MINUTES OF THE TOWN COUNCIL MEETING
HELD ON FEBRUARY 13, 1996

I. **CALL TO ORDER**: The meeting was called to order by President Smith at 9:30 a.m. on February 13, 1996, in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon and Allen Wyett. Also attending were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Marie Crozier, Director of Public Works Albert Dusey, Town Engineer James Bowser, Director of Planning, Zoning and Building Robert Moore and Town Clerk Mary Pollitt.

II. **INVOCATION AND PLEDGE OF ALLEGIANCE:** The invocation was given by Dr. Richard Cromie from Royal Poinciana Chapel. The Pledge of Allegiance was led by President Smith.

III. **PRESENTATIONS**:

1. Mayor Ilyinsky presented a ring to Mr. Black, Public Works Laborer II, for his retirement after 12 years and 11 months of service to the Town.

2. Mayor Ilyinsky presented a ring to Johnnie Gloster, Public Works Sanitation Walker, for his retirement after 24 years and 1 month of service to the Town.

3. Mayor Ilyinsky presented a ring to Ronald Meadows, Public Works Solid Waste Division Manager, for his retirement after 31 years and 8 months of service to the Town.

4. Mayor Ilyinsky presented a ring to Willie J Simmons, Public Works Equipment Operator II/Sanitation, for his retirement after 33 years and 6 months of service to the Town.

IV. **COMMENTS OF THE MAYOR**: The Mayor reserved his comments until later in the meeting.

V. **COMMENTS BY THE HONORABLE SHARON MERCHANT, STATE REPRESENTATIVE (DISTRICT 83) REGARDING 1996 STATE LEGISLATION**:

Representative Merchant advised the Council that legislative sessions will begin on March 5, 1996. Ms. Merchant offered to work on or follow up on any issues of interest to the Town, for example, beach projects. Ms. Merchant explained that her district begins in western Jupiter, and includes Palm Beach Gardens, North Palm Beach, Singer Island, Palm Beach Shores, Palm Beach, South Palm Beach, Manalapan, Ocean Ridge, Briney Breezes, and parts of eastern Lake Worth, Lantana, Hypoluxo and Boynton Beach. Ms. Merchant stated that she does not see any new taxes or increased taxes this session. The State will be reviewing Medicaid Block Grants and welfare dollars. The focus has been on Medicaid since it takes up a large part of the State budget. This is contingent on the Federal government passing the appropriation packages. Ms. Merchant felt the dollars will be coming in block form, which means the Federal government will give the State a lump sum and allow the State to spend it in the best way possible. Ms. Merchant felt the State will then try and allow the greatest level of flexibility locally. Ms. Merchant has recommended to have local private auditing firms review how the money is being spent, to insure it is being spent in the best way possible and to provide accountability to the public.

The House Commerce Committee passed a bill to develop a more cohesive policy on economic development. At that meeting, the Department of Commerce was basically eliminated or downsize substantially to an office called The Office of Trade, Tourism and Economic Development, which would remain under the Governor's Office. Their only responsibility would be to handle Administrative issues and tax incentives, items that are purely public dollars. Many of the responsibilities for both domestic and international trade will be given to Enterprise Florida, which is a public/private corporation. The goal is to get everyone going in the same direction. Ms. Merchant stressed that there needed to be a lot of local input.

Ms. Merchant discussed the banking issues being considered by the State. The Federal government passed the Riegel-Neill Act, which relates to inter-state branching and inter-state banking with some anti-competitive elements included. This bill was passed out of the Commerce Committee to allow inter-state branching and inter-state banking in coordination with this Federal legislation. One of the more controversial issues is concentration limits for banks....how much money for each bank, how many insured deposits and what percentage each bank can have. That limit was set at 30 and Ms. Merchant felt that was where the limit would stay. Ms. Merchant stated she would like to hear any thoughts the Council may have on any of these issues and stated that the Council was welcome to any copies of anything she was talking about for their review.

Ms. Merchant stated that education would be focused on. The legislature would again be considering vouchers, charter schools and the recommendation being worked on by Representatives Warner and Klein to allow counties to determine if they want more than one school board. This would be for counties that service 50,000 or more students. Palm Beach County had approximately 140,000 students. This would require a constitutional amendment since the constitution presently states that there would be one school board per county. Ms. Merchant felt that 140,000 must be more than what is reasonable in Palm Beach County because we don't seem to have economies to scale or efficiencies within our system. Ms. Merchant stated that she was in favor of anything that makes a difference and changes status-quo, feeling that the Palm Beach County School District was not doing a good job. Ms. Merchant explained the proposed voucher system, stating that if you had two children you would get two vouchers. The first question is do we want vouchers. Do you want to take a voucher and register your child on a first come, first serve basis anywhere. The second question would be if we want to limit vouchers to public schools or do we allow any school. These issues will be debated.

Ms. Merchant discussed the idea of charter schools, stating they are basically like public schools but have relaxed regulations. The outcome must be the same, the competency level must be the same, but teachers are allowed to teach with fewer restrictions. In many instances contracts are signed by students and/or teachers regarding items such as behavior, parental involvement, etc.

Ms. Merchant stated the mangrove issue is back. Ms. Merchant said she passed legislation last year to allow for reasonable trimming without extensive DEP permits. The St. Petersburg Times has been raving about instances of mangroves being destroyed. Ms. Merchant said that in checking out these stories, almost everyone of their citings has been considered unfounded. However, Ms. Merchant stated that a senator and house member from that area of the State are determined to re-regulate the trimming so that homeowners will have a much more difficult time in trimming.

Mrs. Smith requested additional monies for current Town projects such as the major beach project.

Mr. McLendon questioned the school issues and whether the tax distribution was cast in stone and what could be done to change the allocation of this money. Ms. Merchant stated that the schools are funded on a per child basis - a procedure called a Weighted FTE. This procedure takes into consideration children with special needs. Ms. Merchant did not feel the funding formula would change and felt that Palm Beach County was not treated fairly in the Homestead tax exemption.

Mayor Ilyinsky stated he agreed with those in the legislature who voted against the mangrove trimming. Mayor Ilyinsky said that between Palm Beach and Stuart, along the Inter Coastal, the loss of mangroves is apparent. Mayor Ilyinsky stated this Town would like to maintain control over its mangroves as there were not that many left. Ms. Merchant responded that the legislation that she passed came from property owners and that the law she is talking about refers only to property owners. The law limits the trimming to six feet in height, and the mangroves can only be trimmed from 10 feet down to 6 feet. If the mangroves are higher than 10 feet, a professional mangrove trimmer who is approved by the DEP must be hired.

Mr. Wyett stated that the Town pays 9% of the county taxes and every time the Town needs something from the County we seem to run into a stone wall. Mr. Wyett stated he is concerned about the Town's shoreline, especially with this morning's headlines stating that the federal government is going to be cutting back the available money. Mr. Wyett expressed concern with the bed tax, stating that the money seems to be getting diverted for many reasons and purposes. Mr. Wyett said that the hotels are on the shoreline, and if there is no shoreline, a bed tax will not be needed. Mr. Wyett stated that he would like to see more of the money from the bed tax going to maintain the shoreline to help relieve the Town of its enormous burden. Ms. Merchant explained that she had no control over the Federal or County governments' disbursement of funds, however, she would be diligent in pursuing the funds requested by the Town from the State.

Mr. Doney referred to a letter sent from Council President Smith to County Commissioner Marcus and Representative Merchant, that emphasized the need of the Town through the County internal bureaucracy to be on the Priority Funding List. Mr. Doney thanked Ms. Merchant for her efforts guiding the Town through the process and continuing to do that at the State level.

Ms. Merchant replied that it was important to keep in touch with her and the Town's representatives at the County level. Ms. Merchant stated that the County has hired a very competent person in Tallahassee to pursue funding of County priorities, and if the Town is on this person's list, then the Town's interests are diligently pursued. Additionally, the County hired Debbie Flack for Beaches and Shores to work strictly on the Town's issues. Ms. Merchant stated that if we all work together, we will go forward as a team.

Mr. Shaw stated that there were many property owners in the State that do not pay any taxes because of the change that was made in the Constitution and hoped that the error will be seen and Ms. Merchant will do everything possible to reinstate the Homestead Exemption the way it was intended. Mr. Shaw felt this would help the Town's tax base. Ms. Merchant stated that she personally filed legislation about 3 years ago to change the Homestead Exemption to where tax is paid on the first $25,000. The second $25,000 is exempt so that everyone would pay at least something. This legislation was defeated in the Finance and Tax Committee soundly. Some of the people who voted against this legislation are members of our Palm Beach County delegation. Ms. Merchant stated that she agreed with Mr. Shaw, and if she could pass that legislation and put it on the ballot she would file it tomorrow. Representative Healy has filed similar legislation in the past a number of times, as did Representative Lewis. Ms. Merchant suggested the Council discuss this issue with some of the other delegation members because if our own people are working against us it makes it much harder to pass legislation needed in this County.

VI. **APPROVAL OF AGENDA.** Mr. McLendon made a motion, seconded by Mr. Shaw, to approve the agenda. On roll call, the motion carried unanimously.

VII. **RESOLUTION NO.7-96 - CERTIFYING ELECTION OF FEBRUARY 6, 1996.**

Attorney Randolph read Resolution No. 7-96:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DECLARING THE RESULTS OF THE ELECTION HELD ON THE 6TH DAY OF FEBRUARY, 1996, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M. ON SAID DATE FOR THE PURPOSE OF ELECTINGA COUNCIL MEMBER IN GROUP 2 FOR A TWO YEAR TERM.

Mr. Wyett made a motion to approve Resolution No. 7-96. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

VIII. **APPROVED AGENDA:**

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

REGULAR AGENDA

IX. **WARRANT LIST AND FUND EXPENDITURES FOR JANUARY, 1996.**

Mr. Shaw made a motion to approve the Warrant List and Fund Expenditures for January, 1996. Mr. McLendon seconded the motion. On roll call, the motion carried unanimously.

X. **ANY OTHER MATTERS:**

President Smith announced that the Town received a check for $50,000 from Ocean Bay Holding, Ltd. Mrs. Smith read a letter into the record that stated on 12/22/95 Ocean Bay Holding, Ltd. advised the Town that Ocean Bay revisited the residential project and decided to terminate the project. The first action towards this liquidation was the demolition of the building. The second action was the sale of all property owned by the corporation. The remaining 8 lots are listed for sale. The representatives of Ocean Bay Holdings were cognizant of the time and effort which this project consumed, and the principal was informed of the cooperative professionalism which the Planning, Zoning and Building Department staff rendered to his corporation's agents and representatives. The principal was also appreciative of the Town Council for their careful consideration and suggestions throughout the extensive approval process. Ocean Bay Holdings is purchasing a "wish list" of items and equipment totaling $50,000 to enhance the operation of the Planning, Zoning and Building Department. A list of proposed items and equipment was attached to the letter as was a check in the amount of $50,000.

XI. **ADJOURNMENT**

At 10:05 a.m., President Smith announced the meeting would be adjourned sine die.

XII. **SWEARING IN OF NEWLY ELECTED OFFICIALS.**

The Honorable Richard L. Oftedal, Chief Judge, 15th Judicial Circuit, Palm Beach County administered the Oaths of Office for two year terms on the Palm Beach Town Council to: Jack McDonald, Leslie A. Shaw, and Lesly S. Smith.

XIII. **CALL TO ORDER AND ROLL CALL.**

Mayor Ilyinsky called the meeting to order. All Elected Officials were found to be in attendance.

XIV. **ORGANIZATIONAL ITEMS**

1. Election of Town Council President - Pursuant to Section 3.01 of the Town Charter. Mr. McLendon nominated Lesly S. Smith as Town Council President. There being no other nominations, Lesly S. Smith was appointed Town Council President.

2. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of the Town Charter. Mr. Wyett nominated Jack McDonald as Town Council President Pro-Tem. There being no other nominations, Jack McDonald was appointed Town Council President Pro-Tem.

XV. COMMENTS OF THE MAYOR:

Mayor Ilyinsky stated his comments today addressed the problem of crime in our community, which has been one of the focal issues of concern for many of our residents lately. Mayor Ilyinsky said he hoped we could put this matter in proper perspective by looking at the facts. Not too many subjects can provide emotion as much as a perceived sense of insecurity. Along with the heightened fear, there has been a great deal of misinformation and this is not a very constructive response to a very serious problem.

Mayor Ilyinsky stated he could assure the residents that we are fortunate to be served by an extremely professional and effective Police Department. Mayor Ilyinsky stated this Department is highly regarded around the nation and also added that State and Federal law enforcement officials have the utmost respect for the people who make up the Palm Beach Police Department. Members of this Department are honest, educated and much better trained than most police and, more importantly, they really are concerned with our safety. The men and women of this department routinely put in a great deal of effort and are apparently putting in a great deal of extra effort in order to support this rash of burglaries. Most of these remarks came from a meeting that the Mayor had with the Chief of Police and Town Manager a few days ago.

This Department is well equipped and staffed. As a result of the high proficiency that the Town enjoys, a great many operational adjustments have occurred within the Department. The Town should be aware of some of these things the Police are doing, because they have not been advertised and little has been written about them. A burglary strike force has been organized. A Captain and the most capable officers from various assignments have been given this task for the minimum of the next few months. The officer will be working flexible hours, based upon the crime analysis and staff assessments of needs. Days off and leaves have been and will be further restricted and, if needed, will be eliminated. Overtime was approved for those officers assigned to the Burglary Strike Force and other Patrol Officers working on this matter. Highly visible patrols have been and will be positioned at strategic locations. Plain clothes officers will augment the regular patrols in certain residential neighborhoods. All police personnel will maintain vigilance on the street. Non-essential desk duties will be diminished. Report dictation and writing will now be done in the field. Suspicious people and vehicles will be stopped, within the limits of the law, on a more frequent basis. The Town's prohibition of unmarked, commercial vehicles is being strictly enforced. With the intensified staffing and other efforts as described, the Department's response time to alarms and in-progress calls will be greatly reduced. Daily contact has been established with the FBI, Florida Department of Law Enforcement, and over a dozen other ocean front police departments in southeast Florida. Investigative and intelligence gathering units within the department have been prioritized to support the Burglary Strike Force. The Police Department has gone all out on this project on behalf of the residents of Palm Beach. The Police administrators remain in control and on track.

Mayor Ilyinsky stated he wanted to report actual facts and a profile on what the situation really was all about in an effort to stop some of the rumors. Florida has been the number one state in crime in the United States for the last five years. Palm Beach County was ranked in the top six metropolitan areas of the United States in over all crime for the past five years. In 1995, Palm Beach County was number four in crime and number two in burglaries in the entire nation. Mayor Ilyinsky stated that it is no wonder, based on these facts, that the Town of Palm Beach would get some spill over of the waves of crime occurring in Palm Beach County.

As for the Town of Palm Beach, the following facts should lessen the unfounded fears of many. The crime rate in the calendar year 1995 was actually lower than in 1992 in the Town of Palm Beach. The rate of residential burglaries in 1995 was lower than some previous years, even going back twenty years. 1993 and 1994 crime reductions in Town were 12% and that was the reason the Town was so hard hit by the level of crime in 1995, but in fact, calendar year 1995 was lower than 1992. Since the two dozen burglaries reported in November, 1995, only a handful has been reported; however, this is not to say there will not be any more. The Police Department is investigating extraordinary resources in addressing this situation. They have released photographs of known and identified burglars to the newspapers. Mayor Ilyinsky asked that people be on the look out for these people and to alert the Police Department if any are seen.

Mayor Ilyinsky stated that some residents are still somewhat lax in helping the Police Department and themselves in this crime situation. The Police are patrolling in plain clothes in unusual vehicles on a daily basis. Some actually are beating around in the bushes and acting very suspicious. Not one single call has been made since this effort has been started two weeks ago. Residents who observe someone who is some place where he or she should not be, should notify the Police.

Mayor Ilyinsky said all residents should be locking doors and windows, even if they are only gone for a short period of time. If you are out back in the swimming pool, lock the front door. Residents should always use a security system and if they do not know how to use the system, the alarm company should be called for directions. Secure valuables, preferably in a safety deposit box at the bank, know who is working on your property, and be specific about what areas of your property are off limits to them. Call the Police Department immediately to report any unauthorized activity on your property.

Mayor Ilyinsky stated that we must accept the reality that 1996 is not the same as 1946 when many of us remember a more tranquil time. Things change and times change in our personal and professional lives in today's information age. We are in a high crime country and unless we help our Police Department by being alert and attentive to common sense precautions, we will continue to be ease pickings for the thieves who come south each winter. Report suspicious characters right away to our Police Department. If the criminals know Palm Beach is on top of their every move, they will go away.

XVI. APPROVAL OF AGENDA.

The following changes were made to the agenda:

Move Item 4, Update Regarding the Downtown Master Plan, to number one, Page 4, under XIX. Old Business A.4. A motion was made by Mr. Shaw, seconded by Mr. McLendon to approve this change. On roll call, the motion carried unanimously.

Defer item XXIII. New Business, C.6., to the March 12, 1996 Town Council Meeting. Amotion was made by Mr. Shaw and seconded by Mr. McLendon to approve this change. On roll call, the motion carried unanimously.

Mr. Doney stated that the Crime Watch Annual Meeting will take place Thursday, March 14, 1996, as listed on the Schedule of Meetings attached to the agenda. This meeting was previously scheduled for March 7, 1996.

Add item 7 under XXI. New Business, D. Other, Page 6, Consideration of sending the issues of offices in private residences, of the review of the regulations of special meetings of Town Commissions or Committees when requested by a petitioner requiring that the petitioner would pay the cost (minimum of $500), and of restudying the method of election of Town Commission Committee members to the Ordinances, Rules & Standards Committee. Mr. Wyett made a motion for this addition to the agenda. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Approved Agenda: A motion was made by Mr. Shaw. The motion was seconded by Mr. Shaw, to approve the approved agenda. On roll call, the motion carried unanimously.

XVII. LICENSES AND PERMITS

A. Charitable Solicitations
1. Big Brothers/Big Sisters of Palm Beach County, Inc.; No.142-96
2. The Lord's Place Auxiliary, No. 229-96
3. The Salvation Army Women's Auxiliary; No. 362-96
4. School of the Arts Foundation, Inc.; No. 363-96
5. Home Safe of Palm Beach County, Inc.; No. 403-96

OTHER
-Failure to File Results Within Prescribed Time - Paid $25 Administrative Processing Fee.

6. Croquet Foundation of America; No. 216-96
7. The American Friends of the Israel Philharmonic; No. 364-96

B. Beverage Licenses
1. Application for a New 4COP-SRX Alcoholic Beverage License by Ralph R. Benfante for LeBateau at 150 Worth Avenue, #234
2. Application for a New 4COP Alcoholic Beverage License by The Breakers Palm Beach, Inc. For the Centennial Dining Room at 45 Cocoanut Row.

REGULAR AGENDA

XVIII. COMMITTEE REPORTS

REPORT OF THE WATER COMMITTEE MEETING HELD ON FEBRUARY 2, 1996

I. **CALL TO ORDER AND ROLL CALL:** A meeting of the Water Committee was called to order by Chairman Samuel McLendon at 2:05 p.m. on February 2, 1996, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Allen Wyett were found to be in attendance. Other Elected Officials attending for all or part of the meeting were Mayor Paul Ilyinsky, Town Council President Lesly S. Smith, and Councilman Leslie Shaw. Members of the Town Staff attending the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Town Attorney John Randolph, Director of Public Works Al Dusey, Town Engineer Jim Bowser, and Town Clerk Mary Pollitt.

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

III. CONSIDERATION OF IRRIGATION WATER SYSTEM WITH AQUIFER STORAGE AND RECOVERY REPORT PREPARED BY HUTCHEON ENGINEERS - REPORT RECEIVED JANUARY 17, 1996: Mr. McLendon stated the primary purpose of the meeting was to hear from Hutcheon Engineers regarding the irrigation and Aquifer Storage and Recovery (ASR) report from John Potts and Jim Anderson. Mr. Dusey commented that the report was on a feasibility study level, and although the report was well done and provides the tools to make a future decision, it is not detailed. Mr. Dusey said the feasibility for an ASR appeared to be very strong.

Mr. Potts reported that the conclusion of the report was that the Aquifer Storage Recovery appeared feasible, both economically and technically. Mr. Potts stated the reason for a further study that would cost approximately $209,000 was that the island substrata had not been well explored, and an insufficient amount of data exists. Mr. Potts recommended the hydro-geological conditions be studied because of the significant variation of sub-surface conditions, and the studies would form a basis for future interactions with various groups. Mr. Potts reported that the apparent availability of funds from South Florida Water Management District exists, since the district is actively funding programs of this nature as well as being supportive of this particular program. Mr. Potts said the programs he was aware of were funded on a 50-50 basis, and the application could be prepared to request funding for the exploratory work.

Mr. Potts discussed the two alternate source and treatment sites in West Palm Beach. One is the C-51 canal at the S155 dam and the other is the Department Of Airports 100 acre site east of I-95, north of Southern Boulevard, that was purchased to mitigate noise. Mr. Potts said that the "airport" site would allow the water to enter the island closer to the middle of the island.

Mr. Potts summarized his meetings with South Florida Water Management District (SFWMD) officials who supported the plan, especially with ASR; however, SFWMD indicated the use of the canal was doubtful during periods when no overflow existed. Mr. Potts stated that this withdrawal issue could be discussed further with SFWMD, and that SFWMD might be more flexible than initially indicated due to the conservation aspect of this potential system.

Mr. Potts and the Committee discussed the potential use of reclaimed waste water as a possibility for providing water, at least as good as canal water, during drought restricted periods. Mr. Potts said this would be years off, and the location of the waste treatment plant in West Palm Beach is so far west that the cost to return the water to Palm Beach would be high.

Mr. Potts, responding to questions from the Committee concerning the location of proposed wells on the island, said the ASR wells would probably be put in the right-of-way, although some of them could be placed on private property, approximately 500 feet apart, generally located on the easterly portion of the northern half of the island along the ridge line.

Councilman Shaw suggested eliminating the distribution system by creating a supply system and informing the residents that a fee schedule would be implemented, similar to the solid waste fee schedule, whereby the residents would have the right to stay with the West Palm Beach water system or install individual wells on private property. Mr. Potts responded that the concept had merit since the Town would not have to legislate the withdrawal of water from the aquifer but would provide water to the residents who could then choose or not choose to use it. Mr. Potts said the distribution system would be eliminated thus reducing the cost dramatically ($8.5 from $15 million); the cost of the ASR would be cut in half because the wells would be holes in the ground without pumps; the operation and maintenance costs would be significantly reduced; and the water would be distributed 24 hours per day into the aquifer storage and recovery system. Mr. Potts continued the real answers to the question whether it would fully work would depend upon further investigations to assure that the water bubble exists sufficiently to allow any customer to use water, and to identify the distribution of wells throughout the island.

Mr. McLendon reported the Health Department had approved a plan for laying two pipes in a single trench using poly bag and staggering the joints. Responding to questions from the Committee regarding the installation of dual piping in the same trench, Mr. Potts indicated that two pipes could be installed for $40 per foot and one pipe could be installed for $32 per foot. Mr. Potts said that assuming a reasonable wholesale rate, the potable system could be replaced at the same time that the non-potable system was installed.

The Committee questioned Mr. Randolph relative to the Town's ability to require consumers to connect to the system, and, at the same time, omit certain streets on the island. Mr. Randolph replied that if the Town planned to use revenue bonds, the Town would require the assurance that residents would tie into the systems. Mr. Potts suggested that every resident would receive a statement similar to sewer billing.

After discussing the desirability of financing through general obligation bonds, guaranteed by the full faith and credit of the Town, Mr. McLendon ascertained that a referendum would be required. Mr. Dusey noted that revenue bonds carried insurance.

The Committee reviewed the costs for the project, ranging from $26.5 million to $34.0 million with substantial savings if the road restoration is limited to trench areas plus a seal coat. The Committee indicated they preferred the cost savings plan that would reduce costs by $6.5 million as compared to the more expensive road paving costs.

Mr. Potts said that in the report, the assumption was made that during the average flow days, water will come across to recharge and also come across during the night to supplement the wells. Mr. McLendon replied he thought the plant would run at capacity beyond the fill-up period and that would supply the irrigation to its capability, then one by one, the ASR wells would be brought on line. Mr. McLendon continued that when the treatment plant was running, a double acting pressure regulating valve--one would be a back pressure to keep the system pressure from dropping too low and the other would be a pressure reducing valve control to regulate the pressure going into the wells. Mr. McLendon said, when pumping the other way, a back pressure valve would be needed to keep the well pump from over-pumping, and the ASR wells would only make up the deficiency if the treatment plant did not put out enough water. Mr. Potts replied the system could certainly work that way, and the goal was to put 6,000,000 gallons of water into the aquifer per day, based on the average day demand being 4,500,000 gallons and an estimated 33% loss in the aquifer.

RECOMMENDATIONS WERE MADE BY THE COMMITTEE TO:

1. **SEND A LETTER OF REJECTION OF THE LAST DRAFT AGREEMENT WHICH WAS DATED NOVEMBER 16, 1995, TO THE CITY OF WEST PALM BEACH STATING THE AGREEMENT BENEFITS THE CITY OF WEST PALM BEACH AND OFFERS NOTHING TO THE TOWN OF PALM BEACH;**

2. **INSTRUCT THE TOWN ATTORNEY TO PROCEED WITH A LAWSUIT TO DETERMINE THE LEGALITY OF THE SURCHARGE;**

3. **REQUEST STAFF TO PREPARE AN APPLICATION TO SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR PARTICIPATION IN THE HYDRO-GEOLOGY STUDIES TO ASCERTAIN THE FEASIBILITY OF THE AQUIFER STORAGE AND RECOVERY WELLS AND FOR HELP IN THIS WATER CONSERVATION PROGRAM;**

4. **REQUEST A JOINT TOWN COUNCIL AND CITY COMMISSION MEETING, TO PROVIDE AN OPEN DISCUSSION IN WHICH THE SURCHARGE IS AN OPEN ISSUE, TO TAKE PLACE WITHIN TEN DAYS AFTER THE CITY OF WEST PALM BEACH ELECTIONS IN MARCH, 1996; THIS MEETING WOULD TAKE PLACE ONLY IF THE 25% SURCHARGE IS OPEN TO NEGOTIATION;**

