TOWN COUNCIL MINUTES FOR MEETING HELD ON MARCH 14, 1995

I. CALL TO ORDER AND ROLL CALL The meeting was called to order by President Smith at 9:30 a.m. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul R. Ilyinsky, President Lesly S. Smith, President Pro Tem Jack McDonald, Councilmen Sam McLendon and Allen S. Wyett. Also attending were Town Manager Robert J. Doney, Town Attorney John C. Randolph, Police Chief Joseph Terlizzese, Fire-Rescue Chief Vincent K. Elmore, Building Official Robert L. Moore, Public Works Director Albert P. Dusey, Town Engineer James Bowser, Assistant Town Manager Peter B. Elwell, Data Processing Director Spencer Wilson, Recreation Director Russell Bitzer, Assistant to the Town Manager David Jakubiak, Code Enforcement Officer Brian House, and Mary A. Pollitt, Town Clerk.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Rabbi Feldman from Temple Emanu-El. The Pledge of Allegiance was led by Mayor Ilyinsky.

III. PRESENTATIONS

APPOINTED OFFICIALS

A. Recognition of Alexander Beal, Zoning Commission

Mayor Ilyinsky recognized Mr. Beal and presented a plaque to Mr. Beal and noted he served in one of the most important positions the Town has--that of Chairman of the Zoning Commission. He thanked him for his many years of service.

Mr. Beal thanked the Mayor and all the members of the Council for the opportunity to serve the Town. Mr. Beal recognized his family members and friends who attended the meeting.

Mr. Beal said that all appointed and elected Town residents have one thought in mind, and that is to keep the Town as it has been and that was what attracted everyone initially.

B. Recognition of Joanna Frost-Golino, Architectural Commission

Mayor Ilyinsky presented a plaque to Mrs. Frost-Golino and recognized Mrs. Frost-Golino's years of service and chairmanship of the Architectural Commission.

C. Recognition of Sally Gingras, Landmarks Preservation Commission

Mayor Ilyinsky presented a plaque to Mrs. Gingras and complimented her on the work she did for the Landmarks Preservation Commission.

D. Recognition of Marie Hope, Architectural Commission

Mrs. Hope was not present at the meeting.

E. Recognition of Ralph Lubow, Seaview Park Commission

Mr. Lubow was not present at the meeting.

F. Recognition of Elise Mackintosh, Landmarks Preservation Commission

Mayor Ilyinsky presented a plaque to Mrs. Mackintosh recognizing her many years of service for the Landmarks Preservation Commission. He added because of the efforts of residents like Mrs. Mackintosh, the Town looks as nice as it does, and her legacy is everywhere one looks in the Town.

Mrs. Mackintosh replied she could not believe she was being given a plaque for something she enjoyed very much, and her heart has been in it.

G. Recognition of Sara Mullens, Seaview Park Commission

Ms. Mullens was not present.

H. Recognition of Jane Volk, Landmarks Preservation Commission

Mayor Ilyinsky noted that Mrs. Volk has been chairman of the Landmarks Preservation Commission and has served the Town well. The Mayor presented a plaque to Mrs. Volk for her many years of outstanding service.

TOWN EMPLOYEES

A. Retirement of Allen Perry, Firefighter - 25 Years

Mayor Ilyinsky presented an engraved ring to Mr. Perry in recognition of this twenty five years and one month of loyal and valuable service. He wished Mr. Perry good luck, good health and god speed in his years of retirement.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky chose to delay his comments until later in the meeting.

V. APPROVAL OF AGENDA

Mr. Doney said he had several changes to the agenda and also some of the Council members wanted to add items.

Mr. Doney reported that a folder will be prepared for each Council member containing the items that have arrived too late to be placed in the Council books that are issued on Friday before the monthly Council meeting. He said this will allow the review of the items and Mrs. Pollitt, the Town Clerk, will be prepared to read any of the letters that are received late into the record during the Town Council meeting.

Mr. Doney referred to page 4 of the agenda, item XI.C.2., Consideration of the Beach Club regarding Town's position on groins. Mr. Robert Grassi submitted a letter requesting deferral of this item until the April 11, 1995, Town Council Meeting.

Motion made by Mr. Shaw to grant the deferral of item XI.C.2., Consideration of the Beach Club regarding Town's position on groins, until the April 11, 1995, Town Council Meeting. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Doney reported that a letter was received from Palm Beach County on March 13, 1995, advising that a hearing will be held on March 23, 1995, at 7:00 p.m., and Mr. Doney requested the Town Council consider this matter and add a new item XI.C.9., Skees Road Yard Trash site. Mr. Doney said he would then speak to the particulars of why the Town Council should go on record in response to this notice.

Motion made by Mr. Shaw to add item XI.C.9., Skees Road Yard Trash Site. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney continued that a letter dated March 14, 1995, was received from Mr. James McCartney Wearn regarding the beverage license transfer by the Poinciana Club. Mr. Wearn requested that item X.A.1. be withdrawn and the letter stated the approval of beverage licenses by the Town recently was recognized as routine since the State of Florida uniformly administers the matter. Mr. Wearn's letter stated the Poinciana Club would continue to renovate as before.

Motion made by Mr. Shaw to withdraw item X.A.1., Consideration of Request for a Transfer of a 4COP Alcoholic Beverage License by P. B. Restaurant, Inc.

Mr. Randolph made the point that the Council was allowing the item to be withdrawn at Mr. Wearn's request, but by making the motion, the Council was not necessarily agreeing with the reason for the request.

The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw said he submitted a memorandum requesting non-potable water lines be included on future street refurbishing planned for this summer in the El Bravo area, and he would like this item added as an agenda item.

Mrs. Smith said the issue of the pipes should be looked at by the Public Works Committee before discussion by the Council. Mr. Shaw and Mr. McLendon, members of the Public Works Committee, agreed to that course of action. The issue of the piping was referred to the Public Works Committee.

Mr. Shaw requested that a work station be added to the Council Conference Room, and he suggested that it be handled from an administrative point. He said this is a "no-cost" item since an extra computer exists in inventory.

Mr. Doney replied he did not think this was a "no-cost" item.

Mrs. Smith suggested the item be added to the agenda under "New Business" as item XI.C.10.

Motion made by Mr. McLendon to add the work station item to the agenda under New Business, item XI.C.10. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Shaw requested that, currently, Town Council members receive multiple copies of reports including one in the minute book. He asked that he not receive duplicate copies of large reports as he had already reviewed them and made notes.

Mrs. Smith replied it was a matter of personal preference, and this was not an agenda item.

Mr. Doney requested that each Council member inform the Town Manager's office of his/her preference regarding the issuance of multiple copies.

Motion made by Mr. Wyett to have an item added to the agenda whereby the Town Attorney, John Randolph, would outline the remaining conditions that Mr. Trump must complete before a certificate of occupancy and an occupational license can be issued. The motion was seconded by Mr. McLendon.

Mrs. Smith said the item would be added under New Business, item XI.C.11.

Mr. McDonald requested that an item to establish a procedure for selection of Commission members be added to the agenda before the Commission appointments, agenda item X.C. before 1. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. McDonald made a motion that an agenda item be added regarding the legal fees and reports under item XI.C.12. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. McDonald requested that the Council consider the appointment of an external political affairs representative that would act as a liaison to other political subdivisions of other municipal and county governments. Motion made by Mr. McDonald to consider the appointment of a Town Council Member to serve as an external political affairs representative as agenda item XI.C.13. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. McDonald asked Mr. Randolph the procedure to follow to set an ORS Committee meeting. Mr. Randolph replied if an item is on the agenda that would be sent to the ORS Committee, a time can be set for a meeting when that item is heard.

Mr. McDonald made a motion requesting that the Council hear an item to establish a Beach Erosion Committee under item XI.C.14. Motion seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. McDonald requested that an item be added to review the potable water conservation objectives.

Mrs. Smith said this was an item that should go to the Public Works Committee, and it may tie into the water negotiations with West Palm Beach. Mr. Wyett added the Water Committee will also have recommendations on this issue.

Mr. McDonald withdrew his request for the addition of an agenda item.

Mr. Moore requested that agenda item XIV.B.9, Special Exception 7-95, be deferred to the April 11, 1995, Town Council meeting, and this notification was received in a timely fashion.

Motion made by Mr. Shaw to defer item XIV.B.9, Special Exception 7-95 to the April 11, 1995, Town Council meeting. Motion seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Moore requested the item XIV.B.10. Special Exception 8-95, be deferred to the April 11, 1995 Town Council meeting, as the project needs an additional variance which will be filed by April.

Motion made by Mr. Wyett to defer item XIV.B.10 to the April 11, 1995, Town Council meeting. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to approve the agenda as modified. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

APPROVED AGENDA (ITEM VI. THROUGH VII.) - APPROVED.

VI. APPROVAL OF MINUTES OF JANUARY 10 AND FEBRUARY 6, 1995

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Big Brothers/Big Sisters of Palm Beach County, Inc.; No. 142-95
2. National Audubon Society; No. 211-95
3. Croquet Foundation of America; No. 216-95
4. Missions of Mercy, Inc.; No. 385-95
5. Center for Emerging Art, Inc.; No. 387-95

Motion made by Mr. Shaw to approve the Approved Agenda. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

VII. A. Charitable Solicitations (Continued)

6. Hiram Walker Foundation; No. 388-95

Mrs. Pollitt said that Mr. William Sullivan will address the Council and explain why the application was received in the Town Clerk's office on March 8, and the event is scheduled for March 21 at Mar-a-Lago. Mrs. Pollitt noted the application has received departmental approval and she requested a waiver to the two week requirement for advertising.

Mr. William Sullivan addressed the Town Council and stated he worked for Hiram Walker & Sons in Boca Raton. He stated the reason the application was late was that Hiram Walker did not realize the application had to be submitted to allow for the advertising two weeks before the event. He apologized for the lateness and promised it would not happen again.

Responding to a question from Mrs. Smith, Mr. Sullivan said this is not the first event the Foundation has had in Palm Beach. Mr. Sullivan stated approximately 200 people are expected for the event.

Mrs. Smith asked Mr. Sullivan to explain the purpose of the Hiram Walker Foundation.

Mr. Sullivan replied the Foundation supports minorities and selected personnel for training in culinary schools. He said Hiram Walker is giving back to the industry by way of the charity, and the charity is giving scholarships to the local institution, the Florida Culinary Institute.

Motion made by Mr. McLendon to approve Charitable Solicitation Permit Application Number 388-95. Mr. Shaw seconded the motion.

Mr. Shaw asked why Hiram Walker does not directly donate to the program Mr. Sullivan identified in lieu of raising funds?

Mr. Sullivan responded that the raising of the funds goes to the schools, and the legal point of directing funds to the schools is not proper. He said the Foundation deals with the schools who are sanctioned and accredited by the Hiram Walker Foundation.

Mr. Shaw said he found it hard to believe that Hiram Walker would seek donations and then take credit for the scholarships.

Mr. Sullivan replied the Hiram Walker Foundation was not a profit entity. Responding to Mr. McLendon's question, Mr. Sullivan said the Foundation was funded through charitable events--from proceeds from the events. Mr. Sullivan said the Hiram Walker Company did not provide funds for the Foundation.

Mr. Shaw said that most companies who support charities at least have matching funds so the public is invited to help in the cause. Mr. Shaw continued that it was not appropriate to come into Palm Beach and use Hiram Walker's name and seek funds from the public.

Mrs. Smith asked if Mr. Sullivan were the Director of the Hiram Walker Foundation? Mr. Sullivan responded he worked for the company and not the foundation. Mrs. Smith asked who were the local chairmen? Mr. Sullivan replied the chairmen for the event were located in Detroit, Michigan.

On roll call, the motion failed 2-3 with Mr. Shaw, Mr. McDonald and Mrs. Smith casting negative votes.

VIII. PUBLIC HEARING

A. Dune Preservation Permit No. 1-95 - Application for a Class I Dune Preservation Permit of Oasis III, 3120 South Ocean Boulevard; to allow applicant to prune seagrapes to 42" in height; remove exotic plant species; and replant some pioneer exotic and scrub zone dune areas with native plant species, per plan on file at the Town Building Department

Mr. Bob Smith, Landscape Architect, addressed the Town Council and offered to answer questions concerning the permit application.

Mrs. Smith asked for comments from the Town Council members. There were none.

Motion made by Mr. Shaw to approve Dune Preservation Permit Number 1-95 with the following conditions:

1. Pruning of seagrapes to 42" in height.

2. Removal of exotic plant species.

3. Replanting of some pioneer and scrub zone dune areas with native plant species.

The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

IX. COMMITTEE REPORT

A. Water Committee Reports of March 1 and 10, 1995

REPORT OF THE WATER COMMITTEE MEETING HELD ON MARCH 1, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel McLendon at 3:45 p.m. on March 1, 1995, in the Town Council Chambers. On roll call, Chairman McLendon and Councilman Allen S. Wyett were found to be in attendance as members of the Committee. Other Elected Officials attending the meeting were: President Lesly Smith, President Pro Tem Jack McDonald and Councilman Leslie Shaw. Others attending the meeting were: Robert J. Doney, Town Manager; John C. Randolph, Town Attorney; Peter B. Elwell, Assistant Town Manager; Albert P. Dusey, Director of Public Works; James Bowser, Town Engineer; and Mary A. Pollitt, Town Clerk.

II. APPROVAL OF AGENDA: The agenda was approved as printed.

III. CONSIDERATION OF WATER SUPPLY MATTERS:

The following subjects were discussed at the meeting:

A. Amending State Statute 180.191 regarding the surcharge issue which could be brought up for consideration during next year's legislative session.

B. Legal action may be appropriate under the current legislation. The Town could file a law suit as a water user/customer of the City of West Palm Beach alleging that the surcharge is not legally imposed. Alternatively, the Town could propose that the Town and the City file a "friendly lawsuit" to let the Court determine whether or not the surcharge was legally imposed.

C. Developing a positive plan, with alternative actions, for the Town to present to the City of West Palm Beach during negotiations.

D. Developing a plan for dual piping for potable and non-potable water.

E. The possibility of the Town obtaining an equity position by buying into the City of West Palm Beach water system.

F. Reviewed the history of water conservation for the Town including the xeriscape requirements for new construction, the required use of water saving plumbing fixtures, and the merits of voluntary water saving methods versus additional mandatory controls.

G. Considered non-potable water sources in conjunction with the water conservation issue. The non-potable water source was considered as potentially important for the negotiations with West Palm Beach.

H. Suggested the Water Committee have authorization to negotiate directly with Mayor Nancy Graham.

I. Considered requesting the Mayor and members of the Town Council prepare a position paper regarding the 10-12 issues of a potential agreement to provide a consensus before negotiations were started.

J. Suggested setting up a meeting with West Palm Beach representatives to determine the issues they are willing to consider.

K. Reviewed the possibility of installing a non-potable water system and the resulting impact of the city's inverse potable rate charges during the stages of the installation.

L. Discussed the condition and the value of the existing distribution system in the Town of Palm Beach. Mr. Dusey was asked to provide a report identifying the dates of installation of the various portions of the distribution system in Town.

M. Discussed the time frame for receiving the Hutcheon Engineers report before the April 11th Town Council meeting and the formation of a plan by the Water Committee to present to the City of West Palm Beach.

N. Suggested contacting the Florida League of Cities for support or information.

After discussion of the previously mentioned items, THE COMMITTEE RECOMMENDED THAT MR. MCLENDON AND MR. WYETT INDIVIDUALLY PREPARE NOTES TO BE PRESENTED AT A MEETING OF THE WATER COMMITTEE SCHEDULED FOR 10:00 A.M. ON MARCH 10, 1995. (THE MEETING WAS LATER RESCHEDULED FOR 1:00 P.M. ON MARCH 10, 1995.)

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 4:45 p.m.

WATER COMMITTEE

SAMUEL C. MC LENDON, COMMITTEE CHAIRMAN

ALLEN S. WYETT, COMMITTEE MEMBER

REPORT OF THE WATER COMMITTEE MEETING HELD ON MARCH 10, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel McLendon at 1:10 p.m. on March 10, 1995, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Allen S. Wyett were found to be in attendance as members of the Committee. Other Elected Officials attending for all or part of the meeting were: Mayor Paul R. Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald and Councilman Leslie Shaw. Others attending the meeting were: Robert J. Doney, Town Manager; John C. Randolph, Town Attorney; Peter B. Elwell, Assistant Town Manager; Albert P. Dusey, Director of Public Works; and Mary A. Pollitt, Town Clerk.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: The invocation was given by Mrs. Pollitt and Mr. McLendon led the Pledge of Allegiance.

III. APPROVAL OF AGENDA: The agenda was approved as printed.

IV. WATER SUPPLY MATTERS:

After a lengthy discussion, THE COMMITTEE RECOMMENDS THE FOLLOWING:

1. THE TOWN COUNCIL AUTHORIZE A FRIENDLY OR AN UNFRIENDLY LAW SUIT REGARDING THE LEGALITY OF THE 25% SURCHARGE.

2. THE TOWN COUNCIL REAFFIRM THE PREVIOUS COUNCIL'S OPPOSITION TO PAY THE 25% SURCHARGE AND AUTHORIZE THE WATER COMMITTEE TO OPEN UP NEGOTIATIONS REGARDING ALTERNATIVE PLANS FOR THE 25% SURCHARGE AND OTHER ISSUES.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 4:05 p.m.

WATER COMMITTEE

SAMUEL C. MCLENDON, COMMITTEE CHAIRMAN

ALLEN S. WYETT, COMMITTEE MEMBER

Mr. McLendon reported the Water Committee first met on March 1, 1995, and discussed approximately a dozen items. Comments were prepared by Mr. Wyett and Mr. McLendon on the most recent proposed contracts for future discussion.

Mr. McLendon continued that the second Water Committee meeting took place on March 10, 1995, and the recommendation to the Town Council was to authorize either a friendly or an unfriendly law suit regarding the legality of the 25% surcharge.

Mr. Randolph stated the first question was whether or not to institute any kind of an action based upon the imposition of the surcharge. Mr. Randolph recalled that in previous correspondence, drafted to the Council, he indicated that the Statute does not authorize the imposition of a surcharge within the corporate limits of an adjacent municipality. He continued that in the event that the Council would attempt to file an action regarding the surcharge, one way to do it would be to file a lawsuit as a customer of the system or an affected party who would be entitled to file a lawsuit as any customer of the system would. In the event the Town were successful in that lawsuit, the Judge would have the discretion to award attorneys' fees to the successful party, and the Judge also has the discretion to award treble damages or triple the amount of any damage the Town had.

Mr. Randolph suggested that an alternative way of filing a lawsuit would be to determine if the City of West Palm Beach had any interest in having this question answered on a friendly basis. In other words, the City of West Palm Beach takes the position that the Statute does authorize an imposition of a surcharge and the Town of Palm Beach takes the position that it does not. If the City of West Palm Beach feels secure in its decision to impose a surcharge, then they may not mind putting the question in front of the court in what is referred to as a declaratory or relief action. He said the parties would indicate to the Court that there is a dispute as to the interpretation of a statute and request the Court to rule on the legality of the surcharge. Mr. Randolph said the advantage is that agreement may be reached on several things; (1) the Town could agree to be bound by the decision of the Circuit Court without the necessity of appeal; (2) the Town could agree that each party would bear its own cost and attorney's fees so that neither party, if successful, would seek attorney's fees against the other; and (3) if the Town would prevail, the right to go for triple damages could be waived.

Mayor Ilyinsky stated he thought the friendly lawsuit way was the best avenue to use after many months of phone calls and communications between the two parties. Mayor Ilyinsky said that Mayor Nancy Graham has been a splendid mayor, and he thought she wanted to negotiate with the Town. Mayor Ilyinsky said it would be a fatal mistake to go across the river, get tough with her and slap her in the face the second day after an election. He added it would be plain bad manners.

Mr. McLendon said he agreed with the Mayor's motives but he understood the authorization should be in total instead of in sub sections.

Mr. Randolph said that was not his recommendation but should be a policy decision of the Council. He was explaining the two alternatives that are available.

Mr. Wyett added he thought it was the intent of the Water Committee to have a friendly suit if the City of West Palm Beach concurs. He said friendly persuasion should be used, and he would take the Mayor's comments into account. Mr. Wyett said the request for a motion was that if the quest for a friendly lawsuit did not succeed, the City of West Palm Beach would know automatically that the Town will be filing an unfriendly lawsuit.

Adrian Winterfield, 443 Brazilian, addressed the Council and said if all possible alternatives are being considered, why is the Council not considering binding arbitration? He said this is simply a non-legal manner of doing a friendly lawsuit.

He said another important matter in this decision is the advice from the attorney as to whether there might be any difference. Mr. Winterfiedl did not share Mr. Randolph's opionion concerning the determination of the validity of the surcharge for the period during which the franchise agreement was in effect and for the period subsequent thereto. He said a defense that might succeed is simply that there is a contract between the two municipalities, but unfortunately there is no contract today. Perhaps West Palm Beach was very happy to suspend negotiations, assuming as he did, that there is a difference between the two eras, before and after expiration of the franchise agreement.

Mrs. Smith asked Mr. McLendon if he preferred one motion?

Mr. McLendon replied the Water Committee would have preferred a single resolution to allow one lawsuit, and if not successful, allow the other.

Motion made by Mr. McDonald to approve the Water Committee report as issued, including the recommendations in the report. He suggested to the Water Committee, if binding arbitration is something the City of West Palm Beach would agree to, to consider that option. The motion was seconded by Mr. Shaw.

Mr. Shaw recalled a discussion regarding the option of an opinion from the Attorney General and asked Mr. Randolph why that would not be practical?

Mr. Randolph replied the Attorney General's opinion is just that--it is an opinion. He said if the parties agreed beforehand to be bound by the opinion, that route could be taken; however, the parties would be receiving an opinion of another attorney, albeit the Attorney General. He added the Attorney General's opinion is not binding in a court of law.

Mr. Wyett said his past business experiences indicated parties have more success in the court system than with binding arbitration.

Mr. McDonald clarified he was only SUGGESTING the option of binding arbitration, not making it part of the motion.

Mrs. Smith asked Mr. McDonald if the motion indicated the Town Attorney should proceed with a friendly lawsuit or should the matter be referred back to the Water Committee?

Mr. McDonald replied the motion was that the report be approved; the report included recommendations, and one of those recommendations was to proceed with either a friendly or unfriendly lawsuit.

Mrs. Smith asked Mr. Randolph for an estimate of the cost for a friendly or an unfriendly lawsuit--particularly if the Town would lose?

Mr. Randolph replied a rough guess would be $50,000 and would take into account the expert testimony that might be expended.

Mrs. Smith asked Mr. McDonald if his motion included points A through N listed in the March 1 Water Report?

Mr. McDonald replied affirmatively, and said he was recommending that those were accurate descriptions of the discussions that took place.

Mrs. Smith asked if the entire Water Committee would have the authority to negotiate directly with Mayor Nancy Graham or would it be Mr. McLendon as Chairman of the Committee?

Mr. Wyett replied those issues should be determined by the Council including the type of meeting--private or open. Mr. Wyett said he first preferred a private meeting but realized any private meeting becomes public when it is presented to the Council; therefore, it should be a Sunshine meeting.

Mr. McLendon added the issue of what type of meeting should be held was one of the items he was going to discuss with Mayor Graham when he talked to her after this meeting. Mr. McLendon said the Water Committee meeting of March 1, 1995, did not contain any issues that required Town Council action. He continued that only two items included in the March 10, 1995, meeting required Town Council action and those related to the litigation and the Council's position on the surcharge.

Mrs. Smith agreed with Mr. McLendon, and stated she understood that items A through N on the Water Report were not included in the motion.

Mr. McDonald said his motion was for the March 10, 1995, Water Committee report.

On roll call, the motion carried unanimously.

Mr. Randolph suggested the Council take action on the March 1, 1995, Water Committee Report.

Mrs. Smith asked for a motion to receive the report of the Water Committee for March 1, 1995.

Motion made by Mr. McDonald to accept the report of the Water Committee meeting for March 1, 1995. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Wyett asked for the Council's opinion regarding the negotiations with Mayor Graham and the City Council. Mr. Wyett said the Water Committee wanted to negotiate with the Mayor and Council only and did not want to negotiate with staff. He continued the meeting can be with the Town of Palm Beach's Water Committee and a committee nominated by them in an open meeting that would perhaps be preparatory to a general meeting between the two Councils.

Mrs. Smith suggested that Mr. McLendon meet with Mayor Nancy Graham before the Town Council discussed the methods of negotiations. Mrs. Smith said Mrs. Graham's remarks had to be considered before issues could be decided.

Mr. McLendon concurred with Mrs. Smith. He said he would report back to the Town Council and a determination could be made at that time.

Mr. Shaw and Mr. McDonald agreed with Mr. McLendon.

Mr. Wyett responded he was attempting to move things along before the next Town Council meeting if that were possible.

Mrs. Smith replied that a special Town Council meeting could always be called after Mr. McLendon has his meeting.

Mr. McLendon commented that the issue of binding arbitration would be pursued to the extent that it is appropriate, and he will report to the Town Council if that is a feasible situation.

X. OLD BUSINESS

A. Beverage Licenses

1. Consideration of Request for a Transfer of a 4COP Alcoholic Beverage License by P.B. Restaurant, Inc., d.b.a. The Poinciana Club located at 70-A Royal Poinciana Plaza (Deferred from February 14, 1995)

This item was withdrawn earlier in the meeting.

B. Ordinances - Second Reading

1. Ordinance No. 4-95 - Amendment to Charitable Solicitation Ordinance

Mr. Randolph read the ordinance:

ORDINANCE NO. 4-95

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10, ARTICLE V, OF THE TOWN CODE OF ORDINANCES RELATING TO CHARITABLE SOLICITATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion made by Mr. Shaw to approve Ordinance Number 4-95 on second reading. Mr. McLendon seconded the motion. On roll call, the motion carried 4-1 with Mrs. Smith casting a negative vote.

Mr. Doney clarified that since the ordinance was adopted on second reading, the Staff understood that in future situations where charitable organizations file applications or results forms late, the agenda will show these as a separate category. This separation would allow the Council to ask questions about the individual charities and remove any charity from the approved agenda if desired. Mr. Doney said the Staff will proceed if that is the intention of the Town Council.

Mr. Shaw agreed that those charities who filed late would be included as summary items on the approved agenda.

Mrs. Smith commented that for the amount of paper work that will be generated for the late filing, the $25 charge is absolutely ridiculous. She said too much staff time would be involved.

Mayor Ilyinsky agreed with Mrs. Smith's comments and said this was a Pandora's box that never existed before. He asked Mr. Doney's opinion of the change.

Mr. Doney replied this was a Council decision, and it was Staff's job to implement any change.

Mr. Wyett made a motion to reconsider Ordinance 4-95. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw, as a member of the Ordinance, Rules & Standards Committee, offered to provide background on the changes.

Mr. Wyett said, after voting the first time, he realized the Town may have a lot of paper work to do for not much value. He said the $25 late filing fee is not going to deter anyone from filing a late application or request. He said he understood the intent of the change, but it falls into the category of not accomplishing too much.

Mr. Shaw said the Committee felt the Council was spending too much time approving charitable solicitation permits after questioning someone why they were late filing the necessary information. The Committee felt that the Staff has completed all the necessary work, and the real issue was, "Does it have to come before the Council?", and could Staff administer the filing. He said the issue of charging the administrative fees for timely or non-timely was part of the program. It may not mean anything to the charities; however those charities who are conscious of the fact that their function is to raise money and the monies are supposed to go to a good use, they may take into consideration the fact that they do not want to have late penalties.

Mr. Shaw continued that some of the requirements relating to the filing of the reports had been changed. The charities now were allowed to use non-independent public accountants.

Mrs. Smith said her concerns and her reason for voting against the approval of the ordinance were for the penalty charged. She asked Mr. Randolph if the ordinance could be passed deleting the part referring to the Fees, Section 10-96.

Mr. Randolph replied that substantive amendments should not be made on second reading. He suggested if the Council had questions relating to the Ordinance, the course of action should be to defer the item until it could be re-examined.

Mr. McLendon asked Mr. Doney to explain the additional amount of paper work that will be required for the changes.

Mr. Doney said he was not concerned with the amount of paper work, but his concern was with Staff's reporting the items by category to allow the public to be aware of those charities who were subject to the fines. He said it was purely a matter of disclosure, and he did not see additional paper work.

Mr. McLendon added that a scolding or a slap on the wrist has not worked in the past, and this may improve the situation.

Mr. Shaw stated he did not think this was an issue of establishing a whole new procedure.

Mrs. Smith said her concern was for the smaller charities whose contributions would be affected by the $25. Her idea was to apply the fines on a percentage basis or not at all.

Mr. Wyett agreed with Mrs. Smith's comments and added the amount was negligible for large charities.

Motion made by Mr. Shaw to approve Ordinance Number 4-95 on the second reading. The motion was seconded by Mr. McDonald. On roll call, the motion carried 3-2 with Mr. Wyett and Mrs. Smith casting negative votes.

2. Ordinance No. 5-95 - Amendment to Chapter 15, Pensions and Retirement

Mr. Randolph read the ordinance:

ORDINANCE NO. 5-95

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING SECTION 15-41, SAME, OFFICERS AND ADMINISTRATIVE SERVICES BY ADDING PARAGRAPH (7) PLAN ADMINISTRATOR; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion made by Mr. Shaw to approve Ordinance Number 5-95 on second reading. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

C. Appointments

Discussion of Committee Appointments

Mr. McDonald requested the Council consider the establishment of procedures to appoint members to the Town's Commissions. He said this should be a fairly formal procedure that would require a fairly professional response from applicants who would be interested in serving on the commissions. Mr. McDonald recommended this item be referred to the ORS Committee for the establishment of appointment standards. He said, in the interim, unless any crucial appointments should be made, appointments should be deferred until the ORS can prepare the appointment procedures which he anticipated would be ready by the April 11, 1995, Town Council meeting. He continued if the ORS Committee's recommendation were approved at the April meeting, the rules could go into effect by the May meeting.

Mr. Randolph replied that he could not comment on the necessity of making any of the appointments immediately. He said it would be the Council's decision to establish a procedure.

Mr. McLendon reported the Architectural Commission has several vacancies and questioned that they may need new members to function.

Mr. Moore responded the alternates on the Architectural Commission would be available to form a quorum. He explained two architects currently sit on the Commission and the Ordinance requires at least two architects but no more than three. Mr. Moore added the delay would be pushing things close, but he thought a quorum could be maintained.

Mr. Shaw said he was agreeable to have the ORS Committee hear the issue, but he thought the Council should look at the four commissions that are on the agenda for this meeting.

Mr. Shaw stated his main concern was the attendance record and the feeling of who should attend the meetings and when. He said according to the Ordinance(s), there is a section that states, "..lack of attendance is defined as failure to attend three or more meetings in any one calendar year. Excused absences, due to illness and personal hardship, shall not constitute lack of attendance." Mr. Shaw said the Council should be very careful about the total number of absentees and also if the absences are consecutive. Specifically, on the Landmarks Commission, if an individual is not going to attend for two meetings in a row, the members have the potential of losing the momentum or direction that the Commission is going toward because they have missed what has transpired. He said the issue of the alternates' attendance is more important, and they are required to attend at least 50% of the meetings. Mr. Shaw stated if an alternate is absent for three or four consecutive meetings and called upon to fill in for a member at a meeting, they may have no idea what has transpired at previous meetings.

Mr. Shaw continued that the Seaview Park Commission has revamped their entire schedule and the meetings are scheduled for every other month. This means an alternate never has to attend any meetings because they are allowed to miss six meetings and the Commission only meets six times a year.

Mr. Shaw said there are people who are qualified and deserve to be recognized. He added appointments should continue, and the appointees should be given the opportunity, if the Council decides to change the attendance requirements, to understand what the changes are.

Mr. Shaw suggested regular members should be allowed to miss three meetings with one excused absence and the excused absence to be affirmed by the Town Council. The Town Council appoints the commission members, the members accept and if the Council gives these members time off, the Council should know about it.

Mr. Wyett said he thought several of the commissions already have very strict guidelines of who they should appoint. He cited the Architectural Commission as an example, and he thought the applications currently submitted make it easy to select the appropriate members. He suggested that additional qualifications do not need to be added to the list. He said each one of these commissions has a large number of highly qualified people applying for the open positions. He added some of the commissions need to be filled in a timely manner such as the Architectural Commission which currently has seven members (one is on a long term leave) out of the ten. He indicated some of the people should be appointed to that commission even if all the seats are not filled at this time.

Mrs. Smith clarified Mr. Wyett's statements and said she understood that Mr. Wyett did not think that Mr. McDonald's suggestion to send the issue to the ORS Committee is necessary. Mr. Wyett agreed with that statement.

Mr. McLendon said he would like to follow Mr. McDonald's suggestion for the future since that may take more time to develop than he anticipates.

Mrs. Smith agreed with Mr. McLendon after hearing the comments of all the Council members. Mrs. Smith said it was not fair to the applicants for the Architectural Commission and Landmarks Commissions that they be held up and not have a full sitting commission when many qualified people are ready to serve.

Mr. Moore corrected his earlier statement. He said he understood the delay would be for a month or two; however, Mr. Wyett was correct when he identified the summer months as a busy time for the Architectural Commission, and those openings should be filled.

Mrs. Smith said there was no guarantee that the ORS Committee would come up with a formula that was acceptable to the full Council, and the Commissions could be sitting not complete.

Mr. Moore responded he knew that, and the public does depend on these committees to meet on a monthly basis to conduct business with their properties.

Mrs. Smith replied the major amount of building permits for the construction season is May 1 to November 1 and if the commissions are not full to hear these applications when they come before them, it is a disservice to the Town's residents.

Mrs. Jane Volk, Past Chairman of the Landmarks Commission, said the issue of qualifications was brought up in the last year, and it was established that because our government is a city government that is qualified by the State under its rules and approved, there are certain qualifications that a commissioner is supposed to have. She said all of the Landmarks commissioners submitted and had their brochures reviewed and those qualifications are already established for the Landmarks Commission. She said it would not be necessary to review the qualifications for Landmarks.

Mrs. Volk said it is very important that the Town does not lose the services of some of the people who do not live in Palm Beach year round. She said this Town was originally a town where people had two residences, and many people still spend only part of their time in Palm Beach. Mrs. Volk stated if the Council is too restrictive about the absentee restrictions, the Town will lose their input and in so doing lose the very people whose input is important historically. She asked the Council to carefully consider any restrictions made concerning the absentee issue. Mrs. Volk said the Landmarks Commission has always been able to carry on and enough people have attended the meetings to know what happened at previous meetings. She continued the minutes are a good source of background for any of the meetings missed.

Mr. McDonald recalled he excluded critical appointments, and he was more interested in procedures than qualifications. He wanted to establish how people could apply for the commissions, how they become aware of any vacancies and how they determine the qualifications of the commissions. He thought those procedures could be completed by the April meeting.

Mrs. Smith stated that Mr. McDonald was Chairman of the ORS Committee, and he could call a meeting anytime he wished. Mrs. Smith said her feeling was that the Town Council did not want to hold up or stop the appointments to some of the commissions by adopting his recommendation regarding all the commission appointments.

Mr. Wyett said the Town Council did not have to fill every commission vacancy but some appointments could be made at this meeting.

Mrs. Smith said she was not sure that the issue had to go to the ORS Committee. She noted a large number of letters received from people who are interested in appointments to the Zoning, ARCOM, Landmarks, and the Seaview Park Commissions indicate that people are well aware of the openings on the various commissions. She said they understand the dedication and service of the various members of ARCOM and Landmarks who have left after serving many years. She cited an application received from Eugene Pandula, Architect, that was twelve pages in length describing his background. She said it is a question of placing an ad in the newspapers stating that openings exist on various commissions, and this can be decided by the Town Council without going through the process of an ordinance change. She stated the Council was seeking good, qualified people who were willing to give their time for the good of Palm Beach.

Mr. Randolph said the issue would not have to be included in ordinance form but could be dealt with by the ORS Committee.

Mrs. Smith said guidelines exist for the Architectural Commission and the Landmarks Commission. She suggested the ORS Committee review guidelines for the Seaview Park Commission and the Zoning Commission.

Mr. Shaw suggested that the Council members list on a simple, concise sheet of paper the information they would like the applicants to provide to the Town. He said that paper could be used when openings come up. Mr. Shaw suggested incorporating on the Town calendar when openings will be available on the various commissions.

Mrs. Smith replied she had read announcements of committee vacancies in three newspapers, and this is one of the reasons many people have applied recently.

Motion made by Mr. McDonald that procedures be established by the Town Council, the ORS Committee or any applicable group, for applications for the Town Commissions' seats.

Mr. McLendon asked if replies could not be handled on an individual basis as these letters were submitted to the Town?

Mayor Ilyinsky said he basically agreed with what Mr. McDonald was attempting to do.

Mr. Wyett asked if Mr. McDonald would agree to an amendment to his motion that it would not apply to this particular Town Council meeting? Mr. Wyett said he could agree with Mr. McDonald's motion if it did not hold up appointments at this particular Town Council meeting.

Mrs. Smith said the motion cannot hold up appointments at this meeting, because it is a motion for the future.

Mr. McDonald said he preferred any commission seats that would be filled today be filled with commission alternates. The alternate positions could be filled later after the procedure has been established. Mr. McDonald said he was incorporating into the motion the condition that any commission seats could be filled today by alternates and the alternate positions could be filled after the procedure has been established.

Mr. McDonald repeated the motion: He moved that the Town Council authorize the ORS Committee to establish application procedures for Town commission seats and any appointments made at the March 14, 1995, Town Council meeting be made from the alternates and no appointments be made to the alternate positions.

Mrs. Smith asked for a second to the motion. There was none. The motion died for lack of a second.

Motion made by Mr. Wyett that the ORS Committee suggest to the Council a formal set of rules and regulations for future applicants for commission vacancies. The motion was seconded by Mr. McLendon.

Mr. Robert Grace, 126 Seagrape Circle, addressed the Council and cautioned the Council not to eliminate people by establishing procedures that are so complicated that the form would be discarded. He said the Council should ask what type of person should be serving and not what type of form you want them to fill out.

Mr. Grace continued that Palm Beach is a very unique town, and most of the residents do not like to spend time filling out forms. He said he was concerned that the Council may not mean to eliminate from consideration some of the people who would be very qualified to serve on the commissions.

Mr. Grace stated serving on the various commissions is not a source of joy for most people. It is something they do as a matter of service, as a matter of duty, and they do not receive payment for it. He thought making the procedure more of a nuisance is not the aim of the Council.

Mr. Wyett offered to withdraw his motion and substitute a very simple motion which would avoid referring the matter to the ORS Committee.

Mrs. Smith said she did think the Town Council has had a problem with appointments. She stated the people who have served and will continue to serve are qualified, dedicated and devoted people to the Town who are serving because they believe they can help. She agreed if the procedure is too difficult, many people will object. She reiterated the need for the advertising in the newspapers.

Mr. Wyett withdrew his motion. Mr. McLendon withdrew the second.

Mr. Wyett made a motion to require a letter and a resume be submitted by applicants for the commissions. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw said he would like to address the attendance issue of the commission members.

Mrs. Smith suggested the the attendance issue could be considered on an individual basis at the time of appointment. She added if he wanted to take up the issue at the ORS Committee meeting, he could do so.

Mr. McLendon replied the attendance issue was the first thing he looked at when the question of reappointment of current members was brought up on the various boards. He said the subject of attendance needs to be addressed by the Chairmen of the various commissions, but he did not know quite how to do that.

Mr. Wyett suggested that attendance should be reviewed when a member is considered for a second term or alternates are appointed as full members. He noted the Seaview Park Commission had an attendance problem, and suggested that commission could be strengthened by members who would attend the meetings.

Mrs. Smith said if an appointed member of a commission only attended one meeting in thirteen months, she would expect them to resign. She added the chairmen of the various commissions should be given input clarifying the issue of what is an excused absence. An excused absence is supposed to be for a hardship or a good reason. These items can be dealt with.

Mr. Randolph said that in the past, procedurally, when direction was required as to what should be reviewed or amended, the Council would vote before the matter goes to the Committee rather than allow the Committee to bring the matter up on its own. He suggested if this particular issue is to go to the ORS Committee, the Council should make a motion for it to do so.

Mr. Alexander Beal, 1050 North Ocean Boulevard, addressed the Town Council and stated that in the three years he served on the Long Range Financial Planning Commission, no member was absent. He continued that in the seven years he served on the Zoning Commission, he recalled only one or two absences. He said absence is a rare thing, and it was ridiculous for the Council to continue to discuss this issue.

Mr. Adrian Winterfield, 445 Brazilian Avenue, addressed the Town Council. Mr. Winterfield said if the Town is to impose term limits, appointing an individual to a commission who has finished serving the allowed two terms on another commission runs contrary to the purpose of term limits. He said maximum participation should be the objective.

Mr. Winterfield said he disagreed with Mr. Randolph and a commission prepares preparatory work for the Town Council and the commission does not do substitutive work by itself since all its decisions are returned to Council. He found it counter productive to suggest that if a matter came up three days after a Council meeting that a committee chairman should be considered and presented to the next Council meeting. He said the committee chairman should have the independence to meet when appropriate upon appropriate notice so they can fulfill their function.

Mr. Wyett asked Mr. McDonald if there were any issues that should be considered by the ORS Committee that were discussed at the meeting? Mr. McDonald said there were none.

Mr. Shaw made a motion to refer the attendance issue for the Town commissions to the ORS Committee. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. McLendon reported a relatively new modification to the State Statute that refers to nepotism. He mentioned that his wife was eligible for reappointment to a second term on the Seaview Park Commission, but has requested that her name be withdrawn from consideration.

Mr. Randolph said that prior to January 1, 1995, no prohibition existed for family members on Town commissions as long as a Council member abstained and as long as that member did not advocate a relative to a position. He continued that a statute went into effect January 1 stating that it could be a violation of the anti-nepotism Statute if a relative accepted a position to a commission where the other relative is on the collegial body that makes the appointment. Mr. Randolph had advised Mr. McLendon of that change before this meeting.

1. Seaview Park Commission - Four Three-Year Terms to Expire February 1998 (Deferred from February 14, 1995)

Mr. Wyett nominated alternates Eileen Morris and Ann Drake to be full members of the Seaview Park Commission.

Mrs. Smith said she would ask each Council member for any nominations unless the Council would like to consider another procedure for making appointments. She asked Mr. Randolph if he had any suggestions.

Mr. Randolph said that a nomination does not need a second, so anyone who wishes to nominate a person for an open commission may do so. In the event there are no other nominations, for instance where only one seat is available, then the Council could go forward with a vote.

Mr. Randolph stated if the Council has several nominations for one or two seats, then the Council should adopt a procedure as to the manner in which the Council would vote. He suggested it be done by a written, signed ballot where each nominee is rated. He noted a number of individuals have expressed interest for a number of the open seats. Mr. Randolph thought the Council should proceed and see how many nominations are received for the open seats. If there are more nominations than seats, then a procedure should be set forth.

Mr. Wyett noted that it has been usual and customary, but not mandatory, that alternates who have served well on the commissions are recognized by promoting them to the first full available seat on a commission. Mr. Wyett said if alternates were not given preference, new members, with perhaps less experience, could be promoted over the alternates.

Mr. McLendon replied that is sometimes preferable.

Mr. McLendon nominated Thomas Turchan and Gail Coniglio to serve on the Seaview Park Commission.

Mr. Shaw nominated Marc Katzenberg to serve on the Seaview Park Commission.

Mr. McDonald had no nominations for the Seaview Park Commission.

Mrs. Smith noted there were four vacancies and the members of the Council would have to indicate if their nominations were for alternate or full members.

Mr. Randolph said he thought the Council should take nominations separately for alternate and full members. He added he did not know what the intent was of the makers of the motions.

Mrs. Smith noted that five nominations were taken for the four seats that are open.

Mr. Wyett reiterated the alternates should be promoted to full members.

Mr. McDonald mentioned that Mrs. Fisher from the Seaview Park Commission expressed interest in being reappointed, and the Council seemed to forget that. He added she should be considered.

Mrs. Smith asked the Council if they would like to list the nominations and do it by the point system or should each person be discussed?

Mr. Randolph asked if Mrs. Fisher had been nominated?

Mrs. Smith replied she had not been at this time.

Mr. McLendon nominated Mrs. Fisher for reappointment to the Seaview Park Commission.

Mrs. Smith reported that a letter from Mrs. Morris was received expressing interest in appointment as a full member.

Mr. McDonald suggested one person at a time should be discussed and considered.

Mrs. Smith replied this would be like the old system where one person would have to be voted down to allow another one to be appointed.

Mr. Randolph suggested all the names could be listed on a piece of paper and all six nominees could be rated on a scale of 1 to 6 with number 1 being the most favored. The person receiving the lowest number would be the person selected to fill the position. He said an additional option would be for the next lowest score to fill the next open position, etc. Mr. Randolph explained that it was possible to eliminate a person who might have received a different score if the voting were done separately. However, if the votes were cast for each nominee, each time, the voting becomes more cumbersome.

Mr. McLendon said the Town Council might be meeting very late if separate votes were conducted for each person nominate. He suggested the vote be handled at one time if possible.

Mr. Randolph said a ballot should be prepared listing the names of the nominees.

Mr. Doney asked that the Town Clerk list the names, then the Council could adjourn for a few minutes and copies could be handed out to the Council members. After the vote is recorded, the

Town Clerk, the Town Attorney and the Town Manager could be involved in the determination of the results. Mr. Doney said when this method of ranking order on a ballot is used, everyone must vote, otherwise this method does not work.

Mr. McLendon said he would agreed to that procedure. He understood two of the nominees on the ballot are alternates which would create two additional positions.

Mrs. Smith replied the alternate seats do not have to be filled. She said the regular seats will be filled. In previous times, the alternates were moved up automatically.

Mrs. Smith summarized that six persons have been nominated for regular seats on the Seaview Park Commission: three are alternates and one is a member who was appointed last month for one meeting. A total of six vacancies, including the alternate positions, are open.

Mr. Wyett commented that if someone has served successfully and gained experience such as some alternates do, these alternates may be off the commissions based on a popularity vote.

Mrs. Smith responded she did not think the procedure used for the Seaview Park Commission would carry over to other commissions.

Mr. McLendon said he thought tennis enthusiasts had over emphasized their opinions on the Seaview Park Commission. He said his intention was to provide greater balance for the Commission.

Mrs. Smith clarified that six names have been listed for the regular positions and the two lowest vote getters will be named as alternates (the two alternate positions will actually have the highest numerical score). She said the ballots will be prepared and after a short recess the Council members will return, fill in the paper and sign it.

Mr. Randolph explained that six people were nominated for the four positions on the Seaview Park Commission. The ballot lists all six names, and the Council Members were instructed to select choices by assigning a "1" to the favorite candidate and a "6" would be assigned to the least favorite candidate. After tabulation, the nominee receiving the lowest score will fill the first position, the second lowest score will fill the second position, etc. He said if the alternates who were nominated are moved up to full members, then a need would exist to fill the alternate positions with the highest scores.

Mr. Shaw clarified that if the alternates are not moved up, then their terms stay as they were. All members agreed.

Mr. Randolph reminded the members to sign their ballots.

Mr. Randolph suggested that the meeting could proceed while the tabulation of the ballots took place.

After the vote was tallied, Gail Coniglio, Eileen Morris, Ann Gardner Drake and Thomas P. Turchan, Jr. were appointed to three year terms. Marc Katzenberg and Renee Fisher were appointed as alternates.

2. Zoning Commission - Two Three-Year Terms to Expire February 1998, One One-Year Term to Expire February 1996, and One Two-Year Term to Expire February 1997 (Deferred from February 14, 1995)

Mr. Wyett made a motion to defer the appointments to the Zoning Commission to a later date because the Zoning Commission was not scheduled to meet until November. The motion was seconded by Mr. McLendon.

Mr. Moore requested the motion contain a date certain for the deferral thus not carrying the item from month to month with updates.

Mr. Wyett responded he would defer the appointments to the May 9, 1995, Town Council meeting.

On roll call, the motion carried unanimously.

D. Other

1. Consideration of a Mobile Dredge with Cost Potentially Shared with Other Municipalities, Inlet Districts, and/or Palm Beach County

Mayor Ilyinsky reported that Mr. Elwell and he attended a Beaches and Shores meeting on March 13, and the Town of Manalapan was the only municipality who expressed a desire to learn more about the project. Juno Beach was interested in monitoring the Town's progress in exploring the option but probably not willing to expend any money for exploration. This attitude was true of a great many areas. He continued that South Lake Worth Inlet District was luke warm at best. The Town of Lantana and the Town of Palm Beach shores were not interested. Many communities have not been heard from because of the scheduled elections, or they have not had meetings at the right time to discuss the issues. He concluded at the present time, not too much interest was expressed for the project.

President Pro-Tem McDonald temporarily chaired the meeting.

2. Progress Report on Lake Worth Inlet Maintenance Dredging

Mr. Bowser reported he talked to Diana Bisher, Project Manager with the Corps of Engineers, and Ms. Bisher provided an update on the dredging project. The Corps dredged 98,000 cubic yards of sand from the entrance channel and had placed an additional 35,000 cubic yards from the turning basin. They anticipated an additional 15,000 cubic yards would be dredged from the turning basin for a total of 50,000 cubic yards. Mr. Bowser said work on that should be completed by the end of the week of March 13th. Work will then begin on the extended turning basin which has an estimated quantity of 46,000 additional cubic yards of sand, and that work should be completed by the end of April. The total estimated quantity of sand to be pumped on the north beach is 194,000 cubic yards.

Mr. McLendon asked Mr. Bowser what the conditions were on the beach?

Mr. Bowser replied the cross section for the Corps dredging is to extend from 500 feet to 2500 feet south of the Inlet. The Corps is to bulldoze the sand to an elevation of approximately 1.6 NGVD, and the sand is extended to a ten foot depth of water from the mean high water line. He said the Corps had more sand in this project than what is permitted by the DEP. Storms are helping the situation by moving sand down the beach so the Corps can refill that template. He continued if they do fill the template and have additional sand, they will put an additional foot or two on the beach and spread it out in a general area.

Mrs. Smith referred to a letter from a Mr. Reed who thought the sand should be put at a level of one foot instead of five feet. She asked Mr. Bowser if that were discussed when the disbursement of the sand was mentioned?

Mr. Dusey recalled the Corps or the original dredger was going to place the sand higher than was specified in the original permit. Mr. Dusey asked the coastal engineer if that was a good or bad idea. The coastal engineer suggested the sand be placed at a lower level to go through the system faster. Mr. Dusey said the Corps was instructed to place the sand as the permit had required and can only place the sand as the permit requires.

Mr. Bowser, responding to questions from Mrs. Smith, said he thought the Corps is about as far south as they can go without covering hard bottom, and there is not an opportunity to go further south. He said this would be confirmed in the Lake Worth Inlet Management Plan which will also address the area that can be filled in the north end of the island.

Mr. Dusey said the Lake Worth Inlet Management Plan will be available in April with the draft recommendation for the Council's review.

Mr. Shaw asked if the completion date of April, 1995, was a spreading or dredging date?

Mr. Bowser replied the Corps spreads sand almost immediately and must follow the requirements of the DEP permit including the turtle restrictions.

3. Comcast Cablevision

a. Consideration of Policy of Refunding Deposits Without Interest

Ms. Diane Christie, Director for Comcast Cable, addressed the Council and referred to Mr. Len Rozek's letter dated March 9, 1995 and offered to respond to any questions the Council members may have regarding that letter.

Mrs. Smith noted that a February letter mentioned that Comcast had 9,502 accounts in the Town with 2,876 residential condominiums, and the March 9 letter mentioned 1,200 accounts. She requested that Ms. Christie explain the numbers.

Ms. Christie replied the February numbers reflected bulk and residential accounts and did not deal with actual converter numbers. She said exact figures were received from their accounting department on the morning of March 14, and the deposits for converters will be refunded to 1,087 customers who have 1,965 converters. The amount of money to be refunded is $39,200. Ms. Christie mentioned that Comcast has not been charging for converters for the last year or two, and converter deposits dropped when customers disconnected and reconnected.

Mrs. Smith clarified that the $39,200 did not include an interest figure.

Ms. Christie reaffirmed Mr. Rozek's statement in his letter that the refunds should be completed within thirty days or sooner.

Mr. McLendon asked Mr. Randolph the reason that Comcast is not regulated by the Public Service Commission?

Mr. Randolph replied that the industry was deregulated with some rather extensive legislation that has been undergoing amendments during the last two years, and these amendments are massive.

Mr. McLendon commented that a central rate regulation would be preferable to each entity having to deal with this issues every month or two.

Mr. Randolph replied he thought that many people who are in the business of regulation share similar opinions; however, the FCC did not want to continue to regulate and, they passed that down to the local governments.

Mrs. Smith asked for additional comments. There were none.

Mrs. Smith thanked Ms. Christie for appearing before the Council.

b. Consideration of Cable Franchise Agreement Negotiations

Mr. Doney reported that Mr. Randolph, Mr. Jakubiak and he have had two meetings with Comcast representatives related to the cable franchise agreement negotiations. Mr. Doney referred to Mr. Jakubiak's memorandum, dated March 7, that identified the plan of action to be undertaken by the Town Attorney and the Staff which will culminate in a report to the Town Council. The memorandum mentioned workshops that will be held during the period of October, 1995, through January, 1996, to consider the agreement.

Mr. Doney explained this item was on the agenda to allow the Town Council to express opinions or consider action.

Mr. Randolph said no action is required by the Town Council, and as long as no objections are made, he and Staff will proceed as outlined in the memorandum.

Mr. Wyett said he understood the negotiations were with Comcast and asked if alternate proposals were being considered?

Mr. Randolph replied that this is a non exclusive franchise, and the Staff is considering drafting an ordinance that would be applicable to any franchisee who would want to come into the Town.

Mr. Jakubiak addressed the Council and explained that any time during this process or after the franchise is signed, sealed and delivered, any competitor can offer a competing franchise to provide service to the Town. He added this does not have to be cable, and it could be satellite technology. He mentioned the Telephone Company has a dial tone service that may be of interest. Mr. Jakubiak said that an investigation to see if competition would want to come into the area is in the very early stages, and he did not want to speculate at this time.

Mr. Jakubiak said another cable company would probably not come into the Town, because they would have to lay cable next to the current cable, tearing up the rights-of-way to do that. He added that alternative technologies may be the better answer.

Mr. Shaw asked if the cable service for the standard services could be bought by the Town and allow individuals to deal with the converter issues? He thought this may provide lower rates to all of the residents.

Mr. Jakubiak replied many issues have to be considered, and the intent is to have a draft agreement for the Council to act upon. He said the Comcast franchise agreement expires in 1996, and the legislation required that the Town enter into negotiations with Comcast.

Mrs. Smith said the Council will be holding public hearings and special Town Council meetings on the cable franchise issue between October, 1995, and January, 1996.

XI. NEW BUSINESS

A. Resolutions

1. Resolution No. 8-95 - Authorization of Application to Florida Department of Environmental Protection Beach Erosion Control Assistance Program for State FY 1996/97 for Implementation of the Lake Worth Inlet Management Plan

Mr. Dusey said the Staff recommended approval of Resolution No. 8-95 which authorizes Staff to complete an application to the State DEP for funding to implement the Inlet Management Plan in the anticipation that it will be approved in the near term. He said there is no guarantee of the amount of money that might be available from the State or Federal sources, but the Town needs to make application for the possibility of obtaining funds.

Mr. Dusey replied to questions from Mrs. Smith and stated the funds would be appropriated in fiscal year 96-97 which is two fiscal years away from the current time. He recalled that Governor Chiles did not appropriate any money for beach related items last year, but the legislature did put some back into the budget for those purposes. Mr. Dusey said he understood the federal budget is either eliminating or plans to eliminate funds for beach renourishment projects through the Corps of Engineers. He added Congress may put money back into the program. Mr. Dusey said the programs are undergoing change at the present time.

Mrs. Smith said she understood this was a way to stand in line should the funds become available either from the State or Federal governments.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN TO PROCEED WITH THE SUBMITTAL OF AN APPLICATION FOR FUNDS UNDER PROVISIONS OF CHAPTER 161, FLORIDA STATUTES, TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF BEACHES AND COASTAL SYSTEMS, FOR THE BEACH EROSION CONTROL ASSISTANCE PROGRAM FOR FISCAL YEAR 1997 FOR IMPLEMENTATION OF RECOMMENDATIONS OF THE INLET MANAGEMENT PLAN FOR THE LAKE WORTH INLET; AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID APPLICATION AND OTHER REQUIRED DOCUMENTATION; AUTHORIZING THE TOWN MANAGER, OR HIS DESIGNEE, TO INITIATE ANY RELATED ACTIONS INCIDENTAL THERETO.

Motion made by Mr. McLendon to approve Resolution Number 8-95. The motion was seconded by Mr. McDonald. On roll call the motion carried unanimously.

B. Appointments

1. Architectural Commission - Two Three-Year Terms to Expire February, 1998 and One Two-Year Term to Expire February, 1997

Mr. Wyett mentioned that the Architectural Commission currently had one architect, Lowry Bell, and the ordinance required that two architects, but no more than three, serve on the board.

Mr. Moore added that one of the architects could serve as an alternate.

Mr. Wyett nominated John Schuler, Lowry Bell, Ethel Lindsey for the three openings.

Mr. Shaw nominated Sally Gingras.

Mr. McLendon nominated Cathleeen McFarlane and Alexander Beal.

Mr. Randolph said the two highest vote getters would fill the two-three year terms and the third person would fill the one-two year term if the same procedure were followed as was for the Seaview Park Commission appointments.

Mrs. Pollitt read the list of nominees:

John Schuler
Lowry Bell
Ethel Lindsey
Sally Gingras
Cathleen McFarlane
Alexander Beal

Mr. Randolph noted that if one of the current alternates, either Mrs. Lindsey or Mr. Bell, would move up to a full member, then their alternate positions would become available to be filled. He suggested the fourth or fifth position on the ballot could move into that position. He said another alternative would be to have a separate vote.

Mr. McLendon suggested taking care of everything in one vote.

Responding to Mr. Shaw's question concerning an alternate, Mr. Randolph said that an alternate position was not available at the present time until or if one of the nominated alternates was appointed as a full time member.

After the votes were tallied, Mr. Randolph reported that Sally Gingras and John Schuler were appointed to three year terms. He added that a three way tie existed for the third term between Ethel Lindsey, Lowry Bell and Alexander Beal. Ballots would be handed out for those three and the highest vote getter will fill the one year term. The other two will fill the alternates' positions.

Mr. Randolph announced, after the tie breaking vote was tallied, that Ethel Lindsey was appointed to the two year term. Cathleen McFarlane and Lowry Bell will remain as alternates, and Alexander Beal was appointed as the third alternate.

2. Landmarks Preservation Commission - Three Three-Year Terms to Expire February 1998

Mr. McLendon nominated Jane Grace and Sari M. Wilkey.

Mr. Wyett nominated Anne Sory Keresey, Jeffrey W. Smith, Joanna Frost-Golino, and Eugene Pandula.

Mr. Shaw nominated Robert Deziel, but he noted that Mr. Deziel had not expressed interest in serving on the Landmarks Commission. Mr. Shaw withdrew Mr. Deziel's nomination.

After the vote was taken and tallied, Mr. Randolph reported that Joanna Frost-Golino, Eugene Pandula, and Jeffrey Smith were elected for the three year terms, and Anne Sory Keresey was elected as an alternate. Jane Grace and Sari Wilkey tied for the remaining alternate position, but Mrs. Grace is currently serving as an alternate and is in the middle of her term. Mr. Randolph believed Mrs. Grace should finish her term.

C. Other

1. Consideration of Proposed Decorative Tile for Reconstructed Front Steps at Police Facility

Mr. Bowser reported that the Police Department steps under a capital improvement program are being reconstructed to have a gentler slope. He said the style, rise and run have been agreed upon. A proposal was made to have tile placed on the risers at the request of the Preservation Foundation, and the Landmarks Commission has given a general opinion on the tile. The preservation has requested that Staff proceed with the tile selection.

Mr. Bowser presented sample 1 and sample 2. Mrs. Smith said she preferred tile 1 and asked the other Council members to express their opinions.

Mr. Bowser reported that no donations have been received from the Preservation Foundation as of this date, and the cost of the project is not known, but it will put out to bid as an alternate.

Mrs. Smith replied donations in memory of Barbara Hoffstott have been received and the money will be forthcoming for the tile. Mr. Weinberg had also indicated school children will donate for the tiles and be able to pick out tiles.

Motion made by Mr. Shaw to approve tile sample number 1 for the police steps. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

2. Consideration of Request by The Beach Club Regarding Town's Position on Groins (Letter Dated March 9, 1995, From Mr. Robert Grassi Requesting Deferral to April 11, 1995 Meeting)

This item was deferred to the April 11, 1995, Town Council meeting.

3. Consideration of Request From Florida Department of Transportation to Utilize Town Property for Staging Areas for Bridge Rehabilitation Projects

a. Flagler Memorial Bridge

Jim Bowser, Town Engineer, addressed the Council and stated the Gilbert Southern Corporation requested the use of Town owned property for the renovation of the Flagler Memorial Bridge. Mr. Bowser introduced Tim Cleary from Gilbert Southern Corporation to answer any questions the Town Council would have.

Mr. Bowser explained the initial request was to use a portion of Bradley Park and perhaps the Town owned property at 6th and Dixie in West Palm Beach. Mr. Cleary indicated his company will not need to use Bradley Park, and the request is for the property west of 6th and Dixie.

Tim Cleary, Gilbert Southern Corporation, addressed the Town Council and stated the property west of 6th and Dixie could be used to maintain a storage area and office trailer for the duration of the project. Mr. Cleary, responding to questions from Mr. McLendon, said his company needs a space approximately 200 feet x 200 feet for a fenced in area.

Mr. Bowser noted that a Right of Use Agreement had been prepared and Gilbert Southern Corporation was to name the Town as an additional insured on the contractor's insurance policy for protection for the Town. Mr. Bowser said they have no objection to the project and the State has been cooperative with the Town, attempting to have the bridges finished before the season.

Mr. Shaw asked if the area directly under the bridge could be used for these same purposes.

Mr. Cleary replied, in this case, security issues exist, and basic access to the bridge is a problem. Additionally, some ramp work will have to be done on the south and north approach ramps to the bridge, and that would provide the limited access to the bridge.

Mr. Bowser, answering Mr. Wyett's question concerning possible damage to the property, said that part of the Right of Use Agreement will require full restoration of the site.

Motion made by Mr. Shaw to approve the use of Town owned property at 6th and Dixie in West Palm Beach for the Flagler Memorial Bridge project. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

b. Southern Boulevard Bridge

Mr. Bowser said Coastal Marine Construction, Inc. requested permission to use a portion of the Post Causeway during renovation of the Southern Boulevard Bridge project. He continued that this project began in February, and the contractor was anxious be begin work. The Public Works Department attempted to steer the contractors away from the parking lot area to the other property that is requested today. Mr. Bowser apologized for not approaching Council before this time for permission to use the site for a staging/vehicle/material area. Mr. Bowser introduced Mr. Harold Brewer, Coastal Marine Construction, to answer any questions the Council would have.

Mr. Bowser said that a Right of Use Agreement would be required from Coastal Marine Construction, and Mr. Brewer has already provided a copy of that for the Town. Additionally, the Town will be named as an additional insured on the contractor's insurance policy.

Mr. Bowser noted that some relandscaping will be required in the project and Coastal Marine Construction will be required to restore any area that is disturbed.

Harold Brewer addressed the Town Council and offered to answer any questions that the Council might have.

Mrs. Smith asked Mr. Brewer if he had a landscape plan for the property?

Mr. Brewer responded he had a landscape plan to redo the abutments to the bridge. He noted sod and palm trees would be added after the removal of the existing Australian pines. He said they were working with Jim Houck, FDOT, to coordinate plans with the Town of Palm Beach. Mr. Brewer said FDOT has committed to spend the dollars that are in the contract to relandscape as the Town wishes.

Mr. Bowser added that Mr. Houck explained to him that the Australian pines will be removed and palms will be planted at the bridge approaches. Mr. Houck has expressed flexibility with the monies that are included in the contract; however, whatever Mr. Brewer disturbs is outside the contract.

Mrs. Smith noted that the area where the construction work that is currently being done is very unattractive. She suggested organizing the chaos.

Mr. Brewer replied they were hesitant to make any changes before the Council acted at this meeting, but they do plan to add some fencing in the area and organize. Responding to questions from Mr. Wyett, Mr. Brewer stated they would restore everything they disturbed to an "as is" or better condition than it is presently.

Mr. Doney referred to Mr. Bowser's memorandum, dated March 3, 1995, that indicated in the CMCI letter, a coordination effort is underway to have a final landscape plan that would be acceptable to the Town. Town Staff will be proposing to Town Council via the Public Works Committee a plan to xeriscape the Post Causeway property. The Town will be able to realize a savings in both initial installation and long-term water savings if a xeriscape plan is approved.

Mr. Shaw questioned what else was being stored on the property beside trailers.

Mr. Brewer replied that some metal materials will be stored on the ground.

Mr. Shaw noted that people who normally park in the lot will have to walk in the street. He asked Mr. Brewer if their storage area could be moved back toward the water line to leave free access for the public from the parking lot to the park area. Mr. Brewer replied he could move the area and agreed to fence the area.

Motion made by Mr. Shaw to grant permission to use the Causeway property with the condition the property will be fully restored to equal or better status and a fence will be installed on the northern perimeter allowing the public to walk from the parking lot to the eastern side of the park area. A right of use agreement will be executed. The motion was seconded by Mr. McLendon.

Mr. Wyett requested that a landscape plan be submitted to the Architectural Commission as part of the motion. Mr. Shaw and Mr. McLendon agreed to that condition as part of the motion. On roll call, the motion carried 4-1 with Mr. McDonald casting a negative vote.

4. Consideration of Town Levied Utility Taxes - West Palm Beach Water Department, Florida Public Utilities, Florida Power and Light, and Southern Bell

Mr. McLendon said the Town levies a 10% utility tax on the telephone, power and water charges. He expressed concern that the 10% charge is not being levied on the water surcharge amount charged by West Palm Beach. He asked if each of the utilities added back the 10% to the monthly utility bill? He stated he personally did not receive a utility bill.

Mr. Doney explained the 10% is added to the gross amount on the bill and that 10% charge for water, Florida Public Utilities, Southern Bell and Florida Power and Light is remitted to the Town, and the total remittance in the FY95 budget is approximately $2,760,000 that is received on an annual basis.

Mr. McLendon understood this is a payment by the user as opposed to being an ad valorem tax, and is a source of Town revenue.

Mr. McLendon said he had not further questions. No action was taken.

5. Consideration of Proposed Deepening of the Intracoastal Waterway in Lake Worth Adjacent to the Town of Palm Beach

Mr. Doney referred to a letter in the back up material provided to the Town Council dated February 13, 1995, from Chris Hodge, President, Marine Industries Association of Palm Beach County, Inc. The Marine Industries Association requested the Town's support for dredging a portion of the Intracoastal Waterway to a depth of 12 feet plus an advanced maintenance depth of two feel.

Mr. Doney said additional information in the back up materials stated the prior Town Council's position regarding the dredging and referred to a letter from Mrs. Wiener to Jeff Koons, former chairman of the Metropolitan Planning Organization. Mr. Doney said this information was provided to inform the Town Council of past directives, and the item was put on this agenda to allow the Town Council to visit the issue from a policy perspective. He suggested a letter of response would be appropriate from President Smith to Marine Industries Association, Inc.

Mr. Wyett asked what the depth of the Lake is now?

Mr. Doney responded the existing channel is ten feet. Mr. Bowser concurred with that figure, but shoaled areas do exist. He continued that FIND is currently doing a project to dredge the entire Intracoastal Waterway.

Mr. Wyett said if opportunity to dredge is passed up, the Lake will continue to fill in. Mr. Wyett asked what West Palm Beach's position was regarding the dredging?

Mr. Doney replied he did not know what their position is.

Mr. McLendon said he does not see that the dredging would increase boat traffic.

Mrs. Smith recalled many concerns existed as expressed in past correspondence including the increase in the number of boats, the damage to the shoreline, damage to the environmental areas where the manatees are, the seagrass, and damage particularly in the northern part of the island where the wake from the large boats could create damage. She added that Representative Shaw requested a feasibility study on this project and the answer was since the Corps of Engineers often take years to complete these studies, the BCC and the BIAPC believe it is unnecessary to spend agency time and public monies to conduct the study, and suggested completing the actual dredging.

Mrs. Smith said if the actual dredging is wrong, why should it be condoned? She recalled the feeling of other Councils was that the dredging was wrong, and the feeling that the dredging should be done now because it may have to be done later, is not the way to approach the issue.

Mr. Wyett replied his concern was that if the dredging was not done now and the determination was made in two or three years that dredging was necessary because the waterway was silted to the point that the average boat could not pass, then the dredging should be done now. He mentioned the recent dock renovation and the revenue from the docks. He questioned the use of the docks in the future or the potential loss of revenue.

Mrs. Smith questioned the approval of the dredging before the FIND Study was available to the Council.

Mr. Shaw said the question is whether the ten foot maintenance level should be increased to twelve feet and go to fourteen feet to be on the safe side. He continued that they are obligated to keep the depth at ten feet, and part of the waterway has to be dredged into the marinas. Mr. Shaw said it was not an issue of ignoring it but an issue of surpassing it. He added that in future years, the dredging may be continued at that depth all the way to Miami and Fort Lauderdale, and would become a true waterway for larger or commercial vessels. One of the prime examples of "quiet expansion" is the Port of Palm Beach. The Port started at one size and is now at the size with an inlet that has caused irreparable damage, not just to the Town of Palm Beach, but down the coast line. He added these are some of the reasons that previous Councils have reacted strongly to these proposed dredging programs.

Mayor Ilyinsky noted that the Intracoastal belongs to the people of the United States, although it is controlled by the Federal Government through the Corps of Engineers.

Mr. Randolph added that the Town of Palm Beach has jurisdiction to the middle line of the Intracoastal but does not own the waterway.

Mayor Ilyinsky said he was surprised that the Federal Government even asked the Town its opinion.

Mr. Doney responded the request came from Marine Industries and not the Federal Government.

Mrs. Smith noted that it was a commercial enterprise that was asking the Town to support a commercial enterprise.

Mr. Doney added that Marine Industries was attempting to gain the consent of all the abutting municipal positions.

Responding to a question from Mr. Wyett, Mayor Ilyinsky replied he does not have a recommendation on the dredging; however, he noted that spots exist between Palm Beach and Jupiter where a boat that draws 5 feet of water is in trouble on the low tide. He added the depths that were mentioned were based on low tide readings. He was puzzled that this immediate area was chosen when areas to the north probably do not have ten foot depths. The Brazilian dock has been a major hit, and the boat using that dock now pays the Town of Palm Beach over $60,000 per month. He noted that there is a possibility other large boats could be docked in Palm Beach if that were in the interest of the Town. He concluded he had mixed emotions concerning the dredging.

Robert Grace, 126 Seagrape Circle, addressed the Town Council and called the Council's attention to the difference between maintenance dredging and deepening.

Mr. Shaw, responding to Mr. Wyett's question, said the Council should respond to this request if it is opposed to the deepening.

Motion made by Mr. Shaw to oppose any deepening of the waterway adjacent to the Town of Palm Beach.

Mr. Wyett said he thought any decision should be deferred until a study was received from FIND.

Mrs. Smith recalled that FIND would not be doing a study until they know if they will be demolished under the Sunset Law. Mrs. Smith clarified that the Town of Palm Beach is on the record, with the previous Council's position, opposing the dredging.

The motion was seconded by Mrs. Smith who passed the gavel to President Pro Tem McDonald. On roll call, the motion carried 3-2 with Mr. Wyett and Mr. McLendon casting negative votes.

6. Consideration of Appointment of Voting Delegate and Alternate(s) to Palm Beach County Municipal League

Mr. Doney said this item was on the agenda to allow the Town Council to appoint an alternate in addition to the Mayor's desire to continue serving as the voting delegate. Mr. Doney added, at the present time, no alternate has been designated. Formerly, Mr. Weinberg and Mrs. Wiener were the appointee and alternate.

After discussion, Mrs. Smith stated that Mr. McDonald as President Pro Tem will be the first voting alternate and Mr. Shaw will be the second voting alternate. Mayor Ilyinsky will serve as the voting delegate.

7. Consideration of Appointment of Member and Alternate Representatives to the Palm Beach Countywide Intergovernmental Coordination Program Issues Forum

After discussion, Mr. McLendon volunteered to serve as an alternate member and Mr. Wyett volunteered to service as the member.

8. Consideration of Forum on Transportation - 21st Century, on Friday, March 17, 1995, at 1:00 P.M., Ramada Hotel, West Palm Beach

Mrs. Smith reported that Mr. McLendon would like to attend this meeting. Mr. McLendon agreed to attend the meeting.

Mrs. Smith said she would assume that Mr. McLendon will represent the views of the Town regarding the I-95 Interchange, AMTRAK and COTRAN routes.

Mr. McLendon committed to reading any of the Town position papers before he attended the meeting to represent the Town's position on various issues.

9. Skees Road Trash Site Project

Mr. Doney reported that the Town received a notification from the Palm Beach County Planning Division regarding a community meeting scheduled for Thursday, March 23, from 7:00 p.m. to 8:30 p.m. at the Redemption Evangelical Lutheran Church.

Mr. Doney said the Town owns a site on Skees Road that is approximately 30 acres in size. This site is north of Belvedere Road and is used for yard trash disposal. All of the vegetative matter that is collected in Palm Beach is disposed of at either the Skees Road yard trash site or the Okeechobee Boulevard yard trash site. He said both of those sites are permitted by the Florida Department of Environmental Protection.

Mr. Doney urged the Mayor and Town Council to notify the Planning Department and the Board of County Commissioners, since this property is located in the unincorporated area of Palm Beach County, that the Town will continue to utilize the site in the future and has no intention of discontinuing the use of the site for the composition of yard trash. If residential development does occur nearby, the neighbors must know that this site was and will be used as a yard trash site. Mr. Doney concluded the site is a valuable and well used piece of property.

Mr. Doney requested a letter be authorized by the Town Council to the Palm Beach County Board of Commissioners similar to a letter dated July 12, 1994, from Mrs. Wiener. The letter contained several recommendations and the Town requested proposed development projects on the adjacent properties include a significant planted buffer and the deeds resulting from any subdivision or development approvals acknowledge the expected continued use of the Town's yard trash disposal site.

Mr. Dusey explained the Town uses two yard trash sites--one on Okeechobee Road, used primarily in the winter time, and the very large one on Skees Road. Mr. Dusey said the yard trash is piled on the site and allowed to decompose naturally. The time period is approximately one year for decomposition. He noted the land has been used for this purpose for 20 - 30 years and a foot or a foot and one-half has been added to the elevation of the site during that time.

Mr. Dusey said the Town avoids tipping fees at the Solid Waste Authority by using the site, and the only cost associated with the site is a bulldozer and operator. Mr. Dusey said the materials are not turned; however the materials are run over after about a year and disintegrate naturally. He added this is a very low technology type of operation.

Mr. Wyett questioned the value of reclaiming some of the material to be used as compost?

Mr. Dusey replied that possibility had been considered; however, he was not sure a market existed for the product. He mentioned the weed seeds would have to be killed.

Mr. Dusey, responding to Mr. McLendon's question, said the second yard trash site is on Okeechobee Road across from the fire station, approximately one mile east of the turnpike and west of Haverhill.

Mr. Doney reported that either Mr. Dusey or Mr. Elwell will be representing the Town at this meeting.

Motion made by Mr. Shaw to authorize Staff to attend the meeting and the drafting of a letter from President Smith, prior to the March 23, 1995, meeting, reiterating the position of the Town to continue to use the Skees Road site for composting yard trash. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

10. Work Station in the Town Council Conference Room

Mr. Shaw reported that Mr. Wilson, Information Systems Manager, had an extra work station (computer) that could be set up in the Council meeting room as the room already was designed for a computer terminal. He said there are times when he would find it advantageous to use the computer in Town Hall. He said this would be a "no cost" issue other than the cost of a table to put the computer on. Mr. Shaw stated he did not wish to be trained nor did he need assistance.

Mrs. Smith asked if the printer to be used is the one located in the Town Manager's office?

Mr. Shaw replied affirmatively.

Mr. Doney said one of the considerations is the use of the meeting room. He noted a computer would have to be placed on a computer table which would cost approximately $150. He said one piece of furniture would have to be relocated. Mr. Doney noted that a one hour training session may have to be scheduled for those who did not know how to use the AS400 system.

Mrs. Smith suggested the individual members should consider using their computers at home and not ones in the Town Hall.

Mr. Shaw offered to donate a table for the computer.

Motion made by Mr. Shaw to hook up the computer to the work station. The motion was seconded by Mr. McLendon.

Mr. Shaw and Mr. McLendon agreed to pay for any training as needed.

On roll call, the motion carried 3-2 with Mr. Wyett and Mrs. Smith casting negative votes.

11. Mar-a-Lago Discussion

Mr. Wyett requested the Town Attorney, Mr. Randolph, outline the remaining conditions that Mr. Trump must complete to obtain a certificate of occupancy and an occupational license. He also asked that the Town Council notify the Town Attorney to instruct the appointed outside auditor who will be verifying the membership of the Mar-a-Lago Club as to the 50% rule; the definition of who qualifies as a Town resident or a legitimate employee under the agreement with Mar-a-Lago. He continued that if there should be any disagreement, the matter should be submitted for the full review by the Town Council. Mr. Wyett stated the Town Council would like to be informed by the auditor of the break down of the membership categories as it applies to the 50% rule.

Mr. Wyett asked for a resolution that the Town Attorney notify the President of the Town Council that he is ready to certify that all terms and conditions of the Declaration of Use Agreement have been met in accordance with the strict interpretation of the agreement and its intent. The President of the Town Council will convene a meeting of the Town Council to receive, review and confirm the issuance of the certificate of occupancy and the occupational license. Mr. Wyett stated it was not his intent to deny or delay the opening of the club at Mar-a-Lago, but it is his intent to make public all procedures.

Mr. Randolph reported that Mr. Trump's attorney, Mr. Rampell, was out of town and unable to attend the Town Council meeting. Mr. Randolph said he informed Mr. Rampell that he advised it would not be appropriate to have any substantive discussions relating to Mar-a-Lago without the applicant in attendance.

Mr. Randolph continued if the matters discussed at this meeting were procedural in nature and included directions to staff that do not modify any of the existing conditions agreed to by the previous Council, he would have no objections. Mr. Randolph added he has been reporting to the Town Manager on the status of the conditions and intends to continue to do so. He said his report will contain the items that have been completed from a legal standpoint and those items that have not.

Mr. Randolph mentioned that he had discussions with Mr. Rampell regarding the affidavit that will be needed for the determination of the number of members who are residents or who own businesses in the Town. An independent auditor will be chosen to execute that affidavit, and Mr. Rampell has been advised that auditor should attest to the fact that these persons do meet the requirements of the Declaration of Use Agreement as stated.

Mr. Randolph concluded he would report, in writing, when and whether the Declaration of Use Agreement conditions have been met, and the Council may take whatever action it wishes as a Town Council.

Responding to a question from Mr. Wyett, Mr. Randolph replied his role was not to issue the certificate of occupancy or the occupational license as that was the role of the Building Official. He said he would write a letter to Mr. Doney relating to the legal items, i.e. unity of title, membership affidavit, etc.

Mr. Wyett responded he would like to have the Council notified and have them meet immediately. This would provide the opportunity for any questions to be brought out in the open at that time.

Mr. Moore said the Building Code items and the Landmarks Preservation Commission items are being followed through with via permits, etc. from the Building Department. He added the Code stated certificates of occupancy shall be issued by the Building Department. Mr. Moore reported he has been informing Mr. Doney of the progress at Mar-a-Lago and will continue to do so. The Town Council will receive copies of any correspondence sent to Mr. Doney.

Mr. Moore reported, absent specific direction to vary from the Zoning Code, the Building Department will be informing Mr. Randolph when the Building Department is ready to issue a certificate of occupancy and the occupational license. He said these would not be issued until Mr. Randolph assured the Building Department that all the legal matters are taken care of.

Mr. Wyett responded he had no problem with the procedure; however, he was concerned that this has been a big issue in the Town, and it should be handled in the open.

Mrs. Smith noted that all of the meetings where Mar-a-Lago was discussed were out in the open. She asked if Mr. Moore could provide an update at this meeting noting which of the conditions have been met and which have not?

Mr. Moore replied he visited the project two weeks ago and is scheduled to review the project again.

Mrs. Smith said this is an on-going procedure, and unless Mr. Wyett is asking that the Council make an on-site inspection to ascertain that all 28 conditions of the 15 pages of the agreement have been complied with, the Council has to rely on the judgement of Mr. Moore, Mr. Doney and Mr. Randolph.

Mr. Wyett responded he is not concerned at all about the building issues; however, he is concerned about the unity of title, the affidavits and various other legal requirements that are subject to interpretation on both sides.

Mr. Doney offered to either hand deliver or FAX the information to the Council members as it becomes available from Mr. Moore and Mr. Randolph.

Mrs. Smith asked Mr. Wyett if he thought the Town Council would be accepting the Mar-a-Lago auditor's report regarding the town-serving requirement?

Mr. Wyett responded the town-serving definition is key to any report and wanted the report monitored to guard against liberal interpretation of the conditions for the town-serving requirement.

Mr. Randolph explained the agreement talks about residents and persons owning businesses. He reported that his discussions with Mr. Rampell regarding the audit indicate Mr. Rampell and Mr. Randolph agree on the meaning of the definition of town-serving. Mr. Randolph added he understands no one will be counted as a resident who is using hotel accommodations for brief periods of time. He reported he had discussion with Mr. Rampell orally, but he will ask that be in writing.

Mr. Wyett asked Mr. Randolph if that condition is binding for Mr. Rampell?

Mr. Randolph replied that when the affidavit is returned, that will be evident. He explained that "binding" means that Mr. Rampell will follow the wording of the Declaration of Use Agreement and that does not use the term "town-serving" in the substantive language. The words "resident" and "persons who own businesses in the Town" are used.

Mr. Randolph said he understood the question raised was whether or not the Council will be satisfied to receive the written correspondence from Mr. Randolph and Mr. Moore with the thought in mind that if there is any disagreement, then a Town Council meeting could be called. He recalled that another major project in Town was handled in the same manner--the Council was kept informed and if the Council had any different interpretations concerning the approvals then a meeting was scheduled. Mr. Randolph said he interpreted Mr. Wyett's request as scheduling a Town Council meeting after the advice has been received from Mr. Randolph and Mr. Moore.

Mr. Wyett replied that was the correct interpretation because he wanted it out in the open and if any one in the Town had statements to make concerning Mar-a-Lago, those statements could be made before it was a closed issue. He reiterated that normal procedures for issuing the certificate of occupancy and the occupational license should be followed with the exception before these are issued, the Council should be advised and a meeting will be scheduled.

Mr. Robert Grace, 126 Seagrape Circle, addressed the Council and stated he had a court reporter present at the meeting. He said he heard Mr. Randolph say, "the definition as I have given it....". Mr. Grace requested Mr. Randolph give the definition for residences.

Mrs. Smith asked Mr. Grace if he were actively involved in litigation against the Town on this issue?

Mr. Grace replied he certainly was.

Mrs. Smith said Mr. Randolph's statement should stand as presented on the record.

Mr. Grace replied his position is that it was not on the record because it was never stated.

Mr. Randolph responded he would paraphrase the Use Agreement and it states under Article VII., "at least 50% of the members of the Club shall consist of individuals who maintain residences in the Town of Palm Beach or have places of employment in the Town of Palm Beach". Mr. Randolph noted he formerly stated, "who owned businesses", rather than places of employment.

Mr. Grace said the word "residences" is the one that needs a definition, i.e. "maintain residences". He continued that there is a conception in the Town that "residence" means having a mailing address and asked what having residences means.

Mr. Randolph replied, at this point, he wanted to rely on the language of the Declaration of Use Agreement and report to the Council what is expected to be reported by the auditor. He continued if that is not satisfactory to the Council, the Council can address that at the time.

Mr. Wyett noted that would require a meeting of the Council before a license was issued.

Mr. Randolph reiterated that he was not involved in the issuance of a license, and that is the Town Council that makes that final determination.

Mrs. Smith reminded Mr. Wyett that the Council has not determined that they would not meet. She said the Council is not objecting to a meeting but have not reached that point. Mrs. Smith continued that all the points are being considered in due process, because the applicant is not present and if there is a full scale hearing, the applicant should have due process. Whether or not the occupational license is issued on a date certain or uncertain, it may be necessary to allow the applicant an opportunity to answer some of the questions raised at this meeting and a special meeting will be called. She reminded the Council that litigation is going on and everyone's position must be protected.

Mr. Adrian Winterfield, 445 Brazilian Avenue, addressed the Council and reported that Mr. Trump announced he had the right to have honorary members. Mr. Winterfield wanted to know if these honorary members would be included in the calculations to determine whether or not 50% of the members are Town residents. He assumed they would be included.

Mr. Winterfield expressed his concern regarding Mr. Trump's compliance with the Zoning Ordinance's definition of a private club. He continued the Zoning Ordinance defines a private club as organizations which are owned and operated by the members. He said for that reason alone it would be necessary to examine the transactions closely. He added everyone is assuming there will be a due transfer to the Mar-a-Lago Club, Inc. which is a party to the Development of Use Agreement. Mr. Winterfield noted that Mr. Trump stated in other litigation that he is under no obligation to make that transfer.

Stuart Shulman, 2280 S. Ocean Boulevard, addressed the Town Council and asked if the "free" memberships issued by Mr. Trump were to be counted as part of the 50% local requirement for membership? Mr. Shulman noted that two Town Council members are also members of the Mar-a-Lago Club and questioned if they would be voting on issues related to Mar-a-Lago.

Mr. Wyett commented that if his resolution is not adopted, the Town Manager will issue all the licenses after receiving certification that everything is in order.

Mr. Doney responded that the issuance of the certificate of occupancy and the occupational license fall under the duties and responsibilities of the Director of Planning, Zoning and Building. Mr. Moore will issue the certificate of occupancy and the occupational license when he deems everything is in order and after consultation with Mr. Randolph and notifying the Town Manager via a memorandum. Mr. Doney requested that the Town Council may direct the Staff to hold off on the issuance of the c/o and the occupational license; otherwise, procedurally, these will be issued as they normally are.

Mr. Wyett replied he was more interested in the legal side. Mr. Trump should meet the legal requirements of the agreement, i.e. the unity of title and various other affidavits. Mr. Wyett inquired who would issue the opinion that these conditions were met?

Mr. Moore replied Mr. Randolph would issue that opinion.

Mr. Doney said one of the prerequisite requirements in the declaration of use agreement is that Mr. Randolph will ascertain from a legal perspective that all items that have been conditionally approved by Town Council are in order. He continued that the actual issuance of the paper work is a function of the Building Official.

Mr. Wyett reiterated he was most concerned about Mr. Randolph's role and wanted to make certain it was out in the open. He added Town residents should be notified as a result of a Town Council meeting that the approvals have been granted. Mr. Wyett stated he had no personal objections to the opening of the Club but his purpose was to make public all the procedures prior to the opening.

Mr. McLendon commented he shared Mr. Grace's concerns regarding the definition of "residents", and he asked that Mr. Randolph address that issue.

Mr. Randolph replied he would address that issue by way of correspondence. He noted that the Council had raised questions regarding the interpretation of the language contained in the Declaration of Use Agreement. Mr. Randolph stated the Town Council has to be satisfied that all of the conditions have been met. He continued he will advise the Council, by way of a memorandum to Mr. Doney, of the information he receives. Mr. Randolph said the Town Council has the right and the obligation to determine that conditions have been met. He said he does not make the final decision--he advises the Town Council and Staff as to what he receives in an attempt to meet required conditions. Mr. Randolph added he provides the advice concerning that information, and the Town Council makes the final determination.

Mr. Randolph noted the Town Council could make the determination by review of a memorandum and take no action other than allowing the normal procedure to be followed. The Council could request the Town Attorney issue a report and consider the report at a special Town Council meeting.

Mr. Wyett responded that his resolution submitted to the Council members before the meeting stated: The President of the Town Council will convene a meeting of the Council to receive, review and confirm the issuance of the certificate of occupancy and the occupational license.

Mr. Moore said if an impasse is reached, the Council will be notified and Mr. Trump or his representatives could appeal to the Town Council. He assured the Council members that his department will not arbitrate any dispute and any dispute will be presented to the Town Council for resolution.

Motion made by Mr. Wyett to have the President of the Town Council convene a meeting of the Council to receive, review and confirm the issuance of the certificate of occupancy and the occupational license and any other requirements. The motion was seconded by Mr. McLendon.

Mr. Doney clarified that the certificate of occupancy and the occupational license would not be issued until a special Town Council meeting is called.

Mr. Randolph anticipated a request for an occupational license could be forthcoming within two to three weeks.

On roll call, the motion carried 4-0 with Mr. McDonald declaring a potential conflict of interest since he was a potential member of the club.

12. Legal Fees

Mr. McDonald questioned Mr. Randolph's billing regarding legal fees and requested information and some suggestions from Mr. Randolph.

Mr. McDonald requested the litigation status report issued in January, 1995, be provided on a monthly basis. He requested that the accumulated legal fees for each case listed on the report be listed on the report.

Mr. McDonald would like to see the accumulated legal fees for any litigation matter that appears on the agenda. He requested a cost estimate, a legal fee estimate, in advance with a short memorandum listing the merits of the case for any item that may require litigation.

Mr. Randolph asked if this would cover only cases where the Town was the plaintiff?

Mr. McDonald replied affirmatively and said the estimates of those cases would probably be easier. If the other side could be estimated, he would like to see that listed also.

Mr. McDonald noted after reviewing the monthly statement that several citizens had contacted Mr. Randolph directly. Mr. McDonald requested the Town's position be clear regarding direct access to Mr. Randolph and the costs associated with that.

Mr. Randolph responded that the policy has been in effect for some time. The determination was made that any citizens who contact Mr. Randolph regarding advice they needed themselves, unrelated to direction from the Town, the Staff or from the Council, would bear the responsibility for the cost of the call.

Mr. McDonald asked Mr. Randolph if a determination could be made, by reviewing the statement, if the contacts were regarding Town matters? He counted three individuals on the January statement that could not be associated with Town matters.

Mr. Randolph replied he was diligent in not including, on the Town statement, persons who have contacted him on non-related matters. He noted, up to this date, he has not charged any resident an additional fee for calling him. He usually indicated he could not take the call or advised the resident the call could not be discussed at length, and the call was not recorded.

Mr. McDonald said he would contact Mr. Randolph directly in the future if he had questions regarding any statement where residents' names were listed.

Mr. McDonald stated Mr. Randolph's status with the Town related to a letter dated June 28, 1988, that lists the legal fees by category. He quoted one line, "..much of what is done for the Town can be done by paralegals, law clerks and associates with our firm." He noted the rates for those different categories were listed. Reviewing the last statement through January 31, 1995, Mr. McDonald noted that in the advice and litigation category, the largest category every month, that approximately 5% of that bill relates to paralegals or law clerks. In addition, 32% of the total bill is for paralegals, law clerks and associates. He noted that the major portion of the work was outside of those listed categories.

Mr. Randolph replied that he primarily handled advice and litigation because he is the target contact person for everyone in the Town regarding advice that is needed.

Mr. McDonald asked about the breakdown of the bill and questioned if paralegals were being used.

Mr. Randolph replied that many Staff members would state that they deal frequently with Mr. Randolph's staff members and those members use paralegals. The Town Staff would not contact paralegals directly. Mr. Randolph offered to have his staff members handle more of the work that he is currently handling if the Town Council saw that as a way to decrease the billing.

Mr. Randolph stated his rate to the Town is $150 per hour as stated in his letter of June 28, 1988. He added the associates his firm hires today, new graduates from law schools, are billing at $100 - $125 per hour. He continued after two or three years, these associates match his $150 per hour that he bills the Town and exceed that amount shortly thereafter.

Mrs. Smith understood that Mr. McDonald had presented a list of questions to Mr. Randolph, not to answer at this meeting, but to answer next month. She asked Mr. Randolph if wanted to respond to all of these questions without the backup material.

Motion made by Mr. McDonald to upgrade the monthly litigation status report to include accumulated legal fees; a cost estimate in advance and a memorandum listing the merits of a case with Mr. Randolph's recommendation.

Mr. Randolph clarified that any time a litigation matter appears on an agenda, accumulated legal fees will be given.

Mr. Wyett questioned the $77,000 spent for litigation on the Park Avenue case (Lichterman).

Mrs. Smith said the cost was dependent upon the point of view that was being defended. The Town was defending the Zoning Code of the Town, and this was a very important point. She said if something is for the defense of the Town of Palm Beach, the money is well spent.

Mr. Moore added the Town was the defendant in the Lichterman case, and the issue was the upholding of the Zoning Ordinance.

Mrs. Smith said the Town has to decide at some point what the monies will be spent for. She added she has requested "ball-park" figures before considering litigation; however, lawyers can only give estimates, not concrete costs.

Mrs. Smith suggested that Mr. Randolph report to the Council at the April 11, 1995, Town Council meeting regarding the issues Mr. McDonald raised. She added, after reviewing the amount of time he is spending on behalf of the Town, he might find out that $150 per hour is not sufficient and may want to raise his fees to be in line with other lawyers.

Mr. Randolph replied he is comfortable complying with the issues Mr. McDonald requested in his motion. He said Mr. Doney prepares a monthly compilation of the fees that have been spent on each topic. Mr. Randolph noted that the information he will be providing will match the information already provided by Mr. Doney.

The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

13. Council Liaison for Political Representation

Mr. McDonald said, with his experiences, the Council needs to open defined channels of communication with some of the political colleagues across the bridge. He gave the example of the County Commissioner who is a proponent of the I-95 interchange and questioned if the Town communicates with her. Mr. McDonald noted the School Board had a meeting scheduled and the School Board receives 47% of the Town of Palm Beach's taxes. He questioned if anyone, representing the Town, attends School Board meetings. Other examples given were the Port of Palm Beach and City Commission of West Palm Beach.

Mrs. Smith said she thought Mr. McDonald was requesting the attendance of the members of this Council and past Councils at various meetings. She added she did not think that there were lines of communications that were closed. Mrs. Smith said the Mayor knows many of the City of West Palm Beach, the County and the State representatives. Also, the Town is represented by existing relationships in Washington. She stated the Town is well represented.

Mrs. Smith said the Civic Association, Citizens South of Sloan's Curve and the Preservation Foundation attend meetings around the County and report their findings to Council members. She did not think a designee should be appointed from the Town Council.

Mr. McDonald said his suggestion was that the Town should be more involved with the people who make decisions that affect the Town of Palm Beach. He replied he was not sure if a paid lobbyist was the answer but a committee comprised of citizens from the Town of Palm Beach may be the appropriate vehicle.

Mr. Wyett reported that he had informally talked to Mayor Nancy Graham of West Palm Beach and both discussed setting up a joint liaison committee to bring the communities closer together and perhaps have concerted action when there was a common interest. He supported the idea of having a volunteer liaison committee.

Mrs. Smith replied that when Mayor Graham spoke to her, joint work shops with both Councils were suggested. She added the Mayors' Conference in West Palm Beach includes the Mayors and the City Managers of the neighboring coastal communities. Mrs. Smith said the purpose of the Town Council is to represent the Town of Palm Beach, and they were elected to do that. If someone is to speak for the Town, the Town Council should authorize that. She strongly objected to a paid lobbyist speaking for the Town Council to outside groups.

Mrs. Polly Earl, Preservation Foundation, gave an example of participation by some of the mentioned groups. She said the Preservation Foundation attends meetings in West Palm Beach that relate to the group. She referred to the extension of the tax abatement that applies to restoration of historic buildings. She noted the County Commission scheduled a workshop meeting on May 23, 1995, to consider the tax abatement extension. Mrs. Earl said her group will be preparing a statement supporting this issue and will provide feedback to the Town Council at no cost to the Town.

Mr. Louis Pryor, President of the Civic Association, supported Mrs. Earl's comments. Mr. Pryor said he thought the issue required a multifaceted approach. He suggested the Council have representation, as needed, in the affairs of government that indirectly affect the residents of Palm Beach. He noted the Civic Association has been active opposing the I-95 interconnect, and members have been present at Department of Transportation meetings. He added the Association raised over 300 petitions to be sent to Representative Clay Shaw.

Mr. Pryor suggested the various Town groups should be aware of the various activities they were engaged in. He concluded citizens of the Town should be prepared to form PACs when the issues call for it.

Mrs. Smith thanked the Civic Association for its interest and concerns. She asked that Mr. Pryor inform the Council of any involvement with issues that pertain to the Council.

No action was taken.

14. Appoint a Beach Erosion Committee

Motion made by Mr. McDonald to establish a Beach Erosion Committee. Mr. McDonald said this committee would be similar to the Beach Cleaning Committee and the committee would be staffed with Town residents with expertise in beach erosion. The on-going committee would meet and make recommendations.

Mrs. Smith recalled that the Beach Cleaning Committee was set up in a certain time frame to make a report. The committee reported in 45 days and did an excellent job under the chairmanship of Mr. McAllister.

Mrs. Smith said if Mr. McDonald thought that a committee was needed to do that type of report in a time certain, the Council could consider the idea, think about it and discuss the idea at the April 11, 1995, Town Council meeting.

Mr. McDonald replied he was not sure of a time certain, but he was interested in the appointment of that committee.

Mrs. Smith said she would have to think about the appointment of a committee that would be on-going without a determined goal, and it would be establishing a new Town committee. Mrs. Smith said erosion control is an on-going problem, and she would have concerns about the expenses involved including Town Staff, Town Manager, Public Works, and a Town Attorney for an on-going committee. She did not want to consider this idea without giving the matter a lot of thought.

Mr. Wyett concurred with Mr. McDonald on the issue of the beaches being an extremely complex issue. He said this would not be solved in a time certain, but the Council does need to form a plan of action. Mr. Wyett agreed with Mrs. Smith that the Council should have additional time to consider the idea. He said the members may not be Town residents unless there would be a legal restriction, and several West Palm Beach citizens who have expertise in the field are concerned about the Palm Beach beaches.

Mrs. Smith questioned the role of the Civic Association who have devoted a lot of time to the problem of beach erosion in the past two years. She mentioned the Lake Worth Inlet Management Plan will be coming from the State and the State of Florida Coastal Construction Study that will be presented to the Council. Mrs. Smith said she did not see the purpose for this committee at the present time with all the matters the Town Council is handling. Mrs. Smith asked Mr. McDonald if he thought the Town Council was not capable of dealing with the beach erosion problem?

Mr. McDonald replied he was not saying any of those things; however, he was putting an idea on the table for a solution. He added all those people may be working on the problem, but there is still no solution.

Mrs. Smith said the formation of another committee may not solve the problem of sand on the beaches, but she was willing to consider it. Mrs. Smith said she would not favor a motion to form a committee until she is aware of what is being considered.

Mr. Wyett agreed with Mrs. Smith that nothing should be done at this meeting; however, many citizens approached him questioning the actions of the Town Council concerning the beaches. He cited examples of exposed seawalls that citizens were concerned with. Mr. Wyett suggested special Town Council meetings could be set up to consider the beach erosion issue.

Mrs. Smith noted four items on this meeting agenda deal with beach issues, and the erosion problem is not being ignored. Mrs. Smith suggested if a Town Council member is not able to deal with the beach erosion issue then that member could request input from volunteers directly.

Mr. McLendon suggested the Public Works Committee could schedule a public meeting, with ample notice to the public, for a beach information potential solution forum with experts from Palm Beach and West Palm Beach participating. After the meeting, the Committee could decide a direction.

Mrs. Smith replied many experts attended the recent Civic Association beach meeting.

Mr. Doney noted Mayor Ilyinsky is a member of the Countywide Beaches and Shores Commission, and Mr. Doney and Mr. Elwell are alternate members. He said this is a Countywide forum of approximately 17 ocean front municipalities, and any of the new, innovative "technologies" are available through that group and available to the Town Council. He noted that a report for the PEP Reef at midtown will be given at the April or May Town Council meeting. It is important to note that the Town has a comprehensive coastal management plan and eleven out of the twelve miles of town shore line are privately owned. He continued that the Town has not assumed the financial obligation and responsibility of the eleven miles of beach to the mean high water line because of the financial obligation.

Mr. Doney stated the Town has an Ocean Front Roadway Protective Seawall Program that has been updated and is reviewed annually to look at the physical condition of the seawalls. He continued there are and have been many pro-active actions by the Mayor and Town Council, and this is an on-going process.

Mr. Doney reiterated the oceanfront protective seawall program and the Cubit Engineering Comprehensive Management Plan exists, and the funding and legal issues are part of the overall discussion on the beach erosion problem.

Mrs. Smith added the Council has approved and spent money for the restoration of the Lake Worth Inlet Sand Transfer Plant. She said the Council members are, in fact, the Beach Erosion Committee, and the issue can be dealt with by the Town Council.

Mr. Pryor, the Civic Association, endorsed Mrs. Smith's comments. He said the Civic Association has struggled to find and recommend solutions to the Council. He continued that it is obvious that no one single solution exists for the beach erosion problem. He preferred to use the term shore protection.

Mr. Pryor noted that the Town may have to bear a large part of the financial burden for the beaches since the federal government wants to bail out, and the State does not wish to allocate any funds for this purpose. He said, in due course, everyone should be aware of the solutions which will include many different approaches such as the dredging, the reef, groins, etc.

Mr. Shaw added that all of the residents will have to work as members of a team. He said the County approached the Town with a dune restoration program that was part of the beach issue and many of the condominium owners did not wish to take part in that program. He said everyone will have to take a more aggressive stance and suggested compromises on some of the issues.

Mrs. Smith reiterated this is a Council problem that should be dealt with by the Town Council. She added that 90 per cent of the Town of Palm Beach is already armored, and many people throughout the State and the country feel that seawalls are part of the problem. She said one of the solutions may be the elimination of seawalls. Mrs. Smith requested the Town Council members consider the Coastal Construction Setback Line, the State of Florida Coastal Plan, the Beaches and Shores Council, the Lake Worth Inlet Management Plan, the Civic Association's mobile dredge and the various other solutions for dealing with the beaches.

Mr. McDonald's motion was withdrawn.

XII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR FEBRUARY 1995

Motion made by Mr. Shaw to approve the warrant registers and funds expenditures report for February, 1995. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XIII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

William H. Spitalny, 2500 South Ocean Boulevard, addressed the Town Council. Mr. Spitalny said his condominium is next to the Par 3 Golf Course and prior to the last two years, he was not disturbed by tractors, motors and other motorized equipment. He said the noise from the equipment starts as early as 6:20 a.m. He said this situation is unfair, and his health is being affected. He asked that this problem be eliminated.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of February 22, 1995 - Excerpt Available in Town Manager's Office

B4-95 Remodel existing house and add partial second floor for Mr. Gary Ross (Jani Whitney) at 127 Oceanview Road - Approved conditionally.

B5-95 Construct Golf Course Irrigation Building for the Everglades Club at 500 South County Road - deferred.

B6-95 Renovate residence for A. R. Rubin at 309 Garden Road - deferred.

B7-95 Second floor addition for Mrs. Albert Berne at 301 Plantation Road - deferred.

B8-95 New residence for Michael Burrows at 6 LaCosta Way - approved.

B9-95 New residence for Dr. and Mrs. DePaola at 124 Onondaga Avenue - deferred.

B72-93 Landscape plan and gate for First National Bank in Palm Beach, Trustee, at 1330 North Lake Way - approved.

Motion made by Mr. Shaw to accept the report of the Architectural Commission. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Variances, Special Exceptions, and Site Plan Reviews

All the persons giving testimony for the variances and special exceptions were sworn in by the Town Clerk.

Old Business

1. Variance No. 5-95 - James Dunworth, 226 and 234 Seminole Avenue; to allow construction of a multi-family (3 unit) structure on a 17,700 sq. ft. lot in lieu of 20,000 sq. ft. minimum required. R-C District (Letter Dated February 7, 1995, from Robert E. Deziel Requesting Deferral to March 14, 1995 Meeting)

Robert Deziel, Attorney representing the applicant, addressed the Town Council and asked for Staff comments before he made his presentation.

Mr. Moore replied it would be appropriate if Mr. Deziel presented his case before the Staff comments were made.

Mr. Deziel presented four photograph boards of the Seminole Avenue neighborhood to provide a visual picture for the Council members. Mr. Deziel stated this is a multi-family request that requires three or more units.

Mr. Deziel reported that the applicant's goal is to demolish the two structures; one structure contains three residential units and the second structure to the west contains two residential units. He continued that these two structures are owned by different property owners and both of these structures have nonconforming uses and are nonconforming structures. He pointed out that this is not a density variance, but he is requesting a variance from 8.11 of the Zoning Code that prohibits either the replacement, the extension or the enlargement of a nonconforming use without receiving a variance.

Mr. Deziel explained that the Town Code was changed in 1983 and a density requirement was applied to the R-C Zoning District. This property is in the R-C district and is permitted six units per acre. Mr. Deziel requested three units which would require 20,000 square feet. He continued that the three lots in question contain 17,700 square feet and are 2,300 square feet short of the Zoning Code requirement.

Mr. Deziel pointed out the hardships are the approximate 5.0 feet first floor elevations that are below the 7.5 feet required. He continued that these properties could not be renovated to today's standards because of the maximum 50% of the appraised values improvement allowance. Mr. Deziel noted that one of the lots is only 50 feet wide and would require a variance for any new construction.

Mr. Deziel addressed the overall condition of the Seminole neighborhood. He noted one project has been completed that upgrades the neighborhood, and this subject project would further upgrade the neighborhood.

Mr. Deziel noted that this project would reduce the residential units on the combined property from five to three. He offered to return to the Council with a site plan for determination of the placement of those three units on the site.

Mr. Deziel stated granting this variance would reduce the density of the neighborhood including the reduction of the number of automobiles parked on the street.

Mr. Moore noted the Staff reviewed the application and the Town Engineer commented that if the application is approved, the driveways must be at least 6 feet from the property line. Mr. Moore added a site plan review by the Town Council would have to be scheduled as Mr. Deziel pointed out. Mr. Moore said Staff saw no hardship for the project. One of the problems the Staff had with the application was the extent of the requested variance. He continued that 20,000 square feet is required for the three units, and the request is for the 2,300 square feet deficit.

Mr. Moore added, although two other higher density zoning categories exist, they do not exist in the immediate or adjacent vicinity to this property. R-D1 permits ten units per acre and R-D2 permits thirteen units per acre. Mr. Moore said that by granting the variance, the Council would be considering, for the extent of the variance, de-facto rezoning on the property from R-C to R-D1. For that reason, the Staff maintains no hardship exists for this particular application.

Mr. McLendon asked Mr. Deziel if property were available on either side of the subject site to make up the needed 2,300 square foot deficiency.

Mr. Deziel replied, that to his knowledge, none was available. He explained property is there, but no for sale signs are on the properties.

Rosalind Clark was sworn in by the Town Clerk.

Rosalind Clark, Real Estate Agent, addressed the Council and reported that the property to the east of 226 Seminole is not on the market at the present time, and the owner has no intention of selling. She was not aware of any property for sale on the other side of the site.

Mr. McLendon said although a for sale sign may not be on the property, an owner may be willing to sell a part of a lot.

Ms. Clark replied the property to the east was only a fifty foot wide lot.

Mr. Shaw said Mr. Deziel had supplied a plan that appeared to be in compliance with and meets all of the Town's density requirements, he saw no reason not to approve the second plan which was presented willingly.

Mr. Deziel responded the drawing he presented was not a proposed plan but a drawing provided to address any concerns as to whether or not the mass of a three unit multi-family would exceed or would compare to a two unit two-family structure. He added that was not the request at this meeting.

Mr. Shaw said he had misunderstood Mr. Deziel's comments.

Mr. Wyett noted the removal of two older structures and the replacement of a three-unit structure was a definite improvement; however, if this is granted, a precedent may be set for future applications. He commended the reduction in units; however, the proposed building seemed large on the plans he had reviewed. Mr. Wyett requested he would like to hear additional information on the subject before he could arrive at a decision.

Mr. McLendon asked questions about the height of a three unit structure compared to the height of a two unit structure.

Mr. Deziel replied different requirements apply to two and three family structures other than the footprints. Mr. Deziel presented a conceptual drawing of the elevation of the three-unit structure showing side loading garages. He added this was a preliminary drawing to provide an idea of the applicant's intentions, and these drawings would be expanded if the project were approved and Mr. Deziel returned for a site plan review. Mr. Deziel said the reasons to approve the project were the reduction in density and the improvement of the over-all appearance of the street.

Mr. Shaw requested clarification of the rear setback requirement for swimming pools and buildings.

Mr. Deziel explained the swimming pools have a ten foot rear yard setback requirement, and they were planned for the thirty foot area in the rear of the structure. Mr. Deziel noted that some of the single family residences on the street are on fifty foot wide lots, and this is an opportunity for the neighborhood to turn around and go in a different direction.

Mr. Deziel, responding to questions from Mr. Wyett, stated a two unit duplex would actually be larger than a three unit structure because of the Town's Zoning Code.

Mr. Randolph said Mr. Deziel stated this request was not a density variance. Mr. Randolph believed it was a density variance since the Council is considering allowing three units where two units are allowed under the ordinance.

Mr. Deziel replied he will disagree with Mr. Randolph because Section 8.11 allows a substitution, change, modification or an extension to an existing, nonconforming use. Mr. Deziel stated this is an existing, nonconforming structure. Mr. Deziel continued that Mr. Randolph's statement applied to a situation where the square footage requirement could not be met and did not have a grandfathered use like this property that has a five unit multi-family.

Mr. Randolph asked Mr. Deziel if the structures would be demolished?

Mr. Deziel replied affirmatively, but he believed the five units were grandfathered.

Mr. Moore said the current use of the property is multi-family, and the amount of units or density on the property is the subject of the variance request. He agreed with Mr. Deziel that Section 8.11 could be introduced at some point, but did not think it was applicable at this time. He stated the use is not nonconforming, and the number of units is the question. Mr. Moore said if the structures are voluntarily demolished, then the project starts fresh.

Mr. Deziel cited Section 8.11 that said a structure may be substituted.

Mr. Randolph replied his position has not changed.

Mr. Wyett commented that Seminole is a sub-standard street struggling to return to the Palm Beach fold, and if the Council approves this variance, the Council should be prepared to approve similar variances with similar conditions. Mr. Wyett suggested that the zoning of this area should be studied to determine if a better plan could be worked out.

Mr. Moore replied the next zoning category that this would fit in would be the RD-1 district and no RD-1 district is adjacent to this project. The RD-1 would create a pocket and would be declared spot zoning.

Mr. Shaw made a motion to deny Variance Number 5-95 because it does not conform with the lot requirements of 20,000 square feet for a multi-family unit and the deficiency is a bad precedent.

The motion died for lack of a second.

Mrs. Smith asked for another motion and suggested the property may need to be re-worked, the variance is too large or Mr. Deziel should look at the variance again and return with a redesign with a smaller variance request.

Mr. McLendon stated his problem was he did not want to set a precedent, although he liked the improvement to the property.

Mr. Deziel asked Mr. Moore how many multi-family structures he had reviewed over the past few years? He did not think many had been reviewed, and if a multi-family approval is granted, the Council has a second chance to review the project. He added the applicant is willing to work with the Town on a design that will complement the neighborhood.

Motion made by Mr. Wyett to defer Variance Number 5-95 to reconsider the type of plan. Mrs. Smith passed the gavel to President Pro Tem McDonald and seconded the motion.

Mr. McDonald said he liked the project but was concerned with the size of the variance request. He suggested reworking the project.

Mr. Shaw replied a variance request for three units cannot be reworked when 20,000 square feet are required and the applicant only has 17,700 square feet--it is not there. Mr. Shaw said a deferral may send the wrong message if the project is simply delayed and an impression is given that at the April meeting the Council would consider the project.

Mr. Randolph replied that Mr. Shaw was correct. Mr. Randolph stated that Mr. Deziel had not presented a site plan so the Council did not have the ability to look at a site plan in conjunction with the application for the variance. He suggested the Council could request that Mr. Deziel return with a site plan to allow the Council to look at all the details. If the deferral is to rework the variance application, there is nothing to rework.

Mr. McDonald stated he would like to see Mr. Deziel return with a site plan for a full site plan review.

Mrs. Smith reminded the Council the motion would have to be amended if the intention was to have a full site plan review.

Mr. Wyett amended the motion to defer further consideration of Variance Number 5-95 until a full site plan review application is filed. Mrs. Smith seconded.

Suzette Green, a resident of Seminole Avenue, addressed the Town Council and stated Seminole Avenue has many residences that were built in the 1920's that do not comply with the code standards and zoning requirements that are in effect in 1995. Many of the structures are full of rats, and the area is very difficult to change. She continued that this variance request will start a clean up process for Seminole Avenue. She cited the 7.5 first floor minimum elevation requirement prohibits the remodeling of these properties to comply with today's standards.

Ms. Green said the structure that contains three units that would be demolished under this plan is very sub standard and has been abandoned. She continued the place is an eyesore and is rat infested. The other structure with two units cannot have sufficient money put into it to make enough significant changes. On that basis, she urged the Council members to consider the 2,300 square feet and the hardships of the neighborhood. Ms. Green added the reduction in units would favorably affect the traffic on Seminole.

Eric Gilbertson, 151 Chilian Avenue, addressed the Town Council and asked Mr. Moore if a stipulation could be part of an approval that would negate anyone else from seeking a variance unless it was a reduction in units from 5 to 3?

Mr. Deziel offered to compromise and return to the Town Council with a different site plan--just the picture. This picture would have the appearance of less mass and be more pleasing to the Council members. Mr. Deziel noted that plans for a full site plan review will be costly.

Mr. Moore replied that the ordinance requires that granting of the multi-family variance would involve the presentation of a site plan review. He understood if the contract purchaser wanted to avoid the cost of a site plan review and filed for the variance to see if that would be granted before the site plan review was prepared. Mr. Moore said no provision is in the ordinance for anything in between. He said the Town Council would be setting a precedent for applicants in the future who would avoid the necessity of filing a site plan review.

Mr. Deziel replied his proposal was to review the variance and the site plan review requirements would be scaled back. If the variance were granted, then the applicant would complete the remaining site plan review criteria.

Mr. Wyett said he is familiar with the street and he would like to find a way the Council could move forward to improve the quality of the street. He was also trying to find a way not to set a precedent. Mr. Wyett asked Mr. Randolph if the variance were approved, would a precedent be set?

Mr. Randolph replied each application is to be considered on an individual basis and each application seems to have something different about it. He continued that approval would not necessarily set a precedent, but if a variance is granted where the lot is shy by 2,300 square feet, an argument could be made by others that they be entitled to like relief. Mr. Randolph said he understood that a multi-family request required site plan review and if this project were divided and a variance were granted to have three units, the Town Council has in effect approved something without having given consideration to the site plan review which is necessary to allow multi-family use. He was not sure it was appropriate to divide the project up in an attempt to save the applicant money. By so doing, part of the process has been omitted. He offered that the applicant may wish to agree to the condition if the site plan review is not approved, then the variance is void. Mr. Randolph stated the intention of the ordinance is to consider the entire site plan when a multi-family request is reviewed.

Mr. Moore said the site plan review process starts with the Town Council and not the Architectural Commission.

Mrs. Smith said she understood Mr. Wyett's motion was to defer the variance request to allow for a site plan review so there would be no exception in this case.

Mr. Wyett confirmed Mrs. Smith's statement.

Mrs. Smith said the motion has the condition that Mr. Deziel return with a site plan review as part of this variance procedure.

Mr. Wyett emphasized the current zoning and requirements may be too strict for Seminole Avenue and the Council may want to refer the matter to the Zoning Commission for potential correction. He suggested a new category called Town-House Zoning.

Mrs. Smith requested the motion be dealt with and the zoning issues be discussed at another time.

On roll call, the motion carried 4-1 with Mr. Shaw casting a negative vote.

2. Special Exception No. 4-95 - Je Me Souviens, Inc., 336 Royal Poinciana Plaza; to allow a continuation of a special exception use, restaurant and lounge, under new management. C-PC District (Deferred from February 14, 1995)

James Wearn, Attorney for the applicant, addressed the Town Council and requested a continuation of a special exception use for a restaurant and lounge, under new management, in the Poinciana Plaza. He explained that Je Me Souviens, Inc. is the lessee and Poinciana Management, Inc. is the lessor. Mr. Wearn introduced Joe Capicotti, the president of Je Me Souviens, Inc. Mr. Wearn said the special exception request would be a continuation of Special Exception 3-92.

Mr. Wearn said the application was filed because of a change in ownership and trade name of the business, known as Au Bar. On February 12, 1992, the Town Council granted Special Exception 1-91, permitting operation of the public restaurant and lounge on the premises subject to the stipulation that any new owner of the business would be required to obtain approval of the Town Council. He cited a February 18, 1991, letter from David C. Zimmerman, Assistant Building Official, that said the approval of this special exception was granted with the stipulation that the approval is granted to this applicant only and that any new owner of this restaurant will be required to obtain approval from the Council. Mr. Wearn stated that was the only reason the matter was presented to the Council at this time.

Mr. Wearn reported that a letter from Royal Poinciana Plaza, Sidney Spiegel, the landlord, dated February 9, 1995, indicated full support of the request. Mr. Wearn read from the letter: "As the owners of Royal Poinciana Plaza, we fully support the request and its approval. A continuance of the existing use is extremely favorable for our tenants because of the minimal impact of traffic and parking during daytime hours. The business operates at night and on weekends when our Center has excess parking available. It can be truly defined as Town Serving and to the best of my knowledge its current management has satisfactorily complied with all current regulations, Town, State or Federal."

Mr. Wearn concluded that Mr. Capicotti has another gentlemen involved with the corporation per the liquor license application which is pending and should come before the Town Council at the April 11, 1995, meeting. He noted that the State of Florida issued a temporary transfer license, dated March 13, 1995.

