TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON JUNE 14, 2005

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting of June 14, 2005, was called to order at 9:30 a.m. in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter Elwell
Deputy Town Manager Thomas Bradford
Assistant Town Manager Sarah Hannah
Town Attorney John Randolph
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Assistant Director of Planning, Zoning and Building
William Crouse - Human Resources Director

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Tim M. Frank - Planning Administrator
George Frick - Patrol Motor Sergeant
Jon Luscomb - Dock Master
Edward Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Eichhorn. President Brooks led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Michael Galvin, Police Captain, Upon His Retirement from the Town of Palm Beach After 25 Years of Service.

Mayor McDonald presented Michael Galvin, Police Captain, with a watch in honor of his retirement from the Town of Palm Beach.

IV. COMMENTS OF MAYOR JACK McDONALD

Later today representatives from Scripps Florida will address the Council. I want to voice my support for Scripps Florida and what I believe they can do for health care in South Florida.

We have a health care crisis in our community and we must take a leadership position collectively, and support Scripps.

Our Town and Community have an unprecedented opportunity to support the development of a first class, nationally renowned research institute right here in Palm Beach County. Scripps stands at the forefront of basic biomedical science. We, as individuals in our community, will benefit for generations to come from their scientific discoveries and the associated improvements to our community and health care through their association with a first class Clinical research facility.

Scripps attracts and supports the best scientists and minds in the world, three of whom have chosen to live in the Town of Palm Beach. The brain power coming into this community will transform our landscape and help galvanize our mission to attract the best doctors and health care facilities in the world. Already, many of the top medical institutions in this country are in negotiations with Scripps to build adjacent facilities and partner with their research colleagues.

The Town of Palm Beach has always been vocal about its priorities which govern our lives and one of our priorities is Healthcare. I encourage you all to support Scripps; they are making major contributions leading to the betterment of health and the human condition.

Thank you

V. APPROVAL OF AGENDA

The following changes were made to the Agenda:

MOVED Item VII. D. 1. - Resolution No. 30-05, from the Consent Agenda to VIII. Regular Agenda, B. New Business, #6.

Motion made by Councilman Coleman, seconded by Councilman Kleid, to move Item VII. D. 1. - Resolution No. 30-05, from the Consent Agenda to VIII. Regular Agenda, B. New Business, #6. On roll call, the motion carried unanimously.

MOVED Item VII. D. 6. - Resolution No. 41-05, from the Consent Agenda to VIII. Regular Agenda, B. New Business, #7.

Motion made by Councilman Coleman, seconded by Councilman Wyett, to move Item VII. D. 6. - Resolution No. 41-05, from the Consent Agenda to VIII. Regular Agenda, B. New Business, #7. On roll call, the motion carried unanimously.

DEFERRED to July 12, 2005, Item VIII. Regular Agenda, A. Old Business #2. - Report of Traffic Engineer's Review of the Florida Department of Transportation (FDOT) Design for Modification of the Southern Boulevard Traffic Circle.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum, to defer Item VIII. Regular Agenda, A. Old Business #2. - Report of Traffic Engineer's Review of the Florida Department of Transportation (FDOT) Design for Modification of the Southern Boulevard Traffic Circle to July 12, 2005, Town Council Meeting. On roll call, the motion carried unanimously.

DEFERRED to August 9, 2005, Item XI. C. 1. Old Business - Special Exception #7-2005, 150 Worth Avenue.

Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum, to defer Item XI. C. 1. Old Business - Special Exception #7-2005 to the August 9, 2005, Town Council Meeting. On roll call, the motion carried unanimously.

WITHDREW Item XI.C.1.Old Business, b. - Site Plan Review #3-2005, 1695 North Ocean Way Realty Trust.

Motion made by Councilman Wyett, seconded by Councilman Kleid, to withdraw Item XI.C.1 Old Business, B. - Site Plan Review #3-2005. On roll call, the motion passed unanimously.

DEFERRED Item XI. 2. New Business, d. - Site Plan Review #4-2005 with Special Exceptions, 240 Sunrise Avenue and 235 Sunset Avenue.

Motion made by President Pro Tem Goldblum, seconded by Councilman Wyett, to defer Item XI. 2. New Business, d - Site Plan Review #4-2005 with Special Exceptions to the July 12, 2005, Town Council Meeting. On roll call, the motion passed unanimously.

Motion made by President Pro Tem Goldblum, seconded by Councilman Wyett, to approve the Agenda, as amended. On roll call, the motion carried unanimously.

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

Mr. Eric Gilbertson, 151 Chilean Avenue, commented regarding property taxes, and complimented the accomplishments of Public Works Director Paul Brazil.

Dr. Sten Lilja, 1330 North Ocean Boulevard, commented regarding the Florida Department of Environmental Protection (FDEP) meeting to discuss the Erosion Control Line (ECL), which was to be held at 6:00 p.m. on Wednesday, June 15, 2005.

[Town Manager Elwell clarified that the meeting was an FDEP meeting scheduled for the single purpose of certifying the ECL. Public Comment would be taken by FDEP at that meeting]

Mr. Burt Handelsman, 250 Worth Avenue, commented in support of proposed Ordinance No. 8-05 concerning Safe Neighborhood Improvement Districts.

Mr. Ralph Del Deo, 265 Fairview Road, commented regarding the three forums to be scheduled later this year to provide information on the zoning issues in the north end, requesting that at least one of those meetings be held in mid-December in order to accommodate seasonal residents.
[Town Manager Elwell advised that discussion would take place in this regard at a later point in the Agenda]

Mr. Sam Boykin, 285 Jamaica Lane, commented regarding the opportunity for residents to meet with Town staff to discuss the zoning forum schedule.

Sgt. George Frick, Chairman of the Police Pension Board, commented regarding the Townwide Compensation Study and some specific details related to police pension benefits that were contained in the study.

Lt. John Cuomo, Vice Chairman of the Fire-Rescue Pension Board commented regarding the Townwide Compensation Study and the pension benefits for firefighters.

VII. CONSENT AGENDA

A. <u>MINUTES: MAY 2, 2005</u>
APPROVAL OF MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION REGARDING FLORIDA BLACKTOP VS TOWN OF PALM BEACH.

B. <u>MINUTES: MAY 10, 2005</u>
APPROVAL OF MINUTES FOR THE REGULAR TOWN COUNCIL MEETING.

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON MAY 25, 2005.

D. RESOLUTIONS

Moved to Regular Agenda as Item VIII. Regular Agenda, B. New Business#6

1. RESOLUTION NO. 30-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Portion of a Five (5) Foot Utility Easement on the South Five (5) Feet of Lt 4, Regents Park and Dedicating a Ten (10) Foot Drainage and Utility Easement on Property Described as the North Fifty (50) Feet of the South 349 Feet of Government Lot 1, Section 2, Township 44 South, Range 43 East, Palm Beach County, Florida. [H. Paul Brazil, Director of Public Works] *Deferred from the May 10, 2005, Town Council Meeting.*

Director of Public Works Paul Brazil discussed Resolution 30-05 referring to his detailed memorandum to the Mayor and Town Council, dated June 6, 2005, and included in the back-up material. He advised that, at the Town's request, the owners of 400 Regents Park Road, submitted an application for abandonment and dedication of public utility easements. He explained that a 5-foot easement was to be abandoned, and a new ten-foot easement was to be dedicated on the same property further to the south to facilitate the installation of an improved storm drainage collection system for the Regent's Park Subdivision.

Mr. Brazil stated that staff recommends that the Town Council approve Resolution No. 30-05 abandoning the utility easement on 400 Regents Park Road and dedicating a new larger easement further south on the same property.

Town Attorney John Randolph read Resolution No. 30-05 by title, as printed above.

Councilman Coleman made a motion to approve Resolution No. 30-05. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried 3/0. Councilman Coleman, President Pro Tem Goldblum and President Brooks casting affirmative votes. Councilman Kleid and Councilman Wyett were temporarily out of the room.

2. RESOLUTION NO. 37-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Revised Statement of Investment Policy for the General Employee Board of Trustees of the Town of Palm Beach Retirement System Pursuant to Second 82-57 (b) of the Code of the Town of Palm Beach, and Providing an Effective Date.

[William C. Crouse, Director of Human Resources]

3. RESOLUTION NO. 38-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Enter into an Interlocal Agreement with the Solid Waste Authority (SWA) for Disaster Debris Management. [Sarah E. Hannah, Assistant Town Manager]

4. RESOLUTION NO. 39-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Rescinding Resolution No. 27-05 and Establishing a New Dock Rate Category Entitled "Summer Monthly Rate" and Establishing Revised Rates for the Same. [Thomas G. Bradford, Deputy Town Manager]

5. RESOLUTION NO. 40-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Rescinding Resolution Number 34-05 and Adopting this Resolution to Clarify the Exclusion of Certain Already Designated Historic or Specimen Trees Located on Properties Within the Town of Palm Beach; Providing for the Recording of Said De-designations and Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County, Florida.
[H. Paul Brazil, Director of Public Works]

Moved to Regular Agenda, Item VIII. Regular Agenda, B. New Business #7

6. RESOLUTION NO. 41-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing the Preliminary Non-ad Valorem Assessment Rates for Commercial Solid Waste Collection; Providing an Effective Date. [H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil discussed Resolution 41-05 referring to his detailed memorandum to the Mayor and Town Council, dated June 3, 2005, and included in the back-up material. He explained that, for the last two years, the Town's commercial solid waste fees were included as a property assessment on the tax bill. The County collects the assessments and transfers the money to the Town. He advised that it was now time to repeat this process.

Mr. Brazil stated that Resolution No. 41-05 listed the preliminary solid waste rates. Upon approval of those proposed rates, the Town would notify the owners of the properties to be assessed, at a public hearing. The public hearing would be scheduled at the July 12, 2005, Town Council meeting.

Mr. Brazil recommended that the Town Council approve Resolution No. 41-05 setting preliminary commercial solid waste fee assessments.

In response to Town Attorney Randolph, Mr. Brazil advised that the rates may be increased slightly.

Town Attorney John Randolph read Resolution No. 41-05 by title, as printed above.

President Pro Tem Goldblum made a motion to approve Resolution No. 41-05. The motion was seconded by Councilman Coleman On roll call, the motion carried unanimously.

7. RESOLUTION NO. 42-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Florida Detroit Diesel - Allison to Provide a Generator and Automatic Transfer Switch for the Police Station Generator Upgrade. [H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 43-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Town's Clean Vessel Act Application for the Australian Dock Pump-Out System Upgrade and Retrofit, Approving the Associated Project Agreement with the Florida Department of Environmental Protection and Authorizing the Town Manager to Execute all Documents Necessary to Effectuate the Clean Vessel Act Grant Program for the Benefit of the Town.
[Thomas G. Bradford, Deputy Town Manager]

9. RESOLUTION NO. 44-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute a Department of Agriculture and Consumer Services Grant Application to Assist in Restoration of the Urban Tree Canopy from Damage Sustained in the Hurricanes of 2004, and if Awarded the Grant, to Enter into an Urban and Community Forestry Grant Memorandum of Agreement with the State of Florida, Department of Agriculture and Consumer Services, Division of Forestry.
[H. Paul Brazil, Director of Public Works]

10. RESOLUTION NO. 45-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute a Department of Agriculture and Consumer Services Grant Application for Remediation of Surviving Trees in the Urban Tree Canopy from the 2004 Hurricanes, and if Awarded the Grant, to Enter into an Urban and Community Forestry Grant Memorandum of Agreement with the State of Florida, Department of Agriculture and Consumer Services, Division of Forestry.
[H. Paul Brazil, Director of Public Works]

11. RESOLUTION NO. 46-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Maintenance Memorandum of Agreement Between the Florida Department of Transportation, District Four, and the Town of Palm Beach for Maintenance of Landscape Improvements Within Medians and Areas Outside the Travel Way to the Right-of-Way Line, Excluding Standard Concrete Sidewalk, Within State Road 704 (Royal Palm Way from the Centerline of the Intracoastal Waterway on Royal Park Bridge to the Intersection of Lake Drive and Royal Palm Way), as Stated in the Agreement and Shown on the Construction Plans.
[H. Paul Brazil, Director of Public Works]

E. OTHER

1. Approval of a Request From the Everglades Club for a Reduction of the Usual Frequency of Garbage Collection.
[H. Paul Brazil, Director of Public Works]

2. Approval of Expenditure from the General Fund Contingency Account for Replacement of Office Furniture for the North Fire-Rescue Station Which Was Damaged by Hurricanes Frances and Jeanne. [Edward J. Moran, Fire-Rescue Chief]

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

VIII. REGULAR AGENDA

A. Old Business

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

Deputy Town Manager Tom Bradford provided a status report on the potential underground utility project, referring to his detailed memorandum to the Mayor and Town Council, dated June 8, 2005, and included in the back-up material provided.

Mr. Bradford recommended deferral of the following four actions intended for Town Council decision for the meeting today, June 14, 2005.

1. Town Council decision on funding for the project. Cash versus financing.
2. Town Council decision on whether the input of the citizens should be received via a referendum or straw ballot.
3. Town Council approval of Letter of Agreement with Adelphia and Agreement with FPL for the Royal Poinciana Way Demonstration Project.
4. Town Council approval of construction proposal and budget amendment to undertake Royal Poinciana Demonstration Project.

Mr. Bradford reported that the schedule originally put together was too aggressive and reviewed the problems currently facing the Town resulting in the request for a deferral. He advised that, in order to be more realistic, these four actions now appear at a later date within the Project Management Time Line.

Mr. Bradford recommended that the original schedule for a referendum or straw ballot on November 8, 2005 should be targeted for February 2006 when the Town holds its municipal election.

2. Report of Traffic Engineer's Review of the Florida Department of Transportation (FDOT) Design for Modification of the Southern Boulevard Traffic Circle.
[H. Paul Brazil, Director of Public Works] **Staff Recommends Deferral to the Town Council Meeting on July 12, 2005, Per Memorandum Dated June 7, 2005, From H. Paul Brazil, Director of Public Works.**

DEFERRED to July 12, 2005, Town Council meeting, per request of Public Works Director Brazil.

3. Town Review of Compliance with the Noise Compatibility Program at Palm Beach International Airport (PBIA).
[Sarah E. Hannah, Assistant Town Manager]

Sarah Hannah, Assistant Town Manager, provided a review of compliance with the Noise Compatibility Program at Palm Beach International Airport (PBIA), referring to her detailed memorandum to the Mayor and Town Council dated June 8, 2005, and included in the back-up material provided.

Ms. Hannah explained that at the Town Council Meeting of May 10, 2005, Councilman Coleman requested that staff look into three items:

1. Intensely monitor and evaluate the activities of PBIA on a real time basis.
2. Consider professional counsel familiar with FAA guidelines and regulations.
3. Develop a public relations strategy for Palm Beach as a community affected by the volume of corporate aircraft flying overhead.

Ms. Hannah advised that, after further consultation with Councilman Coleman, since the May 10th meeting, staff was recommending that the Town first obtain legal advice from an attorney to determine where the Town stands regarding the fanning issue at PBIA before investing in these Town related activities.

Ms. Hannah reported that the Town contacted Attorney Greg Walden with the law firm of Patton Boggs, LLP in Washington, D.C. She reviewed his background advising that Mr. Walden was the former chief counsel for the FAA and was a nationally recognized authority in the field of aviation law.

Ms. Hannah explained that Mr. Walden proposed evaluating the Town's options with regard to the Town's desire to eliminate fanning. She reported that Patton Boggs, LLP anticipates the cost to be no more than $10,000 after reviewing documents and talking with FAA officials.

Ms. Hannah stated that staff recommends that Town Council authorize the funding in the amount not to exceed $10,000 from the General Fund Contingency for the professional services of Greg Walden and Philip A. Bangert of the law firm Patton Boggs, LLP, Washington, D.C.

President Pro Tem Goldblum reported that he had read that Fed Ex was planning to build a very large operation west of Belvedere Road. He stated that, at the Town Council Meeting of May 10, 2005, the representatives of PBIA advised that the airport did very little freight transport and that most of it was belly cargo. He expressed the need to keep a close watch at what was happening at PBIA.

Motion was made by Councilman Wyett to approve funding in an amount not to exceed $10,000 from the General Fund Contingency, for the professional services of Greg Walden and Philip A. Bangert of the law firm Patton Boggs, LLP, Washington, D.C. The motion was seconded by Councilman Coleman.

Councilman Kleid questioned the necessity to hire a high-powered law firm instead of investigating the Town's concerns in-house.

Town Manger Elwell responded that it was Councilman Coleman who brought forth this issue last month. He noted that there was no objection from Town Council, at the Town Council Meeting of May 10, 2005, regarding the request for staff to investigate the engagement of a law firm qualified in FAA guidelines and qualifications.

Councilman Coleman stated that he advocated for the Town to engage counsel for several reasons. He said that John McCracken, Town Attorney, informed him that he was not an expert in this area. He noted that, in his experience with lawyers, it was cheaper to hire someone who has the knowledge than to have someone try to gain that knowledge. He advised that it was important to engage counsel that specialized in this highly technical and continually changing area. He noted that it was a dynamic problem, and the Town should know their alternatives.

On roll call, the motion carried unanimously.

Mayor McDonald asked if there were any Stage 1 and Stage 2 aircraft under seventy-five thousand pounds that were flying in and out of PBIA?

Lisa De La Rionda, Palm Beach County Department of Airports, responded that there was a Stage 1 ban in effect for Palm Beach County. She advised that there were less than five departures a day of Stage 2 aircraft less than seventy-five thousand pounds. She stated that on May 26, 2005, a presentation of their annual report on airport noise was made to the Citizen's Committee on Airport Noise with Councilman Coleman in attendance. She reported that out of 176 operations a day, approximately ten - five in and five out - of Stage 2 aircraft. She explained that PBIA was a very minimal airport with Stage 2 operations.

In response to Mayor McDonald, Ms. De La Rionda responded that PBIA was currently the only airport in the country that had an environmental operating fee for Stage 2 aircraft. She explained that it was a deterrent for operation, and that the operating fee of $2,600 for a departure between 10:00 P.M. and 7:00 A.M.. was high. She advised that when operators were told that this fee must be paid before departure, they usually rescheduled their operations before the quiet time. She said that they hope, in the future, there will be less and less of those types of operations.

Mayor McDonald asked if there was a desire by PBIA to join with Sound Initiative, an organization that tries to recruit regional airports in order to get rid of the Stage1 and Stage 2 aircraft?

Ms. De La Rionda advised Mayor McDonald that he was correct regarding the Sound Initiative. She then explained that these were airports with much higher Stage 2 operations than PBIA, such as Boca Raton. She noted that the Boca Raton Airport still had Stage 1 as well as Stage 2 aircraft and that with the ban of Stage 1 aircraft in effect, PBIA was in a very good position. She said that PBIA would watch the industry since they were aware that Sound Initiative was attempting to work through the Federal legislation in order to benefit airports, in general.

In response to President Pro Tem Goldblum, Ms. De La Rionda stated that currently there was no Fed Ex operation at PBIA She advised that the only air cargo carrier at PBIA was UPS. She said that her understanding was that Fed Ex would be relocating some facilities from Blue Heron Boulevard. She continued that she had no information nor did she have any expectations that there would be any Fed Ex flights at Palm Beach International Airport. She stated that PBIA did not have local control to deny an operator use of the airport. She said that if there was discussion of potential Fed Ex operations, the Citizen's Committee on Airport Noise would be involved in getting that information. She advised that Fed Ex aircraft were one of the quietest aircraft used; and they operate out of Ft. Lauderdale International Airport which was one of their large hubs in the Southeast.

Councilman Coleman stated that his focus was beyond Stage 1 and Stage 2 aircraft, and he had concerns regarding volume and the eighty acres available for development at the airport.

Discussion continued regarding Councilman Coleman's concerns regarding the potential use of the eighty acres available for development at PBIA.

In response to Mayor McDonald, Ms. De La Rionda stated that the master plan and any changes to it was processed through the Department of Airports along with a general consultant, and an advisory board similar to the make up of CCAN. She advised that ultimate approval and responsibility came from the Palm Beach County Commissioners.

4. Town Hall Renovation

a. Status Report on Relocation of the Department of Planning, Zoning, and Building to West Palm Beach.
[Peter B. Elwell, Town Manager]

Town Manager Elwell provided a status report on the relocation of the Department of Planning, Zoning and Building to West Palm Beach. He advised that he had constructive conversations with representatives for the owners of the Florida Crystals Building and was confident the discussions would continue positively. He stated that he did not have a specific recommendation today but hoped to have one for the July meeting. He noted that it might be as late as the August meeting.

b. Status Report on the Overall Town Hall Renovation. [H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil provided a status report on renovations to the Old Central Fire Station area of Town Hall, referring to his detailed memorandum to the Mayor and Town Council, dated June 6, 2005, and included in the back-up material provided.

Mr. Brazil advised that Public Works staff, at the completion of the restoration work, would ensure that the existing kitchen was in working order, and a break room established for the employees in Town Hall.

Mr. Brazil stated that temporary relief could be provided to PZ&B staff with some minor restoration work inside existing office space located in the Old Central Fire area. He advised that the work would be minimal and the costs would come from the existing operating budget; but if professional moving assistance and carpet replacement were necessary, additional funds would be required - $10,000 for moving expenses and $12,000 for carpeting.

Mr. Brazil advised that they were recommending that Town Council (1) authorize staff to proceed with the limited renovation work in the Old Central Fire Station area of Town Hall; and (2) authorize the expenditure of not more than $22,000 from the Town Hall project account in the Capital Improvement Fund.

Discussion ensued on the remedial work that needed to be done on the roof. Mr. Brazil advised that the repairs on the roof at the south end of the building would be dependent upon relocating PB&Z. He explained that once the Planning, Zoning and Building Department has moved out, the renovations to this space would begin to take place.

Town Manager Elwell stated that the next item would include discussion on the remedial work needed to be done on the roof. He added that any work that needed to be done would require PB&Z to move out.

President Pro Tem Goldblum made a motion to approve the authorization for staff to move ahead with limited renovation work in the Old Central Fire area of Town Hall, to allow temporary relocation of nine Planning, Zoning and Building Department staff members, and to allocate an amount not to exceed $22,000 from the Town Hall Project Account in the Capital Improvement Fund. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

c. Options for Improving Sight Lines and Audio/Visual System in Town Council Chambers. [Digby Bridges, of Digby Bridges Marsh & Associates, PA]

Architect Digby Bridges, Digby Bridges, Marsh & Associates, P.A. made a presentation regarding the options for renovations to the Town Council Chambers. He stated that, as discussed previously, these renovations cannot begin until Planning, Zoning, and Building has been relocated. He advised that Tim Frank, Planning Administrator, has applied for a $350,000 Historic Grant to renovate the Council Chambers. In September, the Town should know if they have received this grant allowing for everything to fall into place and begin.

Mr. Bridges discussed the schedule and various stages for the renovations as follows:

- Relocate Planning, Zoning and Building;
- Simultaneously strengthen the roof over Council Chambers, and install new windows for entire building;
- Renovate Town Council Chambers and Entrance Lobby;
- Renovate area vacated by Planning, Zoning and Building.

Mr. Bridges reviewed the renovations to the Town Council Chambers, referring to the plans and memorandum provided to the Mayor and Town Council, and included in the back-up material provided.

Mr. Bridges discussed the conceptual plans for eight alternatives to improve the function, sight lines, and audio/visual systems in the Town Council Chambers. He reviewed the following common elements found in all of the options. He advised that the options differ in their shape and layout of the dais, as well as the location of the public speaker or presentation podium, and in some cases the inclusion of a presentation table and seating in front of the dais.

- More seating has been accommodated by incorporating the existing office and a portion of the existing conference room into the Council Chambers. New rows of seating would be added to match the existing seating.
- An audio-visual room would be established in the remaining portion of the existing conference room adjacent to the Council Chambers, to house the new audio-visual equipment.
- All of the seat positions on the dais/platform would have a television monitor, microphone, and computer/electrical power connections.
- The Town Clerk position would have improved capabilities to control the audio-visual components as well as cameras, lighting, and window treatments (shades/blinds).
- A new retractable screen mounted behind and above the dais/platform would be provided along with a ceiling-mounted projector to allow for improved audience viewing.

Mr. Bridges advised that the cost for the state of the art audio-visual equipment would be $150,000. He reported that the additional costs to provide for the improvements to the Town Council Chambers was estimated to be approximately $660,000.

In response to Councilman Coleman, Mr. Bridges replied that they could explore state of the art conferencing and what the cost would be.

In response to Mayor McDonald, Mr. Bridges replied that the office in the rear was originally the police chief's office. Discussion ensued regarding the options available for using that room and the wood paneling on the walls in that room.

In response to Councilman Wyett's concerns on the type of retractable screen to be used, Mr. Bridges advised that they would be using only state of the art equipment

Chief Reiter explained that the office referred to earlier as the police chief's was actually the judge's office, and the Council Chambers was the courtroom. He advised that it became the police chief's office in the 1940's, and the paneling was added in 1960 or so through a donation from a resident to the chief.

B. New Business

1. Update on Scripps and Health Care in South Florida.
[Gary Lickle and Dr. Harry Orf]
PLEASE NOTE THAT THIS ITEM WILL BE HEARD AT 10:30 A.M. OR AS SOON THEREAFTER AS POSSIBLE.

Gary Lickle, a resident of the Town residing at 400 South Ocean Boulevard, explained that he and his colleagues at Lehman Brothers Trust Company became concerned about Scripps and what it meant to the community and to the Town of Palm Beach. He stated that this project could solve two major problems that are present not only in the State but in the County and in this Town - the image problem of the State of Florida and the healthcare crisis of the community.

Mr. Lickle compared the vision of those who built the Kravis Center and City Place to the vision of those who want to bring Scripps to this Community. He stated that Scripps would provide a clinical research facility, would have the ability to recruit the best doctors, would have the ability to raise educational dollars, and would improve the community.

Mr. Lickle introduced Dr. Harry Orf, of Scripps Florida reviewing his Curriculum Vitae which was included in the back-up material provided.

Dr. Orf, Vice President for Scientific Operations and Professor of Chemistry at Scripps Florida made a power point presentation discussing the positive impact of the Scripps Project on the quality of clinical health care in South Florida.

Mr. Lickle stated that he hoped the Mayor and Town Council as well as the public listening to this today would support Scripps Florida.

In response to Councilman Coleman who asked what could be done to assist them, Mr. Lickle responded that it was important for a lot of the local communities to be more vocal in their support. He stated that it was their goal to make Florida the spot to come to for great health care and great education.

In response to Councilman Coleman who asked if it would be of some assistance, to have the Council write a letter to various constituencies recommending that they view this presentation, Mr. Lickle stated that he thought it would assist them. He commented that when you have the Mayor and Town Council behind a message like this, it was important.

President Pro Tem Goldblum suggested that the Town Council draft a resolution welcoming Scripps to the community.

Town Manager Elwell stated that staff could prepare a resolution for the July 12, 2005, Town Council Meeting.

President Pro Tem Goldblum made a motion to approve the authorization of staff to prepare a resolution for the July 12, 2005, Town Council meeting to show the Town's support of Scripps and Health Care in South Florida. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

Councilman Coleman advised Mr. Lickle that the Town Council was open to any recommendations as to which persons he might want them to contact. He stated that they could inform others how great the presentation was and how impressed the Town Council was that they were recommending others take a look at it.

Mr. Lickle stated that a target list would be developed to guide the Council accordingly.

2. Discussion with The Garden Club and Florida Department of Transportation (FDOT) Officials Regarding the Planned Kapok Trees at the East Approach of the Royal Park Bridge.
[H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil advised that the Florida Department of Transportation (FDOT) and the Garden Club planned to provide an update on the planting of two Kapok trees at the east approach of the Royal Park Bridge. He stated that the FDOT representative could not be present today, but Mr. Sanchez with the Garden Club was present and would give the Town Council an update.

Mr. Jorge Sanchez, on behalf of the Garden Club, provided an update regarding the status of the placement of the trees. He advised that two matching Kapok trees were available and were within the budget allocated by FDOT. He explained that the question was one of space, and if the tree to be placed on the north side, would fit within the space between the bridge and the Four Arts. He stated that the installer informed him that there seemed to be enough room as long as the Four Arts would allow for bracing from their side. He said that it was his understanding that the Four Arts would allow this. They would also allow for a wall to be moved, if needed, as long as the Four Arts did not have to pay for the move. He believed that the wall did not have to be moved.

Mr. Brazil advised that FDOT has pledged $140,000 towards the project, and it appears that they would stay within that budget. He reported that they are working on the schedule and should be able to provide, shortly, when this project would be completed.

In response to Mayor McDonald, Mr. Sanchez advised that it was a question between FDOT and the company that was awarded the bid for installation as to when the trees would be installed. He explained that if that company takes it upon themselves to do the work, it should be done between now and the Fall. He continued if they decide not to do it, then FDOT would have to wait until the contract with the installers expires, which would be in the fall, and then the Town would do it privately.

In response to Mayor McDonald, Mr. Sanchez said that it was his understanding that they would have to wait for the contract to expire.

Mr. Brazil stated that he spoke with FDOT, and there may be a way to terminate the contract if the contractor does not want to do the work.

Mayor McDonald stated that he would like to have the trees installed by the fall, if it could be done. He said that if the Town finds out the FDOT installers don't want to do the installation, then the Town should do it.

Mr. Brazil advised that the Town would pursue that with FDOT.

In response to President Brooks, Mr. Sanchez reported that the height of the trees that have been located were about 45 feet.

3. Potential Project to Light the Trees and Walkways in Peruvian Park. [Jack McDonald, Mayor]

Mayor McDonald advised that the Peruvian Park had recently been updated in cooperation with the Garden Club and Mario Nievera. He stated that the upgrade was done with little expense to the Town. He explained that the Garden Club suggested some additional improvements be made to the park that would be inexpensive.

Mayor McDonald referred to Public Works Director Paul Brazil's memorandum on the lightscaping of Peruvian Park, dated April 1, 2005 to the Mayor and Town Council, and included in the back-up material provided. He asked that the Town Council improve the two-phase plan for lightscaping of Peruvian Park.

- Phase I would be the uplighting of the specimen trees (Royal Palms and Gumbo Limbo Trees) in the back section of the park.
- Phase II would consist of soft, low-voltage lighting along the walkway and inside the flower beds in the front section of the park.

Town Manager Elwell suggested that the Town Council request staff to refine the cost estimates and come back with an actual figure to complete the work as well as how to fund that project. He explained that it could not be funded today because it has to be refined from a concept to a project.

In response to President Brooks, Mr. Elwell replied that he thought a recommendation from staff could be presented at the July12, 2005, Town Council meeting or the budget meeting the day before the Council meeting.

Nancy Murray, Garden Club of Palm Beach, stated that the park would be a wonderful showcase for the Town. She encouraged the Town Council to support this project to add lighting to the park, since there presently was none.

Mr. Mario Nievera stated that he would be glad to review the design, and to come up with the exact specifications so as to not exceed the budget.

Mr. Elwell expressed continued thanks to Mr. Nievera.

President Pro Tem Goldblum moved approval for staff to proceed with the cost estimates for lighting upgrades to the Peruvian Park walkway, and the up-lighting of the trees, to be presented at the July 12, 2005, Town Council Meeting. The motion was seconded by Councilman Coleman.

Councilman Wyett expressed his favor for the project but requested a wider scope of costs. He stated that the first park failed, he believed, because of the limitation on cost and by trying to stay within budget.

Town Manager Elwell advised that staff would be coming back to the Town Council with a refined budget cost to provide beautiful lighting in the park. He explained that he thought that the number would be reasonable, but it was a working estimate that needed to be refined into a real budget cost.

On roll call, the motion carried unanimously.

4. Consideration of Letter from Former Mayor Yvelyne de Marcellus Marix Proposing a Change in the Town's Charter.
[Yvelyne de Marcellus Marix]

Ms. Yvelyne de Marcellus Marix, 1570 South Ocean Boulevard, requested that the Town Council, as elected officials, submit to the voters the issue of whether or not the voters want to amend the Town Charter so that they, through you, the elected officials, will have the final say in the hiring, retention, and firing of department heads.

Ms. Marix referred to her letter dated May 30, 2005 to the Mayor and Town Council, and to the letter she submitted to the Palm Beach Daily News, which was published on Sunday, May 15, 2005, and included in the back-up material provided. She advised that she felt strongly that the Town Charter needed to be changed back to the former system where the Town Council, upon the recommendation of the Town Manager, decides to hire, retain, and fire department heads. She explained that today's Town

Council meeting was not the place to debate or decide this issue, but was requesting the Town Council vote today to let the residents decide whether to amend the Town Charter.

Ms. Marix advised that if the Town Council agrees to this request, Town Attorney Randolph should draft a referendum to be submitted to the voters. She stated that if the Town Council did not agree with this request, she would pursue options available to the residents by seeking that referendum directly through a petition.

Ms. Marix explained that formerly the Town Council was the final word on these issues after receiving the recommendation from the Town Manager. The revision to the Charter now gives the Town Manager the final say, and as a member of the Charter Review Commission, she strongly disagreed with that recommendation. She said that this matter should not rest in the hands of someone who has no vested interest in the Town.

Ms. Marix stated that this issue has been brought to the forefront by the departure of Robert Moore, Director of Planning, Zoning and Building. She stated that even though the Town Manager was highly regarded and very capable, the residents should have a right to input into the selection of Mr. Moore's successor.

Ms. Marix requested that an amendment be made to the Town Charter, via referendum, or, if necessary, through the petition process.

Discussion ensued regarding this issue, and the consensus of the Mayor and Town Council was not to submit the issue to the voters, and that Ms. Marix was free to seek petitions, if she so desired.

5. Townwide Compensation Study Findings and Recommendations. [Jonathan Meng, WMS]

Jonathan Meng, General Partner of WMS and Company, Inc. commented that, in his work, in this area, over the past twenty years, he has worked with many companies, not only in the private sector but with many municipalities, and the Town of Palm Beach stands at the top of the list in the treatment of its employees.

Mr. Meng briefly outlined the findings and recommendations in his report of the Townwide Compensation Study. He started by reviewing the process used in conducting the study.

1. Input from each employee through a position questionnaire;
2. Individual meetings with interested employees who wanted to discuss their position;

3. Formed two overall committees to evaluate the positions, assess the value of that internal equity - one committee comprised of department heads and the other comprised of other managers and supervisors from each department. (Mr. Meng stated it was important to note that the committee process was used, consisting of Town Employees, and not himself as a consultant to determine the pay levels and where each position stood.);
4. Information compared to the marketplace to see how competitive the salaries were, and how competitive the overall benefits package was;
5. Prepared report and presentations made to Town management and employee groups.

Mr. Meng reviewed the criteria utilized to evaluate the positions both exempt and non-exempt.

Mr. Meng discussed the overall findings as they relate to internal equity. He explained that they looked at how fairly employees were compared to other employees within their own department or area. He stated that the study found there was a very good level of internal equity.

Mr. Meng stated that in terms of the market comparisons, two overall markets were looked at. He noted that one was the Palm Beach County Public Sector, and the other was the private sector. He reviewed the findings in the marketplace.

1. Compared to the Palm Beach County Public Sector, the overall practice of the Town was found within the top quartile.
2. Compared to those positions in the private sector, the Town was found to be in the third to the top quartile.
3. The Town's overall benefits package was within the top quartile.
4. The Town's overall compensation practice was well within the top quartile and was rarely exceeded.

Mr. Meng presented a brief overview of some of the recommendations.

1. Maintain a top quartile position compared to the public sector. An employer needs to be competitive within the market in which it attracts and loses its employees.
2. Adopt the reclassification/job evaluations made by the Job Evaluation Committees in order to enhance internal equity, maintain competitive salaries, and accurately reflect the requirements of each position. The total annual salary wage cost of implementing these reclassifications (after appeals) were $302,215. The total annual cost, including benefits would be approximately $438,212.
3. Consider minor enhancements to your benefits package so that the Town's total compensation program remains well within the top quartile.

Mr. Meng continued to review his report, and explained that Town Manager Elwell, in his memorandum of June 9, 2005, to the Mayor and Town Council, had set forth recommendations for Town Council action.

Councilman Coleman commented that the life insurance benefit seemed rather low.

Mr. Meng replied that the life insurance benefit of 2x salary (maintaining the $100,000 cap) put the Town at the top of what other municipalities were doing, however, the costs of adding insurance were not great.

In response to Mayor McDonald, regarding tuition reimbursement, Mr. Meng replied that reimbursement was for collee level courses, and also graduate courses, as long as they were work related. He explained that there were few jobs in the Town that required a graduate degree.

Town Manager Elwell commented that only a few positions did require advanced degrees, with another dozen or so that prefer advanced degrees. He explained that the tuition reimbursement offered a general support for the advancement and continued development of employees, and there was also consideration of competitiveness in what others are offering in terms of employee benefits.

In response to Councilman Kleid, regarding conversion of employee sick time for use by another employee who has no accumulated sick leave, Mr. Meng explained that recommendation would keep the Town current in the marketplace, and would allow employees to help their fellow employees.

Sgt. George Frick, Police Department, respectfully asked that the Town Council look over sections 6-2 and 6-3 of the compensation study, and commented that the Police pension, standing alone, was not top quartile.

President Brooks requested that Sgt. Frick submit, in writing, some of his observations for the review of the Town Council. He commented that the Council had indicated that it wanted the Police Department to be number one, and that he would personally like to review the documents submitted by Sgt. Frick with the Town Manager and the Human Resources Director.

Lt. John Cuomo, Fire-Rescue Department, commented that he hoped that the expression to the Police Department to be number one would also hold true for the Fire-Rescue Department.

President Brooks replied affirmatively.

Lt. Cuomo expressed his appreciation for the attention that the Town Council had given to compensation of the Town employees, and noted that he would provide a written document for the review of the Town Council.

President Pro-Tem Goldblum commented that Town Council would evaluate the overall benefits of the Police and Fire-Rescue Department as compared to other municipalities.

Town Manager Elwell clarified that his recommendation regarding the pension issue was that the full section regarding benefits (Section VI) of the Town of Palm beach Classification, Compensation and Benefits Study be transmitted to each of the three retirement boards, with the request that each board review, and make comments.

Councilman Wyett asked the cost implications of increasing the number of vacation days by three?

Town Manager Elwell replied that there were significant implications, however, the overall magnitude was not yet known. Recommendation #6 of his memorandum of June 9, 2005, was to direct staff to assess the operational impacts of implementation of the recommendations of Mr. Meng regarding increased vacation time, and to recommend a course of action at a future Town Council meeting.

After further discussion, regarding increasing the Town's life insurance benefit, it was determined that Recommendation #4 of Mr. Elwell's memorandum of June 9, 2005, would be segmented out, in order for staff to provide further information.

Councilman Kleid moved approval of the recommendations of Town Manager Elwell, as set forth in his memorandum of June 9, 2005, to the Mayor and Town Council regarding the implementation of recommendations set forth in the Townwide Study WITH THE ELIMINATION of item #4 [recommendation to increase the Town's life insurance benefit, and monthly cap on long-term disability payments]. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 4-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 46, Fire Prevention and Protection, at Article III, Section 46-79, Fireworks, Providing for the

Prohibition of the Manufacturing, Storage, Sale, and Use of Fireworks and/or Pyrotechnic Materials Except in Accordance with the Provisions of this Code; Providing Definitions; Providing for Application for Permit; Providing for Permit Requirements; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Edward J. Moran, Fire-Rescue Chief]

Town Attorney Randolph read Ordinance No. 4-05 by title, as printed above.

Councilman Coleman moved adoption of Ordinance No. 4-05 on second reading. The motion was seconded by Councilman Kleid. On roll call the motion carried unanimously.

2. ORDINANCE NO. 8-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 2, Administration, to Provide a New Article IX Titled Safe Neighborhood Improvement Districts, Providing a Procedure for the Authorization for the Formation of Safe Neighborhood Improvement Districts Through the Adoption of an Ordinance Which Specified That Such Districts May Be Created by One or More of the Methods Established in Sections 163.506, 163.508, 163.511, and 163.512, Florida Statues; 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 briefly explained the difference in the ordinance that was appearing today, and the one that was presented on first reading last month. He explained that certain property owners within the Worth Avenue area wanted to see the ordinance include a provision which would require a super majority of property owners voting in favor of a district, prior to it being approved. Another question had related to whether or not a district could be formed for the purpose of undergrounding utilities.

He advised that the ordinance prepared for consideration today included language which would make the ordinance more strict than the State Statutes required, which would include the provision which stated that "in exercising the authority granted herein, the Town Council may not create a safe neighborhood district, unless, in addition to the requirements of State Statute, the owners of 3/4 of the property to be included therein agree to the creation of the safe neighborhood district." He explained that requirement would be over and above the requirements set forth in State Statute.

Town Attorney Randolph reviewed the requirements of the State Statutes, setting forth the four types of districts that could be established, per his memorandum as provided in the back-up material for today's meeting. He noted that the proposed ordinance today did not differentiate between any of the districts – it simply stated that 75% of the owners within the proposed district must vote in favor of it. He requested direction as to whether the Town Council wanted to give further consideration to the matter, based on the information provided today.

Councilman Coleman suggested that the term "owner" be clearly defined, and suggested that the ownership issue may be a route to future problems.

Town Attorney Randolph advised that 75% of all owners of property was used in the State Statutes, and in a joint tenancy situation, that would be interpreted as an owner being both of the joint tenants. He clarified that the direction he would like to receive today was whether the Town Council would like to see a distinction between the residential districts and the commercial districts, as made by State Statute —— in a commercial district "x" percent of the assessed value of property within the district versus a residential district where 75% of all owners of property within the proposed district. and dealing with assessed value differently than a residential district. He requested input from the Town Council regarding the distinction being made by the State in a commercial district.

Councilman Wyett commented that one ownership could entail many properties on Worth Avenue and questioned whether there would then be one vote, or one vote per property. In addition, he questioned whether a property that had 20' of frontage on Worth Avenue would have the same vote as a property that had 50' of frontage.

Town Attorney Randolph clarified that the ordinance required at least the State requirements, and had become even more strict than that. Under this draft ordinance, in a commercial district, in order for it to prevail, it would have to be voted for by in excess of 50% of the assessed value of property within the district; it would also have to be passed by 75% of the property owners in the district. If an owner owned ten properties, he/she would have ten votes.

Councilman Wyett suggested that perhaps the ordinance should be studied further, before a decision was made.

Councilman Kleid asked the following: if 3/4 of a block was owned by one property owner, and the remaining 1/4 of the block was owned by three property owners, the one property owner's vote would be decisive?

Town Attorney Randolph replied affirmatively; if three property owners owned a property jointly, they would be considered one property owner for purpose of the vote.

Joint tenants and ten owners on a particular property would not be divided – it would be done on the basis of the number of properties within the district.

Mayor McDonald commented that the actual voting could be compared to a condominium association, because it did not matter how many owners of a unit there were – it was still only one vote per unit. He requested clarification from Town Attorney Randolph regarding the following: if the master ordinance was adopted, which would allow setting up the districts, and then an actual district was created, requiring a separate ordinance, could the definition of 75% be changed in that ordinance, or would the master/umbrella ordinance apply?

Town Attorney Randolph advised that the enabling legislation would have to be modified; the enabling ordinance would determine how each new ordinance was made.

In response to Mayor McDonald, Deputy Town Manager Bradford advised that the preliminary conceptual district information had indicated about three dozen property owners on Worth Avenue.

Attorney Ron Kolins, on behalf of the Worth Avenue Property Owners Association, clarified that the Town Council had considered the matter largely because there were various people, or groups, who had asked that the issue be considered. He stated that the Worth Avenue Property Owners Association had opposed the ordinance last month, but were certainly much more disposed to be supportive with some kind of a supermajority requirement. He requested that the Town Council NOT vote separately on residential and commercial districts today, so that further consideration could be given to the issues raised today.

Councilman Wyett moved that Ordinance No. 8-05 be abandoned at this time. The motion was seconded by Councilman Kleid.

Town Attorney Randolph suggested that the Town Council may have a better idea of the specifics of the ordinance if and when someone came forward with the kind of district that they wanted to create.

On roll call the motion carried unanimously.

Councilman Coleman indicated that any requests for districts in the future would need to be very specific.

3. <u>ORDINANCE NO. 9-05</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for

Amendments to the Town's Capital Improvement Fund Budget and Leisure Services Enterprise Fund Budget Adopted for the Fiscal Year Commencing October 1, 2004; Creating a New Leisure Services Capital Fund Budget for the Fiscal year commencing October 1, 2004, and Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 9-05 by title, as printed above.

Councilman Kleid moved adoption of Ordinance No. 9-05 on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

4. ORDINANCE NO. 10-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 2, Administration, Section 2-439 Relating to Citation Fine Schedule; Amending Chapter 18, Building and Building Regulations, Section 18-242, Amendments, Relating to Construction Schedule; Amending Chapter 42, Environment, Section 42-198 Relating to Operations of Certain Machinery During Winter, Sundays and Legal Holidays; Section 42-199 Relating to Hours for Construction Work; Section 420-200 Relating to the Operation of Tennis Ball Machines; and Section 42-230 Relating to Lawn Maintenance Equipment Noise; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 10-05 by title, as printed above.

After discussion, and public comment by Mrs. Marix, concerning the time frame for putting out yard trash, the ordinance was deferred.

President Pro-Tem Goldblum moved that Ordinance No. 10-05 be deferred for third reading at the July 12, 2005, Town Council Meeting, to include the provision that permission for Saturday yard work could begin on May 1st and end on November 30 (coterminous with the major construction season). The motion was seconded by Councilman Coleman. On roll call the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 11-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 42, Environment, Article V Noise, Section 42-230, to Include a New Paragraph (c) Prohibiting the Use of All Leaf Blowers Between the Hours of 5:00 P.M. and 9:00 A.M.; Prohibiting the Operation of Leaf Blowers Which Exceed a Noise Level of 75 dBA after October 1, 2006; and Further Providing That it Is Unlawful to Blow Yard Trash or Clippings into the Public Street; 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 No. 11-05 by title, as printed above.

President Pro-Tem Goldblum commented that he would like to make the time frames the same as those contained in Ordinance No. 10-05.

Town Manager Elwell explained that the peace and quiet on the weekend in the community had been the primary concern related to regulations addressed in the ordinance.

Councilman Coleman suggested that the same dates be used for the regulatory ordinances, in order to make enforcement of them possible.

Town Attorney Randolph commented that re-drafting ordinances at a meeting tended to cause confusion; section (c) of the ordinance relating to leaf blowers was entirely separate and independent from the section in Ordinance No. 10-05. Leaf blowers would be incorporated within Ordinance No. 10-05, relating to yard lawn maintenance equipment, and would be guided by that Ordinance, and would have the same schedule – from May 1st to November 30th, just as all other lawn maintenance equipment. He explained that section (c) of Ordinance No. 11-05 would prohibit the use between the hours of 5:00 p.m. and 9:00 a.m., and make it unlawful to blow the yard trash or clippings into the public street.

Councilman Wyett moved approval of Ordinance No. 11-05 on first reading. The motion was seconded by Councilman Kleid. On roll call the motion carried unanimously.

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Comments of Town Council Members and the Town Manager:

Councilman Coleman commented on four items:

1. Code Enforcement: people who continue to intentionally violate the law should be fined, and some of the offenders seem to consistently have fines waived. He suggested that the Code Enforcement Board use its discretion in cases of ignorance and accident.

2. Pension Funds: more attention from the Town Council to Town Pension fund investments.. [Town Manager Elwell suggested that Mr. Garvy, Chair of the General Employees Pension Board, meet with Councilman Coleman to discuss the issue; if there was a continuing concern that needed Town Council attention, it could be pursued at a future Town Council meeting.]

3. Declared his disassociation from a comment in the newspaper made by a commission member, regarding the lack of significance regarding sensitivity to property values. He commented that the Town Council was sensitive to property values, and that message should be sent down to Town commissions.

4. Budgetary Items: the only way to manage the budget of the Town was by head count, and the addition of a fire boat may eventually involve an increase of people on the payroll. He encouraged exploration of sharing the load of service with other municipalities.

Councilman Wyett commented that he was in agreement with the comments of Councilman Coleman regarding the fire boat, and that the Zoning Commission had, in their deliberations, disavowed their concern about the value of property, and whether it rises or falls by their actions. He suggested that the Town Council should inform them that property values is one of the important concerns of the Town Council and its sub-committees. He noted that the most important meeting of the year would be held when the budget was approved next month, and that few residents would attend. He suggested that any revenue increases seemed to be spent, and that this year was the time to stop spending and start saving, and perhaps to put more money aside to improve the underground electrical system.

Councilman Kleid commented that communication from the Town to its residents needed improvement. The Cable TV announcements, the Internet, the Shiney Sheet, do not reach all residents. Certain matters, such as hurricane information and possible zoning changes must be communicated to each and every resident. In certain specific situations, a direct mailing may be essential, and he suggested that a mailing take place now from the

Town advising residents how to arrange for their employees getting back on the Island after a hurricane, and further advising of the possibility of new zoning changes. He stated that it was important to receive input from the public, and that specific dates and places for public meetings should be set forth in the mailing.

President Pro Tem Goldblum commented that Mayor Smith had contacted all of the other public entities regarding sharing the costs and operation of a fire boat. [Town Manager Elwell explained that a meeting had been held at the Port of Palm Beach, with a number of communities involved, and there was widespread support for the concept of having a fire boat in the water nearby, and little to no support for the formation of a formal inter-municipal team to staff it. As a result of that, the Town had taken the initiative to continue pursuing the potential of adding a fire boat to its public safety services, without the teamwork that it would love to have from its municipal neighbors. He suggested that further discussion take place at next month's budget meeting].

President Pro Tem Goldblum reminded all of the fire that had taken place at the Sailfish Club, and noted that if a fire boat had existed it could have been contained quickly.

Town Manager Elwell reminded everyone that next month was a very busy time, and a budget meeting would take place on Monday, July 11th, with the regular monthly Town Council meeting taking place he next day, Tuesday, July 12th. One item on the July 12th agenda would be the identification of a voting delegate at the annual Florida League of Cities Conference; he noted that each Town Council member had received a packet of information regarding the Conference, and any member interested in attending could contact his office regarding registration for the Conference.

President Brooks offered the opportunity for comments from the public.

There were none.

XI. DEVELOPMENT REVIEWS

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

A. Appeals

1. None

B. Time Extensions

1. None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. SPECIAL EXCEPTION #7-2005 WITH SITE PLAN REVIEW The application of Paolo Della Puppa relative to property described as lengthy legal description on file; commonly known as 150 Worth Avenue; located in the C-WA Zoning District. This is a request to replace an existing retail childrens' clothing store with a restaurant in Suite #110 of the Esplanade. Suite #110, which totals 2,161 square feet, currently houses The Purple Turtle. The new restaurant, known as Via Quadronno, will occupy the same 2,161 square feet. The restaurant proposes 71 seats, including up to 16 seats outside in the Via which also requires a special exception. Twenty-four of the seats will come from the number of seats supported for purposes of parking by the retail space (equivalency). The other seats are new. Per Sec. 134-1159(6), a restaurant requires a special exception approval in the C-WA district. Per Sec. 134-1161, the outdoor seating requires a special exception approval. Per Sec. 134-2182, a special exception for shared on-site parking is requested because the new use will have an increased parking demand of 16 more spaces than the former use. *Deferred from the March 8, 2005, and April 12, 2005, Town Council Meeting.* **Request for Deferral to the August 9, 2005, Town Council Meeting Per Letter Dated May 19, 2005, From James R. Brindell, Esq.**

DEFERRED Special Exception #7-2005 to the August 9, 2005, Town Council Meeting.

b. SITE PLAN REVIEW #3-2005 WITH VARIANCES The application of David W. Frisbie, as Trustee of the 1695 North Ocean Way Realty Trust u/a/d May 28, 2004 relative to property described as Lot 2 and the North 15 feet of Lot 3, Boca Raton Companies Inlet Subdivision; located in the R-A Zoning District. Site Plan Review to allow construction of a two-story, single-family residence and accessory structure totaling 10,480 air conditioned square feet, 12,956 total square feet on a platted lot that is 110 feet in width in lieu of the 125 feet minimum required; to allow a point of measurement variance for the height of a new single-family residence to be constructed on the subject property at 17 feet N.G.V.D. in lieu of the minimum 7.5 foot N.G.V.D. required; and, to allow a variance to permit construction of a terrace 15 feet from the Town bulkhead line and a portion of the two-story single family residence to within 29 feet 3 inches from the Town bulkhead line, in lieu of the minimum setback from the Town bulkhead line of 50 feet where no bulkhead/seawall improvement exists at 14.34 feet NGVD. *Deferred from the April 12, 2005, and May 10, 2005, Town Council Meeting.* **Request for Withdraw Per Letter Dated May 27, 2005, From G.E. Young, P.A.**

WITHDREW Site Plan Review #3-2005 from Agenda.

c. VARIANCE #19-2005 The application of James W. Harpel relative to property described as lengthy legal description on file; commonly known as 1102 North Ocean Boulevard; located in the R-B Zoning District. To permit enlargement of a non-conforming three-story residence (the Code permits only a two-story maximum); to permit construction of a 755 square foot addition with a building height of 28.91 feet in lieu of the 22 feet maximum permitted by Code; to permit construction of the 755 square foot addition with a maximum overall building height of 33.91 feet in lieu of the 30 feet maximum permitted by Code; and, to permit construction of the 755 square foot addition with an 18.44 foot street rear yard setback in lieu of the 35 feet minimum setback required by Code for rear street frontage. *Deferred from the May 10, 2005, Town Council Meeting.*

Ex-parte communication was declared by President Pro-Tem Goldblum with the Architect Jeff Smith; by Councilman Wyett with the attorney of record; by Councilman Coleman with Architect Smith. President Brooks noted that he had declared an ex-parte communication with Attorney Chopin and Architect Smith, when this item had been before the Town Council in May.

Town Attorney Randolph reminded the Town Council that when declaring ex-parte communication, in addition to identifying who the conversation had been with, a brief statement in regard to the nature of the conversation would be applicable.

Attorney Frank Chopin, on behalf of Mr. and Mrs. James Harpel, addressed the Town Council, distributing photocopies of some pages of the book concerning John Volk historical homes. He explained that this John Volk designed home had been built in 1935, and was an especially important landmarked house.

Attorney Chopin explained that the house was approximately 8,300 sq. ft., and the land was approximately 57,000 sq. ft.; the property was zoned R-B, which he considered a prime example of the kinds of conflicts that the Town Council was aware of – based upon the size of the property, its location in a neighborhood where other properties are zoned R-A, this property is made subject to the kind of zoning which is really designed for much smaller properties. He noted that if the property in question was zoned R-A, the applicant would not have to request some of the variances that were being requested today.

Attorney Chopin explained that the house had been allowed to deteriorate, and had been on the market for a number of years before the Harpels purchased it. They were committed to restoring the house, and would like to make a modest addition, which would allow them a family room, breakfast room, exercise room, storage and staff area, and a work room.

Attorney Chopin displayed the proposed site plan, requiring three variances. He noted that the Landmarks Commission had voted to recommend granting of the variances to the Town Council. He provided illustrations to point out the location of the existing house and guest house, the setback requirements, the courtyard, the tennis court, the facades of the home, and explained the areas that were possibilities for the proposed addition.

Attorney Chopin, exhibiting architectural renderings, discussed the alternative proposal. He advised that a variance for the height was needed. He stated that this had been presented to the Landmarks Preservation Commission.

Zoning Administrator Paul Castro stated that the project was presented to the Landmarks Commission last month, but in a different form than what was before the Town Council today. He advised that the plan has evolved, as Attorney Chopin explained. He stated that staff recommends deferring the project so that the Council could receive a recommendation, relative to this proposal, from the Landmarks Commission, which was different from the one that was considered by the Landmarks Commission last month.

Attorney Chopin commented that the proposal does have to go back to the Landmarks Commission again but only for their approval of the design features of the property. He advised that previously they went before Landmarks for their recommendation with respect to zoning. He stated that Landmarks made that zoning recommendation to the Council and that zoning request has not been changed.

Councilman Coleman stated that he would accept the applicant's proposal.

In response to Mayor McDonald, Attorney Chopin stated that what they were requesting was the height variance for the addition only.

Councilman Coleman stated that when a house was landmarked, a hardship was created that runs with the land, and the Town Council needs to be sensitive to those issues. He stated that the height the applicant was creating balances off the other side due to the definition of a garage on this piece of property. He stated he did not have a problem with that.

Mayor McDonald requested that Mr. Coleman state the basis for the hardship in his motion.

In response to Attorney Randolph, Mr. Castro replied that these plans had not been advertised, and that the public has not looked at this new addition. He stated it had originally been advertised back in April, and at that time, it was deferred by the applicant. He advised that the revised plans were received approximately two weeks ago. He said that in between the original advertisement and this meeting, the Landmarks Commission reviewed a much different plan than the one before the Town Council today.

Attorney Chopin submitted case law specifically dealing with the question of landmarking and hardships and how it tied into to Councilman Coleman's comments. He said that what was advertised was a height variance on the north side, and it was in the same area of what they were asking for today. He stated that it did not need to be re-advertised because the proposal was for the same spot, on the same property.

Attorney Randolph stated that he was not aware it was on the same spot.

Zoning Administrator Paul Castro stated that it was not on the same spot.

Attorney Chopin advised that it was on the same property line as before.

Mr. Castro stated, if the Council was going to consider this project, staff had other comments.

- Planning, Zoning and Building questioned the hardship since there was adequate property to be able to design this project without requiring a variance on the street side.

- The Fire Marshall requested the house be completely sprinkled.

- The Public Works Department requested a full scale paving and drainage plan.

Attorney Chopin stated that they agreed to those requests.

Assistant Director of Planning, Zoning and Building Veronica Close, in clarifying several issues, stated that staff considered the variance request to be different from the original set of plans, even though it was on the same street frontage. She said that staff was not convinced that if the public that came in to look at one set of plans, they would feel the same about the other. She noted that the same was true of the Landmarks Commission, and that was why staff was requesting that the new plan be considered by Landmarks. She advised that it was on the agenda at the Landmarks Commission Meeting tomorrow.

Attorney Chopin offered, into the record, a letter from Mrs. Gail Coniglio, a neighbor, stating that she had no objection to the project.

Attorney Randolph stated that one problem was whether people who responded to the advertisement had an opportunity to see what was being proposed today. The other problem was whether or not the Landmarks Commission, who had been charged with advising the Council as to whether they would approve this variance, had an opportunity to look at the current proposal to advise Council. Discussion ensued regarding the recommendations and re-advertising of this application.

Councilman Wyett stated that he liked the present plan before the Council today, but he could not vote to bypass the Landmarks Commission.

Mayor McDonald asked Attorney Randolph if the Town Council could make a decision without republishing?

Attorney Randolph stated his concerns were the setting of a precedent by allowing an applicant to come into a Town Council meeting with a different plan than had been advertised without giving the neighbors an opportunity to see those plans. He advised that he did think the Council could approve the proposal, if they were in favor of it, subject to it being approved by the Landmarks Commission, subject to it being re-advertised, and that no adverse comments were received from property owners. He reiterated that he had concerns about something coming in that was different than what was advertised, and having the Council vote on it.

In response to Mayor McDonald, Attorney Randolph stated that the height of the variance doesn't differ from what was advertised or approved by Landmarks; he advised that approval should be subject to two conditions, if the Town Council felt compelled to move forward today.

1. The applicant was required to go back to the Landmarks Commission.
2. The applicant should re-advertise with plans as proposed.

Councilman Coleman stated his concerns, and said he would vote to approve this application with the conditions suggested by Attorney Randolph. He suggested that presentations should, in the future, have a fifteen minute limit placed on them. He reiterated that when a house was landmarked, a hardship was created that runs with the land and the Town Council needs to be sensitive to that.

President Brooks agreed with Councilman Coleman and advised that when dealing with landmarked homes, the Council has tried to offer some leeway.

Councilman Coleman made a motion to approve Variance #19-2005 subject to an approval from the Landmarks Commission, and re-advertising with the present plans.

Ms. Lory Volk, Vice President of the John L. Volk Foundation, Inc., stated that she thought the elected officials had learned a lesson from the Four Winds issue. She commented that they evidently had not, because they were still usurping what the people who sit on the Landmarks Commission do. She stated that what was before the Council today was a procedural matter. They should not rush through the process, but let it go back to the point of origin. She stated that staff had correctly advised Council. The key word was precedence, and the meaning of landmarking in the Town of Palm Beach.

Attorney Chopin stated that the applicant was going back to Landmarks tomorrow for approval of the design only.

Mayor McDonald stated that it was a unique property; he did see a basis for the variance and suggested that the Council approve the project.

Councilman Coleman's motion died for lack of a second.

President Pro Tem Goldblum made a motion to defer Variance #19-2005 to the July 12, 2005, Town Council Meeting, with the following conditions:

1. **Presentation of the revised plans to the Landmarks Commission.**
2. **Re-advertise the plans as presented to the Town Council today.**

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

d. SPECIAL EXCEPTION #14-2005 The application of Patave South County, Inc. d/b/a 264 The Grill, Patricia A.Gatti, VP relative to property described as Lot L, Phipps Plaza, commonly known as 264 South County Road; located in the C-TS Zoning District. To allow a new restaurant operator to continue to operate an existing 3,407 square foot restaurant with 118 seats; to allow 8 seats outdoors which will be taken from inside the restaurant; and, to adopt conditions of previous approvals including, but not limited to, loading zones, use of door at southeast corner, number of seats (118), garbage control and dumpster use. *Deferred from the May 10, 2005, Town Council Meeting.*

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

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council advising that, Patricia A. Gatti, the new operator of 264 TheGrill Restaurant, was present today, as requested by the Town Council at last month's meeting.

Attorney Broberg advised that last month Town-serving documentation was provided showing that the restaurant was 75.5% Town-serving, exceeding the 50% rule as required by code.

Attorney Broberg explained that a Special Exception was being requested by the applicant to maintain the 118 seats permitted, but to place eight of them outside. He stated that they were also requesting the Special Exception to approve previous approvals that were previously recorded.

Attorney Broberg reported that representatives of the valet parking company, International Parking, were present today, and had worked at this site for the last ten or eleven years. He reviewed the valet parking report which was provided to the Mayor and Town Council in the back-up material. The report contained valet parking history at 264 The Grill and suggestions for future parking at the restaurant. He noted that he did speak with Mrs. Volk to discuss those suggestions.

Zoning Administrator Paul Castro advised that staff had requested Major Sallenbach to investigate any parking complaints. The only complaints were of people parking in the passenger loading and unloading zone. He stated that there were hardly any complaints regarding parking or the valet parking operation.

Mr. Castro advised that the application was for a new Special Exception as required by the Declaration of Use Agreement, and all conditions that have to be met in the Special Exception criteria. He stated that staff recommends that 264 The Grill continues to meet all of the conditions previously granted.

Mrs. Jane Volk, Phipps Plaza, addressed the Town Council, stating that she did not understand why so few complaints had been reported to the Police Department. She expressed her concerns regarding the parking in the Phipps Plaza area as well as her concerns regarding the valet parkers. She stated that if the current owner would abide by what was expected of the valet parkers, the residents would be very happy. The previous owner of the restaurant, Mr. DeMarinas, had promised that he would do that, but did not.

In response to President Brooks, Attorney Broberg advised that the owner of the valet parking company had instructed his employees on what to do and on what not to do.

Zoning Administrator Paul Castro reported there was another very important item to be discussed which was the outdoor seating. He explained that, at last month's Town Council meeting, he expressed the concerns of staff regarding the hours of operation and the possibility of noise within the proposed seating area. He advised that outdoor seating had been previously requested and denied. The previous owners went to court and lost on the outdoor seating issue. He stated it had been quite contentious and staff had concerns that if outdoor seating was granted, there may be some problems with the residents in that area.

Mrs. Antoinette DeSousa, 238 Phipps Plaza, addressed the Town Council, stating that her home abutted the restaurant, and if the outdoor seating was granted, it would be an impossible situation. She stated that outdoor dining had been done about ten years ago; the noise had funneled right to her home and it was terrible. She said that they could not live with it then and could not live with it now.

Mr. Larry Ingber, 219 Everglade Avenue, stated that he frequently dines at 264 The Grill and parks the car himself. He advised that there was plenty of parking on County

Road with at least 25 to 30 parking spots, if not more. He reported that there was always an empty spot, and he has never seen it completely full. He urged the Town Council to keep the parking on the street eliminating any parking at Phipps Plaza.

Attorney Broberg addressed the outdoor seating issue advising that a natural sound dampener was created by an awning over the top of the area, the walls in that area, and the shrubbery there. He stated that Mrs. DeSousa was about 100' away with the walls and shrubbery blocking her entrance. He reported that the person most affected by the outdoor seating was the accountant's office right above the restaurant, and they stated that they had no objection to the outdoor seating. He recommended that the restaurant would shut their doors at 9:30 p.m. or 10:00 p.m. He noted that the restaurant was not a late night establishment.

Ms. Lory Volk stated that it was her belief that the request for outdoor seating was a dead issue; and when Attorney Broberg spoke with her mother-in-law, Mrs. John Volk, he did not discuss outdoor seating. She said that it would make sense for it to be a dead, because when it went over to the courts it was denied. She stated that the walled off courtyard would not deaden the noise and that there was no way to get rid of the noise. She stated that 90% of the residents, who responded to the surveys turned in at last month's Town Council meeting, requested no outside seating and asked the Town Council to honor their request.

In response to President Brooks, Attorney Broberg explained that there was an existing low awning that would keep all sound from going upward as well as walls and shrubbery that deaden the sound going out that way.

Attorney Broberg stated that he vaguely remembered the lawsuit from years ago, and it was the operator of the restaurant against the Town for having denied the request for outdoor seating - not persons against the Town. He explained that the previous owner had a traffic expert who stated that ambient noise from air conditioners in the area were louder than the noise from the customers outside. He believed there had been an issue regarding the cross-examination of the traffic professional presenting that report. He stated this request was completely new, and the current owner was only asking for eight seats. The previous owner had asked for a lot more.

Attorney Broberg said there this was a fairness issue since many restaurants had come before the Town Council with opposition and had been allowed to do this. He reiterated that they were willing to go in at 9:30 p.m., a lot earlier than many of the other restaurants.

In response to Mayor McDonald, Attorney Broberg stated that there would be no valets taking cars around Phipps Plaza; there would be no valets parking cars in Phipps

Plaza; and everything possible would be done to direct the valets to exit to the red stripe in front of Waterworks.

Mrs. DeSousa stated that the conditions were the same ten years ago regarding the outside seating. She advised that everything was exactly the same including the awnings and the shrubbery with nothing having changed.

In response to Mayor McDonald, Attorney Broberg advised that to mitigate the noise, they would come in at 9:30 p.m. The current operator was very sensitive to the neighbors and would do anything the neighbors like; but she would like to have eight outdoor seats since the smoking requirements do not allow for indoor smoking.

President ProTem Goldblum made a motion to approve Special Exception #14-2005, without the outdoor seating. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

2. New Business

a. VARIANCE #20-2005 The application of Three Fours Trust relative to property described as lengthy legal description on file; commonly known as 444 North Lake Way; located in the R-B Zoning District. To allow construction of a 6 foot high retaining wall in lieu of the 4 foot maximum allowed within 25 feet of the easterly right-of-way of the Lake Trail. The proposed 6 foot high wall is along Lake Trail. Plans are on file with the Planning, Zoning and Building Department for review.

Ex-parte communications were declared by President Pro Tem Goldblum with Attorney Ziska regarding the wall, Councilman Wyett with Attorney Ziska regarding the merits of the case, Councilman Coleman with the applicant.

Attorney Maura Ziska, representing Mr. and Mrs. Jaffe, stated that the variance request was to allow for a 6-foot high wall along the Bike Path in lieu of the 4-foot maximum allowed by the Code. She advised that a higher wall was needed for safety and security. She explained that the hardship runs with the land which was created by the change of grade from the property to the Lake Trail.

Attorney Ziska said that when she spoke with Zoning Director, Robert Moore, he advised that, in the future, the Town may consider handling this type of request on an administrative level or by a change in the Zoning Code. She advised that there have been precedents for other variances granted along North Lake Way and the Bike Path. She stated that there was an inconsistency in the Zoning Code, because it allowed for a 6-foot wall on a street, and the Bike Path was considered a street in the Zoning Code.

Attorney Ziska advised that the wall would be 3 feet off the Bike Path and a hedge would be placed in front with nothing on the west side of the Bike Path over 30 inches in height.

Zoning Administrator Paul Castro informed the Town Council that this would be a Study Item for next year along with the Lake vista, itself. Staff comments were related to the hardship of the land and the actual relationship with this wall and the neighboring walls on either side. He stated he did not have any information on those walls. He restated that it would be a Study Item and that staff questions the hardship.

In response to President Brooks, Attorney Ziska advised that they need 6 feet even though there was a hedge in front of the wall, because the hedge would be on the other side of the wall. The grade of the property was so high that it needs to gradually grade down to the wall. She stated that a 4' wall would be lower than the grade, and would not have the gradual slope.

Councilman Wyett made a motion to approve Variance #20-2005 to allow construction of a 6-foot high retaining wall abutting the Lake Trail in lieu of the 4-foot maximum allowed. Councilman Coleman seconded the motion.

In response to Attorney John Randolph, Mr. Wyett stated that the reason for granting this variance was the safety factor, and the fact that the Town Council has been granting these as a matter of course.

President Brooks stated that he believed safety should be a hardship, but it was not considered as a hardship. He advised that this was something the Town Council had heard would be considered as a Study Item many times, and asked if it would be considered in October?

Mr. Castro advised that it would be presented to the Town Council during the regular course of Zoning items during the next Zoning Season. He stated that this issue was brought up this year, and it was added on as a Zoning item at the Town Council's direction.

In response to President Brooks, Assistant Director of Planning, Zoning and Building Veronica Close stated that people were encouraged to hold requests for walls until there was a Code regarding same.

After discussion, **Councilman Wyett amended the motion to approve Variance #20-2005 to include the condition that there be no vegetation more than 30" across**

the width (nothing higher than 30" will be planted on the west side). The exception to this restriction is the two date palm trees to be located on the west side of the Lake Trail. The motion was seconded by Councilman Coleman.

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

Councilman Kleid explained his yes vote by stating that he was convinced they were going to change this rule, and it was going to happen within the next five to six months.

Mayor McDonald suggested that Zoning in Progress be done on items regarding wall variances requests.

President Brooks stated that the Town Council was depending on PZ&B to tell people that they do not want to hear these items until the Town has an Ordinance.

b. VARIANCE #21-2005 The application of Lee Munder relative to property described as lengthy legal description on file; commonly known as 1029 North Ocean Boulevard; located in the R-A Zoning District. To allow a generator (5.16 feet tall and 18 sq. ft. in area) and a transformer switch (6.34 feet tall and 8 sq. ft. in area) to be placed in the front yard with a setback of 29.66 feet and 32.04 feet, respectively, in lieu of the 35 foot minimum required. Plans are on file with the Town Planning Zoning and Building Department for review.

Ex-parte communications were declared by President Pro Tem Goldblum with Attorney Ziska regarding the placement of the generator, and Councilman Wyett with Attorney Ziska regarding the location of the generator.

Attorney Maura Ziska, on behalf of the applicant, advised that since filing this application, the request for the transformer switch has been eliminated. She stated that they were able to move the generator further back to the wall where it would only be encroaching into the front yard setback by mere inches. She advised that the property was located in the R-A Zoning District which requires a 35-foot front yard setback for buildings that could be built of a maximum overall height of 30'. The proposed generator was 5 feet tall and would be screened by a new wall of even height and there was also a 20-foot Ficus hedge along North Ocean Boulevard. She advised that this was the most suitable location for the generator; by placing the generator, at this location, along with some pool equipment, which encroaches only a few inches into the setback, it would be much more suitable and sensitive to the neighbors.

Zoning Administrator Paul Castro commented that staff questions what mere inches were?

Attorney Ziska advised that the generator was moved back, because it was required to have a foot and a half of clearance behind the wall. The request would be 33.8 feet instead of 35 feet. She said that what they were talking about was 14 inches encroaching into the 35 foot front yard setback.

Mr. Castro stated that if the applicant could address the hardship criteria, staff would recommend that there should be a wall in front of the generator.

Attorney Ziska advised that the hardship was the configuration of the property with the changing of the slopes, and the configuration of this residence and the neighboring residences and their living spaces.

Councilman Coleman stated that he did not see any hardship.

In response to President Pro Tem Goldblum, Attorney Ziska, provided architectural renderings and photographs, to indicate that the location he suggested was not optimal from a noise standpoint, because of its proximity to living space. She advised that the applicant selected the location by the pool equipment, near a wall, because there was no living space next to it.

Attorney Ziska stated that there was a hardship to be considered, but there was the impact on the neighborhood to be considered as well.

Mr. Castro suggested placing the generator in the backyard. He commented that it would be run only twice a month, to test the generator, unless there was a storm, and it would not interrupt anything. He advised that the proposed location puts it in the front yard placing the noise out into the street.

Mayor McDonald stated that he did not know how the Town Council would distinguish this application from the Glazer application which they turned down the month before. He said it was the same type of application.

Attorney Ziska advised that Glazer was requesting a 6-foot setback instead of a 25 feet.

Mayor McDonald said that it was still a variance request for a generator, requiring a hardship.

President Pro Tem Goldblum advised that he had informed Attorney Ziska that if the generator was moved back just 10 feet, a variance would not be required, and suggested that she do what was necessary to place the generator without a variance being required.

Councilman Coleman made a motion to deny Variance #21-2005. President Pro Tem Goldblum seconded the motion. On roll call, the motion carried unanimously.

President Brooks directed staff to advise residents not to come before the Town Council with variances on generators.

c. VARIANCE #22-2005 The application of Reynco, Inc., Andrew Reynolds, President relative to property described as lengthy legal description on file; commonly known as 242 Colonial Lane; located in the R-B Zoning District. Variance to allow the demolition of a carport and the construction of a single car garage to be added to a one story house with a 2.0 foot side setback, in lieu of the 12.5 foot minimum required; variance to allow a 3.5 foot wide front covered entry porch to be added to a one story house with an 18.16 foot front setback in lieu of the 25 foot minimum required; and, variance to allow a nine foot wide swimming pool with a rear setback of 3.88 feet in lieu of the 10 foot minimum required.

There was no one present on behalf of the applicant.

Zoning Administrator Paul Castro requested that the Town Council defer this matter until next month. He advised that the applicant was required to go back to the Architectural Commission for a recommendation, and that may be the reason the applicant was not present today.

In response to President Brooks, Mr. Castro advised that the attorney for the applicant was Jim Payne, who was to send a letter requesting a deferral which was not received by staff. He advised that staff recommends deferral of the project until next month.

Councilman Wyett made a motion to defer Variance #22-2005 to the July 12, 2005, Town Council Meeting. The motion was seconded by Councilman Kleid. On roll call the motion carried 4/1. Councilman Wyett, Councilman Kleid, President Pro Tem Goldblum, and President Brooks casting affirmative votes; Councilman Coleman casting a dissenting vote.

d. SITE PLAN REVIEW #4-2005 WITH Special exceptions
The application of Sunset Avenue Corporation, by Brad Bleefeld, Vice President and Treasurer relative to property described as Parcel 1: Lots 194 to 200 inclusive, Floral Park, Parcel 2: The East 20 feet of Lot 70 and all of lots 71, 72, 73 and 74, Sunrise Avenue Addition No.2, and Parcel 3: Lots 190 to 193 inclusive, Floral Park; commonly known as 240 Sunrise Avenue and 235 Sunset Avenue; located in the C-TS Zoning District. This application is a request to construct a new two-story synagogue and Jewish Learning Center on a 1.5 acre parcel of land fronting on Sunrise Avenue. The building will have 200 seats on the second floor totaling 4,337 square feet and a social hall, kitchen and office totaling 4,337 square feet on the ground floor. The building will sit on three combined lots with frontage on both Sunrise Avenue and Sunset Avenue. A total of 115 parking spaces will be provided with access from Sunset Avenue. In addition to functioning as a synagogue, and in common with other religious facilities, this facility will also be used for non-profit cultural purposes such as lectures, art exhibits, Torah study groups, and other special events. The application requires the following approvals: Special Exception use approval for a synagogue in the C-TS district; Special Exception approval for a two-story building in the C-TS district; and, site plan review approval to construct the improvements identified above. The existing parking lot on Sunrise Avenue, which is known as 240 Sunrise Avenue (described as Lots 71-74 of Sunrise Avenue Addition #2) was the subject of Special Exception #26-97 with Site Plan Review which was approved on August 12, 1997. That Special Exception included a condition of approval which stated that "The parking lot will be for the exclusive use of the condominium unit owners of the Palm Beach Hotel." Since the synagogue will be built on that parcel, that condition of approval is requested to be deleted. This deletion is part of this Special Exception request. The parking required by Special Exception #26-97 will be provided in the new parking lot on the Sunset Avenue parcel. **Request for Deferral to the July 12, 2005, Town Council Meeting Per Letter Dated May 24, 2005, From James R. Brindell, Esq.**

DEFERRED Site Plan Review #4-2005 to the July 12, 2005, Town Council Meeting.

e. SITE PLAN REVIEW #5-2005 The application of Oakland Property LLC, Victor Afonso, Managing Member relative to property described as lengthy legal description on file; commonly known as 2315 South Ocean Boulevard; located in the R-C Zoning District. On May 8, 2001, the Town Council approved Site Plan Review #8-2001 and Variance #28-2001 for this project. This application is to modify this proposed project by reducing dwelling units from eight to five, changing the building orientation of the west building, changing the internal access drive location and pool configuration, and modifying the proposed project architecture. The east building footprint and height do not change. The existing variances will not be exceeded and no new variances are being requested.

Ex-parte communication was declared by Councilman Wyett for last month.

Attorney James Brindell, on behalf of the applicant, stated that there had been a previous Site Plan for an ocean parcel where the old SeaLord Hotel was located. The Site Plan approved eight condominium units, six in an east three story building, and two town homes on the west portion of the site.

Mr. Brindell advised that the present application was for a revision to reduce the number of units in the main building from six to three keeping the two town homes on the west, changing the orientation from a north/south direction to an east/west direction. He stated there were no additional requests for variances or changes in the heights.

Architect Gene Lawrence, referring to architectural renderings of the project, reviewed the application discussing the previously approved Site Plan as well as the changes made to the current Site Plan application.

Assistant Director of Planning, Zoning and Building Veronica Close reviewed staff comments:

1. The Fire-Rescue Department requested a fire sprinkler and fire alarm plan per the Florida Building Code.

2. The Public Works Department requested that they redesign the driveway entrances to reduce conflicts; examine the condition and height of seawall; and submit drainage plan.

3. The Planning, Zoning and Building Department requests the applicant to plan to provide a 25 foot wide drive aisle for the north unit on the west building, and a better back-up area, if possible.

4. The Architectural Commission sees the modifications (as proposed) as an improvement.

Mr. Lawrence discussed the alternate plan regarding the back-up area that they have planned. He advised that the alternate plan eliminates any conflicts.

Ms. Close advised that the alternate plan did address the concerns of PZ&B, but she could not speak for the Public Works Department.

In response to Mayor McDonald, Mr. Lawrence stated that they do not own the west parcel, and it has been sold. He advised that it was no longer a part of this project, and there was no connection between the two owners.

In response to Mayor McDonald who questioned the time line, Mr. Lawrence stated that they have several buyers who were very anxious to sign the condominium documents.

Councilman Wyett stated he met with staff, and reviewed the concerns staff had regarding the first two cars that would have to back out onto the street in order to get out. He said that the situation was not desirable.

Mr. Lawrence discussed his plan to alleviate that problem.

In response to Mayor McDonald, Mr. Lawrence advised that during construction, they would maintain the screening for 30 feet which was the full length of the property. He noted that they did have a meeting with Harbor House.

Mayor McDonald requested that the maintenance of the screening should be made a condition of any approval granted to the applicant by the Town Council.

Councilman Wyett made a motion to approve Site Plan Review #5-2005 with the following conditions:

1. **The applicant maintains the north landscape buffer (maintain screening for the full length of the property, 30 feet);**
2. **The applicant examines the condition of the seawall and height;**
3. **The applicant submits a drainage plan for review to the Town's Public Work Department;**
4. **The applicant make changes to the parking plan as outlined.**

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

f. FLOOD VARIANCE #1-2005 The application of Curtis David and Shari M. Emmer relative to property described as Lot 27, East Shore Addition to Palm Beach; commonly known as 233 Plantation Road; located in the R-B Zoning District. The applicant is requesting a flood variance pursuant to Section 50-69 in order to allow a second floor and first floor additions on the existing one story residence. The cost of the addition (approximately $400, 000.00) exceeds fifty (50%) percent of the estimated value (approximately $600,000.00) of the existing structure, thus needed a flood variance in order to be built. The Code allows for applicants to request variance relief to exceed fifty (50%) percent if the floor elevation is between 7.0 feet NGVD and 7.5 feet NGVD, as requested in this case. The existing finish floor elevation is at 7.37 feet NGVD, only 1.5 inches shy of the 7.5 feet NGVD finished floor elevation required by the Code. The existing ceilings are only 8 feet high and all the interior and exterior doors are 6 feet 8 inches high (which is minimum to code). It is not possible to raise the finish floor 1.5 inches as all the doors would become shorter than code allows. That would render the entire house non-conforming.

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

Attorney Alan Ciklin, on behalf of the applicant, stated that the request was for a Flood Variance which does not require a hardship. He advised that the home was at 7.37 feet and the Code requires 7.50 feet. He reviewed the proposed application explaining that the variance being requested was for 1.5 inches, and the Code does specifically allow for variances with this type of improvement.

Zoning Administrator Paul Castro commented that staff had one condition of approval and that was for the applicant to enter into the standard hold harmless agreement.

Councilman Wyett made a motion to approve Flood Variance #1-2005 with the condition that the applicant enter into the Town's general release and hold harmless agreement and provide the Town with a recorded certified copy of the agreement prior to issuance of a building permit. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.

3. Other

a. Consideration of the Proposed 2005-2006 Zoning Season Calendar and Tentative List of Study Items. [Robert L. Moore, Director of Planning, Zoning, and Building]

Zoning Administrator Paul Castro reviewed the Proposed 2005-2006 Zoning Season Calendar and tentative List of Study Items and advised that staff recommends that the Town Council approve same, and direct staff on which items the Council wants to study during the 2005-2006 Zoning Season. He clarified that Item 6 and Item 10 were the same, and one of those items could be eliminated. He noted that there were 13 Study Items for the Town Council's consideration.

President Brooks commented that there would be three community meetings - October 25, 2005, November 7, 2005, and November 9, 2005.

Assistant Director of Planning, Zoning and Building Veronica Close advised that those dates were correct. She stated that earlier in today's meeting she heard that there was a request to change the dates to October 1, 2005, November 1, 2005 and one in December 2005.

Councilman Kleid suggested that the third meeting should be moved into December because most seasonal residents should be back in Town then.

Ms. Close advised that the staff had no problem with that but would like the Council's indulgence, if the schedule has to be moved a little further back, to accommodate that request.

Councilman Kleid added that the communication with respect to these meetings should be extensive even if it requires a direct mailing to each resident.

In response to Mayor McDonald, Ms. Close stated there was no reason the meetings could not be held in November, December and January. She said that if the Town Council wants to move the meetings up an additional month, staff had no problem with changing the dates. She advised that the reason the meetings were moved up was that, at the last meeting, staff got a sense of urgency, which they now believe has changed.

Mayor McDonald requested that the Town Council consider November, December and January for the community meetings to be held, because there were many more residents back in January than in December.

Councilman Wyett discussed the holding of the Planning and Zoning Commission workshops during the Jewish holidays. He asked that the meeting dates be changed due to the importance of these meetings and so more residents could be present.

Ms. Close advised that staff would take a look at that to accommodate the holiday, but stated that the meeting was on the Evaluation and Appraisal Report on the Comprehensive Plan; that it was a technical report, and there were deadlines the Town had to meet.

Councilman Coleman suggested that in keeping with Mr. Kleid's request for communication between the Town and the residents, that the residents be allowed to file their e-mail addresses with staff.

Ms. Close stated that staff could put that notice on their website and invite people to submit their e-mail addresses.

Town Manager Peter Elwell stated that he would like to discuss the methods of communication next month, if that was acceptable.

Councilman Wyett stated that in making a motion, he would request that the meetings be held in middle or late November and not the beginning of November.

Mr. Tom Turchan, 249 Queens Lane, advised that a group of gentlemen had been present earlier to speak against the early meetings. He reported that they agreed with Mr. Wyett that there should be meetings held in November, December, January when there were actually more people in Town. He explained the concern that everything was being railroaded through, and advised that he knew it was not the intent. He commented that it would help to have residents here during that important discussion period. He suggested that e-mail was not the best way to communicate with residents, and that sending letters was the best way to communicate with them.

In response to President Brooks, Councilman Wyett stated that at least one evening meeting was a good suggestion.

Councilman Wyett advised that, after all the zoning community meetings had been completed, he would be making a recommendation for a referendum concerning north end zoning.

Ms. Close clarified that the staff had anticipated that all three meetings would be held in the evening. She advised that when the meetings were moved back, one of the consequences would be that the Planning and Zoning Commission meetings related to Zoning would also be moved back, because they would want the benefit of community input as well.

Councilman Wyett made a motion to approve (modified) Zoning Season Calendar and the list of proposed Study Items, with the following modifications:

1. **The Community Meetings will be scheduled in November, December, and January. (The November Community Meeting is not to be held in the beginning of November but in the middle or late November.)**

2. **Extensive communication with residents through direct mail take place, with respect to the three Community Meetings. Discussion regarding the communication to residents would take place at the July 12, 2005, Town Council Meeting.**

The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.

b. Status Report on Conditions of Approval for Special Exception #28-2004 with Site Plan Review, Michael R. McCarty's Restaurant, 50 Cocoanut Row. [Robert L. Moore, Director of Planning, Zoning, and Building]

Zoning Administrator Paul Castro provided a status report advising that there were no complaints relative to McCarty's Restaurant.

Councilman Coleman made a motion to accept the status report provided by staff, that applicant had met conditions of approval and could continue to operate. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

c. Status Report on Conditions of Approval for Site Plan Review #4-2004 with Special Exception, Amici Restaurant, 375 South County Road. [Robert L. Moore, Director of Planning, Zoning, and Building]

Zoning Administrator Paul Castro provided a status report advising that there had been one valet complaint which has been resolved, and one noise complaint that was also resolved.

It was the consensus of the Town Council to accept the status report provided by staff, that applicant had met conditions of approval, and could continue to operate.

d. Request by The Breakers for Extended Work Hours. [Robert L. Moore, Director of Planning, Zoning, and Building]

Councilman Wyett made a motion to approve the request by The Breakers for extended work hours, with the following conditions:

1. **The approved hours are Monday through Friday - 7:00 a.m. to 8:00 p.m., Saturdays, and Sundays - 8:00 a.m. to 6:00 p.m.**

2. **The property owner shall send a notice to property owners within 300 feet of the work area as to the extended hours. Any noise complaints during the extended hours will be cause to stop work during the extended hours.**

3. **There shall be no work on Thanksgiving holiday (November 24th and 25th), Independence Day, Labor Day, Veteran's Day, Christmas Day and the day after, and New Years Day and the day after.**

4. **Flagler Drive and Via Bethesda shall not be used for construction traffic. If a situation arises where either of these street are needed for heavy equipment access, prior approval must first be granted by the Director of Planning, Zoning and Building.**

5. **Building exterior should be completed by November 15, 2005 and interiors, landscaping and irrigation substantially complete by December 30, 2005. If not completed by these dates and extended hours are still needed, the property owner shall be required to request further extended hours from the Town Council.**

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

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business, the regular Town Council meeting of June 14, 2005, was adjourned at 5:10 p.m.

William J. Brooks
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk