TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON JUNE 13, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting of June 13, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
In place of Town Attorney John C. Randolph
representing the Town: Attorney Stirling Clarke and Attorney Roberto Vargas
Jay Boodheshwar - Recreation Director
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
William Crouse - Human Resources Director
Charles Langley - Public Works Assistant Director
Bret Madison - Public Works Electrician II
Henry Marchman, Police Department Parking Control Manager
Edward J. Moran - Fire Rescue Chief
Greg Parkinson, Police Department CSEU Manager
Michael Reiter - Police Chief

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Cheryl Somers - Assistant Finance Director
Jane Struder - Finance Director
Lynda Venne - Purchasing Agent
Rob Walton - Chief Code Compliance Officer
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of William J. Diamond, Governmental Impact Review Panel, From April 2005 Through May 2006.

Mayor McDonald presented William J. Diamond, with a plaque in recognition of service to the Town of Palm Beach.

B. Recognition of Brian McIver, Governmental Impact Review Panel, From April 2005 Through May 2006.

Mayor McDonald presented Brian McIver, with a plaque in recognition of service to the Town of Palm Beach.

C. Recognition of Samuel C. McLendon, Governmental Impact Review Panel, From April 2005 Through May 2006.

Mayor McDonald presented Samuel C. McLendon, with a plaque in recognition of service to the Town of Palm Beach.

D. $3,000 College Scholarship Provided by the Palm Beach Civic Association and the Citizen's Association of Palm Beach to Benefit a Child of a Town Employee, Presented This Year to Elliot Crockam, Jr., Son of Elliot Crockam, Crane Operator of the Public Works Department.

Mayor McDonald presented Elliot Crockham, Jr., the son of Elliot Crockam Crane Operator of the Public Works Department, with a $3000 check for being selected as the recipient of the Palm

Beach Civic Association and the Citizen's Association of Palm Beach Scholarship Award.

Mayor McDonald thanked the Civic Association and the Citizen's Association for their generosity.

E. Introduction of Blake Rizzolo, Son of Marlene Rizzolo, Town Nurse; Patrick Dickson, Son of Michael Dickson, Firefighter/Paramedic; and Lisa Rojas, Daughter of Danny Rojas, Warehouse Assistant, Recipients of a Full Scholarship to Attend Palm Beach Day School.

Mayor McDonald presented full scholarships to attend Palm Beach Day School to Lisa Rojas, daughter of Danny and Maria Rojas; Patrick Dickson, son of Michael and Jacqueline Dickson; and Blake Rizzolo, son of Marlene and Robert Rizzolo;

IV. COMMENTS OF MAYOR JACK McDONALD

In the last few months, I've presented seven scholarships to children of Town employees, three of them from one of the most prestigious private schools in the county. These expressions of generosity and concern from the community make Palm Beach a very unusual community and a truly remarkable place to work, in addition, to being the most beautiful and safest Town in America.

Parking Meters:

Many of us feel that electric poles and lines are ugly, and one of the reasons to underground them is aesthetic. Parking meters are also unsightly and we have discussed and neglected them too long. There's no reason not to proceed with the elimination of parking meters Town-wide as soon as possible. Not only will this improve the beauty of our Island, but it will be less labor intensive and provide better service to our residents. No need to race back to a meter for more time. Picture the enhanced beauty of South Ocean Boulevard without all of those meters.

Planning, Zoning and Building:

The months slip by and Planning, Zoning and Building remains in Town Hall along with its two thousand trips a month into Town while staff huddles together like Reservation Indians. Looking for buildings to purchase or lease in the hottest real estate area of West Palm Beach, along the Flagler corridor, is a losing proposition. Staff should be directed elsewhere to increase our chances of near term success. I suggest the Council, again, consider the area south of Belvedere. That area provides a close-in location and reasonable economic terms. It is not our residents that are visiting Planning, Zoning, and Building each day, so to look in the most expensive area of West Palm Beach for their convenience is misdirected. This project needs to progress and provide relief for our staff in the Town. The longer we wait the more expensive our options become.

I would like to pause for a moment here, and I'd like to have Paul Brazil and Sandra Tate stand up and anyone else that works in Public Works, Eric and anyone else, if you would all stand up please. I want to recognize all of you for completion of the Reach 8 Dune Restoration Project. It was a difficult, logistical assignment with many disappointments, severe time frames and the pressure of hundreds of unhappy residents. Congratulations to a successful project, well done. Thank you.

Palm Tran:

Next month we will have the opportunity to shift Palm Tran Route 42 bus service from residential Seminole Avenue to commercial Royal Poinciana, a street that unlike Seminole complies with the American Disability Act requirements. The residents of Seminole deserve relief. I've met with the County Commissioner and County staff and we have an opportunity to remedy this situation next month, and I would ask the Council to give it careful consideration.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

<u>Councilman Brooks:</u>

- Regarding Mayor McDonald's proposal for a Charter Review: the Mayor and Town Council could conduct the review, or a Charter Review Commission could be established. Suggested consideration be given to Council Members running at large.
- Consideration of Mayor McDonald's request to be relieved of his obligation to vote in a tie; alternatively, the Council could look at the Mayor as being the presiding officer.
- Elected official term limits should not be more than ten-years.

<u>President Pro Tem Kleid:</u>

- Police Department involvement with strict code enforcement; education of police officers as to code enforcement obligations.

<u>President Coleman:</u>

- Elections officials running at large;
- Supported concept of giving the Mayor full representation instead of taking away his tie vote.

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

Isabel Furlaud, 745 Hi-Mount Road and 675 North Lake Way, commented regarding Hi-Mount Road parking problems; her opposition to Variance #17-2006; enforcement of on-site parking; bussing in of construction workers.

Tom Perry, retired captain from the Palm Beach Police Department, read a statement into the record, on behalf of thirty-nine retired police officers or their beneficiaries; and commented regarding the Pension Board, and recent retroactive changes made.

Amanda Schumacher commented regarding support of P.B.Cats.

Cathy Wells commented regarding support of P.B. Cats.

James Anstis, Architect, commented regarding the ARCOM appeal related to 202 Plantation Road, that would be forthcoming in today's agenda.

VII. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED to July 11, 2006, Town Council Meeting, Item X.B.4., Proposed Use of Town Right-of-Way for Beautification Project on North Ocean Boulevard between Everglade Avenue and Dunbar Road; and Item X.B.4.a., Resolution No. 41-06.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to defer to the July 11, 2006 Town Council Meeting, Item X.B.4, Proposed Use of Town Right-of-Way for Beautification Project on North Ocean Boulevard between Everglade Avenue and Dunbar Road; and Item X.B.4.a., Resolution No. 41-06. On roll call, the motion carried unanimously.

WITHDRAWN Item XII.B.1., Request for Extension of Work Hours at 2315 South Ocean Boulevard.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to approve the withdrawal of Item XII.B.1., Request for Extension of Work Hours at 2315 South Ocean Boulevard.

Director of Planning, Zoning and Building Veronica Close explained that the applicant indicated that they wanted to vacate this project and consider a new project. She noted that the approvals that had been previously granted were for modifications of the existing project. The new project would now take place under new code requirements and would not have the advantage of the prior, more lenient code.

On roll call, the motion carried unanimously.

DEFERRED to July 11, 2006, Town Council Meeting, Item XII.C.1.a., Special Exception #3-2006, 8-14 Via Mizner.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to defer to the July 11, 2006, Town Council Meeting, Item XII.C.1.a., Special Exception #3-2006, 8-14 Via Mizner. On roll call, the motion carried unanimously.

DEFERRED to July 11, 2006, Town Council Meeting, Item XII.C.3.a., Site Plan Review #5-2006 with Special Exceptions and Variances - Modification, 2842 South Ocean Boulevard.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to defer to the July 11, 2006, Town Council Meeting, Item XII.C.3a., Site Plan Review #5-2006 with Special Exceptions and Variances - Modification, 2842 South Ocean Boulevard. On roll call, the motion carried unanimously.

DEFERRED to September 12, 2006, Town Council Meeting, Item XII.C.4.a., Variance #16-2006, 750 South County Road.

Motion made by Council Member Wyett, seconded by Council Member Brooks, to defer to the September 12, 2006, Town Council Meeting, Item XII.C.4.a., Variance #16-2006, 750 South County Road. On roll call, the motion carried unanimously.

MOVED from the Consent Agenda, Item VIII.A., Minutes: May 3, 2006, Item VIII.C., Minutes: May 9, 2006, and ItemVIII.D., Minutes: May 10, 2006 to Regular Agenda, as Item X.B.9.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett, to move from the Consent Agenda, Item VIII.A., Minutes: May 3, 2006, Item VIII.C., Minutes: May 9, 2006, and ItemVIII.D., Minutes: May 10, 2006 to Regular Agenda, as Item X.B.9. On roll call, the motion carried unanimously.

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

VIII. CONSENT AGENDA

A. MINUTES: MAY 3, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL ZONING WORKSHOP REGARDING ZONING SEASON.

B. MINUTES: MAY 8, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING TOWN DEPARTMENT PRESENTATIONS.

C. MINUTES: MAY 9, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING.

D. MINUTES: MAY 10, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING TOWN BOARDS AND COMMISSIONS.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON MAY 24, 2006.

F. RESOLUTIONS

1. RESOLUTION NO. 31-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Excluding 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]

2. RESOLUTION NO. 32-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of Amendment No. 1 to the Agreement Between the City of West Palm Beach and the Town of Palm Beach for Payment of Certain Water Main Improvements Within the Work Area in Connection with the 2005 Town of Palm Beach Water Main Improvements.
[H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 33-06 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]

4. RESOLUTION NO. 34-06 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 and the Town of Palm Beach for Construction and Planting of Landscape Improvements in the Median of South County Road. [H. Paul Brazil, Director of Public Works]

5. RESOLUTION NO. 35-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Locally Funded Agreement Between the Florida Department of Transportation and the Town of Palm Beach for Construction and Maintenance of Decorative Improvements Along South County Road.
[H. Paul Brazil, Director of Public Works]

6. RESOLUTION NO.36-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Maintenance of Decorative Improvements along South County Road as Constructed by the Florida Department of Transportation.. [H. Paul Brazil, Director of Public Works]

7. RESOLUTION NO.37-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Engineered Environments, Inc. for Installation of Six Replacement, Mahogany Windows Within Town Hall.
[H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 39-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Second Amendment to the Tri-party Interlocal Agreement Between the Town of Palm Beach, Palm Beach County, and the Port of Palm Beach.
[H. Paul Brazil, Director of Public Works]

G. OTHER

1. Approval of Cell Phone Stipend Policy.
   [Jane Struder, Director of Finance]

2. Approval of Modifications to Subgrant Agreement for Interoperable Radio Equipment.
   [Michael S. Reiter, Chief of Police]

3. Approval of Expenditure of $65,000 from the General Fund Contingency for Roadway Milling and Resurfacing on North County Road.
   [H. Paul Brazil, Director of Public Works]

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

IX. BOARD/COMMISSION ANNUAL REPORT

A. General Employee Retirement Board, Firefighter Retirement Board, Police Officer Retirement Board, and Investment Advisory Committee– Discussion Regarding the Town's Investment Strategies.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell stated that the following boards would appear before the Council today to make presentations along with professional representatives that serve these boards in an advisory capacity.

- General Employee Retirement Board
- Firefighter Retirement Board
- Police Officer Retirement Board
- Investment Advisory Committee - responsible for investing the non-trust fund balances of the Town.

Town Manager Elwell made the following comments:

- Discussion would focus on the investment and fiduciary responsibilities of the three different retirement boards and the Investment Advisory Committee.

- Requested endorsement by the Town Council of the concept of pooling the funds, for the purposes of investment only, of the three retirement boards as well as the soon to be created Health Trust Fund. The boards would remain separate except for accounting purposes, but pooled for investment purposes.

President Coleman noted that the separation of funds took place prior to his becoming a Council Member. He commented that there were opportunities for efficiency and economies of scale that could be achieved by pooling funds without intruding on the independence of each board. He encouraged those responsible for investing funds to examine the concept of investment fund pooling in order for the Town to receive the following opportunities.

1. Cost savings;
2. More efficient investments;
3. Funds should have the opportunity to make investments, which they might be precluded from because of their individual size.

President Coleman expressed concern over whether pensions funds were likely to achieve, successfully, their assumed long-term rate of return of 8% per year. He stated that his concern focused on the rate of return the non-fixed income portion of each portfolio must achieve in order to offset the known deficiency of the rate of return for the bond portion of each portfolio.

Council Member Wyett stated that he believed that public pension investments had become obsolete because returns on fixed investments did not match the needed expectations. The stock market was probably responsible for the Town's deficits, and the recent actions the Town was seeing did not provide any hope that the Town would catch up any time soon. He noted that this was causing the taxpayers to subsidize the funds.

Discussion ensued relative to the taxpayers subsidizing the funds. President Coleman stated that it was one thing to be in a situation where you could win or loose, but it was something else to enter into a situation where it was predetermined that you were going to lose some, and then it was just a question of how much. He acknowledged that the trustees' positions were thankless positions, and it was rather daunting for them to have to venture forth and try to do the right thing.

Council Member Markin stated that she also believed that the pooling of resources did allow for the funds to become involved with investments that they otherwise would not be able to. She advised that fees were becoming more and more of an issue as the returns were getting smaller. The fees become a much larger part of how it impacts the return. She commented that by consolidating the funds, just based on the fee cost, would help somewhat to boost the returns.

Council Member Markin asked who determined the benchmark by which the returns were being measured on these funds?

Town Manager Elwell responded that it was a combination of the boards and the Town Council. He explained that the target was set forth in the investment policy established separately by each of the three boards. He advised that if there was an umbrella investment committee serving all three boards, then that one committee would set one investment policy. He noted that investment policy was set by the boards with approval by the Town Council.

In response to Council Member Markin, Mr. Elwell advised that the 8% had been long standing, and had been around for as long as he could remember, which dated back to the late '80's. He advised that he could not say it had been like that forever, but it had been unchanged at 8% for a very long time.

In response to Council Member Markin, Mr. Elwell noted that he sits ex officio on the General Employee Retirement Board and consideration had been given to reestablish the benchmarks. He advised it has been reviewed annually, if not more often. It had remained at 8%, based on long term expectations, noting that the 8% was based on a 30-year horizon. The actuarial analysis for each of the different funds had been done on 30-year horizons. The professionals, who advise the Town, continued to believe that 8% was a prudent number for a 30-year horizon even though it was not a prudent number for the next five years.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin, to support the investment policy concept as presented, including the pooling of Town trust funds for investment purposes, and to look for more innovative ways to increase the Town's yield, and that the Town explore these concepts with the three retirement boards. On roll call, the motion carried unanimously.

President Coleman advised that Jon Prime, the investment advisor for most of the funds, was present and suggested, from a point of education, Mr. Prime take a few minutes to give the Council his thoughts on the issues that had been discussed.

Town Manager Elwell advised that Jeanne Valcik was also present and she played the same role for the General Employee Retirement Board and wished to offer some comments.

Mr. Jon Prime, a principal of Prime, Buchholtz & Associates, Inc., commented as follows:

- Boards today do not have free will in terms of structuring funds;
- Police and Fire operate under Statutes 175 and 185;
- General Employees operate under Statute 215, which has more latitude than 175/185;
- Problems related to restrictive legislation; the need for the legislature to provide more latitude and more flexibility with respect to Police and Fire funds;
- Achievement of 8% return was doable;

- In the last twenty years, it was an uncommon period for bonds. Bonds started at double digit interest rates and dropped to all time historic lows;
- Forced allocation to bonds;
  Diversification.

Mr. Prime stated it was important to get the legislature to provide more latitude, more flexibility with respect to the fire and police funds; in particular, if they were going to achieve more diversification and, in fact, less volatility. He noted that one of the issues which endowments and foundations and pension funds have come to realize was that less volatility was better than more volatility, because volatility of returns leads to volatility of contributions, which would have to affect the taxpayers over time. He advised that where one could improve consistency of return, it would reduce volatility of the funding affecting the Town's taxpayers.

In response to Council Member Markin, Mr. Prime advised that the downside of pooling funds, right now, would be the restrictions for Statutes 175/185, which could be an impediment to some of the diversification.

Town Manager Elwell commented that he believed it was important, for the record to reflect, that there were a number of different steps that would have to occur, in sequence, in order to consolidate funds for investment purposes.

- Each of the individual boards would need to determine that they do indeed, in their fiduciary responsibility, believe it would be in the best interest of the employees that they were representing to pool funds.
- Final decisions would need to be made about the composition of an umbrella investment committee;
- The Council would need to make decisions before ultimately moving forward.
- There were legal nuances at each of the steps along the way that would have to be worked through.

Town Manager Elwell commented that, for today's purpose, it was really the pooling question that needed to be decided; and if the Council agreed, they could give formal support to move forward. He advised that staff would report back to Council as to whether it would be possible to proceed.

Council Member Markin advised that she believed it was the intent of the Council to give the boards flexibility to explore whatever they possibly could. The Council assumed that the boards would do things in a legal and appropriate manner.

Town Manager Elwell stated that there were two different issues.

1. The Council had already adopted a motion stating the Council should be as flexible as they felt they could responsibly be as fiduciaries.

2. The potential pooling of funds in order to gain the economies of scale; and perhaps, do better with all the funds placed together as compared to how they might do separately.

In response to Town Manager Elwell, President Pro Tem Kleid clarified that his motion supported the investment policy concept as presented, including the pooling of Town trust funds for investment purposes.

Ms. Jeanne Valcik, Callan Associates of Atlanta, stated that Callan Associates consulted with more public funds than anyone else in the United States. She discussed the following:

- Florida State Board of Administration
- Investment in Bonds
- National Association of College and University Business Officers Study
- 8% Return

Ms. Valcik stated that the 8% return was the actuarial assumed investment return. The actuary believed that over the next 30 years, the Town could meet an 8% return target. She advised that over the next five years, with the blends of stocks and bonds the Town had, it could not be met. She noted, if public funds were looked at, all over the nation, the majority of them would have an 8% return target.

President Coleman questioned whether it was inappropriate to suggest that the use of the term "conservative," described investments that did not meet a hurdle rate, which gave a sense of false comfort, and perhaps, different terminology could be used. He noted that the word conservative, in might be thought of as good, but he was not sure it was good, in this case. It was a point of clarification. He stated that everyone used the word conservative, not just here, but it really was a misapplication of the term.

Mr. Prime echoing President Coleman's sentiments about the definition of conservative, stated that a better definition would be the probability of the fund meeting its objectives. He advised that looking at conservative at the asset allocations' structure, the way the fund was allocated across markets, has a high probability of consistently meeting the long term objectives. He noted that he thought that would be a much better definition of conservative.

X. REGULAR AGENDA

A. Old Business

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

a. Monthly Update

Deputy Town Manager Bradford provided a monthly update regarding the placement of overhead utility lines underground and discussed the following issues:

- SB 888 contemplated promotion and encouragement of underground electric distribution of new service or construction and a study by the Public Service Commission (PSC) to review recommendations to the Governor by July 1, 2007.

- Towns comments by Attorney Scheff Wright were higher reliability standards, adoption of higher windloads, appropriate cost benefit type analysis, requiring use of right-of-way facilitating the use of underground conversions, expanding requirements for data to be collected, rules requiring cost estimates requiring the cost of hardening to reduce cost of underground conversion, inclusion of operating of maintenance cost and inclusion of storm restoration cost in the determination of underground contribution, also reducing cost of underground conversion.

- Updates regarding utilities: received rules and guidelines from Florida Power & Light (FPL) for the utilization of right-of-way, which was currently being analyzed. Town Manager Elwell sent a letter pursuant to the procedures in the franchising agreement to Adelphia, that they provide the Town with an agreement or would be in violation of franchise agreement. BellSouth delivered their form of agreement for the underground project.

- Underground utilities consortium was in process, and had participation of funding from approximately 42 cities, and over 50 communities joined in the regular conference calls to facilitate and derive a better understanding of undergrounding. The interlocal agreement approved by Resolution No. 40-06 contemplated the Town's cost to be $8,073, of which $40,000 had been approved by the Town Council, although some of the cities may be denied, and funding was still required.

- Made progress on a sketch of a small portion of Phase 1 indicating what may look like in actual design, by FPL, to discuss in July.

b. RESOLUTION NO. 40-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Interlocal Agreement Between the Town of Palm Beach and Florida Municipalities to Promote Undergrounding of Utility Facilities and Related Implementation Activities and Authorizing the Mayor to Execute the Same on Behalf of the Town.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to amend and approve Resolution No. 40-06, deleting the words *of the Town Council* from the third and fourth lines of Section 1. On roll call, the motion carried unanimously.

Council Member Brooks asked if the statement on page 214 of the backup, under item 1, *when 100% of the affected property owners sign off on a petition for underground and provide all easements, if needed,* which tied into the use of eminent domain, could be reduced to a majority or a supermajority vote. Mr. Bradford replied that it could, but that the statement was only a suggestion relative to ways and means of reducing the potential of eminent domain. He said that the larger number of affected property owners acquired, the less likely was the use of eminent domain.

At Council Member Wyett's suggestion, the Council surveyed the remaining items on the Agenda in order to determine those that could be deferred to next month's meeting {Deferrals will be noted under each item].

c. Survey of North End Residents Regarding Street Lighting.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to defer Item X.A.1.c., Survey of North End Residents Regarding Street Lighting, to July 11, 2006, Town Council meeting. On roll call, the motion carried unanimously.

TIME CERTAIN AT 2:30 P.M.

2. Wireless Telecommunications Service and Antenna Sites in the Town of Palm Beach.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford referred to his detailed memorandum to the Mayor and Town Council, dated June 5, 2006, and included in the backup material, to discuss the Report on Wireless Telecommunications Service and Sites in Town.

- Town's Wireless Communication Ordinance:
  - The Town had a model Ordinance that had been copied by many cities in Florida and elsewhere.
  - The Ordinance allowed for the permitted use of Town property for wireless communication sites.
  - Commercial properties were a special exception use under the Town's Zoning Ordinance. The Ordinance required that when a provider wanted to locate on a commercial property that they provide the necessary justification and studies to show why it would be needed on that site as opposed to somewhere else.
  - The Ordinance was basically designed to avoid proliferation of sites, and to use stealth technology so that the wireless antennas and/or towers that were created in Town, as a result of the Ordinance, would be virtually unnoticeable.
  - The Town has three facilities on its properties throughout Town; two facilities on the rooftop at Town Hall; one facility at the North Fire Station

Mr. Bradford commented:

- About three years ago, the Town received many complaints about the inadequacy of service, most of which pertained to Verizon.
- The Town notified every carrier of the Town's Ordinance and sites that previous studies had indicated could be used. He stated that Nextel was the only provider to respond.
- About a year later, Verizon upgraded their facilities in the City of Lake Worth and in the City of West Palm Beach, which greatly improved the level of service on the Island. Complaints seemed to have stopped at that time.

Mr. Bradford explained that within the last few months, the Town had started to receive complaints again, and at last month's Council meeting, it was requested that the Town, once again, notify all the carriers of Town sites. He advised that the Town had not received any responses to the letters that had been sent out. He noted that he had advised all the providers that the new Central Fire Station building was available.

Mr. Bradford commented regarding Cingular:

- Cingular was currently in the process of attempting to upgrade their facilities on the Town Hall rooftop.

- Cingular advised that they might be interested in pursuing the Central Fire Station as a site in the event that what they want to do on the Town Hall rooftop would not be adequate to satisfy the complaints that, he assumed, they too were receiving.
- Cingular could not pursue that until their next budget year commences, which for them was a calendar year, January of 2007. Cingular wanted to see if the Town Hall rooftop upgrade worked first.

Mr. Bradford commented:

- Contacted Town Consultant to advise that there were complaints particularly in a central part of mid-Town and apparently other parts of Town.
- The Consultant provided a proposal, included in the backup, to identify where those sites were and then to provide recommendations of what could be done to address the problem.

Mr. Bradford advised that in the 1990's, a Town resident, Ken Horowitz, actively worked with Town staff to create this Ordinance. He noted that he had provided Mr. Horowitz with all of the backup for this meeting and advised him of the situation. He stated that Mr. Horowitz responded this morning, after having come back from vacation.

Mr. Bradford reviewed comments made by Mr. Horowitz:

- He believed that because of the competitive nature of the industry, providers would attempt to put antennas on the new skyscrapers being built in West Palm, and then the Town's problems would virtually go away.
- He explained that each antenna site could service anywhere from five to seven miles and could even go through buildings.
- He expressed concern over proliferation of sites, and that he believed the Town's Ordinance was still workable and was something to hold onto.
- He did not like the idea of non-Town properties providing cell sites.
  (Mr. Bradford commented that situation existed from day one as a special exception use. The only amendment made was about two years ago, the Town added the Breakers property as a PUD-A as their zoning category, to be used as well.)

Mr. Bradford stated that the Town was engaged with providers that they were aware of being in Town. He added that The Breakers was in discussion with a major provider for use of a site at their facility. He noted that he was not at liberty to state who that provider was, but The Breakers had also told him, that if the Town received responses from cell companies, they could inform those providers of the availability of The Breakers property. He stated that it was assumed that if there were facilities in The Breakers towers, due to the height of those towers, it would be very beneficial to the quality of cell phone service in the Town.

Town Manager Elwell added that the reason the Town had consulted with Mr. Horowitz was because of his experience in this field, at the highest levels. He has been an invaluable resource, providing his time completely free of charge to help the Town understand this issue and address it, over the years including as recently as this morning.

Council Member Wyett commented on the following:

- Mr. Horowitz was an expert who had good reason to advise the Town to prevent the proliferation of towers.
- Identification of Town-owned locations.
- For years there had been only one provider on the Town Hall rooftop and now there were three providers.
- Dead spots throughout Town.
- If Verizon put a tower in at The Breakers, Verizon service would improve, but not the rest of the providers.
- The second purpose of the Ordinance was the revenue the Town received, $25,000 per site. If the Town allowed sites to go on private property, the Town would be giving up revenue of $50,000 to $200,000 per year.

PUBLIC COMMENT:

Mr. Stanley Cohen, 249 Seabreeze Avenue, commented.

- Questioned what the Ordinance was written for: was it for the benefit of the members of the community to receive the best service possible or was it revenue producing?
- Major issue was the dead spots in Town, particularly around Palm Beach Day School and the Recreation Center.
- Major concern that those locations would become magnates for people who were deemed undesirable.
- Public safety concerns particularly for the children.
- Requested that towers be placed at the best possible locations, which he did not believe the Town was doing at the moment.

Mr. Jimmy Zisson, 1600 North Ocean Boulevard, commented regarding:

- The Town needed to provide reliable cell coverage where the Town had the most kids playing every day. The safety of the kids in Town should be a huge priority of the Council. He noted that he was not talking about the Palm Beach Day School kids only, but also Palm Beach Public. Those areas have the worst cellular coverage in Town, which was unacceptable and inexcusable.
- Advised that Paul Leone, of The Breakers, could not be present today, but requested that the Council be informed that he was totally behind this, both for The Breakers and the Chamber of Commerce.
- Aesthetic issues of cell towers.
- The Town had to be about doing, and not studying, at this point, on this issue. If the cell companies could not make it happen, then the Town should find a way, privately, to make it happen.
- Instead of spending $20,000 of taxpayers money for another study, request Verizon,

Sprint, Nextel, and Cingular to come out and locate areas with poor signals, at their own expense, report back to the Town, and then decisions could be made.

- The Town should spend the same amount of money on cellular service that they have spent on feral cats

Council Member Wyett stated that the Ordinance was originally put into effect to prevent ugly towers. The revenue portion of it was a side issue and still was a side issue.

Discussion ensued regarding the public safety factor relative to cell phone service in Town. Councilman Wyett stated that the problem needed to be solved, and the Town should have perfect service.

Mr. Zisson stated that Mr. Horowitz was the smartest person he knew relative to this issue. He suggested that Ken Horowitz and George Lindemann, who also lived in Town, as well as several other residents that were in this business, work together on a task force to solve this problem.

Council Member Wyett asked Mr. Zisson if he was suggesting that the Council formally ask for help? He noted that he believed that to be a good idea and stated that the Council was not proactive enough.

Mr. Zisson advised that he did, if it was beyond the scope of what Town staff could do. He noted that it was a good idea to generate revenue, but the Town needed to be more cautious about their budget spending.

Mayor McDonald stated that he agreed with Mr. Zisson's position. He reiterated that Mr. Horowitz felt that a tower on a tall building in West Palm Beach would provide all the service that the Town needs, which would eliminate any towers in Town.

Mr. Zisson responded that the Town should subsidize that.

Mayor McDonald commented on the following:

- He did not know if the Town could go into the cell phone business.
- The best path was to get the providers to erect towers on high buildings in West Palm Beach.
- Cell phone providers, when they called in to the Town's 911 center, did not show the location they were calling from.
- In terms of asking Mr. Horowitz, Mr. Lindemann, and John Scarpa, who all owned major cell phone companies, he would agree to that, if Council believed a task force of those people would be the best way to go, but he believed the best way to go was to get the top suppliers, which would probably be Cingular and Verizon.

In response to Mayor McDonald, Mr. Zisson advised that information regarding the percentages of services in Town were available on local market surveys. He noted that, off the top of his head, Verizon was about 30% or 35%, Cingular 25% -30%, Sprint 20%-25%, and T-Mobile 15%. He advised that those figures were pretty much what it was nationally.

In response to Mayor McDonald, Town Attorney Stirling advised that she did not know if the Town could compete with cellular providers in Florida. She would have to do some research.

Mr. Zisson responding to Mayor McDonald stated that he did not believe the Town needed to compete, but the Town needed to make it really easy for providers to get their signals out there either by informing them that the Town would assist them, and that the Town would not charge them for placement of their towers.

Mayor McDonald advised Mr. Zisson that he was in favor of that, and at last month's Town Council Meeting, he had stated that the Town should not be concerned about revenue. He explained that if the only way to get the providers here was not to charge them, then that was what the Town should do. He supported that and agreed that the Town needed to deal with the four providers, and see what it took to get them here or to have them put something in West Palm Beach that would cover the Town.

Mr. Zisson reiterated that this conversation began more than two and a quarter years ago, and the Town really needed to get this done; certainly before the hurricane season, and before the school year. He noted that there were other areas of Town that it would be nice to include, particularly, the school area that had the biggest concentration of risk and future for the Town.

Mayor McDonald advised that was the reason it was on the agenda today.

Council Member Brooks commented: .

- Technology explodes exponentially, which would favor the Town.
- Ample evidence that Seaview was a particular sore point.
- Competing was out of the question as the Federal Communications Commission (FCC) controls this issue, and it would require an application to become a franchisee.
- Recommended that Mr. Elwell set up a meeting with Mr. Horowitz to include Mr. Zisson, Mr.Wyett and the Mayor to explore this issue.
- Setting up a temporary system for cellular phone service, which could possibly be in place at the start of the school year, until the Town was able to get full service.
- The idea of placement over in West Palm Beach because of building heights.

Town Manager Elwell stated that the Town has had a long association with Mr. Horowitz and appreciated all that he had done to assist the Town. He advised that the Town was re-engaging with him and would continue that dialogue to learn more from him. He noted that the Town would be happy to include communications with Mr. Lindemann and Mr. Scarpa. He suggested that these communications should be conducted from the staff level, as it would be a lot more efficient than if the Council formally appointed them as a task force, which had been suggested. He reminded the Council that there would be Sunshine Law implications, which would make it a much more cumbersome effort.

Mr. Zisson stated that there were so many resources in this Town, specifically in this case, it made sense to interact as much as the Town could, before spending $20,000 to hire COMP COMM. He advised that the COMP COMM report stated very well everything that was involved and needed to happen and he commended the Town for that.

Council Member Markin followed up on Mr. Zisson's comments:

- The Town has three extremely influential residents, and suggested that if those individuals alone could make some phone calls, in order to make this a priority, vendors may see it as a priority.
- Town should not have to do a study.
- Unfortunate that there had been no response from providers to Mr. Bradford's letter.
- Cingular owed the Town a certain amount of responsiveness based on the fact that the Town had a contract with them.
- Cingular's comment that they could do nothing to improve cell service in Town until their meeting in January 2007, was totally unacceptable.
- Apply pressure to Cingular to upgrade equipment, and if they were not willing to do that, have them put it on the table, and the Town could then deal with that accordingly.
- Town needed to be more aggressive.

Motion made by President Pro Tem Kleid that the Council direct the Town Manager to contact residents with expertise in the Wireless Telecommunication field to assist in devising a plan that would solve the problem of cell phone coverage within the Town of Palm Beach. The motion was seconded by Council Member Wyett.

Council Member Wyett commented that competition solved a lot of problems. He suggested sending out a letter stating that the Town was looking to establish a preferred supplier to recommend to the residents, and that supplier would be the supplier that provided excellent service to the entire Island. He noted that all it meant was a couple of antennas going up, one for the south end and one for the north end, and they could be located over in West Palm Beach. It was not a revenue situation but purely a situation of obtaining service.

In response to President Coleman, Mr. Wyett stated that his suggestion of sending out the letter was an idea for the experts to consider.

On roll call, the motion carried unanimously.

3. Governmental Impact Review Panel (GIRP) Report.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah stated that at last month's Town Council Meeting, the Council recommended that staff prepare a report based on the recommendations made by the Governmental Impact Review Panel (GIRP). She referred to her detailed memorandum to the Mayor and Town Council, dated June 7, 2006, and included in the backup material, to discuss the

GIRP Report. She briefly reviewed the five recommendations.

1. Mayor McDonald direct and oversee an outreach to the different entities identified by the Panel:
   - The Aviation and Airports Advisory Board (AAAB)
   - The Metropolitan Planning Organization (MPO)
   - Florida Department of Transportation (FDOT)
   - The City of West Palm Beach as it pertains to Downtown Development, in particular.

2. Mayor McDonald appoint a Town representative(s) to appear at meetings on his behalf.

3. First phase of the outreach program would be to develop and build relationships with these entities. The second phase would be to shift the focus from managing relationships to managing the actual impacts these agencies have on Palm Beach.

4. Representation by Palm Beach officials on relevant commissions should be pursued by the Mayor or his designee.
   - Representation would not be possible for the City of West Palm Beach or the City of Lake Worth because one had to be a resident of those cities.
   - Representation would be possible on the MPO, but very difficult, because MPO policy was based on population, and Palm Beach does not qualify for membership.
   - The Town could have representation on the AAAB with a County Commissioner appointment.
   - Representation on the Board of County Commissioners would require running for office.

5. Establish a better rapport with the City of Lake Worth for both the Town's benefit and Lake Worth's benefit.

Ms. Hannah advised that the Panel members were present to answer any questions the Council might have.

Council Member Brooks commented:

- The Town should not pursue involvement with the AAAB.
- The Town should monitor South Palm Beach because they may be considering approving the construction of a 14-story building on A1A.
- It was highly unlikely that any citizen from the Town of Palm Beach could be elected to the County Commission. He explained that this district had been gerrymandered to allow a minority seat.
- The consideration of the City of Lake Worth, which included the beach, and the

Casino, should be moved to a higher level due to their financial problems, perhaps taking the place of the AAAB. The AAAB could be dropped to a lower level.

- It was critical for the Town to watch West Palm Beach, because it was obvious that Mayor Frankel was facing great opposition to her City Hall/library project.

Council Member Brooks thanked the Panel stating that he thought their work was terrific.

Mr. Samuel McLendon, Governmental Impact Review Panel Member, discussed the impact of increased air traffic on the residents of Island Road and at the south end of Town. He noted that this increase, he believed, was caused by private corporate jets. He suggested that the Town make a special plea to the County to explore the expansion of Pratt Whitney Field. He stated that he hoped the County owned that field or could own it in order to get more of the private jets to fly in and out of that field rather than PBIA.

Mr. McLendon stated that he took the position that the primary issue was the impact of the anticipated traffic in West Palm Beach, and how it would affect the Town, especially after the addition of thousands of new apartments. The Town should encourage West Palm Beach to develop more east/west feeder roads.

President Coleman commented that he was on the Airport Noise Commission. He noted that most of the noise did not come from private aircraft because private aircraft took off faster, climbed faster, had smaller engines, and by the time they got over Palm Beach, the noise had diminished. The problem with private aircraft was the increased traffic at the airport, which caused the fanning north for commercial traffic.

Discussion ensued regarding airport noise and the use of corporate jets. Council Member Markin advised that it would be hard for the Town to criticize some of the noise factors when the Town resident's were most likely the people causing those problems and causing the commercial planes to fan.

Council Member Markin advised that she attended many of the GIRP meetings, and stated that the Panel did an excellent job bringing to light, for the direction of the Mayor, many issues that go on around them, with other municipalities and other organizations. She commented on the following matters:

- Referred to the MPO presentation, and the statement that in order to have representation on the MPO, the municipality had minimum population requirements.
  - It had been said that there were certain municipalities that had been allowed to combine so that they would have representation.
  - Urged the Town not to take a carte blanche answer that current policy did not allow them to participate.
  - MPO was one of the leading organizations for coordinating activities within the County and the municipalities around the Town, and the Town should fight very hard to obtain representation
- If the Town was going to ask for a commitment or participation in some of those organizations that the Town do so with the appropriate level person.

Mr. William Diamond, Chairman of the Governmental Impact Review Panel, 220 Wells Road, stated that he would like to draw the Council's attention to the last sentence on the first page of the staff report:

> "Depending on the Council's agreed level of commitment to this presentation, Council may wish to consider hiring an additional staff person to perform this task or ask for community volunteers to perform this task."

Mr. Diamond reiterated that the question before the Council was what degree did the Council want to expend resources on behalf of the GIRP recommendations. He noted that there were three ways it could be done or a combination.

1. Through volunteers appointed by the Council or the Mayor;
2. There would be a need for some staff backup, which could be done several ways. He did not think the Town wanted to hire an additional staff person;
3. Possibility of hiring a contract employee, without benefits, for this purpose.

Mr. Diamond stated that it was a huge job as there were a lot of meetings in West Palm Beach. He advised that the Town should be proactive in finding out what was going on in West Palm Beach, and have, at the very least, official representation as a so called "stakeholder" or he believed the Town would suffer. He stated that it would be left up to the Council as to what they recommend and how to implement the Panel's recommendations.

President Pro Tem Kleid stated that he believed that the Town should have citizen representation. He advised that placing a qualified citizen there, who was dedicated to the task, could be much more meaningful and helpful than putting a staff person there; particularly, if that person was given authority and direction from the Town Council and from staff.

President Pro Tem Kleid stated that the priority of the relationship with the City of Lake Worth should be elevated. He noted that, the Town was disappointed in the relationship with both the staff and the Mayor of the City of Lake Worth, with regard to the sand dune restoration in Reach 8. The Council was aware that the City of Lake Worth was either proceeding or considering major improvements to their beachfront property, as well as placing public buildings there. He noted that would impact a portion of the Town. The Town should try to have a relationship with the City of Lake Worth, but it should be more than a staff on staff relationship. He explained that he would like to see a Mayor on Mayor relationship and would even like to possibly have a joint meeting with their Council in order to discuss mutual problems.

Chairman Diamond responded that they were all very good ideas. He stated that the Panel agreed with him very strongly about the need for better coordination with the City of Lake Worth. He noted that there were interested citizens, from the south end, who were already doing it in an unofficial capacity, and he believed that those capacities could be made official.

Mayor McDonald stated that he would make some summary comments and then would discuss the Panel's recommendations. He advised that he had sat through twenty years of Town

Council Meetings and what he had seen over those twenty years was a Council that had been involved with a Town that totally ignored what was happening across the lake. He advised that this has changed because of what was going on in the City of West Palm Beach, which was explosive and impacted the lifestyle of Palm Beach.

Mayor McDonald noted that he sat through every one of the GIRP meetings and heard all of the presentations. He stated that basically 90% of everything that affects Palm Beach, was totally outside of their control, which left the Council the ability to influence, persuade or hinder about 10% of the issues. He noted that the Council had to be dedicated to those issues.

Mayor McDonald stated that the recommendations could not be implemented in the same way that the Town did it with the Shore Protection Plan, fifteen years ago. The Town dedicated themselves to getting the job done and did not rely on the department head, because it was beyond his ability or anyone's ability to do that job while doing his own job; Sandra Tate had been hired to run the plan. In regard to the GIRP recommendation, the Town needed to have someone who was dedicated to that job, which consisted mainly of persuasion, influence, representation, and being involved.

Mayor McDonald commented that the Town was not the same community they were years ago. He explained that there was a great deal going on west of Palm Beach without the addition of one new north/south street. The Town needed to be involved in the future; the Town had to make it a priority and follow through, and that was what this Panel was really was about.

Mayor McDonald did not believe the idea of volunteer citizens would work. He did think that the idea of the Council being involved might work. He advised that what occurs across the bridge occurred twelve months a year and did not take a summer break. The Town needed to focus on this twelve months a year and not just during the season. Palm Beach could no longer be just a seasonal community.

After further discussion, it was the consensus of the Town Council to add to the agenda of the July 11, 2006, Town Council Meeting, for discussion, the five recommendations made by the Governmental Impact Review Panel.

President Coleman advised that the Council did recognize that this was not a staff function, and perhaps, the Mayor could think about the creating an ambassador at large, but it would require a real twelve month resident.

4. **TIME CERTAIN ITEM TO BE HEARD AT 11:00 A.M., OR AS SOON THEREAFTER AS POSSIBLE**
   Review of Feral Cat Issues and Other Matters of Animal Regulation.
   [Peter B. Elwell, Town Manager]

President Coleman clarified some statements that were made earlier in the meeting regarding feral cats. He stated that there had not been any discussion by the Council related to euthanasia, but discussion focused on trap, neuter, release or trap, neuter, relocate. He advised that to the extent people were going to comment on euthanasia, it should not be directed at what the Town was trying to do.

President Coleman requested that Town Manager Elwell frame this issue as follows:

- Where was the Town presently on this issue?
- What were the issues?
- What was the reason for today's discussion?
- What had been done?
- What was the Town trying to accomplish?

Town Manager Elwell advised that he would frame the issue before the Council today starting with the recent past as opposed to what occurred several years ago.

- In the summer and fall of 2002, feral cats became an issue of such importance, that actions were taken by the Town. Previously, it had been unaddressed by official actions, but had been addressed by private individuals.
- Some of those actions were controversial and many hearings were held in the Council Chambers.
- A workshop in December 2002, led to the creation of the P.B. Cats Program in 2003
- The program, by most accounts, was considered to be a great success.
- The program was funded, in a large part, by the Town of Palm Beach, but managed entirely privately, on a shoestring, by just a few people.
- The noise level had been a source of constant complaints, which had dropped noticeably to the point of rare complaints. Complaints, when received, were usually handled in an efficient manner.
- Feral cats, for a long period of time, were not an issue for this Council, but was just an ongoing matter in Town. From time to time, hot spots would pop up with things that needed to be addressed; occasionally, people commented about those issues, but again, it was not a policy matter, such as it was today.
- During those intervening three years, there were other animal issues that arose from time to time.
- In particular, the Town had a hot spot on Root Trail, which was distinct from the P.B. Cats Program. The problem related to both the feeding of pigeons and the feeding of cats, although much more significant was the feeding of pigeons and the impacts that the pigeons caused.

Town Manager Elwell noted that there had been a number of discussions regarding feral cats, the most recent within the last couple of months with this Council, as well as prior Councils. He advised that Town staff was in an uncomfortable place since they advised the Council that they had done everything they could reasonably do under the law. Town staff had been unable to successfully address this situation and did not really know if there were appropriate additional steps for the Town to take. He explained that the Town was in this situation for a variety of reasons, mainly dealing, not so much with the law as it was written, but with the enforcement of the law and the court system. The inability of the Town to take these issues into the court system and have them taken seriously and resolved there. He noted that raised the question if it would be productive to modify the regulations, since the Town would need to enforce those regulations, and still might not get the support needed from the courts.

Town Manager Elwell discussed incidents that occurred on Orange Grove Road, Root Trail and Kawama Lane. He noted that the Council, last month, decided that a full review of the feral cat situation was needed, The Council requested placement of this item on today's agenda to hear from the public regarding what was and was not working and what may need further action by the Town, as well as considering items of potential changes in the animal regulations in the Town's ordinances. He advised that the Council had asked about imposing a requirement to collar domesticated cats, reducing the total number of pets a household could have from ten to five, and about more aggressively addressing, within Town Code, the nuisance that had been created by feeding a variety of animals in the public ways of the Town.

Town Manager Elwell advised that included in the backup was a report from the Town Attorney addressing three questions raised by the Council. He noted that the Council had also received voluminous written input from the community addressing all sides of this issue.

President Coleman requested that Mr. Elwell discuss the start and the administrative growth of P.B. Cats in order to get some perspective of that organization. He noted that P.B. Cats was a key player in Town, needing to grow, mature, evolve. He advised that there were still some clear deficiencies in management, reporting and accountability.

Town Manager Elwell stated that he would do that but P.B. Cats would speak for themselves, as well. He advised that he concurred with Mr. Coleman's observation. He commented on the following:

- P.B. Cats did not have the kind of reporting capability that one would expect from Town staff, if this was a Town function; or from an outside agency receiving Town funds to conduct a program.
- Administrative structure for P.B. Cats.

President Coleman advised that better reporting would go to alleviating some of the angst in the community as far as accountability.

Town Manager Elwell stated that it was fair to observe that it was due to Beth Pouncey's extraordinary effort, working innumerable hours, at no pay whatsoever for the first year or two, had kept the program operating.

Beth Pouncey had been the Town's contact person and has always been very responsive to Town staff when there had been hot spot areas. The P.B. Cats program was a private, nonprofit endeavor that the Town supported as a potential and hopeful solution to a major issues in Town. The Town's involvement with P.B. Cats has been mainly to address hot spots as they crop up to make sure private property owners rights have been respected. P.B. Cats has been involved with the day to day operation of the feral cat program, which included feeding, inoculating, spaying and neutering the cats, without Town oversight.

Town Manager Elwell provided some history of Town funding for P.B. Cats.

- The plan was to wean P.B. Cats off of taxpayers funding and have the organization become self-sustaining over a period of years, which has not occurred.
- The Town-funded $30,000 for the initial period of time, and $50,000 for the first full year.
- The annual allocation remained at $50,000 a year. It has not decreased,
- The Council had a request before them from Allen Mason for an additional $30,000 to get P.B. Cats through this fiscal year to October 1, 2006. There had been some talk about the Town having authorized $80,000. He wanted to clarify, for the record, that was not the case. There was $50,000, in this current year's budget, and the request for an additional $30,000 would bring the total funding this year, if approved to $80,000.
- He advised that accountability should be a part of the Council's conversation as they move forward.

In response to President Coleman, Mr. Elwell advised that he was not qualified to speak about rodent control, but there were people in the room that had knowledge and opinions on that subject and the ecological implications of same. He advised that if the Town made certain choices now, as it moved forward, that were different from the choices made in the past, there might be ecological implications as to what happens with the other animal populations on the Island.

PUBLIC COMMENT:

Allen Mason, President of P.B. Cats, stated that he was a twenty-year resident of the Town of Palm Beach along with his wife who was a forty-five-year resident. He distributed the following items to the Council for their review.

1. A progress report on P.B. Cats, which the Council had requested;
2. A magazine that provided information on community approaches to feral cats;
3. A document provided by the Humane Society of the United States addressing this specific issue as it related to Palm Beach.

Mr. Mason stated that P.B.Cats welcomed the review of their public and private program. He advised that he was happy to report tremendous progress since the inception of P.B. Cats in 2003. He noted that they were aware that there were issues that needed to be addressed, but first wanted to discuss the successes of P.B. Cats to date.

Mr. Mason discussed the following recommendations suggested by P.B. Cats:

- An improved mediation process to deal with some of the contentious issues. P.B. Cats proposed a Town ombudsman, an intermediary, or an official mediation process to help resolve and monitor complaints by residents. He explained that TNR was a gradual process and not all areas receive the benefits equally, and at the same time, resolution of legitimate complaints could be improved to prevent high levels of frustration from occurring.

- Improved data reporting. P.B. Cats proposed issuing a semiannual report to the Town Council on the statistical progress of the program similar to the report presented today.

Mr. Mason discussed the Kawama Lane issue. He explained that in October or November of last year, he had been contacted by Mr. Gendelman regarding his concerns. He advised that, as a result of that discussion, the feeding stations were moved out of that area, which had the effect of relocating the cats. He noted that, as of today, they see no more than three cats in that area, and often they do not find any. He believed that the Kawama Lane issue had been resolved.

Mr. Mason advised that despite their efforts, there were still residents in the Kawama Lane area that continued to complain about the cats, and proposals have been made to the Town to remove all the cats off the Island, eliminate the TNR program, which has been so successful, and pass a feeding ban. He noted that he contacted the Humane Society of the United States requesting that they send a representative, at his personal expense, to address that specific issue. He advised that present today was Brian Cortes, Consultant to the H.S.U.S. on feral cat issues as well as Executive Director of a large TNR program based in New York City.

Council Member Wyett stated that he had nothing against cats and loved them. He commented that he had a problem with Mr. Mason's statement that he was aware of only three cats remaining on Kawama Lane. He noted that many residents living on Kawama and some on adjacent streets had reported that there were up to twelve cats after dark. He stated that he would like to understand the discrepancy between Mr. Mason's statement that there were only three cats, and the residents' complaints of multiple cats. He wanted to understand why the cats chose Kawama Lane to congregate.

Mr. Mason responded that the cats congregate there because they are being fed there.

Ms. Pouncey provided a brief history of P.B. Cats and advised that the feral cat problem on Kawama was created during the period when Catherine Bradley's organization was in a decline. She noted, that at that time, no cats were being neutered or spayed.

Discussion ensued regarding the number of cats on Kawama Lane. Councilman Wyett advised Mr. Mason that he looked to P.B.Cats, as experts, to assure the residents on Kawama Lane that their problems would be addressed and solved.

Mr. Brian Cortes, on behalf of Nancy Peterson, Feral Cat Program Manager of The Humane Society of The United States, as a consultant to HSUS, referred to her letter to the Mayor and Town Council, which addressed the feral cat issue, He advised that she encouraged the Town to continue what has been a very successful program and offered to hold an intensive two-day training, which he taught, on how to organize and run this type of program.

Mr. Cortes commented on the following:

- Policy statement of The Humane Society of The United States on trap/neuter/return, noted that in March 2006, HSUS came down in favor of TNR. It was the only method, today, that has shown any promise of effectiveness.

Council Member Wyett addressed Mr. Cortes, informing him that the Council had endorsed trap/neuter/return, but the question he had posed was how did the Town solve their problem on Kawama Lane, where residents were complaining that they were inundated with cats?

In response to Mr. Cortes, President Coleman advised that he planned on suggesting that all domestic cats and all the feral cats that had been neutered or had their ears clipped wear collars for identification purposes.

Mr. Cortes advised that their recommendation would be a little different on that issue. He noted that feral cats were ear clipped to identify them and that could be a little difficult to spot at a distance. Collars on domestic cats that roam could be potentially quite dangerous to the cats if they get stuck, which happened a lot. He suggested that what the Town might want to consider, which was HSUS policy, was owned pet cats should either be confined indoors or within outdoor enclosures. They should not be permitted to roam at large.

Mr. Cortes discussed the many ways for a pet cat to be outdoors, which included a fenced in area and the teaching of cats to walk with a harness. He noted that the Town did not have any laws requiring owners to neuter their pet cats. He advised that if the Town was going to allow pet cats to roam at large, then there should be a mandatory spay/neuter law for owned animals. He explained that would directly address the problem, and would be better than collars.

Mr. Cortes explained that roaming cats could be responsible for a tremendous amount of wildlife decimation. He continued that they did not know if it was the feral cat population on Kawama causing that problem.

Council Member Wyett noted that he believed they could survey very quickly to find out how many domestic cats were out there. He advised that most people keep their cats indoors, but noted not all residents did. He added that was not the problem, the problem was not a domestic cat roaming. The residents were complaining about the number of cats patrolling the street and congregating on their property.

President Coleman stated that he did not understand people objecting to trapping cats that do not exist. He advised that there were two different camps, those who stated that there were cats and those who stated there were none.

In response to President Coleman, Mr. Cortes advised that it was not quite that simple to remove the cats. He then discussed some practical solutions in order to keep cats off of property.

- The most effective way would be to install motion activated sprinklers, which trained cats to stay away from the territory. After about a month, the cat would be trained not enter that area at all. The sprinkler can be removed at that time.

- Cat fence netting on top of fence to keep them in and out;
- Patrol areas to be sure there were no other food sources, remove any food being left.

Mr. Cortes explained that with a TNR program, the progress was gradual. He noted that what they have found that the loudest complaints come from people who have moved into the situation after the program had begun.

In response to President Coleman, Council Member Markin stated that she would like to hear Mr. Cortes out since he was an unbiased expert. She advised that she wanted to hear every facet of the Town's program that he would be able to address and then the Council could make some sort of decision regarding Kawama.

Council Member Markin stated that one of the frustrations that was being heard was the very specific issue of how to deal with removing the cats; it was obvious the Town did not want to place the cats back in an environment like Kawama. She noted that she had heard cats find their way back to their colony, no matter where they might be put. She asked Mr. Cortes if there had been any success with any of the programs he had worked with where once the cats have been removed?

Mr. Cortes advised that certain cats could be removed and explained that the cats presently there could be trapped and moved but new cats could not. He stated that if there was no TNR program in place to monitor the situation, those cats inevitably would reproduce. He noted that one of the issues not being addressed by the Town, was the abandonment problem that was present. The choice would not be cats or no cats, but the choice was between managed or unmanaged. He stated that if a vacuum situation was created on Kawama Lane, sooner or later with no one watching it, the problem would present itself again in a year or so.

Council Member Markin commented that what Mr. Cortes was advising was that it was up to the residents to be more creative and use such things as the infrared sprinklers or netted fencing, etc.

In response to Council Member Markin, Mr. Cortes advised that deterrent spray does work sometimes, and was worth trying. He noted that what worked best was the netting and the sprinklers. He explained that the sprinklers, which were called scarecrows, would be attached to a hose, and would stands up in the ground a couple of feet. He explained that they have an infrared field that the borders could be set to go out about 20 yards. The field could be set across one's front yard, for example, and anytime an animal steps into that field, it would shoot off a spray of water. It does not water the lawn or even get the cat wet, but it was violent enough to scare them. The cats become conditioned not to step onto that property.

Mr. Cortes did not recommend using ultrasonic sound as it almost never works. He advised that the difficult problem, of a successful TNR program, was that it did take time and there was an attrition rate. He discussed the program on Kawama Lane stating that the problems there now were much less than they were three years ago. If the program continues and the attrition rate continues, the Town would have even fewer problems there. He noted that unless they go through this gradual reduction and overall altering of the Island's population and continue monitoring for abandoned cats, the whole system would fail, and the Town would return to where they were before the program began.

Mr. Cortes advised that his main criticism of the current program of P.B. Cats was that there was an inadequate mediation process. The complaint level was caused because people who were not educated about feral cats, did not understand the process. He said it did not make sense to those people that the situation was being improved by putting the cats back. The residents need to be educated.

Council Member Wyett advised that the Town was a very intelligent Town and that almost everyone in Town understood that if you remove one hundred or so cats, the Town would have another unwanted problem. He stated that on the other hand, how many cats do you need in a given area to keep the rodents under control and any other problem under control? He asked how the problem could be solved, if there were too many cats in that area? The cats have to be captured and removed and sent somewhere.

President Pro Tem Kleid advised that it seemed to him it was relatively simple, if the Town was going to solve the problem in the one area that the Town had received the most complaints, and that was to instruct P.B. Cats to aggressively trap and neuter those cats, in that particular area. He explained that then it could be determined quickly whether there were a lot of cats or very few cats.

In response to President Pro Tem Kleid, Mr. Cortes responded that the cats might roam back to that area, if they were close enough. He advised that if they were moved several blocks away or even a quarter of a mile away, they may find their way back to familiar territory.

President Pro Tem Kleid stated that Mr. Cortes used the word may and it seemed to him that the quick fix on this issues was to aggressively trap and neuter those cats found in the area of Kawama Lane and to not relocate them back to that area as well as not feeding them in that particular area.

Mr. Cortes responded that was what P.B. Cats was attempting to do and was sure that was what they would continue to do, if the Council so desired. He cautioned them that a quick fix now could be a big problem later, and they were setting a precedent for other neighborhoods. He added that what you always have to go back to was if it was better or worse than it was before. The choice was not between cats or no cats.

Mr. Cortes stated that one of the things that had not been touched upon was pet limit laws. HSUS view on this issue was to reduce the number of animals a household may own and that number would be at the discretion of the community.

PUBLIC COMMENT:

Mr. Frank Habicht, 209 Sanford Avenue, stated that he had exactly the same number of cats, exactly the same amount of damage on his cars and property as he had before this program started. He suggested registering the cats.

Ms. Katherine Hunter, 434 Chilean Avenue, suggested educating the entire population of the Town of Palm Beach about the cats either by sending out a mailer or placing information on feral cats in the Shiny Sheet.

Ms. Susan Lee, 287 Pendleton Avenue, suggested that the Town Council consider requiring domestic cats and dogs to be chipped and licensed , and use it as a revenue raising enterprise, which would subsidize the cat rescue efforts. She noted that if a cat was abandoned, the Town would know who abandoned it.

Town Manager Elwell advised that the Town was not allowed under State Statute to do that, and registration in the State of Florida was done on a countywide level.

Ms. Connie Gasque, 167 Root Trail, suggested the Town adopt an Ordinance, if they did not already have one, requiring owners to spay and neuter their pets. She urged the Council to support P.B.Cats.

Town Manager Elwell advised that the Town did not currently have an Ordinance requiring owners to spay and neuter their pets.

In response to President Coleman, Town Attorney Stirling Clarke stated that research would need to be done to determine if the Town had the right to take away a domestic pet owner's rights.

Ms. Catherine McGovern advised that she no longer lived on the Island but did come here all the time to help both Catherine Bradley and Beth Pouncey. She advised that more people were needed to work with P.B. Cats.

Mr. Peter Rock, 44 Coconut Row, asked Mr. Cortes if the City of New York helped fund the TNR program and if so, at what percent?

Mr. Cortes advised that the local program was funded through the Mayor's Alliance for New York City's Animals, which was created by the Mayor, but was privately funded. He noted that there were programs in Atlantic Beach, New York and Long Beach, New York, both on Long Island that were publicly funded.

Mr. Walter Ross, 456 Worth Avenue, on behalf of himself and his wife, stated they supported the TNR program and the neutering of domestic cats as well. He advised that they were not in favor of collaring cats because it was too dangerous.

Mr. Clay Marston, 389 South Lake Drive, Apartment 1A, supported P.B. Cats. He stated that the Town needed a major adoption program.

Ms. Susan Gibson, 226 Pendleton Avenue, supported TNR. The difficulty was in allocating the financial and work resources to get the job done. She wanted to go on record as objecting to any Ordinances being passed to limit the amount of cats one could have in their own home. She noted such an Ordinance would punish and restrict her personal and private property rights and enjoyment.

In response to Ms. Gibson's concern for P.B. Cats, which she believed might be threatened by some of the vocal residents, President Coleman stated that he did not believe that was the issue. The issue was one of accountability.

Ms. Kathy Wells, Save-a-Pet, Florida, on behalf of Gertrude Maxwell, advised that Dianne Sauve, Director of Palm Beach County Animal Care and Control has had before the Board of County Commissioners a request for mandatory spay and neuter legislation, which they have left aside. She stated that Ms. Sauve did have it on the petition again to put before the County Commissioners and urged every single animal lover in this room to attend that meeting, as the Commission does not take this issue seriously.

Mr. Rebecca Williams, 232 Seabreeze Avenue, commented on the following:

- The presence of an expert who had offered the residents some solutions;
- Noted that she had observed a certain impatience on the part of some of the Council Members. She advised that all residents deserved to have their voices heard and to have the Council's indulgence and patience, and then to have their good counsel on this issue.

In response to Ms. Williams, President Coleman advised that he tried to move the meetings along because he wanted to give everyone the same respect.

Mr. Scotch Peloso, representing the Sunset Condominium Association, 244 Sunset Avenue, supported P.B. Cats, Inc. He commented that the people living in this community have to be more involved.

Ms. Beth Levine, Ibis Isle, asked if there would be a grandfather clause if the Town limited the number of pets a resident could own.

President Coleman advised that there would be a grandfather clause.

Councilman Wyett stated that he took exception to the idea of mandatory neutering of domestic cats and dogs. He advised that he believed it was an invasion of one's privacy.

In response to Council Member Markin, Mr. Cortes offered the following suggestions to enable the Town to have a better feral cat program.

- The Town needed a more formalized complaint process.
- Within the P.B. Cats program itself, too much responsibility on too few people
- Hire part time person to handle administrative side
- Residents who were directly affected by feral cats, needed to be more actively involved.
- In order to determine a realistic expenditure for a good program, he needed to do a much more in depth analysis of the expenses of the program. HSUS recommended $4 per resident, in general, as an animal control budget, which included more than just feral cats.

- Current level of funding - P.B. Cats was just getting by and part of the problem was the pressure to relocate cats. P.B. Cats had taken on the financial responsibility for those cats, for the rest of their lives, at another location, and as that number of cats increased, the financial burden placed on the program would crush it. He noted that was another reason for being very careful for using that solution.
- Council should be willing to finance the expenses at the relocation site, if they believed that continued relocation for the feral cats on Kawama Lane was the solution.

Council Member Markin stated that the feral program had evolved. She advised that if the Town was going to have a program, and she hoped that the Town would continue with their program, the Town should opt to have a model program, the best program that they could possibly have, which would include the following:

- Education for the residents who want to participate;
- Education for the residents who were angered by the cats;
- Funding to allow the Town to deal with the cats in the problem areas;
- More people needed in the P.B. Cats program in order for it to become a model program. The Town needed to find out more about the model program in Key Largo.
- Form a committee to come up with a plan that would work for the Town.

Council Member Brooks recommended that, at a future date, a Special Town Council Meeting be held to review Town Attorney Randolph's points, which were included in the backup, as well as the information and comments discussed at today's meeting.

Town Manager Elwell suggested that staff could provide a report for the July Town Council Meeting relative to the comments made today from the public and Town Council Members. The Council could, at that meeting have a policy decision discussion. He noted that the funding issues related to P.B. Cats as well as his discussion on regulations and ordinance changes did not need to be addressed today, and could also be discussed at the meeting next month.

President Coleman stated that he thought this issue broke down into three parts:

1. Staff should review administrative recommendations received from Alfred Clark: Administrative accountability, take complaints, and respond back to the citizens.
2. Funding
3. What was going to be done on Kawama Lane?

President Pro Tem Kleid stated that in an attempt to solve some of these issues, he would propose a motion to see if he could get support.

Motion by President Pro Tem Kleid to request P.B. Cats to aggressively trap and neuter in the area of Kawama Lane; to stop feeding cats in the area of Kawama Lane; and have an official mediation process to help resolve complaints in the future; and also to mandate the issuance of semiannual reports to the Town Council on the statistical progress of Palm Beach Cats.

Mr. Mason advised the Council that on Kawama Lane, cats were being fed on private property by the owner of that property. He stated that he was not at liberty to provide the name of that resident but wanted to know what could be done about it?

After discussion regarding the feeding of cats on private property, President Pro Tem Kleid advised that his motion was to stop P.B. Cats from feeding on Kawama Lane.

The motion was seconded by Council Member Wyett.

Discussion continued regarding the feeding of cats on Kawama Lane by a resident of that street. Council Member Wyett stated that if someone was feeding there, they would be attracting cats from a wide area, and then it would be likely that there were more than three cats on the street. He supported the removal of surplus cats, but he did not want to see all cats removed.

Ms. Pouncey commented:

- She had just spent six months on Kawama Lane removing all the cats that were there. She wanted to know what evidence had been presented by the residents that there were still fifteen cats.
- Reviewed fundraising efforts by other municipalities.

Council Member Brooks requested President Pro Tem Kleid withdraw his motion because of the conflicting anecdotal evidence. He noted that he could not vote for it as presented due to that. The Council needed to discuss this more fully before they could address the issue.

President Pro Tem Kleid withdrew his motion.

President Coleman polled the Council to see how many were in favor of serious ongoing discussion at the next meeting, after staff came back with a report, and making that the action point versus doing it today.

Council Member Markin suggested that staff provide a comprehensive plan that included a committee that would be responsible for fundraising, education and issues related to the problems on Kawama Lane.

Mr. Mason supported Council Markin's suggestion.

In response to President Coleman, Mr. Elwell advised that staff could come up with an action plan for the next meeting, He advised that staff could speak definitively to complaint management, accountability, frequency of reporting, method of reporting, to the Ordinance questions that were not directly related to feral cats but were related to overall animal management in the Town, etc.. He noted that there were several issues staff was not well enough informed about and needed further direction, such as model programs, funding, etc.

Council Member Markin stated that she would volunteer to work with staff, if the Council would like her to do so, in order to provide, at the July meeting, outlines of a model program and the potential costs related to that. The Council could then decide whether or not that was the direction they wanted to take.

In response to Mr. Elwell, Town Council directed staff to provide a proposal for a model program.

Councilmen Wyett advised he favored staff providing a proposal for a model program, but noted that in the interim, Council was not doing anything to help the people on Kawama Lane. He proposed that the Council authorize the people on Kawama Lane and in the vicinity of Kawama Lane to trap the cats on their own property and send them over to Animal Rescue. He stated that they should make sure that no one on this Island, that the Town has control over, removed them from Animal Rescue and brought them back to Town.

President Coleman advised Mr. Wyett that the residents have the authority to do that now, and the Council could not pass an Ordinance to rescind that right. He advised that what they were trying to do was to inform the community that the Town was going to deal with the feral cat problem administratively, and on a funding basis. He noted that the Council did not have an answer now for the residents on Kawama Lane, but perhaps, the situation could be resolved at the July meeting.

Town Manager Elwell stated that the consensus and formal direction of the Council, as he understood it to be, was for staff to prepare a report describing a model program that other municipalities might look at to learn from instead of the Town learning from others, and Council would give policy consideration to that proposal in July.

President Pro Tem Kleid stated that he had withdrawn his motion, as he merely proposed it in order that the Council could have some discussion on this issue.

Town Manager Elwell advised that staff had direction, and an action was not required.

B. New Business

1. Reconsideration of Foreclosure Authorization Regarding Code Enforcement Lien at 1191 North Ocean Way.
[Wolf Van Falkenburg]

Mr. Wolf Van Falkenburg requested that his fine be expunged because of the hardship that he had endured. He indicated that the property owner had been seriously ill, and that he had not been aware of the fine on the property. He noted that the property had been neglected due to the hurricanes, that he had employed people that were unreliable, and tried to do the repairs himself.

President Coleman stated that before consideration of waiving the fine, staff would investigate to substantiate his claims, and to determine if the utility bills, and taxes were being paid, and if there was a beneficiary responsible for the lien.

Planning, Building, and Zoning Director Close responded to Council Member Markin that certified letters were sent to the property owner.

President Coleman suggested deferring the item to the next meeting in order to allow time for staff to research the issue.

Mr. Van Falkenburg stated that the he had no idea that letters were sent to the property owner.

Town Manager Elwell commented that one additional month would allow staff to confirm the accuracy of Mr. Van Falkenburg's assertions, but a preliminary decision would need to be made as to whether the investigation was necessary, or that the Town had conducted its affairs appropriately and the foreclosure action should proceed.

Council Member Brooks suggested that Mr. Van Falkenburg, as trustee of the property, hire an attorney, as certified letters had been sent.

Ms. Close noted that this information was faxed to Attorney Michael Tannenbaum, and that Chief Code Enforcement Officer Rob Walton had the name of the person(s) who had signed for the letters.

Responding to President Coleman, Mr. Van Falkenburg stated that the taxes and utilities were paid on time.

Council Member Wyett suggested taking a lien against the property, in the event there was no cash available to pay it.

Mayor McDonald indicated that Attorney Tannenbaum would be the one to speak to regarding the liens. He noted that eliminating the fines would set a poor precedent, as several years ago there was a similar situation where the case settled for $900,000, which was required to be paid.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to approve deferral to July 11, 2006, Town Council meeting, allowing attendance of legal counsel and for staff to provide a comprehensive report.

Chief Code Enforcement Officer Walton indicated that Mr. Van Falkenburg was properly noticed, and that the Code Enforcement Board and the Town Council voted for foreclosure.

President Coleman stated that the Code Enforcement Board was doing their job and that there was an issue of clemency, but that the Council did not have all the facts to make a decision.

Upon roll call, the motion carried unanimously.

2. Update Regarding Landscaping at Phipps Ocean Park to Screen Ibis Isle from State Road A1A.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Brazil conveyed that the Florida Department of Transportation (FDOT) replaced exotic materials with green Buttonwood trees from Ibis Isle in conjunction with the A1A project. The residents of Ibis Isle notified Public Works that the Buttonwood trees were not providing sufficient screening. Mr. Brazil indicated that seagrapes could be planted to provide screening in a relatively short period of time. On a separate project, FDOT requested a joint project agreement for mangrove mitigation. In about five years, similar screening could be provided to what the residents had previously by planting those mangroves in Ibis Isle.

Mr. Brazil indicated that the bids for the Joint Project Agreement were more than what FDOT had budgeted, which left the Town with a shortfall, but FDOT was willing to provide the additional funds needed to do the mangrove mitigation project.

Mr. Brazil presented three alternatives for the Council's consideration:

- Wait for FDOT to complete their paperwork, submit to Town Manager Elwell for execution, accept the additional funds and move forward with the mangrove mitigation project. The paperwork process could take 30 to 45 days.

- Proceed in good faith with FDOT, start the mangrove mitigation project, assuming the liability that FDOT would reimburse the Town for the extra funding, and save 45 days of waiting for the paperwork.

- Abandon FDOT's mangrove mitigation project, and move forward with planting the green Buttonwood trees now.

Mr. Brazil provided the following additional information:

- Allow time for the green Buttonwood trees to grow providing the same type of screening that the residents had previously; and

- It would be possible to plant a row of 10 to 12 foot Areca Palms for about $30,000. The 15 foot Areca Palms were not available at a reasonable price or in a reasonable quantity. The palms would provide more immediate screening, and the planting details could be resolved among the Seagrapes, the Buttonwoods, and Arecas with the Ibis Isle residents and the horticulturist.

Mr. Brazil responded to Council Member Markin that the Areca Palms were generally more stable than most trees during a hurricane.

Responding to Mayor McDonald, Mr. Brazil explained that the Areca Palms would be $30,000 additional and separate from the mangrove mitigation project cost and would provide immediate screening for the residents at Ibis Isle. The Ibis Isle residents would be donating $13,000 toward the $30,000 for the Areca Palms.

Stefanie Gugelot, resident of Ibis Isle, commented that the residents would be happy with the Areca Palms because the seagrapes that were planted at the south end of A1A looked pathetic.

Mr. Brazil clarified that the cost to the Town would be $17,000 for the Areca Palms, and $13,000 would be provided by Ibis Isle residents.

President Pro Tem Kleid commented that if the invasive species were not removed by the year 2008, they would have been mandated for removal anyway, and that the screening problem was caused by the state statute and FDOT. He expressed concern about using public money to support a private establishment.

Ms. Gugelot stated that at last month's meeting, the subject of funding was discussed as a possibility to be used for the screening at Ibis Isle. The residents raised money through voluntary contributions. She commented that the land was public not private and that it did not belong to the Town or to Ibis Isle residents.

Mayor McDonald suggested deferring the item until the end of the day because there would be a situation later that may require mitigation that could resolve the issue.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett to approve the mangrove mitigation project and authorize the Town Manager to sign the revised project agreement with the FDOT. On roll call, the motion carried unanimously.

The remaining portion of this item was discussed during the latter part of the meeting, and is included below:

Mayor McDonald indicated that the Ibis Isle project situation had changed, and requested that the Council authorize Public Works Director Brazil to proceed with the project before the paperwork was completed by FDOT because it was the growing season and as the hurricane season progressed there was an increased chance of delays. He stated that there was no risk of starting without the 45-day paperwork with FDOT.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve moving forward with the Ibis Isle project immediately. On roll call, the motion carried unanimously.

3. Proposed Settlement of Three Code Enforcement Matters Involving the Mar-a-Lago Club and 515 North County Road.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Manager Elwell advised that the Town would require that fines should be sufficient so that they actually discouraged someone from violating the code. He noted that the Town Attorney would be requested to prepare a report with recommendations to be placed on next month's agenda.

Council Member Wyett advised that code enforcement was limited to how much they could fine a violator. He noted that fining someone $5,000 for a problem that caused the Town a $1 million problem, would not eliminate code violators.

Town Manager Elwell stated that there were some limits under the Statutes relative to what could come before the Council as opposed to what had to go before Code Enforcement. He explained that staff would obtain advice from the Town Attorney for discussion in July.

Mr. Reg Stambaugh, on behalf of the Preservation Foundation, stated that it was his understanding that the Town had a recorded Covenant restricting the height of hedges. He noted that he wanted to clarify that the Town was not rescinding that covenant but was enforcing it.

Town Manager Elwell stated that the Town was actually enforcing that provision and certainly was not waiving it for the future. He explained that the Town had been advised that there had been an attempt to plant larger hedges, but they did not do well, and it had been believed that younger, healthier plants would, over a period of time actually grow into a better hedge. He noted that this had been reviewed with Public Works and others who know about plants and what was available in the market at this time. It was difficult to obtain plants now due to the hurricane impact. The Town believed it was a credible position to state that what was planted there now would actually be better in the long run. The Town accepted that as a compromise along with the $15,000 payment.

Motion made by Council Member Brooks, seconded by Council Member Wyett, to approve the settlement and dismiss any Code Enforcement action. On roll call, the motion carried unanimously.

4. Proposed Use of Town Right-of-Way for Beautification Project on North Ocean Boulevard Between Everglade Avenue and Dunbar Road. [H. Paul Brazil, Director of Public Works]

    a. RESOLUTION NO. 41-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of Encroachment Agreements Between the Town of Palm Beach and Mr. George A. Cloutier and Mr. Harvey Kinzelberg for Construction and Maintenance of Decorative Improvements along North Ocean Boulevard.

It was the consensus of the Town Council to defer this item to July 11, 2006, Town Council meeting.

5. Charter Review Proposed by Mayor McDonald.

[Peter B. Elwell, Town Manager]

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve deferral of Item X.B.5., Charter Review Proposed by Mayor McDonald, to July 11, 2006, Town Council meeting. On roll call, the motion carried unanimously.

6. Lakeside Park. [Peter B. Elwell, Town Manager]

   a. Beautification Project Proposed by Town Council President Coleman.

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

It was the consensus of the Town Council to defer this item to July 11, 2006, Town Council meeting.

7. Proposed Vacation Conversion Policy. [Peter B. Elwell, Town Manager]

Town Manager Elwell recommended that the Town Council approve the recommendation set forth in the backup material dated June 7, 2006, authorizing him to create a vacation conversion policy for the Town.

Mr. Elwell explained the idea of offering employees the ability to convert their vacation hours to cash and increase cash flow during an employee's career rather than paying employees for the balance of vacation time when leaving Town employment, which was at their highest salary rate.

Council Member Markin suggested providing an opportunity for employees to buy back a portion of their vacation days, year after year, as opposed to accumulated on the day that they retire.

Council Member Wyett stated that no employee should be allowed not to take their vacation in order to augment their financial situation.

Motion made by Council Member Brooks, seconded by Council Member Wyett to authorize Town Manager Elwell to create a vacation conversion policy for the Town.

Council Member Markin expressed concern that at the end of each year when the conversion payments were distributed, the employees could perceive it as a negative that the Council would be taking something away from them, and she could not vote for it.

Mr. Elwell explained that it would be announced to the employees as approved by the Town Council with the request for consideration of how the leave was accumulated, and with possible changes of how much would be accumulated, or the manner in which it was accumulated. The employees would be kept informed, and by proceeding now with an easier, more positive action, everybody wins. Once it was implemented and put in place, other issues could then be addressed.

Council Member Markin indicated that Mr. Elwell's comments would suffice for the record and she would agree with the vacation conversion policy.

Upon roll call, the motion carried unanimously.

8. Proposed Addition of Three Town Holidays.
[Peter B. Elwell, Town Manager]

It was the consensus of the Town Council to defer this item to July 11, 2006, Town Council meeting.

9. MINUTES: MAY 3, 2006
Approval of the Minutes of the Town Council Zoning Workshop Regarding Zoning Season.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve the Minutes of May 3, 2006, as amended. On roll call, the motion carried unanimously.

10. MINUTES: MAY 9, 2006
Approval of the Minutes of the Town Council Meeting.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve the Minutes of May 9, 2006, as amended. On roll call, the motion carried unanimously.

11. MINUTES: MAY 10, 2006
Approval of the Minutes of the Special Town Council Meeting Regarding Town Boards and Commissions.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve the Minutes of May 10, 2006, as amended. On roll call, the motion carried unanimously.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 3-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2005, Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Manager Elwell read Ordinance No. 3-06, by title, as printed above.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin, to adopt Ordinance No. 3-06. On roll call, the motion carried 4-1, with affirmative votes cast by President Pro-Tem Kleid, Council Member Markin, Council Member Wyett, and President Coleman; Council Member Brooks was temporarily absent from the meeting.

B. First Reading

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

Town Manager Elwell read Ordinance No. 4-06, by title, as printed above.

Motion made by Council Member Markin, seconded by President Pro Tem Kleid, to approve Ordinance No. 4-06, on first reading. On roll call, the motion carried 3-0, with affirmative votes from Council Member Markin, President Pro Tem Kleid, and President Coleman; Council Members Brooks and Wyett were temporarily absent from the meeting.

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

Town Manager Elwell read Ordinance No. 5-06, by title, as printed above.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin, to approve Ordinance No. 5-06, on first reading. On roll call, the motion carried 3-0, with affirmative votes from President Pro Tem Kleid, Council Member Markin, and President Coleman; Council Members Brooks and Wyett were temporarily absent from the meeting.

3. ORDINANCE NO. 6-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 54, Historical Preservation, at Article II, Landmarks Preservation Commission, Section 54-41, So As to Provide for a Period of Forty-five Days from Filing for the Town Council to Decide an Appeal; Providing That Appeals Shall Be Based on the Record of the Proceedings Below and Shall Not Be a De Novo Hearing; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Manager Elwell read Ordinance No. 6-06, by title, as printed above.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin, to approve Ordinance No. 6-06, on first reading. On roll call, the motion carried 4-0, with affirmative votes from President Pro Tem Kleid, Council Member Markin, Council Member Wyett, and President Coleman; Council Member Brooks was temporarily absent from the meeting.

XII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of ARCOM Denial– Application No. B39–06- 202 Plantation Road. [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Stirling Clarke, substituting for Town Attorney John Randolph, stated that this appeal was from an ARCOM denial and that Attorney Kent Safriet requested that the appeal be kept on the record, which would be solely from the record presented at the last ARCOM meeting. She suggested that the Council not hear any new testimony or evidence. The public comments made earlier today by Architect Anstis were to be disregarded by the Council.

Town Manager Elwell suggested that input be limited only to Planning, Zoning, and Building Director Close, the appellate, and whatever was shown from the record rather than allow anyone who was new to speak.

Ex-parte communication was declared by: Council Member Markin with the owners of the property and members of ARCOM; President Pro Tem Kleid with Mr. Zukov from ARCOM and Ms. McNeel; President Coleman with Ms. McNeel and Mr. Zukov and one other member of ARCOM; Council Member Wyett with the applicant and Mr. Zukov; Council Member Brooks with Ms. McNeel, Mr. Anstis, and Mr. Zukov from ARCOM.

Attorney Safriet of Hopping, Green & Sams, represented the appellates, Ms. Diane McNeel and Mr. Peter Plotkin. He presented the following issues:

- The errors in the evidence were differences of opinion based on the subjective standards provided within the Town's Code;
- Provided photographs and site plan;
- The basis of ARCOM's denial was the excessively dissimilar language in Section 18-206 of the code, with respect to architectural compatibility and was vague;
- The terms of the standards were ambiguous and not defined as to what was exactly required;
- Mr. Plotkin researched the Zoning Codes and knew what was allowed to be built according to the code criteria, which was presented to ARCOM;

Ms. Close interjected that the Council was hearing things that were not discussed at the ARCOM meeting.

Attorney Clarke advised the Council that they did not need to make a decision on the vagueness of the Ordinances, but that it was part of the appeal letter submitted on the record by Attorney Safriet. The determination by the Council, based on the record, was whether to approve, deny, or remand it to ARCOM.

Attorney Safriet explained his reasons for discussing the vagueness and continued the discussion:

- Reviewed the history of the project;
- The current denial was based on the fact that the Mediterranean style was architecturally incompatible, excessive massing, and the height of the building;
- For the record, there were several houses in the compatibility study that were Mediterranean style located adjacent to other style homes;
- Mr. Anstis was not allowed to testify at the hearing with respect to his rationale as to why he believed this home met the criteria under 18-205, as he was only allowed a yes or no answer;

- The applicants did not know what was wanted by ARCOM, or what would be approved;

- The ARCOM meeting in January and March was composed of different commissioners;

Attorney Safriet concluded by requesting that the Town Council overturn or reverse ARCOM's decision.

Attorney Clarke clarified that the last ARCOM Commission meeting was on the record and the current project was to be considered as a new project.

Ms. Close discussed several of the comments that she had made at the ARCOM meeting:

- Met with the applicant and advised them that the it was a new project, as it was significantly different enough to warrant going back on the agenda;

- Advised ARCOM that this was a new project;

- Section 18-205 of the Town Code had made reference to dissimilarities within 200 feet;

- ARCOM makes their determination based on their expertise;

- The standards were qualitative in an ARCOM review, and was based on its judgement;

- The ARCOM Commission comprised of three registered architects, a registered landscape architect, a registered engineer, and members of ARCOM who have education background in architecture;

- Zoning could be changed;

- The minutes of the previous meeting were part of the record and were part of ARCOM's decision;

- ARCOM members were present to provide additional information;

- There were suggestions made by ARCOM of ways to reduce massing, without reducing the square footage or the cubic content; and

- In the zoning code, there was no guarantee of building a house at the full lot, yard, and bulk requirements of the Town, and that decision was mediated by ARCOM.

Attorney Clarke stated that members of ARCOM would only be speaking to what was currently in the record.

Mr. Nikita Zukov, Vice Chairman of ARCOM, commented that the applicant's request in January 2006 had been declined, but that ARCOM discussed how the massiveness could work and more ground coverage was needed. However, the applicant was very adamant regarding the footprint. He said that ARCOM voted 5-2 against it.

Mr. Zukov noted that the second submission was a Mediterranean nightmare, and three architects and four other people on the Architectural Commission voted that it was an architectural incompatibility with other homes in the neighborhood. There were Mediterranean homes on the Ocean, but not on Plantation Road.

Council Member Brooks noted that in Attorney Safriet's letter of May 25, 2006, he placed emphasis on the fact that no variances were required, which the appeal was not on a variance. The letter stressed "objective standards", and ARCOM deals with qualitative standards.

Council Member Markin stated that the real reason as to why ARCOM rejected the plan for the house, was the architectural incompatibility with the neighborhood. She said that she had difficulty understanding why this Mediterranean house could not be included in that neighborhood, and that there were no streets designated as to the styles of houses.

Council Member Wyett addressed the fact that Attorney Safriet quoted him in previous meetings was out of context and should not be interpreted as a basis for his presentation. The house was not Mediterranean and there were too many odd things about the house, which probably was the basis of why ARCOM politely found it incompatible.

President Pro Tem Kleid noted that Mr. Zukov could find ways to alter the facade of the house to make it acceptable, if the applicant was willing to do so. He recommended that this be remanded back to ARCOM to reach a compromise.

President Coleman stated that he was in favor of remanding it back to ARCOM, but that he understood that massing was the issue.

Council Member Markin supported Mr. Kleid's motion to remand it back to ARCOM, allowing the Mediterranean style working with the client. She said that she did not agree that mass was an issue.

Mr. Zukov stated that ARCOM had no objection to Mediterranean or any style that was acceptable to what was good for the Town. The bulk was a big item, as it was too much for the second floor.

Attorney Safriet stated that the massiveness was not the basis for the decision, it was only Section 18-2c which was excessively dissimilar with the architectural compatibility.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to remand the Appeal, Application No. B39-06-202 to the Architectural Commission with the proviso that the Town Council was not opposed to the Mediterranean style, and that the facade, architectural features, and massing should be addressed to arrive at an acceptable

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

B. Time Extensions

1. Request for Extension of Work Hours at 2315 South Ocean Boulevard Per Letter Dated April 28, 2006, from James R. Brindell. [Veronica B. Close, Director of Planning, Zoning, and Building]

This item was withdrawn from the agenda.

2. Request for Extension of Work Hours at 38-48 Via Mizner and 8-14 Via Mizner Per Letters Dated March 31, 2006, and May 18, 2006, from Ron Kolins. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Close indicated that staff had received letters of objection to the extension of construction hours and was asking for a deferral in order to meet with the objectors.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve deferral to the July 11, 2006, Town Council meeting of Item XII.B.2., Request for Extension of Work Hours on Via Mizner. On roll call, the motion carried 4-0, with Council Member Wyett, President Pro tem Kleid, Council Member Markin, and President Coleman casting affirmative votes; Council Member Brooks had temporarily left the meeting.

3. Request for Extension of Work Hours at 207 Royal Poinciana Way Per Letter Received May 31, 2006, from Sam Roach. [Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Building and Zoning Director Close indicated that the applicant requested an extension of work hours for the summer months. She noted that staff recommended the following conditions:

- The hours be extended to 8:00 p.m., Monday through Saturday, through September 30, 2006, only;
- No work would be allowed on Sundays or legal holidays;
- Any complaints would stop the work; and

- Evidence was required of contacting the neighbors and no comments.

Motion made by Council Member Wyett, seconded by Council Member Markin to approve extension of work hours at 207 Royal Poinciana Way. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #3-2006 The application of Via Mizner Associates Limited Partnership/Ian Kean relative to property described as lengthy legal description on file; commonly known as 8-14 Via Mizner; located in the C-WA Zoning District. To allow a special exception to convert a retail specialty foods store with takeout (C-108 S and C-109 S) and an existing adjacent Art Gallery space (C-107 S and C-106 S) into a restaurant with 27 seats, the area totaling 1,899 square feet.) *Deferred from the May 9, 2006, Town Council Meeting.* **Request for Deferral to the July 11, 2006, Town Council Meeting Per Letter Dated May 18, 2006, From Ronald K. Kolins.**

Deferred to the July 11, 2006, Town Council meeting.

2. New Business- Less Than 15 Minutes

a. VARIANCE #17-2006 The application of Robert and Christina Baker relative to property described as Lot 128 and the South 50 feet of Lot 127, Mark Rafalsky Tract; commonly known as 766 Hi-Mount Road; located in the R-B Zoning District. Variance requested to allow 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.

Ex-parte communication was declared by President Pro Tem Kleid, President Coleman, Council Members Wyett and Brooks with Attorney Maura Ziska. Mr. Coleman stated that he had seen the premises.

Attorney Ziska, on behalf of the applicant, provided an overview of Variance #17-2006.

Zoning Administrator Paul Castro commented that staff questioned the hardship relative to the reason or justification for raising the wall, since most of the use of the backyard was around the pool area and the cabana. He indicated that he was not sure what kind of use within 9 feet of both walls would be relative to more use of the backyard.

Responding to Council Member Markin, Mr. Cherkowski(ph) stated that the grade differential was sloping away rapidly, the water needed to be retained, and when the applicants were in residence, they use the area, as it was part of the gardens.

Responding to Council Member Brooks, Attorney Ziska conveyed that based on her conversation with the contractor that from this point forward, there would be no construction vehicles on Hi-Mount Road and all the workers would be brought in by bus.

President Coleman suggested approving the variance, tied in with a strong penalty regarding bussing.

Motion made by Council Member Brooks to approve the variance with the condition that a penalty of $1,000 fine be imposed to the contractor per construction vehicle per day.

Council Member Markin stated that she had a problem with approving something that did not show a hardship and tying it into bargaining for something that the contractor should have been doing for the last two years.

Council Member Wyett indicated that he was not in favor of six-foot high walls along the bike path, that there was no hardship, and that terracing could be the solution to the problem.

Council Member Brooks withdrew his motion for approval, and asked that whatever motion was made the fine remain in effect.

Motion Withdrawn.

Motion made by Council Member Wyett, seconded by Council Member Markin to deny Variance #17-2006. On roll call, the motion carried unanimously.

Staff was directed to present recommendations at the July 11, 2006, Town Council meeting regarding fining of construction companies relative to any street parking violations in Town and a method of tracking those violations.

Attorney Ziska commented that from this point forward, the contractor would have no construction vehicles on Hi-Mount Road, and would bus in all workers.

George Kantor, M.D., a resident on Hi-Mount Road, stated that he opposed the variance, and that the condition of Hi-Mount Road for the past two years was reprehensible, dangerous, and out of control. He noted that he called the Police Department 19 times, including this morning to remove illegally parked vehicles from the cul-de-sac. Police came to help him remove vehicles parked in front of his driveway to go to and from work. The maintenance people had asked his help to pick up trash on Wednesday's when they were unable to access the road. The "no-parking" signs had been removed. The police had been very responsive, asking the contractor to move the vehicles and two hours later, the vehicles were back in the same positions.

President Coleman requested that if there was one more violation, that Dr. Kantor call him, or Town Manager Elwell in order to remedy the problem.

Council Member Markin commented that if the "no-parking" signs were removed from that street, the signs should be replaced as soon as possible, to legally enforce this issue and if any damage was done to the signs, to deal with it as soon as possible.

Staff was directed to investigate illegal removal of "no-parking" signs on Hi-Mount Road and to replace the signs as soon as possible.

b. VARIANCE #19-2006 The application of New Jersey Street, LLC d/b/a Christian J. Angle relative to property described as Lots 5, 6 & 7 of Orange Grove Park, less that part of Lot 5 condemned for public purposes; commonly known as 241 Bradley Place; located in the C-TS Zoning District. Variance requested to allow a 1,036 square foot real estate office use on the first floor, which use is permitted only above the first floor.

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

Attorney Tim Hanlon presented the applicant's variance request, discussing several of the following issues:

- The space was used as a travel agency, which was classified as a service retail establishment and not as an office;
- The space would be used as an office and matched other uses within the same building, requiring a variance; and
- The hardship was configuration, design, location in the building, and the traditional use as an office.

Zoning Administrator Castro stated that the building was built as an office building, a travel agent was previously in this tenant's space, and because of a technicality in the code, relating to how this use was categorized, an office use was not grandfathered. By code today, offices were not permitted on the first floor. There was a hardship relative to the building, and the area did not lend itself to a retail type of establishment.

Motion made by Council Member Markin, seconded by Council Member Brooks to approve Variance #19-2006.

Public Comment:

Kelly Layman, 250 Bradley Place, provided handouts and photographs for the record and commented that her residence was located diagonally to the building being discussed. The lanes in the intersection were not aligned, which caused swerving. The residents that exited her building to the right, going south, had to proceed 12 feet beyond the stop sign, which dangerously exposed them to the southbound traffic. She expressed concern that as the businesses increased, it would cause the traffic to accelerate in the intersection, which was one of the premier spots where people walked their dogs to get to Lake Trail.

President Coleman indicated that a stop sign could be installed on the road heading south.

Council Member Markin suggested incorporating this area in the parking and traffic study as a priority, and if the office space was approved, there should be an appropriate number of parking spaces allocated for it.

Mr. Castro noted that there was a principle of equivalency regulation that grandfathered in the parking issues. This building had parking spaces, and the use was less intense than the retail use allowed in the space.

Responding to Council Member Markin, Mr. Castro stated that by converting the space into office use, a restaurant or club would have to request a variance for parking, whereas currently it was not needed. The traffic issues that were discussed would be referred to the Police and Public Works Departments because they were working with a traffic engineer that was doing the study.

Mayor McDonald suggested that if the Town Council approved the variance for this applicant, that the Council ensure that the space would not be leased at a later time without their review.

Motion of Council Member Markin withdrawn.

Substitute motion made by President Pro Tem Kleid, seconded by Council Member Markin to approve Variance #19-2006, only for this particular applicant. On roll call, the motion carried unanimously.

President Coleman requested staff track the violations incurred by the contractors, and report to the Council next month.

c. VARIANCE #21-2006 The application of Marion Hugh and Penelope F. Antonini relative to property described as Lot 4, Plan of Golf View; commonly known as 4 Golfview Road; located in the R-A Zoning District. Variance requested from the side yard requirement in the R-A zoning district to construct a second story addition with a side yard setback of 9.1 feet in lieu of the 15 foot minimum setback required; variance requested from the lot coverage requirement in the R-A zoning district to construct a 55 square foot two story addition (area needed for the installation of an elevator) to increase the lot coverage from 26.64% to 26.76% in lieu of the 25% maximum required; to change from a flat to pitch style roof which will increase the height of the accessory one story guest house in the required fifteen (15) foot west side yard setback. The new roof structure begins to increase height 3.7 feet from the property line. Variance to change from a flat to pitch style roof which will increase the height of the accessory one story guest house in the required fifteen (15) foot rear yard setback. The new roof structure begins to increase height 9.6 feet from the property line.

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

Attorney Frank Chopin, on behalf of the applicant, stated that the three requested changes to the property were to add a second story to an existing garage, change the roof design on the guest house from flat to pitched, and add an elevator shaft allowing access to the second floor above the garage.

Zoning Administrator Paul Castro noted that the Landmarks Preservation Commission said that the variances requested were in keeping with the Landmark architecture that was proposed.

Responding to President Pro Tem Kleid, Attorney Chopin noted that the reason for the elevator was that it was the only access to the second floor as it was being built above the garage.

Responding to Planning, Zoning, and Building Director Close, Attorney Chopin indicated that the Landmarks Preservation Commission would consider the design changes later this month, to determine if the access was according to building code.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve Variance #21-2006. On roll call, the motion carried unanimously.

d. SITE PLAN REVIEW #8-2006 WITH VARIANCE The application of Premier Palm Beach, L.P., a Delaware Limited Partnership and Premier Developers II, L.L.C., a Florida limited liability company relative to property described as lengthy legal description on file; commonly known as 3000 South Ocean Boulevard; located in the R-D(2) zoning district. A mistake was made when a portion of this site's street wall was constructed which resulted in the wall being up to 10 inches higher than allowed by code. The applicant is also requesting a minor site plan modification to change some parking from grass block to paver block. Modification of the approved site plan (Site Plan #6-2003) to allow the substitution of pavers for grass in five parking spaces near the south portion of the building entrance; and, variance to allow a wall which exceeds 6 ft. in height when measured from the crown of the road. The wall ranges from 6.16 ft. to 6.83 ft. above the crown of the road. This is a request to allow a wall height in the front setback of a maximum of 6.83 ft. in lieu of the 6.0 ft. allowed. This is a variance of a maximum of 10 inches.

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

Attorney Brindell, on behalf of the applicant, discussed Site Plan Review #8-2006 with the Variance.

Zoning Administrator Castro advised that staff did not consider correcting a mistake on the front wall as a hardship. He noted that the location of the handicap space required direct access into the building, and that the handicap space and access aisle were necessary and were required to be a hard surface. Although the parking spaces were not in the area of the landscaped open requirements, at the time the Site Plan was originally approved it was a condition of approval that the four remaining spaces had to be landscaped.

Council Member Brooks stated that he did not want the existing wall torn down, but suggested that Mr. Deckelbaum make a donation to the Town Beautification Project. He added that the violation could not be overlooked.

Ms. Close interjected that the Council's decision would have to be based on the merits of the variance on the criteria in the code.

Attorney Roberto Vargas, substituting for Town Attorney Randolph, advised that it did not preclude mitigation, but the code was clear that there must be a finding of hardship.

Mayor McDonald commented that the Site Plan did not require a finding of a hardship, and the hardship of the variance was that a mistake was made, which would require the demolishing of an existing wall. In terms of mitigation, at a meeting last week, a developer of a proposed project offered to build a new Town Hall for the Village of South Palm Beach. If Mr. Deckelbaum wanted to mitigate or offer to the Council that he would like to beautify something in Town, there was no problem with that, and the Town would graciously accept.

Mr. Deckelbaum, offered to donate $17,000 on behalf of the Town for the Ibis Island beautification program.

President Pro Tem Kleid commended the developer for bringing the change forward voluntarily. He agreed that it was diminimus and the Council's approval or disapproval was not contingent upon making any contribution.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett to approve the Variance #8-2006 to correct the height of the front wall. On roll call, the motion carried 3-2, with President Pro Tem Kleid, Council Members Brooks and Wyett casting

affirmative votes, and President Coleman and Council Member Markin dissenting.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve Site Plan Review #8-2006 allowing substitution of pavers for grass in five parking spaces. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS & VARIANCES - MODIFICATION The application of Adam Schlesinger relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Boulevard (former Hilton Hotel); located in the R-D(2), B-A Zoning District. The applicant is requesting to convert this existing 134-unit hotel into a 107-unit condominium hotel. The building will be completely renovated, including the demolition and reconstruction of the entire interior and exterior walls, and the addition of a partially sunken 200-space parking structure to replace the existing 144-space surface parking lot. The swimming pool will be relocated to the interior of the building on the fourth floor, and tennis courts will be built atop the parking structure. The building is and will remain 5 stories over a basement. However, the entrance road will be ramped up and the lobby will be relocated from the basement to the first floor. The hotel already contains customary accessory uses including a gift shop and two dining rooms. These uses will continue in the new hotel but will be reconfigured. Special Exceptions to change ownership of an existing hotel in the R-D(2) district; to allow tennis courts to be built on a structure (the parking deck); and, to expand existing accessory commercial uses in the hotel by enlarging the gift shop from 168 square feet to 436 square feet and adding a small tennis pro shop of 528 square feet. Variances requested for the following: to enlarge a nonconforming building which will be partially demolished and reconstructed by greater than 50% of its existing cubic volume; unenclosed structures over 15 ft. high are required to meet setbacks. The north entrance portal at A-1-A will be 5 ft. from the north property line in lieu of the 30 ft. minimum required by code, a variance of 25 ft. The south entrance portal will be 9 ft. from the south property line in lieu of the 30 ft. minimum required by code, a variance of 21 ft.; side yard setback for parking garage of 10 ft. in lieu of 30 ft. minimum required by code on the north side, and 15 ft. in lieu of 30 ft. minimum required by code on the south side; side yard setback for hotel decorative west facade elements of 27.58 ft. in lieu of 30 ft. minimum required by code on the north side, and 27.50 ft. in lieu of 30 ft.

minimum required by code on the south side; hotels in the R-D(2) district are required to have 35% minimum landscaped open space. This site will have 30.16%, requiring a variance of 4.84%. The existing site has 19.3% landscaped open space.; lot coverage of 63.7% in lieu of 22% maximum required by code for a five-story special exception structure. The existing site has 27.8% lot coverage.; a maximum east-west building dimension of 426.6 ft. in lieu of the maximum 150 ft. allowed by code.; a porte-cochere dimension of 47.5 ft. x 68.75 ft. in lieu of the maximum 30 ft. x 30 ft. allowed by code.; a tennis pro shop (accessory commercial use) outside the main building, and with its own external entrance which is not permitted by code; to allow parking aisle widths of 21.66 ft. and 21.75 ft. in lieu of the 25 ft. minimum required by code; to allow parking to be arranged so that a car must be moved before another car can enter or exit a parking space, for the mechanical parking. *Deferred from the March 14, 2006, and April 11, 2006, Town Council Meetings.* **Request for Deferral to the July 11, 2006, Town Council Meeting Per Letter Dated June 8, 2006, From James Brindell.**

This item was deferred to July 11, 2006, Town Council meeting.

4. New Business- More Than 15 Minutes

   a. VARIANCE #16-2006 The application of Gary R. Lumsden relative to property described as lengthy legal description on file; commonly known as 750 South County Road; located in the R-A Zoning District. To allow construction of exterior steps for access to the existing front entry, at a distance of 31.5 feet from the west (front) property line, in lieu of the 35 foot minimum required; to allow landscaped open space of 38%, in lieu of the 45% existing and 50% minimum required; and, to allow lot coverage by building of 28.1%, in lieu of the 24.1% existing and 25% maximum allowed.

This item was deferred to September 7, 2006, Town Council meeting.

   b. VARIANCE #18-2006 The application of Eric and Harriet Rothfeld relative to property described as Lot 71 and the North 50 feet of Lot 73, of the Plat No. 2 Everglades Island Development; commonly known as 685 Island Drive; located in the R-B Zoning District. Variance requested to allow a cubic content ratio of 4.78 in lieu of the 4.83 existing and the

3.86 maximum allowed to add a two story loggia extension and cabana.

Ex-parte communication was declared by Council Member Markin with a friend of the owners, President Pro Tem Kleid, President Coleman, and Council Members Wyett and Brooks with Attorney Ziska

Attorney Maura Ziska, on behalf of the applicants, discussed the Variance #18-2006:

Zoning Administrator Castro stated that applicant was requesting to demolish the existing cabana, which was much larger than Attorney Ziska conveyed, to create a new loggia, to reconstruct the pool a little further to the west, and to relocate the new pool house. A reduction in the cubic content ratio still exceeded the maximum allowed based on the code today. The new pool house would be connected with the air conditioning from the house area. If application was approved, the proposed pool and pump equipment area did have to be housed in a pump house to mitigate any noise the pool leader may have to neighbors on the north, because it was within the required setback.

President Coleman commented that he had no objection to the variance, and it fell within the guidelines that the Town was in favor of reducing non conformities.

Responding to Council Member Brooks, Attorney Ziska indicated that there would be 50% of green space remaining after the project.

Motion made by Council Member Brooks, seconded by Council Member Wyett to approve Variance #18-2006. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #4-2006 WITH VARIANCE The application of New Bradley House LTD relative to the East 10 feet of Lot 30 and all of Lots 31-37 inclusive of "Map of Floral Park" and Lots 190 and 200 inclusive, Floral Park; commonly known as 290 Sunset Avenue; located in the C-TS Zoning District. Special Exception modification to eliminate Condition of Approval No. 3 for the Coco Palm Beach Restaurant (Special Exception #10-2002) to allow the applicant to be considered for lunch service; variance to eliminate the requirement for 30 off-street parking spaces required during lunch service; Special Exception to provide 30 off-site supplemental parking spaces located in a parking lot along Sunset Avenue (no address-directly east of and behind Publix) which is within 500 feet of the Coco Palm Beach restaurant; and, Special Exception to allow 28 outdoor seats for lunch service from inside occupancy allowed.

Ex-parte communication was declared by President Coleman and President Pro Tem Kleid with Attorney Frank Lynch, Council Member Markin with the chef and the manager of the Restaurant, and Council Member Wyett with the Restaurant owner.

Attorney Lynch, on behalf of Coco Palm Beach Restaurant, provided a brief overview of

Special Exception #4-2006 with Variance.

Council Member Wyett commented that based on the report of the Biltmore, and his own observation, the valet privileges should be revoked, and that the Council should consider reviewing this at whatever decision was made. One of the conditions, if the violations continued on the valet parking, would be to fine the Restaurant.

Mr. Healy, of International Parking Systems, responded that if the use of the new parking lot was approved, they would not be in front of the Biltmore, and it would not be an issue. He suggested that periodically an undercover police officer could park in that location, and if u-turns were being made, the restaurant could be fined. He accepted Biltmore's concerns, which were legitimate, and should not be happening.

Zoning Administrator Castro indicated that staff's concerns regarding the initial application several years ago were the on-street parking, traffic circulation, and whether or not the applicant would use the designated parking lot. That intersection was over capacity, specifically at lunch time, because of the Publix location, and the loading and unloading that occurred for all the restaurants. The original application was approved for the evening, on the condition that valet service was used, and only the parking lot on Sunrise.

Mr. Castro continued that a letter from the Palm Beach Biltmore Association, dated June 2, 2006, prompted staff to investigate the parking, and found that the valet parkers were not parking in the designated parking lot. The valet operation was not adhering to the original approval and conditions that were specified.

Garrett Klotz, representative of American Consulting Engineers and on behalf of the Town, provided a brief synopsis of his report.

Mortimer Goodstein, a resident and a legal committee member of the Biltmore, stated that the residents wanted to retain their quiet life, and urged the Council to consider the matter of integrity and veracity. Mr. Goodstein commented that traffic coming over the bridge and turning north onto Bradley Place was quite extensive and the traffic increased in the winter time and became enormous. He urged the Council to consider denial of the application.

Council Member Brooks commented that he could not support Coco's petition for lunch service because of reasons discussed by the traffic consultant, Mr. Castro, and Mr. Goodstein.

Attorney Lynch commented that Coco's had many Biltmore residents dining in their Restaurant. The issue was the congestion of the community at that intersection, not parking in Dr. Weldon's parking lot, and that there would always be a problem with the parking because it was a bad situation.

President Coleman noted that he was inclined to deny this request, and if the valet parker was not managed, the Restaurant's approvals would be rescinded.

Motion made by Council Member Wyett, seconded by Council Member Brooks to deny

Special Exception #4-2006 with Variance. On roll call, the motion carried unanimously.

President Coleman directed staff to come back in six months and report whether Coco's was complying with the parking plan that was approved for evening dining.

d. SITE PLAN REVIEW #7-2006 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Commerce Bank relative to property described as Lot 28 to 31, Block 10, Revised Royal Park Addition; commonly known as 380 South County Road; located in the C-TS zoning district. Request for site plan modification to change the roof style and outside elevations, reconfigure driveway entrances and handicap space, eliminate the dumpster and reconfigure the interior space on both floors; Special Exception use to allow a town-serving financial institution in the C-TS district on the northwest corner of South County Road and Peruvian Avenue; modification to the Special Exception to allow a town-serving business in excess of 2,000 square feet of gross leasable area (5,053 sq. ft.) in the C-TS district; modification to a Special Exception to allow a modification to the second story of a two-story building within the C-TS district; variance from the required front yard setback (South County Road frontage) to allow 4.30 feet in lieu of the required 9 ft. setback minimum required for a 22.16-foot high, two-story structure; variance from the required ten-foot pedestrian walkway to allow a 8.35 foot wide sidewalk along South County Road; variance from the requirement for a loading zone; variance from required off-street parking spaces to allow 20 spaces in lieu of the 21 required spaces based on 5,053 gross leasable floor area; variance from required landscape open space requirement for two-story buildings to allow 16.3% in lieu of the 13.9% existing and required minimum of 25%; variance from required front yard landscaped open space to allow existing 12.8% in lieu of the 35% minimum required; variance from maximum size of business logo with wall sign. The code allows one square foot logo. The request is for a four square foot logo on both the south and east elevations; and, variance to allow demolition and renovation to a non-conforming structure that is in excess of 50% of its cubic footage by replacing the roof design and exterior windows.

Ex-parte communication was declared by President Coleman and President Pro Tem Kleid with Attorney Brindell.

Attorney Jim Brindell on behalf of Commerce Bank, provided a brief summary of the Site Plan Review #7-2006 with the Special Exceptions and Variances.

Architect Harold Smith of Smith and Moore Architects discussed the architecture plans of the Commerce Bank.

Zoning Administrator Castro indicated that the variances were being requested because of the plans to demolish more than 50% of the building by cubic footage. Everything would need a variance in order to meet today's code requirements, which would be impossible for this building and lot size. They were complying with parking requirements, and staff agreed with the gross leasable area. The building was being scaled down as a result of the different type of architecture that was being planned. The dumpster was being eliminated because they had a private provider for security reasons. He stated that staff was not sure of the impact that the proposed hours of operation would have on the condominium building located directly behind the Bank.

Mayor McDonald commented that the application could not ever meet the standard for the hardship, because three banks had operated in this space, and the applicant could not say that there would be no reasonable use of this building for their purpose.

Responding to Mayor McDonald, Attorney Brindell stated that there was a reasonable, beneficial renovation of this property, which was in the Town's best interest also. In order to retrofit the building and bring it into code, variances were needed.

Council Member Markin commented that she was offended by this building based on what was currently located on this particular site, that it was totally out of character with the Town.

Council Member Wyett stated that he had no problem with the hardship rule, and supported all the variances. He added that he would like to discuss the appropriate type of architecture for the site, and the hours of operation.

President Coleman indicated that he could work with the variances, but the type of architecture for the Bank did not belong where the building was situated.

Council Member Wyett suggested deferring the item in order for the applicant to come back with a revised plan.

Attorney Brindell pointed out that in order to lower the roof line, the roof would have to be removed, which would incur the 50% rule, and he said he hoped that the variance would be granted.

Mr. Castro stated that the Architectural Commission recommended approval of the project, as it was a vast improvement over the existing architecture. He recommended that if the Council wanted to see a different type of architecture in keeping with County Road, that all the variances of the project be deferred, so a proposal could be heard in its entirety by the Council and the Architectural Commission.

Motion made by Council Member Wyett, seconded by Council Member Markin to approve deferral of Site Plan Review #7-2006 With Special Exceptions and Variances to August 8, 2006, Town Council meeting. On roll call, the motion carried unanimously.

5. Other

   a. Consideration of the Proposed 2006-2007 Zoning Season Calendar and Tentative List of Study Items.
   [Veronica B. Close, Director of Planning, Zoning, and Building]

It was the consensus of the Town Council to defer this item to July 11, 2006, Town Council meeting.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business to discuss, the June 13, 2006, Town Council meeting adjourned at 7:30 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk