TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MAY 9, 2006

I. CALL TO ORDER AND ROLL CALL

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

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

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
William Amador - Fire Marshall
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Paul Castro - Zoning Administrator
Veronica Close - Director Planning, Zoning & Building
Andrew Cox - Assistant Fire Chief
William Crouse - Human Resources Director

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RECYCLED PAPER

Tim M. Frank - Planning Administrator
Charles Langley - Public Works Assistant Director
Jon Luscomb - Dock Master
Michael Mason - Major Law Enforcement
Edward J. Moran - Fire Rescue Chief
Michael Reiter - Police Chief
Cheryl Somers - Assistant Finance Director
Jane Struder - Finance Director
Rob Walton - Chief Code Compliance Officer
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Albert D. Hutzler, III, Investment Advisory Committee, From May 2004 Through May 2006.

Mayor McDonald presented Albert D. Hutzler, III, with a plaque in recognition of service to the Town of Palm Beach.

B. Presentation of Palm Beach Country Club Scholarships to Elliot Crockam, Jr. (Elliott Crockam's Father Accepting on His Son's Behalf), Rob Smith, and Caitlin Burroughs, by Mr. Ira Eichner.

Mayor McDonald presented the Palm Beach Country Club Scholarships to Caitlin Burroughs, Rob Smith and Elliot Crockam Jr. Elliot Crockam's father accepted on behalf of his son.

IV. COMMENTS OF MAYOR JACK McDONALD

On May 17 during Police Week and on Peace Officers Memorial Day, we will be installing a memorial plaque for Town employees at Memorial Fountain. The ceremony will begin at 7:30 p.m. at the Fountain and we ask everyone who believes in peace to attend.

Later today, Publix Supermarket will appear before the Council to address certain issues. Before their appearance, I want to apologize to them for the public way this matter has been handled. I regret that the issues that were being resolved in a direct, cooperative and friendly manner before being brought to the Council became a matter of public criticism. I was present last month when this issue was raised and I failed to direct or object to it. I accept responsibility for that, and I want to recognize Publix for their strong record of community service and the role they served for many years as the emergency provider of food supplies to the Town after hurricane events.

Today I ask the Council to consider authorizing the appointment of a charter review commission, with specific direction to review the manner in which councilpersons are elected. I believe an at-large format that would eliminate running against incumbents would attract more candidates to run for the Council. If the Council does not want to authorize a full review commission then I request they consider the election issue as a referendum item to be considered next February.

I have a letter request from Mayor William Benjamin of Manalapan written as President of the Silverbacks, a social club founded by late Palm Beach Mayor Ilyinsky. The letter requests approval to plant a pair of Fox Tail Palms at the site of the Ilyinsky Memorial in Lakeside Park. The request speaks for itself but also raises the larger issue of a beautification plan for the Park. This issue has previously been raised by both President Coleman and me. The letter indicates one of their members is president of one of the condominiums fronting on the park and also refers to the beautification issue. Mayor Benjamin's request requires an answer and, in addition, I hope the Council will pursue the issue of Lakeside Park beautification.

And finally it is quite clear that our residents, specifically, residents of the north end, want their streets to look better and the Council should consider substantially increasing funding for street resurfacing and paving.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Coleman:

- Notify Mayor Benjamin of Manalapan that the Council would contact him after reviewing the Lakeside Park issue at the June 13, 2006, Town Council meeting.
- Regarding the Publix letter sent by Council Member Markin that letters with ratification of the Town Council should be at the direction of the Town Council, as an official communication, which he had not clarified at the time Ms. Markin presented the draft.

- Assessment by Public Works as to damage done through construction as opposed to ordinary wear and tear, specifically on streets. Keep in mind the thought of allocating an opportunity to replenish the fund.

- Strongly in favor of undergrounding; but that the Town Council should develop various approaches in order to be sensitive to issues such as eminent domain, and take concerns of residents into consideration.

President Pro Tem Kleid:

- The Council should consider some restrictions on appeals heard by the Town Council relative to decisions made by Town Boards/Commissions.

- Decisions of appeals should be approved only on the record, and should be reversed only if the Town Council believed the decision rendered was not supported by the record.

- De novo appeals should not be permitted, and requested discussion of this be added to the Agenda for June 13, 2006, Town Council meeting.

- Agreed that letters from the Town Council should be signed by the Mayor or President of the Town Council.

Council Member Brooks:

- Review all sides of the feral cat issue. Requested staff provide report regarding Palm Beach Cats program and that a general discussion take place at a Town Council meeting in the future.

- He and Town Manager Elwell would confer on an appropriate meeting date for discussion of the feral cat issue.

- Agreed that letters from the Town Council should be signed by Mayor or President of the Town Council.

Council Member Markin:

- Summarized the Publix matter; noting that Publix Manager Mr. Abiusi, was very cooperative.

Council Member Wyett:

- Supported Council Member Markin's actions regarding the Publix matter.
- Urged that the public be notified clarifying the 10' easement issue that was required for the underground wiring project.

Town Manager Elwell:

- Addressed the current procedure of sending out letters from the Town Council:

  An official position letter was sent under a signature of the Mayor or President of the Town Council, unless there were unusual circumstances. Individual Council Members have also customarily written letters on Town letterhead expressing their individual views on an issue, for example, in response to a letter from a Town resident, but on their own behalf and not the Town Council's behalf.

Council Member Markin noted that the letter to Publix was a draft that she brought forward and had not intended to send until she had the approval of the Town Council; she noted that she subsequently was directed to send it and had then done so.

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

Michael Katropoli(ph), 3250 S. Ocean Boulevard, commented regarding:

- The system of electing Town Council members should be on a district basis in order to more accurately represent the citizens;
- Storm shutter code required that shutters be placed against the windows.
- He supported the Town in assisting Manalapan and South Palm Beach Fire-Rescue; and
- That he was interested in participating in the proposed study of the Town election system.

President Pro Tem Kleid commented that each elected official represented the entire Town and that he did not support the idea of elected representatives from various areas of the Town competing with each other for the Town's attention.

Council Member Wyett suggested that Mr. Katropoli(ph) attend the monthly Citizens' Association and Civic meetings, in which the Council Members attended, and to feel free to call him and any member of the Town Council with his concerns.

Eric Nord Gilberston, 151 N. Chilean Avenue, commented regarding the high taxes and lowering the millage rates, which could make a big difference for the fixed-income retirees and the low-income people. He added that a new beach erosion problem occurred when the waves caused the beach to step down more than two feet, and that it should be graded as soon as possible to avoid serious swimming injuries.

Connie Gasque, 167 Root Trail, introduced a document from another resident on Root Trail regarding the feeding of pigeons and cats, and a letter from Sarah Hannah recommending that the Town not act on the issue because Root Trail was a private road and the courts would not do anything about it. If it was a private road, why was she required to pay for parking, and collecting revenue from the parking violations. She said she would like the Town Council to address the code violation of section 10-8 of the animal code, which addressed raising and boarding of animals.

Wolf Van Falkenburg, trustee of Mockingbird Trust at 1191 N. Ocean Way, commented regarding code enforcement fine of $80,000. He explained that since the owner passed away one year ago, there were two hurricanes, and that he had been working to repair the damages. He said although he had been hospitalized, he did the utmost to make the property acceptable. He requested that the fine be removed.

Mayor McDonald suggested that the item be placed on next month's agenda for discussion, and in the interim, the Council would delay the deadline of the fine.

It was the consensus of the Town Council that staff would provide a complete report for consideration during the June 13, 2006, Town Council meeting, and that the fine will be in abeyance until that time.

Jenny Hoffmeyer, 155 Root Trail, commented that cats and pigeons cared for by Catherine Bradley on Root Trail, had presented a health hazard to her daughter as a result from the droppings of the animals and birds, which prevented her daughter from walking freely in her yard.

Susan Lee, 287 Pendleton Avenue, commented regarding the Publix grocery store and read a letter that she wrote to Council Member Markin listing complaints against the store.

Jere Zenko, 232 Tangier Avenue, commented about the pigeon problem and how Mayor Daly resolved the problem in Chicago, and that she would research the species.

In response to Ms. Zenko's concern regarding easements that would be necessary in regard to the underground project, Council Member Wyett responded to Ms. Zenko that although the easements for undergrounding would not be 10', it was not yet known what size they would be.

Ms. Zenko suggested that Town staff delineate the easement area with orange spray paint, in order to help the citizens understand how it would affect their property. She expressed concern as to how the undergrounding would be paid, and noted that an assessor could develop a computer program that would indicate individual costs to homeowners.

Susan Gibson, 226 Pendleton Avenue, asked if the Town Council or management of the Town would investigate the slow development of the Market Salamander Project on County Road.

Council Member Wyett agreed that it was long-term construction with very little progress and requested that the Building Department provide a report on the project.

Town Manager Elwell noted that staff was developing a sample to depict the location of the transformer boxes, and it would be addressed, along with the cost, when the full report was completed.

Stefanie Gugelot and Paulette Cooper Noble, residents of Ibis Isle, commented regarding the Ibis Isle entranceway landscaping. Ms. Gugelot requested the help of the Town Council to rectify the decimation of the landscaping on A1A, in front of Ibis Island, as well as Ibis Island Way. She presented photographs to show how the area looked before it was destroyed by the Florida Department of Transportation (FDOT), in October and November of 2005. She noted the changes that had occurred since that time.

- It had become a visual eyesore;
- It had affected the beauty of Ibis Isle;
- It had severely impacted security;
- No privacy;
- Increased vehicle and pedestrian traffic;
- It had affected the wildlife.

Ms. Gugelot stated that they have been working with Director of Public Works Paul Brazil and Assistant Director of Public Works Eric Brown, who have been wonderful to work with and very sympathetic. She provided the following background information relating to this issue.

- January 2006:
    - The Town advised the residents that FDOT had worked on this project and not the Town;

  - The Town did not have money for A1A but did have $7,000 for Ibis Way;
  - The residents of Ibis Isle agreed to raise money in order to plant and fix-up the area;
  - The residents of Ibis Isle raised about $17,000.

- February 2006:
  - The Town advised that the residents would have to wait to do the planting because of an agreement between the Town and FDOT regarding the planting of mangroves. The State of Florida or FDOT would pay for the mangroves reimbursing the Town.

- March 2006:
  - The residents were advised that the work should start in May.

- April 2006:
  - The residents were advised that FDOT had allotted $45,000 for the project, and the lowest bid received to plant the mangroves was about $61,000.

Ms. Gugelot advised that they did not know when the mangroves would be planted, and if it would even happen. She noted that the mangroves had to be planted first before the residents could start their planting using the money they raised. She explained that they had two problems:

- Timing - Hurricane season would be starting in a couple of weeks;
- Money

Ms. Gugelot commented that she did not know if the Town Council could help them or if Mr. Brazil and Mr. Brown could assist in moving this project along.

Ms. Cooper Noble discussed the financial aspect of the project. She reiterated that they had raised $17,000, with half of the residents contributing. She advised that they have not been able to raise any more money. She stated that the lowest bid received for the A1A section was $32,000, which did not include Ibis Way.

Mr. Brazil advised that several issues had come up during his conversation with Ms. Gugelot and Ms. Cooper Noble.

- Funding;
- If and when the project could begin.

Mr. Brazil stated that the planting of the mangroves delayed permanent planting north of Ibis

Isle Way. He explained that they might be able to leave the plants in pots, and place them there now. The plants would actually get some growth since the irrigation system was working. He advised that when the Joint Project Agreement (JPA) with FDOT was straightened out, the plants would then be relocated during the excavation; the mangroves put in; and then the potted plants would be permanently placed there. He advised that, as far as funding, he would have to turn to Mr. Elwell and the Town Council, because he could not answer that.

Mr. Brazil explained that mangroves thrive in standing water, and the Town would have to lower the area where they would be planted. He advised that the area the mangroves were to be placed was very close to the area the residents planned to place their plants. He stated that was the reason for his suggestion to leave the plants in their pots. The residents should purchase them now, install them, and when the grading occurs, if it affected the plants, they could be moved out of the way. The mangroves could be installed and then those plants moved back and permanently planted.

President Coleman advised that he was reluctant to appropriate money, at this meeting. He noted that the Council required additional information and recommendations from staff. He requested that staff provide a report at the next Town Council Meeting.

In response to Council Member Brooks, Mr. Brazil stated that, first and foremost, the area had been destroyed during the removal of invasive species. He explained that when the hurricanes came through, there was additional damage to the mangroves, and that area did take a big hit from the hurricanes.

After further discussion, it was the consensus of the Council to have this item placed on the agenda for next month's Town Council Meeting.

Mr. Elwell advised that staff would place this item on next month's agenda, explaining that staff was working on this in hopes that the issue of funding with FDOT could be resolved. The Town wanted to ensure that they would be fully reimbursed by FDOT.

Ms. Gugelot stated that they were not complaining about the Town and appreciated what the Town was doing for them. She noted that it was FDOT that was slowing things down.

Jimmy Zisson, 1600 North Ocean Boulevard, advised that he has been a north end resident for twenty-seven years. He commented regarding:

- Publix supermarket
- Repair of roads, seawalls, utility poles, landscaping replacement, patching of bike paths
- Cellular service

- Financing of critical public works projects
- transfer fee/impact fee
- Feral cats

Discussion ensued regarding Mr. Zisson's comments, President Pro Tem Kleid advised that the Council was interested in listening to all concerns, and suggested that additional background information may be helpful to Mr. Zisson, as well as attendance at more Town Council Meetings. He explained that the discussion of wireless telecommunications would commence shortly and suggested that Mr. Zisson stay for at least that part of the presentation.

Council Member Markin stated that she shared Mr. Zisson's concern over the cellular service. She explained that it had been discussed at the last meeting, and staff was going to look into why the Town had not received responses from other cellular vendors in their search to improve service.

After discussion regarding transfer fees, Mr. Elwell advised that, in Florida, municipal governments could not charge a transfer fee for the transfer of real estate. Transfer fees were reserved for the State.

Mr. Zisson asked if there were any land bank fees that would be legal for the Town to use? He explained that land bank fees were applied to purchases with a percentage of that purchase placed into a land bank, which then bought open green space.

Town Attorney John Randolph advised that the State preempted the issuance of taxes. He noted that municipalities could not get into the issuance of taxes unless it was through special legislation. He advised that occupational license taxes were addressed by State Statute, and that unless there was State legislation that allowed the Town to apply transfer fees or land banking fees, the Town could not do so because the State preempted that.

In response to Mr. Zisson, Mr. Elwell advised that the State did regulate building permit fees. He explained that there were parameters as to what a municipality could charge and how to calculate that charge. He explained that there was a relationship between building permit fees and the costs of overseeing construction activity, which was set out in State law.

Council Member Wyett advised that he wanted to affirm Mr. Zisson's right, and to protect that right to come before the Council to complain or comment.

Mr. Zisson responded that he did that relative to the cellular phone issue, that he had received a response letter, but there was no follow-up.

Council Member Wyett stated that if he did not get an answer and did not feel satisfied, he should contact any one of the Council Members on the phone or internet to ask for their assistance. If he did not get satisfaction through those means, he should come to the Council meetings. He explained that his point was that Mr. Zisson had the right to appear, to complain, to compare and comment. The Town Council had the obligation to listen to him.

VII. APPROVAL OF AGENDA

The following changes were made to the Agenda:

WITHDRAWN Item XII.C.1.a., Special Exception #1-2006 with Site Plan Review and Variances, Lots 5 & 6, Ocean Lane.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve the withdrawal of Item XII.C.1.a., Special Exception #1-2006 with Site Plan Review and Variances. On roll call, the motion carried unanimously.

DEFERRED to June 13, 2006, Town Council Meeting, Item XII.C.4.b., Special Exception #3-2006, 8-14 Via Mizner.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve deferral to June 13, 2006, Town Council Meeting, Item XII.C.4.b., Special Exception #3-2006. On roll call, the motion carried unanimously.

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

VIII. CONSENT AGENDA

A. MINUTES: APRIL 6, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING DUNE RESTORATION PROJECT IN REACHES 7 AND 8.

B. MINUTES: APRIL 10, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING LANDMARKS PROGRAM.

C. MINUTES: APRIL 11, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING.

D. MINUTES: APRIL 13, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING UNDERGROUND UTILITIES- TECHNICAL AND LOGISTICAL ISSUES.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON APRIL 26, 2006.

F. RESOLUTIONS

1. RESOLUTION NO. 26-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Acceptance of the Declaration of Restrictive Covenants of the Bath and Tennis Club, Inc, a Copy of Said Declaration Being Attached Hereto, and Authorizing the Mayor to Execute an Acceptance of Said Declaration of Restrictive Covenants. [Peter B. Elwell, Town Manager] *Deferred from the April 11, 2006, Town Council Meeting.*

2. RESOLUTION NO. 28-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Superior Landscaping and Lawn Service, Inc. for Supply, Delivery and Installation of 150 Coconut Palm Trees in Selected Public Areas Within the Town of Palm Beach.
[H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 29-06 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]

4. RESOLUTION NO. 30-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to D.B. Ecological, Inc. for Sea Turtle Monitoring Associated with the Reach 2 Beach Nourishment Project, the Mid-Town Beach Nourishment and Expansion Project, the Phipps Ocean Park Beach Nourishment Project, the Reach 8 Beach Nourishment Project and the Operation of the Sand Transfer Plant. [H. Paul Brazil, Director of Public Works]

G. OTHER

1. Authorization to Purchase Replacement Vehicle Extrication Equipment. [Edward J. Moran, Chief of Fire-Rescue]

2. Ratification of Town Manager's Decision to Retain Lou Mrachek to Assist with Beach Project Change Order.
[Peter B. Elwell, Town Manager]

3. Authorization and Funding for Replacement of the Golf Course Irrigation Computer System.
[Jay Boodheshwar, Director of Recreation]

4. Approval of Allocation of FY2007 Justice Assistance Grant Funds. [Michael S. Reiter, Chief of Police]

5. Approval of Proposed Change in the Date of the September Town Council Meeting to Thursday, September 7, 2006.
[Peter B. Elwell, Town Manager]

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

IX. BOARD/COMMISSION ANNUAL REPORT

A. Architectural Commission (ARCOM).
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Close provided the annual report on the Architectural Commission (ARCOM).

Floyd Wideman, former Chairman of the Architectural Commission, commented that improved enforcement of regulations made by ARCOM, was needed. ARCOM required that an applicant provide a preconstruction landscape plan. For example, a construction site on North County Road was approved with a stipulation that a 10' hedge that would remain until construction was completed, but the applicant replaced the 10' hedge with a 3' hedge. ARCOM drafted a letter to Code Enforcement to stop all work on the property until the hedges were replaced in accordance with the deed restriction placed on the property by ARCOM, but no action had yet been taken. The hedge remained at 3' with ongoing construction.

Mr. Wideman thanked the Town Council in supporting the decisions by ARCOM regarding appeals, but indicated that zoning should be modified to mitigate the number of variances.

Responding to President Coleman, Mr. Wideman indicated that ARCOM appointees was comprised of three architects, a landscape architect, and an engineer. He noted that the Commission was also in need of plain, ordinary citizens, as some professionals would possibly be judging their competitors, and that the Council was moving in the right direction as to the type of people that were appointed to the commissions. Mr. Wideman commeted that it was critical to add someone to monitor the construction projects from an architectural, not engineering points of view.

President Coleman requested that Mr. Elwell respond by tomorrow's meeting, May 10, 2006, to Mr. Wideman's complaints of deed restriction violations on the property located on North County Road, and provide a status report of what had transpired.

Council Member Markin suggested that any code enforcement issue that originated from any of the commissions be treated as a priority.

X. REGULAR AGENDA

A. Old Business

1. Status Report Regarding Water Quality Concerns and the City's Actions to Address Them. [Ken Rearden, Assistant City Administrator, City of West Palm Beach]

Ken Rearden, Assistant City Administrator of the City of West Palm Beach, introduced Marjorie Craig, Utility Director who provided a status report of the water quality.

Responding to Council Member Wyett regarding water restrictions due to the lack of rain, West Palm Beach Utility Director Craig stated that she had not fully reviewed the drought plan, but the National Weather Service indicated a high drought rating. The current water supply was fine, as the City was able to access Lake Okeechobee, and a series of wells.

Mr. Rearden called attention to the City ordinance that restricted watering in the day time, which had been in effect for 15 years at least, and that the Town had the same ordinance. He pointed out that the City was able to secure state funding and possibly federal funding for the water plant project, which prevented an increase in the rates to the residents.

Responding to Council Member Markin regarding the enhancement of the water's taste and odor as a permanent solution, Mr. Rearden noted that it would be in place until the carbon filters and other enhancements were installed.

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

Deputy Town Manager Bradford provided an update of the placement of overhead utility lines underground and requested staff direction on the following issues:

- The referendum date for the issuance of General Obligation bonds. Shall the Town's Ordinance limiting bond questions to December 15 to April 1 be amended to allow bond and finance questions to be posed to the voters in all future general elections by allowing such from November 1 to April 15, or shall another date be chosen for the Referendum, such as February 6, 2007, municipal election in the Town of Palm Beach?

President Coleman stated that in order to have the ratification vote outside of the February time frame, the ordinance would need to be amended.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve the Referendum for the approval of the issuance of General Obligation bonds on February 6, 2007, at the same time as the Town election, to allow time to implement a massive education process, so the residents would not be fearful that their properties would be destroyed or disturbed, and to allow time to understand the cost structure.

President Pro Tem Kleid indicated that in the national election on November 7, 2006, a larger amount of people would be voting, which would result in a better consensus. He expressed concern about moving forward too quickly in view of the problems with Adelphia/Comcast, BellSouth, education process, etc., and asked Mr. Bradford if November 7, 2006 was a realistic date.

Mr. Bradford replied that February 2007 was the best time frame for the Referendum because in the fall of 2006 were when the detailed hearings were scheduled with the PSC relative to the 25% credit to local governments, and November 7, 2006, would not be to the Town's advantage.

On roll call, the motion carried unanimously.

- Authorization of Town participation with the Municipal Underground Utilities Consortium, not to exceed $40,000, to analyze the fairness of Florida Power & Light's (FP&L) proposed tariff granting a 25% credit to local governments.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve the authorization of participation with the Municipal Underground Utilities Consortium in a not to exceed amount of $40,000 with the anticipation of $20,000 to $25,000 amount, to analyze the FPL Tariff. On roll call, the motion carried unanimously.

- Amendment of the Town Code of Ordinances allowing for easements to be set aside for future undergrounding;

Discussion occurred, with many issues that were raised regarding easements and property owners. Town Manager Elwell suggested that postponement of this item would allow staff to provide a full report for consideration.

It was the consensus of the Mayor and the Town Council to postpone the discussion of the easement issues to the June 13, 2006, Town Council Meeting for further consideration.

- The provision of streetlights in conjunction with the underground project;

Deputy Town Manager Bradford suggested drafting a survey form to canvass each neighborhood before construction, as not all people were in agreement regarding streetlights.

Council Member Wyett commented that he was in favor of the survey especially for the north end residents.

Council Member Markin agreed with surveying the north end residents, because of safety concerns.

Motion made by President Pro Tem Kleid, seconded by Council Member Wyett to authorize staff to draft a survey of north end residents regarding street lights, to be presented at the June 13, 2006, Town Council meeting.

Discussion occurred among the Council Members about illumination, height, and various types and styles of street lights. Director of Public Works Brazil indicated that the Town had an existing standard of street lights, in which the illumination could be adjusted, and customized for residential use.

Mr. Elwell noted that the Town's standards would be included in the draft survey presented at next month's Town Council meeting, in order to see the differences.

Upon roll call, the motion carried unanimously.

Legislative Update:

- The key points of the legislation did not make it into the Constantine Amendment SB 888;

- Representative Mary Brandenburg reported that she was unable to convince any of the committees to move the bill forward because it was so comprehensive that each of four committees found a problem with it; and

- Ms. Brandenburg suggested creating several bills comprised of one item each, instead of the one bill with all the items included.

Public Service Commission (PSC):

- The Town Council had authorized Attorney Schef Wright to file legal responses with the PSC to the Petitions filed by FP&L revising the Contribution-In-Aid-of-Construction (CIAC) formula and amending Rule 25-6.115 of the Florida Administrative Code pertaining to facility charges.

- The PSC suspended FP&L's tariff amendment that would provide for the 25% credit to local government conversion projects in order to allow time for a review of its provisions;

- The PSC requested a municipal study, in which the Municipal Underground Utilities Consortium (MUUC) would participate, under an Interlocal Agreement presented at the June 13, 2006, Town Council Meeting.

- An engineering firm, Power Services of Wake Forest, North Carolina, had been selected to undertake the study, at a cost of $120,000, with the cost sharing arrangement with the MUUC, in which the Town's cost was estimated at $40,000.

Communications with utility companies regarding Phase I

FP&L:

- Staff had not received the FP&L rules on use of right-of-way for underground utilities, which was affecting the progress of the financial and logistical aspects of the potential project.

Adelphia/Comcast:

- Adelphia requested a written agreement with the Town for the anticipated conversion project, and staff had not yet received a draft of an agreement for staff and attorneys to review, as the Town must know all financial ramifications from the agreement before going to a referendum.

- It was suggested that a formal letter be sent from the Town pursuant to the notice requirements contained within the franchise agreement.

BellSouth:

- Staff had not yet received the agreement from BellSouth as promised by BellSouth Attorney Sharon Liebman on April 11, 2006, which could result in filing a formal complaint to the PSC by the Town.

Mr. Bradford concluded that staff was working to bond the expense for 30 years versus the previous assumption of 20 years, which could reduce the annual cost to the Town property owners compared with the estimated annual costs provided in prior reports, and that Bond Counsel indicated that the bonds would be tax exempt. A Special Town Council meeting was being scheduled concerning Llwyd Ecclestone's screening of utility structures associated with underground service.

B. New Business

1. Governmental Impact Review Panel (GIRP) Report.
[Jack McDonald, Mayor]

Mayor McDonald commended the Panel for doing an excellent job, which required no funding, and for completion of their assignment before the deadline. He thanked William Diamond, Brian McGiver, and Samuel McLendon for their voluntary service, and Assistant Town Manager Sarah Hannah and Deputy Town Clerk Diane Kassover for their important staff support.

Chairman Diamond provided a summary report of the Governmental Impact Review Panel's evaluation of the impact of the numerous municipal, counties, regional commissions, boards, councils and committees that make decisions affecting the Town of Palm Beach. He noted that the report could be found in Assistant Town Manager Hannah's memorandum, dated May 4, 2006, in the backup material.

Chairman Diamond responded to President Pro Tem Kleid that he agreed that there was a need for special consideration requiring representation at the City of Lake Worth meetings in order to be apprised of the Lake Worth beach and Casino project activities, even though it was listed as a low priority.

Chairman Diamond responded to Council Member Brooks' that the Palm Beach International Airport's increased private jet traffic was actually doubling and that they would look into the possibility of moving the private jets to the General Aviation facility in north County.

President Coleman interjected that he served on an airport commission, and that because federal money was used for the construction at the airport, there was no authority to limit or move private jets. He noted that private jets were not a problem because they had a shorter takeoff time and were at a much higher altitude by the time they were over the Island. Sending commercial jets over the Island at the lower altitude was causing the problem.

Responding to Council Member Markin, Mr. Diamond commented that representation by a county commissioner was based on percentage of population, and not on the amount of revenue generated countywide.

Mr. Diamond responded to President Coleman that staff input was needed for representation on various committees, in order to write reports in the correct manner, and report back to the Council. Mr. Diamond replied that it was difficult to answer whether staff representatives would be equally respected as was a citizen volunteer, but that citizens were always highly regarded. He suggested that whoever was sent must come with the imprimatur of the Town Council and/or the Mayor, and could not attend merely as an observer.

Motion made by President Pro Tem Kleid, seconded by Council Member Markin to accept the Report and add it as an Agenda Item for discussion at the June 13, 2006, Town Council Meeting. On roll call, the motion carried unanimously.

Mayor McDonald provided the following information for the Council to consider next month:

The Report centered on transportation traffic issue that was mentioned yesterday by the Police Chief as one of the most important challenges facing the Police Department. The City of West Palm Beach in their city reports stated that undoubtedly traffic was the biggest headache for West Palm Beach residents. That statement was from the largest city in the county that had led the region and the state in downtown redevelopment. He pointed out that the report indicated that the county Traffic Performance Standards Committee had not met since 2003, and had no plans to meet in the future.

The Council should pursue all opportunities to reduce traffic impacts; it may have missed an opportunity with the public school, which resulted in construction of an imposing, plain building and the daily busing in and out of nearly 100% of the students. Moving Building & Zoning out of Town along with its 500 visitor trips a week would result in the release of many Town Hall parking spaces. Encouraging an off island Publix for West Palm Beach was another positive step.

The Building and Zoning Application Review will contain a short-term traffic and parking impact element. Parking space variances and Town serving requirements should be scrutinized. The airport was in an expansion mode to accommodate increased traffic. Should we become an active and aggressive advocate for expansion of the North County Airport to receive some international flights? Should some of our property in West Palm Beach become a construction parking lot for park and van service to Palm Beach?

This week the legislature allocated $2.7 million for Flagler Drive reconfiguration. How would that affect the Town of Palm Beach? The legislature allocated $1.2 million for the Palm Beach International Airport Aviation Capacity Program, and $1.8 million for the U.S. Highway 1, Flagler Drive Waterfront Redevelopment. Some but not all of the issues were addressed in this report and he suggested that consideration be given for discussion next month.

2. Council Member Markin's Letter to Publix Supermarket.
[Susan Markin, Town Council Member]

Council Member Markin provided a background of the letter that was sent addressing concerns about Publix supermarket and she indicated that Publix manager, Nick Abiusi was very cooperative in discussion and in his effort to improve the supermarket.

Publix Manager Nick Abiusi provided a status report listing solutions to the problems that were brought to his attention.

Council Member Markin commented that everyone appreciated the efforts of Mr. Abiusi, and that his letter dated April 12, 2006, was a matter of public record in the backup documentation, which showed that he was doing everything he possibly could to improve the situation.

Responding to President Coleman, Mr. Abiusi stated that Publix was not past their capacity in customer volume, but was very restricted in their product amount. Mr. Abiusi noted that Publix at City Place may move, but because of the upcoming growth, would remain in the downtown area. He stated that he was unable to provide the threshold number of customers needed to open a store, as he had no access to that information.

Mr. Abiusi responded to Mr. Diamond that Florida Power &Light and Corporate Facility Services evaluated the store three weeks ago for a generator, which required ventilation, a permanent mount, and a gas apparatus to operate it. He did not have a final decision, but the delivery of the generators were running two weeks to a month behind.

Mr. Abiusi responded to Council Member Markin that he did not know of a delivery service out of Publix for the elderly, but would keep that dialogue open, as there was a large concern for it on the Island.

3. Letter Dated April 25, 2006, from Ms. Cynthia Martin Regarding Feral Cats. [Peter B. Elwell, Town Manager]

Town Manager Elwell stated that in the backup materials, there were three letters regarding feral cats.

Ms. Cynthia Martin, 220 Orange Grove Road, stated that her pet was chased into a pool by two feral cats and died. The Police Department referred her to PB Cats, who informed her that nothing could be done about the numerous cats that occupy her yard. She said that she contacted the Palm Beach County Animal Care and Control Division who provided her with traps, and that the Animal Care picks them up and hands them over to Ms. Pouncy of PB Cats, and the cycle starts over again.

Responding to Council Member Markin, Ms. Martin stated that she had requested to have the feeding of the cats moved from her location, and Ms. Pouncy said that she would ask the neighbors to change their feeding pattern, but it did not change the cats from being on her property.

Council Member Brooks expressed sympathy to Ms. Martin, and suggested that the Council have a full discussion on this subject at the next meeting, because there were several other residents that had expressed distress regarding the situation.

Beth Pouncy of PB Cats, expressed great sadness of the loss of Ms. Martin's pet, and noted that PB Cats were fulfilling their goal of the reduction of the amount of reproducing cats on the island; cats were removed, spayed, neutered, and returned to the place they were found. Ms. Pouncy conveyed that she had been responsive to Ms. Martin's request, and asked the neighbor's to remove the feeding utensils were used in the driveway contiguous to the Martins', to the other side of the property.

Responding to President Coleman, Ms. Pouncy stated that: after three only years into a ten-year program, it appeared that it needed to be updated, as the old program was not working for the

Town; that there were approximately 300 cats on the island; the reason that the cats were not relocated off the island was because it would create a huge vacuum, and nature would fill the vacuum with rats.

President Coleman suggested relocating some of the cats, not all, off the island and that the Town would assist financially.

Ms. Pouncy responded to Mr. Elwell that the reclaimed cats were waiting introduction to an area in Royal Palm Beach, and would never return to the island.

Mr. Norman Goldblum stated that the Town of Palm Beach needed a law to specify an exact number of animals allowed per home.

Council Member Markin commented that she would like to see the PB Cats' program evaluated.

President Pro Tem Kleid indicated that number of cats could not be diminished if neighbors were feeding them.

Mr. Elwell suggested addressing the issue at tomorrow's Special Town Council meeting, on Wednesday.

President Coleman suggested that collars be required on domestic cats, that the number of animals allowed per home be reduced from 10 to 5, and that the Town's concept of spaying and relocating the cats versus spaying and releasing them needed to be reviewed.

Mr. Leonhardt commented that he did not feed cats anymore, and that he was sorry about Ms. Martin's dog.

It was the consensus of the Town Council to review the Town cat issues at the June 13, 2006, Town Council meeting.

**********The luncheon recess was taken at 1:05 p.m.***********

**** The Town Council Meeting of May 9, 2006, was reconvened at 2:30 p.m.*****

4. Request by Rosarian Academy for Lease to Allow Use of Town-owned Property in West Palm Beach. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford provided a brief history regarding the Lease Agreement dated September 17, 2003, between the Bishop of the Diocese of Palm Beach, on behalf of St. Ann School, and the Town of Palm Beach, for use of Town-owned property in downtown West Palm Beach. The property located at 300, 312 and 320 Sixth Street was used as a temporary location for a physical education program while St. Ann School constructed its new gymnatorium.

Mr. Bradford advised that the Diocese of Palm Beach did not want to extend their lease. Rosarian Academy had advised the Town that they would like to enter into a lease agreement with the Town for the same property, for the same purpose, with the same terms and conditions of the previous lease.

Mr. Bradford explained that St. Ann School was leaving some bleachers, the fencing and some recreational equipment. He noted that the Town wanted to modify the lease to include that Rosarian Academy would have to remove those items, at the time the lease was terminated. The lease agreement, if approved, would run through May 31, 2007, with the exact same terms and conditions of the previous lease with that modification included.

Mr. Bradford informed the Council that Mr. Mark Cook, on behalf of Rosarian Academy, had advised him, earlier today, that Rosarian Academy fully recognized the Town's 30-day right to terminate the lease agreement, at any time.

Council Member Wyett addressed the legal costs to draw up a lease questioning if the $10 per year lease arrangement covered same. He suggested that if it did not cover the Town's costs, the lease fee should be increased to cover them.

In response to Council Member Wyett, Mr. Bradford advised that the $10 per year lease arrangement did not cover the legal costs to draw up a lease.

Mr. Bradford informed the Council that he had been advised that the fence, which was in disrepair on the property, had been fixed last week. The grass was to have been cut last week.

Council Member Brooks noted that the lease would have to be between the Town of Palm Beach and Rosarian Academy's legal name. He explained that it was not owned or operated by the Diocese but was owned and operated by the Adrian Dominican Sisters of Adrian, Michigan.

Mr. Bradford informed the Council that Mr. Cook had apprised him of that when discussions had been initiated.

Council Member Wyett made a motion to approve the Lease Agreement between the Town of Palm Beach and Rosarian Academy to lease Town property at 300, 312, 320 Sixth Street in West Palm Beach, Florida from June 1, 2006 through May 31, 2007. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

5. Town Council Input to the Mayor Regarding His Role in Achieving the Top Priority Townwide Goals for FY07.
[Jack McDonald, Mayor]

Mayor McDonald requested input from the Town Council regarding undergrounding of overhead utilities, which was one of the Council's primary objectives. He referred to the update Mr. Bradford provided earlier on the status of legislation introduced by Senator Atwater. He asked the Council if they wanted to try again next year with different legislation regarding underground utilities?

Mayor McDonald advised that he had recently gone to Washington, D.C. and was going again tomorrow to meet with Congressman Shaw regarding funding requested by the Town for the Sand Transfer Plant and Beach Nourishment. He explained that those funds were in the budget, and the Town was waiting for the Appropriations Committee to approve same.

In response to Mayor McDonald, President Pro Tem Kleid stated that the Town should pursue different legislation next year regarding undergrounding, as it was the best course of action that the Town could take. He noted that the Town needed validation from the State Legislature regarding this issue; advice would be needed from the Town's legislative representatives as to how the legislation should be phrased. He explained that he believed the Town had started off on the wrong track by requesting that an attorney draft the legislation, as an attorney might not have the political savvy of a state legislator.

Mayor McDonald suggested when the Council drafts the legislation, they should prioritize, what they believed were the most important issues.

Mr. Elwell advised that staff had done just that. He suggested that it might help during the process, if staff circulated amongst the Council, what had been communicated to the legislative representatives. The Council might then be able to direct staff by either advising that staff was moving in the right direction, or by providing a different direction for staff to follow.

President Coleman requested that staff speak with their lobbyists, in order to determine the least controversial issues. He believed that might help the Council, from a pragmatic point, define the difference between what they could accomplish, what they would like to accomplish, and that would provide a clear response to Mayor McDonald's question.

Mr. Elwell stated that staff would retransmit that list to the legislative representatives in Tallahassee, and provide a copy to the Council. He advised that after the Town received additional input from Tallahassee, staff would report to the Council again with a recommendation as to what the Council should look for next year.

President Pro Tem Kleid stated that when Mayor McDonald requested the placement of this item on today's agenda, he believed the Mayor would be requesting information from the Council as to how he could assist them in achieving their five priority goals. He noted, with the exception of Code Enforcement, all the other priorities required that the Town continue relationships with outside legislators, etc., and he hoped that the Mayor would continue that as well as forge new relationships to help the Town achieve those priorities.

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

Deputy Town Manager Thomas Bradford stated that at the April 11, 2006, Town Council Meeting, Council Member Markin requested staff provide a report on wireless communication facilities in the Town of Palm Beach. He advised that her request was in response to complaints she had received relative to "dead zones" in Town. He referred to his detailed memorandum to the Mayor and Town Council, dated April 12, 2006, and included in the back-up material, reporting on wireless communication facilities:

- Three approved wireless communication sites in Town, which were legal and documented.
  - Cingular and Nextel have facilities located on Town Hall Rooftop
  - Nextel has facility located at North Fire Station

- Town's Wireless Communication Ordinance:
  - Town has an innovative Ordinance that has been used as a model for most communities throughout the United States. In Florida, the Ordinance has been copied repeatedly by other cities.
  - The Ordinance allows communication sites but limits their proliferation due to the eyesore that could accompany a site.

    - The Ordinance encourages the use of stealth technology in order that the general public does not become offended by the gigantic towers that were seen in other areas.
- The sites on Town property were for permitted uses, which meant that it was not as difficult to acquire a permit than it was if it was a special exception use. Special exception uses were allowed on commercially zoned property and the PUD designation. The Breakers has a PUD designation.

Mr. Bradford commented regarding:

- The Breakers contemplation of allowing facilities on their property to earn income, and improve the internal service in their building.
- The Breakers planned to work with Verizon to place a facility on their property.
- The Town averages about $25,000 a year, per site, in rental fees.
- The Town Council requested, two years ago, staff communicate with each of the known service providers and inform them of Town sites available for wireless communication facilities. Nextel was the only provider to respond.
- About 18 months ago, Verizon upgraded their facilities in the City of Lake Worth and in the City of West Palm Beach, which greatly improved the level of service provided on the Island.
- Cingular was in the process of upgrading their site on the Town Hall rooftop. The upgrade would allow many more calls as well as improved reception and quality.
    - Cingular would face the problem of the structural integrity of some of the roof trusses.
    - Approval by a structural engineer would be required prior to allowing Cingular to locate new facilities to that site.
    - Cingular might decide not to move forward with the project until such time Town Hall was renovated, because the structures might need to be relocated while the truss system was repaired.

Mr. Bradford acknowledged that there were dead zones in Town and that there were ways and means that could be used to formally identify those. The question the Town needed to ask, once the time, energy, and money had been expended, was what would the Town do with that information? The problem basically was that the Federal Communications Commission (FCC) regulated and provided licenses to service providers. The only power the Town had, that he was aware of, was called "jawboning". The Town could talk and urge a provider over and over to fix a problem, but the bottom line was that they did not have to fix that problem. The Town could contact the FCC to report the providers' shortcomings, however, the power to actually control a provider regarding the quality of service would lie elsewhere.

Mayor McDonald commented that the Town discovered, during Hurricane Wilma, that once the Town's ability to tax BellSouth had been removed, the Town was unable to get any response from BellSouth during the storm, because they no longer felt the need to maintain a public relations relationship with the Town. He stated that since cell phone service was so bad in Town, providers should be offered sites on Town property, and they should not be charged. He suggested that potential sites, in areas other than mid-Town, such as the north or south ends, should be considered. The service was more important than the revenue. Mayor McDonald also noted that he did not think that a special exception use as opposed to a permitted use was a detriment, because it meant that they had to show they met the requirements of the special exception, which he did not believe would be difficult to do.

Council Member Wyett stated that there were significant dead zones, particularly with Verizon; he did not believe the Town should give sites away since there were only a few sites left in Town. He suggested that the Town allow more sites on private property.

Council Member Markin discussed the dead zones and suggested revisiting vendors in order to address ways the Town could improve service. She advised that The Breakers had a perfect set-up to place towers which would not be visible and would service a good part of the Town.

President Pro Tem Kleid stated, for the record, that he was disappointed that the gentleman who had earlier complained about wireless service had chosen to leave the meeting. He advised that there were valuable facts that were being addressed, good questions and good follow-ups. He noted that he too shared President Coleman's thoughts that people could stand up and say what they wanted, but when they made bold statements, and the Council informs them that they would be discussing that issue shortly, he believed, it was a shame that they were not present to hear the discussion.

In response to Council Member Brooks, Mr. Bradford advised that most complaints regarding cellular service were received from the mid-Town and the north end areas of the Island. He stated that the top two providers were Verizon and Cingular.

Council Member Brooks stated that Council Member Markin's point on The Breakers was excellent. He questioned why The Breakers was moving slowly and wondered what the reason for that was?

Mr. Bradford stated that The Breakers was cautious and wanted to do it right and without mistakes. The Breakers had requested all the information on Town Ordinances and so forth.

Council Member Brooks advised that it was not unusual for private institutions to rent space out. He stated that due to the height of The Breakers, a site located there should alleviate a lot of the dead zone problems.

In response to Council Member Brooks, Mr. Bradford advised that he had not discussed any timetable with The Breakers, but would contact them to get an update.

President Coleman suggested that the issue should be divided into two parts: that which was under Town control and that which was for the Town to encourage. He noted that the Town had under control what was under their roof regarding Cingular; the Town should do whatever was structurally needed in order that Cingular could update their technology.

Mr. Elwell advised that President Coleman's suggestion was not possible until the Planning, Zoning and Building Department had been relocated. He explained what would physically be required to strengthen the area above the Council Chambers.

- Vacate the first floor;
- The appropriate equipment brought in to support the roof;
- Placement of shoring to handle the weight of the roof.

Mr. Elwell that the Council Chambers and the office space beneath could not be used for several months while the repairs were being made to the roof. He noted that all meetings held in the Chambers would be relocated. He advised that once that process was completed, the shoring would be removed, and the renovation could proceed.

Director of Public Works Paul Brazil advised that when the shoring occurred, and the renovation proceeded on the roof structure, only contractors could be in that area. He advised that it would take about four months to complete.

Council Member Markin suggested placing a tower at the new Central Fire Station instead of the Town Hall roof.

Mr. Bradford responded that he spoke with a site planner who had advised him that the Central Fire Station would be ideal as a site, and noted that the Fire-Rescue building had not been completed two years ago, when letters had been sent to the various providers notifying them of site availability.

Mr. Elwell advised the following:

- Staff would send another letter out to providers, same as the one sent out several years ago;
- Staff would follow-up with The Breakers to get an update on their plans relative to

placement of wireless towers;

- Staff would provide the Town Council with a written report after both avenues had been explored.

7. Review of Processes for Addressing Violations of the Town Code and Violations of Conditions of Regulatory Approval(s).
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Department Director Veronica Close referred to her detailed memorandum to the Mayor and Town Council, dated May 3, 2006, and included in the back-up material, regarding procedures in adjudication of code violations and violations to other types of Town documents.

Ms. Close discussed the four types of violations and procedures for dealing with those violations:

1. Code Provisions;
2. Special Exception, Site Plan Review, and Variance Conditions of Approval;
3. Declaration of Use Agreements;
4. Restrictive Covenants and Architectural Commission and Landmark Commission approvals.

In response to Council Member Wyett, Ms. Close advised that the maximum fine Code Enforcement could render was $250 for the first violation, and up to $500 per violation per day, for repeat violations. She noted that there was another provision in the code that allowed up to a $5,000 fine for a violation that was either irreparable or irreversible.

Council Member Wyett referred to two code violation situations relative to Donald Trump, one regarding the Gosman property hedges, and the other regarding the Elton John event at Mar-a-Lago.

In response to Council Member Wyett, Ms. Close advised that the Council, had instituted their own dollar amount for a fine in an agreement with the Brazilian Court Hotel, in the case that agreement was violated. She stated that was one way to deal with violations but advised that there were remedies other than just a fine.

In response to Council Member Wyett, President Coleman advised that tomorrow at the Special Town Council Meeting, the Council would review the code violation relating to the Gosman property.

President Coleman stated that he was not sure why the Town used the process of a warning, a notice and a hearing.

In response to President Coleman, Ms. Close advised that repeat violators have to be given a notice of a meeting. In the case of a normal violation, the State Statute required the violator be given an opportunity to correct the violation.

In response to President Coleman, Ms. Close advised that warnings were issued, because it was staff's experience, that not every offender violates the code because of intent or malice or things of that nature. She explained that many people were not familiar with the code, and staff did their best to notify them. She advised that when a violator received a warning, they did not have much time to respond.

President Coleman asked at what point did the Town request that people step up to the plate, know the rules and be more responsive?

Ms. Close advised that staff was working with Code Enforcement Officers to impress on them how important certain violations were; and in fact, staff was in the process of establishing priorities. She referred to President Coleman's earlier example of the issuance of speeding tickets stating that there were times when a warning would be given instead of a ticket. The Police Officer would use his or her discretion to determine when a violator deserved a warning or warranted a ticket.

President Coleman stated that he advocated that the Town eliminate warnings and use a Notice System, which was what State Statute required. He noted that people should be invited to be responsible.

President Pro Tem Kleid stated that he would argue the other side of the coin. He advised that one of the things he found was that Palm Beach was looked upon as a friendly neighborhood community. He believed that staff wanted to give the opportunity to correct violations, and hopefully, that would be the direction taken. He thought it was all a part of what the Town was perceived to be, and what the officials of the Town were perceived to be, in regard to how these problems were handled.

8. Ten-Year Program to Upgrade Storm Water Pump Stations and Collection Pipes– Review of Implementation to Date and Proposed Schedule for the Remainder of the Program.
[H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil referred to his memorandum to the Mayor and Town Council, dated April 28, 2006, and included in the back-up material, to provide an update on the Town Storm Drainage Plan. He quoted that the purpose of the Town's 10-Year Storm Drainage Program was to:

> "provide a 100-year storm protection for homes at the first floor elevation 5.0' and above in Basin D-4 (Miraflores), D-8 (Country Club Road), and D-10 (Via Marila). Also, provide first floor protection for homes at elevations 5.5' in D-2 (Palmo Way) and 6.0' in D-9 (Mediterranean Road)."

Mr. Brazil added that the cost was originally estimated to be $2.7. million. It was refined shortly after that to $2.37 million. He advised that they were five years through the program with some adjustments being made, with Council's permission, and other adjustments at a staff level, basically, value engineering the projects. For the first five years, they were generally on schedule and slightly below budget. He commented that he was very proud of Public Work's Engineering Department.

Mr. Brazil then commented on the next five years of the project. He noted that construction costs were increasing; and unfortunately, the estimates given to the Council five years ago had been impacted by many things such as the hurricanes. He noted that due to the hurricanes, there was a shortage of contractors, material and there had been an increase in fuel costs; there were also material shortages such as with concrete.

Mr. Brazil discussed the recommended modifications to the program. He explained that staff believed these modifications would leave them with the same design level of service the Town originally wanted. The modifications were a little more creative, allowing staff to stay relatively close to their original budget and within the project schedule.

Mr. Brazil stated that staff recommended the Council approve the amended 10-year Storm Drainage Plan as outlined in the attached memorandum from James Bowser, Town Engineer, dated April 27, 2006. He advised that staff would continue to do value engineering work and expected that there would be additional, relatively small, modifications.

Mr. Brazil noted that staff would approach the Council, in the near future, with a Capital Improvement Program, which would include approximately $375,000 of additional funding for the next five years, above what had been proposed. He noted that this would compensate for what the anticipated increase in construction costs would be.

Mr. Elwell advised that he supported and recommended approval of Mr. Brazil's recommendation. He commented on the teamwork of the Public Works Department, noting that staff, in direct response to the concerns raised by residents and the Council, had found a creative and better way to implement the program. He advised that staff, on their own initiative, tried and found where the Town could save a substantial amount of money since the initial ten-year estimate did not include inflation. Because of the substantial reworking of the program, the end result would be the same level of service to the residents with a lot less trouble.

Council Member Wyett made a motion for the Town Council to endorse the amended 10-Year Storm Drainage Plan. The motion was seconded by Council Member Brooks.

Council Member Brooks addressed Mr. Brazil stating that value engineering was not an easy task and the Council did see the benefits.

Council Member Markin stated that as a north end resident, she, along with the other north end residents, appreciated all the work staff had done. She commended Mr. Brazil and his team for their efforts.

In response to Council Member Markin, Mr. Brazil advised that all pumps were completely automatic with back-up systems to that automatic system. He advised that the Town had back-up systems in place for emergency power, emergency water, as well as a telemetry system to notify staff when the pumps were running, when it was raining, and if it exceeded the design level of rain. The telemetry system would notify staff if any part in the control building had malfunctioned.

Mr. Elwell added that there was a human element to the telemetry system relative to exceeding a certain threshold of rain. The Town would receive an alarm notifying staff that system was not able to pump all of the falling water, and that was when the Town called out staff.

In response to Council Member Markin, Mr. Brazil advised that the Town was procedurally as sound as they were mechanically.

Council Member Markin stated that somehow the Town needed to inform the residents of this ten-year program, which was expensive as well as time intensive. She advised that she did not think the majority of residents knew all that had gone into the project.

On roll call, the motion carried unanimously.

9. Evaluation of the Performance of Town Manager Peter B. Elwell.

   a. Potential Salary Adjustment Based on Evaluation of Performance for 2005-2006.

Town Manager Elwell referred to his memorandum of May 4, 2006, provided in the meeting backup, containing three annual performance goals and related objectives for his performance measurement during 2006-2007 as follows:

1. Achieve the Mayor and Town Council's Five Top Priority Goals for FY07;
2. Continue to Improve Communications with the Public; and
3. Address the Rising Cost of Employee Benefits in Town Budgets.

Council Member Wyett commented that Mr. Elwell's performance during the past year was beyond the expectations of the Council. He noted, however, that in FY07, more control over the budget was necessary, as the budget had doubled over the last 11 years.

President Coleman commended Mr. Elwell on the exceptional job he had done, and that the largest component of the budget was staffing, which was the one item that the Town could control.

President Pro Tem Kleid noted that although the Town Council evaluated Mr. Elwell separately, all agreed on his strong points and areas for improvement.

Council Member Markin commended Mr. Elwell for a job well done and concurred with the Council regarding the budgetary issues and staffing. She stated that the new computer system and its related upgrades would provide a prime opportunity for efficiency, by combining staffing and technology.

Council Member Brooks noted that the consistency of the Town Council's evaluations of Mr. Elwell was amazing, and thanked Mr. Elwell, and his staff. He recommended an increase of 4% to 6% of Mr. Elwell's base salary. President Coleman suggested a 5% increase.

Motion made by President Pro Tem Kleid, seconded by Council Member Brooks to approve a 5% increase of Town Manager Elwell's base salary. On roll call, the motion carried unanimously.

b. Adoption of Annual Performance Goals for 2006-2007.

Town Manager Elwell noted that there were additions to the Goals and Objectives for 2006-2007, submitted by President Pro Tem Kleid, Council Member Brooks, and himself. He recommended approval, unless any of the Council Members had a concern about any of the additions.

President Pro Tem Kleid noted that the additional objectives he added were to improve communications with local county and state agencies, and elected officials on matters that impacted the Town.

Council Member Brooks commented that the additional item he had proposed included a proactive plan to lessen the impact on the FY07 budgets for new employees only, and to address the issue of the employees' accumulation of sick leave and vacation leave.

Mr. Elwell noted that staff had been working on a plan to address the issue, for the June Town Council meeting, related to reducing the Town's long-term liability for the payment of accumulated leaves.

Council Member Brooks concluded that his final proposal was to research the possibility of eliminating the Town's co-payment percentage for medical benefits to retirees more than 65 years of age, in light of Medicare and Medicare Part D.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid to approve the Annual Performance Goals for the Town Manager with the specified additions. On roll call, the motion carried unanimously.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 2-06 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Town Code of Ordinances at Subdivision III, Firefighters, Section 82-95, Amount of Pension, and Subdivision IV, Police Officers, Section 82-115, Amount of Pension, to Increase the Pension Multiplier from 3.25% to 3.5% Retrospectively for Payments Due Firefighters and Police Officers Who Were Actively Employed on and after October 1, 2005; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 2-06, by title, as printed above.

Motion made by Council Member Brooks, seconded by Council Member Wyett, to adopt Ordinance No. 2-06. On roll call, the motion carried unanimously.

B. First Reading

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

Town Manager Elwell stated for the record that the first and second Reading of the budget amendment ordinance reflecting the increased costs and revenues related to the hurricane recovery after Hurricane Wilma, would be brought forward in the July, August, or September meetings. The previously approved items, related to the Town upgrades for beautification within the Florida Department of Transportation (FDOT) projects that were forthcoming on A1A, were incorporated into this budget amendment and were separate from the larger budget amendment that would be addressed with the hurricane expenses, later in the year.

Town Attorney Randolph read Ordinance No. 3-06, by title, as printed above.

Motion made by Council Member Wyett, seconded by President Pro Tem Kleid, to approve Ordinance No. 3-06, on first reading. On roll call, the motion carried unanimously.

XII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #1-2006 WITH SITE PLAN REVIEW AND VARIANCES The application of Richard Kurtz relative to property described as lengthy legal description on file; commonly known as Lots 5 & 6, Ocean Lane; located in the R-B Zoning District. Site Plan Review with Special Exception to allow construction of a twostory, single-family residence and accessory structure on two (2) platted lots, which in combination are 91.87 feet in width in lieu of the 100 feet minimum required; variances for a point of measurement for the height, overall height and cubic content ratio for a new single-family residence to be from 18 feet National Geodetic Vertical Datum - mean sea level (NGVD), in lieu of 12.22 feet NGVD required. *Deferred from the April 11, 2006, Town Council Meeting.* **Withdrawn per Letter Dated April 25, 2006, from G. E. Young.**

Under Item VII. "Approval of Agenda" Special Exception #1-2006 With Site Plan Review and Variances was withdrawn from the Agenda.

2. New Business- Less Than 15 Minutes

a. SITE PLAN REVIEW #6-2006 WITH SPECIAL EXCEPTION AND VARIANCE The application of Hermes relative to property described as Lots 5-16, Inclusive, Block 18, Royal Park; commonly known as 240 Worth Avenue; located in the C-WA Zoning District. Request for a modification to a previously approved Site Plan Review to enclose a vestibule which will increase the first floor square footage by 51 square feet; request for a Special Exception to allow an existing apparel store ("Hermes") to operate in a new location (240 Worth Avenue) with 4,043 sq. ft. of gross leasable area. Special Exception to allow commercial space in excess of 2,000 sq. ft. of gross leasable area, and a finding that the proposed use is town serving, and a variance to eliminate one additional off-street parking space required for the second floor change in use from office to retail office/storage and the 51 square foot enclosure of the first floor vestibule.

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

Attorney Ziska provided an overview of the applicant's request and presented elevations of existing and proposed plans.

Zoning Administrator Castro noted that the Fire Marshall required that the applicant provide two means of egress from the second floor and fire sprinklers throughout the building. Mr. Castro indicated that the applicant needed to demonstrate the hardship related to the variance. He added that in the southeast portion of the proposed store was an open porch area that would be enclosed, incorporating an elevator to the second floor. The second floor conversion from residential to partial storage, retail, and office-use required one parking space.

Motion made by Council Member Wyett, seconded by Council Member Brooks to approve Site Plan Review #6-2006 With Special Exception and Variance. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

   None

4. New Business- More Than 15 Minutes

   a. SPECIAL EXCEPTION #2-2006 The application of Via Mizner Associates Limited Partnership/Ian Kean relative to property described as lengthy legal description on file; commonly known as 38, 42, 45 46 and 48 Via Mizner; located in the C-WA Zoning District. To allow residential tenancy above the first floor. The request is to convert two residential units (R-2 S and R-3 S), and three commercial units (C-217 S, C-218 S, and C-219 S) into a single residence containing approximately 5,205 square feet (south residence), and to convert one commercial unit (C-216) on the second floor into a second residence containing approximately 2,305 square feet (north residence). A small vestibule and elevator shaft will be built within first floor commercial unit C-120S to serve the south residence, removing an additional 115 square feet from that commercial unit.

Ex-parte communication was declared by President Pro Tem Kleid, Council Member Wyett, and Council Member Brooks with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, provided an overview of the Special Exception request of the Via Mizner property.

Zoning Administrator Castro noted that the reduction in units resulted in a reduction in the proposed parking as opposed to the existing parking, and if the applicant was proposing to use the parking that they would be recouping from the conversion area to seating on the first floor, further consideration was needed, and may require two separate applications.

Attorney Kolins responded that the additional application on the agenda, which had been deferred, concerned the expansion of an existing takeout pizza restaurant by converting adjacent existing space to restaurant space within the condominium. In Via Mizner, reallocating parking spaces from one use to another within the condominium had been done previously, as a restaurant was required to have an equal amount of parking spaces for the number of seats.

Motion made by Council Member Wyett to approve Special Exception #2-2006 with the condition that the premises may not be used commercially for a private club.

Council Member Markin expressed concern about setting a precedent for others who may do similarly as the applicant, and the Town losing its entire purpose of the Worth Avenue commercial district.

Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.

Attorney Kolins noted for the record that the commercial spaces were office spaces, and not retail spaces.

Zoning Administrator Castro noted that the applicant would be required to "sprinkler" the building.

b. SPECIAL EXCEPTION #3-2006 The application of Via Mizner Associates Limited Partnership/Ian Kean relative to property described as lengthy legal description on file; commonly known as 8-14 Via Mizner; located in the C-WA Zoning District. To allow a special exception to convert a retail specialty foods store with takeout (C-108 S and C-109 S) and an existing adjacent Art Gallery space (C-107 S and C-106 S) into a restaurant with 27 seats, the area totaling 1,899 square feet.

Under Item VII. "Approval of Agenda" Special Exception #3-2006 was deferred to June 13, 2006, Town Council meeting.

5. Other

a. Consideration of Requiring a Supermajority (At Least 4 Affirmative Votes) to Approve a Variance.

[Denis P. Coleman, Town Council President]

Council Member Wyett indicated that he was looking for a vehicle to allow the Town Council to pass an affirmative variance outside the normal hardship, making it possible for all members to legally vote yes or no by having a supermajority rule in order to override a normal variance procedure.

Council Member Brooks noted that he was uncomfortable with the supermajority vote, as it was too draconian. He added that the existing process worked well with a simple majority vote, and that eventually the Council would discuss the question of moving variances and special exceptions to some other body, with the Town Council remaining as the court of appeals.

President Pro Tem Kleid noted that he was disturbed by the legal hardship test and was hoping to acquire some criteria, making it more difficult to obtain hardship variances. He said he agreed with Council Member Brooks that the supermajority was too draconian.

Public Comment:

Attorney Kolins commented that the Council granted too many variances and that there was no zoning code that would be thorough enough to deal with each and every physical situation on the ground. He said that there should only be two criteria to consider granting variances that would help a citizen: (1) would that variance be at odds with the Town itself, or the public policy of the Town; (2) would the variance be at odds with the neighborhood or more immediate area where the land sits where the variance was being requested.

Council Member Markin commented that the requirement of a supermajority vote would be a deterrent of variances and that she agreed with the concept.

It was the consensus of the Town Council to add the item - Consideration of Requiring a Supermajority (At Least 4 Affirmative Votes) to Approve a Variance - to the list of study items for the zoning season.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the regular Town Council Meeting of May 9, 2006, was adjourned at 4:35 p.m.

APPROVED:

Denis P. Coleman
President

ATTESTED:

Susan A. Eichhorn
Town Clerk