# TOWN COUNCIL MINUTES OF MEETING HELD ON FEBRUARY 14, 1995

I. CALL TO ORDER AND ROLL CALL - Meeting was called to order by President Pro Tem Smith in the Town Hall Council Chambers at 9:30 A.M. On roll call, the Elected Officials found to be in attendance were: Mayor Ilyinsky, President Pro Tem Smith, Councilwoman Royal, Councilman Shaw, and Councilman Goldsmith. Also attending were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Deputy Town Clerk Pollitt, Police Chief Terlizzese, Fire-Rescue Chief Elmore, Assistant Town Manager Elwell, Director of Public Works Dusey, Personnel Director Crouse, Recreation Director Bitzer, Town Engineer Bowser, Finance Director Crozier, Purchasing Agent Boggs, Director of Planning, Zoning and Building Moore, Planner/Projects Coordinator Frank, and Information Systems Manager Wilson.

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by Dr. Kirkman from Royal Poinciana Chapel. The Pledge of Allegiance was led by President Pro Tem Smith.

III. PRESENTATIONS

APPOINTED OFFICIAL

A. Recognition of Allen S. Wyett, Architectural Commission

Mayor Ilyinsky recognized Mr. Wyett's service to the Town of Palm Beach as a member of the Architectural Commission and presented a plaque to him.

TOWN EMPLOYEES

B. Retirement of Moses Hagood, Equipment Operator III, Public Works Department - 30 Years and 3 Months - A ring was presented to Mr. Hagood.

C. Retirement of John Irvine, Police Officer - 21 Years and 9 Months

Mayor Ilyinsky presented a ring to Police Officer Irvine.

Mr. Irvine stated that it has been a pleasure to serve the Town and that he would like to thank the Town Council, the Town Manager, the Mayor and the Police Chief for allowing him to serve the community the last twenty-one years. He thanked Chief Terlizzze personally for bringing the Police Department out of the dark ages and into the 21st century.

D. Retirement of Grace T. Peters, Town Clerk - 22 Years and 3 Months

Mayor Ilyinksy recognized twenty two years and three months of loyal and valuable service to the Town of Palm Beach, its citizens and fellow employees. In recognition of her service to the Town the Mayor presented Mrs. Peters with an engraved ring containing the seal of the Town of Palm Beach. The Mayor said he, the Town Council members, amd her fellow employees wished her good health, happiness and God bless.

Mrs. Smith added that the Town is hosting a party for Mrs. Peters next week and that she hoped that everyone could be there.

IV. COMMENTS OF THE MAYOR - The Mayor delayed his comments until after the newly elected officials were sworn in.

V. APPROVAL OF AGENDA

Motion made by Mrs. Royal to approve the agenda. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

VI. RESOLUTION NO. 7-95 - Certifying Election of February 7, 1995

Mr. Randolph read the resolution:

RESOLUTION 7-95 CERTIFYING ELECTION OF FEBRUARY 7, 1995

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON FEBRUARY 7, 1995 BETWEEN THE HOURS OF 7 A.M. AND 7 P.M. ON SAID DATE, FOR THE PURPOSE OF ELECTING FOR THE TOWN OF PALM BEACH ONE COUNCIL MEMBER FOR A ONE YEAR TERM, TWO COUNCIL MEMBERS FOR A TWO YEAR TERM, AND ONE MAYOR FOR A TWO YEAR TERM.

Motion made by Mr. Goldsmith to approve Resolution Number 7-95 certifying the election of February 7, 1995. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

**APPROVED AGENDA** (ITEM VII.)

VII. APPROVAL OF MINUTES OF JANUARY 4, 17, AND 23, 1995

Motion made by Mr. Shaw to approve the approved agenda. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

REGULAR AGENDA

VIII. COMMITTEE REPORT

A. Administrative and Personnel Committee Report of January 17, 1995.

REPORT OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE
MEETING OF JANUARY 17, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Administrative and Personnel Committee was called to order by Chairman Lesly S. Smith at 10:00 a.m. on January 17, 1995, in the Town Hall Council Chambers. On roll call, President Pro Tem Smith and Councilman C. Gerald Goldsmith were found to be in attendance as members of the Committee. Other Elected Officials attending the meeting were: Mayor Paul R. Ilyinsky and Councilman Leslie A. Shaw. Others attending the meeting were Mr. Robert J. Doney, Town Manager; Mr. John C. Randolph, Town Attorney; Mrs. Marie Crozier, Finance Director; Mr. William C. Crouse, Director of Personnel; Mr. Albert P. Dusey, Director of Public Works; Mr. Robert Curro, Storekeeper/Clerk, Finance Department; Mrs. Grace T. Peters, Town Clerk; and Mrs. Mary A. Pollitt, Deputy Town Clerk.

II. APPROVAL OF AGENDA: The agenda was approved as printed.

III. CONSIDERATION OF APPEAL OF SUSPENSION FOR FIVE DAYS AND NINETY-DAY PROBATION BY ROBERT CURRO, STOREKEEPER/CLERK, FINANCE DEPARTMENT. Mrs. Peters gave the oath, individually, to all who testified. After hearing the testimony of Mr. Curro, Mr. Crouse, Mrs. Crozier, Mr. Shaw and the recommendation of Town Attorney Randolph, THE COMMITTEE RECOMMENDED THAT ON THE BASIS OF THE EVIDENCE SUBMITTED, AND THE TESTIMONY OF THE WITNESSES AS WELL AS THE DOCUMENTATION PRESENTED BY MR. CURRO AND MR. CROUSE AND THERE BEING NO OTHER EVIDENCE PRESENTED, THAT THE ACTIONS OF THE FINANCE DIRECTOR, MRS. CROZIER, BE SUSTAINED. MR. GOLDSMITH SUGGESTED THE GRIEVANCE PROCEDURES BE REVIEWED.

IV. ADJOURNMENT: The meeting was adjourned at 12:45 p.m.

ADMINISTRATIVE & PERSONNEL COMMITTEE

LESLY S. SMITH, COMMITTEE CHAIRMAN

C. GERALD GOLDSMITH, COMMITTEE MEMBER

Motion was made by Mr. Shaw to accept the report of the Administrative and Personnel Committee of January 17, 1995 and accept the action of that report. Seconded by Mrs. Royal. Motion was unanimously approved.

IX. OLD BUSINESS

A. Ordinances - Second Reading.

1. ORDINANCE NO. 2-95 - REDUCTION IN CONTRIBUTIONS TO RETIREMENT SYSTEM.

Mr. Randolph read the ordinance:

AN ORDINANCE OF THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15, SECTION 15-33d SO AS TO REDUCE THE MEMBER CONTRIBUTIONS FOR BENEFIT GROUP GENERAL FROM 6.10 to 5.10; BENEFIT GROUP FIREFIGHTER FROM 8.82 TO 6.82; BENEFIT GROUP POLICE OFFICER FROM 8.9 to 6.9; AND BENEFIT GROUP LIFEGUARD FROM 9.21 to 7.21, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Shaw to adopt Ordinance 2-95. Seconded by Mr. Goldsmith. On roll call the motion carried unanimously.

B. Other

1. Audit Report

a. Audit Report for Fiscal Year Ending September 30, 1994.

Mr. Doney spoke regarding the Audit Report, referring to the Memorandum of February 2, 1995 from Mrs. Crozier, Finance Director. He added that Mrs. Crozier was present and would speak further to particular questions and comments. He did feel that it was important to note one important highlight, and as has been done during previous receipts of the annual audit, if the Town Council and the Mayor, or the Finance and Taxation Committee wish to discuss the audit in any particular detail, representatives of the auditor's firm, Moore, Caler, Donten & Levine would be present at a Finance and Taxation Meeting or at a Special Town Council Meeting.

Mr. Doney felt that the most important thing to note at this particular meeting, in view of the time available today, is that the General Fund, which accounts for the majority of the Town's operations, has an undesignated fund balance of $5,717,448.00. This represents approximately 19% of the FY95 General Fund Budget of $30,199,205.00. This figure represents approximately two months of operating expenses and is considered prudent in recognition of the many emergency problems the Town could experience because of the age and location of the infrastructure and also because of the Town's exposure to the Atlantic Ocean. In Mr. Doney's opinion, quoting from Mrs. Crozier, and in Mrs. Crozier's opinion with which he concurred, the other funds, the Enterprise, Debt Service, Insurance, and Pension also remained sound. Mr. Doney stated that it is important to note that the Town's bond rating according to Moody's Investor Service remains at Aaa, and the Town of Palm Beach is the only municipality that continues to maintain an Aaa rating. Mr. Doney maintained that it is a very good report. He added that there is an additional item, an independent item, which is a Report to Management. He continued that the appropriate action that the Town Council can take today, once the Mayor and Town Council have asked any questions, is to receive the Audit at today's meeting, and then, officially, Mrs. Crozier will take additional action to transmit it to the Department of Revenue and other State Agencies.

The Mayor congratulated the Finance Department, stating that the Aaa rating is a very, very nice thing to have and that it is because of the efforts of Mrs. Crozier and the rest of her department. He extended his congratulations once again.

Mr. Shaw motioned that the Audit Report as presented for the year ending September 30, 1994 be approved. Mr. Goldsmith seconded the motion. On roll call, the motion carried unanimously.

b. Management Letter and Staff Response.

Mr. Doney stated that the particulars of the Report to Management are set forth in the memorandum dated February 2, 1995 from Mrs. Crozier to him and as noted on that memorandum he has reviewed the Report to Management with Mrs. Crozier, and the details of that Report to Management have been discussed with the Town auditors. Representatives of the Town auditors were present to answer any specific questions. He added that certain portions of the Report to Management comments have been highlighted along with the Town management's responses to those audit comments. To answer any particular questions, Mr. Doney offered his services as well as Mrs. Crozier's in response.

Mr. Doney said that two prior year audit comments had been resolved. One was concerning grant administration. One of the key issues there is to make sure that the Finance Department is fully informed and participates in the administration of any grants received by the Town, be it through the Solid Waste Authority or through the funding which is received on the monitoring of the PEP Reef through the Department of Environmental Protection.

The other item that is a continuing problem which concerns everyone on all appointed Boards and Commissions as well as all elected officials, is the filing of Statements of Financial Interest, and that is something which everyone needs to be reminded of regarding timely filing. Any questions that arise as a result of the Report to Management prior to the Town Council taking action will be responded to by Mr. Doney or Mrs. Crozier.

The Mayor asked Mr. Doney about automobile allowances being filed on the W-2 form, and Mr. Doney responded that they have always been reported as part of wages.

Mrs. Smith asked if there was any member of the public who would like to speak to this. There was no response.

Mr. Shaw moved that the Management Report and staff response to the audit be approved. Mr. Goldsmith seconded. The motion carried unanimously.

X. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR JANUARY 1995

Motion made by Mr. Shaw, seconded by Mrs. Royal to approve the Warrant List and Fund Expenditures for January, 1995. On roll call the motion carried unanimously.

XI. ANY OTHER MATTERS - There were none.

XII. RECOGNITION OF TOWN COUNCIL MEMBERS

A. Town Council Member Hermine L. Wiener (1988 - 1994)

Mrs. Wiener was not present.

B. Town Council Member Michele Clarke Royal (1993 - 1995).

A plaque was presented to Mrs. Royal.

C. Town Council Member C. Gerald Goldsmith (October 1994 - February 1995).

A plaque and a portrait were presented to Mr. Goldsmith.

Mayor Ilyinsky commented that he would like to recognize Hermine Wiener who was unable to attend the meeting. Mrs. Royal and Mr. Goldsmith expresssed their thanks to everyone.

XIII. ADJOURN SINE DIE -

The meeting was adjourned sine die.

XIV. SWEARING IN OF NEWLY ELECTED OFFICIALS - The Honorable Jack H. Cook, Chief Judge, 15th Judicial Circuit, Palm Beach County.

Mayor Ilyinsky called the meeting to order and stated that Mrs. Smith would identify the distinguished guest, Judge Cook. Mrs. Smith read the following: The swearing in today of our newly elected officials will be done by Jack H. Cook, Chief Judge of the Circuit Court, 15th Judicial Circuit of the State of Florida. Judge Cook is a strong proponent and very active in the service of domestic and repeat violence injunctions and is working in conjunction with our police department for a training program that will outline the procedures to be used by the police in dealing with domestic violence, a subject very much in the headlines today.

Judge Cook gave the oath to the Mayor and the newly elected Council members, John L. McDonald, Samuel C. McLendon and Allen S. Wyett.

XV. CALL TO ORDER AND ROLL CALL - Meeting called to order and on roll call the following elected officials were found to be in attendance: Mayor Ilyinsky, Mrs. Smith, Mr. Shaw, Mr. McDonald, Mr. McLendon and Mr. Wyett.

XVI. ORGANIZATIONAL ITEMS

A. Elected Officials

1. Election of Town Council President - Pursuant to Section 3.01 of Town Charter - Mayor Ilyinsky called for nomination for Town Council President and Mr. McLendon nominated Mrs. Smith as President. On roll call the motion carried unanimously.

2. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of Town Charter - Mayor Ilyinsky called for nomination for Town Council President Pro-Tem and Mr. Wyett nominated Jack McDonald as President Pro-Tem. On roll call, the motion carried unanimously.

B. Administrative Official

1. Appointment of Town Clerk - Pursuant to Section 2-3 of the Town Code - Mr. Doney recognized Mrs. Peters for her long service to the Town of Palm Beach. He then recommended Mary A. Pollitt, Deputy Town Clerk, be appointed by the Town Council as Town Clerk effective February 24, 1995 at 5:01 P.M. Motion made by Mr. Shaw to approve the appointment of Mrs. Pollitt to Town Clerk. Seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XVII. COMMENTS OF THE MAYOR - Mayor Ilyinsky said, at the end of his new term, he will have served 15 years as a public servant of this community, and during those years he has enjoyed the association with many fine people who have also dedicated their time and energies to assist in governing Palm Beach. Most recently, Hermine Wiener has donated seven years; Michele Clarke Royal has served well during her tenure of office and he looks forward to continuing their friendships now that they have left office. He stated he has gained a great deal of knowledge of how Palm Beach works and what makes it work so well. For the first time in the history of the Council, three new members are welcomed who have had no prior government experience. They all come directly form the private sector. In the private sector, they have individually enjoyed tenure as executives in industry or as qualified professionals. They have operated autonomously in the context of their respective responsibilities. Their productive efforts as leaders required them to act positively, expending minimum effort in explanation except in those circumstances where it accelerated the pace of performance or benefited the end result. They did perform admirably in their respective roles. Service, however, in the public sector is an entirely different matter. In the public sector, we function only under a philosophy or consensus--that means that the elected officials are all equal in our responsibilities of governing this community. The process of gathering information, obtaining staff support and legal guidance are performed by all and is part of the process of developing opinions and that is ultimately shared during council proceedings. At all times, the Council functions as members of a team, individually contributing to the net result of the majority. There is no such thing as members making deals in the deliberation process. He was confident the new members were aware of the changes in the conduct of their new responsibilities. Their prior activities have sharpened keenness and their fresh approach is welcomed at this governing body. The Mayor, President and the newly elected officials will join to dedicate their efforts to a fine performance of their responsibilities and maintaining the quality of life enjoyed in Palm Beach. Mayor Ilyinsky quoted: "May we remain in God's pocket as long as we serve".

XVIII. APPROVAL OF AGENDA

The following changes were made to the agenda:

C. OTHER 1. Consideration of Fifth Annual Palm Sale Proposed for Sunday, April 9, 1995, sponsored by the Preservation Foundation of Palm Beach. Moved forward under XX. Old Business A.1.

Motion made by Mr. Shaw. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Item IX.B.1. Consideration of Request for a Transfer of a 4COP Alcoholic Beverage License by P. B. Restaurant, Inc., d.b.a. The Poinciana Club located at 70-A Royal Poinciana Plaza. Requested by Mr. Shaw to move to XXI. New Business C. Other 8.

Add item XXI. New Business C. Other 9. to discuss an invitation for Mrs. Smith to speak at the Civic Association.

Motion made by Mr. Shaw. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Add item XXI. New Business C. Other 11. Discussion of time certain for development review matters.

Motion made by Mr. Shaw. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

**APPROVED AGENDA** (ITEM XIX.)

Motion was made by Mr. Shaw to approve the agenda as amended. Seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney mentioned one other item that had been brought up to him by Mrs. Smith was the possibility of scheduling a Workshop Town Council Meeting if the Mayor and Town Council were so inclined. There was one after the election in February of 1994 at which time the Town Attorney explained the various laws that regulate public officials, and in addition the administrative officials covered the issues from a procedural, operational and organizational perspective. Mr. Doney continued that if the Mayor and Town Council are so inclined the staff would be glad to make preparation for a Workshop Town Council Meeting.

Mrs. Smith felt that since new members of the United States Congress go through two orientation meetings then the Town Council of Palm Beach can also do that. She said that she thought it should become part of the process and that if the members of the Council agree, this could be set up as a Workshop, open to the public where any questions could be answered and this can be brought up under Item XXI.C.10 in the Agenda.

Motion made by Mr. Shaw to schedule a Workshop. Seconded by Mr.Wyett. On roll call the motion carried unanimously.

Mr. Shaw brought up an idea that he had about the Council establishing a policy that may be more time-friendly to the many Variances and Special Exceptions that come before the Council and to start to schedule them at a certain time, for example, in the afternoon session of Council. He felt this would eliminate the need for attorneys and residents to question the time something would be heard, although he realized that this may add some time to the meeting day. He wondered if this could be discussed. Motion was made by Mr. Shaw to add this to the Agenda for discussion as Item XXI.C.11. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Mr. Shaw made the motion to approve the Agenda as amended. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw made the motion to approve the Approved Agenda. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

XIX. LICENSES AND PERMITS

A. Charitable Solicitations

1. Fraternal Order of Police; No. 79-95
2. Rehabilitation Center for Children and Adults, Inc.; No. 126-95
3. Israel Tennis Centers Association, Inc.; No. 175-95
4. School of the Arts Foundation; No. 363-95
5. Opportunity, Inc. of Palm Beach County; No. 242-95

B. Beverage Licenses

1. Consideration of Request for a Transfer of a 4COP Alcoholic Beverage License by P.B. Restaurant, Inc., d.b.a. The Poinciana Club located at 70-A Royal Poinciana Plaza -

This item was moved to XXI. C.I., later in the agenda, and deferred.

2. Consideration of Request for a Transfer of a 4COP Alcoholic Beverage License by 2870 Palm Beach Hotel, L.C., d.b.a. Howard Johnson - Palm Beach, located at 2870 South Ocean Boulevard

3. Consideration of Request for a New 4COP SRX Alcoholic Beverage License by Taverneer Group, Inc., d.b.a. Beebe's Tavern, located at 251 Royal Palm Way, Suite #100

**REGULAR AGENDA**

XIX. LICENSES AND PERMITS

C. Charitable Solicitations

1. Ultimate Children's Learning Adventure of Palm Beach County, Inc.; No. 382-95 -

Mrs. Peters explained that the problem with this application was that they did not have an audit, however, they expected to have an audit for their event and they would like approval subject to receiving a financial statement before the event.

Terry Mitchell, Executive Director of The Ultimate Children's Learning Adventure spoke to the Council. She explained that her organization was a new organization, endeavoring to build a child care facility in the area of Riveria Beach. The City of Riveria Beach has donated land to the organization, upon which the child care facility will be built. Their fund raiser is scheduled to be held on March 26, 1995, and they are currently in the process of preparing an audit. She produced a letter from their council stating that the reason that they do not have an audit at this time is because this is the first audit they will have.

Mr. Shaw asked if they were a new organization why did the memorandum state that they were compiling an audit for 1993 and 1994? Ms. Mitchell stated that they are compiling an audit for 1994, however, they were issued a non-profit status in November of 1993 and they actually began using it in January of 1994, and there was no activity in 1993.

Mr. Shaw moved that Charitable Solicitation No. 382-95 be approved with the understanding that a financial statement will be provided as soon as possible. Mr. McLendon seconded the motion. On roll call the motion carried unanimously.

XX. OLD BUSINESS

A. Other

Consideration of Fifth Annual Palm Sale Proposed for Sunday, April 9, 1995, Sponsored by the Preservation Foundation of Palm Beach

Mrs. Polly Earl addressed the Town Council. She said that she hoped that by this time the palm sale has become a tradition in the Town of Palm Beach. Over the past five years they have sold over $200,000 worth of palm trees, so they are bringing palm trees back to Palm Beach--replacing those that have been destroyed by lethal yellowing and by degradations of storms, lightening and development of property. Of that amount, over $82,000 has been in donations to the Town for trees planted directly on Town property that nobody in the Town has to pay taxes for. These are donations from public-spirited citizens who like to give something to the Town. This has resulted in the planting of over 1,300 trees in the Town in varieties that are lethal yellow resistant. Mrs. Earl added that some of these trees were 18-20 feet tall and that they hope to continue this project and that this year they would add the availability of native plants that are xeriscape plants and appropriate to landscaping and saving water in the Town.

Mrs. Smith responded that she believed that it was discussed that part of the funds from the Par Three Golf Tournament would go to Town beautification and that it was hoped that the Preservation Foundation would offer to help with these trees for the Town beautification at cost. Mrs. Earl replied that this is not a fund raiser and that all of the trees are sold at cost.

Mrs. Smith thanked Mrs. Earl for providing this service to the Town.

1. Consideration of Future Water Supply Issues

a. Report of Negotiations with City of West Palm Beach Regarding Water Franchise

Mr. Randolph addressed the Council and advised that his report to the Council would be a short report; it would only be to advise what has happened since the recommendation by the Town Council that staff meet with staff members of the City of West Palm Beach to discuss the renegotiation of the franchise.

Staff had two meetings. The first meeting was immediately after the last Council meeting to simply re-introduce everybody to the table. Because of the short notice involved, all of the players could not be at that meeting. Erik Olson did attend, however, and indicated that the city would be happy to continue to meet with the Town to negotiate the franchise. At that meeting another meeting of staff was set. Town representatives were Al Dusey, Bob Doney and Town Attorney Randolph. Representing the city of West Palm Beach were Michael Wright, Erik Olson, City Attorney Pat Brown and an Assistant City Attorney, along with a finance person.

Mr. Randolph felt that the meeting was a good meeting. Many suggestions were made as to amendments that could be made in the franchise, although no agreements were made. The City of West Palm Beach suggested that they could come before the Town Council in a Workshop Session, to provide to the Town Council information related to what it has to offer the Town of Palm Beach concerning a future water supply, and improvements to the water system, etc. Mr. Randolph agreed to submit the invitation to Council to see whether or not the Council would be amenable to having such a workshop. At this point, he was simply passing this information on to the Council for consideration and advice.

Mr. Wyett asked Mr. Randolph if there had been any discussion as to the City of West Palm Beach's willingness to improve the water contract last offered to the Town of Palm Beach.

Mr. Randolph responded in the affirmative. He said that there were several points raised and that if the Council wished to discuss these points publicly at this point that would be left to the discretion of the Council.

Mrs. Smith asked if Mr. Olson was present. Mr. Randolph replied that he was not, and he indicated Mr. Olson was willing to come back to the Council in a workshop session to discuss this matter.

Mr. Doney suggested that this needed to move along and encouraged the scheduling of a workshop.

Mr. McLendon agreed that a workshop should be scheduled as soon as possible.

A motion was made by Mr. McDonald to schedule a workshop as soon as possible. Seconded by Mr. Wyett.

Mrs. Smith was hopeful that the workshop could be scheduled before the next Town Council meeting and asked Mr. Randolph if he could possibly speak to Mr. Olson to ascertain dates for the workshop so that they could be cleared on the calendar in the afternoon session of the Town Council meeting.

Mr. McLendon requested that Mr. Randolph provide each Council member and the Mayor with a copy of the State Statute that enables the surcharge and any peripheral information that is available as to consideration by the legislature when they passed the statute. Mr. Randolph said that he would be happy to do that.

Mr. Doney said that if the Town Council and Mayor could give a block of time that would be suitable for a workshop meeting, Mr. Elwell would contact Mr. Olson to confirm a meeting.

On roll call the motion to schedule a workshop meeting carried unanimously.

b. Nonreusable Alternatives

Mr. Dusey addressed the Council with information on the new proposal from Hutcheon Engineers regarding the site of the nonreusable source of water and distribution system. Based on the suggestions of the Council as to items to be looked at the consultant has reduced the total down to the following items: determining system flow requirements; the design of a distribution system; Riveria Beach as a source of irrigation quality water; West Palm Beach Canal as a source of irrigation quality water. The total for the study of those items is $41,500. At the same time the consultant suggested that we might want to consider looking at aqua storage and recovery in the shallow aquifer in conjunction with the use of C-51 Canal, the reason being that he feels strongly that South Florida Water Management District is heading in the direction of moving away from the idea of using well water for irrigation purposes. Mr. Dusey said that an alternative would be suggested by John Potts of Hutcheon Engineers.

John Potts of Hutcheon Engineers reported that the South Florida Water Management District is in the business of regulating how water is used in south Florida, and as such they consider the ground water aquifer as a resource, and it must go to the highest and best use until its capacity is used. Irrigation water is not the highest and best use; potable water would be, and it goes down from there.

Mr. Potts continued that in order to complete that system so that it has a year-round reliability to its customers, there is the need to store water to have it available during periods of extreme drought. The system provides for a great deal of excess water during the wet season. Large quantities of water could be stored in the shallow ground water, much the way that nature has for many years. On the island it is no longer there because of development; it was withdrawn in the early years by private wells. This system would be more of a natural system compared to the deep aquifer storage and recovery systems. This one replenishes the shallow ground water, about 30 feet deep, during periods of wet season and then it is recovered during dry seasons. It would provide the potential of a year-round reliable system which would then place the Town in the position of having to import or purchase only drinking water from the City of West Palm Beach, and this is a significant reduction in the volume of water used. The study of the City of Riveria Beach was removed for the alternate proposal, adding in the aquifer storage and recovery. The proposal would come to slightly more; to $51,000 as opposed to the $41,000. Mr. Potts offered to answer any questions regarding the proposal.

Mr. Wyett asked if the Town chose to recharge the aquifer, would the water have to be processed when it was taken out again?

Mr. Potts responded that it would be processed in the fashion that the irrigation water would and that is basically filtration and disinfection--not making it drinking quality standard. That is one of the reasons for using the deeper aquifer as the current regulations require that drinking water quality is made before it is put down in the aquifer. The shallow water aquifer does not require that.

Mr. Wyett questioned the size of a plant required to process the water. Mr. Potts replied that this was the subject of the study. With current plans for 6-8 million gallons a day, and if the process were done on a continuous basis, that amount would be sufficient. One of the purposes of the study is to determine the optimum size of a plant. This study would locate that plant on the mainland near the C-51 Canal, near the source.

Mr. McLendon asked what would be the status of the shallow aquifer at the end of a normal rainy season?

Mr. Potts answered that the aquifer is functioning at it's maximum, however because of development, storm drainage facilities, driveways, parking lots and non-porus surfaces, it is not as fully re-charged this day as it was when this was a barren island. It is a function of development that we pave areas and we seek to drain that water off as quickly as possible so that we are not flooded out, therefore it is not as fully re-charged as it can be. After a normal rainy season it may be fully re-charged.

Mr. McLendon asked if Mr. Potts visualized a pressurized re-charged well or just gravity fed. Mr. Potts responded that it would be very slightly pressurized, just to insure positive flow, but not highly pressurized. It may even be a horizontal well. Mr. McLendon felt that would make more sense.

Mr. McDonald asked what percent of our daily water is used for irrigation. Mr. Potts answered anywhere from 40-60 percent, depending on the time of the year.

Mr. Shaw commented that he was delighted to see that the point had been reached where discussion of the C-51 Canal was included. He thought that one thing of importance in allocation of this budget was, notwithstanding the future need for storage, the C-51 could be relied upon as a major supplier of water for irrigation, because even during those periods when it may not be available, the potable system could be relied upon. He felt in evaluating an alternative, before we looked at it as a $51,000 project it should be looked at as a source of water, realizing that if we do not go forward with the storage we still would have a viable source. He wondered if, within the framework of this proposal, a hydraulic system could be designed that would enable us to go back to the existing water supply and use that, or would that mean another study.

Mr. Potts responded that the advantage of aquifer storage is independence of the large amount of water used from the current or future supplier. Also, the environmental issue would be addressed of using potable water for irrigation purposes. The whole process then becomes more salable to the regulatory agency.

Mr. Shaw explained that he was looking at it from a financial point. If the shallow aquifer part of the proposal is eliminated along with the City of Riviera Beach, the study would cost

$29,500. Later on, if it was found out that the shallow wells are required, the appropriations could be made at that time without going backwards. Mr. Potts agreed with Mr. Shaw.

Mrs. Smith asked Mr. Potts if it was determined that the C-51 Canal would work as a source of non-potable water, how long would it take to put this process into play?

Mr. Potts replied that probably two and one-half to three years would be the length of time necessary.

Mrs. Smith asked whether that would be to build it, after permitting, etc. She stated that she was trying to get the idea across that this is not something that is going to happen in the next six months.

Mr. Potts agreed, stating that the acquisition of the source and getting it to the island is actually the easy part. The hard part would be in distributing it up and down the island to various users.

Mrs. Smith inquired of Mr. Dusey what the cost of this would be and how much of the cost would be borne by the South Florida Water Management District.

Mr. Dusey answered that the total cost was unknown, however, distribution was going to be very, very expensive. He said that he already had a preliminary cost on the treatment system, which he felt seemed fairly reasonable in getting it to the south end of the island. He did not have this information with him however. He assured Mrs. Smith that he could assemble that information and give it to the new Council members.

Mr. Shaw stated that there was a letter, dated June 7, from Mr. Dusey to Mr. Doney and in that letter it said that the preliminary estimate to construct the 3 million gallon per day treatment plant facility, storage, and distribution system between Southern Blvd. and the southern Town limits is $6.33 million. The annual operating costs are estimated to be between $500,000 and $600,000. He continued that he did not know what that would actually equate to if that number were taken and put into the cost of the water that would be sold to determine if water rates would be comparable without the 25% surcharge. he asked how would that be treated--would this be a 30 year pay-off, or is it something that realistically could be structured into a proper financing program?

Mr. Shaw then asked if the entire infrastructure of the program would have to be completed before distribution of water could be attained?

Mr. Potts replied that he believed that the system could be started on day one with the major users, however, the bringing of the service to every residence and business in the Town would be long term. Almost 25-30% of the irrigation uses would involve just five major users.

Mr. Shaw asked if Mr. Potts thought that would take three years or could it be accelerated? Mr. Potts responded that could be accelerated by about six months, maybe even a year.

Mr. McLendon questioned Mr. Potts on the determination of the irrigation use for private homes. He held strong reservations on whether a nonreusable water system should be extended further north than the Palm Beach Country Club. His concern was that the individual home use would be difficult to determine accurately. He suggested some of the cost of planning a distribution system throughout the whole Town could be cut back if it was not planned to go that far.

Mr. Potts explained that this issue has been addressed across the nation. Quite a few places are using grey water as irrigation for single family homes. There has been considerable effort to address that concern and substantially minimize or reduce the possibility of people using this nonreusable water. Typically what happened is no connection was allowed other than the sprinkler system.

Mr. McLendon asked if there had been any discussion with the Water Management District about the possibility of locating a pumping facility and a treatment facility on the property that they have along the canal.

Mr. Potts replied that he had personally done several projects with the District when the project was one that benefited their goals and objectives of managing the water resources in south Florida--they had become very cooperative and the history is if you are doing the right thing then they will help with it, whether it's money or land or whatever.

Mr. Wyett inquired of Mr. Potts whether he had addressed the permit process and how much time he estimated it would take from the time the Council would say that they would like to move in that direction.

Mr. Potts responded that generally a consumptive use permit such as this would take anywhere from a minimum of 90 days up to a year and a half if there was a dispute. Hopefully, this would be a cooperative project and he expected this project to be in the 4-6 month range.

Mr. Wyett asked for clarification on one other point. The proposal stated that previously completed work would be utilized but with a treatment plant located at Phipps Park, and he found this confusing.

Mr. Potts explained that a rough estimate had previously been done for a treatment facility located at Phipps Park. This new study has taken the base work already done, increased it and included the cost of maintenance.

Mr. Shaw asked Mr. Potts if there was anything in this process that other municipalities would object to that would hinder proceeding.

Mr. Potts answered that there was an overall issue of allocation of resources. The water in C-51 is a resource and one which is shared by a lot of communities. The City of West Palm Beach gets their water directly from that, but the current plumbing systems waste a great deal of water, and that is one of the idea issues to explore. He felt there is certainly potential for objections, but that there was good reason to believe that the effort would be successful.

Mr. McLendon pointed out that the objections would likely come during droughts-- and that is another concern that should be considered in using the C-51 Canal as a potential solution, because use of that for indiscriminate irrigation may be something that would be prohibited under those conditions. He thought that gives further impetus to go toward the re-charge aspect.

Mr. Potts asserted that if a system only used the water that went over the dam, no good grounds for objection existed--only wasted water would be used. The really touchy issue is if the Town wants water when no water is going over. That is where re-charge helps. It says we are either going to eliminate or greatly minimize our need for this water when it is not being wasted.

Mr. Doney asked Mr. Potts how many shallow wells would need to be drilled?

Mr. Potts said that would be hard to say--that is why that element does carry a relatively high cost. It is not something that has been done on an individual basis. He suspected that the wells would probably be needed on a 400-500 foot spacing basis. This is a geological issue that he was not prepared to talk about in depth.

Mr. McLendon asked if Mr. Potts visualized that these would be double acting wells. Would they be rechargeable with a pump to be reactivated for irrigation? Mr. Potts responded affirmatively.

Mr. McLendon questioned whether they would be 8" inch wells or bigger. Mr. Potts responded that probably they would be 8". He added that they would not be putting water into the aquifer at a high rate so it is not a high flow rate issue, it is a question of how well the substrata will take water. There may be more smaller wells rather than larger and fewer ones.

Mr. McLendon asked if Mr. Potts was familiar with The Breaker's lateral system. Mr. Potts responded affirmatively. Mr. McLendon commented that he had trouble getting information on that. Mr. Potts observed that system is one that does not include a re-charge; it is a means of just re-using the same water over and over, and it is basic technology that would be a part of this program.

Mr. Wyett asked Mr. Potts if he was familiar with the investigation the Palm Beach Country Club has done? Mr. Potts responded negatively. Mr. Wyett continued that he had received a report that there was contamination with the water they tried to retrieve.

Mr. Potts replied that is very possible--that is one of the difficulties of retrieving the water. If it was messy before it will not be any cleaner if it is recycled, and it has the potential of actually gaining in contaminants because every time you spray with it water evaporates but all of the solids go back in the ground.

Mr. Shaw asked what the visual and space impact on the community would be when the project is finished and running. Mr. Potts responded that it would be similar to a home well in which the only thing seen above ground would be an electric box with no significant impact.

Mr. Doney remarked that Mr. Potts had explained what the advantages of the aquifer storage were, and now he would like to know the disadvantages.

Mr. Potts explained that the disadvantage in any aquifer storage and recovery was the percentage recoverable. The deeper aquifer was looked at by previous consultants and the expectations on storing in the Floridan aquifer included about a 50% recovery rate. In other words for every gallon put in, a half gallon is recovered. The shallow aquifer is expected to have a higher recovery because there are no specific currents or ground water movements in it as there are in a deeper aquifer, but there is going to be a loss. There is the cost of the machinery, the pumps, the pipes and the wells to put it into the ground. There were no disadvantages foreseen beyond that.

Mr. McLendon questioned if there was any flooding potential anywhere? Mr. Potts replied that he felt there was none because if the ground water is raised higher than its natural level above sea level it just goes into the sea, so it is sort of a bucket that overflows if too much is put into it--it can only get full, it cannot become overfilled.

Mrs. Smith inquired if there was any member of the public that would like to speak to this issue.

Mrs. Yvelyene Marix of 1570 No. Ocean Boulevard, addressed the Council, asking for an idea of the overall cost. She thought an idea of the overall cost would be very helpful in making a decision on which way to go. Also, it would enable comparison with some other systems.

Mr. Wyett made the comment that if this Council fails to find some way to conserve potable water the Town will be faced with a curtailment of State funds. Those funds have not been completely identified, but they have been mentioned to the tune of one million dollars. This Town is under a directive to reduce its potable water uses starting with this year. That directive came in a couple of years ago. Mr. Wyett noted that it is imperative that this system is looked at as one of possibly several methods to comply with the goals of the South Florida Water District Management.

Charles T. Levin of 3450 So. Ocean Blvd. addressed the Council. He remarked that this whole study has to do with the present availability of water and the possibility of future water. He maintained the proposal to obtain non-potable water is going to be enormously expensive and wondered whether weighing having to pay more cost for the water as opposed to entertaining this enormous project is viable. He felt that, assuming that the water is going to be available, that it ought to be approached on a cost basis; which is going to be the lesser of the evils. He questioned whether Council would take under consideration which would be the lesser cost.

Mr. McLendon responded that certainly there is always a cost consideration in it and comparative costs would be made before making any decision. However, he continued, beyond the cost picture there may be drought periods and the Management District may put restrictions on potable water use for irrigation, then school is out--it is no longer a question of just costs, it's a question that the water cannot be used for that, and he felt that people were interested in irrigation.

Mr. Shaw asserted that there is another issue which should be discussed. Down the line, the Town will be subjected to not just restrictions but source and use of water. A point will be reached where Town residents are not going to be able to use potable water for irrigation purposes and when that time period comes, and the Town finds what is required by State and Federal departments to go into a dual distribution system, the Town will be at exactly the same point as now--that point being to rebuild a distribution system. He added it is a question of do it now or wait ten years down the line and let another decade of Palm Beachers come in and face the same issue. There are places throughout the United States which have already reached that point where they cannot use potable water distribution systems for irrigation, so it is not just a matter of how much more is it going to cost to get water today, but what requirements will have to be met in the future.

Mr. Shaw made a motion that the Council go forward with this study, but would also like to amend that motion so that it is two-phased in that the study start with element one, system flow requirements; element two, transmission and distribution; element six, West Palm Beach Canal as source of irrigation quality water. This would come to a total of $29,500. Once that is done and based on the continued feasibility of the project, the Town would then consider element eight, which is the shallow aquifer storage and recovery at $22,000 which would mean the entire commitment is for the $51,500, but it gives the Council an opportunity to withdraw.

Mrs. Smith asked for a second to the motion for purposes of discussion. Mr. Wyett seconded the motion.

Mr. Wyett commented that he thought it made a lot of sense--a non-potable system is eventually going to be needed and the information received from the three elements would be very valuable in making a future decision. He agreed that the aquifer decision could be delayed until more discussion with West Palm Beach is held, as they, too, may be looking at an aquifer system and the Town may want to join with them on that.

Mr. McLendon stated that he would like Mr. Potts to clarify some questions with regard to the transmission distribution system as well as the system flow requirements. He felt some hesitation in doing the whole Town and was there a way that this could be two-stepped?

Mr. Potts replied that in developing this proposal at first only major users were looked at, then all users and then all users and major users. He said that the truth is that the piping sizes are not going to change significantly so it would be better to look at the whole picture, understanding that if in the end, only major users were provided for not much money has been wasted.

Mr. McDonald asked Mr. Potts if the report was split would the price still be $22,000 and if there was a benefit in doing the entire study initially.

Mr. Potts responded that the only real benefit was that one of the early tasks is to talk to the Water Management District. If we do not have a storage system it could weaken the early negotiation position. But on the other hand, if the cost of the piping and the treatment is not affordable there is no reason to move ahead with aquifer storage and recovery.

Mr. McDonald asked how long it would take to complete a report with elements one, two and six? Mr. Potts replied about sixty days.

On roll call the motion was approved unanimously.

Mr. Doney raised the issue of the Town Council consideration of having a motion to appropriate the funding for this particular authorization from the undesignated fund balance.

Mr. Shaw made the motion to appropriate funds from the undesignated fund balance for the study. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

2. Sand Bypassing at the Lake Worth Inlet

   a. Consideration of a Mobile Dredge with Cost Potentially Shared with Other Municipalities, Inlet Districts, and/or Palm Beach County

Mr. Elwell addressed the Council, saying that both he and the Mayor attended the Beaches and Shores meeting on February 13 and received some feedback from the other members, but not enough to determine who may be interested in being a partner of the Town in exploring the dredge. There were a few positive comments, some negative comments and mainly a lot of questions asked. He said that the action taken by the Beach and Shores Council was to have each of the delegates that attend those meetings on behalf of the coastal municipalities and the other organizations that participate to go back to their policy making boards and ask for specific, formal direction on this matter armed with the additional information that they have from yesterdays's discussion, and it was expected either at the March or April Beaches and Shores Council meeting to get a very clear idea of who and how many of these organizations would be interested in being a partner of the Town in this endeavor.

Mr. Wyett made the statement that he is pro-beach, but he would also like, simultaneously, to be moving extremely strongly in the direction of getting the United States Corp of Engineers involved because that is the most economical plan one could get if the Corps could be persuaded to work in conjunction with Palm Beach County municipalities.

Mrs. Smith asked Mr. Elwell who, at the meeting he attended, was in favor of the dredge? Mr. Elwell replied that the main portion of the discussion had to do with issues like costs, and the narrow window of time for operating the dredge because of the turtle restrictions.

Mrs. Smith inquired whether Mr. Elwell felt whether there was a consensus in favor of the dredge or against it, or were the main concerns over the costs?

Mr. Elwell felt that he could not really say if there was a consensus because there was a discussion without coming to a consensus. Everyone else other than the Mayor and Mr. Elwell was there to learn about what the Town was considering, and now they are going back to their Councils with the information to see if there is interest in pursuing it any further.

Mrs. Smith asked if Mr. Elwell thought there would be a consensus from the other municipalities involved within two months. Mr. Elwell responded affirmatively.

Mrs. Smith asked for comments from the public and since there were none she confirmed that Council would wait for a report on this matter in April.

b. Progress on Maintenance Dredging

Mr. Dusey addressed the Council. He said that there was good news from the Corps of Engineers; that there was additional funding available to do some additional dredging that would place about another 96,000 cubic yards on the beach at the northend for a total of about 218,000 cubic yards. This, of course, is on top of about 178,000 cubic yards dredged last season at about the same time.

Mr. McLendon asked what assurance there was as to the quality of the material that is further in the lake. Did it have to be sand or could it have to be some muck too?

Mr. Dusey replied that tests are done on it to ascertain the quality. If it is not good quality they will dispose of it elsewhere. Apparently when the inlet was filled up last year a lot of that better quality sand washed into the turning basin.

Mr. Wyett remarked that he had been hearing rumors that the sand transfer plant was going to be operationally delayed and asked for Mr. Dusey's comments on that.

Mr. Dusey responded that he was not aware of any delays and operation is anticipated for September.

Mr. McLendon asked if they had finished the test boring--he asserted that they had done one on one side of the inlet. Mr. Dusey said that he thought that by now they had finished, but said that he would definitely find out.

Mr. McLendon inquired as to anticipated dredging further south to the Brazilian docks to deepen the navigation channel by 4-5 feet. Mr. Dusey acknowledged that this was brought before the Town Council eight months ago and Council had expressed its opinion at that time that it was not in favor of going beyond the current limits.

Mrs. Smith added that she believed that Council had acted in conjunction with various neighborhoods from West Palm Beach--there were environmental concerns about the deepening of the channel, increased boat traffic, the manatees, the danger to the houses, the wake, and possible damage to Palm Beach properties by the increased boat travel. She continued that if this is an issue that the new Council would like to address and take a different position on, it could certainly be put on the agenda for discussion at any time.

Mr. McLendon remarked that he would like to review the file on it.

Mrs. Smith asked Mr. Dusey if he had any idea how much sand placed on the beach last year was actually still there? Mr. Dusey replied that he thought most of it was still there. The sand that was placed on the northend is not intended to sit there because if it stays, it does not benefit downstream beaches. It is hoped to get that sand past the inlet so that it boots out and everyone would benefit as it boots. Last year's sand is being monitored to see where it is and how it's moving. There were no preliminary results available as yet.

Mrs. Smith asked if Mr. Dusey thought there would be any substantial movement in their lifetimes? Mr. Dusey replied affirmatively. With the storms in November and December, substantial amounts of sands moved into the inlet. He believed the sand moves about a mile a year.

Mrs. Smith noted that in Mr. Bowser's memorandum, the Corps is preparing to authorize the contractor to excavate the turning basin options of the inlet dredging project bid and they will provide a copy of this order to the Town. She wondered when Mr Dusey anticipated that will be done.

Mr. Dusey responded that a copy of the order had not been received, but believed that the process of dredging was ongoing.

Mr. Alexander Beal addressed the Council. He wondered if the Council had ever had the benefit of studying the use of groins. He realized that it was prohibited by the State, but is it known for sure that groins are not helpful or could they be helpful? He mentioned that on Nantucket Island groins are used and there are beautiful beaches there. He thought perhaps the issue of groin use should be looked into.

Mr. Dusey stated that the State is softening on its position of being anti-groin. There are a number of projects underway where groins are very specifically designed for location and purpose, and if it is designed properly it can be done.

Mrs. Smith asked Mr. Dusey how many projects he was aware of where the use of groins was incorporated. Mr. Dusey replied that he knew of two that were at least in the design process; one on Singer Island and one south of the Jupiter Inlet.

Mr. Eric Gilbertson of 151 Chilean Ave. addressed the Council stating that there is still no sand at the Town beach. He said that it is gone, it is very depressing, and something must be done now.

Mr. Wyett inquired of Mr. Dusey whether there was a count of how many groins still remain in the beach area. Mr. Dusey replied that there are still some and that there is an inventory of such. Mr. Wyett wondered if it has ever been investigated as to whether or not repairs could be made to those groins. Mr. Dusey replied that there was a plan done in 1986-87 to look at all the groin systems in Town and recommendations were made at that time. Mr. Wyett asserted that in paying attention to the restoration of our beaches, proposals cannot be made piecemeal--putting sand on the beach is one thing, groins, to the best of his knowledge, are the only method of keeping it. There were new methods that work like groins that are not technically groins and perhaps a comprehensive plan should be put together rather than one plan at a time to see if it works or not.

Mrs. Smith mentioned that the Breakers Hotel received permission to repair their groins, so the State is certainly open to restoration and repair on groins.

Mr. McLendon commented that he is pro-groin and pro-groin substitute, and he thought that the main objection of the State to groins could be modified and mollified by angling the sand retention unit toward the major beaches, minimizing any of the currents on the downstream side. He stated that he is currently in the process of looking at material he received from Tallahassee.

Mr. Doney explained that he thought it was important to note that in the report that Mr. Dusey had referred to, authorized by the Town Council in 1985, there was a comprehensive report called the Comprehensive Coastal Management Plan that was prepared by Cubit Engineering Limited. It physically identified, inventoried and actually surveyed all coastal structures on the entire coast line of Palm Beach and that plan that was the foundation for the proposed Mid-Town Beach Nourishment Project. A copy of that plan is available for review. The big issues that were involved with it at the time were many legal issues and also cost considerations, since the groins were abutting the private properties on approximately 11-12 miles of Palm Beach which were considered to be, because of State law, the low mean high water line of the State of Florida. Everything easterly of the mean high water line is considered State or sovereign; therefore the Town Council has not authorized that the Town take on the funding responsibility of any of those groin projects, but all of that information was included in the Comprehensive Coastal Management Plan.

Mrs. Smith confirmed with Mr. Dusey that the Town Council would like to have an update on the sand transfer plant for the next meeting.

3. Royal Park Bridge Underdeck Lighting

a. Consideration of Report of Landmarks Preservation Commission Meeting of January 18, 1995

Mr. Doney spoke, saying that Mr. Dusey and Mr. Bowser would be addressing this issue. In addition, he said, there were issues that were related to the Town Attorney and the DOT agreements.

Mr. Dusey stated that the Landmarks Preservation Commission met last month and recommended approval of the lighting if the south arch could be reconstructed so that it appears the same as the north. He thought that DOT decided to reject that proposal because of costs, which implied that Landmarks could also reject the lighting if the south arch cannot be reconstructed.

Mrs. Volk, Chairman of the Landmarks Preservation Commission then spoke. She noted that the original bridge was built in the normal way with solid arches, but when an addition was made, a false arch was made to carry the impression of the original bridge. The Landmark Commission did not feel that the lighting was an architectural enhancement unless that one arch could be filled in. Since that is not possible she felt that the matter could be considered concluded; that unless the arch was filled in the Landmarks Commission did not feel that it was an appropriate architectural enhancement.

Mr. Dusey explained that the Florida DOT has agreed to maintain the underdeck lighting if Town Council agrees to have it installed. The agreement for the lighting on the outside, on the top of the deck, has already been approved.

Mr. Bernard Freeman of Florida DOT addressed the Council saying that the Town Council has had an opportunity to look at the recommendations of the DOT and the Landmarks Commission and this is what they can base a decision on.

Mrs. Smith said that Town Council had received confirmation that DOT would be paying for the lighting, not the Town. She asked Town Attorney Randolph to discuss some of the modifications to the agreement with DOT.

Mr. Randolph explained that there were two modifications to the agreement. The first one concerned the Indemnification Agreement--the State indicated that it could not indemnify the Town but the agreement contained an indemnification from the Town for the State. It was requested that the indemnification clause from the Town to the State be removed, and they agreed to remove that. In regard to the maintenance there had been some concern of the Town Council that the wording of the agreement might imply that it was the responsibility of the Town to replace the system in the event it was maintained in such a manner that it was no longer viable, and language was included which indicated that the Town would not be responsible for replacement of the lighting system. The State agreed to both changes, and they were incorporated in the agreement.

Mrs. Smith asked if the new members of the Council had a chance to look at the lighting on the bridge? They all agreed that they were aware of the general issues of the proposal.

Mr. Shaw asked for a clarification of the issue that DOT would take care of replacement and maintenance--is it maintenance or strictly replacement?

Mr. Dusey said that on the underdeck lighting DOT is going to do everything. On the upper deck the Town will do the maintenance, and replacement is not the Town's responsibility.

Mr. Shaw remarked that the major issue is the aesthetics, and he thought that Landmarks had already rejected the issue. He suggested it would be appropriate for Town Council to follow suit.

Mrs. Smith asked for comments from any members of the Public.

Mayor Ilyinsky asked Mr. Dusey how keen the City of West Palm Beach was on the lighting issue? Mr. Dusey said that he knew there was a great deal of interest in it, and that he thought they were in favor of it.

Mr. Doney commented that he thought that the City of West Palm Beach had voted in favor of the underdeck lighting on the west side of the intracoastal channel.

Mr. McDonald made the motion that the Town Council decline the DOT offer to install and maintain the underbridge lighting. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

b. Consideration of Funding for Maintenance via Proposed Agreement with Florida Department of Transportation

No action was required.

4. Consideration of Proposed Palm Beach/South Palm Beach Dune Restoration Project - Comments from the Special Meeting of the Citizens' Association South of Sloan's Curve on February 10, 1995

Mr. Elwell addressed the Town Council, starting out by explaining the two Town parcels involved and a few general things about the project. The Agenda item specifically referenced the meeting last Friday of the Citizens' Association South of Sloan's Curve and an update of the actions will be provided. The presentation made at that meeting and the proposal put forth by Palm Beach County on this matter was a dune restoration project from approximately Sloan's Curve to the Lantana Public Beach--a little over four miles of coastline. The County has broken that project into three core areas and that is an important concept for the Council to consider not only because of how it may affect the overall project but specifically because one of the core areas is to be centered at Phipps Ocean Park and the specific question before the Council today is facing the Friday deadline to respond to the County so that they can then move forward. The specific question would be whether or not to authorize that Phipps Ocean Park be included within the project. A related question regarding the Par III Golf Course, would be discussed later.

Mr. Elwell continued that the three Palm Beach core areas were public park areas; Phipps Park, Kreusler Park, Lake Worth Public Beach, and the Lantana Public Beach. The County intends to start at each of these core areas and address the question of participation with each of the public entities involved. Then if the public entities wish to proceed with the project it would be planned and coordinated by Palm Beach County. The County would then contact the private property owners in each direction and continue moving up from the core areas in each direction until they get to a property where someone says no and that would define the limits of the project.

Mr. Elwell explained that within those core areas, to State Regulations provide that within one-quarter mile of public beaches the State would fund 75% of the project depending on the appropriation level and 25% would be funded by Palm Beach County--nothing by the Town in the case of Phipps Ocean Park or by private property owners who are within one-quarter mile of the public beach. However, he added, outside of those core areas and more than one-quarter mile from the public beaches the participants in the project would have to pay 100% of the costs. That is an issue that the Town needs to deal with regarding Par III Golf Course, which is more than a quarter of a mile south of Phipps Ocean Park. He continued that one important point, whether in or out of the core area, and regardless of the funding issues, is that any properties that have a possibility of participating in this project will only participate if they choose to. Private property owners as well as the Town and public entities that have an opportunity to participate will be allowed to make that decision; the County will not impose the project anyplace within the proposed project area.

Mr. Elwell noted that regarding public access and parking there is information in the proposal that addresses these issues, discussing that if additional access and parking is provided adjacent to particularly the private properties within the project area, that would increase the level of public funding from the State and County government. He maintained that the County wanted to stress that in no way are they attempting to obtain additional access or parking or impose that on anyone.
He stated that Mr. Randolph may want to speak to the old A-1-A right of way issue but it is hoped that issue would not be an impediment to this project if the Town Council wishes to participate. In that spirit the County staff has been spoken to about the possibility of drafting legal language, and they at this point have the support of the County Attorney's office for this concept--to have the County Attorney, the Town Attorney, and any private attorneys representing private property owners writing language that would effectively set aside the alleged old A-1-A issue. The County believes there is an existing right of way that runs along the dune area that would be affected by the project and that matter is still very much in dispute. Rather than let that dispute interfere with this project the attorneys, with the blessing of the Town Council and the blessing of the other two, would make a final decision on the matter. The attorneys would then work together on writing the perfect language to set this issue aside.

The issues that would need to be dealt with for any dune restoration project would be principally on the plus side, the environmental benefits of having healthier dune vegetation with native species or plants, with more sand there to provide additional storm protection in the case of northeast storms--not so much in the case of a tropical storm or a hurricane, although it would then provide a better first line of defense.

On the negative side of the consideration is the disruption of the construction process, as the County is proposing to do this not by a dredging method but by trucking in sand. Because of turtle season and the limitations to do this type of work only in the winter months, it would be disruptive during the winter season. They are looking at perhaps several thousand truckloads of sand for the whole project. For the Phipps Ocean Park and Par III Golf Course portions of the project, they are looking at approximately 1,000 truckloads of sand. Another issue on the negative side in considering whether to participate would be the potential loss of some lawn landscaped areas and some ocean views. The County is very sensitive to building the dune up in such a way that would not completely obscure the view. In order to make the project effective and bring enough new sand into that area they would create an undulating type of dune that would leave pockets of view but not as open a view as currently exists.

Mr. Elwell asserted that because of the public funding and mainly only positive potential impact of the project regarding the two Town parcels, staff recommends approval that Phipps Ocean Park be included within the project. Similarly, at Par III, staff believes that it would be beneficial for the Town to have the project occur there, but with some conditions on Council's approval.

Mr. Elwell continued that regarding funding of the project and application, it is clearly a public facility since it is a recreational facility. It is not a public bathing beach under the State's traditional rules, but the State believes that the it needs to be somewhat flexible in interpreting those rules and realizes that the storm protection benefits of this project at the Par III Golf Course would accrue to the general public using that golf course. Staff recommended that approval for Par III be conditioned upon the achievement of the approval of the State and County government to share cost since that is a public parcel in the project. Also, it is recommended that the Town retain control over the final design of the Par III portion because of concerns relating to the undulating dune issue, preserving as much view as possible while having a beneficial project. In addition, it is important for the Town to have control over the implementation--for instance, the routes that the trucks will take and making sure that there is no damage on the golf course that will affect the recent improvements that have been made there. On that second condition regarding the Town control over the implementation of the project at Par III the County staff indicated they had no difficulties with that. Mr. Elwell thought that could be obtained readily in writing from the County. Finally, there is the recommendation that the Town Attorney be authorized to work with the County attorney and private attorneys on behalf of the private property owners to prepare that language that was discussed regarding the old A-1-A right of way issue.

Mrs. Smith asked Mr. Randolph to speak to the old A-1-A right of way issue to clarify the point.

Mr. Randolph addressed the Council, stating that historically there have been allegations by private entities, considered at great length by the County with the County sort of going along with this argument, that the old A-1-A roadbed in the south end of the Town of Palm Beach was never abandoned to public use, and therefore it is a strip of land that is open and available to the public. That allegation has caused some concern by many of the private properties in the area, many of whom, the County alleges, have built structures over the old A-1-A property, which obviously would be an encroachment if the roadbed were public. Many of those problems were resolved by agreement between private property owners and the County. The Town of Palm Beach never became formally involved in the dispute, intentionally staying out of that dispute. Currently, there is no dispute pending between the Town and the County in regard to this matter and he saw no reason to get into a dispute at this particular time.

Mr. Randolph explained that he simply wanted to make sure that nothing that is done by the Town in regard to this particular project is an accession to the fact that the old A-1-A roadbed issue has been resolved. In other words, there is still an argument pending in regard to that, however, as suggested by Mr. Elwell, it is important that nothing that is done regarding this project affects that in any way. He felt satisfied that the suggestion made by Mr. Elwell can be accomplished. He thought that without resolving the issue of whether or not the old A-1-A roadbed is public, language can be devised which should be acceptable to both the Town and the County, which will basically state that is not an issue as it pertains to this and nothing that either of the parties does in entering into any agreement regarding dune restoration will work against one or the other parties or be an admission by either party as to the status of that roadbed.

Mr. Shaw stated that he had attended the meeting on February 10, 1995, where the County presented its case to the citizens south of Sloan's Curve and that he found it strange that Mr. Davis was not here today to present the same case to the Council so that questions could be addressed to him, considering that a decision was required by the 17th. He thought an interesting result of that February 10 meeting was that it appeared that the majority of the residents of the area were opposed to having this done and the Town was put in an awkward position as a property owner. He thought it imperative that the Town listen to its neighbors and hear what they are saying as far as the impact of 1,000 trucks that would come to the two parcels involved--this is going to be a project that is going to take three to four months during the winter season, carrying on for two years.

Mr. Shaw thought perhaps the wrong message is being sent as to the Town's intentions with beach nourishment and dune nourishment. The Town is saying that it wants to restore beaches as long as there is no dirt and no access over property. How then can it be explained to the County and State that their assistance is wanted in funding to help restore the beaches which should be restored with federal funds?

Mr. Shaw agreed that a portion of A-1-A does reside on the Town's property and would be affected as right of way, so obviously setting it aside is a prerequisite to going anywhere with the discussion. He thought that the County must realize that the benefit of the Par III is more beneficial to the County than it is specifically to the Town of Palm Beach. As much as residents enjoy it, 82% of the individuals who are playing golf on that golf course do not reside in the Town of Palm Beach, so the County must understand that if this is to be considered, as Mr. Elwell pointed out, that this is as much a public facility as any beach along the coast. The maintenance of the dunes have an affect on the beach, but if the dunes are gone, there will be no golf course.

Mr. Shaw said that he questioned a compromise in that the Town is faced with the reality that the ideal time of the year to do the work is at an unacceptable time, which would put a tremendous burden and inconvenience on the residents. Also, he noted it should be realized that the probabilities are that regardless of what the Town of Palm Beach does, Lake Worth and Lantana and County Park will probably go forward with this, so there will be trucks whether the Town likes it or not. The question is how can this issue be mitigated so that it is best for the Town? He wondered if the sand cannot be put on the beach during the summer--could the sand be brought and placed on a parcel of land close to the dune on the public beaches that would enable the process to be done in the summer months? If the trucks could be brought in during the summer rather than the winter months that would be a more pleasant approach to an unpleasant situation.

Another thing that Mr. Shaw observed was that a number of years ago it was established that the County does not control the dunes--there was a court case to question who controlled them. His understanding was that it was established that the dunes are controlled by the property owners. He questioned if the County acknowledges that if this work is done and the Town grants them the right to do this, would they also acknowledge that they in no way control the dunes and that any rights are not being relinquished to them and that they would not be a party of the maintenance. An important part about that, he felt, was the County regulations state that seagrapes not be maintained at eight feet. The Town's regulations, which have been favorable to all of the residents in the south end, is that they may cut their seagrapes back to three feet. If this project is done on any of the properties would that change that cutting and maintenance issue? He felt that this was a very critical point that has not been brought out.

Mr. McLendon asked Mr. Elwell where the trucks would go through to get to the beach?

Mr. Elwell responded that specific routes have not been determined. What the County would need to do is identify some locations that would provide access to the beach and when they would drive through those locations there would be a separate easement that would provide that access. Part of the agreement would be that any damage done would be repaired at the end of the project.

Mr. McLendon questioned why there was an urgency of a deadline for decision making, if they would not be starting until November.

Mr. Elwell confirmed that the project would not be started this November, but the following November--the reason being that it is according to a State funding cycle. Because there is a sizeable portion of the project that is supposed to be funded by the 75% State share, the State has to receive an application from Palm Beach County that has to be mailed prior to March 31st of this year so that it can be reviewed by the State staff with a recommendation that would go through next year's legislative process in the State Legislature. Then the appropriation, if its made, would be made prior to July 1, 1996. The funds would then become available after the turtle season ended--it could be expended in the fall of 1996.

Mrs. Smith asked Mr. Elwell in the case of Phipps Park where there is heavy seagrape growth with the walkway that goes down to the dune, why has it not been considered to bring the sand by barge and blow it onto the beach instead of destroying the existing area?

Mr. Elwell explained that there were some degraded portions of the dune at Phipps Ocean Park and the plan would be to leave healthy plants alone and to cut through the dune to provide access for dumping of the truckloads in locations where invasive-type species would have to be removed as part of the project anyway. That would be true throughout the project.

Mrs. Smith inquired if the trucks would be taken over the golf course when the Town has just spent $700,000 doing a restoration of project?

Mr. Elwell replied very specific routes would have to be approved, nowhere near any green or tee, which is the portion that has just been rebuilt. Mr. Elwell continued that it is possible, but only with the Town's approval, that they could go across portions of the fairways and there would be some damage done that would have to be repaired. Mr. Dusey and Mr. Elwell had visited the site along with representatives of the County last week looking at the project, expressing serious concerns about how the sand could be brought in from outside the Par III Golf Course. Again, it is only with the Town's permission that they would be able to go across the golf course. If they do not receive that permission, it is possible that the sand could be brought in from another location. It would be at a higher cost and how to handle that cost issue would be something that would have to be addressed. Any additional conditions desired by the Town would be part of our response to the County.

Mr. Wyett mentioned that he had visited Phipps Park right after Storm Gordon. The park was officially closed; the water was lapping over the steps and he did not believe that the beach had been restored. He felt that unless both beach and dune restoration were approached comprehensively, those dunes that money would be spent on would be washed away.

Mr. McLendon stated that it has been assumed from the recommendations that the proceedings on the Par III Golf Course would be dependent upon the State and County paying for it. He was having trouble believing that they would agree with that and wondered if this is a realistic position to take.

Mr. Elwell responded that they have been advised by County staff that they understand the issues and they verbally advised that there is no problem with the Town controlling those portions of the project. In response to a comment that the golf course would be unplayable during the process, Mr. Elwell explained that portions of it would certainly be while the trucks were actually moving across it, however he was not sure of how long that would be. He believed that the back nine would be playable throughout the project.

Mrs. Smith stated that it did not seem to be a very attractive prospect that the golf course would be unplayable in the wintertime when the majority of residents would be here. She asked if there was any member of the public that would like to speak to the issues at hand?

Mr. John Matich, co-chairman of the Citizens Association South of Sloan's Curve addressed the Council. He stated that during the meeting of February 10, 1995 the people from the environmental agency were listened to very intently. He expressed that the feeling then was just about what he was hearing from the Town Council--that the time factor is probably the most objectionable item and to have trucks coming through during the height of the season and going through private property is probably the primary reason why most condominiums would not want this project. The second item was the golf course. Some of the condominiums were charged as much as $176,000 to restore their dunes. They felt that if they were going to protect their dunes they could do it on their own. This is part of the report where they noted three or four other condominiums that have renourished their dunes achieved lot of success. The sand transfer plant should be in operation about six months from now and that will bring sand to the beaches. Luckily, it has a southward movement and the beaches in the south end will be enriched. Public access is the next point mentioned by Mr. Matich and many condominiums have doubts about the temporary status of that. Mr. Matich maintained that the majority of the condominium owners did not want this project to go through.

Mrs. Smith asked Mr. Matich if the condominium residents had actually discussed the project taking place at the Par III Golf Course and Phipps Park as separate parts of the project?

Mr. Matich responded negatively-- they had discussed strictly dune restoration at the individual condominiums.

Mr. Charles Levin addressed the Council saying that he would like to speak for the owners of the condominiums. He said thousands of trucks would travel up A-1-A and he was concerned with them going through the property of the condominiums inasmuch as thousands of dollars had been spent in landscaping. He thought it would be a complete disgrace for the County to go through all of these properties.

Mr. Isador Segal, past president of the Citizens Association South of Sloan's Curve as well as past president of 2660 So. Ocean Blvd. Beachpoint Condominium spoke. He said that, speaking unofficially, he knew that the next board meeting of Beachpoint would result in rejection of the proposal.

Mrs. Smith noted that there were already several letters from condominiums opposed to the project on record. That is why she had raised the question as to bringing the sand in by barge. Storing of the sand during the winter any place would be totally unacceptable because of the winds blowing it.

Mr. Wyett inquired if there was any negotiation going on between the Town and the County as to whether they would be willing to consider changing their mind about paying for the golf course restoration.

Mr. Elwell responded that the Town's concerns have been expressed to the County--Town staff recommendations were that this portion should be funded by the State and the County.

Mr. Wyett questioned whether the Town's permission was required to restore the sand dunes at Phipps Park? Mr. Elwell responded affirmatively.

Mrs. Smith asked Mr. Elwell where the sand would be coming from? Mr. Elwell responded that it would come from inland, and there are sources of clean fill that they would have to do the same kind of matching process that is required to get a State permit when dredging is done from offshore. The project would be dependent upon the match, but similar processes are done regularly.

Mr. Shaw asked if the Town could give a conceptual "yes" without making any commitment or guarantees?

Mr. Elwell believed that any appropriate action could be taken today. The Town has been asked as a property owner whether or not the Town wishes to participate in this project. It seems that a "yes" with conditions would be appropriate, with a more formal blessing by the Town Council at a future Council Meeting after all concerns have been addressed.

Mr. Shaw asked if Mr. Elwell thought the project would go forward in the County Park, Kreusler Park, Lake Worth and Lantana if the Town said no. He felt that it was important to realize that the "no" could still bring in thousands of trucks that would come over the Lake Worth bridge and head south down to Lantana whether the Town benefits from it or not.

Mr. Elwell added the County has indicated that each of the three core areas would be treated as a separate project, and only if there was very enthusiastic support for the entire project would it become one long project. Essentially, it would be three smaller projects proceeding simultaneously. If the City of Lake Worth and the Town of Lantana support the project then those portions of the project could proceed even if there is no project at Phipps Park.

Mr. Shaw asked if the Town of Palm Beach would have any control over the sand for Lantana coming through the Town.

Mr. McLendon asked Mr. Elwell if Phipps Park only was approved how many trucks would be involved?

Mr. Elwell responded that approximately 300 trucks would be involved.

Mrs. Smith remarked that she had one last question. What exactly was the estimated dollar cost to do the dune restoration at the Par III Golf Course, and/or Phipps Ocean Park?

Mr. Elwell replied that $33,000 is the current estimate for Par III and approximately $186,000 funded by the County and the State at Phipps Park.

Mr. Wyett asked Mr. Elwell if he felt that a bargaining position would be lost if the Council approved only Phipps Park.

Mr. Elwell replied that generally speaking, from experience in discussing funding on projects like this, he thought the parcel would be treated on its own merit, however, he could not assure anyone of the State's response.

Mr. Wyett recognized that negotiating with the County and the State was different than a business negotiation, but noted that in a business negotiation he would hold off one to get the other.

Mr. Elwell agreed that it was different from business negotiations in the sense that they are working from regulations as to what they can agree to and so there is not much of a leverage issue regarding these two specific parcels being public land.

Irving Wolfe addressed the Council, making the comment that when Mr. Davis spoke he said that the County and State would be subsidizing the project, but then he thought Mr. Davis said that he was going to apply for the funding. In his opinion, it was not definite that the monies would be there. He felt that it may result in the Town being responsible at some point.

Joe Curran, of the Enclave at 3170 S. Ocean Blvd. addressed the Council. He wondered if everyone realized that the County made it quite clear that it would take them two years to install this and another two years for maintenance. That is four years that the County would have access to Town properties. He recommended proceeding cautiously.

Mr. Wyett remarked that he had a strong feeling that discussion with the County would include beach and sand dune restoration because one without the other would be futile. He felt that even though the County may not react the way a businessman would react the message should be sent that the golf course is a public facility. He did not want to see the project done piecemeal.

Mrs. Smith asked for any further comments. There were none.

Mr. Shaw made the motion that the Town Council conceptually approve the County and State 100% funding of the Phipps Ocean Park Beach and the potential inclusion of the Par III Golf Course with 100% funding, subject to a number of conditions that have been raised. Seconded by Mr. McLendon.

On roll call the motion carried 4-1 with Mrs. Smith casting a negative vote.

XXI. NEW BUSINESS

A. Ordinance - First Reading

1. Ordinance No. 4-95

Mr. Randolph read Ordinance No. 4-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER X, ARTICLE V OF THE TOWN OF CODE OF ORDINANCES RELATING TO CHARITABLE SOLICITATIONS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING FOR AN EFFECTIVE DATE.

Mr. Randolph said that he would like to pass down a revised version of the Ordinance from that which is in the book. Mr. Shaw requested that the Ordinance be modified at Section 10-91, C-12 and at 10-106a. He indicated the changes in his memorandum. These really do not change the substance of the Ordinance, but are in line with what the Council had directed after the ORS Meeting. The Ordinance distributed by Mr. Randolph incorporated the changes referenced in Mr. Shaw's memorandum.

Mr. Randolph said that he would gladly point out where the changes were. The second sentence in the Ordinance reads "said financial statements shall be issued by a certified public accountant." That is changed. The next change comes at Section 10-106, under "Reports Required." It formerly read "all persons issued permits under this article shall furnish the Town Council," and has been changed to "all persons issued permits under this article shall furnish the Town Clerk, within 90 days after the conclusion of the last event scheduled under the permit."

Mr. Wyett asked Mr. Randolph if it was possible to add to the Ordinance that each charity state how much money it raised in the previous year, how much was spent on administration and how much went to the charity. He continued that section of the Shiney Sheet is not read by residents, or they do not receive the Shiney Sheet. He thought the real purpose of the ordinance was to try and protect the residents against being solicited by charities that are really not charities.

Mr. Randolph responded that it could be changed, but he believed that the change would have to be made at another time. It was decided by the Ordinance Rules and Standards Committee that other items would possibly have to be changed in the future with regard to this ordinance. If Council would like to amend this ordinance further it would be brought back for a first reading at the next meeting.

Mr. McLendon mentioned that he thought the ordinance was fine. Mr. McDonald moved that Ordinance 4-95 be accepted. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

2. Ordinance No. 5-95 - Amendment to Chapter 15, Pensions and Retirement

Mr. Randolph read Ordinance No. 5-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING SECTION 15-41, SAME, OFFICERS AND ADMINISTRATIVE SERVICES BY ADDING PARAGRAPH (7) PLAN AND ADMINISTRATOR, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING FOR AN EFFECTIVE DATE.

Mrs. Smith asked Mr. Doney for an explanation for the amendment.

Mr. Doney addressed the Council, saying that he recommended that Council consider this amendment as that organizationally it would be appropriate for the Personnel Director be the plan administrator, with a secretary within the Personnel Department taking the minutes. Mr. Crouse would be the Plan Administrator. The materials that come in on a quarterly basis would have to be distributed to the nine Retirement Board members, and Mr. Crouse could complete the interaction that needs to occur. Mr. Doney felt that it was a logical move, making good organizational and operational sense.

Mr. McLendon moved for approval of Ordinance No. 5-95. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

B. Appointments

1. Seaview Park Commission - Four Three-Year Terms to Expire February 1998 -

Mr. Wyett requested that all appointments to all commissions be deferred until next Council Meeting to allow the three new council members to become better acquainted.

Mr. McLendon asked what would happen if the term expires in February and nothing was done until March.

Mr. Doney responded that historically in order to allow a forum to be present on a particular commission if the Town Council deferred consideration of appointments the existing member could serve an additional month, but he did not know if the issue had come up where an individual had served two full terms, which he believed was the case regarding the Seaview Park Commission.

Mrs. Smith asked Mr. Bitzer if there had been a Seaview Park Commission meeting yet this month. She believed that the concern was that if appointments were not made until March that there would be four seats open for the March meeting, with the possibility of no quorum being present.

Mr. Bitzer spoke to the Council and said that there could still be a quorum because there were three alternates on the Commission.

Mr. Wyett motioned that all commission appointments be deferred from this meeting to the next meeting. Seconded by Mr. McDonald.

Motion carried 4-1 with Mr. Shaw casting a negative vote.

2. Zoning Commission - Two Three-Year Terms to Expire February 1998, One One-Year Term to Expire February 1996, and One Two-Year Term to Expire February 1997

This item was deferred to the March 14, 1995 Town Council Meeting.

C. Other

1. Consideration of Fifth Annual Palm Sale Proposed for Sunday, April 9, 1995, Sponsored by the Preservation Foundation of Palm Beach

This item was discussed earlier as it was moved forward on the Agenda.

2. Comcast Cablevision

a. Consideration of Proposed Channel Lineup Changes with Rate Increases (to be effective February 17, 1995) -

Mr. Len Rozek, Area Vice President for Comcast Cable addressed the Council. He reviewed the basic rate structure of Comcast--three elements are involved in the preferred ($23.00 per month) basic service--limited basic service (off-air type channels); standard service (primarily satellite service); value-pac service (a cluster of four services that are also satellite delivery services). The way that the FCC regulations regulate cable television, local municipalities have the right to regulate limited basic service. Standard service is regulated by the FCC and value-pac is actually a de-regulated service now according to a recent FCC ruling.

Mr. Rozek explained the way that Comcast is considering programming and price changes is to provide limited service which is regulated by the Town and is actually reduced by $.03. Standard service is going to increase by $.48 and three channels will be added. The three channels that will be added are the Sci-Fi Channel, Home and Garden Television and Pre-View Guide. Value-pac will be increased $.90 and that is to reflect the addition of AMC and programming cost issues. The total net increase is $1.35.

Mr. Shaw noted that the channels added did not seem to be targeted toward bringing more quality programming to the individual. Programs are being added that residents have no control over from a rate structure because they are structured under the FCC. He wondered if customers actually wanted these extra services.

Mr. Rozek replied that these services are regularly requested by customers. Mr. Shaw questioned if these channels could be added in such a way that residents had the opportunity to say yes or no. Mr. Rozek said that would be very impractical financially. The costs were arrived at by the FCC as an independent third party.

Mr. Wyett said that he also felt that residents had no choices as to what channels they might like to see. He thought that the residents should be allowed to vote as to what they want to see. He was not sure that what Comcast is offering is what the residents want.

Mr. Rozek remarked that Comcast does listen to their customers but the way federal regulations are structured influences programming. They are trying to run a business making good economic and customer decisions.

Mr. Randolph responded to some of the comments made for clarification. He did not think the cable company was requesting the approval of the Council of these rates because they are in a tier that the Council does not regulate. He thought that staff brought this issue before Council because of their own concerns. He thought that Mr. Jakubiak would have further comments.

Mr. Jakubiak clarified what he thought was a misrepresentation made by Comcast. The reason that this was being brought forward was that in November the Town approved Comcast 393 and 1200, even though it was felt that the rates were high at that time. Mr. Jakubiak stated that a report of the review of the 393 for West Palm Beach has been received and it states that Comcast has made a number of misstatements of fact and miscalculations. That report states that the current programming rates are higher than they should be to begin with.

Mr. Jakubiak continued that the programming tier that Mr. Rozek speaks about can be challenged by any member of the public. It can also be challenged by the Town. A complaint should be submitted to the FCC with supporting documentation against that programming tier if it is felt that it is excessive or if the rates continue to escalate.

Mr. Jakubiak said the reason the issue is being brought forward at this meeting is that in November Comcast said that they were only going to increase their rates $.15 after approval of the 393 and 1200. Two months later they are being increased by up to another $1.35 for channels that Mr. Rozek just explained. One channel, Home and Garden, was added due to a retransmission consent agreement. Retransmission consent agreements occurred when this legislation first went into effect so these channels were known at that time, and it was not explained to the Council that Comcast's rates were going to be increased further. When Comcast submitted this rate increase, they submitted it as going into effect as of February 17. Comcast did not say that they requested to appear before Council--they said they were increasing their rates. There is an ordinance on the books which Comcast has been asked to comply with. Staff feels that all rate increases and program changes should first come before Council and be explained to the public.

Mr. Doney added that he felt it appropriate for the Town Council, if so inclined, to approve a motion today to officially state the position that Comcast come before Council first when presenting rate increases and program changes.

Mr. Wyett remarked that the residents of the Town should be aware that they do have alternatives if Comcast rates are not acceptable.

Mr. Rozek pointed out that the R.W. Beck Report that Mr. Jakubiak referred to is a draft that Comcast has not even seen and that Beck had done a lot of work in Tallahassee in an attempt to challenge Comcast rates before the FCC, which have been unsuccessful. Mr. Rozek continued that looking at an R.W. Beck Report would be like hearing an opening argument in a trial and then making a decision. R.W. Beck is hired and only benefits if they can show cities that they have done some work. At this point R.W. Beck has not presented anything from West Palm. Their work in Tallahassee was full of errors and mistakes, and they have been successfully challenged by Comcast.

Mrs. Smith said that the report is dated January 9, and if Comcast has not seen it in a month's time, the Palm Beach Town Council does not see it as their problem.

Mr. Rozek replied that the report was a draft that he did not believe was meant for public circulation yet.

Mr. Shaw commented that he would like Comcast to reaffirm that the Town's rates will never be higher than other municipalities if something did come of the Beck Report--if rates are lowered then the Town's rates would be lowered accordingly.

Mr. McDonald moved that Comcast present any programming or price changes to the Town Council in advance at a public meeting. Mr. McLendon seconded the motion.

On roll call the motion carried unanimously.

b. Consideration of Comcast's Policy of Refunding Deposits without Interest -

Mr. Rozek of Comcast addressed the Town Council, stating that customers pay a $20.00 deposit for a converter box as a good faith hold for having this expensive equipment in their homes. It clearly states in the contract that interest will not be paid on it and that is a company policy throughout the United States.

Mr. Doney observed that staff would like some direction as further negotiations will be necessary regarding franchise renewal. Mr. Doney explained that the Town Council had enacted Ordinance 27-93 addressing rate regulation by the Town. He felt it would help staff if the Town Council could direct an action as to how they felt about the deposit.

Mr. McLendon made the motion that Comcast refund the old deposits. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

3. Consideration of Substantial Deviation Application to the Treasure Coast Regional Planning Council Concerning Proposed Expansion at Palm Beach International Airport

Mr. Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that the reason this was being brought forth is that there is a pre-application that outlines a number of areas of expansion including a new concourse with a moveable walkway, more parking facilities, and another baggage claim area. The application also addresses a runway extension and the proposed I-95 interconnection. The Town will receive an application possibly in June or July. Once that application is received there may not be an opportunity for Council review since it will be time sensitive. Comments will be required by staff relating to objections to the airport expansion so Council direction is now being requested for staff to draft letters of opposition to oppose various parts of the application.

Mr. Doney added that he felt it important that any letters of objection and comment filed on behalf of the Town come under the Mayor's signature as the Town Council designated member of the Citizens Committee on Airport Noise.

Mr. Wyett made the suggestion that the Town officially send a letter to senators and representatives in Washington and Tallahassee officially opposing airport expansion.

Mr. Doney remarked that Council has written to Congressman Shaw while Mrs. Smith pointed out that there is a letter in the file from Congressman Shaw on this issue.

Mr. Wyett commented that he has received information unofficially from a third party that Connie Mack is taking a direct interest, and he thought a letter from the Town to Senator Mack reaffirming the Town's position would be appropriate.

Mr. McDonald made the motion that once the Substantial Deviation Application is received the Town will submit comments and objections to the Treasure Coast Regional Planning Council. Mr. Wyett seconded the motion.

Mr. Doney noted that what is wanted from a staff level is to write letters of objection, such as Mr. Wyett had referred to earlier, in concert with the legal efforts of Sullivan & Cromwell, coordinating with the City of West Palm Beach and the attorneys in Washington to go to Congressman

Shaw and Senators Mack and Graham regarding I-95. Mr. Doney suggested that if the Council authorized those letters now to be sent under the Mayor's signature, then the staff can work with the City of West Palm Beach to prepare and submit appropriate letters in concert with the legal advisors Sullivan & Cromwell.

Mr. Jakubiak added that the City of West Palm Beach has asked that we coordinate with them and both Mayors in drafting a letter of opposition. He continued that he also had requested a clarification of the funding for both the I-95 interconnect and the runway extension. At the Treasure Coast Regional Planning Council it was brought out that the runway extension had already been approved in 1980 and that is a concern regarding funding.

Mr. Wyett made the motion that staff work with the City of West Palm Beach in preparing letters of opposition to the I-95 interconnect. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

4. Consideration of Florida Department of Transportation's Letter Dated December 29, 1994, Regarding Yard Trash Placement on State Road A-1-A -

Mr. Dusey spoke to the Council referring to the letter from FDOT of December 29 indicating some serious concerns with placing yard trash on the A-1-A right-of-way with the trash encroaching on the travel portion of the roadway. Mr. Dusey said that it was asked that the Town approach the property owners and have some type of concrete slab placed at these locations so these problems are eliminated. He stated that he is now requesting Council's approval to approach the property owners.

Mrs. Smith asked how many concrete slabs would be involved?

Mr. Dusey felt that perhaps a dozen concrete slabs or less would be necessary. Everything possible would be done to minimize the aesthetic impact.

Mr. Shaw asked if there was sufficient space between the roadway, where the proposed slabs would be, and who owned this property. Mr. Dusey felt that most of the time it would be DOT.

Mr. McDonald moved that the Public Works Committee receive more information to determine sites and what each site may require and report back to Council so that a decision can be made . Seconded by Mr. McLendon.

Mrs. Smith asked if there was any member of the public that would like to speak to this. There was none.

On roll call, the motion carried unanimously.

5. Consideration of Hourly Parking Meter Rate at Phipps Ocean Park -

Mrs. Marie Crozier, Finance Director addressed the Town Council recalling that at the March, 1994 meeting the Mayor and Town Council authorized an increase in the hourly rate at Phipps Park from $.75 to $1.00 per hour. A prepared report indicated, in her opinion, that six months is not an adequate timeframe to monitor the revenue at Phipps Park. She recommended waiting until September to evaluate the revenue.

Mr. McDonald motioned for approval to delay the review of the increased rate of the parking meters at Phipps Park until September, 1995.. Seconded by Mr. Shaw.

On roll call, the motion carried unanimously.

6. Consideration of Proposed Letter of Recommendation to Preserve the Florida Inland Navigation District (FIND) -

Mr. Doney addressed the Town Council stating that the staff at FIND has been very responsive and helpful to Town staff and if the point of control and point of action were changed to be in a regional location or in Tallahassee, the Town and other municipalities that abut the intracoastal waterway would not be as well served. He recommended that the Town Council submit a letter to each member of the Palm Beach County Legislative Delegation and the Senate Natural Resources Committee, which is reviewing the question of whether or not FIND should be abolished. Mr. Dusey and Mr. Elwell were present to answer any particular questions.

Mrs. Smith mentioned that the advantage of having FIND locally situated is that they are one of the few groups who work for the Town and as far as environmental protection in the inland waterway they are helpful to the Town. She was in favor of keeping FIND.

Mr. Doney explained that Florida Inland Navigation District is a special taxing district operating under the supervision of the Department of Environmental Protection. FIND is the required local sponsor for the Florida portion of the Federal Atlantic Intracoastal Waterway and has the primary function of raising funds to be used in acquiring rights of way and spoil sites for the development and maintenance of the waterway. Mr. Doney added that within the Town's Comprehensive Plan there are some spoil islands in Lake Worth that could be re-vegetated, and there could be some FIND money to do these vegetation projects.

Mrs. Smith commented that the Town was planning on asking for funds for this project and FIND was helping the Town to get this money to do this project south of Southern Blvd. She noted that they are one of the Town's sponsors. They protect the manatees and the environment along the coast on the inland waterway.

Mr. Shaw said that he had asked how much money was paid in to FIND by taxpayers in Palm Beach. Mr. Elwell reported a figure of about $210,000, noting that the amount of money that has come back to the Town as a result of FIND is in excess of that annually. Mr. Shaw felt that if FIND were abolished the Town would have to handle these matters alone.

Mr. Shaw made the motion that the Florida Inland Navigation District be supported by a letter of recommendation. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

7. Consideration of Florida Power and Light Company's Request for Modification of Town Council Approval (at November 9, 1994 Town Council Meeting) for Construction Activity to Install a Subaqueous Crossing Making Landfall Near Sloan's Curve -

Mr. Dusey addressed the Town Council, stating that Florida Power and Light had withdrawn their request verbally.

8. Consideration of Request for a Transfer of a 4COP Alcoholic Beverage License by P.B. Restaurant, Inc., d.b.a. The Poinciana Club located at 70-A Royal Poinciana Plaza -

Mr. Robert Moore, Director of Building and Zoning, addressed the Town Council, stating that the application for transfer had been processed by the Town staff, was approved by the Town staff and was here today for final action. Mr. Wearn has written a letter to the Council regarding this and Mr. Moore remarked that Council may wish to defer this matter until he could address the issue.

Mrs. Smith asked if there was any member of the public waiting to speak to the matter. There was none.

Mr. McDonald asked Mr. Randolph if the facts stated in Mr. Wearn's letter were correct.

Mr. Randolph responded that this was simply a determination of whether the liquor license should be transferred or not. He felt the deliberation should be confined to this issue.

Mr. Shaw explained that the reason he had asked for discussion of this matter was that he did not understand who the owner of the Poinciana Club was, or if a club existed. His impression was that the club is currently being run by a group in Fort Lauderdale that intends to open up a restaurant, and that the use of a dinner club was now being transferred from that use into a full restaurant. His concern was not whether or not there could be a restaurant, but whether or not the use of the property that has been granted by the Town Council would allow that. If a restaurant was not allowed, then a liquor license should not be transferred. If one had nothing to do with the other he felt that it was still an issue that should be brought forward.

Mr. Randolph responded that the approval they were given was as a club and that they are confined to operate as a club. He felt that the transfer of a liquor license had nothing to do with that issue.

Mrs. Smith asserted that this is not a new subject. Six or seven months ago the status of the Poinciana Club had been discussed and as she understood the situation the question of town serving had still not been answered.

Mr. Randolph replied that there is a State Statute that relates to transfers of liquor license and the State had approved this one. His belief was that the Town Ordinance was subservient to the State Statute--the status of the Poinciana Club and the liquor license addressed two separate issues.

Mrs. Smith felt that it would be appropriate to defer this matter, considering the experience of the new council members with this matter.

Mr. Shaw made the motion to defer the matter. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

9. Consider an invitation from the Civic Association for Mrs. Smith to speak at a meeting -

Mrs. Smith had received an invitation from the Civic Association to join Commissioner McCarthy at their meeting on February 27th. She felt that it was important to bring this matter before the Council so that the Council could sanction whether a member could speak to a private group on behalf of the Council. She felt it was important that there be no confusion whether Council members and the Mayor would be speaking as a member of the Council, on behalf of the Town, or as an individual.

Mayor Ilyinsky asked for the comments of Mr. Randolph in this matter.

Mr. Randolph replied that it was a matter of policy for the Council to determine how they would like to handle these types of matters.

Mrs. Smith responded that she was specifically asking for this particular meeting because she was asked to update the community on the progress and status of beach restoration efforts of the Town, which is a matter of record. She felt it important for Council members to know that she would not be offering her personal interpretation but would be stating what the Town has done and she wanted to bring it before the Council for their consideration.

Mr. Ned Barnes, Director of the Civic Association addressed the Council stating that they would be very grateful if Mrs. Smith could come to the meeting to educate and inform, simply to update the Civic Association.

Mr. Shaw made the motion that Mrs. Smith's attendance at the meeting be approved. Mr. McDonald seconded the motion.

On roll call the motion carried unanimously.

10. Consider workshop for Council members -

Mr. Doney suggested that the Town Council select a meeting date for a workshop for discussion of council members duties and roles as well as administrative relationships with council members.

Mr. Doney mentioned that there is a proposed meeting date for a workshop with Mr. Olson of the City of West Palm Beach concerning water on March 1, 1995 at 1:30 P.M. He felt that this should be posted as a Special Town Council Meeting.

A workshop meeting or elected officials, staff, and the Town Attorney was scheduled for February 24, 1995, at 10:00 A.M. A Special Town Council Meeting to discuss water issues with Mr. Erik Olson was scheduled for March 1, 1995 at 1:30 P.M.

11. Consider time certain for Development Review Matters to be heard at Town Council Meetings

Mr. Shaw explained that he had asked that the development review matters come as the first item after lunch or at the conclusion of all items prior to that so that the attorneys, architects, and residents who come before the Council with development review items would know what time their items would be heard.

Mr. Doney remarked that previously these matters were considered in the morning, however it was felt that administrative matters of townwide importance be considered in the morning rather than have variances and special exceptions discussed well into the afternoon with administrative matters following.

Mr. Shaw replied that he would like to set a policy that development reviews would not be started prior to the lunch break.

Mrs. Smith added that for purposes of discussion she thought that special or big projects that were anticipated to take more than 15 minutes could be handled with the applicant submitting a notice to the Town and it could then either be heard at a Special Town Council Meeting or at a time set aside for that project.

Mr. McDonald made a motion that development reviews not be started prior to the lunch break and that applicants with special projects submit a notice to the Town. Mr. Shaw seconded the motion.

On roll call the motion carried unanimously.

XXII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT

Attorney Gary Brandenberg, representing the owners of Royal Poinciana South Apartments, addressed the Council stating that in April of last year the residents of the apartments came to the Council with a problem with noise from E.R. Bradley's Saloon. At that time the proprietors of E.R. Bradley's came to the Town Council asking for approval of a variance to enclose the outside patio area, thereby keeping the noise internal to the restaurant facility. He continued that eight months have lapsed and nothing has been done in this regard. He added that parking was an issue that had been brought up, and it was decided that the noise issue would be considered after the building enclosure had been completed so that it could be decided if the enclosure would alleviate the problem. Now, he explained, they were again before the Council asking for consideration of this issue at a Special Town Council meeting in the future.

Mr. George Frost addressed the Council asking that Item XXI C.3 be revisited. This item had to do with the expansion of the Palm Beach International Airport and Mr. Frost felt that this was an airport expansion sleeper. The application with the Treasure Coast Regional Planning Council would allow a monumental increase in airport activity, thereby making a monumental increase in airport traffic. He continued that vehicular traffic would increase 250%--from a figure of 200,000 up to 700,000 vehicles a year. He felt that now there is an opportunity to go to our federal officials objecting to funding of the airport runway extension.

On a collateral item, Mr. Frost advised the Council that Thursday night there would be a public hearing for another federal project very much like the airport interchange, calling for an extension of Australian Avenue over Southern Blvd., over the West Palm Beach Canal, connecting with Congress Avenue. Although it sounded rather innocuous, he felt that the aerial passover would interfere with the northwest-southeast runway causing an effective shortening of that runway, causing more traffic thus more noise for Palm Beach and portions of West Palm Beach. He urged this project be looked at with the view that it may increase airport traffic in an east-west direction.

Mr. Doney added that Town Council may wish to direct staff regarding the meeting on Thursday night with an official letter to be entered into the record.

Mr. Wyett motioned that the Town Council send an official letter opposing the extension of Australian Avenue. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

Attorney Brooks Ricca addressed the Council speaking in response to Attorney Brandenberg's comments regarding E.R. Bradley's. Mr. Ricca represented the owners of E.R. Bradley's and he asked the Council to think back to Mr. Goldsmith's earlier comments regarding what a wonderful town this is and how we should all work together. On behalf of the owners, Frank and Gail Coniglio, he wanted to confirm that they are not insensitive to the neighboring residences close to the restaurant. He asked the Council to consider and understand that there are legal proceedings that occur and to get to the appropriate point in proceedings things must be handled properly. He maintained that it is claimed that his clients were violating some noise ordinance and he thought it would be appropriate that the problem be identified so that rumor and conjecture are not involved. He asserted that the facts should be dealt with in an appropriate process.

Mr. Eric Gilbertson, 151 Chilean Avenue, addressed the Council and saluted the Mayor, President Smith, Councilman Shaw and the new "dream team" council members. He wished them good luck.

Mr. Adrian Winterfield addressed the Council regarding the Charitable Solicitation Ordinance and its preferential treatment. He referred to the Fellowship of Christians and Jews noting the full page ad on January 31, announcing the annual dinner. He presumed most elected officials would be attending that dinner. He was astounded to learn that the Fellowship had filed no application under the Charitable Solicitation Ordinance, however, he noted that in the invitation there was a line stating that the price of the ticket covered the cost of the evening. There was also an invitation to individuals unable to attend to join the organization with several categories of membership ranging from $50 to $5,000. He felt that sort of invitation is a solicitation. He recalled that last year the Fellowship advised that they were not holding a fund raising affair--perhaps this year they feel that they can continue in the same manner. He respectfully suggested that the Ordinance be applied equally to all.

Mrs. Smith asked for any other comments. There were none.

XXIII. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of January 25, 1995 - Excerpt Available in Town Manager's Office

The major matters were:

B01-95 - Addition for Mr. & Mrs. Conrad Black, 150 Canterbury Lane - Removed from agenda.

B02-95 - Addition for Ms. Jayne Duncan Firman, 112 Via Palma -Removed from agenda.

B03-95 - Revisions for Jerome Fisher, 334 North Woods Road - Approved.

B80-94 - Alterations/Additions for Addison Development (Phipps Subdivision), 450 North County Road - Approved Conditionally.

B82-94 - Demolition for George Welch, 254 Atlantic Ave. - Approved Conditionally.

Motion made by Mr. Shaw to approve the report. The motion was seconded by Mr. McDonald. On roll call the motion carried unanimously with Mr. Wyett declining to vote since he was a member of the Architectural Commission at the time when these matters were heard.

B. Variances, Special Exceptions, and Site Plan Reviews

<u>Old Business</u>

1. Variance No. 62-94 - Palm Beach National Bank & Trust Company, 125 Worth Avenue; to allow applicant to occupy an additional 739 square feet on the first floor, abandoning the second floor square feet approved as Special Exception No. 8-93; total approved square feet would remain the same at 9,981 square feet. C-WA District. (Deferred from December 13, 1994 Meeting)

H. Loy Anderson, President of the Palm Beach National Bank & Trust Company, addressed the Town Council. He explained the bank is not seeking a variance to occupy additional space, but is seeking to consolidate its space which is currently spread out over three floors. He continued that this presents some security issues and creates a hardship for the bank.

Mr. Anderson requested the use of additional first floor space as it became available. He emphasized the third floor space would be abandoned if the first floor space is approved.

Mr. Anderson stated the bank is located in a C-WA zone which does not permit usage of the first floor space for banks. Historically, most of the first floor at 125 Worth Avenue has been used for financial services. The remaining space has had a variety of tenants with a high turn over. He noted the location is not conducive to many retail uses. The space is not open to the sidewalk and is elevated three feet above the sidewalk, separated by colonnades and railings from the sidewalk. Mr. Anderson said the bank would not be accessible from Worth Avenue but only from the lobby after entering the building.

Mr. Anderson suggested a banking use is good for this type of transitional building into the Worth Avenue district to the west. He added the residential neighbors to the east benefit from a quiet tenant, such as the bank.

Mr. Anderson said a money shop would be located in the expanded first floor area. That shop sells money related items.

Mr. Anderson noted that the town-serving documents he filed with the Town have shown that the bank is almost totally town-serving.

Mr. Moore stated the space is non conforming regarding the use of banks on the first floor, and the original concept of prohibiting banks to occupy space on the first floor was to encourage browsing. Mr. Moore said Mr. Anderson stated well the physical aspects of the front of the building including the separation of the building from the sidewalk by railings and colonnades.

Mr. Moore requested, if approval was granted for the first floor space, a condition should be added providing for the closing off of the entrance from Worth Avenue, i.e. no entrance off Worth Avenue, only from the interior lobby.

Motion made by Mr. Wyett to approve Variance Number 62-94 with the condition the Worth Avenue entrance be closed off. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Old Business - Other

1. Consideration of Request for Amendment to the First Amendment of the Blossom Estate Subdivision Agreement by Peter S. Broberg, Esquire (Deferred from December 13, 1994 Meeting)

Mr. Peter Broberg, Attorney for Gerald Schwartz, announced Dennis Chicca, Architect, and Chris Macy, an environment consultant with Dames & Moore, were at the meeting to answer any questions the Council might have.

Mr. Broberg explained this is a request to amend a subdivision agreement. He presented a site plan showing the location of lots 7 and 8 and recapped the history of each lot. He stated each lot has a "buildable envelope" and that was shown outlined in yellow on the site plan. He stated that, originally when the subdivision was platted, lot 7 was designated as a "no build" lot. Later, the Town Council agreed a building could be constructed on lot 7 and a building envelope was created. He continued the caveat was that only 7% of the buildable envelope could be used.

Mr. Broberg presented drawings and site plans that showed the tennis court exceeded the buildable envelope. Mr. Broberg explained a mangrove enhancement program was initiated in one area and George Gann, the Town's mangrove consultant, was contacted to provide additional advice. He said the request is to locate the road outside the buildable envelope. The subdivision agreement would have to be amended.

Mr. Broberg reported all the neighbors on Blossom Way had been notified of the project, and the Audubon Society, the owner of the property to the north, indicated if some planting additions were done, they would have no objections.

Chris Macy, environmental consultant with Dames & Moore, identified the exhibits that showed the removal of the exotic invader species and the replacement of these with native species selected from the list supplied by Mr. Gann. He noted that ten sable palms and one gumbo limbo tree would remain. As a result of consulting with Mr. Gann, thirty different species will be involved in the area--a highly diverse ecosystem with seeding to attract birds to the Audubon area. He continued in addition to using native species, the plantings will benefit the wild life.

Mr. Moore concurred the subdivision agreement states no improvements will be made; therefore, the language would have to be changed. He said Staff has no objection with the conditions agreed to by the applicant for the mitigation and the acceptance by the property owners.

Mr. Broberg reported that Mr. Macy created a document that spoke to the removal, re-planting and the maintaining of the area which he offered to submit to the Council.

Mrs. Smith asked to hear it at this meeting. She asked Mr. Broberg to expand on the maintenance of the mangrove area. She recalled the conditions regarding this property revert back to 1959 when the mangrove areas were designated as part of the Town's Comprehensive Plan as an area to be preserved and protected.

Mr. Macy explained, using a drawing, that some fill had been placed on the site previously close to the mangroves and outside the building envelope. Attempting to remove the fill, the ground was actually scraped lower than it had been originally, and the mangrove area was actually increased. He noted that the Department of Environmental Protection looked favorably on the increased mangrove area and additional areas beyond this buffer area that are planted with transitional species. Mr. Macy said the restoration of a maritime forest has provided an additional buffer with appropriate plantings that range from 30 to 120 feet from the Audubon mangrove areas.

Mr. Macy said a biologist from Dames & Moore researched the appropriate manner to remove the invader exotic species and his findings were submitted to Mr. Gann who recommended some additional changes that were incorporated into the document.

Mr. Gann reported he reviewed the issue from the biological prospective and said his initial concern was that there be a buffer zone between the driveway and the Audubon property. He added a plan was worked out after several drafts were submitted to him. Mr. Gann said if this project is completed there will not only be a functional mangrove preserve but an adjacent upland area which will be preserved in perpetuity and exotic species will be removed in perpetuity, a very rare combination. He said this is a good plan.

To prevent the run off of fill used for the driveway into the mangrove area, Dennis Chicco, architect, reported the driveway will be constructed from pervious materials, either cast stone or crushed sea shell with a compacted base so the run off will not be harmful to the adjacent areas.

Mr. Macy stated the drainage requirements for the driveway area preclude drainage into the Intracoastal and the preliminary plans for the drainage include direction to an upland area into infiltration trenches to restore the water table in the barrier island. This will reduce any contaminants from the driveway area.

Motion made by Mr. Shaw to approve an amendment to the First Amendment of the Blossom Estate Subdivision Agreement. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

New Business

1. Variance No. 5-95 - James Dunworth, 226 and 234 Seminole Avenue; to allow construction of a multi-family (3 unit) structure on a 17,700 sq. ft. lot in lieu of 20,000 sq. ft. minimum required. R-C District (Letter Dated February 7, 1995, from Robert E. Deziel Requesting Deferral to March 14, 1995 Meeting)

Mr. Moore said this item is a deferral and a letter requesting deferral for this and variance number 7-95 was received one week in advance.

Motion made by Mr. Shaw to defer this item and Variance No. 7-95 to the March 14, 1995, Town Council meeting. The motion was seconded by Mr. Wyett. On roll call the motion carried unanimously.

Mr. Gary Ross, owner of 222 Phipps Plaza, requested that Variance No. 7-95 be heard although a letter requesting deferral was submitted by his architect.

Mrs. Smith requested a motion be made to defer Variance Number 5-95.

Mr. Shaw made a motion to defer Variance Number 5-95, 226-234 Seminole Avenue, to the March 14, 1995 Town Council meeting. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Gary Ross, owner of the 222 Phipps Plaza, explained he did not want to be deferred and the deferral request was sent because of a lack of communication between Mr. Ross and his architect. Mr. Ross said he would like to have the item heard because he needs to occupy the office space.

2. Variance No. 6-95 - Kevin Boyles, 240 Miraflores Drive; to allow construction of two-car side entry garage providing a 20' front yard setback in lieu of 25' required. R-B District

Eugene Fagan, architect, stated the reason for the variance was to change the location of the garage as identified on a site plan presented to the Town Council. He said the house currently has a front entrance, two car garage, all viewed from the street. The new plan calls for a side entrance to the garage, and a motor court has been created. Mr. Fagan noted an existing twelve foot high ficus hedge runs across the front of the property.

Mr. Fagan explained, using a site plan, that 100 square feet will exceed the setback line of 25 feet and his client does not plan to ask for any other variances.

Mr. Moore reported the Staff does think the hardship could be addressed, and the garage could be built with no variance or a lesser variance of one or two feet.

Mr. Fagan noted that the planned garage would be 20 feet by 20 feet, and no other location on the lot would allow the garage to have a side entrance.

Mr. Shaw said the entire garage could be moved in on the left side with a bend in the driveway.

Mr. McLendon agreed that the garage could be decreased in size.

Mr. Wyett suggested a minimum variance of 2 - 3 feet would allow the garage to be built.

Motion made by Mr. McDonald to approve Variance No. 6-95 with the condition a minimum two foot variance be allowed. The motion was seconded by Mr. McLendon. On roll call, the motion carried 4-1 with Mr. Shaw casting a negative vote.

3. Variance No. 7-95 - Palm Beach Development Group, Inc., 222 Phipps Plaza; to allow construction of an addition to a two-family structure providing a 9.9' north side yard setback in lieu of 12.5' required. R-C District (Letter Dated February 7, 1995, from Eugene R. Fagen, III Requesting Deferral to March 14, 1995 Meeting)

Mr. Moore reported that the Planning, Zoning and Building Department determined that the submitted plan had another area, the breakfast nook, that would require a variance.

Mr. Fagan replied that should have been included in his initial application and it was not.

Mr. Moore said the advertised variance for the powder room could be heard by the Town Council, but the breakfast nook had not been advertised.

Mr. Fagan stated this request was for a 9.9 foot north side yard setback, and the reason for the variance was to allow for a handicapped toilet to be installed in the powder room. He added that only 27% of this lot can be built upon due to the configuration of the lot. Mr. Fagan said only 30 square feet of new construction would be beyond the setback if this is approved.

Mr. Moore reported this plan was not reviewed by the Landmarks Commission with a certificate of appropriateness prior to review by the Town Council. He continued the Staff does not object to the fill in for the powder room as they are following the existing lines of the building. Mr. Moore suggested a unity of title may be appropriate. He asked Mr. Fagan how he calculated his lot coverage figures?

Mr. Fagan replied the figures were calculated using all the properties shown on the site plan. He said a unity of title currently exists and he will supply a copy to the Building Department.

Mr. Shaw said the Town Council has not had an opportunity to review this project, because the members were under the impression this item would be deferred. Mr. Shaw requested the applicant return to the March Town Council meeting after the Council has reviewed the plans.

Mr. Gary Ross, owner, requested the Council not defer the project because the Building Department had issued him an approved set of drawings and a permit. He reported that construction has begun on the project, and he would like to continue. He noted he made plans to move his office into the renovated area after he received the permit and he would forfeit a $13,000 deposit on his other space if he is not allowed to continue.

Mr. Moore stated he has no knowledge that a building permit has been issued for the area needing a variance.

Mr. Ross responded his plans show the area for the variance as approved, and the need for a variance was identified after the approvals were given. Mr. Ross indicated he returned for the variance as a show of good faith. Mr. Ross noted the space has been used for offices in the past and he needs to add the bathroom for his office.

Mrs. Smith said her concern was with the issuance of the building permit. Mr. Moore responded he would have to verify that Wednesday morning because the computers were down after 5:00 p.m.

Mr. Ross offered to retrieve the permit from the job site and return to the meeting if he could be deferred to the end of the meeting.

Mr. Wyett said he saw no reason to cause a hardship for a very minor project and suggested approval of the powder room be granted.

Mr. McLendon agreed with Mr. Wyett.

Mr. McDonald wanted to confirm a building permit was issued.

Motion made by Mr. McDonald to defer the project to the end of the agenda to allow the applicant time to present the building permit to the Council.

Mr. Moore said he hoped the issuance of the permit is not the issue. He reminded the Council that Mr. Fagan stated the Landmarks Commission approved this project, and they have not.

Mrs. Smith said she had a problem if the Council denied this project, and Mr. Ross already had a building permit.

Mr. Fagan replied that the walls in question have not been built and would not be built unless the Town Council approved them. Mr. Fagan said only the ground footers have been poured, and they could be covered over. Mr. Fagan explained the Landmarks Commission did not issue a certificate of appropriateness for the addition; however, the Commission did not have any objections to the addition after reviewing the elevation drawings.

Mr. Moore said his recommendation would be for the approval for the powder room, because it follows the existing construction.

Mr. McDonald offered to have them return with the building permit at the end of the meeting.

Mr. Randolph said the building permit issue would be important only if the Council considered denying the project.

Mr. McDonald's earlier motion to defer the item to the end of the agenda was seconded by Mr. Shaw.

Mr. Shaw asked if the motion could include approval with the condition the building permit be submitted to the Building Department on Wednesday morning.

Mr. Randolph said he did not see the relavance between the existing building permit and the granting of the variance.

Mr. McDonald withdrew his motion to defer to the end of the meeting. Mr. Shaw withdrew his second to the motion.

Motion made by Mr. Wyett to approve Variance Number 7-95 for the powder room. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

4. Variance No. 8-95 - J. Raynor, Trustee, 496 North Lake Way; to allow a two-story dwelling to be built at the existing site grade of 8.5' in lieu of 7.5' as required. R-B District

Paul Prosperi, Attorney for the property owner, addressed the Town Council and explained the floor elevations of the neighboring houses. He said the roof line of this property will be lower than any of the roof lines of the neighboring houses even with the point of measurement variance. He said the harship for the request is that the lot rises high away from North Lake Way and the second hardship is the possibility of flooding if the house is built lower than the 8.5 feet requested.

Mr. Moore said the house will not exceed the height of the neighboring houses, and it is a variance that will run with the contour of the land. The Staff has no objections.

Motion made by Mr. McLendon to approve Variance Number 8-95. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

5. Special Exception No. 4-95 - Je Me Souviens, Inc., 336 Royal Poinciana Plaza; to allow a continuation of a special exception use, restaurant and lounge, under new management. C-PC District

Mrs. Smith asked if anyone were present to speak for the project. There was no one present.

Motion made by Mr. Shaw to defer the item to the end of the agenda. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

At the end of the meeting no one was present.

Motion made by Mr. Shaw to defer the item to the March 14, 1995, agenda. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

6. Special Exception No. 5-95 with Variance - Merrill Lynch, Plaza Center Building, 249 Royal Palm Way; to allow expansion of a special exception use from 11,164 sq. ft. to 14,164 sq. ft. and to grant a variance to the requirement of three (3) additional parking spaces. C-OPI District

James Brindell, Attorney representing Merrill Lynch, addressed the Town Council and said this building was built twenty-five years ago and financial institutions were a permitted use. At the time, the building met Code in terms of the required parking spaces. Mr. Brindell noted that a number of financial institutions have occupied space in the building over the years including the space in question.

Mr. Brindell reported an updated town-serving statement has been provided. He said Merrill Lynch has been in the Town for 50 years, and the purpose of this move is to allow Merrill Lynch to accommodate their business clientele in an appropriate fashion.

Mr. Moore stated Merrill Lynch provided an agreement stating that the three parking spaces will be assigned within the parking structure. Mr. Moore had no objections to the application as long as Merrill Lynch continues to provide their town-serving statement.

Motion made by Mr. Shaw to approve Special Exception Number 5-95 with the condition the three parking spaces be assigned within the area. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

7. Special Exception No. 6-95 - Sunrise Bootery, 211 Royal Poinciana Way; to allow expansion of a special exception use (3,200 sq. ft.) to 4,000 sq. ft. C-TS District

Gary Lickle, representing Sunrise Bootery, Inc., addressed the Town Council and requested the expansion of 800 square feet for the retail shop.

Mr. Lickle said this is a second floor space that was previously used by a single tenant and a common entrance exists. He said the hardship is that to seperate this space into two spaces would require two seperate entrances. Mr. Lickle noted Sunrise Bootery has been in the Town for 40 years and the business has been expanded to sell clothing as well as shoes. A town-serving affadavit has been filed with the Town.

Mr. Moore confirmed that the 800 square feet is on the second floor and a town-serving affadavit was received. The Staff has no objections.

Motion made by Mr. McLendon to approve Special Exception 6-95. Thw motion was seconded by Mr. Shaw. ON roll call, the motion carried unanimously.

C. <u>New Business - Other</u>

1. Consideration of Appeal - Lichterman vs. Town of Palm Beach (240 Park Avenue)

Mr. Randolph reported the Town has thirty days to make a decision to appeal after a final judgement has been issued. He said the time for appeal is tolled in the event a motion for a new trial or petition for re-hearing is filed. Mr. Randolph filed on behalf of the Town a petition for rehearing which sets forth before the court some of the matters that he alleged the court had errored in regarding this case. He said the court had not responded regarding the petition for rehearing. He said the 30 days will run from the time that a response comes from the judge for the petition for rehearing.

Mr. Randolph explained that this item was put on the agenda to ensure that the Council would not miss the time beyond the thirty days to appeal. He said there is no immediate need for the Town Council to make a determination to appeal with this particular petition pending before the court. He noted other Town Council meetings have been scheduled that would allow time for a decision. Mr. Randolph said he hesitated to discuss litigation when a matter is pending before the court, and this petition for rehearing is presently pending. He added he is not comfortable discussing the merits of the litigation while the petition is pending.

Mrs. Smith said members of the audience have been waiting to address this issue. She asked Mr. Randolph to express his opinion about the Park Avenue residents speaking before the Town Council while the ligitigation is pending.

Mr. Randolph said he would not preclude anyone the opportunity from expressing his/her opinion concerning the efforts he/she would like to see rendered by the Town in this matter. He continued the discussion of the case should not go too far and could come to the attention of the court.

Mrs. Smith suggested Mr. Randolph stop any of the residents from speaking if it reached the point that the comments were not appropriate.

Mr. Wyett suggested while the residents were expressing their comments, the Council members should not make any comments.

Mrs. Smith concurred with Mr. Wyett and also mentioned that if Mr. Randolph stopped any of the residents from continuing with their remarks, it was in the interest of the pending litigation.

Mayor Ilyinsky asked if the residents were not present to make certain that the Town will appeal the decision? Receiving affirmation from the audience, the Mayor replied he encouraged an appeal by the Town and hoped for a positive decision for the Town and the residents.

Mr. Randolph cautioned that the decision by the Town to appeal or not to appeal should be based upon the legalities of the case, if errors have occured, if grounds for appeal exist and if the appeal will be successful. He continued the determination should not be based upon statements from affected property owners.

Adrian Winterfield, 445 Brazilian Avenue, addressed the Town Council and stated Mr. Randolph did not mention the recent addition to Section 286.011 which permits a closed meeting of attorney with the elected officials under certain specific conditions. He continued if Mr. Randolph and the Council feels that it would helpful to have such a meeting, Florida Statutes provide the specific conditions for having such a meeting.

Francine Bernard, 234 Park Avenue, speaking for the Park Avenue residents, stated they trust that Mr. Randolph will apprise the new Council members of the issues pertaining to this case. She said the residents of the street are together as a group and support the continuation of the litigation regarding the zoning issue that is extremely important to the Town as far as setting a precedent and important for the potential deterioration of another residential neighborhood.

Ms. Bernard had the residents stand, as a group, to demonstrate the unified effort of the neighborhood.

Motion made by Mr. McDonald to defer this item until the judge has issued an order on the petition for rehearing. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Consideration of Urban Design Guidelines for Town Hall Square Historic District

Tim Frank, Coordinator/Planner for the Town, stated the guidelines presented to the Council members is almost a duplicate of the one presented to the Council one year ago; however, since the adoption, Mrs. Volk objected to one section of the Guildelines concerning the Town Hall. Mr. Frank noted the Guildelines were perpared by Adley, Brisson & Engman, consultants to the Town, and they did not have any knowledge of the architects involved in some of the later restorations to the Town Hall.

Mr. Frank reported he had rewritten the section regarding the section Mrs. Volk originally objected to, and she now agrees with this version. He stated the document is now historically correct and requestioned endorsement by the Town Council.

Motion made by Mr. Shaw to accept the Urban Design Guidelines for the Town Hall Square. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith suggested that the Guidelines be incorporated into the Architectural Commission Guidelines.

XXIV. ANY OTHER MATTERS

Mr. Doney passed out copies of the proposed Palm Beach County Dune Restoration Project.

Since the issue was a complicated one, Mr. Elwell said if the Council agreed that the material presented represented the intent of the motion made earlier in the meeting, then action would be taken.

Mr. Wyett suggested that any easement the Town granted to provide access to the beach be adequately restored to the Town.

Mr. Shaw asked if easements were not for a specific term?

Mr. Elwell replied they were to be for a specific term, and he thought that was covered in the document under number 3.

Mr. McDonald concurred that number 3 covered the concern.

Mr. Randolph said he had no problems with the document.

XXV. ADJOURNMENT

The meeting was adjourned at 6:25 p.m.

Mary A. Pollitt
Town Clerk