TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MONDAY, MAY 12, 2008

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Monday, May 12, 2008, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Richard M. Kleid
President Pro Tem Gail Coniglio
Council Member Denis P. Coleman
Council Member Susan Markin
Council Member David Rosow

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Town Attorney John C. Randolph
Paul Brazil - Public Works Director
Paul Castro - Zoning Administrator
Veronica Close - Planning, Zoning and Building Assistant Director
Jane Day - Historical Preservation Consultant
Tim Frank - Planning Administrator
Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director
Susan Eichhorn - Town Clerk

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. COMMENTS OF MAYOR JACK McDONALD

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Pro Tem Coniglio:
Requested placing on tomorrow's Town Council agenda consideration by the Town Council of the question of a two day versus one day Town Council Meeting schedule or the possibility of alternating the weeks: one week, development review items and another week, administrative items. She recommended reverting back to a one day a month Town Council form.

Town Manager Elwell advised that issue would be added to tomorrow's Town Council agenda as an additional item of new business.

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

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

Ralph Del Deo, 265 Fairview Road, commented regarding the action previously taken by the Town Council, which in essence was against landmarking Royal Poinciana Plaza; commented in support of landmarking Royal Poinciana Plaza now; commented that he was pleased to see that the drainage project had begun at the Pump 8 area and expressed hope that the Town would find the money for the other areas needing drainage. He presented a handout to the Town Clerk relative to the comments he had made and those he was unable to present due to the three minute limit.

William Diamond, 220 Wells Road, in his capacity as the Town's liaison to the City of West Palm Beach, commented that the City was planning to build several acres of land out into the waterway directly across from the Town. The project was being called "Islands in the Stream" and was supposedly for nature conservation. He believed the Town should take notice of it, as it was, once again, another extension of the City of West Palm geographically toward the Town of Palm Beach. The Town should have a position in this regard, and he requested direction from the Town Council, through the Mayor, on how to proceed.

Council Member Rosow added that the Town Council should obtain more information as to what the City of West Palm Beach was proposing relative to "Islands in the Stream" in order to discuss this issue at the June 2008,Town Council Meeting.

President Pro Tem Coniglio commented that she was in agreement that further discussion might be helpful and advised that the project "Islands in the Stream" was a Palm Beach County Project. She advised that she had spoken with Mayor Frankel who she believed would be agreeable to conversation, but noted that it was not in their purview.

Town Manager Elwell, in response to President Kleid, advised that staff would provide a preliminary report relative to the "Islands in the Stream" project to be discussed at the June 2008, Town Council Meeting.

Sam Boykin, 285 Jamaica Lane, commented that the Royal Poinciana Study had found that the majority of the Town's citizens preferred a two story with an occasional three story building on Royal Poinciana Way. The developers were circulating that they wanted to place a large building there for retail sales of some type, and he did not believe it conformed in spirit to what was there. He requested that a motion be made to turn this matter over to the Landmarks Preservation Commission, not for any disciplinary action, but to maintain a record, which could then be presented to the Town Council.

Joan Alleman, 991 North Lake Way, commented relative to the action taken by the Town Council at last month's Town Council Meeting to delay landmarking Royal Poinciana Plaza. She noted that she was not certain that the Town Council understood the unintended consequences relative to that action, and suggested that the Town Council either reverse their decision or take steps now to landmark the property.

VI. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

WITHDREW: Item X.A.1. - Appeal by 1565 North Ocean Way, North Ocean Way, LLC, Regarding ARCOM Decision No. B10-08/SE 4-08.

WITHDREW: Item X.C.3.b. - Modified Site Plan Review #15-2007 with Variances, Villa D'Este Condominium Association, Inc., 230 Everglades Avenue.

DEFERRED: Item X.C.4.b., Special Exception #6-2008 with Site Plan Review and

Variances, Everglades Club, Inc., 350 Worth Avenue, to the June 9, 2008, Town Council Meeting.

MOVED: Item X.A.2., Appeal of 434 Seaspray Avenue Regarding ARCOM Decision No. B22-08/VE5-08 (Artificial Turf), to be heard before Variance #5-2008, Christopher and Andrea Kaufmann, 434 Seaspray Avenue.

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

VII. BOARD/COMMISSION ANNUAL REPORT

A. Architectural Commission. [Morgan Dix Wheelock, Chair, and John S. Page, Director of Planning, Zoning, and Building] *Deferred from the April 8, 2008, Town Council Meeting.*

Morgan Wheelock, Chairman of ARCOM, thanked the Mayor and Town Council for the many times they had upheld the decisions and recommendations made by ARCOM. He presented a summary of the Commission's Annual Report for 2007, as provided in the Town Council backup. He provided additional comments regarding ARCOM and discussed the following issues:

- The reduction in the number of agenda items due to the decrease in speculative development, noting that it was expected that the agendas would continue to shrink as a reaction to the economy this year.

- The developer of spec development almost always hired an architect and landscape architect for design, carrying them through ARCOM approval but not beyond.

- ARCOM had a new policy that the architect and landscape architect of record were required to certify before the issuance of the Certificate of Occupancy that the project was built in accordance with the plans approved by ARCOM. If not, the deviations of the plan must be listed.

- Procedures related to demolition.

- Requested clarity on generator size, suggesting that the Town Council limit the size of generators to what would be required to power basic needs for sustenance of health and security.

- Requested that ARCOM's authority include aesthetic control over all visual changes made to public ways in the Town of Palm Beach.

- Suggested that to avoid the awkwardness of holiday luncheons given by members of various commissions for commission members, Town officials and staff, the Town consider hosting a holiday cocktail party.

- ARCOM had almost perfect attendance, perhaps one absence every three months, and the summer months were no different from winter months.

- The Commissioners voted unanimously, at the ARCOM meeting held in April, to recommend to the Town Council that artificial turf be banned in the Town of Palm Beach.

Mr. Wheelock responded to questions and concerns of the Town Council.

After discussion, it was determined that the generator issue would be referred to the Planning and Zoning Commission, and the other issues raised today referred back to ARCOM for further study and recommendation.

In response to President Pro Tem Coniglio, Mr. Wheelock clarified that he would accept, as a member of ARCOM, a nonresident architect and/or landscape architect as long as there was a resident architect/landscape architect on the Commission at the time.

President Pro Tem Coniglio commented that ARCOM should establish the criteria for setting up architectural significance versus demolition due to her concerns relative to the cost and time line to the residents. She commented in agreement with ARCOM relative to the size of generators.

In response to President Pro Tem Coniglio, Town Manager Elwell advised that the issue of generators would have to go through the process set forth in the code because of the zoning season. It would be appropriate to identify this item as a study item for next season.

In response to President Pro Tem Coniglio, Mr. Castro advised that he did not know if the Landmarks Preservation Commission (LPC) had the same policy as ARCOM relative to architects and landscape architects, because the issues before Landmarks were usually renovations or additions onto landmarked historic structures.

President Pro Tem Coniglio commented that if there were additions to landmarked properties, she would assume that the same person that brought the project forward would be held responsible for all changes, particularly on preserved properties.

Mr. Castro responded that Planning, Zoning and Building scrutinized that issue very heavily, because of the situation of landmarking, but he did not know if, technically, the architect and/or landscape architect were signing off at the end of the project.

President Kleid, on behalf of the Mayor and Town Council, thanked Mr. Wheelock and the members of the Commission for their hard work and dedicated service to the Town.

Council Member Coleman supported the comments made by President Pro Tem Coniglio on formalizing the process in Landmarks.

Discussion ensued relative to property that had come before ARCOM for demolition, which had been referred to Landmarks, Mr. Wheelock commented that he would someday like to see a definition of architectural significance and every building for demolition would have to pass that test.

After today's discussion related to generators, demolitions, etc., Town Manager Elwell advised that it would be helpful and constructive for the Town Council to receive from the Planning and Zoning Commission, in one case, and from ARCOM in each of the other cases, specific recommendations.

William Guttman, 216 West Indies Drive, commented on the sense of frustration he felt regarding the Planning and Zoning Commission, who had dealt with generators the previous zoning season, as it related to the nuisance value to the neighbors rather than size, and on the aesthetics of enclosing them. He urged that if the Planning and Zoning Commission took these issues up again, that the entire Architectural Commission attend that meeting to provide input from an aesthetic perspective.

President Kleid thanked Mr. Wheelock once again.

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In response to Attorney Kolins relative to the timing for development review items, President Kleid advised that it could not be determined if they would be heard before 2:00 p.m. He noted that Mayor McDonald had to leave the meeting later this afternoon, as did Council Member Coleman. He explained that there was the possibility that there would only be four Town Council Members present to hear development review items, and if there was a tie vote, the item would be denied. The applicant, when their item came before the Town Council, would be asked whether they wanted to present or wanted to defer until the June Town Council Meeting.

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VIII. REGULAR AGENDA

A. Old Business

1. Royal Poinciana Area Planning Study.

a. Recognition of Members of the Royal Poinciana Area Planning Study Steering Committee. [Mayor McDonald]

Mayor McDonald recognized the following members of the Royal Poinciana Area Planning Study Steering Committee, acknowledging those that were present in the audience:

Alex Anylan
Ned Barnes (present)
Page Lee Bell
Jeff Cloninger
Elizabeth Dowdle (present)
Gerald Frank
Gerry Goldsmith
Ida Goldstein
Arnold Hoffman
Paul Leone
Yvelyne D. Marix (present)
Kit Pannill
John Ripley (present)
Jimmy Ryan
Amy Shaughnessy
Lesly Smith
Sidney Spiegel
Wendy Victor
Rebecca Williams

Yvelyne "Deedy" Marix thanked Mayor McDonald for the recognition. She noted that she believed Beth Dowdle's presentation was superb, and the Town Council should give it very serious consideration.

President Kleid responded that the Town Council was giving serious consideration to all comments heard, but noted that these comments should be brought up at the time the meeting to discuss the plan was held.

b. Presentation of Final Conceptual Master Plan.
[Marcella Camblor, Treasure Coast Regional Planning Council]

Marcela Camblor of the Treasure Coast Regional Planning Council (TCRPC) officially submitted the Royal Poinciana District Citizens' Master Plan. She commented as follows:

- At the April 7, 2008, Town Council Meeting, a Draft Report had been submitted and since that time, comments had been received from the community and the Town Council.

- The differences between the Draft Report and the Final Report were simple additions that did not change the recommendations.

- All comments received from the public were available and had been turned over to the Planning, Zoning and Building Department.

- One set of comments, which had not been received until yesterday and had not been incorporated into the report, had been included in the information provided to Planning, Zoning and Building Director Page.

- The Final Report would be placed online by the end of the day today with all changes/corrections.

- The Treasure Coast Regional Planning Council commended Testa's, who had worked very closely with the TCRPC, on redesigning their plans to conform to the recommendations in the master plan.

- The Treasure Coast Regional Planning Council, at the request of the Town Council, initiated discussions with Town staff, the Florida Department of Transportation (FDOT), and the Metropolitan Planning Organization (MPO) regarding the construction of the Flagler Memorial Bridge and the multi-use walkway under the bridge. The first meeting, which was set up by Commissioner Koons had been very positive.

- Since the last meeting, there had been several meetings between the representatives of Publix, Town staff, and staff from the Treasure Coast Regional Planning Council. Publix was very interested in implementing the concepts embedded in the Charrette Report.

Ms. Camblor, on behalf the Treasure Coast Regional Planning Council, thanked the Town

Council for allowing them to work with the Town and its residents.

Town Manager Elwell commented on the meeting the Treasure Coast Regional Planning Council had with Town staff, FDOT and MPO.

In response to Mr. Elwell, Ms. Camblor advised that she would issue an addendum for those persons who had received hard copies of the Final Report today, noting that the report that would be posted to the website might be different from what was received at the meeting.

President Kleid thanked Ms. Camblor and the staff of the Treasure Coast Regional Planning Council, noting that it was a pleasure working with them.

Motion was made by President Pro Tem Coniglio to accept the Final Conceptual Master Plan of the Royal Poinciana Area.

At the request of Council Member Markin, **President Pro Tem Coniglio amended her motion, seconded by Council Member Rosow, to accept receipt of the Final Conceptual Master Plan of the Royal Poinciana Area. On roll call, the motion carried unanimously.**

President Kleid suggested the following:

- Discussion take place relative to setting a date for a future meeting, at which time the Town Council would examine the final plan;
- The Treasure Coast Regional Planning Council or some other organization come back to prepare zoning code amendments to reflect what was agreed to by the Town Council.

Ms. Camblor responded to questions and concerns of the members of the Town Council regarding financial feasibility as follows:

- The TCRPC believed, for the most part, that what the Charrette Master Plan was proposing was more consistent with what was on the grounds today and was definitely more than what the current zoning allowed. A simple conclusion was that it was more financially feasible than the Town's current code was today.

- The best test to all of this was that Testa's had gone back, taken the Charrette recommendations, created a proposal for a specific parcel, that followed it to the dot. It appeared from the report the TCRPC received from Testa's was that they were very close to making this financially feasible for them.

In response to President Kleid, Director of Planning, Zoning and Building Page responded that there had been encouraging private discussion between staff and Testa's within the past several weeks, but an application had not been officially submitted.

After further discussion, Town Manager Elwell advised that staff would coordinate a meeting date, and then make an announcement to the public.

Beth Dowdle, member of the Steering Committee, commented on the following:

- Thanked the Town Council for supporting this planning effort and for appointing her to the Committee; thanked the TCRPC and the design team; and thanked Mayor Smith for allowing the Steering Committee use of her building.
- The role of the Steering Committee.
- The significance of the Royal Poinciana Way District.
- The Treasure Coast Regional Planning Council's draft and final report.
- The best urban designers could miss the deeper point that Town planning was not simply about design but also about being stewards to the history and the culture of the community and to protecting the legacy of those that came before us.

William Guttman, 216 West Indies Drive, commented on the following:

- The financial feasibility of the portion of the plan that dealt with Royal Poinciana Way.
- The inclusion of some economic and market analysis in Final Report.
- It was critical that the Planning and Zoning Commission be allowed to use the Treasure Coast Regional Planning Council in dealing with the Testa property.

John Ripley, Preservation Foundation, commented on the following:

- Financial feasibility related to the study and potential zoning changes.
- Thanked the Treasure Coast Regional Planning Council for their fine work and their many excellent recommendations.
- Criticisms of the report of the Treasure Coast Regional Planning Council.

Council Member Markin commented on the purpose of the study, noting that the Town should be cautious as to how they proceeded developmentally, just based on economic conditions.

President Kleid commented that discussion of the plan was premature and that a date would be set to hold an official open meeting to discuss the plan in detail to which the public would be invited.

NOTE: The following item will be heard during the Town Council Meeting on May 13, 2008:

Results of the University of Miami School of Architecture Studio Project Viewing the Royal Poinciana Area Through a Landmark Preservation Lens. [John Ripley, Executive Director, Preservation Foundation of Palm Beach]

B. New Business

1. Royal Poinciana Theatre Business Model Presentation. [Patrick Flynn, Palm Beach Theatre Guild]

Patrick Flynn, President of the Palm Beach Theater Guild, noted that three meetings had occurred with the new lessees of the Royal Poinciana Playhouse, characterizing the meetings as cordial and productive, but hardly decisive. The most exciting concept was for the playhouse to be the anchor tenant.

Mr. Flynn provided a power point presentation on the business model for the operation of the Royal Poinciana Theater titled: "Revised Feasibility Plan - Spring 2008". He then introduced Charles Lanigan, retired Executive Vice President of Bank of America and a member of the Guild's executive committee.

Mr. Lanigan provided a brief history of his background and addressed the financial plan for the Palm Beach Theater Guild, noting that $3.8 million was believed to be needed for renovations of the theater and celebrity rooms. He advised that a $5 million capital campaign would be launched to pay for those renovations and to cover the initial working capital. The fundraising campaign would formally begin in late September, early Fall but significant progress had to be made first on signing a long-term lease.

Mr. Flynn and Mr. Lanigan responded to the questions and concerns of the Town Council as follows:

- The Guild had about $1 million in soft pledges, but without a long-term lease to operate the theater, it was difficult to raise additional funds.
- The Guild did have a formal Board.
- The Guild, at present, had cash on hand of about $50,000

President Kleid thanked Mr. Flynn for providing an update on this project.

2. Memorandum of Ground Lease at Royal Poinciana Plaza.
[John C. Randolph, Town Attorney]

Town Attorney John Randolph referred to his memorandum to the Mayor and Town Council dated May 7, 2008, and included in the backup material, to discuss the Memorandum of Ground Lease for Royal Poinciana Plaza. He distributed a letter received over the weekend via e-mail from Charles Siemon indicating that his clients did have the authority to deal with the Town Council and with this property exclusively as a result of the 99-year ground lease.

Attorney Randolph responded to questions and concerns of the Town Council as follows:

- The Sterling Munder Group had the full right and authority to bind this property based on the representations that had been made to him.

- The Town code contained a provision which allowed the Town subpoena powers in regard to quasi judicial hearings, and he did not believe it would allow the Town the ability to subpoena documents, which were not particularly relevant to a particular hearing, at any point in time.

Discussion ensued and President Kleid commented that Attorney Randolph had provided his opinion relative to the Memorandum of Ground Lease, and unless he heard otherwise, and the Town Council wanted to pursue obtaining a copy of the lease, they would move on.

After discussion, Attorney Randolph was directed to request the following from Attorney Siemon:

- A design concept presentation to the Landmarks Preservation Commission in July.
- Opinion letter from the Attorney who drew the lease.
- Any other information that may be needed from Attorney Siemon regarding the lease provisions.

Jere Zenko, 232 Tangier Avenue, commented on the lack of due diligence; her introduction to land use was in fighting Charles Siemon; and that she did not understand why Sterling Palm Beach, LLC would not produce the lease.

William Diamond, 220 Wells Road, commented on the subpoena rights of the Town relative to this matter.

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 9-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, Article X, On-Street Parking Permits, Division 2, Residential Districts, at Section 134-2296, so as to Provide for Visitor Permits; Amending Section 134-2298 Relating to False Representation; Amending Section 134-2299 Relating to Revocation; Deleting Section 134-2300 Relating to Temporary Visitor Permits in its Entirety; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 9-08, by title, as printed above.

Motion made by Council Member Coleman, seconded by Council Member Rosow, to adopt Ordinance No. 9-08 on second reading. On roll call, the motion carried 4/1:

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

2. ORDINANCE NO. 11-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-2 by Modifying the Definition of Nightclub; Section 134-2 by Modifying the Definition of Restaurant; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 11-08, by title, as printed above.

Motion made by Council Member Rosow to adopt Ordinance No. 11-08 on second reading.

President Pro Tem Coniglio recused herself, and in response to Attorney Randolph, advised that her recusal was consistent with the reason she previously had given. She had noted, at first reading of this Ordinance, that she was recusing herself in order to eliminate any perception of an unbiased scrutiny on her behalf.

President Kleid passed the gavel to Mayor McDonald and seconded the motion. On roll call, there was a 2/2 vote:

Council Member Rosow:	**Yes**
President Kleid:	**Yes**
President Pro Tem Coniglio:	**Recused**
Council Member Coleman:	**No**
Council Member Markin:	**No.**

Mayor McDonald broke the tie voting yes. The motion was adopted by a 3/2 vote.

3. ORDINANCE NO. 13 -08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 22, Businesses, at Sections 22-271, 22-272, 22-273, 22-274, 22-275, 22-276 and 22-277 by Providing Consistent Language Throughout Those Sections Relative to Entertainment Establishments and by Creating a Closing Time for Those Uses; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 13-08, by title, as printed above.

Motion made by Council Member Rosow, seconded by Council Member Markin, to adopt Ordinance No. 13-08 on second reading. On roll call, the motion carried 4/0.

President Pro Tem Coniglio recused herself for the same reason previously noted, which was to eliminate any perception of an unbiased scrutiny on her behalf.

4. ORDINANCE NO. 15-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 54, Historic Preservation, of the Town Code of Ordinances at Article III, Section 54-93, So as to Modify Section 54-93 to Add Notice Requirements; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 15-08, by title, as printed above.

Motion made by President Pro Tem Coniglio, seconded by Council Member Markin, to adopt Ordinance No. 15-08 on second reading. On roll call, the motion carried unanimously.

B. First Reading

None

X. DEVELOPMENT REVIEWS

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

A. Appeals

1. Appeal by 1565 North Ocean Way, North Ocean Way, LLC, Regarding ARCOM Decision No. B10-08/SE4-08.
[Francis X. J. Lynch] *Deferred from the April 7, 2008, Town Council Meeting.* **Request for Withdrawal Per Letter Dated April 16, 2008, From Francis X. J. Lynch.**

Item X.A.1., Appeal by 1565 North Ocean Way, North Ocean Way, LLC, Regarding ARCOM Decision No. B10-08/SE 4-08, was withdrawn.

2. Appeal by 434 Seaspray Avenue Regarding ARCOM Decision No. B22-08/VE5-08 (Artificial Turf).
See items X.C.3.a., X.C.3.a.(i) and X.D.2.

Please Note: ***Item X.A.2., Appeal of 434 Seaspray Avenue Regarding ARCOM Decision No. B22-08/VE5-08 (Artificial Turf), was heard before Variance #5-2008, Christopher and Andrea Kaufmann.***

Ex-parte communication was declared by Council Member Markin who had a conversation with the property owner at his home; Council Member Coleman, President Kleid, President Pro Tem Coniglio, and Council Member Rosow had conversations with the property owner and visited the property.

President Kleid commented that this was a quasi judicial hearing and comments would be limited to the record only, no extrinsic evidence would be heard.

Attorney Ron Kolins, on behalf of the appellant, advised that Mr. Kaufmann would like to address the Town Council at this time.

Mr. Christopher Kaufmann, 434 Seaspray Avenue, addressed the Town Council commenting as follows:

- Apologized for all the trouble he had caused everyone.

- Had not realized that a building permit was needed to replace his natural grass with artificial grass.

- Explained that grass did not grow in his garden due to drainage problems, the shade from a 20' hedge, and 50 mature cocoanut trees.

- Was prepared to pay for any fines.

- Advised that the artificial grass looked like grass, felt like grass, was beautiful, and drained nine and half times better than natural grass.

- Asked that the Town Council to consider that his backyard was his pride and joy and was very important to him. He loved it very much and was very proud of what they had done.

Attorney Ron Kolins entered into the record a notebook containing a memorandum from him dated May 7, 2008, regarding this case, a copy of the transcript, and other exhibits, which he circulated to the Town Council and staff.

Attorney Kolins, on behalf of the appellant, displayed photographs of the area to provide a history of the project and explain the reason for the appeal of ARCOM decision.

Architectural Review Commission Chairman Morgan Wheelock commented as follows:

- Staff requested, prior to the April 23, 2008, ARCOM meeting, that the Attorney have a landscape architect present, in order to have expert witness on the benefits or problems of artificial turf. The Attorney decided not to, and the only expert opinions heard were his, as he was a landscape architect. He provided a brief history of his background.

- He commented on ARCOM's decision to deny the project, noting that he believed ARCOM had a moral obligation to make its consideration not only based on aesthetics, but on what was enriching and preserving for the neighborhood.

- He believed that when talking about artificial turf, one was talking about an environmental problem, which could become immense, if allowed.

- He concluded by reading a portion of the motion made at the April 23, 2008, ARCOM meeting: "that the turf would cause the nature of the local environment to materially depreciate in appearance and value."

- He advised that four members of ARCOM had visited the site.

Council Member Rosow commented that he had visited the property and was very impressed by the way it looked, but he expressed concern over the jurisdictional issue, drainage and safety of the artificial turf.

Attorney Kolins responded to the questions and concerns of Council Member Rosow.

Council Member Coleman commented in support of ARCOM's decision, noting that it was a good policy decision. He advised that he visited the property three times and found it to be very attractive. It was precedent setting for the Town, and if the Town Council agreed, he suggested that this issue be held in abeyance in order for it to be studied.

Council Member Markin commented in support of Mr. Coleman's remarks. She noted that she thought the site looked stunning, noting that her concern, on a precedent level, was the drainage aspect of it. She questioned whether the material drained horizontally or vertically, and because it was a petroleum product, whether it was fire retardant. She wanted to be very cautious about setting a precedent and personally required more information from an engineering standpoint.

Attorney Kolins responded to the questions and concerns of Council Member Markin.

In response to President Pro Tem Coniglio, Town Attorney Randolph advised that ARCOM did have jurisdiction over the aesthetic value of someone's yard. The condition was whether it was visible from public view, and the key factor was whether or not a building permit was required to install the artificial turf. He advised that if a building permit was not required, then ARCOM did not have jurisdiction to review this.

Zoning Administrator Castro responded that a building permit was required because the drainage necessary for that material needed to be engineered. A permit was required to design and build any drainage system in this Town.

Town Attorney Randolph advised that, on that basis, ARCOM did have the right to review. He responded to Council Member Coleman who questioned if there was any other ground for review, noting that it still would invoke the jurisdiction of ARCOM, because of the provision that spoke to any substantial change in materials. ARCOM and staff had determined, since it covered an entire yard such as this, that this was a substantial change in materials and that was the reason it was sent to ARCOM.

Public Comment:

Morgan Wheelock, 301 Australian Avenue, addressed the Town Council as a member of the public, commenting on the life span of the material and environmental concerns related to the material.

William Strawbridge, 434 Chilean Avenue, addressed the Town Council as a citizen and as a member of ARCOM, expressing concern over the precedent issue, and medical issue.

Staff Comments:

Director of Planning, Zoning, and Building Director John Page commented on the precedent setting concern.

Attorney Kolins provided a rebuttal to the questions, concerns, and objections raised today, noting that the bottom line was that there was nothing of record, legally or factually, to justify ARCOM's decision. He respectfully requested that the Town Council reverse that decision.

President Kleid closed the public meeting and the Town Council entered into Executive Session.

After discussion, **President Pro Tem Coniglio made a motion to uphold the decision of ARCOM and deny the appeal.**

Town Manager Elwell noted that the Town Council had before them both the appeal of ARCOM and Variance #5-2008, and it appeared that some of the concerns discussed related as much to the Variance as they did to the appeal question.

The motion died for lack of a second.

Discussion ensued and **Council Member Rosow made a motion, seconded by Council Member Markin, to hold the decision on the appeal and Variance #5-2008 until such time as the Town Council had more information from staff to consider.**

Discussion ensued relative to the following:

- A precondition would be that water had to be retained on the property, and if it did not retain water, the applicant would have to come up with a drainage plan.

- Staff would present a report at the July 8, 2008, Town Council Meeting.

- Deferred the appeal, along with Item X.C.3.a. - Variance #5-2008 (see below) and Item X.D.2. - ARCOM Request for Code Amendment to Prohibit Artificial Turf, until the July 8, 2008, Town Council Meeting.

- Applicant would be responsible for the fees related to the Town hiring their own independent outside professional.

Council Member Rosow amended his motion, seconded by Council Member Markin, to include that the fees for expert consultation would be the responsibility of the applicant.

Attorney Randolph advised that since Town code indicated that the Town Council must act on the appeal within 45 days of the filing of the appeal, there should be an agreement on record from Attorney Kolins that he agreed to waive that provision to allow this to be heard in July.

Attorney Kolins responded that he agreed.

On roll call, the motion carried 4/1.

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

Town Manager Elwell clarified that staff was directed to provide the following information regarding artificial turf at the July 8, 2008, Town Council Meeting:

- Drainage
- Fire retardant characteristics
- Life span (both maintenance and replacement)
- Environmental safety of the product
- Preference of one product over another
- Underground and surface fungus compared to natural grass

Attorney Kolins clarified, for the record, Mr. Castro's statement that he had said there was nothing in the code about natural grass versus artificial, noting that what he said was there was nothing in the code that required a building permit for this. He explained that he wanted it to be clear that he did not misspeak.

In response to Attorney Kolins, President Kleid commented on the following:

- At the July 8, 2008, Town Council Meeting, the applicant would be allowed to have their own experts for rebuttal.
- The expert hired by the Town would provide an independent evaluation.
- Staff would provide cost information to Attorney Kolins relative to the Town's hiring of an expert consultant.
- Staff would allow Attorney Kolins to see the scope of work and the proposals of staff.

B. Time Extensions

1. Request for Waiver of Section 42-199, Hours of Construction, at 215 Brazilian Avenue (Per Letter Dated April 21, 2008, From Maura A. Ziska). *This item relates to X.C.4.c.*

Ex-parte communication was declared by Council Member Markin with Attorney Maura Ziska via the telephone; Council Member Coleman and President Pro Tem Coniglio with Attorney Ziska; and Council Member Rosow met with Attorney Ziska.

Attorney Maura Ziska provided an overview of the Request for Waiver of Section 42-199, Hours of Construction, at 215 Brazilian Avenue.

Director of Planning, Zoning, and Building John Page noted that his memorandum dated May 2, 2008, included in the backup material, listed conditions that the Planning, Zoning and Building Department requested be attached to the approval of this request.

Attorney Ziska responded that she was aware of the conditions, agreeing to them as part of the motion to approve the request. She confirmed compliance with notice requirements.

After discussion, **Council Member Coleman made a motion, seconded by Council Member Markin, to approve the request of extension of hours of construction with the following conditions:**

- **Continuous pours in June 2009 and in October 2009 (pre-Halloween).**
- **The applicant agreed to relocate any neighbor in the condominium to the west during the construction time period of 20 hours.**
- **The Construction Management Agreement agreed to by the applicant to be brought back to the Town Council at the July 8, 2008, Town Council Meeting.**
- **All other conditions as set forth by staff in Director of Planning, Zoning and Building Page's memorandum dated May 2, 2008, included in the backup material.**

On roll call, the motion carried unanimously.

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 #7-2008 The application of Eclectic Inc., Steven C. Marks; relative to property described as Lot L, PHIPPS PLAZA, Plat Book 20, Page 72; commonly known as 264 South County Road; located in the C-TS Zoning District. The applicant requests a special exception to allow transferring eight indoor seats outdoors through French doors which would open onto the proposed outdoor seating on the south side of the restaurant.

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

Attorney Peter Broberg, on behalf of the applicant, provided an overview of the Special Exception request and presented photographs of the site. He responded to questions and concerns of Council Member Markin.

Council Member Markin commented, for the record, that this Special Exception requested the transfer of eight indoor seats outdoors through French doors, which meant that if seats were moved outside, knowing that this location had a parking issue, and always had one, there would be eight empty seats inside, at any given time. The restaurants ended up with additional seats outside to what was already existing to the inside, creating further parking problems. It put the onus on the Town or Code Enforcement to visit the restaurant occasionally during a peak time to ensure that eight seats inside were not being used in lieu of the eight seats outside.

Staff Comments:

Zoning Administrator Castro made the following comments:

1. The seats have to be physically removed from the inside in order for the Town to regulate that issue.

2. If the movement of seats was approved, the Declaration of Use Agreement should be modified to address music as well as the operational aspects of the hours outside.

Discussion ensued and Attorney Broberg advised that there were two Declaration of Use Agreements that already blanket this property. The owner would not add to the chairs because it was defined in the Declaration of Use Agreement as to how many chairs were already allowed.

Motion made by Council Member Coleman, seconded by Council Member Markin, to approve Special Exception #7-2008, subject to a Declaration of Use Agreement.

In response to Mayor McDonald, Attorney Broberg advised that there were residential units behind this outside area; and that the restaurant usually finished serving dinner by 11:00 p.m.

After discussion, **the motion was amended by Council Member Coleman, seconded by Council Member Markin, to approve Special Exception #7-2008, subject to a modified Declaration of Use Agreement that did not allow music outside and did not allow outside service after 11:00 p.m. due to the close proximity of residential units. On roll call, the motion carried unanimously.**

b. SITE PLAN REVIEW #2-2008 WITH SPECIAL EXCEPTIONS The application of William E. Shockett, Vice President of City National Bank of Florida, as Trustee of Land Trust Agreement dated 9-20-2005 known as Trust Number 2401-2301-00; relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Blvd.; located in the R-D(2) Zoning District. The applicant requests a site plan modification for internal floor plan changes to the approved floor plans which include: in the basement; the elimination of the kids' room, the relocation of the gift shop from the first floor; the conversion of conference room space to additional employee bathrooms and meeting room; on the first floor, the conversion of 256 square feet of lobby to a bar with 16 seats and the deletion of previously approved bar and sushi bar; on the second floor, the conversion of restrooms to additional meeting and banquet space; on the third floor, the construction of new bathrooms within the interior atrium which were relocated from the second floor and the elevation of the new cooling tower to the slab between the fourth and fifth floors within the atrium. A special exception to raise the air conditioning cooling tower from the third floor to between the fourth and fifth floors in the R-D(2) zoning district; a special exception to construct a spa totaling 535 square feet in the basement of the hotel and a bar with 16 seats totaling 256 square feet on the first floor as accessory commercial uses.

Ex-parte communication was declared by Council Member Markin and Council Member Coleman via the telephone; President Pro Tem Coniglio and Council Member Rosow received voice mail from Attorney Brindell but did not speak with him.

Attorney Brindell provided an overview of the applicant's request.

Council Member Rosow questioned why this request was before the Town Council since it was for interior renovations. He believed that staff could handle it now and in the future.

Zoning Administrator Castro responded that this was before the Town Council because of the Site Plan Review. He noted that staff had little flexibility and could not allow many of the interior changes. The Town Council had to approve them as part of the Site Plan modifications.

President Kleid suggested, and Council Member Rosow, agreed that some of these procedures should be changed in order that future requests such as this did not have to come before the Town Council.

Council Member Markin commented in support of the request but deferred to staff to advise if there were any issues that the Town Council needed to be concerned about.

Staff Comments:

Zoning Administrator Castro commented on the following:

1. The only concern from staff's viewpoint was with the bar off the lobby area.

2. The spa was for the residents staying at the hotel.

3. The moving of the cooling tower.

After discussion, **President Pro Tem Coniglio made a motion, seconded by Council Member Markin to approve modifications to Site Plan Review #2-2008 with Special Exceptions with the conditions that the applicant would not make further changes, and that the project would be completed within the time frame that had been determined. On roll call, the motion carried unanimously.**

After discussion, President Kleid suggested adding to the zoning season study items, Mr. Rosow's proposal to allow staff to make decisions regarding interior changes, which did not increase the intensity/density, parking, and if there were no other variances or exceptions required.

3. Old Business- More Than 15 Minutes

a. VARIANCE #5-2008 The application of Christopher and Andrea Kaufmann; relative to Lots 315, 317, and 319, POINCIANA PARK, 2ND ADDITION, according to the plat thereof as recorded in Plat Book 6, Page 86, of the Public Records of Palm Beach County, Florida; and Lots 614, 616, 618, 620, 622 and 624, POINCIANA PARK, 3RD ADDITION, according to the plat thereof as recorded in Plat Book 8, Page 72 of the Public Records of Palm Beach County, Florida; commonly known as 434 Seaspray Avenue; located in the R-B Zoning District. The applicant requests a variance to allow artificial turf to remain installed which would reduce the landscape open space from 59.59 to 21.27% in lieu of the 50% minimum required for a lot in the R-B district over 20,000 square feet. *Deferred from the April 7, 2008, Town Council Meeting. This item relates to X.C.3.a.(i) and X.D.2.*

(i) Appeal of ARCOM Decision Related to Artificial Turf. *This item relates to X.C.3. a. and X.D.2.*

Deferred Item X.C.3.a., Variance #5-2008, 434 Seaspray Avenue, to the June 9, 2008, Town Council Meeting as discussed under Item X.A.2., Appeal by 434 Seaspray Avenue Regarding ARCOM Decision No. B22-08/VE5-08 (Artificial Turf).

b. MODIFIED SITE PLAN REVIEW #15-2007 WITH VARIANCES The application of Villa D'Este Condominium Association, Inc.; relative to property described as Lots 7 and 8 and the east 22 feet of

Lot 9, Block 5, H.W. Robbins Addition, Ocean Park, in the Town of Palm Beach, Florida, according to the records on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida as recorded in Plat Book 6, Page 78; commonly known as 230 Everglades Avenue; located in the R-C Zoning District. The applicant requests a modification to the Villa D'Este site plan to place a 100 kilowatt emergency power generator and a 9.75 foot tall wing wall located at the northeast corner of the existing site; a variance to locate a 100 kilowatt emergency power generator and wing wall with a side yard setback of 1.33 feet in lieu of the 3.59 foot setback originally requested and in lieu of the 20 foot minimum required; a variance to construct the wing wall to screen the 100 kilowatt emergency power generator within the side yard setback with a height of 9.75 feet in lieu of the six foot maximum allowed. *Deferred from the April 7, 2008, Town Council Meeting.* **Request for Withdrawal Per Letter Dated May 8, 2008, From Francis X. J. Lynch.**

Item X.C.3.b., Modified Site Plan Review #15-2007, Villa D'Este Condominium Association, Inc., 230 Everglades Avenue, was withdrawn.

4. New Business- More Than 15 Minutes

a. <u>VARIANCE #6-2008</u> The application of Herbert J. Siegel and Phyllis M. Siegel; relative to property described as Lot 3 of Graham Eckes Academy, according to the map or plat thereof as recorded in Plat Book 66, Page 105 of the Public Records of Palm Beach County, Florida; commonly known as 6 Windsor Court; located in the R-B Zoning District. The applicant requests a variance to allow a 45 KW generator to be placed in the street side yard along Windsor Court with a street side yard setback of 15.1 feet in lieu of the 25 foot minimum required.

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

Attorney Ziska provided an overview of the Variance request. She stated that the hardship was that the house fronted three streets and had three street yard setbacks leaving no other location for the placement of the generator.

Zoning Administrator Castro commented that staff had questioned the noise decibel level, but with the wall and hedge material, staff believed the generator would not have as much of an impact as if it were on the other side of the property next to the other single family home.

Motion made by Council Member Rosow to approve Variance #6-2008.

After discussion, **Council Member Rosow amended his motion to grant Variance #6-2008 with the stipulation of Town Council Member Coleman that the generator conform with the noise requirements per Town code, 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. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.**

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Recess was taken at 12:57 p.m.
The Town Council Meeting of April 12, 2008, was reconvened at 1:20 p.m.

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b. SPECIAL EXCEPTION #6-2008 WITH SITE PLAN REVIEW AND VARIANCES The application of Everglades Club Inc., Scott Lese, General Manager; relative to property described as lengthy legal description on file; commonly known as 350 Worth Avenue; located in the C-WA Zoning District. The applicant requests a special exception to modify the Everglades Club by demolishing the existing one story kitchen facility portion of the building and constructing a new two story kitchen facility addition which will expand the use of Club by adding more square footage. A request for site plan review to modify the previously approved site plan of the Everglades Club. The proposed modification is to renovate the kitchen facility by demolishing 14,072 square feet and adding 16,039 square feet on the first floor and 14,457 square feet on the second floor. The new building addition will contain a larger kitchen facility, a new wine room, additional bathrooms, a new flower shop, a new employee dining room, a new trash receptacle, a new laundry room and new office space. Also, the existing air-conditioning equipment that is currently located on the roof will be replaced with a new cooling tower and relocated to an area outside and adjacent to the existing generator. The site plan also provides for the addition of two loading docks for deliveries, where none exist today. Variances requested are to allow construction of the new kitchen facility to be phased over four years in lieu of the two year maximum completion time; to allow the building with new additions to be a length of 398.5 feet in lieu of the 376 feet existing and the 150 foot maximum allowed; a variance for a front yard setback ranging from 2.5 feet to 5.5 feet in lieu of the 10 foot minimum required; a variance to allow a west side yard setback for the proposed southwest tower of 2.2 feet in lieu of the 10 foot minimum required; a variance to provide one loading space in lieu of the two spaces required by code for the proposed additions; a variance to provide a 5 foot sidewalk in lieu of the 10 foot minimum required; a variance to allow the proposed building additions to increase the total square footage from 154,510 square feet to 170,934 square feet in lieu of the 15,000 square foot maximum allowed; a variance to allow four towers in lieu of the two maximum allowed. **Request for Deferral to the June 9, 2008, Town Council Meeting Per Letter Dated April 16, 2008, From Maura A. Ziska.**

Item X.C.4.b., Special Exception #6-2008 with Site Plan Review and Variances, Everglades Club, Inc., 350 Worth Avenue, was deferred to the June 9, 2008, Town Council Meeting.

a. <u>MODIFIED SITE PLAN REVIEW #20-2007 WITH SPECIAL EXCEPTION AND VARIANCES</u> The application of 215 Brazilian Holding, LLC, Aby Rosen, Manager; relative to a property described as Lot 5 and the West 85 feet of Lot 6, Block E of REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA, according to the plat thereof as recorded in Plat Book 4, Page 1 Public Records of Palm Beach County, Florida; commonly known as 215 Brazilian Avenue; located in the R-C Zoning District. The applicant requests to modify the previously approved site plan (SPR#7-2005) as follows: (a) add a 424 square foot porte-cochere to the front entrance of the hotel for passenger drop off and pick up; (b) expand the previously approved third floor footprint by 905 square feet on the east side of the hotel building; (c) relocate previously approved pool 47.8 feet to the north and reduce size from 1,032 square feet to 906 square feet, and add pool bathrooms/pavilions west of the pool; (d) increase size of previously approved loggia and second and third floor balcony on the west side of the previously approved hotel building from 147 square feet to 642 square feet; reduce the amount of balcony space from 1,653 square feet to 842 square feet; (e) reconfigure the number of previously approved 59 parking spaces in the sub-basement/garage to provide 73 parking spaces by using tandem/valet parking; (f) add administrative offices, traditional "back of house" functions, a generator room and storage areas in sub-basement/garage for a total of 6,389 square feet. The variances requested to accomplish the modifications to the site plan are as follows: (a) a front yard setback of 4.5 feet for the porte-cochere in lieu of the 28.4 feet minimum required and the 25 feet previously approved in SPR#7-2005; (b) three story additions on the east and west side of the proposed building in lieu of the two story maximum allowed; (c) to allow the proposed third story changes with the previously approved height of 28.4 feet in lieu of the 23.5 foot maximum allowed; (d) to allow the previously approved overall height of 36.5 feet in lieu of the 28.5 foot maximum allowed; (e) east side yard setback for the third floor addition to be the previously approved 20 feet in lieu of the 28.4 feet minimum required; (f) a variance to allow the parking spaces to be situated in contradiction to the maneuvering requirements in Section 134-2172; that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The application is proposing stacked parking which requires the shuffling of vehicles in order to remove vehicles from required parking spaces; (h) east side yard setback of 5 feet for the proposed basement modifications in lieu of the 28.4 feet minimum required and 20 feet previously approved in SPR#7-2005; (I) front yard setback of 7.1 feet for the proposed basement modifications in lieu of the 28.4 feet minimum required and the 25 feet previously approved in SPR#7-2005; (j) rear yard setback of 5 feet for the proposed basement modifications in lieu of the 30 feet minimum required and the 5 feet previously approved in SPR#7-2005; (k) lot coverage of 44.09% for the proposed basement modifications in lieu of the 30% maximum allowed and the 38.09% previously approved in SPR#20-2005; (l) landscaped open space of 15.1% for the proposed basement modifications in lieu of the 35% minimum required and the 21% previously approved in SPR#2-2004; (m) to allow the proposed basement modifications to exceed the requirement that at least 51% of its floor area be outside the confines of the main portion of the building located above the basement; (n) to allow construction of the hotel to be four (4) years in lieu of the two (2) year maximum completion time from implementation date of October 25, 2007. *This item relates to X.B.1.*

Ex-parte communication was declared by: Council Members Markin and Rosow spoke with Attorney Maura Ziska.

Attorney Ziska provided an overview of the applicant's request.

Architect Ed Oliver, of Oliver, Glidden, Spina & Partners, presented architectural renderings and an overview of the project.

Discussion occurred among the Town Council Members, Zoning Administrator Castro, and Attorney Ziska, regarding the following:

- Elevations of the building were shown with and without the porte-cochere.
- The east wall was moved to the third floor.
- The applicant was required to apply for a new variance to be presented for approval, and build on what was previously approved.
- For the record, the applicant would be placing the utilities underground.
- As the dining room was not a restaurant, the new nightclub ordinance would not apply to the applicant.
- Previous approval of 50 rooms versus 24 rooms was questioned, as it had an impact on parking.

Attorney Peter Broberg, on behalf of Lynn Weiner, who resided on Brazilian Avenue, commented that a hardship was needed for the porte-cochere, as it placed the building four and a half feet from the property line.

Attorney Ray Royce, indicated that he represented Mr. Louis Pryor, who resided in the condominium apartments immediately adjacent to the west of the property, and the Brazilian Apartments Condominium Association. He stated that a Declaration of Use Agreement was entered into, which provided safeguards in order to avoid the outdoor area from becoming a nuisance type area.

Attorney Ziska agreed to the conditions that Attorney Royce read into the record, which would not allow any modifications to be made to the Declaration of Use Agreement.

Frederick Keitel, 412 Brazilian Avenue, expressed concern regarding the lack of parking.

Staff Comments:

Zoning Administrator Castro made the following comments:

- In 2005, staff had concerns about the demolition of the existing hotel, redevelopment of the three-story hotel, the amenities being proposed, and the sub-basement and basement area.

- There was not enough parking.

- By today's code, if the hotel was built, there was a requirement of at least 121 parking spaces.

- The applicant was proposing 59 parking spaces with the ability to stack even more in the basement.

- Staff had concerns relative to traffic circulation, and the valet operation during peak season/peak hour.

- Staff did not see a hardship relative to the 10 variances granted in 2005, and continued to try to understand what the hardship was to allow for the site to be redesigned.

- In the redesign of the Plaza Inn, several of the areas, which were back of the house functions, were moved to the basement which significantly constrained and restricted the parking that was circulating in the original basement plan that was approved.

- The existing Declaration of Use Agreement was somewhat silent on the function room, under section 12, as the hours of operation should be limited.

- Off island staff parking did not work, and without knowing the location of the parking, staff was concerned about the impact to other municipalities, as it might not be legal. It was being held out as part of a reason to approve the modification of the project.

Gareth Klotz, American Consulting Engineers, on behalf of the Town, reported on the traffic circulation and operational aspects of the applicant's valet parking and the impacts to the street traffic.

Zoning Administrator Castro concluded with the following comments:

- Fire-Rescue's concern was parking and stacking cars in a basement area with little access. In the event of a fire, compliance with NFP88A, required a minimum clearance of sprinkler heads of 18". Installation of an early warning detection device for smoke, fire, and fuel leaks was needed.

Discussion occurred among the Council Members, Mr. Castro, and Attorney Ziska regarding the first floor plan and reducing density.

Attorney Ziska indicated that the applicant had an ingress/egress easement along the alley, that provided non-exclusive use of the alley, such as making deliveries to multiple businesses and for trash pickup, which would continue to be permitted by the property owners.

Motion made by Council Member Markin, seconded by Council Member Rosow to deny Modified Site Plan Review #20-2007 with Special Exception and Variances.

Attorney Ziska requested a deferral to work on the density and parking issues.

The Town Council held a discussion regarding the issue of the continuance of variances.

Motion was withdrawn.

Motion made by Council Member Rosow, seconded by Council Member Markin to approve deferral of Modified Site Plan Review #20-2007 with Special Exception and Variance to the May 13, 2008, Town Council Meeting to be heard at the end of the Agenda. On roll call, the motion carried 4-1:

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

D. Other

1. Consideration of Designation of the Planning and Zoning Commission as the Town's Local Planning Agency (LPA).

[John C. Randolph, Town Attorney]

Town Attorney Randolph provided an overview of the Town's Local Planning Agency (LPA) and its designation.

Discussion occurred among the Town Council Members regarding the Planning and Zoning Commission's request to be designated as the LPA, rather than the Town Council, with several of the following comments:

- It would lessen the workload of the Town Council, and would be beneficial.
- The Planning and Zoning Commission should be designated as the LPA, as it was already doing the work of the LPA.
- The Town Council , as the LPA, was currently operating without any problems, and should remain as the LPA.
- The Planning and Zoning Commission worked with the Evaluation and Appraisal Report (EAR) and the Comprehensive Plan, and could provide assistance to the Town Council.
- The LPA would make recommendations to theTown Council, who would then make any ultimate decisions.

Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman to approve the designation of the Planning and Zoning Commission as the Town's Local Planning Agency (LPA). On roll call, the motion carried 3-2:

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

Town Attorney Randolph indicated that he would bring back an ordinance to reflect the motion.

2. Consideration of ARCOM Request for a Code Amendment to Prohibit Artificial Turf. [John S. Page, Director of Planning, Zoning, and Building]

This item relates to X.C.3.a. and X.C.3.a.(I)

Consideration of the ARCOM Request for a Code Amendment to Prohibit Artificial Turf was deferred to the May 13, 2008, Town Council Meeting.

XI. ANY OTHER MATTERS

There were none.

XII. ADJOURNMENT

There being no further business to discuss, the May 12, 2008, Town Council Meeting was adjourned at 2:55 p.m.

APPROVED;

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk