

**TOWN OF DAVIE  
REGULAR MEETING  
JULY 19, 2006**

**1. PLEDGE OF ALLEGIANCE**

The meeting was called to order at 7:05 p.m. and was followed by the Pledge of Allegiance.

**2. ROLL CALL**

Present at the meeting were Mayor Truex, Vice-Mayor Crowley, and Councilmembers Paul, Starkey, and Caletka. Also present were Acting Town Administrator Cohen, Town Attorney Kiar, and Town Clerk Muniz recording the meeting.

Mayor Truex explained that the Wal-Mart agenda item would be addressed last. He assured all those present that they would have the opportunity to speak. Town Clerk Muniz explained that an overflow room was available to accommodate some of the attendants.

Mayor Truex stated that item 3.2 had been withdrawn. Scott Burton, representing GeoWeb, introduced himself and explained his prior involvement with the redistricting project.

Mayor Truex announced that item 3.21 needed to be tabled to September 20, 2006/

Councilmember Paul made a motion, seconded by Vice-Mayor Crowley, to table. In a voice vote, all voted in favor. (Motion carried 5-0)

Mayor Truex announced that items 5.2 and 5.3 needed to be tabled to September 20, 2006.

Councilmember Starkey made a motion, seconded by Councilmember Paul, to table. In a voice vote, all voted in favor. (Motion carried 5-0)

Mayor Truex announced that item 5.4 needed to be tabled to August 16, 2006.

Councilmember Starkey made a motion, seconded by Councilmember Paul, to table. In a voice vote, all voted in favor. (Motion carried 5-0)

**3. APPROVAL OF CONSENT AGENDA**

*Minutes*

3.1. June 7, 2006 (Regular Meeting)

*Resolutions*

3.2. **AGREEMENT** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH GEOWEB CONSULT SERVICES FOR DISTRICT BOUNDARY REVIEW CONSULTANT SERVICES, AND PROVIDING FOR AN EFFECTIVE DATE. (\$11,910) (tabled from July 5, 2006)

R-2006-195 3.3. **CONTRACT** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH GABY & GABY, INC. FOR WILDLIFE BIOLOGIST SERVICES. (cost dependent on the number of projects authorized and budget availability)

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- 3.4. **CONTRACT** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,  
R-2006-196 AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH KEITH AND SCHNARS, P.A. FOR WILDLIFE BIOLOGIST SERVICES. (cost dependent on the number of projects authorized and budget availability)
- 3.5. **CONTRACT** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,  
R-2006-197 AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH T.Y. LIN INTERNATIONAL/H.J. ROSS FOR WILDLIFE BIOLOGIST SERVICES. (cost dependent on the number of projects authorized and budget availability)
- 3.6. **GRANT APPLICATION** - A RESOLUTION OF THE TOWN OF DAVIE,  
R-2006-198 FLORIDA, AUTHORIZING THE APPLICATION FOR AN \$85,000 GRANT FROM THE BROWARD COUNTY HISTORIC PRESERVATION CHALLENGE GRANT PROGRAM; AND AUTHORIZING ACCEPTANCE AND EXECUTION OF THE GRANT IF AWARDED (WITH \$10,000 IN-KIND SERVICES MATCH).
- 3.7. **GRANT APPLICATION** - A RESOLUTION OF THE TOWN OF DAVIE,  
R-2006-199 FLORIDA, AUTHORIZING THE APPLICATION FOR AN EMERGENCY SUPPLEMENTAL URBAN AND COMMUNITY FORESTRY GRANT OF \$50,000; AND AUTHORIZING ACCEPTANCE AND EXECUTION OF THE GRANT, IF AWARDED (WITH \$16,881 IN-KIND MATCH).
- 3.8. **GRANT APPLICATION** - A RESOLUTION OF THE TOWN OF DAVIE,  
R-2006-200 FLORIDA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE COUNTY EMS GRANT PROGRAM IN PARTNERSHIP WITH OTHER MUNICIPALITIES; AND AUTHORIZING ACCEPTANCE AND EXECUTION OF THE GRANT, IF AWARDED (WITH NO MATCHING FUNDS).
- 3.9. **ACKNOWLEDGEMENT** - A RESOLUTION OF THE TOWN OF DAVIE,  
R-206-201 FLORIDA, ACKNOWLEDGING THAT A PORTION OF THE SR7/441 TRANSIT ORIENTED CORRIDOR IS LOCATED WITHIN THE 60 DNL NOISE CONTOUR LINE OF THE 2020 AIRPORT FLIGHT PATH; ACKNOWLEDGING THAT THE TOWN OF DAVIE WILL ENSURE APPROPRIATE NOISE MITIGATION MEASURES WILL BE REQUIRED FOR ANY NEW RESIDENTIAL OR OTHER INCOMPATIBLE USE BY THE DEVELOPER/BUILDER; AND ACKNOWLEDGING THAT THE TOWN OF DAVIE WILL NOT REQUEST MONETARY COMPENSATION BY THE BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS FOR IMPACTS ASSOCIATED WITH IMPACTS WITHIN THE 60 OR GREATER DNL NOISE CONTOUR LINES FOR NEW RESIDENTIAL UNITS LOCATED WITHIN THE TOC; PROVIDING FOR AN EFFECTIVE DATE.

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- 3.10. **ENGINEERING SERVICES** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, SELECTING THE FIRM OF CALVIN, GIORDANO & ASSOCIATES INC. TO PROVIDE ENGINEERING SERVICES FOR WASTEWATER TREATMENT PLANT IMPROVEMENTS AND AUTHORIZING THE TOWN ADMINISTRATOR OR HIS DESIGNEE TO NEGOTIATE AN AGREEMENT FOR SUCH SERVICES.  
R-2006-202
- 3.11. **EXPENDITURE** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE EXPENDITURE OF FUNDS IN THE AMOUNT NOT TO EXCEED \$10,000 TO THE PINE ISLAND RIDGE CIVIC ORGANIZATION, INC. TO PAY FOR THEIR LEGAL FEES AND PROFESSIONAL SERVICES ASSOCIATED WITH THE PRE-ANNEXATION AGREEMENT BETWEEN THE PINE ISLAND RIDGE COUNTRY CLUB, INC. AND THE TOWN OF DAVIE, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.  
R-2006-203
- 3.12. **DEVELOPER'S AGREEMENT** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND THE "PROVENCE HOMEOWNER ASSOCIATION INC." FOR THE PLACEMENT OF AN ENTRANCE MONUMENT SIGN, LANDSCAPING WITHIN THE TOWN'S RIGHT-OF-WAY; AND PROVIDING AN EFFECTIVE DATE. (DA 6-1-06, Povence, generally located on the southwest corner of SW 14 Street between Flamingo Road and SW 127 Avenue)  
R-2006-204
- 3.13. **REVISION** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING A REVISION TO THE NON-VEHICULAR ACCESS LINE OF THE "SPIELMAN-MARGOLIS REPLAT," AND PROVIDING AN EFFECTIVE DATE. (DG 9-5-05, Wal-Mart, 7921 SW 45 Street)
- 3.14. **BOND ISSUANCE** - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$16,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF TOWN OF DAVIE, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2006, TO PAY COSTS OF A PORTION OF THE PROJECT DESCRIBED HEREIN AND COSTS OF ISSUANCE; PROVIDING THAT SUCH GENERAL OBLIGATION BONDS SHALL CONSTITUTE GENERAL OBLIGATIONS OF THE TOWN AND THAT THE FULL FAITH, CREDIT AND TAXING POWER OF THE TOWN SHALL BE IRREVOCABLY PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON SUCH GENERAL OBLIGATION BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING CERTAIN DETAILS OF THE BONDS; DELEGATING CERTAIN MATTERS IN CONNECTION WITH THE ISSUANCE OF THE BONDS TO THE MAYOR; AUTHORIZING THE NEGOTIATED SALE OF THE BONDS TO THE ORIGINAL PURCHASER; APPOINTING A PAYING AGENT AND A BOND REGISTRAR; APPROVING THE FORM AND EXECUTION OF A BOND PURCHASE AGREEMENT; PROVIDING FOR A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING THE EXECUTION OF AN OFFICIAL STATEMENT;  
R-2006-205

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AUTHORIZING OBTAINING A BOND INSURANCE POLICY AND ANY NECESSARY COVENANTS WITH RESPECT THERETO; COVENANTING TO PROVIDE CONTINUING DISCLOSURE IN CONNECTION WITH THE BONDS IN ACCORDANCE WITH SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12 AND AUTHORIZING THE EXECUTION OF A COMMITMENT WITH RESPECT THERETO; AUTHORIZING A BOOK-ENTRY REGISTRATION SYSTEM FOR THE BONDS; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF THE TOWN TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; AND PROVIDING AN EFFECTIVE DATE

3.15. **BOND ISSUANCE** - A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$25,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF TOWN OF DAVIE, FLORIDA LIMITED GENERAL OBLIGATION BONDS, SERIES 2006, TO PAY COSTS OF A PORTION OF THE PROJECT DESCRIBED HEREIN AND COSTS OF ISSUANCE; PROVIDING THAT SUCH LIMITED GENERAL OBLIGATION BONDS SHALL CONSTITUTE LIMITED GENERAL OBLIGATIONS OF THE TOWN AND THAT THE FAITH, CREDIT AND TAXING POWER OF THE TOWN SHALL BE IRREVOCABLY PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON SUCH LIMITED GENERAL OBLIGATION BONDS, UP TO A MAXIMUM OF THE TAX LIMITATION AS DEFINED HEREIN; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING CERTAIN DETAILS OF THE BONDS; DELEGATING CERTAIN MATTERS IN CONNECTION WITH THE ISSUANCE OF THE BONDS TO THE MAYOR; AUTHORIZING THE NEGOTIATED SALE OF THE BONDS TO THE ORIGINAL PURCHASER; APPOINTING A PAYING AGENT AND A BOND REGISTRAR; APPROVING THE FORM AND EXECUTION OF A BOND PURCHASE AGREEMENT; PROVIDING FOR A PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING THE EXECUTION OF AN OFFICIAL STATEMENT; AUTHORIZING OBTAINING A BOND INSURANCE POLICY AND ANY NECESSARY COVENANTS WITH RESPECT THERETO; COVENANTING TO PROVIDE CONTINUING DISCLOSURE IN CONNECTION WITH THE BONDS IN ACCORDANCE WITH SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12 AND AUTHORIZING THE EXECUTION OF A COMMITMENT WITH RESPECT THERETO; AUTHORIZING A BOOK-ENTRY REGISTRATION SYSTEM FOR THE BONDS; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF THE TOWN TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; AND PROVIDING AN EFFECTIVE DATE.

3.16. **BID** - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BIDS FOR SUPPLY AND INSTALLATION OF CHAIN LINK AND PASTURE FENCE. (chain link fence - Action Fence Corporation - primary source and Tropic Fence, Inc. - secondary source; 5 foot pasture fence - Little Critters Corral, Inc)

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- 3.17. **FIRE ASSESSMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA,**  
R-2006-208 RELATING TO THE PROVISION OF FIRE RESCUE SERVICES, FACILITIES AND PROGRAMS IN THE TOWN OF DAVIE, FLORIDA; ESTABLISHING THE ESTIMATED ASSESSMENT RATE FOR FIRE RESCUE ASSESSMENTS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2006; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.
- 3.18. **CONTRACT AMENDMENT - A RESOLUTION OF THE TOWN OF DAVIE,**  
R-2006-209 FLORIDA, AUTHORIZING THE MAYOR OR HIS DESIGNEE (TOWN ADMINISTRATOR) TO EXECUTE CONTRACT AMENDMENT #1 WITH CORZO, CASTELLA, CARBALLO, THOMPSON, SALMAN, P.A. (C3TS), FOR ADDITIONAL SERVICES FOR CONSTRUCTION ADMINISTRATION FOR THE OAKES ROAD FIRE STATION AS DESCRIBED IN THE CONTRACT AMENDMENT. (\$22,320)

*Temporary Use Permits*

- 3.19. TU 5-2-06, Florida Street Rods, Inc., 1904 South University Drive (weekly auto show)  
3.20. TU 6-2-06, NSU 5-K Run-Walk at Nova Southeastern University, 3301 College Avenue

*Quasi-Judicial Consent Agenda*

- 3.21. **PETITIONER REQUESTING A TABLING TO SEPTEMBER 20, 2006**  
SP 10-2-04, Dunkin Donuts Restaurant, 3884 SW 64 Avenue (B-2) (tabled from July 5, 2006) *Site Plan Committee recommended denial because the Committee was of the opinion that the Town would never accomplish what it expected of the downtown if it continued to approve parcel-by-parcel items which did not meet the intent of the Western Theme. The Committee decided on an addendum to its recommendation that the following comments be implemented into the site plan should the Council decide to reverse the Committee's recommendation to deny: 1) address the covered walkway on the north side of the building to be extended the entire length and that the east side of the building was totally barren; 2) the pavers at the corner are to match the current pattern; 3) look at the handicapped space location do to slope into the building; 4) bike racks are missing; 5) the Committee did not like the signage colors; and 6) parking arrangement has a dead end, no outlet parking area which does not work*
- 3.22. SPM 5-1-06, Stonebrook Estates, 12885 and 12855 Stonebrook Drive (E) *Site Plan Committee recommended approval*
- 3.23. MSP 6-1-05, Wal-Mart - Margolis Site, northwest corner of Orange Drive and University Drive (B-2) *Site Plan Committee recommended approval the site plan subject to Planning and Zoning Division Recommendations, under Site Plan, excluding numbers 2, 3, and 4; under Landscape Plan, excluding numbers 1, 2, and 3; and all other recommendations stay in tact. Also include the following: 1) that the applicant agrees to modify the entry curve on the southern University Drive entrance including the divider island; 2) the compactor wall needs to be brick clad and all other walls will be of stone*

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*and brick materials; 3) the eight-foot screen wall on Orange Drive will match the brick and stucco facades; 4) the western wall is to be extended to the southern curb as far as possible in the truck loading dock area; 5) clarify that the garden center storage is reflected accurately on plans A0.1; 6) create a loading area for the garden area that is not in a drive aisle; 7) that the applicant agrees not to have outside garden areas or displays, ever; 8) the retaining walls on University Drive that had been discussed will be of brick and stone facades, with additional decorative sections, or stone columns, or landscaped "hardscape" walls; 9) cart corrals will not have Wal-Mart signage on them at any location (and make them look attractive); 10) add stop bars, stop signs and arrows by the rear loading dock area where missing; 11) adjust light levels in the parking lot and review with Town staff so that there would not be excessive lighting in areas where not needed; 12) on the north side buffer, add Oak trees every 30 feet staggered forward and back on the ten-foot buffer that begins on the corner of the property and goes to the conservation area; 13) applicant will use best efforts to vacate and/or get permission to plant in the northern utility easement, and if permission is obtained, spread out the landscaping to match the staggering Oak tree plan; 14) add Cocoplum hedge/understory in the Oak tree area as described in item number 12; 15) add staggered Oaks on the northeast corner of the landscape buffer (right side of preserve/conservation area); 16) match entry trees on University Drive entrances and at the corner of Orange Drive and University Drive by adding clusters of Royal Palms and each area will be clusters of five trees except for the corner of Orange Drive and University Drive, on that corner there will be a cluster of nine Royal Palms on the corner feature; 17) add retaining walls in the berms with stone facades on University Drive and Orange Drive (agreed to have three on the south end, one between each of the entrances on University Drive, and one on the hardscaped corner); 18) with regard to the landscaping, the landscaping plan is to come back before the Committee for a final review; 19) add decorative lighting on the sidewalks in front of the store along with some bollard lighting in addition to just the wall lighting; 20) with regard to traffic issues, Wal-Mart will continue to diligently pursue a signal light on University Drive throughout the approval process; 21) Wal-Mart has agreed to contribute \$100,000 towards the 76th Avenue improvements; 22) Wal-Mart has agreed to provide the left-turn lane at the bridge on Orange Drive; 23) Wal-Mart has agreed that there will be no overnight parking of RVs' or campers on the property and that will be a deed restriction on the property; 24) Wal-Mart has agreed that there will be no deliveries between 11:00 p.m. and 7:00 a.m.; 25) that Wal-Mart will do a redesign of the sidewalk that comes down University Drive, around the retention area, around the Snyder property and connecting into Orange Drive and the sidewalks on Orange; and that this approval is subject to the Town Attorney giving a legal opinion that the Development Agreement is still valid*

Councilmember Starkey pulled items 3.13, 3.16, and 3.23 from the Consent Agenda. Councilmember Caletka pulled items 3.10, 3.12, 3.17. Mayor Truex pulled item 3.9. Councilmember Paul pulled item 3.11.

Councilmember Paul made a motion, seconded by Councilmember Starkey, to approve the Consent Agenda minus items 3.9, 3.10, 3.11, 3.12, 3.13, 3.16, 3.17 and 3.23. In a voice vote, all voted in favor. (Motion carried 5-0)

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**4. DISCUSSION OF CONSENT AGENDA ITEMS**

3.9 Mayor Truex confirmed that this would not prevent any objections to future airport expansions.

Councilmember Paul made a motion, seconded by Councilmember Starkey, to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

3.10 Councilmember Caletka wondered if there was a potential conflict, as a former Town employee was now employed by Calvin, Giordano and Associates. Mr. Kiar stated that the firm had done several projects for the Town and the former employee had not been involved in the company's hiring.

Vice-Mayor Crowley made a motion, seconded by Councilmember Starkey, to approve. In a voice vote, with Councilmember Caletka dissenting, all voted in favor. (Motion carried 4-1)

3.11 Councilmember Starkey asked if it was legal for the Council to approve this item. Mr. Kiar said he could not find anything in the agreement to indicate one way or the other, but due to an oversight, it was apparently left out.

Vice-Mayor Crowley made a motion, seconded by Councilmember Starkey, to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

3.12 Councilmember Caletka asked why the sign must be sited on the Town's right-of-way. Planning and Zoning Manager Bruce Dell advised that all of the subdivision's streets had been turned over to the Town. Councilmember Caletka said he was opposed to the signage

Councilmember Paul was concerned that there were signs but that was prior to the scenic corridor and the Town should stay true to the scenic corridor. She stated that she did not want to see lights or signs in the right-of-way. Councilmember Paul indicated that the applicant had the opportunity to provide a site plan and the signage should have been taken care of at that time.

Councilmember Starkey said that she preferred that the developer pay for the signage now, rather than the residents' having to pay for it later on. She said that the signs were to announce their community and these signs were in every community.

Vice-Mayor Crowley advised that he did not have a concern with the sign but he had concerns with the landscaping as it was on top of a bridge and over a canal.

Mr. Kiar asked that Council include a sovereign immunity clause in the development agreement.

Vice-Mayor Crowley made a motion, seconded by Councilmember Starkey, to approve, subject to the Town Attorney's comment and approval from the Central Broward Water Control District for landscaping and the signage. In a roll call vote, the vote was as follows: Mayor Truex - yes; Vice-Mayor Crowley - yes; Councilmember Caletka - no; Councilmember Paul - no; Councilmember Starkey - yes. (Motion carried 3-2)

3.16 Mr. Cohen assured Councilmember Starkey that this item would resolve the issues on which they had been working for four months, and the company would be on the job the next day.

Councilmember Starkey made a motion, seconded by Councilmember Paul, to approve. In a voice vote, all voted in favor. (Motion carried 5-0)

3.17 Councilmember Caletka felt the fire assessments were too high, and therefore, he was opposed.

Councilmember Starkey made a motion, seconded by Councilmember Paul, to approve. In a voice vote, with Councilmember Caletka dissenting, all voted in favor. (Motion carried 4-1)

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3.13 and 3.23 Later in the meeting, Susan Motley, representing the petitioner, stated she had no objection to items 3.13 and 3.23 being heard together.

Mr. Kiar read the rules of evidence and swore in the witnesses. Mr. Dell summarized the planning report.

Ms. Motley presented a book of documents regarding the project, and gave a history of the project.

Leigh Kerr, the land planner, testified that the project was compatible with the Town's Comprehensive Plan. He discussed the historical analysis he had conducted.

Derek Cave, the project engineer, explained the steps taken in processing the application. Ms. Motley presented the Regional Road Concurrency Agreement to which Mr. Kerr referred, into the record. Mr. Kerr submitted copies of the Engineering Department's comments on the geotechnical report regarding Orange Drive into the record.

Vice-Mayor Crowley asked what would prevent the applicant from returning and requesting outparcels at a later date. Mr. Cave explained the need to maintain the pond areas for drainage requirements. Ms. Motley indicated that Wal-Mart would be willing to deed restrict the property to prevent this.

Mayor Truex asked about the signs shown on the photos. Mr. Cave responded that two monument signs would be requested at a later date; however, these had not been designed yet. Ms. Motley confirmed that signage was not part of the site plan up for approval this evening. Mr. Kiar asked if the applicant would stipulate that they would not request a monument sign on Orange Drive. Ms. Motley said that if approval of the site plan and plat were given this evening, she would agree to stipulate that there would be no signage on Orange Drive.

John McWilliams, the applicant's traffic consultant, addressed comments made by the Town's Engineering Department. Mr. McWilliams explained how the software performed the weave analysis and intersection analysis. Councilmember Caletka objected to the method used to analyze the traffic because it lacked secondary variables such as the number of accidents occurring at this location. Mr. McWilliams explained the data that was used to run the traffic analysis.

Mr. McWilliams said FDOT had already determined that the offsite roadway plans in the right-of-way substantially complied with their standards and the next step was to issue a permit.

Regarding Town Engineer Larry Peters' comments that adequate road right-of-way must be acquired, Ms. Motley said she had many discussions with Mr. Peters regarding Wal-Mart's inability to obtain right-of-way for a road. She said this was not something a private developer should be made to do or could do. She said that Wal-Mart had volunteered to contribute \$100,000 to address the concerns Mr. Peters had brought up concerning 76th Avenue and 39th Street even though they disagreed with them. Mr. McWilliams described Mr. Peters' concerns and how their traffic model differed from Mr. Peters' conclusions.

Greg Kyle, representing the petitioner, described the socioeconomic model used to generate the traffic data. He informed Councilmember Caletka that the number of trips was based on the number of employees of a retail establishment. Councilmember Caletka objected to this model, as it only utilized linear relationships. He noted that it did not take other variables into account, such as seasonal and weekday variations, or the income levels of surrounding neighborhoods, which Councilmember Caletka felt would have some bearing on who traveled to the store. Mr. Kyle confirmed for Ms. Motley that his analysis conformed to existing traffic engineering principles.

Mr. Kiar asked what the store's hours would be on Sundays and if traffic studies had been done on Sunday at 10:00 a.m. on University and 39th Avenue. Mr. McWilliams said this had not been done, as this was not standard engineering practice in Broward County. He indicated that standard practice was to study the evening peak time traffic.

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David Simms, the landscape architect, explained the site's landscape features and described how several trees would be relocated on the site. Councilmember Starkey questioned why the two ponds had not been connected. Ms. Motley explained that this area had the highest concentration of oak trees and staff had requested that they preserve as much of the oak stand as possible. They had also received input from residents to the north regarding preservation of the oak trees.

Councilmember Starkey asked if the ponds could connect, even in a narrow strip, to form a continuous security buffer. Mr. Cave said that they did have the opportunity to connect the ponds in the area where the trail was now located and added that staff had requested the trail connection to Orange Drive be placed here. Councilmember Starkey suggested another location for the trail that would allow the pond connection. Mr. Cave said the trail was also located within a utility easement. He could place a trail there, but he could not place a storm water management facility inside a platted utility easement.

Ms. Motley reiterated the applicant's request for site plan approval, stating that they had met the requirements of the specifications that were particular to this property. She said that the petitioner felt they were entitled to approval of the site plan and cited several changes made in response to the Town's requests.

Ms. Motley said that during discussions with Councilmembers, a request for a pergola had been brought up and suggested that three pergolas could be incorporated into the walkways. They would also include a purple martin birdhouse in the plans, if Council wished.

Javier Rodriguez, the Town's traffic engineer, explained the analysis he had performed on Wal-Mart's traffic study. He felt the Wal-Mart model had used a low estimate of the traffic on Orange Drive. Mr. Rodriguez thought Wal-Mart's one-half percent local growth estimate was low as well.

Glenn Smith, representing Wal-Mart, cross-examined Mr. Rodriguez regarding the basis for his disagreement with the traffic analysis supplied by Wal-Mart's consultant. He noted that Mr. Rodriguez had not done a traffic study as Kimley-Horn had but had evaluated Kimley-Horn's data and procedures. Mr. Rodriguez advised that he had performed two or three traffic impact studies in his career. He admitted he did not have specific information to contradict the data used by Kimley-Horn to perform their study, but felt intuitively that something was incorrect.

Le Nguyen, Assistant Town Engineer, stated that he had worked with Mr. Peters on the site plan review and had last offered comments on April 5th. Mr. Nguyen felt that Behar and Company had addressed most of the traffic concerns, but regarding the Orange Drive improvements, he had reviewed the Wal-Mart consultant's geotechnical report and felt this indicated that the Orange Drive sub base was inadequate and must be reconstructed.

Tucker Gibbs explained that he was representing the Lake Estates at Rolling Hills Homeowner's Association and Richard Allen, the adjacent property owner.

Robert Codling, representing Alpine Wood, Rolling Hills Homeowner's Association, stated his objection to the project and questioned the differences between this and the 1989 approval. He listed several differences in construction requirements between what was permitted in 1989 and what was permitted today on this project. Mr. Codling felt that the traffic counts used in the analysis were wrong, noting that area residents knew that the 1.6% drop in traffic claimed by the applicant was "absolutely impossible."

Mr. Gibbs submitted the Davie Downtown Master Plan and the Davie Road Market Plan and stated that the people he represented opposed the project for several reasons. He explained that the project was the result of the 1989 settlement and development agreement. Mr. Gibbs felt the plan did not meet the provisions of the Town's Comprehensive Plan and land development regulations. Regarding the settlement and development agreement, Mr. Gibbs stated that when this was approved in 1989, the Town Attorney and Town Special Counsel informed Council that there was a potential legal issue related to the five-year duration of the development agreement. Mr. Gibbs read from Council meeting minutes of one

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of the 1989 meetings where the settlement agreement was discussed and noted the remarks made by Special Counsel that the duration might conflict with the Florida Development Agreement Act. He explained that at the August 30, 1989 meeting, Special Counsel Michael Burke had suggested that the intent of the parties was that the duration of the agreement be the maximum extent permitted under the Florida Development Agreement Act, and admitted that part of the agreement might be invalid. Mr. Gibbs continued that the agreement was voted on as a resolution, not an ordinance, and this was significant because some of the provisions in the agreement could only be imposed by ordinance, not by a resolution. He said that the development agreement was invalid because the provision of Florida Statute Section 163.32.29 limited the duration to ten years, the extension of which was subject to mutual agreement, which had not occurred. Even if the agreement was intended only to settle litigation, Mr. Gibbs stated that the agreement was void because a municipality could not legally contract out of its own zoning code. He stated that the only way to freeze development rights was through a development agreement, adopted pursuant to Florida statute. In 1989, the matter they were discussing was called a development agreement, but they were now being told that this was not a development agreement, rendering all the language relating back to 1989 invalid. Because of these issues, Mr. Gibbs urged Council to “look at the law and reject this application.”

Mark Alvarez, planner, presented his curriculum vitae and discussed this project’s incompatibility with the surrounding area. He referred to the Comprehensive Plan and Zoning Codes maximum square footage requirements, noting that this project was well over these limits. Mr. Alvarez described the residential and economic impacts of the project. The residential impacts included increased noise, light, and traffic and decreased security, both actual and perceived. Economic impacts included replacing community-owned retail establishments, changing management jobs with lower-wage jobs, and removing decision-making from the community. Mr. Alvarez stated that approval of the Wal-Mart at this location worked against the redevelopment efforts of the Community Redevelopment Agency, the Davie Downtown Master Plan and the Davie Road Market Plan.

Joel Spiegelman, representing the homeowners of Lake Estates at Rolling Hills, stated that he was opposed to the project. He said the trail was a “criminal trail” that would only serve to allow criminals access to neighboring residential properties. Mr. Spiegelman questioned why the truck route circled the property and did not enter directly from University Drive. He also objected to the 24-hour operations, stating that there were no other 24-hour stores in Davie, nor should there be. Mr. Spiegelman requested a ten-foot acoustic wall, a six to eight-foot high berm along the parking lot, an expanded landscape buffer, and a connection of the two lakes to increase security.

Luis Fontanils, representing Pine Island Bay Community, advised that the residents wanted no public access to the water retention buffer area for security and privacy reasons. He wanted deliveries limited to Monday through Fridays from 7:00 a.m. to 9:00 p.m. Saturdays from 9:00 a.m. to 5:00 p.m. and no deliveries on Sunday. Mr. Fontanils also requested a six to eight-foot berm near the truck access points, a ten-foot concrete block wall, landscape buffering, and a wrought iron fence. He said the best solution was to deny the application and “find something better to do with the site.”

Greg Sanders, 8343 North Lake Forest Drive, explained that the residents’ main concerns were the 24-hour operation; the safety and security concerns; the trucks; Code enforcement; light, air and noise pollution; traffic impact on Orange Drive; impact on their rural lifestyle and property values.

Mayor Truex recessed the meeting at 11:55 p.m. and reconvened the meeting at 12:05 a.m.

Henry Cuzner 8048 South Savanna Circle, noted that in 1989, his housing development had been a golf course and there were no safety concerns for the adjacent neighborhood. He said that Wal-Mart tended to involve the police in even small incidents, such as petty shoplifting, which would result in increase costs for police. Mr. Cuzner said there would be other municipal costs as well, such as the additional impacts on nearby roads and the loss of tax revenues from smaller businesses that would be

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forced out of business. He felt these costs would total well over the tax revenue realized from the Wal-Mart. Mr. Cuzner cited several statistics regarding the negative effects Wal-Marts had had on other municipalities.

Richard Allen, 8028 South Savanna Circle, explained why his family had moved to Davie several years ago. He felt that he would be “impacted immensely” by additional noise and light pollution, security issues, and reduced property values. Mr. Allen objected to the project.

Margaret Capallero 8250 SW 44 Court, said she was opposed to “any establishment of this magnitude” that abutted two communities. She was especially concerned about the additional truck traffic for deliveries. Ms. Capallero felt that her everyday quality of life would be affected negatively.

Don Martin 8343 North Lake Forest Drive, described the traffic problems he envisioned would arise on neighboring streets if the Wal-Mart were built. His biggest objection to the Wal-Mart was its refusal to comply with what he felt were “normal operating hours,” instead insisting on 24-hour operation. Mr. Martin felt the neighbors were “never going to have a day of rest again.”

Walter Mears, 7350 SW 39 Street, said he was in favor of the Wal-Mart, remarking about objecting neighbors, “If they don’t like it, they can put their house up for sale.” Mr. Mears said he had received two letters from Mr. Peters at the Town, asking him to “give the City my house.” His house was blocking construction, and Mr. Mears said Davie wanted Wal-Mart to pay to move the house. Mr. Mears did not want the house moved, nor did he want Wal-Mart to have to pay for it, but felt the road configuration should remain as it was.

Mr. Sanders submitted a letter, and petitions signed by 618 Davie residents, all opposing the project.

Elizabeth Cole, 2986 South University Drive, discussed Wal-Mart’s business practices and cited several negative statistics regarding these practices and the resultant impacts on other communities where Wal-Marts were located. She agreed that Wal-Mart would create “phenomenal noise and light pollution.”

Mayor Truex closed the public hearing.

Glen Smith, representing the petitioner, cross examined Mr. Alvarez. Mr. Smith noted that Mr. Alvarez had not cited Section 17.6 of the Land Use Plan, regarding buffering and setbacks. Mr. Smith quoted from the Section, “Town land development regulations shall address incompatible land uses through requirements such as buffering and setbacks.” Mr. Alvarez agreed that this Section was relevant to his analysis, but explained that a project must comply with all of the compatibility policies. He had not taken issue with the setbacks and buffers. Mr. Alvarez clarified for Mr. Smith that the “biggest problem” was that the store was too large and did not fit the zoning code; the problems Mr. Smith wanted to discuss were secondary.

Mr. Smith talked about points made by Mr. Gibbs earlier. He stated that local appellate courts had determined in cases similar to this that settlement agreements between a jurisdiction and a developer regarding development did not constitute contract zoning and had approved these agreements. Mr. Smith said that Section 163 stated it was a “supplement to other powers that a town would have.” He felt Mr. Alvarez should have discussed the Regional Road Concurrency Agreement, which said if the property owner performed certain improvements, it met concurrency. Mr. Smith stated that the settlement agreement still applied, the Land Use Plan Amendments considered this commercial property and the zoning applied, 1989 law governed, and everything based on the settlement agreement still applied, including the Concurrency Agreement. These facts warranted approval.

Ms. Motley referred to Mr. Burke’s memorandum of law, stating the effectiveness and validity of the development agreement. She explained measures taken by Wal-Mart to work with the Town and residents to create “the very best situation possible in light of where we are with this property.” Ms. Motley asked Council to approve the site plan and delegation request.

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Councilmember Starkey listed the changes/additions she wanted for the project: move the walkway to the east side of the retention area; install an eight-foot wall and repair/replace an existing lower buffer wall; create a perimeter of water for security by connecting the ponds; add trees for additional buffering; add a fountain in the pond in the northeast corner; install several pergolas she specifically described; add benches to the pergola area; alter the trucks' loading orientation; reduce the height of the lighting; add a bus shelter near the north entrance; utilize solar power; install on-site backup generators; submit a hurricane preparedness plan; construct the driveways of brick pavers and provide 24-hour security. She submitted photos depicting the pergolas and trees she wanted.

Mr. Simms indicated that he would look into moving the path and tree planting because there were easement issues to consider and he discussed several options for dealing with the existing wall. He responded to Councilmember Starkey's idea to alter the trucks' loading orientation, informing her that they would need to add a 12-foot corridor to the building [increasing its square footage by 3,600 square feet] in order to accomplish this. Regarding the bus shelter, he stated that the street could not accommodate a bus turn-in between the entrances, but he agreed to install one in another spot. Mr. Simms said he would need to consult with Wal-Mart regarding the solar power.

Ms. Motley agreed to the buffer wall, fountains and pergolas, the reduction of the lighting height and addition of pergola benches. She was concerned about safety issues with using brick pavers and suggested stamped concrete for the driveways. Ms. Motley also agreed to consult with the Police Department to develop an effective 24-hour security plan. Ms. Motley informed Councilmember Starkey that the store would be wired for a "roll up" generator. She added that Wal-Mart would also submit a hurricane preparedness plan to the Town.

Councilmember Caletka asked why Wal-Mart was willing to abide by a higher water retention standard. Ms. Motley informed him that this was in anticipation of Central Broward Water Control District requirements. Their development agreement was with the Town, not the Water Management District. Ms. Motley noted that they were going through the process because this was a requirement of the agreement.

Vice-Mayor Crowley asked if Wal-Mart would restrict their delivery times to between 7:00 a.m. and 7:00 p.m., forego the entrance from Orange Drive, and alter their hours of operation. Ms. Motley said they had already agreed to prohibit deliveries between 11:00 p.m. and 7:00 a.m. She explained that eliminating the Orange Drive entrance would put more traffic on University Drive. Mr. McWilliams confirmed that this would eliminate an alternate route and increase traffic on University. Ms. Motley said she had "no discretion" regarding the 24-hour operation. Vice-Mayor Crowley asked about the roadway improvements to 76th Avenue. Ms. Motley replied that Wal-Mart was committed to the improvements, provided the Town could acquire the needed right-of-way from the road's private owner.

Councilmembers then stated their disclosures. Mayor Truex stated that he would abstain from voting because his brother worked for Kimley-Horn, but was opposed to the project.

Councilmember Paul likened this project to the Home Depot on Nova Drive and University Drive, which generated constant complaints from the neighbors. In Councilmember Paul's opinion, the 24-hour operation and entrance from Orange Drive were the deal-breakers. She felt that trucks would still arrive at all hours and be required to wait until the permitted hours to unload, so the noise would still be a problem 24 hours a day. Councilmember Paul felt the project was not compatible with the neighborhood or Orange Drive.

Councilmember Starkey agreed with the reservations and objections mentioned by her fellow Councilmembers. She noted that the settlement agreement included the provision that the Town may apply subsequently adopted laws to the property if public hearings were conducted and they determined by competent, substantial evidence. Councilmember Starkey felt they had met these evidences. She was particularly concerned about the store hours, especially as it was located next to a residential

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neighborhood. Councilmember Starkey hoped that if a judge made a finding contrary to the Council's, many of the terms and conditions discussed this evening would be put in place to minimize the impact on the community.

Councilmember Caletka doubted that the tax revenue generated by Wal-Mart would compensate the Town for the additional costs that would be incurred. He did not believe that government was in the business of making private investors wealthy at the expense of taxpayers. Councilmember Caletka felt the traffic studies were mathematically weak and this project would surely lead to additional traffic problems.

Councilmember Starkey made a motion, seconded by Councilmember Paul, to deny item 3.23 . In a roll call vote, the vote was as follows: Mayor Truex – abstained; Vice-Mayor Crowley - yes; Councilmember Caletka - yes; Councilmember Paul - yes; Councilmember Starkey - yes. (Motion carried 4-0)

Councilmember Starkey made a motion, seconded by Councilmember Paul, to deny item 3.13 . In a roll call vote, the vote was as follows: Mayor Truex - abstained; Vice-Mayor Crowley - no; Councilmember Caletka - yes; Councilmember Paul - yes; Councilmember Starkey - yes. (Motion carried 3-1)

**5. PUBLIC HEARING**

*Ordinance - First Reading (Second and final reading to be held August 2, 2006)*

5.1. **RETIREMENT PLAN AMENDMENT - AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE RETIREMENT PLAN AND TRUST FOR THE MANAGEMENT AND GENERAL EMPLOYEES; AMENDING THE DEFINITION OF MANAGEMENT EMPLOYEE TO EXCLUDE DEPUTY AND ASSISTANT FIRE AND POLICE CHIEFS; PROVIDING FOR CONTINUATION OF EXISTING MEMBERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.** (tabled from July 5, 2006)

Town Clerk Muniz read the ordinance by title. Mayor Truex advised that a public hearing would be held on August 2, 2006.

Mayor Truex opened the public hearing portion of the meeting. As no one spoke, the public hearing was closed.

Councilmember Starkey made a motion, seconded by Vice-Mayor Crowley, to approve. In a roll call vote, the vote was as follows: Mayor Truex - yes; Vice-Mayor Crowley - yes; Councilmember Caletka - no; Councilmember Paul - yes; Councilmember Starkey - yes. (Motion carried 4-1)

*Items to be Tabled*

5.2. **PLANNING AND ZONING BOARD TABLED TO AUGUST 23, 2006; COUNCIL CAN TABLE TO SEPTEMBER 20, 2006**

V 2-1-06 O'Connor, 2273 SW 132 Way

This item was tabled earlier in the meeting.

5.3. **PLANNING AND ZONING BOARD TABLED TO AUGUST 23, 2006; COUNCIL CAN TABLE TO SEPTEMBER 20, 2006**

V 2-2-06 Rousseau, 2461 SW 131 Terrace

This item was tabled earlier in the meeting.

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- 5.4. **AS THE PLANNING AND ZONING MEETING OF JUNE 28, 2006 WAS CANCELLED, THIS ITEM WAS DEFERRED TO JULY 12, 2006; COUNCIL CAN TABLE TO AUGUST 2, 2006**

VARIANCE - V 4-1-06, Rodriguez, 10061 SW 15 Place (PRD 3.4)

This item was tabled earlier in the meeting.

**6. APPOINTMENTS**

6.1. Mayor Truex

- 6.1.1. Airport/Transportation Advisory Board (one exclusive appointment - term expires December 2006)

No appointment was made.

- 6.1.2. Agricultural Advisory Board (one exclusive appointment - term expires April 2008) (insofar as possible, members shall have experience in agricultural matters, related occupations or other similar skills)

No appointment was made.

- 6.1.3. Parks and Recreation Advisory Board (one exclusive appointment - term expires April 2008) (members should have a concern with or an interest in the park facilities and recreational needs of the citizens of the Town)

No appointment was made.

- 6.1.4. Senior Citizen Advisory Committee (one exclusive appointment - term expires April 2008) (members shall be a minimum 60 years of age)

No appointment was made.

6.2. Vice-Mayor Crowley

- 6.2.1. Parks and Recreation Advisory Board (one exclusive appointment - term expires April 2008) (members should have a concern with or an interest in the park facilities and recreational needs of the citizens of the Town)

No appointment was made.

- 6.2.2. Community Redevelopment Agency (one exclusive appointment - term expires April 2008) (member shall either reside or engage in business within the jurisdiction of the Town)

Vice-Mayor Crowley made a motion, seconded by Councilmember Starkey, to appoint Thomas Gill. In a voice vote, all voted in favor. (Motion carried 5-0)

6.3. Councilmember Caletka

- 6.3.1. Youth Education and Safety Advisory Board (one exclusive appointment - term expires April 2008) (members shall, whenever possible, have interest and expertise in law enforcement, elementary school instruction, education matters, child psychology, pediatric medicine, parenthood and grandparenthood)

No appointment was made.

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6.4. Councilmember Paul

- 6.4.1. District Boundaries Review Committee (one exclusive appointment from the respective Councilmember's district; term expires upon submittal of recommendation to the Town Council) (members shall be a registered voter)

No appointment was made.

6.5. Councilmember Starkey

- 6.5.1. District Boundaries Review Committee (one exclusive appointment from the respective Councilmember's district; term expires upon submittal of recommendation to the Town Council) (members shall be a registered voter)

Councilmember Starkey appointed Don Burgess.

- 6.6. Unsafe Structures Board (two non-exclusive appointments; terms expire April 2009) (members shall be permanent resident or have their principal place of business within the Town's jurisdiction) (one appointment shall be a plumbing contractor and one appointment shall be a real estate property manager)

No appointments were made.

6.7. Florida League of Cities Voting Delegate and Alternate

Councilmember Paul nominated Councilmember Starkey as the voting delegate. Mayor Truex seconded the nomination. In a voice vote, all voted in favor. (Motion carried 5-0)

In a voice vote, all voted in favor of reappointing Vice-Mayor Crowley as the voting alternate.

**7. OLD BUSINESS**

- 7.1. Home Occupational License Update - Development Services Director Mark Kutney  
This item was not discussed.

**8. NEW BUSINESS**

- 8.1. Review of Site Work Permit Fees for Downtown Davie

Earlier in the meeting, Mark Schmidt, representing Downtown Davie, stated that the Town's Engineering permit fees were by far the highest in Broward County. He listed what the permit fees would be for his project in various municipalities and requested that his fee be reduced to a County-wide average.

Mayor Truex asked if any member of the Council was willing to waive the fee or allow Mr. Schmidt to make a partial payment while the Council considered reducing the fees. Councilmember Starkey thought Mr. Schmidt should have factored the fees in when he planned the project.

After some discussion, Mayor Truex confirmed that Mr. Schmidt would submit a letter to Development Services indicating that in return for the Town's issuing the permit when 50% of what was currently due was paid, Mr. Schmidt would pay whatever the Council ultimately decided was appropriate.

**9. MAYOR/COUNCILMEMBER'S COMMENTS**

**COUNCILMEMBER PAUL**

**BROADVIEW PARK WORKSHOP.** Councilmember Paul thought the Broadview Park annexation workshop scheduled for August 14th needed to be held earlier as the "drop dead date" for the agreement with the County was September 1st. She asked that this issue be discussed at the August 2nd Council meeting and recommended that the workshop be held the first week of August. Mayor Truex advised that

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he opposed the annexation and felt that the budget needed to be taken into consideration. Councilmember Starkey thought the workshop should be held before the issue was discussed at the August 2nd Council meeting.

**“MMM SCHOOL SITE.”** Councilmember Paul stated that she attended a meeting at the City of Weston where a land swap with the South Florida Water Management District was proposed for the “MMM” school site. She advised that everyone was now awaiting the District’s decision. Councilmember Paul added that the School Board may still be interested in purchasing the Sheridan/Flamingo site and the School Board was still working with GL Homes to close on the Imagination Farms site. She circulated information which contained the details to Council.

**“BUILDING BRIDGES.”** Councilmember Paul asked that a “Building Bridges” item be placed on the next agenda.

**TAKE HOME VEHICLE.** Councilmember Paul asked that staff provide information on which staff had “added back income for their personal use of vehicles on their W-2’s.”

**HAPPY BIRTHDAY.** Councilmember Paul wished Harry Venis a happy birthday.

**COUNCILMEMBER STARKEY**

**“MMM SCHOOL SITE.”** Councilmember Starkey stated that she was strongly opposed to a school being located in a wetland, regardless of mitigation and advised that the environmental groups were also opposed. She indicated that the Western High School and the Cypress Bay School needed relief immediately. Councilmember Starkey stated that if the City of Weston was anxious for another site, they needed to find a site that was not in the wetlands or an impound area. She asked Councilmember Paul that she relay that the Town strongly urged them to find an alternative site but move forward with the Flamingo/Sheridan site.

**10. TOWN ADMINISTRATOR’S COMMENTS**

**HAPPY BIRTHDAY.** Mr. Cohen wished Mr. Kiar a happy birthday.

**11. TOWN ATTORNEY’S COMMENTS**

No comments were provided.

**12. ADJOURNMENT**

There being no further business to discuss and no objections, the meeting was adjourned at 2:18 a.m.

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor/Councilmember

\_\_\_\_\_  
Town Clerk