TOWN COUNCIL MINUTES OF MARCH 10, 1992

Roll Call

I. CALL TO ORDER AND ROLL CALL. The Town Council Meeting for March 10, 1992 was called to order by President Heeke at 9:30 AM in the Town Council Chambers on March 10, 1992. On roll call, the following Elected Officials were found to be in attendance: Mayor Marix, President Heeke, President Pro TemWeinberg, Councilwomen Douthit and Wiener, and Councilman Ilyinsky. Also attending for all or portions of the meeting were Mr. Doney, Attorney Randolph, Mr. Dusey, Mr. Moore, Mrs. Peters, Mrs. Crozier, Mr. Elwell, Mr. Jakubiak, Chief Terlizzese, Chief Elmore, Mr. Moore, Mr. Frank and Mr. Zimmerman.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by Father Warren of Bethesda by the Sea Episcopal Church and Pledge of Allegiance was led by President Pro Tem Weinberg.

Presentations

III. PRESENTATIONS

A. Recognition of Gail Coniglio - Seaview Park Commission - Mrs. Coniglio was presented with a plaque by Mayor Marix for her years of service on the Seaview Park Commission from 1987 to 1982.

B.Recognition of Helene Newman - Seaview Park Commission - Mrs. Newman was given a plaque by Mayor Marix for her years of service on the Seaview Park Commission from 1987 to 1992.

C.Recognition of Frank Flower - Zoning Commission Mayor Marix presented a plaque to Mr. Flower in recognition of his service on the Zoning Commission from 1988 to 1992.

D.Retirement of Ed Jennings, Firefighter Inspector - Fire-Rescue Department. Mr. Jennings was not in the room at the time and this item was put over to the April Town Council meeting.

E.Retirement of Henry Marchman, Sergeant - Police Department - Sgt. Marchman was presented a plaque by Mayor Marix in recognition of his 23 years 7 months of loyal service to the Town.

F.Retirement of James Moore, Police Officer - Police Department - Mayor Marix presented a plaque to Officer Moore in recognition of his 23 years 7 months of loyal service to the Town.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR - Mayor Marix stated she will delay her comments until later in the meeting.

Approval of AGenda

V. APPROVAL OF AGENDA - - Mr. Doney referred to Page 2, VIII. B 2 and 3 indicates letters were to be sent to the Legislative Delegation and due to the fact this is the last week of the Session, he will have it done by telephone. He referred to XII.A.1 Ordinance No. 4-92 should be deferred to the April Town Council meeting, if ready. Mr. Moore referred to Item XIII.C.1 - Variance No. 3-92 requesting it be deferred until the April 14, 1992 Town Council meeting. Motion was made to approve the regular agenda as amended by Mr. Ilyinsky, and the "Approved Agenda" as printed. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mrs. Wiener noted an item on the Approved Agenda, No. VIII.B.4, the PBIA FAR Part 150 Study Update should be discussed and also she wondered if the Bid Awards should be approved in this manner. Mr. Heeke stated they have been on the Approved Agenda and could be pulled if there were questions. Mrs. Wiener believed items on the Approved Agenda should be those things which are rote and she was concerned about Bids and such things as Mutual Aid with the City of West Palm Beach. Mr. Heeke stated they have recommended not accepting any of the Bids and they have been doing that. Mrs. Wiener recalled when this was originally started it was for members of the Council to give the changes in the minutes to Mrs. Peters before hand and for the Charitable Solicitations which have been approved, but she believed now the Approved Agenda is getting longer and longer and they are getting into other areas and she believed that certain items needed to be publicly discussed. Mr. Heeke responded the Council always has the option of pulling items off the Approved Agenda and asked if there were any items the Council wished to pull off the Approved Agenda. Mr. Weinberg believed there was a report to be given by Mr. Jakubiak on the PBIA study, as he represented the Town on the FAR Part 150 study.

Mrs. Wiener noted on the Sealed Bid No. 006-9192 all bids came in higher and she would like to discuss that also. Mr. Heeke announced they would consider these two items at this time.

New Business

VIII. NEW BUSINESS

A. Bid Award

Sealed Bid No. 006-91/92

1.Sealed Bid No. 006-91/92 - One Diesel Dump Truck Mayor Marix noted this bid was recommended to be rejected and to rebid. Mrs. Wiener asked if this was needed or perhaps it is not needed and she thought New Business should not be a part of the Consent Agenda as there are some questions she has and they need to be answered. Mrs. Douthit noted this is to be rebid at an appropriate time. Mr. Doney reported the necessity for this to be rebid is that there are some particular items on the specifications for this Diesel Dump Truck which came in higher than Mr. Dusey thought they should be and it was felt it should be rebid and that may be several months, but it is a needed piece of equipment. Mrs. Wiener stated that was her question whether or not it was needed.

B. Other

4.PBIA FAR Part 150 Study Update (Alternatives for Noise Abatement) - Proposed Letter to PBIA Consultant

PBIA FAR
Part 150
Study Update

Mr. Heeke noted a memorandum from Mr. Jakubiak is in the back-up on this matter, with a proposed letter from Mr. Heeke to Mr. Baldwin and this matter is now open for discussion. Mr. Weinberg asked for Mr. Jakubiak's summary.

Mr. Jakubiak addressed the Council indicating this has been going on for approximately one year and will be ongoing. He recalled the comments received on this subject and Letters to the Editor in the Palm Beach Post state some inaccurate information. He stated there is much analysis on this subject and he has information in his office, which is very technical in nature which is available for anyone to read. He stated the Town has given official positions on some of the items being discussed, such as expansion of the Airport, which would include extensions of the runway. He recalled another controversial position is the fanning of aircraft but there has been little discussion about the Stage 3 Aircraft which is the primary goal of the FAR. He stated the Stage 2 Aircraft are noisy and the FAR would like to phase them out completely. He noted there have to be some decisions made and some of the ideas the Town is presenting are more equitable use of four runways as opposed to using the east runway; and more use of the west runway, which will be beneficial to the Town; the use of the west runway in calm weather and these comments will require further review and they will be sent back to the consultants who will review them and report back. He commented that Mr. Weinberg and himself are representatives from the Town and they will give the Council updates as the study progresses. Mrs. Wiener understood that fanning is a problem but if they used the northwest runway, this perhaps could be avoided and she asked for a further explanation of this. Mr. Jakubiak responded the consultant has proposed using the northwest runway even more as well as the southeast runway. Mrs. Wiener asked what did the Town have to do to encourage that? Mr. Jakubiak responded the consultants are now requesting input and this is nothing new and the Town has reserved making its comments until they have had an opportunity to review the data but other members of the Technical Advisory Committee will also be submitting comments and he was sure some of those would be in conflict with the Town's position. He stated the Town has taken the position they want more equitable use of the runways and the consultants have proposed greater use of the northwest runway.

Mr. Doney noted attached to the memorandum of 3-4-92 from Mr. Jakubiak, there is reference to Task 7 - Prepare and complete Part 150 Noise Control Program and that is to be heard during the period of September 28 and October 27, 1992. He believed if there were any questions any of the items, the Mayor and Town Council should offer their comments so they can be discussed and forwarded to Mr. Baldwin.

Mayor Marix believed the decision on the fanning is a short term matter. She felt the serious matters are more long-term and that is how soon can Stage 3 be put into action and how the airport can be prevented from expanding and that is one of the worse problems. She believed if they were allowed to expand, it would make PBIA be one of the major airport in the country. She believed another problem is to try to find a way to alleviate the noise right now.

Mr. Weinberg advised PBIA had intended to introduce Stage 3's by 1994, however, the FAA recently came through with the ultimatum that the new airlines have until 1999 before they have to comply with the Stage 3. Mayor Marix advised there are communities which have put these standards into effect indicating in their particular communities they would not have it.

Mr. Jakubiak informed the Mayor and Council that PBIA also wishes to have Stage 2 eliminated by 1996, but that doesn't mean that there will one hundred per cent all Stage 3, and the year 2000 is their goal to have this in complete compliance.

Mr. Louis C. Pryor, addressed the Council on behalf of the Palm Beach Civic Association informing them the PBCA wishes to go on record as fully supporting seven of the eight proposals of the Good Neighbor Council for aircraft noise control, specifically the elimination of Stage 2 aircraft, which cause excessive noise; no extension of the east/west runway; increased use of the northwest runway; 50-50 sharing of the departures to the east and to the west when the northwest runway is not being used; encourage PBIA to seek grant money from FAA to obtain an Instrument Landing System; however the Board does not support fanning of aircraft over Palm Beach as because in trying to be representative of most of its' members, a straight line path rather than fanning permits a more rapid rate of incline, which adds to the aircraft's safety factor in the event of an engine failure as fanning does broaden the area of noise pollution. He felt most importantly getting back to the first point, under no circumstances should the Town lower its guard about not allowing the PBIA becoming wishy-washy in their current resolve in phasing out Stage 2 aircraft in 1994.

Mr. Ilyinsky and Mr. Heeke did not agree with the position on fanning, with Mr. Heeke stating the noise should not be concentrated on a select few as he considered that grossly unfair. Mrs. Douthit stated she is for fanning in one sense but does not believe the aircraft should run the entire length of the island, as that seems pointless. Mayor Marix believed that the real noise is between 7 AM and 7:40 and she believes they are going out over the ocean and then coming back, but the fact is there is noise and there is grime.

Mrs. Wiener believed it was unfair for one portion of the island to receive all the noise and there obviously is fanning but she felt the fanning should be alternated and distributed all over the island. Mrs. Wiener believed the Civic Association approach the Council with ideas they would like to have considered and wondered if it would be possible for them to rethink their position on fanning, as she doesn't want to see the island separated with one group against the other.

NOTE: Items listed on the "APPROVED AGENDA" will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that certain items be deleted from same and be individually considered.

<u>APPROVED AGENDA</u> (ITEMS VI THROUGH IX)

VI. APPROVAL OF MINUTES OF JANUARY 6, 7, 14, 21, 22, 29, FEBRUARY 3, AND 19, 1992

Licenses & Permits

VII. LICENSES AND PERMITS

A. Charitable Solicitations

Charitable Solicitations

1. Parent Child Center of the Palm Beaches, Inc.; No. 198-92
2. Save-a-Pet Florida Inc.; No. 236-92
3. Adopt-A-Family of the Palm Beaches, Inc.; No. 254-92
4. Palm Beach County Medical Society Auxiliary Foundation, Inc.; No. 296-92
5. Israel Cancer Research Fund; No. 308-92
6. Variety Club of the Palm Beaches; No. 312-92
7. Children's Home Society of Florida; No. 60-93

B. Beverage Licenses

1. Transfer of 2COP Alcoholic Beverage License from Lawrence Stanley Gorfine/Tete-A-Tete, Inc. to Nikiforos Georgios Stoupas d/b/a Casablanca Cafe Americain, Inc., 101 North County Road

B. Other

Mutual Aid Agreement for Fire-Rescue Emer.Services

1. Consideration of Updated Mutual Aid Agreement for Fire-Rescue Emergency Services Between the Town of Palm Beach and the City of West Palm Beach - Request for Authorization for Mayor Marix to Execute Agreement

Law to provide revenue for Municipalities

2. Consideration of Letter to Palm Beach County Legislative Delegation and Members of the Florida Legislature Supporting Adoption of a State Law to Provide Revenue for Municipalities for Training and Equipment to Modernize Records Management Systems

Voter Control of Mun.Taxes

3. Consideration of Letter to Palm Beach County Legislative Delegation and Members of the Florida Legislature Supporting State Constitutional Amendment that would Provide for Voter Control of Municipal Taxes

IX. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR FEBRUARY 1992

REGULAR AGENDA

Public Hearings

X. PUBLIC HEARINGS - Mrs. Peters reported Proof of Publication has been received on the three proposed landmarks. Mrs. Peters administered the oath to those who will be presenting testimony.

Res. 11-92

A. Landmark Designation for 120 El Brillo - Consideration of Resolution No. 11-92. Attorney Randolph read the Resolution by title:

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 NO.
2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE
CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES
HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH
LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS
CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF
THE TOWN OF PALM BEACH.

Mr. Frank reported this property meets the Criterian C, embodies distinguishing characteristics of an architectural type or as a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship; also Criterian D, is representative of the notable works of one or more master builders, designers, or architects, whose individual ability has been recognized to influence their age, and in this case it was Marion Sims Wyeth. Mr. Frank reported this property is owned by Mr. & Mrs. John Mashek and there have been no negative comments on the designation.

Mr. James Sved, consultant, advised the residence was designed in 1928 by Marion Sims Wyeth and is a Mediterranean Revival design with the notable features of wrought iron balconies, barrelled clay tile roof and the roof eaves. He felt the most dramatic item is the main entrance where a Mephastophelean figure on the entablature, which is flanked by a pair of seahorses located directly above the Composite column capitals. He indicated this home was completely renovated in 1981 and this house is very worthy of consideration for landmarking.

Mr. Heeke asked what type of renovations were done in 1981 to which Mr. Sved responded mostly interior, however, they did have a pool house built and the Masheks are not satisfied with it, in fact would like consideration to not include this pool house in the landmarking of the house.

Mrs. Wiener moved that the Designation Report be made part of the record. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mrs. Jane Volk, Chairman of the Landmarks Preservation Commission reported the Masheks have volunteered their home for the landmarking excepting to exclude the pool pavilion which is inappropriate and will be replaced at a later date.

Mr. Heeke asked if the Resolution should have some language to exclude the pool house, to which Mr. Randolph responded they could do that by adding a sentence stating "excluding the pool house and the land upon which it sits." Mrs. Douthit asked why they are excluding the land? Mrs. Volk asked for the structure to be excluded and not the land as anyone buying the house in the future may have their own ideas of a pool pavilion and its placement.

Mrs. Douthit moved for the approval of Resolution No. 11-92 with the exception of the cabana pool house which will remain unlandmarked and with many thanks to the Masheks who volunteered this home for landmarking, with the reasons being the property meets the criteria in the Landmark Ordinance of C and D. Seconded by Mr. Ilyinsky. Mr. Randolph advised the Resolution has been amended with the language added at Section 2 stating, "excluding therefrom the cabana poolhouse."

On roll call, the motion carried unanimously.

B. Landmark Designation for 241 El Vedado - Consideration of Resolution No. 12-92 - Mr. Randolph read the Resolution No. 12-91 by title: Res. 12-92

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 NO. 2-94, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Frank explained this property meets Criterian C and D. He advised the architect is John L. Volk and during the proceedings of the Landmark Preservation Commission, the owner objected to this landmarking and advised the property was for sale. He advised a letter has been received from Cynthia Farris who has placed a bid on the house and has no objection to the landmarking in the event her bid is accepted; and Mr. Frank recalled he had a phone call from a realtor who also had a prospective purchaser who had no objection to the landmarking.

Mr. Sved advised this property was built in 1936 based on a design by John Volk and is a Neo-classical design and there is a parapet on the roof and there are entablutures above the windows.He stated there is a central chimney on this house and very few houses in the United States have a central chimney as most chimneys are designed to be on the outside walls. He believed this is worthy of consideration for landmarking.

Mrs. Wiener moved the Designation Report be made a part of the record. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mayor Marix stated she wished to refer to the remarks of Mr. Frank stating the seller was against landmarking and the two buyers had no problem with it, and she thought this was a good example that landmarking does not affect resale of the property. Mrs. Wiener believed that part of this was being able to get the landmarking booklet out to the public.

Leslie Divoll, Landmark Commissioner, addressed the Council indicating the Chairman, Mrs. Volk, has declined to make a comment on this particular property. She stated she was a preservation architect and felt it was necessary to address the negative comments that the owner put on the record in his letter asking that the designation be declined. She reviewed the designation report and as an architect she attempted to evaluate this and having done that, even more firmly is in agreement with the decision of the Landmarks Commission, who voted unanimously for the landmarking. She noted there were two offers on this property, one firm and one pending and the prospective buyers have indicated their support of the designation. She advised the present owner states the entrance on the east side takes away from the practicality and grandeur of the residence, and expresses his opinion that the entrance on the side is not a aesthetically pleasing feature. She noted this was the way the house was configured when he bought it, so she felt his disapproval should be set aside. She believed if this entrance was changed, it would introduce traffic into the main primary room and disrupt their garden. She believed a complete rearrangement of the interior of the house would be required if this entrance was changed. She stated the owner also writes that this is not a pure expression of the style, but she felt Palm Beach architecture by its' very nature is eclectic, inventive and imaginative and adapts creatively the elements of style and the owner's suggestion of landmarking only "pure" styles would put the Landmark Commission in a position to recognize only the most rudimentary copies of old masters, rather than promoting recognition of local mastery of creative architecture. She felt 241 El Vedado was a one-of-a-kind work of a master architect and deserves landmarking. Mrs. Wiener asked if there was any further word that the house has been sold to which Mr. Frank responded negatively. Mrs. Wiener suggested it be deferred. Mr. Heeke believed that was a good idea. Mayor Marix understood that voluntary landmarking is appreciated but the fact is the Council has to make the determination of whether or not it is or it is not landmark material. Mrs. Douthit believed it was wonderful when the homeowners volunteered their homes for landmarking but in this case the homeowner doesn't want it but the two parties who wish to buy it do want the landmarking and are aware of the fact that this is being considered today and if they weren't for it, she was sure they would be here to protest and therefore, she moved Res. 12-92 landmarking 241 El Vedado be approved on the grounds that it meets Criteria C and D. Seconded by Mr. Ilyinsky. Mrs. Wiener stated that from Day One, she has been concerned about people's property rights and thought if they are this close to a purchase by someone who wants landmarking, she would like to see this deferred, stating she had a feeling about this because of the interplay and felt confrontation should be avoided at all cost. Mr. Heeke asked if deferring would require the approval of the owner? Mr. Randolph stated they would only need the approval if the time was running out. Mr. Frank stated they could defer this as there is enough time if this is considered at the April Town Council meeting as that would be in the 90 day period. Mr. Heeke asked if it needed to be readvertised? Mrs. Peters responded it would not have to be readvertised if it was deferred to a date certain.

Mr. Heeke indicated he had no problem with a deferral of thirty days as he would like to be cooperative with the parties in negotiation at this time. Mayor Marix agreed, but stated she had a problem with the fact that a lot of properties have already been landmarked because the Council felt they should be landmarked and there have been people asking for a deferral of a month or two, due to the fact that they did have their homes on the market, and there is nothing wrong with delaying it a month or two, but could it do damage to our landmarking procedures? Attorney Randolph did not believe there would be an effect on the landmarking procedures as each case is looked at individually and it is within the Town's discretion to grant the extra time. Mr. Heeke felt there are offers pending, which he felt was a little different circumstance, and he didn't think it was precedent setting and he would be inclined to defer. Maker and seconder of the motion did not wish to withdraw their motion.

On roll call, the motion failed to carry (2-3) with Mrs. Wiener, Mr. Weinberg and Mr. Heeke voting against the motion. Mrs. Wiener moved that the Landmark Designation for 241 El Vedado and Res. No. 12-92 be deferred to the April Town Council Meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to defer.

Res. 13-92

C. Landmark Designation for 294 Hibiscus Avenue - Consideration of Resolution No. 13-92 - Mr. Randolph read the Resolution by caption:

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 COMMITTEE THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Frank reported the property at 294 Hibiscus Avenue meets Criterian C and D. He advised the architect is Maurice Fatio and this item was controversial through the Landmarks Preservation Commission's hearing, and the owner had the property for sale, however, since the meeting the property has been sold and he has been advised by the former owners' attorney that the new owners have no opposition to landmarking.

Mr. Sved reported this was built as a mixed use structure in 1929 by Treanor and Fatio for Mr. Wiley Reynolds, who wished to build a whole block with mixed uses of offices, shops and apartments. He advised it is a Mediterranean design and is a highly detailed and beautiful building. He pointed out the columns as well as the cornice spanding between the first and second floors is hand carved by quarried coquina, which was quarried from the Key Largo quarry. He advised this is a hip roof structure and the barrel roof tiles are the original and everything except the front door, windows and air conditioners are original. He advised at the center of this building on the first floor is a small courtyard and this property is very much in its original design. He read a letter from Alex Fatio Taylor, the architect's daughther which stated the archway was originally intended to connect to an adjacent building which was never constructed and the building is classic Fatio and deserves to be preserved in its purest state. He noted this building is very worthy of the Council's consideration for landmarking.

Motion was made by Mrs. Douthit to receive the Designation Report into the record. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Daniel Brams addressed the Council, noting he is the current owner of the building and he just became aware of this meeting and asked if this could be deferred until he has an opportunity to explore the ramifications of the landmarking. He is aware of the objection filed by Attorney Prosperi for the previous owner and he doesn't necessarily share his opinion, but would like the time to be able to make an informed decision on this matter. Mr. Heeke asked him if he was aware of the fact that the property was about to be landmarked when he bought the property to which Mr. Brams responded affirmatively. Mr. Ilyinsky moved the matter be deferred to the next Town Council Meeting to give the new owner the opportunity to read the book and become informed about the landmarking procedure. Seconded by Mr. Weinberg. Mrs. Wiener asked what would have happened if they had gone forward with this as she was not aware the owner was in the room. Mr. Randolph responded notice is given by way of advertising and that was done. Motion carried unanimously on roll call.

Taxicab Ordinance

B. Taxicab Ordinance - Request by Robert White of Park Avenue Limousine of Palm Beach County, Inc. (Located in Delray Beach) to Exceed Maximum Number of Fifty (50) Taxicab Permits Per Sections 10-320 and 10-321 of Town Code of Ordinances.

Mr. Randy Bring, Vice-President and Co-owner of Park Avenue Limousine addressed the Council noting his company has received a request from a hotel in Palm Beach to provide service exclusively to that hotel. He pointed out the type of service his company offers is unique and special and different from what is currently provided in Palm Beach. He stated the public demand for limousine service is one of the provisions for the Certificate of Convenience and among the many things his company offers is a wheelchair awareness training program and he didn't believe that any other company offered that specifically for the handicapped passenger. He stated another question is whether the public has been served by the number of permits that are presently in effect. He stated the character and experience section that the Ordinance asks to be considered is something he would be pleased to document as he can provide good references. He requested the Town Council look at the type of service which his company does offer and he would like to provide one additional vehicle to one client in Palm Beach.

Mr. Doney noted the documentation has been provided by Mrs. Crozier in her memorandum of March 2, 1992 and March 3, 1992 and the burden is on the applicant to demonstrate the need before the Town Council may consider exceeding the cap of fifty permits. He advised the meeting has been properly advertised and the other permit holders have been advised that this matter will be considered today. He noted he has asked what hotel to which Mr. Bring was referring but he declined to reply as he wished to protect that business interest should it materialize. He believed the need to exceed the cap has not been demonstrated.

Mr. Heeke called for public comment and there was none. Mrs. Douthit asked if they had special vehicles to handle the handicapped. Mr. Bring responded his company has developed and instituted a program which has been adopted by several limousine companies throughout the United States, which is a program to allow staff to be comfortable with the handling of a wheelchair as well as working with physically challenged people, and they do have specially equipped limousines with special doors which have been enlarged, which are designed to comfortably accommodate the handicapped. Mrs. Douthit believed when they had a call for a vehicle to accommodate a wheelchair, they should pull off the other limousine they had in the Town and substitute it with the other. Mr. Bring believed if he wanted to have that vehicle on call at the hotel, they would need the necessary certificate. Mrs. Douthit stated she would like to keep the cap at fifty and asked Chief Terlizzese to give his comments.

Chief Terlizzese recalled the Council decided a few months ago that the cap would remain at fifty and he didn't see any need for additional permits as the vehicles now permitted can provide the service.

Mrs. Wiener believed the reason they are not finding the other owners of the permits in attendance is simply because they were relying on what the Council told them last time and that is the cap would remain at fifty. She agreed that the cap should remain at fifty. Mr. Heeke agreed, recalling it was increased to 52 earlier this year and the permit holders were willing to give up two cars, so now we are back to fifty and he has not heard from anyone that the service is inadequate and the Chief of Police has indicated he believed adequate service was being provided with the 50 permits.

Mrs. Douthit moved that the Ordinance be upheld maintaining the cap at fifty and the request to increase be denied. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

XI. OLD BUSINESS

Old Business

A. Ordinances - Second Reading

1. Ordinance No. 2-92 - Establishment of a Dispute Resolution Board - Mr. Randolph read Ord. No. 2-91 by caption:

Ord. 2-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA ESTABLISHING A PROCEDURE FOR EMPLOYEE GRIEVANCE RESOLUTION; PROVIDING FOR DEFINITION; ESTABLISHING A GRIEVANCE RESOLUTION BOARD; ESTABLISHING POWERS AND DUTIES; PROVIDING FOR THE RETENTION OF THE RIGHT TO BYPASS THE GRIEVANCE RESOLUTION BOARD AND GO DIRECTLY TO THE ADMINISTRATIVE AND PERSONNEL COMMITTEE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Ilyinsky to adopt Ordinance No. 2-92 on second reading. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

2. Ordinance No. 3-92 - Amendment to Chapter 3, Section 3-17 of the Town Code of Ordinances Regarding Alcoholic Beverages - Mr. Randolph read Ord. No. 3-91 by title:

Ord. 3-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 30 OF THE TOWN CODE OF ORDINANCES AT SECTION 3-17, PROVIDING FOR THE PROHIBITION OF CONSUMPTION OF ALCOHOLIC BEVERAGES AT CERTAIN PUBLIC PLACES; PROVIDING AN EXCEPTION FOR PATRONS SEATED OUTDOORS IN CONJUNCTION WITH A PERMITTED RESTAURANT: PROVIDING AN EXCEPTION FOR THE CONSUMPTION OF BEER AT THE PAR 3 MUNICIPAL GOLF COURSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Douthit moved for approval of Ordinance No. 3-92. Seconded by Mrs. Wiener. Mr. Weinberg stated he would like to have the consumption take place at the Club House and not on the Golf Course. Mr. Randolph stated that can be done without amending the Ordinance. Mr. Adrian Winterfield suggested the Ordinance should state what the Council actually means and they don't mean to have people drinking beer on the golf course and if they want to restrict that activity, they should be more precise and indicate those restrictions. He recalled the local newspaper reported the necessary license for this activity has been held by the Golf Pro. Mr. Doney stated that was correct. Mr. Winterfield asked how long has this been going on to which Mr. Doney responded the license has been in effect since 1973 since the Town acquired the property. On roll call, the motion carried unanimously.

B. Appointment

Appointment
Bldg. Board
of Adjustments
and Appeals

1. Building Board of Adjustments and Appeals - One Citizen-At-Large Position for Alternate Member - Deferred from February Meeting -

Mr. Moore recalled at the February meeting, the name of Mr. Rauch was proposed and it was not known whether or not he was a resident of the Town, as the only address they had for him was a post office box, and it has been determined that he lives in the 3000 block of South Ocean Blvd. and upon completion of a home he is constructing on La Puerta, he will be moving there, therefore he would qualify as the citizen member at large, for this Board. Mr. Weinberg moved that Mr. Neal Rauch be appointed as the Citizen-At-Large Position, which is an Alternate Member. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

C. Other

1. Consideration of Future Water Supply Study by James M. Montgomery, Consulting Engineers, Inc. - Progress Report on Negotiations with the City of West Palm Beach and Related Matters by William Sundstrom -

Future Water
Supply

Mr. Sundstrom addressed the Council, noting that since they were last here, they requested permission to conduct a Desk Top Study of the feasibility of building an Aquifer Storage and Recovery System under the island and the Council authorized that, subject to securing confirmation from the South Florida Water Management District that the construction of such a system would accomplish the stated goal, which is drought-proofing in the case of future water restrictions.

Mr. Sundstrom reported that they have had a series of meetings with representatives of the City of West Palm Beach and believe they are well along with a conceptual new Franchise Agreement which would last in perpetuity and he asked if Mr. Wodraska could address this concerning the communication from the South Florida Water Management District.

Mr. John R. Wodraska addressed the Council, noting the background information furnished the Mayor and Town Council contains a letter dated March 2, 1992 from Tom MacVicar, Deputy Executive Director of the South Florida Water Management District stating that under the way the SFWMD approaches water shortages, there are only two recognized times that they will issue relief from restrictions and they are:

1. Reclaimed water projects - and a lot of golf courses take waste water effluent, treat it and sprinkle it on the Golf Course.

Aquifer Storage and Recovery

2. Aquifer Storage and Recovery concept.

He pointed out they do recognize these two areas, and as a result of the proposal of the ASR, the South Florida Water Management District states we do qualify. He stated because the proposal suggests buying bulk water in times when there are plenty during the rainy season from the City of West Palm Beach and creating an underground storage tank in the Town. He stated SFWMD is saying if the Town of Palm Beach does this and the City of West Palm Beach is under water restrictions, then restrictions could be imposed on the Town of Palm Beach. He felt there were some alternatives, as the District, unless they get to the worse category of drought (which they have never experienced) that would impose internal domestic restrictions on what people would use inside of the house. He reported most all water restrictions are geared to outside water use. He felt by creating the underground storage tank, they would have enough water to take care of the domestic use, inside the houses, from the City of West Palm beach and the water underground storage tank would be limited to irrigation water.

Mr. Wodraska felt the District is encouraging this method and it is a very progressive water management plan and for years the people in Florida have been struggling with this working towards how this could be captured when there is an excess and hold on to it. He commented that in 1965, the Town entered into a Franchise Agreement with the City of West Palm Beach and now in 1995, the Council is going to be asked to look thirty years into the future and make some decisions on what kind of water trends are being predicted. He believed if the original charge is how can they come up with a water management plan to plan for the future, with some drought-proofing to deal with restrictions, this technology of ASR is the best.

Mayor Marix heard Mr. Wodraska state they are well along with their discussions with West Palm Beach on a possible contract and wondered if that contract was tied in with the underground storage? Mr. Wodraska reported his discussions with the City of West Palm Beach has been about them operating the system and because of the question as to who owns the water, it is very important from a legal standpoint, but they have had meetings with West Palm Beach and believe they have come up with a way the agreement can be structured. Mayor Marix asked if the agreement they are coming close to finalizing, is that in connection with the underground storage or is an agreement in the event they don't go underground? Mr. Wodraska responded this would allow them to go both ways, either include the underground alternative and if that is not feasible, allows them to go to a more traditional approach. Mayor Marix asked with regards to the underground storage, which is quite a novel approach, and obviously it will have unbelievable ramifications if it can be put in this Town because of the type of subsoil there is in the Town and many other questions, however, assuming it does work and assuming the other items with regards to expenses as best they can estimate and the variances, etc., will the Town ever get a comparative with practicality on a long range basis with the desalinization process which was originally being considered? Mr. Wodraska thought there were some comparisons available as the technology of Aquifer Storage has been around since the seventies and a perfect example is in the Keys, where there is a desalinization plant and the price of water was as high as ten dollars per thousand gallons and the cost effectiveness, taking ocean water and trying to make it potable is very expensive and that area is going to an ASR and a well has been installed in the Marathon area. He stated this is the purpose of the Desk Top Studies and that will be the first step in getting involved in this. He believed it was still the most cost effective to go with the Aquifer Storage as compared to the desalinization. Mayor Marix believed the cost of desalinization as methods improve has been reduced and when the decision is made, she wants to be sure they have some comparative figures. Mr. Wodraska reported most of the work going on in Florida right now is not desalinization of ocean water but looking at the Floridan water, which is brackish. Mayor Marix stated she knows that but the research to reduce those costs is ongoing. Mr. Wodraska stated this is a subtropical area and the problem with sub-tropical Florida is seventy per cent of the rain received is during the hurricane season and that is when the people are not here and thirty per cent during the seven months of the year when the people are visiting here and agricultural is at its peak, so the question is how do you hold on to the 70% of the rain during the rainy season rather than dumping it in the ocean. He stated the alternative to putting it underground is much more cost effective than trying to take it out of the ocean and reclaim that water.

Mrs. Douthit noted Mr. Wodraska keeps referring to wells and she is confused about that subject as she visualizes well is a place where water is procured but it is fed by underground springs. She believed that what he was referring to is the bubbles stored underground which they would fill up with water from West Palm Beach, so it could be termed an underground storage tank. She thought if this did turn out to be the best way to go, and fifteen or twenty years down the line the Town decided to go to desalinization, there would be storage for that type of system. Mr. Wodraska agreed. Mrs. Douthit recalled when they were originally talking about Reverse Osmosis, it was mentioned there would have to be four or five above ground storage tanks to store the water and asked if the underground storage would take the place of the above ground storage tanks? Mr. Wodraska responded that would be a possibility. Mayor Marix asked if there was a figure for life expectancy for the underground storage facilities? Mr. Wodraska responded the technology has been around for approximately twenty years and after a period of time, the increased efficiency for the wells he is aware of seems to be evident. He doesn't know if anyone can say that at some point in time, they no longer become functional and he is not aware of a life expectancy. He recalled the facility in Charlotte County when it was first installed was operating at 80% and now is at 100% and it has become more efficient as a result of creating a better zone of water. Mayor Marix asked if water is stored underground, could there be seepage into that supply of water? Mr. Wodraska responded this could happen, but they are talking about installing it six or seven hundred feet in confining layers of impervious material which would protect it. He stated it actually gives an afforded level of protection as it is so far underground and it is protected by layers of impermeable rock.

Mrs. Douthit indicated she has read over the years that sewage be deep welled and clearly locations would have to be far enough away from these underground storage areas. Mr. Wodraska responded there are a lot of these wells and these are in what is known as the boulder zone which is in excess of three thousand feet down and there are confining areas which would not allow it to come up. He stated hazardous material is also stored there and they are looking at this boulder zone as one that would never be used again, however, it is put so far down underground that it is physically prohibited from coming back up. Mayor Marix recalled reading there have been some problems recently to which Mr. Wodraska agreed, but again he stated they are down three thousand feet and for the ASR, they are looking for a zone in the 600 foot range. Mrs. Douthit asked where these deep wells for the hazardous and sewage are located and if they were going to put the ASRs down on the island of Palm Beach, would they be far enough removed from them? Mr. Wodraska commented there are excellent questions being asked as to how many people have done this before;

Aquifer Storage & Recovery (cont'd)

what are the preliminary economics; where are other wells of this type in existence explaining that is the purpose of the Desk Top Study. He didn't believe the questions could be answered with the level of detail until they go to the next step. Mrs. Wiener asked what was the next step? Mr. Wodraska responded the $15,000 Desk Top Study. Mrs. Wiener believed that was talked about at the last meeting. Mr. Wodraska agreed but noted they were not to initiate it until there was some assurances from the South Florida Water Management District, which he interpreted the letter received from them to state there were some assurances. Mrs. Wiener believed they gave an answer, but she thought they were saying yes with one hand and no with the other, reading from the letter: "The level of relief afforded through the variance could vary depending on the operation of the system and the severity of restrictions...."and later: "...no restrictions should be required" and she thought it was carefully worded and "should be" is a very questionable phrase.

Mayor Marix agreed noting the way this is voted on today with the referendum before the voters, could mean they would lose their rights in the Town and it may be the County will be telling us what to do.

Mr. Wodraska stated he wanted to make sure everyone understand what the District is saying about blending the water and what they are saying is if the Town continues to take their water from West Palm Beach and was relying solely on taking it out of the underground storage here, there would have to be a variance, however they are saying if we continue to take water from West Palm Beach and West Palm Beach has restrictions on it, then at some time there will be restrictions placed on the Town. He believed one of the alternatives the Town has is to say to the District that there have never been restrictions on the amount of water people use inside their homes and the Town should be allowed to continue to take that amount of water from the City of West Palm Beach and the only restrictions then would be on outside lawn irrigation and the underground storage tank water would be utilized for that. He stated it was his belief that the District is trying to encourage incentive for the Town to move forward on this progressive procedure and the Town would be in the forefront if they choose to go this way. He believed if all would deal with this problem on a broader scale, the water management problems could be solved and that is why the District would like to see the Town go forward with this.

Mr. Adrian Winterfield asked if the present delivery system was a dual one which would allow segregation between potable and non-potable waters, and if not, what would be the cost to establish such a system? Mr. Sundstrom responded there is a single unified potable water distribution system on the Island and the cost of building a dual delivery system would be prohibitive.

Mr. Sundstrom stated he would like to comment on the precepts to the franchise agreement or inter-local agreement which will soon be ready for distribution as he thought they fitted well with the comments made by Mr. Wodraska today. He recalled they stated three goals for the City of West Palm Beach and four goals for the Town of Palm Beach. He recalled the Town's goals have been identified:

1. To improve the use, enjoyment and availabilityof a sufficient quantity of water during periods of drought or restrictions, which would enable the residents of the Town to preserve and protect the beauty of lawns and horticulture.

2. To achieve a high level of conservation of water resources by methods other than economic inducements or penalties.

3. To establish a level of independence to the end that substantial quantities of water required by theresidents of the Town are demonstrably availableat all times without negatively impacting finite resources.

4. To improve both the quality of water received from the City and to further bring about improvements in pressure to all venues of the Town.

Mr. Sundstrom reported the City of West Palm Beach has in the process substantial improvements to the distribution system on the Island and some of those improvements have been on hold during the negotiation process. He believed as they get into the summer, they will see most of the improvements either completed or scheduled for completion. He stated the goals of the City of West Palm Beach:

1. To maintain and preserve and protect the relationship which has existed between the City and its consumersresiding within and adjacent to the municipal boundaries of the Town.

2. To avoid the loss of revenue or revenue support which could adversely affect the remaining customers of the City's system or reduce the base of customers requiredto support the capital improvements designed to improvethe quality of service to the City and its customers.

3. Design a total system of conservation of which the Townof Palm Beach represents an integral part which reducesdemand on the surface waters as a source of supply and in general reduce the stress on all water supply Aquifers during periods of restriction.

Mr. Heeke noted this is a preliminary report and called for further questions. Mr. Winterfield addressed the Council noting since there is not a dual delivery system, he has difficult understanding how it would be possible to take water from the underground storage for irrigation while continuing to take potable water from West Palm Beach. Dr. Sten Lilja addressed the Council recalling Mr. Wodraska's statement that they were very close in coming to an agreement with the City of West Palm Beach on the franchise and he recalled the consultants had proposed at an earlier meeting that the Town should take over the distribution system, which he believed was a very large item as the condition of that system is not the best and he asked if they were actually negotiating to take over the distribution system in the Town and what happens if the underground storage idea would not be feasible in the Town but might work in the City of West Palm Beach. Mr. Sundstrom advised the discussions do not envision the acquisition of the distribution system, but envision that it will remain the property of the City of West Palm Beach and it will be the City of West Palm Beach's obligation. He advised on the ASR System, the discussions are that that system would belong to the Town because it would be built by the Town, but it would be operated by the City of West Palm Beach and there would be a one time purchase of water to fill up the bubble, and from then on it would be a replenishment. He stated they would not know what the cost would be until they discover what the retrieval rates are as to whether there would have to be put down three gallons to get two gallons back.

Mayor Marix asked when would they have what the offer would be a on a regular contract, and would the Town be able to choose between retrieval system or paying a different rate structure? Mr. Sundstrom responded one of the advantages of having the retrieval system is that it gives the Town the ability to establish a conservation rate. He recalled the rates and charges were increased in December by the City of West Palm Beach and when they did that, they instituted a conservation rate which was for customers using over 12,000 gallons per month. He appeared before the City Council in West Palm beach during the course of their adopting this Ordinance and agreed that the City's rate would be subject to a cost-of-service study and that has not commenced at this point.

Mayor Marix explained what she is looking at is when it is known that if the Town does nothing, the rate will be such and such; if they use more water, the rates would increase and that would be one side of the balance and as they work on the other angles, they would be able to state, if they don't do one thing, they can spend some monies for pumps, - there would be a certain rate structure with restrictions and that would be one side of the picture; but the other side of the picture would be the result of the study and she would hope a third side of the picture will be what will happen with regular salt water desalinization after more research is done on the advances being made there so they would end up with one scenario, the second and a third and at which point, she imagined they would be able to make a decision. Mr. Sundstrom recalled they had spoken to some folks in Denmark who had made tremendous improvements in the desalinization process, but simply they are not ready to do it on an application of this size. He talked also with Louisiana State University who have come up with a generator which would be put in the Gulfstream and would generate electricity and do the desalinization and these kind of things are popular science at this point, but twenty years from now, they could be reality.

Date for
Spc.Town Counc
Mtg. on Budget

2. Consideration of Date and Time for Special Town Council Meeting on Budget Matters in March or April 1992 - Deferred from February Meeting (See Item XII.D.3.)

After discussion, it was the consensus of the Mayor and Town Council to start the April 14, 1992 Town Council Meeting at 9:00 AM and at 10:30 AM the Budget matters be discussed for as long as it would take, with input from the public.

Lunch break was taken. Meeting reconvened by President Heeke.

New Business

XII. NEW BUSINESS

A. Ordinances - First Reading

Ord. 4-92

1. Ordinance No. 4-92 - Amendments to Noise Ordinance - This Ordinance was deferred to the Town Council Meeting of April 14, 1992.

B. Resolutions

Res. 15-92

1. Resolution No. 15-92 - National Pollutant Discharge Elimination System - Authorization to Enter Into Supplemental Interlocal Agreement -

Mr. Heeke explained a memorandum has been received from the Town Engineer recommending execution of the supplemental inter-local agreement and adoption of the Resolution No. 15-92. Attorney Randolph read the Resolution No. 15-92 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZINGTHE TOWN MANAGER TO EXECUTE A SUPPLEMENTAL INTERLOCALAGREEMENT WITH THE NORTHERN PALM BEACH COUNTY WATER CONTROL DISTRICT FOR PREPARATION OF PART II OF THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT APPLICATION.

Motion was made by Mr. Weinberg to adopt Resolution No. 15-92. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Appointment
Architectural
Commission

C. Appointments

1. Architectural Commission - Two Three-Year Terms to Expire March 1995. Mr. Ilyinskymoved that Joanna Frost-Golino and Marie Hope be reappointed to the Architectural Commission with their terms to expire in March of 1995. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

D. Other

Town_Owned
Properties

1. Discussion of Use of Town-Owned Properties and Right-of-Ways - President Heeke called on Attorney Randolph for his explanation. Mr. Randolph advised there are many issues which have come to light as a result of the events which took place at the end of 1991 and many of those concerns related to the fact there was a lack of Town policy or Ordinances which related to the appropriate uses of Town Parks, rights-of-way and Town-owned properties. He stated one of the purposes of this being on the agenda is to receive input from citizens who have asked for an opportunity to be heard on this subject and also he believed some direction was needed for the appropriate use of Town-owned properties in the future.

Mr. Randolph stated there have been many reports about this being a religious issue, however, that it is not his opinion, explaining that the Courts have upheld that religious displays shall not be displayed in a manner so as to make it appear that the government is endorsing any particular religion, and Christmas Trees have been held by the courts not to be religious displays. He stated the placement by the government, however, of religious symbols, such as a Creche or a Menorah, may be deemed as an endorsement if placed by the government and therefore should not be condoned. He explained this is a complicated issue when all of the court decisions are read which relate to this issue which indicate in many instances that certain displays, which would normally be religious displays may not be unconstitutional, where, for instance, where several religious displays are allowed to be placed in a grouping so it can be a holiday display rather than a religious display. He stated certain religious display have not been held to be in

Town-owned Properties (cont'd)

violation of the Constitution where the government provides a disclaimed relating to the particular display. He thought that because displays, whether a religious one or not, may or may not be appropriate, depending upon the circumstances and what the Council needs to look to is the appropriate use of Town property, such as public parks, rights-of-way or governmental owner property or any display. He felt that was the issue which needed to be looked into and that is, what is the appropriate use of any particular property.

He advised that public properties are recognized by the courts historically as being the appropriate places for the public to exercise their constitutionally protective rights of freedom of speech, assembly, expression, etc., and the Courts will therefore look first to the protection of those rights, however, that is not to say that those rights are subject to reasonable time, place and manner restrictions and that is why in his opinion, the Council should give consideration to the adoption of regulations for the use of public properties, reasonably aimed at protecting the public's health, safety and welfare. He stated consideration should be given as to whether or not they wish to have regulations regarding the size of displays located within public parks, also consideration may be given as to whether the displays may be given to unattended displays and if they are unattended, for how long? He felt the may also be given to whether or not there are different characteristics to some area where there are four lanes of traffic, or Bradley Park or Phipps Ocean Park, etc. He advised the Council to have some sort of a consistent policy so that when they are approached in the future with requests to use government property, there are guidelines and it is understood by the public, who wishe to use these rights-of-way. He believed those guidelines should be aimed at protecting the health, safety and welfare and they cannot abridge first amendment rights. He believed there was a definite distinction if the government was using the park or public rights-of-ways for their own governmental interest or whether or not third parties are asking for it to be used for their own purposes.

Mr. Jesse Newman addressed the Council indicating he was President of the Worth Avenue Association when the first tree was put up and it has been there ever since and also the Chamber of Commerce had paid for the tree on County Road for the past twelve years and the argument he wanted to advance was the fact that it is the residents and the licensed business people in the Town that really should be considered a priority. He noted it is difficult for him to conceive they can be intimidate by outside sources, be it religious or secular. He felt the business community has enjoyed a festive atmosphere and wish to continue it. He felt if the houses of worship in this community wished to have any displays, they would have come forth or put it on their own property, and they have not. He believed they were talking about a secular display in the interest of festivity and celebrating the time of year when everyone is celebrating, and as an example, he referred to the Christmas Tree on the lawn of the White House.

Barbara Hoffstot, 822 South County Road addressed the Council urging them to give back their secular Christmas Tree. She was sure they all knew her position on this matter through her letters to the Mayor and Town Council and Letters to the Editor in the newspapers. She stated the following facts:

1. The Courts have made the decision that Christmas Trees are a secular matter.

2. Nothing could be more historic than to have a Town Christmas Tree in a Historic District.

3. The South County Road Merchants are entitled to afestival appearance in their area as are the WorthAvenue merchants, particularly when that tree is located in the middle of a public street.

4. She suggested the Town have its own tree on its own property, which is the Memorial Fountain Park.

She didn't believe the Town had given the proper notice to get the public input, which the public has the right and duty to give, as the item was "buried" on the agenda and she thought that was confusing and unfair.

Mr. John Maus, President of the Worth Avenue Merchants Association addressed the Council indicating they have spent annually $15,000 for the tree, the lights, the ornaments and the street lamps and they felt it was something that was done in a small town shopping area. He indicated the Town of Palm Beach is different and is one where the municipality contributes nothing to a holiday display and the private sector kicked in for the benefit of the citizenry, and he urged them to consider rights-of-way for these decorations for Worth Avenue and for South County Road and if the Town was not willing to enter this realm, they should allow the private sector to keep it going.

Sue Ellen Clarkfeld, owner of Truffies on South County Road, stating she is agreement with the statements made earlier and that is if there is one tree, there should be two trees, but if they are a Town targeted by outside forces, such as the KKK and the Menorah,they should have a unified merchants association encompassing all of the commercial areas and they should pick one area where all commerce could celebrate on the same time together as a unified small Town would do in many other parts of this country. She recalled when Henry Flagler built this community, there were numerous Mom and Pop shops but that no longer is the case as Worth Avenue is now a corporation which invites a lot of outsiders to come and see their commerce and they do have a tree and whether they move forward next year and have one tree or two trees, the hurt will remain as the tree in Memorial Park represented a tradition and people who lived here looked forward to it and she believed more people did come down South Country Road than went down Worth Avenue.

Edward Kassatly, 309 Barton Avenue, addressed the Council and has a shop at 250 Worth Avenue, and is President of the Worth Avenue Properties Association. He recalled they helped Jesse Newman decorate the first tree on Worth Avenue and the property owners, the Merchants Association, the workers and the families of Palm Beach implore you to keep the Worth Avenue tree and to keep the tree at the Fountain and to help decorate Palm Beach, which is composed of people and families and they come to Palm Beach for schools, shopping, churches and the way the community is run. He felt they had to lead Palm Beach as the taxes collected not only from Worth Avenue but from County Road and from Royal Poinciana Way. He felt Worth Avenue takes care of Worth Avenue and they try to make it beautiful for the community and the rest should take care of their own spaces and if the Town needed money to keep this tradition going, they would be glad to help out.

John Serivec, Chairman of the Worth Avenue Christmas Tree Committee for the past five years addressed the Council urging them to allow the tree.

Town-owned properties (cont'd)

Steve Keidaish, Vice-President of the South County Merchants and Professional Association asked the Council to seriously consider allowing them to erect the tree next year. He was in receipt of over three hundred phone calls asking what they could do to continue having the tree at the location in Memorial Fountain Park and they were wholly supportive of continuing this tradition. He stated his disappointment that they were not able to have the tree this past Christmas as they feel it is a secular display and something that everyone can enjoy and he agreed there wasn't a Town in the country which is quite as much in focus as is the Town of Palm Beach. He urged them to allow this tradition to continue and offered his services to give any input as they wish to be cooperative and they would like the issue addressed and the Christmas Tree allowed next Christmas Season.

Mr. Heeke called for further comments and there were none. Mr. Heeke declared the Council to be in Executive Session.

Mr. Ilyinsky stated he would like to see this matter worked out as there is not a City in this country which doesn't have a Christmas Tree and he would like to see the tradition continued both on Worth Avenue and on South County Road.

Mrs. Wiener wondered how they got to this point as she felt it was ridiculous. She recalled there were some outside people who wished to erect a Menorah in Memorial Fountain Park and the Menorah is a religious symbol and they had no objection to the Christmas Tree and she didn't understand how and why the South County Christmas tree was not permitted to remain and she made it clear to the Town Attorney and the Town Manager that this is secular and a Christmas Tree is not a religious symbol. She asked if there was anyone in the audience who was opposed to the Christmas Tree? Mr. Heeke didn't feel that question needed to be asked as the comments from the public have all been positive. Mrs. Wiener believed there was no-one who was opposed and the approach here has been over-cautious but it is now known they went too far and since both of the trees have been erected for a number of years, there should have been no reason to reverse themselves and she is in favor of continuing to have the two Christmas Trees in the Town.

Mrs. Douthit stated she too likes Christmas Trees but the whole problem was over the use of Town property and all know that trees are secular decorations and power is available in the Memorial Fountain Park. She knew they have refused to erect the large sign with the Red Feather by the local Community Chest and things like that should not be allowed, however, if the Town Council wants the Christmas Tree, that is fine but she didn't believe they should allow any fund raising signs of any kind or any religious symbols of any kind.

Mayor Marix believed they all want Christmas Trees, but they are talking about the use of Town property. She thought what they were trying to do is find a solution so they do not fill their public areas with signs. She recalled the reason they got into this situation was over the request for the thirty nine foot Menorah to be erected and there are some who did not believe this was a religious symbol. She believed they were talking about all Town properties and which properties can best be used. She was trying to explain this is a very broad subject and they are not deciding whether or not they like a tree or not. She knows the decorations on Worth Avenue are quite extraordinary and other parts of the Town don't do much at all and perhaps as someone mentioned churches are not interested in making their displays, but stores are probably interested. She thought that the more general decorations the Town has the better it is for shoppers, as if the Town were beautifully decorated, people would come here in hordes. She thought they were talking about all Town properties and the most suitable place to put things and in what way can the Town Council assist in making the whole Town look attractive with holiday decorations.

Mr. Heeke read the Letter to the Editor that was in the local newspaper on this subject suggesting representations of religious symbols should be made on the church properties in Town and the Chamber of Commerce should not be involved as many people come to see the displays at the stores. Mr. Heeke didn't believe sight should be lost in trying to keeping a holiday atmosphere in Town, particularly over the Christmas Season, but they needed to address the rest of the time and they needed to invoke some guidelines. He recalled last year they were in a difficult position with the Menorah issue and there was correspondence from the representative of the ACLU who would participate in our decision on the denying of the Menorah but not if there was a Christmas Tree allowed or we permitted a third party to put up a Tree.

Mr. Heeke stated he has a strong feeling about Memorial Fountain Park, particularly since renovation of Town Hall has been completed. He recalled this was the site of the KKK Rally and the result of that prompted the Town Council to enact a parade Ordinance designating areas other than the center of Town for parade groups and he felt if anything is to be done at Memorial Park, it should be done by the Town and not by a private citizen or a private group. He thought in that way they could draw a distinction with third parties coming in and putting a display there. He thought they could point to Bradley Park as the area of assembly and if they wanted a display there and it met the other tests and standards, they could be directed to that location. He was not adverse to the Town putting up two trees, one at Memorial Park and one in the right-of-way on Worth Avenue but he thought it should be the Town's activity to put them up. He felt the merchants could energize themselves with the decorations and things of that nature. He believed it was something that could be handled within the budget as there are many who would make donations to defray that cost. He believed this was a solution to the problem, but it didn't address the use of public properties, particularly Memorial Park. He believed the use of Memorial Park should be limited to the Town itself in the use of that park and not let other influences go in there whatsoever.

Mayor Marix did not want them to forget about the north end commercial areas, on Royal Poinciana Way and North County Road, as she didn't wish to promote one area to the detriment of the other areas. Mr. Heeke agreed. Mrs. Douthit suggested they get some figures but wondered if it was possible to limit the use of Memorial Fountain Park to Town efforts, such as a Town Christmas Tree and nothing else and Mr. Randolph research whether certain groups would be limited to other areas, such as Bradley Park. Mr. Randolph pointed out public parks are reserved for public rights, such as freedom of speech and they can regulate them but those rights are paramount. Mr. Heeke felt they needed to focus their attention to what they needed to do with regards to legislation and think about the third party displays and matters of this nature and they may want to think about an Ordinance as to what may be permitted and the times it would be permitted at various locations in Town, as that may be the way to approach it that the displays could not be unattended and could only be in certain locations during certain hours, as he thought that was focus here. Mr. Randolph did not think those things could be resolved today and today was to get the input and if Council wishes, they may authorize him to come back with ordinances relating to the appropriate use of right-of-way.

Town-owned properties (cont'd)

Mrs. Wiener noted they keep going back to the Menorah and she knows that it is a religious symbol. She believed they were talking about two Christmas trees that have been part of this community for many years, and there are a number of ways this can be approached, either by grandfathering or taking donations, but if they are going to get into legislation, it will take time. She thought they should narrow in on the trees and have legislation that surrounds them. She felt the tree at Memorial Fountain Park and the one on Worth Avenue are a part of this Town. Mr. Heeke believed if the Town puts trees up on those two locations and Royal Poinciana, he has no problem with that, but he is concerned about people coming in with displays, not so much the Menorah group, but others if there are no guidelines. He felt that could go on concurrently as he doesn't believe there is a problem with the Christmas Tree and he will receive input from those who have been involved in putting up the tree and budget accordingly and estimate the cost for putting one up on Royal Poinciana Way.

Mr. Newman announced the Chamber of Commerce will donate the cost of the tree on County Road and on Royal Poinciana Way. Mr. Heeke felt it needed to be put in the budget whether they use it or not.

Mayor Marix thought consideration needed to be given to guidance for those organizations which want to erect signs with regards to their community service. She wanted to be sure that everyone who wanted the tree for promotional purposes would decorate their places so they look nice, but not just count on the Town to have a tree. Mr. Weinberg felt it needed to be decided what could be put on public property and what could be put on private property. Mr. Heeke agreed but noted there is public property in different locations which would have different uses. Mr. Heeke stated he would like to see the Council ask the staff to come back with regulations as to the use of Town properties for displays and perhaps it may be something that Ordinance, Rules & Standards Committee may want to look at first and then have it before Council to hammer out the location problems and reasonable restrictions. Mrs. Wiener thought this was discussed with United Way and she didn't know what all the discussion was on the Christmas Tree and she didn't know why this whole thing was getting so enlarged and she is willing to go along with as much study as they want but she would like to see the two trees that have been here for years continue as those trees belong to the Town and should continue to be part of the Town. Mayor Marix stated they are not arguing about that to which Mr. Heeke agreed but she wanted them to understand what did cause this was the threat of a lawsuit over the Menorah. She felt they had to defend the interest of the people and they look into the problem and before no one had done that over the Christmas trees.

Mrs. Wiener responded stating they are threatened with law suits every day of the week and they have been told over and over that if something is right, they should go ahead with what they were doing. She didn't think the Christmas Tree issue is one that is so major to take up hours of staff and legal time, but whatever they wanted to do all she wanted to see was those two trees back. Mr. Heeke asked if anyone objected to the Town being responsible for putting up the tress next year out of the Town's budget, and that would be three trees, one at Worth Avenue, one at Memorial Fountain Park and one at Royal Poinciana Way. Mrs. Wiener stated as long as they are of the same quality and decorations are the same. Mayor Marix pointed out the tree on Worth Avenue was quite different than the one in Memorial Park. Mrs. Wiener stated she would like to see them of the same quality. Mr. Heeke believed what Mrs. Wiener was asking that they be equivalent to those that have been in those locations over the years. Mrs. Douthit believed the decorations were quite different. Mr. Heeke asked if anyone on the Council had any objection to the Town putting those trees up and the Council responded they had no objection. Mayor Marix asked the Town Attorney if he was in favor of what they were doing? Mr. Randolph responded he is trying to get input as to what they wished to do and they are on the right track and they can dispose of the problem of the Christmas Trees and he will come back with some sort of an Ordinance relating to regulations of other displays.

Mrs. Wiener moved that the Christmas Trees be allowed for the coming Christmas Season and there will be three trees on Town property, one at Memorial Fountain Park, one on Worth Avenue and Hibiscus and one on Royal Poinciana Way, and the two trees which have been a part of the Town previously will be approximately the same size or equal to the same size and costs as in the past and the third tree on Royal Poinciana Way to be determined by the merchants in that area. Mayor Marix stated her concern without knowing the cost, recalling the tree on Worth Avenue this past year was one of the most gorgeous she has ever seen and it was very large, so she didn't think they should in the motion describe what kind of trees they should have in the different areas.

Mr. Ilyinsky pointed out there will be donations received for the trees so it wouldn't be costing the Town anything. Mayor Marix stated she was worried about the unfairness of it. Mr. Heeke pointed out only a certain type of tree would be accommodated at Memorial Fountain Park. Mr. Heeke stated he had no problem with the motion as he believed it said they wanted to have trees compatible to the previous trees which they have had in the past and he would hope the same thing would go for Royal Poinciana. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Heeke believed the consensus of the Council was to have the Town Attorney prepare drafts of regulations governing the use of Town properties for other purposes of display. Mrs. Douthit believed that the Town Attorney needed firmer direction as there are other serious questions and perhaps he could bring them a list of things they wouldn't be able to do. Mr. Randolph advised he will bring a boiler plate ordinance with pick and choose types of regulations as he would anticipate a regulation as to whether or not signs will be located within median strips, displays other than Christmas Trees would be in excess of a certain height and if a display was allowed, it would not be unattended and matters along that line. Mrs. Wiener did not believe they wished to encourage a lot of usage to which Mr. Heeke agreed but felt they needed some kind of governmental regulations.

2. Audit Report

Audit Report

a. Audit Report for Fiscal Year Ending September 30, 1991 - Discussion and Acknowledgement of Receipt - Mr. Doney advised there is a memorandum from Mrs. Crozier dated March 2, 1992 and he concurred with her comments that the Town remains financially sound. He advised the Undesignated Balance in the General Fund is $4,741,930 which represents 17% of the FY 1992 General Fund Budget. He noted there is always a need for the contingency fund, and an example would be the October 31, 1991 storm. He believed the Capital Improvement Program is a good one and it is administered by Mr. Dusey and they properly plan for replacement, maintenance and proper preventive maintenance programs. After further discussion, a motion was made by

Mr. Ilyinsky to accept the Audit Report for Fiscal Year Ending 9-30-91. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Management Letter and Staff Response

b. Management Letter and Staff Response - Acceptance - Mr. Doney explained a memorandum has been prepared by Mrs. Crozier which addressed the comments of the auditors and he concurs with the comments. He advised several of the items are ongoing, one is he is further evaluating and will make a determination relative to the Finance Director's position and he is exploring reassignment of duties and reorganization and he will ensure there is proper accountability. He noted another concern is the workload issue. Mr. Heeke called on the auditor's representative for his comments on the work load issue. Mr. Mark Applebaum, of Coopers and Lybrand addressed the Council noting whenever there are duties established for a certain number of people and there is a vacancy, the people who are there would have to assume a larger workload. He knew these duties could be moved outside of the Finance Department, but they believed at times the people were trying to perform two or three jobs at once and he thought it would be helpful to reorganize the department and put some structure back into it. Mr. Heeke asked if they had any specific recommendations relative to the reorganization to which Mr. Applebaum responded negatively. Mayor Marix asked if he meant by his statements to reorganize what is there or to add personnel. Mr. Applebaum responded they are not adverse having some of the duties presently conducted by the Finance Department moved to other locations or other departments, but there was a full time position there and with that being removed, some of the duties need to be realigned.

Mr. Doney recalled there are a lot of things to weigh in this situation and he has discussed it at great length with Mrs. Crozier and they are attempting to slot everything that needs to be done with individuals so there is always proper accountability. He advised when he reaches a decision and if it is a recommendation to not replace the Finance Director, it will be done on a conditional basis so that at the end of a certain period of time, it be further evaluated to ensure it is in the best interest of the Town. Mrs. Wiener commented on the accountability as it is a serious matter. She believed an organization of this size handling these types of funds needs whatever you want to call that person, a Treasurer or Finance Director. She stated there were some things that they can't get away from and by making an error by sending some of this financial responsibilities to other departments would be the easiest way of getting into financial problems, as she views this. She believed this is an exact thing, as it balances down to the penny and has to deal with other levels of government and with the citizens and she thought they had not done as they should in not replacing the position of Finance Director as it is probably the third or fourth spot in this Town. Mayor Marix stated she was very proud of the accountability of the Finance Department. Mrs. Douthit believed the Finance Department was running quite smoothly and it has been some months now that the position has been vacated and she suggested they wait for Mr. Doney's recommendation.

Mr. Doney indicated he would like to thank Mrs. Crozier for all her good efforts since September to which the rest of the Council agreed. Mr. Doney stated he would be making a decision on this reorganization and will report to the Council within thirty days.

Mr. Doney asked to get back to the Letter to Management. Mr. Heeke noted the usual comment is made on the Financial Disclosures noting there was one person who failed to file the form on a timely basis. Mayor Marix felt since the Financial Disclosures are required by law, she felt they ought to know who didn't file it timely and secondly, what action is taken when people do not file. Mr. Heeke responded it usually is someone on one of the Commissions.

Mrs. Wiener pointed out the staff response by Mrs. Crozier was quite concise to which Mr. Heeke agreed. Motion was made to accept the Management Letter and Staff Response by Mr. Weinberg. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Consideration & Approval of FY93 Budget Calendar

3. Consideration and Approval of FY93 Proposed Budget Calendar (See Item XI.C.2.) - Motion was made by Mr.. Weinberg, seconded by Mr. Ilyinsky to approve the calendar as proposed. Motion carried 4-1 on roll call. with Mrs. Douthit voting against the motion.

Solid Waste Authority Task Force Report

4. Consideration of Solid Waste Authority Task Force Report - Mr. Dusey advised the Solid Waste Authority will make a decision on March 18, 1992 to split access and go into a base fee for single-family residential customers. He advised a Task Force was formed and concluded their deliberations and made a recommendation. He noted some of these costs will affect the Town's budget. He stated many of the municipalities are concerned about the County Commission sitting as the Solid Waste Authority and what he needs is to have a position statement of the Town and communicate that to the Solid Waste Authority before their meeting on March 18, 1992. He noted the Town's position previously was in favor of the split assessment but when Solid Waste Authority did away with the tipping fees and assessed our residents based on County-wide averages, and at that time approximately three to four hundred thousand dollars was eliminated in the budget but residents paid a whole lot more than they should have. He believed they were talking about $41 per single family home per year, but if they were to split assess, we probably would have to reintroduce into the Operating Budget the figure eliminated last year for the tipping fee for the single family homes.

After further discussion, the Town Council stated its approval of the split assessment process.

Development Reviews

XIII. DEVELOPMENT REVIEWS

Major Matters Architectural Commission

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of February 26, 1992 - Excerpt Available in Town Manager's Office

Motion was made by Mr. Weinberg to approve the Major Matters of the Architectural Commission Meeting of 2-26-92. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

The major matters were:

B65-91 - Revision of residence of C. Claude Mimun, 1144 N. Ocean Blvd. Approved.

B79-91 - New residence for Michael Burrows, 1495 N Ocean Blvd. Approved conditionally.

B4-90 - Modification to residence of Leonard Sessa, 6 South Lake Trail. Approved conditionally.

B2-92 - Renovation to residence of Mr. & Mrs. Heinz Koop, 201 Sandpiper Dr. - Approved.

B3-92 - Addition of pool cabana to Mrs. Adele Wells Meyer, 215 El Bravo Way. - Deferred.

B5-92 - Addition to home of David Mack, 958 N. Lake Way. Deferred.

B71-91 - Landscape Plan of Palm Beach Land Investments, Inc., 2 Windsor Ct. - Approved conditionally.

B62-91 - Revisions to residence of Agi Rosos and Jacques Havas, 101 El Bravo Way - Approved conditionally.

B38-88 - Fountains/Driveway Change at 601 N. County - (Martin Trust) Approved.

B6-92 - Remodeling of 114 Seaspray Ave. (Mary Cochrane). Approved.

B7-92 - Renovations to 221 Onondago Ave. (Frank T. Noska) Approved.

B8-92 - Landscaping at 3200 South Ocean Blvd. Approved.

B. Appeal

1. Appeal of Planning, Zoning and Building Department's Decision to Stop Work on 1070 North Ocean Boulevard - Letter Dated February 28, 1992 from Francis X.J. Lynch

Appeal to Stop Work on 1070 North Ocean Blvd.

Attorney Lynch addressed the Council indicating he was representing Mr. & Mrs. Larson. He advised they were before the Council in November and the outcome of that meeting was a reduction of one foot on the south side of the property which they restudied to see what they could do within those constraints, and they found the garage was reduced by one foot, and that was not a sufficient size for a garage, so they decided to place the garage under the existing pool deck. He advised the Plan was presented to ARCOM and they approved it, however, subsequent to that time and in accord with the revised plan, it was necessary to take up the existing garage slab for the purpose of digging deeper for pilings, which was necessary for sound construction procedures. He reported the initial depth of those pilings was two feet below the existing slab and under that circumstance, they could cut the existing slab and pour the concrete through the cuts in the slab. He stated they had to go down to a depth of 13' below the existing slab to accommodate the wall for the garage and go beneath the floor of the garage, they had to take up the slab to get to the point thirteen feet below. He stated this was something that was not brought to the Town's attention prior to pulling up the slab. He advised they have had a great deal of expense, not only because of the great amount of engineering work needed to be done but the carrying cost related to the project until it is completed. He advised when they restudied the project, they went back to some of the comments made by the Architectural Commissioners and those comments did include placing the garage under the pool deck.

Mr. Cherinsky, Florida Registered Structural Engineer, addressed the Council, exhibiting a plan which showed the three original footings. He advised when the foot was cut off at the November meeting, the three car garage became a two car garage and they decided to relocate it. He stated in order to put the garage ten feet below the existing slab, the footings in the existing slab had to be cut to a depth of ten feet and in doing so, it would change the slab and the earth around it, so they needed to remove the original footings.

Mr. Lynch commented if they are allowed to complete the work, the idea was and is now to put the slab back so it is in the same condition it was in prior to being removed, and the setback will be the same as discussed in November.

Mr. Ilyinsky asked what the problem was? Mr. Moore explained between the time the applicant was before the Council in November and a solution was reached, they submitted plans to the Architectural Commission for approval to go back to the concept of an underground garage, however, their argument they used about why they didn't need to comply with the terms of a proper setback for the structure that was removed to the ground, was that the slab or "floor area" was not disturbed and they had not removed fifty per cent of it, and therefore they did not need to comply. He recalled this prompted a change in the Zoning Ordinance Section 5.17 in which they address cubic area rather than floor area to address this scenario. He advised when the plans were submitted, the permits were not issued, however, the contractor went forward with the excavation of the slab. He told the Mayor and Council it is important to note that this property sets extremely high and the engineer has advised you the property does sit well above sea level and when they started the excavation, they cut off the portion that they had negotiated with the Town and they cut off the portion which was encroaching on the DNR setback on the northeast corner of the property. He stated the building inspector found the excavation already in progress and piling was being installed to protect the area on the south side of the property and the job was not stopped to protect the property to the south, however, the job was stopped in mid-January. He advised a survey was taken of the remaining area of the slab and the original square footage that was already there was 4578 feet and the garage area was 815 and what was supposed to have been left was 4072, so approximately twenty per cent of the slab area was removed. He stated the negotiated terms with the Council was that the floor area or the slab would not be removed. He stated when they discovered that the slab was removed, the Council was asked how they wished to resolve this and they asked the applicant to come before the Council and explain their reasons of why they removed the slab.

Mayor Marix recalled this was one of those things that never should have occurred, as they were given a permit to raise their roof and put on a second story and it was a little bit higher than normal as it was on a hill. She stated the next thing they saw was the place was completely demolished except for two little walls left standing, and that was the non-conforming setback line. She recalled after it was discussed why the whole house was knocked down, they stated they didn't understand and since the slab area was not altered, that was the whole reason why they should be able to rebuild the house not according to Code. She commented they did negotiate with the Council and one foot was taken off. She noted now they are saying they had to remove the slab because the garage was being relocated. She believed it was a lovely location and a nice lot but

Appeal to
stop work on
1070 North
Ocean Blvd.
(cont'd)

everything has been torn down that was there and she felt very strongly that it should be built to Code. Attorney Lynch responded the wall remaining was a bearing wall.

Mrs. Douthit commented there seems to always be a problem there as every time one turns around, something is amiss and it is all based on one thing that the slab had to remain and the next thing we know, it is removed, so she would agree that they needed to build it to Code. Mrs. Douthit asked what they were looking for now - a variance? Mr. Lynch responded the construction procedure was stopped. Mayor Marix believed they wanted to go forward without a variance and not be according to Code. Mr. Lynch stated that was not entirely correct as the contractor may have proceeded a little bit too quickly, but also there is some concern to get the project back on schedule to be completed in a timely fashion. Mayor Marix believed they originally used the slab as the excuse of why they had to build the house the way they wanted to build it without the proper setbacks, then they removed the slab and now they want to put it back. Mrs. Douthit believed they should come back for a variance. Mr. Ilyinsky didn't believe it needed one. Mayor Marix stated it does as it violates the setback. Mr. Ilyinsky asked how it got to this point. Mrs. Douthit responded they came to the Council and negotiated and then they tore it down. Mayor Marix recalled originally they asked for a height variance and then they tore the house down. Mrs. Douthit believed they needed to abide by the Code but they just couldn't go on. Mr. Heeke recalled they talked about a bearing wall and asked if there was a roof on it? Mr. Moore advised there was no roof.

Mayor Marix believed the wall is in the plan, and there is no wall except what is sitting on the rights-of-way. Mr. Weinberg asked what were the recommendations of Mr. Moore? Mr. Moore responded the job was stopped since they went beyond the agreement which was the slab was to stay there, only removing the one foot and the two feet which was negotiated at the Town Council meeting in November. He stated they went beyond that in a redesign of the house to put the garage underneath, without the benefit of being told they could go ahead, and according to their figures, they have removed twenty per cent of what they hung their hat on to allow them not to have to comply with the sideyard setbacks.

Mr. Moore felt the options were:

(1) Apply for a variance because both sideyards will be deficient by approximately five feet.

(2) Pull back and redo it and build the house according to Code.

Mayor Marix noted this is a very big lot and there is nothing there except a trail of misunderstandings and she thought they were going to build a very expensive house on a huge lot right next to other people and they should abide by the setbacks. Attorney Lynch recalled one of the most critical aspects was to retain the guest room behind the garage. He advised the slab that was removed is a non-structural slab and there are no weight bearing walls attached to it or anything else, but when they were before Council there was a great deal of discussion about what they could and couldn't do and the problem was the garage and once the garage became approximately 20' it became too small and they had to look for another place to put the garage. He asked them to look at the design of the house and they would note there is no place where that garage could be put, except to go underground. He stated because they went underground, they had to put the pilings in deeper than originally planned. He recalled the original demolition permit stated "remove existing concrete, as necessary for pilings" and it was always contemplated there would be a four by four hole that would have been cut in the existing slab and the piling would be put within those constraints.

Mayor Marix felt those were technical things about the slab but the right and the wrong of this is the fact they are building a house basically from scratch on a huge lot, without the required setbacks. She stated they never told the Council originally they were going to knock the existing house down and put the garage underneath, and it was one thing after the other and she did not believe a lot that size has a hardship to built a house to Code. Attorney Lynch responded if there was a way that the slab could have been structurally preserved, it would have been done. He stated in hindsight, he does believe they should have gone to the Building Department and told them, but they didn't as they thought they were okay, and went forward based on that.

Mr. Ilyinsky asked how the house has changed from the one that was approved by the Architectural Commission? Mr. Moore responded the garage is no longer on the first level and is now underground. Mr. Ilyinsky asked if ARCOM approved that? Mr. Lynch responded affirmatively. Mr. Ilyinsky asked what was different than what was approved by ARCOM? Mayor Marix responded they went ahead and removed the slab and the original reason they asked for permission to not have the required setback was they had the slab and that would mean this house was no bigger than the other house and it would be expensive to remove the slab and that is why Council granted them permission to go forward and now they have taken the slab away and the setbacks are not met and the Council would be allowing them to build a house without correct setbacks.

Mr. Lou Larsen, owner of the property, addressed the Council, advising the project was to be completed by late February and it is still a slab next to a hole in the ground. He advised he has tried very hard to comply with the negotiated regulations and the Code has been changed as a result of this problem of square feet versus the cubic feet, which is an issue. He recalled a permit was granted after many visits to the Building Department and he received assurances that he was in compliance, nevertheless, he was before the Council in November and reached another agreement that he thought they were living by and they felt it was an improvement to the house, to the Town and to the aesthetics by placing the garage underground and it is a vast improvement to have no garage doors facing the street. He stated he could not go back and start again as he has spent over a half million dollars and he simply can't begin again. He advised all he wants to do is start the job and he apologizes if the Council feels they should have come before them to temporarily remove the slab to install the pilings for the garage, which will be installed under the pool deck and in fact one wall of the garage will be translucent to allow light into the garage and they would be able to see the pool. He beseeched them to be allowed to continue with the work.

Mayor Marix was very happy to hear all this but the fact remains the north and south walls are not where they should be. Mr. Lynch advised the whole slab has not been removed, only a portion has been removed. Mayor Marix stated if she said the whole slab, she misspoke. Mr. Lynch felt the substantial value is the slab which remains and which follows the existing line of the house, which was cut back by a foot and they are saying they did remove a portion of the slab, but they had to from a structural standpoint and they will replace it. He stated the agreement required them to go back and restudy how they could redesign the house to live within that one foot cut. Mayor Marix recalled at that meeting they could have told Mr. Moore they were going to have a problem and asked for a solution. Mr. Lynch stated he could not speak to that but that may very well had happened is they would have had to come back to the Council before the work was done, but they still would have been back with a slab and a hole in the ground. Mr. Heeke believed that would have been better for them to come back when they realized they would have to remove the slab, because of the history of this property. Mrs. Wiener asked Mr. Lynch what difference is there going to be between the slab that existed and the slab that will replace what was removed? Mr. Lynch responded there would be absolutely no difference as it will be within the same setback and be the same type and nothing will change as it will be a repour of the original slab. Mrs. Wiener asked Mr. Moore if he agreed to that statement? Mr. Moore stated he will have to examine the plan and deferred to the structural engineer as he thought there would have to be a change in the configuration, especially now with the foundations and the piling that was instituted to allow for the underground garage. Mr. Cherinsky reported there would be no change. Mr. Moore asked him about the piling wall on the south side of the property, as he believed that was probably an addition over and above of what was approved at the last meeting. Mr. Larsen responded he is not a technical person, but he believed the piling and retaining wall was done in the best possible way to protect the neighboring property. Mr. Moore asked if this was because the garage was being place underground? Mr. Cherinsky responded there was a masonry retaining wall and it was switched to a piling wall. Mr. Moore believed that made it a change in the structural support. Mrs. Wiener asked about the slab. Mayor Marix felt they used the slab as an excuse to break the Zoning setback laws, the whole idea is not to let them say they are replacing the slab as it doesn't matter if it is going to be exactly the same or not, but that was the excuse used originally to allow the setbacks they wanted and it is not to our present Code and that is the problem.

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Mrs. Wiener asked how the Building Department become aware of this problem? Mr. Moore responded they received a call after the piling was installed that the slab was removed and they visited the site and determined that was correct. Mrs. Wiener believed if someone came to her and stated they didn't understand about the slab and then they are told it is not the slab they are talking about, they are talking about volume, so she would say that the slab didn't matter as they are interested in volume and then come to an agreement, but now suddenly the slab seems to be of great importance and she doesn't understand. Mr. Heeke believed what he thinks it was when the house was literally torn down, it was more than what the Council had expected when the project was first presented to them, as the Council thought it was to be a second story addition and all of a sudden the existing house is demolished and all that is left standing are a few walls. He stated the second floor addition was permitted, even though it was a non-conforming structure as it didn't have adequate setbacks. He recalled when the construction went to such an extent, Mr. Lynch's client came back to the Council and they represented to the Council that to change the slab was expensive and that is why they couldn't comply with the setback and negotiations were initiated and they agreed to take a few feet off and the project then proceeded and then it was discovered that more of the slab had been removed. He didn't believe it was a question of volume but a feeling of the Council that if he was going to tear that much of the house down, it should then be built to Code.

Mrs. Wiener stated her problem was that if the slab was the history and then it was changed to volume, they are saying the slab doesn't matter and she had a problem with that. Mayor Marix recalled the permission was received before the cubic foot regulations was put into effect. Mr. Moore stated they interpreted the Ordinance with regards to the square footage of the floor area and that is exactly what the Ordinance said, although that was not the intent. He reported the Ordinance was changed - Section 5.17 during the Zoning hearings and now we talk about the cubic area rather than square footage. Mr. Moore advised what is occurring is that instead of them coming in and asking permission to take up twenty per cent of the slab to change the design, as they has based their whole defense on the slab issue, they are coming in after the fact, so they are really before the Council in a variance type situation.

Mrs. Douthit believed they should come back for a variance. Mr. Weinberg asked if there were other options? Mr. Moore advised the three possible solutions would be:

(1) Build the house to Code.
(2) File for a variance for the sideyard setbacks, as more than fifty per cent of the slab area has been removed.
(3) Seek permission to remove and replace exactly what was there beforehand.

Mrs. Wiener believed if they were allowed to continue as they were and not put down the restriction to take one foot off of here and one foot off of there, that there would be a different set of circumstances, but in fact there was a compromise reached and now they are back asking for that same piece of flesh again. Mr. Heeke believed there was a little more to it than that as Council felt they did not get a full and complete picture of this the first time. Mr. Weinberg believed they were wrong. Mr. Heeke believed it was a very simple project when it was first presented to them and not a total renovation or rebuilding as if Council had been aware of that, none of this would have been inclined to let it proceed. Mr. Weinberg believed that was in the past and now they have to make a decision as to where they have to go from here. Mrs. Wiener believed the owner originally did not plan to do the garage as now proposed as she knows these things do happen during construction.

Mr. Weinberg told the applicant he knows what is against him and asked him what is for him now? Mr. Larson advised they tried to improve what had been given to them last time and rather than have two small cars as the garage would only accommodate two small cars, they put the garage underground and a piece of slab had to be removed to make this improvement. Mr. Weinberg pointed out to the applicant there are some options available which the Building official has outlined. Mr. Heeke pointed out if he has to come back for a variance, they are going to be having this same discussion and then have to deal with elements of hardship and he didn't believe that was an option.

Mrs. Wiener stated that due to this peculiar set of circumstances and everyone was pained and upset but she didn't think there was anything irregular in the mind of the owners of the property and she moved that they be allowed to continue the construction, but please don't change an inch. Seconded by Mr. Weinberg. On roll call, the motion did not carry with Mr. Ilyinsky, Mrs. Douthit and Mr. Heeke voting against it. (3-2).

Mr. Ilyinsky asked what happens now? Mrs. Douthit stated he can build to code. Mr. Moore believed he still had the option to come back for the variance.

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Mr. Larson asked if there was anything else he could do to move this forward? Mr. Ilyinsky stated he believed there have been a long series of misunderstandings and he agreed this was a huge lot in a lovely part of the Town and it should be built to Code. Mr Larson stated it just was not possible for him to do that at this point but narrowing in on the fact that they had an agreement and all they did was to improve the aesthetic appearance, they placed the garage underground which eliminated garage doors facing the street and to do that they had to temporarily remove the slab and that is what has got them to this point and he didn't believe it was fair to turn them away. Mr. Ilyinsky stated he has to listen to staff and he didn't think they were dealing with fairness as they sit here and try to make the right judgment for the future of the Town. He originally was not aware of the size of the lot and this is a big house they are putting on it. Mayor Marix asked if Mr. Moore believed the setbacks could be brought completely into line or close to it? Mr. Moore responded he was not familiar with the cost factor and the ease of redesigning this, however the excavation has taken place on the property where the slab was removed and to move the south wall to bring it to a proper setback would be difficult to do. He believed to move the north wall would be easier to accomplish. A brief break was taken after which President Heeke reconvened the meeting.

Mr. Lynch advised during the break they looked at what could be done and as to the north side, they believed they could remove one foot off the north slab, which would bring the setback to 11.5 feet. Mr. Moore stated the new setback should be 13.8 feet.

Mr. Ilyinsky believed they were trying hard and they are going to reduce the setback on the north end so he would be willing to move that with the setback provided on the north of 13.8' and whatever arrangements they can make, they be allowed to proceed with this construction. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1, with Mrs. Douthit voting against the motion.

C. Variances, Special Exceptions and Site Plan Reviews

Old Business

Old Business

Var. 3-92

1. Variance No. 3-92 - John Switzer, 10 South Lake Trail; to allow construction of a garage at the NE corner of the property providing a front yard setback of 5' in lieu of 35' required. R-A District. Deferred from February Meeting. Request for postponement.

This variance was postponed to the April Town Council meeting.

New Business

New Business

Var. 5-92

2. Variance No. 5-92 - Peter Halmos, 315 Clark Avenue; to allow construction of a second story addition with a 12.5' side yard setback in lieu of 15' required; and to allow a garden wall height of 10' in lieu of 6' maximum permitted. R-B District. Attorney Robert Deziel addressed the Council on behalf of his client, Mr. & Mrs. Halmos, requesting the 12.5 side yard setback in lieu of the 15' required for a second story addition; and secondly, the increase in the height of a garden wall to a height of ten feet in lieu of six feet maximum. He asked to consider these requests separately and address the second floor addition which will be an outdoor porch. He advised this was before the Council previously and was approved but the construction was never done. Mr. Heeke asked if he requested an extension of time on this variance to which Mr. Deziel responded they did not and are simply reactivating this. Mr. Ilyinsky believed this had been granted previously and he moved that this particular part of the variance be granted. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Deziel stated the second variance is to raise a wall from the present six feet to ten feet. He advised what exists there on the neighboring property is a shanty which is located right at the property line. He stated people reside in this dilapidated structure, which is used for staff quarters and this is two feet off of the applicant's property. He stated the windows are approximately eight feet high on this structure and the problem is there is a lot of noise coming from this staff quarters and he had reason to believe it was safe to say that people who should not be living there are living there. He described the hardship is the fact there is a non-conforming structure and use on a neighboring property which causes a hardship to his client's property. He believed to the same extent that there could be an easement that would only be a beneficial nature to one piece of property and there is a hardship located off their property which causes the hardship to his client's property and if the non-conforming use and structure were eliminated, their problem would be eliminated but that elimination cannot be done and they would like to do the best they can to deal with it and that would be to increase the height of the wall, at least to the height of the windows. He has surveyed the situation and believes he would just need eight feet to get the wall up to a place where it would do some good. He pointed out the winds coming from the east exacerbate the problem further and across the alley are two other walls, one 7.6' high and one 8' high and he brings that to their attention to establish the fact that there may be some precedent because of the alley and the noises that are created that at one time there was some sympathy to try and diminish the noises which caused the problems to the neighborhood. He realized the hardship that he has described is not on his client's property but he truly thought a hardship did exist and he believed it caused a hardship legally to the property. Mr. Heeke thought it was kind of like a noisy neighbor. Mr. Deziel agreed but took it one step further that this noisy neighbor causes more harm because it is in a non-conforming location.

Mr. Ilyinsky asked if Mr. House has examined this to which Mr. Moore responded it is a well known case and the applicant has stated the house has been rented illegally but they can find no evidence and if they had evidence, they would take it before the Code Enforcement Board.

Mr. Deziel explained there is a wall there about four feet in height and a fence next to it about six feet high. Mr. Heeke felt the difficulty might be that it would create a barrier. Mrs. Wiener wondered if it would cut off their air and light. Mr. Ilyinsky asked if a deed restriction could be put on it that if the non-conforming building was no longer there, that they would remove the top two feet of the wall. Mr. Deziel stated he would agree to that. Mr. Deziel commented on the question with regards to the light and the wind, the guest house would receive its' air from the east and there are windows on the other side of the house, but the fact that they are opening these windows is what causes the problem of noise. He indicated they will landscape the wall with a high hedge.

Mr. Heeke believed a six foot wall with a sizeable hedge would help and then they wouldn't need a variance as that is allowed.

Var. 5-92
(cont'd)

Mr. Deziel responded there is a four foot wall but it is structurally sound and an additional four feet could be put on top of it. Mr. Heeke recalled a few years ago, there was a similar situation on Via Bethesda in the rear yard and the Council did not permit the wall to be raised to a height of eight feet. Mr. Deziel responded if the nonconforming use would be eliminated, they wouldn't be here with this request.

Mrs. Douthit moved that a six foot wall be permitted. Mr. Randolph informed the Mayor and Council that no motion was needed as a six foot wall was permitted. Mrs. Douthit suggested they build the six foot wall and see how that works and if it doesn't, he can always come back.

Motion was made by Mrs. Wiener to deny the part of the Variance No. 5-92 with regards to the ten foot height request. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Var. 6-92
(cont'd)

3. Variance No. 6-92 - Luis and Lillian Fernandez, 246 Eden Road; to allow construction of an addition to the covered entrance providing a street side yard setback of 10.5' in lieu of 30' required. R-B District.

Attorney Robert Deziel addressed the Council on behalf of Mr. & Mrs. Fernandez who wish to construct an addition to the covered entrance with a street sideyeard setback of 10.5' in lieu of 30' required. Mr. Heeke indicated this property is a double sided lot and Adam Road is a dead end road and the Council approved the addition of this garage. Mr. Heeke asked if they could cut into the property a driveway to which Mr. Moore responded they have a driveway and what they are asking for is an entranceway. Mr. Ilyinsky moved for approval. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Var. 7-92
(cont'd)

4. Variance No. 7-92 - Byron Englander, 248 Bahama Lane; to allow a separation of Lot 16 from 17 thereby creating a nonconforming lot coverage of 35% on Lot 16 in lieu of 25% maximum allowed; and to permit construction of a single family residence on Lot 17 which is 90' deep, in lieu of 100' required. R-B District.

Mrs. Danielle Englander, 311 Seabreeze Avenue addressed the Council stating when this lot was purchased by her father-in-law back in the 50's, the lots on that street were 90' deep, but since then, that rule has been changed and they wish to sell one lot as a separate building lot. She advised the lot does get its own tax bill, electricity and water bills. She knows the house on Lot 16 covers 35% of that lot, but those additions were made in 1956 and the house was spread towards the rear. She stated on both sides of the existing house, the setbacks are quite wide. Mr. Heeke asked if the square footage on the lot exceeded 10,000 square feet to which Mrs. Englander responded affirmatively. Mrs. Douthit knew all these lots were 90' and that was in the original platting, however, the Council is not permitted to create a nonconformity and the original house with the two lots is permitted, however, if this was granted, it would create a non-conforming lot. Mr. Randolph stated they could grant the variance which would allow them to create a non-conforming lot and allow a house to be built on an undersized lot. Mr. Heeke stated there are other properties similarly situated in the Town and this could set a precedent.

Mr. Heeke asked if this is a subject which the Zoning Commission should look at in the future? Mr. Moore stated exemptions are given under Section 5.17 for existing houses, and it is recognized there are non-conforming properties and it is a possibility that the Zoning Commission could look at it. Mr. Heeke reminded this would tend to increase density and asked if Mr. Moore had any idea how many similar lots such as this there were in this Town in which a situation like this might occur? Mr. Moore responded perhaps approximately one hundred. Mrs. Wiener asked if there were unity of titles to which Mr. Moore responded negatively. Mrs. Wiener thought that if there were unity of titles, they would be getting one tax bill and Mrs. Englander advises she gets a separate bill on the other lot. Mayor Marix asked if this was separated would they come back in the future for further variances such as a swimming pool? Mrs. Englander recalled there have been people who wanted to put a small pool on the house on Lot 16.

Mrs. Douthit pointed out if this is allowed, they would have to do something with the accessory structures that are now located on what would be the empty lot. Mr. Moore stated they would either have to abandon it or remove it as there couldn't be an accessory structure without a principal structure. Mayor Marix asked if they had a buyer, would they have to remove the structures if they were immediately going to build a primary structure? Mr. Randolph responded the buyer would have to get a variance to allow the accessory uses to continue until the house was completed.

Mr. Ilyinsky moved Variance No. 7-92 be denied. Seconded by Mrs. Douthit. Mrs. Englander advised there was a house at one time on the other lot. Mr. Moore stated that is why they have a separate tax bill on this lot. On roll call, the motion carried unanimously to deny.

Var. 8-92
(cont'd)

5. Variance No. 8-92 - Dorothy DePaola, 124 Onondaga Avenue; to allow construction of an addition providing a 5'2" side yard setback in lieu of 12'6" required. R-B District.

Stephen Bruh, Architect, addressed the Council on behalf of his clients, Mr. & Mrs. DePaola, requesting the variance for a garage. He believed it would enhance the architectural characteristics by altering the style of the building. He did not feel the granting of this would be detrimental. He indicated there was a dense tree line between his client's property and the neighboring property which will remain and it would not detrimentally affect the neighbor who is not opposed to the addition. Mr. Ilyinsky knew there was a garage there before and asked what happened to it? Mr. Bruh responded the garage was enclosed and turned into living space. Mayor Marix believed that was before the new rule was in effect that garages could not be converted.

Mr. Moore gave the staff comments noting the non-conformity on that side of the house is being requested and would increase the non-conformity and the Town Manager wished additional explanation of the hardship. He felt there may be room on the other side of the house. He advised there was a letter of objection and a letter which had no objection from the neighbors. Mr. Heeke did not see a hardship and felt it was not a minimal variance. Motion was made to defer the Variance No. 8-92 to the next Town Council meeting by Mr. Ilyinsky. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously to defer.

Spec.Excep.
4-92

6. Special Exception No. 4-92 - Tourneau Jewelry, 175 Worth Avenue; to allow a jewelry store to occupy 2,165 square feet in lieu of 2,000 maximum permitted. C-WA District.

Mr. Heeke stated on this Special Exception he had a conflict of interest as the applicant is his client and turned over the chairing of the meeting to President Pro Tem Weinberg. Danny Barr addressed the Mayor and Town Council on behalf of his father, Josef Barrto ratify the continuance of a Special Exception granted to them two years ago. He advised there is a new name for the store, and he introduced David Banner who represents Tourneau and Jewelmasters is associated with Torneau by operating a jewelry counter inside. He advised the customers are Town residents in postal zone 33480 and they believe that will continue in the future. Mr. Banner addressed the Council, indicating he is the Regional Manager of Tourneau and he found that many of their customers who shop their store in New York have requested a store in Palm Beach which they have done, and will keep documentation on their customers, and most of them will have the zip code 33480.

Mrs. Douthit asked if the enterprise has been Town-serving in the past to which Mr. Barr responded affirmatively. Mayor Marix felt it would be difficult for anyone to refuse a request for Josef Barr, after what he has done for this Town. Mr. Moore advised that Jewelmasters have filed annual statements to indicate they are town-serving but they are requesting a minimal area over the 2000 square feet allowed. He stated the applicant is Tourneau and they would need to provide some form of Town-serving documentation as they are a new business opening their doors in Town and Mr. Barr will only have a counter in the store. Mr. Ilyinsky moved the Special Exception 4-92 be granted with the condition that the Town-serving documentation be submitted by Tourneau. Seconded by Mrs. Wiener. On roll call, the motion carried 4-0 with Mr. Heeke abstaining.

D. Other

Var. 29-91

1. Variance No. 29-91 - Request for One (1) Year Time Extension - Robert, Leo and Joe Bustani, 240 Australian Avenue; to allow construction of a two-family dwelling on a lot of 12,500 square feet in lieu of minimum lot area of 13,333 square feet per Section 4.20 of the Town Zoning Ordinance. R-C District.

Attorney Gustav Broberg addressed the Council representing the Bustanis requested the one year time extension on the variance. Mrs. Douthit recalled this application and knew this was the first request for extension and she moved the one year time extension be allowed for Variance 29-91. Seconded by Mr. Ilyinsky. President Heeke assumed the chairmanship of the meeting and called for the roll to be read. On roll call, the motion carried unanimously.

Easement
6 South Lake
Trail

2. Consideration of Request for Abandonment of 5' Private Easement by Paul Thibadeau on Behalf of Leonard Sessa - 6 South Lake Trail

Attorney Thibadeau addressed the Council on behalf of Mr. Sessa, indicating Mr. Sessa owned two parcels of property which was previously the Anthony Estate. He stated his predecessors in title obtained permission to subdivide the two lots and the then owners asked for the access easement on the north side of the westerly lot to allow access from the interior lot to the Bike Trail. He recalled as a condition to that approval, the Town Engineer requested this five foot easement also be included for utility purposes. He stated his client has now acquired the property and since construction has been started on his house, it has become apparent that they do not need the access easement as Mr. Sessa owns both lots, the lot burdened by the easement and the lot serviced by the easement and would like it abandoned. He assured the Council the easement was strictly for the convenience of the interior lot and is not dedicated to the Town and is not for public purposes. He stated the only reason they are here is because there was a condition on the original approval that if the easements were to be amended, they had to come back to the Council to do so. He stated as for the utilities, Mr. Sessa has installed a six inch water line from Cocoanut Row contiguous to the interior lot; has replaced the telephone, power and cable tv line underground on the interior lot and all of the utilities are located on the interior lot and there is no need for utility purposes for the easement on which they are requesting the abandonment.

Mr. Heeke asked if Mr. Sessa intended to maintain the two lots as one piece of property to which Mr. Thibadeau responded negatively, indicating there are two lots and he is building on one now and they didn't wish to waive the subdivision. Mr. Heeke asked what about the access of that interior lot to the Lake Trail. Mr. Thibadeau stated they didn't feel that was necessary or desirable and wished to waive it. He advised there is precedent for that and some of the streets which do not have access to the Lake Trail are Reef, Dolphin, Oceola, Colonial, Orange Grove, List, Garden, Eden, Sandpiper, Tradewind, Bahama, Cherry, Via Linda, Kawama, Emerald, Oleander, Sunrise and the two new subdivisions, Chapel Hill and Antigua. Mr. Heeke believed the abutting streets, however had access to which Mr. Thibadeau responded the older subdivisions do have access.

Mayor Marix believed the other streets he mentioned were only a few feet off an access, i. e., Orange Grove doesn't but the next street, Monterey does. Mr. Thibadeau stated that same condition exists here as they can go to Primavera or Pendleton to get to the Bike Trail here, and Mr. Sessa does own both lots and he is the one benefitted by the easement and it is not for the benefit of the public and he wishes to abandon it. Mr. Heeke asked what was the purpose of having this access to the Lake Trail at the time the Council originally granted the request? Mr. Thibadeau believed it was at the request of the applicant who owned the property.

Mr. Moore recalled the applicant and the then owner of the property made the request.

Mrs. Wiener moved the Town Council grant the request for the abandonment of the five foot private easement at Six South Lake Trail. Seconded by Mr. Ilyinsky.

Mr. Moore noted Mr. Dusey was not in the room and he had sent a memorandum that if this is approved, the approval should be contingent on receipt of letters from all of the utitilies that they have no interest in it and he wished to confirm the statement of Mr. Thibadeau that there is no need for this easement Mr. Thibadeau addressed that point, noting there is a 30' easement on the interior lot at the south side in which the water and sewer lines are located and that is for utility purposes. He stated there is a brand new easement for the electrical, television and phone lines on the interior lot as well and the only person who could demand the use of the easement for utility purposes is his client and he doesn't want it.

On roll call, the motion carried unanimously.

Var. 20-91

3. Variance No. 20-91 - Request for One (1) Year Time Extension - Frank T. Noska, III, 221 Onondaga Avenue; to allow construction of a swimming pool in the required street side yard providing a setback of 11.2 feet in lieu of 25 feet as required. R-B District.

Frank Noska addressed the Council indicating when he bought the property, he wished to install a pool and he has made some renovations to the exterior of his home which were approved by ARCOM and instead of installing the pool he wishes to finish the interior work and this is the first request for extension that he has made. Mrs. Wiener moved to grant the one year time extension for Variance No. 20-91 for the building of a swimming pool at 221 Onondago. Seconded by Mr. Weinberg.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Communications from citizens

Adrian Winterfield addressed the Council on the Consent Agenda requesting the items be sufficiently identified so that the recommendations are known, for example, the bid award - the addition of one sentence to rebid and state the reason.

He addressed the regulation of government property for nongovernmental purposes, he requested a comprehensive ordinance be drafted as he felt it is unnecessary to start with another ordinance as there is in place the Parade Ordinance and there could be sections for the use of Town property for secular displays, as an example. He requested this occasion be taken to include what has been done on an Ad Hoc basis for years under the Special Event Permit procedure, as there has never been any authority other than a previous Town Manager's instructions for the conception of this and it should be included in the Code of Ordinances. He requested the participation of Council on the issuance of these Permits and if they wished to delegate these decisions to staff, there be an explicit provision requiring anyone dissatisfied with the decision to seek review before the Town Council. He believed that had such a provision been in effect at the time of Klangate, the Town could have saved considerable funds in legal expenses.

XV. ANY OTHER MATTERS

PEP REEF Contract

A. <u>PEP REEF CONTRACT:</u> Mr. Doney recalled the Town Council extended the time for the completion of bonds, insurance, etc., subject to approval by the Town until today and Mr. Lickle is in the audience to request an extension. Attorney Lickle addressed the Council recalling they requested a two week extension in February and at the same time the additional cost of the bond was estimated at between $44,000 and $54,000, and today is the deadline for that to be submitted. He stated he was hoping he would not have to be here, however wished to report that all the insurance provisions are in place and acceptable to the Town. He has been in receipt of a letter today from Amwest Surety which basically states that everything has been done by American Coastal and the branch has recommended approval of the bond and it will take a few days, after which it will be issued. He stated another part of that is the premium has come in at $54,000. He stated a bond form has been sent to Mr. Randolph and Mr. Doney has seen it also. Mr. Doney responded he has seen it but needs to get Mr. Randolph's approval on it. Mr. Lickle asked for a few more days and approval to go to the $54,000 and hoped that this concluded the negotiations.

Mr. Heeke asked Mr. Randolph if the surety form submitted by Mr. Lickle was in order to which Mr. Randolph responded affirmatively. Mr. Heeke asked if the next step was Amwest's issuance of the bond? Mr. Lickle stated that was correct and it is just a matter of the Home Office approving it and the authorization for the additional premium and he thought in order to not have a Special Meeting, the extension of time be until the next Council meeting as it sounds like what they are asking is pro forma at this point. Mr. Lickle agreed noting that even with the setbacks, American Coastal has been moving forward and if the bonds were not in place by the next Town Council meeting, the Town Council would have the right to cancel the contract. Mr. Weinberg asked if the delays in the paper work would delay the completion of the construction date? Mr. Lickle responded that it would not as American Coastal has proceeded with the moulds at their own risk on the assumption that the bond will be in place shortly. Mr. Weinberg asked what the anticipated schedule completion date was? Mr. Lickle responded it is set for mid-September.

