MINUTES OF THE TOWN COUNCIL MEETING HELD ON MARCH 12, 1996

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order by President Lesly Smith at 9:30 A.M. on March 12, 1996. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon, and Allen Wyett. Also attending the meeting were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager Dave Jakubiak, Town Attorney John Randolph, Fire Chief Ken Elmore, Police Chief Joseph Terlizzese, Director of Planning, Zoning & Building Robert Moore, Planner/Projects Coordinator Timothy Frank, Zoning Administrator Paul Castro, Director of Public Works Al Dusey, Acting Finance Director Cheryl Somers, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: The invocation was given by Rabbi Feldman from Temple Eman-uel. Mrs. Smith led the Pledge of Allegiance.

III. PRESENTATIONS:

A. Recognition of William S. Gubelmann, Landmarks Preservation Commission from 1990-1996 -

Mayor Ilyinsky presented a plaque of recognition to Mr. William S. Gubelmann for his service as a member of the Landmarks Preservation Commission from 1990-1996.

B Recognition of Anne G. Metzger, Landmarks Preservation Commission from 1990-1996 -.

Mayor Ilyinsky presented a plaque of recognition to Anne G. Metzger for her service as a member of the Landmarks Preservation Commission from 1990-1996.

C. Retirement of Leonard Greene, Assistant Public Works Director - 30 Years and 2 Months -

Mayor Ilyinsky presented a ring to Mr. Leonard Greene, Assistant Public Works Director upon his retirement from the Town of Palm Beach after serving the Town for 30 years and 2 months.

D. On behalf of the town of Palm Beach, Presentation by Golf Commission of February 14, 1996, 13th Annual Par 3 Pro-Am Benefit Proceeds to Rehabilitation Center for Children and Adults and Palm Beach Recreation Department -

Mrs. Ann Herman, Chairwoman of the Golf Commission and Mr. Larry Ochstein, Chairman of the Seaview Park Commission, presented checks to Mr. Wiley Reynolds, III, who accepted the checks on behalf of the Rehabilitation Center.

E. Garden Club Donation for Mid-Town Beach Dune Planting Program -

Mrs. Joan Willmott of the Garden Club presented the Town with a check for $9,000 to be used for planting sea oats on the beach as a Garden Club Donation for Mid-Town Beach Dune Planting Program.

IV. COMMENTS OF THE MAYOR: Mayor Ilyinsky commented on the Monday storm in Palm Beach and hoped that the Town would return to its usual beautiful weather.

V. APPROVAL OF AGENDA

The following items were added to the agenda:

1. Add item XI.A.3, South Florida Water Management District Report.
2. Add item XI.1.a., Discussion of the Port Authority's responsibility for maintaining beaches at the Inlet.
3. Add item X.B., Ordinances, Rules, and Standards Committee Meeting of March 6, 1996.
4. Add item XII.B.9., Consideration of Architectural Commission Issues -- (1) the number of meetings scheduled per month, and (2) the demolition of Palm Beach residences.
5. Add item XII.B.10., Consideration of Parking Guidelines For the South Fire-Rescue Station.

The following items were deferred:

1. Mr. Wyett made a motion, seconded by Mr. McLendon, to defer item XIV.D.1.,Variance Number 3-96, to the April 9, 1996, Town Council Meeting. On roll call the motion carried unanimously.

2. Mr. Shaw made a motion, seconded by Mr. Wyett to defer item XIV.D.6.,Variance Number 8-96, to theApril 9, 1996, Town Council Meeting. On roll call the motion carried unanimously.

3. Mr. Wyett made a motion, seconded by Mr. Shaw to defer item XIV.D.8., Special Exception Number 3-96, to the April 9, 1996 Town Council Meeting. On roll call the motion carried unanimously.

Mr. Wyett made a motion, seconded by Mr. McLendon, to approve the agenda as amended. On roll call, the motion carried unanimously.

VI-VII. APPROVED AGENDA:

Mr. Wyett made a motion, seconded by Mr. McLendon, to approve the Approved Agenda. On roll call, the motion carried unanimously. The following items were approved on the approved agenda:

VI. Approval of Minutes of January 3, 4, 16, 22 and 23, 1996.

VII. Licenses and Permits:

A. Charitable Solicitations

1. Rehabilitation Center for Children & Adults, Inc.; No. 126-96
2. Opportunity, Inc.; No. 342-96
3. Kristina Cassidy Children's Foundation, Inc.; No. 404-96
4. The Children's Place and Conner's Nursery, Inc.; No. 405-96

Other
- Failure to File Audit and/or Waiver of Advertising Requirement

5. Fraternal Order of Police, Palm Beach Lodge # 19; No. 79-96
6. Ann Storck, Inc.; No. 407-96
7. River Fund, Inc.; No. 408-96
8. Interfaith Alliance; No. 409-96

-Failure to File Prior Results Form Within Prescribed Time and Waiver of Advertising Requirement

9. Lourdes Foundation, Inc.; No. 135-96

-Failure to File Prior Results Form Within Prescribed Time

10. The Mary Obolensky Underwood Foundation for Leukemia Research; No. 320-96

<u>REGULAR AGENDA</u>

VIII. LICENSES AND PERMITS - NONE

IX. PUBLIC HEARINGS

A. Landmark Designation of 250 Jungle Road - Consideration of Resolution No. 11-96.

Mr. Timothy Frank, Planner/Projects Coordinator, verified that the Town had proof of publications. The Town Clerk swore in all witnesses for this Public Hearing.

Mr. Frank stated the subject property was 250 Jungle Road. The Landmarks Preservation Commission considered the matter and found that the property met the following criteria for designation:

Criteria C - Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of period, style, method of construction or use of indigenous materials or craftsmanship.

Criteria D - Representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Mr. Frank stated that the applicant has worked with the Landmarks Preservation Commission and favored designation of this parcel.

Mrs. Jane Day addressed the Council stating that the house at 250 Jungle Road was designed by Maurice Fatio in 1929 as his personal residence. Mr. Fatio had designed quite a few of the landmarks in the Town of Palm Beach and this particular residence is in a more subdued Mediterranean style that became popular after the real estate crash in 1926 and the hurricane of 1928. The design features on the house included the front door with segmented arch and cast stone around it; the balconies with the curved windows; the garage as a separate building, and the barrel tiled roof imported from Cuba. The house was representative of the smaller homes that had been done after the hurricane of 1928 and was important because it was designed by the architect for his own personal use, and was one of four that he built in Town for his own personal use. Mrs. Day stated that if the Council ratified the Landmarks Commission decision to make this a landmark, this would be the first tax abatement project in the Town. Mrs. Day added that the homeowners redesigned and used the architect's original elements so they would qualify for the tax abatement.

Mr. McDonald made a motion, seconded by Mr. Shaw, to make the designation report part of the record. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve the landmark designation of 250 Jungle Road, and the adoption of Resolution 11-96, and noted that the criteria for designation were C and D of the Preservation Ordinance, Section 1638A, Ordinance 2-84. The motion was seconded by Mr. Wyett.

Attorney Randolph read Resolution 11-96 by title only:

RESOLUTION NO. 11-96
250 Jungle Road

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATIONS COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call the motion carried unanimously.

X. COMMITTEE REPORTS

A. Ordinances, Rules, and Standards Committee Meeting of February 9, 1996.

Mr. McDonald requested the Council approve the report as supplied in the minutes since all the recommendations were covered at last month's Town Council meeting.

Mayor Ilyinsky stated there was a line in the old ordinance to the effect that Tequesta was a bird sanctuary. Mayor Ilyinsky stated he would like to see this written into the Town's ordinance since Palm Beach is still considered to be a bird sanctuary. It was reported that there was a separate ordinance for that subject and the code would be researched for verification.

Mrs. Smith stated the Council accepted Mr. McDonald's report as the past ORS Committee Chairman, but has not acted upon the recommendations which have been subsequently changed. The Council will act on these recommendations in the next report.

B. Recommendations from the Ordinances, Rules, and Standards Committee Meeting of March 6, 1996.

Mrs. Smith stated that this report was not ready, however, the Council would address the recommendations of the Committee.

Mr. Shaw stated that the Committee reviewed the prior meeting of February 9, 1996, to reaffirm what had been discussed and to review some of the items.

One of the items that was reviewed was animals and fowl as it pertained to the Code. The Committee recommended that the Town Attorney proceed with a proposed draft ordinance to be returned to the ORS Committee with language for special exceptions permitting certain animals in the Town. The Committee decided that the ordinance should be designed in such a way that the animals of habitation would not be mixed with a special permit so as not to imply that someone could get a special permit to have animals that would normally not be permitted in Town. The Committee discussed that they would allow domestic petting animals, with donkeys and ponies being the only other type of animals that would be permitted under a special permit. The Town would not permit any caged animals that would be considered dangerous or require trainers or special handlers. With any special permits there would be indemnification to the Town.

The Committee also considered the fishing prohibition on the public right-of-way in the Lake Worth area. In prior discussions, the permitted fishing hours were from 6:00 a.m. to 6:00 p.m., and because the sun sets at different times during the year, the Committee felt the ordinance should be amended to read "from sun set to sun rise". Mr. Randolph was directed to draft the proposed ordinance.

Discussion regarding charging commercial properties for yard trash collection was extended so that the Committee could look at the impact on the Town of having excessive pick-ups at one time at one location, and to establish a benchmark of one truck load. Mr. Dusey of the Public Works Department was requested to provide the Committee with a list of both commercial and residential properties that have an excess of yard trash collection, to give an approximate cost of the impacts on the Town of having this excessive pick-up, and to determine if the Town should have a charge for this service. Mr. Shaw pointed out that this is only for pick-ups in excess of one truck load at one time and was not an annual accumulative accounting.

The Committee discussed the proposed Customer Standards Ordinance which would allow the Town to set a benchmark of compliance for any franchisee within cable. In the event the franchisee did not meet that benchmark, fines would be initiated. The Committee proposed that of they would establish the benchmark at five documented or recorded complaints on a monthly basis. Documented complaints would include both written and those from the recorded answering hotline used by residents to call attention to problems. The Committee also decided that in the event the accumulated complaints of any of the sections of the ordinance would reach seven, fines would be initiated.

The Committee discussed clarification of the word "outages" referring to them as individual outages as far as compliance because the franchise agreement already identified outages system-wide. The Committee reaffirmed that decision. A reference to a 30 day period was modified to state one-month so that it was easier to follow.

The requirement of a 4-hour window of service for residents in the event they needed a technician to come to the house was modified to a 2-hour window with notification by the technician to the residents to say if they were running late. The residents would then make the decision whether to stay and meet the appointment or reschedule. Compliance would be 4 hours, but there would have to be a 2 hour notification.

Mayor Ilyinsky stated that ordinances are written for honest people and not those who try to get away with something. For example, Mayor Ilyinsky questioned how they would treat and qualify two Budweiser Clydesdale horses brought into Town, with both being accompanied by trainers and keepers. Mayor Ilyinsky stated these animals have been used successfully for fundraisers in the past and he would hate to see these animals denied permitting. Mayor Ilyinsky stated that in approximately 1-1/2 months the Town would get a request to license a Bengal Tiger. The Mayor stated that this tiger comes with a trainer and a keeper and the purpose of the visit was to raise money for the WorldWide Fund. The Mayor asked how these types of events would be handled?

Mrs. Smith stated that the ordinance would not preclude any charity from coming before the Council and requesting a special permit. Mr. Shaw stated that the wording of the ordinance would preclude people from coming before the Council. Mrs. Smith stated that there are ways of coming before the Council, such as Citizen Comments, and the item could be introduced in whatever way possible. Mrs. Smith stated that individual cases could be handled by wording in the ordinance, allowing special exceptions..

Mr. Shaw stated that the way the ordinance came out of ORS the particular animals mentioned would not be allowed. He noted that the Council could make a policy decision to allow those kinds of events through the issuance of permits on a limited basis, most likely tied to a Charitable Event permit.

Mrs. Smith stated that the ORS Committee has directed the Town Attorney to draft an ordinance to be returned to them with the language they requested for special exception.

Mr. Shaw added that he did not think there was a prohibition on animals such as Clydesdales, but rather the Committee was concerned with caged and dangerous animals that were not necessarily used for charitable events and did not want to expose the Town to the liability by issuing permits for them. Mr. Shaw stated that language could be inserted into the ordinance to include charitable events.

Mr. Shaw referred to the format of the report , asking if the report could be a simplified in a manner that would be acceptable to the Council. Mr. Shaw commented that this would take a portion of the workload off of the Town Clerk's Office, and allow the Council to receive the reports on a more timely basis.

Mrs. Smith stated that part of the workload is precipitated by calling meetings too close to the Town Council meetings, and that a schedule should be set for not calling a committee meeting less than 7 working days prior to a Town Council meeting. This would prevent the Town Clerk from working overtime and on weekends to prepare a report. Mrs. Smith stated that committee meetings would not be held a week prior to the Town Council meetings because it was then impossible to get the reports ready.

Mr. Wyett agreed, suggesting that there should be provisions for emergency meetings. Mrs. Smith stated that she was referring to regular meetings, and felt that the Council should establish a routine for the Town Clerk and staff, that a regular meeting not be set less than 7 days prior to the Town Council meeting.

Mr. Wyett made a motion to adopt the 7 day rule and Mr. Shaw's recommendation regarding simplified reports.

Attorney Randolph stated that he understood the recommendation, however, pointed out that minutes have to be taken of those meetings and provided to the Council. Attorney Randolph stated that under the Sunshine Law minutes had to be taken and transcribed. If the Council wanted just the actions of the meetings to be included without any minutes in regard to discussion, then the Council could direct that and have the report include motions and actions taken. Mr. Shaw stated that was what he was recommending, as the Council always would have the opportunity to go back to the minutes if needed. Attorney Randolph stated the minutes had to be transcribed under the Sunshine Law, and that the tape was not sufficient.

Attorney Randolph stated that the Town's minutes have been very complete, and that it was a matter of policy on how they were done, and many times minutes are simply motions made and actions taken if that is the direction.

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Mr. Shaw asked if the format for the March 6, 1996, meeting was acceptable. Attorney Randolph stated he wanted clarification from the Town Manager and the Town Clerk. He stated that minutes could be taken as usual with a list of recommendations for the Council's convenience, or in any manner directed by the Town Council.

Mayor Ilyinsky remarked that the Town Clerk should continue to take the entire minutes, but the report typed by her should be in the general format suggested by Mr. Shaw.

Mr. Doney stated that there are various styles of minutes, with some including only the high points of discussions at meetings. The report referred to by Mr. Shaw abbreviated recommendations and did not give discussion or conversation exchanged during the committee meeting. From a staff perspective, doing it both ways would give the Clerk the luxury of doing the minutes sometime after the recommendations report was produced.

Mrs. Smith stated that as she looked at the ORS meeting of February 9, 1996, where there was discussion of the collection of fines, fees and monies, it was important for her to read the many discussions that took place. There were many different witnesses and Mrs. Smith pointed out the need to reread discussions that took place on that particular issue, as well as the public interest in those minutes. Mrs. Smith asked if it would be possible for the different committee chairmen to determine whether or not long minutes were needed or recommendations would suffice.

Attorney Randolph recommended that the Council have a general policy in regard to the taking of minutes so there would be consistency in the way minutes are kept in the Clerk's Office. An abbreviated version could be used for ease at Council meetings, but the Council would have to make a decision in the way minutes are taken. Attorney Randolph stated that the Town Council President suggested that the abbreviated version was not complete enough and would have to be more complete than its present form.

Mr. Wyett mentioned that he liked the idea of a compromise - something more complete than the March 6, 1996, report, but more abbreviated than the February report. Mr. Wyett commented that there was a tremendous burden on the Town Clerk with all the committee meetings being held and the length of Council meetings.

Mr. McLendon stated that perhaps the Town Clerk could do modified minutes and if it was felt that some subjects deserved more typed information, that could be done.

Mr. Doney stated that the motion made by Mr. Wyett about having the committee meetings scheduled at least 2 Fridays before the Council meeting in which that report would be heard, would allow the Town Clerk the time necessary for the minutes. Mr. Doney explained that producing committee reports in greater detail gives those not in attendance at those meetings some perspective. Mr. Doney stated that part of the problem is that the Town Clerk's Office is in a catch-up mode, mostly because of the Shore Protection Board where they were 2 meetings behind on minutes. Staff was concerned with scheduling, while attempting to ensure that expectations of the Town Council are being met.

Mr. Wyett stated that he would separate his motion. Mr. Wyett's first motion was that committee meetings would not be scheduled less than 7 working days prior to the Town Council meeting. Mr. McLendon seconded the motion, which on roll call unanimously carried.

Mr. Wyett then made a motion to incorporate Mr. Shaw's recommendation to have a modified report from committee meetings which would be less lengthy than the February 9, 1996 ORS meeting, but more detailed than the March 6, 1996 ORS meeting. Mr. Shaw seconded the motion. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to accept the report of the ORS Committee meeting of March 6, 1996. Mr. Wyett seconded the motion. On roll call, the motion carried unanimously.

Attorney Randolph asked if the Council wanted to go through the step of having a special ORS meeting to discuss an additional exception within the ordinance for the other animals and have it come back to Council. This would not require drafting of the second ordinance until after the special meeting; or, the Council could approve the report today with an additional recommendation that the Attorney incorporate a provision to allow a special permit for animals used for charitable events. The Council directed the Town Attorney to incorporate a provision as recommended by the Town Council to allow a special permit for certain animals for charitable events.

Mr. McLendon stated he would like to get the Police Chief involved in the recommendation regarding fishing as he is concerned with the reduction of police efforts. Mr. McLendon questioned whether police enforcement waited for a complaint from a homeowner or patrolled to look for fishermen.

The Police Chief responded that if the Council passed an ordinance, they would not wait for a complaint from a resident or anyone else because it would be a law. If illegal fishing was noticed during routine patrols the officers have the direction to take appropriate action. The Police Chief stated that this would not be a high priority item, and pointed out that public property is already closed at night and is posted.

Mr. McLendon made a motion to approve Part V of the ORS Committee fishing recommendations as amended. The motion was seconded by Mr. Wyett, and on roll call was unanimously carried.

Mr. Doney asked if the Council would consider items VI and VII of the ORS report.

Item VI of the ORS report was referred to Public Works and item VII of the ORS report was accepted as part of the report. Mrs. Smith pointed out that the motion to accept the report had already been made to accept the recommendations of the ORS Committee report of March 6, 1996.

XI. OLD BUSINESS

A. OTHER

1. Consideration of Beach Issues

a. Status Report on Restoration of the Lake Worth Inlet Sand Transfer Plant - Discharge Piping.

Mr. Dusey, Public Works Director, addressed the Council and stated that the Counties Corporation was supposed to begin the drilling yesterday, however, bad weather had made that impossible. Mr. Dusey stated they have now begun the drilling and all equipment is on site.

Mrs. Smith asked if Mr. Dusey would like to discuss the Port and their involvement with the Inlet?

Mr. Dusey stated that in the past the Port Authority had been approached with different amounts of success. Initially the Port had stated they were not interested in participating with the Town or the County and that the Inlet was the Corps' responsibility. The Port members have changed, making it difficult for Mr. Dusey to speak with any certainty, however, there have been indications behind the scenes that the Board is coming around to thinking that participation with the Town is reasonable in some form.

Mr. McLendon stated that 170,000 cubic yards of sand per year drift, with the jetty blocking the sand. If the cost of the sand is $5.00 per cubic yard to haul, at a cost of $150,000 per year, Mr. McLendon remarked that whatever is dredged at the Inlet at the Corps of Engineers expense might be considered a continuation of that responsibility. Mr. McLendon commented that the Town could not standby to await a favorable response from the Port Authority. Since the Port had a large tax base, including the Town, and depended on revenues from their tenants to sustain the Port, Mr. McLendon saw no reason why they could not be asked legally to assume some responsibility.

Mr. Doney stated to the best of his knowledge, over the last 20 years, when the Port Authority members changed, attempts have been made to have officials publicly acknowledge the principal benefit that the Port enjoys as a result of the Inlet remaining in its properly designed dredge depth. Mr. Doney suggested that a letter be sent to the Port Chairman from the Mayor or Council President stating that the Town was interested in this public acknowledgment. The apportionment of benefits was discussed at one time suggesting that the responsibility be divided in thirds between the Town, the Port Authority and the County. The Port had never had to levy a millage because they had enough revenues from the Port commerce activities.

Mr. Doney stated that because it is a federally maintained inlet the Port knows the Corps of Engineers is going to pick up the tab for the maintenance dredging. The Port had no financial commitment towards this, but was the first one to state the danger of larger ships running aground. Mr. Doney suggested this was the perfect time to renew the opportunity to approach them on the responsibility subject.

Mr. Wyett made a motion to authorize the Mayor to write a letter to the Chairman of the Port Authority to suggest that the Town and the Port meet to discuss responsibilities. The motion was seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

Mr. Dusey stated he was unable to get a status report this morning on the dredging. Mr. Dusey stated that the dredging company was delayed on another project in the north part of the state, however, this could be to the Town's benefit in that several storms have washed sand into the Inlet. The sand would have to be moved, and the Town would be the beneficiary of the sand.

Mayor Ilyinsky stated that he understood that if an emergency occurred when the dredging company was not here the sand might be dumped at some other location. Mr. Dusey responded that there was an attempt to do this once before and the Town strongly objected. A compromise was reached whereby 40,000 yards were allowed to be placed in 30 foot of water, but the Corps had to make that up the next time they came in and placed sand on the Town's beach. Mr. Dusey stated that he understood that an emergency would not necessarily allow the contractor to dump that sand, but to take care of one spot in the channel that is badly shoaled. Mr. Dusey stated he would expect this sand to be placed on the Town's beach and not in another location.

Mr. Dusey stated he would get an update on this situation for the Council, but again reiterated that the recent storms would be an advantage to the Town.

b. Update on Mid-Town Beach Restoration Project, Including Use Of PEP Reef Units as Groins.

Mr. Dusey reported that the access ramp was being completed and the stairs at Brazilian would be completed today or tomorrow. The equipment ramp at Peruvian has also been completed. The Town had contracted with the same contractor to do some tilling that is required as part of the permit conditions if the sand was too tight. That had started and should be concluded early this week. Mr. Dusey stated he expects to turn the beach over to the Police Department and their lifeguards later this week and this will conclude the project.

Mr. Dusey noted that vegetation restoration was being conducted at Mid-Town and should be completed in another week and a half.

2. Monthly Status Report from Finance Department Regarding Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town.

Mr. Doney stated that as indicated in the memorandum in the Council package dated March 4, 1996, he would like to add an additional statement. As indicated in paragraph 4 of that memorandum, the report is totaled on Page 6 and reflects the total principle amount outstanding of $1,494,402 of which $5,134 has been collected, leaving a principle balance of $1,489,268. Of the $1,489,268 outstanding principle balance, $1,377,500, approximately 92%, is attributable to the Johnson Estate at 190 South Ocean Boulevard. Mr. Doney stated that as of March 7, 1996, the Town's Finance Department collected an additional $3,022.76 for the Solid Waste Fees. Reports would be given to Council on a monthly basis.

Mr. McDonald asked the Town Attorney for a report on the Johnson Estate.

Attorney Randolph stated he has prepared for filing a claim against the Johnson Estate for the two outstanding liens.

Mr. McDonald stated that from time to time he sees letters from the Finance Department to the Town Attorney asking for advice on what to do on particular items and asked if the Attorney planned to respond in writing and, if so, requested a copy of the responses. Mrs. Smith stated that the entire Council will get copies of the responses. Mr. McDonald asked that the Town Attorney also provide the Council with copies of responses on items that have been turned over to him for collection.

Mr. Doney stated that in the report given to Council dated February 9, 1996, on page 5 and 6 there was a column that contained zeros that had now been updated to include the principal amount of $3,022.76.

Mr. Doney stated that Mr. Dusey's office handles cutting off service, however, the Town prefers to turn the matters over to Attorney Randolph for collection to be pursued with liens when appropriate.

Mr. Shaw questioned whether some of the people on the list were traditionally late every year or if there was a cycle that they pay their assessments late? Mr. Shaw felt it was odd that somebody would not pay a 1996 bill and go to the point of being in default as far as commercial properties, when they have paid it every year prior. Mr. Dusey stated there were some repeat offenders, but was not sure if there was a pattern regarding who pays and who does not.

President Smith asked when the Palm Beach Pier lien would be taken off the books since it is seemingly uncollectible as the present owner was not advised of any outstanding liens. Mr. McDonald remarked that the letter stated that the Town made no representations as to the accuracy of the information and that it was a valid lien against the property.

Attorney Randolph mentioned that the Town was not precluded from collecting the liens, but that there were other matters that needed to be looked at first. It had been determined that there were two separate properties involved, the Gilford property and the Palm Beach Pier. Attorney Randolph stated that the Palm Beach Pier Corporation is a real problem as far as collection as there is no such entity in existence, and that at some point the Town should look at clearing the books in regard to that matter. The Dudley matter was still being reviewed along with the other letters being sent to Attorney Randolph by the Finance Department as to the collectability. The representation made by an individual did not necessarily mean the debt had been satisfied.

President Smith remarked that the debt went back seven years and had been on the books too long-- the pier was gone, the Marcos' were dead and the company was defunct. Attorney Randolph stated there was a Palm Beach Pier

Escrow Account with Edwin Summers and others that was being reviewed. Mr. Doney stated that there was a pier bond that was previously posted that would allow for a window of time for collection.

Attorney Randolph noted the debt should not be eliminated without further research of the situation. President Smith suggested it could be looked at by the Finance and Tax Committee meetings this Spring.

Mr. Shaw stated that he noticed on the original sheet, page 4, there were 3 solid waste assessments. Two of them were again appearing on the current list. The current list showed that certified letters had been sent, but Mr. Shaw asked if there was any reference to the fact that a prior year's assessment had not been satisfied. Mr. Shaw also noted that there was a third item on the old list not included on the new list, and questioned whether this meant staff had taken the current monies and applied it to the current year and not the prior year.

Mr. Dusey stated bills were sent out quarterly and if those bills are not paid within a particular amount of time, a letter was sent stating the bill has not been paid and if not paid by a time certain a lien would be placed on the property. Mr. Dusey noted that if the Town was not paid 4 times a year, there would be 4 separate liens on that piece of property.

3. Mr. McLendon's Report on his Meeting with the South Florida Water Management District.

Mr. McLendon stated that staff arranged for a meeting with the South Florida Water Management District (SFWMD) on February 27, 1996, and that he considered it a partially successful meeting.

Mr. McLendon reported if the Town was willing to spend money for a dual piping system, there could be hope for consideration of the additional use of canal water, however the only thing received from SFWMD was sympathy.

The other item discussed was the possibility of getting aid from the district to fund half of the hydro geological study that was recommended before making major commitments to the shallow aquifer system. SFWMD was sympathetic but had already made their commitments for this year's funds, but gave the Town some encouragement for next year. There were serious reservations as to whether the Town could spend money for this now and get reimbursed. The application forms for aid were not yet available, but Mr. McLendon planned on pursuing it.

Mr. McLendon stated the possibility of using renovated waste water for irrigation purposes was discussed, which was not in the permit realm, but recommend to be included in the permit. Discussion had taken place regarding using the canal as a system to lay a pipe in the bottom instead of breaking up streets, which was being looked at favorably.

Mr. McLendon stated he had written a letter to Mayor Graham officially rejecting the last draft of the water franchise agreement, however, there had been no response to date. Mr. McLendon had telephoned Mr. Olsen, who is in charge of the utilities department, to see what was happening on the 3 items pending with him since May and the computerized hydraulic study of the system draft was expected within the next 2 weeks. There had been no real action regarding the value of the distribution system. Mr. Olsen had expected to complete a negotiation with Royal Palm Beach to sell them wholesale water by January, however, it had been determined that these were very preliminary discussions, and in Mr. McLendon's opinion, was very unlikely to result in a formal agreement. Mr. McLendon stated that he had talked to the County to see if they could help, however, it did not appear to be a possibility.

Mr. McLendon stated that, even though it was not a recommendation of the Water Committee to the Council, since the Town is half way toward the goal of 30% mandated water consumption, he would like to see the Town reenact the ordinance required to get that task completed.

Mr. McLendon commented that the Town should proceed legally to address the issue with West Palm Beach as far as the legality of the surcharge being applied to the Town.

Mr. Wyett stated that he concurred that there were no actions from West Palm Beach and did not think they were taking the Town seriously. The big issue was not whether there was a contract, but the fact that the Town would be faced with major repairs very shortly.. The maintenance was consistently being deferred and the lawsuit would be one means to let West Palm Beach know the Town was very serious. Mr. Wyett stated that he was very concerned with the notes to Mr. McLendon from the Water Management Authority, and that this Council needed to have a resolution. The Town used approximately 1.5 billion gallons of water a year to water lawns and was offering to spend about $30,000,000 to reduce that amount by at least 1.2 billion gallons. SFWMD had not given the Town any assurances and was talking less than a 20 year permit when the Town needed at least a 30 year permit for bond issues.

Mr. McLendon stated staff is working on an addendum to the Engineering Report regarding the ASR system and the consultants recommended to include evaluation of the renovated water use. Mr. McLendon noted that this was water the Town owned, but the major problem was that it was so far away.

Mrs. Smith stated that because this was a new item on the agenda, staff was not prepared to speak to the issue, and recommended that this should be a regular agenda item on the regular April meeting agenda as the Town will have the results from the West Palm Beach election, and Mr. McLendon will have more information on the system.

Mr. Shaw made a motion to have the issue of the supply of water from West Palm Beach placed on the April 9, 1996 Town Council Agenda as a regular agenda item. The motion was seconded by Mr. McLendon, and on roll call carried unanimously.

XII. NEW BUSINESS

A. Resolutions

1. Resolution No. 12-96-Florida Inland Navigation District (FIND) Grant for Town's Australian and Peruvian Docks.

Jim Bowser, Town Engineer, addressed the Council and stating that this Resolution certified that the local government agency complies with the districts rules and regulations with regard to grants. Staff was applying for a grant for the reconstruction and expansion of the Australian Dock, asking for 20% of the estimated $1,800,000 cost ($360,000). The resolution is required as part of the application package, and the Town would know by the end of the summer whether this money would be given to the Town.

Attorney Randolph read Resolution No. 12-96, by title only:

RESOLUTION NO. 12-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE APPLICATION FOR FINANCIAL ASSISTANCE UNDER THE STATE OF FLORIDA INLAND NAVIGATION DISTRICT WATERWAY ASSISTANCE PROGRAM FOR THE PURPOSE OF FUNDING THE REPLACEMENT OF THE AUSTRALIAN DOCK.

Mr. Wyett made a motion approve Resolution No. 12-96. Mr. McLendon seconded the motion. On roll call, the motion carried unanimously.

2. Resolution No. 15-96 - Authorization for Mayor to Execute Maintenance Memorandum of Agreement with Florida Department of Transportation for the Metropolitan Planning Organization Grant for South County Road Tree Plantings.

Mr. Bowser stated that at the February 13, 1996, meeting staff was authorized to administer the South County Road Tree Planting Project on behalf of the Greater South County Road Association. The Town was required to sign a memorandum of agreement with the Department of Transportation for this grant which totals $68,959. Staff was requesting that authorization be given to the Mayor to execute the agreement on behalf of the Town.

President Smith questioned whether the 60 day cancellation was the normal length of time for notice from the County to the Town. Mr. Bowser stated that he saw a recent agreement from the County where a 30 day cancellation agreement was referenced, however, he had seen some agreements that referenced a 90 day cancellation agreement.

Mr. Shaw questioned the first Whereas statement in the Resolution referencing 4 lanes, stating he was concerned because the road was 3 lanes through most of the Town. Attorney Randolph did not think this was an issue.

RESOLUTION NO. 15-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR COST SHARING OF THE SOUTH COUNTY ROAD TREE PLANTING PROJECT.

Mr. McLendon made a motion to approve Resolution No. 15-96. Mr. Shaw seconded the motion, which on roll call unanimously carried.

B. Sealed Bids

1. Sealed Bid No. 96-05-D-14 Stormwater Pumping Station at N.W. Corner Of Society of the Four Arts Plaza Parking Lot; Consideration of Resolution No. 16-96.

Mr. Bowser stated that 4 bids had been received for construction of the D-14 Stormwater Pumping Station to replace the D-5 pumping station located at the west end of Seaview Avenue. The bid was the first phase of the pumping station including one main pump, one duty pump, the basic building and the capacity to expand it to its ultimate configuration. The existing collection system for the D-14 extended from Royal Palm to Via Bethesda and would not be connected to the D-14 now, which is why the Town could use the one pump and the duty pump. This would exceed the capacity of the existing D-5 station.

Mr. Bowser stated the Town had two alternate bids with this project; one was to use an electric submersible pump in lieu of the belt driven axle flow pump. Staff considered items such as the initial cost, operation and maintenance, system reliability and noise, and although the electric pump would cost an additional $40,000, staff concluded the submersible pump would outperform a belt driven axle flow pump.

Staff therefore recommended Alternate #1 in the amount of $40,000 be approved for the submersible electric pump.

Mr. Bowser stated that at the time the scope of work had been done a generator had not been included. After consideration staff had concluded they should have at least bid it as an alternate to give the Town the option to add the generator. If there was no an emergency generator and power was lost there would be flooding of the system. Mr. Bowser stated that D-5 did not have an emergency generator, but had a better bypass system on it. The electric generator system, which included a fuel tank, ventilation system and noise suppression system for the engine, was bid at $196,525 which was 21% less than the engineer's estimate of $250,000. Staff recommended that the Town accept alternate # 2 for this project.

One other item in the bid recommendation, put in as an allowance, was for landscaping. This project went through the Landmarks Commission with some heavily xeriscape landscaping with no irrigation system. The estimated cost for this was $10,000, listed as a separate item on attachment "A" on the resolution.

Staff recommendation was to award the low bid to Murphy Construction Company. The base bid of $877,470, alternate one for $40,000, alternate two for $196,525 for a total bid award of $1,113,995. Staff also requested an additional appropriation of $236,525 from the Capital Improvement Fund Contingency. Mr. Bowser stated he checked with the Finance Department, and the money is available in the Contingency Account. Staff recommended approval of Resolution No. 16-96.

Mr. McLendon stated he agreed with the conclusion on the emergency generator, and asked how big a generator staff recommended. Mr. Bowser stated that the capacity was 4 200-horsepower motors, but was not sure what the KBA reading was on the generator.

Mr. Shaw questioned the cost advantages of putting the pumping facilities on existing Town-owned property? Mr. Bowser stated that the property the facility was being put on was obtained in a trade with the Society of the Four Arts. When they wanted to do some parking lot improvements, the Town had a 50 foot right-of-way that went through their property that wasn't being used, except as a bicycle trail. The Town had traded this site for reducing the 50 foot right-of-way width to 12 feet. This was not a salable lot and the Town had to get a variance as the lot was only 50 ft. X 100 ft.

Mr. Shaw asked if there would be any benefit to the Town from a maintenance point considering the existing fact that there was already a building, and the fact that there were already other pumps at the dock area to consolidate this entire system into the town-owned property and buildings already there. Mr. Bowser replied there would be no benefit.

Attorney Randolph read Resolution No. 16-96, by title only:

RESOLUTION NO. 16-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO THE MURPHY CONSTRUCTION COMPANY FOR THE D-14 STORMWATER PUMPING STATION.

Mr. McLendon made a motion to approve Resolution No. 16-96, seconded by Mr. Shaw. On roll call, the motion was carried unanimously.

2. Sealed Bid No. 96-06 D-14 Stormwater Collection System (Royal Palm Way To Pendleton Avenue and Atlantic Ocean to Lake Worth), Phase 1; Consideration of Resolution No. 17-96.

Mr. Bowser addressed the Council stating that there were 7 bids received on this project for the D-14 Stormwater Collection System, Phase 1. This would add an adequately sized storm drainage pipe from the pumping station across from the Society of the Four Arts property to Four Arts North to Seaview and from Seaview to Coconut Row. In future phases next year, staff would recommend extension of the pipe along Coconut Row to Pendleton Avenue. In Fiscal Year 1998 the collection system would be between Bart and Seabreeze Central and the alley between Clark and Seabreeze. As was customary with the storm drainage project, the Town had worked with the City of West Palm Beach to have the water mains replaced on these streets. Four Arts and the 400 Block of Seaview would be getting a new water main that the Town bid. Contained within Resolution No. 17-96 was authorization to have the Mayor sign an agreement with the City of West Palm Beach for them to pay for the cost of the water main associated with this project.

Mr. Bowser stated there was one alternate bid item, which was to install an irrigation quality water main on Seaview Avenue and Four Arts. The bid price was $55,150 which staff considered to be twice, if not more, than the cost should be for this pipe. If the Town, in the future, went to an irrigation quality system, staff believed it would be considerably less to construct the pipes in these streets after the fact, and therefore, recommended not to accept this alternate. Mr. Bowser stated that two resolutions had been written in the event Council wished to proceed with the irrigation quality main on this project.

The funding for this project was contained in 2 line items within the Capital Improvement Program. The D-14 Pumping Station included the first part of this storm drainage pipe up to Seaview Avenue. Staff split the job, so money would be moved from the D-14 Pumping Station to this job in order to help construct this project. However, there was an additional budget shortfall with items missed in the estimate. Mr. Bowser stated he missed the sanitary sewer that would be lost during the job, as well as sidewalk/curb combination on the south side of Seaview that would be lost into the pipe trench, for a total of $55,000. The Town also had higher than expected costs with respect to the mobilization maintenance, traffic and drainage structures. Staff discovered that prices were a little higher than shown in the 1993 study. In 1994 there had been a jump in contractor prices because the market had been held down. Mr. Bowser stated that staff added in money for inflation, but the budget needed additional appropriation if the Council wanted it constructed. Mr. Bowser stated an additional $225,975 would be needed to construct the project, which he believed was essential given the flooding that occured in that area last year. Mr. Bowser stated that there was a $56,000 contingency in the project, with the possibility that money will be returned to the fund once the project is completed.

Staff recommended approval of the project, less the irrigation quality main, however, if Council wished to proceed there were two resolutions provided.

In response to President Smith, Mr. Bowser stated that this project has been in the long range Public Works plan since 1976. The study was done in 1993 and outlined more specifically the pipe sizes and estimates for the project.

Mr. Shaw asked for clarification regarding the $55,000 dual pipe system and the additional $55,000 for the sidewalk cuts. Mr. Shaw questioned whether there was any way both projects could be done at the same time because of ongoing flooding problems, and if both phases could be done in the same year. Mr. Bowser stated that once the Town completed the D-14 system, 3-4 million dollars may be spent. Mr. Bowser stated that the Town only had an $1,500,000 Capital Improvement Program and staff had segmented the projects. Mr. Bowser stated that these two projects would cost 1-1 ½ million dollars alone, and at this point, it was too late to proceed with trying to get another project initiated.

Mr. Shaw remarked that he was interested in doing the phases that were planned for 1998 that included the street work because it is a problem and a number of residents had been faced with deterioration of property.

Mr. Bowser responded that this could be addressed when the Town did the Capital Improvement in the upcoming budget.

President Smith stated that it is, unfortunately, a question of money and many areas of the Town are faced with flooding problems, however, there was a long-range program.

Mr. Bowser stated that staff would do some value engineering, look at some of the prices given by the contractors and would continue to investigate ways to reduce costs on the project. Mr. Bowser continued that staff would go to the contractor and ask if there is another way the project could be done to save some money.

Mr. Wyett commented that the Town could lay 600 feet of C-900 pipe in the trenches when they were working, however, there could be a liability problem.

Mr. Dusey stated there were all kinds of problems with having a contractor on site and the Town staff on site at the same time, as the workers get in each other's way and there liabilities associated with that. Mr. Dusey stated he did not recommend the Town do that.

President Smith stated that the Council had two resolutions in the book - one for the base bid and one for the alternate bid for the additional bid of $55,150. It was the decision of the Council to approve the base bid resolution.

Attorney Randolph read Resolution No. 17-96, by title only.

RESOLUTION NO. 17-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO LONZO CONSTRUCTION COMPANY OF FLORIDA, FOR THE D-14 STORMWATER COLLECTION SYSTEM, PHASE 1.

Attorney Randolph stated that for clarification this would be in the total amount of $691,962.

Mr. Wyett made a motion to approve Resolution No. 17-96. Seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Sealed Bid No. 96-08 - Mid-Town Beach Dune Planting Program, Consideration of Resolution No. 18-96.

Mr. Bowser stated two bids had been received for the Mid-Town Beach Dune Planting Project. The low bid was $21,000, which was above the estimate of $18,000. Mr. Bowser stated that there was some fund sharing on this with the Town as noted earlier when the Town received $9,000 from the Garden Club and the United States Fish and Wildlife Services also provided a $9,000 grant to the Town. The Town would be applying for an increase in this grant money since the bids are higher, asking for 50% of the cost in hopes of raising the grant by another $1500. The shortage between the grant monies and the money available could be taken from the Mid-Town Beach Restoration Project. Staff recommended approval of Resolution No. 18-96.

Mr. Wyett made a motion to approve Resolution No. 18-96. Seconded by Mr. Shaw.

Attorney Randolph read Resolution No. 18-96 by title only.

RESOLUTION NO. 18-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO COASTAL MANAGEMENT AND CONSULTANTS FOR THE MID-TOWN BEACH DUNE PLANTING.

Mr. Bowser stated that the Resolution included the authorization for the Mayor to sign the agreement with the City of West Palm Beach for the Town to administer the water main portion on their behalf.

On roll call, the motion carried unanimously.

C. Appointments.

1. Architectural Commission - Two Three-Year Terms to Expire March 1999 and One Alternate Term to Expire March 1998.

Mr. Wyett stated that at this time it would be appropriate to recognize Mr. Hoffman has served on the Architectural Commission for a number of years and was willing to stand for the Landmarks Commission in lieu of the Architectural Commission; and Mr. Jeffrey Smith, member of the Landmarks Commission was willing to stand for the Architectural Commission, with the consent of the Town Council.

President Smith suggested the reappointment of Mrs. Laurel Baker for a second term, currently the Vice-Chairman of the Architectural Commission.

Mr. McDonald stated that if Mr. Hoffman did go from ARCOM to Landmarks, that would create another opening and, therefore, would change the voting. President Smith explained that Mr. Hoffman is an ARCOM commissioner finishing his first term and would be eligible for reappointment, and that the Town Council would not reappoint him if he was appointed to the Landmarks Commission. Mayor Ilyinsky stated that it was his feeling that Mr. Hoffman wished to be considered for reappointment to the ARCOM and if he did not make that appointment be considered for appointment to the Landmarks Commission.

Mr. Wyett stated that this was an unusual situation where the Council has 2 members of 2 commissions that would like to switch their positions. Mrs. Laurel Baker had faithfully served the ARCOM and normally they are reappointed to a second term. Mr. Wyett stated that with the confusion in the new system being used, he wanted to ensure that members of commissions did not lose their positions due to the new system.

Mr. McDonald stated that Council was still voting for the top 3 people. Mr. Moore stated that the system that was discussed was as Mr. McDonald explained, however, reappointments could be considered first, and then the remaining seats..

President Smith stated that the last time there were reappointments to the Zoning Commission it was done by motion.

The Town Clerk passed out ballots. Mrs. Smith stated that she wanted it known that any sitting alternate members in the middle of their terms would not lose seats.

Mr. Moore stated that the Council had also decided that any alternate who was not raised to a regular member by a vote count would not lose a seat as an alternate.

Mr. McDonald remarked that the issue that did need to be addressed, in view of the two people who wished to switch commission seats, was that Mr. Hoffman's term was up and interest had been expressed in going to another board. Mr. McDonald continued that although the Council was trying to establish a procedure that would work in the future and would not be changed every month, in this particular case it would not be fair to ignore his wish voting should be conducted independently.

Mr. Wyett expressed concern with the ballot before him. Normally, in previous years, the regular member with first term expiring would be voted on for a second term, but in this particular instance all 4 serving members (Baker, Hoffman, Bell and Deziel) could be passed over for permanent positions and anyone of the 15 people who recently applied could get the permanent position.

President Smith disagreed stating that Mrs. Bell and Mr. Deziel were in the middle of their terms and could not be unseated. They could be moved up to regular members, but they could not be unseated as alternates. Mrs. Smith stated there have been instances where alternates had not been moved up to regular member status.

Mr. Wyett stated that by a quirk of the system, any of the 15 people who newly applied could become the first two regular members. Mr. Shaw stated that whoever received the highest number of votes would get the seat on the commission.

Mr. Wyett commented that it seemed unfair to give the same consideration to a member who had faithfully served a term and to those who had not yet served at all. Mr. Wyett expressed his concern that the new procedure would not allow the Council to discuss the merits of each member and leave appointments to some type of chance in appointments.

President Smith remarked that appointments would not be an accident and that the sitting members of the Council have had the

Mr. Shaw suggested that the other way was to not vote for all 20 people and that would prevent someone from getting an 18th or 19th place. Mr. Shaw restated that he did not like the idea of ranking 20 people but would prefer to rank only the number that was needed to fill the position.

Mr. McLendon stated that the Council had yet to find a perfect system, but in his opinion the Council should vote on the regular members for reappointment, then vote for alternates that would be moving up to regular membership--then new people would be voted on for alternate positions.

Mr. McDonald stated that there was an application received yesterday and that name was on the list. Mr. McDonald questioned how this would be evaluated and commented that applications should be received by a certain time.

Mrs. Smith stated that the Council did not have a policy stating that if an application is received the day before appointments it could be considered. She asked that the Council members proceed with voting for the appointments and that Mr. Doney advise each applicant of the attendance requirements.

By ballots of the Town Council Laurel Baker was reappointed for a three year term, Lowry Bell was appointed for a three year term, Floyd Wideman and Dr. Marvin Rosenberg were appointed as alternate members of the Architectural Commission.

2. Landmarks Preservation Commission - Two Three-Year Terms to Expire March 1999.

By ballots of the Town Council Lindley Hoffman and Harrison Robertson, Jr. were appointed for three year terms, and Sari Wilkey was appointed as an alternate commissioner of the Landmarks Preservation Commission.

D. Other

1. Consideration of Request by Mrs. Jacqueline Cowell for El Vedado Road To be Renamed El Vedado Way.

Mrs. Jacqueline Cowell, 240 El Vedado Road, addressed the Town Council, stating that El Vedado Road should be renamed because it originally had been El Vedado Way in the 1920's; as well as it being a matter of practically because there is an El Vedado Road in West Palm Beach.

Winifred Anthony Sterns stated that she supported Mrs. Cowell, and from the time she was a child it had been named El Vedado Way, and that she would like to see a return to the original name.

Mr. Moore stated that there were several issues involved, and it was not simply a matter of changing the name. Several legal issues had to be addressed, such as the original plat that did state El Vedado Road. He added that there were notifications to post offices, county offices and many things that must be done with a name change on a road.

Mr. Moore stated that he and Mr. Dusey had asked for the consent of the neighbors on the street, asking for half of them to agree. There had been some question regarding the ownership of the property on the petition that had been sent to the Town. For those reasons, Mr. Moore requested the Town Council defer this issue until next month.

Mr. Moore stated he has not begun to calculate the cost of this name change, pointing out that changes would include the official maps, the notification to the various offices, the property appraiser's office, the clerk of the court. Mr. Moore stated a deferment of one month would give staff time to research more of what exactly had to be done, however, preferred a deferment to the May meeting in order to do proper research and calculation of costs.

Mr. McLendon made a motion to defer this issue until the May 14, 1996, Town Council meeting. The motion was seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. Consideration of Request by BellSouth to Review Town's Permitting Process And Related Issues.

Don Mathis, Regional Director of BellSouth, addressed the Town Council, stating that in the past few years there had been a situation in trying to work out agreements with the Public Works Department to provide services in the ever changing communications industry. The nature of their business is somewhat different than the nature of most other utilities; the policies and manuals and the way they had been working had come to a head in the past couple of seasons. Mr. Mathis stated that BellSouth wanted to honor town Council rules and regulations, however, they are also under an agreement with the Public Service Commission for telecommunication services.

The issues are how and when BellSouth can work and how service can be provided under the various regulatory bodies. BellSouth would require guidance from the Town Council in directing staff to work with BellSouth so that services could be provided to customers.

Mr. Mathis specified that when additional services come in or a new line was requested it must be provided. Most homes in the past have had one or two lines, however, in this day and age it was not unusual for homes to have between 6-8 telephone lines, requiring BellSouth to come in and change cables to provide service. Presently Town rules state that anything beyond 2 lines was not an emergency, and in some cases BellSouth is under the Public Service Commission guidance which disagrees with that ruling.

Another issue was the type of line requiring special facilities, in which BellSouth attempts to adhere to Town policies. Mr. Mathis stated there is debate concerning some of the fines, which will continue with the Town staff.

Mr. Mathis specified that he is asking the Town Council to direct staff to meet with BellSouth to work out some of these differences regarding providing telecommunication services to the Town of Palm Beach.

President Smith asked why Mr. Mathis thought the appeals process before the Town Council had been eliminated, as she had been in attendance when BellSouth appeared before the Town Council for special exceptions for services and had been granted permission to do the work, except between December 1 and May 1.

Mr. Mathis responded that the Public Service Commission required BellSouth to provide requested service within so many days of the request. Maintenance was a separate issue that was also regulated, and if a customer had a problem it had to be corrected. If BellSouth took the time to come for a special exception, they would be in violation of one regulatory body's rules while trying to meet the rules of the other regulatory body.

Mr. Mathis stated that in general construction they had worked very hard to do these in the summer months, however, there had been some overlaps.

Mrs. Smith described a problem in one case that she had been receiving correspondence on since August. It seemed that a customer saw telephone lines wrapped around the trees on Everglades Island and notified BellSouth in first in August, then again in September, finally getting a response in the beginning of October when BellSouth stated they would look into the problem. Then on the 5th of December BellSouth told the customer they could not do the work because the Town would not let them. Mrs. Smith expressed concern that this customer was not getting satisfaction, and commented that this was a two way street in the way the utility company responds.

Mr. Mathis stated that mistakes have been made, and offered his name and telephone number to guarantee that it would not be months for response in the future. He mentioned that there was an issue a few weeks ago where there was a question whether a cable was completely out of service or not and whether the request was an emergency. He noted that losing air pressure on an air cable that has paper insulation was not actually an emergency because it was not out, however, it needed to be replaced because interference on the line made the line worthless.

Mr. Mathis stated that with some municipalities there is an agreement that BellSouth will put all lines underground in every case as long as the differential is paid by the municipality.

Mrs. Smith responded that perhaps that would be looked at during review of the franchise renewal next year.

Mr. Mathis stated that BellSouth did need some relief in order to be able to provide the customer with the appropriate service.

Mr. McDonald questioned whether the problem was not being able to do some work because it was not considered an emergency, or the inability to get a permit quickly enough to do the work.

Mr. Mathis advised that there was a definition on what is considered an emergency and what was not. The need for service was not considered essential in the guidelines after two lines and was also an issue. Mr. Mathis continued that they had neglected in a few cases to pull a permit when a hole needed to be dug, but there was a question of when permits were required regarding easements and rights-of-way. He noted that the major issues were the emergencies, buried cables issue and permit issues.

Mr. Shaw questioned whether it was BellSouth's desire to go underground with cables, recalling a discussion at a prior Council meeting where BellSouth fought going underground.

Mr. Mathis stated issues are handled case by case. If there was a choice, and all things are the same, particularly the cost, easement availability, etc, BellSouth would not put poles in and would go underground with the cables. The question concerned cost issues.

Mr. Shaw stated that if BellSouth had a preference to go underground then that should take precedence over cost factors. Mr. Mathis stated that precedence becomes an issue in evaluation costs, with a significantly different cost being a trade off. One of the requirements of the Public Service Commission in the State of Florida was that BellSouth provide service at an economical cost because there are no regulated rates.

Mr. Shaw stated BellSouth was required by the Public Service Commission to have a long range plan, and that he did not think that the requirements of telephone lines in the Town of Palm Beach was something new, but had been ongoing for a number of years. He questioned how BellSouth's capital improvement program or upgrading program meets requirements so that they know where there are line deficiencies, and if there was a schedule was for 1996?

Mr. Mathis stated that they did have targets to eliminate cables, and to look at those cables in terms of the fill and services to the customers. In the smaller cables that feed throughout the Town of Palm Beach there was an issue regarding the inaccuracy of growth potential, and predictions could not be made regarding how much cable would go into disrepair in any given year.

Mr. Shaw replied that BellSouth knows, based on what is happening in the Town of Palm Beach, that there is a deficiency. Mr. Mathis disagreed and stated he would have to guess on a projection as to what would be needed on any given street. Mr. Shaw commented that since Mr. Mathis had already outlined a history of expansion it could be used as a template for identifying deficiencies next year.

Mr. Shaw indicated that BellSouth needed to review the threshold level, and if 85% is not the proper point, perhaps it should be lowered. Mr. Shaw suggested that what the Town had today would not work next year with regard to the lines, and emphasized that BellSouth should work with the Building Department to see projections for expansion or areas to be rebuilt.

Mr. Mathis replied that they had done this and that some of the highest technology in the country was located in the Town of Palm Beach, including fiber optics. Mr. Mathis reiterated that they were studying and would continue to study what could be done and how it could be provided.

In response to the question of Mr. Shaw asking what BellSouth would ask for today, Mr. Mathis responded that he would ask for the rule regarding two lines to be removed because it did not meet the 1990's and what people had in their homes. Additionally, he would ask that he be able to meet with staff to come up with a better definition of the definition of an emergency.

Mayor Ilyinsky questioned the situation of someone calling BellSouth and requesting five lines in a home where there had previously been one old line, and asked if BellSouth would tell the customer that the work could not be performed at the present time because of the Town ordinance that prevented work during certain times of the year? The Mayor questioned how many people were angry with BellSouth for telling the customer the procedure, commenting that he had not heard one complaint from any citizen in the Town that they are not getting top notch service from BellSouth.

Mr. Mathis stated that when a customer from the Town orders a line, employees have no clue regarding the ordinances in the Town of Palm Beach. Construction employees deal with these problems, and Mr. Mathis expressed that there were a number of customers who had called him with these problems, and if the situation did not exist he would not be before the Council today.

The Mayor suggested the Council nominate an Ad Hoc committee of one person to sit down and discuss these issues with Mr. Mathis and other members of his team, along with Mr. Bowser and Mr. Dusey.

Mr. Wyett stated that people have called him on this issue, most recently the people who moved in and had 3 lines but wanted more, who were told they must wait until the end of the season. Mr. Wyett stated that the number of lines a customer had should be dictated by their needs and nothing else.

There was no action taken on this issue, however, the Council directed Mayor Ilyinsky, Mr. Dusey and Mr. Bowser to meet with Mr. Mathis of BellSouth for discussion.

President Smith stated that the Mayor would be the mediator and asked that BellSouth not do work or request doing work in the area of Publix, and mentioned that telephone trucks are sometimes located too close to the end of the streets by the telephone boxes thereby blocking the view of cars pulling out onto cross streets.

COMMENT TO THE COUNCIL:

Before going on to the next item on the Agenda, Mrs. Smith recognized Mrs. Paulette Burdick of the Palm Beach County School Board.

Mrs.Burdick addressed the Town Council, thanking the Town for working with the School Board regarding the closing of the Palm Beach Middle School. Mrs. Burdick stated that the decision to close the middle school was based on educational soundness. Foreign language, yearbook publications and journalism classes, advanced placement classes and more opportunities to use the sophisticated science labs and technology labs were the main basis for her personal decision. Mrs. Burdick continued that in order to prepare the students for the year 2000 to be able to be technically qualified to get a job in the work force, it was a necessary decision. Mrs. Burdick declared she was looking forward to keeping the lines of communication open between the Town and the Palm Beach County School District and offered the Council the opportunity of a tour of the Conniston Middle School to see the labs and the opportunities the children would have at this school.

3. Consideration of Personal Communications Services (PCS) Wireless Technology - Request for Towers Siting and Related Issues.

Mr. Doney stated that the back up on this item was the memorandum dated February 23, 1996, from Mr. Jakubiak. The telecommunications issue and the Telecommunications Act of 1996, a copy of which has been provided, addressed concerns and local zoning authority. Mr. Jakubiak, Attorney Randolph and Mr. Moore had looked into this matter further and each of them would address this matter. Mr. Doney noted that this would be an ongoing review process because the rules implementing the law were still in the rule-making process.

Mr. Jakubiak stated that the tower for telecommunications service could be utilized for a number of different types of services. Technology could be anywhere from digital telephones, paging systems, cellular systems and, because of the Telecom Act, it would breed communication competition. The issue was particularly important because it carried zoning implications.

The legislation currently stated that a municipality could not arbitrarily reject requests from a company to place a tower on public or private property, nor could definitely not reject a tower because of health hazards if the tower meets the FCC emission standards. The issue in regard to CityTel was a recommendation by the Florida League of Cities. The Florida League of Cities held regional meetings and indicated to municipalities that there were a number of requests currently for tower placement throughout the United States. The League also indicated that CityTel was the only company they are aware of that they are recommending for providing a multi-use tower in a municipality. A multi-use tower would be placed on public property as opposed to private property and would generate revenue for a municipality. The Florida League of Cities additionally recommended that a municipality try to implement changes in the zoning code to restrict the placement of towers by putting in what is called a " co-location requirement." This meant that when a company came in for a permit, the Town would have them place their tower transmitting location on the existing tower or the future location that was identified.

Mr. Jakubiak stated that CityTel was requesting an authorization letter to review the property of the municipality and would not place a tower within the boundaries of the municipality unless the tower was requested.

Mr. McLendon asked how many towers might be anticipated?

Mr. Jakubiak responded that he would be discussing a couple of issues, one would be towers which could be 65, 85, 120 feet, and the other locations would be for antenna or stealth antennas or towers which are built onto a structure and blend into the structure. Those fill in locations should be of more concern, but staff was hoping there would not be a request for a tower, but if there was the Town would have to take action. Mr. Jakubiak stated that there would be a tower for every two square mile area.

Mr. Shaw stated that the Town did not have the ability to deny the setup of a tower as the proposed legislation now existed.

Mr. Jakubiak stated it could be denied, but it would have to be in writing and had to be supported by evidence. Mr. Jakubiak indicated that he had received contrary information as to who the appellate authority would be...either the court system or the FCC. If it was the FCC, that would probably be to the detriment of a municipality.

Mr. Shaw stated that, if he understood the suggestions of staff, the first thing the Town would need to do to protect itself from multiple tower requests would be to have a zoning requirement that the Town enter into a shared tower option. Once that was enacted by the Council, the tone would be set for any applications. Mr. Shaw questioned how a request to change the zoning would meet with Citytel's request to review the Town's facilities?

Mr. Jakubiak explained that CityTel would have to first secure maps of the Town and survey locations to find specific locations in accordance with a grid as to how these towers should be placed. By having an authorization letter signed, CityTel would be given permission to come onto public property and survey.

Mr. Shaw stated his concern at this particular point was the fact that CityTel was the only one that was willing to share revenue. There were many people willing to erect towers, but not willing to share revenue, while CityTel was asking for the franchise and indicating they are willing to share revenues with the Town. Not knowing what the future is, Mr. Shaw expressed concern with giving CityTel an option to do this without having any form of bidding or the option to look at what other revenue formulas may occur a year or two later. Mr. Shaw declared he had no problem with a company coming into the Town to look at the potential, but did not think CityTel was willing to do that without having the agreement to tie the Town to them for a period of time.

Mr. Shaw questioned whether CityTel had given any indication whether they would be willing to leave the franchise fee negotiable or propose a matching fee should another company offer the Town more. Mr. Jakubiak stated he had not entered into that part of the negotiations.

Mr. Wyett commended Mr. Jakubiak for being on top of the Telecommunications Act of 1996 and knowing what is going on with this issue. However, Mr. Wyett emphasized that no one really knows what is going on and there is a difficulty in reacting to this program. Mr. Wyett stated that according to his calculations regarding towers being located every two square miles, there would be five towers located in the Town. Mr. Wyett commented that it was possible that these towers would not have to be located in the Town; depending on the technology they could all be located in West Palm Beach. The towers have a two square mile area and putting a tower on the island would send the radio waves out into the ocean or the lake. Mr. Wyett pointed out that the Town would be in the radius of towers that would be placed in Lake Worth. Mr. Wyett stated he would rather see towers in Lake Worth and West Palm Beach than erected in this Town.

President Smith asked Mr. Moore to speak to the issue of whether or not the Town has had any requests for towers in the Town of Palm Beach.

Mr. Moore stated there had been an inquiry to the zoning administrator for the Town regulations for a 65 foot tower and two inquiries on very small antennas (four inches in width and four feet in height). These inquiries were for installation on private residences.

Mr. Jakubiak noted that the Florida League of Cities has stated that the municipalities should be proactive on where the tower placements are, and that they should be on public property before they go on private property.

President Smith questioned the legal position if the Town did not have an ordinance or zoning regulation controlling the towers when individuals from residences request towers or antennas on their houses?

Attorney Randolph responded they would have to abide by the regulations currently in effect such as set backs, height, and all other regulations that exist in the Town's zoning ordinance. He added that every residence could have a tower if they met the provisions of the Town's code, however, there was another question as to whether or not these were commercial and if the Town could deny the request based on the towers going into a residential area.

Mrs. Smith stated that she has had people mention to her that they are not getting good reception on their various cellular machines and would like to have the power that is added by the towers, with the tower or the antenna attached to the chimney or the highest point on their house. Mrs. Smith questioned how this could be controlled?

Mr. Moore replied that this would be controlled by the zoning ordinance that currently permits antennas and allows antennas to be 40% of the height of the house above the roof.

Mr. Wyett stated that he was not aware of many antennas in the Town and suggested that perhaps the Council should consider putting zoning in progress to protect the Town.

Mr. Moore stated that this could be accomplished after a study was done. Mr. Moore stated there would have to be a purpose to have zoning in progress, but staff could certainly do the research.

Mr. Doney stated that it was his understanding that there was no date certain by which any municipality must enter into an agreement with CityTel. Mr. Doney asked if Attorney Randolph believed that the zoning in progress action by the Town Council today would give staff time to sort out what was evolving?

Mr. Wyett pointed out that the zoning in progress would give the effect of a prohibition of the placement of towers in Town while it is being studied.

Attorney Randolph stated the Town Council could give consideration to that, however, the Federal Communications Act stated that there should not be a prohibition against these towers, only the ability to regulate them. Attorney Randolph continued that the Town would have to be very definitive in where the towers would be allowed during the period that was going to be studied or they would indeed have a prohibition. He suggested that the Town Council be very specific during the study period, perhaps stating that no towers could be erected more than a certain height.

Mrs. Smith questioned whether it would be possible to list several properties where it would be possible to place towers if the requests came in during the zoning in progress, suggesting locations such as the fire station, Town Hall, etc. that could be stipulated as possible locations during the zoning in progress procedure. Attorney Randolph agreed that was a possibility because the Council would not be prohibiting them in the Town.

Mrs. Smith stated there would be a prohibition, but was thinking about something that was going to happen within the next 6-8 months and since there were no requests in the Town it is not locked into CityTel. Mrs. Smith noted that because this is a municipality, items such as this must go out for bids..

Mr. Jakubiak stated that the Town would not be locked into CityTel by giving them the authorization but would simply be allowing them to survey the property and monitor where the sites should be.

Mr. Shaw urged the Council to make a decision to minimize the number of sites available on the island, to see that the zoning required the multi-use tower, and to make sure that the municipality is the one that would be able to get the revenue instead of a private venture on what would be considered non-commercial properties.

Mr. Wyett stated he is very concerned with inviting anyone in to do a study because that may accelerating proposals. Mr. Wyett was in favor of seeing personal communication service as the way of the future and observed that it was not practical to put towers on the island because of the narrowness of the island. Mr. Wyett affirmed that he wanted the zoning in progress to prevent any premature action.

Mr. Shaw remarked that the Town would not know if the zoning in progress would fall in line with FCC thinking because they may say it can only be for a 3 month period. Zoning in progress only would give the Town an opportunity to determine where to put the towers or how they should be treated. Mr. Shaw suggested the Town do a review or have the island analyzed to give the Council a better position to devise the zoning to make sure they are going in the right direction. Mr. Shaw stated that what the Town did not want to see is south end condominiums suddenly turning into antenna farms because zoning did not stipulate shared or common antennas. Mr. Shaw stated that zoning in progress was important, but he would also like to see the review process of where these would be located.

Mr. McLendon emphasized that the Florida League of Cities recommended that the Town be active instead of reactive, and did not see the harm in getting as much information as possible and to have an analysis done by a knowledgeable firm.

Mr. Jakubiak pointed out that personal communication services are located low to the ground and everyone seemed to be talking to antennas on top of buildings. Mr. Jakubiak stated that when talking about a tower there was potential for six providers per PCS, and other providers for cellular and paging services. This was why CityTel provided multi-use towers. Mr. Jakubiak was presently asking municipalities for authorization, and staff would make sure there would be no commitment whatsoever to CityTel and the work would be done at no cost to the Town.

Mr. Wyett suggested that the Town establish strong communications with the City of West Palm Beach on this subject.

Mr. Wyett made a motion that the Town enact zoning in progress that would preclude the location of towers in Palm Beach until the matter can be studied with a provision or ability to allow anyone who wants to place a tower on town owned property to approach the Town; work with the City of West Palm Beach to discuss the placement of towers; and to place this issue on the April 9, 1996 Town Council meeting agenda for discussion.

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

4. Consideration of Proposal by Resource Management International, Inc., dated February 13, 1996, for Town-Owned Information Superhighway.

Mr. Jakubiak reported that he contacted the City of Lakeland to see what had been done as far as telecommunications. Lakeland had installed their own fiber optics system, provided their own telephone service, and connected their computers at a cost savings on their network.

Mr. Jakubiak stated he was seeking policy directive from the Town Council as to whether or not they would like staff to research any of these items and report back to Council. Mr. Jakubiak pointed out that this would mean entering into a private/public partnership for a community owned system which would take some research.

Mr. Shaw commented that he would not be interested in initiating the correspondence, but would not be opposed to being the recipient of a private entity coming to the Town with their proposal.

Mr. McLendon remarked that he was not interested in the Town of Palm Beach owning a cable system.

Mrs. Smith stated that she believed that Palm Beach County and the School District would of more interest to a private entity.

It was the Council's decision to take no action on this issue.

5. Consideration of Consultants' Competitive Negotiations Act Pursuant to Florida Statutes - Selection Committee Formations for:

a. Civil Engineers
b. Electrical Engineers

Mr. Bower addressed the Town Council, stating that the Town hires consultants using the Consultant's Competitive Negotiations Act by signing continuing multi-year contracts. Consultants are hired on an as-needed basis. Town policy provides the opportunity for the Town Council to sit as the Selection Committee. If the Council decided not to sit as the Selection Committee, it would be formed by the Town Manager.

Mr. Bower stated the Town has the need to hire Civil Engineers and Electrical Engineering firms and he asked direction from the Town Council. Mr. Bower established that the present Civil and Electrical Engineers being used by the Town have been used for four to five years, and pointed out that the contract he is seeking to do now would expire in January, 2001, or 5 years.

Mr. Bower stated that the advertisement will state that the Town may chose up to 3 firms because sometimes there are so many projects that one engineer gets backed-up and deadlines cannot be met. Also, some firms are better at particular kinds of work or are specialty firms.

Mr. Shaw agreed that choosing 3 qualified firms would give the Town more flexibility and would work in the Town's best interest with time constraints.

Mr. Doney stated that historically, the Town Council had never elected, as a body, to sit as the Selection Committee. The administrative procedure that is in place, 2-89-2, would have the committee made up of the Chairman of the related Town Council committee or alternatively the committee member. In this particular case, it would be the Public Works Committee. Also on the Committee would be the Town Manager or his designee, Director of Public Works or his designee and another individual as deemed appropriate by the Town Manager.

Mr. Wyett made a motion to appoint Mr. McLendon to work with Mr. Dusey, Mr. Bower and Mr. Difiore to review civil engineering firms; and, Mrs. Smith to work with Mr. Dusey, Mr. Bower and Mr. Kartrude to review electrical engineering firms. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

6. Audit Report

a. Audit Report for Fiscal Year Ending September 30, 1995 - Discussion and Acknowledgment of Receipt.

Mr. Doney stated that as indicated in the back up memorandum dated March 4, 1996, the audit for the fiscal year ending September 30, 1995, was completed by Town Auditors. The report indicated the year end position of all funds and a full report that was concluded in accordance with the Florida Statutes and also the federal laws in accounting regulations.

Mr. Doney stated the audit report and overall general observations indicated that the Town continued to remain financially sound. The general fund, which accounts for the majority of Town operations, had an undesignated fund balance as of September 30, 1995, of $6,258,488 which represented approximately 21% of the FY 96 budget of $29,570,588. This figure represented two months of operating expenses and was considered prudent in recognition of the many emergency problems that the Town could experience due to the geographic location of the Town and the age and condition of the Town' infrastructure. Mr. Doney emphasized the potential of hurricanes and other disasters, pointing out that if there was a very serious hurricane, the Town could not budget enough monies.

The budget remained consistent with the Town Council's previously announced and stated policy of maintaining an undesignated general fund balance of approximately 12-15%. The other funds such as the Enterprise Funds, The Debt Service Funds, The Insurance and Pension Funds also remained sound.

Mr. Doney advised the Council that the Undesignated Capital Improvement Fund balance, after the Council authorized funds this morning, still left an Undesignated Capital Improvement Fund balance of $206,477, which was considered appropriate according to the scale and scope of the construction projects the Town has ongoing.

Mr. Veil, one of the auditors, stated that the Town seemed to be financially sound and has adequate general fund monies. The Capital Improvement Program was available in the event of any problems and the self-insurance fund seemed to be well funded.

Mr. Doney stated that the appropriate action for the Town Council to consider, pursuant to Section 11.45 of the Florida Statutes, required the audit report be received at a regular meeting of the governing body within 30 days from receipt of the audit. If the Town Council approved such a motion, staff would then transmit the audit to the Auditor General, Department of Revenue and other required agencies pursuant to Florida Statutes.

Mr. Wyett made a motion to accept the Audit Report. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw noted that the Town Manager agreed to go along with all the recommendations of the auditors. One of the recommendations concerned employees not filling out Statement of Financial Interests and Mr. Shaw encouraged Mr. Doney to have these forms completed. Mr. Shaw requested a list at next April's meeting of those that have not complied. Mr. Doney stated that this would be covered under the next topic.

b. Management Letter and Staff Response - Acceptance (Pages 54-58 of Audit Report).

Mr. Doney stated that the Audit Report (pp. 54-58) indicated the Town Auditor's report to Town management and staff's responses. The reason for doing this is statutory. Mr. Doney advised he would highlight those statements that he felt were important, staff actions and responses.

The first item concerned the Actuaries Benefit Reporting Form and staff concurred with the information submitted. Mr. Doney stated that staff has implemented the procedure and it is in place.

Retirement File Documentation. Staff concurs that the retirement file checklist would assure that all necessary retirement forms are completed and included in each retirement file. The Personnel Department has implemented the checklist and is now reviewing each file to assure compliance.

Board approval of retirement applications. Staff concurs that all retirement applications be approved by the Retirement Board, except for those that are automatic by death of an employee. The Retirement Board conducted quarterly meetings, and the Town has had employees retiring on a month's notice. Mr. Doney stated staff would be sure this is handled by paper notifications.

Encumbrances. Staff is in the process of implementing a computer program that would list all purchase orders encumbered for which no activity has taken place for 12 months or more. The Finance Department would review this list with the Public Works Department on a monthly basis to ensure that all projects are scheduled to commence or have all monies returned to the general fund balance that have been indefinitely deferred or canceled.

Building Permit Deposits. Staff concurs that the Building Department should generate a monthly report to reconcile deposits held pending the issuance of a building permit. The Finance Department was currently working with the Building Department to implement this procedure.

Mrs. Smith stated that each Council member has read the report and did not see a need to review the audit response item by item.

Mr. Doney stated that since Financial Disclosures have been in effect, the Town Clerk handles notification to all elected and appointed officials affected by this requirement. Mr. Doney stated that he would provide Mr. Shaw with a list.

Regarding the Building Permit Deposits, Mr. Shaw asked if they were held as a check or the funds deposited and held somewhere else. Mr. Doney stated the policy was changed this year so that when a check is received it was deposited on the same day or the next.

Mr. Shaw stated that, regarding the single competitive bid process, that exceeded $10,000 there was some confusion.

Mr. Doney responded that this situation occurred because initially it could have been a sale that did not look like it would exceed

$10,000 but began to accumulate. According to Mr. Doney, the issue concerned the Personnel Department, and from time to time they had used employment agencies for part time assistance. The accumulative total for those engaged services had exceeded $10,000, and staff felt that, based upon experiences with employment agencies in the past, that the agency was most qualified. The concern of the auditors was that when it exceeded the accumulative of $10,000 the Town should be giving consideration to bidding out this service.

Mr. Wyett stated that the Supervisor of Elections Office is in the process of mailing the Financial Disclosure Forms to each elected and appointed official and they had not yet been received.

Mr. Shaw made a motion to accept the Audit Report, Pages 54-58. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

7. Consideration of Authorization for Attendance at the Florida Shore and Beach Preservation Association's Workshop on March 14, 1996, in Tallahassee.

Mr. Doney stated there was a memorandum concerning the Florida Shore and Beach workshop from Mr. Dusey dated February 23, 1996, and although he did not believe that there was a necessity to have any staff member attend this meeting, it would be an opportunity if an individual Council member or the Mayor desired to attend.

Mrs. Smith remarked that if the Town Manager did not think there was anything to be gained by attendance at this meeting, then there was not much merit to any Council member traveling to Tallahassee at his/her own expense to attend.

Mr. Wyett stated that he was not suggesting that a Council member attend, but questioned whether the Town had an arrangement with any lobbyist in Tallahassee that should be in attendance on the Town's behalf.

Mr. Doney replied that the Town does have a lobbyist, but for this particular type of service, the Town relies on the Florida Shore and Beach Preservation Association through the Director and their legislative lobbyist.

Mr. Wyett stated that funds were very competitive, and while he did not want to miss an opportunity, he did not want to waste money either. Mr. Doney stated that it is in the Department of Environmental Protection budget request for next year and the current year and from a staff perspective, felt the Town was properly positioned. Mr. Doney added that Representative Merchant was supportive, as was the County Commission. The Town was on the County Commission's legislative funding priority list for these projects, namely the Lake Worth Inlet Management Plan Implementation.

Mr. Shaw made a motion to approve attendance of anyone who would like to attend the workshop in Tallahassee, but permitting no one to speak for the Town. Mr. Wyett seconded the motion, which upon roll call, carried unanimously.

8. Consideration of Donation from Saks Fifth Avenue - Designation of Use of Donated Funds.

Mr. Doney stated that the amount reported in his letter of March 4, 1996, was $3,570, however, the Town has received an additional check from Saks Fifth Avenue to raise that total to $3,610 for the consideration of the Town Council for the appropriate use of the funds. As indicated, Saks Fifth Avenue's idea of a second all-terrain vehicle for the Police Department was based upon some media coverage of the first vehicle they had. Saks was aware that vehicle was given about 10 years ago through a donation from Saks Fifth Avenue. Mr. Doney advised there was a need for improved audio visual equipment in the Chambers and toward that end Mr. Frank and Mr. Moore issued a memo dated February 16, 1996, with some ideas.

Mr. Shaw had provided some suggestions on the audio visual potential improvements. The biggest difficulty over the years has been because the Chambers was a multi-use room which necessitated the moving of the camera and trying to obtain easily available equipment.

Mr. Wyett suggested that the Town Manager meet with each individual Council member to hear ideas and put together a total presentation.

Mr. Shaw stated that Mr. Frank and Mr. Moore would be in the best position to receive input from the Council members.

Mr. McLendon stated that the article in the newspaper indicated the beach vehicle for the Police Department was the primary indication. Mr. McLendon understood that the group of mid-town condominium associations were trying to gather funds for this second vehicle. Once the condominium associations saw Saks Fifth Avenue donate the money for the vehicle, they decided to just pay the differential. Mr. McLendon noted that there were organizations that would be willing to donate toward the purchase of the second beach vehicle.

Mrs. Smith explained that Saks Fifth Avenue only suggested the beach vehicle and it was up to the Town Council to designate the use of the money.

The Police Chief stated that the Town did need a second all-terrain vehicle, that would also require another trailer. The second vehicle would require approximately $10,000 - $12,000. The Police Chief had discussed this with the Town Manager and the conclusion had been that the more immediate need was to update the audio visual equipment in the Chambers because it was used by all departments and citizens.

Mr. Doney stated that staff would consult with someone to design a proper system that could be brought back to the Council for their consideration.

Mr. Wyett made a motion to authorize the Town Manager to study upgrading the audio/visual system in the Town Council Chambers with the proviso that the donation from Saks Fifth Avenue can be used for the upgrade. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

9. Consideration of Adding the Issues of the Number of Meetings Held by the Architectural Commission and Requests for Demolition of Houses as Reviewed by the Architectural Commission to the April 9, 1996, Town Council Agenda.

Mr. Wyett made a motion to add the above two issues relating to the Architectural Commission on the agenda for the April 9, 1996, Town Council Meeting. The motion was seconded by Mr. McLendon and on roll call carried unanimously.

Attorney Randolph stated that the Architectural Commission code provided that two members of the commission shall be architects. Specifically, the code stated that at least two members, but not more than three members of the commission, should be registered architects in the State of Florida.

Mr. Randolph stated he did not know the professions of the members appointed earlier, but if the Council was not assured that there were two registered architects as part of the 7 member commission the Council would need to review the vote.

Mr. Moore stated that the code stated that 2 members, not alternates, must be registered architects. Currently, the board had Mrs.Gingras as a member and Mr. Lowry Bell is a registered architect and as an alternate member. Mr. Moore stated that in order to fulfill the requirement of the ordinance, Council would need to appoint Mr. Bell as a regular member or appoint someone to the commission other than had been done in the morning.

Mr. Shaw made a motion to amend the previous vote, and to appoint Mr. Lowry Bell a full member of the Architectural Commission and Mr. Wideman as the alternate member. Mr. McLendon seconded the motion.

Mrs. Smith stated that Mr. Hoffman, who is a registered architect, was up for a second term. Mr. Hoffman had said that if the Council so desired he would move to the Landmarks Commission. Not being aware of the condition that there had to be 2 regular members that were registered architects on the commission, Mr. Hoffman had not been reappointed and Mr. Bell remained an alternate as did the other alternate, Mr. Deziel. Mr. Wideman had been elected as a regular member, and Mrs. Smith stated that due to a lack of information, there had not been a proper vote.

On roll call, the motion was approved by a vote of 4 ayes and 1 nay vote, with Mrs. Smith casting the nay vote.

10. Discussion of Parking Conditions at the South Fire-Rescue Station.

Mr. McDonald stated he would like the Police Department or the Fire Department to establish some guidelines as to parking allowed for people that use the fire house for meetings.

Mr. Wyett confirmed that he has had numerous conversations with the Police Chief and the Town Attorney. The Town Attorney had informed Mr. Wyett that the Town could not make any special provisions as to the parking. Mr. Wyett suggested that as a motion of this Council, they authorize that there shall be free parking on the first Tuesday of the month between the hours of 1:00 p.m. and 5:00 p.m. for all residents who wish to park in the area immediately south of the Fire Station.

Mrs. Smith stated that the procedure would be to make a motion to place this item on the next agenda. Mr. Wyett stated that he was asking for an emergency process because the Citizens Association that uses the Fire Station would meet the first Tuesday of this coming month and they either should get a one month additional free parking or resolve the issue now.

The Police Chief did not consider this issue to be an emergency, and stated that there have been groups that meet at the fire house and it had been the Police Department's policy to enforce parking regulations. The Police Chief noted that this was a matter of policy and if the Town Council wanted to pass a resolution to cover this issue to give the Police Department contrary direction, the Police Department would be happy to accept it.

Mrs. Smith remarked that it was policy that the Town charged for rooms used by other organizations. Mr. Doney stated that the Town had such a policy.

The Fire Chief addressed the Council stating that the problem was the parking and not the meeting room. The Chief preferred to continue handling the meeting room as had been done. The Chief commented that he used an application form similar to that used by the Recreation Department, and had not had a problem with the meeting room. The problem was simply the parking, and the Chief stated he had a long-range plan where the sod could be stabilized in the area between the fire station and the south parking lot to be used on the days of meetings for a parking area. The meeting room was being used anywhere from 8-10 days a month. A portion of that use was by the Fire Department or the Police Department.

Mr. Rodney Fink, Co-Chairman of the Association South of Sloans Curve, addressed the Council stating they would appreciate parking arrangements. Mr. Fink stated his association met the first Tuesday of every month, November through May, from 2:00 p.m.

until 4:30 p.m. There was no other area in the vicinity of the fire station where the members could park.

Mr. McDonald made a motion to add the issue of parking conditions at the south Fire-Rescue Station to the April 9, 1996, Town Council agenda. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XIII. COMMUNICATIONS FROM CITIZENS

There were no comments from the public.

XII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR FEBRUARY, 1966

Mr. Shaw made a motion to approve the warrant list and fund expenditures for February, 1996. Mr. McLendon seconded the motion. On roll call, the motion carried unanimously.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of February 28, 1996 - Minutes Available in Town Manager's Office.

The Major Matters were:

B4-96	Addition, New Facade, an New Roof at 180 Barton Ave. requested by Joseph J. Bianco - deferred.
B6-96	Enclose Courtyard, New Loggia and Tennis Pavilion at 1300 North Ocean Way, requested by Mr. and Mrs. Paul Van Der Grift- deferred.
B8-96	Addition and Roof Change at 535 South County Road, requested by Alice Bush Gronewaldt - approved.
B9-96	Addition at 346 Crescent Drive, requested by Robert Lloyd George - approved.
B10-96	Addition at 159 Dunbar Road, requested by Mr. and Mrs. Stefan Richter - approved.
B11-96	New Storefront at 224-A Worth Avenue, requested by Revillion, Inc. - deferred.
B12-96	New Duplex at 253 Seminole Avenue - deferred.
B13-96	Demolition and New Residence at 1204 North Ocean Blvd., requested By Dr. and Mrs. Marvin Rosenberg - deferred.
B14-96	Demolition and New Residence at 1557 North Ocean Blvd., requested By Jonathan F. Rappaport - approved.
B15-96	New Facade at 255 Southland Road, requested by Robert Malesardi - Approved.
B16-96	Front Entry and Driveway at 576 Island Drive, requested by Richard Greenfield - approved.
B17-96 and C60-95	New Residence at 286 Jamaica Lane, requested by Sid H. Eibl - deferred.
B18-96	Additions and Roof Change at 202 Kenlyn Road, requested by Jeremy And Anna Abbott - deferred.
C2-96	Garage Addition at 214 Plantation Road, requested by Robert Deziel - deferred.

Mr. Wyett made a motion to approve the major matters previously considered by the Architectural Commission at its meeting of February 28, 1996. Mr. Shaw seconded the motion. On roll call, the motion unanimously carried.

B. Appeals

1. Appeal of Administrative Decision of the Director of Planning, Zoning And Building by Ronald K. Kolins on behalf of Palm Beach Towers And Palm Beach National Bank, located at 44 Cocoanut Row.

Mrs. Smith stated that as a Director of a local bank and after discussions with the Town Attorney, so that there will be no question of impropriety, she would recuse herself from participation in this issue.

Mr. Kolins stated that he is requesting that Palm Beach National Bank be allowed to put in a small branch office in Palm Beach Towers in an area that originally was occupied by a stock brokerage firm. Normally a determination like this would be made by staff, however, Mr. Kolins did believe that staff desired Council consideration. Mr. Kolins stated that technically they were required to file an appeal and must submit to the Council for a possible approval. There were 29 commercial units in the Palm Beach Towers

The proposal was for a small bank of approximately 840 square feet. When the property converted from a hotel to a condominium the Board stated that use substitutions must involve the same type or kind of use. Mr. Kolins established that it was clear that a bank and a stock brokerage were certainly the same type or kind. This could be measured in one of two ways: in the Town code today and for the last 10-12 years, the Town had equated banks and stock brokerage firms under the definition of banks and financial institutions. That was a recognition that stock brokerages provide checking accounts and other services that banks traditionally provided. Secondly, they were the same type or kind in terms of the intensity of use, which was usually measured by the demands on parking. Under Town code, among others, banks and stock brokerages had the same intensity and requirements for parking. To allow Palm Beach Bank to come into Palm Beach Towers would not change the intensity of the use or change the type or kind of use.

Mr. Kolins emphasized that to allow this bank to be in Palm Beach Towers would be a tremendous service and benefit to the residents of Palm Beach Towers. Many of the residents of the Towers are elderly, making getting out and about sometimes difficult, and in terms of safety it would beneficial to the residents to have the bank in the building.

Mr. Kolins stated that it was on this basis that the request was being made to the Town Council to approve the authorization for Palm Beach National Bank to locate an office in Palm Beach Towers.

Mr. Moore stated that Mr. Kolins outlined the case very well, however, added that in 1973 when the Town Council heard this variance and conditionally approved it, it did specify that the uses could not be substituted for others of a different kind, but could be substituted in type or kind. Mr. Moore stated this was the definition that the Council was looking at, whether or not the definition of a financial institution, which included stock broker firms that came into the ordinance in 1985, would be considered type and kind when it was not part of the ordinance in 1973.

Mr. Moore explained that this was a complicated issue because it was a policy issue of the Council in 1973, and in consultation with the Town Attorney it was concurred that this matter should be brought to the Town Council in the way of an appeal for a determination of the facts today.

Mr. McDonald thought that on a strict interpretation of the documents he would have to vote to deny the bank being placed in the towers. Mr. Shaw stated he would not do that because he is not opposed to the bank being in the building and if the residents wanted the bank it should be allowed. Mr. Shaw stated he did not want to deal with this piece-meal and would prefer to have this deferred for one month to allow the staff to come up with a solution for all of the space as opposed to this one space.

Mr. Wyett asked if this Council could override the action of a previous Council. Mr. Moore stated that what was before the Council today was an interpretation, not a rehearing of the original variance or a new hearing.

Mr. Wyett concurred with the Palm Beach Towers Condominium attorney in finding that a stock brokerage firm and a bank are both financial organizations, and moved for approval. Mr. Shaw seconded the motion, and added that this Council needed to go back and review the intent of the Council of 1973; that financial institutions and stock brokerages were considered one.

Mr. Shaw stated he knew this was commercial space and the idea of commercial space is to bring people into it to engage in business. Mr. Shaw wanted to make it very clear that from his perspective, Palm Beach National Bank was inviting people to come into the building, thus adding a commercial use. Mr. Shaw wanted the residents to understand that they were inviting a commercial use that would bring additional traffic to Palm Beach Towers.

Mr. Kolin stated that the specific use of the space in question was a real estate office, however, at one point in time the space had been used by a stock brokerage firm.

Mr. Moore expressed that this presents another problem in that it was staff's understanding that the space in question was retail space and not office space. Mr. Moore pointed out that the intensity of parking for office and retail vary by 250 square feet per office and 200 square feet for retail. Mr. Anderson was informed, and the attorney representing the Towers, was informed that the only space that could possibly be used was one that had been previously occupied by a retail firm and not an office. Otherwise the intensity of parking would not work, making this a more intense parking use.

Mr. Kolins stated that if indeed the real estate office required one space per each 250 square feet as opposed to one space per 200 square feet, no additional parking was provided or required to be provided when the real estate firm went into that space. Therefore, the parking today for that space was as it was when it was originally a stock brokerage firm. In that respect there had been no change in the intensity.

Secondly, Mr. Kolins stated that in Section 6.20 of the Code, the parking code, subparagraph 5, it lumps the following uses together: retail, commercial, personal service establishments, banks and financial institutions. All of those are required to have one parking space per 200 square feet. Mr. Kolin believed that real estate businesses would fall within that grouping of services, and if it did not all the parking for this use was based on the stock brokerage when it was originally converted.

Mr. Moore referred to Section 38.2 of the Definition of the Codes, Offices and Professional Services, administrative offices, establishments providing professional services such as lawyers, doctors, insurance agents, real estate brokers, consultants, interior designers, architects and engineers. The parking requirement for the offices would be one parking space for each 250 square feet as opposes one space for each 200 square feet for retail.

Mr. Moore stated staff has gone through lengthy discussions with the applicant prior to all of this to make a determination because there was another person interested in having this space occupy a prior office and were told they could not do it based on the parking problem. It was the understanding of staff that they had secured space that had previously been retail. If there was a non-conforming situation as to parking and a change in intensity of use from retail to office, one could never go back to retail. Mr. Moore stated this was a non-conforming parking situation at Palm Beach Towers today.

Mr. Kolins asked if there was no change in the parking and for these uses collectively when it went from a stock brokerage to a real estate office. Mr. Moore stated that the conformity would have been reduced. From 1973 until 1980 there was no definition for office or stock broker within the ordinance. In the memorandum from Mr. Castro dated March 8, 1996, it is pointed out that since there was no definition one was provided for stock brokerage firms and banks and financial institutions in 1980. The issue is before the Council today for a policy determination because there was no guiding definition in the 1973 ordinance. In 1985 the Council and Zoning Commission combined stock brokerage firms, banks and financial institutions.

Mr. Moore stated that this was not about going back and determining whether or not the bank could occupy space that was previously used in a method that was a stock brokerage firm; it is a determination of the evolution of the spaces from 1973 to today. Substitutions have taken place. The dress shop could have easily become a men's clothing store. A law office could easily become an accountant's office. The question was whether or not a strict interpretation would have to be that a law office would always have to be a law office, and a stock brokerage firm would always have to be a stock brokerage firm. A caveat of this matter being considered today was that the applicant defined a space that was a former retail space, not an office space. It was the opinion of Mr. Moore that this matter was not even right for Council determination unless they wish to determine that, in fact, the bank could go into this space based on the conclusion that the stock brokerage firm and the bank are one and the same and must find a space that was previously occupied by retail rather than by office.

The Council could also find that an application for variance must be filed, as there will be a difference in the parking requirements between banks and financial institutions and offices.

Mr. McDonald stated he was surprised as this was presented to him that they were taking a retail space.

Mr. McLendon stated that a deferment may be the appropriate thing to do so that staff can look at the existing uses, and that the whole issue should be dealt with as a package instead of piece-meal.

Mr. Kolins suggested that when this Council said the substituted use had to be the same type or kind it was talking about the same type or kind that was allowed when the council made that statement. In this particular space, in 1973, February 13, the use was a real estate brokerage; and, the Council had said then in effect that a stock brokerage could be substituted because that is what was there, with the same type or kind. The Council had not said when the use changes 20 years from now, the Town would measure it against that use. They measured it against the use that was presently there. At the time, to the best of Mr. Kolin's knowledge, none of the uses in that building and approved in 1973 had specific code definitions which said they were the same type or kind. Mr. Kolins detailed some of the uses that were approved in 1973. The Code now tells you that this is the same type or kind and Mr. Kolins found it inconceivable to say that language precluded the Council from measuring the proposed use against the use in 1973.

Mr. Wyett stated his calculations showed a difference of 3.4 parking spaces and 4.25 parking spaces - not even one complete space. Secondly, the word evolution had been used, and the use of Palm Beach Towers 20 years ago had a much younger population and perhaps did not need a bank. Mr. Wyett expressed that this was a tremendous need of the population of the residents, and that regulations in 1973 over-regulated what should be in the private domain. Mr. Wyett proposed that the Town should allow this request and put as a study the other spaces in the building to come up with a total plan.

Mr. Shaw stated that by allowing the bank to go back in, the Town would be bringing the property back into compliance with the original approval. The idea had been not to have car rentals or that kind of use, however, the intent had been to ensure that the type of businesses that were there were what was made available. Mr. Shaw stated he would be surprised to find the actual intent by square footage would be earmarked by a specific type of use. Mr. Shaw confirmed his second to the motion for approval.

On roll call, the motion was unanimously carried by a vote of 4 ayes and 0 nays, with Mrs. Smith not voting for reasons stated.

C. Time Extensions - None

D. Variances, Special Exceptions, and Site Plan Reviews

<u>Old Business</u>

1. Variance No. 3-96 - Bartlett Burnap, 740 Hi-Mount Road, to allow construction of a two-story residence with a portion of the sub-basement two (2) feet above the lowest street elevation, in lieu of entirely below the lowest street elevation as required. R-B District. (Deferred from February 13, 1996, meeting)

   This item was deferred to the April 9, 1996 meeting per a letter dated March 1, 1996 from Robert E. Deziel.

2. Variance No. 4-96 - Richard McCarthy, 520 south Ocean Boulevard, to allow construction of a single family residence at an elevation of 19.97' NGVD in lieu of the 14.97' required, a point of measurement variance. R-A District. (Deferred from February 13, 1996 Meeting).

Guy Rabideau, attorney for Richard McCarthy, distributed documentation to the Town Council to assist them in understanding this request. Mr. Rabideau stated that he was amending what had been originally asked for by asking for lowering the point of measurement to 19.66' NGVD. The original intent was not to go higher than the nature layer of the land.

Mr. Rabideau stated that the request was minor and the roofline of the house, if the variance, was granted would still be less than what would be allowed under this zoning area. The major concern was the tie-beam to the roof and was the only point where there is concern.

The height of the house, if the variance was granted, would be 41.66'. If no variance were granted, they would be allowed to go up to a 39.97' height. There was only a difference of 1.69 feet. There was a slight rise on the front of the house that did not affect the roof height, and the tie-beam at that area would be 42.74 feet, for a difference of 2.77 feet. Mr. Rabideau stated there was also a back stair tower that could be seen from the road on the rear of the property. This stair tower would go up to a height of 44.66 feet, for a difference of 4.49 feet from where currently permitted.

Mr. Rabideau pointed out that roof height of the house with the variance would be 48.55 feet and without the variance they would be allowed to go to 49.97 feet. Mr. Rabideau compared this to the neighboring residences, showing the height to be lower than the residences to the north and south. Mr. Rabideau stated this stayed in the character of the neighborhood.

In the R-A Zoning the applicant was required to measure the height of the house from the crown of the road. This lot and one adjacent lot had a slight rise when coming away from the road of about 4-5 feet. There was a house built on this lot in the 1950's that had used the same measurement for height that the applicant was seeking and also accommodated the natural lay of the land.

Without a variance, the applicant has the option to cut down the lot or to build a shorter house. Cutting down the lot would create various problems, one being drainage, less of an ocean view and extra costs. The R-A zoning district allowed a 25 foot difference from the measurement up to the tie-beam. The applicant was building a 22 foot house.

With a 25 foot height allowance, Mr. Rabideau guessed that there were very few houses built significantly less than that height. Mr. Rabideau stated Council had copies of letters from neighbors that were objecting, however, Mr. McCarthy had met with the neighbors. The letters mentioned light and view concerns, and Mr. Rabideau stated that there will be a lower roof line than what can be built without the variance so the light and view concerns are minimized. The neighbors also mentioned drainage concern, however, the original house built in the early 1950's caused drainage problems, particularly the to the house to the west. As any new construction, the applicant must take care of any drainage problems from his lot so it would not affect the neighboring lots. The applicant had been through a drainage approval process and was not anticipating any drainage problems with this house. Mr. Rabideau stated his concern that if the lot had to be cut down there would be additional drainage to be taken care of because of drainage from the neighboring house onto this lot.

The privacy concern is attributable to the property to the west, however, the natural lay of the land was such that the land rises up and generally slopes back to a drop off toward the rear of the property. Mr. McCarthy had reviewed his landscape plan with the neighbors to the west and it was understood that the privacy concerns had been met.

The letter raised a precedence issue for neighboring houses, however, Mr. Rabideau stated that only this lot and one adjacent lot raised this question and could only raise this issue for one additional house.

The Town Clerk swore in all witness that would be speaking to any variances or special exceptions at this time.

Mr. McCarthy, owner of 520 South Ocean Boulevard, reiterated that he was not interested in raising the height of the house, but the problems exist because of the tie-beam at the top of the second floor and that was the only variance he is seeking. Mr. McCarthy stated he spoke with the neighbors and assured them that privacy was one of his main objectives also. Mr. McCarthy and the neighbors met with the landscape architect and the proposed landscaping would afford quite a bit of privacy. In regards to drainage, the engineer spoke to Mr. Bower and designed drainage calculations and the calculations were redesigned to add a french drain to the rear of the lot as well as a swale in the rear area. As requested by Mr. Bowser, a French drain had been added to the front of the lot also.

In regard to taking away light or view rights, Mr. McCarthy stated that he was decreasing this problem by building the house 1-1/2 feet below what was allowed.

Mr. Moore stated that the Town Engineer had identified the retention of the stormwater and the portion of the lot at the rear must meet a 25-year storm, 3 day event, which was approximately 10.5 inches of rain fall. The Building Departments comments stated that in looking at the comparative drawings that had been presented, the tie-beam variance in question should be down to 540 Ocean Boulevard as the house to the south is going to be torn down. It was staff's recommendation that the overall request should be dropped by one foot and there would be no objection providing the Town Engineer's concerns were addressed and designed into the project.

Mr. McCarthy stated that he did not understand why a foot would make a difference to anyone; that a change of one foot in the second story wall would not change the height of his house, but only the amount of roof that would be seen. It would only hurt Mr. McCarthy's ocean view and would not affect any other neighbors.

President Smith questioned the hardship. Mr. Rabideau stated the hardship was regarding the drainage if the lot would have to be cut down, including additional costs and the loss of ocean view. President Smith stated that the loss of ocean view on a brand new house that could be designed any way chosen was not a hardship that went with the land.

Mr. McCarthy stated that the design of the house included quite a bit of detail and work in designing with the lay of the land. To take away from the natural grade of the land was a hardship according to Mr. McCarthy. Mr. McCarthy stated this was not a spec home, but one that he planned to move into eventually, and that the house was designed for the natural grade of the land.

Mr. Wyett stated that the hardship goes with the lay of the land and found it difficult to ask the applicant to lower the land on an ocean front lot in which every inch protects the house against the surge of water in a major storm. Mr. Wyett indicated that this was a hardship that the applicant should capitalize on. In reviewing this project with the Building Department, Mr. Wyett noted that there had been an objection to the rear tower on the second deck and suggested that area be lowered to accommodate concerns of neighbors.

Mr. Shaw stated that the house that was originally on the property was a single story house and in reading the second page of the survey it showed the problem was not so much with the lay of the land, but with the foundation of the house. On the street the property went up on the north side roughly 15-1/2 feet and rose up to the 19.66 feet indicated by the applicant as to where the foundation was. Mr. Shaw stated that the fact that the prior house was in compliance did not give the applicant the right to take the position that was where he needs to start. In other words, if the applicant wanted to put a one story house on the lot he could do what he wanted to within reason as far as drainage is concerned. In this case there was a drainage problem in the back, and there was discussion of constructing a drainage wall to mitigate the problems of excessive drainage to the west, to take the property down a foot. That would save the applicant the problem of bringing in soil and materials to deal with the problem if there was a 12 foot elevation in the back. As far as the view of the ocean, by constructing a two story house there would be an excellent view of the ocean on the second floor.

Mr. Shaw did not see a hardship and stated other people have come before the Council that were required to take the house down a foot and a half. There was a house being torn down to the south and what the Council was trying to do instead of creating a crown to the profile, was to create a level or a dip in order to get a lighter look.

Mr. Rabideau stated it was true the foundation of the original house was 19.66 feet, but that was also the lay of the land. It peaks along the north side of the property. Mr. Shaw stated that the applicant picked the highest point of the land to take everything up to instead of taking a cross section.

Mr. Moore stated that the drainage problem can be solved by engineering the drainage and constructing a retaining wall in on the high side of the property to the north.

Mr. McCarthy suggested that there would be a potential drainage problem with the old existing grade of the land and his plans would take care of this problem. Mr. Shaw stated that the applicant could either build on the south side to meet the elevations to the north or could lower the north side to meet the elevations to the south.

Mr. McCarthy stated that lowering the house by one foot would only affect him and not the neighbors, so a foot would be of some importance to him.

Mrs. Smith stated that the variance would go with the land and the Council would listen to the neighbors, but would not grant variances because of concerns of neighbors. The Council granted variances because of the hardship that the applicant had to convince the Council exists. Mrs. Smith stated the applicant was choosing where to build the house and how much of a variance he would need.

Mr. McCarthy stated that it seemed to be counterproductive to lower the elevation. The Town was requiring him to put 85 pilings under this home because of the issue of undermining, then asking him to cut the lot down, which worked against each other in the applicant's opinion.

Mr. Shaw stated that the applicant is the one electing to put in a two story home and could have come to the Town requesting to raise the house 5 feet of fill and deal with the water problems. The zoning was established for a reason, and asking the applicant to comply with one foot was what the Council was obligated to do in finding a hardship. Mr. Shaw did not conclude that the applicant had shown a hardship that cannot be resolved.

Mrs. Smith stated there was an offer from the Building Department that there would be no objection if the height was reduced by one foot. Mrs. Smith explained that the applicant had already presented what he called the hardship.

Mr. Rabideau stated that the height of the tie beam also tied into the hardship and in building houses in the R-A zoning lower than that height, he did not think that was the best use or what was practical for R-A zoning.

John Bannister, Attorney for the Dommericks, neighbors to the west, stated that their property was substantially lower than the McCarthy property, sitting approximately 6 feet lower. His clients were concerned that their view would be interrupted, along with the fact that the tie beam being higher would make the wall higher. The Dommericks were concerned that if this was allowed a precedence would be set for other homes that were going to be built and renovated in the future. They were concerned with the fact that there may be potential drainage problems if this was allowed to be built higher with a variance.

Mr. Bannister stated that for there to be a hardship, the property had to be devoid of reasonable use. This was a self-imposed

imposed hardship and it was a fact that the view of the ocean was not a hardship. Mr. Bannister suggested the Council should deny the request for a variance because the applicant failed to show a hardship and his client had legitimate concerns.

Jackie Albarran, architect for Mr. Seelbinder, stated that the floor would be approximately 8 feet higher than the floor of the surrounding neighbors and was within a few inches of the eave of the house behind this property.

Arthur Seelbinder, 25 Middle Road, stated that while Mr. McCarthy's property was in a R-A zoning, he had a variance for a 100 foot lot which the minimum in that zoning is 125 feet. An R-B zoning had a minimum lot of 100 feet and cubic requirements that went along with that zoning. The R-A did not have cubic requirements, and one concern was that the original home on the property was approximately 3,000 square feet and the proposed was somewhere near 9,000 square feet. The neighbors questioned what the cubic measurements were on the proposed house because if it was R-A zoned but met the standards of the R-B standard, how could it be compared to the cubic requirements. Mr. Seelbinder stated the drawing showed the roof line as proposed and what the roof line would be, however, there was a tremendous difference looking from the Dommerick property across this property. This was a massive structure as you look at it from the rear. Mr. Seelbinder showed photographs of the site so the Council could see how the property laid in relation to the crown of the road.

Mr. Seelbinder addressed the drainage, asserting that staff had assured him that they had looked at the engineering and would try to ensure that much of the water coming from the property would be moved toward the ocean. Mr. McCarthy had discussed landscaping and had agreed to increase the landscaping along the property line, however, neighbors would like to see more of the plan that was proposed.

Mr. Seelbinder stated that presently there are 4 houses in the area on the market, all in the R-A zoning, and are subject to renovations or rebuilding, and this property could set a precedence.

Mr. Seelbinders exhibits were made part of the record.

Mr. McDonald made a motion to deny this request based on the inability to show a hardship. The motion was seconded by Mr. Shaw, and on roll call the motion was unanimously carried.

New Business

3. Variance No. 5-96 - Mr. and Mrs. John Carter, 269 Pendleton Avenue; to allow construction of a storage shed providing a 7'2" west side yard setback in lieu of 15' as required. R-B District.

Mr. Ralph Cantin, Architect for the Carters, outlined the proposed plan for the storage shed and stated the proposed plans were in harmony with the Town's zoning ordinance.

Mr. Moore stated that this increased the non-conforming conditions, however, it was in line with the existing house and ran the length of about 6 feet. The hardship would need to be addressed in further detail.

Mr. Cantin stated that the only hardship would be if the applicant were to take down the shed he would not be allowed to rebuild it. Therefore, the hardship was the existing situation.

The present house was being extending about 16 feet, about 2 feet behind the setback. Mrs. Smith stated that the applicant was moving the storage into an area that would preclude the Town from knowing if it was a storage shed or not and was extending the buildable space of the house.

Mrs. Smith asked why this could not be lined up in the set back and had to be run back with the garage. Mr. Cantin replied that the owner preferred this to the existing shed which was visible from the street. Mrs. Smith pointed out that theoretically they were not moving the shed, but adding onto the house. Mrs. Smith stated the applicant was adding onto the cabana and abandoning the legal shed at the rear of the property.

Mr. Moore stated that the nonconforming shed could be ordered to be removed by the Town as there was no permit. Mr. Cantin stated that the area of the new cabana and the section being requested for the variance would not be connecting.

Mr. Moore confirmed that the air conditioning units can be placed in the back setbacks.

Mr. Wyett made a motion to approve this request as it was in line with the existing house. Mrs. Smith stated that this was not a hardship. Mr. Wyett then withdrew his motion.

Mr. Shaw made a motion to deny the request for lack of a hardship and because it was an isolated structure and not connected to the main structure and not a part of the design. Mr. McDonald seconded the motion.

Attorney Randolph stated the applicant could not return to the Council for 6 months if it was denied. If it was deferred, the applicant could rework the design and be placed on the April agenda. Mrs. Smith stated that the applicant had not demonstrated a hardship, and the new addition could be moved back so no variance would be needed.

Mr. Shaw withdrew his motion, and Mr. McDonald withdrew his second.

Mr. Shaw made a motion to defer this issue until the April 9, 1996, Town Council Meeting. Mr. McDonald seconded the motion. On roll call, the motion was unanimously carried.

4. Variance No. 6-96 - John and Marianne Castle, 1095 North Ocean Boulevard, to allow construction of additions providing a 10.5' and a 9.25' north side yard setback in lieu of 15' as required. R-A District.

Mr. Peter Broberg, attorney for the client, stated that the application for variance was for 2 small variances. The property, the former Kennedy house, was under an agreement with the Town that Mr. and Mrs. Castle would voluntarily submit the house for landmarking within 5 years. In the meantime, however, it was contemplated through an agreement that was dated May 23, 1995, between the Town and the members of the Landmarks Commission that they would be able to do renovations to the property. This agreement was to ensure that the house would not be torn down and would be allowed to bring the house into a very livable condition.

Mr. Broberg stated that the existing house was built 9.25' from the north property line. Both extensions from the original house were only a little more than 6 feet going east and west. Mr. Broberg pointed out the areas of the house requiring a variance. The house was designed off-center too close to the property line for the present R-A zoning district. The special conditions were that the house was built off-center and that the house was under the watchful protection of the May 23, 1995 agreement. Mr. Broberg read from the agreement, as follows: "During the 5 year period, commencing with the effective date of the Town and the Commission, agree that renovations to the property, including the main house, are permitted." The agreement stated that notwithstanding the immediate preceding sentence, the then property owners shall have rights to alter, repair, or demolish the out structures and perform renovations on the out structures and the main house.

The hardship again, was the house being built off center and built too close to the property line and that there are extensions of the house that are not closer to the property line, but simply extensions of the house.

Mr. Joe Brennan, Architect, addressed the Council and stated that the reason they could not meet the minimum side yard setback of 15 feet was a hardship because they would like to get the three car garage doors off the street. The Landmarks Commission recommended the owner do this and they had taken the garages off the street and put in a drive through. Mr. Brennan detailed the proposed renovation and plans and the reason for each variance.

Mr. Moore stated that the staff had no objections to this request and discussions with the neighbors anticipated there would be major renovations on the north portion of the building to clean up unsightly conditions.

Mrs. Smith stated she had no problem with the bay window on the ocean, but questioned whether the newly designed garage would also be a storage are?

Mr. Broberg replied it would not be a storage area, but rather a garage and an entrance into the residence. In response to Mr. Wyett, Mr. Broberg stated that the hardship was a directive by the Landmarks Commission that asked the 3 garages to be removed from the street. The bay window was a minor variance and the hardship was because the existing house was so far north of the existing wall there was no view of the ocean.

Mr. Wyett stated that earlier the Council denied or deferred a petition because an ocean view was not considered a hardship and they wanted to be consistent.

Mr. Shaw made a motion to approve the request for the variances because the Castles were trying to comply with what would be a landmarked property and to balance the various elevations. Mr. Shaw concluded that the owners were trying to add symmetry to the house and the hardship would be that they were complying with Town directives.. As far as the garage, the owners again were trying to comply with the desire of the Landmark Commission to solve a street access situation. Mr. Shaw stated that the hardship was with the lay of the land, the position of the house and the compliance of the Castles into getting this house more in line with the Landmarks Commission's desires.

The Mayor felt this was a minor variance request on a piece of property that the Town was able to save because it made a special deal.

Mr. McDonald seconded the motion for approval. On roll call, the motion was approved unanimously.

5. Variance No. 7-96 - Mr. and Mrs. Michael Kaiser, 245 Dunbar Road; to allow installation of an awning at the second floor balcony providing a 5.6' west side yard setback in lieu of 15' as required. R-B District.

Mr. Steve Trezise addressed the Council, stating that on an existing guest home the applicant would like to add an awning that would be in violation of the side setback. The hardship was that the owner purchased the property with the building existing with the balconies in place. The setback violation was already occurring and it was noted that the home was a Ballenger Award Winning Home from 1993. The main house was a Victorian structure and the guest house was a Modernist cubistic structure with no soft edges and no roof overhang, with a flat roof. Mr. Trezise stated the owners had added landscaping and extensive addition of surface treatment of carvings to the face of the house. The owners inherited a non-conforming structure with balconies, one of which was in violation of the side setback, and one that was a poorly detailed structure, and the balconies had just been repaired and rebuilt due to significant rot.

Mr. Trezise stated that the owners were trying to do two things with this request: soften the existing structure, which was

was architecturally non-conforming, and trying to rectify poor detailing and prevent future repair of the wood balconies.

The awning on the right side of the home was over an existing balcony. Both awnings had ARCOM approval. The existing awning was put up approximately 3 weeks ago. The awning on the left side of the home was the reason for this request, and the hardship was the structure being existing and being an inherited violation.

Mr. Moore stated that staff did not have any objection to the application, however, suggested a retractable awning rather than a permanent awning.

President Smith questioned why this application could not have been handled on the staff level. Mr. Moore stated that with an abundance of caution staff felt it should be presented to Council, however, it was a minor matter.

Mr. Wyett made a motion to approve the request with the condition that the awning be non-permanent. Mr. McLendon seconded the motion. On roll call, the motion was unanimously carried.

6. Variance No. 8-96 - Mr. and Mrs. Thomas Hirschmann, 102 Flagler Drive, to allow construction of a garage addition providing a 7.5" north side yard setback in lieu of 15' as required, and to allow a porch replacement and addition providing a 12.75' south side yard setback in lieu of 15' as required. R-B District.

This item was deferred earlier in the meeting to the Town Council meeting of April 9, 1996.

7. Special Exception No. 2-96 - Tropical Fruit Shop, 261 Royal Poinciana Way, to amend Special Exception approval # 21-94 by permitting 4 of the 15 permitted seats to be relocated to an outdoor area. C-TS District.

Stephanie Vagocolis, owner of the Tropical Fruit Shop, explained the special exception request and stated it was mostly because the customers of the store constantly request that there be seats outside. Most of the customers are from the bike trail and would like to have a place outside to have something to drink. On the street, all the existing restaurants did have outside seating.

Mr. Moore stated that this was a special exception and it would be appropriate for the owner to discuss with the Council the Town serving status.

The owner stated she had provided information as to the customer base and they also had a computerized mailing list of all those who ordered fruit, and it was determined that 76% of the customers were from the Town.

Mr. Moore stated staff would recommend the following conditions:

1. The area must be 32 inches maximum for the 4 seats;
2. All service must be from inside the store;
3. The walkway must have a clear ten feet of walkway, however, the required planters can be included in the ten feet.

Mr. McDonald made a motion to approve the special exception, including all the conditions as stated by Mr. Moore. Mr. Shaw seconded the motion. On roll call, the motion unanimously carried.

8. Special Exception No. 3-96 With Variance and Site Plan Review - Sandsong Investments, Inc., 206 North Ocean Boulevard; to allow construction of a single family residence pursuant to Section 5.48II.B of the Town Zoning Code. A variance is requested to allow 20% of the first floor to be retained as a one story in lieu of the 50% required; and to allow 85% of the second story to meet the special exception overall height requirements in lieu of the 50% allowed. R-B District.

This item was deferred to the April 9, 1996 Town Council meeting as requested in a letter dated March 6, 1996, from Robert E. Deziel.

E. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction Work, by Alan Powell for Suites 200, 218 and 310 located at 125 Worth Avenue.

Mr. Moore stated the Town received a letter requesting that work begin on April 1, 1996, on three suites at 125 Worth Avenue. The letter stated the work would be inside, creating no problems and working the normal working hours.

David Palmer of Livingston Builders addressed the Council, stating he was requesting to work in two of the spaces, mainly minor cosmetic work, even though they would not normally be allowed to work on Worth Avenue at this time of the year. The building was one they renovated last year and had gotten permission in the past (September, 1994) to work extended hours on Worth Avenue. Mr. Palmer explained that work had been done successfully without disturbing any of the tenants. They planned to park the construction vehicles under the parking garage and use the elevator and would not cross Worth Avenue at any time.

Mr. Moore stated that the applicant was correct in the fact that the Town had given this building permit to continue work and that it was commenced prior to the November 15 or the December 1 deadline. This would be the first application that Mr. Moore was aware of that the Council has seen that requested to begin work before the end of the season. Even though the conditions as laid out by the applicant were correct in that he could do this work without being noticed or seen, it was the opinion of staff that this would be a dangerous precedent. Mr. Moore did not feel there would be a hardship to begin a job on Worth Avenue prior to the end of the season.

Mr. Palmer stated that in the case of 125 Worth Avenue, it was unique in that there was only one other office building such as this on Worth Avenue and work could successfully be done in the building without disturbing anyone else on the Avenue. Mr. Palmer stated that the hardship was that the object of the landlord was to get occupants to lease space and there were constant negotiations. The landlord ha to cut off all negotiations during the season because he could not lease or build out any space in his building during the season even though it would not disturb anyone on Worth Avenue. Mr. Palmer noted that the landlord had a very small window in which he could entertain lessees.

President Smith stated that the owner felt he should be given special consideration because he was in a large building and not on the street and because the work would not be seen, and that it seemed that the other landlords on Worth Avenue who had lost their tenants would also like to begin work, but should not be permitted to begin because the projects were not as large. The Council had been asked by other store owners to begin work during the season, stating they would enter by way of the back door and that no one would see them. The Council had denied these requests because of setting the very precedent that Mr. Palmer was requesting.

Mrs. Smith explained that while this was a very difficult situation, all of the landlords on Worth Avenue were aware of the time frame to do the work. The Council did grant extensions and did try to accommodate store owners when the work was not completed. However, this job would be starting during the season, not merely completing the work.

Mr. Moore stated that the reason the prohibition was on Worth Avenue was because of a request by the Worth Avenue Merchants Association and the Property Owners Association. Mr. Moore reiterated the danger of setting a precedent by approving this request.

Mr. Wyett said he understood the precedent situation, however, also understood the difference between an office building and a retail space. Office buildings were different because they were rented on a 12 month basis and a tenant could be lost the day after season begins for any number of reasons. Mr. Wyett concluded that the Town was penalizing landlords with office space by having to wait 6 months until the end of the season, and that a six week advance beginning on this project was not out of the question and he had no trouble granting office renovations as long as there was no viability from the street and everything was done internally with minor renovations.

Mr. Moore stated that he did not disagree with that point of view as far as the office building being somewhat different from retail, however, there was another consideration with the acquiescence of the rest of the office tenants that were in the building that would be disturbed by construction during a time period that they would normally not be disturbed. Mr. Moore stated that the Council in the past has had the remainder of the tenants also approve the proposed construction.

President Smith asked if Mr. Palmer had asked the other tenants if this would be a problem. Mr. Palmer stated he had not spoken to the other tenants in the building.

Mr. Shaw made a motion to approve the request based on the fact that this building was unique in the fact that it was an office building and that the Council was not setting a precedent for Worth Avenue but merely establishing the fact that this was an office building. There would be a condition that all the materials would be brought in by the vehicles of the workers, and no delivery vehicles; that all unloading would take place in the underground garage, and that prior to any work starting the owner would notify all of the tenants and if there was a complaint or an objection by any of the tenants the work would have to wait. Mr. Shaw stated that the permit would not be granted until the Town received a letter stating that the tenants had approved this work prior to the season. Mr. Shaw stated the hours of operation would be from 9:00 a.m. to 5:30 p.m.

The Mayor pointed out that the Council may be opening a Pandora's box with this situation. President Smith stated that this permission was given for the two offices only, and that other landlords would be approaching the Council in the future.

Mr. Wyett seconded the motion. On roll call, the motion failed by a vote of 2 ayes and 3 nays with Mrs. Smith, Mr. McDonald and Mr. McLendon casting the nay votes.

Mr. McLendon made a motion to deny the request citing that it was a dangerous precedence to set. Mr. McDonald seconded the motion. On roll call, the motion was carried by a vote of 4 ayes and 1 nay, with Mr. Wyett casting the nay vote.

XV. ANY OTHER MATTERS.

Mr. McLendon expressed his concern with the speed of the boat traffic on the Lake Worth Waters. Mr. Dusey stated that staff could prepare a letter for the Mayor's signature to the Marine Patrol and the Coast Guard to ask them for their assistance with the problem.

Mr. Wyett discussed the water issue with respect to the West Palm Beach election and meeting with the new City Commission. Mr. Wyett suggested this Council have a meeting before the next regular meeting for the purpose of discussing the water issue entirely. Mr. Wyett asserted that this should not go to the Water Committee, but rather was a Council matter. The Town Council agreed to discuss the City of West Palm Beach Water Draft Agreement after the scheduled Public Hearing on March 25, 1996, at 2:00 P.M. to discuss Comcast issues.

Mrs. Smith suggested, and the Council agreed, that Mr. Shaw, Mr. Moore and Mr. Jakubiak be directed to meet on the issue of the video requirements for the Town Council Chambers.

XVI. ADJOURNMENT.

There being no further business to discuss, the meeting was adjourned at 6:15 P.M.

Mary A. Pollitt, Town Clerk

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, Lesly S. Smith, hereby disclose that on March 12, 1996:

a) A measure came or will come before my agency which (check one)

___ 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:

Director & Stockholder of local competitive bank.

RECEIVED
TOWN CLERK'S OFFICE
MAR 14 1996
TOWN OF PALM BEACH

3/12/96
Date Filed

Lesly S. Smith
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.

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

LAST NAME—FIRST NAME—MIDDLE NAME Smith, Lesly	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach Town Council
MAILING ADDRESS	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 3/12/96	MY POSITION IS: [X] ELECTIVE [ ] APPOINTIVE

Item XIV B. Appeals 1. Palm Beach Towers & Palm Beach National Bank

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.

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.