MINUTES OF TOWN COUNCIL MEETING HELD ON MARCH 11, 1997

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to Order by President Smith at 9:30 A.M. on March 11, 1997. The roll was called with the following Elected Officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Leslie Shaw, Councilmen Jack McDonald, Sam McLendon, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Police Chief Joseph Terlizzese, Police Major Frank Croft, Fire/Rescue Chief Vincent Elmore, Director of Public Works Al Dusey, Town Engineer James Bowser, Director of Recreation Russell Bitzer, Purchasing Agent Charlie Boggs, Fire Marshall John Wandell, Director of Planning, Building & Zoning Robert Moore, Zoning Administrator Paul Castro, Planning/Project Coordinator Timothy Frank, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Dwight Stevens from Paramount Church. Mrs. Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Larry Ochstein, Seaview Park Commission - From 1991 to 1997 - Mayor Ilyinsky presented a plaque to Mr. Ochstein.

B. Recognition of Martin Richmond, Zoning Commission - From 1992 to 1997 - Mayor Ilyinsky presented a plaque to Mr. Richmond.

C. Retirement of Richard E. Barber, Plumbing/Mechanical Inspector, Planning, Zoning, and Building Department - 19 Years and 5 Months - Mayor Ilyinsky recognized the years of service of Mr. Barber and presented an engraved ring to him.

D. Retirement of Raymond E. Harley, Equipment Operator I/Sanitation, Public Works Department - 24 Years and 10 Months - Mr. Harley was not present.

E. On behalf of the Town of Palm Beach, Presentation by Golf Commission of February 1, 1997, 14th Annual Par 3 Pro-Am Benefit Proceeds to Rehabilitation Center for Children and Adults and the Palm Beach Recreation Department

Ann Herman presented a check in the amount of $11,000 to the Rehabilitation Center from the proceeds of the Annual Par 3 Pro-Am Benefit on behalf of the Palm Beach Golf Association. Mrs. Herman also reported that the Golf Course was the other recipient this year, through the Recreation Department.

IV. COMMENTS OF THE MAYOR

There were no comments made by the Mayor at this time.

Mr. Wyett commended the Police Department on their efforts in the recent murder trial.

V. APPROVAL OF THE AGENDA

Mrs. Smith advised that XI.A.1. - Ordinance 2-97 - Wireless Telecommunication Towers and Antennas would be considered after 5:01 p.m. for third reading, pursuant to State law.

Mrs. Smith advised that XI. B. 3. - b & c - Consideration of Report of the Shore Protection Board and Appointment of Shore Protection Board would be heard at 11:00 a.m. if not reached before that time. Due to the important necessary intergovernmental issues the Town arranged the special time to accommodate the municipal representatives of the City of Lake Worth, the Town of South Palm Beach, the Town of Lantana, the Town of Manalapan, and the representative of Palm Beach County.

The following changes were made to the Regular Agenda.

Page 5, Defer Item XII. D. 2 to the April 8, 1997, Town Council Meeting - Consideration of Letter dated January 20, 1997 from Jeffrey Prudden Regarding Donation of Property, Lot 1 (West 315') of Sea Isle Estates, to the Town of Palm Beach;

Mr. Shaw made a motion to defer Item XII. D. 2 (Prudden Donation of Property on Sea Isle Estates) to the April 8, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Defer Item XII. D. 4 to the April 8, 1997, Town Council Meeting - Consideration of Appeal of a Public Works Invoice Regarding Sanitary Sewer Issues by Mr. Cornelius Millane, 332 Eden Road;

Mr. Wyett made a motion to defer Item XII. D. 4 (Appeal of Public Works Invoice by Mr. Cornelius Millane) to the April 8, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Add Item XII. D. 12 - Discussion of Response From Insurance Carrier Regarding Legal Counsel for Mar-a-Lago lawsuit;

Page 5, Add Item XII. D. 13 - Discussion of Conflict of Interest Policy;

Mr. Wyett made a motion to add Item XII. D. 13 - Discussion of Conflict of Interest Policy; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Add Item XII. D. 14 - Discussion of Legal Billings from Miller, VanEaton and Miller, Canfield;

Mr. Wyett made a motion to add Item XII. D. 14 - Discussion of Legal Billings from Miller, VanEaton and Miller, Canfield; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Page 5, Add Item XII. D. 15 - Discussion of the New Parking in Front of the Mid-Town Post Office;

Mr. Wyett made a motion to add Item XII. D. 15 - Discussion of the New Parking in Front of the Mid-Town Post Office; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Add Item XII. D. 16 - Discussion of Rental/Use of Town-owned property.

Mr. McLendon made a motion to add Item XII. D. 16 - Discussion of Rental/Use of Town-owned property; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Page 7, Defer Item XV. B. 3 to the April 8, 1997, Town Council Meeting - Variance No. 6-97 - Michael Kalisman, 146 Dunbar Road to allow construction of an addition.

Mr. Wyett made a motion to defer Item XV. B. 3 (Variance 6-97) to the April 8, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Rodney Fink, Co-Chairman of the Citizens' Association thanked the Mayor for his action on the request for a Post Office in the south end. Mr. Fink requested the Mayor arrange a Postal Planning Meeting with the Postmaster, Mayor of South Palm Beach, and a representative of the Citizens' Association South of Sloan's Curve. The Mayor agreed to do this. Local representatives from the offices of State Representatives Clay Shaw and Mark Foley would be requested to attend also.

Adrian Winterfield referred to his memorandum on occupational licenses and requested an investigation regarding the Post Office Box drop addresses. He also questioned the tent that is currently up in the Mar-a-Lago property, and the fact that it was not submitted to Landmarks.

In response to Mr. McDonald, Police Chief Terlizzese stated that there had been some experience with some of the post office box and mailing services boxes in regard to telemarketing frauds. He would meet with Director of Building, Planning and Zoning Robert Moore, and Town Attorney Randolph to discuss this issue, with the results of the meeting being presented to the Town Council Meeting at its April 8, 1997 Meeting.

Eric Gilbertson recommended a crosswalk on Chilean Avenue and possibly one on Brazilian crossing South Ocean Boulevard to the main stairway to the beach. Mr. Gilbertson recognized the accomplishments of the Mayor, Town Council and the staff regarding the Mid-Town Beach Project.

Public Works Director Al Dusey agreed to investigate the possibility of Pedestrian Crosswalk signs at Mid-Town Beach, as well as speak to the Department of Transportation regarding County Road and other crossing areas in Town.

APPROVED AGENDA (ITEMS VII. AND VIII.)

VII. APPROVAL OF MINUTES OF FEBRUARY 3, 11, AND 17, 1997

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Opportunity, Inc.; No. 342-97
2. Landmarks Preservation Commission; No. 358-97
3. Missions of Mercy, Inc.; No. 385-97
4. The River Fund; No. 408-97

Other

- Failure to File Prior Results Form Within Prescribed Time; Paid $25.00 Fee

5. Croquet Foundation of America; No.216-97

Mr. Wyett made a motion to approve the Approved Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

REGULAR AGENDA

IX. PUBLIC HEARINGS

A. Landmark Designation of 6 Golf Road; Resolution No. 19-97

Planner/Project Coordinator Timothy Frank reported that the subject property had been found to meet the criteria for designation: Criterion A: exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town; Criterion C: embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship; Criterion D: representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age. In this case, the architect was Marion Sims Wyeth; the builder was Harry Raymond Corwin. Historic Preservation Consultant Jane Day would continue with the presentation.

At this time, the Town Clerk confirmed Proof of Publication, and all those who would be speaking to the issue were sworn in.

Historic Preservation Consultant Jane Day addressed the Town Council, stating that the property at 6 Golf Road was part of Golfview Road Development Corporation developed by Marion Sims Wyeth and E. F. Hutton in 1922. The house was built in the Mediterranean Revival Style by Harry Corwin, and was a good example of the Mediterranean Revival Style with Italian influences. Extensive additions to the property had been done by Marion Sims Wyeth.

Mr. Shaw made a motion to accept the report; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve Resolution 19-97 designating 6 Golf Road as a landmark in the Town of Palm Beach; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Town Attorney Randolph read Resolution 19-97:

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 PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE 3 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 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

X. ORGANIZATIONAL ITEMS

A. Administrative Officials

1. Appointment of Finance Director - Pursuant to Section 2-2 of the Town Code

Town Manager Doney referred to his memorandum dated March 7, 1997 wherein the recommendation was given for James Demming as Finance Director. Mr. Demming currently was the Finance Director for the City of Palm Bay, and after thoroughly reviewing his qualifications and credentials Mr. Doney was recommending consideration by the Town Council.

Mr. Wyett made a motion to approve the recommendation of Town Manager Doney to appoint James Demming as Finance Director for the Town of Palm Beach; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XI. OLD BUSINESS

A. Ordinances (Second and Third Reading)

1. Ordinance No. 2-97 - Wireless Telecommunication Towers and Antennas *(To be considered after 5:01 P.M. for Third Reading, Pursuant to State Law)*

(Ordinance 2-97 was read after 5:01 P.M., immediately following Item XII. New Business D. Other 6, and included the following:)

Mr. Randolph read Ordinance 2-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING ORDINANCE 2-74 AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH, BY AMENDING APPENDIX A "ZONING" BY ADDING A NEW PROVISION ENTITLED "WIRELESS COMMUNICATION TOWERS AND ANTENNAS" PROVIDING DEFINITIONS, PROVIDING FOR PERMITTED LOCATIONS, PROVIDING FOR PERMITTED USE, ACCESSORY USES, AND SPECIAL EXCEPTION USES, PROVIDING FOR PERMITS AND LEASE AGREEMENTS, PROVIDING A PENALTY FOR VIOLATION HEREOF, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 2-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

2. Ordinance No. 3-97 - Amending Chapter 8, "Garbage and Trash," of the Town Code of Ordinances *(See Item XII.A.3., Resolution No. 23-97)*

Mr. Randolph read Ordinance 3-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 8 OF THE TOWN CODE OF ORDINANCES "GARBAGE AND TRASH" BY ADDING A NEW SECTION 8-16 "CHARGE FOR COLLECTION OF TRASH" AND RENUMBERING THE SUBSEQUENT SECTIONS 8-16, 8-17, 8-18, 8-19, AND 8-20 TO 8-17, 8-18, 8-19, 8-20, AND 8-21 RESPECTIVELY, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 3-97; seconded by Mr. Shaw.

Mr. Shaw suggested that the Ordinance be clarified with the word "commercial" added.

Mr. Randolph responded that the schedule that would be set up would only relate to commercial collection, however, the word could be added if so desired. After discussion by the Town Council it was decided to leave the Ordinance in its Original state.

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

3. Ordinance No. 4-97 - Amending Chapter 6, "Bulkheads, Pierheads, and Groins," of the Town Code of Ordinances

Mr. Randolph read Ordinance 4-97:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 6 "BULKHEADS, PIERHEADS, AND GROINS" AT ARTICLE 3 BULKHEADS AND PIERHEADS ON LAKE WORTH, AT SECTION 6-33 AND SECTION 6-34, SO AS TO PROVIDE AN EXEMPTION FROM THE PROVISIONS HEREIN RELATING TO LENGTHS OF PIERS AND LANDING DOCKS OWNED AND OPERATED BY THE TOWN OF PALM BEACH; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF OrDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 4-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

4. Ordinance No. 5-97 - Signage Requirements for Passenger Loading Areas

Mr. Randolph read Ordinance 5-97:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5 ARTICLE 11 OF THE TOWN CODE OF ORDINANCES RELATING TO SIGNS AND AWNINGS, SO AS TO PROVIDE A NEW SUBSECTION G UNDER SECTION 5-421 ALLOWING FOR TEMPORARY SIGNS DESIGNATING PASSENGER LOADING ZONES LOCATED WITHIN THE COMMERCIAL AREAS OF THE TOWN; PROVIDING FOR REGULATIONS RELATING TO SAME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Police Chief Terlizzese stated that the Police Department concurred in the wording of the Ordinance.

Mr. Shaw suggested that paragraph 4 would be an enforcement nightmare, and should be amended to read "said signs shall not be placed in a manner so as to impede or impair the flow of vehicular or pedestrian traffic."

Police Major Croft stated that there would be designated areas on the sidewalk for placement of the signs--they would be put at the beginning of the parking area where passengers would be loaded and unloaded, with prohibition of signs being placed on the pavement because it would be an obstruction. He believed that the current wording in the Ordinance was most appropriate.

Mr. Doney suggested that greater accountability be placed on the managers and owners of the restaurants, and that citations be given to those obstructing traffic in a vigorous enforcement effort.

Mr. Wyett suggested adding the word "grass" to the third line in Section 1, g (4), where the placement of the signs was mentioned -- "on the sidewalk or grass." Mr. Randolph would insert the word in the Ordinance.

Mr. Wyett mentioned that he had driven around Town on Saturday night observing the parking situation, had noticed several areas where there were problems, and suggested that restaurants should be made responsible for their valet parkers with staff recommendations being made to clarify the situation.

Chief Terlizzese responded that an attempt had been made in the past to write a valet Ordinance, however enactment had not been allowed on State roads.

Mr. Wyett suggested that Police Department rules and regulations could be published in a more informal way.

Chief Terlizzese responded that he had no authority to tell people to do anything that was not a law.

Mrs. Smith suggested that perhaps the Occupational License could be used as a tool to increase valet parking.

Mr. Randolph explained that restaurants could not be required to have valet parkers without adopting some sort of an Ordinance.

Chief Terlizzese stated that there would be more enforcement, and a Police Captain would be sent around to get the message to restaurants, however, the Ordinances, Rules & Standards (ORS) Committee may wish to deal with the problem.

Mr. Shaw indicated that the enforcement would control the parking and recommended that the existing regulations be utilized.

Mr. Shaw made a motion to approve Ordinance 5-97 with the amendment of the addition of the word "grass"; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Wyett made a motion to refer the loading zone situation to ORS; seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Randolph advised that Ordinance 5-97 would be brought back for a third reading at the April 8, 1997 Town Council Meeting.

B. Other

1. Consideration of Franchise Agreement with Comcast Cablevision, Inc. and Other Related Issues

Assistant to the Town Manager Dave Jakubiak addressed the Town Council, stating that attorney Maria Silveira of the Miller, VanEaton law firm was present, as well as Diane Christie and Michel Champagne from Comcast Cable Vision. The Franchise Agreement had been received today and was ready for first reading for approval.

Michel Champagne, General Manager of Comcast, addressed the Town Council, stating that he believed the agreement would be satisfactory to all.

Attorney Silveira stated that Nick Miller had reviewed the agreement and believed it would protect the Town adequately on all of the outstanding issues.

Mr. McLendon made a motion to approve the Franchise Agreement with Comcast Cablevision, Inc.; seconded by Mr. Wyett.

Town Attorney Randolph noted that there would have to be a second reading before the Franchise Agreement could be adopted, which would give all concerned an opportunity to review the document.

Mr. Randolph read Ordinance 6-97:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING COMCAST CABLEVISION OF WEST PALM BEACH, INC., A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE TOWN AND TO PROVIDE CABLE SERVICE IN THE TOWN OF PALM BEACH, FLORIDA PURSUANT TO THE TERMS OF THE AGREEMENT ATTACHED HERETO.

In response to the Mayor, Mr. Jakubiak explained that language had been incorporated into the Franchise Agreement that would allow bulk agreement customers to appear in front of the Town Council if there was disagreement with the obligations of the Cable Company.

Mr. Wyett read one sentence from the Agreement which would assure residents south of Sloan's Curve that they were adequately protected: "Further the company agrees that upon expiration of the exiting bulk rate contract any renewal thereof or any new bulk rate agreement it will not enforce any term in the bulk rate agreement that prohibits the bulk rate subscribers from choosing a competitive alternate for the service of the company under the applicable law."

On roll call, the motion carried unanimously.

Hans Richter, Manager of the Bath & Tennis Club addressed the Town Council, stating that Comcast had been approached concerning supplying cable to residents--a survey had been done by Comcast and a bill of $3,500 had been presented. It was his understanding that Comcast was supposed to supply a cable to every resident in Palm Beach under the Franchise Agreement, and he questioned the $3,500 cost for hook-up.

Mrs. Smith explained that Mr. Richter had been given the opportunity to address this issue at the last Town Council Meeting, however, he was not present at the meeting.

Michel Champagne of Comcast responded that the 1992 and 1996 Cable Act made it very clear that the installation portion of the cable television bill versus the monthly service portion of the telephone bill were very separate. Under the Franchise Agreement, anyone in the Town within the standard drop range was served (within 150' of current service) as part of the standard installation rate. Anything over 150' required the charge of time and materials for installation, as required by the Federal Government. In the case of Mr. Richter, the cost of $3,500 in time and materials was submitted to bring the service to the Bath & Tennis Club. It was not the responsibility of Comcast to pay the up-front fees beyond the standard 150' drop to provide service to residents.

Mr. Richter replied that Comcast should provide the cable to the Bath & Tennis Club, just as they do to every other resident in Town.

Mrs. Smith suggested that Mr. Richter and Comcast meet to try and work the situation out and return to the Town Council with the results.

Attorney Silveiro clarified that the 150' distinction was not in the Franchise Agreement, but in Federal Law.

2. Consideration of Personal Communications Services and Cellular Wireless Facility Sitings

Assistant to the Town Manager Dave Jakubiak addressed the Town Council, stating that a report dated March 5, 1997 had been submitted to the Town Council outlining some alternatives for the use of town property for future Personal Communications Services (PCS) and Cellular sites. He noted that a survey submitted to various providers was included in the report, with two responses received from providers (AT& T and BellSouth). One alternative had been to utilize the Town Hall facility; another alternative had been to pursue all Town sites. He commented that the revenue potential for the sites could range from $12,000-$18,000 annually--if one provider located on a site and if all 8 licensed providers then located on the site the figure could go up to $96,000-$144,000 annually. Also included in the report was the summary of the Mid-State report.

Mr. Wyett made a motion that the Town Hall be designated as the central Town site for wireless communication, that the Town be authorized to enter into negotiations for the appropriate providers, and that specifications be obtained so that the Town will know what type of structural reinforcement may be needed; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Wyett commented that the scope of wireless communication would vastly increase in the next few years, and he suggested that the Town Council should begin study of removing the consideration of how wireless would be handled in the Town of Palm Beach from the Zoning Commission to the Town Council.

Director of Planning, Zoning & Building Robert Moore suggested that the Town Council may want to consider a more comprehensive Telecommunications Ordinance that would not be under the umbrella of the Zoning Ordinance.

Mr. McLendon asked why the Golf Commission objected to the Par III site?

Mrs. Herman stated that the Golf Commission had voted unanimously that they did not want a tower and antennas on the Golf Course, as it would be an obstruction of the beauty of the Golf Course, and Phipps Park was about one block down the street and the erection of a tower behind the Fire Station would not be detrimental to anyone.

Mr. Wyett commented that it was his feeling that a tower should never be built in the south end.

Attorney Silveira responded to the query of Mr. McLendon regarding rights of the Town to impose antennas on multi-family residential units in the south end. She explained that under Florida law it would be a takings issue--it was private property. The only way to control what went up on the buildings was through the Zoning Ordinance where restrictions were delineated. She noted that if a private property owner turned down any antennas or towers the Federal Communications Law required the Town to do nothing that would prohibit or have the effect of prohibiting the service providers from doing business in the Town. If there was no private property that would enter into a lease with the service providers, at least the Town knew where on its public property it may be able to place a tower.

Mr. Jakubiak clarified that staff would move ahead to prepare specifications toward wire line facilities.

Mr. Dusey explained that there was one element of the site that the Town would need to be involved in for specifications and that was stealth technology, so that when the facilities were attached to the building, it would look good.

Mr. Wyett made a motion that further discussion of this matter should be referred to the Ordinances, Rules & Standards (ORS) Committee; seconded by Mr. Shaw.

Mr. Jakubiak would send a notice to interested companies requesting submission of proposals, explaining that the Town site had been selected.

Mrs. Polly Earl of the Preservation Foundation addressed the Town Council stating that she hoped the Preservation Foundation would be allowed to seek and provide some recommendations from the Secretary of the Interior or the National Trust as to their thinking on minimum standards for the installations on landmarked buildings.

On roll call, the motion carried unanimously.

