# TOWN OF PALM BEACH

Office of The Town Clerk

## MINUTES OF THE REGULAR TOWN COUNCIL MEETING
## HELD ON WEDNESDAY, MAY 12, 2010

### I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Wednesday, May 12, 2010, at 9:30 a.m., in the Emergency Operations Center, 355 South County Road, Palm Beach. On roll call, all of the elected officials were found to be present.

### II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

### III. COMMENTS OF MAYOR JACK McDONALD

There were none.

### IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

### V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

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

William Cooley, 8 Windsor Court, commented regarding an ATM Report entitled Townwide 2009 Physical Monitoring Report regarding sand placement on beaches, and stated that it was an interesting report for the Council to read. He also commented regarding the Council enforcing the 1979 Agreement.

Council Member Wildrick briefly responded regarding the Report.

Laurel Baker, Palm Beach Chamber of Commerce, commented regarding the window treatment issue and town serving regulations.

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## VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

**DEFERRED:** Item VIII.C.2.b., Special Exception #6-2010, to the June 22, 2010 Town Council Meeting.

**DEFERRED:** Item VIII.C.2.d., Variance #4-2010, to the June 22, 2010 Town Council Meeting.

**DEFERRED:** Item VIII.C.3.a., Special Exception #3-2010, with Site Plan Review and Variance to the June 22, 2010 Town Council Meeting.

**DEFERRED:** Item VIII.C.4.b., Site Plan Review #3-2010, with Variance to the June 22, 2010 Town Council Meeting.

**DEFERRED:** Item VIII.C.4.c., Site Plan Review #4-2010, with Special Exception and Variances to the June 22, 2010 Town Council Meeting.

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

## VII. PUBLIC HEARINGS

Town Clerk Cunningham administered the oath to all those who would be providing testimony.

A. RESOLUTION NO. 48-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 290 South County Road Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.[John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 48-10 by title, as printed above.

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

Historical Consultant Jane Day provided an overview of the Designation Report.

Kathy Elliott, real estate representative for Mr. Campaniello, indicated that he was opposed to the landmarking of his building at 290 S. County Road. Ms. Elliott read a letter written by Mr. Campaniello for the record (a copy of the letter was not submitted). Ms. Elliott noted that he was in the process of selling the building and a landmark designation would make it more difficult to sell. Mr. Campaniello requested delaying the landmarking or landmarking only the front facade of the building.

Discussion occurred among the Town Council and Dr. Day clarifying for Mr. Campaniello several of the following issues:

- Landmarking would not restrict the inside use of the building.
- There were tax advantages for doing restoration on the building.
- Changing any existing windows would need to go before the Landmarks Preservation Commission, although there were options available.

President Rosow expressed concern regarding the following:

- Landmarking anything when there was opposition and subjecting an owner to a referendum process.
- The definition of "public building" as it is used in the proposed referendum

Council Member Diamond noted that previously the Town Council decided that an owner objection was not a reason to turn down a landmark request; however, it would lead to close scrutiny of any such request.

President Pro Tem Coniglio said that the objection raised by the property owner was basic to the internal use, and as discussed, was not included in the landmark designation. She noted that, as she is concerned about the referendum, the process cannot stop because of it and the Council should move forward.

Council Member Kleid said that the Council agreed not to consider the 50 years and also agreed not to consider the owner's opposition. He indicated that in his own mind, he makes that one of the considerations; when it is less than 50 years old and an owner did not consent then he felt that the burden shifts a little. He noted that he wanted to make that point, which would indicate why he would be voting a certain way.

Council Member Wildrick said that he fundamentally agreed with President Pro Tem Coniglio in her comments. He added that the owner is trying to sell the building, and the other would prohibit internal changes in the building, and neither applies in this case.

**Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to accept the Designation Report of the Property Known as 290 South County Road as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84. On roll call, the motion carried unanimously.**

**Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve Resolution No. 48-10.**

Mayor McDonald asked how this property was distinguished from the Meier property and was the Council intending to discuss the owner's alternatives for a façade landmarking. He noted that the alternatives should at least be discussed in order to consider Mr. Campaniello's objections. Mayor McDonald commented that he could see inconsistency with the Meier property, which was turned down because the owner objected to it.

President Rosow said the Mayor raised a valid point and that the western façade was not landmarkable in anybody's opinion. The Council was talking about landmarking the northern and eastern facades of the building.

Dr. Day said that she preferred that the entire building be landmarked, as the owner would have the ability to qualify for any tax credits either federal or local, which was to the owner's advantage.

President Pro Tem Coniglio indicated that she did not know how it would be done and if the building still existed on the backside, she did not know if it would be a considered issue, as the whole building needed to be ratified at this point. The comparison to the Meier property was that the property owner was not objecting to the landmarking, mostly with respect to his internal ability to change the use. She stated that the Meier house also did not comply with the "pseudo 50 year rule" and, as she is a preservationist, the Council should go forward with the designation.

**Upon roll call, the motion to approve Resolution No. 48-10 carried 3-2.**

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| **President Rosow** | **No** |
| **President Pro Tem Coniglio** | **Yes** |
| **Council Member Diamond** | **Yes** |
| **Council Member Kleid** | **No** |
| **Council Member Wildrick** | **Yes** |

***This item was reconsidered after the following item, VII.B.***

B. RESOLUTION NO. 51-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 977 North Ocean Boulevard Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 51-10 by title, as printed above.

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney James Brindell, visited the property, and spoke with the owners; he received calls from residents.

- Council Member Kleid spoke with and received a letter from Attorney Brindell advocating the position of his client; he visited the house and spoke to the owners; he received calls from residents.

- President Rosow spoke with and received a letter from Attorney Brindell advocating the position of his client; he visited the property and received at least two phone calls from residents who asked President Rosow not to vote in favor of landmarking the property.

- President Pro Tem Coniglio met with Attorney Brindell and the homeowners at the site; she received verification by letter from Attorney Brindell; she spoke with two members of the Landmarks Preservation Commission, and received a telephone call asking her to oppose this designation.

- Council Member Wildrick talked with Attorney Brindell, who spoke to him about not landmarking the property; also a couple of residents called, and he drove by the property and read the paperwork on the subject; he received a voice mail from Mr. Austin.

Historic Consultant Day presented a full designation report, as there was a court reporter present.

Attorney Brindell, on behalf of property owner Genevieve Du Pont, indicated that he was here as a result of the Landmarks Preservation Commission's split vote of 4-3 to recommend designation of the property. He noted that Nicole Du Pont Limbocker, the daughter of Mr. and Mrs. Du Pont, and her husband Derek, Dr. John Garner, a landmark's expert, and Attorney Josh Long, from Attorney Brindell's office was present today. Mrs. Du Point was not available, as she is no longer capable of managing her business; a letter was in the backup from Attorney Thomas Sweeney, who resides in Delaware, and had represented the Du Pont's since the mid 1970's. The letter objected to landmarking the house.

Attorney Brindell provided a PowerPoint presentation regarding Mrs. Du Pont's opposition to landmarking her property. He submitted a copy for the record and a large binder of exhibits.

Nicole Du Pont Limbocker provided a history and background of the process of building her parent's home.

Mr. Brindell continued with his presentation.

He introduced Dr. John Garner who spoke in opposition to the landmark designation, and provided a detailed report of his argument.

Attorney Brindell pointed out that according to a 1952 article the Du Pont house was not a Georgian Revival style house.

Lori Volk, John L. Volk Foundation, said that the John Volk book was written by him and that it was disappointing to hear that Mr. Volk built such a terrible house; he prided himself on working with his clients. She said she was frustrated that an outside architect was brought in that didn't live in Palm Beach or know Palm Beach architecture.

Council Member Kleid responded to Lori Volk's comment that he was predisposed and stated that he did not say that he was predisposed. He said that two of the considerations that he would put into the mix, when he decided whether to landmark or not, was the 50 years and whether or not the owner had consented. That was not determinative as far as he was concerned, but it was one of the criteria that he goes through.

Eugene Pandula, Chairman of Landmarks Preservation Commission, provided his comments and said that Dr. Garner had spoken in opposition of landmarking certain properties in the past; he wanted to remind Dr. Garner that it was the Town of Palm Beach's Ordinance, and this was not a classroom environment. He suggested that Dr. Day's presentation be allowed to stand.

Attorney Brindell spoke again and said that the allegations in the Designation Report had been addressed. Dr. Garner had shown that it was not traditional Georgian Revival on the exterior. The interior did not represent a new concept, as it evolved after WWII. The consultants did not meet the criteria with positive evidence. Attorney Brindell noted that he had presented positive evidence to refute the allegations.

Edward Cooney, 495 N. Lake Way, Landmarks Preservation Commission member, said that 977 is not typical landmarked property. He focused on criteria three and noted that it did adhere to the Ordinance. He disagreed with Attorney Brindell and endorsed the landmarking of the home.

**Council Member Diamond moved not to accept the Designation Report of 977 North Ocean Boulevard, as it was defective, had omissions, was based on sociology, and not the requirements of law, to which every property owner was entitled.**

**Motion died for lack of second.**

Responding to President Pro Tem Coniglio, Dr. Day noted that the importance of landmarking the property was because it was designed in a transitional period and was valuable for study.

President Rosow called for a motion regarding the Designation Report.

**Council Member Diamond moved not to accept the Designation Report of 977 North Ocean Boulevard, as it was defective.**

**Motion died for lack of second.**

**Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to accept the Designation Report for Property Known as 977 North Ocean Boulevard. On roll call, the motion failed 3-2.**

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| **President Rosow** | **No** |
| **President Pro Tem Coniglio** | **Yes** |
| **Council Member Diamond** | **No** |
| **Council Member Kleid** | **Yes** |
| **Council Member Wildrick** | **No** |

Council Member Kleid indicated that it was his understanding that the Council would either accept the Designation Report or not, and then have a second vote. He said that if this was the end of the voting, he would change his vote on landmarking it.

Town Attorney Randolph explained that there should be a second vote, but this vote did not pass; a second vote was still required, but there had to be an action in regard to this motion. He suggested that Council Member Diamond renew his motion to reject it because it was flawed and if there was a second, vote on it, and then vote on the Resolution.

Council Member Diamond renewed his motion:

**Council Member Diamond moved not to accept the Designation Report of 977 North Ocean Boulevard, as it was defective. Council Member Wildrick seconded the motion. On roll call, the motion carried 4-1, with President Pro Tem Coniglio dissenting.**

Town Attorney Randolph advised that a vote on the Resolution was required, even though the Designation Report had not been accepted.

**Motion made by Council Member Diamond to deny Resolution No. 51-10. Council Member Wildrick seconded the motion.**

President Pro Tem Coniglio indicated that the Resolution for landmarking fulfilled two of the four criteria, and that the Town needed to be consistent with a mission to preserve history in the Town of Palm Beach

**On roll call, the motion carried 4-1, with President Pro Tem Coniglio dissenting.**

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Mayor McDonald commented on the passing of Resolution No. 48-10, as he indicated that the Council needed to be consistent with their policy. He noted that two of the last three landmarked approvals were denied based on owner objection. He would like Resolution No. 48-10 to be reconsidered and to provide Dr. Day with an opportunity to talk to the property owner; he may be persuaded to agree with the landmarking; it could be deferred for one month. Otherwise, he announced that he would veto the Council's decision.

Council Member Diamond responded that his vote was not based on owner objection, and if the buildings were landmarkable under the law, they should be landmarked no matter what the owner says.

President Rosow was concerned with the potential referendum and he deferred to Counsel.

Town Attorney Randolph noted that someone who voted on the prevailing side could bring it up for reconsideration.

Council Member Wildrick commented that he did not want a precedent of re-opening after the voting had occurred, and linking one building to the other. Each building should stand on its own. He said that the point was that this building in the center of Town represented the look of Palm Beach. He said the second issue was that the owner should have some say, more in the case of a private home or dwelling as opposed to a public facility such as a restaurant, or an office building.

President Pro Tem Coniglio commented that the end of landmarking season would not be over until November, and the potential referendum was stopping the process based on another lawsuit.

Responding to President Pro Tem Coniglio, Town Attorney Randolph indicated what the legal ramifications were if she were to re-open the discussion and vote again.

**Motion made by President Pro Tem Coniglio, on the prevailing side, to re-open discussion and reconsider Resolution No. 48-10, at the July meeting; there was discussion among the Council, that if there was owner consent, there could be a unanimous decision. Council Member Kleid seconded the motion. On roll call, the motion carried 3-2.**

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| **President Rosow** | **Yes** |
| **President Pro Tem Coniglio** | **Yes** |
| **Council Member Diamond** | **No** |
| **Council Member Kleid** | **Yes** |
| **Council Member Wildrick** | **No** |

President Rosow noted that it would be put on the July meeting agenda.

Dr. Day would be the liaison between the Town Council and Mr. Campaniello in speaking with him.

Mayor McDonald asked that this Resolution be reconsidered as he requested since he hoped that communication with the owner would illuminate to him all the advantages of landmarking his property and that he would then agree.

**Motion made by President Pro Tem Coniglio to defer Resolution No. 48-10 to the July 22, 2010, Town Council Meeting, seconded by Council Member Kleid. On roll call, the motion carried 3-2.**

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| **President Rosow** | **Yes** |
| **President Pro Tem Coniglio** | **Yes** |
| **Council Member Diamond** | **No** |
| **Council Member Kleid** | **Yes** |

**Council Member Wildrick** **No**

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Landmarks Preservation Commission Approval, Certificate of Appropriateness #7-10, 780 South Ocean Boulevard.

Ex-parte communication was declared by:

- Council Member Wildrick spoke with Attorney Maura Ziska about all three of her subjects on one phone call; and Keith Austin left a voice message; he spoke with Attorney Peter Broberg.

- President Pro Tem Coniglio had not spoken with Attorney Ziska, although they tried; spoke with the Curtis's and met at their property; and spoke with Attorney Broberg.

- President Rosow spoke with Attorney Ziska, visited the Curtis's property and spoke with Attorney Broberg, and the appropriate people lobbied for their positions.

- Council Member Kleid spoke with Attorneys Broberg and Ziska, who both advocated the position of their clients; and also went to the Curtis house to look at the site and spoke with Mrs. Curtis.

- Council Member Diamond met with Attorney Ziska, the Curtis's, and looked at both properties.

Attorney Ziska, on behalf of Mr. and Mrs. Curtis, at 720 S. Ocean Blvd., provided an overview of the appeal of the Landmarks Preservation Commission's decision granting their neighbor, Mr. Taylor, approval for an outdoor summer kitchen within 20 feet of the Curtis's property line.

Christine Curtis, property owner, provided a detailed explanation of the impact that the Landmarks Preservation Commission's approval of Mr. Taylor's property, at 780 S. Ocean Blvd., would have on the Curtis's.

Attorney Broberg, representing Terry Taylor, submitted into the record the Town Code, Sec 134-237; he also submitted a drawing of the property for the record. He provided an overview of his client's position.

Architect Jason Drobot, Brasseur & Drobot Architects, was about to provide a PowerPoint presentation when President Rosow interjected that it was clear that the dimensional waiver had been met, and it was the Council's decision on whether or not to uphold the dimensional waiver.

Responding to Mayor McDonald, Attorney Broberg stated that the Florida law says the opinion of neighbors was not factual evidence for the Town Council to consider.

Council Member Kleid noted that the Council could take judicial notice of the fact that there was conformance with the dimensional waiver and the law says that people do not have a right to a view.

Responding to President Rosow, Historical Consultant Day provided an explanation of Landmarks Preservation Commission's process of approval of Mr. Taylor's property; this was the first time that Landmarks Preservation Commission considered a dimensional waiver. She stated that had the Landmarks Preservation Commission visited the Curtis's property, they would have understood the impact of the dimensional waiver on the neighbor.

Mayor McDonald stated that in terms of Palm Beach and neighbors, quiet enjoyment of their property was a very large factor. He indicated that hardship was not a requirement and that the property owner should be able to locate the outdoor kitchen elsewhere on the property, as it was only four feet. He did not see where this meets the test of why the waiver process was implemented.

Responding to President Pro Tem Coniglio, Dr. Day indicated that she would not mind if Landmarks Preservation Commission reconsidered the Certificate of Appropriateness, and that the structure could be moved.

President Rosow indicated that the Council did not like to see neighbors upset regarding additions and changes.

President Rosow stated that he would like to see a motion that sends the waiver back to the Landmarks Preservation Commission for review and obtain input from the neighbor, with a solution acceptable to all.

Mr. Terry Taylor, owner of 780 S. Ocean Blvd., explained the use of the outdoor kitchen.

Town Attorney Randolph advised that the Town Council was required under the Appeal Section of the Code to act on the appeal within 45 days unless the applicant agreed to an extension of time. Mr. Taylor would need to provide an agreement that would extend the period of the appeal.

Gene Pandula, Chairman of the Landmarks Preservation Commission, noted that this appeal appeared to be the letter of the law. If this building is moved over 4'9", it complied with all of the zoning codes.

Responding to Mr. Pandula, Mayor McDonald said that the Town Council was sending the appeal back to Landmarks Preservation Commission for consideration in terms of how it would impact the neighbors. He added that a policy decision would need to be made on how to treat waivers in the future.

Town Attorney Randolph explained the appeal process to Mr. Pandula.

Attorney Broberg indicated that his client, Mr. Taylor has agreed to go back to the Landmarks Preservation Commission.

**Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to return the Certificate of Appropriateness #7-10, 780 South Ocean Boulevard to the Landmarks Preservation Commission, and applicant agreed to waiver of hearing within 45 days. On roll call, the motion carried unanimously.**

2. Ratification of Side Yard Setback "Dimensional Waiver" at 780 South Ocean Boulevard. [John S. Page, Director of Planning, Zoning, and Building]

**Please refer to Item VIII.A.1. (above) for information on this item.**

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath and Tennis Club) (Per Letter Dated April 27, 2010, From Kast Construction III, LLC).

**Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve the Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath and Tennis Club). On roll call, the motion carried unanimously.**

President Rosow disclosed that he is a member of the Bath and Tennis Club, and has no financial interest in the outcome of this decision.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #5-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Society of the Four Arts, Inc., relative to property commonly known as 1-2 Four Arts Plaza; described as lengthy legal description on file; located in the R-B Zoning District. Request for Special Exception and Site Plan Review to modify the Four Arts cultural center by demolishing a 1,262 square foot one story building and constructing a 1,561 square foot one story addition onto the existing Garden House. The addition will contain bathrooms (including handicap stalls), food preparation area, storage and a loading dock area. A Variance request to allow a rear yard setback of 6.75 feet in lieu of the 15-foot minimum required for the addition. [Attorney: Maura A. Ziska, Esq.] [Landmarks Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the landmark property. Carried 7-0.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska, and she advocated her client's position.
- Council Member Kleid spoke with Attorney Ziska, and she advocated her client's position.
- President Rosow spoke with Attorney Ziska, and she advocated her client's position.
- President Pro Tem Coniglio had no ex-parte communication.
- Council Member Wildrick spoke with Attorney Ziska.

President Pro Tem Coniglio noted that according to the backup there were no objections from any of the neighbors and asked if staff had any objections.

Planning, Zoning and Building Director Page indicated that staff had no objections.

**Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, that Special Exception #5-2010 with Site Plan Review and Variance shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. On roll call, the motion carried unanimously.**

b. SPECIAL EXCEPTION #6-2010 The application of Diane Wren, relative to property commonly known as 3000 S. Ocean Blvd., Unit PH6; described as Bellaria Condominium Unit PH6, Phase South; located in the R-D(2) Zoning District. Request for Special Exception to add a 532 square foot roofed portion on the existing 5th floor patio. The height exception is required above three stories. [Attorney: James R. Brindell, Esq.] [ARCOM Recommendation: Defer to the May 26, 2010 ARCOM meeting. Carried 7-0.] Request for Deferral to the June 22, 2010, Town Council Meeting Per Letter Dated May 3, 2010, From James R. Brindell (Special Circumstances).

***Item VIII.C.2.b., Special Exception #6-2010 was deferred to the June 22, 2010, Town Council Meeting.***

c. SITE PLAN REVIEW #2-2010 WITH VARIANCES The application of Cathedral Estates LTD., relative to property commonly known as 417 Peruvian Avenue (a/k/a 2 Major Alley); described as lengthy legal description on file; located in the R-C Zoning District. Request for Site Plan Review with Variance requests to construct a free standing glass rooftop of 200 square feet over an existing terrace that will be open on all four sides and would result in a west side yard setback of 2.45 feet in lieu of the 20 foot minimum required, lot coverage of 44.4% in lieu of the 43.4% existing and the 30% maximum allowed and landscaped open space of 7.35% in lieu of the 7.5% existing and the 35% minimum required.[Attorney: Maura A. Ziska, Esq.] [Landmarks Commission Recommendation: Implementation of the proposed variance does not cause negative architectural impact on the landmark property with conditions the applicant reduce the size; add landscaping on the west side after removal of existing landscape material; and meet drainage and lighting requirements of the Town. Carried 7-0.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska, and she advocated the position of her client.

- Council Member Kleid spoke with Attorney Ziska, and she advocated the position of her client.

- President Rosow spoke with Attorney Ziska, and she advocated the position of her client.

- President Pro Tem Coniglio had no ex-parte communication.

- Council Member Wildrick spoke with Attorney Ziska, and she advocated the position of her client.

Planning, Zoning and Building Director Page recommended that if Town Council was inclined to say yes, that the conditions placed on the approval by the Landmarks Preservation Commission would be adhered to.

**Motion made by Council Member Diamond that Site Plan Review #2-2010 With Variances be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11, subject to staff recommendations. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.**

d. VARIANCE #4-2010 The application of Robert T. Tomsich, relative to property commonly known as 151 Via Bellaria; described as lengthy legal description on file; located in the R-A Zoning District. Request a variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of the 24.9% existing and 25% maximum allowed. [Attorney: M. Timothy Hanlon] [ARCOM Recommendation: Defer to the May 26, 2010, Architectural Commission meeting. Carried 7-0.]Request for Deferral to the June 22, 2010, Town Council

Meeting Per Letter Dated May 4, 2010, From M. Timothy Hanlon (Special Circumstances).

***Item VIII.C.2.d., Variance #4-2010 was deferred to the June 22, 2010, Town Council Meeting.***

e. VARIANCE #5-2010 The application of Fairfax, Sammons & Partners Limited Co. Architectural Firm, relative to property commonly known as 214 Brazilian Avenue, Suite 100; described as Royal Park Addition, Lot 32, Block G; located in the C-TS Zoning District. Request for variance approval to allow an office use (architectural firm) of approximately 550 square feet on the first floor, which is in contradiction to the Code which does not allow an office on the first floor in this circumstance.[Attorney: Jason Evans, Esq.]

Ex-parte communication was declared by:

- President Rosow spoke with Les Evans, who advocated for approval of the Variance.
- President Pro Tem Coniglio spoke briefly to Les Evans.

Zoning Administrator Castro said that in the past, the Council had granted these variances, but only so that it did not run with the land, and ran only to the applicant. The office space involved was tucked away off the frontage of the street.

Responding to President Pro Tem Coniglio, Les Evans noted that the other requests for variances for offices had been on the street and this one was back in the lobby with no visibility from the street.

**Motion made by President Pro Tem Coniglio that Variance #5-2010 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.**

3. Old Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #3-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Roy Reeves, Restaurant Operator, relative to property commonly known as 219 Worth Avenue; described as Lots 20, 21, 34 and 35, ROYAL PARK ADDITION, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book, Page 1; located in the C-WA Zoning District. Request for Special Exception for a 4,075 square foot upscale American cuisine restaurant which includes site plan review to allow a new entry door and 36 outdoor seats on the proposed second floor patio within the proposed expansion area. The applicant is requesting umbrellas to cover the outdoor seating. The applicant also proposes to meet all conditions of approval which were granted to the previous restaurant applicant for this tenant space. The variance being requested is to eliminate the four additional off-street parking spaces required for the 74 proposed seats. [Attorney: Maura A. Ziska, Esq.]Deferred from the April 14, 2010, Town Council Meeting. Request for Deferral to the

June 22, 2010, Town Council Meeting Per Letter Dated April 26, 2010, From Maura A. Ziska (SECOND REQUEST).

***Item VIII.C.3.a., Special Exception #3-2010 with Site Plan Review and Variance was deferred to the June 22, 2010, Town Council Meeting.***

b. SPECIAL EXCEPTION #4-2010 The application of M. Timothy Hanlon; relative to property commonly known as 710 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A Zoning District. Request for Special Exception approval to permit construction of a 72-foot long tunnel for pedestrian access under South Ocean Blvd. to and from the beach parcel for this landmarked property. The applicant proposes to close one lane of traffic at a time during construction. [Attorney: M. Timothy Hanlon] Deferred from the April 14, 2010, Town Council Meeting.

Ex-parte communication was declared by:

- Council Member Kleid spoke with Attorney M. Timothy Hanlon.

- President Rosow had a brief conversation with Attorney Hanlon.

- President Pro Tem Coniglio had a voicemail from Attorney Hanlon.

Council Member Wildrick commented that he understood that another tunnel was being constructed a month later, and he did not want disruption twice in the event this application was approved. He asked if the applicant would be willing to move his to the same time as the later one.

Attorney Hanlon responded to Council Member Wildrick that if the two projects were approved at the same time, he would be willing to comply. He indicated that conceptual approval may have been received from Florida Department of Environmental Protection (FDEP), next it would come to the Town Council for approval, then it would go back to FDEP and he would have at least 90 days to respond. He expressed concern regarding being tied to the other project in the event that it was delayed. If approved in the same timeframe, they would want to stand on their own and move forward. Their timing would be in August or September, when traffic was minimal. He indicated that his traffic plan currently provides for no closure of traffic lanes.

Council Member Kleid noted that if there was a free flow of traffic they would not have to be tied in with another construction project.

Zoning Administrator Castro made several of the following comments:

- Concern as the first time he saw this was last Friday,
- Marty Gauthier had concerns with the configuration.
- The traffic engineer did not have time to review the project, as it was only just received last Friday.

- Concern with the realignment and whether it was feasible to change the lanes around, as was being proposed at this curb, keep the traffic safe, and at what speed.
- He was reluctant to make a recommendation since he did not have an opportunity to look at the plans.

Attorney Hanlon responded that the traffic plan was not part of the zoning application, which was why it was not delivered to Mr. Castro; he had no problem with the proposed conditions, and the traffic plan was approved by Public Works. He stated that it was part of the building permit anyway, so he could accept that condition.

Discussion occurred among the Town Council members and Attorneys Hanlon and Broberg regarding the conditions of approval for the application. Several of the following comments were made:

- There would be no traffic stoppage.

- Attorney Broberg noted that next month he would be coming before the Town Council with a schedule that would mimic the application of Attorney Hanlon, if possible. He would be presenting a traffic closure, going down County Road and coming up the other side for the duration of one week.

- It could be done in turtle season.

- The seawall was not yet approved.

- No complaints were on file from the neighbors.

Zoning Administrator Castro provided several of the following concerns by staff:

- Last Friday was the first he had heard of the project.

- Public Works had concerns since the traffic engineer had not yet reviewed the plans.

- He did not know what was proposed for the speed of the traffic.

Attorney Hanlon responded that the traffic plan was not part of zoning, and that they were continuing to work with Public Works.

**Motion made by Council Member Diamond, seconded by Council Member Wildrick to approve Special Exception #4-2010 with the following conditions of approval:**

- **Two way traffic flow would be maintained at all times.**
- **A corrective plan of action for the seawall would be submitted.**
- **The traffic routing plan was acceptable to the Public Works Department.**

- **The construction project would be coordinated with neighbor at 780 S. Ocean Blvd, before October.**

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

Responding to President Pro Tem Coniglio, Attorney Broberg affirmed that he had received preliminary approval from the Florida Department of Environmental Protection (FDEP).

4. New Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #7-2010 The application of Island Hotel, Inc., relative to property commonly known as 235 Sunrise Avenue C-22; described as Palm Beach Hotel Condominium Commercial Unit C-22 per Condominium Declaration of 2/12/81; located in the C-TS Zoning District. Request for Special Exception to modify condition of approval within the Declaration of Use Agreement. In 2007 Unit C-22 of the Palm Beach Hotel was approved for use as a synagogue. A Declaration of Use Agreement was approved in 2008 which outlined certain restrictions and limitations on the use of the unit. One of those restrictions (Article IV#9) was that the Synagogue shall not be allowed to prepare food in the kitchen which requires the use of cooking equipment. The kitchen cooking equipment shall only be used for keeping warm pre-prepared or catered food. The Synagogue is requesting that this restriction be eliminated in order to cook and prepare food in the kitchen. The range hood was updated with a new fire suppression system in 2007. [Attorney: James R. Brindell, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney James Brindell; he worshipped at that Temple and understood the situation.

- Council Member Kleid spoke with Attorney Brindell, who advocated the position of his client, and years ago was at the property and saw the kitchen.

- President Pro Tem Coniglio had a lengthy conversation with Mr. Abraham; she visited the site.

Council Member Diamond requested that the letter from the Palm Beach Hotel be addressed concerning the kitchen being used only while the Synagogue was there.

Attorney Brindell responded that the only Special Exception right now was for the Synagogue.

Planning, Zoning and Building Director Page confirmed that the ladder capability and existing equipment in Fire-Rescue Department could serve the top floor and also as a result of an inspection last Friday, with the Fire-Rescue Department and the Building Official, it was determined that the existing kitchen facility was protected and there was adequate fire protection to allow for the improvements.

Zoning Administrator Castro commented that in the Declaration of Use Agreement that it needed to be clear that the applicant had to come back.

President Rosow noted that currently all that was allowed in the kitchen was the warming of food.

Responding to President Rosow, Mr. Castro indicated that at the time of application, the Synagogue did not ask for an operable kitchen. He requested that the use for the kitchen apply only to the Synagogue.

Town Attorney Randolph indicated that, although the Declaration of Use Agreement was not transferable, it should be stated in the motion that the kitchen use was for the Synagogue only.

President Pro Tem Coniglio recalled that the Synagogue was hoping to have a full service kitchen from the beginning, but staff's recommendations negated that and only allowed warming.

Attorney Brindell noted that there was new fire suppression equipment, which met all the fire safety codes.

**Motion made by Council Member Diamond that Special Exception #7-2010, shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with the condition that the Declaration of Use Agreement was amended only for this applicant. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.**

b. SITE PLAN REVIEW #3-2010 WITH VARIANCE The application of Mr. & Mrs. Adler, relative to property commonly known as 7 Sloan's Curve Drive; described as lengthy legal description on file; located in the PUD-B Zoning District. Request for Site Plan Review to construct a 135 square foot infill addition on the front entry of an existing townhouse and a 49 square foot infill addition to the breakfast atrium and a 49 square foot infill addition to an upstairs bedroom. A Variance is requested to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 35.9% in lieu of the 33.7% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Defer to the May 26, 2010, Architectural Commission meeting. Carried 7-0.]Request for Deferral to the June 22, 2010, Town Council Meeting Per Letter Dated April 26, 2010, From Maura A. Ziska (Special Circumstances).

***Item VIII.C.4.b., Site Plan Review #3-2010 with Variance was deferred to the June 22, 2010, Town Council Meeting.***

c. SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc., relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. Request for a Site Plan Review and Special Exception to construct a 50,870 (43,360 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 218 off street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen on the roof. Part of the proposed design is to have two generators located within the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is Town serving. A Special Exception is being requested to have two illuminated monument signs at the northwest and southwest entrances to the west parking lot and one illuminated business identification sign on the west entrance of the building. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 245 feet in lieu of the 150-foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 10 feet in lieu of the 14 foot minimum required based on building height; ( c ) to allow a side yard setback for the proposed towers to be 10 feet in lieu of the 19-foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 50,870 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow 8 towers in lieu of the two maximum allowed; (g) to allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed (h) to allow the parking lot light poles to be 23 feet in height in lieu of the 15-foot maximum allowed; (I) to allow the height of the proposed one story grocery store to be 22.66 feet in lieu of the 15-foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 37 feet in lieu of the 20-foot maximum allowed; (k) to allow a monument sign at the northwest entrance where no sign is allowed; (l) to allow a monument sign at the southwest entrance where no sign is allowed. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Defer to the May 26, 2010, Architectural Commission meeting. Carried 7-0.]Request for Deferral to the June 22, 2010, Town Council Meeting Per Letter Dated April 26, 2010, From Maura A. Ziska (Special Circumstances).

***Item VIII.C.4.c., Site Plan Review #4-2010 with Special Exception and Variances was deferred to the June 22, 2010, Town Council Meeting***

D. Other

1. Vacant Storefronts: Possible Ordinance/Policy Change. [Robert N. Wildrick, Town Council Member]

Council Member Wildrick presented photos of unacceptable screening methods around Town, and stressed that it was a continuous problem within the Town, which had to be corrected. He then presented photos of screening that enhanced the Town.

Council Member Wildrick requested that the Council amend the Ordinance from 75% coverage to 100% coverage of the vacant storefronts. He noted that the expense was minimal, it would be easier to enforce, and it would improve the look of the Town.

Planning Administrator John Lindgren asked if it would be acceptable for Royal Poinciana Plaza to use more than one picture to cover their windows, as they were very large.

Responding to President Pro Tem Coniglio, Mr. Lindgren indicated that the entire window would be filled.

Responding to Council Member Diamond, Mr. Lindgren added that venetian blinds were not allowed, unless it was a suite in an office building that had become vacant with the remaining suites having blinds, it would be allowed if the business was a not-for-profit organization, and staged storefronts were also acceptable.

Council Member Wildrick noted that if all the windows were like the Gucci windows, it would improve the Town's appearance.

Mr. Lindgren indicated that the Royal Poinciana Plaza liked the historic postcards, however the size of the files could not be enlarged enough to cover the larger windows, as the image becomes distorted. There were other alternatives, such as the Norton Art Museum pictures; they could use the postcards for the smaller windows, but they wanted to know if other pictures would be acceptable.

Council Member Wildrick noted that it would be acceptable.

**Motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve amending the policy regarding vacant storefronts from 75% coverage to 100%.**

Mr. Lindgren noted that the change was in the policy within the ordinance.

Rob Walton Code Compliance Officer commented that staged windows were difficult to assess as they were not a defined criteria.

Council Member Wildrick suggested that staged would be acceptable if only approved by the Planning, Zoning and Building Department.

**The maker and seconder agreed.**

**Amended motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve amending the policy regarding vacant storefronts from 75% coverage**

**to 100%, and that the staged storefronts be approved by the Planning, Zoning and Building Department. On roll call, the motion carried unanimously.**

Town Attorney Randolph advised that even though this did not require an ordinance change, he suggested that the new policy, as amended, come back to the Council for review.

*Council Member Wildrick left the meeting at 12:54 p.m., and did not return.*

2. Town Serving Regulations: Study Update Recommendations from Planning and Zoning Commission. [John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Director Page provided an overview of the Town Serving Regulations Study.

Mr. Page stated that Bill Brisson expanded his scope of services, as follows:

1. Is concept of Town Serving relevant after 30 years and is there a need for a Town Serving provision?
2. What would be the ramifications of eliminating the Town Serving provision?
3. If the Town Serving concept/regulation is relevant and needed, is the limit on the square footage of a building or use still necessary or useful; is there a better alternative criteria or standard?
4. If the square footage limitation is needed or useful, what would be the most appropriate square footage limitation? Also is it necessary for the business to prove it qualifies as Town Serving either initially or periodically thereafter. Which zoning districts should be applicable?

The Planning and Zoning Commission, after hearing from business interests and some residents, indicated that Town Serving should not be eliminated but that it would be appropriate to have the study updated.

Responding to President Pro Tem Coniglio, President Rosow indicated that criteria #4 would deal with what reporting requirements were necessary.

Zoning Administrator Castro said that it had been very difficult for staff to determine what could be used for qualifying for Town Serving. Staff wanted it to be fair and equitable for qualifying.

President Rosow noted that the consultant would come back and offer recommendations to the Council.

**Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio to approve the expanded scope of services by the consultant as recommended by the Planning and Zoning Commission. On roll call, the motion carried 4-0, as Council Member Wildrick was absent.**

## IX. ANY OTHER MATTERS

Mayor McDonald asked for clarification regarding the Resolution and the Budget Tax Force that was approved at yesterday's meeting, because it only dealt with the County budget and excluded the schools.

## X. ADJOURNMENT

There being no further business, the May 12, 2010, Town Council Meeting was adjourned at 1:00 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk