TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, MAY 8, 2007

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Tuesday, May 8, 2007, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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 Stirling Clarke Halversen, on behalf of Town Attorney John C. Randolph
Jay Boodheshwar - Recreation Director
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Director of Planning, Zoning and Building
Paul Castro - Zoning Administrator
Tim Frank - Planning Administrator
Fred Hess - Police Sargent
Charles Langley - Public Works Assistant Director
Tim Pompos - Fire Marshall
Michael Reiter - Police Chief
Susan Eichhorn - Town Clerk

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

None

IV. COMMENTS OF MAYOR JACK MCDONALD

None

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

None

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

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

Eric Nord Gilbertson, 151 Chilean Avenue commented on the property tax assessment value method used in the State of Florida.

Jere Zenko, 232 Tangier Avenue, commented on the following:

- Property Tax Refund received from property owned up North.
- Policy of recusal; policy of noting conflicts of interests.
- Second reading of ordinances provided time for the Town Council to study the subject.
- Undergrounding utility lines.
- Flip tax as a way to realize additional revenue.
- Opposition to one-way conversion of Sunrise/Sunset Avenues.

Peter Schneiderman, 272 Sandpiper Drive, commented in opposition to the undergrounding of utility lines. He discussed the cost and work involved in undergrounding. He commented as well on the Town Code as it related to generators and suggested that the Town ease the code.

Deputy Town Manager Bradford responded to Mr. Schneiderman's concerns relative to undergrounding as follows:

- Staff estimated that only about 10% of the properties in Town would require the provision of an easement in order to serve the homes.
- The right-of-way would be used as the pathway, wherever possible, for the placement of transformers and switch cabinets.
- A minority of properties in Town would encounter rock, and he reviewed how that would be dealt with.
- Transformers were dependent upon the demand for power and some homes would require their own transformer, while other locations would have one transformer for every four to six homes. The Town did not know, until it was into the design of the project, how many transformers would be placed on any given street. The same was true of switch cabinets.
- The transformers and switch cabinets would be kept to a minium, because once the system was turned over to FPL, they would have to maintain it. It was in FPL's interest and the Town's interest to keep that number to an absolute minimum.

VII. APPROVAL OF AGENDA

WITHDREW Item XII.C.3.c., Variance #9-2007, application of Malcolm and Linda Glazer, relative to property at 1482 South Ocean Boulevard.

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

VIII. CONSENT AGENDA

None

IX. PUBLIC HEARINGS

A. RESOLUTION NO. 22-07 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Abandoning a Certain Private Right-of-way and Utility Easements Described in Plat Book 37, Page 183, in the Public Records of Palm Beach County, Florida, Commonly Known as Lots 1 and 2, via Pelicano, and Rededicating Utility Easements, in the Town of Palm Beach; 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]

Director of Public Works Paul Brazil referred to his memorandum to the Mayor and Town Council dated April 26, 2007, and included in the backup material, to discuss the request of Via Pelicano Trust, 220 Via Pelicano, to abandon certain easements and rededicate others. He noted that staff recommended approval with conditions of Resolution No. 22-07.

Public Comment:

Rosa Durando, Conservation Chair and Board Member of the Audubon Society of the Everglades, stated for the record, that the Audubon Society continued to be very protective of the mangroves on what was known as the Blossom Property; and commented on the Audubon Society's ability to gain access to the property for cleanup.

In response to Ms. Durando, Mr. Brazil advised that Palm Beach County did have an annual cleanup, and they approached these properties from the Intracoastal waterway. He explained that he could not grant the Audubon Society access to cross over private property.

President Kleid advised Ms. Durando that the Audubon Society would have to contact the owner of that property directly.

In response to Council Member Markin, Mr. Brazil commented as follows:

- Presently, there were two lots located there. It was his understanding that the applicant was going to unify the two and that was the reason conditions were added to the recommendation for approval of this Resolution.

- The Audubon Society did have the right to access the Audubon site, but the Town could not grant them access through private property. It was his understanding that there had been a casual agreement with the previous owner, which the Audubon Society needed to reestablish, or approach the property from the Intracoastal.

Mr. Elwell explained that the Audubon Society owned an adjacent parcel, which provided a means of access from land. He advised that the official position of the Audubon Society of the Everglades was that they had no objection to this change. He advised that protection of the mangroves was not the issue, and the realignment of the easements for this property to be used as one property, did not change the protections that were on the plat.

Town Attorney Stirling Clarke Halversen read Resolution No. 22-07, by title, as printed above.

Motion made by President Pro Tem Coleman to adopt Resolution No. 22-07, with the following conditions:

- **The property owner will pay all fees related to the implementation of the abandonment, including, but not limited to, recording fees; and**
- **The owner will enter into a unity of title agreement, acceptable to the Planning, Zoning, and Building Department, that will not allow the property owner to sever those two properties into two buildable lots, in the future, unless access was provided to Lot 2.**
- **Additionally, the Unity of Title would require that the severance could only occur if both lots independently would be in compliance with the Town's Comprehensive Plan and lot, yard and bulk requirements in Chapter 134, Zoning, of the Code of Ordinances.**
- **The property owner shall relocate the fire hydrant from the cul-de-sac to a location approved by the Fire Marshall.**

The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

X. REGULAR AGENDA

A. Old Business

1. Status Report Regarding Burial of Overhead Utility Lines. [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Thomas Bradford referred to his memorandum to the Mayor and Town Council dated April 27, 2007, and included in the backup material, to provide a status report regarding burial of overhead utility lines.

Mr. Bradford advised that the Town should receive a 25% credit from Florida Power & Light (FPL) if the Town drew up and executed a master UG contract that encompassed all phases of work with FPL before October 4, 2008. He believed that the 25% credit was sufficient for the Town to move forward with a referendum on February 5, 2008. He noted that the following items needed to be considered:

- To what degree if any, did the Town want to secure credits with other utilities?
- If the Town Council wanted to proceed in that direction, should the Town do so unilaterally or proceed with the Municipal Underground Utilities Consortium (MUUC)? The MUUC could slow the Town down, but would save the Town money.
- Did the Town Council want to pursue the referendum as scheduled on February 5, 2008?

President Pro Tem Coleman stated that he was in favor of the referendum but was concerned that if it was held in February, and was not approved, the Town would not have another opportunity to hold a second referendum. He suggested that the Town accelerate the referendum to December in order to provide the Town time to schedule a second vote in March or April if it failed.

Mr. Bradford advised that rescheduling the referendum would require amending the dollar amount to reduce same in the Resolution; the Town Council would then have to adopt the Resolution; then 30 days after the adoption of the Resolution, the ballot language would have to be provided to the Supervisor of Elections.

President Pro Tem Coleman reiterated that the Town should hold a December referendum as a fail safe, and because the FPL credit expired in October 2008. He suggested that it would be best for the Town to proceed with the MUUC rather than proceed individually.

In response to President Kleid, Mr. Bradford advised that the Town would remain on track if it was decided to hold a referendum in December. He noted that other than the public relations aspect of the referendum, the Town needed only to redo the project management time line.

Mr. Elwell advised that the additional cost to the Town to hold a December referendum would be approximately $10,000.

Council Member Brooks noted that he was not opposed to a December referendum and commented further as follows:

- Time line required to have the contract signed before the October 8, 2008 deadline.
- The Town should proceed with the MUUC.
- The Town submit to the Public Safety Commission (PSC) additional petitions seeking credit from other utilities.

In response to Ms. Coniglio, Mr. Bradford stated that the monies at stake relative to BellSouth and Cable TV were minimal compared to the money at stake with FPL. He noted that if those credits were received, it would be a plus. Staff would go forward with the numbers they had today; and if the referendum was approved and more savings were secured by the Town down the line, less money would be borrowed than authorized by the voters.

Council Member Markin commented on the following concerns she had:

- Impact of proposed tax reductions.
- The Town's bond rating.
- The public speaker today represented the mind set and questions that existed among many of the Town residents.
  - Concerned with education of residents.
  - Concerned that if the referendum was scheduled for December, the education of residents would take place in the summer when fewer people were in Town; and that many residents did not return before December.
- The Town had not yet conducted a public relations program for this project.
- Concerned with funding, ongoing costs, increasing costs, and escalating costs.

- The question on the credit was if it continued to go with the length and duration of the project; was it always 25% even though the cost of the project would continue to escalate every year? *[Mr. Bradford responded yes and that was in the contract.]*

Discussion ensued regarding the scheduling of the referendum as it related to educating the residents.

Mr. Elwell explained that there were different aspects related to the bonding issue.

- The relative uncertainty of what was coming out of Tallahassee regarding property tax reform.
- The Town had committed to a referendum; and it would be a General Obligation Bond rather than a Revenue Bond, which meant a separate millage rate on future tax bills, if approved by the voters. It would be separate from the operating millage of the Town.
- There could be an impact on the Town of Palm Beach if it was constrained in appropriating money for Town operations. The Town's very strong property tax base would become less of an advantage to the Town and its bond rating.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, directing staff to work with the Municipal Underground Utility Consortium (MUUC) to pursue additional credits for underground conversion costs from all utility providers. On roll call, the motion carried unanimously.

Motion made by President Pro Tem Coleman to accelerate the referendum to December 2007.

Alec Flamm, 2000 South Ocean Boulevard, on behalf of the Palm Beach Civic Association, commented that the Town was coordinating public relations efforts with the Palm Beach Civic Association. The Civic Association approved an advocacy education program on this subject in the amount of $50,000. He commented that the Civic Association was uncomfortable holding the referendum in December and believed the education aspect of this issue would be more effective if the vote took place in February.

In response to Mr. Flamm, Mr. Bradford advised that, as it stood today, retroactivity was off the table, but it did not preclude the Town from asking for it when they moved back into the process to justify the extra credits. He noted that it was possible, but the Town would have to go through the process.

President Pro Tem Coleman amended his motion to accelerate the referendum to the beginning of January 2008, to allow the Town time to hold a second referendum if the first was turned down by the electorate.

In response to Council Member Brooks, Mr. Coleman reiterated that his concern was if the referendum failed on February 5th, that he was trying to buy insurance for the Town to be able to hold a second referendum.

Mr. Elwell advised that a strategic decision on the part of the Town Council was needed to determine which approach should be taken. The Town Council could direct staff to move forward simultaneously toward the primary referendum on February 5th, and a second referendum held before the outside deadline, sometime in the first or second week of April. He stated staff could review same and report back next month.

Motion made by Council Member Markin to approve holding the referendum on February 5, 2008, as planned.

In response to Council Member Markin's motion, President Kleid advised that there was a motion on the floor made by President Pro Tem Coleman to accelerate the referendum to the beginning of January 2008, to allow the Town time to hold a second referendum if the first was turned down by the electorate, but there was no second.

Jere Zenko, 232 Tangier Avenue, suggested holding them both on the same day to provide the residents with an either/or option.

President Kleid reiterated that there was a motion on the floor to hold the referendum in January and asked for a second to that motion. **The motion died for lack of a second.**

The motion made by Council Member Markin to hold the referendum on February 5, 2008 as planned, was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

2. Retention of a Planning Consultant for the Royal Poinciana Way Area Planning Study.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Veronica Close referred to her memorandum to the Mayor and Town Council dated April 26, 2007, and included in the backup material, to provide a brief history and update on the retention of a planning consultant for the Royal Poinciana Way Area Planning Study. She also referred to her memorandum dated May 4, 2007, and included in the backup material, to review the recommendations made by the Planning and Zoning Commission (PZC).

The recommendations made by PZC to the Town Council were to direct staff as follows:

- Staff to solicit, within one week of this Town Council Meeting, Requests for Proposals (RFP) from the five (5) respondents to the Town's request for a letter of interest as a planning consultant, requiring a response back one week prior to the June Town Council Meeting.
- Require the scope of services be limited to a land use study.
- Appoint the Planning and Zoning Commission as the Selection Committee, and directing them to provide the Town Council their recommendations at the June Town Council Meeting.
- Requested the Town Council review the ordinance regarding attendance of PZC members and consider waiving the provisions regarding absences at specially called meetings for those members who were unable to attend.

Ms. Close advised that staff considered the recommendations and input of PZC and addressed the issue of limiting the study to a land use study to include economic and market considerations as well as the use of public spaces. The Town Council might also consider including lot, yard, and bulk requirements, concurrency as well as transportation.

Ms. Close advised that staff was not in favor of just an architectural study. The Town had a very capable Architectural Commission. Staff did not envision this as an architectural study, because they did not believe it could be determined what land use one wanted simply by looking at the architecture of a street.

Ms. Close reviewed the following staff recommendations:

- Appoint the Treasure Coast Regional Planning Council to conduct the study.

- Alternatively, if the Town Council wanted to proceed with a national consulting firm:

    - Direct staff to solicit Requests for Proposals from five (5) of the seven respondents with a response date of June 8th.
    - Appoint a Selection Committee composed of the following persons:

- The President of the Town Council or his designee.
- The Chairman of the PZC or his designee.
- The Town Manager or his designee.
- The Director of PZ&B or her designee.

- Include in the scope of services, land use, traffic and parking, and the other factors that speak to the eventual use and interrelationship in the Royal Poinciana Area including public ways, transportation, the bridge, parks as well as land use.

- Direct Selection Committee to review the proposals and prepare a shortlist, followed by interviews of those consultants on the list.

- Direct the Selection Committee to provide the Town Council with its recommendations at the Town Council's July meeting.

- Direct staff to negotiate a contract with a budget amount for the Town Council's approval at a subsequent meeting in July or at its next regular meeting.

President Kleid suggested holding oral presentations at the Planning and Zoning Commission Meeting on June 14, 2007.

Ms. Close responded that it was usually a two-step process: documents submitted were reviewed and determinations were made; and then the finalists were invited back. It would be uncommon to skip the initial process, and it would not be staff's recommendation.

Town Manager Elwell advised that Ms. Close had accurately described the advantages of the two-step process. He noted that if the Town Council preferred to accelerate the process, the RFP could include that respondents should be prepared to participate in interviews at the Planning and Zoning Commission Meeting on June 14th. He advised that was not an optimum choice, but it could be done that way.

President Pro Tem Coleman urged that the process be slowed down, and the Town wait sixty days, at which time, they should have information regarding property tax reform legislation.

In response to Council Member Brooks, Ms. Close advised that the RFP deadline would be at least one week prior to the Town Council Meeting, which was the reason for setting a June 14th date. She explained that the RFP would be submitted to the five respondents only, rather than across the board.

Ms. Close commented on President Pro Tem Coleman's suggestion to move slowly noting that PZC had mentioned the possibility of conducting a more limited study in-house.

President Pro Tem Coleman responded that he wanted to adjourn the conversation today until the Town knew where they stood relative to the property tax question. He advised that perhaps when the Town knew where they stood, a limited in-house study would be a good alternative.

Mr. Elwell commented as follows:

- Clarified Mr. Coleman's suggestion that the Town Council not move forward with either of the two options presented today, because of the uncertainty of property tax reform legislation.

- The Town did need to know where they stood on the question of property tax reform, but he believed that if the Town Council completely postponed this and revisited it later in the summer, the Town would be playing an enormous amount of catch up in trying to do a proper job during the next zoning season.

- Suggested that the Town Council authorize the slower track RFP process today, which would express the Town's desire to move forward with it.

- If the Town Council authorized staff to move forward and contacted these five entities to submit proposals and continue on with the screening process, the Town Council could position themselves at the July Town Council Meeting, if the funding was available, and if it was a prudent expense to make, to select someone and move forward. The Town would then be right on schedule.

- If it was determined, because of the property tax reform or any other reason, the Town was not prepared to move forward, at that point, they had absolute authority to stop the process.

President Kleid stated that by going out for the RFP, the Town had not committed themselves but were just moving along the track. If the process was delayed and the Town tried to move it on a fast track, they would miss the entire zoning season. He believed they had to press forward at this time.

Council Member Brooks stated that he was in favor of looking at five nationally recognized experts.

Motion made by Council Member Brooks that the Town Council embrace the schedule provided by the Planning and Zoning Commission; a final decision did not have to be made at the June 18th or 19th Town Council Meeting; and the Town Council could wait until July, at which time, the Town would know where they were on their own budget.

After further discussion, **Council Member Brooks amended his motion to approve the recommendations of the Planning and Zoning Commission, to obtain Requests for Proposals (RFP) per the schedule recommended to the Town Council. The Town Council directed that the RFP finalists would participate in oral presentations to the Planning and Zoning Commission at its June Meeting. Further discussion regarding selection would then take place at the July Town Council Meeting.**

In response to President Kleid, Council Member Brooks advised that Ms. Close had been directed that the RFP explicitly state that it was for land use and not form use. He noted that had actually been voted on, and he believed Mr. Lawrence had made the motion. He reiterated that it was his belief that his motion did not need to state that.

The motion was seconded by President Kleid.

Council Member Markin commented as follows:

- Reviewed previous studies conducted by the Town that had been costly, and the recommendations had not been followed.
- The Town needed to plan with specific scope and objectives.
- Concern with any internationally known consultant coming into Town, when the Town knew more than anyone else what was needed.
- Concern that the Town would have a hard time getting residents involved, because there were no residents living there. It was a business area.
- Concern proceeding with the study, especially in lieu of what the impending tax cuts might be. The Town should be extremely cautious and advised that she agreed with Mr. Coleman.

Council Member Coniglio agreed that the Town did need to be fiscally responsible. She did not believe the Town should continue to bring development projects forward piecemeal. The Town needed to have some kind of overview. She questioned if the Treasure Coast Regional Planning Council would be included in the RFP.

Ms. Close advised that Treasure Coast Regional Planning Council did not respond to RFP's. She did not believe that they were excluded by the PZC, but they operated under a different format.

She noted that they would not be considered in the resulting interviews of the five candidates, but a presentation could be made by them, at some point.

Council Member Coniglio expressed concern with expediting the process.

John Ripley, Executive Director of the Preservation Foundation of Palm Beach, commented that the Preservation Foundation respectfully disagreed with Council Member Markin, and they supported the study; commented in support of Ms. Coniglio's statement that the project should not move along piecemeal; commented that the Preservation Foundation would like to see the Treasure Coast Regional Planning Council involved from the beginning; and that it would be a mistake for the Town to receive RFP's and have the presentations so close together, as time was needed to digest them.

Leslie Shaw, 318 Seaspray, Member of the Planning and Zoning Commission, commented on the following:

- The financial aspects of the cost of the study.
  - The results of the study might actually improve the Town's tax base, in the future, based on what the outcome of the study was.
- The idea behind this project was to study the entire area and determine how it could be improved from a zoning or land use base.
  - The area was not depressed and did not require total gutting and rebuilding, but rather a review of the properties to determine how they could best be maximized without infringing on residents' rights; or by turning it into a downtown mall, which was never the idea; but basically to bring ideas forward so there were better uses for the area.
  - The residential aspect, since part of the area included the Breakers PUD, and it did have residential neighbors that had to be taken into consideration.
  - From a financial or fiscal standpoint, he believed that the Town, the PZC and the Town's consultants would be able to provide the Town with enough insight and guidelines as to how the Town could redevelop the area from a land use basis with minimal expenditure to move forward.

- On staff, were planners, a consulting firm, which had been very responsive to the needs of the Town and redevelopment over the years and had been able to manage very well as an in-house project.

- Urged moving forward with the RFP, but believed, as well, that it was the Town's responsibility to make certain decisions or at least prepare for those decisions, and then bring them to the public in order to move forward. The Town would need to make a determination and then let the Planning and Zoning Commission decide in order to present it to the public.

Council Member Markin responded to Mr. Shaw's comments and agreed that the project, in the beginning, was to review what was there and how that could be improved upon, but not to drastically change the area. She advised that she was not comfortable with conducting a study when the true objectives and methodology were not understood and when the study was going to cost so much money at a time when the Town might not have it.

Mr. Elwell clarified that Mr. Brooks' motion was to approve the Planning and Zoning Commission's recommendations, on the June expedited time line. If the Town Council did not believe, at the June Town Council Meeting, that there was enough financial information available, the item could be deferred.

Council Member Brooks amended his motion to approve the recommendations of the Planning and Zoning Commission, to obtain Requests for Proposals (RFP) per the schedule recommended to the Town Council. The Town Council directed that the RFP finalists would participate in oral presentations to the Planning and Zoning Commission at their June meeting.

The motion was seconded by President Kleid. On roll call, the motion carried 3/2: Council Member Brooks, President Kleid, and Council Member Coniglio casting affirmative votes; Council Member Markin and President Pro Tem Coleman casting dissenting votes.

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At a later point, Town Manager Elwell advised that he needed clarification on an item of Town business that occurred earlier in the meeting. He explained that he wanted to clarify staff's understanding of the intent on the action taken from Council Member Brooks' motion where the Town Council approved the Planning and Zoning Commission's recommendation for the Royal Poinciana Planning Area Study. It was apparent to staff, that the consensus of the Town Council was that the interviews would be valuable to the screening process prior to when recommendations were made to the Town Council. Therefore, the way staff interpreted the action taken was that the Town Council approved the Planning and Zoning Commission's recommendations with the additional step that staff would include in the RFP the requirement that anyone who submitted a written proposal needed to also attend the Planning and Zoning Commission Meeting on June 14th to be interviewed.

Council Member Brooks advised that was his intention.

Council Member Coniglio advised that was not her desire, but at this point, she believed that the onus would be on the Planning and Zoning Commission to delve through all that information in the interview process; and she was comfortable with the fact that the vote on the funding would not happen until later.

Mr. Elwell advised that staff would proceed in the manner he described absent any further action by the Town Council.

President Kleid commented that one of the requests of the Planning and Zoning Commission was for review of their ordinance with respect to unexcused or excused absences. He believed that they had asked that excused absences be granted to members who were not present at the May meeting or may not be present at the June 14th meeting.

Council Member Markin commented that if the Planning and Zoning Commission was to be actively involved, they should be present and participate in the process.

After further discussion, President Kleid advised that no action would be taken on this matter.

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B. New Business

1. Florida Department of Transportation Update on A1A Projects.
[Melvin Pollock, P.E., West Palm Beach Operations Engineer]
TIME CERTAIN: 10:00 A.M.

Melvin Pollock, Florida Department of Transportation (FDOT), thanked the Town and Town staff for their assistance in coordinating the three ongoing construction projects with FDOT. He explained that he was present today to introduce the project teams: J. "Sandy" Daniel, FDOT Senior Project Engineer on the two resurfacing projects; and Stephen B. Stokes, FDOT Senior Project

Engineer on the revetment project.

Mr. Pollack proposed that FDOT would submit a progress report on the three projects the first of every month for the Town Council's review. FDOT would come before the Town Council to address any questions or concerns they might have.

Town Manager Elwell thanked Mr. Pollack and his field team. He informed the Town Council that it had been Mr. Pollack's suggestion to provide the monthly updates.

Amy Shaugnessy, 226 Australian Avenue, Chair of the Palm Beach Civic Association Transportation Committee, commented on the renovation of the Lantana bridge in 2010.

Mr. Elwell responded that the Lantana bridge was a Palm Beach County bridge and not an FDOT bridge. He noted that due to concerns relating to that project, the Metropolitan Planning Organization would address the situation to ensure that FDOT and the County were adequately coordinating the planned work on the bridge.

2. Residents' Request for Traffic Calming on Root Trail.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated May 3, 2007, and included in the backup material, to review suggestions from staff regarding residents' request for traffic calming on Root Trail as well as a review of the materials provided by Peter Coleman, resident of Root Trail.

William McHenry, 126 Root Trail, commented on the safety issue, which he noted was a matter of opinion; commented on the parking issue noting that it had pretty much been resolved; and he commented on the uniqueness of Root Trail, which was a very narrow street with young children living on the street. He advised that the residents of Root Trail commissioned a speed study of the street unaware that the Town had conducted one as well. He reported that Peter Coleman would review the residents' study, and Michele White would discuss issues related to Root Trail and respond to some of the recommendations Town staff had made.

Peter Coleman, 125 Root Trail, discussed the study conducted by the residents of Root Trail regarding safety concerns, and the need for traffic calming features. He explained that the two studies were done back to back and were conducted at the end of the season. The traffic count, the volume of readings received were probably significantly less than if the studies had been performed in the peak of the season. The conclusion of the residents' study was that speed bumps were desperately needed.

Michele White, 127 Root Trail, advised that the Town's effort and suggestions were appreciated. She commented on the following issues:

- Concern by the Town over setting a precedent; Town staff did not consider Root Trail unique as other streets in Town had no sidewalks and were narrow or narrower.

- Residents believed that perhaps a precedent had already been set by placement of two speed bumps in front of the condominiums just north of The Breakers. The street did not appear to have the risk factors that were present on Root Trail.
  [Ms. White distributed a photograph.]

- Residents did not believe that the Town's alternative solutions would work and discussed the residents' reasons for concern.

In response to President Pro Tem Coleman, Mr. Elwell advised that he did not believe the speed bumps in front of the condominiums just north of The Breakers were located on public right-of-way. He noted that he had not been aware of any speed bumps and would have to review the photograph and inquire of staff.

Ms. White concluded that it was the consensus of the residents that the conditions on Root Trail were unsafe. The residents of Root Trail were willing to design, to the Town's specifications, aesthetically pleasing traffic calming devices, and were willing to incur the cost of those devices. She noted that most importantly, by installing these devices, the lives of their children would be protected.

President Kleid thanked the residents for their excellent presentation.

Mr. Elwell commented on the following:

- The photograph distributed by Ms. White was of Breakers Row, a private street. The speed bumps were essentially an installation of an improvement on private property.

- Staff did not believe that the speed bumps at Breakers Row addressed the precedent in question as far as the use of traffic calming devices on public streets.
- Staff could prepare a list of streets with similar characteristics in order to assist the Town Council with their decision.
- Root Trail was distinguished from other streets with similar characteristics by the

proximity of the front door or front doorstep to the street.

- The distinguishing characteristics did not have impacts that would cause Root Trail to be so unique as to not set a precedent as it related to the safety issues.
- Staff did not recommend that the Town Council approve speed bumps on Root Trail unless they were prepared to have a Townwide policy on speed bumps.

Catherine Bradley, 165 Root Trail, commented on the following:

- There were problems on the east and west ends of Root Trail.
- The residents' property supposedly extended 10' into the street on the west end and requested residents be notified when work would occur on the property owner's 10'. She noted that today the street was being torn apart and residents had not been notified.
- There were issues other than safety that needed to be discussed, such as liability.

President Kleid informed Ms. Bradley that the issues she raised were not on the Agenda, and the Town Council was only addressing traffic calming devices on Root Trail. He suggested that she speak with Mr. Brazil as to what was occurring on her part of the street.

Ms. Bradley reiterated her concerns and requested that the Town advise the residents if the property that extended 10' into the street was truly public or truly private property.

Jenny Hoffmeier, 155 Root Trail, advised that she had been unaware that the Town could change the direction of the street in order to make Root Trail safer for the children. She stated that there were children living on both the north and south side of Root Trail and changing the direction of the street would not help.

President Kleid stated that he wanted to know, relative to both studies, how many vehicles were clocked going 25 miles per hour or more?

Chief Reiter responded that the Police Department survey found none, and Peter Coleman responded that the residents' study found 23 vehicles going 25 miles per hour or greater.

President Kleid noted it seemed incredible that two surveys were conducted within the same general time period, and the Police Department survey found no vehicles traveling above 25 miles per hour and the private study found 23 vehicles.

Council Member Brooks commented on the following:

- Chief Reiter was not in favor of speed bumps because it would slow down and possibly cause damage to emergency response and police vehicles.
- Disagreed with Mr. Elwell's comments that there needed to be a Town wide policy.
- Root Trail was totally sui generis as discussed by Mr. McHenry and Peter Coleman and suggested that the Town should arrive at a policy that would be exclusive for Root Trail.
- If others made a request for street calming, it could be handled administratively through either PZ&B, Public Works or perhaps both. To be forced into some sort of inaction because of bureaucracy, and the fear that a Town wide policy was needed, was not merited.

In response to Council Member Brooks, Mr. Elwell advised that he was under the impression, until today, that a private street would still have to come to the Town for permission to put speed bumps in. He noted that he was equally of the impression that there were no speed bumps in Town, and advised that further research would have to be done regarding this issue.

Council Member Brooks suggested that there should be a creative resolution with this problem, noting that there were inherent dangers on Root Trail. He believed the Town Council had to address the situation.

Council Member Markin commented as follows:

- She was unaware of any other streets in Town that had access to the beach, with the houses extremely close to the road, with historic value and as narrow.
- A Townwide policy was not needed and that Root Trail was a very unique street with very unique circumstances.
- Concurred that a special exception should be made relative to speed bumps on Root Trail due to the narrowness and proximity of the houses to the street.

President Pro Tem Coleman stated that his preference was to give the street back to the residents, the Town abandon Root Trail and permit the residents to place traffic calming devices as requested.

Mr. Elwell clarified that the survey had been conducted for eight days continuously, twenty-four hours a day, and the data was broken down hour by hour. He advised that there might have been a seasonal factor in the findings. The Town's survey was conducted between April 10, 2007 and

April 18, 2007. In total, the average daily trips were 100 and there were 800 vehicles over an eight-day period.

Mr. Elwell requested that Town Council Members be very explicit in their motion, regarding the uniqueness and regarding the factors the Town Council believed made Root Trail unlike any other. He noted that would be the basis on which traffic calming devices would be allowed in the absence of a Townwide policy, and it did not create a precedent.

Mayor McDonald recommended the Town Council designate Root Trail as a historic vista and allow the residents to use traffic calming procedures.

Discussion ensued and Mayor McDonald, in response to Mr. Elwell, advised that a Town Council declaration designating Root Trail as a historic vista was what he was suggesting in order that staff then could implement some unusual methods in dealing with the street.

President Kleid stated that Root Trail was unique because of the close proximity of the houses to the street, not the narrowness of the street or the vista.

After further discussion, **a motion was made by Council Member Markin that the Town Council approve speed bumps as a traffic calming tool for Root Trail based specifically on the narrowness of the street, the proximity of the houses to the street, and the fact that the avenue of Root Trail was access to the public beach.**

President Kleid suggested that the motion include that the costs related to the traffic calming devices would be the responsibility of the residents subject to the approval of staff as to the design and materials used.

Council Markin amended her motion to include the condition that the costs would be paid by the residents of Root Trail, and that the residents of Root Trail residents would pay for the installation of the speed bumps based on approval of the Town staff. The motion was seconded by Council Member Brooks.

President Pro Tem Coleman advised that he was in favor of the speed bumps but questioned the Town's responsibility as far as the maintenance of the speed bumps.

Mr. Elwell responded that it would be the Town's responsibility and liability. He commented, under discussion of the motion, it would be appropriate for the Town Council to assign staff the task of designing a raised elevation, traffic calming device, to reduce speed on Root Trail. Staff would take on that project and work with the residents of the street and come back before the

Town Council for approval before proceeding any further.

Mr. Elwell requested, as well, that the Town Council incorporate into the record of this discussion, for the reasons of future requests that the Town expected to receive, a description of Root Trail noting that they found it truly unique in the dictionary sense of unique, and that there was no other street in Palm Beach, to their knowledge, like it and therefore, it was an isolated situation.

Council Member Brooks advised that his second remained valid, and suggested that Ms. Markin include in her motion some of the distinguishing factors of Root Trail that described its uniqueness. He noted that other requests for traffic calming should be handled administratively.

Chief Reiter suggested that the entire design and placement of traffic calming devices should be under the purview of the Public Works Department. It would be a unique situation because not only do they need to find traffic calming devices that would accomplish all the things discussed, but it would be important to find those that do not create a noise problem. He noted that they were noisy and with the homes so close to the road, the placement would be very important so that it did not negatively affect the homeowners.

Council Member Markin amended her motion to approve the installation of traffic calming devices on Root Trail for the following reasons:

- **Root Trail is a street unlike any other;**
- **It has varied widths from the east to the west end;**
- **It begins as a two-way street and ends as a one-way street on the east end of the street;**
- **The street was very narrow;**
- **The proximity of the houses to the street was extremely close;**
- **It was an avenue to the public beach, which increased the amount of traffic on the street;**
- **It would be designed, engineered and installed by the Town with attention given to installing such speed bumps that were not noisy or create vibration;**
- **It would be paid for by the residents.**

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

Catherine Bradley requested that the residents be advised where the traffic calming devices would be placed.

In response to President Kleid, Ms. Bradley noted that the placement of the devices on the narrow part of Root Trail was a problem.

XI. ORDINANCES

A. Third Reading

1. ORDINANCE NO. 5-07 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 134-1729 by Modifying and Adding Regulations for the Size and Placement of Generators in all of the Town's Zoning Districts; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date. [Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Stirling Clarke Halversen read Ordinance No. 5-07, by title, as printed above.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to adopt Ordinance No. 5-07, on third reading. On roll call, the motion carried unanimously.

B. Second Reading

1. ORDINANCE NO. 8-07 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: by Renaming the Heading in Division 4 of Article II to Include Dimensional Waivers; by Adding Sections 134-234 Through 134-237 Providing for Waivers to Certain Dimensional Requirements for Single-Family Homes Constructed Prior to 1980 and for Landmark Structures; by Adding Section 134-1732 to Require Permit for Temporary Storage Units and to Allow Temporary Storage Units for a Period of Time not to Exceed 72 Hours; by Modifying Sections 134-1729 to Prohibit Generators on the Roofs of Buildings; Repealing all Ordinances in Conflict Hereof; Providing for Codification; Providing for an Effective Date. [Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Stirling Clarke Halversen read Ordinance No. 8-07, by title, as printed above.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to adopt Ordinance No. 8-07, on second reading.

Zoning Director Paul Castro commented that the Town received a letter from Gene Barbado regarding this Ordinance, questioning some of the separation requirements as thresholds for waivers. Staff did not agree with his proposed changes eliminating any separations, or with some of the language suggestions he made.

On roll call, the motion carried unanimously.

2. ORDINANCE NO. 9-07 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 Business Taxes; Providing for the Amendment of Fees; Providing for Severability; Providing for Repeal of All Ordinances or Parts of Ordinances in Conflict; Providing for Codification; and Providing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Stirling Clarke Halversen read Ordinance No. 9-07, by title, as printed above.

Motion made by President Pro Tem Coleman, seconded by Council Member Markin, to adopt Ordinance No. 9-07, on second reading. On roll call, the motion carried unanimously.

3. ORDINANCE NO. 10-07 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 122, Utilities, Providing A New Article V Requiring That Electrical Power Supply, Telecommunications, Video, Cable Television, Internet And Similar Facilities Be Placed Underground; Providing For Private Property Owner's Responsibility; Requiring Permits; Providing For Exceptions; Providing For Penalties; 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 Stirling Clarke Halversen read Ordinance No. 10-07, by title, as printed above.

Rod Macon, Regional Director, on behalf of Florida Power & Light (FPL), advised that a letter had recently been sent stating FPL's concerns relative to this proposed ordinance.

Patrick Byran, an attorney with FPL, thanked the Town Council for the opportunity to comment on this ordinance. He advised that FPL was respectfully requesting that the Town defer the second reading of this ordinance until such time as the language of the ordinance could be modified so that it complied with existing law.

Attorney Bryan commented as follows:

- FPL would appreciate the opportunity to work with the Town's Attorneys and Town staff to arrive at language that FPL believed complied with the law and was satisfactory to the Town, FPL, and other utilities.

- FPL supported the use of underground facilities and had gone to great lengths at the Public Service Commission (PSC) recently to have the rules changed and to have the tariff changed to encourage the use of underground facilities.

- FPL could not support any initiative or any ordinance that it believed to be unlawful.

    - If the Town passed the ordinance as drafted today, FPL would have no alternative but to resist enforcement and could not comply with the ordinance without themselves violating the law, violating PSC rules, and violating their own tariff.

    - It might be likely that the Town and FPL ended up in litigation to resolve that dispute, and that was the last thing that FPL wanted, and it was the reason they were here today to attempt to avoid that situation.

- One portion of the ordinance required repairs to existing overhead lines be placed underground. In some instances, it might not be feasible, and it would be, at the very least, an inefficient way to underground the Town's entire system, and there would be cost considerations as well.

Deputy Town Manager Bradford responded that this ordinance was important and should be adopted today on second reading. This ordinance had been brought forward in response to House

Bill 529, which now sat on the Governor's desk, and the Town would like to have it adopted prior to his anticipated signature of that bill. He responded to comments made by Attorney Bryan, as follows:

- In reference to Section 122-157, staff believed the correct language was in the ordinance and had the ordinance reviewed by Town Attorney Randolph, and the other Town telecommunication attorneys.

    - All agreed that it went without saying, in Florida, that as it pertained to this ordinance, it had to be done according to the State Statutes or the applicable PSC rules. Staff did not believe there was any merit to that particular argument.

    - If the Town Council found there was merit to any of the other arguments, staff would still request that the Town Council adopt the ordinance and instruct the Town Attorney to work with them to see if there was any way to clarify these issues. Staff believed it was very important to get this ordinance on the record today. Staff could possibly come back, at a later date, with an ordinance that would address any concerns.

Attorney Stirling Clarke Halversen clarified the Town Attorney's position on this ordinance as follows:

- Any municipality that adopted an ordinance would always be subject to the State Statutes and to Federal law. It went without saying that the ordinance did not need to include language that stated the Town would comply with State Statues and Federal law.

- Section 122-157, referred to compliance with the PSC rules and FPL's tariffs.

- Sections 122-156 and 122-157 addressed the replacement of the utilities or a substantial portion of the utilities, and also talked about relocation, refurbishment, reconstruction, which were more major issues than just ordinary maintenance or repair issues. It was not necessary to change the wording to address that particular issue.

- Overall, it was believed that the ordinance did comply with legal sufficiency. If the Town Council adopted this ordinance today, no problem was seen, but if the Town

Council did want to address some of the concerns mentioned, the Town Attorney could work on amendments to the ordinance.

Attorney Bryan briefly rebutted that it did provide some comfort level to them to hear the Town Attorney say that it went without saying the Town would have to comply with PSC rules and the contribution requirements.

President Kleid noted that the Town Council could agree to continue a dialogue with FPL; and if necessary, amend the ordinance.

Motion made by Council Member Brooks, seconded by President Pro Tem Coleman, to adopt Ordinance No. 10-07, on second reading.

Sam Boykin, 285 Jamaica Lane, commented in objection to this ordinance for the following reasons:

- The language of the ordinance was confusing to him as a lay person, and needed to be reworded or the Town could be headed for a lawsuit.
- It appeared that the owners would have to pay for the transmission of power and the underground up to the house.
- The Town, he believed, in order to expedite this, was to pay for delivery of the underground wires to the house, and the owner would only have to pay connecting that up to their house from the street.

In response to Mr. Boykin, Mr. Bradford clarified the ordinance noting that he believed Mr. Boykin was referring to the title on the Agenda, which referred to Section 122-160, where the time limitation on the connection was referred to. He explained that all it was saying was that if and when the undergrounding of a street, block, or subdivision had been completed and once the underground was available, per State law, they had three months to connect. It did not mean that they were paying for that, but it was just a statement that once notice was given, they must connect within a certain time frame. The payment for that did not come into play under this language.

In response to President Kleid, Mr. Boykin stated that he accepted what staff had said but reiterated that he believed the wording was very poor.

On roll call, the motion carried unanimously.

C. First Reading

None

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The luncheon recess was taken at 12:27 p.m.

The Town Council meeting of May 8, 2007, was reconvened at 2:00 p.m.

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PUBLIC COMMENT:

Kathy Wallace, 1472 South Ocean Boulevard, commented on the following:

- Thanked the Town Council for their vote on the recreation lights at yesterday's Special Town Council Meeting.
- Clarified that the issue of the recreation lights was determining what was and what was not appropriate for the entire Town of Palm Beach.
- A plan was not just needed for Royal Poinciana but for all of Palm Beach; and she did not believe that the consultants were able to do that for the Town.
- Density should be primary concern.
- Suggested that when commercial establishments requested greater square footage than was currently in existence, it be granted through mitigation. The mitigation would require that an equal amount of commercial space elsewhere in Town be allocated for green space.
- Consideration should be given to assigning impact fees for any project increasing density or usage in the Town.

XII. DEVELOPMENT REVIEWS

A. Appeals

1. Request by Richard Britt, General Manager, L'Ermitage, for Town Council to Overturn the Decision of ARCOM on Application No. A4-07. [Veronica B. Close, Director of Planning, Zoning, and Building]

Attorney Peter Broberg, on behalf of L'Ermitage, addressed the Town Council, advising that L'Ermitage desired to replace its roof with S-tile versus the barrel tile roof. He provided samples and photos of both types of tile, explaining that the S-tile would provide more safety during hurricanes.

Attorney Broberg explained that the request to overturn the decision of ARCOM on Application No. A4-07 was being made to the Town Council because many neighboring facilities had S-tiles, and L'Ermitage would like the same opportunity.

Mr. Richard Britt, General Manager, L'Ermitage, addressed the Town Council, displaying a power point presentation of various buildings in Town with S-tile. He maintained that it would be very difficult for anyone to distinguish between the S-tile and the barrel tile roofs. He advised that he had done a survey of the tile roofs in Palm Beach and that the majority of roof with deterioration were of the barrel tile variety.

Veronica Close, Director of Planning, Zoning & Building, reported that ARCOM had considered this application at the April 25, 2007 meeting. After consideration, they had proposed that the S-tile roof was not in conformity with good taste and design and did not contribute to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm, and high quality. Staff recommended that the town Council uphold the decision of ARCOM.

Architect Jeff Smith, member of ARCOM, addressed the Town Council, stating that the roofing consultant to the L'Ermitage had indicated at the ARCOM presentation that the S-tile was not any more wind resistant than barrel tile, and that the manner of how they were adhered to the roof made the difference, not the tile itself. He noted that the original building had been done with barrel tile, and that there were details in the building with barrel tiles set in them, that would not match a change in the roof material.

The President of the Condominium commented that the barrel tile installation was extremely complicated and penetrated the roof lining much more than S-tile.

Council Member Markin noted that there was a pool house structure, a tennis building, and eight townhouses across the street that were associated with L'Ermitage that have barrel tile roofs. Mr. Britt responded that four of the townhouses had barrel tile and four had S-tile.

Council Member Brooks moved that the Town Council uphold the decision of ARCOM. The motion was seconded by Council Member Coniglio.

Discussion took place about the approval process of ARCOM. Tim Frank, Planning Administrator, explained that ARCOM had approved both types of tile in the past, however, it was mainly a design decision. If the architecture was not Mediterranean Revival, perhaps S-tile would be considered more appropriate in some cases.

Architect Smith commented that he had served as a member of ARCOM since 1983, with a short hiatus, and that, in his memory, S-tile had never been approved.

President Pro Tem Coleman suggested that there should be consistency in ARCOM decisions, and requested that staff respond to the question of fair standards.

PZB Director close advised that ARCOM made qualitative decisions, and staff tried to be consistent in their recommendations to them.

Town Manager Elwell commented that ARCOM could discuss the issue at their next meeting in terms of having a consistent approach. He noted that individual members approach each issue differently, and there had been some instances when ARCOM chose to allow S-tile applications.

Council Member Markin suggested that ARCOM commit to having a standard in place from this point forward, regarding S-tile and barrel tile roofs.

President Coleman requested that staff hold discussions with ARCOM regarding a unified policy, and report back to the Town Council next month.

On roll call the motion to uphold the decision of ARCOM on Application No. A4-07, carried unanimously.

B. Time Extensions

1. Request for Extension of Time to Complete Construction Work at 224 Pendleton Avenue per Memorandum Received April 11, 2007, from Freestyle Builders.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by President Kleid via a conversation with Attorney Brindell; President Pro Tem Coleman via a conversation with Attorney Brindell; and Council Member Brooks via a conversation with Attorney Brindell.

Attorney Brindell, on behalf of the applicant, provided an overview of the request for an extension of time to complete construction work at 224 Pendleton Avenue to October 11, 2008.

Planning, Building, and Zoning Director Close referred to her memorandum to the Mayor and Town Council dated April 26, 2007, and included in the backup material, to discuss the applicant's request for extension of time to complete construction work. She advised that Attorney Brindell's comments were accurate relative to the permit issuance and noted Planning, Zoning & Building did not rescind a permit when transferred to a new property owner and then reissue a permit, because it would start a whole new construction time line and would thwart the intent of the ordinance.

Ms. Close advised that staff recommended approval of the date to October 11, 2008, with the following provisions:

- Notify all property owners within 300 feet of 224 Pendleton. *[Ms. Close understood this had been done.]*.
- Normal work hours only under the code.
- If the job was not completed by October 11, 2008, a fine of $1,000 per calendar day be levied against them until the Certificate of Occupancy was issued.

In response to President Pro Tem Coleman, Ms. Close explained why, when there was a change of ownership, a new building permit was not issued. In general, the Town's policy was not to terminate a permit and restart it because it restarted the time period. She noted that according to State Statute, a building permit went to the contractor who was the authorizing agent.

After further discussion, **President Pro Tem Coleman made a motion, seconded by Council Member Brooks, to approve the request for extension of time to October 11, 2008 to Complete Construction Work at 224 Pendleton Avenue, with the following staff conditions:**

- **At least 10 days before the Town Council meeting, the applicant shall notify all property owners within 300 feet of 224 Pendleton of this request so they may express their concerns.** *[Ms. Close advised that to staff's knowledge this had been done and no comments had been received regarding the applicant's request.]*
- **Normal work hours per code only.**
- **If the job was not completed by October 11, 2008, a fine of $1,000 per calendar day be levied against them until the Certificate of Occupancy was issued.**

On roll call, the motion carried unanimously.

2. Request for Extension of Time to Complete Construction Work at 212 Seabreeze per Letter Dated March 19, 2007, from Carol and Frank LeCates. [Veronica B. Close, Director of Planning, Zoning, and Building]

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

Attorney Michael Greene, commented that he and Attorney Joseph Negron, represented Carol and Frank LeCates, owners of the property located at 212 Seabreeze Avenue. He provided an overview of the request for extension of time to March 31, 2008 for completion of construction work.

In response to President Kleid, Ms. Close advised that the Town would extend a building permit due to a hurricane. Staff generally would come before the Town Council at the end of the hurricane season to ask for an adjustment of dates for all the permits.

In response to President Kleid, Attorney Greene noted it was much harder to restart a job than starting the job from scratch. He advised that the applicant had already lost five months of time getting the job restarted.

In response to President Pro Tem Coleman, Attorney Greene advised that the original contractor was Woolems Construction and provided a brief history of the applicant's relationship with Woolems.

Director Planning, Zoning, and Building Close advised that according to their records, the permit had been issued on July 28, 2005 and was due to be completed of June 28, 2007, providing for a total of 20 months. She noted that two months had been added for Saturday work and one month for construction, for a total of 23 months.

Ms. Close advised that staff recommended approval of the request for an extension of time to December 31, 2007 in order to complete the project with the following conditions:

- If the job was not completed by December 31, 2007, a fine of $1,000 per calendar day be levied until the Certificate of Occupancy was issued.
- Allowed to work during normal work hours only per code.
- At least 10 days before the Town Council Meeting, the applicant shall notify all property owners within 300 feet of 212 Seabreeze of this request so they may express their concerns. *[Ms. Close advised that no responses had been received as a result of the notice.]*

President Pro Tem Coleman made a motion to approve the extension of time to March 31, 2008 to complete the project, and a fine of $1,000 per calendar day be levied until the Certificate of Occupancy was issued, if the job was not completed by March 31, 2008.

President Kleid advised that the motion died for lack of a second.

Motion made by Council Member Brooks to approve the request for extension of time to January 31, 2008 to complete the project at 212 Seabreeze with the following conditions outlined by staff:

- **At least 10 days before the Town Council meeting, the applicant shall notify all property owners within 300 feet of 212 Seabreeze of this request so they may express their concerns.** *[Ms. Close advised that no comments had been received regarding this request.]*
- **Normal work hours per code only.**
- **If the job was not completed by January 31, 2008, a fine of $1,000 per calendar day be levied against them until the Certificate of Occupancy was issued.**

The motion was seconded by President Pro Tem Coleman. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #11-2007 The application of Say Hey, LLC (Mr. & Mrs. Steven Ames) relative to property described as Lot 85, Less the South 10 feet thereof, and all of Lot 83, Plat No. 2 EVERGLADES ISLAND DEVELOPMENT, according to the Plat thereof, as recorded in Plat Book 21, page 51, Public Records of Palm Beach County, Florida; commonly known as 735 Island Drive; located in the R-B Zoning District. Variance request to construct a boat lift 22.7 feet west of the U.S. Pierhead line and the Town's Bulkhead line in lieu of the 6 foot maximum allowed.

Ex-parte communication was declared by President Kleid via a telephone conversation with Attorney Ziska; and President Pro Tem Coleman via telephone conversation with Attorney Ziska.

Attorney Ziska, on behalf of the applicant, provided an overview of the variance request. She presented photographs of similar boat lifts on Everglades Island and reviewed examples of recent variances granted for boat lifts. The hardship, which ran with the land, was that it would be impossible to dock a boat on the west side of Everglades Island without this relief as 6' was not sufficient or safe to be able to install a boat lift or moor a dock.

Attorney Ziska advised that the Florida Department of Environmental Protection and the Army Corps of Engineers approved the boat lift.

Zoning Administrator Castro commented that staff questioned the hardship for the variance. He noted that precedents were not set by other property owners or other decisions, but on the hardship related to this property.

Attorney Ziska responded to Mr. Castro's comments noting that many of those boat lifts on the west side of Everglades Island had marginal docks. She stated that 6' marginal docks were allowed and there was sufficient room to allow a boat lift to be installed.

President Pro Tem Coleman suggested that on issues such as this, perhaps staff could have some form of administrative discretion.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks, to approve Variance #11-2007. On roll call, the motion carried unanimously.

b. VARIANCE #13-2007 The application of Anne Randolph Young relative to property described as lengthy legal description on file; commonly known as 161 Via Del Lago; located in the R-A Zoning District. Variance to allow a front yard setback of 25.25 feet in lieu of the 35 foot minimum required and 30.25 existing in the R-A Zoning District for a covered entry at the front door.

Ex-parte communication was declared by President Kleid via telephone conversation with Attorney Ziska; and President Pro Tem Coleman via conversation with Attorney Ziska.

Attorney Maura Ziska, commented that she and Architect Michael Perry, represented the applicant. She provided an overview of the request for a variance. She stated that the hardship, ran with the land, and the house and the nonconforming front yard setback existed because the house was built prior to the change in code, which allowed a smaller setback.

Zoning Administrator Castro commented that staff had no objections.

Motion made by Council Member Brooks, seconded by Council Member Markin, to approve Variance #13-2007. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. VARIANCE #3-2007 The application of Lois Umbach relative to property described as South 3 feet of Lot 26 and Lot 27, Woods Landing Plat No.2; commonly known as 577 East Woods Road; located in the R- B Zoning District. Variance request to allow construction of a 749 square foot two-story addition with lot coverage of 36% in lieu of existing 30% and architectural allowed 30%. *Deferred from the February 13, 2007, March 13, 2007, and April 10, 2007, Town Council Meetings.*

Ex-parte communication was not declared by any member of the Town Council. Council Member Brooks noted that he had no ex-parte since the last time this petitioner was before the Town Council, and that he actually spoke to them after the Town Council sent them back for more work.

President Kleid commented that neither the applicant nor a representative for the applicant was present.

Motion made by President Pro Tem Coleman to deny Variance #3-2007.

Zoning Administrator Castro advised that Attorney Broberg represented the applicant and that he had a conversation with him relative to the Architectural Commission's approval of the project. He explained that, during that conversation, they reviewed the plan which met Town Code. He noted that he had contacted Attorney Broberg last week requesting that a letter be sent asking that the case be withdrawn, which has not been received. Staff recommended that the Town Council deny the application.

The motion was seconded by Council Member Brooks.

In response to Council Member Coniglio, Mr. Castro advised that ARCOM had approved the project that met the Zoning Code without requiring a variance.

On roll call, the motion to deny Variance #3-2007 carried unanimously.

b. SPECIAL EXCEPTION #3-2007 WITH SITE PLAN REVIEW The application of Palm Beach Orthodox Synagogue, Inc. relative to property described as Floral Park Lots 178, 177, 176, and S. 8.14 feet of Lot 175; commonly known as 120, 122 and 126 North County Road; located in the C-TS Zoning District. Special Exception to expand the existing Synagogue by using the existing office building that was Rampell & Rampell as the foyer to join the applicant's property to the South (the operating sanctuary) to the property to the North (the previously approved multi-purpose room); and to reconfigure the 2nd story by removing 1,127 square foot thereof while retaining room for 3 offices. Based on the principle of equivalency of this use, the additional space will demand less parking than the previous use. The request proposes to increase the occupancy of the multi-purpose room from 132 (as allocated under Special Exception #14-99) seats to 158 seats to match sanctuary occupancy. In addition, this request also proposes to allow this multi-purpose occupancy to increase based on the permitted principal of equivalency for parking from the approved 52 (as allocated under Special Exception #27-2001) seats to 100 seats when the sanctuary is in use. Such increase does not maximize its permitted use under equivalency. *Deferred from the March 13, 2007, and April 10, 2007, Town Council meetings.*

Ex-parte communication was declared by President Kleid who had met with the President of the Synagogue several months ago.

Attorney Richard Zaretsky, on behalf of the applicant, provided an overview of the request for a special exception to expand the Synagogue using the existing office building that was Rampell & Rampell. He stated that the key point was that this had essentially been rolled back into a re-approval of Special Exception No. 15-2005, approved July 12, 2005. He noted that the primary focus was the upstairs of the old Rampell & Rampell building. He provided architectural plans to discuss the proposed project.

Zoning Administrator Castro reviewed the architectural plans to discuss the proposed project. He commented that if the Town Council approved the plan, as presented today, staff recommended, as a condition of that approval, a Declaration of Use Agreement, as it related to the enclosure of the vacant area, seating in the offices or the small study rooms, and specifically the use of that area. He advised that the applicant would have to come back before the Town Council when they wanted to use additional space, but they would have to find parking either in a shared parking concept with a variance request and a special exception or some other type of mitigating factor.

In response to President Kleid, Attorney Zaretsky responded that he questioned staff's request for a Declaration of Use Agreement.

In response to Attorney Zaretsky, Mr. Castro advised that they would still be short of parking spaces, but because of the proposed seating. He explained that the second floor plan had originally been for offices only, but the present proposal shown was for study rooms with more seating capacity. Staff looked at seating capacity, not just the room function, when the special exception use was for any assembly such as this. He noted that the seating capacity was a concern.

Mr. Castro advised that in addition to the execution of a Declaration of Use Agreement, a Unity of Title would be required in order to open up and join all three areas along with a special exception, a site plan review, and a parking analysis as it related to the proposal for the vacant area, which would be kept locked.

After further discussion, **a motion was made by Council Member Brooks to approve Special Exception #3-2007 with Site Plan Review with conditions that a Declaration of Use Agreement and a Unity of Title be executed by Attorney Zaretsky representing the Palm Beach Orthodox Synagogue and Director of Planning, Zoning, and Building Close representing the Town of Palm Beach.**

Ms. Close suggested that the Town Manager be authorized to execute the Declaration of Use Agreement.

Council Member Brooks amended his motion to authorize the Town Manager to execute the Declaration of Use Agreement on behalf of the Town. The motion was then seconded by Council Member Coniglio.

Mr. Castro clarified that the Declaration of Use Agreement would be related to the vacant room, and advised that staff wanted the Declaration of Use Agreement to include that the applicant agreed to keep that vacant room locked at all times. The area could only be used after they came back to the Town Council to get approval for its use, which might then require a variance for parking, depending on what was proposed in respect to seating.

Discussion ensued relative to the entire upstairs area as it related to parking, and Attorney Zaretsky advised that President Kleid was correct that if that area was used for office space only, there would be enough parking, but if it was decided to use it for other reasons, there might not be enough parking.

On roll call, the motion carried unanimously.

Mr. Zaretsky advised that the Rabbi just mentioned to him that those rooms were previously designated as office space, and if the applicant applied for permitting for office space, then that would not be an issue.

Mr. Castro advised that would be the decision of the Town Council, because the applicant's proposal was to keep the vacant area locked. He noted that he would have to re-evaluate their seating again, as well, because the first proposal showed five offices and that would be a different parking scenario than was shown on their plans.

President Kleid advised that basically they had received the requested approval, and if they wanted more they would have to come back before the Town Council.

c. VARIANCE #9-2007 The application of Malcolm and Linda Glazer relative to property described as lengthy legal description on file; commonly known as 1482 South Ocean Boulevard; located in the R-AA Zoning District. Request for a variance to construct an elevator addition with a building height plane setback of 44.4 feet in lieu of the 60.3 feet minimum setback required by code. *Deferred from the April 10, 2007, Town Council Meeting.*

Item XII.C.3.b. was withdrawn under Item VII., Approval of Agenda.

4. New Business- More Than 15 Minutes

a. SITE PLAN REVIEW #8-2007 WITH VARIANCE The application of Victor Moore and John J. Tatooles relative to property described as Lots 6 and 6A of OCEAN VIEW, according to the Plat thereof as recorded in Plat Book 21, Page(s) 16, of the Public Records of Palm

Beach County, Florida; commonly known as 122 Ocean View Road; located in the R-A Zoning District. Site Plan Review to allow the construction of a two-story single family residence in the R-A Zoning District on a non-conforming platted lot which is: 100 feet in width in lieu of the 125 foot minimum required; 112.5 feet in depth in lieu of the 150 foot minimum required; and 11,138 square feet in area in lieu of the 20,000 square foot minimum required. A variance is also requested to allow a building height plane setback of 35 feet in lieu of the 42 foot minimum required for the house and 53 feet in lieu of the 77 foot minimum required for the proposed tower.

Ex-parte communication was declared by President Kleid via a telephone conversation with Attorney Maura Ziska.

Attorney Ziska, commented that she and Architect Michael Perry, represented the property owners John Tatooles and Victor Moore. She provided an overview of the site plan review with a request for a variance. She commented as follows:

- The two-story house was presented to ARCOM last month, and the Commission recommended the variances, but deferred the architecture to restudy the water table, the parapet, square off the windows, and rethink the massing.

- The hardship, which ran with the land, was that the lot was undersized and irregular in shape.

- Three letters had been received from neighbors in support of the project.

Architect Michael Perry presented architectural renderings to discuss the application. He reviewed the street scape, which would be presented to ARCOM later this month in order to obtain final approval on the architecture.

Zoning Administrator Paul Castro commented as follows:

- The Architectural Commission had a split vote, a 4/3 vote recommending the variances, but the consensus of the Commission was for the project to come back before them to review the massing.

- Staff believed massing was all about the building height plane, and had some concern over the presentation made to the Architectural Commission and the project before the Town Council today, as it related to a change in pitch in the roof style.

- Many members of the Architectural Commission did not like the tower feature or the widow's walk up with the parapet, which required the building height plane variance.

- Staff questioned the hardship as it related to the tower itself, and was concerned about receiving a recommendation from the Architectural Commission as it related to the massing in the new presentation that was in front of the Town Council today.

Attorney Ziska responded that whether or not ARCOM approved the tower, the applicant had reduced the roof 3 feet and the tower 3 feet, but the variance for the building height plane would still be required, because it had to do with just the height of the house to the tie beam. She advised that the application should not be delayed, and should be moved forward today. The applicant would return to ARCOM allowing them to continue jurisdiction. She noted that should ARCOM inform the applicant that they did not like the tower, it would be removed from the plan, and the variance would not be needed.

Council Member Markin commented relative to her concerns noting that she did not believe the hardship was legitimate.

Council Member Coniglio commented she was uncomfortable voting for a variance when ARCOM had not approved the architecture. She believed that the applicant should return to ARCOM for approval of the architecture, which might then change the number of variances that would be required.

Council Member Brooks advised that he was in total agreement with both Ms. Coniglio and Ms. Markin. He questioned why this applicant was even before the Town Council and why it had not remained at ARCOM until the project had been approved in its entirety. He stated that he would have preferred that the application had administratively come through ARCOM and then to the Town Council.

Director of Planning, Zoning and Building Close commented as follows:

- An applicant would normally appear before ARCOM first for this type of combination project.
- ARCOM would consider the project and make their recommendations to the Town Council regarding the zoning application.
- ARCOM would reserve their right to act on architecture, if they were not satisfied and believed that they could not approve it that day.

- Staff had always advised ARCOM that they could not simply defer the project, if they did not agree with it, because the applicant still had the right to come back to the Town Council, at their next meeting, with or without ARCOM's recommendation.
- This applicant had chosen to come before the Town Council without the approval of ARCOM. Some applicants do not come before the Town Council until they have been able to resolve their differences before ARCOM.

Motion made by Council Member Brooks, seconded by Council Member Coniglio to defer Site Plan Review #8-2007 with Variance for one month in order that the applicant return to the Architectural Commission (ARCOM). On roll call, the motion carried unanimously.

b. VARIANCE #12-2007 The application of Charles Minot Amory, III and Victoria Amory relative to property described as Lot 12, Block F, ROYAL PARK ADDITION, a Subdivision of the Town of Palm Beach according to the plat thereof, recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; commonly known as 141 Brazilian Avenue; located in the R-B Zoning District. Variance to demolish and rebuild a non-conforming two story garage guest house. The variances requested are to construct said new two story accessory structure with: a side yard setback of 7.9 feet in lieu of the 15 foot minimum required; and a rear yard setback of 13.8 feet in lieu of the 15 foot minimum required. Variance is also requested to allow the proposed two story unattached accessory building in the R-B Zoning District for a lot that is under 20,000 square feet. The Code only allows a one story accessory structure on a lot under 20,000 square feet.

Ex-parte communication was declared by President Kleid via a telephone conversation; President Pro Tem Coleman via a conversation with the property owner and with Attorney Ziska; and Council Member Brooks via a conversation with Mr. Amory several months ago.

Attorney Maura Ziska, commented that she and Architect Rafael Saladrigas, represented Mr. And Mrs. Amory, owners of the property at 141 Brazilian Avenue. She provided an overview of the request for variances. The hardship, which ran with the land, was that the existing garage apartment was in disrepair and needed to be replaced. The request was to allow the applicant to rebuild what was already there making it a stronger, safer building. She noted that ARCOM reviewed this application, at last month's meeting, and unanimously recommended the variances and also approved the architecture in completion. The applicant did not have to return to ARCOM this month.

Architect Rafael Saladrigas presented architectural renderings and distributed photographs to discuss the application request for four variances.

Attorney Ziska advised that they were making the property more conforming by removing a nonconforming structure.

Zoning Administrator Paul Castro provided staff's comments and questioned the hardship of this application.

After further discussion, **Council Member Brooks made a motion, seconded by President Pro Tem Coleman, to approve Variance #12-2007. On roll call, the motion carried unanimously.**

D. Other

1. Clarification of the Action Taken by Town Council on a Portion of Variance #6-07 and Subdivision #1-2007, 545 and 561 North Lake Trail and 549 North Lake Way.

Ex-parte communication was declared by President Kleid via a conversation with Attorney Broberg; Council Member Brooks via a telephone conversation with Attorney Broberg; President Pro Tem Coleman via a conversation with Attorney Broberg; and Council Member Markin via a conversation with Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, provided an overview of the action taken by the Town Council on a portion of Variance #6-07 and Subdivision #1-2007, 545 and 561 North Lake Trail and North Lake Way. He commented that it was his understanding that staff was questioning last month's approval of the subdivision as it related to the construction of the two-car garage. He explained that Council Member Brooks' motion had stated that it would be built at an unspecified time in the future. Staff was requesting clarification as they were unclear, at this time, when the garage was to be built and wanted a time specific.

In response to President Kleid, Mr. Broberg advised that staff wanted the applicant to build the garage before applying for the first permit on a vacant lot.

Zoning Administrator Castro acknowledged that Mr. Broberg was correct.

Attorney Broberg advised that the applicant would like the action taken at last months Town Council Meeting to remain and that the garage could be constructed "whenever." He stated that he did have an alternative plan, and explained that last month the applicant had applied for a variance, which would allow the applicant not to build the two-car garage. The variance was properly noticed, but it was tabled. The variance request could be heard today, and the Town Council could grant that variance with the condition that whenever the old church was remodeled or redone, a two-car garage would be added.

Zoning Administrator Castro commented that staff's position was that before the first permit was granted on the house, the garage should be built or the applicant should reapply for the variance to eliminate the garage.

President Kleid asked if it would be sufficient that, at the time the applicant applied for the permit, they would have to build the garage?

Mr. Castro advised that they could apply for the permit at any time. The problem staff had was that they believed that prior to a first built building permit for a house, which was well over a year away, there should be some conclusion as to when that garage would be constructed. If the Town Council chooses that to be at the point and time Landmarks Preservation Commission approval was received on at least the building permit, staff could accept that a permit was issued for the garage.

Attorney Broberg noted that this building existed for 114 years without a garage, and utilized, since the twenties, as a home without a garage quite successfully. He did not see the rush to judgement here as it was a very sensitive old building that was landmarked. He advised that the applicant did not know what they were going to do with it, where the garage would be placed, and did not want to build a garage just to build a garage. It defeated the purpose of the landmarking, and the sensitivity that was being applied to the project. He advised that they had two landmarked properties side by side, and that the applicant could remove those two properties from the subdivision, just leaving them the way they were; but the applicant did not want to do that.

Council Member Markin commented on the following:

- If there was a nonconforming structure and/or lot, which the applicant was to divide into conforming lots, approved by the Town Council, then this particular piece of property should also be conforming.
- Determining when to build the garage, should be left totally open ended.
- Suggested that the applicant apply for a permit to build the garage at the same that they applied for a permit for work on the other lots; and not before, as it did not have

to be built before.

- She noted that looking from the Town's perspective and from a precedent setting standpoint, the lots would be made conforming all at the same time. The applicant would have all the time they needed between now and the time they decided to move ahead with the other lots to determine what would be done with that garage.

Attorney Broberg commented that there were many variables regarding this structure. He reiterated that it was 114 years old and never had a garage, and there were many lots/homes in the Town that did not have garages. He stated that the applicant was resisting the pressure to put a garage on that building until they were ready to do so. He noted that they would construct a garage, at some point, but the question was - what was some point?

Mr. Castro commented on the following:

- The applicant had requested permission to subdivide the property from one parcel to five.
- The applicant, in order to subdivide the property, would require many variances, which related to the sensitivity of the landmarked structures, and the setbacks that would be necessary to split the old church from the other house.
- Staff's concern was the two-car garage requirement.
- When the applicant came before the Town Council, they asked for all the relief necessary to build a subdivision to ensure that both landmarked houses conformed to the code.
- One of the requirements for conformity was that the applicant was required to have a two-car garage on both those properties.
- The Town Council had approved the project subject to building the garage at some point in the future.
- Mr. Broberg had commented that the applicant might not own the property when some of the lots were sold and subdivided, which concerned staff even more.
- Staff was concerned over whether or not the garage would ever be built, in addition to being concerned over resolving this issue as it related to appropriateness from the Landmark Commission's standpoint as well as the Town Council.

Mr. Broberg explained that, at some point, the church would have to be renovated because of the value of the land. The representation to the Town Council was that when changes were being considered for the first room or the first bathroom remodeled, at that point, the two-car garage plan would come before the Town Council along with the plan to renovate or remodel the old church.

President Pro Tem Coleman suggested that a time limit be placed on building the two-car garage, such as three years or change of ownership, whichever came first. He noted that the garage issue should be resolved before a change of ownership occurred.

Paul Maddock, Jr., Trustee, commented as follows:

- Clarified that Ducks Nest, the adjacent house, was a separate piece of property from the church.
- For the record, Ducks Nest did not have a garage. The garage had been converted about fourteen years ago into a bedroom.
- The church had no garage, and had not had a garage for 114 years.
- Agreed to the placement of some time constraints.
- Requested that when the renovation plan for the church was filed, the garage would just be one aspect of that renovation.
- Reluctant to build a garage, at present, as he wanted to have it linked to the church.
- After a thorough study of the church and of the renovation plan was conducted, would the applicant know where the best place would be to locate the garage.
- After 114 years, he did not understand the urgency;
- He understood the legality, and staff's position of wanting to adhere to the strictest aspect of the law; and that was the reason the applicant had requested the special exception and why it was granted.

Council Member Markin stated that the sense of urgency that the applicant had in dividing the property was respected by the Town Council, which had granted some variances to the applicant based on the fact that a garage would be built. She reviewed her concerns as it related to dividing all of the property into different parcels conforming to current Town Code but noted the two properties would not be conforming, and might never be, as the applicant might sell them. The Town would be placed in the same position of having two lots in a cul-de-sac that were nonconforming when the properties surrounding them had been granted variances and would not have parking. The Town would end up with cars on the streets, which was exactly why the Town changed the ordinance to make sure that everything was conforming, so people would not park on the street.

Mr. Maddock responded that each of the properties had parking and would have off-street parking. He noted that was not to say that there was not room for garages to be constructed.

Mr. Castro advised that the other concern he had after several meetings with the owner's representatives, was that it had been represented to him that the other Duck's Nest had a separate two-car garage. He explained that he had told them that both properties had to conform to the code as it related not only to the requirement for a two-car garage but to the setbacks. He noted that staff's concern all along with the church was the way it had been originally shown on the plans, and that the garage needed a setback variance. If a garage was required, the lot line should be moved a couple of feet to accommodate the ability to provide a garage. He stated that his other concern was that now Duck's Nest did not have a two-car garage, which was required by code.

In response to Mayor McDonald, Mr. Maddock clarified that within a couple of years from the acceptance of the plat by the Town, the owner of the property, at that time, could build a garage onto the church. He reiterated that, at this point, he did not know where that garage would be until it was studied with an architect, and they worked with the Landmarks Preservation Commission, and worked within some type of renovation plan. He was not sure when that plan would take place.

Mayor McDonald commented that Mr. Maddock must have some kind of a time frame in mind. He clarified that the motion that passed granting the variance was contingent, he believed, on the construction of a garage at Duck's Nest, but there was no time frame with it. He believed that the Town Council needed to clarify that motion, and Mr. Maddock could come to an understanding that worked for both the Town and the applicant. The motion could not remain open ended. He advised that he did not believe that was what the Town Council intended to do, nor wanted to leave it stand.

After further discussion, Mr. Maddock advised that when the construction was completed and the property had been platted and in use, it would be two years from that point for the garage to be built.

Mr. Castro advised that staff could agree to that, provided there was a Restrictive Covenant to that effect, which would be eliminated at the time the garage was built. The covenant would tie the applicant to two years from that period. If the property changed hands, anyone who purchased the property would be aware of that encumbrance on the property.

President Pro Tem Coleman made a motion, seconded by Council Member Brooks, to approve the building of the garage within a two-year time period after the plat was approved and recorded. There would be a Restrictive Covenant to that effect, which would be eliminated at the time the garage was built.

Mr. Elwell stated that there was an issue that arose today, which might require legal advice as to whether or not the Town Council should address this issue and if so, how. There were representations made to staff, staff's recommendation to the Town Council, and the Town Council's consideration and action was based on a certain set of facts. He noted that today there were a different set of facts before the Town Council regarding the Duck's Nest property, and he believed that one way or another, the Town Council needed to decide whether to address that or not.

Council Member Coniglio asked if the Duck's Nest garage would be tied to this motion as well?

Mr. Elwell advised that was why he raised this issue during discussion, but he believed that it could be dealt with as two separate items.

Council Member Markin suggested that the point of this was to make both lots conforming because the other lots were going to be new conforming lots. She recommended that a motion be made that suggested that both lots be made conforming by building the garages within the two-year time period. There was no reason to treat them differently.

After further discussion, **President Pro Tem Coleman amended his motion clarifying that approval was contingent upon making both lots conforming by building the garages within the two-year time period after that plat is approved and recorded. There would be a Restrictive Covenant to that effect, which would be eliminated at the time the garages were built. Council Member Brooks seconded the motion. On roll call, the motion carried unanimously.**

Discussion ensued regarding the conversion of the two-car garage at Duck's Nest into a bedroom and converting it back to a two-car garage. President Kleid responded that if the residents removed the French doors and converted it back into a two-car garage, staff and the Town Code would be satisfied.

XIII. ANY OTHER MATTERS

A. Emergency Matters Regarding Beaches Affected by Weather Conditions.

The Regular Town Council Meeting of May 8, 2007, was adjourned at 4:07 p.m., and was reconvened by President Kleid at 4:12 p.m. due to emergency matters regarding the beaches affected by weather conditions. On roll call, the following officials were found to be present: Mayor Jack McDonald, President Richard M. Kleid, Council Member William J. Brooks, Council Member Gail Coniglio, and Council Member Susan Markin. President Pro Tem Coleman was absent.

Lee Goldstein, Co-Chairman of the Citizens Association of Palm Beach, discussed the emergency situation regarding the beaches affected by the weather conditions in Palm Beach. He explained that he was before the Town Council seeking direction.

Director of Public Works Paul Brazil provided a report on the beach conditions. He advised that there would be another high tide this evening, at midnight, and similar conditions were expected as to what had been seen at today's high tide. He explained that by Thursday or Friday, staff would physically be able to go out and start assessing the damage better than they could presently.

Mr. Brazil reported on the contingency efforts by the Town to employ resources, if needed, and what the Town would be allowed to do by the State and Federal governments.

- Short Term Plan:
  - In the case of a building actually being threatened, Murray Logan Construction, Inc., the company who recently did the revetment work for the North Ocean Boulevard seawall, had revetments on hand, which could be placed on relatively short notice.
  - The Town was trying to obtain cost estimates from Murray Logan Construction, Inc., based on cubic yards placed.
- Long Term Plan:
  - The Town was looking for an inland source of sand that would be beach compatible. Two contractors had been contacted to find that sand and to obtain a per yard price placed.
  - Staff anticipated that Reach 8 would have the most immediate need.

Mr. Brazil explained that the concern with placing sand was the Town would need a joint permit from the Army Corps of Engineers and from the Florida Department of Environmental Protection, which was difficult to obtain. Emergency placement of sand, similar to what had been done in the past, would be much more complicated because of where the mean high was going to end up after this event.

Council Member Brooks asked Town Manager Elwell if a municipality had the right to declare an emergency in order to bypass the two agencies?

Mr. Elwell responded as follows:

- The Town could declare an emergency under certain circumstances, but they had to communicate to the appropriate agencies what they proposed to do.

- There were ways to eliminate the type of permitting process that took months and was irrelevant to this type of situation.
- There were actions the Town could take, but needed to take them prudently.
- The Town did not have carte blanche when declaring an emergency as there were higher levels of government that had legal authority over the Town.
- There were ways for communication to take place with higher authorities if it was a dire enough situation.
- Still photography had occurred today, and would continue throughout this weather event as it provided important evidence; visual documentation would continue.
- It was important to ensure that the Town did not overreach their authority in the desire to protect the Town.
- The Town could not prudently take sand action while the event was still ongoing unless a structure was threatened, because any sand action would immediately be lost.

Mr. Elwell advised that Mr. Brazil had scheduled a conference call tomorrow with the Town's legal adviser and the Town's consultant team to provide the Town with advice on what they could or could not do without permission. The Town was getting additional guidance as it monitored the situation on the beach to know what needed to be done.

President Kleid summarized that it appeared the Town was lining up resources and was in contact with governmental agencies, but was not at the point yet where they could take any dramatic action, because they had to wait for the event to have finished, unless there was imminent damage to buildings and life. He noted that the storm was expected to end in 24 hours.

President Kleid suggested that if the Town did have the capability to video tape, it should be done particularly during the midnight event, even if the Town had to pay someone to be there.

In response to Council Member Coniglio, Mr. Brazil advised that the best case scenario for an emergency response was revetments. He noted that for the long term, sand could be permitted. If the Town used revetments as a long term solution, the Town would pay for its removal. He explained that there were two good areas of access to the beaches, in an emergency situation, that the Town had used in the past.

President Kleid advised that 3200 South Ocean Boulevard and 3360 South Ocean Boulevard were both accessible.

Mr. Elwell discussed the possibility of calling a Special Town Council Meeting within the next couple of days if there was the need for any emergency field actions requiring authorization of expenditures. He noted that it might be difficult raising a quorum on short notice and suggested that the Town Council authorize him to take emergency field actions under the Town's emergency purchasing procedures.

After further discussion, **Council Member Coniglio made a motion, seconded by Council Member Markin, to authorize Town Manager Elwell, under the Town's Emergency Purchasing Procedures, to take emergency field actions that may become necessary, in the event that the Town Council could not be convened with a reasonable period of time. The motion carried 4/0; President Pro Tem Coleman was not present.**

XIV. ADJOURNMENT

There being no further business, the Regular Town Council Meeting of May 8, 2007, was adjourned at 4:28 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk