# TOWN OF PALM BEACH

Office of The Town Clerk

## MINUTES OF THE REGULAR TOWN COUNCIL MEETING
## HELD ON MAY 10, 2005

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting of May 10, 2005, was called to order at 9:30 a.m. in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

Town Manager Peter Elwell
Deputy Town Manager Thomas Bradford
Assistant Town Manager Sarah Hannah
Town Attorney John Randolph
Harry Ackerman - Assistant Building Official
William Amador - Division Commander/Fire Marshall
Russ Bitzer - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Assistant Director of Planning, Zoning & Building
Andrew Cox - Assistant Fire-Rescue Chief
William Crouse - Human Resources Director
Jane Day - Historic Preservation Consultant



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Tim M. Frank - Planning Administrator
Jon Luscomb - Dock Master
Robert Moore - Director of Planning, Zoning & Building
Edward Moran - Fire-Rescue Chief
Timothy Pompos - Administrative Lieutenant/Fire Inspector
Michael Reiter - Police Chief
Gary Sallenbach - Support Services Major
Cheryl Somers - Assistant Finance Director
Jane Struder - Finance Director
Sandy Tate - Public Works Coastal Projects Administrator
Lisa Walkowich - Recreation Department Office Manager
Susan Eichhorn - Town Clerk

## II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

## III. PRESENTATIONS

A. Recognition of Robert Shinedling, Fire-Rescue Captain Paramedic, Upon His Retirement from the Town of Palm Beach After 30 Years and 2 Months of Service.

Mayor McDonald presented Robert Shinedling with a watch in honor of his retirement from the Town of Palm Beach.

B. Recognition of Gail Coniglio, Recreation Advisory Committee From April 13, 1999, Through April 30, 2005.

Mayor McDonald presented a plaque to Mrs. Coniglio recognizing her years of service on the Recreation Advisory Committee.

C. Recognition of Arthur Gross, Recreation Advisory Committee From April 13, 1999, Through April 30, 2005.

Mayor McDonald presented a plaque to Mr. Gross recognizing his years of service on the Recreation Advisory Committee.

D. $3,000 College Scholarship Provided by the Palm Beach Civic Association and Citizen's Association of Palm Beach to Benefit a Child of a Town Employee, Presented This Year to Luke Ackerman, Son of Harry Ackerman, Assistant Building Official in the Planning, Zoning, and Building Department.

Mayor McDonald presented Luke Ackerman, son of Assistant Building Official Harry Ackerman, with a $3000 check for being selected as the recipient of the seventh annual Palm Beach Civic Association and Citizen's Association of Palm Beach Scholarship Award.

## IV. COMMENTS OF MAYOR JACK MCDONALD

I want to thank the Four Arts Society for their generous offer to provide a free 1 year library membership to all Town employees. With this membership, The Four Arts expresses its gratitude for the Town's financial support to the library and for the excellent service our employees provide to the community. This is a free opportunity for our employees to expand their minds, especially the Town Manager and the department heads.

I recently attended a County League of Cities meeting and listened to several municipalities complain about the continual negative and inaccurate newspaper coverage of town or city government. In my ten years as a public official I think the Palm Beach Daily News has done an excellent job of reporting Town government news in a balanced and complete manner and I commend them for it.

On a slightly more caustic note:
This past month a reduction in speed change occurred on South Ocean Boulevard without any input or involvement by the Police Department or the Council. The Police Department is opposed to the change and I am opposed to the change and many residents are opposed to the change. I request that the Council object to this action taken by the DOT until it can be properly reviewed by our Police Department with input from the residents. We do not need additional restrictions to slow the flow of traffic in Town. The request was initiated by a

resident and reviewed, approved and changed by the DOT with uncharacteristic lightning speed.

I think this action sets a terrible precedent and is a good illustration of another governmental entity taking unilateral action that impacts the Town. It is an example of an action that initiated the formation of the Government Impact Review Committee. I would like to thank William Diamond, Brian McIver and Sam McLendon for agreeing to serve on that important and necessary committee.

**Councilman Kleid made a motion instructing the Town Manager or his designee to contact the Florida Department of Transportation to express the Town's dissatisfaction with an arbitrary change in the speed limit of a given area without first notifying the Town of Palm Beach, in order to give the Town an opportunity to have some input into that decision. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.**

V. APPROVAL OF AGENDA

Discussion ensued regarding the last agenda Item XI.C.3.a., Request by the Planning and Zoning Commission to Declare Zoning in Progress for Neighborhood CCR Index Proposal on June 1, 2005. It was determined that this item would be heard at 10:00 a.m. time certain. The Town Council requested this time change in order to allow those members of the audience present for this particular item not to have to wait until the end of the meeting when it was scheduled to be heard.

**President Pro Tem Goldblum made a motion that Item XI.C.3.a., Request by the Planning and Zoning Commission to Declare Zoning in Progress for Neighborhood CCR Index Proposal on June 1, 2005 be heard at 10:00 a.m. time certain. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.**

The following changes were made to the Agenda:

**DEFERRED** to June 14, 2005, Town Council Meeting - Resolution No. 30-05- utility easement abandonment [Item VII. Consent Agenda, E. Resolutions No. 4.].

**Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum, to defer Resolution No. 30-05 to the June 14, 2005, Town Council Meeting. On roll call, the motion carried unanimously.**

**DEFERRED** to June 14, 2005, Town Council Meeting - Site Plan Review #3-2005 with Variances - 1695 North Ocean Way [Item XI. Development Reviews C. 1. A.].

**Motion made by Councilman Wyett, seconded by Councilman Kleid, to defer Site Plan Review #3-2005 with Variances to the June 14, 2005, Town Council Meeting. On roll call, the motion carried unanimously.**

**DEFERRED** to June 14, 2005, Town Council Meeting - Variance #19-2005 - 1102 North Ocean Blvd. [Item XI. Development Reviews 2.a.].

**Motion made by Councilman Wyett, seconded by President Pro Tem Goldblum, to defer Variance #19-2005 to the June 14, 2005, Town Council Meeting. On roll call, the motion carried unanimously.**

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

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

Ms. Tracey Tooker noted that the Banyan Tree at the Society of the Four Arts had been removed from the landmarked tree list. She asked the following questions:

- Who makes the list of landmarked trees?
- Who makes the decision to eliminate trees from the list?
- Why are Banyan Trees, which are indigenous to Florida's ecosystem, on the invasive plant list, destined for extinction?
- Why was the Town rushing to judgment and condemning the Banyan Tree?

Ms. Tooker read a letter from Mike Zimmerman, Certified Arborist, who advised that it was difficult to determine the extent of the hypoxylon canker infection of this tree. The report stated that this disease can remain within a tree for an extended time and not kill the tree. She reported that Mr. Zimmerman requested that further monitoring be done of this historic/specimen tree.

Ms. Tooker advised that Mr. Ervin Duggan, President of the Society of the Four Arts, believed that the loss of this tree was a tragedy for the Town.

Mr. Eric Gilbertson, 151 Chilean Avenue, commented on the retirement of Planning, Zoning & Building Robert Moore. He remarked that Mr. Moore should be allowed to continue as Director because of his expertise, commitment, and loyalty to the Town of Palm Beach.

Ms. Ingberg Chambers commented on the Banyan Tree at the Society of the Four Arts and questioned the removal of the tree. She also thanked the Mayor for the action taken to address the use of noisy machinery and hours of construction on Saturdays [Ordinance #10-05, to be heard on first reading today].

VII. CONSENT AGENDA

A. MINUTES: APRIL 12, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE REGULAR TOWN COUNCIL MEETING.

B. MINUTES: APRIL 12, 2005
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING CLOSED- DOOR SESSION REGARDING FLORIDA BLACKTOP.

C. MINUTES: APRIL 25, 2005
APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING REGARDING ZONING.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON APRIL 27, 2005.

E. RESOLUTIONS

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

2. RESOLUTION NO. 28-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Changes to the Strategic Plan and Providing for an Effective Date. [Sarah E. Hannah, Assistant Town Manager]

3. RESOLUTION NO. 29-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of an Interlocal Agreement Between Palm Beach County, the Metropolitan Planning Organization (MPO), the Town of Palm Beach and Any Other Participating Municipality in Palm Beach County, Which Provides for 120 Days Notice If the County or Any Municipality with Jurisdiction Over the Listed Roads Desires to Reduce the Capacity on the Roadway or Remove the Road from the County's Thoroughfare Plan. [Sarah E. Hannah, Assistant Town Manager]

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

**Res. No. 30-05 deferred to June 14, 2005, Town Council Mtg.**

5. RESOLUTION NO. 31-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Accepting a Quit-Claim Deed from the Audubon Society of the Everglades, Inc. for the Property Commonly Known as the Lapham Property Having Parcel Identification No. 50-43-44-02-00-001-0050 and Agreeing

to Abide by all of the Conditions of the Conveyance of the Property to the Town.
[Thomas G. Bradford, Deputy Town Manager]

6. RESOLUTION NO. 32-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Revoking Ad Valorem Tax Exemptions for the Property Hereinafter Described (Commonly Known As 301 Australian Avenue) and Stating That the Subject Property No Longer Meets the Criteria Set Forth in Ordinance No. 31-93, Also Known as Chapter 54, Article V of the Code of Ordinances of the Town of Palm Beach, Relating to Landmarks Preservation and Titled "Tax Exemptions."
[Robert L. Moore, Director of Planning, Zoning, and Building]

7. RESOLUTION NO. 33-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Grant Agreement, FDEP Contract No. H5PB2, Between the State of Florida Department of Environmental Protection and the Town of Palm Beach for the Bureau of Beaches and Coastal Systems 2004 Hurricane Recovery Plan Project Known as the Southern Palm Beach Island Dune Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town.
[H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 35-05 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute a Palm Beach County Public Lands Grant Application.
[H. Paul Brazil, Director of Public Works]

F. OTHER

1. Authorization to Expend Matching Funds from General Fund Contingency for the Fire-Rescue Department to Purchase Protective Clothing for Fire-Rescue Personnel Through a FEMA Grant Award. [Edward J. Moran, Fire-Rescue Chief]

2. Authorization of Funding for South Fire-Rescue Station Electrical Modifications. [H. Paul Brazil, Director of Public Works]

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

VIII. REGULAR AGENDA

A. Old Business

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

a. Status Report.

b. Policy Decision on Party Responsible for Payment of Secondary Service Costs.

Deputy Town Manager Tom Bradford provided a status report on the potential underground utilities project, referring to his detailed memorandum to the Mayor and Town Council, dated May 3, 2005, and included in the back-up material provided.

Mr. Bradford explained that he did not mention, in his report, that FPL would pay the Town the cost of replacing the existing overhead systems throughout the Town. He explained that would have to be factored into the cost estimates.

Mr. Bradford reported that staff was requesting the following three things from the Town Council.

- Town Council receive and review the status report in order to provide direction to staff as the Town Council deems appropriate;
- The Town bears the cost of converting Adelphia aerial facilities to underground;
- For project planning purposes, the Town Council designate individual property owners as the party responsible for payment of conversion of secondary service lines.

President Brooks stated that he agreed with Mr. Bradford regarding the Town bearing the costs of converting Adelphia aerial facilities to underground and explained why.

In response to President Pro Tem Goldblum, Mr. Bradford advised that he was not sure where the exact individual connections wold take place, but that it would run from the primary service line to the individual home. Mr. Bradford also advised that, in regard to the payment for the primary service line on individual streets, the Town currently would be paying for that. He explained that if other options presented themselves along the way, the direction could be changed. Additionally, Mr. Bradford advised that one option for addressing residential neighborhoods was to have 75% of the street desiring conversion, with the cost added to the tax bill for the entire street.

President Pro Tem Goldblum stated that this was something that needed to be discussed further before a solution could be reached. He suggested that if a street wanted to start the conversion, at this time, they should be allowed, to pay for it themselves. He stated that when the Town starts on the project, the residents, on that particular street, would receive a credit, at a rate to be decided by the Town.

Mr. Bradford commented that the Town could probably do something on that order as long as bond money was not involved.

In response to President Pro Tem Goldblum, who asked how the Town would handle those streets that already had underground cable connections, Mr. Bradford replied that all issues would be laid out before the Town Council to be reviewed one by one.

Councilman Wyett stated he disagreed that the Town should pay for cable and telephone underground wiring. He noted that wiring for cable and telephone differed from electrical wiring because everyone in Town buys electricity, but not everyone buys cable. He noted that many people were giving up their wire telephone lines to go wireless, and residents who received no benefit from this, would be taxed. He remarked that the Town should not pass up on an opportunity to negotiate an agreement with the company that would replace Adelphia.

Councilman Wyett stated that the cable and the telephone companies were dependent upon the FPL poles. He questioned what the cable and telephone companies would use to put there wires on if the FPL poles no longer existed?

In response to Councilman Coleman, who questioned the $6 million of fixed costs, and asked if the utility/electric rates fluctuate between here and West Palm Beach depending on what the fixed costs were, Mr. Bradford replied that they could for conversion but not for the monthly bill.

**Councilman Kleid made a motion to approve that the Town bear the costs of converting the Adelphia, [or its successor] aerial facilities to underground, incorporating those costs into the overall costs of the program to the Town. The motion was seconded by President Pro Tem Goldblum.**

In further discussion, Councilman Wyett noted his objection to paying for the conversion of Adelphia aerial facilities Town-wide. He advised that he would agree to approve payment for the Royal Poinciana Way Demonstration Project only so as not to hold up that project. He explained that he would like to get separate approval for this portion of the project. He did not want to make a final decision for the project Town-wide, because he believed there was a chance of saving the Town a lot of money.

Discussion continued regarding the objections of Councilman Wyett; Town Manager Elwell advised that he and Mr. Bradford conferred and thought it would be in the best interest of the Town to approve this for the Royal Poinciana Way Demonstration Project only, and the Town would continue to study this on a Town-wide basis.

Discussion ensued regarding depreciation concerns relating to cable and telephone. Councilman Wyett suggested negotiating a depreciation package with the cable company.

**Councilman Kleid amended his motion to approve that the Town bear the costs of converting the Adelphia, [or its successor] aerial facilities to underground, <u>only</u>, as related to the Royal Poinciana Way Demonstration Project, incorporating those costs into the overall costs of the program to the Town. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.**

Discussion ensued regarding the concerns of Councilman Wyett related to the refusal of FPL to connect to the rear of the residents' property, where many homes had their connections; his concerns pertained to the steep fees associated with those connections that would be pass on to the homeowners.

**Councilman Kleid made a motion to approve that the property owners within the Town would be responsible for costs of conversion of secondary service lines from aerial to underground; if the property owner did not wish to make a lump sum payment, the cost of secondary service line could be financed over time, and added to a property owner's tax bill as a special non ad valorem assessment. The motion was seconded by President Pro Tem Goldblum. On roll call, the motion carried unanimously.**

2. Report of Traffic Engineer's Review of the Florida Department of Transportation (FDOT) Design for Modification of the Southern Boulevard Traffic Circle.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Paul Brazil reported that, as requested by the Town Council, Public Works, in cooperation with the Garden Club of Palm Beach, retained Kimley-Horn and Associates to review the Florida Department of Transportation's (FDOT) proposed redesign of the Southern Boulevard Traffic Circle.

Frederick W. Schwartz, Kimley-Horn and Associates, explained the difference between a traffic circle and a roundabout before making his presentation to the Mayor and Town Council.

Discussion ensued regarding the following concerns of Councilman Kleid:

- The instructions Mr. Schwartz received when asked to review the FDOT proposal.
- If Mr. Schwartz, when looking at the plan, took into consideration the residents as opposed to the workers coming over in the morning.
- If Mr. Schwartz had looked at the roundabout located in Lake Worth, near the high school, which apparently had the same traffic standards as FDOT was recommending to the Town, and which seemed to be a safety hazard.

In response Mr. Schwartz stated that he had not considered who the car drivers were and where they were going.

Mr. Kleid replied that was the problem.

Town Manager Elwell asked Mr. Schwartz, if it was his goal, when making the assessment, to try to determine what would maximize the flow of traffic through the roundabout, without knowing who was driving the cars, and where they wanted to go?

Mr. Schwartz responded negatively; he advised that he was not given a clean slate, but was given the FDOT design to evaluate. He noted that he had looked at some modifications to the plan.

Director of Public Works Paul Brazil explained that when looking at the proposed FDOT design, they went a step further by reviewing other options that might possibly exist outside the current right-of-way. He stated that some of the other options considered were slip lanes, enlarging the circle, and being able to signalize. He advised these options all hinged on right-of-way acquisition, which would be an issue at this location; without right-of-way acquisition, staff was recommending that the Town adopt the FDOT proposal, since it presented an improved condition; in the future, the other options might become available.

President Goldblum noted that the problem was that not every vehicle was the same. He noted that, in the morning, mostly young construction workers come into Town who were aggressive drivers. He commented that, on the other hand, there were the retired individuals who were very cautious drivers. He recommended removing the yield signs replacing them with traffic signals, which would allow a certain amount of traffic through at a time. He explained that in the evening, it could be timed one way, and in the morning another. He stated that this would create a steady flow of traffic, and aggressive and passive drivers would not come into play.

Mr. Brazil stated that the problem, at the circle, usually occurred twice a day - in the early morning and in the late afternoon. He suggested that some assistance from the Police Department during those short periods might be of help.

Mayor McDonald asked Mr. Schwartz if the road would continue to be a level of service "F" (LOS of "F") with this improvement?

Mr. Schwartz responded that only the intersection was looked at; and because it didn't meet any of the standards of the tools he had, he was unable to analyze the existing conditions to confirm that it was an "F". He advised that the report looked at the FDOT design under a few different conditions. He commented that assuming it was an "F", during the morning peak hour, with the new design, it would continue to be an "F".

Mayor McDonald expressed concern that this entrance was aesthetically the least appealing when driving into Town. He discussed the need to bring it up to a higher standard, and suggested trying to acquire the right-of-way to make the drive into Town more appealing and to increase the level of service at that roundabout.

In response to President Brooks, regarding how to get the traffic circle to work, if it was failing, during peak hours, because it was a level of service"F", Mr. Schwartz reviewed several alternative approaches that could be used in order to address the use of the traffic circle during peak hours.

In response to President Brooks, regarding the presence of a police officer, during peak hours, in order to alleviate the traffic circle from failing, Mr. Schwartz advised that a police officer could be more effective at moving traffic at a roundabout than at a signal because he would only have one lane to control.

Police Chief Reiter stated that Mr. Schwartz was accurate. He reported that when staffing levels allowed, this past season, a police officer was posted at the circle in the mornings, Monday through Friday, to accomplish what Mr. Schwartz suggested. He noted that the Police Department observed that the afternoon rush hour was not as bad as the morning. He mentioned that he was concerned with the possibility of returning to the past when traffic backed all the way up to Worth Avenue, if delays such as a stop sign were put into place. He was not sure a police officer would help in that case. He commented that two police officers would be required to completely control the intersection, but generally, it was done with one.

Councilman Wyett stated that he disagreed that the afternoon rush hour was not as bad as the morning, because in the evening from 4:00 p.m. to 6:00 p.m., traffic backs up pretty close to Worth Avenue. He stated one of the biggest problems that could not be solved, unless the capacity was enlarged, was that there were a lot of timid and/or confused drivers. He commented that if the job was not done properly, then it should not be done at all.

Councilman Coleman stated that this may be the design that the Town ends up with, but it does not resolve the problem. He noted that he did not personally vote to spend money to ratify what the FDOT proposed to the Town in their study, and it did not answer the question that was proposed.

Ms. Nancy Murray, Garden Club of Palm Beach, commented that the Garden Club was behind paying for half of this study, because they were looking toward the future. She stated that the answer they received from the study was marginal and pertained to the conditions that exist now. She noted that it was hoped that they would get a different answer from this study.

Discussion ensued regarding the report received from the consultant, with Councilman Coleman reiterating that he would not have voted to spend $10,000 to study the FDOT proposal, because he assumed that FDOT could put forward a report that met their own guidelines.

Mr. Brazil explained that until the Town spends some time on right-of-way acquisition, it would be hard to justify doing a final design.

Town Manager Elwell recommended a deferral of this item, since the report indicated, and part of Mr. Schwartz's presentation mentioned, that there were some preferred options which required the acquisition of right-of-ways. He stated that because of this concern, regarding the acquisition of right-of-ways, he believed that between now and the June 14th Town Council Meeting, this issue could be investigated further and any additional information along with additional drawings could be brought before the Town Council, at that time.

President Pro Tem Goldblum advised that he had previously mentioned traffic lights and suggested that if a traffic officer could work, continuous lights should also work.

Mr. Brazil stated that the vast majority of the time the circle worked just fine, even for a timid driver, and it was more expeditious to let them flow freely. It was during the one time of day, when the Town was at a level of service "F" that some outside help would be necessary either with a light or an officer.

In response to President Pro Tem Goldblum, Mr. Brazil advised that blinking lights could also be used.

Mayor McDonald stated that the Town needs to look at the long term and do something that would increase the efficiency of this area.

**Councilman Wyett made a motion to defer discussion of the design modifications for the Southern Blvd. Traffic Circle to the June 14, 2005, Town Council meeting, in order to allow staff to study preferred options for the design modification of the Southern Boulevard Traffic Circle, including the potential for acquisition of right-of-way. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.**

3. Landmarks Preservation Update.
[Robert L. Moore, Director of Planning, Zoning, and Building]

a. Jane Day's Presentation Regarding Physical Modification of Landmark Properties.

Director of Planning, Zoning, and Building Robert Moore reported that, as directed by the Town Council at its April Town Council meeting, two separate reports were to be prepared for review by the Town Council at this meeting. The first report would be presented by Historic Preservation Consultant Jane Day on "Landmark Properties: Additions, Livability and Contemporary Standards in the Town of Palm Beach." Maia Farish, Executive Director of the Preservation Foundation of Palm Beach, would present an update to the Town Council regarding the report on economic benefits of landmarking - the pros and cons of landmark structures. This report was to be presented to the Town Council at a later meeting.

Jane Day presented an informational report on "Approved Changes to Landmark Properties: Additions, Livability and Contemporary Standards in the Town of Palm Beach."

Councilman Coleman remarked that Ms. Day had mentioned that landmarked properties were subject to variances and setbacks, and questioned if that created hardships that ran with the land. He noted that, if that was the case, one should be more amenable to variances on landmarked property than just wiping the slate clean.

Ms. Day responded that real estate law and hardships that run with the land were not her area of expertise.

Councilman Coleman stated that he hoped the law followed common sense, and that he was not looking for a legal definition. He wanted to know what Ms. Day's thoughts were regarding this.

Ms. Day advised that she believed it was the hardship that runs with the land; and perhaps, when a landmarked property was involved, one should be a little more lenient. She stated that landmark issues should be looked at on a case by case basis.

Director of Planning, Zoning, and Building Robert Moore advised that, historically, when the Town looked at landmarks, they had been sympathetic to livability issues. He commented that the Town Council may not always have found in favor for every single case that came before them, but had always been sympathetic to that fact. He commented that, generally, it had been because the house had not been moved on the property, and it hade somewhat been tied together with the lay of the land.

In response to Councilman Coleman, Mr. Moore agreed that there was something to be said for running with the land, when considering historic preservation projects.

Councilman Wyett addressed Ms. Day stating that it was a very good report. He referred to Page 3, next to last paragraph, which mentioned that additions should be setback from the main facade, when placed on the property, in such a way that they were not visible. He noted that this guideline, in the past, had not been followed. He requested that there should be a specific statement such as "the facade of the historic house that was visible to the public should not be substantially changed as to make it unrecognizable." He commented that the landscaping should nto be changed either.

Ms. Day responded that she always tried to look for historic photographs when a review of a landscaping plan was to take place, in order to go back to historic precedents. She advised that this cannot always take place because plants used in the 1920's might now be considered pest plants, such as the Australian pines.

Councilman Wyett stated that even if the nature of the planting was changed, new landscaping should not conceal the house from the street.

Ms. Day stated that one rule in historic preservation was that if the architect were to come back and recognized his house, then the house maintained its historic integrity. She discussed the example in her report of the home on Clarendon Avenue.

Councilman Wyett stated that there have been some houses that were unrecognizable after renovations were completed and that was his concern.

Ms. Day reported that the Landmark Commissioners have tried to come up to speed before every meeting. She remarked that they review the plans with staff and ask all the appropriate questions. She noted that staff was doing everything they could to educate them, and they were extremely receptive. The results have been better than ever.

Ms. Day advised that a workshop was to be held after the Landmarks meeting next week, and she would bring Councilman Wyett's recommendation before them, putting that at the top of the list.

b. Update from Preservation Foundation Regarding Affect of Landmarking on Property Values.

Maia Farish, Executive Director, Preservation Foundation of Palm Beach advised that she did not have anything substantive to report at this time. She referred to her letter to Mr. Moore dated May 2, 2005, advising that Florida Appraisers & Consultants, Inc., was preparing a Comprehensive Report: "An Economic Comparison Study of Designated Landmarked Residential Properties and Un-designated or Non-landmarked Residential Properties." She advised that this study would be completed 90 days from commencement and would be presented to the Town Council at its August Town Council meeting. She explained that the study was being undertaken due to the concerns of the Town Council as well as other members of the community that landmark designation devalued the property or has the potential of devaluing property. She stated that she wanted to dispel that myth, from an economic standpoint.

Mrs. Farish added, for the record, that there was the perception that when one had a landmarked house, it added another layer of bureaucracy to the permitting process. She explained that a property owner of a landmarked house would be required to go before the Landmark Commission to get their permit; and the owner of a home that was not necessarily landmarked, but perhaps a historic house, would have to go to the Architectural Commission (ARCOM) for permission to get their building permit. She explained that they were parallel layers of bureaucracy.

President Brooks thanked the Preservation Foundation for undertaking this Town serving project.

4. Consideration of Creation of a Neighborhood Improvement District for Worth Avenue.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Tom Bradford provided a status report on the creation of a Neighborhood Improvement District for Worth Avenue, referring to his detailed memorandum to the Mayor and Town Council, dated May 2, 2005, and included in the back-up material provided.

Town Manager Elwell stated that the Worth Avenue Property Owners Association had notified the Town through their attorney that they were opposed to the creation of a Neighborhood Improvement District on Worth Avenue. He stated that it was important to note that no official notification had been received by the Town other than the communication from their attorney. He advised that this communication should not affect the consideration of this item today by the Town Council. He mentioned that interest had been expressed regarding this concept for other areas in Town even residential neighborhoods. He recommended that the Town Council move forward with the first reading of the enabling Ordinance that was coming before the Town Council, later in the meeting.

President Brooks stated that he agreed with Mr. Elwell, and by approving the enabling Ordinance, should the need arise, they would be prepared to move ahead with this concept. He wanted to point out that the consideration of the Neighborhood Improvement District was not initiated by the Town but by the merchants and owners.

Attorney Ron Kolins, on behalf of the Worth Avenue Property Owners Association, noted that the Association was opposed to this concept as well as the passage of the enabling Ordinance. He explained that this Ordinance would allow for the creation of districts for other areas of the Town; and since there was no urgency or emergency for creating any district in Town, including the Worth Avenue District, it was unnecessary to pass this enabling Ordinance today. He advised that, if the enabling Ordinance ultimately was passed, there would be other provisions that the Worth Avenue Property Owners Association would like to include in the Ordinance.

Attorney Kolins advised that his Association would like to work with some representatives from Worth Avenue Association to put together a private group to study this because of the ramifications of this concept. He believed that all parties involved, including the Town Council, needed to be made aware of those ramifications. He discussed the formation of the group and urged that representatives of the Town's staff and a member of the Town Council be present to observe and present whatever thoughts they may have. He stated that it was his belief that ultimately they could come up with a program that would be very workable both for government and the private interests.

Discussion continued on the enabling Ordinance, and President Brooks reminded Attorney Kolins that the Ordinance was on first reading only today.

Attorney Kolins reiterated his request that the Council not take any action. He noted that ultimately a program could be developed that would be very workable for all concerned.

B. New Business

1. Noise Compatibility Program at Palm Beach International Airport (PBIA). [Sarah E. Hannah, Assistant Town Manager]
**THIS ITEM WILL BE HEARD AT 10:30 A.M. OR AS SOON THEREAFTER AS POSSIBLE.**

Sarah Hannah, Assistant Town Manager, stated that the staff and Town Council had received complaints over the last several weeks regarding an increased volume of aircraft noise flying over midtown. She advised that several airport representatives were present to explain the informal runway use program and flight path directions.

Mr. Ted Baldwin, a representative of the firm of Harris, Miller, Miller & Hanson, Inc., stated they were a transportation noise consulting firm, serving Palm Beach Count, since the early 1990's, as the aviation noise consultant for all of its airports, but mainly for Palm Beach International Airport (PBIA).

Mr. Baldwin outlined Palm Beach County's history of noise abatement planning. He advised that over the last two decades, they have operated under a federal regulation called Part 150 - a voluntary federal program. He reported that airports were not required to conduct this study, and Palm Beach International Airport was one of a small number of airports in the country, about sixty or sixty-five airports, that have actually conducted two rounds of a Part 150 Study. He explained that their first Part 150 study was in 1983, and was called the NAMS, Noise Abatement and Mitigation Study. In the mid 1990's, his firm was asked to update that study which they completed in 1995. He advised that, at that time, the FAA gave them a record of approval. He reported that Palm Beach International Airport and Palm Beach County have received national recognition for leadership in noise compatibility planning through their efforts. He reported that Part 150 sets forth standards for airports to follow in conducting comprehensive noise studies and presented the following overview of Part 150.

- Noise Exposure Map, NEM - complete description of the airport, the noise it creates, and surrounding land uses and capability issues;
- Noise Compatibility Program, NCP - description of noise abatement measures taken by the airport to reduce the size of noise contours, to shift them away from populated areas, to help with compatibility;
- Land use measures - address residual issues, such as sound insulation for homes closest to the airport;

- Preventive measures - to see that new development does not cause new incapabilities.

Mr. Baldwin advised that PBIA was the only airport in the country that has an environmental operating fee for noisier aircraft; aircraft at night pay a surcharge that went toward mitigation. He commented that today, a rule like that could not be adopted and the rule was grand-fathered under some recent federal regulations.

Mr. Baldwin pointed out that in the early 1980's, the Palm Beach County Commission created CCAN, the Citizen's Committee on Aircraft Noise. He advised that it was a very effective model for giving advice to policy making organizations such as the County Commission. He explained that it was an advisory group, and the Town of Palm Beach was well represented having four representatives on CCAN, with Councilman Coleman being the most recent appointee.

Mr. Baldwin discussed the following, which he believed were important to the Town of Palm Beach.

- FAA Record of Approval for 1995 Part 150
  - a. Runway 9 Left Turbojet Departure Flight Track
  - b. Preferential Runway Use Program

- FAA Implementation of PBIA Flight Path and Runway Use Measures
  - a. Elements of PBIA "Informal Runway Use Program";
  - b. Explanation of an informal runway use program;
  - c. FAA had not approved a formal runway use program at any airport since 1981.

- Use of Alternate Heading on Runway 9L
  - a. Recent dramatic traffic increases particularly corporate/private jet use;
  - b. Increases most common on Sunday evenings and Monday mornings;
  - c. Worst-case days, up to 150 departures have been delayed from 15 minutes to 2.5 hours;
  - d. All traffic controlled by FAA Miami Center, PBIA assigns alternate departure heading to limited numbers of jet departures.

- Observations Regarding Alternative Heading
  - a. Review of March 28 - April 26 flight track indicated FAA assigned alternate heading to only 1 - 2% of jet departures (fewer than 100 departures);

b. Alternate heading leads jet departures over vicinity of Banyan to Island Roads;
c. Procedure totally consistent with Part 150 regulation and PBIA's approved measures;
d. PBIA Tower Manager scheduled to present update on 9L departure procedures at upcoming CCAN.

- Constraints on Use of Runway 13/31
  a. Approved preferential use by corporate jets applies only to west-flow operations
     1. Airliners on 27R (to west)
     2. Corporate jets on 31(to northwest)
  b. Safety considerations make corporate jet use of Runway 13 infeasible in east-flow operations

Discussion continued with Mr. Baldwin responding to the following questions and concerns Councilman Coleman had:

- What is a 150 Study?
- What is the importance of a 150 Study?
- How many of the safety issues had to do with weight turbulence?
- Concern regarding a plane flying over Town Hall which was a departure from the ususal heading.
- Was acceleration of climb at the discretion of the pilot?
- Questions on throttling back?
- What rights did residents, living in the potential flight path, have when corporate aircraft was involved, if any?
- Were there any monitors on the Island?
- Who was the airport?
- What was the relationship to the FAA?
- Who were the people in the tower? Were they FAA people, or airport people?
- What was the climb potential of commercial aircraft, in feet, such as the A300 and the 737?

President Brooks asked, if corporate jets could be utilized more at the North County Airport; and if so, would that assist with the problem being discussed today?

Mr. Baldwin responded that the main runway at the North County Airport was 4300 feet long, which was very short. The line was usually drawn at 5000 feet for landing or for take off. They could take off in less but usually want that extra margin of safety. He advised that, in some cases, the insurance carriers would not allow them to operate with less. He discussed some of the issues regarding the utilization of the North County Airport.

Mr. Baldwin noted that an increase in traffic was being seen at the Fort Lauderdale Executive Airport .due to some of the similar issues occurring at Fort Lauderdale International Airport and at PBIA. He commented that the Town was not alone with regard to this problem.

Councilman Wyett stated that the FAA's provisions seem to be outdated by the proliferation of corporate and private jets because they get equal runway time. He stated that air traffic would only get worse and PBIA eventually would not be able to support both commercial and private planes. He wanted to know if the expansion of the North County Airport or if the building of a new airport in Martin County could force, (by some incentive) private jets off these runways?

Mr. Baldwin responded that he did not know the solution; he advised that trying to attract corporate jets to North Palm Beach or other airports would be a policy decision. He stated that as a noise consultant, he could not address policy issues; these issues could be raised with the County.

Councilman Wyett noted that he was aware that the airport could not charge too much of a differential, or any differential, between a private plane and an airliner; and so, the landing fees for well-heeled private jets were not too exorbitant. He suggested that if the landing fees were raised dramatically, giving the airliners free terminal rights to offset their high costs, then it might discourage some of those jets from coming to PBIA and encourage them to go elsewhere.

Mr. Baldwin responded that may create immediate lawsuits. Further discussion ensued regarding Councilman Wyett's suggestion.

In response to Mayor McDonald, Mr. Baldwin advised that the "husk-kit" issue could be discussed at CCAN.

Mr. Baldwin and Mr. Bruce Pelly, Director of Palm Beach International Airport responded to the following questions and concerns Councilman Coleman had:

- Was it fair to draw the conclusion that the expansion of corporate aircraft was partially related to the willingness, on the part of the airport authority, to make grounds available to corporate aircraft to service their planes by entering into reasonable leases, building facilities?

- Was there a mandate on how solicitous the County had to be in providing general aviation services for planes that are on the ground?
- How much more space was available at the airport for a person to choose to put in a general aviation facility?
- What was the potential capacity for this to grow to?
- Could the FAA tell the airport what buildings could be put on their property?
- Does CCAN get involved with the range of this discussion or was it a noise committee, only?
- How would the Town of Palm Beach probe the potential capacity in order to know what it was they would be fighting against – identify potential problems so that the Town could take action now.
- Could it be determined who was on duty during a specific incident?
- Was there any inclination on the part of some of the people in the tower to use more discretion than other people?

Councilman Coleman, who asked what was the best way to move this conversation forward, was advised that the Town needed to begin with CCAN, because as a member, they could raise all these questions, and CCAN would supply them with answers. Mr. Pelly noted that there was an Airport Aviation Advisory Committee which deals with business issues; he advised that the County Commission made appointments to the other committees. It was suggested that he talk to the Commissioners regarding representation.

In response to President Pro Tem Goldblum, who asked how much freight aircraft came into PBIA, Mr. Baldwin advised that there was very little and most of it was belly cargo. He stated that UPS was the only dedicated cargo operator. He noted there were no Fed-Ex operations at PBIA. He explained that UPS was one of the first companies to fully use Stage 3 jets, which met the highest technology standards.

In response to Councilman Coleman, Mr. Baldwin stated that most area aircraft met Stage 4 requirements. He advised that these requirements have been developed by the International Civil

Organization; and in 2006, the Federal Government would require that all newly certified aircraft meet those new standards, which would make aircraft ten decibels quieter overall.

In response to Councilman Wyett's inquiry, he was informed that there were no direct European flights coming into PBIA yet.

Discussion continued regarding the vision and mission of the airport with Mr. Pelly explaining that PBIA serves a much larger area than just Palm Beach County. He stated that they work hand in hand with the Convention & Visitor's Bureau as far as the marketing program was concerned. He commented that the airport was making an effort to get additional commercial service. He stated that they would like to see direct flights into areas of the country where currently there was no direct service. He advised that it was PBIA's mission to grow.

Mr. Heinz Gundlach, 150 Algoma Road, stated that the growth of the airport was destroying one of the most beautiful parts of Palm Beach, and if not stopped, all of Palm Beach would be destroyed. He commented that it was a bad situation for the residents in Town who live under the flight path. He advised that the County was being pressured by the airport, hotel and construction industries to build a new terminal and a second runway. He remarked that it was his belief that this could be stopped or slowed down, but the Town would need to work closely with the County to accomplish this. He said that everyone would have to work together for the Town's future.

In response to Councilman Coleman, Mr. Pelly stated that it was not possible for another runway to be put in; he advised that the master plan would be reviewed to determine if there was the potential for doing something with the small general aviation airport; perhaps, to allow some of the corporate jets to go off on that runway.

Mr. Ken Douglas, 4 Golfview Road, informed the Town Council that he has lived in Palm Beach for twenty years, the last ten on Golfview Road. He read from the Part 150 Study advising that the document had been signed by Mr. Pelly and by Palm Beach County authorities. After quoting from part of the document, he stated it was his opinion, there was catastrophic liability on the part of Palm Beach County and PBIA regarding current conditions. He recommended that Mr. Randolph, along with the attorneys from his firm, review the issue, in order to come to a conclusion, present that conclusion to the Council, and then act on it.

2. Scope of Work and Funding for Siemon and Larsen Contract Regarding the "Alternative Development Standards" Zoning Study Item.

[Robert L. Moore, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Robert Moore reviewed a proposal dated April 28, 2005, received from Siemon & Larsen, P.A. for the development of "Alternate Development Standards" within the Town's Zoning Code. According to his memorandum to the Mayor and Town Council, dated May 4, 2005, staff recommended that the Town Council appropriate $35,000 from the General Fund Contingency Account and authorize the Town Manager to enter into a contract with Siemon & Larson P.A., in an amount not to exceed $35,000 for the development of Alternate Development Standards within the Town's Zoning Code.

At the request of President Brooks, Mr. Moore read, from the language of the proposal of Siemon & Larsen, P.A., under the category "Proposed Schedule and Deliverables" Item No. 5 - "Two public workshops during the 'zoning season'." President Brooks stated he hoped the reading of this would eliminate any questions or confusion.

Mr. Moore clarified that the recommendation was not to exceed $35,000, and as a point of information, the proposal included the statement that any additional meetings would be $2,500 per meeting. He explained that if they exceeded the $35,000, they would have to come back for authorization.

**Councilman Goldblum made a motion to approve the appropriation of $35,000 from the General Fund Contingency Account, and authorized Town Manager Elwell to enter into a contract with Siemon & Larsen, P.A., in an amount not to exceed $35,000, for the development of Alternative Development Standards within the Town Zoning Code. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.**

3. Report on the Annual Inspection and Evaluation of the Town's Historic and Specimen Trees.
[H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil reported on the historic specimen tree de-designations, referring to his detailed memorandum to the Mayor and Town Council, dated April 29, 2005, and included in the back-up material provided. He recommended the de-designation of eleven (11) historic and specimen trees lost to Hurricanes Frances and Jeanne directly, or in their aftermath.

Mr. Brazil advised that staff was recommending de-designation for an additional two trees infected with disease. He read two reports regarding the condition of the Lofty Fig tree located in the Four Arts Sculpture Garden. He noted that earlier in the meeting a third report written by Mike Zimmerman, Certified Arborist, had been read by a member of the audience. He noted that one report was from Robert Haehle, Landscape Consultant for the Town of Palm Beach, and the second was from C. Way Hoyt, Registered Consulting Arborist. He reported that Mr. Haehle recommended removal of the tree, but because Mr. Zimmerman stated in his report that his investigation was inconclusive, the Town contacted another independent arborist, C. Way Hoyt, who also recommended removal of the tree. He advised that staff regretted having to recommend de-designation of the tree.

In response to Councilman Coleman, who asked what the definition of a specimen tree was, Mr. Elwell advised that the Town Code contained a section on historic and specimen trees.

Mr. Robert Haehle, Landscape Consultant, defined a specimen tree as a tree of standing size and beauty of a particular species; trees that were unusual or rare; basically outstanding specimens of a particular genus.

The recommendation was made for historic or specimen tree de-designation for 13 specimen trees, per Resolution No. 34-05.

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

Town Manager Elwell read Resolution No.34-05 by title, as printed above.

**Councilman Wyett made a motion to approve Resolution No. 34-05. The motion was seconded by Councilman Coleman. On roll call, the motion carried unanimously.**

4. Annual Evaluation of the Performance of Town Manager Peter B. Elwell.

a. Potential Salary Adjustment Based on Evaluation of Performance for 2004-2005.

President Brooks reviewed Town Manager Elwell's performance evaluation advising that his overall score was 4.92 out of a top scale of five. He reviewed the categories Mr. Elwell was evaluated on by each member of the Town Council.

Councilman Coleman recommended that Mr. Elwell be given a 5% salary increase, to include the cost of living increase. Councilman Coleman was informed that there was a contract between Mr. Elwell and the Town which provided Mr. Elwell with a cost of living increase separate from any potential salary adjustment.

Mr. Elwell clarified that any cost of living increase he received would be equivalent to what all the Town employees receive on October 1, 2005.

Councilman Coleman amended his recommendation stating he did not know there was a contract and did not want to be in violation of it. President Pro Tem Goldblum then recommended a 5% increase of Mr. Elwell's base salary as it was today.

**Councilman Coleman made a motion to approve a 5% increase to Town Manager Elwell's base salary. President Pro Tem Goldblum seconded the motion. On roll call, the motion carried unanimously.**

b. Adoption of Annual Performance Goals for 2005-2006.

Town Manager Elwell referred to his memorandum of May 4, 2005, included in the back-up material, regarding the adoption of annual performance goals for the Town Manager, and recommended that the Town Council approve or modify them as presented.

**Councilman Coleman made a motion to adopt the annual performance goals for 2005-2006 as presented. Councilman Wyett seconded the motion. On roll call, the motion carried unanimously.**

5. Appointment of Town Representative to the Palm Beach County Intergovernmental Coordination Program Issues Forum.
[Peter B. Elwell, Town Manager]

Councilman Kleid stated that he was delighted to be appointed as the Town Representative to the Palm Beach County Intergovernmental Coordination Program Issues Forum. He commented that he was interested in seeing the reactions among other intergovernmental authorities, and how the Town of Palm Beach could be improved through this.

**President Pro Tem Goldblum approved the appointment of Councilman Richard M. Kleid, as the Town representative to the Palm Beach County Intergovernmental Coordination Program Issues Forum. Councilman Coleman seconded the motion. On roll call, the motion carried 4/0 with Councilman Kleid abstaining from the vote.**

6. Recreation Advisory Commission Appointments.
[Russell E. Bitzer, Director of Recreation]

After casting ballots, the Town Council appointed the following members to the Recreation Advisory Commission:

| Full Members: | Alternate Members: |
|---|---|
| Michael Spaziani | Joseph Della-Guistina |
| Michael Andrews | |
| Danielle Hickox | |

IX. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 2-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Section 134-390, to Change the Amount

of Time to Complete Renovations and Reconstruction of Nonconforming Uses to Be Consistent with Building Code Requirements; Section 134-390 by Providing New Time Frames for Completion of Restoration of Less than Fifty Percent of Existing Floor Area of Nonconforming Uses; Section134-419, to Provide New Time Frames for Completion of Voluntary Demolition, Reconstruction or Renovation of Nonconforming Buildings and Structures Which do not Exceed Fifty Percent by Cubic Footage and to Allow Replacement of Roofs of Similar Style and Size Without the Requirement that it be Less than Fifty Percent; Section 134-891, to Provide Clarity on the Overall Height Allowed for Two Story Accessory Buildings in the R-B District; Section 134-1473, by Correcting a Misnumbered Section in the Code; Section 134-1697 to Allow Activities on the Town's Docks Associated with their Municipal Operation; Section 134-887 by Allowing for Municipal Docks and Associated Ancillary Structures and Uses in the R-B Zoning District; Section 134-888 Modifying Accessory Uses to Allow Uses Associated with the Town's Operation of its Municipal Dock; Providing for Severability, Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 2-05 by title, as printed above.

**Councilman Wyett made a motion to adopt Ordinance No. 2-05 on second reading. The motion was seconded by Councilman Coleman. On roll call, the motion carried 3/0. President Brooks and Councilman Kleid were temporarily out of the room.**

2. <u>ORDINANCE NO. 7-05</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 114 of the Code of Ordinances Relating to Taxation; at Section 114-43 Relating to Fees Charged for Occupational Licenses; Providing for the Amendment of Fees and Addition of New Occupational License Categories; Providing for Severability; Providing for Repeal of All Ordinances or Parts of Ordinances in Conflict; Providing for Codification; and Providing an Effective Date.
[Robert L. Moore, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 7-05 by title, as printed above.

**Councilman Wyett made a motion to adopt Ordinance No. 7-05 on second reading. The motion was seconded by President Pro Tem Goldblum.**

Councilman Coleman stated that he was going to vote for this, but as he had previously discussed with Town Manager Elwell, the Ordinance did not make sense to him. He noted that Mr. Elwell had agreed with him and advised that there would be a review process.

Town Manager Elwell then advised that the process the Town follows for updating this was strictly controlled by State regulations and State Statutes. He recommended the adoption of this Ordinance and the increase of the fees by 5%. He suggested that when the State adopts the new Statute related to occupational licenses, the Town should consider forming a Blue Ribbon Panel.

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

B. First Reading

1. ORDINANCE NO. 4-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 46, Fire Prevention and Protection, at Article III, Section 46-79, Fireworks, Providing for the Prohibition of the Manufacturing, Storage, Sale, and Use of Fireworks and/or Pyrotechnic Materials Except in Accordance with the Provisions of this Code; Providing Definitions; Providing for Application for Permit; Providing for Permit Requirements; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Edward J. Moran, Fire-Rescue Chief] *Deferred from the April 12, 2005, Town Council Meeting.*

Fire-Rescue Chief Moran reviewed his memorandum to the Mayor and Town Council, dated May 5, 2005, included in the back-up material provided, regarding the regulations of fireworks.

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

**Councilman Wyett made a motion to approve Ordinance No. 4-05 on first reading. President Pro Tem Goldblum seconded the motion. On roll call, the motion carried unanimously.**

2. ORDINANCE NO. 8-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 2, Administration, to Provide a New Article IX Titled Safe Neighborhood Improvement Districts, Providing a Procedure for the Authorization for the Formation of Safe Neighborhood Improvement Districts Through the Adoption of an Ordinance Which Specified That Such Districts May Be Created by One or More of the Methods Established in Sections 163.506, 163.508, 163.511, and 163.512, Florida Statues; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 8-05 by title, as printed above.

**Councilman Wyett made a motion to approved Ordinance No. 8-05 on first reading. The motion was seconded by President Pro Tem Goldblum.**

Mr. Ian Kean, 550 Island Drive, resident of the Town and owner of Via Mizner on Worth Avenue, discussed his understanding of how this Ordinance would work in general. He commented that he thought it was confiscatory in nature and troubling, and that it had not been fully discussed and disclosed. He advised that he had some very fundamental objections to the concept of the Ordinance.

He noted that Mr. Bradford had made a presentation regarding this Ordinance to his Association last November, and that was the first they had heard about it. He wanted it to be on record that the Association, at that meeting, voted against it and asked that the Ordinance be withdrawn from consideration by the Town Council. He advised that it had been withdrawn, but last month it was put back on the agenda without their knowledge.

Town Attorney Randolph explained that the proposed Ordinance would enable legislation which would put on the books the ability to use one of four methods described in the Florida Statutes to establish a safe neighborhood district.

Town Manager Elwell clarified that it was now understood that the Worth Avenue Property Association had taken a position; nevertheless the initial impetus had come not only from merchants, but also from individuals who were property owners. The concepts had been discussed for a long time, with the Town being in the position of attempting to assist. The original communicators had been both property owners and merchants on Worth Avenue. He noted that this had now become more than just Worth Avenue; over the past few months there had been additional ideas of individuals from the public, as well as individual Council members, related to how the creation of districts in the Town might be beneficial. The proposed Ordinance was intended to enable the creation of such districts in the future, at such time as there was a group that would wish to pursue that. The Town Council had made it clear that feedback from all interested parties was desired before any action was taken on the creation of a district.

Councilman Coleman commented that the Ordinance would provide any neighborhood in the Town with a convenient mechanism to create a district, should a large particular segment of the Town desire it. He expressed that, in his opinion, the proposed Ordinance was not directed at Worth Avenue.

Councilman Wyett suggested that both landlords and tenants would need to come together to address the creation of a district, and that he would prefer to defer the proposed Ordinance.

Former Mayor Marix expressed concern with the fact that the Town itself could create a district, and commented that she was hopeful that the Ordinance in question was not passed, since the rank and file of residents and voters in the Town did not have a clear idea of its intention. She expressed concern that the intention of this particular Town Council may not carry for future Town Councils. She suggested that further public discussion take place, or perhaps even a referendum be held, in order for the Town voters to decide whether the enabling Ordinance was acceptable or not.

Town Attorney Randolph clarified that the Town Council would have the ultimate decision as to whether to form a district, however, it would normally come to the Town Council by way of a petition from a group of property owners. If a majority of property owners wanted it, and a petition was filed, the Town Council would make the decision of whether a safe neighborhood district would be appropriate.

President Brooks expressed displeasure with the tremendous amount of time that had been spent on this issue; he noted that the Mayor, Town Council and staff had responded to requests from some merchants and some owners on Worth Avenue. He respectfully suggested that the Worth Avenue owners and Worth Avenue merchants get together, noting that there was the ability for them to address the situation on their own, without coming to the Town Council.

Councilman Coleman stated that he was mystified by the argument – the Town Council would retain all of the authority in the future that it had today, with or without the proposed Ordinance. He noted that future Councils could not be bound by the current Council.

Mr. Ian Kean clarified that there were four possible methods for the creation of districts; three of the four required majority support on the part of the people affected; the fourth would not. The first three would only raise $500 per property per annum; the fourth could raise 2 mills against the assessed property value. He maintained that if economics dictated that the first three were not useful, the fourth method would involve a transfer of property rights from property owners to the Town Council, because it was not for a specific purpose, and was a permanent change in the operation and administration of a geographic district.

**On roll call the motion to approve Ordinance No. 8-2005 on first reading carried 4/1, with President Pro Tem Goldblum, Councilman Coleman, Councilman Kleid, and President Brooks casting affirmative votes; Councilman Wyett casting a dissenting vote.**

President Brooks thanked Deputy Town Manager Bradford for all of the work he had done on the project, and commented that he thought it unfair to the Mayor, Town Council, and the staff, that such an inordinate amount of time had been given to something that the property owners and merchants could not agree on.

3. ORDINANCE NO. 9-05 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for Amendments to the Town's Capital Improvement Fund Budget and Leisure Services Enterprise Fund Budget Adopted for the Fiscal Year Commencing October 1, 2004; Creating a New Leisure Services Capital Fund Budget for the Fiscal year commencing October 1, 2004, and Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford explained that Ordinance 9-05 proposed a formal budget amendment, because the auditors had requested that the Town move capital projects related to leisure services to a new Leisure Services Capital Fund, which currently did not exist. He recalled that the Leisure Services Enterprise Fund was approximately two fiscal years old, and a capital account had not been created within that fund. He also explained that in the course of examining the Town docks post-hurricane, it was the opinion that the inlet dock was in the worst shape of all of the docks; the longer the Town waited for the repairs, the more it would cost. He explained that the repairs, as well as the security cameras and new security gates would cost approximately $335,000. Items such as the re-surfacing of the tot lot, the allocations for the emergency generator at the Recreation Center, and the storm shutters would be placed in the newly created Leisure Services Capital Fund.

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

**President Pro Tem Goldblum moved approval of Ordinance No. 9-05 on first reading. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.**

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

Town Manager Elwell advised that the proposed Ordinance addressed the Saturday ban on construction activity and certain other noisy activities, however, it did not include the provisions related to the phasing out of certain noisy leaf blowers, which would be brought forward next month in a separate Ordinance.

Town Attorney Randolph read Ordinance 10-05 by title, as printed above.

In response to President Pro Tem Goldblum, Town Manager Elwell indicated that budgetary issues related to the staffing of code enforcement and other enforcement activities in the Town, would be included for discussion when the proposed budget was presented for consideration in July.

In response to Councilman Kleid, Town Manager Elwell indicated that the Ordinance distinguished between commercial activities where people were making a profit by providing a service, versus an individual home owner performing the work – it was intended to allow a resident to mow their lawn, etc., in order to maintain their own home.

Town Attorney Randolph explained that the Ordinance merely added Saturdays to the prohibitions already in existence for Sundays.

**Councilman Wyett moved approval of Ordinance No. 10-05 on first reading. The motion was seconded by President Pro Tem Goldblum. On roll call the motion carried unanimously.**

X. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Town Manager Elwell thanked the Town Council for the expressions of appreciation that were given in the performance evaluation process, as well as the candor expressed regarding suggestions for continued improvement.

Councilman Coleman commented that he had observed the number of citizens present this morning in regard to the conceptual discussion of R-B Zoning, and he encouraged that staff consider doing an opinion survey, in the summer months, on a direct mail basis, of the people in the R-B Districts, particularly on the north end. He noted that 20% of the petitions signed were people who had listed West Palm Beach as their address, and that he would like to get a more scientific sense of the opinion of the Town population, so that the Town Council could act in a more informed manner.

Town Manager Elwell commented that the summer may be not be the proper time to conduct a survey, and suggested that there may be difficulty reaching people at that time, even by mail. He suggested that discussion take place next month, when the zoning schedule was discussed.

Zoning Administrator Paul Castro pointed out that staff had intended to do a mailing well in advance of any hearings that were conducted, and that staff would work with the Town Manager to elaborate on the mailing.

Councilman Coleman replied that he was suggesting something more than a mailing – something with an enclosed response, more of a straw poll.

Councilman Coleman commented that after the airport discussion today, he would request that the Town Council direct the Town Manager and staff to come back next month to address three issues: monitoring of the activities of the airport on a real time basis, with a dedicated resource person; reaching out for professional counsel that had experience dealing with the FAA and who would understand the nuances and precedents; a public relations strategy so that the Town was not portrayed as the wealthy community of Palm Beach, but as a community that was having its property rights trampled by the increasing volume of corporate aircraft flying overhead.

Town Manager Elwell indicated that a set of options would be brought forward next month for consideration of the Town Council in this regard.

Councilman Wyett commented regarding the citizen turnout concerning the zoning issue today, and that the Town Council would need to weigh all of the issues in order to properly address the situation.

President Brooks observed that the zoning issue had been moved forward on the Agenda in order to accommodate the citizens in attendance this morning – staff had initially advised people that the item was listed as the last thing on the Agenda, as it originally had been scheduled, and he noted that citizen comments would be heard again this afternoon, if necessary.

President Pro Tem Goldblum commented that the Town Council had heard all along from a few people that wanted to keep the homes in the north end exactly as they are. The outcoming of citizens today indicated that things should be left as is; he suggested that staff should continue to look at what it had been doing, because it was apparently working. He suggested that consideration must be given to what families today need as well, and that the Town should proceed slowly and carefully.

Councilman Kleid commented that if a straw vote of residents was taken regarding the R-B zoning, the phrasing of the question should be carefully done; he explained that a certain answer would be given, depending on how the question was phrased. He stated that he would look with interest at the proposed survey questions.

Public Comment:

Dr. Sten Lilja, 1330 North Ocean Blvd., addressed the Town Council, stating that he commended the zoning commissioners and staff for their tenacity to keep working on the critical zoning issues. He agreed that the time should be taken to do the work right. He noted that he had worked towards moving the old non-story basement exception, which effectively limited homes in the north end to two-stories maximum. He noted that Town Consultant William Brisson had consistently recommended, since October 1991 to October 1998, that FAR be set at .30, rather than .45. In October of 1998 he noted that he had proposed, and the Zoning Commission had adopted, a sliding scale from .35 for a 10,000 square foot lot. Unfortunately, the Town Council at that time elected to raise the FAR to .40. He stated that it was apparent that the desire to preserve neighborhoods and community feelings was being attacked because of greed. He stated that it was truly unfortunate that the new source of greed associated with the increase in property values had appeared to hamper the commendable efforts of the Town Council to try to preserve the Town. He urged the Town Council to stay on course.

XI. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

None

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

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. SITE PLAN REVIEW #3-2005 WITH VARIANCES The application of David W. Frisbie, as Trustee of the 1695 North Ocean Way Realty Trust u/a/d May 28, 2004 relative to property described as Lot 2 and the North 15 feet of Lot 3, Boca Raton Companies Inlet Subdivision; located in the R-A Zoning District. Site Plan Review to allow construction of a two-story, single-family residence and accessory structure totaling 10,480 air conditioned square feet, 12,956 total square feet on a platted lot that is 110 feet in width in lieu of the 125 feet minimum required; to allow a point of measurement variance for the height of a new single-family residence to be constructed on the subject property at 17 feet N.G.V.D. in lieu of the minimum 7.5 foot N.G.V.D. required; and, to allow a variance to permit construction of a terrace 15 feet from the Town bulkhead line and a portion of the two-story single family residence to within 29 feet 3 inches from the Town bulkhead line, in lieu of the minimum setback from the Town bulkhead line of 50 feet where no bulkhead/seawall improvement exists at 14.34 feet NGVD. *Deferred from the April 12, 2005, Town Council Meeting.* **Request for Deferral to the June 14, 2005, Town Council Meeting Per Letter Dated April 29, 2005, From G.E. Young, P.A.**

**DEFERRED Site Plan Review #3-2005 to June 14, 2005, Town Council Meeting.**

b. SPECIAL EXCEPTION #11-2005 The application of Coco Palm Beach, LLC relative to property described as the East 10 feet of Lot 30 and all of Lots 31-37 inclusive of "Map of Floral Park"; commonly known as 290 Sunset Avenue; located in the C-TS Zoning District. The applicant requests to eliminate Condition of Approval No. 2 for the Coco Palm Beach Restaurant (Special Exception #10-2002) to allow the applicant to be considered for outdoor seating. Condition of Approval No. 2 requires the applicant to wait six (6) months from the date of opening to request outdoor seating. Specifically, Condition of Approval No.2 provides: "No outdoor seating shall be allowed. If the applicant so chooses, he can re-apply for a Special Exception for outdoor seating a minimum of six (6) months after the restaurant opens for business." The restaurant has been open since January 3, 2005. If the condition is eliminated, the applicant requests a Special Exception approval to provide 28 outdoor, open air seats to be taken from the inside capacity. No new additional seats are being requested. The applicant seeks to modify Special Exception #10-2002, specifically Condition of Approval No. 4, which states: The restaurant (Coco Palm Beach) shall stop serving dinner at 11:30 p.m. and shall have last call at the same time. The applicant seeks to modify the restriction such that, the restaurant can serve dinner and alcoholic beverages until 2:00 a.m. *Deferred from the April 12, 2005, Town Council Meeting.*

Ex-parte communication was declared by Councilman Kleid via conversations with those representing Coco's, and with residents from the Biltmore. President Pro Tem Goldblum declared ex-parte communication with those representing Coco's and with residents from the Biltmore. President Brooks declared ex-parte communication with those representing Coco's and with residents from the Biltmore. Councilman Coleman declared ex-parte communication with many phone calls from the parties involved

Attorney Frank Lynch, on behalf of the applicant, addressed the Town Council, recalling that the applicant had been directed to discuss the proposal to allow for outdoor dining with the residents at both the Biltmore and the Royal Poinciana South buildings. He noted that there was a proposal from Royal Poinciana South, which he understood that the Biltmore residents had joined. He stated that the applicant was prepared to live with the bulk of those proposals, and would like to add several conditions. He read the following into the record, noting that the following was on Royal Poinciana South stationary, and was an Agreement between Coco Palm Beach and Royal Poinciana South Apartments — the Biltmore was handwritten into the document:

1. No valet parking on Sunset Avenue and immediately and permanently terminate using Royal Poinciana South as a turn-around, or Bradley Place.

Attorney Lynch requested that amendment be made that there would be no valet parking on Sunset Avenue west of the intersection with Bradley Place.

2. If outdoor dining is granted by the Town Council, the last order is to be placed by 9:00 p.m.,and the area cleared and closed by 10:30 p.m., for a maximum of 28 seats.

Attorney Lynch requested 11:30 p.m., so that there would be nothing left to clear by 11:30 p.m.

3. The outdoor area must be specifically for dining and/or waiting, and will not be utilized as a cocktail lounge.

4. Lunch service will be agreeable with no valet parking.

5. At no time in the future will Coco's apply for a nightclub or cabaret license.

6. At no time in the future will Coco's apply for extended dining hours beyond the 11:30 p.m. for indoor dining, and 9:00 p. m. for outdoor dining.

Attorney Lynch advised that the applicant would like to add two conditions as a self-policing issue, and as an incentive to obtain approval of the 11:30 p.m. dining:

1. Valet parkers would wear Coco's uniforms, so that they could be easily identified. There had been complaints last month from Royal Poinciana South that valets were using the area in front of Royal Poinciana South.

2. The residents of Royal Poinciana South and the Biltmore would be given a hotline, a dedicated 24-hour per day answer machine, which would take complaints concerning the operation of the restaurant as it related to the neighborhood.

Attorney Lynch requested consideration of the 11:30 p.m. closing for outdoor dining.

Zoning Administrator Paul Castro advised that two years ago the applicant received a special exception and some variances for parking, and it had been brought to his attention that there may have

Councilman Kleid commended both sides for coming as close as they could to a settlement, however, he suggested that the six month waiting period was too short, since it would run to only October, which did not include the season.

Mayor McDonald commented that six months was the usual time period used in these situations, and that it seemed reasonable. He noted that in this case, two private parties were freely negotiating a contract, and the Town Council was not imposing any of those conditions upon the applicant that were addressed in the private agreement.

Mr. Hoffman, Biltmore resident, commented that it was his understanding that the Town Council had asked Mr. Kaye, Mr. Brown, and Mr. Koeppel to meet to see if they could arrange some kind of a resolution to submit to the Town Council. He remarked that Mr. Brown was not authorized to speak for the tenants of Royal Poinciana South. He explained that he was speaking for himself, and on behalf of the Biltmore owners, and that he was prepared to speak on the outdoor seating request. He stated that he was not comfortable with the 10:30 p.m. closing time for outdoor dining, as the noise was intolerable for residents of the Biltmore. He maintained that people in the neighborhood would gradually move away if the area was noisy, and that the Town should be preserved as a first class residential Town.

Mr. Ned Barnes, speaking on behalf of Mr. Steve Brown, addressed the Town Council, stating that there had been a great deal of concern by the residents in coming to an agreement with the applicant. He explained that the ongoing process was very difficult for those negotiating the agreement, and there was concern that six months from now they would have to come back again to address the issue. He noted that the issues of concern being raised today had been continuous complaints when Bradley's was in the same location.

President Brooks suggested that the applicant send a separate notarized letter to Royal Poinciana South and the Biltmore to address items 5 and 6 from the agreement between the applicant, Royal Poinciana South, and the Biltmore, as he was not comfortable voting for an agreement that would limit the right of a citizen or entity to petition the government.

Councilman Wyett commented that the noise from outside the restaurant with vehicles and noise was of great concern to the residents; he noted that the grandfathering situation was sometimes also an issue, and that he had a great deal of concern related to protecting the residents.

Zoning Administrator Castro requested that if outdoor seating was approved, a condition be added that there be no outdoor music of any kind, and that the applicant would be coming back to the been some inconsistencies in the approval letter sent two years ago. Staff had listened to the audio tapes of the meeting, and there were two inconsistencies that should now be clarified for the record: The variance that was granted for required off-street parking was not just for this applicant, and would run with the land; however, a new applicant or tenant for the space would need a special exception for the off-site supplemental parking where it is located today. In addition, there had been some discussion concerning waiting six months to come back to the Town Council, and from listening to the audio tapes, it was not clear whether that condition was specifically placed on the applicant. There had been discussion at that time, with Attorney Kolins, regarding coming back in six months, or coming back sooner.

Mr. Castro addressed the application as it was coming to the Town Council today, and advised that staff still had some concerns as it related to the hours of operation outside; the parking and traffic circulation issues were addressed through a traffic and circulation study that had been provided by Attorney Lynch yesterday. Staff had not yet had the opportunity to review it at this time; the applicant was required to come back to the Town Council in July to demonstrate Town-serving documentation. Staff remained concerned about parking on the street with the extended hours and outdoor seating being requested.

Councilman Coleman thanked Mr. Kaye for pursuing the discussions with the residents, and also remarked that he was disappointed in seeing the request from the Biltmore requesting financial remuneration for giving their approval. He suggested that the applicant request a closing hour of 10:30 p.m. for outdoor dining, and come back in six months for consideration of 11:30 p.m.

Councilman Wyett commented that the area was currently very congested, which raised concerns as to the lunch service. He remarked that if people used the Publix parking lot it would deprive residents of parking in order to shop for groceries.

Attorney Lynch responded that the applicant would have to make other arrangements for the valet parking if lunch service was requested; that would require another traffic study.

In response to the concerns of President Brooks as to the condition that Coco's would not apply for extended hours at any time in the future, Town Attorney Randolph advised that the conditions being discussed today would apply only to the operation of Coco's, and was not assignable.

Attorney Lynch remarked that the applicant acknowledged the fact that the restaurant location had always been a problem in the past, and the applicant was trying to be a good neighbor in accepting the agreement proposed by Royal Poinciana South and the Biltmore.

Town Council in July to address the Town-serving documentation and for review of the Parking and Traffic Circulation study.

**Councilman Coleman moved approval of Special Exception #11-2005, for Coco Palm Beach, for outdoor dining, to apply only to Coco Palm Beach, and to no other applicant/tenant, for trial period until the Town Council meeting of January 10, 2006, at which time applicant would return for re-consideration of the outdoor seating, with the following conditions:**

- **that the outdoor dining service completely close at 10:00 p.m. (applicant to come back at the January 10, 2006 Town Council meeting for reconsideration of outdoor seating).**
- **no outdoor music at any time.**
- **applicant to submit Town serving documentation and traffic circulation study for review at the July 12, 2005, Town Council meeting.**
- **items No. 5 and 6 of the private Agreement between Coco's, the Palm Beach Biltmore, and Royal Poinciana Plaza Building would be addressed privately between the parties involved.**

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

2. New Business

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

**DEFERRED Variance #19-2005 to the June 14, 2005, Town Council Meeting.**

b. SPECIAL EXCEPTION #13-2005 The application of Debbie Martin, Fifth Third Bank, relative to property described as Lots 39 and 40, Block 11, Royal Park Addition; commonly known as 319 Peruvian Avenue; located in the C-TS Zoning District. To allow use of the first floor, 1,250 square feet area, as a bank as was previously occupying said space (Southern Community Bank and First National Bank of Florida).

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

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the Town-serving documentation would be provided well within the usual six month period.

Director of Planning, Zoning & Building Robert Moore stated that the applicant must return to the Town Council within six months with the Town-serving documentation.

**Councilman Wyett moved approval of Special Exception #13-2005, with the condition that the applicant provide Town-serving documentation within six months. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.**

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

Ex-parte communication was declared by President Brooks with the co-owner of the restaurant.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that there was a new owner of the restaurant; a special exception was required to operate a restaurant in the particular Zoning District. He provided Town-serving documentation. He noted that the prior owner had two Declaration of Use Agreements that the Town Council had imposed upon him for the expansion of the restaurant, and for waiver of parking places. The current applicant was willing to abide by the requirements set forth in those Agreements. The current applicant was also requesting the ability to maintain the 118 seats permitted, but to place 8 of them outside. He distributed two photographs of the area, and noted that the Town Council had denied a request for outdoor seating in the past largely because of a resident who lived directly behind the restaurant. He advised that he now had a letter from that resident agreeing to the outside seating.

Zoning Administrator Paul Castro commented that staff had concerns with the hours of operation and the possibility of noise within the proposed seating area; one of the conditions of previous approval was that the south entrance was to be completely closed off with panic hardware, so that there would be no exiting that way. The applicant was now requesting to open up that area with seating on the south side of the building.

Attorney Broberg responded that the applicant did not want to change the use of the southeast door with the panic hardware. A fixed French door was on the wall west of that, which was proposed to become an opened French door.

The following members of the public commented:

Lory Volk commented that the valet parking situation at the restaurant was precarious, and that she believed that there had been an agreement to lease space with the bank, which was clearly not happening. Diners were parking in the "parking by permit" only section in Phipps Plaza. She noted that the last time this restaurant had requested outside dining, it had gone to the appellate court, and four judges said no at that time. What had convinced the judges was the lack of evidence by the restaurant that patio dining would not cause more noise. She stated that the residents were asking for relief in the parking situation, since most of them did not have garages; she noted that she had sent a survey to 18 property owners of record, and five of them came back undeliverable; 11 property owners of record objected to the application for outside dining. She requested that the application in question be denied at this time.

Attorney Broberg responded that the applicant would take a deferral only on the outside dining.

Zoning Admistrator Paul Castro pointed out that this was a whole new special exception; based upon the Declaration of Use Agreement; it was not simply a Town-serving issue, it was the operation of a restaurant at this location, and was based on the change of ownership.

Director of Planning, Zoning & Building Robert Moore clarified that the applicant was applying for a new change of ownership, and was applying additionally for outside dining. Sufficient Town-serving documentation had been submitted by the applicant.

**Councilman Wyett moved approval of Special Exception #14-2005, without the outdoor seating. The motion was seconded by Councilman Coleman.**

Mrs. Jane Volk addressed the Town Council, expressing concern regarding the parking in the Phipps Plaza area; the parking for Phipps Plaza was in the street, and when the restaurant diners were taking up all of the parking it was a problem for residents. The owner of the restaurant, Mr. DeMarinas, had promised that he would provide valet parking, and that had never been done. She stated that she had lived therefor 58 years, and had complained about the parking continuously. She stated that the daytime parking was enforced, however, the night parking was not enforced.

Councilman Goldblum commented that the Police Department would be contacted to ensure that the parking was enforced in the area.

Mayor McDonald suggested that the entire application be deferred until the June 14, 2005, Town Council meeting, and that supporting evidence of the valet parking and outside seating be provided at that time; the new owner would be allowed to operate until next month's meeting, without the change of ownership.

**Councilman Wyett withdrew his motion of approval, and adopted the suggestion of Mayor McDonald, to defer Special Exception #14-2005 to the June 14, 2005, Town Council meeting, allowing the applicant to operate the restaurant until that time. President Pro-Tem Goldblum seconded the revised motion, and also requested that the new owner appear before the Town Council at the June 14, 2005, Town Council meeting.**

Mrs. Annette DeSousa , 238 Phipps Plaza, addressed the Town Council, stating that her home abutted the restaurant on the west side, and that if the French doors were ever opened, it would be an impossible situation for her. She stated that outside dining had been done, without a permit, for about two-three weeks in 1994; the noise had funneled right to her home. She submitted a letter from the neighbors who resided in back of the restaurant objecting to the application.

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

3. Other

a. Request by the Planning and Zoning Commission to Declare Zoning in Progress for Neighborhood CCR Index Proposal on June 1, 2005. [Robert L. Moore, Director of Planning, Zoning, and Building] **MOTION MADE EARLIER IN MEETING TO HEAR THIS ITEM AT 10:00 A.M. - TIME CERTAIN - OR AS SOON THEREAFTER AS POSSIBLE.**

Zoning Administrator Paul Castro stated that staff had been directed by the Town Council to proceed with a study of the Neighborhood CCR Index Proposal, and the Zoning in Progress related to the street by street CCR, which would take effect at the November Town Council Meeting. He advised that staff was recommending that the Town retain an architect, at the expense of the property owner, to review the calculations of the property owner's architect when there was an addition to an existing home or when building a new home.

Mr. Castro advised that at the April 19, 2005, Planning and Zoning Commission meeting, it was suggested that the November 8th date be moved up to June 1st to implement the CCR Street by Street Index. He stated the reason for the date change request was that it was thought there might be an influx of new applications trying to beat the November 8th deadline. He advised that this would place a heavy burden on staff who would have to check all of the documentation for the CCR.

Mr. Castro stated staff recommended, contrary to the Planning and Zoning Commission, that the impact of this proposal continue to be studied; and Zoning in Progress, if implemented, would still be implemented by November 8th. He gave the following reasons for recommending November 8th as the date for implementation:

- Zoning items for the next Zoning Season were to be advertised for November 8th;
- Staff would have time to develop an implementation strategy;
- Staff would have time to hire an architect to review or oversee all projects;
- Staff would have the opportunity to look at each street and report back to the Town Council and Planning and Zoning Commission with any implications this proposal might present, if adopted.

Planning, Zoning and Building Director Robert Moore stated that staff had not been prepared, at the meeting on April 19th, to provide information on this subject because it was not an agenda item. He reviewed the number of permits issued for new homes for 2003, 2004 and 2005, through the month of April, stating that there had not been an influx of permits. He reported that the people most concerned about this issue were the residents who were worried about whether they would be able to remodel or build additions to their homes when this program was put in place.

Mr. Moore advised that the Planning, Zoning and Building Department had received many telephone calls on this subject. The callers were advised that Zoning in Progress would take place in November, as usual. He stated that a record was not kept of those callers, and they had advertised that this would take place in November. He said that he did make the Planning and Zoning Commission aware of the situation, and that it could create some problems if the date was changed to June.

Mr. Moore stated that he understood the concerns the Planning and Zoning Commission had, but staff does not see the evidence they did that there would be a rush of permits to beat the deadline of this study. He discussed some issues which the staff would not have time to study if the date was moved up to June. He commented that if this was implemented in June, the Town would require some methodology for waivers; and at this time, staff would not be able to advise on the intricacies of this plan because there was just not enough time.

Mr. Moore advised that staff had been assigned by the Town Council to study the re-zoning of the RB District, which was made a priority last month.

Councilman Wyett commented that it was his understanding that there was no Public Notice and no Public Hearing on the issue of moving up the Zoning in Progress from November to June, and that the public should have the opportunity to respond to any proposals for a change in the date.

Mr. Moore advised that it was not an agenda item but there was an item on the agenda to review the minutes of the Planning and Zoning Commission's previous meeting.

Zoning Administrator Paul Castro advised that Mr. Moore was correct and that the residents did not receive notice regarding this issue; he explained that there had been lengthy discussion on this issue at the beginning of the meeting before going into regular business.

Councilman Coleman commented that there was not enough information to move forward with an action item for June and advised that he thought it should be deferred.

President Pro Tem Goldblum agreed and stated that it was his belief that the schedule should adhere to the November date.

Councilman Kleid advised that he was present at the Planning and Zoning Commission meeting, and believed that the Commission did not deliberate enough on this matter. He explained that it was an impromptu item that came up because there were concerns that many people would be putting in applications, which, as noted previously, has not occurred yet. He stated that he agreed with the original proposition to have Zoning in Progress in November, and it should not be moved up to June.

**Councilman Kleid moved approval that there be no date set at this time for Zoning in Progress. President Pro Tem Goldblum seconded the motion.**

Mrs. Mimi Vail, 249 Queens Lane, placed into the record a petition with additional signatures from residents of the north end.

Attorney Ron Kolins requested clarification regarding the declaration of Zoning in Progress, asking whether the debate today was to consider if it would start early, or would there be a full-blown debate with public input in November, depending upon the plan that the staff comes up with? He explained that the public needs to know if they will have a chance to deal with the substance of the issue later on.

Mr. Moore replied that the plan was to debate the staff recommendations on this particular subject, with full public input, at the October meeting of the Planning and Zoning Commission. He advised that the Commission would then make a recommendation to be brought before the Town Council at their November meeting. He stated that, at the November meeting, it would be up to the Town Council to either choose to have further discussion or to have Zoning in Progress.

Mr. Ralph Del Deo, 265 Fairview Road, presented a petition signed by residents in opposition to proposed zoning changes, and provided it to the Town Clerk for the record. He expressed his concerns regarding this issue and suggested that the public should have more input.

Councilman Kleid stated that it was his belief that there was a lot of misconceptions regarding this matter. He explained what was meant by a Neighborhood CCR Index, why it was thought necessary to enact a Neighborhood CCR Index, and how the Neighborhood CCR Index, if put into effect, would be integrated with other zoning modifications. He said that it was his understanding that this concept would be presented to the Planning and Zoning Commission and Town Council for implementation at or before the November 8, 2005, Town Council meeting when Zoning in Progress would be contemplated to commence. He stated that, historically, good zoning has protected and enhanced real estate values and has not decreased them.

Mr. Alfred Fix, 249 Fairview Road, commented that the changes to the Zoning Code, presently being considered, would severely depress his property value as well as other home owners. He advised that any proposed changes should apply to the entire Town of Palm Beach and not just the north end. He stated that he was strongly opposed to the proposed zoning changes, and requested that they be withdrawn to avoid further economic loss to property value.

Councilman Kleid advised that, at present, there was no Zoning in Progress but there was a work in progress which would be discussed at the Planning and Zoning Commission meeting in October, and then again in November, before any action would be taken. This would allow ample time for public input, starting with today.

Mr. William Kemble, 206 Caribbean Road, requested that the residents be given full voice in this matter.

**Councilman Kleid restated his motion that they do not put Zoning In Progress in June and that they continue with the original proposition to put Zoning in Progress on November 8th after full discussion both at the Planning and Zoning Commission in October and at the**

**November meeting of the Town Council. President Pro Tem Goldblum seconded the motion.**

Councilman Wyett commented that many residents would not be around in October when the Planning and Zoning Commission meeting took place. He requested that the Town Council instruct the Planning and Zoning Commission to meet in November to review this, and then the Council would hear it in December.

Mr. Moore advised that the current calendar would be presented before the Town Council next month, at the June meeting, for final approval for the next zoning season. He stated that now the discussion was about hearing this on October 6th . He explained that the Planning and Zoning Commission would want to hear this side of the question as soon as possible in order to formulate their suggestions to present to the Town Council. He advised that the Zoning in Progress does not have to be put on in November, if more time was needed to study it.

Councilman Coleman agreed with Mr. Wyett that most residents would not be in Town in October, and believed there should be full participation in this process; and if a delay of thirty or sixty days was required, so be it.

Discussion ensued regarding the motion previously made by Councilman Kleid. Councilman Coleman reviewed the motion stating that at this time, there was no date for Zoning in Progress

**The motion made by Councilman Kleid was clarified stating that the Town Council approved that there be no date set at this time for Zoning in Progress; the zoning calendar would be considered at the June 14, 2005 Town Council Meeting. President Pro Tem Goldblum seconded the motion. On roll call, the motion carried unanimously.**

Mr. Louis Donaghue, 250 Ridgeview Drive, discussed his concerns regarding any future changes in the CCR particularly as it would affect his property. He also noted that he was in support of keeping Mr. Moore as Building, Zoning and Planning Director.

Ms. Nancy Murray, speaking for the Garden Club of Palm Beach, stated that the members have concerns about the overbuilding of some sections of Palm Beach. She advised that the Garden Club applauds the Town Council and the Planning and Zoning Commission for trying to put an end to this problem. She reported that she had polled the officers of the Garden Club of Palm Beach and found that they endorse, in principle, Zoning in Progress. She advised that they were looking to the Town Council to establish reasonable standards for building in November.

Mrs. Koeppel stated that as a resident of Palm Beach and as a real estate broker in the Town, she wanted to address the Town Council both professionally and personally. She advised, that on a personal level, the north end represents young families who need space, and defining that space should be left to the individual. She remarked that it should not be left to a committee to decide how large that home should be. She advised that she never received any notification on this matter, and hoped that in the future, residents would be notified, in advance, so that they could take part in any discussion.

Mr. Robert Satter, 140 Seagate Road, stated that he was a real estate lawyer and a real estate developer for thirty years, although not in the Town of Palm Beach. He advised that the twenty residents living on his street were outraged. He reported that they saw this as unreasonable, unnecessary and unfair. He remarked that he did not know who the proponents were, but believed they were not people living in the north end. He reported that he had lived there for many years; he and his wife have been planning a renovation to their house, but it would be precluded by the program being presented as they understood it. He stated that the people on the north end believe the neighborhood should continue to progress in the way it was now progressing.

Mr. Sam Boykin, 285 Jamaica Lane, commented that this was a matter that should not even be considered, and that it should be dropped. He stated that it had been studied for many years, and the citizens he knows believe the present system works. He explained that his house could not have been built ten years ago under the proposed doctrine, which had not been announced nor were the residents given enough time to study.

Mr. Tom Turchan, 211 Eden, commented that this exact proposal was brought up in 1999 and was sadly defeated. He stated that it had been brought up again by people, who he believed, did not live in the north end. He questioned why the majority of the big, monster homes were being built on the lake, on the ocean and in the estate section, and were not being down-zoned.

## XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

There being no further business, the regular Town Council Meeting of May 10, 2005, was adjourned at 5:52 p.m. [Executive Session to Immediately Follow, for the purpose of discussion collective bargaining pursuant to Section 447.605 of the Florida Public Employees Relations Act].

William J. Brooks
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk