Council Member Coniglio with Architect Smith.

Attorney Chopin indicated that he represented Lewis and Alice Sanders, and provided an overview of the request.

Dr. Stephen Leatherman, director of the International Hurricane Research Center and Laboratory for Coastal Research and chair professor at the Institute, which was part of Florida International University in Miami, provided a presentation of the impacts of hurricanes.

Responding to Council Member Brooks, Dr. Leatherman responded that if he were to buy a house on the island, he would create a high sandy dune by bringing in clean fill to build up the elevation for protection from a storm surge.

Responding to President Pro Tem Coleman, Attorney Chopin clarified that a seawall had the characteristics of a retaining wall; a wall built behind the coastal construction line was a retaining wall.

Architect Smith commented that a seawall was usually built at the bulkhead line, and was added to other seawalls. The way the house was designed would act as a seawall at the 23' height.

Council Member Markin expressed concern about elevating the property and creating runoff, which would cause flooding.

Attorney Chopin explained that all the houses in the area were at 23' or higher, and that elevating the property would provide a benefit that the house would function as a retaining wall, which would prevent the runoff from channeling and help the properties to the west.

Dr. Leatherman commented that there were strong objections to seawalls, and that he did not think the state would change their opinion, as there was evidence that seawalls do reflect wave energy and increase beach erosion during storms.

Responding to President Pro Tem Coleman, Attorney Chopin noted that to mitigate damage to the properties, the retaining wall that runs north and south at the front of the house as it faced the ocean, could be extended all the way across the property. He indicated that the applicant would be agreeable to it.

Responding to Council Member Brooks, Attorney Chopin commented that steps were needed in order to minimize the risks of building near the water.

Motion made by President Pro Tem Coleman to approve all three variances, with the condition that 300 feet of retaining wall be in place. The motion died for lack of a second.

Motion made by President Pro Tem Coleman to approve allowing the elevation of the house, with the condition that the retaining sea wall run 300 feet across the width of the property. The motion died for lack of a second.

****

At this time, 12:40 p.m. the meeting was adjourned for the luncheon recess.

The Town Council Meeting of June 19,2007, was reconvened at 2:10 p.m.

****

Attorney Chopin advised that the applicant would be prepared to amend the application to request a point of measurement variance for 22', rather than 23'.

Council Member Brooks moved approval of the variance for the point of measurement at 22'. The motion was seconded by President Pro Tem Coleman with the inclusion of the sea wall running 300 feet across the width of the property.

Attorney Maura Ziska, on behalf of Mr. and Mrs. Trust, who live to the south of the property, expressed concern with the 300 foot wall across the property, because their service drive, garage, and basement level was at street level.

Attorney Chopin noted that discussions had taken place in that regard, and that at the end of the pool deck, it would be wrapped around and tied into there, rather than into the wall, so there would not be that structural issue.

In response to Council Member Markin, Attorney Chopin advised that this house was, in part, eleven (11) feet higher on either side of it. The ceiling height on the first floor was thirteen (13) feet and ten (10) feet on the second floor.

Architect Smith advised that the houses on either side of it were one story houses, and that the lot coverage for this house was eight percent.

On roll call the motion of Council Member Brooks to approve the variance for the point of measurement at 22', carried 4/1:

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

Attorney Chopin explained that the windscreen variance was so that the windscreen could come up into the setback when the windscreen was in use. The other remaining variance was to allow the mix of architectural detail, with the parapets not exceeding the height of the pitched roof.

<u>Staff Comments</u>: Zoning Administrator Castro explained the regulation, noting that several years ago there were several homes that had pitched roofs, along with a parapet completely along the entire roof system itself. The reason why there was a height and overall height requirement in the Code was to lower the massing as it relates to the walls of the house. A pitched roof style house allows an overall height of 5', and in some cases even higher, than a pitched roof, there was a tendency to have not only more wall on the face of the building, but also more overall height, which would increase the mass. For that reason, approximately six years ago, the Town Council adopted the staff recommendation that would not allow the mix and match of roof styles, with parapets on pitched roof houses, no matter what the size.

Discussion took place regarding the position of seawalls. Council Member Coniglio questioned whether the Town could assist the applicant to construct or add a seawall to the front of the property.

Town Manager Elwell advised that the Town could not assist with a seawall out of the ground, at the face of the property, because of state requirements. The Town may be able to assist with a wall landward of the Coastal Construction Line for a wall embedded in the ground.

Regarding the parapet, Attorney Chopin advised that they were attractive architectural features, and did not add to the height. The Code provision referred to by Mr. Castro was not intended to apply to cases such as this.

Council Member Brooks moved approval of the variance for the parapets. The motion was seconded by President Pro Tem Coleman. On roll call the motion carried unanimously.

Council Member Brooks moved approval of variance for the windscreen. The motion was seconded by President Pro Tem Coleman. On roll call, the motion failed 3/2:

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

Attorney Chopin requested that the variance for the windscreen be withdrawn at this time.

b. SITE PLAN REVIEW #8-2007 WITH VARIANCE The application of Victor Moore and John J. Tatooles relative to property described as Lots 6 and 6A of OCEAN VIEW, according to the Plat thereof as recorded in Plat Book 21, Page(s) 16, of the Public Records of Palm Beach County, Florida; commonly known as 122 Ocean View Road; located in the R-A Zoning District. Site Plan Review to allow the construction of a two story single family residence in the R-A Zoning District on a non-conforming platted lot which is: 100 feet in width in lieu of the 125 foot minimum required; 112.5 feet in depth in lieu of the 150 foot minimum required; and 11,138 square feet in area in lieu of the 20,000 square foot minimum required. A variance is also requested to allow a building height plane setback of 35 feet in lieu of the 42 foot minimum required for the house and 53 feet in lieu of the 77 foot minimum required for the proposed tower. *Deferred from the May 8, 2007, Town Council Meeting.*

Ex-parte communication was declared by Council Member Markin via a conversation with Attorney Maura Ziska, by President Pro Tem Coleman with Attorney Ziska, and by Council Member Brooks with Attorney Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, accompanied by the architect, Michael Perry. She explained that the application had been deferred last month, because the Architectural Commission (ARCOM) had deferred the architecture. The applicant was back today with the revised plan. The applicant had gone back to ARCOM last month; they had voted to remove the tower, and the applicant was now back with a revised plan.

Attorney Ziska explained that the variance for the building height plan setback of 35 feet in lieu of the 42 foot minimum requirement was needed because in the R-A District two feet was needed for every one foot of height, and this was an insufficient lot. Site Plan review was needed because the lot was 11,000 sq. ft. instead of 20,000 sq. ft.

Staff Comments: Zoning Administrator Castro commented that the applicant was asking for a much more de minimis variance. He noted that the lot did not have the depth necessary in the R-A Zoning District for the building height plane.

Council Member Coniglio moved approval of Site Plan Review #8-2007. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

a. VARIANCE #16-2007 The application of 439 Worth Avenue Realty Trust U/A dated 1/19/07, relative to property described as Lots 10 and 11, Block 13, ROYAL PARK, an addition to the Town of Palm Beach, Florida, according to the Plat thereof, recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; commonly known as 439 Worth Avenue; located in the RD-2 Zoning District. The applicant is requesting to build a three story, 5,496 square foot single family home on the subject property. The variances being requested in order to build the proposed house are as follows: a lot area of 6,648 sq. ft. in lieu of the 10,000 sq. ft. minimum required; a 50 ft. wide lot in lieu of the 75 ft. minimum required for new lots; a building height of 35 ft. in lieu of the 25 ft. maximum allowed; a building overall height of 39 ft. in lieu of the 35 ft. maximum allowed; a street rear setback of

19 ft. in lieu of the 25 ft. minimum required; a three story single-family home in lieu of the two story maximum allowed.

Ex-parte communication was declared by Council Member Coniglio with Attorney Alan Ciklin; by President Kleid with Attorney Ciklin; by President Pro Tem Coleman with the architect, Roger Janssen.

Attorney Alan Ciklin, on behalf of the applicant, addressed the Town Council, along with architect Roger Janssen. Mr. Ciklin explained that the applicant would be living in the proposed house; the existing home on the site was less than 3,000 sq. ft., and was very dated. The property was truly unique – in the RD-2 residential district, and was the only single family home in that district. To add to its uniqueness, the house is surrounded by multi-family condominiums. He explained the variance requests, noting that the Architectural Commission (ARCOM) had reviewed the project on May 23, 2007, and had expressed enthusiasm regarding the design. A representative of the Preservation Foundation had attended the meeting, and he also voiced support for the project.

Architect Roger Janssen exhibited architectural renderings of the site, and reviewed the specifics of the project.

Staff Comments: Zoning Administrator Paul Castro advised that the property was unique; the single family lot was basically crunched in between two larger developments. Staff believed that the proposed house was a very good compromise and the variance criteria had been addressed.

President Kleid called for public comment. There was none.

Council Member Brooks congratulated Mr. Janssen on a magnificent architectural rendering, and moved approval of Variance #16-2007. The motion was seconded by President Pro Tem Coleman. On roll call, the motion carried 4/1:

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

b. 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 to July 10, 2007, Town Council Meeting.

5. Other

a. Staff Report Regarding Consistent Policy in ARCOM Decisions Regarding S-Tile and Barrel Tile Roof Material. [Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Building & Zoning Veronica Close advised that at the last Town Council Meeting, the Architectural Commission had been asked to review their concerns regarding clay barrel tile, and to establish a policy regarding roof tiles. She reported that ARCOM had reviewed the issue, and had made a motion to only consider clay full barrel tiles on future projects; they also indicated that they would prohibit the use of concrete as a material in future projects that required a curved tile as an integral element of the overall design concept. ARCOM had also indicated that they would require, in the future, that existing S-Tile roof systems be re-certified, in situations where the existing roof needed to be replaced. The applicant would need to come back for consideration of clay barrel tiles.

President Coleman commented that part of the discussion last month revolved around how circumstances change as commissions evolve. He suggested a control mechanism, so that a future commission could not waive the policy without coming back to the Town Council.

Ms. Close replied that ARCOM had established a policy, and it would take an action of ARCOM to change that policy. Staff had added the requirement onto the ARCOM application.

Town Attorney Randolph advised that, if so directed, he would review a method of accomplishing a manner in which the policy would remain in place even as commissions change.

President Kleid commented that ARCOM now had a written policy, and that staff would bring that to the attention of future commissions and Town Council members.

Council Member Coniglio commented that a roof tile should never be changed from what was existing; what was taken off needed to be replaced.

Town Manager Elwell advised that he believed the ARCOM policy, and placement on the ARCOM application, would be sufficient.

Mr. Elwell referred to the litigation regarding roof tile systems, noting that it did not involve any damages; the relief that was being sought was only to overturn a decision of the Town Council. The insurance coverage would only provide a very marginal benefit – during the period of the deductible, there would be a differential cost in the hourly rate if the Town Attorney handled it, rather than the insurance panel attorney. However, he suggested following the continued practice of having the Town Attorney defend the Town in these type of situations.

It was the consensus of the Town Council to have the Town Attorney defend the Town in the litigation; staff would bring back the proper, formal approval of waiving coverage on the Consent Agenda for the July 10, 2007, Town Council Meeting.

XI. ANY OTHER MATTERS

None.

XII. ADJOURNMENT

There being no further business, the Town Council Meeting of June 19, 2007, was adjourned at 3:40 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk