TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON APRIL 11, 2006

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting of April 11, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

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

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

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

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RECYCLED PAPER

Tim M. Frank - Planning Administrator
Charles Langley - Public Works Assistant Director
Jon Luscomb - Dock Master
Bonnie Maney, Communications Manager
Michael Mason - Major Law Enforcement
Edward J. Moran - Fire-Rescue Chief
Michael Reiter - Police Chief
Gary Sallenbach - Support Services Major
Cheryl Somers - Assistant Finance Director
Jane Struder - Finance Director
Lisa Walkowich - Office Manager
Rob Walton - Chief Code Compliance Officer
Amy Wood - Accounting Supervisor
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Floyd Wideman, Architectural Commission, From March 1996 Through March 2006.

Mayor McDonald presented Mr. Floyd Wideman with a plaque recognizing his service on the Architectural Commission from March 1996 through March 2006.

B. Recognition of Marvin Rosenberg, Architectural Commission, From March 1996 Through March 2006.

Mayor McDonald presented Dr. Marvin Rosenberg with a plaque recognizing his service on the Architectural Commission from March 1996 through March 2006.

C. Recognition of Leslie A. Shaw, Architectural Commission, From March 2000 Through March 2006.

Mayor McDonald presented Mr. Leslie A. Shaw with a plaque recognizing his service on the Architectural Commission from March 2000 through March 2006.

D. Recognition of Eugene Lawrence, Code Enforcement Board, From July 1996 Through April 2006.

Mayor McDonald presented Mr. Eugene Lawrence with a plaque recognizing his service on the Code Enforcement Board from July 1996 through April 2006.

E: RECOGNITION OF THE FINANCE DEPARTMENT

Mayor McDonald recognized the achievements of the Finance Department.

IV. COMMENTS OF MAYOR JACK McDONALD

Today, I'm going to make my second award of the "Just Put It Off Until The Requester Is Dead Award." This month, it's going to go to Florida Power & Light (FP & L), because it took FP & L five months to make an emergency repair on Laurian Lane, and the request involved residents, several members of Town staff, several members of FP & L and the Mayor. We did survive it, and the repair was made last Friday.

My second item today is to request the Town Council direct an appropriate commission or committee to formulate a development plan for the Royal Poinciana Plaza. I suggested it before running for Mayor in 2005, and I still firmly believe that a proactive proposal is a more rational and beneficial way to deal with this development challenge; a challenge that ultimately causes great angst to our residents. I believe the Council is in a position to provide visioning leadership that will reduce or eliminate the near hysteria that results from each new application. Let's put the ball in our court, and decide what WE want and what is beneficial for the community. Hopefully, that will include a multi-purpose theater on the site, in addition, a well thought out reasonable plan may provide legal benefits down the road.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Councilman Brooks commented on the following items:

- The process of having board/commission applicants appear before the Town Council yesterday afternoon was very well done. He noted that he very much looked forward to the Special Town Council Meeting on May 10, 2006, where an in-depth discussion would take place regarding the procedures which would be followed in the future regarding boards and commissions.

Council Member Markin commented on the following items:

- The Firemen's Gala, and the incredible job done by the Fire-Rescue staff. She particularly recognized Darrel Donatto and Liz Nowacki.

- Cell phone service; the huge void in service in Town. [*Town Manager Peter Elwell advised that there were a number of towers in Town; staff would provide a report with the history of when it was only possible to put an antenna on a Town building and what had been done to try to make that more flexible, in order for the Town Council to decide whether any further Council action may be required*].

- Traffic signal timing, especially near Publix and Bradley Place.
  [*Town Manager Peter Elwell advised that staff would follow up to ensure that traffic signal timing is appropriate*].

- Publix Supermarket:

  * grocery carts
  * windows and floors
  * stocking issues
  * floor space
  * garbage behind the store
  * landscaping and exterior of building
  * suggestion to invite the Publix manager to attend the regular Town Council meeting on May 9, 2006.

  [*Town Manager Peter Elwell advised that many of the items were in the purview of Publix, as a private entity; garbage and landscaping items were potential code enforcement items, and staff would follow up on them. Publix management would be asked to attend the May 9, 2006, Town Council Meeting to respond to these concerns*].

- Planning, Zoning & Building relocation. Suggestion of a space planning study with the intention of keeping the department in the Town Hall building. [*Town Manager Peter Elwell advised that he would need further direction from the Town Council; in the absence of direction from a majority of the Town Council to revisit keeping*

Planning & Zoning & Building in Town Hall, staff would move forward in the manner previously directed – to locate properties off-site in West Palm Beach].

- The increase of boat traffic due to the development of Peanut Island, and the locking of the gates on E. Inlet.

President Pro Tem Kleid commented on the following item:

- The eyesore plantings put in by Florida Department of Transportation (FDOT) in the Palm Beach median going north from the Lake Worth Bridge. He suggested that the Beautification Committee of the Palm Beach Civic Association, the Citizens Association, the Garden Club, and the Public Works Department should take action to beautify the area, which was an important gateway to the Town. [*Town Manager Peter Elwell advised that the civic associations in Town would be contacted and staff would report back to the Town Council as to what occurred].*

Councilman Wyett commented on the following items:

- Concurred with Council Member Markin in every respect, and suggested that the relocation of Planning, Zoning & Building, and the renovation of Town Hall be added to the agenda for the May 9, 2006, Town Council meeting.

- Cell phone antenna placement.

President Coleman commented on the following items:

- The responsibility for the maintenance of bridges. [*Town Manager Elwell advised that the Town maintained the Palm Beach side of the bridge; staff would review the matter to ensure that the area was maintained properly].*

- The landscaping on the public school property and suggested inserting some plantings behind the white fence. [*Town Manager Elwell advised that staff would provide a report addressing the history of the project, and landscaping options that would be available].*

Town Manager Elwell commented on the following item:

- Announced that Annual Report would be coming out very soon, and that the Government Finance Officers Association had consistently awarded the audit, budget, and now the annual report, for the quality of those documents.

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

Madeline Greenberg, 3360 South Ocean Boulevard, commented regarding:

- Hurricane evacuation and the responsibility for elderly residents. She suggested a registration program for residents with the Town facilitating arrangements for emergency situations.

Harrison Robertson, 134 Seagate Road, commented regarding:

- The relocation of the Planning, Zoning & Building Department, urging that PZ & B remain in Town, and suggested alternatives such as closing Australian Avenue and constructing a building there; also the possibility of condemning buildings on the west side of County Road, and placing PZ & B in that location.

- Royal Palm Plaza Theater property or the Hibel property as targets for the Town to condemn and to use as new buildings for theater purposes, or as an auditorium for large Town meetings, or which could be rented out for other purposes.

- Suggested that the Town Council stop hearing ARCOM appeals de nova, which would require the appellant to furnish a transcript, and the only question before the Town Council would be whether or not there would be sufficient evidence to support the conclusion.

Eric Gilbertson, 151 Chilean Avenue, commented regarding:

- Property values and property taxes.

Heinz Gundlach, 150 Algoma Road, commented regarding:

- Airport noise.

Richard Raffo, 173 East Inlet Drive, commented regarding:

- The security of the gates on East Inlet Drive, requesting that more attention be provided by the Police Department. [*Town Manager Peter Elwell advised that staff would follow up*].

VII. APPROVAL OF AGENDA

The following changes were made to the Agenda:

ADDED Discussion of Relocation of Planning, Zoning and Building, as Item XI.B.7.

Motion made by Councilman Wyett to add as Item XI.B.7., Discussion of the Relocation of Planning, Zoning and Building. The motion was seconded by Council Member Markin. On roll call the motion carried 3/2: President Coleman, Council Member Markin and Council Member Wyett casting affirmative votes; Council Member Brooks and President Pro Tem Kleid casting dissenting votes.

DEFERRED to May 9, 2006, Town Council meeting: Resolution No. 26-06.

Motion made by Council Member Wyett to defer Resolution No. 26-06 to the May 9, 2006, Town Council meeting. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.

DEFERRED to June 13, 2006, Town Council meeting: Site Plan Review #5-2006 - 2842 South Ocean Blvd.

Motion made by Councilman Brooks to defer Site Plan Review #5-2006 with Special Exceptions and Variances to the June 13, 2006, Town Council meeting. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

DEFERRED to May 9, 2006, Town Council meeting - Special Exception #1-2006 - Lots 5 & 6, Ocean Lane.

Motion made by Councilman Wyett to defer Site Plan #1-2006 with Site Plan Review and Variances to the May 9, 2006, Town Council meeting. The motion was seconded by President Pro Tem Kleid. On roll call, the motion carried unanimously.

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

VIII. CONSENT AGENDA

A. MINUTES: MARCH 13, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING STRATEGIC PLANNING.

B. MINUTES: MARCH 14, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING.

C. MINUTES: MARCH 31, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING UNDERGROUND UTILITIES AND RELOCATION OF PLANNING, ZONING, AND BUILDING DEPARTMENT.

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL REVIEW COMMISSION AT ITS MEETING ON MARCH 22, 2006.

E. RESOLUTIONS

1. RESOLUTION NO. 19-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Excluding Certain Already Designated Historic or Specimen Trees Located on Properties Within the Town of Palm Beach; Adding Newly Designated Historic or Specimen Trees; Providing for the Recording of Said De-designations and Additions 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]

2. RESOLUTION NO. 21-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Joint Participation Agreement Between the State of Florida Department of Transportation and the Town of Palm Beach

for Construction and Administration of a Mangrove Mitigation Project During Resurfacing of SR A1A/Ocean Boulevard at Phipps Ocean Park in Palm Beach, Florida. [H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 24-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Urging Citizens and Businesses to Practice Water Conservation and to Become More Aware of the Need to Conserve Water.
[Peter B. Elwell, Town Manager]

4. RESOLUTION NO. 25-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Second Amendment to Interlocal Agreement Establishing the Municipal Public Safety Communications Consortium (MPSCC) of Palm Beach County as Set Forth in Exhibit "A" Attached Hereto; Providing an Effective Date; Authorizing the Expenditure of Funds as Set Forth in the Agreement; Authorizing the Mayor to Sign the Agreement as Representative of the Town of Palm Beach. [Michael S. Reiter, Chief of Police]

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

Deferred Resolution No. 26-06 to May 9, 2006, Town Council Meeting., under Item VII. Approval of Agenda.

F. OTHER

1. Selection of Architectural Firms Pursuant to CCNA Requirements.
[H. Paul Brazil, Director of Public Works]

2. Authorization for Expenditure to Install Noise Attenuating Panels in the Emergency Operations Center (EOC).
[H. Paul Brazil, Director of Public Works]

3. Authorization for Expenditure to Install a Hood and Fire Suppression System in the Kitchen at the North Fire-Rescue Station. [H. Paul Brazil, Director of Public Works]

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

IX. BOARD/COMMISSION ANNUAL REPORT

A. Code Enforcement Board.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Department Director Veronica Close stated that the Code Enforcement Board presently had on board five out of the nine members that comprised the Board. She acknowledged the Board Members that were present: Mr. Lawrence, Mr. Hoffman, Mr. Raffo and Mr. Ochstein.

Ms. Close provided a status report regarding code enforcement activities to date and over the past year. She explained briefly Code Enforcement Board procedures and the two methods used by code enforcement in the Town of Palm Beach.

- Direct Code Violation
- Code Citation to Appear

Ms. Close explained the procedure used for court cases that relate to code violations:

- Code Officer notifies violator;
- Reasonable time given to correct violation, not to exceed 30 days, in accordance with the Town's Code;
- Notice of Hearing, if violation was not corrected;
- Repeat violation immediately brought before Code Enforcement Board;
- Code Enforcement Board hears case, finding violator in violation,

provides time for the violator to correct violation, time provided depends on violation;

- If violation not corrected by next meeting, fine can be assessed back to date given to correct the violation;
- If violation continues not to be corrected, lien filed;
- After 90 days, if there was no homestead exemption on the property, the property could be foreclosed;
- Issue would be brought back before Code Enforcement Board, who would authorize foreclosure;
- The recommendation for foreclosure would come before the Town Council;
- An appeal of a decision of the Code Enforcement Board needs to be taken to court and not to the Town Council.

Ms. Close explained that a Code Citation was a Notice to Appear. The Code Enforcement Officer, instead of bringing the case before the Code Enforcement Board, would issue a Notice to Appear, which was a paper fine similar to a parking ticket. She advised that there were violations for repeat offenders. The violator could either pay the fine or appear before the Code Enforcement Board to contest the fine.

In response to President Coleman, Ms. Close advised that in the case of homesteaded properties, the lien remains on the property until it was either sold or ownership had been passed on. She noted that it was her belief the lien remained with the property for twenty years.

Ms. Close discussed the following:

- In cases where there might be health or safety violations, the Town had the option of going onto that property to make repairs, which become part of the lien.

- The Town now had a part-time Code Enforcement Officer that worked nights and weekends.

- The Town hoped to hire another Code Compliance Officer to fill an open position.

- The efforts of the Code Enforcement Board were traditionally reactive, but in the past couple of years, they have been more proactive, actively enforcing new Ordinance changes.

- In the past six months, staff had eliminated placing items on the Code Enforcement Board agenda thirty days in advance. When a person was cited for a violation, the violator would be provided with the date of the next Code Enforcement Board meeting, and was told that if the violation was not corrected, they had to appear at that Code Enforcement Board meeting. This procedure decreased the time for compliance by thirty days.

- When a case came before the Code Enforcement Board, a finding of violation was asked for, in almost all circumstances, even if the violation was corrected before that meeting, but after the time allowed to correct same. The reason for this was because if it was a repeat offender, they would be brought directly back to the Code Enforcement Board, and instead of enabling the Code Enforcement Board to assess a fine of $250.00 a day, a fine of up to $500.00 a day could be assessed for repeat violators.

- The Planning, Zoning and Building Department had a policy of recommending fewer continuances and postponements wherever possible.

- The PZ & B recommended to the Code Enforcement Board that fines be assessed the day after the time period allowed for violations to be corrected.

- The Code Enforcement Division of PZ & B would sit down to assess priorities, looking at health and safety issues first as soon as they were at full staff.

- In the next twelve months, the Planning, Zoning & Building Department would require that all Code Enforcement Officers have at least two levels of certification by the Florida Association of Code Officers. Four certifications were available, but PZ & B was, presently, concentrating on the first two.

- A number of seminars and conferences had been identified for Code Enforcement Board members to attend, if interested.

- Staff was working with the Police Department to expand their Code Citation Program.

Ms. Close advised that Resolution No. 23-06 outlined administrative fees. She explained that the Code allows for assessment of costs associated with prosecuting a case where the Town prevails. The initial fee of $150.00 represents an average cost of prosecuting a case before the Code Enforcement Board, where the Town prevails, and a finding of violation was issued. This was normally done at the first Code Enforcement Board hearing.

In response to President Coleman, Ms. Close advised that the Planning, Zoning and Building Department did not, at present, have a computer system that tracked statistics relative to code enforcement. She noted that PZ & B did gather that information manually, once a year. She stated that at PZ & B's June presentation to the Town Council, they would have those statistics available, unless the Council would prefer to have them provided sooner.

Town Manager Peter Elwell stated that code enforcement had been identified by the Town Council as one of their five top priorities for this year. He advised that if the Council gave final approval for that priority today, staff would assist in providing additional data and recommendations on how to implement that priority item, in addition to providing the Council the statistical information requested, during the focus presentations occurring in May and June for each of the Town departments.

Councilman Brooks stated that he had been very frustrated reading the minutes of the Code Enforcement Board to find that violations have been dismissed because of compliance. He advised that fines should be applied at the time of the violation, and requested that as Planning Zoning & Building progressed in refining the procedures for code enforcement, they take egregious examples of noncompliance into consideration when it comes to fines.

Councilman Wyett suggested that next month's agenda should include the subject of the Town Council hearing violations of agreements made by them with the offending parties, since the Council could take more drastic action than the law allows the Code Enforcement Board to take.

President Coleman stated that would be placed on next month's agenda.

Council Member Markin discussed the fee structure relative to staff time. She advised that the initial fee of $150.00 did not cover the amount of time spent by a Code Enforcement Officer on noncompliance issues. She recommended that the $150.00 initial fee along with any other fine calculations be increased.

President Coleman advised that there was a tonal issue on how to deal with one's neighbors and that the tone was getting sharper. He noted from a budgetary view, the biggest resource the Town Council controlled was staffing. He advised that if people felt that it was easy to take advantage of the system, the Council would need to increase code enforcement staffing. He explained that he was an advocate of getting people's attention and shifting more of the responsibility to the citizens.

Ms. Close clarified that the administrative cost was based on actual costs, which may have to be adjusted. She noted that they were presently at a disadvantage because staff was working on a system to track those costs, and they may find out that the numbers were not adequate. She stated that these costs were for prosecuting a case and explained that the fines were different. She advised that State Statute did limit fines to $250.00 per occurrence for an initial violation and/or per day and $500.00 per occurrence and/or per day, and those fines do accrue.

Town Manager Elwell stated that the administrative cost, under Statute, had to reflect actual costs and could not be part of the punitive imposition. He advised that $150.00 was currently the Town's real estimate for costs when handling a relatively routine case. He suggested that the Town Council adopt Resolution No. 23-06 today. He advised that staff promises to monitor the costs more carefully, in the future, than has been done in the past. He noted that staff would come back to Council as soon as the data supported an increase in that fee. He commented that staff would be collecting data that had not previously been collected.

President Coleman explained that the Mayor and Town Council directed Town boards and commissions to present a review of the past year's activities and any current issues to the Council. The first Board to present was the Code Enforcement Board and he thanked Architect Gene Lawrence, former Chairman, for attending today's meeting.

Mr. Lawrence stated that he was privileged to have been the Chairman of one of the more highly qualified boards in this Town. He advised that there were some very good people on the Code Enforcement Board, with the reason being that the Board consisted of a broad scale of qualified people such as architects, engineers, business people, and contractors.

Mr. Lawrence discussed several suggestions he had relative to the Code Enforcement Board.

- The guidelines for fines should be more structured.
- The Code Enforcement Board should consider placement of a fine at the point of citation.
- The procedure that did not allow a fine to increase once the process had begun should be reviewed and revised.
- The procedure for extension of construction contracts needed to be made much more precise with more staff review before coming to the Code Enforcement Board. The fines related to this were large, and at the last meeting, there were fines of $80,000 and $20,000.

President Coleman requested Mr. Lawrence reflect on the possible pluses and minuses of a special master as opposed to the present structure of placing citizens on the various boards and commissions to make policy decisions.

Mr. Lawrence advised that he did not see any problem with using a special master, but believed that if a board or commission consisted of a diverse group of people, they would do a good job. He noted that he had philosophical feelings about all of the boards and not just the Code Enforcement Board.

In response to President Coleman, Mr. Lawrence stated that he had not had the experience nor had he seen difficulties dealing with alleged violators, because they were neighbors. He advised that a board member could not recuse themselves because the alleged violator was a neighbor. He informed the Council that there was no ex-parte communication with the Code Enforcement Board explaining that an issue before the board could not be discussed anywhere except in that hearing.

In response to President Coleman, Mr. Lawrence advised that he would suggest a management policy or a tool that once a year, Town boards and commissions would review what they were doing, what they were doing badly, how they were doing, how they could do better, and what needed to be improved. He explained that it should be a structured event, with each member of that board evaluating what went on during the year and present it to the Town Council.

President Coleman stated that he had thought about having departing members anonymously evaluated by their peers for such things as competency, efficiency, and working and playing well with others.

In response to President Coleman, Mr. Lawrence stated that he did not think that would be a reliable process. He noted that what President Coleman was talking about was a peer review and he believed that it might be more effective to have a staff review.

In response to Council Member Markin, Mr. Lawrence stated that he had looked at the issue of a board chair having more input into the appointment of a board or commission member. He advised that he did not believe it would necessarily make a big difference, unless the person was personally known to the chair or another member.

President Coleman thanked Mr. Lawrence for all the work he had done for the Town and for the Code Enforcement Board.

1. RESOLUTION NO. 23-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Establishment of Fees for Certain Services Provided by the Town, Establishing an Effective Date.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 11-06 by title, as printed above.

President Pro Tem Kleid made a motion to approve Resolution No. 23-06, Approving the Establishment of Fees for Certain Services Provided by the Town. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

2. Code Enforcement Board Authorization for Foreclosure Action; 1191 North Ocean Way.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Department Director Veronica Close stated that staff and the Code Enforcement Board were recommending to the Town Council that they proceed with the foreclosure action in regard to Case No. 04-1792, Mockingbird Trust, 1191 North Ocean Way. The violations consisted of grass and exterior violations. She advised that the grass violations had been taken care of but the exterior violations still existed.

Ms. Close explained that this case began in December 2004, and was now just coming before the Town Council because there had been a death in the immediate family as well as a significant illness. The violator had come before the Code Enforcement Board a number of times to request time extensions, which were granted, under the circumstances.

In response to President Coleman, Ms. Close advised that there were $80,000 in liens placed on this property.

Council Member Wyett made a motion to approve the recommendation by staff and the Code Enforcement Board to proceed with foreclosure in regard to Case No. 04-1792, Mockingbird Trust, 1191 North Ocean Way. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

X. PUBLIC HEARING

A. <u>RESOLUTION NO. 22-06</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission That the Property at 435 Seaspray Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.
[Veronica B. Close, Director of Planning, Zoning, and Building]

Planning Administrator Tim Frank presented Resolution No. 22-06, and noted that there was proof of notice and verification of publication.

The witnesses were sworn in by Town Clerk Eichhorn.

Mr. Frank advised that the subject property was located at 435 Seaspray Avenue. The Landmarks Preservation Commission had studied the property and had found that the necessary criteria had been met in order to designate the property as a Town of Palm Beach Landmark.

Historical Preservation Consultant Jane Day presented the Designation Report regarding the property located at 435 Seaspray Avenue. She advised that the owner requested that the house be landmarked.

Councilman Wyett advised that normally he would not be in favor of landmarking this property, because the architect was unknown as well as some other factors. He noted that because the house was located on one of the "Sea" streets, landmarking it would contribute to what might eventually become a historic district.

Motion made by Councilman Wyett, seconded by Councilman Brooks to accept the Designation Report as part of the record.

President Pro Tem Kleid advised that the property owner approved of this house becoming a landmarked property, and since this house was more than fifty years old, it easily fit within the criteria to become a landmarked property.

On roll call, the motion carried unanimously.

Town Attorney Randolph read Resolution No. 22-06 by title, as printed above.

Motion made by Councilman Brooks, seconded by Councilman Wyett to approve Resolution No. 22-06 designating property at 435 Seaspray Avenue, as a Landmark of the Town of Palm Beach. On roll call, the motion carried unanimously.

XI. REGULAR AGENDA

A. Old Business

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

Town Manager Elwell, advised that Ken Rearden, Assistant City Administrator, City of West Palm Beach, had planned to be here today to report on the work that the city had done to improve the taste and smell of the water. He noted that Mr. Rearden was out of town, but was willing, if necessary, to provide an update at next month's Town Council meeting on the water quality concerns of the Council. He stated that Mr. Rearden had provided a written status report noting that there had been some noticeable improvement in the water.

Councilman Brooks stated that he believed there was definite improvement in the water in the mid-town area. He noted that if the north end and south end agreed, he did not believe Mr. Rearden needed to come before the Council next month.

After some discussion, it was decided that there had been improvement, and the Council would continue to monitor the water quality.

2. Status Report Regarding Beaches and Dune Restoration Project.
[H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil presented a brief update on coastal issues, specifically the dune restoration project south of the Lake Worth Pier. He advised that there were no turtle nests or false crawls last night. He noted that staff would monitor this daily, reporting back to Town Manager Elwell on what was found.

Mr. Brazil stated that temporary road construction was started this morning at 3360 South Ocean Boulevard, which was the southern point of entry by Monument 132, and they expected to haul sand through that area tomorrow. He advised that they continued to haul sand out of Old South Ocean, and tomorrow, would probably start hauling sand out of the Par 3 Golf Course with a second effort.

Mr. Brazil advised that progress had been very good, noting that approximately 3,000 cubic yards of sand had been placed as of 9:00 a.m. He stated that the production rate would decrease over time, as the whole distances got further away from the access points south of the Lake Worth Pier.

Mr. Brazil advised that staff's response to the U.S. Fish and Wildlife Service, as directed by Council at yesterday's meeting, was underway. The Town's attorneys had the first draft. He explained that the second draft required input from Mr. Elwell, but it was anticipated that the letter would go out today.

In response to Councilman Klein, Mr. Brazil advised that 3200 South Ocean Boulevard was the first point of access south of the pier. He stated that yesterday they hauled, by late afternoon, better than 80 truck loads in six hours.

President Coleman noted the effort between 132 and 134 was additional equipment, and that there was no diminution in the effort being done in the rest of the project.

B. New Business

1. Proposed Confined Space Training Prop at Phipps Ocean Park.
[Edward J. Moran, Chief of Fire-Rescue]

Fire-Rescue Chief Edward Moran proposed construction of a joint confined space rescue training prop to be used by both the Fire-Rescue and the Pubic Works Departments. The definition of a confined space was any structure that had limited openings, lack of natural ventilation and was not intended for continuous occupancy. He stated that some examples of confined space were sewer lines, manholes, water drainage lines, and underground FPL utility vaults. He noted that in the Town of Palm Beach there were over 100 confined space sites.

Chief Moran stated that Director of Public Works Paul Brazil was a partner in the Fire-Rescue Department's effort to build a confined space rescue prop. The Public Works Department would be most affected by confined spaces. He advised that most confined space incidents ended in fatalities and 100 workers die each year in confined space emergencies; confined space incidents usually resulted in two fatalities, because there would always be someone there to rescue the victim. He commented that the most common reason people got into trouble in confined spaces was the failure to monitor atmospheric systems, while another reason was flammable or poisonous gasses inside confined spaces.

Chief Moran stated that with the support of the Town Manager, classroom training had been provided last year before the hurricanes. The Public Works Department had been invited to join in that training. He noted that an outside company provided the 80-hour course, which consisted of confined space awareness and operations level training. He advised that all employees were now trained to the operations level for confined spaces.

Chief Moran advised that a second part of confined space training was the practical training aspect. He explained that what they planned to do was build, behind the South Fire Station, an underground training rescue prop. He noted that it would consist of a series of pipes and a couple of manhole covers, which were completely underground. He advised that there would not be any impacts on parking, green space or underground utilities. The only visible part of the prop would be the two manhole covers, which could be covered with astroturf, if necessary.

Chief Moran advised that the greatest thing about this project was that the Town would not incur any costs, because all materials were to be donated by Town employees, and all work involved would be done by Town employees. He acknowledged two employees that were instrumental in putting the entire proposal together, Larry Plympton, Public Works Water Resources Manager, and Lt. Craig Stanfield, Fire-Rescue Department.

Chief Moran stated that they were before Council today to ask permission to begin construction of the confined space rescue prop which would not only be beneficial to Public

Works but would include joint training with their mutual aid providers, which included West Palm Beach, Lake Worth and Palm Beach County Fire-Rescue Departments.

Councilman Wyett made a motion to approve the construction of a Joint Fire-Rescue and Public Works Confined Space Rescue Training Prop.

In response to Councilman Brooks, Chief Moran advised that this type of training was not, at present, being conducted. He explained that this prop would provide the realism needed for this type of training. He stated that currently they took the equipment off the vehicles, and on the apparatus floor of the station, simulated raising and lowering people out of holes in the ground.

The motion was seconded by Councilman Brooks.

In response to President Pro Tem Kleid, Chief Moran stated that Palm Beach County might have an offsite area where they did this type of training. He advised that the logistics of getting personnel to travel off island for training would be difficult. He added that it would be costly as well because it would involve overtime pay. He explained that by building this prop, staff could be trained while on duty, at a significant cost savings to the Town; he advised that they did have people who were trained to teach this course.

In response to Council Member Markin, Chief Moran stated that it would be a continuous training program and every month there would be a different aspect of confined space rescue training. Public Works would be invited to join Fire-Rescue in utilizing the confined space prop to train their personnel as well. He advised that the manhole covers were approximately 250 pounds and were sealed in the same way that regular manholes seen in the streets were sealed. He noted that with the assistance of Public Works, locks could be installed on the manhole covers.

Mr. Brazil advised that there were similar manhole structures all over Town and without a specific tool and a lot of backbone, they could not be disturbed.

On roll call, the motion was carried unanimously.

2. Audit Report for Fiscal Year Ending September 30, 2005, Management Letter, and Staff Response.
[Jane Struder, Director of Finance]

Finance Director Jane Struder introduced Mark Veil, of Caler, Donten, Levine, Druker, Porter & Veil, P.A., the Town's auditing firm. She stated that they were before the Town Council to present the Comprehensive Annual Financial Report (CAFR) for fiscal year ended September 30, 2005.

Ms. Struder commented that the undesignated fund balance for the General Fund at September 30, 2005, was $19,580,000, which represented 35% of the FY2006 operating budget expenditures, and exceeded the 25% minimum by $5.4 million.

Ms. Struder advised that additional copies of the report would be available in the Finance Department and on the Town's website later in the week.

Mr. Mark Veil, Town Auditor, presented a summary of the financial statements.

Councilman Wyett made a motion to accept the Audit Report for Fiscal Year Ending September 30, 2005. The motion was seconded by Councilman Brooks. On roll call, the motion carried unanimously.

3. Request by the City of West Palm Beach for Town Sponsorship of the City's Fourth on Flagler Event.
[Peter B. Elwell, Town Manager]

Town Manager Peter Elwell reported that the City of West Palm Beach had requested Town sponsorship for the Fourth of Flagler Event, in the amount of $5,000, funding to be expended from the General Fund Contingency.

Mr. Elwell announced that Cinde Martin, Sponsorship Consultant to the City of West Palm Beach for its Fourth on Flagler Celebration, was present at today's meeting.

Councilman Wyett made a motion to approve the funding in the amount of $5,000 from the General Fund Contingency, for sponsorship of the City of West Palm Beach's Fourth on Flagler Event. The motion was seconded by President Pro Tem Kleid. On roll call, the motion carried unanimously.

4. Adoption of Top Priority Townwide Goals for FY2007.
[Peter B. Elwell, Town Manager]

Town Manager Elwell identified the five highest priority Townwide goals for FY2006:

1. Proceed aggressively with undergrounding project, if approved by the voters.

2. Commence construction of the upgraded sand transfer plant at Lake Worth Inlet.

3. Begin implementation of the Traffic and Parking Improvement Plan.

4. Continuation of the beach nourishment projects; specifically, nourishment of Reach 8.

5. Improve the breadth and intensity of code enforcement activities in the Town.

Mr. Elwell explained that information was collected from staff, and the Mayor and Town Council; and ultimately, the Town Council voted a ballot to determine the top five priority goals.

Councilman Brooks made a motion to adopt the top five priority Townwide goals for FY2007, as enumerated above. The motion was seconded by President Pro Tem Kleid.

Councilman Wyett stated that he approved the list of the top five priorities, but suggested that next year the list be divided, separating out ongoing items.

On roll call, the motion carried unanimously.

Mayor McDonald requested that the Council inform him if there was anything, specifically, they wanted him to do based on their objectives for next year. He suggested placing this item on next month's Town Council agenda, if the Council needed more time to think about his request.

After further discussion, President Coleman announced that this item would be placed on next month's agenda.

5. Recreation Advisory Commission Appointments.
[Jay Boodheshwar, Director of Recreation]

President Coleman announced that, after casting ballots, the Town Council had appointed the following to the Recreation Advisory Commission:

Regular Members: Milissa Agnello
Kenneth Schechet

Alternate Member: Rita Taca

6. Code Enforcement Board Appointments.
[Veronica B. Close, Director of Planning, Zoning, and Building]

President Coleman announced that, after casting ballots, the Town Council had appointed the following to the Code Enforcement Board:

Regular Members: Larry Ochstein
Catherine M. Duemler
Martin I. Klein;

Alternate Members: Harris S. Fried
Alfred J. Cinque.

7. Planning, Zoning & Building Department Relocation.

Council Member Markin provided a brief history relative to the proposed relocation of the Planning, Zoning and Building Department. She noted that the last study was completed in 2002, and since that time, there had been many changes.

- Construction of Central Fire Station completed;
- Northern part of Town Hall emptied and remains vacant;
- Application study for the computer upgrade for PZ&B underway. One of the objectives of computer upgrade would be to minimize the necessity for contractors, architects and residents coming into PZ & B in person on their various projects;
- Costs of building and for leasing have gone up in West Palm Beach.

Council Member Markin discussed the following:

- There were other departments in Town Hall that never interface with the public such as Human Resources. Perhaps, those departments did not need to be located in Town due to the nature of their business

- The Town should have three architectural firms available to them, rather than one. The reason being that some firms might be better at restoration of a building, some might be better at space planning, and some might be better at new designs of a building. The Town currently was in a great position to call on the three architectural firms that were interviewed at Public Works, who were all anxious and willing to work with the Town.

- The residents would not be served prudently and efficiently without a very detailed space planning approach before making this major decision to move a major entity off the island.

Town Manager Elwell discussed the following two items:

1. At the conclusion, when previously studied, it was determined that the resident/ non-resident classification of Town visitors was 90% or more non-resident.

2. On traffic, the number of trips was substantially greater than 100 trips a day, perhaps, quite a bit higher than that number.

Mr. Elwell stated that this data could be resurrected, if staff was to pursue, space planning.

Mr. Elwell provided a brief history of the study work that had been performed by the Town, which was done intermittently between 2000 and 2002 and resulted in the 2002 study. He advised that it had been ultimately decided to move the Planning, Zoning and Building Department off island.

After in depth discussion by the Town Council regarding relocation of the Planning, Zoning & Building Department, it was the consensus of the Council that a space planning study was not warranted, and the Council should move forward as previously directed at prior Town Council Meetings.

Council Member Markin moved that the Town concurrently look at hiring a space planner to come in and reevaluate the spacial needs of the administrative staff in Town Hall. The motion was seconded by Council Member Wyett. On roll, the

motion carried 2/3, with Council Member Markin and Council Member Wyett casting affirmative votes; Council Member Brooks, President Pro Tem Kleid, and President Coleman casting dissenting votes.

XII. ORDINANCES

A. Second Reading

None

B. First Reading

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

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

Councilman Brooks made a motion to adopt Ordinance No. 2-06 on first reading. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

XIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of ARCOM Decision- Marcie Stollof, 120 Seagate Road- Case No. B14-06. *Deferred from the March 14, 2006, Town Council Meeting.*

Attorney Ron Kolins of Greenberg Traurig introduced six exhibits into the record on the behalf of the applicant, and discussed several of the following issues:

- One window on the second floor addition's rear elevation of Ms. Stollof's residence was originally approved by the Architectural Commission (ARCOM), and faced Mr. Kaywell's house to the rear of it;

- Mr. Kaywell complained about the invasion of his privacy due to the second floor addition, which included a window and balcony as part of the renovation.

President Coleman interjected by requesting the following Town Council's ex-parte concerning this item:

- Council Member Markin declared that she had several discussions with Mr. Kaywell and Ms. Stollof regarding the properties and visited both properties;

- President Pro Tem Kleid declared that he had a brief conversation over the telephone with Attorney Broberg about his defense of the case;

- President Coleman declared that he had met with Attorney Broberg and his client;

- Council Member Wyett declared that he had met with Attorney Broberg and his client, had lunch with Attorney Kolins, refusing to discuss the case, and paid for his own meal;

- Council Member Brooks declared that he had discussions with Mr. Broberg, Mr. Kaywell, Attorney Kolins, and Ms. Stollof.

Attorney Kolins resumed his discussion:

- The internal plans of the house had changed, placing the master bedroom against the blank wall on the second floor, which needed windows;

- The proposed changes would add two windows, move the second floor and the balcony 10 feet further back than was originally approved; All changes were taken by Architect Pat Seagraves to Mr. Frank for administrative approval, and it was unclear whether the approval included the windows.

The building permit, consistent with the elevation brought to Planning Administrator Frank, could not have been issued without administrative approval;

- A hearing with ARCOM voted 5/2 denying the application for the windows, but approved moving back the second floor and balcony. He presented photographs depicting four houses under construction that all had windows on the rear elevation looking down upon their neighbors.

- A display board was presented of ARCOM's criteria.

Attorney Kolins listed the following five reasons why ARCOM's decision must be reversed:

1. The decision was not based on any ARCOM criteria in the code;

2. The majority of ARCOM agreed that Ms. Stollof's proposal was architecturally preferable;

3. The basis of ARCOM's decision was to protect privacy, but there were other windows, balconies, and other houses, in which Kaywell's property could be seen from above (display board was presented);

4. The fundamental fairness and equal protection was denied to Ms. Stollof by not permitting her to have the opportunity to enhance her neighbors privacy by screening;

5. Ms. Stollof had met all of ARCOM's code criteria, therefore the application must, by the code's requirements, be approved.

Attorney Peter Broberg stated that the windows to the east were screened prior to the hurricane, which was why it appeared that there was no privacy. He said that when the plan originated, there were five windows along the south wall, which were not accepted by ARCOM, and one window was allowed on the south side. He noted that his client, Mr. Kaywell, had agreed to the screening and one window.

Mr. Floyd Wideman, previous chairman of ARCOM, rebutted Attorney Kolins's letter to the Town Council indicating that:

- ARCOM's decision of privacy was predicated on an appropriate standard, as written in ARCOM's mission statement - *the design elements protect the privacy of the neighboring property;*

- ARCOM's decision was not arbitrary and capricious, based on the hour and a half debate regarding the one window issue, which resulted in a vote of 5/2;

- ARCOM's decision did not violate Ms. Stollof's rights to procedural due process in that she had several consecutive meetings with ARCOM;

- ARCOM's decision did not violate Ms. Stollof's rights of equal treatment and protection under the law, as Attorney Kolins spoke at great lengths many times; and

- ARCOM did everything by the rules, and this project was approved with one window. It was brought in with ballooned (highlighted changes) modifications of the original approval, two windows were added and not ballooned or listed. Construction proceeded under a correction notice that the windows were not approved.

Chairman of ARCOM Morgan Wheelock, previous Vice Chairman, indicated that the grounds that ARCOM used to make decisions and evaluations, was not solely based on architectural merit, or excellence, but also on the preservation of neighborhoods, character, quality, and privacy of lifestyle.

Mr. Jack Stollof commented that other houses were being built in the Town that were twice as high as his daughter's house, and he did not understand how those houses obtained recent approval.

Director of Planning, Zoning and Building Close noted that:

1. ARCOM approved the project at the last meeting on March 22, 2006, with one window and landscaping as shown, including a hedge in the rear of the house or the hedge in question;

2. The Architectural Commission was asked to consider a deed restriction but did not do a deed restriction; and

3. Under the appeal process, the applicant may consider it an inconsistency or

non-conformity with the procedures or the criteria used by the Architectural Commission, and that the procedure to consider privacy as an issue was very common.

In response to Attorney Broberg, Attorney Kolins commented that:

- Screenings could be knocked down by storms, and suggested that was true of everyone in the Town, and his client, Ms. Stollof, should not be treated differently;

- Ms. Stollof was not screening bad architecture with landscaping, but was screening for purposes of privacy for the neighbor;

- In a letter dated November 6, 2003, to Attorney Broberg outlining the understandings between the clients, there was no mention of the window(s); and

- A letter dated November 7, 2003, to Attorney Kolins noting that Mr. Kaywell had concerns regarding privacy, but that there would be screening.

In response to Mr. Wideman, Attorney Kolins made the following comments:

- ARCOM was required by the Code to set forth the general basis for the appeal;

- The decision was not based on ARCOM criteria, as there was no privacy standard in the Code;

- Privacy should not be the sole basis for a decision, but if it was, everyone else should be treated the same; and

- The first building permit was received based on the windows. There was no correction notice, until Mr. Kaywell complained to the Building Department.

In response to Mr. Wheelock, Attorney Kolins commented that there was no jurisdictional standard for the consideration of privacy, and for the record, did not have a standard cited for the decision.

Town Attorney Randolph asked Attorney Kolins if he presented in his record the transcript of the meeting where this application was first heard and approved?

Attorney Kolins responded that he presented the transcript from the February 22, 2006, ARCOM hearing where they made their decision on the windows, and had a subsequent hearing on landscaping.

Town Attorney Randolph asked if he had received approval by ARCOM for the construction of the house with one window?

Town Attorney Randolph asked if those minutes were presented as part of the record, and if not, he suggested that staff incorporate into the record the transcript from the approval of ARCOM.

Attorney Kolins requested that everything from any prior hearing on this matter were incorporated into the record, including the following items: any transcript, tape, document, memo, and decision by reference related to this case.

The Town Council made the following comments/suggestions:

- ARCOM was not required to protect privacy unless it was requested and did not discriminate;
- Suggested that the neighbors reconcile with each other because it would be difficult to overturn a ruling made by an administrative body, that had not erred;
- Each case was treated differently, and the plan was approved for one window;
- ARCOM acted appropriately through the consideration of the neighbor's approval;
- One window was approved, a tacit agreement existed between the neighbors, but three windows were not ballooned in the plans;
- The Council should uphold the administrative bodies unless they acted in an illegal, arbitrary, or capricious way;

Architect Pat Seagraves clarified that he was not aware that there was any agreement regarding the number of windows at the time of his presentation of the plans of the second floor with three windows versus one, and was not involved with the plans when it had five windows. There were two windows in the bedroom when he brought the plans to Planning Administrator Frank, and nothing had been clouded, because in his firm, a job was not clouded until the permit had been issued. He added that he typically would present to Mr. Frank what was approved at ARCOM, and suggest what one would do, and Mr. Frank would approve it, if it was in his jurisdiction. He said he did not try to sneak anything through.

Mr. Seagraves responded to President Coleman that there was never an understanding with the neighbor regarding one window, at any time.

Ms. Stollof stated that for the record, when she first moved here, Mr. and Mrs. Kaywell were welcoming and very friendly to her, and she was very sorry that the Planning and Zoning Commission had to get involved in this. She continued that she sat at the table with her builder and architect, and she had received permission to sign a piece of paper to order the windows. She said that she found it hard to believe that the reputation of her architect, of everything that he had accomplished in the Town, would take a chance to allow her to sign a piece of paper, to spend the money, and order the windows, to take a chance that he might sneak them in. She said she truly believed what was said here today was true, that she had tried through her attorney, personally first, before she even hired Attorney Kolins, to save the money, to work this out with Mr. Kaywell. She stated that was all she ever wanted to do, and would still like to do. She thanked the Town Council and said she was very sorry for all of this.

Council Member Brooks reiterated that Attorneys Kolins and Broberg should negotiate the issue to resolve the differences between their clients.

Attorney Kolins stated that Attorney Broberg reported that there was no acceptable compromise.

Mr. John Kaywell, 201 Angler Avenue, apologized for the time this had taken, and conveyed that he had compromised, requesting one window, heavy screening, and not to move the wall.

Motion made by Council Member Brooks, seconded by Council Member Markin to deny the appeal, upholding the administrative body known as ARCOM. On roll call, the motion carried 4-0, as Council Member Wyett was absent.

B. Time Extensions

None

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 #14-2006 The application of 700 North Lake LLC* relative to property described as lengthy legal description on file; commonly known as 700 North Lake Way; located in the R-B Zoning District. Applicant requests a variance to construct one and two story additions (the one story addition is approximately 3,100 square feet and the two story addition is approximately 300 square feet) onto a landmark house and a proposed new pool cabana on a through lot with a point of measurement of 26.41 feet National Geodetic Vertical Datum (NGVD) in lieu of the 8.35 feet NGVD required on the west half of the lot and 11.71 feet NGVD required on the east half of the lot. (The existing finished floor of the landmarked house is at 26.41 feet NGVD which is the same as the relief being requested.)

Ex-parte communication was declared by Council Member Markin who had a brief telephone conversation with Architect Jeff Smith regarding the expansion; President Pro Tem Kleid met with the Architect Smith and walked the property relative to the variance request; Council Member Wyett visited the property and had a meeting with Attorney Chopin and Architect Smith. Council Member Brooks declared no ex-parte communication but advised that Architect Smith's office had phoned him, but he did not find it necessary to speak with him on this matter.

Attorney Frank Chopin, on behalf of the applicant, discussed the merits of the variance. He advised that the house, when built in 1938, was not a five acre piece of property, and much of the property had been added later on. The new property was not landmarked and there was an agreement with the Landmarks Commission that allowed the property to be subdivided.

Attorney Chopin advised that the house on the property was landmarked and sat on a coral reef that ran north and south. The lot was a true lot, which meant that the west half of the property had to be measured from the Bike Trail, and the east part of the property had to be measured from the crown of the road. The hardship ran with the land, because 15' or 18' of the coral rock could not be moved in order to expand.

Zoning Administrator Paul Castro advised that the Landmarks Commission reviewed the case relative to the variances and believed that the request for the additions on this house were merited. He stated that there was a hardship, which was related to the significant grade change between Lake Trail and the location of the house as well as for North Lake Way and the location of the house, not only for the requested additions, but also the cabana.

Councilman Wyett made a motion to approve Variance #14-2006.

Councilman Wyett explained that he made the motion to approve this variance due to the hardship. He stated that the request met all the standards of the criteria.

In response to President Pro Tem Kleid, Attorney Chopin stated that the Landmarks Commission unanimously recommended that the Council grant the variance.

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

President Pro Tem Kleid advised that he voted to approve the variance, because he truly believed there was a hardship that ran with the land.

b. VARIANCE #15-2006 The application of Patricia Ward Waldman, Ward Waldman Real Estate Services, LLC relative to property described as Royal Park Addition, Lots 40 & 41, Block 10; commonly known as 225 Peruvian Avenue; located in the C-TS Zoning District. Applicant requests a variance to allow an 800 square foot real estate office use on the first floor which is only allowed on the second floor in the C-TS District.

Ex-parte communication was declared by Council Member Markin who had a brief telephone conversation with Ms. Ward; President Pro Tem Kleid stated he had a brief telephone conversation with Attorney Broberg with respect to the variance; President Coleman stated he had a brief telephone conversation with Attorney Broberg; and Council Member Wyett stated he returned

Attorney Broberg's phone call, but he was no longer in the office.

Attorney Peter Broberg, on behalf of the applicant, stated that the request was for a variance to allow an 800 square foot real estate office use on the first floor which was only allowed on the second floor in the C-TS zoning district. He commented that this section of Peruvian Avenue was not a retail area, and he believed there were only two actual retail shops.

Zoning Administrator Paul Castro stated that staff did conduct a survey to determine what types of commercial businesses were located along the 200 block of Peruvian Avenue. He advised that it was mostly office type use.

Mr. Castro noted that next year staff would be looking at this issue to further refine what was allowed on the first floor in terms of office use, when looking at the character of an area, as well as what the intended purpose of a building was when originally built.

Mr. Castro explained that the applicant was asking for a variance to place an office on the first floor of 225 Peruvian Avenue. He advised that there were offices up and down the street, and there was no strolling pedestrian activity in the area, which was the cause of the hardship being addressed by the applicant. He stated that staff believed there might be a hardship as it related to that and to the office uses in that area.

Councilman Wyett made a motion to approve Variance #15-2006. The motion was seconded by Councilman Brooks. On roll call, the motion carried unanimously.

PUBLIC COMMENT:

At a later point in the meeting, Mr. Steve Brannock , on behalf of Barclays International Realty, requested that he be permitted to comment regarding Variance #15-2006, which had been presented earlier today by Attorney Peter Broberg and approved by the Council. He advised that he was objecting to this variance, which requested allowing office use on the first floor of a building on Peruvian Avenue. He noted that variances typically related to lot dimensions, setbacks, building heights, heights of walls, fences or gates. This particular application requested allowing a use that was not allowed, at present.

Mr. Brannock noted that about a year ago the Town spent a lot of time studying the issue of whether offices should be allowed on the first floor of buildings. He advised that, at that time, the Town Council decided it was in the best interest of the Town not to allow it. The reasons were that they wanted to increase pedestrian traffic to protect small businesses, and they did not want the Town to turn into a condo Town or office Town. The reasons for the decisions then were valid and would also be valid today.

Mr. Brannock explained that there were established standards to meet in order to qualify for a variance. He stated that, principally, an undue hardship would have to be met, and in this case, there was no undue hardship. He noted that the applicant simply wanted to use the space for a different use than what was allowed under the Zoning Code. He stated that the request did not even meet a principle difficulty type of test. He explained that, finally, he requested the Council set aside their earlier motion to approve this variance because he believed it would open up the flood gates.

President Coleman asked if there were any motions to reconsider the Town Council's previous motion, and there were none.

3. Old Business- More Than 15 Minutes

a. VARIANCE #7-2006 The application of Michael and Lisa Schultz relative to property described as Lots 3 and 3A, Esplanade Estates; commonly known as 1438 North Ocean Blvd; located in the R-B Zoning District. Variances to allow construction of a two story addition with points of measurement for height, building height plane, overall height and cubic content ratio of 17.79 feet National Geodetical Vertical Datum mean sea level ("NGVD") in lieu of the 9.74 feet NGVD maximum allowed, as determined by the Town; to allow the building height plane setback from elevation 17.79 feet NGVD ranging from 54 feet to 65 feet in lieu of a minimum setback required ranging from 42 feet to 49 feet for various portions of the proposed additions; to allow five (5) dormer windows in habitable space which the Code does not permit; and, to allow two (2) windows in a gabled end of a roof which is above the maximum height allowed which is not permitted by the Code. *Deferred from the February 14, 2006, and March 14, 2006, Town Council Meetings.*

Ex-parte communication was declared by President Pro Tem Kleid who had a conversation with Attorney Ziska to discuss her position with respect to the variances; President Coleman who had a telephone conversation with Attorney Ziska; Councilman Wyett who had a telephone conversation with Attorney Ziska relative to her presentation on the merits of the case.

Attorney Maura Ziska, on behalf of the applicant, discussed the merits of the variance. She explained that the property known as the Sea Captain's Cottage was in very poor condition. She advised that the applicant wanted to renovate the house and reviewed the requested variances.

- Request for variance to allow construction of a two story addition with points of measurement for height, and a building height plane variance;
- Request for variance to allow five(5) dormer windows in habitable space, which the Code does not permit;
- Request for variance to allow two(2) windows on the gabled end of a roof which is above the maximum height allowed which is not permitted by the Code.

Architect Pat Seagraves presented architectural renderings and photos to discuss, in detail, the variances requested.

Attorney Ziska advised that the Architectural Review Commission reviewed this request, at their last meeting, and supported the project recommending approval of the variances.

Zoning Administrator Paul Castro advised that this house had gone before the Landmarks Commission for proposed designation. The Landmarks Commission did not like the additions being placed on the house, and the applicant requested that it be taken off the consideration list, which the Landmarks Commission did. He noted that was the reason this application had been deferred for several months.

Mr. Castro explained that the applicant returned to the Architectural Commission, which reviewed the variances as they related to the proposed additions on this non-conforming house. He advised that it was non-conforming in terms of it being four stories where two story homes were allowed, and non-conforming as it related to the point of measurement. The Architectural Commission liked the architectural style and believed that the variances were merited for the proposed additions. The basic changes between the proposed two story element and the two story element that was there before was that it was raised substantially higher than the original existing elevations in order to make the roof systems match the existing non-conforming aspect of the house, which would remain.

Mr. Castro advised that staff did not see the hardship relative to the variance request for the dormer windows, which were not allowed in habitable space, or the other variances related to the point of measurement and building height plane, which were issues related to the typography between Ocean Way and North Ocean Boulevard.

Architect Seagraves advised that the existing house was four stories. He stated they were proposing to set the new addition on the dune, which would not be raising the house any higher than any of the other houses around it, as far as the footprint of where the house sits. He noted that the dormers were clerestory into the existing house and the fourth floor consisted of small children's bedrooms. The house was less than 10,000 square feet.

In response to Councilman Wyett, Attorney Ziska stated she could not agree to the elimination of the existing fourth floor structure.

Architect Seagraves stated that his client had several small children, and he did not know if they would be in favor of eliminating the existing fourth floor structure.

In response to Councilman Brooks, Attorney Ziska advised that green space would be increased as they would be removing a lot of the hardscape driveway area.

Discussion ensued regarding the building height plane variance request. Attorney Ziska advised that ARCOM did not think the house would be too massive on the street, in that area, and noted that two story homes were allowed in that area.

Zoning Administrator Castro used architectural renderings to explain the reasons the following variances were required: height variance, an overall height variance, a cubic content ratio variance, and a building height plane variance for point of measurement. He noted that all four of the variances were required for point of measurement to build the addition at that location.

Councilman Brooks advised that he would approve this request for the following reasons:

- There was a measurable change in the grade;
- The existing home was in a state of disrepair;
- The proposed request would improve the look of the lot;
- ARCOM supported the project.

Councilman Brooks made a motion to approve Variance #7-2006.

Discussion ensued regarding the roof on the new section of the house and the concerns Councilman Wyett had relative to the massiveness of it. Mr. Seagraves stated that it might look a little more massive than it actually was because of the proposed changes.

Council Member Markin seconded the motion. On roll call, the motion carried 4-1, with Council Member Brooks, Council Member Markin, Councilman Wyett, and President

Coleman casting affirmative votes; President Pro Tem Kleid cast a dissenting vote, explaining that he did not see a legal hardship.

b. SITE PLAN REVIEW #4-2006 (MODIFYING SITE PLAN REVIEW #8-2005 WITH VARIANCES) The application of Linda A. Gary and Michael Belisle relative to property described as Adams House Lot 3; commonly known as 419 Chilean Avenue; located in the R-C Zoning District. Request for a change to a previous condition of approval of the original site plan for the four town homes. The request is to eliminate the prior condition requiring that the atrium areas be kept as landscaped open space in perpetuity, as well as the restriction precluding a screen enclosure over the atrium; and, request for another site plan review modification to enclose a second story open terrace on the rear of the townhouse at 419 Chilean Avenue; covering an area of 306 square feet. *Deferred from the March 14, 2006, Town Council Meeting.*

Attorney Kolins, on behalf of the applicant, explained that he was reporting back to the Town Council as requested. He explained that approximately three months ago the applicant had received approval from this Council to enclose an internal atrium in their townhouse on Chilean Avenue. He advised that subsequent to that, an application had been filed to enclose a patio adjacent to it; and in the course, of reviewing that application, Town staff found a deed restriction on that row of four townhouses, which stated the atriums could not be enclosed. He noted that Council requested Town staff to research the issue, because they had concerns of whether the enclosures were done pursuant to Town Council approval or not.

Attorney Kolins explained that he had been asked by Zoning Administrator Castro to obtain from the residents of those four townhouses an executed termination of that portion of the deed restriction. He noted that according to the terms of the deed restriction, three out of the four owners had to agree to that termination. He advised that all four agreed to it, and he had the signed document, which also required execution by the Town. He noted that pursuant to the approval granted his clients, the renovations were started.

Zoning Administrator Castro advised that he did research that issue, and found that, including this unit, three of the four units had received permits to enclose or partially enclose the atriums. He noted that this specific unit, back in 1984, received a permit to put a screen enclosure over the atrium, which no longer existed. He advised that two of the other units received building permits in 1991 and 1996, respectively, to enclose their atriums.

Mr. Castro advised that staff did ask the applicant to come back before Council, because at the time the variances were granted, neither the Council nor staff knew about the restrictive covenant, which only the Council could release the applicant from, allowing them to enclose the atrium by variance. He explained that this was a new piece of evidence and it needed to be presented to Council.

Councilman Wyett made a motion to approve Site Plan Review #4-2006 (Modifying Site Plan Review #8-2005 with Variances). The motion was seconded by Councilman Brooks. On roll call, the motion carried unanimously.

Attorney Kolins clarified that he would, at this time, give Mr. Castro the document, executed by the property owners, which would need to be executed by the Town, and returned to him for recording.

Mr. Castro advised President Coleman that staff did need the release of a restrictive covenant for that specific section relating to the atriums, which the Town needed to sign off on as well as the residents.

Councilman Wyett amended his motion to approve Site Plan Review #4-2006, to state that staff receive a release of the restrictive covenant approving the elimination of the prior condition requiring that the atrium areas be kept as landscaped open space in perpetuity, as well as the restriction precluding a screen enclosure over the atrium, which has been signed by the residents and would be executed by The Town of Palm Beach. The motion was seconded by Councilman Brooks. On roll call, the motion carried unanimously.

c. SITE PLAN REVIEW #5-2006 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of City National Bank of Florida, as Trustee of Land Trust Agreement dated 9-20-2005 known as Trust Number 2401-2301-00, William E. Shockett, Executive Vice President & Trust Officer relative to property described as lengthy legal description on file; commonly known as 2842 South Ocean Boulevard; located in the R-D(2), B-A Zoning District. The Applicant is requesting to convert this existing 134-room hotel into a 107-room hotel condominium. The building will be completely renovated, including the demolition and reconstruction of the entire interior and exterior walls, and the addition of a partially sunken 220-space parking structure to replace the existing 144-space surface parking lot. The swimming pool will be relocated to the interior of the building on the fourth floor, and tennis courts and tennis pro shop will be built atop the parking structure. The building is and will remain 5 stories over a basement. However, the entrance road will be ramped up and the lobby will be relocated from the basement to the first floor. The hotel already contains customary accessory uses including a gift shop and two dining rooms. These uses will continue in the new hotel, but will be reconfigured. Special exception to change ownership of an existing hotel in the R-D(2) district; special exception to allow tennis courts to be built on a structure (the parking deck); and, special exception to expand existing accessory commercial uses in the hotel by enlarging the gift shop from 168 square feet to 436 square feet and adding a small tennis pro shop of 420 square feet. Variance requested to demolish more than 50% of the cubic volume and reconstruct and enlarge the nonconforming building; for a side yard setback for parking garage of 10 feet in lieu of 30 foot minimum required by code on the north side, and 15 feet in lieu of 30 foot minimum required by code on the south side; for lot coverage of 63.6% in lieu of 22% maximum allowed by code for a five-story special exception structure; for a maximum east-west building dimension of 426.6 feet in lieu of the maximum 150 feet allowed by code; for a porte-cochere dimension of 40 feet in lieu of the maximum 30 feet allowed by code; for a tennis pro shop (accessory commercial use) outside the main building, and with its own external entrance which is not permitted; to allow parking aisle widths of 21.66 feet and 21.75 feet in lieu of the 25 ft. minimum required by code; and, variance to allow parking to be arranged so that a car must be moved before another car can enter or exit a parking space, for the mechanical parking lifts. *Deferred from the March 14, 2006, Town Council Meeting.* **Request for Deferral to the June 13, 2006, Town Council Meeting Per Letter Dated March 24, 2006, From James R. Brindell, Esq.**

Deferred Site Plan Review #5-2006 to June 13, 2006, Town Council Meeting, under Item VII. Approval of Agenda.

4. New Business- More Than 15 Minutes

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

Deferred Special Exception #1-2006 to May 9, 2006, Town Council Meeting, under Item VII. Approval of Agenda.

5. Other

a. Consideration of the Neighborhood Cubic Content Ratio Index Report on the R-B Zoning District and the Results of the Community Meetings on this Subject. [Veronica B. Close, Director of Planning, Zoning, and Building]

Zoning Administrator Castro reported that on February 8, 2006, staff provided the results of the study item of the proposal to implement the Neighborhood Index Cubic Content Ratio (NICCR) for the Town Council's review. Staff and the Planning and Zoning Commission recommended at their meeting on February 16, 2006, not to accept the NICCR project.

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid to approve staff recommendation not to pursue changes in the Zoning Code to implement the Neighborhood Index Cubic Content Ratio. On roll call, the motion carried 4-0, as Council Member Wyett was absent.

XIV. ANY OTHER MATTERS

There were none.

XV. ADJOURNMENT

There being no further business, the regular Town Council Meeting of April 11, 2006 was adjourned at 3.25 p.m.

Denis P. Coleman
President

ATTEST:

Susan A. Eichhorn
Town Clerk