TOWN COUNCIL MINUTES OF MARCH 9, 1993

I. CALL TO ORDER AND ROLL CALL - The Town Council meeting of March 9, 1993 was called to order by President Pro Tem Weinberg in the Town Hall Council Chambers on March 9, 1993 at 9:30 AM. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Pro Tem Weinberg, Councilwomen Wiener, Douthit and Smith. Also attending were Mr. Doney, Mr. Randolph, Mrs. Peters, Mrs. Crozier, Mr. Dusey, Mr. Bowser, Chief Elmore, Chief Terlizzese, Mr. Elwell, Mr. Jakubiak, Mr. Moore, Mr. Frank and Mr. Zimmerman. Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by Rabbi Feldman. Pledge of Allegiance was led by Mayor Ilyinsky. Invocation

III. RESOLUTION NO. 11-93 - Certifying Run-Off Election of February 16, 1993 - Res. 11-93

The following is a transcript: Transcript

PRESIDENT PRO TEM M. WILLIAM WEINBERG: The Town Attorney will read Resolution No. 11-93 by title, please.

ATTORNEY JOHN C. RANDOLPH: This is a Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, declaring the results of the run-off election held on the 16th day of February, 1993 between the hours of 7:00 AM and 7:00 PM on said date, for the purpose of electing a Councilmember in Group 1 for a two-year term.

PRESIDENT WEINBERG: Mr. Cardwell?

ATTORNEY DAVID CARDWELL: Yes, sir.

PRESIDENT WEINBERG: Will you identify yourself, please?

ATTORNEY CARDWELL: Thank you. My name is I'm an attorney representing Marie Hope, and with the Council's permission, I'd like to make a statement to supplement the written statement which I have presented to you concerning the February 16th run-off.

PRESIDENT WEINBERG: Go ahead.

ATTORNEY CARDWELL: Thank you. Mr. President Pro Tem, Mr. Mayor, Members of the Town Council. I am here today as the attorney for Marie Hope, a candidate for the Town Council Seat No. 1, who was a candidate in the run-off election on February 16th, which you have a Resolution before you canvassing the returns for that election. As you know, it was a very close election. It was decided - based on the results that have been given to you - by only two votes. Mrs. Hope asked me to look at the circumstances surrounding the election and based upon my experience, having worked in the area of Election Laws since 1976, including being legal counsel to the Secretary of the State Division of Elections and the Director of that Division, and being familiar with municipal elections, having been a City Attorney before, have a look at that and be prepared here today to present what we have found and what we would like to bring to your attention. We are not here today to notify you that we have filed a contest in Circuit Court. We have undertaken that course of action because we felt that that was counterproductive and also would have a cost to the Town as well as we thought not be the proper form, rather to come before this Town Council today to bring to your attention matters which we think warrant your attention.

With a close election, it is in the interest of this Council, as well as the Town of Palm Beach, that any and all questions surrounding that election be answered. It is not the intention of Marie Hope to be here today as a sore loser, or to seek anything other than to be sure that everyone in this Town is satisfied with the results of the election and that you can avoid any problems, which we may learn from this experience, in future elections.

First, I'd like to - as pointed out in my letter addressed to you - that it's our position that you, the Town Council, actually serve as the Canvassing Board, despite the fact the Resolution which you adopted calling the February 16th Election referred to the Town Clerk and the Supervisor of Elections as the Canvassing Board - in reality, their duties were really to administer the Election for the Town.

Your Code of Ordinances in Section 2-36 states the Town Council canvasses the results of the Election and declares the results. That's the purpose of the Resolution which you currently have before you. Section 2-37 also states that this Town Council is the Judge of the election of its members. It is our contention that those two sections read together which are Ordinances which would control over a Resolution, clearly indicate that this Town Council functions as the Canvassing Board and as such should be viewed as that for determining the outcome of the Election and receiving any information or reports of any irregularities or activities in connection with the Election, which may effect its' result.

You'll hear from Mr. Green, representing Michele Royal, and I believe that he has a letter which is on your desk, which he has, as I read it quickly, seems to agree with me that you are the Canvassing Board, but he asserts that your duty is ministerial. And I would agree that in many respects, your duties are ministerial, so long as there are no allegations of any impropriety or any concerns regarding the outcome of the Election. And he cites several cases which support his position. But please note that all of those cases predate the enactment of the current Florida Election Code. Florida Election Code has for many years increasingly added duties and responsibilities to Canvassing Boards. Canvassing Boards now are to review the Absentee Ballots - in fact, before Absentee Ballots are opened, as these were on Election Night and the next day - the Canvassing Board should be present for that, so that there would be an opportunity to challenge any particular Absentee Ballot. Canvassing Boards are now charged with the responsibility of hearing protests of elections and to dispose of those protests. And Canvassing Boards have other responsibilities as set forth in the Statutes, so I think it's clear that while those cases were correctly decided at the time, that the role and responsibility of a modern Canvassing Board has significantly changed. In fact you do have a great deal of discretion to exercise should there be any questions concerning an election for which you are the Canvassing Board, as was the case of the February 16th Run-off. Res. 11-93 Transcript

I'd like to bring to your attention two particular matters, which we think, warrant your concern and your attention and which we think should be investigated.

The first involves Absentee Ballots. Under Florida Law, it is relatively easy for someone to request an Absentee Ballot, and there is a process by which an individual may pick up Absentee Ballots for someone, provided a request is made in writing for that to be done. But there have been some questions raised in the community which have been brought to the attention of Mrs. Hope that concerned her, and that should be a concern of anyone in the Town regarding how certain Absentee Ballots may have been requested, may have been voted, and may have been returned. I pointed out in my letter there were nineteen requests in particular that we have a concern about, and eighteen of those were returned.

I cannot tell you today that we have any conclusive evidence that anything improper was done, or that any undue influence was exercised, but the questions have been raised regarding those ballots. In the limited time since the election and with the limited resources available to Marie Hope, as well as the limited legal authority by virtue of her being a private citizen and not a governmental authority, they are unable to be able to investigate and come to any conclusion as to the activity surrounding those ballots. But certainly when there is an election decided by only two votes and there were eighteen ballots of which many people in Town have questions about, and those eighteen are more than the margin of the difference between the two candidates, it seems it warrants some attention to be sure that there was not anything done improperly.

We have some concerns about those and we would hope that you would share those concerns and feel it is in the best interest of the Town to look into those ballots, as well as others which may have been cast.

The second activity which I want to bring to your attention are the allegations which surfaced regarding the February 2nd election, which we have some reason to believe may also have occurred in the February 16th Election, regarding illegal voting by nonresidents. To be an elector of the Town of Palm Beach, a person must not only satisfy all the other requirements to be a registered elector in the State of Florida, but must also be a resident, maintain his or her legal residency within the corporate limits of this Town. As you know from media reports and I believe you have a report from your Police Department today regarding some allegations with the February 2nd Election, there is some finding which has been made that individuals voted who were not residents of the Town. Those votes were illegal. Those votes should not be counted. We have reason to believe that they may also have occurred in the February 16th Run-off, despite the fact that the Police Reports indicates that the three that they have charged or are found to be in violation, did not vote in the February 16th Election.

It is our understanding there were several others that allegations were raised and they may still be under investigation, and there have been other questions that have been raised regarding the February 16th Election. Again, as a private citizen and as a candidate, Marie Hope does not have the resources nor the legal authority that either a City, such as the Town of Palm Beach, or a Police Department or other law enforcement agency has, to investigate whether or not illegal votes have been cast.

For Marie Hope to try and determine if there were illegal votes cast that were not residents of the City, she really would have to investigate all 2400 people who voted in the February 16th run-off. The Police Department may have information which is not public record, which may be able to narrow that inquiry, but this again is a concern when the vote margin is so narrow, as it was in this case, we should be sure that all votes cast were proper and that there were no questions regarding any of the votes that were cast on February 16th.

As a Canvassing Board, I believe you have a great deal of discretion. You can go ahead if you desire and canvass the results today, declare the results and proceed as is normally the case with your Election. But the Election on Feb. 16th, as I pre-said, was decided by two votes. There are a lot of questions. There are a lot of concerns. I would think it would be in the best interest of the Town and in the best interest of the candidates, and the best interest of everyone, that any and all questions be resolved and not allowed to linger and constantly be a problem in the future. I believe that this Town Council could, if it wanted to, direct appropriate Town Officials to undertake an investigation of the allegations we've raised regarding the Feb. 16th Election, as well as any other information which may come to their attention, and bring a report back to you, before you canvass the election, so that you are confident that everything has been looked into, all questions have been answered. I believe you have the discretion to delay the Canvass and the declaration of the results today and a certification of the results. You can continue this meeting to such time as the returns - the return of the investigation to you later. You could also decide not to count the Absentee Ballot, if you have a concern that the Absentee Ballots were not properly cast or there is questions about their validity. Now that has been done in other instances to where it was impossible to determine which Absentee Ballots were or were not validly cast. As I previously mentioned in this instance, because the Town Council as the Canvassing Board, was not present at the time the Absentee Ballots were opened, there was not an opportunity provided to the candidates to challenge individual ballots before the Canvassing Board, only before the Election Administrators, and the Statute says it shall be done in front of the Canvassing Board.

You also could, in my belief, if you desire, to hold a new Election. If you felt that that would resolve any and all questions. So, as you can see, I think you have a great deal of discretion. But certainly, I think it is important and would be in the best interest of all concerned that you would look into these allegations before canvassing the results of the Election. I thank you for your attention and would be glad to answer any questions if you have any.

PRESIDENT PRO TEM WEINBERG: Mr. Randolph?

MR. RANDOLPH: Mr. President and Council, historically and traditionally, the Town Council in fulfilling its role, which is prescribed by its Ordinance 2-36 of Canvassing and Declaring the Results of the Election, has done so through a process of ratification of the results as they had been tabulated and certified by both the Supervisor of Elections and our Town Clerk, as opposed to physically involving itself in the counting of the ballots. In discussing the matter of the Absentee Ballots with our Town Clerk, Grace Peters, we have been advised that the Absentee Ballots and the counting of same were handled properly. We believe in this instance, as in past elections, Res. 11-93 Transcript

that you have the right to rely upon the information that you have received from your Clerk and from the Supervisor of Elections in finally determining this matter, pursuant to the terms of the Resolution, which is Resolution No. 11-93, which has already been read by title.

The Ordinances of the Town calling for the Council to canvass the elections and declare the results thereof, and to be the judge of the elections is intended to apply to the certification of the election - the actual counting of the ballots. It is not intended in my mind to allow the Council to go behind the certification and - or the votes cast - in order to determine whether there has been misconduct on anyone's part - undue influence - or the like. I believe the appropriate tribunal for those questions is in a court of law and not with this Town Council.

Nevertheless, the Town Council should not take lightly the comments and allegations which have been made here today, particularly when they relate to any impropriety in the election process, and we think that it is important, in light of the comments that have been made here today by Mr. Cardwell and his report that has been given to you, that the Council hear the results of the investigation relating to both items which have been raised here today.

As I understand it, the Police Department has conducted and completed an investigation in regard to persons who allegedly voted in the election who were not residents of the Town. I think it is important that you hear from the Chief in that regard. And I think it is also important that you hear from our Town Clerk, Grace Peters, who on behalf of the Council, was involved not only in the tabulation of the votes with the Supervisor of Elections, but in the handling, the distribution and the collection of the Absentee Ballots.

At this point, Mr. Weinberg, I would therefore request that you call upon Chief Terlizzese for his report and then upon Grace Peters for hers, at the conclusion of which, I believe the Town will be in a position to move forward one way or the other in regard to this matter.

PRESIDENT PRO TEM WEINBERG: Chief Terlizzese?

ATTORNEY DAVID CARDWELL: Mr. President Pro Tem, could I just reserve the opportunity to respond after their reports, if time permits?

PRESIDENT PRO TEM WEINBERG: We will hear both reports.

ATTORNEY DAVID CARDWELL: I understand.

CHIEF JOSEPH L. TERLIZZESE: Mr. President, Mr. Mayor, Council members, briefly, allegations which were brought to the attention of the Police Department by information contained in the Palm Beach Daily News, from information forwarded by the Supervisor of Elections, and other sources were investigated, pursuant to these allegations of criminal wrongdoing. In our inquiry into the matter, we found that there were three people identified who voted in the February 2nd Election, who are non-Town residents. This is a violation of the Florida State Statutes. One person was charged with three felony counts - the false swearing and illegal voting. Two more people have been identified who voted in that February 2nd Election, and the information contained in our investigation will be presented to the State Attorney's Office, so I am not at liberty at this point, to identify them or to make any accusations until such time it gets a review from the prosecutors. Whether or not charges will be filed is questionable at this point. The remaining people who we looked at in regards to the February 2nd Election were all either non-Town residents who did not vote in the Election or were Town residents who legally voted, so there was no improprieties, other than those three that we were able to determine. The three people who voted illegally in the February 2nd Election, none of these three voted in the Run-Off Election on February 16th. We have no further information regarding improprieties or illegalities concerning either one of the elections and at this point in time, I think the duly constituted official and authority who is responsible for overseeing elections is the Supervisor of Elections, Jackie Winchester. She's the Constitutional Officer who is responsible. We have been in consultation with her and neither her office or our office has any additional information, other than what I just stated.

PRESIDENT PRO TEM WEINBERG: Thank you, Chief.

CHIEF TERLIZZESE: If there is any questions that I may answer?

PRESIDENT PRO TEM WEINBERG: Council, any questions on this matter? Thank you, Chief. Mrs. Peters, will you please report?

TOWN CLERK GRACE T. PETERS: Yes. We distributed 168 Absentee Ballots. Absentee Ballots can be requested in various ways - one is by phone - another is by mail, - people can come to the counter and vote, as the reason they want to file an Absentee Ballot is they will be out of Town that day. We had received eleven handwritten notes from people who asked friends or family to pick up their ballots since they were ill or were not going to be in Town that day. We had, as is the case in the past, the candidates or their workers prepare form letters and we had 14 form letters authorizing Emily Hartman to pick up Absentee Ballots; 5 authorized John Matich, 6 authorizing Dr. Edwin Smith and 22 authorizing Anne Herman to pick up Absentee Ballots. There were 125 Absentee Ballots counted. Twenty nine of the one hundred sixty eight sent were never returned. Three were canvassed by the Canvassing Board and were not allowed - one did not have a signature on it at all and two others did not have witnesses. Eleven Absentee Ballots were returned after the Election Day. There were twelve ballots that were not counted due to them being improperly voted. I just received this letter this morning from Mr. Cardwell and I believe there are two people on that list that he furnished who did not vote. But I would like to have further time to study that. And that's my report.

PRESIDENT PRO TEM WEINBERG: Mr. Cardwell, you asked to speak? This is a Council matter and we are not here to involve ourselves in a debate, but if you have a short statement, we would be happy to listen to it.

ATTORNEY CARDWELL: Thank you. Could I ask one question either of the Police Chief or the Town Clerk first?

PRESIDENT PRO TEM WEINBERG: I believe that's possible.

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ATTORNEY CARDWELL: Thank you. It is our understanding that with regard to the Feb. 16th Election, there were mailings made to addresses of voters supposedly registered to vote in the Town of Palm Beach that were returned indicating those voters were no longer at that address, has anything been done with that information to determine if those individuals were in fact residents of the Town on February 16th and voted in the February 16th Election.

MRS. PETERS: Most of the ballots that were returned, Mr. Cardwell, were for people that were up north, in college, or at some up north addresses, or at hotels. But we have not had an opportunity to check into that as yet.

ATTORNEY CARDWELL: Mr. President Pro Tem, Mayor and members of the Council, while the Police Report which you've received today, both I believe there's a memorandum as well as the verbal report today from the Chief, really only addresses the February 2nd Election. And in addition, the Police went ahead and determined that three individuals that he mentioned had not voted in the February 16th Election. Notwithstanding that fact, we still have a concern regarding reports that we received that there were mailings to residents to the Town that were returned for the February 16th Election. I'll admit that that is not conclusive evidence that those individuals were not residents of the Town. They could have moved to somewhere else within the limits of Palm Beach and the mail just not be forwarded. But it also raises questions whether they may in fact have moved out of the Town that day. Or not be residents on the day of the Election. And we would urge you to investigate those individuals just as the allegations regarding the February 2nd Election were investigated, so that if there are any questions regarding the Election can be resolved.

PRESIDENT PRO TEM WEINBERG: Mr. Randolph?

ATTORNEY RANDOLPH: That concludes my comments, Mr. Weinberg.

MAYOR ILYINSKY: Mr. President?

PRESIDENT PRO TEM WEINBERG: Yes.

MAYOR ILYINSKY: Mr. President, may I?

PRESIDENT PRO TEM WEINBERG: Mr. Mayor?

MAYOR ILYINSKY: I would first of all hope that all of those lovely young people in the front row are witnessing a democracy at its very best. You will never see this happening in any other country in the world, I assure you. So you should be very proud of yourselves as being Americans today, and thank you for being here. The contention that the election of Michele Clarke Royal is invalid is a very serious one. The moral and legal right of this Council to set aside the Election results is highly questionable. Mr. Cardwell, after I finish this you will be assured that I am not a lawyer. This is not the best forum for this matter, I do not believe. The question can be best pursued in our Circuit Court system which offers ample opportunity to resolve this dispute. I would recognize as valid the certification of Michele Clarke Royal and swear her in as a welcome member of the Council of the Town of Palm Beach, because Election results have been certified by the Council appointed Board of Canvass and she received the most votes. To those that contend otherwise, I would respectfully suggest that their claim be conducted through the court system. I wish to assure them that we stand ready to abide by the results of proper due process. Thank you, Mr. President.

PRESIDENT PRO TEM WEINBERG: Ladies and Gentlemen of the Council, it is now up to us to make a decision and speak on this matter. We have been advised - we have certification by the Supervisor of Elections - by the Police and the Clerk. As far as we're concerned, it is a legitimate certification and the Mayor has pointed out any issue with this should be outside of our jurisdiction. We are to act on behalf of the Council at this point and if there is any argument with that, as the Mayor indicated, that should be solved in a Court of Law but not here. We are not in a debating situation. Acting on the certification that we have received, it is now necessary for us to vote on the matter as it pertains to Resolution No. 11-93.

COUNCILWOMAN HERMINE WIENER: I don't know if there is any discussion anyone has or any contrary opinions to the Mayor's opinion or Mr. Weinberg's opinion. I surely do not and therefore, I would like to move the adoption of Resolution No. 11-93.

PRESIDENT PRO TEM WEINBERG: Is there a second?

COUNCILWOMAN LESLY SMITH: I second.

PRESIDENT PRO TEM WEINBERG: Mrs. Peters, there's been a motion and a second - will you please call the roll?

MRS. PETERS: Mrs. Wiener?

COUNCILWOMAN WIENER: Yes.

MRS. PETERS: Mrs. Smith?

COUNCILWOMAN SMITH: Yes.

MRS. PETERS: Mrs. Douthit?

COUNCILWOMAN DOUTHIT: Yes.

MRS. PETERS: Mr. Weinberg?

PRESIDENT PRO TEM WEINBERG: Yes. - Acting on the certification with the vote we have just taken, we will now proceed with the swearing in of the duly elected party. Judge Letts?

ATTORNEY CARDWELL: Mr. President Pro Tem -could I just say thank you for your courtesy in letting me heard this morning and I'd like to ask that the letter I submitted be included in the record of the meeting.

MAYOR ILYINSKY: Thank you, Mr. Cardwell, very much.

PRESIDENT PRO TEM WEINBERG: Thank you.

COUNCILWOMAN DOUTHIT: Mr. Weinberg?

PRESIDENT PRO TEM WEINBERG: Yes. I'm sorry. Mrs. Hope?

Res. 11-93 Transcript

MARIE A. HOPE: I'd like to thank the Council for the opportunity to address you and make our position known. I'd also like you to know due to the unusual course of events, I walked in here today knowing I was going to lose and had no hope of winning whatsoever. I felt it was necessary. I have a lot of supporters - moral supporters - financial supporters and I felt that it was something that had to be brought forward. This campaign really was a battle of two different philosophies - one being preservation - one being over-commercialization. It was about old vs. new and big is better. And I am sorry to say and I hope you'll be mindful of your decisions in the future because there truly is a small group of people in Town who want to take over our Town. They want to over-commercialize it and it's already begun with the logos on Worth Avenue - Mar-a-Lago is coming up - I know these are hot topics and hot subjects, but please be mindful and retain and support our strong zoning ordinances and our strong zoning code, our Landmarks Commission as well as our Architectural Commission. I'd like to thank you and I appreciate the opportunity of serving all of my supporters and I appreciate being allowed to be a candidate in this lovely Town. Thank you so much.

Marie Hope

IV. SWEARING IN OF NEWLY ELECTED OFFICIAL - The Honorable Gavin K. Letts, Judge, Fourth District Court of Appeals - Judge Letts gave the oath of office to Michele Clarke Royal.

V. ORGANIZATIONAL ITEMS - Mayor Ilyinsky presided.

A. Election of Town Council President - Pursuant to Section 3.01 of Town Charter - Motion was made by Mrs. Douthit, seconded by Mrs. Smith to nominate M. William Weinberg for President of the Town Council. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion. President Weinberg accepted the responsibility with humility, pride and dedication.

B. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of Town Charter - Motion was made by Mrs. Royal who nominated Hermine L. Wiener. On roll call, the motion carried unanimously.

VI. PRESENTATIONS

Presentations

A. Recognition of Jeffrey W. Smith - Architectural Commission - Mayor Ilyinsky presented Mr. Smith with a plaque in recognition of his six years of service on the Architectural Commission.

B. Recognition of Michele Clarke Royal - Seaview Park Commission - Mayor Ilyinsky presented Mrs. Royal a plaque in recognition of her two years of service on the Seaview Park Commission.

C. On Behalf of the Town of Palm Beach, Presentation by Golf Commission of January 25, 1993 LPGA Par 3 Tournament Proceeds to Hurricane Andrew's "We Will Rebuild" Organization - Mr. S. Ashton Clark, Jr. of the Golf Commission presented a check in the amount of $15,000 representing the proceeds from the Par 3 Golf Benefit to a representative of the We Will Rebuild Organization to benefit those affected by Hurricane Andrew.

VII. COMMENTS OF THE MAYOR - Mayor Ilyinsky welcomed the two newest members to the Council.

Comments of The Mayor

VIII. COMMENTS FROM THE HONORABLE MARY MCCARTY, CHAIR, PALM BEACH COUNTY COMMISSION - Request by Palm Beach County Commissioner McCarty's Office to Defer This Item to the April 13, 1993 Town Council Meeting - Mr. Weinberg explained Commissioner McCarty found she could not be with us today but will attend the April 13, 1993 Town Council Meeting.

Comments from Honorable Mary McCarty

President Weinberg requested that two items on the Regular Agenda, XV.C.6 and 7 - the donation of benches by the Citizen's Association South of Sloan's Curve and the Palm Sale Scheduled for April 4, 1993 by the Preservation Foundation be moved to the "Approved Agenda" and this was moved by motion of Mrs. Wiener, seconded by Mrs. Smith. On roll call, the motion carried unanimously.

IX. APPROVAL OF AGENDA

Approval of Agenda

<u>APPROVED AGENDA</u> (ITEMS X THROUGH XII) - Motion was made to approve the "Approved Agenda" by Mrs. Douthit, seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

X. APPROVAL OF MINUTES OF NOVEMBER 10, 1992 AND FEBRUARY 8, 1993

Approval of Minutes

XI. LICENSES AND PERMITS

A. Charitable Solicitations

Charitable Solicitations

1. Hanley Hazelden Foundation, Inc.; No. 239-93
2. The Auxiliary of Bethesda Memorial Hospital, Inc.; No. 290-93
3. Visual Learning Foundation, Inc.; No. 355-93
4. The Sculpture Theatre, Inc.; No. 356-93
5. Pathfinders of Palm Beach and Martin Counties, Inc.; No. 357-93

XII. NEW BUSINESS

A. Bid Award

1. Sealed Bid No. 93-003 - One 66-Cubic Yard Compaction Transfer Trailer.

Sealed Bid. No. 93-003

2. Consideration of Donation by Citizen's Association South of Sloan's Curve for Additional Benches Along Pedestrian/Bicycle Pathway South of Sloan's Curve.

Benches for ~~Sloan's Curve~~

3. Consideration of "Palm Sale" Scheduled for April 4, 1993 by Preservation Foundation of Palm Beach.

Palm Sale - Pres.Found.

REGULAR AGENDA

XIII. PUBLIC HEARING

Public Hearing

A. Landmark Designation for 1560 South Ocean Boulevard - Consideration of Resolution No. 10-93 Mr. Randolph read the Resolution No. 10-93 by title:

Res. 10-93

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.

Mrs. Peters gave the oath to those who will be giving testimony. Mr. Frank reported the subject property is 1560 South Ocean Blvd and the Landmark Preservation Commission has found it meets Criterian (a), and (b),

(a) This property reflects the broad, cultural, political, economic or social history of the Nation, State, County or Town.

(b) Is representative of notable work of a master builder, designer, or architect, whose individual ability has been recognized or who influenced his age. He reported the architect is Addison Mizner.

Jane Day of Research Atlantica, Inc. addressed the Council, indicating this property at 1560 South Ocean Blvd. was designed in 1924 by Mr. Mizner for John McGee. In 1927, the property was purchased by Edith Rea. She reported the house is a two story Mediterranean Revival building with a partial basement and is constructed of hollow clay tile with a stucco facing on the exterior. She noted the main entrance is on the north and is typical of the Mediterranean style with the curved arches. She noted the door and the wrought iron railings leading to the front entranceway are originals. She noted there are cantilevered balconies which go around all of the facades and are typical not only of the style but of the architect. She noted there is a barrel tile roof. She advised there is a multi leveled patio which goes down a few steps and there are fountains, fruit trees, mature landscaping and it is decorated with Spanish tiles imported by Mizner for this house. She noted this house started out as a ten acre property and is representative of the grand estates in Palm Beach during the boon times of Florida in the 20's. She stated the pool was originally a reflecting pool but has been expanded for swimming. She reported another room was added as a loggia which was designed specifically to accommodate a ceiling imported by Mizner from Spain, which is octagon shape. She stated the roof is flat and there is a stairway that leads to the balcony and a second floor master bedroom. She reported there are elaborated chimneys characteristic of the style and it has an ocean view.

Mrs. Douthit moved that the Designation Report be made a part of the record. Seconded by Mrs. Smith. ON roll call, the motion carried unanimously.

Mr. Randolph reported for the record the Proof of Publication has been received.

Mrs. Jane Volk, Chairman of the Landmark Preservation Commission reported Mr. & Mrs. Tigese are enthusiastic about the landmark program and have cooperated.

Mrs. Douthit moved approval of 1560 South Ocean Blvd. as a landmark which met Criterian A and D and the Resolution No. 10-93 be adopted. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

XIV. OLD BUSINESS

Old Business

A. Appointments

Appointments

1. Landmarks Commission - Two Three-Year Terms to Expire March 1, 1996 - Deferred from February Meeting - Motion was made by Mrs. Wiener to defer these appointments for one month. Mrs. Smith pointed out two of the Commissioners are up for reappointment. Mrs. Wiener moved that Mr. Gublemann and Mrs. Metzgar be reappointed to the Landmarks Preservation Commission with their term to expire on March 1, 1996. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Landmarks Commission

2. Zoning Commission - Two Three-Year Terms to Expire February 1996 - Deferred from February Meeting - Motion was made by Mrs. Douthit to reappoint Mr. Wood and Mr. Murphy to the Zoning Commission for a three year term to expire February, 1996. Seconded by Mrs. Smith.

Zoning Commission

Mrs. Smith asked why the Zoning Commission does not have alternates to which Mr. Randolph responded simply because they have seven members and there has been no provision in the Ordinance to have alternates. Mrs. Wiener asked if this could be looked at on a short range basis. Mr. Doney noted later in the meeting this will be discussing as he had asked Mr. Moore and Mr. Bitzer to prepare a table which shows all Boards and Commissions and their terms and whether or not there were provisions in their particular ordinances to have alternates. On roll call, the motion carried unanimously.

B. Other

Other

1. Consideration of Letter Dated December 21, 1992 from Mayor Nancy Graham, City of West Palm Beach, Regarding Town-Owned Building at Northwest Corner of Intersection at North Olive Avenue and El Campeon Boulevard -

Letter from Mayor Graham regarding Town owned property

Mrs. Douthit suggested this item be again be deferred. Mrs. Wiener suggested they look at alternatives as she viewed this as a valuable piece of property and should be looked at very carefully. She thought that there should be an evaluation made of this property. Mrs. Douthit believed the Town Manager was putting together a report on what it would cost to perk this building up and add landscaping.

Mr. Doney reported the property is the former Public Works facility at the corner of North Olive Avenue and El Campeon, which was formerly Loftin Street. He quoted from Mayor Graham's letter "the above referenced property remains an eyesore and contaminates the gateway over North Bridge into the Town of Palm Beach and similarly into the City." Mr. Doney did not agree with that statement stating there could be some painting and additional landscaping to soften the look of the building and they can make cosmetic improvements.

Mr. Doney advised Mr. Dusey reports the cost to demolish the building would be $140,000 and a minimal landscaping plan could be installed for $22,000. He stated he would not recommend the Town Council consider the demolition and if any work is authorized, it be minimal to do some minor repairs to the exterior and landscaping, which will soften the exterior. He advised there could be some xeriscape type plantings and Mr. Dusey estimated in his Jan. 26, 1993 memorandum, the minor repairs and painting would be in the neighborhood of $10,000 and landscaping costs for the south and east facades of the building would be in the neighborhood of $15,000 or a total estimate of $25,000 which would substantially improve the appearance.

Mr. Doney reported Mr. Moore has advised this property is located in the highest commercial zoning district in the City of West Palm Beach and while at the current time, it is not worth what it was in 1987, which was 1.9 million dollars, and he believed it is important for the Mayor and Town Council to consider that any sale of this property and other pieces of property which the Town owns in this area is a one time potential revenue which could help the budget situation, however, future needs cannot be predicted, so he would not recommend the sale of this property at this time.

Mr. Doney advised the zoning issues and planning issues are contained in Mr. Moore and Mr. Frank's memos. He reported the buildings are still used for storage of parking enforcement buildings and storing employee's vehicles off island, so it does provide that service. He did not recommend an updated appraisal be made as based upon his conversations with Callaway and Price as we would have to pay three to five thousand dollars for an appraisal which would not be helpful at this time.

Mrs. Wiener thought perhaps the $25,000 figure for cosmetics could be reduced as we do want to cooperate but everything around this building is not in the best shape. She thought if the surrounding area was spruced up and the Town's property was the eyesore, then the Town would make haste to cooperate, however, it was her thinking the City of West Palm Beach needed to show they are doing their share as everyone has budget limitations. She thought perhaps this could be held in abeyance for several months and see what the City of West Palm Beach is going to do and see if any of their area is improved.

Mr. Doney stated they could write a letter for the Mayor's signature to Mayor Graham indicating the discussion today and ask for an improvement in the immediate area over a certain timeframe.

Mrs. Smith stated they should also indicate they do not wish to tear down a building at a cost of $160,000 just because the City of West Palm Beach wants to see it torn down. She asked if they were offering to purchase the building to which Mr. Doney responded negatively.

Mrs. Royal asked if there were any offers to purchase this property from the Town to which Mr. Doney responded there were letters of interest over the years, such as the Palm Beach Medical Group.

Mr. Doney advised he will compose a letter for the Mayor's signature. Mrs. Smith asked if Mr. Bennett's letter was going to be acted upon today to which Mrs. Douthit responded it should simply be made a part of the record.

Lake Worth Inlet Sand Transfer Plant

2. Consideration of Lake Worth Inlet Sand Transfer Plant - Attorney Randolph recalled this was put on the agenda as it was Mrs. Wiener's suggestion at the last meeting that they proceed simultaneously with the litigation and doing something about the Sand Transfer Plant and this was put on the agenda for discussion by the Council as to staff recommendations.

Mrs. Douthit recalled some of the Federal monies were being used for the PEP Reef and perhaps the other half could be used to totally redo and then operate ad infinitum the Sand Transfer Plant. She recalled some years ago the Army Corps of Engineers did own up to being responsible for 85% of the Town's erosion problem, but that figure has now been reduced to 65% of responsibility.

Mrs. Wiener felt they needed to talk about whether or not the Town of Palm Beach is committed to getting the Sand Transfer Plan operational, regardless of where the costs lie. She felt they needed to move forward and they needed to talk about the financing of it, but something needed to be done. Mrs. Douthit felt they should be pursuing this. Mrs. Wiener thought it needed to be pursued and every avenue of finding revenues from outside is worthy of pursuit, but in the meantime we need to move forward and get the sand going.

Mrs. Smith asked how long this has been in the court to which the response was about two years. Mrs. Smith asked if there were any particular reasons why previous councils did not act on the Sand Transfer Plant while it was in court? Mr. Randolph responded he knew of no reason but before entering into the litigation, they sat down with the County and discussed methods of getting the Sand Transfer Plant back into operation. He recalled discussions were also held with the Port Authority because of some feeling of responsibility on their part. He recalled those discussions did not come to fruition and as a result, they ended up in litigation. He believed they were saying they wanted to have a look at who may be responsible for the Sand Transfer Plant itself, the funding, the creation of the Inlet etc., and move forward with an attempt to get something done in regard to the bypassing of sand at the Inlet.

He stated there were studies prior to the litigation ongoing with the Corps of Engineers to look at rebuilding the Sand Transfer Plant or even installing a new facility. He suggested they could go back to that stage and speak with members of the County, the Port and the Corps and report back to the Council. Mrs. Smith asked how long that would take to which Mr. Randolph responded a

Lake Worth Inlet Sand Transfer Plant

relatively short time, explaining it was not an easy matter as there are so many jurisdictions involved. Mrs. Smith understood but had a concern for the beaches in Palm Beach and whether or not it might be viable to have a new Sand Transfer Plant built that would start pumping sand onto our beaches. Mrs. Douthit explained that is why she suggested they get in touch with the Army Corps of Engineers to build it and maintain it, as it is the annual maintenance that she doesn't want to see the Town have that responsibility.

Mr. Doney advised the present Plant without replacing the entire interior, would not be functional. Mr. Randolph recalled at the time of the hearing in court, the amount of $400,000 was the amount mentioned that it would cost to have the transfer line replaced and it would have to be rebuilt. Mrs. Smith believed they were talking about spending $160,000 to tear down the building in West Palm Beach and this amount for redoing or replacing the Sand Transfer Plant and it is something the citizens need to know about.

Mrs. Wiener asked if anyone had figures on what it would cost to maintain it on an annual basis? Mr. Randolph recalled some years it was $300,000 and other years it was less. Mrs. Wiener felt it was incumbent upon the Council to move forward with this Sand Transfer Plant with coming up with a viable plan for building one and at the same time pursue other avenues. She recalled a lot of monies are spent on a lot of things and nothing is nearly as important as this is, and when they get into budget time, they need to place more emphasis on this and she so moved. Seconded by Mrs. Smith.

Mrs. Royal asked if there could be some other technology rather than a fixed plant, and she was thinking specifically of the barge which is located off of Delray Beach. Mrs. Douthit pointed out that barge is part of the renourishment program. Mr. Randolph suggested that this be a part of the study and they should look at that as a possibility, as he has heard that floating dredges are becoming more acceptive so he wouldn't rule this out. He recalled when the Corps of Engineers was asked to study this, they were looking at several things, one is jet pumps, secondly, floating dredge or thirdly, a bypassing plant.

Mrs. Wiener thought they should ask the Corps what their preference might be, but she didn't want to get involved in a $100,000 study. Mrs. Smith thought this has already taken years and we have gotten nowhere, and she thought they should explore the possibility. Mr. Doney advised he would prepare an updated status report based upon the prior contacts with the Port, the Corps, and the County. He recalled a definitive Section 111 Report was being prepared by the Corps of Engineers and in 1991 they abandoned that and went to the Coast of Florida Erosion and Storm Effect Study which is now underway.

Mrs. Wiener asked if it would be possible to have an Interim Report on this next month to which Mr. Doney agreed.

On roll call, the motion carried unanimously.

South Fire-Rescue Station

3. Consideration of Temporary Facilities for Replacement South Fire-Rescue Station - Mr. Dusey explained at the January Town Council meeting the staff was directed to expedite this project with the intent that the noisy and heavy work would be done before the next Season. He has examined how the schedule could be speeded up and it was felt the best way to do that would be to have temporary quarters installed as soon as possible, so that when the architect's work was completed, the old station could be immediately demolished as the new Station will be constructed on the site of the old station. He noted they have come up with a project budget not to exceed $170,000 for the temporary quarters and he requested authorization to proceed with the temporary quarters at a figure to not exceed $170,000.

Mrs. Smith noted she was not a member of the Council in January and she is opposed to spending $170,000 for temporary quarters and asked why the new fire station could not built in a location other than where the old fire station is now standing. She felt the fire rescue people should be able to stay in the existing facility at a great saving to the taxpayers and asked if there was some reason why this could not be done.

Chief Elmore addressed the Council indicating the temporary quarters was not a staff recommendation and staff would prefer staying in the existing building and building the new facility a little north of the existing building in the park, and when the work is completed the existing building would be demolished and they could return it to green space. Mrs. Smith thought this was preferable and noted she is a great component of having green space and asked if she was correct in stating that the loss of the green space would be approximately two thousand square feet difference, but then the old building will be torn down when the new one is completed and that area would be turned into green space. Chief Elmore was not sure what the additional green space footage would be.

Mrs. Wiener also agreed as did Mrs. Douthit that the monies should not be expended for the erection of temporary quarters. Mr. Weinberg believed this wouldn't be a problem as he has fought this in previously held Committee meetings and he is glad to see that now someone agrees with him on this matter.

Mrs. Smith made a motion that the Plans for the New Fire Station be considered and the Fire Rescue Department personnel remain in the old building during the construction. Mr. Dusey stated there is a Site Plan in their packet that would locate the building north of the present building which would allow the personnel to remain in the old building.

Mrs. Wiener advised the Mayor and Council that Mr. Medlen has had press coverage as he thinks we have no right to build a new Station and he is about to sue the Town over this. Mr. Weinberg believed they had to move ahead with their planning and he would like to see a reconsideration of the Site and the Plan for the proposed new South Fire Station.

Motion was restated by Mrs. Smith that they reconsider the Site for the proposed new Fire Station. Seconded by Mrs. Wiener. Mr. Weinberg asked if as an amendment she would include the Design also to which Mrs. Smith and Mrs. Wiener agreed. On roll call, the motion carried with a 4-1 vote with Mrs. Douthit voting against the motion since she thought it should be site only.

Mayor Ilyinsky reminded all of the Council that he had served with Mr. Heeke on the Public Safety Committee and the design of the building was approved. He too believed the temporary quarters should not be necessary but it brought up the question that they will have to again discuss this with the architects as moving the building would entail a certain number of changes and the green space was a problem that Mr. Heeke brought up and for that reason, he agreed with Mrs. Douthit as he thought the design was not set in concrete and he suggested when the new Committees are appointed, the Public Safety Committee meet with Mr. Dusey to iron out these details.

Mrs. Smith asked if the design would go before the Architectural Commission to which Mayor Ilyinsky responded affirmatively. Mr. Doney recalled the design is first decided upon by the Town Council and then goes to ARCOM.

Mrs. Smith recalled when she was on ARCOM, she believed the site had been decided and at this time, the site has not yet been decided and then the building should go to ARCOM for architectural approval. She recalled the architectural style was not etched in concrete before it came to ARCOM, so the style will go to ARCOM for their input and approval. Mr. Dusey stated that would be his intent to take it before ARCOM. Mr. Doney reminded this is based upon what the Town Council authorizes. Mr. Dusey recalled the appearance of the building was acted on by Town Council by approving it, and this was a rendering.

PEP Reef Project at Mid-Town

4. PEP Reef Project at Mid-Town - Consideration of Request for Time Extension by American Coastal Engineering, Inc. - Beth Mitchell, Vice-President of American Coastal Engineering, Inc. addressed the Council noting she recently has written a letter with an update on the Reef and requested an extension of time based upon the terms of the contract and the weather conditions which have prevailed since Dec. 10. She announced that since the letter of Feb. 24, 1993, there has been additional twelve days of bad weather that is not conducive for installation of the reef and she is requesting an extension of time from the May 10th date to May 22nd.

She gave a status report on the REEF, noting the AT&T cables were completely armored and the surveyors have located the cables and that information is being furnished the Department of Natural Resources. She advised they have established the actual gap between the cables, including the 24' in either direction, will be 188' as compared to the 216' which was estimated.

Mrs. Douthit made a motion to extend the time from May 10th to May 22nd. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

New Business

XI. NEW BUSINESS

A. Ordinances - First Reading

Ord. 8-93

1. Ordinance No. 8-93 - Amendment to Golf Commission Ordinance Regarding Increase in Membership and Addition of Alternate Members -Attorney Randolph read Ordinance No. 8-93 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 14 OF THE TOWN CODE OF ORDINANCES RELATING TO PARKS AND RECREATION AT ARTICLE II, GOLF COMMISSION, SO AS TO EXPAND THE MEMBERSHIP FROM FIVE MEMBERS TO SEVEN MEMBERS AND SO AS TO PROVIDE FOR THREE ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY;PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Douthit, to approve Ordinance No. 8-93 on second reading.

Mr. Weinberg asked if alternates had a specific time of service? Mrs. Douthit thought they should. Mrs. Wiener recalled they were talking about uniformity on all of the Commissions, but she thought they should move forward with this Ordinance as the formula seems to be what was recommended, seven members and three alternates.

Mrs. Douthit thought they should sometime put a time limit on the alternates' service. Mrs. Wiener wondered if that would be appropriate as they only fill in when needed. Mr. Weinberg felt if an alternate was going to just be there year after year, they wouldn't be very effective as they are there to assist and they should have some opportunity to be appointed to the particular board on which they are serving as an alternate.

Mrs. Douthit did not believe that being an alternate would allow the person to be appointed to a Commission automatically. Mr. Weinberg stated that is why he thought they should be for a certain time. Mrs. Smith agreed.

Mr. Doney noted a table has been prepared by Mr. Bitzer showing the various boards and he believed the Building Board of Adjustments and Appeals was created by Town Ordinance but it was pursuant to State Law; as well as the Code Enforcement Board and they should not be included as well as the MINI-PERC Commission. He advised they do not have alternates serving on the Seaview Park Commission.

Mrs. Wiener believed they needed to decide if they wanted to move forward with the Golf Commission Ordinance which allows seven members and three alternate which the Town Council may appoint and they can talk about these other things at a future meeting. She thought there were other things that needed to be considered such as the removal of people from the various Boards and Commissions for whatever purpose. She believed there is some tightening up which needs to occur.

Mrs. Douthit suggested it be sent to the Ordinance, Rules & Standards Committee. Mrs. Wiener thought they should move forward with the Ordinance No. 8-93 and in the future it can be tightened up, if necessary.

Motion was seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Ord. 10-93

2. Ordinance No. 10-93 - Franchise Renewal Agreement with Florida Public Utilities Attorney Randolph read Ordinance No. 10-93 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE AND PERMISSION TO CONDUCT A GAS BUSINESS IN THE TOWN OF PALM BEACH, FLORIDA.

Mr. Peter Elwell addressed the Council indicating there is a memorandum dated March 2, 1993 which summarizes the changes being made. He highlighted the changes which are the term of the agreement as they have tried to reduce the length of the term, however, through negotiations, the Florida Public Utilities has agreed to an increase in revenue in exchange for the 30 year term.

Mr. Elwell advised the calculation of the fee would be based on revenue from general revenue commercial customers, and in addition to the residential customers there would also be an increase in the percentage rate of the franchise fee from 5% to 6% of the total revenues. He stated the budget impact would be an increase From $50,000 to $90,000. He recalled another change of some significance was the insurance portion. He noted some of the language is outdated and has been brought up to date and there are increased coverages required and some provisions relating to indemnification and bonds, which will give the Town additional protection.

Mrs. Wiener asked Mr. Doney if he thought this was the absolute best possible deal on this franchise? Mr. Doney responded based upon the numerous negotiations with the people at Florida Public Utilities and also the franchises which FPU has been negotiating on with the surrounding municipalities in this District and the other alternatives that are available, he thought this was the best he could do and it will be in the best interest of the Town and it will increase our non-advalorem revenue and he found this to be very appropriate for the Town Council to consider.

Motion was made by Mrs. Wiener to approve Ordinance No. 10-93. Seconded by Mr. Smith. On roll call, the motion carried unanimously.

Appointments:

B. Appointments

Architectural Commission

1. Architectural Commission - Two Three-Year Terms to Expire March 1996 and One Alternate Member - Mrs. Douthit nominated Floyd A. Wideman to the Architectural Commission. Mr. Weinberg noted they have been flooded with twelve requests. Mrs. Douthit believed the concept of people writing letters when they wanted to be on a Board is inappropriate. Mrs. Smith explained there are a number of letters that have been received and there are numerous applicants that she does not know and she hasn't had a chance to review and she didn't second the nomination as the Ordinance requires two architects to be on the Commission and at the moment there is only one architect. She would like to propose an architect to be appointed to this Commission which she thought was in accordance with the Ordinance.

Mrs. Wiener commented there is a new member to the Council as of today and she believed they should defer this to the next meeting of the Town Council in April so some serious time can be given to this in the next month and she would so move. Seconded by Mrs. Royal.

Mrs. Smith asked what this deferments would do as far as applicants going before that Commission to which Mr. Randolph responded he didn't think there was a problem as there is a full Board which is operable at this time and the Council will act on this next month.

On roll call, the motion carried unanimously.

Seaview Park Commission

2. Seaview Park Commission - Balance of One Term to Expire February 1994 - Mrs. Wiener moved that this appointment to the Seaview Park Commission also be deferred until the April Town Council meeting. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

C. Other

FY94 Budget Calendar

1. Consideration and Approval of FY94 Proposed Budget Calendar <u>and</u> consideration of Date and Time for Special Town Council Meeting on Budget Matters in March or April 1993 - After discussion, a motion was made by Mrs. Wiener, seconded by Mrs. Smith that the meeting be held during the May 13, 1993 Town Council Meeting at 10:30 AM. On roll call, the motion carried unanimously.

After discussion, the Budget Calendar was approved with the Finance & Taxation Committee Meetings changed to June 9th, 10th and the 11th, at 9:30 AM, if necessary on motion of Mrs. Douthit, seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Voting Delegate Palm Beach Co. Municipal League

2. Consideration of Appointments for Voting Delegate and Alternate Voting Delegates to the Palm Beach County Municipal League - Motion was made by Mrs. Douthit, seconded by Mrs. Smith that Mayor Ilyinsky be the voting delegate to the Palm Beach County Municipal League. On roll call, the motion carried unanimously. Motion was made by Mrs. Wiener, seconded by Mrs. Douthit that M. William Weinberg be the alternate voting delegate to the Palm Beach County Municipal League. On roll call, the motion carried unanimously. On motion of Mrs. Smith, seconded by Mrs. Royal, Mrs. Wiener was appointed as a second alternate to the Palm Beach County Municipal League. On roll call, the motion carried unanimously.

3. Consideration of Palm Beach County Municipal League Articles of Incorporation and Bylaws. Mr. Doney noted the Municipal League is making a change in the Bylaws. No action was taken.

Lunch break was taken. President Weinberg reconvened the meeting at 1:30 PM.

Water Resources Committee

4. Consideration of Appointments to the Water Resources Committee - Mr. Weinberg recalled Mr. Heeke and Mrs. Wiener were the appointments to this Committee and since Mr. Heeke is no longer a Council member, they need to make another appointment. Mrs. Douthit suggested that Mr. Heeke be continued on the Committee. Mr. Doney recalled it is an Ad Hoc Committee. Mayor Ilyinsky asked if Mr. Heeke could be continued as a member? Mrs. Wiener recalled that Committees of this type are usually made up of Council members.

Mr. Weinberg suggested this Committee be disbanded and the subject matter be considered by the Public Works Committee. Motion was made by Mrs. Wiener to disband the Committee and the water matter be taken up by the Public Works Committee. Seconded by Mrs. Royal.

Allen Wyett, 1140 North Lake Way addressed the Council stating he thought this was a very important issue and the decision on this will effect the quality of life in this Town, even more than zoning, ARCOM, preservation, as without sufficient water, this island will not remain green. He stated the State of Florida is mandating a thirty per cent cutback in water and they are going to find means to conserve water as well as get make-up water. He believed the Town had among its citizenry people who have had experience in water and that he thought the water issue was sufficiently large and important to involve interested citizens who understood the technicalities and suggested they consider that issue.

Mr. Weinberg suggested the civic associations be involved in this and when and as if this Committee is formed, they will be working with them to go forward on this matter. Mr. Wyett stated he was well informed on water issues.

On roll call, the motion carried unanimously.

Conisderation of Fiduciary Liability & Related Issues

5. Consideration of Fiduciary Liability and Related Issues - Concerning Board of Trustees of the Town's Retirement System - Mrs. Martinuzzi, Risk Manager indicated she has been researching this matter as it pertains to the Board of Trustees of the Retirement System. She recalled this issue was brought up due to some solicitation from individual consultants to individual board members regarding Errors and Omissions Coverage. She noted it was determined that the insurance offered to the Board of Trustees, although they were included as additional insured on the policy, the policy did exclude Errors and Omissions as it pertained to Fiduciary Liability Plans specifically ERISA, so basically the Board was sitting bare without protection in regard to decisions made by them having to do with discretionary matters as well as other decisions.

She advised she solicited quotations and the Board has purchased a $25,000,0000 policy to protect them for the decisions they do make. She recalled other issues arose such as Waiver of Recourse, and whether or not the Council should indemnify the Board of Trustees of the Retirement System. She advised a memorandum has been prepared by Attorney Monaghan regarding the indemnification and it appears that this is something that the Council cannot do, based upon public policy and the way the Florida Statutes are written, so basically that leaves the only option available to the Board for protection is to purchase insurance. She indicated the Board has requested the issue be brought to the Town Council so the Council is aware and can review and evaluate it and make the determination as to whether or not the Council would assist with the premium cost and ratify the decision to pay the premium of $225 to eliminate the waiver of recourse, basically for the insurance company to give up their right to subrogate against the individual trustees in the event there is a claim.

Mrs. Wiener did not think there was any reason why the Council shouldn't do this, and actually she thought it behooves them to do so and she would so move.

Mrs. Martinuzzi explained she is working with the Insurance Company to have that particular section of the policy eliminated, as it is her thought that public plans are exempt from ERISA, however rather than litigate that issue, and in the event there is a claim, she thought it would be in the best interest to pay the $225 so they can keep their options open in the event there is a claim.

Mrs. Douthit moved to pay the $225 premium on the Right of Recourse matter. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mrs. Martinuzzi advised the Board of Trustees also requests that the Town Council consider making part or all of the premium payments that were necessary for the insurance. Mrs. Wiener and Mrs. Douthit felt it should be paid out of the pension plan. Mrs. Wiener believed they could go broke if they responded to what the concept is of everyone's insurance and she thought it should come out of the Retirement Fund and they should keep a lid on it.

Mrs. Wiener moved the premiums for the insurance continue to come out of the Pension Fund. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Conisderation of No Smoking Policy in Town owned buildings

8. Consideration of No Smoking Policy in Town-Owned Buildings - Mr. Doney noted this proposed policy would go into effect on May 15, 1993 and inasmuch as it would require the Town facilities to have external designated smoking areas as the cost of modifying air conditioning systems and ventilation systems is prohibitive, and this will require Town Council approval.

Mr. Doney advised they will be providing an area for smoking on the roof with an awning over the deck that is now there. Mr. Weinberg asked if the awning is visible from the street to which Mr. Doney responded it is not visible from the street but could be seen from a taller building nearby. Mrs. Smith asked if the awning had to be approved by the Landmarks Commission to which Mr. Moore responded the concept was brought to Landmarks for their input and there was no objection but the Town will file for a Certificate of Appropriateness.

Motion was made by Mrs. Wiener, seconded by Mrs. Royal to approve the No Smoking Policy in Town Owned Buildings as outlined in the memorandum sent by Mr. Doney to the Mayor and Town Council dated March 5, 1993 and that the staff proceed with the installation of the awning which has been offered to the Town as a gift and to proceed with the replacement of the decking. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion, explaining her reason for voting against this was the signage was going to be costly.

Approval of Warrant List & Fund Expenditures

XVI. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR FEBRUARY 1993 - Motion was made by Mrs. Douthit to approve the Warrant List and Fund Expenditures for February, 1993. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Development Reviews

XVII. DEVELOPMENT REVIEWS

Development Reviews

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of February 24, 1993 - Mr. Moore advised the 910 South Ocean Boulevard project has been approved by the Architectural Commission and is a part of this report. Mrs. Wiener commented she has had a problem with this project since it first started and she wanted to be on record that this does not fall into the Council's understanding of a one family home, as what she sees there is something way beyond that. She was sorry that it has gotten to that point without any serious consideration by the Town Council. Motion was made by Mrs. Douthit, seconded by Mrs. Smith to approve the Major Matters considered by the Architectural Commission at their meeting on February 24, 1993. On roll call, the motion carried unanimously.

The major matters were:

B73-92 - New residence for Sidney Kimmel, 1020 N. Lake Way. - Deferred to March meeting.
B87-92 - New two family structure for Brazilian Development Co., Inc., 240 Australian Ave. - Conditionally approved.
B99-92 - Demolition and construction of new residence for Mr. & Mrs. Robert Meister, 1375 S. Ocean Blvd. - Deferred
A137-92 - Awning for Island National Bank, 180 Royal Palm Way - removed from agenda.
B51-92 - Landscape Plan for James Sirigotis, 256 Miraflores - Approved.
B5-93 - Cabana for June Barrymore, 260 S. Ocean Blvd. Approved.
B39-92 - Landscape Plan for Dr. & Mrs. Richard Rodman, 233 LaPuerta Way. - Deferred
B69-92 - Refinements of materials and colors for previously approved project of Angela and Malcolm Healey, 1341 S. Ocean Blvd. - Approved.
B58-92 - Driveway Materials for Dr. & Mrs. Marvin Rosenberg, #3 La Costa Way - Approved.
B22-92 Gates for residence of Mr. & Mrs. Francis Guyott, #4 La Costa Way - Approved.
B6-93 - Remodel and additions to residence at 151 Via Bellaria (Ocean Bay, Inc.) Approved.
B7-93 - New residence and accessory structure for Ocean Bay, Inc., 171 Via Bellaria. - Approved.
B8-93 - Second Floor Addition for Catherine Tankoos, 608 Island Dr. - Approved.
B9-93 - Demolition and reconstruction of main residence of Mr. & Mrs. Christopher Asplundh, 1334 N. Lake Way. - Approved.
B10-93 - Remodel storefront of Mondi Collection, 226A Worth Ave. - Approved conditionally.
B11-93 - New residence for Mr. & Mrs. Joseph Rimoni, 218 Miraflores Dr., - Approved conditionally.
B12-93 - Traffic Directional Sign for Bessemer Building Corp., 222-224 Royal Palm Way. Approved conditionally.

B. Appeal

Appeal of Arch. Comm. denial of new residence at 1674 No. Ocean Blvd.

1. Appeal of Architectural Commission's Decision for Denial of New Residence at 1674 North Ocean Boulevard, Mr. and Mrs. James Stern Zisson, Applicants - Mrs. Douthit suggested this matter be deferred in light of what has transpired in the last few days. Attorney Paul Prosperi addressed the Council noting he is representing Mr. & Mrs. Zisson. Mrs. Smith advised she has a conflict of interest with this project as she was a member of the Architectural Commission when it was first considered in October and she will excuse herself from the discussion.

Mrs. Douthit moved the matter be deferred for one month. There was no second to the motion.

Prosperi comments - 1674 No. Ocean Blvd.

Attorney Prosperi reported to the Council his clients purchased the property at 1674 North Ocean Blvd for the purpose of constructing their home. He advised an application was made to the Architectural Commission in September to be heard at their October meeting. He advised his clients were in receipt of a letter dated Jan. 27, 1993 from the Chairman of the Architectural Commission who advised the Commission had determined the proposed structure was dissimilar to existing structures within 200' and for all the reasons set forth in Section 5-387 (f) of the Town Code, the request was denied. He disagreed and appealed on the following facts:

(1) As to the item that the proposed structure as to floor area and cubical content and height and would be the largest of the existing neighboring structures, Mr. Prosperi noted it is not the smallest or largest with respect to any of these three measures.

(2) As to the item that the proposed structure is located in an eclectic neighborhood, is of high quality design and materials and in fact was complimented on the design by several members of the Architectural Commission.

He pointed out the Architectural Commission spent time discussing Floor Area Ratio (FAR) in this neighborhood and FAR is not mentioned in the Architectural Commission Ordinance and he did not think it was an appropriate criteria for disapproval.

He believed the Commission, by a consensus of the members who were voting on this matter, seemed to be imposing a requirement that new buildings fall in the average range of neighboring structures and he could not find that written in the Ordinance and pointed out the survey which the Town staff made last year in connection with the Zoning Commission's consideration of reducing the FAR in the R-B District, showed that the average FAR in that District is something under 25%, so that if the Architectural Commission, which has been created by this Council, were to adopt this criteria, they would be imposing a criteria twice as stringent as it appears in the Zoning Code and a criteria which is nowhere written and therefore no purchaser of property would have any advanced warning of any such criteria.

Mr. Prosperi reported this house does conform to every particular in the Zoning Ordinance as to FAR, lot coverage, setbacks, height, angle of vision and other requirements. He advised it is lower in height by two feet as to flat roofs and 8; as to pitched roofs and smaller in area by 1569 square feet as well as cubical content by 41,000 cubic feet than the nearest neighbor, which is also the most recently constructed house in the neighborhood.

Mr. Prosperi advised that most, if not all, of the structures in the neighborhood are over thirty years old and are built below the newly required Flood Grade, therefore, these other structures are by Federal, Town and State mandates, self-amortizing structures and they cannot be renovated in an amount of more than 50% over time of their Fair Market Value of improvement. He thought what they have is the Architectural Commission by reference to structures which are disfavored in the Code by Federal mandate and Town Ordinances, and these structures could not be

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rebuilt and are self-amortizing. He advised his clients did rely on the published criteria in the Zoning Ordinance and now are being held to a somewhat different standard which is not written anywhere in the Town Code.

Mr. Prosperi exhibited a drawing which showed the nearest neighbor is 202 Indian Road, and it has 128,480 cubic feet whereas his clients have 87,400 cubic feet. He stated the gross floor area of the neighbor is 9,250 feet and his client has 6,410 feet. He noted the roof height of the neighbor is 27' flat and 33' pitched and the maximum height of his client's roof either flat or pitched is 25'. He indicated because of the configuration, the two properties which have adjoining lot lines the neighbor's house is 1.47 larger in gross floor area and 1.43 times larger in cubical contents and it is a two story house. He advised the house at 215 Arabian is a two story house with a cubical content of 72,000 square feet. He noted the houses to the south are separated by 95' because of the 35' road right-of-way of Arabian Road and the 25' setback and the 30' setback on that property and the distance between these homes is 110'. He indicated the house across the street on North Ocean Blvd., there is a 40' right-of-way of North Ocean Blvd., so the distance between any part of this house is 95' and the maximum height occurs 60' back from North Ocean Blvd., and he makes the point to indicate there are no one story houses whose property touches his client's property.

He advised the occupant of 215 Arabian and 215 Indian Road, the two nearest houses, have sent letters endorsing the original proposal and this appeal.

Attorney Randolph asked Mr. Prosperi to leave the exhibits with the Town and asked him to identify them for the record. Mr. Prosperi stated the one exhibit is entitled "Size comparison to Neighboring Residents" and the other is "Site Plan - Neighboring Residents."

James Zisson addressed the Council indicated he resides now at 208 Indian Road which is around the corner from the lot at 1679 North Ocean Blvd. He recalled they bought the lot in an attempt to house their growing family and the lot was chosen because it could accommodate the size of the house which they needed, and the architect designed the house according to the Code. He advised he is not seeking any variances and was not told that he had to have a referendum of neighbors, many of whom live in nonconforming houses, as to whether they liked the style of their proposed new residence. He could find no written law which specifies that they need to comply with averaging of cubic content or FAR in order to receive approval. He felt they had accommodated over the last six months the comments of the neighbors and the Architectural Commission to the best of their ability, but given their needs and desires, by having three major designs and making reductions in height as well as addressing the massing and siting of the building and felt he was responsive and cooperative. He felt that he had made as much accommodation as is possible and he asked for their consideration to allow him and his wife to build their home.

Attorney James Brindell addressed the Council on behalf of ten property owners in the neighborhood, those who own property at 1545 North Ocean Way, 1557, 1581, 1470, 1575, and 1570 North Ocean Blvd., 323, 212 and 230 Arabian, and 110 Indian. He advised his clients do support the denial made by ARCOM noting the decision was 5-2 and was after several hours of meeting time on three different occasions. He stated there was a motion to approve which failed to get a second. He recalled both architects on the Architectural Commission voted to deny on the grounds that it failed to meet the requirements of Section 5-387 (f).

He stated ARCOM did ask the Zissons to defer as ARCOM felt it was a solvable dispute, but their attorney did not agree. He heard the comments of Mr. Prosperi that ARCOM attempted to impose an average of the FAR or Cubic Feet as a test, and he sees nothing in the minutes of the meetings held by ARCOM that suggests a standard is being developed or imposed by ARCOM, so he felt that the real issue has to do with mass, not actual square footage, as this house is proposed to be built at 6900 square feet. He felt their architect could provide them with that amount of square footage without the visual impact on the neighborhood and the massing that it presents.

He heard the comments of Mr. Prosperi that they have met all of the Zoning requirements and therefore, there should be no argument by ARCOM, which he felt begs the question of what is the purpose of ARCOM. He felt it was fair to say that most Towns in Florida do not have an Architectural Commission and that is one of the reasons the Town of Palm Beach is exactly what it is and will remain what it is because of ARCOM. He felt the Zoning compliance issue is not the issue but it is a question of whether this project as proposed is a visibly excessively dissimilar in relation to any other structure existing facing upon the same roadway or intersecting with the public or private ways within 200' of the proposed site.

He felt the Council needed to take a look at the context of a proposed project - where it is going to be built - rather than simply testing it against the much more generic standards which the Zoning Code provides and this attempts to deal with the kinds of things that a generic Code cannot deal with, so the Zoning Code compliance issue is not really the issue here and it is a question of whether the project as proposed is a visibly excessively dissimilar in relation to any other structure existing facing upon the same or intersecting public or private ways within 200' of the proposed site, in respect to one or more of several criteria. He thought it was important to think about the Ordinance which set up the Architectural Commission says is the purpose and that is to provide the designer of a structure with a larger context within which the work that they are doing is to be viewed. He recalled it also states the task of ARCOM is to preserve various elements of urban beauty and require new projects enhance the existing. He stated there is an extra value placed on the existing and that should be something that is done very carefully.

He felt if this project is approved it will be an announcement by the Town that the large mass estate type of house on what is essentially a small low density residential lot will be acceptable.

He recalled there was discussion at the Architectural Commission's meetings about the house immediately to the north which has been used as a precedent here for why this house will be acceptable. He stated a number of the members of the Architectural Commission indicated they thought that ARCOM had made a mistake. He suggested that if this project is approved, it will be an affirmation by the Town that that indeed was the correct decision because this project will be consistent with and that will mean other projects that come after in the same or similar neighborhood will be acceptable to the Town, and that is the essence of this matter. He asked them to actually look at some of the numbers given by Attorney Prosperi, and if it is looked at several different ways, they would be able to see the proposed project is out of schedule with the neighborhood in general.

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1674 No.Ocean Blvd.(cont'd)

Mr. Brindell advised the average FAR in the neighborhood is .2 and this project is .1. He recalled the Code states it can be up to .5, and that could point out the fact that they have a Zoning Code standard doesn't mean that that automatically allows one to go to the maximum. He stated the Zisson project meets the minimum 30' setback requirement from the two streets, so there is a large project and massiveness not so much in square feet. He pointed out the lot to the north is approximately 46% larger than the Zisson lot. He reported if they would look at the department records, they would find sixteen of the twenty-two surrounding residences contain less than 50% of the cubic feet proposed for this project, so this project is not in proportion with the vast majority of what is actually there.

He stated this is not a huge lot in terms of the volume of house that is being proposed to be put on the lot, and has minimum setbacks and in context creates a much more imposing impact on the neighborhood than they find in the neighborhood. He related it isn't a matter of one story vs. two story as if you drive around the neighborhood, they will see a number of two story houses, but they seem to fit well within the context of the surroundings, as opposed to what this project will do.

He commented that of the 22 homes within the 200' area, 12 of them are less than 3000 square feet and less than 17 of them are less than 4000 square feet, and only four are larger than 4000, so from a square footage point of view, it is on the high end. He felt the square feet could be accommodated, and it is translated into the mass that is being proposed, it begins to get out of scale with the neighborhood and that is what ARCOM's function is - to deal with that kind of an issue.

Mr. Brindell pointed out most of the ceiling heights in the surrounding homes are less than nine feet and the project has 11 or 11.6 and 11.13 in one instance. He thought the staff has an overlay which was done which will show how the house would look on the lot. He produced photographs to be a part of the record of the neighborhood. He asked the Town's Building records which relate to the properties within 200' be a part of the record as they substantiate the numerical calculations he has given to show ARCOM was not wrong in their judgment about the relationship of the proposed mass of this project, to the balance of the neighborhood.

Mr. Randolph asked that all of the witnesses be sworn and advised that cross-examination is available to anyone involved in this quasi-juducial proceeding. Mrs. Peters gave the oath to all of the witnesses.

Jeffery Smith, former Chairman of the Architectural Commission addressed the Council explained why ARCOM denied the application. He stated the Zissons did refuse to continue to work with ARCOM and asked for either an approval or denial and would not allow the matter to be deferred. He recalled at the 1st ARCOM meeting, Mr. Zisson did acknowledge that the house that his architect had designed had become a better house prior to the ARCOM hearings. He advised ARCOM did not approve the application because it did not meet the criteria it must comply with. He reported that out of the 21 homes in the neighborhood that ARCOM was required to consider, only the home at 202 Indian Road is larger than this house and it does sit on a significantly larger lot. He felt that one mistake by ARCOM should not be considered as support for this project as the Zisson house is three to four times larger than any of the 21 houses in the neighborhood. He noted while they are in compliance with the Zoning Code, they are not in compliance with the requirements of the Architectural Commission, whose task is to preserve the quality of the neighborhood and he asked them to uphold the decision of the Architectural Commission.

Attorney Prosperi made a part of the record the architect's drawing of the design of the house and the site plan and photographs of the lot. He pointed out the drawing does show the height of the house south and north of the Zisson house, as well as the two story residence west of the house and the existing one story residence to the east. He noted there was no mention by Mr. Brindell or Mr. Smith about the terms of the Ordinance, which is stated as the reason for the denial of ARCOM and that is that this residence is visibly, excessively dissimilar. He heard them refer to a mistake made by ARCOM made in the past, but which is now part of the neighborhood and they have heard them say that by upholding this appeal this Council will be sending a message that large houses are permissible. He thought that message had already been sent when the Zoning Ordinance was adopted which states what is permissible and the reason the Architectural Commission exists is not to second guess the Zoning Ordinance but to apply their Ordinance which refers to "visibly excessively dissimilar." He noted nobody has made that argument and they have talked of other things. He believed this house falls within the range of the largest and the smallest, as it is significantly smaller than its nearest neighbor which is the newest house in the neighborhood and the only house to comply with the Flood Insurance regulations. He suggested that by what has not been said, they indicate that the criteria applied was impermissible and that this house does conform to the Architectural Commission's Ordinance.

Mrs. Douthit felt this illustrates her point that she would like to have the Zoning Commission look at this as they are at .45 of a 135' x 135' lot, so the house is much bigger than .45 on an average lot of 100' x 100'. Mr. Moore explained that the lots in this neighborhood are irregularly shaped lots as there are small lots and larger lots. Mrs. Douthit asked this be put on the Zoning calendar next year.

Mrs. Royal thought the Ocean Bay project on Clarendon will dwarf many of the homes in that neighborhood.

Mr. Weinberg asked Mr. Moore if he had an opportunity to suggest some sort of a compromise to this situation, what would that be to which Mr. Moore responded it is important for the Mayor and Council to drop back and review what he believed is the correct way to apply the Zoning Ordinance and the Architectural Commission Ordinance as the Architectural Commission is advisory. He commented on the Zoning Code which lays out the Lot, Yard and Bulk regulations within the Code and they are at maximums and minimums in some cases and those are envelopes to build to and what is in place in addition to the Zoning is the Architectural Commission Ordinance and they have heard the testimony given today referring to Section 5-387 (f) which states the Architectural Commission shall not find that the proposed structure is dissimilar and then it lists the four criteria - cubical contents, gross floor area, height of roof and other significant design features, such as materials and the quality of architectural and that is what ARCOM is charged to look at. He recalled at one time they looked at Zoning as well, but that is not a function of ARCOM any longer. He heard today that ARCOM in their consideration of this matter was very close to what they felt was a building that would be compatible to the area, however, the applicant had felt they had been before ARCOM enough times and they wanted a decision and they got one and hence the appeal. He stated the concept of looking at the neighborhood within 200' is in the Ordinance and

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was put there at the request of the Town Council to advise neighbors of proposed structures which will be built in their neighborhood and give the neighbors an opportunity to offer their comments and not necessarily restrict what a property owner wished to do.

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Mr. Moore felt there were two ways to look at this - one is the concept of the neighborhood as a whole - and they have heard today the neighborhood has very small structures; another way to look at it would be to look at the structures which are immediately adjacent. He stated Mr. Prosperi has told the Council that averages of cubical content, etc. are not mentioned in the ARCOM Ordinance and that is correct. however, the average of the four adjoining houses to which Mr. Prosperi referred on cubic content was 69,700 cubic feet and the proposed residence is at 72,000 cubic feet.

Mr. Weinberg asked how he would propose to reduce the cubic feet to which Mr. Moore responded they could drop their ceiling heights, and they could come to the average of the four surrounding houses.

Mr. Jeffrey Smith addressed the Council indicating he looked at the report the staff has prepared and looked at all the building department records of the houses as well as the tax records and they are all different. He stated the numbers are very much smaller than the numbers that have been tossed around but he wished to submit for the record that the proposed house is 82,000 cubical content and the largest one in the neighborhood is 100,000 cubical content. He believed the reason for this is staff was using 10' ceiling heights whereas the actual average would be more like 8.4'. Mrs. Wiener asked Mr. Moore if he had an explanation to this and Mr. Moore explained the figures he used were presented by the applicant at the last ARCOM meeting and he can't accurately answer the question. Mrs. Wiener asked if he didn't have on record what the ceiling heights were in the neighborhood? Mr. Moore stated they would have them on some of the plans, however, he was not sure about the older homes. He stated he assumed the applicant's figures presented at the Architectural Commission were correct, but he noted they do vary a great deal. Mrs. Douthit wondered if this should be deferred until this is resolved? Mr. Moore noted the figure for the 215 Arabian house the applicant showed at 87,400 cubic feet and Mr. Smith's calculations are 59,200 cubic feet.

Mr. Smith advised in defense of the applicant, the methodology that Mr. Smith used was the same that the Zoning Commission used - and that was to the top of the ceiling and he did not include the pitch of the roof. Mrs. Weiner commented they shouldn't be changing the rules in the middle of the deliberations to which Mr. Smith responded he did not change the rule as the only difference was to use actual ceiling heights and not ten feet, as ten feet is not a consistent ceiling height in the north end.

Mr. John Calamarino addressed the Council, indicating at the time they were figuring cubic content there was no definition in any Code that he could find of what cubic content actually is and how it should be figured, so he called the Building Department and he didn't recall with whom he spoke, but he did ask the question as to whether or not space under the roof would be the way to measure the cubic content. He did not examine the houses within the 200' radius but for the four houses adjoining, the cubic content is the area under the roof and it includes the area under the pitched roof as well as the area of structure inside a flat roof and it was taken off a set of working drawings of the house at 202 Indian Road, and the other three houses the dimensions were secured from drawings provided to them by the Town. He advised he took no averages.

Mrs. Wiener asked why there was such a difference from the figures furnished by the applicant's architect and Mr. Smith's figures? Mr. Calamarino responded he believed Mr. Smith used a different methodology of calculating cubic contents and again pointed out it is not defined in the Code. Mr. Smith addressed the Council noting it is now defined by the recent hearings of the Zoning Commission and that was the methodology he used to test it. Mr. Moore explained Mr. Smith calculated his figures in a smaller cubic area which is what is going to be recommended from the Zoning Commission whereas Mr. Calamarino calculated his figures on the overall.

Mrs. Wiener pointed out the fact is Mr. Smith's methodology was done on a recommendation of the Zoning Commission which is going to be recommended to the Council and she didn't think that was a fair way of handling things.

Attorney Brindell recalled Mr. Moore suggested two ways the Council can look at this but as he reads the Ordinance, it says to him that the criteria under 5-387 (f) relate to any other structures existing facing upon the same or intersecting public or private ways, and within 200' of the proposed site, so he didn't believe they could limit themselves to the immediate adjacent houses. Mr. Randolph agreed. Mr. Weinberg thought perhaps they were comparing apples to pears rather than apples to apples.

Mrs. Douthit didn't feel it should be based on the old measures as compared to the new. Mrs. Wiener recalled it has been through the whole process. Mrs. Douthit agreed, but felt by virtue of the bulk it would add to the neighborhood, she would like to make a motion to uphold the ARCOM's decision to deny. There was no second to the motion.

Mr. Moore reported he has figured this out by using the format that was different from the original figures, and that methodology does not take into consideration the roof structure, whether it be a flat or pitched roof, and only the mass of the house - from the slab to the upper ceiling area of the second floor, or where the tie beam would be. He does not disagree with Mr. Brindell's statements and if he has misled them, he apologizes, however, this whole area within 200', he stated there were two ways to look at the problem, one from looking at the houses immediately surrounding the site, however, they must also consider the houses within the 200'.

Attorney Prosperi reminded the Mayor and Council the Ordinance does state it has to be visibly excessively dissimilar and not numerically dissimilar, not average dissimilar, but visibly excessively and he pointed out this house is in the range of the largest and smallest of all the measures.

Mrs. Douthit thought the mass was very evident. Mr. Moore pointed out the applicant and ARCOM were very close at their last meeting to settling this matter. Mr. Weinberg asked how close were they? Mr. Moore reminded the applicant did demand a decision, but they were very close. Mrs. Wiener asked if they were so close, why is there this terrible parting in the neighborhood, as this indicates to her that there really was no closeness. Mr. Smith responded he did think they were very close and they asked Mr. Prosperi at least three times if this could be deferred. Mrs. Wiener stated she read the minutes. Mr. Smith recalled Mr. Zisson's statement that the project did get better and he will agree even today that it is better than the first plan brought before ARCOM. He thought there was a common ground here and something could be worked out. Mr. Weinberg recalled it was Mr. Smith's statement that they were quite close and he asked if he could expound on that? Mr. Smith responded he was very disappointed when they requested either an approval or a denial, so that was their only option, but they did try to defer and made motions to do so but the Town Attorney ruled that that was not proper as the applicant did not want to take the deferral. Mr. Weinberg asked what could be done now to bring them closer as he wished to solve a community problem and what can be done to make this a workable circumstance. Mr. Smith responded they could send it back to the Architectural Commission. Mrs. Wiener stated the reason she asked the question is because she doesn't believe they are close, according to everything she has heard and read on this matter and the politics of this tell her very clearly that they are not close at all and a month from now,the neighbors will still have to spend money on an attorney as well as the applicant and everyone will have lost another month. Mr. Smith responded he can't speak for the current Architectural Commission but only for the one on which he served, and he felt they always considered each project very carefully and considered the neighborhood and they were protecting not only the new owner and his property rights, but also the surrounding property owners. He recalled they had a concern about that as this project did get a lot of people to the meetings and they were very careful on deliberating over this project. Mr. Smith felt it was a design issue and they brought the project through three designs and it was much more in conformance as the bulk was lessened and he thought there was still room to continue with that. Mrs. Wiener asked if what he was saying is they want to see a house considerably smaller? Mr. Smith responded he is saying the house was made smaller, bulk-wise. He didn't believe it was reduced square footage wise, but there are ways to make a house look smaller without adjusting the square footage. Mrs. Wiener believed every architect understands that. 1674 No.Ocean Blvd.(cont'd)

Attorney Prosperi indicated he does have a court reporter's transcript of the Jan. 27th Architectural Commission meeting and there are a couple of exchanges which he would like to read to the Council, which could determine whether they were close or far. Mr. Weinberg agreed. Mr. Prosperi read:

Mrs. Frost-Golino: "Looking at why we deferred this the last time, it was for cubical content, the height of the building, gross floor area and other significant design features. You haven't changed the style. I don't think that was our intent to change the style."

Mr. Colamarino: "There are some changes that also stylistically we haven't changed - Stylistically, I think it is improved."

Mrs. Frost-Golino: Height of the building, I understand you have worked under that. My only comment would be the fact that even though you have pushed it back at the garage, it is right there at the building plane, and it is so I guess I still have a problem with it and I think the only way you are going to tackle it is to basically cut down some more cubical contents and some more of the gross floor area in order to bring it more in line with the majority of properties in the area. That's the problem and I understand the architect has to solve that and that's why ARCOM has to come up against the fact that the Zoning Code will let you build up to .45 - in fact in this specific situation, it may not be appropriate for the neighborhood because the average of the neighborhood is .2. I see you have made progress here and I applaud it."

Mr. Smith: "I don't have so much a problem with the floor area ratio. I think you actually are not at the maximum. I have a bigger problem with how you calculate it. I think if you go back and include the space you are not counting as, and try to find out - then you are probably at more than .45 and that is the problem I see with this project. My eyes tell me it is larger and my experience as an architect tells me it is is larger. By looking at the maximum - I think if you tried to compromise it and do not do a two story living room and do a story and a half and start playing with the volume, I think you would have done a great job."

Mr. Prosperi stated what happened is that his clients made three redesigns and they were not willing to make any further design change.

Mrs. Douthit restated her motion that the Council uphold the Architectural Commission's decision. There was no second to this motion.

Mrs. Wiener moved that the Council grant the appeal of the Zissons. Seconded by Mrs. Royal. Mayor Ilyinsky stated he thinks the house is massive and he believed the lovely neighborhoods are ruined by massive homes as they cut out the sunshine and air for the neighbors and completely change the look of the Town. On roll call, the motion failed to carry. Affirmative votes: Wiener and Royal. Negative votes: Douthit and Weinberg. Abstention: Smith. Mayor Ilyinsky broke the tie and voted against the motion.

Mrs. Douthit commented she would like to see Mr. and Mrs. Zisson modify the plan and then return to the Architectural Commission. Motion was made by Mrs. Douthit to return this matter to the Architectural Commission. Seconded by Mrs. Wiener. On roll call, the motion carried 4-0 with an abstention by Mrs. Smith.

C. Variances, Special Exceptions and Site Plan Reviews

Old Business

Old Business

Var. 12-93

1. Variance No. 12-93 - Robert G. Bustani & Associates, 219 Chilean Avenue; to allow a parcel separation, retaining lots 23-26 with the multi-family dwelling, thereby creating a nonconformity in required lot size providing 11,625 square feet in lieu of 13,333 required and providing a created side yard setback of 11' in lieu of 12.5' required. R-C District. Deferred from February meeting. Attorney Peter Broberg addressed the Council on behalf of the applicant recalling he was before the Council last month when this was deferred to this meeting. He stated this was a request for two variances and they are basically trying to legitimize a use which has been in existence for years. He noted the residence is on the west side of the property and on the east side there is a parking lot and the request is to split up the lots, breaking off the parking lot to the east, Lots 25 and 26. He stated the variance is to divide the lot but the second residence on the property will be only 1.5' too short of the minimum setback which is 12.5' or 11'. He stated the square footage of the lot will be approximately 1700' shy on the property to

Var. 12-93

the west. He stated the Code requires four parking spaces for two family parcels off-street and not within the front yard area. He stated the lot presently has 21 parking spaces and by reconfiguring it, they can provide the four off-street parking spaces for the two residences on the property and 17 additional spaces have been provided on the existing parking lot. He asked them to consider the variance requests favorably and in return for the granting of this variance, the Town will receive a beautifully landscaped parking lot on the Chilean side and the side which abuts the Preservation Foundation offices and along the west side of the parking lot or the east side of the residences, there will be 11' of greenspace with a hedge and a gate. He stated the project will reduce paving of 400 square feet and adds more green space, approximately five per cent. He recalled at the last meeting there was discussion about a Unity of Title with the Bustani's commercial parcel, which they took exception to, basically because of the financing. He stated he has brought with them from the financial institution which presently holds the mortgage on the property and the substance of the letter is possibly, if the properties are joined together by Unity of Title will trigger the Due On Sale clause in their mortgage, which nobody wants to do. He proposed in lieu of the Unity of Title is that the entity that owns the commercial property will lease the parking lot for a number of years, possibly fifty years. Var. 12-93

Mr. Moore recalled the intent of the Unity of Title was to tie the commercial building to the parking lot. He had no problem with the lease of the parking lot, if the Town Attorney would agree that this will satisfy the intent. Mr. Randolph commented if the Council is satisfied and feels that this gives them what they want, he has no problem with the leasing arrangement, however, he would suggest that the Agreement be in a recordable form and it be recorded. Mr. Broberg advised he had no problem with that.

Mrs. Wiener cautioned that leases can be broken and asked if it was in a recordable form, would it not be one that could be broken? Mr. Randolph responded it would have to be in a form so it could not be broken.

Mr. Randolph asked Mr. Broberg why they wouldn't have the same problems with the mortgagors with a long term lease as they would with the tying together of the properties. Mr. Broberg stated they could do a deed restriction and record that which would run with the land in perpetuity that the property could not be used for no other purpose than a parking lot. Mrs. Wiener commented she had a preference to the lease and she moved that Variance No. 12-93 be approved with the stipulation that there be a fifty year recordable lease that this parking lot will serve the commercial building. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

New Business

Var. 13-93

2. Variance No. 13-93 - RSVP Palm Beach, 277 Royal Poinciana Way; to allow private mail boxes to be located on the first floor in lieu of second floor required, and to allow them within an existing retail establishment. C-TS District. Mark Weiner addressed the Council indicating he has requests from his customers that private mail boxes be a part of his service and for the use of the residents of the Town of Palm Beach. He advised they would be able to provide mail forwarding services for their customers when they do leave the area. He advised there is a waiting list at the post office and the Post Office has also requested them to provide the mail boxes, due to their long waiting lists. He stated they are on the first floor and handicapped people can access their offices quite nicely.

Mrs. Smith asked if the personnel at the Post Office made these statements in writing to which Mr. Weiner responded negatively. Mrs. Royal asked how many boxes were they proposing to offer to which Mr. Weiner responded approximately two hundred. Motion was made by Mrs. Wiener to approve Variance No. 13-93. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Var. 14-93

3. Variance No. 14-93 - Patricia P. Francis, 310 Plantation Road; to allow construction of an addition to a nonconforming residence; 120 square feet addition would increase lot coverage from 33.54% to 34.62% which exceeds the 30% maximum allowed. R-B District. - Mr. Harold Smith, Architect addressed the Council on behalf of Mr. & Mrs. Francis, requested permission to construct an addition to the one story residence which would be 120 square feet at the rear of the property and they would have to increase the lot coverage. He advised the addition will not be seen from the street and is in the rear of the property. He would like to improve circulation patterns within the house as presently to move from one side of the house to the other, they must walk through the dining room, the kitchen and the breakfast nook, and with this additional square footage, they feel they can improve that situation, by creating a hallway around the rooms mentioned. He stated the landscaping would be increased in the front of the house. After further discussion, Mrs. Smith moved for approval of Variance No. 14-93. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Spc. Excep. 6-93

4. Special Exception No. 6-93 - Windsor Properties, The Paramount Building, 139 North County Road; to allow a first floor real estate office provided there will be no street frontage. C-TS District. - Attorney Christopher Schilling addressed the Council on behalf of Paramount Partners. He introduced Joan Macaulley who represents Windsor Properties. He indicated a lease has been signed with Windsor contingent on the approval of this application. Mrs. Wiener felt this was a perfect example of a reason to grant this, as the whole idea was not to have these offices at street front and this is located in a courtyard and she moved for approval of Special Exception No. 6-93. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously for approval.

Spc. Excep. 7-93

5. Special Exception No. 7-93 - Preservation Foundation of Palm Beach, Inc., 382-386 Hibiscus Avenue; to allow a nonprofit cultural center to extend into an R-C Zoning District (Lots 25-28). R-C and C-TS Districts. Attorney Frank Chopin addressed the Council indicating the Preservation Foundation has filed a Special Exception application with regards to Lots 25 through 28 of Block 11 of the Royal Park Addition. He advised his client doesn't own the property but has entered into a contract to purchase the property and subject to the approval of the Town Council. He stated they are purchasing this property along with the property immediately to the south and they propose to demolish the existing building which is on the property and they intend to develop a botanical garden to surround the nonprofit cultural center which would be an office for

the people who will be overseeing the property with a gazebo. He exhibited a site plan which showed what they wished to do. He stated they will maintain the property and will make the area available for public use and for the Preservation Foundation's Educational programs. He envisioned bringing children to it from the schools to learn about preservation and about the community. Mrs. Douthit thought it was a vast improvement over what has existed on that property and she moved for approval of Special Exception No. 7-93. Seconded by Mrs. Smith.

Mr. Moore explained the nonprofit cultural centers are allowed in both these districts and the tax revenue which would be lost would be approximately $7000.

Mrs. Wiener stated she was under the impression it was to be a passive park and now she is hearing school children will be going through it and this is a non-profit cultural center and she had a problem with that. Mr. Weinberg asked what was a nonprofit cultural center? Mr. Chopin responded it will be largely passive as their goal is to have a botanical garden, but at the same time, they have carried on educational programs, both at the Day School and Palm Beach Public at the Little Red School House and they would like to bring the children there so they would have an opportunity to learn about this kind of landscaping and they don't envision a situation in which they would have this type of activity on a frequent basis but they would like to have the option to do so.

Mrs. Wiener asked if they planned to have the teachers coming with the children? Mr. Chopin stated they didn't wish to have any liability obviously but this would be something that would have to be done on an organized basis. Mrs. Smith asked if it would be open to the public to which Mr. Chopin responded it would be. Mrs. Douthit suggested xeriscaping as that would take a minimum amount of water.

On roll call, the motion carried unanimously.

6. Special Exception No. 8-93 with Variance - Palm Beach National Bank and Trust, 125 Worth Avenue; to allow expansion of the bank and trust facility by an additional 1,750 square feet of second floor space; bank and trust presently occupies 4,940 on second floor and 3,252 on the first floor pursuant to Special Exception Approval No. 13-92. A parking variance of 2 spaces is requested by providing 7 spaces in lieu of 9. C-WA District. Mrs. Wiener advised she has a conflict as she is a member of the Board of Directors for this Bank and would not be voting on this matter. Spc. Excep. 8-93

H. Loy Anderson, President of Palm Beach National Bank addressed the Council noting he had appeared before them some months ago requesting a Special Exception for use of space over 2000 square feet and a variance from parking as well as a drive-through window, and the Council granted that request. He has submitted evidence of their Town-serving status and their service to townspeople has increased beyond the 80%. He stated the first floor area was increased and they brought their Trust Department to Palm Beach at that time. He is now requesting a modification to that application and wishes to increase the second floor space by 1750 square feet, which will increase the total square footage on both the first and second floors to a little under 10,000 square feet. He noted a variance to the parking spaces is also being requested as they can provide seven spaces in lieu of nine, but will provide the additional two spaces off-premise. He will continue the Town-serving status and requested favorable consideration.

Mr. Moore reported they will provide the two additional parking spaces off-site and as long as they continue with the filing of their Town-serving status, his office had no objection.

Mrs. Royal asked where would the extra spaces be located to which Mr. Anderson responded it would be across the street from their office. Mrs. Smith asked if the increased space was for clerical people who are in the Bank now and they just need the space since they are cramped to which Mr. Anderson responded that was correct.

Motion was made by Mrs. Royal to approve Special Exception No. 8-93 with the variance with the conditions as stated by Mr. Moore. Seconded by Mrs. Smith. On roll call, the motion carried 4-0 with an abstention from Mrs. Wiener.

D. Other

1. Consideration of Settlement of Lawsuit Regarding Southeast Bank, N.A. v. Town of Palm Beach - Deferred from February meeting - Attorney Randolph reported the facade of the property was designated by the Town Council on a 3-2 vote. He recalled First National Bank did object to the designation and subsequent to the designation, a lawsuit was filed for declaratory relief as well as alleging a Civil Rights violation wherein they asked for damages. He stated the crux of their complaint was based on the fact that they felt this matter had been dealt with before by the Council and it was unfair to come back and have the property considered again for designation. Consideration of Lawsuit Re: Southeast Bank

Mr. Randolph recalled they also talked about a conflict of interest that was discussed at the time that one of the Council members did have a conflict and should not have voted. He recalled these negotiations were ongoing for a long period of time and this lawsuit was on hold and the only action was a Notice to Dismiss filed by the Town. He stated early on the negotiations between the Bank's attorney and he discussed a possible settlement in an attempt to avoid prolonged litigation and at that time, a compromise was discussed and it was suggested the compromise would be in order if the Town would agree to dedesignate the remaining portion of the property which goes to the north. He stated that is the proposal before the Council it comes without recommendation but he wanted them to know it was discussed between both sides in good faith as a proposal which could be offered to avoid the prolonged litigation and attempt to preserve something both for the Town and for the Bank. He advised the Town felt to preserve the Volk to Volk area is important and as part of the draft stipulation, the agreement would be that there would never be an attempt to dedesignate or destroy that portion of the property. He noted another portion is the two and three story sections as if the property was destroyed, the three story could never be built back to that configuration.

He has incorporated the legal description in the Stipulation which would remain designed and the description of the property which would be dedesignated. He advised this has been advertised so

Consideration of lawsuit re:Southeast Bank

all that are concerned could have an opportunity to address it and gave notice also to the Preservation Foundation.

Mr. Chopin did not think this was the forum to go over the issues of the landmarking which was done over a very long period of time, recalling this had come before the Town Council who had an opportunity to consider the issues. He advised the issue which has been brought to you is whether the lawsuit should be settled and he would like to make them aware of several factors. He has examined both the State and Federal court files on this. He noted the case was originally filed in State Court and the Town brought an action to move it to Federal Court. He noted there was a Motion to Dismiss, which was denied and with the reassignment of the case to a different judge and the setting of a status conference, there hasn't been anything else for the past two years.

He recalled the lawsuit was brought by Southeast Bank against the Town, and since that time the Bank has been sold to First Union and when they took over Southeast was not obligated to purchase any real estate, although it did have an option to do so and when they did exercise that option to purchase the property, it did so knowing that the property had been landmarked. He stated they are not a party to the litigation and he doesn't know why it isn't. He stated a part of the stipulation is that there will be no effort made to designate this property, but he wished the Council to be aware he doesn't know how in fact, a party can be bound by the stipulation when the party in interest, is not a party to the stipulation upon which the Town wishes to enter into. He didn't believe they were bound by that stipulation.

He reminded all that landmarking is an issue of importance and there is a procedure to go through for dedesignation of landmarked properties and what is before the Council is a lawsuit which was not prosecuted and which had no basis at all in terms of its merit. He stated they have a situation where they are now bypassing this whole process of landmarking with review by the Elected Officials with an opportunity for people to heard if the actions are settled under these circumstances and they are not getting anything for it as they are making a deal with the wrong party. He suggested they not approve the settlement of the lawsuit as they should hear from First Union as to their position on this matter.

He believed they are making a dedesignation decision in a forum which is contrary to the Ordinance without being able to make any judgment about the value of whether it should be landmarked or not.

Mrs. Douthit thought it was a little unusual that Southeast wishes to settle the case when they don't own the property. Mrs. Wiener asked if there was any agreement made when Southeast was taken over by First Union to which Mr. Randolph responded he didn't know, but he knows Gunster Yoakley would have to remove themselves as counsel in this case when First Union takes over, but the request has been made that this matter be attempted to be settled prior to that. He advised in the event this is not settled, it is his belief that Gunster Yoakley will withdraw and there will be a substitute counsel. He advised the Stipulation does have a signature line for a First Union representative to sign.

Mrs. Smith asked who initiated the negotiations to which Attorney Randolph responded it was most recently initiated by the current lawyer for the Bank. Mrs. Smith asked what would be the reason for the Town to settle the lawsuit before a determination was made in court? Mr. Randolph stated it would be simply to avoid the expense. Mrs. Smith commented she and Mrs. Royal were not a part of the discussions, so they have no history of this, but obviously the Council did vote to landmark the building and it was challenged and it is going to court. She thought the new owners ought to be asking for a settlement and she considered it premature to take any action on this today to which Mrs. Wiener and Mrs. Douthit agreed.

Mrs. Wiener believed there must be something going on in the background and they may want to get off the hook and have a cleaner deal between the two banks which is very satisfactory to them, but she thought it should be revisited when the new attorney for the new bank are involved in the discussions.

Mrs. Smith asked if any action needed to be taken on this today to which Mr. Randolph responded if the Council doesn't approve the settlement, no action needs to be taken.

Consideration of Request for Waiver to Section 12-50

2. Consideration of Request for Waiver to Section 12-50, "Operation of Certain Machinery During Winter, Sundays and Legal Holidays", of Town Code by Mr. Robert Safrin, Director, The Society of the Four Arts, for Installation of New Elevator - Hap Lewis, Architect addressed the Council representing the Four Arts requested a waiver to the noise ordinance as they are putting an elevator in the Embassy Building and the hydraulic system into the ground and they need to drive it in. He advised it is inside the building and they will keep the windows closed. He stated there are residences about a block away but the Four Arts owns all the property around this building. He proposed that it be done during the week from 9 to 5 and this should take four or five days to do the work. He stated it cannot be augured in as they have hit rock. Mrs. Douthit asked why they elected to install a hydraulic elevator in the South Florida climate. Mr. Lewis explained the reason is if they didn't use the hydraulic system, the elevator mechanism would stick out of this landmarked building by ten to twelve feet. Mrs. Wiener wondered if somehow they could do something nice for the neighbors as the noise will be unbelievable. Mr. Lewis was sure the Four Arts would be sensitive to that. Mrs. Wiener moved that the waiver to Section 12-50 be granted for the purpose of installing the elevator at the Four Arts. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Consideration of Request by Pres. Found. for Ord. to Provide for Local Option Restoration Tax Abatement for Landmarked Structures

3. Consideration of Request by Preservation Foundation of Palm Beach for Town Council to Consider Adopting an Ordinance to Provide for Local Option Restoration Tax Abatement for Landmarked Structures - Mrs. Polly Earl of the Preservation Foundation addressed the Council noting there is an option offered by the State of Florida which allows Counties and Municipalities to abate a portion of property taxes on qualified restorations of landmarked properties. She requested the Council study this or remand it to an appropriate committee or request them to gather information, to initiate the process of the Town enacting this option, which she believed would have a minimal impact on the Town's tax revenues. She believed this would encourage citizens to landmark their properties and to encourage local enterprise and contractors and local repair to seek the proper type of restoration of these properties.

Mrs. Wiener recalled during the election she did state there should be a reduction in taxes of from twenty five to fifty percent but at that time she was not aware that it would not be retroactive and this would be a future situation and she didn't understand that they would be reducing money for what they already have in their coffers on a regular basis. She has in the past had problems with forcing landmarking on the residents and they get nothing in return. Mrs. Earl responded from the very beginning she felt this would appeal to the Council as this is something they can offer the homeowner, and as equally important for the Town to enact this, the Town should help them and work with other communities to have this enacted at the County level.

Mrs. Wiener thought if they were abating this tax ten years down the road, how would that be calculated as that is where it really is at and she would like to totally understand the formula. Mr. Randolph recalled when this was addressed at a previous Town Council meeting, it was left that the Town not invent the wheel and they would look towards what other communities would be doing, however, he hasn't found any municipalities that enacted an ordinance to initiate this process.

Mr. Moore reported he has talked to the State of Florida Department of Preservation and the City of Orlando and the State has put up monies to draw up an Ordinance. He advised the entire seminar on Historic Preservation is being devoted to this subject and Mr. Frank will be going and they will get the information needed. He asked for authorization to go to the tax assessor's office and talk with them on how they plan to put this into motion and also discuss the legalities with the Town Attorney.

Mrs. Wiener felt they should wait until Orlando has an ordinance in place, but in the meantime Mr. Moore be authorized to discuss this with the County Tax Assessor and the legalities of such an Ordinance be checked and she so moved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Communication from Citizens

XVIII. COMMUNICATIONS FROM CITIZENS - Adrian Winterfield addressed the Council on the ordinance on abatement of taxes stating the Council should expect nothing as since it applies only to improvements, it does not touch the land element, and almost all increases in taxes have been in re-evaluation of the land element and not of the improvements.

XIX. ANY OTHER MATTERS

Airport Noise

A. AIRPORT NOISE: Mr. David Jakubiak addressed the Council indicating he did attend the meeting held today, which was scheduled for tomorrow to vote on TAC alternatives. He stated President Weinberg could not make the meeting rescheduled for today because of this Town Council meeting and therefore his vote wasn't recorded. He advised the votes that were taken did not relate to the short and long term alternatives which were discussed. He did not believe these alternatives were in the best interest of the Town as there are some fundamental issues which the Town of Palm Beach is in the minority. He reported the issues which were voted on were:

(1) Improved Flight Track Compliance - He stated the Town is in favor of this alternative.

(2) Elimination of Fanning Except on Runway 9L - Mr. Jakubiak reported there was debate on this issue as to whether the other three runways should be considered separately and everyone vote on Runway 9L also, but there are communities which are not effected by Runway 9L and he didn't think it was fair that everyone would vote on what would be happening over the Town of Palm Beach.

(3) Increased Corporate Jet Departure Use of Runway 31. He stated they voted on this and obviously the Town does favor that, but it doesn't address the distribution of air traffic on the runways.

(4) Nighttime West Flow Preferential Runway Use from 10 PM to 10 AM. He recalled President Weinberg made a motion on this at a previous meeting to increase the nighttime usage to 10 AM, whereas it was at 7 AM.

(5) West Flow Runway Use Preferred in Calm Winds at Night. He stated he did support that.

He reported it was clear from the proposals that the TAC Committee as a whole is moving towards Alternative 7, the short term alternative and a long term alternative which will be in opposition to some of the key issues.

Mr.Weinberg stated he will continue efforts on behalf of the Town but he doesn't believe he will be very successful.

Mr. Doney informed the Mayor and Council the next TAC meeting will be at the County Commission Workshop on May 25, 1993 and it is important to publicly state once again the Town's position.

Mr. Jakubiak advised there were two residents at the TAC meeting today and residents will be encouraged to come to the Workshop.

I-95 Traffi Separators

II. I-95 Traffic Separators on Medians. Mr. Doney advised he was in receipt of a letter from Mr. Thomas Bradford, Village Manager of Tequesta urging adoption of resolutions urging the DOT to provide the appropriate traffic separators. He advised letters of this type are received from time to time and unless the Mayor and Council directs some action at a Town Council meeting, it is not the intent of staff to proceed with any of these items. Mayor Ilyinsky didn't see any harm in writing a letter to the Senators and Representatives urging some cooperation. Mrs. Douthit believed this would cause another series of accidents as travel on I-95 is mesmerizing and instead of crossing the median, accidents will occur as people drive into the traffic separators. Mrs. Wiener commented that in the accidents that have been occurring, the person who is travelling in the other direction had nothing to do with the accident and it results in a traffic accident which could kill him. She thought if someone has had too much to drink or is falling asleep and he runs into the barrier, that can't be helped but at least they won't be killing someone else. Mayor Ilyinsky commented he will write the letters.

Turtles

(III) NEWS RELEASE AND LETTERS TO OCEANFRONT PROPERTY OWNERS REGARDING TURTLES: Mr. Doney advised he has sent out letters to all oceanfront property owners and issued a news release on lights on beaches during the upcoming turtle season.

(IV) Special Town Council Meeting to be held on March 12, 1993. Mr. Doney asked that the Mayor and Town Council pick up their back-up information for this Special Town Council meeting.

Adjournment

XX. ADJOURNMENT - There being no further business, the meeting was adjourned at 4:35 PM.

Grace T. Peters
Town Clerk