3. Coastal Management Issues

a. Consideration of Application to Florida Department of Environmental Protection for Tentative Ten-Year Long Range Beach Erosion Control Budget Plan

Public Works Director Al Dusey addressed the Town Council, stating that the State Department of Environmental Protection was changing the way it did business which would eliminate the need to go to local delegations. The methodology involved preparation of a Ten-year Improvement Program. The critical year was the first year, and Mr. Dusey said that he had taken all of the projects that he had good information on in order to put a Ten-Year Program together. The Lake Worth Inlet Management Plan was the most important of all projects, and there were certain elements that he was recommending the Town pursue: a monitoring program to validate the sediment budget and the comprehensive beach and offshore monitoring program called for by the Lake Worth Inlet Management Plan. The Corps of Engineers had also recently completed a Coastal Florida Study which developed four projects for the Town--one was the updated Sand Transfer Plant; a north end beach project approximately 2 miles long between the south jetty and the Palm Beach Country Club; a mid-Town beach nourishment project that was 3.1 miles long between Wells Road and Via De Lago; and a south end beach nourishment project of approximately 3.25 miles long between Sloan's Curve and the Dorchester Condominium. The Ten-Year Program was a compilation of all of those, and the purpose of submitting it was to get the Town into the process. As soon as the Comprehensive Coastal Management Plan was completed it would be substituted. A $25,000 request of State money was being requested in the Fiscal 1998/99 Program, to match $25,000 from the Town or local money to start a monitoring program to validate the sediment budget. Additionally, during the first year in the Comprehensive Beach and Offshore Monitoring Program $75,000 in State money was matched by $75,000 of local money. The last element was $450,000 of State money to match $450,000 of local money, to start the design and permitting of a north end beach restoration project, which was approximately 2 miles running from the south jetty to the Palm Beach Country Club. Mr. Dusey asked for Town Council approval with the understanding that modifications could be made at any time. He reiterated that the Town needed to submit something to the Florida Department of Environmental Protection in order to get into the process.

Mr. Shaw asked how much overlap in long term monitoring was in the proposed program and the ATM Plan?

Mr. Dusey replied that the Comprehensive Coastal Management Plan would recommend long term monitoring, as there was not enough good data available to show how sand was moving, etc. The long term monitoring program would establish a data base that would build information.

Mr. Shaw asked if any of the monies expended or recuperated through matching funds could meet the requirements of the ATM Plan?

Mr. Dusey responded that the first two items would, (the $50,000 for the initial monitoring program for the sediment budget, and $150,000 for the Comprehensive Beach and Offshore Monitoring Program).

Assistant Town Manager Peter Elwell stated that monies expended would not be spent twice between this work and the ATM Plan. The recommendations of the ATM Plan will in fact recommend projects consistent with the Ten-year Plan.

Mr. McLendon made a motion to approve the Application to the Florida Department of Environmental Protection for a Tentative Ten-Year Long Range Beach Erosion Control Budget Plan; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

b. Consideration of Report of the Shore Protection Board and Shore Protection Board's Recommendation of its Meetings on February 24, 1997, and March 6, 1997

Chairman of the Shore Protection Board Gary Lickle addressed the Town Council, referring to several issues of concern: the term of the Board itself, what kind of commitment each board member would make throughout the summer, the potential conflict interest of Charlie Isiminger, and review of the Applied Technology Management (ATM) Contract.

Mr. Lickle reported that there was agreement that the Board should exist for the period of one year, with reappointment consideration. Each board member had made 100% commitment to the project. Mr. Lickle had spoken with Mr. Isiminger, who fully recognized that his participation on the Board would conflict him out of any construction projects, however, he felt so dedicated to the project that he was willing to serve on the Board.

Review of the ATM report had been conducted by the Board, and the major issues looked at were:
An increase in monitoring to conform not only to general State requirements, but to come up with the most efficient form of monitoring so that data would be available in the future.

A meeting had been held with representatives of Lake Worth, Lantana, Manalapan, and South Palm Beach and there was lukewarm response. Mr. Lickle suggested that further awareness was needed.

ATM representatives were present today to answer any questions.

Dave Decker of ATM addressed the Town Council, stating that there were two elements to the study: ATM labor, and data gathering. A 10% differential had been quoted between the cost of doing the entire island, or just doing the Town. It had been determined that there would be a 10% reduction in labor effort, but a pro-rata percentage reduction in data gathering if the area south of the Town municipal limits was not studied. He further explained that with the revised contract there was a total projected inlet to inlet budget of $133,000. If the Town chose to have ATM study only the Town municipal limits that would reduce the budget to $115,000.

Mr. Wyett expressed that hopefully the communities to the south could find a way to budget the $18,000 in order to be included in the study.

Mr. Shaw questioned the dollar amount in Item 5 of the proposal - to identify suitable sand sources for beach restoration, Item 11 - $8,300 charge for meetings with the Shore Board, and the data contingency of 10%.

Mr. Decker responded that in regard to Item 5 all information regarding suitable sand sources would be gathered, put together, evaluated and presented. He explained that the scale of the project compared to the mid-Town project was greatly increased; ATM would make recommendations as to steps the Town would like to consider to manage its beaches for the next ten years. It was important to recognize that the sand in the offshore borrow areas was not in a dynamic setting, but out in water depths of 30' plus, so what was there today almost assuredly would be there five years from now.

In response to the contingency, Mr. Decker explained that it was an unknown, but a function of how much data ATM had the ability to gather. If the data was gathered it would also have to be interpreted and processed, so there was a labor component also.

Mrs. Smith asked why every step of the plan would have to be discussed with the Shore Board? She understood the Shore Board reviewing the finished product before it would come to the Town Council for review, but she believed it was a waste of money to discuss it step by step with the Shore Board.

Mr. Lickle explained that the Shore Board dissected and went through each item and can find areas where changes should be made, for example in the monitoring. That was the same type of review process that would be ongoing with major issues encountered.

Mrs. Smith responded that she was not entirely sure why a Town of Palm Beach appointed commission of laymen was going to help a recognized expert in the field on a major issue encountered. She would like to see ATM update the long range Coastal Construction Management Plan and submit it to the Shore Board for study, but not step by step, as that would take too long, and ATM could then cut down time billed to the Town.

Mr. Doney commented that page 7 of the ATM proposal identified that ATM would prepare for and participate in up to three meetings with the Shore Protection Board, in addition to periodic progress meetings with Town staff. He noted that it was common to have a contingency budget for the unexpected, and the contingency could only be used upon written justification in advance. He established that it should be understood that there would be no design specific projects.

Mr. McDonald stated that he understood the price change, as the parameters of the study had changed; he suggested that the Council seek another bid if this proposal was not sufficient. He made a motion to approve the study; seconded by Mr. McLendon.

Mr. McLendon asked Mr. Decker if there was any analysis or core samples included in the cost of sand sources?

Mr. Decker replied negatively. One of the goals of the plan was to look at the big picture for the island; identify the sources of sand available; identify the reaches of shoreline that are in need of sand; those reaches of shoreline that may be managed without any renourishment project; and move forward with a more comprehensive approach to laying out some guidelines for renourishing the beaches long term.

Mr. McLendon remarked that the data contingency was actually data accumulation for profiles.

Mr. Decker replied that beach profiles had been budgeted for in the direct costs. The data contingency area would be needed if additional effort was required to obtain information. In the identification of suitable sand sources item there was approximately one man week set aside for a professional to obtain all information from three counties, the Corps of Engineers, historic studies through the University of Florida Coastal Archives, digest and interpret it, and present it back to the Town Council.

Mr. Wyett referred to the funding analysis item in the plan, amounting to $12,700, considering it premature to appropriate money for this purpose.

Mr. Lickle explained that the cost benefit analysis would be needed when support for the funding issue was needed.

Mr. Shaw asked that the maker of the motion ask ATM to reevaluate the project.

Manager of Manalapan Charles Helm addressed the Town Council, stating that he had expressed at the recent Shore Board Meeting that Manalapan had just signed a Settlement Agreement involving the Florida Department of Environmental Protection, Palm Beach County, and Ocean Ridge, which was a 21-year agreement calling for an Inlet Management Plan to be completed within 18 months, then determining the impacts to be studied for a 21-year period. He noted that joining the Town could be a duplication for the Town of Manalapan.

Assistant Town Manager Peter Elwell, Chairman of the County Wide Beaches and Shores Council stated that the Beaches and Shores Council would be very interested in the studies, as the prime reason for its existence was the sharing of information for all 17 municipalities interested in maintaining and protecting the shoreline throughout Palm Beach County--50 miles of beach, 12 of which were in the Town of Palm Beach. Duplication of information would be unavoidable, but could be limited as much as possible. He explained that there were areas of sand sources in Palm Beach County that had not been explored, and the investment in this scope of work would be very worthwhile.

Public Works Director Al Dusey advised that with the authorization of $115,000, ATM could update the plan and take a very basic look at Department of Environmental Data south of the Town.

Mayor Roberts of South Palm Beach addressed the Town Council, stating that South Palm Beach had new sand and did not know where it had come from. She would like to see monitoring done to ascertain relevant information, and suggested that the monitoring time be extended. She mentioned that the Sand Transfer Plant had just been put on line, and she expressed concern that another project was already being considered. As a good neighbor, she would recommend the plan to the South Palm Beach Commission if the other municipalities joined in.

Mr. Lickle pointed out the importance of the monitoring issue, which would determine where the sand came from.

Dr. Sanford Kuvin addressed the Town Council, stating that some of the sand in South Palm Beach came from the mid-Town beach. He suggested that a competitive bid be obtained for the project, since there was no emergency regarding time.

Mr. Doney explained that the Town had a continuing contract with ATM, which continued through September 1, 1998. Because of the desire of the Shore Board to move quickly Mr. Dusey had sought the proposal from ATM for the scope of work.

Mr. Randolph clarified that the Town was in compliance with the Consultants Competitive Negotiations Act in this regard.

Mayor Roberts clarified that this matter had not yet been discussed with her Commission, although she had said she would highly recommend the proposal if the other municipalities went along with it.

Mr. Wyett suggested that the Town Council could approve the expenditure of $115,000 with the contingency that the plan could be expanded to the $130,000 figure as the municipalities to the south joined.

Mr. McDonald clarified that it would be in the best interest of the Town to do the full study.

Mr. Lickle agreed that the inlet to inlet concept was what should be done.

Mr. Shaw asked that ATM bring the figure for the entire study down to $115,000.

Mr. Decker responded that was a reasonable request, however, he was faced with suggested changes to the scope that had not been included previously. Labor efforts had already been reduced from the last proposal and the additional costs presented today were hard costs that ATM was passing through to sub-contractor surveyors. Eliminating the contingency was an alternative, as well as limiting the study area, and ATM would come back to staff concerning options, depending on what the Town Council desired.

Mr. Shaw stated that he believed some items could be adjusted to bring the figure down.

Mr. McLendon withdrew his second to the motion of Mr. McDonald to approve the proposed plan, as he agreed with the proposal of Mr. Dusey.

The motion died for lack of a second.

Mr. Wyett made a motion to accept the plan based on a limit of $115,000, leaving it to the Shore Board and ATM to decide where to cut items; the motion died for lack of a second.

Mrs. Smith asked Mr. Decker if he was prepared to accept what the Town Council may decide today or would prefer to come back?

Mr. Decker responded that the scope of services outlined some specific steps that ATM envisioned would have to be taken to develop a meaningful plan that the Town would be able to use. ATM could start cutting the scope of services back, but a point would come where meaningful recommendations could not be made if the plan was too scant. He would need further clarification.

Mr. Shaw explained that he was asking that the current proposal be cut down with no changes in the work.

Mrs. Smith clarified that the request was to develop the plan inlet to inlet for $115,000.

Mr. Doney stated that when a professional was asked to give a credible proposal it could be negotiated down, but the contingency fee more often than not was usually used to some degree.

Mrs. Smith commented that the Town Council was not drawing up the agreement.

Mr. Lickle remarked that the actual increase dollar amount from the original proposal was from $126,000 to $133,000, and was not a $15,000 increase.

Mrs. Smith noted that the Town Council had authorized $115,000 a month ago.

Mr. McLendon made a motion to award the contract to ATM on the basis of a broad brush of the area south of the Town of Palm Beach limits, and as proposed for north of that point, for $115,000; seconded by Mr. Wyett. On roll call, the motion carried 4/1 with Mr. McDonald casting a negative vote.

Mr. Doney clarified that ATM would need to come back before the Town Council.

(Later in the meeting, under Item XII. New Business D. Other 6, Mr. Louis Pryor of the Civic Association proposed that a donation of $15,000 be made to the Town by the Civic Association in order for the entire inlet to inlet study to be done. He would bring the proposal to the March 20, 1997 Executive Committee Meeting of the Civic Association.)

c. Consideration of Appointment of Shore Protection Board

Mr. Lickle clarified that Mr. Isiminger had expressed his understanding that he would be conflicted out of any near term projects, however, the conflict would extinguish itself in the long term future.

Mr. Elwell stated that Mr. Isiminger had made a statement at the Shore Protection Board that he understood that there may be conflicts that would prevent him from doing work within the Town of Palm Beach, and he accepted that and wanted to continue to serve on the Board.

Mr. Shaw asked if the Town would be in violation of rights of a competing bidder if a bid was eliminated from the firm of Mr. Isiminger?

Mr. Randolph replied negatively--the understanding was that he was aware of the conflict of interest up front, but was willing to serve on the Board.

Mr. McDonald commented that he did not see why someone who had served on a Board previously would be prevented from bidding on work after the service on the Board had ended.

Mr. Randolph clarified that Mr. Isiminger had indicated that as a condition of his serving on the Shore Protection Board he understood that he would be conflicted out on jobs relating to things that he had discussed while on the Board.

Mr. McDonald said that he had understood Mr. Isiminger's statement to be that he would not bid on any work while he was serving on the Board.

Mrs. Smith stated that her understanding was that Mr. Isiminger would not be bidding on any projects that would be passed and recommended by the Shore Protection Board, even if the Board had been disbanded and he was no longer on it. She suggested that a statement be obtained from Mr. Isiminger in this regard.

Mr. Elwell suggested that Mr. Isiminger be appointed to the Board with conditions imposed by the Town Council as to what he would be allowed to bid on in the future, and present it to Mr. Isiminger for acceptance.

Mrs. Smith commented that the contribution of Mr. Isiminger had been invaluable and was important to the Board, and suggested that specific clarification be obtained.

Mr. McLendon agreed that design projects recommended by the Shore Protection Board should not be bid by Mr. Isiminger, however, he saw nothing wrong with Mr. Isiminger having the ability to bid on projects that had nothing to do with the Shore Protection Board recommendations, and beyond the point of the plan being finished.

Mr. Lickle would contact Mr. Isiminger and clarify the issue with written language.

Mr. McLendon made a motion to re-appoint the entire Shore Protection Board; seconded by Mr. Wyett.

Mr. McLendon clarified that his motion to re-appoint the entire Shore Protection Board would conform to Resolution 24-95, which was an ad hoc advisory committee for a period of one year from today.

Mr. McDonald asked Mr. Lickle if he intended the Board to remain at nine people and continue to meet monthly?

Mr. Lickle responded affirmatively; the schedule was sometimes more than monthly, however, the goal was once per month.

Mr. Doney clarified that the Shore Protection Board abide by the agreement made by the Mayor and Town Council not to have Committee meetings the week before the Town Council Meeting.

On roll call, the motion carried unanimously.

4. Status Report on Water Franchise Agreement Negotiations with the City of West Palm Beach

Town Attorney Randolph reported that staff level meetings had occurred with the City of West Palm Beach in regard to negotiations on the Water Franchise. Progress was being made, however, more meetings were to be set up and a report would be forthcoming.

Mr. McLendon commented that he had given some information to the Town Council as to his understanding of what the City of West Palm Beach had paid for the West Palm Beach Water Company. The information he had given was based on going to the County Clerk's office and getting an estimate from the stamps on the deed, which indicated $3 million; he had since been able to learn from Commission records that they had paid about $8.5 million, and he wanted to clarify it for the record.

5. Consideration of Proposed Settlement Agreement of Town of Palm Beach vs. City of West Palm Beach Regarding Downtown Master Plan to Establish Date, Time, and Place for Closed Door Attorney/Client Session to Consider Settlement Pursuant to Section 286.011(8), Florida Statutes

Town Attorney Randolph provided a copy of a Proposed Settlement Agreement with the City of West Palm Beach, noting that an attorney/client closed door session had been held in this regard. If it was the desire of the Town Council to have another session the date, time, place, and names of attendees of the meeting would have to be announced. He advised that he would need advice concerning the litigation, and suggested that a meeting be set.

After discussion, Mr. Randolph announced that the attorney/client closed door meeting for consideration of the proposed Settlement Agreement of Town of Palm Beach vs. City of West Palm Beach regarding the Downtown Master Plan would be held at 10:00 A.M. on Monday, March 24, 1997, in the Conference Room in Town Hall. He stated that those attending would be Mayor Ilyinsky, President Smith, President Pro-Tem Shaw, Councilmen McDonald, McLendon and Wyett, Town Attorney Randolph, Attorney Hawkins, Town Manager Doney, and a Court Reporter from Ley and Marsaa whose name would be announced.

Mr. Randolph noted that the public meeting on March 24, 1997 would be convened, and adjourned to the Conference Room for the attorney/client session.

XII. NEW BUSINESS

A. Resolutions

1. Resolution No. 20-97 - Interlocal Agreement with Palm Beach County Regarding Restoration of Town-Owned Spoil Islands in Lake Worth Lagoon

Town Engineer Jim Bowser addressed the Town Council, handing out an attachment page to the Agreement, noting that the Audubon Society was the lessee of the islands, and they had been convinced not to be a party to the Agreement; however, they wished to have a paragraph added that they were the lessees of the island, and would be allowed to review and comment on the County plans. The County was in full agreement. Mr. Bowser recommended that Resolution 20-97 authorizing the Mayor to sign the Interlocal Agreement be passed.

Mrs. Smith commented that the islands were full of garbage and filthy, and asked if there was any thought towards a volunteer effort to clean them up?

Mr. Bowser replied that Audubon had hired a person to manage the islands to make every effort to keep them clean.

Mrs. Smith stated that Audubon must maintain the blame for the deplorable condition of the islands and work with the County in cleaning them up.

Mr. Bowser said that he would work with the Town Manager's office to write to the proper parties in this regard.

Mr. Wyett made a motion to approve Resolution 20-97; seconded by Mr. McLendon.

Mr. Randolph read Resolution 20-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH PALM BEACH COUNTY FOR THE RESTORATION OF TOWN-OWNED SPOIL ISLANDS WITHIN THE LAKE WORTH LAGOON.

On roll call, the motion carried unanimously.

2. Resolution No. 21-97 - Submerged Land Lease Agreement with State of Florida for the Town Docks

Town Engineer Jim Bowser addressed the Town Council, stating that the State of Florida now required submerged land leases for marinas on State owned lands, and the Town marina was on State owned lands. When a marina expanded the new regulations applied to the expansion portion, and a proposed Submerged Land Lease with the State of Florida for the Town Docks was being presented for approval. Mr. Bowser reported the fees would be based upon the potential revenue generation of the facility--7% of the potential revenue on a yearly basis, with a 30% discount for the Town since the marina facility is on a first come/first serve basis. This calculated to an approximate cost of $68,600 per year.

In response to the query of Mr. Shaw regarding the loss of marina revenue during construction, Mr. Bowser noted that he would present to the State the most favorable position to the Town in the hopes of reducing the fee.

Mr. Bowser noted that staff recommendation was a five-year lease. There had been an opportunity to sign a 25-year lease with the State, however, a 25% annual surcharge Or 2 1/2 times the yearly fee of year one would be attached to that. Mr. Bowser had calculated that the five-year lease was more appropriate.

Mr. McDonald made a motion to approve Resolution 21-97; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Town Attorney Randolph read Resolution 21-87:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SOVEREIGNTY SUBMERGED LANDS LEASE WITH THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA FOR THE TOWN OWNED DOCKS.

Mr. Randolph clarified that the motion was to pass the recommendation that the Agreement be approved subject to final review by the Town Attorney and the Risk Manager for the Town.

Mr. McDonald agreed that would be incorporated into the motion.

3. Resolution No. 23-97 - Establishing Commercial Yard Trash Collection Fees *(See Item XI.A.2., Ordinance No. 3-97)*

Town Attorney Randolph commented that Ordinance 3-97 contained a typographical error: Under Section 8-16 the language read "the charge for the collection and disposal of trash shall be made by the Town and collected..." The word "shall" should be changed to "may" He asked that a motion to amend the Ordinance be made accordingly.

Mr. McLendon made a motion to amend Ordinance 3-97 to substitute the word "may" for the word "shall" in Section 8-16; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Public Works Director Al Dusey explained that an estimation of generation of yard trash for each property had been made based upon the vegetation on the property. For large producers such as the Breakers, etc., charges would be based on actual loads. He reported that Resolution 23-97 contained the provisions requested by the Town Council: the first truck load for all commercial customers would be at no charge; subsequent truck loads would be at a fee calculated to be $185.00 per load.

Mr. McDonald made a motion to approve Resolution 23-97; seconded by Mr. Shaw.

Mr. Randolph read Resolution 23-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY FLORIDA, ESTABLISHING COMMERCIAL YARD TRASH COLLECTION FEES TO BECOME EFFECTIVE APRIL 1, 1997.

On roll call, the motion carried unanimously.

B. Appointments

1. Architectural Commission - Three Member Three-Year Terms to Expire March 2000 and One Alternate Member Three-Year Term to Expire March 2000

Ethel Kinsella, Robert Deziel, and Joanna Frost-Golino were appointed as members. Floyd Wideman was appointed as an alternate member.

2. Landmarks Preservation Commission - Two Member Three-Year Terms to Expire March 2000 and Two Alternate Member Three-Year Terms to Expire March 2000

Arthur Silverman, Elizabeth Shields, and Sari M. Wilkey were appointed as members. Leighton Rosenthal, Nikita Zukov, and Ann Lilja were appointed as alternate members.

C. Sealed Bids

1. Sealed Bid No. 97-06 - Cocoanut Row Storm Drainage Improvements; Resolution No. 22-97

Town Engineer Bowser addressed the Town Council, stating that five bids had been received for the Cocoanut Row Storm Drainage Improvement Project, which would install a new storm drainage pipe in Cocoanut Row from Seaview Avenue to Pendleton.

Mr. Shaw made a motion to approve Resolution 22-97; seconded by Mr. McLendon.

Mr. Randolph read Resolution 22-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO FOSTER MARINE CONTRACTORS, INC. FOR THE COCOANUT ROW STORM DRAINAGE IMPROVEMENTS.

Mr. Bowser noted that the award was contingent upon issuance of a permit, and if for some reason a permit was not secured the contract would not be executed.

On roll call, the motion carried unanimously.

D. Other

1. Consideration of Request for Seventh Annual Palm Sale Proposed for March 23, 1997, Sponsored by the Preservation Foundation of Palm Beach, Inc.

Mrs. Polly Earl of the Preservation Foundation addressed the Town Council, stating that this was the seventh year that the

Preservation Foundation had sponsored the Palm Sale, which was part of its commitment to the Town and maintaining its residential quality. Over the past six years the Preservation had put $250,000 worth of palms in the Town, and half of them had been donated to the Town for planting on Town-owned property.

Mayor Ilyinsky made a motion approving the Palm Sale. The Council accepted the motion.

2. Consideration of Letter dated January 20, 1997, from Mr. Jeffrey P. Prudden Regarding Donation of Property, Lot 1 (West 315') of Sea Isle Estates, to the Town of Palm Beach

This item was deferred to the April 8, 1997, Town Council meeting.

3. Consideration of Parking Meters on South Lake Drive

Police Chief Terlizzese addressed the Town Council, stating that currently there were 87 parking spaces on Cocoanut Row, 62 10-hour meters on the west side of South Lake Drive, with 12 of them being rented, leaving 50 to use on a day-to-day basis. On the east side there were 17 resident/permit only parking spaces and there were 8 public spaces. The meters were not heavily used in the area, however, a $15,000 annual parking meter collection revenue was received from them for the last three years. The 12 rented meters were rented out at $75 per month.

Mr. Randolph confirmed that he had not recommended that the parking meters be leased legally because the streets were public streets dedicated to the use of the public and individuals could not be given priOrity in that regard. When those existing parking meter leases were up the meters would go back into the public domain.

Police Major Croft addressed the Town Council stating that the meters were not being utilized to the fullest extent on South Lake Drive, suggesting that provisions be made for pre-paid permit parking to the public, as well as coin meter parking to be operated on a first come/first serve basis. Mr. Randolph had agreed that would be a workable situation

Mr. McDonald asked Mr. Randolph if he was recommending terminating the leasing of the existing parking meters?

Mr. Randolph replied negatively; it had been decided that when the leases terminated they would not be renewed. He had advised that he did not think it was appropriate to bag the meters, and it had then been decided that when the leases were up the meters would be returned to the public.

Mr. John Maus, President of the Worth Avenue Association, and Vice-President of the Palm Beach Chamber of Commerce stating that his concern was the abandonment of 49 meters on South Lake Drive. He explained that there was a need for increased parking for employees as mOre little stOres opened on WOrth Avenue. He urged that spaces that were not being used should be opened up.

Mr. Wyett suggested that decal parking could be made available at a smaller fee than the private lot parking lots.

Mr. Maus agreed that may work.

Mr. Shaw made a motion that a decal costing $5 per day be used for parking that would allow parking in that area.

Mrs. Smith asked Major Croft how he anticipated starting this program?

Major Croft explained that the decals or placards would not be a problem to produce. The program could be implemented in 60 days. He requested direction from the Council as to support of the proposal, along with an idea of the dollar figure.

Mr. Maus proposed that it would be better to abandon the meters to see what may happen and who would use it. Perhaps residents could use the parking and free up the area in the east end of the 400 block of Peruvian. He commented that he did not understand how the decals/placards would not be leasing.

Mr. Randolph explained that the difference was that this would be made available to anyone, not particular individuals.

Mr. Wyett agreed that the decal/placard would be appropriate, and recommended that a figure be worked out that would encourage people who were parking on Worth Avenue to use the spaces, with fees substantially under the commercial lot. He proposed that a yearly rate could be implemented.

Mrs. Smith asked what control or security the police would be able to execute at night if any car could park in the area with no restraints?

Chief Terlizzese responded that it would be a security problem, because anyone could park in the area.

Mrs. Smith noted that the parking may not be available to employees of the Town, or homes/apartment buildings who needed more parking.

Chief Terlizzese noted that it could be a staging area for skating clubs, bicycle clubs, etc.

Mr. McDonald suggested that this be treated as a four month problem (December, January, February, and March) with a four month decal being issued for people to buy, and the rest of the year people could feed the meters with coins.

Mr. Randolph agreed that would be a good solution, as long as the meters were available to everyone during the first period of time.

Mr. McDonald also suggested that the rate be below market for the four month period.

Major Croft stated that it should be consistent with other municipal parking rental, which was $75 per month.

Mrs. Smith suggested that the Police Department put together a proposal, speak with Mr. Maus, and come back to the town Council with specifics.

Major Croft clarified that meters would be re-wound down to $.50 per hour for the next few weeks to see if there would be a noticeable difference.

Mr. Shaw made a motion that the meters be reduced to $.25 per hour from now until a plan was finalized; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mr. Maus brought up another item concerning parking: vigorous enforcement. He noted that parking fines in the Town had more than doubled in the past year, and although parking fine revenue might be looked at as a revenue item it was not a goodwill item.

4. Consideration of Appeal of a Public Works Invoice Regarding Sanitary Sewer Issues by Mr. Cornelius Millane, 332 Eden Road -

This item was deferred to the April 8, 1997, Town Council meeting.

5. Consideration of Proposed Official Town Comments for Public Hearing on March 26, 1997, in West Palm Beach Regarding the Reestablishment of the Palm Beach County Coastal Construction Control Line

Assistant Town Manager Peter Elwell addressed the Town Council referring to his memrandum dated March 5, 1997 in this regard. There would now be a hearing because the State was going to proceed to set the Coastal Construction Line. It was no longer believed that there would such an onerous impact on oceanfront property owners in Town, as was the concern in 1992. It was the belief, however, that the line was being set unfairly and inappropriately because it was using a model that was not suited to the lower east coast of Florida in order to enforce State regulations upon property owners in the lower east coast of Florida. The staff recommendation was that authorization be given for a Town representative to offer official comments of objection at the Public Hearing on March 26, 1997.

President Smith passed the gavel and made a motion that Peter Elwell be authorized to appear at the Public Hearing on March 26, 1997 to offer official comments on behalf of the Town; seconded by Mr. McLendon. On roll call, the motion carried unanimously. Mr. Elwell would represent the Town at the 7:00 P.M. March 26, 1997 Department of Environmental Protection meeting at the Palm Beach County Environmental Resource Management Building, 509 Conference Room, 3323 Belvedere Road in West Palm Beach.

6. Consideration of Consultants' Competitive Negotiations Act (CCNA) for the Selection of Coastal/Marine Structural Engineering Services

Public Works Director Al Dusey reported that a selection process had been completed for a coastal/marine structural engineering service, and requested authorization for the Town Manager to enter into a Continuing Services Contract with Con-Tech Engineers.

Mr. Wyett made a motion to approve authorization for the Town Manager to enter into a Continuing Services Contract with Con-Tech Engineers; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Louis Pryor, representing the Civic Association, addressed the Town Council, referring to the $115,000 contract awarded to Applied Technology Management (ATM) which would include a broad brush study of the area south of the Town property limits. In order to ensure that the whole inlet to inlet study be accomplished with everything possible done to ease future permitting, Mr. Pryor recommended that the Civic Association donate up to $15,000. He would bring the proposal to the March 20,1997 Executive Committee Meeting of the Civic Association.

Mr. Wyett commented that was a wonderful civic gesture and recommended that the Town Council accept the offer, subject to the Executive Committee Meeting. The entire Town Council agreed.

(At this time Ordinance 2-97 was read and approved by the town Council - Please see Item XI. A. 1)

7. Consideration of Proposed Dedicated State Funding Source for Coastal Projects - Request for $5000 Donation from the Town to the Lobbying Effort Being Coordinated by the Florida Shore and Beach Preservation Association (FSBPA)

Assistant Town Manager Peter Elwell referred to his memorandum of March 4, 1997 addressing this item. He noted that in January of 1997 the Town Council had expressed unanimous support of that effort coordinated by the Florida Shore and Beach Preservation Association. It was the best opportunity in recent years to make the inroads necessary to get legislative support. A contribution from the Town in the amount of $5,000 was being requested. Staff recommendation was that the Town contribute something financially towards the effort that was consistent with the position of the Town and could bring millions of dollars of State aid for coastal projects to the Town.

Mr. McDonald made a motion to approve the donation of $5,000 from the Town to the lobbying effort being coordinated by the Florida Shore and Beach Preservation Association; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Elwell clarified that the amount would be taken from the Undesignated General Fund balance.

8. Consideration of Results of Solid Waste Survey

Public Works Director Al Dusey reported that a Solid Waste Survey had been conducted in January and February of 1997. A summary had been prepared, including the comments received on each particular item. There was no indication that residents perceived any impact upon the general appearance of the Town regarding yard trash set out schedules. The question concerning the safety of trash in the street had been less conclusive, as "no concern" had received the most votes, a good number had expressed "some concern," and a lesser number had expressed "very concerned." The single family response on the last two questions regarding reduction of garbage service from the current level for single family homes down to three or two days per week with one day of recycling had been that they did not wish to change the service. The multi-family also indicated no desire to reduce the level of service.

Mr. McLendon expressed concern on the nature of the survey--people were voting on the schedule of pick up rather than on the appearance of trash in the street.

Mr. Wyett commented that even though there may have been some faults with the survey, the survey could speak for itself. He suggested that the period of time during which trash could be put out for more than one day start with June, since the Town was still busy in the months of May and November. He also suggested that putting out trash two days in advance was sufficient.

Mrs. Smith suggested that the survey be sent to the Public Works Committee for study.

Mr. McLendon made a motion to send the survey to the Public Works Committee; seconded by Mr. Shaw.

Mr. Wyett suggested that trash on North County Road also be included in the study of the Public Works Committee.

On roll call, the motion carried 4/0, as Mr. McDonald was out of the room.

9. Consideration of Possible Water Desalinization Partnership Between the Town and Florida Power & Light Company

Mr. Wyett reported that it had come to his attention that in Tampa Bay there was a very large Water Desalinization Plant, which would involve a partnership between the power company and water company. He suggested that the Town Council authorize an investigation into a water desalinization partnership between the Town and Florida Power & Light, to be activated when Mrs. Smith concluded negotiations with West Palm Beach. He explained that if the negotiations broke down for any reason this would be another avenue to investigate.

Mr. McLendon mentioned that he was in the process of meeting with FPL in this regard on an unofficial basis to obtain more information.

Mrs. Smith suggested that the Town Council discussion of this issue be put on hold and tabled to an indefinite time.

Town Attorney Randolph agreed that this issue should be put on hold.

Mr. Wyett made a motion to table this issue to a time uncertain; seconded by Mr. McLendon. On roll call, the motion carried 4/0 as Mr. McDonald was out of the room.

10. Consideration of Proposed Change of Capital Equipment Designation from $500 to $750, Pursuant to Florida Statutes, Chapter 274, Section 274.02

Town Purchasing Agent Charles Boggs addressed the Town Council, stating that for many years the State threshold for an item to be designated as a capital equipment item was $500. It had recently been changed to $750, and Mr. Boggs recommended that the Town increase its threshold to $750.

Mr. McLendon made a motion to approve the change of Capital Equipment designation from a threshold of $500 to $750; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

11. Consideration of Memorandum dated February 7, 1997, from Mrs. Mary Pollitt, Town Clerk, Regarding Update on Charitable Solicitation Permits Issued for the 1995-96 Season (Pursuant to Town Council's Request at its February 17, 1997 Special Town Council Meeting)

Town Clerk Pollitt stated that when Ordinance 4-95 was passed it was suggested that the $25.00 fine for failing late results would be evaluated. According to her memo of February 7, 1997, there was a 61% failure of charitable organizations to supply results in a timely fashion. She concluded that the fine was not working as planned, and suggested that the Ordinance be referred to the Ordinances, Rules & Standards (ORS) Committee for review.

Mr. Wyett made a motion to refer this item to the ORS Committee; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

12. Discussion of Response From Insurance Carrier Regarding Legal Counsel for Mar-a-Lago.

Mr. McDonald stated that there was a statement in the letter dated January 22, 1997 from the Management and Professional Liability Claims Adjustors that they recognized the Town choice of counsel endorsement allowed the Town to chose its own counsel, however, after the Town exhausted its deductible it could experience a very large uninsured legal expense exposure. He asked if there had been a response to the Town response to that letter?

Mr. McDonald made a motion that this item be put on the April 8, 1997 Town Council Meeting Agenda; seconded by Mr. McLendon. On roll call, the motion carried 4/0 as Mr. Wyett was out of the room.

13. Discussion of Conflict of Interest Policy Regarding the Representation of the Town by a Law Firm and a Possible Conflict With Representation of a Client by the same Law Firm in Particular Situations.

Mr. McDonald made a motion to add discussion and clarification of the conflict of interest policy to the April 8, 1997 Town Council Meeting Agenda; seconded by Mr. McLendon. On roll call, the motion carried 4/0, as Mr. Wyett was out of the room.

14. Discussion of Legal Billings from Miller, Van Eaton and Miller, Canfield.

Mr. McDonald stated that he did not recall if any limit had been set on legal fees for Attorney Nick Miller.

Mr. Randolph responded that there had been no cap. Mr. Miller had explained what would be done, and that he would always come to the Town Council beforehand.

Mr. McDonald made a motion to add discussion of legal billings from Miler, Van Eaton and Miller, Canfield at the April 8, 1997 Town Council Meeting, including an estimate of how much work was left to do, and what the costs would be; seconded by Mr. McLendon.

Mr. Doney suggested that the law firms could also be asked to break the billings down to the two items they were concerned with: Comcast and PCS Cellular.

On roll call the motion carried unanimously.

15. Discussion of the New Parking in Front of the Mid-Town Post Office.

Mrs. Smith stated that the new parking arrangement in front of the Mid-Town Post Office was wreaking havoc inside of the Post Office with long waiting lines.

Police Chief Terlizzese responded that he believed the new system was working better than the old system.

Mrs. Smith said that she had understood that the problem was being evaluated because of the problem with Cafe L'Europe and the valet loading zone, and did not understand how the Post Office parking had also been changed.

Chief Terlizzese responded that he was not present at the meeting and did not know how it was done.

Police Major Croft explained that the recommendations of Mr. Shaw in this regard had been discussed at the January Town Council Meeting. The real issue was the unloading area in front of Cafe L'Europe which had been moved to Brazilian and was not working. The only way to facilitate the necessary unloading area would be to put it right in front of the restaurant, which had the effect of losing one space for Post Office parking.

Mr. Shaw explained that it had been his understanding that three diagonal spaces in front of Cafe L'Europe would be turned into passenger loading zones at night, so that in the daytime they would continue to be diagonal parking spaces. He believed that the change from diagonal to parallel had been made because of the pubic safety issue.

Chief Terlizzese noted that the Department of Transportation (DOT) liked the way it now was.
Major Croft agreed that the parking was now much improved.

Mrs. Smith stated that she hoped this would be one area where there would be no ticketing going on.

There was no action taken by the Town Council.

16. Discussion of Rental/Use of Town-owned property.

Mr. Shaw made a motion to put the policy regarding rental of Town-owned property on the April 8, 1997 Town Council Meeting Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney commented that he had provided background on this issue through his memorandum dated February 24, 1995 to the Mayor and Town Council identifying the current policy, which he believed was a good policy, which could be reviewed before the next Town Council meeting.

XIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. McLendon made a motion to add discussion of the Town Application for Diversion of Inlet Dredged Sand to the April 8, 1997 Town Council Meeting Agenda; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mrs. Smith commented that she had not finished making the Committee assignments and would notify the Town Council next week about the assignments for 1997-98.

XIV. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES For FEBRUARY 1997

Mr. Wyett made a motion to approve the Warrant List and Fund Expenditures for February 1997; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of February 26, 1997 - Minutes Available in Town Manager's Office

The major matters were:

Deferrals and Continuations - Major Projects:

B85-96 Application by Frederick J. Keitel III, 230 Royal Palm Way, for renovation of building and style change - project heard under New Business - Minor Projects.

B8-97 Application by Addison Development, 229 Via Las Brisas, for new one-story residence with a flat concrete tile roof - approved.

B88-96 Application by Felice Forman, 150 Canterbury Lane, for demolition of all structures on the property - withdrawn.

B1-97 Application by Ronald Schram, 1420 North Ocean Blvd., for construction of a new beach house - deferred.

B3-97 Application by Ray and Sharon Flow, 1350 North Ocean Blvd., for new cabana and landscaping - approved.

B4-97 Application by Mr. and Mrs. Norman Bahary, 160 Kings Road, for change in style from contemporary to Spanish and the addition of a two-car garage - deferred.

B5-97 Application by Mr. and Mrs. Burkhead, 680 Island Drive, for removal and replacement of existing two-story wing; removal and replacement of pool and deck, and facade changes - deferred.

New Business - Major Projects:

B9-97 Application by Llwyd Ecclestone, 190 South Ocean Blvd., for demolition of garage/staff quarters, addition of a new garage/staff quarters and enclosure of an existing courtyard - deferred.

B10-97 Application by Renaissance Group, Lot 7.2 Revised Plat of Island Road Development, to change the location of the garage, add a tower entrance and add a larger bay to the west elevation - will be re-advertised as a new project.

Mr. Wyett made a motion to approve the major matters considered by the Architectural Commission at its meeting of February 26, 1997.

B. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Pollitt administered the oath to all those who would be speaking to Variances, Special Exceptions, and Site Plan Reviews.

Old Business

1. Site Plan Review No. 2-97 - Skip Gozo, 127 Ocean View Road; located in the R-A Zoning District; to review proposed construction of a new residence. *(Deferred from January 14, 1997, and February 11, 1997)*

Mrs. Smith requested ex-parte communication information. Mr. Wyett declared communication with Mr. Broberg concerning Site Plan Review 2-97; Mr. McLendon declared communication with Mr. Broberg and Mr. Gozo concerning the plat of the lot; Mr. Shaw declared communication with Mr. Broberg and the architect reviewing the plans for the house; Mr. McDonald declared communication with Mr. Broberg concerning Site Plan Review 2-97.

Attorney Peter Broberg, on behalf of Skip Gozo, addressed the Town Council, distributing three aerial views of the property in question and stating that this matter had first come before the Town Council several months ago with the presentation of a Mediterranean style house. There had been one deferral as there were only four Town Council members present. The feeling of the Town Council at that time had been that the house mass should be reduced, which had been done. The style of the house had been changed to a Bermuda style, which reduced the roof height and the overall size of the house. The problem was that the plans had not been submitted in sufficient time for review and another deferral was granted. Mr. Broberg was now again back before the Town Council with the request.

Mr. Broberg explained that the house would be 6,300 sq.ft. on a 16,600 sq.ft. lot. There were no variances being requested; the house would be smaller in mass than the first time it came before the Council, and Mr. Broberg asked for approval of the Site Plan.

Director of Planning, Zoning and Building Robert Moore stated that the lot was a deficient lot as far as gross square footage was concerned, and the issue before the Town Council at the last meeting had been a proportionate reduction of square footage of lot coverage to compensate for the deficiency and the gross square footage of the lot. The Town Council had requested that the lot coverage on the property be reduced from 3,900 sq. ft. to 3,400-3,500 sq.ft., which would give a 20.75% lot coverage. The prior method of dealing with such properties had been by variance, and it was very difficult to establish a hardship. As a result the Zoning Commission and Town Council elected to remove this type of lot from the variance category and put it into a Site Plan Review for platted lots, and a Special Exception with Site Plan Review for unplatted lots.

Mr. Wyett suggested that the 350 sq.ft. porte cochere be removed and the garage connected to the house so the square footage would be closer to the recommendation.

Mr. Broberg responded that his client would be amenable to the suggestion if the square footage lost could be added to the second floor. He drew a precedent with a neighboring house which was on a lot 23% deficient, with a reduction requested by the Town Council of 20.2%, with 7,100 sq. ft. allowed. The lot in question was 17% deficient (larger than the neighboring lot) and 6,300 sq.ft. was being requested.

Mr. Moore commented that the porte cochere was not habitable space, but lot coverage. He was not sure Mr. Broberg understood that the Town Council was not dealing with habitable space on the second floor, but was talking about lot coverage on the first floor.

Mr. Wyett clarified that additional square footage on the second floor would be an Architectural Commission issue.

Mr. Moore explained that to meet the 20.75% lot coverage the house would have to be 3,445 sq.ft. of lot coverage.

Mr. Broberg agreed to take the suggestion of Mr. Wyett.

Mr. Wyett made a motion to eliminate the porte cochere with the exception of coming out a few feet to provide a nice entryway, and to allow a connection from the garage to the house, which would give approximately 3,600 sq.ft. on the first floor; seconded by Mr. McLendon.

Attorney Robert Deziel, representing Mr. and Mrs. Frederick Adler, addressed the Town Council, stating that he wanted to be clear that his client had no problem with the developer building a speculative home next door, however, asked that the rules be followed as closely as possible, as the house was way too large. He maintained that the house should be reduced to 3,445 sq.ft. He wanted to make it clear that whatever was approved today would go to the Architectural Commission for approval. In addition he recommended that some type of landscaping be provided for the home.

In response to Mrs. Smith, Mr. Moore explained that the architectural style of the house could be changed when it came before the Architectural Commission, and it would be possible for the applicant to reduce the square footage if the Architectural Commission said it was too large.

Mr. Randolph suggested that this was the opportunity for the Town Council to make sure that the property in question met the requirement of the Site Plan Review Ordinance, and not rely on the Architectural Commission for that. He pointed out that before approval of a Site Plan the Town Council should make a finding that approval of the Site Plan would or would not adversely affect the public interest, and certify that the specific zoning requirements governing the individual use had or had not been met, and that further satisfactory provision and arrangement had been made concerning the following matters where applicable: sufficiency of statements of ownership, intensity of use, ingress and egress, location in relation of off street parking, proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property boundaries, manner of drainage, utilities, recreation facilities, such other standards as may be imposed by the zoning regulations, visible size and bulk, the proposed development should be so arranged that it minimizes the visible bulk of the structure to drivers and pedestrians on abutting roadways, the point of reference being the center line of the abutting roadway, with the intent being to maintain visual impact of multi-story buildings at the same relative level of intensity; as a single story building at the minimum required setback. After review and preparation of the findings, the Town Council shall approve, approve with changes, or deny the application, and direct the building official to approve or withhold approval of the building permit.

Mrs. Smith stated that when the porte cochere was taken away the facade was totally flat, with the garage protruding to the ease, and that some substantial changes in the east facade of the house would have to be made if the porte cochere was eliminated; she believed the house was too close on the north property line; she stated that she thought the design of the house would have to be changed. She remarked that she did not want this to go to the Architectural Commission and have them say the plan would not work, but the Council approved it.

Mr. Randolph clarified that the motion should include a finding that approval with conditions was not adverse to the public interest and that it otherwise meets all of the other conditions within the Ordinance.

Mr. Wyett agreed to include that in his motion.

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

Mr. Moore commented that the revised plans were due in the Building & Zoning Office no later than 5:00 P.M. one week from this date.

<u>New Business</u>

2. Variance No. 5-97 - Jack Friedman, 901 North Ocean Blvd.; located in the R-A Zoning District; to allow construction of two additions at a height beginning at 7.14' above zero datum (16.69' NGVD) which is the highest elevation of the crown of the road.

Ex-parte communication was not declared by any Council member.

Architect Michael Johnson, representing Jack Friedman, addressed the Town Council stating that the property was located just north of the Palm Beach County Club, was a little over 2 acres, had approximately 12% lot coverage, had three yards, elevations ranging from 5' above sea level to 24' above sea level; there were five structures on the property--three guest houses, a pool house, and the main residence. Mr. Friedman wished to build an open air pavilion over an existing observation deck at the north end of the property to be set back approximately 50' from the side property. The house of the neighbor to the north was at 24' above sea level; 19' above the crown of the road, with an overall height of approximately 23'. The pavilion would have an overall height of approximately 20', 3' lower than the neighboring property. One of the guest houses on the property was an odd shaped guest house, which was proposed to be redesigned as a rectangular building of the same length, width and height, with the inclusion of a basement area housing a generator and providing storage space. Mr. Johnson presented drawings showing the relationship between the existing building and the proposed building. The building height plane would restrict the building of the proposed portion of the house, thus the request for a variance for 20" above the referenced measurement.

Mr. Moore gave staff comments: Comprehensive Plan comments: point of measurement should be considered, but the height plane should be adhered to so that mass of structure would not overshadow view from the road; Building Department comments: no hardship on the south side; no objection to the north side variance; Town Manager comments: additional information needed; justification for variance should be presented.

Mr. Johnson explained that Mr. Moore indicated that the height should be maintained, however, only vehicular traffic would be affected by this residence, as the roadway contained a dangerous curve with no sidewalks. He requested that the Architectural Commission be allowed to make the decision as to whether the building shadows, or is a greater impact for the particular location.

Mr. Wyett noted that there was no legal hardship.

Mr. Johnson replied that the hardship was the lay of the land and the elevation changes within the property, which would be reviewed by the Architectural Commission.

Mr. Wyett responded that the Architectural Commission would make its comments and decisions based on the aesthetics of the property, however, the Town Council was looking at the variance. He pointed out that there was no hardship as to the guest house, although he had no problem with the unit to the north as long as there was conformance to the requests of the Building Department.

Mrs. Smith asked if it was possible to pull in the south side of the guest house, as it was highly visible from the road. She stated that she believed it could be redesigned without the large variance.

Mr. Shaw remarked that there was a large amount of land south of the property, and suggested a deed restriction agreement to maintain a sufficient landscape buffer that would block the view from the road without encroaching on the setbacks. Another alternative would be to rotate 90 degrees, so that there would not be an angle problem.

Mr. McDonald stated that he did not see a hardship.

Mr. Wyett made a motion to defer the south side guest house Variance 5-97 to the April 8, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Johnson then addressed the north pavilion portion of the Variance request, stating that the overall building height was lacking; about 20" from the elevation datum from the reference point.

Mr. Wyett made a motion to defer the north side portion of the Variance to the April 8, 1997 Town Council Meeting, since the architect had indicated that he was trying to match one to the other.

Mr. Moore explained that there was truly a hardship for the point of measurement because of the lay of the land, however, the objection was to the height plane.

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

3. Variance No. 6-97 - Michael Kalisman, 146 Dunbar Road; located in the R-B Zoning District; to allow construction of an addition thereby expanding a nonconforming accessory building providing no side yard setback in lieu of 15' required, and to allow two entry gates setback 15' in lieu of 18' required. -

Deferred to the April 8, 1997 Town Council Meeting per letter dated March 6, 1997, from Mr. Ronald K. Kolins

4. Variance No. 7-97 - Homa Bahary, 160 Kings Road; located in the R-A Zoning District; to allow construction of an addition with a 28' 2" high tower exceeding the maximum building height plane at a setback of 36' 4" in lieu of 56' 4" required.

Ex-parte communication was declared by Mr. Wyett with the neighbor to the west, Jane Swing, regarding objections to Variance 7-97; by Mr. McLendon with the friend of Jane Swing as clarified in the letter of Jane Swing; by Mrs. Smith with Mr. Maschmeyer who was concerned with the height of the tower.

Mr. Randolph clarified that letters written to the individual Council members would be declared as ex-parte communication; however, letters to the Town would not apply.

Mrs. Smith read the letter of Mrs. Swing as part of the record.

Architect Robert Bell, representing Homa Bahary, addressed the Town Council, stating that the existing house was originally a small residence; over the years it had been added onto, changed, and revised. The owner now wished to achieve two things: to change the architectural style of the building to make it more compatible with the neighborhood and the Town; and to create a garage, which the house did not currently have.

Mr. Moore noted that staff had not been able to determine a hardship in this case.

Mr. Bell replied that because of the form of the building itself any other type of roof system would be very difficult and would not be aesthetically pleasing. The total size of the property was 28,616 sq. ft.

Mr. Wyett stated that the neighbor to the west strongly objected to this Variance, and did not consider that there was a hardship.

Mr. Bell replied that three of the neighboring properties had approved the proposed construction.

Mayor Ilyinsky stated that he considered the improvements were a great advantage to this house.

Mr. Shaw made a motion to deny Variance 7-97; seconded by Mr. McDonald.

Mr. Wyett noted that a denial would involve the applicant waiting a year to come back. He suggested that Mr. Shaw amend his motion to a deferral so as to allow the architect to develop a more acceptable plan.

Mr. Moore explained that if the Town Council denied the variance and Mr. Bell chose to lower the tower significantly he could re-appear before the Town Council, as it would be a significant change.

Mr. McDonald stated that he would then have to pay the fee again and that would not be necessary if a deferral was granted.

Mr. Shaw withdrew his motion to deny, and made a motion to defer Variance 7-97; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

5. Variance No. 8-97 - Robert G. Markey, Trustee, 1415 and 1423 Or 1425 South Ocean Blvd.; located in the R-AA Zoning District; to allow construction of a residence with a point of measurement of 23.5' NGVD in lieu of the 7.5' required.

Attorney Robert Deziel, representing the applicant, addressed the Town Council, stating that the request was to allow construction of a single family residence with a point of measurement of 23.5 NGVD in lieu of the 7.5 NGVD required for the property. He incorporated all the terms incorporated in the Variance Application as part of the presentation today. He thanked Mr. Moore and Mr. Castro for their assistance in the preparation of the Variance Application.

The applicant had purchased two separate properties encompassing 335' of ocean front land. Currently there was an existing single family residence on the south parcel and an approved variance for another single family residence on the north parcel. The intention of the applicant was to demolish the existing single family residence, combine both parcels, and then build one single family residence on the entire parcel. In order to build a single family residence in this area a variance was required to establish the point of measurement for grade and the finished floor elevation in order for the residence to be constructed on the property. Any property owner along this stretch of oceanfront property would need a variance to construct a new home because of the severe grade differential between the crown of the road and the dune height. Since the adoption of the Zoning Code in 1974, every single new home in that area obtained a point of measurement variance, and with the exception of one property, every single application had been granted. The one exception was the vacant lot that made up the north one-half of the applicant's property, which had previously been the subject of controversy. The neighbors to the north had now agreed not to object, given certain landscaping considerations. He submitted the language for a landscape buffer which would be part of an approval. He explained that the hardship was the lay of the land, since the natural grade of the dune was 15' higher than the customary 7.5' NGVD requirement. The 23.5' request was a minimum variance and was reasonable for the following reasons:

1. The existing residence had a 25.6' finished floor elevation. With the Variance approval the finished floor elevation would be reduced by 2'.

2. The natural grade of the property was approximately 22', and it was customary to build the finished floor at 18" above the natural grade in the area.

3. Two of the last variances approved were for 24.5' and 23' both at a height greater than the request today.

4. There were several houses in the same area with finished floor elevations higher than the request today, and based on the size of the property the request was fair and appropriate.

Ex-parte communication was declared by Mr. McDonald with Mr. Deziel and Mr. Smith regarding Variance 8-97; by Mr. Shaw with Mr. Deziel regarding the footprint of the proposed house; by Mrs. Smith with Mr. Deziel and Mr. Smith regarding Variance 8-97; by Mayor Ilyinsky with Mr. Deziel and Mr. Smith regarding Variance 8-97, by Mr. McLendon with Mr. Deziel and Mr. Smith regarding Variance 8-97, and by Mr. Wyett with Mr. Deziel and Mr. Smith regarding Variance 8-97.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments:
Comprehensive Plan: variance request seems excessive; should be designed to relate to adjacent structures and grant minimum variance to give relief; Town Engineer: full site plan review will be made at a later date; beach quality sand to remain in the Town; Building Department: need overall height of neighbors to the north and south; mechanical equipment must be laid out for the eight rooms as a condition prior to the issuance of building permit to see why they need the eight rooms in the basement for mechanical; Town Manager: request additional information on justification for the variance. He noted that one added factor was that there was a time constraint involved because of the pending moving of the construction control line, and the applicant had addressed all of the concerns of staff in a very forthright manner.

Mr. McDonald asked the height of the buildings on either side of the property?

Mr. Deziel replied that the height of the building to the north was 52.4', and the height of the building to the south was 57'.

Mr. McDonald asked if the applicant would agree to a Unity of Title?

Mr. Deziel stated that he had met with Mr. Moore in preparation of the application and that issue had come up, however, the determination had been made that because the house straddled the two properties, and it was not possible to build another residence there, the Unity of Title would not be necessary.

Mr. Moore stated that he believed the construction of the house across the property lines would be a de facto unity of title in itself.

Mr. Randolph advised that if the Town Council wanted to be assured that the property was unified a Unity of Title would be a requirement.

Mr. McDonald stated that was what he would like to see done.

Mr. Shaw expressed concern for the large number and size of the mechanical rooms in the basement, as well as the increase in the height plane. He commented that the house seemed to be built to the extremes of the property line.

Mr. Deziel responded that architect Jeff Smith had told him that because of the nature and size of the home the HVAC design called for the air conditioning coming up through the walls, distributed throughout the crown moldings. The primary purpose of the rooms in the basement were so that the air conditioning could go up all four walls in the rooms above. The HVAC system would be submitted to Mr. Moore for review. Concerning the height, Mr. Deziel explained that the house in question had 335' of frontage and was only 4' higher than the house to the south which had only 127' of frontage. In response to the lot coverage, he noted that the lot coverage was only 16% and was appropriate for the setbacks.

Architect Jeff Smith stated that the basement was strictly designed for mechanical, vehicles, and servicing of windows that went down into the basement. The large rooms would contain steel columns that supported the floors above because the structural spans were so large they were no longer residential. The rooms would strictly be used for mechanical access because the client did not want any air conditioning ducts visible; the walls were 30" thick and all air conditioning would be run through them and would come out of the crown molding.

Mr. Deziel stated that the applicant would satisfy the requirements of the Building Department regarding the basement rooms, which would not be used as habitable space.

Mr. Wyett made a motion to approve Variance 8-97 with the conditions that the beach quality sand remain in the Town, with any excess being delivered to the central beach or where the Town so directs, that there be a unity of title, that the mechanical rooms be kept to the minimum, and the landscaping agreement be included as a condition of approval; seconded by Mr. McDonald who added that the hardship was based on the topography of the land. On roll call, the motion carried unanimously.

6. Special Exception No. 4-97 with Variance - McCann Coyner Clarke Real Estate, Inc., 333 Peruvian Avenue; located in the C-TS Zoning District; to allow lessee to occupy 1,800 sq.ft. on the second floor together with 2,200 sq.ft. on the first floor (approved by Town Council in 1995), thereby further exceeding the 2,000 sq.ft. limit. A variance is requested to allow expansion without providing the five (5) additional off-street parking spaces required.

Mrs. Smith declared a conflict of interest, recusing herself, as her daughter was an employee of the Real Estate Agency.

Ex-parte communication was not declared by any Council member.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, distributing some pictures of the property in question. He explained that the Town-serving nature of the real estate firm was evident as that was proven each time the occupational license was renewed. He noted that five additional off-street parking spaces would normally be required, however, there were nine available parking spaces currently, with parking also available in the half-moon driveway in the front. On average there would be 5-6 employees there on a daily basis, and the intensity of use of the property would not be increased by simply expanding what was currently downstairs to the upstairs area.

Director of Planning, Zoning & Building Robert Moore disagreed with Mr. Broberg that the intensity of use would not be increased in converting residential to commercial use. He advised that staff comments were as follows: Police Department: must show location of off street parking spaces; Fire Department: fire sprinklers will be required; Comprehensive Plan: the plan could be designed to meet parking requirements; Building Department: must address Town-serving and parking; Town Manager: concurs with staff comments.

Mr. Moore explained that in actuality cars could be parked on the property, however, from a technical standpoint spaces could not be lined out on the property without providing some additional hardscape in a manner that would conform with the code.

In response to Mr. McDonald, Mr. Broberg explained that the hardship for this variance was that much more parking than required by Code could be provided but for the design of the parking spaces, and the green space would have to be torn up to provide that design.

Mr. Wyett stated that he would not accept the idea of using the driveway as the cars would be crowded on the property and it would not be aesthetically pleasing on this semi-commercial, semi-residential street. He had no objection to allowing the additional 1,800 sq. ft., however, 5 parking spaces were needed, and could be put on the west end of the property. He made a motion to approve Special Exception 4-97 on the condition that sprinklers were provided, and that the Building Department be satisfied as to parking; seconded by Mr. McDonald.

Mr. Wyett clarified that his motion was purely for the Special Exception, with denial of the Variance requesting that expansion be allowed without the provision of 5 additional parking spaces, suggesting that they be provided as he had outlined.

Mr. Randolph suggested that the Special Exception and Variance be dealt with separately, and mentioned that the Town-serving requirements must be included in the Special Exception motion.

Mr. Wyett agreed to add the Town-serving requirement to his motion.

Mr. Wyett re-stated his motion: He made a motion to approve Special Exception 4-97 with the provisions that Town-serving be provided, and sprinklers be provided; seconded by Mr. McDonald. On roll call, the motion carried 4/0, as Mrs. Smith had recused herself.

Mr. Wyett then made a motion to deny the Variance included in Special Exception 4-97, requesting that the required parking be provided to its maximum, with no parking other than visitor parking be in the circle, before a Certificate of Occupancy be issued.

Mr. Shaw noted that a parking plan could be provided that would not require a variance.

Mr. McDonald seconded the motion. On roll call, the motion carried 4/0, as Mrs. Smith had recused herself.

7. Special Exception No. 5-97 with Site Plan Review and Variance - Palm Beach Country Club, 760 North Ocean Blvd.; located in the R-A Zoning District; to allow construction of a 2,100 sq.ft. addition; and to allow a 2.5' point of measurement variance by beginning the building height measurement at 16' MSL NGVD in lieu of 13.5' allowed.

Ex-parte communication was declared by Mr. McLendon regarding a telephone call from Mr. Goldsmith; by Mayor Ilyinsky regarding a telephone call from Mr. Goldsmith, and a conversation with Norman Goldblum; by Mr. Shaw with Mr. Goldsmith and Norman Goldblum about the variance; and Mr Wyett with Norman Goldblum.

Attorney Frank Chopin, representing the applicant, addressed the Town Council explaining that the variance was a request to enclose an area of the Palm Beach Country Club presently serving as a patio and outdoor area for the purpose of providing sheltered eating space for the members of the Club. The hardship supporting the request was that the Club had been built prior to 1984, when there was no definition of a corner lot, and elevations had been measured from the highest point, which had changed according to the Code today. The request was being made so that the small addition would conform with the roof line of the existing property.

Director of Planning, Zoning & Building Robert Moore gave staff comments as follows: Building Department: no objection to variance, but Town-serving must be addressed.

Mr. Chopin stated that the Club met any Town-serving requirement, and offered to submit any information or evidence in this regard.

Mr. McDonald asked for clarification of the hardship.

Mr. Chopin explained that when the Club had been built prior to 1984, the height limitations were different than current zoning requirements as well as the definition of a corner lot, which now included the property in question.

Mr. McDonald made a motion to approve Special Exception 5-97 with Site Plan and Variance; seconded by Mr. Shaw.

Mr. Shaw suggested that landscaping of the staff parking area north of the main entrance be accomplished.

Mr. Chopin assured the Town Council that he would bring this to the attention of the Club, who would address the problem.

Mr. Wyett stated that the parking lot should be made more aesthetically pleasing and totally concealed; in addition he commented that the palm trees recently planted on the lake were a disgrace, and recommended that approval be subject to a definite plan for landscaping.

Mr. Chopin responded that he would personally see to it that the Club became aware of the concerns of the Town Council, which would be addressed in a satisfactory manner.

Mayor Ilyinsky reminded everyone that Mr. Chopin was not here to discuss landscaping and parking issues.

Mr. Moore stated that the same subject had come up some years ago when the Club was rebuilt, and the owners of the Cub had indeed made improvements in the area. It would be difficult for staff to link the parking area or lake to this application, however, Mr. Chopin did agree to address the concerns with the Club.

Mr. Shaw added that he had discussed the condition of the parking area and landscaping with Mr. Goldblum, and Mr. Goldsmith, who both gave assurances that the problem would be addressed.

Mr. McDonald added the hardship associated with the application was the topography of the land.

On roll call, the motion to approve Special Exception 5-97, with the condition that Town serving documentation be provided, carried unanimously.

XVI. ANY OTHER MATTERS

There were none.

XVII. ADJOURNMENT

The meeting was adjourned at 8:55 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn
3/24/97

SE. 4-97

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

LAST NAME—FIRST NAME—MIDDLE NAME Smith, Lesly Stockard	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE Palm Beach Town Council
MAILING ADDRESS 1021 No. Ocean Blvd.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED Mar. 11, 1997	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on 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

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

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ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must 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.

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APPOINTED OFFICERS:

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must 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 must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must 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 must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Lesly S. Smith, hereby disclose that on March 11, 1997:

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

____ inured to my special private gain or loss;

____ inured to the special gain or loss of my business associate, ____;

✓ inured to the special gain or loss of my relative, ____;

____ inured to the special gain or loss of ____, by whom I am retained; or

____ inured to the special gain or loss of ____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

3/11/97
Date Filed

Lesly S. Smith
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, 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 $10,000.