Mr. Wearn mentioned he heard a rumor that a Robert Vincent was involved with this corporation, and that is not the name of the other gentlemen.

Mrs. Smith said she had not heard Mr. Vincent's name mentioned and did not know why the name was introduced.

Mr. Wearn responded that Mr. Peter Broberg sent a letter to the Mayor and members of the Town Council.

Mr. Moore reported that Mr. Wearn had accurately recounted the history of the particular location, and the town-serving issue needed to be addressed and the new management needed to maintain their town-serving status. He noted that a condition regarding the outside dining was included previously, and he recommended that prohibition be continued.

Mr. Wyett expressed his concern for the town-serving issue, and assuming this restaurant would be the same type of restaurant as the previous restaurant, Au Bar, he questioned the ability to prove the town-serving requirement.

Mr. Wearn said the restaurant had demonstrated compliance in the past, whatever the conditions were for SE 1-91 and SE 3-92, and this was a change in management, not a change in the requirements for the special exception. He said these conditions run with the land and with the use.

Mr. Wyett requested clarification of the request. He said the reason this request was before the Town Council was because of a change in ownership or a transfer of some nature, and Mr. Moore said town-serving is an issue.

Mr. Moore replied the new occupational license that will be issued for the new restaurant and bar requires that the Town Council look at the town-serving portion only. He referred to footnote 3.

Mr. Wyett asked if any evidence exists that this will be town-serving?

Mr. Moore replied that the operation has been town-serving in the past and annual statements of the auditing of the business have been submitted. He said he has no reason to believe that it would not be town-serving.

Mr. Wyett said, as a town resident, he questioned if the patronage of Au Bar in the past has been patronized to the percentage that is required by town residents.

Mrs. Smith said many new Town restaurants have been approved and have returned within six months to prove they were town-serving. She did not think this was a new condition.

Mr. McLendon asked Mr. Moore if the restaurant had submitted information proving they were town-serving?

Mr. Moore replied they had submitted the information in the past, but this is a new operation. Responding to a question from Mr. McLendon, Mr. Moore said Mr. Wearn is representing a change in ownership only.

Mr. Shaw requested that Mr. Randolph explain Mr. Wearn's statement that the special exception lies with the land. Mr. Shaw remembered that dates were mentioned in the Code that countered that statement--either a pre or post date that states special exception lies with the applicant.

Mr. Randolph replied that any special exception, under the general status of the law, runs with the land and in this case that would be the same; however, a special provision is in the Town of Palm Beach Code, under footnote 3b of the Schedule of Use Regulations, which provides that any special exception that was approved subsequent to 1980, in the event the party requires a new occupational license, would then come before the Town Council for review to determine whether the provisions of 6.40L of the Code still apply. He said the procedure in this case is when a new occupational license is sought, the applicant would come forward and show proof that he has met the conditions of 6.40L which would have to show that it is town-serving. It is correct to ask for that type of information.

Mr. Shaw asked if the special exception was not granted prior to 1980, then it was not relevant?

Mr. Randolph replied this was granted subsequent to 1980, and it does apply in this case.

Mr. Wyett asked Mr. Moore when the last proof of town-serving was received by the Town?

Mr. Moore responded the proof was received when the occupational license was renewed which was last September.

Mr. Wyett questioned the validity of that position at that time.

Mrs. Smith said Mr. Wyett would be questioning the auditor or the accountant who provided the affidavit. She said it is not the position of the Town Council to question the validity of the audit to determine if it were town-serving.

Mr. Randolph stated the issue is not the past element, but the present issue is to determine if the new owners will operate the establishment in a town-serving manner. He said the Town Council could look at this as they would any fresh application to hear evidence to determine if it would be town-serving.

Mrs. Smith asked Mr. Capicotti if he were the new owner. Mr. Wearn and Mr. Capicotti confirmed he was the president of Je Me Souviens, Inc.

Mrs. Smith asked Mr. Capicotti to explain to the Council what type of restaurant this operation will be?

Mr. Wearn replied the intent is to continue the current operation. Mr. Capicotti agreed.

Mr. McDonald asked Mr. Wearn if Mr. Capicotti is the owner in addition to being president?

Mr. Wearn replied the application for the beverage license which is a matter of public record, indicated the share holder is the other individual mentioned earlier, Vincent Scognamiglio.

Motion made by Mr. McLendon to approve Special Exception Number 4-95 to allow the continuation of a special exception use, restaurant and lounge under new management with the town-serving condition to be addressed in six months.

Mr. Moore asked if the condition regarding the prohibition of outside dining would be included in the approval?

Mr. McLendon agreed to that. The motion was seconded by Mr. Shaw.

Police Chief Terlizzese addressed the Town Council and reported that the beverage license application, which has not been processed by the Police Department, was submitted late and indicated the owner of the business was Robert Vincent, and he also owns the Country Nights Bar in West Palm Beach.

Mrs. Smith asked Mr. Wearn if the application the Police Department has was incorrect?

Mr. Joseph Capicotti addressed the Council and stated that information was incorrect. The owners of Country Nights are Robert Reese and Vincent C. Scognamiglio. He said Robert Vincent, in the press, has become the owner. Mr. Capicotti said Mr. Vincent is not the owner.

Mayor Ilyinsky asked Mr. Capicotti why Mr. Vincent's name was on the application submitted to the Police Department?

Mr. Capiccotti replied he had no idea.

Mayor Ilyinsky told Mr. Capicotti to straighten that out.

Mrs. Smith said the Council had a problem and could not continue with this matter if the Police application is not correct. She said no action should be taken by the Town Council since the application was incorrect.

Mr. Wearn explained the request before the Town Council was for a special exception and the question was on a beverage license application. He noted a temporary alcoholic beverage license was issued on the basis of the information that Mr. Capicotti had represented to the Council.

Mrs. Smith told Mr. Wearn she understood the request; however, enough questions have been raised with the information presented that she would not want to vote on the issue at this time.

Mr. Wearn asked if it would be appropriate to go to the Police Department and attempt to straighten out the confusion with the Chief at this time?

Mr. Randolph replied if the request is to postpone the matter until later in the meeting to allow resolution of the matter, that is a possibility. He noted the time was after 5:00 p.m. and it may not be possible to conduct business with the Police Department at this hour.

Chief Terlizzese replied this could not be resolved on this day because of the late hour and will have to be addressed during normal business hours.

Mr. McLendon withdrew his motion. Mr. Shaw withdrew the second to the motion.

Mr. Wearn referred to an application that was approved and signed by David C. Zimmerman on December 20, 1994, and he wanted to present that as part of the record. He said the application listed the names of the people who were involved with this operation.

Mr. Moore replied that Mr. Zimmerman's approval would be related only to the State beverage license and would indicate only that the address is the proper zone for conducting the business. The approval would not have anything to do with verifying ownership.

Mr. Wearn said the letter does reflect who the owners are because it must before it was completed and filed with the Town.

Chief Terlizzese responded the form was issued by the Department of Regulation.

Mr. Wearn stated the form showed the owners as Mr. Joseph Capicotti and Vincent Scognamiglio.

Chief Terlizzese stated the Police Department received the application for a Town Alcoholic Beverage License which was returned to the Town Clerk's office last week by the Organized Crime Unit because the establishment had not yet obtained a Town occupational license or a State of Florida Alcoholic Beverage License. These are necessary precursors to the approval of the Town Alcoholic Beverage License. This information had not been received and this was needed to do a thorough background check. Chief Terlizzese stated that on March 13 at 5:00 p.m., the applicant produced a State Alcoholic Beverage License to Brian House. Mr. House indicated verbally that the Town license would be issued, and there is no known impediment to the issuance by the Building Department. As noted in Mr. Broberg's letter of March 13, 1995, the application received by the Police Department a week ago indicated Mr. Robert Vincent was the owner of the business. He stated the Police Department has not had the opportunity to check out the application as approved by the Building Department at this time.

Mr. Randolph said the Town Council has a representation by way of an application and by way of the representations that have been made at this meeting by the applicant as to who the owners are. Mr. Randolph said the Council normally does not look beyond the application unless conflicting evidence exists and conflicting evidence has been presented at this meeting. Mr. Randolph continued that the relevancy of ownership may or may not be important, because the Council has to make a determination if the use, when it is transferred, will continue to be town-serving. He added if the issue of ownership is relevant to the determination of the town-serving decision, then the ownership issue has value.

Mrs. Smith replied the ownership issue was relevant, because the applicant should know the name of the owner when an application is filled out. This may have been a mistake, but Mrs. Smith added the name of the owner is a hard thing to mistake.

Mr. Wearn suggested that any motion for approval could be conditioned upon the fact that the owners represented at this meeting were the actual owners. If the owners, as represented at this meeting were not the actual owners, then the application would not be approved.

Mr. Shaw noted that the club was open and operating and did not see the urgency to consider this matter.

Motion made by Mr. Shaw to defer Special Exception Number 4-95 to allow the various departments time to determine the correct ownership.

Mr. Moore stated the club was operating, but the club needs the granting of the special exception. He said they are at the mercy of the Town Council at this point in time.

Mrs. Smith asked that this be explained.

Mr. Randolph explained if the Special Exception is not granted at this meeting, the club will not have to discontinue the operation.

Mr. McDonald understood the Club would not be shut down and the matter could be deferred without interference with the operation.

Mr. Wearn replied if the club could operate in the interim period of time, no problem would exist. He understood the club is operating in a limited way and described the club did not have the ability to schedule events, advertising or anything that would be involved with the continued operation of the business. Mr. Wearn stated the owners wanted to cooperate with the Town's wishes.

Mr. McLendon stated he did not understand why some of these items were not handled previously since this matter was deferred from the last Council meeting, and the application with the Police Department could have been handled in a timely manner.

Mr. Capicotti explained he had a communications break when Mr. Zimmerman left the Building Department and also conversations concerning the occupational license were confusing. He added he was instructed not to approach the Town Council without his temporary State license, and that is the reason he requested deferral until this meeting. Mr. Capicotti continued that the restriction not to advertise, especially with St. Patrick's Day approaching, is a disadvantage to his business.

Mr. Moore said the normal process would be to ask the club to restrict advertising until the special exception is approved.

Mr. McLendon seconded the motion made by Mr. Shaw to defer the Special Exception request.

Mr. Shaw suggested the club be allowed to advertise for current events, not events six months in advance, and use the name they are operating under.

Mrs. Smith said the Council is trying to give the club a month's leeway to operate, and a terrible precedent with the advertising would be set. She added the Council is very strict about advertising in the Town.

Mr. Shaw replied he would let his motion stand as originally stated.

On roll call, the motion carried unanimously.

3. Special Exception No. 26-94 - Prego Partnership (Amici Restaurant), 288 South County Road; as a condition of approval of this special exception in August 1994, the applicant was precluded from using the rear 1,189 sq.ft. of the restaurant until Town serving status could be demonstrated by the applicant. The request is to consider approval of the applicant's Town serving documentation so that the rear area can be used by the restaurant. C-TS District

Mr. Moore stated this application was unusual because the entire requested amount of floor area was not approved initially. He noted that in the interim, the restaurant has had a serious lack of storage area and several proposals were submitted to the Building Department in an attempt to solve the issue including multiple deliveries--three to four times daily, trailer storage in the parking lot and the use of the additional space prior to Town Council approval. Mr. Moore noted the business has been very successful, and the valet parking has become an additional problem.

Mr. Moore said the issue regarding the use of the storage area was determined to be a Town Council problem. As a result, the town-serving affidavit was filed prior to the six months required time period in an attempt to resolve the use of the additional space.

Mauritzo Chiamonello, the principal of Amici Restaurant and Amici, Partnership, addressed the Council and thanked the Town for the warm welcome Amici's has received. He reported over 62% of the customers are Town residents, and the certification was submitted to Paul Castro in the Building Department.

Mr. Chiamonello requested the Town Council allow Amici's to use the back part of the store for storage, refrigeration and an office. He emphasized this will not allow the restaurant to expand by even one seat, but will alleviate the problems of delivering the supplies. He added, with this approval, he can eliminate four or five deliveries per day--reducing the traffic in the area.

Motion made by Mr. McDonald to approve Special Exception Number 26-94 with the stipulation the valet parking aspect be moved south of the corner. The motion was seconded by Mr. Wyett.

Mr. Chiamonello, responding to questions from Mr. Shaw, stated all deliveries were made to the rear of the building but the trucks enter off Royal Palm Way. He said for the first month he hired an off-duty Police Department officer to help with the valet parking and has talked to his neighbors on County Road in an attempt to work out the problems.

On roll call, the motion carried unanimously.

New Business

4. Variance No. 9-95 - R & M Associates, Inc., 1415 South Ocean Blvd.; to allow construction of single family residence at a building height beginning at 23' above the crown of South Ocean Boulevard in lieu of 7.5' required. R-AA District

Peter Broberg, Attorney representing R & M Associates, Inc., addressed the Town Council and requested approval to begin constructing a residence at 23 feet above the crown of South Ocean Boulevard. He stated the reason and the hardship for the request is the contour of the land. He described this property is the last vacant lot on the Ocean south of the Bath and Tennis Club.

Mr. Broberg presented a line drawing showing the finished floor and grade elevations and the roof elevations for five residences, including the subject residence, on South Ocean Boulevard. He noted the dune or the coral embankment determines the elevation of each property. The finished grade elevations vary from 15.6 feet to 21 feet.

Mr. Moore stated the Staff does not disagree that the hardship runs with the land, and a similar variance had been granted on this property some years ago. Mr. Moore recalled that recently the Council has considered neighboring properties when considering variances of this type and not to grant an unfair advantage in the overall height. Mr. Moore noted this particular structure would exceed the two adjacent structures and suggested consideration of a reduced version of the variance request to not exceed the two structures on either side.

Mrs. Smith noted the structure on one side is 52.4 feet and the other side is 50.5 feet. The proposed structure is shown at 58 feet. Mrs. Smith asked if the residence could be lowered by 2 feet?

Mr. Broberg replied he was not certain and the proposed residence is similar to the two-story Tsai residence on North County Road.

Mr. Wyett said he thought this residence should not be higher than the neighboring two houses, and the owner should be able to reduce the height by two feet.

Paul Prosperi, Attorney representing Jeffrey M. Picower, owner of the property to the north of the subject site, addressed the Council. Mr. Prosperi said his client is aware of the characteristics of the land but Section 10.13.e. of the Zoning Ordinance requires, as a condition of the variance, the Town Council must find "that the variance granted is the minimum variance that will make possible the reasonable use of the land". Mr. Prosperi contended the requested variance exceeds the minimum variance required. He reviewed the overall height of the house, and the elevations requested are substantially higher than the existing neighboring houses.

Mr. Prosperi explained that Mr. Picower's house has a finished floor elevation of 19.6 feet or 4.4 feet lower than the elevation proposed by the variance application. He continued the maximum roof elevation of 52.4 feet on Mr. Picower's residence is 5.6 feet lower than proposed with this application.

Mr. Prosperi contended this application would artificially raise the finished grade over its natural level. He noted that bulldozers and other equipment have been noted on the site over the last two months. The sand and other materials indicate the grade has been disturbed.

Mr. Prosperi added the new construction would be 7.5 feet taller than the house immediately to the south. He reported that, using Mr. Gosman's drawing submitted at the meeting, the average finished grade of the four existing neighboring residences is 18.9 feet. Mr. Prosperi said his client would not object to setting the point of measurement at this elevation, and a variance limited to the average of the elevations would allow a reasonable use of the land and meet the requirement of the Zoning Ordinance.

Mr. Prosperi pointed out that the proposed residence would have a basement garage and from a side view have the appearance of a three story house making it bulkier than a 25 feet tall house. He contended the height of the proposed residence is designed to have a commanding view over the neighboring residences. Mr. Prosperi continued that if the proposed house were built at 18.9 feet, as a point of measurement, the maximum height would be 53.9 feet to the top of a hipped roof, comparable to Mr. Picower's 52.4 feet and the other neighbor's house at 50.5 feet.

Kevin Palmer, representing the owners of 1423 South Ocean Boulevard, reported his clients have not seen any plans for the residence although they have requested to see them. Mr. Palmer requested the height level be limited to provide a certain level of privacy for his clients and to not unreasonably affect the property value.

Mr. Broberg pointed out the grade is at 23.0 feet, and no fill has been brought in. He said the only trucks on the property have been there for due diligence--for test borings. He continued that it would be unreasonable to require that the residence be built at the average of the other residences since that would require the removal of 5-6 feet of soil. He offered to comply with reasonable restrictions placed on an approval by the Town Council. Mr. Broberg restated the hardship exists with the contour of the land but his client would agree to the reduction of a couple of feet.

Mrs. Smith said a couple of feet could be taken off quite easily.

Mr. Shaw asked what portion of the house was represented by the 23 foot grade elevation?

Mr. Broberg replied the grade ran from 23 feet to 7.5 feet.

Mr. Moore explained if the Council approved 2 feet less than requested the grade would be reduced by 2 feet.

Motion made by Mr. Shaw to approve Variance Number 9-95 with the conditions the finished grade elevation will be lowered by three feet, to twenty feet, the finished floor elevation will be twenty-one feet and the height will not exceed 52.4 feet. Mr. Shaw stated the conditions allowed a fair grade of the land to mitigate any issues of run off with the neighbors and the height gives a balance to the neighboring properties so that one house does not appear higher than the other and the three houses balance out. This is a minimum variance to make reasonable use of the property. The motion was seconded by Mr. McLendon. On roll call, the motion carried 4-1 with Mrs. Smith casting a negative vote. Mrs. Smith stated she did not see the hardship in this case.

5. Variance No. 10-95 - Palm Beach Tamarin, Inc., 1496 North Lake Way; to allow construction of a single family residence on a lot providing 85' frontage on Mediterranean Road, in lieu of 100' required, and 9,500 sq.ft. in lieu of 10,000 required. R-B District

Dean Vegosen, Attorney for Palm Beach Tamarin, addressed the Town Council. He said the existing lot has approximately 9,500 square feet which is less than the 10,000 square feet required by the Zoning Code in the R-B district. He noted it is not feasible to renovate the existing house on the lot, and the house would be demolished and replaced with another house. He added no other variances are being sought--other than the lot is undersized.

Mr. Moore replied the Staff had no objections to the granting of the variance providing the applicant agreed that all the Lot, Yard and Bulk regulations would be met, and no future request for a variance would be sought.

Mrs. Smith asked Mr. Vegosen if his client would accept the condition that no variances would be sought for side yard setbacks, etc. at a later date? Mr. Vegosen replied affirmatively.

Mr. Vegosen said the new house will either be split level or a two story structure.

Motion made by Mr. Wyett to approve Variance Number 10-95 with the condition no variances be sought for the Lot, Yard and Bulk regulations of the Zoning Code. The hardship is the undersized lot that runs with the land. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

6. Variance No. 11-95 - Greencab N.V., Inc., 1676 South Ocean Blvd.; to allow construction of a second floor addition providing a 25.67 street side yard setback in lieu of 35' required. To allow said addition to be built in compliance with the permissible height from the crown of South Ocean Boulevard, in lieu of the requirement of the average of the two streets at this corner lot, a difference of approximately 6'. R-A District

Ames Bennett, Architect for Greencab, N.V., addressed the Town Council and identified the owners as Mr. and Mrs. Langas-Swarovski. Mr. Bennett presented drawings and plans for a second floor and noted the side yard setback requirement is 35 feet since this is a corner lot. Mr. Bennett said that the family owns the adjacent property to the south and five feet was deeded to the subject property to provide the required 20 foot side yard setback on the south side of the property. Mr. Bennett requested a variance to allow the construction of the second floor over the existing first floor which has a 25 foot set back.

Mr. Bennett noted this property contains two lots.

Mr. Bennett explained the variance for the point of measurement to allow the height of the proposed second floor to be 35 feet overall. Because of the existing zoning requirements, the second floor ceiling height would be only six feet which falls below the Building Code requirement. He described the hardship as the contour of the land as if falls from South Ocean Boulevard to the Lake.

Mr. Bennett said that other properties in the Town have similar conditions with the contour of the land and asked that each property be considered separately. Mr. Bennett added recently the Council granted a variance to Mr. Gumlach to build a two story floor garage apartment that was nine feet from the property line in lieu of fifteen feet required, and that was a precedent. Mr. Bennett said the only possible way to develop this property, under the current zoning requirements, would be to demolish the existing residence and construct a new residence to the west.

Mr. Moore reported that the Staff's comments included the addition should be designed to conform with codes and a site triangle should be established at the corner to comply with Town codes. Mr. Moore complimented Mr. Bennett on the thoroughness of his presentation and explanation of the variance. He continued that the Staff thinks the side yard variance request is not inappropriate from the street because two street yard setbacks are required and when the residence was built in 1959, the setbacks conformed to code. He continued the Council has always looked at expansion over the first story for an additional story with those setbacks in mind as long as they did not violate existing setbacks as a rule. Mr. Moore stated the Staff did not find a problem with the first request.

Mr. Moore said the second request is unique and is a request to waive the necessity of averaging the elevation of the point of measurement. He said when the house to the north of this residence was built, no requirement existed, and that house has two stories over a garage which gives the effect of three stories.

Mr. Moore continued the subject residence has had several additions and no loss of use of the property has occurred due to further restrictions within the zoning ordinance. He said a further problem exists with this property as Mr. Bennett correctly identified. Mr. Moore did not think the six foot difference between South Ocean Boulevard and the cul-de-sac at the bottom to the west would be analogous to the situation that exists where thirty feet in height is the difference with the cul-de-sac on High Ridge Road and the Country Club.

Mr. Bennett corrected Mr. Moore and noted the difference was twelve feet with an average of six feet for his client.

Mr. Moore said when the ordinance was changed approximately four years ago, this was taken into consideration. He explained the entire length of the street could have been averaged but the average of the two streets was used. For that reason, Mr. Moore said Staff does not think the point of measurement variance would be appropriate in this case since it would allow the appearance of a three story structure from the side street and would be visible from South Ocean Boulevard.

Mr. McLendon asked if the point of measurement on the side street was located at the far west end of the property or where the house ends?

Mr. Bennett explained that this property was divided into two lots approximately half way back, and a street was put in with a cul-de-sac at the bottom or the junction of the two lots. He said four houses could have been built on the lots, and two houses were built to the north; however, this property has not been divided. Mr. Bennett said the owners do not want to divide this property.

Mr. McLendon asked what the difference between the point of measurement was at the cul-de-sac line and the westerly line of the house?

Mr. Bennett replied that the finished first floor of the house is on a par with South Ocean Boulevard and the basement garage area is below. He continued a swimming pool with a terrace has a retaining wall to hold the swimming pool and is located to the west of the house. A tennis court backs up to the retaining wall.

Mr. McLendon asked if the west line of the house were approximately half way down the cul-de-sac?

Mr. Bennett responded negatively and referred to the submitted survey. He said the garage is approximately fifteen feet east of the beginning of the cul-de-sac.

Mr. McLendon responded he was attempting to determine another number if the distance from the edge of the house to the point of the third measurement was a great distance.

Responding to a question from Mr. Shaw, Mr. Moore stated the cubic content ratio was not applicable to this zoning district.

Mr. Bennett explained the lot coverage is well below the allotted amount, and this addition would not affect the lot coverage.

Mrs. Smith told Mr. Bennett she had a major problem with the appearance of a three story house when the second story is added. She understood the house across the street does have a three story element with the garage underground. Mrs. Smith said this would set a terrible precedent, and this zoning issue should be studied. She added she understood the hardship goes with the land, but many properties are like this in Palm Beach. Mrs. Smith asked if Mr. Bennett considered changing the second floor so the mass will not appear so heavy from the north side or give the appearance of three stories. Mrs. Smith said she would rather see a moratorium on sites like this and have the three story element studied rather than continue with these projects.

Mr. Bennett read from the Zoning Code: "A basement story shall not be considered a story with regard to height regulations contained in this ordinance, if said story does not exceed 8 feet above 0 datum for the subject lot and if clearly designed and adapted to and used solely for the purposes of automobile parking and/or machinery and essential building utility services, not involving habitable space." Mr. Bennett said the so called third floor is really a basement by definition.

Mrs. Smith responded the appearance from the outside is of a three story house on the north side.

Mr. Bennett cited other examples of existing houses that have similar situations and produced photographs of them.

Mrs. Smith said part of the problem is that this house and many others have been added onto piecemeal, and the addition of the proposed second floor now has the appearance of a three story elevation. Mrs. Smith stated she had seen this house when it was presented to the Architectural Commission.

Mr. Bennett explained the remodeling that was done in 1988-89.

Mr. Wyett said the nature of the Zoning Ordinance prevents a second story on this house, and the intention of the ordinance was not to prevent owners in this type of situation where the elevations change to ever construct a two story residence. He said a new residence on this site would have an elevated west side and would always look like a three story house. Mr. Wyett said he would have a problem denying a resident the right to develop the property to a reasonable maximum.

Mr. Shaw asked if the Council could grant the building of the extra story with the condition that the second story did not exceed the maximum elevation for the house. He suggested constructing the second story to a point where a stairwell and door were shown on the side elevation or the eastern half of the property.

Mr. Randolph responded the Town Council may put whatever conditions it wishes on the granting of a variance.

Mr. Shaw asked if a zoning issue would be raised if the Council granted this variance for a maximum height for a property?

Mr. Bennett replied the maximum height was 25 feet above the datum point.

Mr. Moore added that five feet could be added for the parapet wall.

Mr. Shaw said he thought the house should not exceed 25 feet straight up the wall at any given point, and the front elevation along South Ocean Boulevard would have the appearance of a two story residence; however, the second story would not go past one or two rooms on the first floor.

Mr. Bennett asked Mr. Randolph if this were a legitimate variance and could the Council legitimately grant it?

Mr. Randolph replied it was a legitimate variance and the Town Council could grant a variance with conditions.

Mr. Wyett said he thought Mr. Bennett designed a second story like Mr. Shaw requested.

Mr. Shaw explained he was requesting the second story addition be cut short before it had the appearance of a third story.

Motion made by Mr. Shaw to approve Variance Number 11-95 to allow for a 25.67 foot setback in lieu of 35 feet required and with the condition the second story shall not exceed the maximum buildable height at any point along that additional story.

Mr. Moore pointed out that the allowable height is 25 feet plus the 5 feet allowed for the parapet.

The motion was seconded by Mr. McDonald.

Mr. Bennett offered to build a retaining wall along the north property line to minimize the effect of the addition.

Mrs. Smith asked if anyone from the public wished to address the issue?

Robert Grace, 126 Seagrape Circle, addressed the Town Council and stated he lives within the notification area and the subject house is southeast of his residence. He stated he and his wife prefer not to use air conditioning and his hardship will be the deprivation of the air circulation when this second story addition is built.

Mr. Grace noted that the house to the north of the subject property that has been mentioned extensively has a second story that covers only 50% of the first floor. He said the flat side wall on the north side of this house will be horrible looking, and this is what the ordinance did not want to happen. He said the Town Council is setting a dangerous precedent when all the streets in Palm Beach go down hill as they go away from the Ocean. He suggested the second story should be moved south and not have it directly lined up with the first floor. He asked that if the variance is granted, a couple of conditions be attached.

Mr. Grace asked that a condition be part of the variance prohibiting any construction on the lake lot to the west of the house in the future. He requested that no construction be allowed on the front of the house within the 25 to 35 foot setback on South Ocean Boulevard.

Mr. Grace noted that the property to the south is owned by the mother of the applicant, and a jog in the property line between the two properties was made to allow for the side yard setback. He said that sometime in the future, owners may not want that jog in the lot line and straighten it out. He asked the Council to condition the variance to allow that not to happen.

Mr. Bennett corrected Mr. Grace's 35 foot front yard setback figure as it was actually 65 feet back from the road. Mr. Bennett said the owners did not want to change the design of the residence and build in the front of the house. He continued that the owners want to maintain the distance from South Ocean Boulevard.

Mr. Bennett said the Town requested a unity of title be submitted on the 5.2 feet on the side yard or the jog in the lot line that Mr. Grace addressed. Mr. Bennett said that unity of title will be submitted to the Building Department.

Mr. Shaw replied he had not requested that Mr. Bennett back fill around the house to give the impression that the ground is higher than it actually is. He said his idea was to reduce the bulk and his suggestion was that the second story should lie above the first story from the Ocean back to the point of the covered patio, and it should not cover the two extra sections on the northern elevation.

Mr. Shaw said he would like to amend the motion to say the second story addition would lie strictly on the portion of the house that is fronting the Ocean and back as far as up to the awning/patio.

Mrs. Smith asked if the owners would like to address the Council?

Mrs. Langes-Swarovski addressed the Council and stated she wanted to enlarge the house to have room for her children, and she did not think these kinds of problems would happen. She said she did not want to hurt anyone, but wanted to make the house nicer.

Mr. Bennett asked if he would have to return to the Architectural Commission? Mrs. Smith replied affirmatively.

Mr. Randolph asked that the maker of the motion include a reason for the granting of a variance.

Mr. Shaw replied the variance is the minimum that could be granted and allow the owners to have a second story without creating the impression of tremendous bulk on the side. The hardship lies with the land.

Mrs. Smith asked Mrs. Pollitt to read the motion.

Mrs. Pollitt read the motion that was for the approval of Variance Number 11-95 granting a second story, not to exceed the height allowed, the second story will extend from the front of the house to the covered patio, it is the minimum variance to grant for the use of the property and the hardship lies with the land.

Mr. Bennett replied that was acceptable.

Mrs. Smith asked the distance from east to west to the covered patio?

Mr. Bennett responded that the distance was approximately 35 feet. He said the stairway on the north side will be eliminated.

Mr. Shaw asked that the unity of title be included in the motion.

On roll call, the motion carried 4-1 with Mrs. Smith casting a negative vote.

Mr. Bennett clarified that the unity of title will include the property from Ocean to Lake.

7. Variance No. 12-95 - George Michel, Jr., 310 Mediterranean Road; to allow installation of two sets of gates at two driveway entrances, each setback 3' from the edge of the roadway, in lieu or 15' required. R-A District

George Michel, owner of the property at 310 Mediterranean Road, addressed the Town Council and requested approval to install two sets of gates in the setback. He stated the fifteen foot required setback could not be met.

Mrs. Smith requested that Mr. Michel present a plan to the Council and explain why he could not meet the setback requirements.

Mr. Michel said he submitted a plot plan with the application and offered to present photographs to the Town Council.

Mr. Moore said the purpose of the ordinance is to consider, on a case by case basis, the traffic impact that these gates might have and the ability to block traffic while the electronic devise opens the gate. Mr. Moore added, based on the fact that this street is a dead end, the Staff has no objections.

Mr. Michel explained the street ends in a cul-de-sac with plenty of room to turn around.

Motion made by Mr. McDonald to approve Variance Number 12-95. The motion was seconded by Mr. Wyett.

Mr. McDonald stated the reason for approving the variance was that the street was a dead end and to move the existing wall and posts would be a hardship.

On roll call, the motion carried unanimously.

8. Variance No. 13-95 - Palm Beach Development, Inc., 222 Phipps Plaza; to allow construction of an 8' x 10' addition setback 8.5' from the south and west property line intersection, in lieu of 12.5' required. R-C District

Eugene Fagan, Architect for Palm Beach Development, requested variances for 9.9 feet and 8.5 feet setbacks in lieu of the required setbacks. He stated the building is landmarked and he is attempting to line up the walls to have an appropriate look in keeping with the historic property.

Mr. Fagan noted that only 27% of the lot is buildable due to the strange configuration of the lot, and the coverage will be 23.5% with the new addition.

Mr. Fagan said the main reason for requesting a variance is the hardship of the shape of the lot and the attempt to design a compatible addition for the landmarked structure.

Mr. Moore stated the Staff has no particular objection as it is a fill-in. He said the area involved is a very small corner of the piece of the property to meet the correct setbacks.

Motion made by Mr. McLendon to approve Variance Number 13-95. Motion seconded by Mr. McDonald.

Mr. Shaw said he was not comfortable with the 8.5 feet setback from the property line to the corner of the breakfast nook. He did not see that squaring off the building was a trade off for granting of a variance. He suggested removing 4 feet from the breakfast nook.

Mr. Fagan explained his client wanted both wings on the building to be equal.

Mr. Shaw said the roof lines do not match, and only the windows are symmetrical. He added the addition would also make entering the garage difficult.

Mr. Fagan, responding to Mr. Shaw's question, indicated a unity of title existed for the lot.

Mr. McLendon said the reason for the motion was that the variance was almost insignificant and it would be a hardship to do otherwise. He said the shape of the land is also a hardship.

On roll call, the motion carried 3-2 with Mr. Shaw and Mr. Wyett casting negatives votes.

9. Special Exception No. 7-95 - Worth Avenue Associates, Ltd., 150 Worth Avenue; to allow a new restaurant to occupy 5,200 sq.ft., in lieu of 2,000 maximum permitted, or in lieu of the previously permitted 3,700 sq.ft. occupancy approved by Special Exception 8-83. Further, to allow restaurant to meet parking requirements by reserving land area across the street to meet the need as demanded, a matter also addressed by the previous Special Exception approval. C-WA District (Letter Dated March 6, 1995, from James R. Brindell Requesting Deferral Until April 11, 1995)

This item was deferred until the April 11, 1995, Town Council meeting.

10. Special Exception No. 8-95 - Spencer Gallery, 313 1/2 Worth Avenue, Via Bice; to allow a retail occupancy of 2,292 sq.ft. thereby exceeding the 2,000 maximum permitted. C-WA District

This item was deferred to the April 11, 1995 Town Council meeting.

C. Other

1. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by John C. Cassidy for Work at Via Mizner

John Cassidy, Cassidy Air Conditioning, representing the owners, Mr. and Mrs. Knuth, addressed the Town Council. Mr. Cassidy requested permission to make a main connection to the system on a Sunday. He said the purpose of doing the work on a Sunday is to not disturb the air conditioning in the various shops in Via Mizner.

Mr. Cassidy reported the work will not be noisy and will not take the entire day to complete.

Mr. Moore said he thought the request was to replace the entire cooling tower for Via Mizner.

Mr. Cassidy replied this request was just for the Knuth apartment, and the cooling tower serves the entire Via Mizner.

Mr. Moore asked why the work had to be completed during the months of March or April? He asked Mr. Cassidy if the work could be done during the months of May or June since the entire project will probably last another year.

Mr. Cassidy said his purpose for doing the work now is to be on line to test the system prior to all of the walls being constructed and enclosed. He added it would be very difficult if they found they did not have the proper water pressure on the system if the walls were closed up.

Mr. Cassidy explained this is a condenser water system and if he could connect to the system of pipes in the apartment, the pressure could be determined and any leaks detected.

Mrs. Smith asked if it would be a hardship to wait until May 1st?

Mr. Cassidy replied other work needs to be completed there, and he would like to complete this part of the work before continuing.

Mrs. Gay Knuth, owner, addressed the Council and stated she hopes to be finished with the project in July, and this needs to be tested before the walls are closed up. She said she wants to start laying tile by the end of April and the beginning of May. She said she plans to spend the summer in Palm Beach to complete this project.

Motion made by Mr. Wyett to approve the working hours on Sunday to complete the connection to the cooling tower with the condition Mr. Cassidy will advise the Building Department of the date on which the work will be done and Mr. Cassidy will notify the Via Mizner shop owners of the date. The motion was seconded by Mr. McLendon. On roll call, the motion was approved unanimously.

XV. ANY OTHER MATTERS

Mr. Doney announced that the Ordinance, Rules and Standards Committee meeting with Mr. McDonald as Chairman and Mr. Shaw as member will meet March 21, 1995, at 2:00 p.m. in the Town Council Chambers.

Mrs. Smith said someone was in the audience representing the Hiram Walker Foundation who stated the Foundation was not represented earlier in the meeting and the Council did not receive the proper information for the Charitable Solicitation permit. Mrs. Smith said the only way the permit could be reconsidered was for a member of the prevailing side to reopen the matter.

Motion made by Mr. Wyett to reopen the matter of the Charitable Solicitation permit for the Hiram Walker Foundation, Number 388-95. Mr. Shaw seconded the motion. On roll call, the motion carried unanimously, 4-0. Mr. McLendon left the meeting prior to the vote.

Mrs. Smith said the Council would reconsider the Hiram Walker Foundation Charitable Solicitation Permit Number 388-95.

Ms. Collette DeLabry, Attorney with the firm of Edwards and Angell, addressed the Town Council on behalf of the Hiram Walker Foundation.

Ms. DeLabry explained that Mr. William Sullivan appeared at the meeting earlier in the day with a request for the Hiram Walker Foundation to host a charitable event at Mar-a-Lago on Tuesday, March 21.

Ms. DeLabry said that Mr. Sullivan was not familiar with the permit application process; the application was submitted March 6, although the permit was complete, it was not submitted in time to meet the advertising requirements.

Ms. DeLabry requested the Council reconsider and waive the requirement for the advertising time period which is two weeks prior to the event. She passed out information concerning the Hiram Walker Foundation.

Mrs. Smith noted that Mr. McLendon and Mr. McDonald left the meeting and the three members left would have to provide a unanimous decision for this issue to pass. Mrs. Smith asked Mr. Randolph if that were correct.

Mr. Randolph responded that since this was not a zoning issue, it would not require a 3/5 vote and a 2/1 vote would carry the issue.

Ms. DeLabry explained the Hiram Walker Foundation was formed in 1992 and since that time it has granted in excess of $115,000 worth of scholarships to mostly minority recipients. She continued that their mission is to identify, isolate and channel company resources to support and provide encouragement for minority education and employment in the food service and retailing industries. The Palm Beach event would be a very important part of the fund raising activities for the Foundation. She continued that the Foundation also makes contributions directly to schools, provide in school training materials, guest lecturers and recognize significant accomplishments.

Mr. Shaw asked if Ivana Trump was holding the event at Mar-a-Lago? Ms. DeLabry responded affirmatively.

Mr. Shaw said he thought that all the profits would be contributed to the Florida Culinary Institute, and the most recent information indicates only $2,000 would be given to the Institute.

Ms. DeLabry replied the Foundation has donated monies to other Florida institutions and plan to continue to do that in the future. Ms. DeLabry promised, if another event is held in Palm Beach in the future, the paper work will be handled in a more timely manner.

Mr. Shaw said he did not see that the issue had changed as far as he was concerned, and he was under the impression that all the proceeds were going to stay in the area.

Mr. Wyett said the issue of where the money is used is not an issue the Council should address.

Motion made by Mr. Wyett to approve Charitable Solicitation Permit Number 388-95. Mrs. Smith passed the gavel to Mr. Shaw and seconded the motion. On roll call, the motion carried 2-1 with Mr. Shaw casting a negative vote.

XVI. ADJOURNMENT

The meeting was adjourned at 7:30 p.m.

Mary A. Pollitt
Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Mc Donald, Jack	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach town Council
MAILING ADDRESS 2170 Ibis Isle Palm Beach	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: X CITY [ ] COUNTY [ ] OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED 3/14/95	MY POSITION IS: X ELECTIVE APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

RECEIVED
TOWN CLERK'S OFFICE
APR - 6 1995
TOWN OF PALM BEACH

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

Mar-a-Lago

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, JACK McDONALD, hereby disclose that on 3-14, 19 95:

a) A measure came or will come before my agency which (check one)

X inured to my special private gain; or

___ inured to the special gain of ______________________, by whom I am retained.

b) The measure before my agency and the nature of my interest in the measure is as follows:

matter relating to special meeting to approve declaration or use for private club —

My interest - member of private club

4-5-95
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.