Mr. Heeke asked where the funding would come for the increased premium? Mr. Doney responded it would come from the previously appropriated funds for the Mid-Town Beach Nourishment Project. Mrs. Wiener felt it was a highly unusual situation where the Town pays for these kind of things and it has gone up considerably from what was estimated originally and she hoped they would be willing to contribute something. Mayor Marix recalled they were told it would be between $44,000 and $54,000 and the reason the $44,000 was authorized was to help them have more negotiating room. Mr. Lickle responded that was the case, but unfortunately, it did end up at the higher end. Mr. Ilyinsky moved that the additional premium of $54,000 be authorized in addition to the extension of time to the April Town Council meeting for the surety bond to be in place. Seconded by Mrs. Douthit. On roll call, the motion carried 3-2 with Mr. Weinberg and Mrs. Wiener voting against the motion.

Annual Reports

B. <u>PRODUCTION AND DISTRIBUTION ALTERNATIVES FOR THE CURRENT AND FUTURE ANNUAL REPORTS.</u> Mr. Doney reported that based upon the time factor and pursuant to the Code, his recommendation is that the Annual Report be filed with the Mayor and Council, and with the revised Page 3 on the Mayor and Town Council with limited copies made available at all Town offices. He stated the bigger issue on the style and method of distribution for future Annual Reports needs to be discussed and a decision needs to be made on that by August 1, 1992. Mr. Heeke noted the suggestion for the 1991 Report is the camera ready copy be reproduced and made available for anyone who wishes to have it. Mr. Doney responded he will distribute the copies to the Mayor and Town Council, pursuant to the Code, and have the extra copies available. Mr. Doney indicated he did send a memorandum to the Mayor and Council which discusses the calendar style and asked the Mayor and Town Council to let him know which way they wished to go on this matter.

Selection Team - Coastal Eng.

C. <u>SELECTION TEAM ON COASTAL ENGINEERING FIRMS</u>. Mr. Doney advised unless the Town Council wishes differently, he will appoint a Selection Team with either Mr. Weinberg as Chairman of the Public Works Committee or Mr. Ilyinsky as a member of that Committee, and three other members from staff, to which the Town Council agreed. Mayor Marix believed they were hiring a professional engineering firm to design the rehabilitation of coastal structures and asked if there was any idea of what kind of expense was envisioned on this subject. Mr. Doney advised the general engineering firm of Gee and Jenson was used but there haven't been coastal marine engineers for the lakefront and oceanfront projects. Mayor Marix asked what they were planning? Mr. Doney responded according to Mr. Dusey, the scope would be to do the structural design on the Mid-Town Beach Seawall concrete facing; Town-owned Lakefront bulkheads; the docks at the Marina; and the Everglades Island Bridge pilings and any other projects coming up in the next fiscal year. Mayor Marix asked if they were committing themselves to anything moneywise? Mr. Doney responded there is some money appropriated in the Capital Improvement Program for this year in the Lakefront Bulkheads and this special type of engineering firm, coastal marine, would be doing the design. He advised it would only be for already appropriated Town Council Capital Improvement Projects or if the Town Council wished to approve additional projects. Mayor Marix felt it might be more comfortable if re-approval of those particular projects was received as they might decide to not do certain things. Mr. Doney explained that all of the projects are enumerated on a Status Report issued by the Public Works Department on a monthly basis and they are all approved in the budget. Mr. Doney asked the Mayor if she wanted them all to come back again for approval? Mayor Marix thought re-approval might be in line. Mr. Heeke suggested a memorandum be sent by Mr. Dusey as to what is on the drawing board at the present time and asked if there was any objection to the suggestion of Mr. Doney to appoint the selection team. The Council agreed Mr. Doney should make the appointments.

Upcoming Meetings

D. UPCOMING MEETINGS. Mr. Doney called the attention of the Mayor and Council to the upcoming meetings.

Jet Skis

E. JET SKIS. Mayor Marix called the attention of the Council to the problem of jet skis and the fact that the Coast Guard is also concerned about this problem. Mayor Marix left the meeting at 6 PM.

Bernard vs. Town of PB-

Lawrence vs. Town of PB

F. BERNARD VS. TOWN OF PALM BEACH. LAWRENCE VS. TOWN OF PALM BEACH. Mr. Randolph advised both of these cases were decided adversely to the Town and it is his opinion to not go further with the Bernard case, however on the Lawrence case, he doesn't have a strong feeling one way or the other but wanted to know if the Council wished to appeal the decision of the Circuit Court. After discussion, it was the consensus of the Council that the Lawrence case should be appealed.

Roller Bladin

G. ROLLER BLADING Mr. Heeke advised Michael Burrows called him and told of an incident on the Lake Trail where an elderly lady was knocked into the bushes accidentally by a roller blader. He knew that sometimes because of the build up of speed, roller bladers do not have control over the way they are skating and they might well be a danger to pedestrians as well as themselves. He thought the use of the Lake Trail was being taken away from pedestrians. Mrs. Douthit stated she also heard of far more serious accidents. Mr. Heeke reported he has discussed this with the Chief of Police and it was suggested that perhaps traffic ripples could be installed, short of a banning and Mr. Randolph has suggested that perhaps a time could be set for permitting roller blading on the Lake Trail. Mrs. Wiener stated perhaps the ripple idea is a good idea except it might cause a lawsuit. Mr. Randolph advised that potential always exists. Mr. Heeke believed they could ban it on the Lake Trail, however, he wanted to stop a step short of doing that. Mrs. Wiener knew that roller bladers love the Lake Trail as it is smooth and nice. Mr. Heeke stated he hated to be hard nosed about it but perhaps banning might be the only answer as the police can patrol but they really can't control the situation fully. Mrs. Douthit asked if this would be for all trails in Town as there is one on South Ocean and there is the one south of Sloan's Curve.

Mrs. Wiener believed everyone should have an opportunity to address this and there be a public hearing on this. Mr. Heeke knew there were town residents who also enjoy roller blading and he would call a Public Safety Committee Meeting in the near future for the purpose of discussing roller blading on the Lake Trail and other locations in the Town.

Mr. Heeke recalled the Mayor brought up the subject of jet skis and he asked that more information be secured and how other governmental agencies actually enforce the restrictions placed on the use of jet skis.

MAR-A-Lago

E. MAR-A-LAGO. Mr. Heeke stated he was concerned with whether or not one hearing in April would be sufficient as the proceedings must be concluded by the end of April. Mr. Randolph advised the public hearings must be concluded by the end of April and the Council has sixty days within which to adopt a Resolution doing one of the three options he explained at the previous hearing.

Mr. Byron Englander addressed the Council noting his wife was here earlier with regards to Variance 7-92 and he wondered if the decision could be put on the shelf. Mr. Heeke advised a decision was already made on this matter. Mr. Englander asked if the Council could reconsider this matter. Mrs. Douthit asked if his wife knew what the decision was as she didn't believe Mrs. Englander knew what the final decision was when she left the meeting earlier. Mr. Englander agreed that she didn't and he would appreciate if they would put this matter on the shelf. Mrs. Wiener advised if they were to grant the variance, there would be two non-conforming lots which would have been created by the Town Council and that is the problem. Mr. Englander stated he would rather not get involved in these things as he has been here a number of years and is in the real estate business. Mrs. Douthit advised according to the Comprehensive Plan, Council cannot create these two non-conforming lots. Mr. Englander asked that it be reconsidered and it simply be put on the shelf. Mr. Heeke didn't know what purpose that would serve as the position the Council took was one they didn't like to take but it was one that was mandated by the Code and Comprehensive Plan. Mr. Englander understood what he was saying but wanted the Council to know he has inherited these properties and he would like to put this on the shelf so the property can be marketed as one piece without the information that they have been defeated in this particular maneuver. Mr. Heeke felt the record has been made and minutes will be available. Mr. Englander thought they could reconsider and then put it on the shelf as he believed that may have been discussed earlier. Mr. Randolph recalled there was some discussion about it being deferred and that is what he means about putting it on the shelf. Mr. Heeke stated they would not reconsider it as it already is a matter of record.

Adjournment

XVI. ADJOURNMENT - Meeting was adjourned at 6:15 PM.

Grace T. Peters, Town Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME
HEEKE BERNARD ALLEN

MAILING ADDRESS
124 Seabreeze avenue

CITY
Palm Beach

COUNTY
Palm Beach

DATE ON WHICH VOTE OCCURRED
March 12, 1991

NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Palm Beach Town Council

THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
[✓ CITY] ☐ COUNTY ☐ OTHER LOCAL AGENCY

NAME OF POLITICAL SUBDIVISION:
Palm Beach - (Town)

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. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

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

RECEIVED
TOWN CLERK'S OFFICE
MAR 21 1991
TOWN OF PALM BEACH

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

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

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Bernard A. Heeke, hereby disclose that on March 12, 1991:

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

___ inured to my special private gain; or

✓ inured to the special gain of First National Bank in Palm Beach (Southeast Bank NA), by whom I am retained.

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

At the March 12, 1991, Town Council meeting, I voted on an issue involving First National Bank in Palm Beach (Southeast). My vote was contrary to the Bank's position on that issue. That particular Town Council meeting did not adjourn until well after 8:00 p.m. The next morning, at my law firm, I became aware and was reminded the firm's litigation section, of which I am not a member, was representing the Bank on at least one pending matter. I immediately notified the Town Attorney for his advice. During a meeting on March 20, 1991, he and I had only a few minutes to confer during which he advised we needed to discuss the matter upon his return to town as there may have been a conflict of interest concerning my vote and the need to file this notice. The advice of the Town Attorney is there was an apparent conflict of interest concerning that vote and this disclosure should be made

March 21, 1991
Date Filed

Bernard A. Heeke
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

ATTORNEYS AND COUNSELORS
FLAGLER CENTER TOWER
505 SOUTH FLAGLER DRIVE
ELEVENTH FLOOR
P. O. DRAWER E
WEST PALM BEACH, FLORIDA 33402-3475
(407) 659-3000
FAX: (407)832-1454

WRITER'S DIRECT LINE: ____________________

LARRY B. ALEXANDER
VINCENT J. ALTINO
GEORGE H. BAILEY
KEVIN C. BEUTTENMULLER
MICHAEL D. BROWN
RUTH P. CLEMENTS
SCOTT M. COLTON
JOYCE A. CONWAY
MARGARET L. COOPER
BYRON R. CORNWELL
REBECCA G. DOANE
RANDY D. ELLISON
L. MARTIN FLANAGAN
LORI E. HANDELSMAN
SCOTT G. HAWKINS
THORNTON M. HENRY
PETER S. HOLTON
REBECCA F. HUHTA
J. A. JURGENS
MARK B. KLEINFELD
CHARLES B. KOVAL

MICHAEL T. KRANZ
JOHN M. LeROUX
JOHN BLAIR McCRACKEN
PAMELA A. McNIERNEY
TIMOTHY E. MONAGHAN
GUY RABIDEAU
JOHN C. RANDOLPH
PAULA REVENE
ANDREW ROSS
STEVEN J. ROTHMAN
PETER A. SACHS
ANDREA J. SAFKO
JOEL T. STRAWN
SIDNEY A. STUBBS, JR.
ALLEN R. TOMLINSON
JOHN S. TRIMPER
SANDY M. VANSTRUM
MICHAEL P. WALSH
H. ADAMS WEAVER
PAUL C. WOLFE

R. BRUCE JONES
1904-1988

HENRY F. LILIENTHAL
1902-1982

HARRY ALLISON JOHNSTON
1895-1983

RETIRED
WILLIAM A. FOSTER

OTHER LOCATION

54 N.E. FOURTH AVE.
DELRAY BEACH, FLORIDA 33483

RECEIVED
APR 01 1991

RECEIVED
TOWN CLERK'S OFFICE
APR - 2 1991
TOWN OF PALM BEACH

4/1
RJD

March 28, 1991

XC Mayor and Town Council
Peters
Moore

Mr. Robert J. Doney
Town Manager
Town of Palm Beach
Post Office Box 2029
Palm Beach, Florida 33480

To PBE,
then file

RE: Town of Palm Beach
Disclosure of Local Officer's Interest
March 21, 1991 - Bernard A. Heeke
Our File No. 13156.8

Dear Bob:

I have reviewed the above referenced form which was filed by Mr. Heeke. It is my understanding that this form was filed by Mr. Heeke, out of an abundance of caution, after conferring with me, in the event it were determined that his vote constituted a conflict of interest. ✓

I have discussed with Mr. Heeke the circumstances surrounding his vote and have been advised that at the time of the vote Mr. Heeke was not aware that his law firm was at the time representing First National Bank in Palm Beach (Southeast). Because he was not aware, Mr. Heeke did not "knowingly" vote in his official capacity upon a measure which inured to the special gain of a principal by whom he was retained. ✓

The applicable Florida Statute relating to this matter is Section 112.3143(3) which states in part as follows: ✓

> "No county, municipal, or other local public officer shall vote in his official capacity upon any measure which inures to his special private gain or shall knowingly vote in his official capacity upon any measure which inures to the special gain of any principal, . . . by whom he is retained."

In addition to discussing this matter at some length with Mr. Heeke, I have conducted independent legal research and have further conferred with staff members of the Commission on Ethics for the State of Florida. Based upon the facts represented to me, the research I have completed, and my conversations with staff at the Commission on Ethics, I am of the opinion that because Mr. Heeke did not "knowingly" vote on a measure which inured to the special gain of a principal by whom he was retained, there is no conflict of interest. ✓

Mr. Heeke, in his disclosure form, indicated he was filing the form because of what he was advised was an "apparent" conflict of interest. Upon further review, it does not appear there was an actual conflict of interest. ✓

Sincerely,

John C. Randolph

JCR/ssm

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

LAST NAME—FIRST NAME—MIDDLE NAME
HEEKE BERNARD ALLEN

MAILING ADDRESS
124 Seabreeze Ave

CITY
Palm Beach

COUNTY
P B

DATE ON WHICH VOTE OCCURRED
3/10/92

NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Town Council

THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
[✓ CITY] ☐ COUNTY ☐ OTHER LOCAL AGENCY

NAME OF POLITICAL SUBDIVISION:
Palm BEACH TOWN COUNCIL

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. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

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

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Bernard A Heeley, hereby disclose that on 3/10, 1992:

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

____ inured to my special private gain; or

X inured to the special gain of Josef Barr, by whom I am retained.

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

Announced conflict at meeting prior to any discussion thereon and left chambers during all discussion and the vote on the matter

3/12/92
Date Filed

Bernard A Heeley
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.