TOWN COUNCIL MINUTES OF MARCH 8, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - The Town Council Meeting of March 8, 1994 was called to order by President Wiener at 9:34 AM in the Town Council Chambers. Elected Officials in attendance, on roll call were: Mayor Ilyinsky, President Wiener, President Pro Tem Weinberg, Councilwomen Smith and Royal and Councilman Shaw. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Assistant Town Manager Elwell, Mr. Dytrych, Mr. Bitzer, Chief Terlizzese, Chief Elmore, Mr. Dusey, Mr. Bowser, Mr. Zimmerman, Mrs. Crozier, Mr. Frank, Mr. House and Mr. Boggs.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Dr. Kirkman gave the Invocation. Pledge of Allegiance was recited and led by the President Pro Tem Weinberg.

Presentations

III. PRESENTATIONS - Mayor Ilyinsky presented plaques of recognition to all of the following with the exception of Mr. Sanchez and Mr. Broberg, which were deferred to the April Town Council meeting. All of the recipients were congratulated by the Mayor and Town Council.

A. Recognition of Jorge A. Sanchez, Architectural Commission

B. Recognition of John H. Schuler, Architectural Commission

C. Recognition of Leslie Divoll, Landmarks Preservation Commission

D. Recognition of Peter S. Broberg, Seaview Park Commission

E. Recognition of William B. Cudahy, Zoning Commission

F. Recognition of Robert E. Deziel, Zoning Commission

G. Retirement of James C. Blackwell, Public Works Department - 20 Years, 4 Months

H. Retirement of Norman D. Ouellette, Public Works Department - 16 Years, 3 Months

I. On Behalf of the Town of Palm Beach, Presentation by Golf Commission of January 27, 1994 LPGA Par 3 Tournament Proceeds to Good Samaritan, J.F.K., and St. Mary's Hospitals - Mr. Eugene Pollack, member of the Town's Golf Commission presented checks from the proceeds of the Par 3 Golf Tournament held on January 27, 1994 to representatives from Good Samaritan Hospital, JFK Hospital and St. Mary's Hospital.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky extended his vote of thanks to the Chairman of the Beach Advisory Committee and all the Committee members for their work and their report. He noted this Committee was charged with finishing this project within 45 days and met that challenge and he was appreciative, and knew all the members of the Town Council were also.

Approval of Agenda

V. APPROVAL OF AGENDA

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

APPROVED AGENDA (ITEMS VI. THROUGH VII.) - Mrs. Smith moved for approval of the APPROVED AGENDA. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Approval of Minutes

VI. APPROVAL OF MINUTES OF FEBRUARY 28, 1994

Licenses & Permits

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Parent Child Center of the Palm Beaches, Inc.; No. 198-94
2. Croquet Foundation of America; No. 216-94
3. The Mary Obolenski Underwood Leukemia Foundation, Inc.; No. 320-94
4. Landmark Preservation Commission; No. 358-94

Regular Agenda

REGULAR AGENDA - Mr. Shaw requested and moved that the subject of traffic congestion on Sunset Avenue at County Road and on Royal Poinciana Way area be studied. Seconded by Mrs. Royal. On roll call, the motion failed to carry 3-2 with Mrs. Smith, Mr. Weinberg and Mrs. Wiener voting against the motion.

Traffic on Sunset Ave.

A motion was then made by Mr. Weinberg that the Police Department be asked to make a study of the traffic on County Road near the intersections of Sunset Avenue and Royal Poinciana Way and they submit a report. Seconded by Mrs. Smith.

Mr. Dusey addressed the Council noting that usually traffic problems are studied by a traffic engineer, however, he could furnish statistics. Mr. Shaw stated all he wanted to do was sit down with the Town Manager as he is not looking to spend huge amounts of money, but only wanted to alleviate the problems in this area as he believed just the relocation of the loading zones at both corners could possibly alleviate some of the congestion.

Mr. Doney reported Mr. Shaw has spoken to him about the possibility of there being one way movement on Sunset Avenue from Bradley Place to North County Road and the staff could look at it, but they really do not have staff resources to technically study the change in the traffic signal movements and the signage as they need to have a traffic engineer who was initially involved with the placement of the signal to re-evaluate the traffic flow, and perhaps they need to think about appropriating some study dollars. Mr. Dusey addressed the Council noting he agreed with Mr. Doney as if they are going to consider one way traffic on Sunset, they need to know what impact it would

Traffic on Sunset Ave. (cont'd)

have and only a traffic engineer can do that. He noted preliminary issues can be looked at by staff, such as accidents which have occurred and those types of things. Mrs. Wiener suggested that in addition to past history, they would have to know how any change would affect the traffic in this area. Mr. Shaw reiterated his proposal is not to incur great expense but to look at the potential issues with the Town Manager and then allow them to come back as to where they stand. He only wishes to use a little common sense to see if there is a way of alleviating the problems which have been ongoing as result of the unloading zones at Publix. Mr. Dusey responded the loading zones are a policy question and a Town Council made the decision some time ago when the traffic signal was installed regarding the parking in that area, however that can always be changed. He pointed out that making a roadway one way has more implications than just deciding about parking. Mr. Weinberg believed they should have a preliminary study before they proceed any further. Mrs. Smith suggested the preliminary study be referred to the Public Works Committee for a recommendation to the Town Council. Mr. Weinberg withdrew his motion. Mrs. Smith made a motion that a preliminary study be done by the Police Department and the Public Works Department and this study be sent to the Public Works Committee for further handling. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Shaw stated on another unrelated matter, he would like to work with the Town Manager to deal with a number of complaints and comments made pertaining to some of the operations at the Seaview Park as there seems to be an ongoing question as to how the relationship between the various departments and how they are operated and there have been complaints as to how residents get to play tennis and he would like to have a formal approach to what the Seaview facilities functions are, and how can the Town residents be better served. Mrs. Wiener reminded Mr. Shaw that the Town Council is not permitted to interfere with the workings of any of the departments, and if there are complaints, they need to talk to the Town Manager and the Department Head and if there is no resolving of the matter, then they come to the Town Council, as a whole.

Spec. Excep. 28-93 (deferred)

Mr. Zimmerman asked that Special Exception 28-93, Item XV.B.2 be deferred to the April Town Council meeting and Item XV.B.7, Variance No. 9-84 be withdrawn.

Mrs. Peters gave the oath to all people in the room who would be talking on zoning matters.

William McCrany representing the Phipps Plaza Property Owners addressed the Council on the request for deferment of the Special Exception No. 28-93 of the 264 Restaurant, recalling at the December meeting there was discussion as to whether or not a ninety day extension was appropriate and there were objections to the delay by the Phipps Plaza group and that position has not changed, and he requested the current request for postponement to the April meeting be denied.

Attorney Alan Ciklin, representing the owner of the restaurant addressed the Council advising that the attorney retained by Mr. de Marinis originally will not be able to represent him anymore and the purpose of asking for the deferment is to give time to himself to adequately prepare for the public hearing.

Mrs. Wiener asked if it was known if the residents in this area would be leaving town before the April hearing to which Mr. McCrany responded there will be a number of the residents leaving.

Isaiah Roosine, 228 Phipps Plaza addressed the Council, indicating the problem with the delay is that the owner of the restaurant has already occupied and used that area without permission. He views that as breaking the rules and the chances are they will break the rules again and the people in Phipps Plaza want this determined now and without further delay.

Mrs. Smith asked if the Police Department did have complaints about the use of this outdoor area to which Chief Terlizzese responded they have had a few but not too many lately.

Mrs. Smith moved that Item XV.B.2 be deferred to the April Town Council meeting and made the request that at that time, all of the residents affected be in attendance or be represented so the applicant and the neighbors may have a full hearing. Seconded by Mr. Weinberg. On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Wiener voting against the motion.

Mr. Weinberg asked that under Any Other Matters, add an item on the County Commission on Airport Noise (CCAN). Mrs. Wiener asked it be placed under New Business, XII.C.12 and Mr. Weinberg so moved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Smith moved that the Regular Agenda be approved with the amendments. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

VIII. PUBLIC HEARINGS — Public Hearing

Landmark of 162 Peruvian Ave.

Res. 9-94

A. Landmark Designation for 162 Peruvian Avenue - Consideration of Resolution No. 9-94 - Deferred from February Meeting - Mr. Frank reported the Landmark Preservation Commission has found that the property at 162 Peruvian Avenue meets the following criteria specified in the Landmarks Ordinance:

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

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

Mr. Frank reported the architect is Belford Shoumate.

Mrs. Day of Atlantica, Inc., addressed the Council, noting this is a modernistic style Art Moderne which was popular from 1920 through 1940. She noted they were never common in domestic architecture, many commercial and public buildings were built in this style and its companion, Art Deco. She noted this house is a good example of this uncommon style of domestic architecture. She stated it is a one story structure and is basically horizontal in its design, as was typical of that style.

Mrs. Day advised it has many of the details of the Art Moderne and Art Deco as the front door surrounds are the original and the tile work is the original from 1937 and is repeated in the front walk and on the stepping stones. She reported the tile is also repeated inside of the house. She

Res. 9-94
Landmark of
162 Peruvian
Ave. (cont'd)

indicated above the front door is an eyebrow feature which is very common in Art Deco and there are rounded columns on either side.

She reported the fan light is repeated in other design elements on the property. She stated this sub style of Art Deco was called Ocean Liner Deco and was popular with the ocean liners going back and forth across the ocean and the stairway in this house leads up to the roof of the house. She noted in the central courtyard of the house, there is a terrace which is walled by concrete and a pool is located at the south end. She pointed out the whole design of the house goes from one section of the wall to another and it is an important house for a number of reasons, as it uses the technology which was most important and the newest of that age, 1937 and they were able to look at the plans of this house.

She advised another charming feature is the roof over the living room rolled back so they could see the stars, and is an excellent example of Mr. Shoumate's work, and she recommended it be landmarked.

Mr. Shaw commented the roll back roof is an unique feature and asked if that was a part of the landmarking? Mr. Frank responded it is not as he does not believe it is operable. He advised it will be landmarked as it is and if the owners wanted to continue with it in its present form, that would be acceptable. Mrs. Wiener recalled when something is landmarked, it is landmarked as is and they don't look forward to any changes.

Attorney Broberg addressed the Council on behalf of the owner, indicating he would like to speak at the end of the presentation.

Mrs. Patricia Dempsey, 156 Peruvian Avenue, which is east of the house which is proposed to be landmarked. She advised she is in favor of having the house landmarked. She has been the owner of her house for about five years and has done much renovation. She noted she lives alone and feels very safe with the house next door, even though it is empty and doesn't want it to be demolished, as she read in the paper a few months ago, that the owner would donate the house to the Town, if the Town would move it. She doesn't want to be situated next to a parking lot and has a concern about her property value, if the house is removed.

Mrs. Smith asked Mr. Randolph if the house would be landmarked or would the house and the property be landmarked. Mr. Randolph believed they are talking about the landmarking of the house on this particular property.

Mrs. Polly Earl of the Preservation Foundation addressed the Mayor and Town Council supported what has been stated about this house, and she believed it met four of the criteria set out in the Ordinance, noting much of Mr. Shoumate's outstanding work was done in the Art Deco style so by preserving this house, they would be preserving a species of house which has very few designated, and a house in the outstanding style of the architect. She believed this house was very special and has not been altered over the years, which is quite unusual and it has Art Deco, Art Moderne details and is a highly evolved building in terms of the technology used in its construction. She thought some day some art historians would like to study this house as it is an outstanding example of how an architect can marshal and use space as on this small lot, there is a living room, dining room, kitchen, three bedrooms, 2 1/2 baths, a dance terrace and a pool. She believed the house was useable as a residence and this Council has provided tax benefits for landmarked property and whether or not the owners choose to avail themselves of it, the benefits are available.

She noted the Preservation Foundation does run a lot of children's programs and in these programs, the children are taken on tours and they are taught the heritage of the Town and one of the things they teach them is the diversity of architecture and that diversity is good and no one style is any better than any other style. She asked the Council to give their favorable action on this landmark designation for what is a gem of a small house.

Attorney Broberg representing the owner of the property at 162 Peruvian Avenue addressed the Council. He pointed out that notwithstanding the glowing reports on this property by Mrs. Day and Mrs. Earl, he wished to editorialize that the Landmarks process was getting a little out of hand and why it is, is because there is not any quid pro quo. He believed the Landmarks Commission was a third party which makes decisions on an owner's property for them, which is supported by staff and independent consultants and dictates what an owner's property will be or will not be. He felt there were plenty of houses in the Town worthy of consideration and plenty of residents who want their houses landmarked and those are the houses which should be landmarked. He felt if there was a style of house or a personage which lived in the house of note and it does not fill a register of houses in the Town, then he believed those houses should be put on a separate list and if the owner is willing to have his house landmarked, then it be landmarked but if not, the property would stay on the list until it is determined there is no other example of the architect's work or the style, then it should come off that list.

He could not imagine that if every house in the Town was built by Belford Shoumate or Addison Mizner that every house in Palm Beach would be landmarked. He stated his client wants to do something positive to this house. He recalled at the Landmarks Commission hearing, the owner did offer the home to the Landmarks Commission and it be removed and they would be able to preserve it on a piece of property of their choosing and nothing has come out of that offer.

He advised he and his client did meet with the Preservation Foundation, with Mrs. Earl and offered the house to them as well as Mr. Shoumate's library and they advised they could not accept it. He wished to impress upon the Council that they have actually tried very hard to do something with the house to preserve it. He felt because their attempts had not been successful and because the house has some redeeming qualities, he would like to offer some alternatives:

1. The Town Council defer designation of this house for one year or until November of 1994 when the zoning season begins, to allow the owner to apply to the Town Council to rezone the property for office space, such as a law firm or real estate office.

2. To allow the owner a year without designation to find a designer group and make this a designer house, as the wiring and air conditioning, etc. need to be replaced. He suggested this would benefit a charity or be a project through the Preservation Foundation, and when the house is in a showcase position, a designation would be accepted.

Mr. Broberg reported the roof is inoperable.

Town Manager's comments on Town Charter and Code (cont'd)

Mr. Shaw asked if there was a question on an issue that is already being addressed, does that mean they can't go to the Town Manager and ask him to look into it, as if a resident has a question or points something out to him, is Mr. Doney stating that has to brought up as an agenda item at a Council Meeting or versus saying this was brought to my attention, could you add it to your agenda. He wondered if that was considered counterproductive in that they are not going back and forth several times but asking that while his is being reviewed, there is added another item. Mr. Doney responded it would of course depend on what the issue is, as in some instances, for example on the water issue, some of the issues have already been studied by consultants, but he would need to have the Council tell him that they want those issues reinvestigated. He knows this is frustrating at times as the Council only meets once a month, and then the staff is asked to report back, and it seems like they are not moving quickly enough. He believed staff wise they do pride themselves in doing a thorough job and making sure good well-founded and defensible recommendations are being made.

Mrs. Wiener thought if they looked at the fact that time is money and all understand that the Town's monies cannot be expended individually and that is a policy, that would help all to understand.

Mr. Weinberg stated he was concerned about Mr. Doney's remarks as they all take off their hats to the staff and the Town Council gives to them the responsibility of professionalism and the Town Manager has direction in this situation as they don't need to call the Council into session just because there is one resident who has a problem and then the Council has to meet to decide whether it be researched, as that is what staff is getting paid for and he would expect them to continue to do so to the utmost discretion which is professional.

Mrs. Smith thought they were missing the crux of the matter as the elected officials should have the ability to know what is an important question to take to the staff and what is not important, to which Mrs. Wiener agreed.

Mr. Doney discussed the appointments of residents,who now have to be registered voters, to Town Board and Commissions. He noted the present procedure is for that individual who wishes to be appointed to write their qualifications and interest and Town staff would not express an opinion as to whether or not they would be considered. He advised nor does the staff, because by association, when they inquire as to whether or not the person is still interested, they find themselves being a part of or drawn into further questioning and that is something that needs to be discussed as he doesn't know how that procedure could be improved.

Mr. Shaw, recalled when he received the packet for the Town Council meeting, particularly with regards to the appointment of the Architectural Commission members, he noticed that of the twenty plus letters, there were a number of letters dated early 93, and he wondered if those people had been recontacted as to whether or not they were still interested. Mrs. Smith asked Mr. Shaw why he didn't call and find out to which Mr. Shaw responded it would have meant that he would have had to call all the Council members with the information. Mrs. Smith reminded him he could not do that as that would be a violation of the Sunshine Law.

Mrs. Wiener noted sometimes it takes several years to have an opening on a particular Board and Commission, as the members may serve six years in a particular position.

Mr. Doney recalled in the past, people in the Town who ere interested in serving on Board or Commissions, got in touch with the staff and expressed their interest and staff would make the recommendations to the Council. Mrs. Wiener noted that is now changed and all the resident has to do is to be a registered voter and advise the Town that they are interested and that is the only requirement.

A. DEPARTMENT HEADS - COMMENTS AND QUESTIONS FROM ELECTED OFFICIALS: None.

III. TOWN ATTORNEY COMMENTS ON VARIOUS STATE LAWS APPLICABLE TO TOWN COUNCIL ACTIVITIES:

Town Atty. comments on various state laws applying to Town Counc. activities

Attorney Randolph stated he would first address the Sunshine Law. Mrs. Wiener noted she had read the column in the Palm Beach Post on this subject by the Town Attorney. Mr. Randolph noted he had been asked to do this article by the editor and for the most part, it was printed as presented except for one sentence where there was an omission and that was that there should be no golf outings, no lunches, or cocktail parties between members of the Town Council, but he has advised them it is good to avoid those kind of instances, however, he knows it is almost impossible to do so in small communities at social events. He stated it is only a violation if they are going to discuss business of the Commission, and he encouraged them to avoid those type of contacts, if at all possible, as if someone thought it was a violation of the Sunshine Laws, the Council member could have to be in a position to be put on the defensive of having to defend against an allegation.

Mrs. Wiener thought it would be rude to question a Host or Hostess as to who their dinner guests were going to be, and if it was a member of the Council, they would have to decline and she thought that was a bit far fetched. She didn't believe realistically that if there were several Council members or the Mayor in a group of people,that they would be discussing Town business. Mr. Randolph agreed but there is always those who will contend that i they are getting together, there is no way they would not be discussing business, so his advice is what the Law is, and the public perception is up to the Council as often there is a perception that the Sunshine Law is being violated even though it is not. Mrs. Wiener agreed the law is to be followed, but it is a strange and peculiar type law, as people may be conducting business on a telephone and those individuals will never be seen together at all and she knows of no way to preclude that.

Mr. Randolph advised that the Sunshine Law states that no two or more members may get together in regards to any item of business on which official action may reasonably be predicted to be taken and that would mean telephone calls, meetings, or discussions at the rostrum at a public meeting when they might just be discussing taking a break. He felt it was almost impossible to monitor.

Mrs. Smith recalled the Council does sit together at the Chamber Breakfast or the Policeman's Ball and she thought the point was being stretched when the integrity of the elected officials comes into effect. She states they sit together and have a good time together and they do not discuss the business of the Town as they know that is against the Sunshine Law.

Mr. Randolph stated he is not advising them that they can't do that, as in a small community, it is difficult to avoid that kind of contact and there are instances where they will be together, Town Atty's comments on various state laws applying to Town Council Activities

(cont'd)

but what he is telling them when those things to occur, there can be a perception by some that business will be discussed and to the extent that it can be avoided, it should be avoided.

Mr. Randolph commented that the Mayor and Council should be aware with regards to the Sunshine Law as to not how it will effect them as individuals, but what is most important is what it can do to the ultimate action that will be taken on the item of business that was discussed as it will be voided, recalling that is what happened in the Town of Palm Beach years ago when the Town's Zoning Ordinance was thrown out by the Supreme Court.

Mayor Ilyinsky knew it was the law and he was sorry he could never share, for instance, with Mr. Shaw, the newest member of the Council the dreams and goals he has for this Town and could never get to know him well enough to discover what Mr. Shaw was thinking. Mr. Randolph responded that was correct as some day the Mayor may have to break a tie in any particular matter and he may have to vote and because he has that power to vote, it would be a violation for him to share those comments with Mr. Shaw as it would be argued that they should be shared with the entire Council at a public meeting.

Mrs. Wiener asked how often does the Town Attorney advise the Boards and Commissions of the Sunshine Law as new members come onto those boards. Mr. Randolph stated it is sporadic. Mrs. Wiener suggested that in the letter when people are advised of their appointment that there be a short attachment letter from the Town Attorney explaining the requirements of the Sunshine Law. Mrs. Wiener asked if someone would make this a motion that the letter on the Sunshine Law be a part of the packet that every newly appointed member receive. Mr. Shaw moved that in the letter sent to newly appointed persons to the various Boards and Commissions, a letter from the Town Attorney be included explaining the Sunshine Law. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mr. Randolph explained there are three basic elements to the Sunshine Law:

1. That they meet in the public.
2. Reasonable notice be given of the public hearing.
3. Minutes be taken of the meeting and they be made available to the public.

Mayor Ilyinsky asked if there was a violation if he were to meet with, for example, Mr. Pryor of the Civic Association. Mr. Randolph responded it is not a violation for the Mayor or any member of the Council to meet individually with any member of staff to collect information or to discuss things on a one-to-one basis with the Staff, nor would it be a violation to discuss something with a particular constituent such as the Civic Association individual, however, where it becomes formalized if the Town Council were to appoint a committee of staff, they are in danger of forming a committee which would be subject to the Sunshine Law and would require the staff members to abide by that law. He thought the best thing to do is to rely upon the staff for what they do rather than direct them formally to do something.

Mr. Randolph stated if the Mayor were formally given the task of being in contact with the Civic Association member, that could be interpreted to be a violation of the Sunshine Law, however, if the Mayor had certain concerns he wished to discuss with the Civic Association, he could do that Ora one-on-one basis without being a violation of the Sunshine Law.

Mr Randolph referred to the Jennings case, stating it is not new that quasi judicial matters should not be discussed other than at a public meeting and it always has been that ex-parte communications are inherently improper and are an anathema to quasi judicial proceedings. He stated what this means is when anybody sits in a quasi judicial capacity as opposed to a legislative capacity, as with a judge those things that are learned should be learned at the public meeting. He stated the best way to look at it is as though they were a judge in a hearing room.

He stated the way quasi judicial is defined versus legislative is that legislative decisions are those which relate to the prospective application of a new law, such as an amendment to the Zoning Ordinance or Code and they can talk all day long to anyone they want, other than a Commissioner in regard to legislative decisions. He stated that is not the case in quasi judicial proceedings which would be defined s those which are not enacting law but which are applying a law already on the books which has specific criteria to be complied with in order for an applicant to receive approval on an application. He stated a quasi judicial proceeding would be an application for variances or special exceptions, site plan reviews, code enforcement proceedings, Architectural Commission proceedings and some parts of Landmark Preservation Commission proceedings.

Mr. Randolph advised anyone coming before the Council on a quasi judicial proceeding is entitled to receive due process. He advised the way the Jennings case first came down, was it said that in the event you have been lobbied, that has to be made known to the person who is appearing before you, so that that person would have the benefit of what took place, and they would have to be advised as to the extent of the lobbying so they could question you to make a determination as to whether or not they have been prejudicied in any manner. He reported the Jennings case went further than that stating that if you have been lobbied,there is a presumption of prejudice and the mere fact that you tell someone that you have been lobbied is not enough as there will be a presumption of prejudice which means that the burden will shift to the member, in the event they are attacked in court to prove there was no prejudice as a result in the lobbying.

He told the Council what this means is when they sit in a quasi judicial hearing, they should not allow themselves to be lobbied. He expounded this would mean phone calls from neighbors or attorneys who should have a better understanding of the law and not call in the first place. He thought that the Council member or Mayor should not talk to them and should end the conversation. He suggested if they do receive calls they just explain this is a quasi judicial matter and they should appear at the public hearing and tell what they have to tell.

Mr. Randolph thought where it gets difficult is in its interpretation as does this mean they should not be looking at letters that come in with regard to a particular matter before the hearing and does this mean they cannot talk to staff with regards to a particular matter coming before the Council at a public hearing.

Mrs. Royal asked if the Council would be able to view the site that is a subject of a variance or special exception? Mr. Randolph thought if this was stretched to the extreme, he would have to respond they should not, as as a Judge they should learn everything they have to learn about a particular matter at that public hearing, so that would mean they don't go to the property and visit it beforehand, and they shouldn't look at letters from the neighbors before the meeting, and they would not talk to staff in regard to the matter. He commented he doesn't know how to advise them legally on this, as staff serves the Council and Mayor to allow them to be informed in regard to particular things and if all they are doing is being informed, just as a judicial assistant might be informing his or her judge, that they should be able to receive that information from staff which is available also to anyone else.

Town Atty's comments on various state laws applying to Town Counc. activities (cont'd)

Mr. Randolph believed a strict violation of the law would be if a Council member went to the staff member and asked how they should vote on a particular matter.

Mrs. Wiener recalled she has never visited a site of a variance or special exception as the owner may be about and she viewed this an an improper thing and she thought that looking at the blueprint and asking staff technical questions that may have to do with the Ordinance would be the extent of that conversation. She believed that an applicant could also receive that type of information from the staff as they would look at the plan and ask for advice on that applicable ordinance. She believed that was not a conflict with the Law.

Mr. Randolph stated he doesn't know what would be interpreted with the case law as it seems to him if they need to be informed with regards to that to the limitation that has been explained. Mrs. Wiener felt there may be more danger in this area that anything else they do. Mr. Randolph did not think they should give consideration to letters and if there is an objection,it should be heard at the public hearing, rather than them possibly forming an opinion based upon contact either by telephone or letter. Mrs. Wiener asked what should she do when she receives a letter at her home and she opens it up and starts reading it? Mr. Randolph acknowledged those types of things are going to happen and once a determination has been made of the subject matter, she stop reading it and turn it over to Mr. Doney and have it brought up at the public hearing.

Mrs. Royal noted since this is a small Town, she was sure there would be some cases where one of the five members of the Council would be familiar with the location of a particular variance or special exception to which Mr. Randolph responded that could not be avoided. Mrs. Royal asked if that person who was familiar should remove themselves from the deliberation to which Mr. Randolph responded negatively, indicating these things are recognized by the court as being unavoidable.

Mr. Shaw pointed out if they are not going to be able to read the back-up material, and everything has to be absorbed at the meeting, they may be here for two days. Mr. Randolph explained he does not know how this law will ultimately be applied, and it is hard to draw the line, as if they don't draw the line by saying that independent communication should not be included as part of the back-up before a meeting,then people will use that a a way of getting around the law by simply submitting it through the Town Manager's office and making independent communications. He felt the safest way to handle this would be to not read the independent communications prior to the meeting.

A short break was taken.

President Wiener reconvened the meeting.

Mr. Randolph advised the Mayor and Council as long as they keep in mind the intent of the law in this regard, they will be in good shape. He knows there will be things they will struggle with as if the independent communications received are part of the package and are available to the public, there could be no harm.

Mr. Randolph believed there would be some problems, but he believed there was a good understanding of the Law. He stated the problem is violating it is not as it relates to the Mayor and Council individually,but because of what can come out of it and that is the action taken could be overturned, and the burden will be on the members of Council and Mayor if there has been an ex-parte communication to prove that the applicant has not been prejudiced in regard to it.

Mr. Randolph explained zoning decisions in the past have been determined to be legislative, so there was never any concern that they had to deal quasi-judicially with zoning matters. He advised the Snyder decision came out and said in some instances zoning decisions will be quasi-judicial when they are dealing with a particular piece of property or an identifiable small group of properties, that would be quasi-judicial instead of legislative and the elements of due process need to be applied as it relates to a specific property, even if it is a zoning amendment that is being made.

Conflicts of Interest

CONFLICTS OF INTEREST: Mr. Randolph explained they cannot abstain from voting at a public meeting unless there is a recognized conflict of interest, which means they have an issue before them which inures to their special private gain.

He advised when there is a conflict of interest, it must be announced publicly at the meeting and then the form filed within fifteen days. He stated there are "permissive" conflicts of interest which may not exactly meet the definition of inuring to someone's special private gain, but which the Ethics Commission has allowed people to abstain, for example, when a former client of someone may have an issue,and because of the perception that the public might think the member has toward the applicant, they may abstain.

Mr. Randolph advised they may not abstain because they may be embarrassed about voting on a particular issue if their neighbor is involved, for instance, as those are not he kind of things the law contemplates allowing them to abstain.

Mr. Randolph reported they cannot vote if it reasonably inures to their private gain, or loss for that matter, they cannot vote. He referred to a zoning measure where an application is before them which relates to their particular neighborhood and if it is felt by downzoning it,they would be affecting their particular property or by upgrading the zoning, it would inure to their private gain, there is nothing to preclude them from voting in that kind of matter as the Ethics Committee has interpreted the word "special" and if it is general and affects a large class of people, it would not inure to their special private gain.

Mr. Randolph explained that there are several tests applied by the Ethics Commission:

1. The Remote and Speculative Test.

Town Atty's comments on various state laws applying to Town Counc. activities (cont'd)

2. The Size of Class Test.

3. The Gain or Loss Test.

Mr. Shaw asked if he would have a conflict if the school where his daughter attends would come before the Council to which Mr. Randolph responded he thought that would fall into speculative and general and he would have nothing to gain. He stated his answer would be different if Mr. Shaw was on the board.

Mrs. Royal asked if there was a possibility there would be a lawsuit arising out of an issue, could the Council meet if there are minutes taken? Mr. Randolph stated they could as there is an amendment to the law where they can meet outside of the public to discuss litigation which they are proposing to settle,but it has to be recorded and minutes taken and that must be made available to the public upon conclusion of the matter. Mrs. Royal stated that is with regards to matters already in litigation to which Mr. Randolph responded affirmatively.

GIFTS: Mr. Randolph explained the specifics are they should not accept any gifts if it is given to sway their decision in regard to any matter which comes before them. He stated there are limitations on the solicitation and acceptance of gifts without regard to potential influence. He stated certain gifts should never be received as from lobbyists with a value of over $100. He stated exceptions are if it is something that can be consumed in one sitting. Mrs. Wiener pointed out there are no registered lobbyists in the Town.

Town Atty. comments on Town Council's consideration of and actions on Zoing Applications

IV. TOWN ATTORNEY COMMENTS ON TOWN COUNCIL'S CONSIDERATION OF AND ACTIONS ON ZONING APPLICATIONS: Mr. Randolph explained that a Special Exception is something that someone is entitled to if they meet the criteria set forth in the Zoning Ordinance. He noted if the criteria is not met, the burden shifts to the Council to show the applicant why they have not met the criteria. He stated they also must meet the criteria for Site Plan Review which comes under 9.60 of the Ordinance. He advised in granting the Special Exception, it should be found that the applicant has complied with all of the requirements stated under the criteria and the action taken requires to approve, approve with changes, or to deny. He thought it was a good idea to include in the motion the following, since this is a quasi-judicial proceeding:

1. Specify there is compliance, if that is the case.
2. If denied, they should specify where the applicant has not met the requirements of the Ordinance.

He advised on a variance, the person is not entitled to a variance, which is granted under certain circumstances set forth specifically in the Code and it should be remembered a variance is granted when there is a hardship is shown or there is something unique to the property which would allow someone to receive a variance. He advised it doesn't apply when someone comes in and states they have a growing family and needs to increase the size of the house as that is not a hardship. He stated an uniquely shaped lot would be a hardship as it applied to the land.

He believed some procedures should be changed, particularly as they relate to the hearing of variances and special exceptions and he asked for consideration of the swearing in of all who will speak on variances and special exceptions to be sworn. Mrs. Wiener stated she didn't wish to overorganize the procedures, but if the law requires it, they will do it. Mr. Randolph thought they needed to do it, as he considers it a fundamental element of due process. He believed they have to advise people they do have the right to cross-examine with regards to variance and special exception applications.

Mrs. Smith asked if it would be a help for the people who wish to speak to the Council, submit their names 30 minutes prior to the hearing of the applications and if they haven't submitted their name,they would not be able to speak. Mr. Randolph responded that could be done but he does worry about denying someone the right to speak if they don't have a card on file, particularly as late as the Town Council meetings are and some people arrive late afternoon or early evening and he thought if someone comes in to speak, they should be afforded the opportunity to speak. Mrs. Wiener asked what will happen if they are not allowed to speak to which Mr Randolph responded they could go to court and explain they were not given the opportunity and if the court deemed that due process was not involved, it would have to be reconsidered by the Council.

Mrs. Smith made a motion to adopt the recommendation of Mr. Randolph that speakers to Special Exceptions and Variances be sworn in. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

V. CONSIDERATION OF PROCEDURES FOR OTHER TOWN COUNCIL MATTERS:

Consideration of expenditures by elected officials

A. CONSIDERATION OF EXPENDITURES BY ELECTED OFFICIALS:
Mr. Doney stated this item concerns not only travel expenses but the ordering of some particular material or publication and he thought this should be considered at a Town Council meeting and everyone who will be representing the Town at a conference or seminar should have the entire Town Council's approval. He stated they budget annually approximately $3000 and if there is not enough money budgeted, he would request the Council to transfer funds from the Undesignated General Fund Balance. He recommended an elected official attending any conference or seminar be approved in advance of the registration.

He recalled sometimes there is not enough advance notice for this to be considered by the Town Council and in those instances, he gets approval from the Town Council President and it is brought up at a Special Meeting or the next Town Council Meeting.

Mrs. Wiener agreed the Council must approve all expenses as none of them can spend money on an individual basis and she would not indulge in anything like that. She didn't think it was a problem, but it has to go through a normal procedure and have it authorized by the entire Council.

Mrs. Smith made a motion that all expenditures for travel expenses by any member of the Town Council be approved by the full Council prior to the registration forms being sent. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Doney noted there are conferences such as the Legislative Conference, annual meetings of the Florida League of Cities, the Hurricane Conference, the Florida Shore & Beach Preservation or the Summer Technical Conference, many good conferences and they should be handled on a case-by-case

Res. 9-94

Landmark of 162 Peruvian Ave.(cont'd)

Motion was made by Mrs. Smith, seconded by Mrs. Royal that the Designation Report be a part of the record. Motion carried unanimously on roll call.

Mr. Shaw thought the house could be landmarked, even if the zoning is changed. Mr. Broberg did not agree noting that the house needs to be completely renovated, and the extensive renovations would not warrant it remaining as a residence for use as a rental property. Mr. Shaw felt if it was landmarked under the existing conditions, it will be what it is today, and if the use is changed at some future date to office space, the landmarking would still exist. Mr. Broberg announced if the moving of the building is not a viable option, that is correct.

Mrs. Royal asked Mr. Frank if the house is landmarked and there is a desire for an adaptive re-use, can they then go to the Zoning Commission and request a re-use and would the Landmark Commission oversee the renovation of the property if it is rezoned, to which Mr. Frank responded affirmatively. Mr. Broberg pointed out the Landmarks Preservation would oversee the renovation, no matter what, if it is designated today.

Mrs. Smith believed the house met the criteria for landmarking and to defer this for one year would set a terrible precedent and she moved the Res. 9-94 for the landmarking of 162 Peruvian be adopted. Seconded by Mr. Weinberg.

Attorney Randolph read the Resolution, noting it is Res. 9-94 relating to 162 Peruvian Avenue:

> 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 IN THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

Res. 15-94 Landmark of 221 Monterey Road

B. Landmark Designation for 221 Monterey Road - Consideration of Resolution No. 15-94 - Mr. Frank explained this property has been found by the Landmarks Preservation Commission to meet the Criteria C and D as recited for the previous landmarking. Mr. Frank reported the architect is Maurice Fatio.

Mrs. Day reported the house was designed in 1935 by the architectural firm of Trainer and Fatio and was built by E. B. Walton. She noted this was the fourth of thirteen houses designed by Mr. Fatio for this building firm and was the basis of how he got his architectural firm through the lean years of the Depression years.

She stated it is a Neo Classical style which was the most popular style of architecture built in the first half of this century. She pointed out the most prominent feature is the front porch which is on the south facade and which is two stories in height and supported by classical columns. She noted there is regular fenestration with windows on each side of the front door and three windows evenly placed above. She noted the windows are also typical of the Neo Classical styling and are 8 over 8, doublehung sash windows and on either side of the front door are classical pillasters. She noted there is a gable roof with a shed roof over the prominent front porch. She recommended it for landmarking.

Motion was made by Mrs. Smith to accept the designation report as part of the record. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Shaw suggested they landmark just the front portion of the house and not the garage/bedroom addition. Mrs. Day pointed out it was not an addition but the original house, and was used as the service wing of the property. Mr. Shaw thought the landmarking should be the front facade, as he viewed that as the main section of the house.

Mrs. Smith did not believe the Town Council should supersede what the Landmarks Commission has done as they have recommended approval of the entire house. Mr. Shaw did not agree and thought the front facade is the character they wished to preserve and he would recommend that is what be landmarked.

Mrs. Day recalled the owner of the property was at the Landmarks Commission hearing and he was in favor of the landmarking.

Mrs. Jane Volk, Chairman of the Landmarks Preservation Commission clarified that the Commission did consider the fact that there were awnings on the property but recognized that they were an auxiliary addition and are easily removable.

Motion was made by Mrs. Smith that Resolution No. 15-94 be adopted designating 221 Monterey Road as a landmark, as it meets Criteria C and D. Seconded by Mr. Weinberg.

Attorney Randolph read Resolution No. 15-94, which designated 221 Monterey Road:

> A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTRY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried 4-1 with Mr. Shaw voting against the motion.

Dune Pres. Permit App. No. 2-94

C. Dune Preservation Permit Application No. 2-94 - Consideration of the Class I Permit Application of Irwin and Terry Kramer, relative to Lots 5 and part of 6, Casa Apava; commonly known as 1295 South Ocean Boulevard. Applicant proposes to add beach-compatible sand, trim seagrape, remove exotic vegetation, and revegetate per application on file at

Dune Pres. Permit No. 2-94 (cont'd)

the Town Building Department. Mrs. Peters gave the oath to all who will testify on this matter. Mr. Zimmerman reported Mr. Brian House and Mr. Gann-Matzen are both here to offer their testimony. Attorney Ron Kolins addressed the Council on behalf of his clients, Irwin and Terry Kramer, indicating this is an application for a Class I Dune Preservation Permit. He advised what they are proposing is a dune enhancement program in conjunction with the construction of the residence, which will be a major benefit to the dune and to improve the eco system there now.

Mr. Kolins believed the dune in that area is already tremendously altered to the north and south and there are residences being constructed which are being built on all or part of the dune. He pointed out the dune that remains on his clients' property is low and has been altered. He proposed to enhance that dune by taking on site material and building it up out to the Coastal Construction Control Line. He noted he had received great cooperation from the staff as well as George Gann-Matzen, the Town's consultant and they have agreed to all of the recommendations offered by Mr. Gann-Matzen.

Mr. Kolins reported they will be removing the great number of exotics on the property, including the Australian Pines. He advised the dune will be enhanced by raising it from the rear of the house to the Coastal Construction Control Line, which is a significant enhancement and the fill used will be taken from the site itself. He noted the area landward of the Coastal Construction Control Line will be revegetated with grass, three terraces which extend off the rear of the house and it has been determined to be secondary structures, which would allow them to intrude up to fifteen feet.

Mr. Kolins indicated in the areas along the sides of the house which extend from 167 to 180 feet from the seawall will have new areas of vegetation created heavily planting species which have been approved by the consultant.

Mr. Kolins noted between the Coastal Construction Control Line and the seawall, after the exotics are removed, the existing vegetation will be retained and will be enhanced by a great variety of approved species, filling in the areas where the exotics will be removed. He advised there will be a dune walkover which has been placed to allow the minimum amount of disruption from the existing vegetation. He advised an irrigation system will be installed.

He recalled a report dated March 2, 1994, has been submitted by Mr. Gann-Matzen and the staff has reviewed it and his clients agree to all of the proposed modifications reflected in the letter, and if there need to be minor modifications, they would be agreeable to it.

Mrs. Smith moved approval of Dune Preservation Permit Application 2-94 incorporating the conditions of Mr. Gann-Matzen as contained in his letter of March 2, 1994 with which Mr. Kolins is in agreement. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Licenses & Permits

IX. LICENSES AND PERMITS

Charitable Solicitations

A. Charitable Solicitation

1. The Center for Family Services; No. 252-94 - Mrs. Peters reported this was not approved by staff as the audit submitted with the application was over eighteen months old. Mr. Edwin Reed, Executive Director of the Center for Family Services addressed the Council noting that the audit process was interrupted since their largest office was put onto computer, which took three months longer than they had anticipated. He advised the schedules have been completed and they have gone back to the Auditor and he is now awaiting the completed and up-to-date audit. Mrs. Wiener asked if this would ever happen again to which Mr. Reed responded it would not. A motion was made by Mrs. Royal that the Charitable Solicitation Permit be granted to the Center for Family Services. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Masterworks Chorus of the Palm Beaches, Inc.; No. 368-94 - Mrs. Peters noted their application was not received timely and if approval is granted, it should be conditioned upon going through all of the Departments. Motion was made by Mrs. Smith to grant the permit conditioned upon approval by all of the departments. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Committee Report

X. COMMITTEE REPORT

ORS Committee Report

A. Ordinance, Rules and Standards Committee Report of March 3, 1994 -REPORT OF THE ORDINANCE, RULES & STANDARDS COMMITTEE MEETING OF MARCH 3,1994.

Roll Call

I. CALL TO ORDER AND ROLL CALL: The Ordinance, Rules & Standards Committee Meeting was called to order by Chairperson Royal at 2:07 PM on March 3, 1994 in the Town Hall Council Chambers. On roll call, Chairperson Royal and Committee member Shaw were found to be in attendance. Also attending were Town Manager Doney, Town Attorney Randolph, Assistant to the Town Manager Jakubiak, Town Clerk Peters, Director of Public Works Dusey, Town Engineer Bowser, Public Works Inspector Mike Eterginio, and Director of Planning, Building and Zoning Moore.

II. APPROVAL OF AGENDA: Agenda was approved as printed.

Proposed ordinance re: Cable TV Consumer Protection & Competition Act of 1992

III. CONSIDERATION OF PROPOSED ORDINANCE WHICH WILL ADOPT RULES AND ENFORCEMENT MECHANISM TO REGULATE CUSTOMER SERVICE STANDARDS IN COMPLIANCE WITH THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992. After discussion, and hearing the comments of Len Rozek, General Manager and Regional Vice President of Comcast Cablevision of West Palm Beach, it is the RECOMMENDATION OF THE ORDINANCE, RULES & STANDARDS COMMITTEE that consideration of the proposed Ordinance to regulate customer service standards in compliance with the Cable Television Consumer Protection and Competition Act of 1992 be postponed for 45 to 60 days, during which time Comcast will send the Town an analysis of Comcast's telephone call breakdowns for the past twelve months and a mechanism will be put into place within the next two to three weeks, to track specifically the calls received from customers in the Town of Palm Beach. A motion was made and approved that the twelve month historical analysis would be based on the total subscriber base of Comcast (and not Town specific). However, within two weeks, Comcast would put a manual system in place to track all future telephone calls from Town of Palm Beach residents. A report will be received within 45 days and another meeting of the Ordinance, Rules and Standards Committee will be scheduled to receive the report.

IV. CONSIDERATION OF RIGHT-OF-WAY PERMIT ISSUES: — Consideration of Right-of-Way Permit Issues

A. PUBLIC RIGHTS-OF-WAY PERMIT ISSUES: After discussion, it is THE RECOMMENDATION OF THE COMMITTEE THAT staff develop a formula to categorize the type of requests for right-of-way permits, and a determination be made for the residential and the commercial districts and in each district recommendations be made as to the time constraints for those particular districts during which right-of-way permits could be issued, i.e - the summer months, a nine month period and perhaps in the residential district, a year round period. This information should be prepared for an ORS meeting to be held in May with recommendations to the Town Council for the June meeting, in order that an Ordinance may be prepared for first reading in July. It is the FURTHER RECOMMENDATION OF THE COMMITTEE that an Ordinance be prepared which would reference a Minimum Standards Applicable to Use of Public Rights-of-Way manual, which would be a document used by contractors and utility companies. This document would be prepared by the Public Works Department, spiral bound, and would be easily updated.

B. SECTION 12-51 - HOURS FOR CONSTRUCTION WORK: After discussion, it is the RECOMMENDATION OF THE COMMITTEE that on Worth Avenue, the Town Attorney be authorized to prepare an Ordinance which would prohibit right-of-way permits to be issued after November 1 on Worth Avenue; and restricted hours for construction work would be amended to begin on November 15, rather than December 1, with work hours to extend to 7:00 PM except Sundays and holidays. — Hours for Construction Work (Sect. 12-51)

C. SECTION 11-30 - PARKING OF TRUCKS, COMMERCIAL VEHICLES LIMITED. After discussion, it is the RECOMMENDATION OF THE COMMITTEE that input be received from each of the affected Department Heads and this would be to look into general parking concerns for all zoning districts, as it relates to construction related parking and this subject be put on the agenda of a future ORS Committee meeting for further consideration of Section 11-30 of the Town Code. — Parking Limitations (Sect. 11-30)

V. ANY OTHER MATTERS:

A. SHORT TERM OCCUPATIONAL LICENSES: Mr. Moore advised there are some businesses which come to the Town to hold sales of their items for several days or for a week at local hotels, from their hotel room and he wondered if these merchants should be requested to obtain a short-term occupational license. After discussion, it is the RECOMMENDATION OF THE COMMITTEE that the issue be brought to the attention of the Town Council and a consensus be obtained as to where this subject should be directed. — Short Term Occupational Licenses

VI. ADJOURNMENT: Meeting was adjourned at 4:55 PM. — Adjournment

Signed by Michele Clarke Royal, Chairperson and Leslie A. Shaw, Committee Member

Mrs. Royal indicated the representatives from Comcast were at the meeting and they did state they could breakdown the monitoring of their system to give information which is Town specific and they will be able to continue that for at least one year of manual record keeping, during which time, the Town can input to them if there are certain categories which should be added or deleted or amended. She believed Comcast wanted to work with the Town so the information can be received that is needed so the Town can fulfill their obligation to regulate the cable provider as per service. — Comcast - Cable TV

Motion was made by Mr. Shaw that the recommendation of the Ordinance, Rules & Standards Committee that the proposal by Comcast to provide us with a detailed accounting based on criteria that they have set up will be made available to us as written in Section Three in the Report of the Ordinance, Rules & Standards Committee with the inclusion that they will continue to do so for one year, at which time we will re-evaluate. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

After hearing the comments of Mr. Shaw with regards to the Right of Way Permits, noting the recommendation is to categorize the type of requests and a determination be made for the residential and the commercial districts and the permits be issued only certain times of the year, Mr. Weinberg commented he would like to have the input from the Building Department and since Mr. Moore is not here today, he would like to send this back to the Public Works Committee to further investigate. Mrs. Wiener agreed noting they wish to keep the Town as a place that is easy to live in for all the residents and she would also like to hear input from the Building Department. Mr. Doney clarified that the Building Department does issue the permits, but the Public Works Department is the Department which makes the decision as to whether or not a Right of Way Permit should be issued and this is done in conjunction with the Police Department. Mr. Dusey was asked by Mrs. Smith if he thought staff time would be utilized properly in creating the categories referred to in the ORS Report? Mr. Dusey responded this was in response to a suggestion that the season should be shrunk somewhat. He noted they do things in the rights-of-way year round which do not disturb the residents, however, excavations of the street are not allowed. He felt to categorize is not something that has to be done, however, it would take away the discretion his Department now has, which may be a problem or it may not be. Mrs. Smith thought the only way it should be broken down is between the Commercial and Residential as she didn't want to see the streets torn up during the season. Motion was made by Mrs. Smith that the issue of right-of-way permits be referred to the Public Works Committee for consideration of categorizing the issuance of permits by the residential and commercial areas. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. — Richt of Way Permits

PUBLIC RIGHTS OF WAY MANUAL. Motion was made by Mr. Shaw that the Public Works Department be authorized to prepare a manual which will be used as a guideline for rights-of-way and its cost will be born by the sale of the said manual. Mrs. Wiener felt they were getting into the Finance & Tax area with regards to the sale of the manual. Mrs. Smith asked that he amend the motion to exclude the reference to the cost. Mr. Shaw restated the motion that an Ordinance be prepared which would reference a Minimum Standards Applicable to Use of Public Rights-of-Way Manual, which will be a document used by contractors and utility companies. Seconded by Mrs. Royal. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion. — Public Rights of Way Manual

Hours of Construction Work

HOURS OF CONSTRUCTION WORK: Mr. Shaw made the motion that the Town Attorney be authorized to prepare an Ordinance which would prohibit right-of-way permits to be issued after November 1 on Worth Avenue, and restricted hours for construction work would be amended to begin on November 15, rather than December 1, with work hours extended by an additional hour to 7 PM, except Sundays and Holidays. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Parking Limitations

PARKING OF TRUCKS, COMMERCIAL VEHICLES LIMITED. Mrs. Royal stated this recommendation is that all affected Department Heads look into the general parking requirements for all zoning districts as it relates to construction related parking and this be again considered by the Ordinance, Rules & Standards Committee meeting for further consideration and a recommendation to the Town Council. Mrs. Smith wondered why they were looking into this for all zoning districts as that is the whole Town. Mr. Shaw responded there was a concern about Section 11-30 and there was discussion on a worker's vehicle and a construction vehicle as the construction vehicle is not the vehicle the worker comes to work in and parks it on the street. He noted Section 11-30 almost negates what their intent is as the section is vague.

Mr. Weinberg asked Chief Terlizzese for his comments on the parking. Chief Terlizzese addressed the Council, pointing parking has been a problem since 1929, when the Town commissioned the first parking study, and he has spent many years studying the problem. He recalled the area to which they referred earlier was a part of that study. He advised in the fifties the Town had 24 traffic signals when another study was commissioned to study parking and traffic flow and 20 traffic signals were removed. Mrs. Royal read Section 11-30 to the Mayor and Council, which she thought definitely needed to be amended as it gives construction vehicles carte blanche with regards to parking. She asked the Chief if construction vehicles have caused a problem to which the Chief responded affirmatively, especially in the residential sections of the Town. He indicated a lot of construction workers use their vehicles to carry their equipment to the job site and if they are not allowed to do so, the construction time will be prolonged. Mrs. Royal asked if they needed to be parked directly in front of the job site to which Chief Terlizzese responded that usually is handled in the preconstruction meetings between Public Works, Building Department and the Police Department.

Mrs. Royal asked how he would like to see the ordinance amended with regards to Section 11-30? Chief Terlizzese felt flexibility needed to be there to allow the contractors and the workers the opportunity to complete the construction work, which in the long run is a benefit to the property owners. He felt they had to be realistic.

Mr. Doney pointed out the Chief was not at the ORS Meeting and staff needs to look at this with the Town Attorney as there are different implications with different departments and it needs to be studied by all and brought back to the ORS Committee.

Mr. Weinberg moved the issue be referred back to the staff and to the Town Attorney and upon reaching a decision, it be referred to the Ordinance, Rules & Standards Committee. Seconded by Mrs. Royal. On roll call, the motion carried 3-2 with Mrs. Smith and Mrs. Wiener voting against the motion.

Short Term Occupational Licenses

SHORT TERM OCCUPATIONAL LICENSES: Mrs. Royal noted the recommendation is that this be brought before the Town Council and a decision be made as to which Committee this should be directed for further study. Mrs. Wiener suggested this be a part of the Zoning Commission agenda for 1994-5 Zoning Season and Mrs. Smith so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XI. OLD BUSINESS

A. Ordinances - Second Reading

ORD. 3-94

1. Ordinance No. 3-94 - Rescinding Town of Palm Beach Endowment Fund Ordinance No. 5-87 and Resolution No. 42-86 - Attorney Randolph read Ordinance No. 3-94 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING CHAPTER 2, ARTICLE XI, CODE OF ORDINANCES RELATING TO ENDOWMENT FUND: FURTHER RESCINDING RESOLUTION NUMBER 42-86 RELATING TO SAID ENDOWMENT FUND; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Smith, seconded by Mr. Weinberg to approve the Ordinance No. 3-94. On roll call, the motion carried unanimously.

Ord. 4-94

2. Ordinance No. 4-94 - Amendments to Turtle Protection Ordinance

Attorney Randolph read the Ordinance by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN'S SEA TURTLE PROTECTION ORDINANCE AT SECTION 14-66 ("LIGHTING RESTRICTION ALONG THE BEACH") AND SECTION 14-69 ("OCEAN FRONT DEVELOPMENT"); PROVIDING FOR SEVERABILITY;PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Smith, seconded by Mr. Weinberg to approve Ordinance No. 4-94. On roll call, the motion carried unanimously.

Ord. 5-94

3. Ordinance No. 5-94 - Amendment to Commercial Solid Waste Collection Fee Ordinance - Attorney Randolph read Ordinance No. 5-94 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 8 OF THE TOWN CODE OF ORDINANCES, GARBAGE AND TRASH, AT SECTION 8-21 THEREOF PROVIDING THAT SAID SECTION SHALL NOT APPLY TO EXISTING CONTRACTS; PROVIDING A NEW SECTION 8-38 RELATING TO APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Weinberg, seconded by Mrs. Smith to approve Ordinance No. 5-94. On roll call, the motion carried unanimously.

B. Other

1. Consideration of Beach Cleaning Advisory Committee Final Report Dated February 25, 1994 - Request for Town Council to Schedule Special Town Council Meeting During March 1994 - Mrs. Wiener thanked the Committee for their work on the Beach Cleaning Advisory Committee. Mr. McAllister, Chairman of the Committee thanked the Mayor and members of the Town Council for receiving the report. After discussion, the Town Council set the date of March 22, 1994 at 10 AM for the formal receipt of the report and it will be a Town Council Meeting and not a Workshop. Beach Cleaning Advisory Comm.Report

2. Consideration of Proposed Water Franchise Agreement with the City of West Palm Beach - Status Report by Town Staff - Mr. Doney reported a meeting was held March 4, 1994 with the City Attorney of West Palm Beach, Mr. Randolph, Mr. Elwell and himself. Mr. Randolph referred to the proposed agreement, indicating there is a concern about the water pressure and the City used the word "average" which doesn't satisfy the Town. He reported the City understands our concern but they have a concern about guaranteeing an absolute minimum pressure of 40 psi at all times, due to the demand situation and circumstances beyond their control. Water Franchise Agreement

Mr. Randolph reported what was agreed is the technical staffs of both the Town and the City will work together to supply language which will replace the word "average" and it will be acceptable to both municipalities. He noted they are trying to redefine the pressure requirement to satisfy each party. He stated the Town's concern is not related to "average minimum pressure" and the City of West Palm Beach's concern is they not be bound to something beyond their control.

He recalled the Town's staff did not want to see any above ground storage facilities and it was agreed to insert language which would assure there would be no above ground facilities to be constructed within the Town, without the prior written consent from the Town and that language would be amended to reflect that provision.

He advised the Town's staff wanted the agreement to be exclusive for potable water, but nonexclusive for non-potable because the Town has concerns about what is happening in the industry and a lot of things are happening to allow the use of gray water. He recalled the City's concern in response to that was that they are going to have to look at the amount of consumption of non-potable water in the Town to see how it would affect their position financially. He did not believe there was concern about golf courses doing what they want in regard to reuse, and they don't have a problem with that but their concern is if they don't want to allow anyone to come in on a competitive basis for the provision of potable water.

Mrs. Royal thought the Town would want to keep their options open there, as if someone comes up with a supply of non-potable water which is more cost effective for our residents, she would not want to enter into a contract that would not allow that. He stated they are going back to look at their records to see how meaningful this provision would be to them and if it is found it is not much of a problem, then they will move forward on this. However, Mr. Randolph stated he believed they will find they do supply a large amount of non-potable water to the Town. He thought the Council needed to determine whether the same thing can be accomplished by allowing private users within the Town to provide their own non-potable water, as the City doesn't disagree with that.

Mr. Randolph noted the next item is with regard to capital improvements which would be made and a determination will not be able to be made prior to a hydraulic study being completed, as to what capital improvements need to be made. He reported the February deadline will be here before the hydraulic study is completed, and if language could be drawn up which will specify performance standards which have to be met by the City, and it may not be necessary for them to append an exhibit. He recalled the City does have a concern that they would not be able to draw up performance standards which will be specific enough to satisfy both parties, but they have agreed an attempt should be made to do that. He stated it was left that the City and the Town staff will sit down together to make a determination if they could provide performance standards which will be satisfactory to both, which would preclude the Town from having to append the document.

Mr. Randolph referred to the section where the City has written they do reserve the right from time to time to make additions to and deletions from said plans and to adjust the schedule in accordance with operational considerations and funding considerations. Mr. Randolph felt that gave the City the authority to do anything and the Town told them they could not live with that and their response was they will revise that paragraph so the City would not have absolute flexibility.

Mr. Weinberg wanted to know if that would allow the Town to be involved in a series of priorities with regards to capital improvements to which Mr. Randolph responded he believed if there is an exhibit attached to the Agreement which will talk about the specifics, then the Town would be involved in making a determination as to what will happen with regards to the capital improvements. He advised they are trying not to be so specific, however, and to draft some performance standards which would be satisfactory to the Town.

Mrs. Smith asked if there was some provision in the Agreement where the Town had the right to get the City's immediate attention in the event of an emergency, as she reads it it states the City of West Palm Beach is going to be making the decision as to whether or not there is a major problem and who would make the final determination as far as the Town is concerned? Mr. Randolph responded the Town would, if they don't comply with the standards and that is why the standards have to be specific. He advised the language they are now looking at is not satisfactory to the Town staff and that will come out and new language will be drafted by the City in an attempt to satisfy us and it will be reviewed.

Mr. Randolph noted the next concern is that the City needs to include language that the City will pay for certain relocation and adjustments of its facilities with regard to certain Town projects and the City has agreed to look at that language and adjust it in a manner which will satisfy the concerns of the Town. He hoped this will mean they could sit down on an annual basis with the representatives from the City of West Palm Beach and make a determination as to what the projects are and as long as they are advised in advance what the projects are, they will plan accordingly and they will pay for those. Mrs. Royal asked if that would include, for instance, improvement of roadways? Mr. Randolph believed there could be a five year improvement program process and they would sit down with the City and go over that five year improvement program, the roadways and come to an agreement with the City that they would take care of the relocations of their facilities when the Town has to go into the roadways.

Mr. Randolph pointed out the $300,000 mentioned in the City's proposed agreement was not satisfactory to staff who felt a formula was needed to determine the amount they would pay, rather than the fixed amount, as the fixed amount could vary from time to time. Mr. Randolph recalled the City did agree to replace the $300,000 figure with a formula which will be developed by the staffs of both municipalities.

Water Franchise Agreement (cont'd)

Mr. Shaw asked if the formula included consideration of the inverse rates, as far as allocation of the inverse rate back to the capital improvements? Mr. Shaw explained the inverse rate is an amount and if it is going to be charged, would not be a number that would come from actual cost of production, i. e. if it were determined there were more residential units on a given piece of property, even though the same amount of water were being consumed, the City would have a lower water rate and the fact that they are getting the benefit of a higher water rate because of the lower density, they should at least get the benefit of that being fit into the formula, so there would be a little bit more flexibility.

Mr. Randolph believed this formula was intended to deal with construction and removal of lines in any particular year and he didn't think it dealt with the rate making. Mr. Shaw commented he is not talking about the rate making as what they are saying is they are trying to replace $300,000 to be spent on replacement/renewal of the utilities, and a formula is being developed and what he is asking is that the formula take into consideration that part of the revenue that is being generated by the City is coming from an inverse rate and that revenue is not a criteria of a cost to produce or deliver water, but an arbitrary penalty being placed on the Town for the excess use. He felt if they are going to get the money, they should give back to the Town their fair share of the money in the form of a capital improvement project.

Mrs. Royal hoped that it be something like a CPI as all prices do escalate. Mr. Randolph recalled the CPI was one of the things mentioned in one of their discussions and it may well be what does come back, but he hasn't seen that language as yet.

Mr. Randolph referred to Section 5, which the City did not consider to be a major item, and they acknowledge the need for water conservation and noted the Town's efforts and this section describes future actions of both parties, but would not be written in a way to dictate to the Town what it has to do in regard to conservation, but have language that both are cooperative towards conservation.

Meeting adjourned for lunch. President Wiener reconvened the meeting after the luncheon break.

Mr. Randolph referred to Section 6, which dealt with the surcharge and the Town adamantly objects to any language permitting a surcharge, which was brought before the City staff but they feel contrary and it is an issue which will be addressed at the joint meeting.

He noted in regard to the Town's participation in rate making, a note has been made that the Town would require more meaningful participation and the City Staff agreed to redraft that so as to allow the Town to have participation from the very beginning in the rate making process, and the City has agreed to have language that the Town would have input into rate making from the very beginning. He pointed out the Town would not have the say-so as to the rates but would have input.

Mr. Randolph referred to Page 8 which shows the language in the annotation which was the language of the Town's first draft and the Town staff feels strongly that they need that protection so the inverse rate block structure as it is in effect now, will not change other than proportionately. He stated the City of West Palm Beach is opposed to that as they do not feel the Town should be involved to that degree that they could not change their rates. Mr. Randolph thought it was fair as it gives the City an opportunity to change their rates but they must do so fairly and in an proportionate basis to that which exists now. He stated the City did not agree with this language.

Mr. Randolph stated the term of thirty years only means that in the event the Town was to get to a point where the Town was not satisfied with what was in the agreement, they should look at shortening the term so there would be an opportunity to see how the City is performing within a shorter term and if they were not performing, then the Agreement could be terminated and this could be renegotiated or look to other methods of obtaining water. He stated the feeling of staff is if indeed there is an agreement which is satisfactory to the Town in every respect, the thirty year term will be fine.

Mrs. Wiener recalled it has taken us three years to get to this point and she would hate to spend ten per cent of the time in every contract to try and renew the contract, as there is no reason for us to believe that if we cannot agree on something now, that they will change their minds, and the only reason the Town would do that, is if they were looking for other sources of water.

Mr. Randolph stated on the pressure question, their language remains the same as when they are talking about quality of service and the pressure, the Town would want to see some language come back that would be satisfactory to the Town with regard to something other than "average" pressure. Mrs. Royal asked if they could nail it down and state 40 pounds per square inch as a minimum pressure? Mr. Randolph stated that would be something that would be favorable to the Town and that is the way he would look towards drafting it. He expected the City when it drafts it, would go the other way.

Mr. Randolph stated he made an annotation on Page 9 that the Town should not have to pay for water main flushing, as this is another activity that should be treated in the Town exactly the same as it is treated in the City. He recalled at the staff meeting, the City did agree to confirm what its' policy is with regard to interfund transfers for flushing the storm sewers in the City. He stated they are going to look at this and get back with us.

Mr. Randolph referred to page 10 noting a notation has been made that the City must be able to supply sufficient water pressure in regard to back flow prevention devices on the interior of the back flow device, and the parties conceptually agreed that the paragraph be revised to specifically address the interim period between execution of the agreement and improvement of the system infra structure to the point where it meets the performance standards. He did not believe they came to an Agreement on this one at the staff meeting as to how this should be addressed. He stated the Town's feeling was that the pressure on the interior of the line should remain constant and in the event the backflow pressure device causes it be less than required under the Agreement, that the City would remove it and that is something that will be looked at.

Water Franchise Agreement (cont'd)

Mr. Doney recalled the discussion they had with the City was that they would not require the backflow preventer devices to be installed on properties where the City had not as yet met the minimum performance criteria for 40 psi's and they would hold off on that until their pressure requirements have been met.

Mr. Randolph stated the bottom of Page 10 relates to termination, and the City proposed they have 18 months upon notice from the Town to cure anything they have not complied with in the Agreement and it was indicated to the City that there may be a situation where certain things which have not been complied with, could be cured almost immediately, and the language for the default provision they want to change the default provision to provide for a sixty day period to cure any default relating to rates or other things like that and have the eighteen month period for things like capital improvements and other things which would take a longer time to cure. Mr. Shaw suggested a date of commencement should be included. Mr. Randolph thought that was a good suggestion.

Mr. Randolph referred to Page 12, which relates to the buy-out. He commented in the current agreement they are not required to pay for portions of the system which were dedicated by developers unless there were improvements and the City agreed with that. He noted a minor item is the suggestion that any evaluation of the system be done by appraisers or engineers.

Mr. Randolph noted the City version of the contract talked about averaging with two appraisers submitting their appraisals and the buy out would be determined by averaging the figures, and that method was not satisfactory to the Town as the cost of the system might not relate to anything, so it was suggested by the Town that they take out averaging and they provide a system whereby two appraisers be selected and if they cannot agree, a third appraiser be selected by those two appraisers and a price determined by that panel would be binding. He stated the City staff basically agreed to that.

Mr. Randolph noted in Section B, where it says "The Town agrees to adopt all necessary suitable ordinances for the protection of the City" the Town staff felt that was too broad and needs to be modified and the City agreed to modify it to satisfy the Town's concern.

Mr. Randolph stated a minor item was that each party designate one person to whom notice must be addressed and the City agreed to that provision. He felt there were substantive things agreed to at the staff level, but obviously, there remains a lot of items which need to be addressed at the joint meeting.

Mr. Shaw thought the review work done has been superb on the part of the two staffs, however, he would like to add something as although there have been times when consultants have been hired to negotiate some of the contracts and give input, he would like to feel free to know that they are utilizing the talent of people in the Town and felt they should approach some of the residents who feel they may be beneficial to the staff and share their knowledge and experience acquired over the years, and he moved that the Town Manager be authorized to consult with those individuals with specific knowledge and experience in the negotiation of water franchises, as he deems necessary and to the extent that he deems necessary to assist in the negotiating of this water contract.

Mrs. Wiener responded they are very close to doing something very serious on the water franchise and in one week will be meeting with the City of West Palm Beach Commission and there are experts which we have paid well and staff who have done a wonderful job and she has invited anyone who had any additional matters to bring before their Council to come and speak to them, and she thought from a time point of view, this motion was ill advised as they need to move forward and she would be very much opposed to starting a Committee at this point. Mr. Shaw responded he was not asking to start a Committee but would like those residents who would like to be a part of some of the internal discussions be able to do so with the Town Manager.

Mrs. Wiener pointed out the Town Manager is always open to telephone calls and letters and there has been a lot of them through the last few years.

Mr. Doney advised since it is important that the policy direction to move forward next week when the Council meets with the West Palm Beach City Commission, and if any individual resident comes to him with alternative suggestions, he could not advance those ideas at the City of West Palm Beach as the Town Council and Mayor of Palm Beach would not have had an opportunity to review them, and that is why procedurally it would be best if there are any suggestions they be considered at this time. He advised a letter has been received from C. H. Vescelius, Chairman of the Water Resources Committee of the Palm Beach Civic Association and the staff has reviewed them, however, he thought this was the appropriate forum in which matters need to be advanced at a Town Council Meeting.

Mrs. Wiener called for a second to the motion made by Mr. Shaw and there was none and the motion died for lack of a second.

C. H. Vescelius addressed the Council indicating he was encouraged by what has been discussed today. His Committee has been through five drafts and want to be of help to the negotiating team, but as he sees it, it is not something that may possibly be over next week, as most contract negotiations are give and take as they go. He recalled they have received a draft from the City of West Palm Beach and we are coming back with what we believe should be our draft, and that may go on with three or four or five of these draft agreements before it is finally finished. He thought each one of the drafts did require an analysis of some sort and perhaps strategy on how it should be approached. He wondered what they should do with regards to the 25% surcharge that the City of West Palm Beach is adamant about, and other items.

Mr. Vescelius wanted the Council to know they are in this as concerned citizens to help the Town if they can and the negotiations before they are completed, will have to be aggressive and he suggested they not give in too readily at all on major points and he wants them to know they have the Civic Association's support if they take that route.

Water Franchise Agreement (cont'd)

Mr. Weinberg asked Mr. Randolph how the meeting would be conducted as will the attorneys be doing the talking or do we follow up on what has been discussed today, or do they go back and start all over again. Mr. Randolph responded he didn't think they have anything to say about the manner of how their attorney is representing them, and the purpose of the staff meeting with the City was to try one last time to resolve issues and they think they have resolved some of the issues at the staff level, which may cut short some of the conversation which they might have on some of these things.

Mr. Randolph anticipated Mr. Brown would be leading the discussion on behalf of the City and whomever is selected to speak on behalf of the Town and there be an opportunity for give and take. He didn't see any final decisions coming out of that meeting and would recommend they not attempt to do that at that meeting, but this be an opportunity for the elected officials to meet face to face so each party will understand the concerns of the others.

Mrs. Wiener felt there was one way that the whole matter could be wrapped up next week and that is if the City acquiesced to the Town's recommendations.

Sebastian Ruta, 3230 South Ocean Blvd. addressed the Council and is concerned about the present water situation. He has written a letter and wishes to commend the Town Manager in sharing this letter with the City of West Palm Beach. He agreed with the statements of Mr. Randolph who does not accept certain portions of the Agreement. He recalled the predecessors provided a contract for thirty years with the City for water and that was good for the Town of Palm Beach and it is a good contract.

He referred to the minimum pressure of 40 lbs. He recalled in the original contract the pressure was to be adequate pressure and according to the underwriters, this should be at 65 lbs. He knows the Town of Palm Beach has notified the City of West Palm Beach about its' dissatisfaction with the water pressure. He understands the Town is reluctant to have a water tower. He recalled in his letter he suggested that in order to provide and maintain adequate pressure twenty four hours a day, at no cost to the taxpayers of Palm Beach, he suggested the condominium owners donate to the Town of Palm Beach the cost of electric power used to pump the water at a high level and they can do one of two things:

1. Install a modern water tower;

2. Install a pumping station.

He felt this would not only help the homeowners and taxpayers but would provide a better water pressure for the Fire Department, in the event of a fire.

He heard the comments this morning and didn't see anything wrong with having a pumping station. He thought the Council had the responsibility to see that the citizens of the Town are protected as they are elected by the people. He thought they should have an ejector station developed, with a generator. He has been in construction all of his life and he knows they can sustain a pressure of 125 lbs or more. Mrs. Wiener asked how does he suggest that this be a part of the negotiations, as she would like to get back to the contract. Mr. Ruta suggested they tell the City they have a contract with them and they have not performed for many years and they want to have the proper pressure and other things and if the City of West Palm Beach cannot do it, we will build a system that would provide the pressure that we need to have. He added when they told this Council they couldn't have one hundred pounds of pressure, they were wrong.

Mr. Adrian Winterfield addressed the Council asking at present does the Town actually purchase non-potable water from the City of West Palm Beach? He knows much of the water purchased is used for non-potable purposes. Mr. Randolph responded everything that is purchased is potable water.

Mr. Winterfield asked if the suggestions just made were adopted, in the event that the Town undertakes water capital improvements, and it has to be bonded, he did not think it should be by a General Obligation Bond but in the nature of a Revenue Bond, which would place the burden exclusively upon the water consumers.

Mr. Doney recommended Mr. Randolph lead the negotiations for the Town and the Mayor and Town Council members, he and Mr. Dusey also have the opportunity to make comments at the meeting to be held with the City Commission, to which the Council agreed.

Branch Library of Society of Four Arts at South Fire-Rescue Station

3. Consideration of Status Report by Town Council President Pro-Tem Weinberg Regarding Proposal to Have Branch Library of the Society of the Four Arts Library at the South Fire-Rescue Station Multi-Purpose Room - Mr. Weinberg reported the Society of Four Arts has declined to participate in this project and under those circumstances, he will not follow through with them any longer.

Mr. Weinberg suggested that perhaps the room could still be used by citizens and bring in revenue to the Town, such as renting it out for bridge games. Chief Elmore reported the room would not be used every day by his Department, but two or three times a week for meetings, and training for the whole department. Mrs. Wiener stated her concern of having the room used for bridge tournaments as most of the condominiums in the south end do have rooms in their buildings for this type of activity. Chief Elmore noted that frequently during the day, there would be no-one in the Fire Station as when there is a fire call, all personnel do leave. He stated this happens when his personnel are inspecting or training or performing any services, there is nobody left in the Fire Station and it is locked up. He noted there is no cleaning crew beyond the firefighters and that would also be a problem.

Donation and distribution of fruit to homeless food centers

4. Consideration of Request for Donation and Distribution of Fruit to Homeless Food Centers - Status Report by Town Staff - Mr. Dusey stated a memorandum has been prepared on this and this does not have to be a complicated process, as if this is authorized, they will start the publicity and set up a collection and distribution process. Mayor Ilyinsky asked if there was a cost involved to which Mr. Dusey responded they are going to do it within their present framework of employees although an insignificant amount will be spent on gasoline. Mr. Doney explained it will be a pilot program and they will report back to the Council. Mrs. Wiener suggested it be a pilot program for sixty days, as if it found it is a lot of time and effort, they may not want to continue it. Mr. Weinberg asked if the fruit is limited to citrus fruits to which Mr. Dusey responded they are willing to take all

fruits offered. Mrs. Smith moved that the program be started as of March 15th for sixty days, through May 15th and Mr. Dusey can report back at the June Town Council Meeting. Seconded by Mr. Shaw. On roll call, the motion carried unanimously. Mrs. Wiener commended Mrs. Ronnie Block for the idea.

XII. NEW BUSINESS

A. Bid Awards

Bid Awards

1. Sealed Bid No. 94-006 - Par 3 Pump Station Building - Recommend Jaguar Construction, Inc. in the Amount of $17,100 From the Golf Course Fund Per Memorandum Dated February 15, 1994 from Mr. Dusey - Consideration of Resolution No. 14-94 -

Sealed Bid No. 94-006

Mr. Randolph read Resolution No. 14-94:

Res. 14-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO JAGUAR CONSTRUCTION, INC. FOR THE PAR THREE PUMP STATION BUILDING.

Mr. Weinberg moved for adoption of Resolution No. 14-94 awarding the contract. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

2. Sealed Bid No. 94-007 - Par 3 Greens Renovation - Recommend Haverland Blackrock Corporation in the Amount of $217,786 From the Golf Course Fund Per Memorandum Dated February 23, 1994 from Mr. Dusey - Consideration of Resolution No. 16-94

Sealed Bid No. 94-007

Attorney Randolph read the Resolution No. 16-94 -

Res. 16-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO HAVERLAND BLACKROCK CORPORATION FOR THE PAR 3 GREENS RENOVATION.

Mrs. Royal moved the Resolution No. 16-94 awarding the contract be adopted. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

3. Sealed Bid No. 94-008 - Replacement South Fire-Rescue Station (Capital Improvement Fund Project) - Recommend O'Connor and Taylor, Inc. in the Amount of $1,375,000 Per Memorandum Dated March 3, 1994 from Mr. Dusey - Consideration of Resolution No. 17-94 - Attorney Randolph read the Resolution No. 17-94 by title:

Sealed Bid No. 94-008

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO O'CONNOR AND TAYLOR, INC.FOR THE SOUTH FIRE STATION.

Res. 17-94

Mr. Weinberg moved for approval of Resolution No. 17-94. Seconded by Mrs. Smith.

Attorney Randolph noted at the end of the memorandum from Mr. Dusey, he makes a comment that perhaps the Town Attorney should update the Mayor and Town Council on the status of the lawsuit and he would like to do that. He recalled when this was last talked about, there was some hope to move forward and that the pending lawsuit may be resolved. He refreshed their memories on the lawsuit, noting it was set on a docket in January and it was expected to be reached at that time, but they were not heard and now the case has been set on a docket which will begin on April 18, 1994 ending May 6th.

Attorney Randolph advised he has filed with the Court a motion to expedite the hearing and have this heard either first on that particular docket or even prior to that time. He did not feel the lawsuit was meritorious, but he thought they needed to be advised there may be some risk in going forward in regard to the construction with such a lawsuit pending. He believed the bids were good for ninety days and he suggested they might want to give consideration to holding off on the award until the next Town Council Meeting so a determination can be made as to whether or not there will be a resolution of the pending lawsuit.

Mrs. Wiener asked if there were any guarantees that the case will come up on that docket or may be put off until the Fall? Mr. Randolph responded he believed they will be on that docket but he doesn't know if they will be heard first as that is still a question. He thought they would be in a position to know the findings of the court in regard to this matter perhaps not at the April meeting but certainly at the May meeting.

Mrs. Smith asked if the people who are litigating against the Town would lose, and in the meantime the Town would be put over to next Fall, would they be able to sue them and recover damages for the increased costs the delay would cost in this construction? Mr. Randolph responded if they can prove to the court that it is a nuisance suit, without merit, they could recover, but otherwise not. Mrs. Smith noted the bid was only good for a ninety day period and they are talking about 1.5 million dollar contract which is being held, and she thought that was outrageous. Mr. Randolph responded he felt there would be a decision on this matter within that period of time.

Mrs. Wiener commented they have been waiting a long time to move forward on this and they are impatient, but on the other hand, she wondered how the court would look upon this moving forward today and would there be influence on the Judge if he thought the Council was prejudging where they were going or would it make no difference? Mr. Randolph responded it should not make a difference to the court as either a decision to postpone should not be a matter of relevance to the court, nor would a decision to go ahead, and the risk is entirely with the Town if it does go ahead and awards the contract and then for some reason, there would be an adverse result on this case, there could be some risk.

Mrs. Smith wondered if approval could be given today for an execution of the agreement in the event all action has been settled. Mrs. Royal believed the construction could not start until the legal action is completed and asked if the construction could be started earlier? Mrs. Smith did not believe the contract could be awarded until the legal action is cleared. Mrs. Wiener pointed out they could start, but then they would be liable for the full damages of the contract if they began now. Mrs. Royal asked if insurance could be purchased to mitigate that, in order for the Town to remain on its' time schedule? Mr. Shaw believed they could write into the contract that there is a 30 or 60 day cancellation clause and at which time it would be acknowledged that they would not proceed in any way, and the contract could be delayed for 30 to 60 days in signing it or we could sign it with the right to cancel it.

Attorney Randolph stated there may be a problem with the way the specifications were written and it was indicated that upon award of the contract, there are provisions in the contract which will have to be done and he has a little concern of awarding this on a contingent basis, because that was not discussed in the bid specifications and he would prefer that in the event they were not to go forward with this today, that the Council do not put any contingencies on it and this be postponed for one month to see where they are at that point in time and give further consideration to it at that time.

Mrs. Smith moved to defer Res. No. 17-94 until the April meeting at which time the legal situation will be reviewed. Mrs. Wiener wondered if rather than defer it, as if it doesn't come before the court, there would be no reason to again discuss it and if in fact, there is a decision by the April meeting, that would be fine, but if there is no decision, she thought it should be deferred until such time as there is a decision. She suggested that if the court hearing is held before the next Town Council meeting, and it is favorable, a special Town Council meeting could be called to award the bid.

Mr. Shaw asked if this was delayed, would the delay have an impact upon the residents which are nearby and how will they be effected if everything is pushed forward? Mr. Weinberg commented there will be an impact on the neighborhood. Mr. Shaw asked if special permits would have to be issued as it would be past the time they would be allowed to do the construction to which Mrs. Wiener responded that would not be the case.

Mr. Dusey advised for every day that it is delayed, there will be time tacked on the other end, and there is a certain amount of construction time and they can't get away from that. He noted there will be a ten month construction time for the building itself and 45 days for the demolition of the old building and clean up and parking lot construction, but the new building will be occupied within ten months after the construction.

Mayor Ilyinsky suggested it be deferred. Mr. Doney questioned whether or there would be some advantage of having the Council take some type of action which might allow the Town Attorney to get the court to expedite. Mr. Randolph responded that has already been done.

Mr. John Matich addressed the Council on behalf of the Citizens Association South of Sloan's Curve indicating how excited they are with the prospect of having a new fire house and the completion of same should coincide with the 25th anniversary of their Association and they wish to underwrite the cost of a clock to be placed in the bell tower.

Mrs. Smith restated her motion which was to defer this matter until such time as the legal problems are cleared up and if this is heard by the Court before the next Town Council meeting, a Special Meeting will be called to hear this matter at that time. Mr. Weinberg seconded the motion. On roll call, the motion carried unanimously.

Appointments

B. Appointments

Architectural Commission

1. Architectural Commission - Three Three-Year Terms to Expire March 1997 - Mrs. Smith nominated Leighton Rosenthal for a second term on the Architectural Commission. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Weinberg moved that Mr. Bruce Helander be moved from an alternate position to the regular position on the Architectural Commission. Seconded by Mrs. Royal. On roll call, the motion carried 4-1 with Mrs. Smith voting against the nomination.

Motion was made by Mrs. Royal to move Alan Wyett from an alternate to the regular position on the Architectural Commission. Seconded by Mr. Shaw. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the nomination.

Motion was made by Mrs. Smith, seconded by Mr. Weinberg that the alternate position appointments for the Architectural Commission be deferred to the April Town Council Meeting. On roll call, the motion carried unanimously.

Zoning Commission

2. Zoning Commission - One Three-Year Term to Expire February 1997 - Motion was made by Mr. Weinberg, seconded by Mrs. Smith that Eugene Lawrence be moved from an alternate position to the regular position on the Zoning Commission for a three year term. On roll call, the motion carried unanimously.

Mrs. Wiener recommended that those people who are not residents of the Town should not be considered for appointments to the various Boards as they should be registered voters of the Town. She thought that Town citizens who want to serve on Boards and Commissions should send a letter of interest as much of the confusion they have had was due to the fact that someone recommended them, and didn't check with those people as to whether or not they were interested.

C. Other

1. Consideration of Letter Dated December 15, 1993 from Mrs. Hoffstot Regarding Several Town Matters - Mrs. Hoffstot addressed the Council indicating she has sent a letter which is self-explanatory. Mrs. Wiener asked her to summarize the letter as the public has not had the benefit of reading it.

Mrs. Hoffstot re: Beautificationi Comm.

Mrs. Hoffstot reported she is the Chairman of the Beautification Committee for the Preservation Foundation for the Town's Historic District and her suggestions are:

1. Covering the newspaper racks with wood latticework on all news stands in the Town Hall Historic District.
2. Addition of palm trees from the public beach southward to the Bath and Tennis Club.

3. Begin a campaign next Fall to have residents donate tiles which will be installed on the risers of the entrance steps to the Police Department building.

Beautification Comm. (cont'd)

Chief Terlizzese advised the steps need to be replaced as they have had several people fall, and if the donations of tile are approved by the Town Council, he suggested they wait until after that proposed work is done. Mrs. Smith knew there was some discussion about installing non skid tiles. Chief Terlizzese advised that would not be on the stairs but on the entranceway. Mrs. Smith noted this building is in an Historic District and any changes would have to be approved by the Landmarks Commission and asked if the stairs were reconfigured, and the non skid tiles installed, what would be the cost? Mrs. Hoffstot responded their idea was to have attractive tiles of the Town Council's choosing and all they wanted to know is if the Council felt it was a good suggestion and if they thought it was, they would start a campaign for people to donate. Mr. Shaw felt it was a great idea but they needed to decide what they were going to do with the steps. Mrs. Smith responded they will probably have to redesign the steps.

Mrs. Polly Earl addressed the Council, indicating she had a conversation with Mr. Moore several weeks ago on this matter when he indicated there was under consideration a modification of the steps and there will be redesign work which will come up next budget season and it was decided there was no sense to put tiles on something which will be torn apart, and she was waiting to hear from Mr. Moore who was going to investigate this further. She advised Mrs. Hoffstot is looking for an affirmation from the Council that on whatever steps the Town will have at the Police Department would be attractive with some tiles on the risers.

Mr. Doney advised whatever is done there would have to be through Mr. Dusey's department and if there is a modification suggested to the steps, it would have to be according to Code.

Mrs. Wiener did not think the Council needed to be involved in those matters and all the Council has to decide is whether or not they are interested generally in getting a figure of what it would cost to redo the steps in a way so they would be safe and useable by the public. Mrs. Smith and Mr. Weinberg indicated they are interested. Mr. Weinberg stated he thought this should be a Town project and not a Preservation Foundation project. Mrs. Wiener thought this should be an item for Finance & Taxation Committee and they move towards improving the stairs.

Mr. Shaw moved that the Preservation Foundation through Mrs. Hoffstot be thanked for the suggestion about the donation of tiles and the Town Council seriously take into consideration the use of the tiles donated by the Preservation Foundation for the Police Department stairs and whether it be in the existing format or a future redesign that may come in the next year or so.
Mrs. Wiener did not agree with the next year or so, as if they are going to be putting in tiles and then there is a redesign, it wouldn't work. Mr. Shaw responded he isn't talking about putting in the tiles, just the donation of same to be added to the Town and it can either be the existing stairs or if it is the Town Council's decision to rebuild the steps, those tiles will be used and accepted from them to us.

Mrs. Hoffstot commented they would need to know what type of tiles the Council prefers and they would like to start in October, so they would have the entire season to move forward on and she wanted to clarify with Mr. Weinberg that this is a joint venture. Mr. Weinberg stated he has a philosophy that anything the Town needs, they should be able to afford and shouldn't have to solicit contributions. Mayor Ilyinsky disagreed noting a community effort is commendable and should be encouraged at all costs and likened it to the donation of the clock at the South Fire Station.

Mrs. Royal seconded the motion. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

Mr. Doney reminded the Council that this will be reviewed by the Landmarks Preservation Commission and clarified that this will be the stairs only on the west side to which the Mayor and Town Council agreed. Mrs. Wiener asked if some figures could be gathered. Mrs. Hoffstot thought they would take the samples of the tile to the Landmarks Preservation Commission for a choice of the tiles and they will find out what the costs will be and they will solicit contributions from residents to donate the tiles.

Mrs. Hoffstot asked the Council to encourage those people who live along the Oceanfront to plant more palm trees. Mrs. Wiener noted the Preservation Foundation does have its palm sale. Mrs. Hoffstot thought it would mean a great deal if the Council was behind them.

Mr. Doney commented the estimates on the stair renovation will be brought before the Finance & Taxation Committee.

2. Consideration of Proposed Agreement with AT&T Regarding Use of Town Rights-of-Way - Mr. Randolph indicated he wrote a letter to Mr. Doney as a result of discussions they have had with AT&T and recalled Council left this matter at a previous meeting directing him to draft an Ordinance to accommodate AT&T in their requests to use the Town's right-of-way and an appraisal was done to appraise the value of the use not only on this right-of-way but other rights-of-way used by AT&T within the Town.

Agreement with AT & T re: use of rights of way

Mr. Randolph recalled the Town Council requested AT&T pay the Town $20,000 annually for the use of the right-of-way but AT&T did not agree. He advised AT&T were in negotiations with the City of Miami over a similar matter and the City of Miami has prepared an Ordinance and AT&T has asked the Town to adopt a similar type Ordinance, with which the staff did not agree.

Mr. Randolph advised AT&T has come up with a similar offer whereby they would pay an up front fee which would not relate to the lineal feet of right-of-way that were being used, but would relate to the inconvenience caused to the Town relating to the use of the Clarke Avenue area during the Season, and that offer he believes is closer to the realm of reasonableness and it is that AT&T would pay the Town an up front fee of $50,000.

Mr. Randolph noted this is not based on any linear feet but attached to the inconvenience to the Town. He advised in addition to the $50,000, AT&T would pay 35 cents per running foot, which would come to $1,140 on an annual basis. He advised in addition there would be other contributions which would raise the annual revenue to the Town as a result of the use of the right of way to $11,756.00. He noted that figure does not take into account any interest that would be earned on the $50,000 up front fee which would be figured at 5%.

AT & T use of rights-of-way (cont'd)

Mr. Randolph pointed out there are unresolved questions in regards to the proper way to calculate the fee for the use of the right-of-way, as it is untested as to what the Town means when it talks about being able to charge for the right-of-way. He advised AT&T does not feel that means fair market value on which our appraisal was based.

Mrs. Royal asked if Mr. Randolph knew how many feet of right-of-way the City of Miami had to which Mr. Randolph responded he did not know. Mr. Dusey noted the Town's footage is 3,353'. Mrs. Smith asked if the Town Attorney had communication from the AT&T Attorney since he wrote the nasty letter last November? Mr. Randolph responded he had received no correspondence but had a personal visit from him. Mrs. Smith asked how Mr. Randolph would describe the demeanor of the AT&T Attorney to which Mr. Randolph responded he thought the time was convenient for the AT&T Attorney to meet with him and his demeanor was cooperative but most of the negotiations were with an attorney from Miami who accompanied him.

Mrs. Wiener asked if they appeared more amenable to reach a satisfactory conclusion to which Mr. Randolph responded affirmatively. Mrs. Wiener asked the Town Attorney if he was recommending what had been proposed or can we do better? Mr. Randolph responded he and staff believe a good deal had been struck.

Mrs. Smith clarified they are talking about $50,000 up front; $1140.55 annually; $250 annual fee for for the first fifty lineal feet of the pathway and 75¢ per lineal foot for any pathway added after the date of the agreement.

Mrs. Smith moved that the Town Council accept the offer from AT&T for $50,000 up front; in addition to the 35¢ per foot or a total of $1,140.55; $1330 as an initial fee for preparation, review and approval; a permit fee of $250.00 and an additional annual fee of $250 for the first 50 lineal; of pathway with an addition 75 cents per lineal foot for any pathway added after the date of the agreement.

Mr. Dusey clarified that the first year the fee will be 15 cents a foot, the second year is 25 cents a foot and it goes up to 75 cents after the five year period. Mrs. Wiener handed the gavel to Mr. Weinberg to chair the meeting and seconded the motion. On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Royal voting against the motion.

Audit Report

3. Audit Report

a. Audit Report for Fiscal Year Ending September 30, 1993 - Discussion and Acknowledgement of Receipt - After discussion of the letter dated March 4, 1994 to Mr. Doney from Mrs. Crozier, a motion was made by Mrs. Smith, seconded by Mr. Weinberg to accept the Audit Report. Mr. Doney reported the Undesignated General Fund Balance as of September 30, 1993 was $4,779,444 which represents 16% of the FY 94 General Fund Budget of $29,203,425. He considered this amount very prudent.

b. Management Letter and Staff Response - Acceptance - Mr. Doney commented a memorandum has been sent by Mrs. Crozier and he agreed with the comments of Mrs. Crozier. He noted Spencer Wilson is the Acting Data Processing Manager and they are attempting to see whether or not a position can be eliminated in that office. He stated as far as having what the auditors recommend, an independent performance of certain tasks, he did not think it was cost effective or practical if they didn't have the four people who are cross trained, and he hopes to make the best use of the personnel in the Data Processing Office.

Mr. Doney felt all it would result in if the auditor's requirement were met, would be to have additional staff to have the independent performance of tasks.

Mr. Doney noted the recommendation that an internal audit program should be considered has been in the Management Letter for several years and it is believed that they will try to do spot audits through the Personnel and Finance Departments, on a random basis so they can be assured that the controls in the cash handling procedures are properly addressed.

Mr. Doney noted another item that has been in the Report, is that all officials should file a Statement of Financial Interests on a timely basis. He advised the individuals are reminded of their obligation in this regard as they are required to file the Financial Disclosure each year and some do and some don't and all we can do is continue to remind.

Mr. Doney indicated Account Segregation for Capital Project Expenditures should be considered and he advised Mrs. Crozier concurs that a separate account grouping for the Infrastructure Expenditure Accounts would facilitate more efficient reconciliation of fixed assets, additions, and Infra-structure Expenditure Accounts will be segregated for FY94.

He noted Reconciliation of Enterprise Fund Fixed Assets - in FY94 a physical inventory and reconciliation of the Enterprise Fund Fixed Assets will be performed, with documented procedures written.

He advised the two prior year comments have been cleared to the auditor's satisfaction, that is the establishment of policies for bond transactions; and Statement No. 10 of the Government Accounting Standards Board Accounting and Financial Reporting for risk financing and related insurance issues.

A motion was made by Mr. Weinberg to accept the Management Letter and Staff Response Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Calendar of Events - FY95

4. Consideration of FY95 Proposed Budget "Calendar of Events" - After looking over the calendar, Mrs. Wiener asked that the time for the Finance & Taxation Committee meeting on August 5, if it is needed should be set for 10 AM, to which Mrs. Smith agreed. Motion was made by Mrs. Royal, seconded by Mr. Shaw the Calendar of Events for the upcoming budget year was approved. On roll call, the motion carried unanimously.

5. Consideration of Parking Meter Rates at Phipps Ocean Park and Kreusler Park - Mr. Doney noted there is a memorandum from Mrs. Crozier dated Feb. 23, 1994 and it points out that the Palm Beach County Board of Commissioners did not approve the Town's request to increase the parking rates at Kreusler Park to $1.00 per hour.

Parking Meter Rates at Phipps & at Kreusler Parks

Mr. Doney noted the recommendation for Phipps Ocean Park is to implement a change from 75 cents per hour to $1.00 per hour and then they compare the revenues to the last two years as far as the net revenue to the Town, and report back to the Town Council for consideration of either continuing the change in meter rate or going back to the 75 cents rate.

Mrs. Smith asked why the Palm Beach County Commission denied our request to which Mrs. Crozier responded she never received a formal reply after many letters and phone calls and finally their response was a copy of their agenda.

A motion was made by Mr. Shaw that the increase to $1.00 for Phipps Ocean Park parking be authorized and this be for a trial period of the summer months. Seconded by Mrs.Smith. On roll call, the motion carried unanimously.

6. Consideration of Request for Town Council President and Town Manager to Attend Commission for Accreditation for Law Enforcement Agencies Meeting in March 1994 in New York, with Police Chief and Accreditation Manager - Motion was made by Mrs. Smith, seconded by Mr. Shaw that the Town Council President and Town Manager Doney be authorized to attend the accreditation meetings in New York. On roll call, the motion carried unanimously.

Comm. for Accreditation for Law En forcement Agencies mtg.

7. Consideration of Proposed Comments to Palm Beach County Department of Environmental Resources Management Regarding Proposed Groin Maintenance Project at 1423 South Ocean Boulevard - Mr. Dusey advised as part of the improvement project at 1423 South Ocean Blvd., County DERM is processing a permit on behalf of themselves and the State DEP and have asked for the Town's comments on a groin improvement project at 1423 South Ocean Blvd. He advised they looked at the Comprehensive Coastal Management Plan which was approved by the Town Council years ago, and find a recommendation to shorten the groin so the sand will bypass. He noted an alternative has been offered by the engineer for the project and he called on him for his comments.

Groin maintenance project at 1423 South Ocean Blvd.

Charles Isiminger, project engineer for Mr. & Mrs. North, the owners of 1423 South Ocean Blvd., addressed the Council with an exhibit, noting there is a groinfield at the Bath and Tennis and this groin is a part of that. He advised the adjacent owner to the south, Doyle Rogers has no objection. He advised they are willing to maintain the entire 200' of the groin and pursuant to the Staff's comments and the Comprehensive Coastal Management Plan, they will maintain only 90' of the groin landward, which was requested. He stated they would like to leave the existing rocks in place as they are now buried in the sand.

Mayor Ilyinsky asked if this was before Beaches and Shores at the County level? Mr. Isiminger responded the County is in a quandary as to what their jurisdiction is, and it may be that they do not have any coastal jurisdiction. He stated this item is on this agenda because of the Wetlands Protection jurisdiction. Mayor Ilyinsky did not understand because he sits on the Beaches and Shores Council and this is precisely what they do. Mr. Isiminger responded a recent decision from a Court of Appeals on the Sloan's Curve vegetation trimming cast doubt on whether or not the County has jurisdiction seaward of the Control Line. He advised they have applied for a Wetlands Protection Permit from the County, but did not apply for a Coastal Protection Permit and he has not heard anything further. He believed it was through the Coastal Protection Ordinance, that the Beaches and Shores Council gets involved and he doesn't know if they will be required to go before them at this time.

Mrs. Smith asked if it was premature for the Town to hear this before it is heard by DERM to which Mr. Randolph responded he did not think so. Mrs. Smith asked what was the reason the Council was hearing it at this point to which Mr. Randolph felt it was a chicken and egg situation and he didn't think it made much difference as the State is probably looking to the Town as the clearing house first to make sure there are no problems with the Comprehensive Plan, however it remains to be seen as to whether or not the County has anything to say about it.

Mrs. Royal moved that the Council approve the groin maintenance project at 1423 South Ocean Boulevard, subject to the applicants getting all of the other relevant approvals necessary. Seconded by Mr. Shaw. On roll call, the motion carried 3-2 with Mrs. Smith and Mr. Weinberg voting against the motion.

8. Consideration of Second and Third Floor Renovations of Town Hall - Mr. Doney advised this has been approved and the architect is working on the floor layout with the Public Works Department, and in order there be a point of contact, it is recommended the Town Council designate the Council President to meet with the staff and the project architect to provide feedback and guidance on the layout of the Mayor and Town Council's Office, the Personnel Office, and the proposed Conference Room in the rear of the Council Chambers plus the third floor of Town Hall where the Data Processing Department will be moving after the Mayor and Town Council move into the second floor office now occupied by the Data Processing people.

Second & Third Floor Renovations of Town Hall

Motion was made by Mrs. Smith that the recommendation of the Town Manager that the Town Council President be designated as the contact person on the building renovations of the second and third floors of the Town Hall be approved. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

9. Consideration of Brazilian Dock Reconstruction - Proposed Change in Dock Elevation - Mr. Dusey reported when they originally were before the Council, they requested permission to raise the dock one foot for a number of reasons, one being the anticipated rise in sea level and also to get the utilities out of the way. He advised that now it is found it will be a problem for the vessels that are there now and they now wish to put it back to the original elevation.

Brazilian Dock Reconstruction

Mr. Shaw asked if this was being done for the future, are there boats docked there which this would not pose a problem to and possibly go along with the existing plan on some of the docks? Mr. Dusey responded they would have to look at each dock individually as some of the other docks have larger vessels and it may be better to lower the elevation. Mr. Shaw asked if it were raised, would it be an inconvenience to the boat owners? Mr. Dusey stated that wouldn't work.

Mrs. Smith asked what they are doing with the utilities? Mr. Dusey responded they will be run under the decking but it will be better than what is there now.

Motion was made by Mrs. Smith to approve the elevation Mr. Dusey had originally on the Brazilian Docks. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Proposal to Deepen the Intracoastal Waterway Channel

10. Consideration of Proposal to Deepen the Intracoastal Waterway Channel - Mr. Doney advised this proposal is in the planning stages and as indicated in the back-up information, historically, it has been a concern to the Mayor and Town Council of Palm Beach as if that Intracoastal channel is deepened, there could be larger vessels and there could be more wake damage to the adjacent upland property owners, lakefront bulkheads. He noted another consideration is the potential for additional dredging requests to bring in larger vessels. He felt there would be an impact on the number of bridge openings. He felt if the Town Council is so inclined, this is an opportunity for the Town Council to express a opinion, comments and objections to the Metropolitan Planning Organization of what the Town believes is appropriate regarding this proposal.

Motion was made by Mr. Shaw that the Town Council approve the draft letter prepared to the Metropolitan Planning Organization on the Town's opposition to deepen the Intracoastal. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Valet Parking on Royal Poinciana Way by Mr. Bruce McClintic

11. Consideration of Appeal of Police Department's Decision Regarding Valet Parking on Royal Poinciana Way by Mr. Bruce McClintic. Mr. McClintic addressed the Council indicating he was the operation manager for the Sunrise Bootery recently relocated to the east end of Royal Poinciana Way. He advised customers of the Sunrise Bootery asked that something be done about the parking, and he has been in touch with the Town staff and the parking division who have spent a lot of time working on this.

Mr. McClintic reported he talked with the Town's zoning people as to whether or not there would be a violation if there was valet parking instituted for their customers, and he was told it could be done, as long as there were no ordinance violations. He hired some people to do the valet parking and they did violate traffic ordinances by using the loading zone. He was contacted by Mr. Marchman of the Traffic Division who advised this did violate a town ordinance and they would not be able to continue to do that and it was suggested that they come before the Town Council and request a testing period and that is why he is here.

Helen Bertles of the Royal Poinciana Business Association addressed the Council, noting a survey has been done of all the merchants in a two block area and they are just about unanimous in their desire to have valet parking instituted for the convenience of their customers and requested a two month trial period be allowed to test the procedure. She advised they have located thirty private sources of parking spaces. Mrs. Wiener asked where these spaces were located to which Mr. McClintic responded there are a number of commercial spaces which could be leased, but they first wish the Town Council approval.

Mrs. Wiener did not believe there was an excess of parking spaces in this area and those spaces are already assigned to the various commercial businesses in that area and cannot be assigned to anyone else, and called on Chief Terlizzese for his comments.

Chief of Police Terlizzese addressed the Mayor and Council, and thought perhaps a workshop should be set to discuss the traffic problems in the Town. He has legal concerns about the legality of using public parking spaces for commercial valet parking. He is sympathetic to their plight and believes the real problem is most of the parking is already usurped early in the day and it is obvious the merchants and their employees are the ones who are utilizing the parking. He believed if they could have some solution to that problem, there may be ample parking most of the year, so the turnover would be encouraged.

Mrs. Royal asked how valet parking is handled at restaurants? Chief Terlizzese responded the cars are parked on private parking lots and this method has been used on Worth Avenue for many years. He noted occasionally they find the parkers using the public spaces on Worth Avenue and they shut them down when that is discovered.

Mr. Shaw asked how Chuck and Harold's handle their valet parking? Chief Terlizzese responded they only have valet parking at night and they use a nearby bank parking lot. Mrs. Royal noted a loading zone is used for unloading and for the valet parker to get into the car and take it to the parking space and wondered if that was legal to use a public parking space for a commercial use like that? Chief Terlizzese responded it is a parking space and anyone can use it as such.

Mr. Shaw asked if it was feasible to have a valet parking designated spot in front of a restaurant. Chief Terlizzese commented this procedure has been permitted at night for valet parking on Worth Avenue. Mr. Shaw commented that could be applied to Royal Poinciana Way to which Chief Terlizzese responded he didn't believe it could be done in the daytime hours as these are public parking spaces in a commercial district. Mr. Shaw asked if this should be turned over to a Committee of the Council? Mrs. Wiener thought if a majority of the Council does not agree with this, this would not have to be taken to a Committee. She has found with valet parking the street has been obstructed altogether, and she doesn't think this proposal was a feasible one, not from a safety point or legal point of view and for the people trying to move along that street in the traffic lanes.

Mr. Shaw believed there was a valid problem in this area and they are trying to resolve it. He believed if the employees were not parking their cars there, there may not be a problem. Chief Terlizzese agreed, noting it would be approximately one hundred parking spaces that would be freed up. Mr. Shaw asked if the Association could make an effort to get the employee parking off the street, they may find they have the spaces available for their customers and they wouldn't have to go to the expense of having a valet service.

Mr. McClintic recalled the Police Department has ruled that it would not be legal for them to use a parking space for drop-off and pick-up, but what they are requesting is the Town Council allow them a trial period, noting there are four loading zones currently located there and after 5 PM, they can be used for valet parking. Mrs. Wiener stated she really didn't have a problem with the drop off or pick up, but her problem is there is no space in this area to put the cars which would be valet parked. Mr. McClintic reported he has been informed by Mr. Marchman that there are 3000 valid parking spaces in the north end, but the problem is logistics. Mrs. Wiener pointed out they are talking about putting these cars in a residential area and that certainly would not be allowed.

Valet Parking on Royal Poinciana Way by Mr. Bruce McClintic (cont'd)

Mr. McClintic responded he is proposing since the problem is the employee cars, that these cars be parked a couple of blocks away which will free up the public parking spaces on Royal Poinciana Way. Mrs. Wiener recalled some time ago a proposal was before the Council to bus in the employees who work on this island and it was not adopted, and she didn't believe what they were proposing was one that this Council wanted to entertain.

Mrs. Smith asked if they had a lot where they can park their employees, why have they not done that? Mr. McClintic responded he would have to have the incentive for the merchants to be able to do that and rather than institute that, he wished to try this on a trial basis. He noted if the problem is not the lack of spaces but rather that they are being improperly used, and this is something that is being worked on, he hoped the Council would let them use a loading zone for a sixty day period on a trial basis and at the end of that time, there could be a report on whether or not there were problems. He stated what they will do is have the valet parkers move the employee cars a few blocks northward.

Mrs. Wiener and Mrs. Smith pointed out they still have not solved the problem of parking these cars in residential areas. Mrs. Smith believed that the employees should be the ones to find other parking areas to free up the public parking spaces and the employers are the ones that would need to enforce this. Mr. McClintic responded if they can't park on Wells Road or in that area, he will have to try and find somewhere else. Mrs. Smith stated they have to deal with their employees not the Town Council. Mr. McClintic stated he only has a few employees.

Mrs. Wiener believed the fact of the matter is when they talk about incentives, there are rules and regulations and the rule is that those parking spaces may not be used for more than one hour and if they don't obey the rules, that is not the Council's problem. She recalled when this has been talked about in the past, it was found there is no on-island parking and any parking plan always discussed off-island parking.

Mr. McClintic stated the problem really is not with the employees, but the idea of having valet parking would allow the Council to be able to serve the Town residents, who are the people complaining there is no place for them to park. Mrs. Wiener reminded Mr. McClintic they both heard the Police Chief state the parking spaces are used up by 8:30 AM which means it must be the business owners and employees who are parking there, and if that is taken care of, the problem will be solved.

Mr. McClintic agreed that the employees should not be parking there, but he is seeking cooperation from the Council so the employees can be motivated. Mrs. Wiener suggested they motivate their employees on their own. Mrs. Smith suggested he look into the overall picture as the motivation for moving the employee cars should come from the employers on Royal Poinciana Way, and the Council would like to help, and suggested that this be deferred for one month and Mr. McClintic look at the picture of what is going to be done with the employee cars to open up the parking spaces for the clients that are complaining, and she so moved. Seconded by Mr. Shaw.

Mrs. Royal suggested they identify the available parking in the commercial areas, so when a customer comes and stops in a loading zone that they have an identifiable legal place for the customer's car to be taken by the valet. Mr. McClintic asked how many spaces should he try to locate to which Mrs. Smith responded he should come back with how many spaces they could find. Mr. McClintic responded he has satisfied the employee parking problem for his employees.

Mrs. Smith asked why he was here to which Mr. McClintic responded he is trying to get parking for his customers, and also he wishes to look down the road. Mrs. Smith suggested he look down the road and come back and tell the Council the spaces that he has been able to acquire for either employee parking or for valet parking and it cannot be in a residential area. Mrs. Wiener cautioned it should not also be public spaces. Mr. McClintic stated he wishes to do this for the entire block and he has satisfied the parking requirements for his own employees, but now has the opportunity to take ten spaces that the people who run Genero's has graciously offered to rent during the day.

Mrs. Smith did not believe he would be able to do that and suggested he study it further.

On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion, stating her negative vote was due to the fact that she didn't think this matter should come back before the Council.

12. COUNTY COMMISSION AGAINST AIRPORT NOISE: Mr. Weinberg recalled he has discussed this with the Town Council previously as he was a representative of the Municipal League and was serving 37 communities as well as the Town, which was an impossible task, as many of the other communities are interested on their own behalf. He stated it was the decision of this Council to explore the possibilities of him not being involved in serving under two hats. He has had meetings with members of the County Commission and with the proviso that he leave the representation of the Municipal League and attempt to become a geographic entity unto itself, and last week he received a telephone call from the Chairman of the County Commission who informed him that the Town of Palm Beach would have exclusive responsibility for itself and he should withdraw from the Municipal League and they would send a letter of confirmation which he has never received.

County Comm. Against Airport Noise

Mr. Doney suggested this be continued to the April 12, 1994 Town Council Meeting and by that time, there may be some confirmation in writing.

Approval of Warrant List

XIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR FEBRUARY 1994 - Motion was made by Mrs. Smith to approve the Warrant List and Fund Expenditures for February, 1994. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Communications from Citizens

XIV. COMMUNICATIONS FROM CITIZENS - Mr. Adrian Winterfield addressed the Council calling their attention to Ord. 8-94, noting no Council or staff time should be expended. Mrs. Wiener called him out of order as the Town Attorney advised the Town Council may not be lobbied until the subject appears on the agenda.

Mr. Winterfield addressed another subject, recalling the Council voted to include an item relative to occupational license on the Zoning Calendar of next year and if that is the case, he wanted them to know that occupational licenses are not covered by the Zoning Ordinance.

He asked on the matter of Mr. Evans, he heard the Mayor and President of the Town Council express their support of the Police Department, primarily relative to the general question of racial harassment and he noted there has been an allegation of certain language being used and he asked if that has been communicated to Council and if so, whether Town Council has taken that into consideration.

XV. DEVELOPMENT REVIEWS

Major Matters Architectural Commission

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of February 23, 1994 -

The major matters were:

B2-94 - New residence for Robert C., and Nina Lawrence at 30 Middle Road. Deferred.
B3-94 - New residence for Noiseau Enterprises, Inc., 146 Atlantic Avenue. Approved conditionally.
B87-92 - Landscape Plan, Details for Brazilian Development Co., 240 Australian Ave. Deferred a portion of the project except for the garage doors which were approved conditionally.
B16-93 - Revisions to residence of Mary S. Conrad, 105 Banyan Rd. - Approved.
B35-93 - Revised Landscape Plan for Preservation Foundation, 386 Hibiscus Avenue. - Approved.
B5-94 - Demolition of residence of Mr. & Mrs. Peter May, 1375 S. Ocean Blvd. - Approved.
B6-94 - Beach House for Patricia Sousa, 1300 N. Ocean Blvd. - Approved conditionally.

Note: The motion to approve this item was made at the end of the meeting under Any Other Matters.

B. Variances, Special Exceptions and Site Plan Reviews

The oath was administered by Mrs. Peters to all of those who wished to give testimony on any variances and special exceptions.

Old Business

<u>Old Business</u>

Var. 3-94

1. Variance No. 3-94 - Faraway Shores Limited, 144 Chilean Avenue; to allow construction of an addition providing an 8.5' side yard setback in lieu of 12.5' required. R-B District. Deferred from February meeting. - Architect Robert Bell addressed the Mayor and Council indicating he is requesting the variance for his clients as the residence does not have a garage as is required by the Code. He advised all requirements regarding landscaping, lot coverage, etc. are met and the lot is 23' narrower than a normal lot in this area. He indicated no other variances will be requested.

Mr. Bell recalled he was requested at the last meeting to try and find another location on the property for the garage and he has studied this further and if this garage was located on the western side, it would be a larger variance as three and one half feet more would have to be requested. He tried to push the garage addition up against the west wall of the house which would only allow the garage to be 11.10' wide and it blocks the windows of the kitchen, bathroom and the bedroom on that side of the house. He felt the only solution was to have the garage on the east side of the house and have a straight-in driveway and eliminate all but about a 12 x 12 area blocking up the opening of the wall and have a service gate and the area in the front would be planted heavily.

Mr. Bell did look at another drive configuration other than the straight-in configuration and it would reduce the front yard landscaped area by 27%.

Mr. Zimmerman explained the original proposal was to look at alternates which Mr. Bell has done and by eliminating the paving on the west side of the house, the landscaping will be increased, although the issue of the straight-in garage is still a concern.

Mrs. Smith advised she was in the Building Department to look at the revised plans last Friday and they were not in and they are supposed to be in the Building Department at least seven days before the Town Council meeting.

After further discussion, a motion was made by Mrs. Smith to approve the Variance No. 3-94 with the condition that the sight screening ficus hedge should be six feet in height, which will be sight screening the garage entrance from the street. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Spc. Excep. 28-93

2. Special Exception No. 28-93 - Victor de Marinis 264 Restaurant, 264 South County Road; to allow 16 outdoor restaurant seats per Section 6.61 of the Town Code. C-TS District. Deferred from December meeting. Letter dated March 7, 1994 from Alan Ciklin requesting postponement to April meeting. - This matter was postponed earlier in the meeting.

Spec. Excep. 6-94

3. Special Exception No. 6-94 With Variances - Palm V Associates, 240 Worth Avenue; to allow Nature's Way Restaurant to establish outdoor seating. A variance to Section 6.61 is required to allow proposed 40 outdoor seats as an expansion to the maximum number of permitted seats for this restaurant space. Applicant proposes to provide off-street parking within 500' of the cafe pursuant to Section 6.20(d)(1), and

requests a variance to Section 6.20(d)(1) requiring said parking to be in the same zoning district. C-WA District. Deferred from February meeting.

Spc.Excep. 6-94 (cont'd)

Attorney Broberg addressed the Mayor and Town Council on behalf of the owner of the property. He wanted to make a correction to the narrative as they are requesting 40 seats total, with 26 outdoors and 16 indoors. Mrs. Wiener pointed out on the application it states 40 outdoor seats. Mr. Broberg indicated they wish to service the seats existing on the premises, that would be 16 inside and 24 outside for a total of 40 seats.

He advised Nature's Way was considered as a take out and they were not allowed to bus the seats in the vias where people would sit down and have their meal. He stated the whole purpose of this application is to turn Nature's Way into a "restaurant" and by doing so, allowing it to serve the tables on the outside in a protected area under Section 6.61 of the Code.

Mr. Broberg recalled at the last meeting, the Town Council asked that he be in touch with the residents on Golfview and he has asked their attorney, Mr. Lynch, to meet with them, as it is felt they do have a problem with the application and he wanted to meet with them and resolve the problems they have and perhaps try and explain that some of the problems may be perceived and they really are not there. He stated he would be happy to go away today and meet with them and come back next month if that is what the Council would like him to do, or they can proceed with the presentation.

Mrs. Wiener commented this Council cannot command people to meet with him, to which Mr. Broberg responded he understood that. Mrs. Royal commented perhaps they were under the impression that there would be 40 seats outside and there may be a different attitude towards the application.

Mr. Broberg explained they are concerned with their quality of life and all his client wants to do is be a good neighbor and have the opportunity to explain themselves.

Mr. Shaw asked some questions and Mrs. Wiener asked him to allow Mr. Broberg to make his presentation, as that is what is normally done.

Mr. Broberg commented they wish to turn this take-out food place into a permitted special exception restaurant, which is Letter F under the Use Regulations, and by doing so, they jump to 6.61 of the Code, which would allow them to serve and bus the tables already existing outside. He advised they wish to make the place more accessible to people who are eating there. He stated the area will be better policed by the restaurant, than it is now as it now done by the maintenance crew of the landlord. He stated if they are allowed to bus the tables, obviously they would like to serve them somewhere down the line, but he wished to emphasize that they are not asking to add any more tables than are presently existing on the site at this time.

Mr. Broberg exhibited photographs which showed the area noting when Pari Sorbet moved into this area seven years ago, they provided the tables and chairs and then an archway was built to enter the area on the other side of the property and that area is open to the public. He has read the letters in opposition to the application, and noted there was not any history. He wanted them to know that Pari Sorbet came from Via Mizner and were in the space now occupied by Nature's Way for at least five years, and they prepared foods and had a kitchen and they had garbage cans back in the alley and they had patrons who came to buy their food and took it outside and they didn't wait on those tables.

He advised when Pari Sorbet moved out, Nature's Way came in and did exactly the same thing, and they too have a kitchen and they have garbage cans the same as Pari Sorbet had them, and they have not been increased, and there always has been an alley way behind the restaurant. He stated the number of prepared meals and the cooking that goes on has not increased. He noted to the west where Prince Manyo is located now was another food preparation place called the Epicurean. He stated if they move further west, there was a kitchen there which was used by the Gucci employees. He thought if the concern by the Golfview residents was that turning this into a restaurant would open the floodgates of restaurants on the south side of Worth Avenue, that is not a valid objection, as there was food preparation there for many, many years. He knows that Mr. House has gone out to check for odors and he couldn't find any. He has read the letters about there being rats there, and the owner of the property does have an extermination service which comes regularly and not only does the owner of the property have this extermination service, but he lives on the second floor and there are ten other residential units in that area. He didn't believe those apartments could be leased if there were rats and noise or bad aromas.

Mr. Broberg advised the dumpsters serve thirty tenants and even if this restaurant was not there, there would still be trash put in the dumpsters. He advised the landlord has provided off street parking to accommodate the tables on the outside and it is in a CTS zoning district, so it will require Town Council approval to park in this other district, but it is within five hundred feet.

Mr. Zimmerman reported that the first thing that must be done, if the Town Council so wishes, is the establishment of a restaurant, and if that is done, the applicant is entitled to have outdoor seating. He pointed out the parking required would be in another zoning district and a couple of the concerns from Town staff was that there was garbage and trash, which has been addressed and the way that is removed on a daily basis. He did not believe the applicant had discussed Town-serving issues, which is another concern of the staff. He advised that any number of seats in excess of nine would require parking of one space for every three seats. Mrs. Wiener wondered how the tables and chairs got there and asked if a previous Council may have given the permission? Mr. Zimmerman responded those seats did not get there with Town approval and that is one reason they are here today. Mrs. Smith asked if Pari Sorbet had seats inside also to which Mr. Zimmerman responded there were nine seats. Mrs. Wiener could not believe there were no records of the seating on the outside and wondered how the seating got there. Mr. Shaw asked if both sides of the archways were for the Pari Sorbet customers? Mr. Broberg stated that was not so.

Burton Handelsman, the owner of the property, addressed the Council indicating that the table and chairs that are there are the same that were used by Pari Sorbet. He stated when they moved out, they put the table and chairs in an air conditioned space and did not lease it to Nature's Way, until they knew what this Council was going to do and he will not lease it to Nature's Way until the approval is given. He advised if Nature's Way are not permitted to bus the outside tables, they will keep it open to the public. He advised currently there are people who come from

Poinciana Plaza who come with their baskets and sell food and it is eaten at those tables and his people clean up after them.

Spec. Excep. 6-94 (cont'd)

Attorney Frank Lynch addressed the Council on behalf of several of the Golfview Home owners, recalling two years ago a request was made to put in a restaurant at 256 Worth Avenue. He stated they had an elaborate plan to freeze dry their garbage so there would be no odor, however, the application was denied. He brings this to the Council's attention because many of the concerns they attempted to address two years ago, they failed to address this time and that is the garbage issue. He exhibited photographs which one of his clients took from their side of the alleyway which show the garbage dumpsters were overflowing. He reported in recent months, his clients have been subjected to a substantial increase in the rate population on their property, which they believe has a lot to do with the fact there is a food establishment in this area.

Mr. Lynch heard Mr. Broberg infer that his clients refused to meet with him, but the fact is his clients do have concerns about the odor, the garbage and the rats. He stated the concern all along has been a restaurant and it may be that Nature's Way has tried to come in the back door with their operation and now want Council approval to legitimize it. His clients strongly object to the approval of the Special Exception.

Mr. Handelsman addressed the Council noting he has owned the property approximately ten or eleven years and during that period of time the dumpsters and the waste receptacles are the same that were there when he bought the property as he hasn't added any.

He indicated he employs three full time maintenance people and he lives directly on the property site and he has never seen any rodent, and he is there every single day. He puts his garbage in those receptacles and if there is a rodent infestation, his exterminators cannot find it and have not seen any droppings. He has had no rodent complaints and he doesn't want to say it is not true, but he has never seen any, not even a mouse.

Mr. Handelsman explained his maintenance people do come in and wash the tables and bleach them twice a month. He felt this facility would be a service to the residents and visitors to the Town and he doesn't understand the concerns.

Ella Scher, 9 Golfview Road addressed the Council indicating she has been there for about ten years and for the past season, their life has been a nightmare and she read a letter from her husband to the Mayor and Town Council, noting there are several heavy trash containers which are used seven days a week night and day, and when the covers are closed there is a loud banging noise and it only ceases when the containers are filled to overflowing and cannot be closed. She stated their master bedroom, kitchen, dining room and garage are all on the north side adjoining the alley and the noise prevents them from enjoying their home. She noted this season they have rats in their garage and need to set out poison and rat traps on a regular basis. She indicated since writing this letter, they have had an infestation of roaches. She noted on the other side of Nature's Way is Gucci's Patio and they now have forty places for people to sit and eat. She walked through that area today when she was coming to this meeting at about 1:45 PM and at least thirty people were sitting there and eating and that is not even the area under consideration.

Mr. Shaw asked what the hours of operation would be to which Mr. Handelsman responded 8 AM to approximately 5:30 PM Weekdays and Saturdays and on Sunday 10:30 AM to 5:30 PM. Mr. Shaw asked who was using the dumpsters that were making all the noise at all hours of the day. Mr. Handelsman responded they have other tenants in the building and it could be the residential tenants bringing down their garbage.

Mrs. Smith asked how often the dumpsters are emptied to which Mr. Handelsman responded they are emptied seven days a week.

Mrs. Smith asked about the wall and Mr. Handelsman stated the wall is about six feet high, however, all garbage is taken off the premises by way of Worth Avenue. He indicated if the residents would allow him, he would be willing to make that wall higher.

Mrs. Royal asked if there were any complaints filed over the past three years against Nature's Way to which Mr. Zimmerman responded he is not aware of any complaints.

Mrs. Royal asked if the kitchen for the Gucci employees was still in operation to which Mr. Handelsman responded that it is not and he has removed all of the appliances and several large commercial refrigerators, lockers for sixty people and also disassembled the Epicurean kitchen which was also a full scale take out operation. Mrs. Royal did not understand that with fewer food operations where the rats were coming from to which Mr. Handelsman responded with all due respect and he lives there, he has yet to see a rodent. He explained he has exterminators who are paid and if there was a problem, they would simply ask them to take care of it, but it has never become a necessity and he doesn't know where they come from, but it is not from his side.

Mrs. Wiener noted the major source of contention is the dumpsters and asked if there was any place on the property where those dumpsters can be taken which would be away from the Golfview area, both the noise and the general use. Mr. Handelsman noted the Public Works people have to roll them out to Worth Avenue and they would have to roll them a further distance and they could be moved to a more hidden location, but it would mean the Public Works people would have to wheel them further distance, although it would be further away from the Golfview people. He stated there is no odor.

Mrs. Wiener commented the Golfview people think there is and Mr. Handelsman thinks there isn't a problem and all she wants is to find a solution and wondered if the dumpsters could be taken far enough away so that the noise and the odors which the residents say are there could be moved away from their home sites.

Mr. Handesman stated another possibility is to add more dumpsters and put them further from the homes, however, the Town's collection people may not be willing to roll those dumpsters the further distance. Mrs. Wiener asked how far away could they be relocated to which Mr. Handelsman responded they could move them another seven or eight feet away.

Mr. Weinberg asked what time of day is the garbage picked up to which Mr. Handelsman responded it is usually nine o'clock or nine thirty in the morning and on Sundays, it is later.

Mr. Shaw asked if the garbage containment could be indoors and whatever debris is collected, it be maintained and kept in that room and that would be wheeled out. He thought perhaps the proposal should be that all of the dumpsters be moved into a properly screened facility that would be in the courtyard and would make the distance to Worth Avenue less, and would eliminate all of the use of the alleyway. He noted they are dealing with garbage and noise generated at all hours, and not necessarily by the Nature's Way facility.

Spec.Excep. 6-94 (cont'd)

Mayor Ilyinsky believed this was a residential Town and the opening of the via has made this area quite lovely, however, what the concern is that Worth Avenue will become one vast restaurant. He viewed the Via Mizner open seating and it has become a sort of disaster as one can't walk through there anymore and there is no place to sit down other than at the restaurant. He has nothing against Nature's Way but would be deeply concerned that the entire via would become one enormous restaurant. Mr. Handelsman stated this application is for the open seating near the restaurant not through the archway to the other side. He wishes to legitimize the tables that are there now and have them serviced by the personnel of Nature's Way. He stated they seem to be dumping on Nature's Way and that isn't fair as they have a nice operation which is very clean and sanitary. He does understand the concern of the folks on Golfview as they believe it will be turned into a major restaurant facility and that is not the purpose.

Mrs. Wiener asked about moving the dumpsters back seven or eight feet and wondered if they put a higher wall, which would allow better soundproofing and would be a further distance away and the wall will provide a barrier. Mr. Handelsman stated he is willing to cooperate in any way that will make everyone happy, and are not out to cause a disturbance. Mrs. Wiener asked Mr. Lynch if a higher wall were built, would that be of any help? Mr. Lynch stated he doesn't wish to evade the question but one of the concerns of his client is the establishment of a restaurant as right now it is a take out facility. He stated the garbage is a concern and a restaurant would increase the amount of garbage. He felt as a take out facility, there would be less garbage and as a take out facility, it can be there, but the problem is they want to make it into a restaurant. He sees nothing brought before them which shows that this particular property is any different than the application which was denied two years ago. Mrs. Wiener asked if they had any objection to the placement of another wall on Mr. Handelsman's property which will help to diminish the noise. Mr. Lynch commented he was not sure there was enough room there to install another wall and the only thing that it would do is to eliminate the possibility of installing a dumpster back there. Mr. Shaw stated they could continue this as a take out facility as the neighbors don't want a full fledged restaurant there with strolling violins, etc., and other noise, so if they want to take an existing use and enhance it by cleaning up the tables and we work with that issue only, and the fact they are going to have another garbage site, and possibly cut down on the number of outdoor tables. He believed there was too much garbage there now and it may be that it isn't Nature's Way producing it, but there is noise being generated seven days a week and they need to address that.

Dr. John Whelton, 12 Golf View Road addressed the Council noting he owns the wall at the rear of his property and a gate was put in by Mr. Handelsman and he would like it to be removed. He knows that Nature's Way was permitted as a take out facility and now they have been using the outside tables as a sit down restaurant and he did not think that should continue and requested the application be denied.

Attorney Broberg summarized that the 256 Worth Avenue application brought to the Council a few years ago has no bearing on this application. He is not asking for any seating in the adjoining via. He indicated if the Council wishes, they will come back next month with a proposal as to the garbage, as it is their contention that the garbage will not increase as the garbage cans have been there for 20 years, and if they want them moved, he would have to make a determination if that is feasible. He asked for a deferral so they can address some of the issues brought up today.

Mrs. Wiener announced they were now in Executive Session and called for the comments of the Council. Mrs. Royal asked Mr. Zimmerman why the indoor seating area was shut down to which he responded it was felt they had no permission to be a restaurant and we asked them to close their doors until this hearing was over. Mr. Weinberg commented that they are talking about food selling and serving establishments and he doesn't know when a facility like this is a take out and when is it a restaurant and he viewed this as a question of degree, as they are eating and sitting and whether it be indoors or outdoors doesn't make much difference. He thought it could be solved if this be deferred so they have an opportunity to work their way out of this.

Mr. Randolph explained this would become a restaurant when an establishment appropriates those tables for its own use and that is what is being requested here.

Mrs. Smith felt the residents on Golfview may not be serving their best interests by not meeting and trying to work this out as even if the restaurant is turned down, their concerns about garbage and rats presently exist and they are saying it is an intolerable condition and believed they should meet to discuss it with the people involved. She moved to defer this Special Exception for another month and recommended they get together and Mr. Handelsman review the property and be able to show the Council where the present dumpsters could be moved to, which would take them away from the Golfview residents, and perhaps open the gate and deal with the problem of the rats and talk to the people who are dumping in the dumpsters. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

<u>New Business</u>

New Business

4. Variance No. 6-94 - Kathy DeMario, 275 North County Road; to allow construction of a swimming pool 20' from Dunbar Road, the street side yard, in lieu of 30' required. R-B District. - Eugene Fagan, Architect, addressed the Council on behalf of the DeMarios and requested a variance of the pool setback from 30' to 20', noting it is a corner property. He noted everything is conforming on this lot and the neighbor directly to the south has a pool in his back yard about 15' from his property line. He advised the neighbor to the east has a pool in his rear yard which conforms to all of the setbacks. He indicated his clients wish to put a pool on the north side of their house and the 30' setback on the side and the front of the property constrains the limits of where the pool can be placed.

Var. 6-94

Mr. Zimmerman indicated the corner property does limit where they can place their pool. He stated the applicant should address the hardship as there is a possibility the pool can be placed closer to the house or reduced in size to make it a minimum variance. He stated if they approve it, he requested the owner enter into an agreement to maintain the hedge screening around the property. Motion was made by Mrs. Royal to approve the Variance 6-94 with the condition that there be appropriate sight screening. Seconded by Mr. Shaw. On roll call the motion carried 4-0 as Mrs. Smith was out of the room at the time of the roll call.

Var. 7-94

5. Variance No. 7-94 - Selma Terner Slater, 257 W. Indies Road; to allow construction of an addition providing a 10'2" side yard setback in lieu of 12'6" required. To allow gates and posts setback 5' in lieu of 15' required from the front property line. R-B District. - Keith Spina, Architect with Oliver & Glidden addressed the Council on behalf of Mrs. Slater. He noted the first variance is the side setback as they wish to have an addition of a garage. Mr. Zimmerman stated the staff believes the request for the garage is minimal and has no objection. Motion was made by Mr. Shaw to approve the addition of the garage with the variance to the side yard setback for Variance No. 7-94. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mr. Spina indicated the second part of the variance is for installation of gates and gate posts, for security purposes. Mr. Zimmerman explained the staff felt the gateposts could possibly be moved closer to the house so the most minimal variance would be considered. Mr. Spina did not believe they could be moved back any further. Mrs. Smith did not agree noting they could go back about three feet. Mr. Spina stated that is a possibility. Mrs. Smith asked if there was a wall around the property to which Mr. Spina responded affirmatively indicating they could probably move them back three feet, if that is what the Council wants.

John Lang, Landscape Architect addressed the Council, indicating it was his opinion the gates and gates post could not be moved three feet back, as the turning radius would not allow ingress and egress. Mr. Shaw suggested the gate be put at an angle and it could be put into the landscaping.

Motion was made by Mr. Shaw the gates and gates post be deferred until the revised plans be submitted. Mrs. Wiener believed they could authorize it without the revised plans. Mr. Shaw made a motion that the gates and gates post be authorized by placing them back three feet additional which would allow them nine feet from the edge of the pavement. Seconded by Mr. Weinberg. On roll call, the motion carried 4-1, with Mrs. Smith voting against the motion.

Var. 8-94

6. Variance No. 8-94 - Donald Trump, Mar-a-Lago, 1100 South Ocean Boulevard; a variance to Section 5.36 of the Town Zoning Ordinance is requested to comply with conditions of an agreement between the Town and Mar-a-Lago Club, Inc., which specify a gate west of the existing Southern Boulevard gate shall be provided. Said existing gate is 12' high in lieu of maximum 8' currently permitted. Applicant proposes to replace the wall and add two wing walls, also at 12' high. R-AA District. Attorney Paul Rampell introduced Wes Blackman, project coordinator for Mar-a-Lago. Mr. Blackman explained this request is in the Declaration of Use Agreement and is a variance to meet the intent of that agreement with regards to the installation of a gate west of the existing gate. He advised the existing gate is 12' high and the posts are 12' high and that is the request. He advised this is scheduled to go before the Landmarks Commission, if approved by the Town Council. He stated the new gate which will be similar to the existing gate. Mr. Zimmerman advised the Town Staff has no objection, however, the exact location of this gate is yet to be determined as it has to go through the approval process by Department of Transportation and the Town's Engineer. He asked what the height of the wall west of the existing gate would be to which Mr. Blackman responded it would be seven feet. Mrs. Wiener believed this was a Town requirement to have the gate.

Mrs. Smith wondered why they were considering it if they didn't know the exact location as yet, noting she has no problem with the design of the gate. Mr. Blackman responded they are now in the process of working this out with Mr. Bowser and the Police Department to make a determination as to what would be the ideal location, and also balancing the needs and requirements of the Florida Department of Transportation. He noted they did decide on a location north of the traffic circle which caused concern to the Town, so now they are trying to work out relocating the proposed gate further west. Mrs. Smith asked again why are they hearing it today? Mr. Blackman responded he was told by Mr. Zimmerman that nothing is unique as to the location along the Southern Boulevard frontage in terms of this variance request as they have approval to establish a new gate that is aesthetically identical. Mrs. Smith asked if they were showing were the new wall will be located as well? Mr. Blackman responded the location has yet to be determined. Mrs. Smith responded that is exactly what she is having trouble with. Mr. Blackman commented it would be along the Southern Boulevard frontage. Mrs. Wiener felt it was a requirement and in order to fulfill the requirement a variance must be granted and the determination of where it will be located will be made by the DOT and our experts and without the granting of the variance, nothing can happen. Mrs. Smith knew all that but still had a problem with why it was brought before them without having the exact location as this will be conceptual approval and she has the question as to the timing. Mr. Randolph advised that there is an agreement that no final approval will be granted to anything until there were certain conditions met, such as the mortgagee's consent or paying off the mortgage. He understood that the applicant decided since there was much to do before they could move forward, and they submitted this application, but there will be no final approval until certain other matters are taken care of. He suggested if they are inclined to grant the variance, that final approval of the variance be withheld until the condition is met.

Mrs. Royal commented the variance can be approved, but the building permit could not be issued. Mr. Randolph felt it went further than that as the variance can be approved but it would be conditioned upon the Agreement being met relating to the mortgagee's consent.

Attorney Rampell indicated he has the letter agreement which states that no permits necessitated as a result of the conditions imposed by the Declaration of Use Agreement shall be considered for final approval until the conditions contained therein are met, which is the resolution of the mortgage issue, so no building permit could be issued.

Mrs. Royal moved that Variance No. 8-94 be approved conditioned upon the location being determined by the Department of Transportation and the Town Engineer working together and this Variance is also subject to the mortgagee's eventual consent, or some other way that that problem is dealt with. Seconded by Mr. Weinberg. On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion.

7. Variance No. 9-94 - Palm Holdings, Inc., 1029 North Ocean Boulevard; to allow construction of a tennis court with a 25' front yard setback in lieu of 35' required. R-A District. - This variance was withdrawn. Var. 9-94

8. Variance No. 10-94 - Barry Boyce, Trustee, 353 Chilian Avenue; to allow construction of two two-family dwellings on a 25,000 square foot lot in lieu of 26,666 square feet required, thereby establishing a density of 6.4 units per acre, which exceeds the maximum permitted of 6.0. R-C District. Attorney Ronald Kolins addressed the Council, on behalf of the applicant noting there is 25,000 square feet on which his client proposes to construct four units, two duplex units. He stated 13,333 times two is 26,666 so they are 1,666 feet shy. He noted they are entitled to three and three quarter units and they would like four. He stated they are entitled to a density of six units and they want 6.4. He advised the lot coverage percentage is 35% and they are at 33%. He noted the property is adjacent to the Chesterfield Hotel which lies to the north. He noted the two dwellings on the property would be demolished as they are in disrepair. He felt the neighborhood would be preserved by the design contemplated for these units and this is a most positive aesthetic addition for the Town. He advised that each unit will have a garage and he exhibited plans which showed each driveway would have a large enough area to turn a car around so they would not have to back out. He noted they are requesting three curb cuts for the four units. He advised one of the cuts would be on Cocoanut Row and two on Chilian Avenue. He noted the setback on the west is allowed to be ten feet and it will be 12.5'. He thought the most important reason why this should be approved is the compatibility of what they are proposing to the general area. He showed them what was surrounding this property as directly across the street is a mid-rise multi family building; to the north is the Chesterfield Hotel and there are other multi families surrounding it. He pointed out to the southwest are a number of tall multi-family buildings. He noted to the southeast is the same thing. He noted the densities in that area are far in excess of the 6.4 and he read the statistics: Var. 10-94

Chesterfield Hotel - 106.8 units per acre
Multi family building across the street - 64 units per acre

Mr. Zimmerman reported the Comprehensive Plan does not favor the increase in density, however, in the staff's opinion, the density for this application would be minimal. He stated the Town Engineer has pointed out if the access was located on Chilian, it would make for easier access as Chilian is a one-way street westward whereas Cocoanut Row is two way traffic north and south. He agreed this is in the middle of high density development and based on the fact that it is a minimal variance and the compatibility of the design to the neighborhood, staff believes it is a good project.

Motion was made by Mrs. Smith that the Variance No. 10-94, with the condition that they study the exit on Cocoanut Row, as that is south of the Chesterfield and they have valet parking and it would be a problem area with regards to traffic. Seconded by Mr. Weinberg. On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Royal voting against the motion.

A short break was taken. Mrs. Wiener reconvened the meeting.

9. Special Exception No. 7-94 - Peter and Leni May, 1375 South Ocean Boulevard; to allow approval granted under Variance No. 46-92, two kitchens, to transfer to new ownership. R-AA District. - Mr. Zimmerman reported the applicant is willing to enter into a kitchen removal agreement. Motion was made by Mrs. Smith that the Special Exception No. 7-94 be approved with the condition that the applicant will enter into a Kitchen Removal Agreement. Seconded by Mr. Shaw. On roll call, the motion carried unanimously. Spec. Excep. 7-94

10. Site Plan Review No. 1-94 - Augustine Falcione, 970 North Lake Way; to allow installation of an 8' high sculpture per Section 9.60 Site Plan Review, required by Section 5.50(b) of the Town Zoning Code. R-B District. - John Lang, Landscape Architect addressed the Council indicating Mr. Falcione has an international collection of sculptures and he wishes to place one of them at the south end of his property where there is a 35' ficus hedge and they will screen it from the street with an eight foot high hedge, so it will not be visible from either Lake Way or any adjacent property or the Lake Trail. Mr. Zimmerman indicated staff has no objection. Mr. Weinberg moved for approval of Site Plan review No. 1-94. Seconded by Mrs. Royal who asked the motion be amended to conditionally approve the Site Plan with the appropriate sight screening to which Mr. Weinberg agreed. On roll call, the motion carried unanimously. Site Plan Review No. 1-94

C. Other

1. Consideration of Request by Bethesda-by-the-Sea Church for Change in Date for Proposed Antique Show from December 1-3, 1994 to December 8-10, 1994 - Zoe Stout, President of the Women of the Episcopal Church of Bethesda by the Sea addressed the Council, indicating they wish to change the date that was approved last month for the Antique Show to be held at the Church from December 1-3 to December 8-10. She stated the reason is the Wilson's Children Hospital in Jacksonville has had an antique fair in the first week of December for the past seventeen years and one of the managers informed Mr. Armocast who manages the antique fairs, that they preferred the second weekend in December and based on that information, Mr. Armocast informed Bethesda that the first weekend was available, and now they have been informed that that is not the case. She stated it was always the desire of Bethesda to follow the Wilson's show in Jacksonville as many of the vendors would come south the following weekend and she is requesting the change of the date. Bethesda-by-the-Sea Antique Show

Mr. Doney noted there have been staff comments from the Police Department, Building & Zoning, the Public Works Department, as well as the Fire Chief all of which were sent to Father Warren and he asked Mrs. Stout if they were willing to comply with those conditions.

Mrs. Stout stated all of the questions have been answered through Reid Sprague, the Financial Officer. Mrs. Wiener recalled in January, the Council was told there would be between 300 to 400

Bethesada-by-the-Sea Antique Show (cont'd)

people a day attending this event and according to the information now received, they hear numbers like 2000 to 3000 people and she asked for a clarification.

Mr. Reid Sprague, Administrator at Bethesda, addressed the Council indicating they do not anticipate anywhere near 2000, as they could not handle that number of people on the church grounds and buildings. Mrs. Wiener asked how the Town would be protected from that kind of onslaught. Mr. Sprague responded they would take steps to restrict access if the demand were that high. Mrs. Stout clarified that people are going to be shuttled to the Church and that could be controlled. Mrs. Wiener asked how could they preclude people coming in cars to the church for this event to which Mrs. Stout responded there will be no available parking. Mr. Sprague added they have not requested parking on South County as they sometimes do for large services. Mrs. Smith asked if they are going to have Barton Avenue made one way those days to which Mr. Sprague responded they have not made that request.

Mrs. Smith noted Mrs. Stout indicated Mr. Sprague had responded to all of the questions the Town had and asked how they did that to which Mr. Sprague responded they have not responded officially to the Town but they have discussed the problems internally with regards to the garbage collection, to the scheduling of the loading and unloading of the vendors.

Mrs. Smith asked if they would be advertising this event which would state there would be no available parking at the church and a shuttle service would be provided, to which the representatives responded they had anticipated ways to restrict parking but they had not thought of doing that by specific ads in the newspaper, but any flyers and brochures would contain that information.

Mr. Sprague advised they have had preliminary approval from the Flagler Museum to utilize their parking lot and use the shuttle service over to Bethesda. Mr. Shaw asked if that was the Flagler Museum and not the Poinciana Plaza to which Mr. Sprague responded affirmatively. Mr. Shaw pointed out this will be a Thursday and Friday which are commercial days and there would be no parking available at the Plaza. Mr. Sprague asked if he was talking about the parking spaces on Royal Poinciana Way to which Mr. Shaw responded it would be difficult to find parking spots on that street. Mr. Sprague responded the Flagler has tentatively agreed to provide parking in the Museum Parking Lot. Mr. Randolph did not believe the Flagler Museum could use their parking spots in this manner. Mr. Shaw asked if they had approached the Poinciana Chapel for parking spots to which Mr. Sprague responded they have not.

Mrs. Wiener noted this is close to Christmas and there will be more people coming to Town and wondered if they could possibly get the earlier date back as everything will be aggravated by having this event one week later. Mr. Sprague responded it would not be possible to get the earlier date and have the manager they wished to go with.

Mrs. Royal asked if the Flagler Museum could close on Thursday so there wouldn't be any use of the Museum parking lot.

Mrs. Wiener noted Major Reiter's comments in his memorandum to the Police Chief that a simple calculation of expected revenue indicate the expected attendance of 300 persons per day is understated and such an understatement could cause greater traffic problems and a requirement for additional special detail officers. Mr. Sprague advised if the Council wishes them to come up with a plan to restrict the number of attendees, they will make an attempt to do so. Mrs. Royal stated as a communicant she would like to see a lot of attendees so much money can be made and the roof can be fixed, but if the Flagler Museum cannot be closed those particular days, it may be parking is a moot question and needs to be addressed again.

Mrs. Stout reported they have also discussed using the parking lot of First Union.

Mrs. Smith noted in the application they state they will be parking in Royal Poinciana Plaza. Mr. Sprague responded they have tentative agreement with the Flagler and there is a Committee of the Church which will discussing this issue with the First Union Bank and there may be discussions with the Royal Poinciana Plaza but there are no commitments.

Mr. Weinberg asked if they would be selling tickets for admission to which Mr. Sprague responded affirmatively. Mr. Weinberg asked if they would be willing to limit the number of tickets each day to which Mr. Sprague responded they can study that. Mrs. Smith understood that they would be selling tickets for the lectures and teas and special previews but not for general admittance to the vendors. Mrs. Stout advised there would be admission tickets also but the luncheons and preview parties would be extra events paid for separately.

Mrs. Wiener made the statement that she was sorry they had to change their dates as she voted for this last time on the information that was received from the Town Staff, but now she has a problem with it.

Mrs. Royal asked if they would be willing to look further into the parking problems? Mrs. Stout responded they would be willing to do so but they can't arrange for anything definite until they receive Town approval. Mrs. Royal did not believe approval could be given until there was some definite information on the impact of the parking and that it had been mitigated. Mrs. Wiener agreed noting this is the time when the traffic is very heavy and she believed there would be chaos.

Mr. Shaw did not know how they could consider as a possibility that the Bank would allow parking in their facility on heavy business days of Thursday and Friday. He felt there would also be problems with the Plaza and the Flagler Museum as on all three days, Thursday, Friday and Saturday, they will be in full operation and need to provide the parking for their customers.

Mrs. Stout stated it is up to them to find the parking and if they can't find it close by, they will look elsewhere. Mr. Shaw noted the Jacksonville event is being held in an auditorium which is a facility which has parking available.

Mrs. Wiener asked if they had received any indication from the antique show manager as to the number of people they would expect to have come to the show each day to which Mr. Sprague responded the show manager's opinion was there would be in the neighborhood of three hundred people coming to the event. He pointed out there are only 21 vendors and the attendees will be able to move through the vendors very quickly. He commented they would be willing to work with the Council's desire if they wish to restrict that, they will work up a plan to do so.

Bethesada-by-the Sea Antique Show (cont'd)

Mrs. Wiener noted there are no department heads in attendance. Mrs. Smith recalled she voted against this the last time and now she has additional concerns, especially that it will be two weeks before Christmas and there are a lot of unanswered questions. Mrs. Stout stated they are relying on the manager's experience as he does seven of these shows each year and has been doing them a number of years and the statistics submitted were his, based on his experience.

Mrs. Smith asked how much time has he spent in Palm Beach as this Town is unique and people flock to this Town without the lure of this show, and that is why she wanted to know how much on-island experience he had as this show will be an additional draw to the crowds of tourists that they would get anyway.

Mr. Shaw asked if they would do no advertising and dealt solely with word of mouth, could they reach the number of people necessary to meet their expectation of 300 people a day. Mrs. Stout responded part of the manager's job was to promote the show and he does so in antique journals and digests, as he will bring in people. Mr. Shaw asked if they would limit advertising it may give the Town a little security in knowing they will not be looking at having 2000 people there or will it be so detrimental that no-one would come. Mrs. Stout reminded the Mayor and Council, they are putting on this event to raise the money for the renovations and you have to get the people in to do that. Mr. Shaw wanted to make sure they didn't go too far above the 300 expected but limiting promotion on the event and leaving it to some degree that they could start the advertising on Thursday. Mrs. Stout hoped that the advertising would benefit the Town by providing peripheral business. Mrs. Wiener did not believe she understood as they really don't want more traffic in this Town as the streets cannot accommodate what we have now. Mrs. Stout pointed out they received mixed messages from the Worth Avenue Association. Mrs. Wiener reminded that the Worth Avenue Association does not deal with the public safety problems as that is a Council problem and they are the ones that have to listen to that and in addition, the residents of the Town will believe their interests are not being served.

Mr. Shaw made a motion that approval be given to this request, contingent on the Building and Police Departments approving a parking plan that we can all live with, and which will take care of a minimum of 500 cars per day, in addition to taking care of the other requirements with regards to off-street parking, occupational licenses, etc. Seconded by Mrs. Royal. On roll call, the motion did not carry, 3-2 with Mrs. Smith, Mr. Weinberg and Mrs. Wiener voting against the motion.

Mrs. Wiener asked if they could figure out another way of approaching this and come back to the Town Council.

Mrs. Smith made a motion to defer this issue and have the representatives of the Church come back with a firm study on what the parking situation would be at the April Town Council meeting. Seconded by Mr. Weinberg who asked they consider not only the traffic but also the Fire Department's requirements. On roll call, the motion carried unanimously.

Mr. Doney asked Mr. Sprague to respond to the comments of the staff by April 1st so it can be distributed before the April 12th Town Council meeting.

2. Consideration of Request for One-Year Time Extension by Doyle Rogers - Amended Variance No. 70-92 - Ocean Bay, Inc., 910 South Ocean Boulevard and 151 and 171 Via Bellaria; to allow construction of a second floor addition to a two-story residence built at a ceiling height of 40.03'; and providing a 30.8' side yard setback in lieu of 35' required. R-A District. (See Item XV.C.3.) - Attorney Doyle Rogers addressed the Mayor and Town Council for an extension of one year indicating they need additional time. Mr. Zimmerman stated this is the applicant's first request and there is no objection from the staff. Motion was made by Mr. Weinberg to grant the one year extension. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

One Year Extension - Amended Var. No. 70-92

3. Consideration of Request for One-Year Time Extension by Doyle Rogers - Variance No. 7-93 - Ocean Bay, Inc., 910 South Ocean Boulevard and 151 Via Bellaria; to allow a kitchen at 151 Via Bellaria to remain in an accessory structure that is guest house to 910 South Ocean Boulevard; and allow a kitchen to remain in an accessory structure (formerly known as 168 Clarendon) that is staff quarters to 910 South Ocean Boulevard. R-A District. (See Item XV.C.2.) Attorney Doyle Rogers addressed the Mayor and Town Council who requested the one year time extension. Mr. Zimmerman stated the staff has no objection as this is the first request. Motion was made by Mr. Weinberg to approve the one year time extension. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

One Year Extension - Var. 7-93

4. Consideration of Request for 90-Day Time Extension by Raymond W. Royce - Special Exception No. 10-93 With Variances - J. Grace, 230 Sunrise Avenue; to allow roof-deck automobile parking level on a proposed one-story structure replacing an existing two-story. Variances requested are 1. provide 13% landscaped open space in lieu of 15% required; to allow roof top parking without a horizontal sight block covering the parking per Section 6.21(H)(4) of the Town Zoning Ordinance. C-TS District. - Eugene Lawrence, Architect made the request on behalf of the applicant, Mr. J. Grace, for a 90 day time extension. Mr. Zimmerman stated the staff has no objection. Motion was made by Mrs. Royal that Special Exception No. 10-93 with Variance be granted a 90 day extension. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

90-day extension - Spec.Excep. No. 10-93

5. Consideration of Request for One-Year Time Extension by Peter S. Broberg - 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 11,525 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. - Attorney Broberg requested a one year time extension for Variance No. 12-93. Mr. Zimmerman stated there is no objection from the staff. Motion was made by Mr. Weinberg to grant the extension of one year. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

One Year Extension - Var. 12-93

XVI. ANY OTHER MATTERS -

A. Motion was made by Mrs. Smith, seconded by Mr. Weinberg to approve the Major Matters of the Architectural Commission at their meeting on Feb. 23, 1994. On roll call, the motion carried unanimously.

County Comm. Against Airport Noise

B. COUNTY COMMISSION AGAINST AIRPORT NOISE: Mr. Doney asked for a motion that Mr. Weinberg be appointed as the Town's representative on CCAN, contingent upon written confirmation being received from the County Commission as to his appointment. Mrs. Smith so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Adjournment

XVII. ADJOURNMENT - Meeting adjourned at 7:32 PM.

Grace T. Peters
Town Clerk