5. **IF NO PROGRESS IS MADE, THE TOWN COUNCIL SHOULD MEET IN A SPECIAL SESSION TO AUTHORIZE THE EXPENDITURE OF FUNDS, ESTIMATED AT $209,000, TO CONFIRM THE FEASIBILITY OF WATER STORAGE IN THE SHALLOW AQUIFER;**

6. **AUTHORIZE THE COMMITTEE TO MEET WITH THE PUBLIC WORKS STAFF TO IRON OUT THE WORKING DETAILS OF THE STUDY;**

7. **AUTHORIZE THE WATER COMMITTEE TO CONTINUE ITS WORK TO INCLUDE THE CONSIDERATION OF A DUAL WATER SYSTEM REPLACING THE AGING WATER DISTRIBUTION SYSTEM OWNED BY WEST PALM BEACH AND TO NEGOTIATE A WHOLESALE WATER AGREEMENT;**

8. **AUTHORIZE NEGOTIATIONS WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR ACCESS TO THE C-51` CANAL.**

Mr. Randolph said the Town Council may want clarification, one last time, from the City of West Palm Beach concerning the City's position on the "friendly" lawsuit, and West Palm Beach indicated at a previous meeting they might not be adverse to the "friendly" lawsuit if they had the right to appeal. Mr. Randolph stated he understood the recommendation was to move forward regardless of whether lawsuit would be "friendly" or "unfriendly", and he could receive a response from West Palm Beach rather quickly.

Responding to Mr. McLendon's suggestion that the State law that requires a surcharge to be supported by documentation if it exceeds 25% should be amended to also require documentation for the first 25% if the revenue generated by same is over $100,000, Mr. Randolph replied he would investigate that possibility.

IV. **FURTHER CONSIDERATION OF PROPOSED WATER FRANCHISE AGREEMENT WITH CITY OF WEST PALM BEACH AND RELATED MATTERS:** This item was considered under item III., above.

V. **ANY OTHER MATTERS:** There were no other matters

VI. **ADJOURNMENT:** There being no further business, the meeting was adjourned at 4:00 p.m.

WATER COMMITTEE

Samuel C. McLendon, Committee Chairman

Allen S. Wyett, Committee Member

Mr. McLendon stated that the Committee met on 2/2/96, and the two purposes of the meeting were to review the report on the irrigation/water study, the aquifer storage and recovery investigation, and the report from the engineers.

Mr. Potts from Hutcheons Engineering presented the report to the Committee and the contents of the meeting are public record. Mr. McLendon stated he would briefly explain the contents of the report. He stated that the report was an attempt to determine the viability of a non-potable irrigation system which would be less costly per unit of water and make it feasible to help the Town meet the required reduction in water use and meet Comprehensive Plan requirements. The alternatives presented in the report included two potential supply sources at two locations emanating from the C-51 Canal. The two sites were just east of Dixie at the canal location and the other east of I-95 north of Southern Boulevard on airport property. The report did not recommend a choice of the two sites, however, Hutcheon Engineers leaned toward the airport site as being a larger and more flexible site to utilize and was more conducive to getting a line in more toward the middle of the Town.

The basic system proposed was a minimum treatment of the canal water, including filtration and chlorination that would be pumped to the island to be used for irrigation. In conjunction with that, since the canal water based on present water management policy, would not be available for a number of days each year and that the only way to make it completely reliable was to go to an aquifer storage and recovery facility that would include up to 100 shallow wells in which the treated nonpotable water would be injected when not needed for irrigation. During drought periods this water could be withdrawn or even to meet peak hour requirements on a daily basis if needed. The costs were substantial, however, the Committee felt the Town could do it based on the existing water rates being paid for irrigation water. The Committee was disturbed by the recommendation that the Hydro-geology knowledge was less than anticipated and that information from another test site was recommended. The Committee was advised that funds may be available to share that test phase, which was estimated at $209,000. The knowledge re: hydro-geology of Palm Beach Island is somewhat limited. The intent of the study recommendations was to locate these ASR wells along the easterly portion of the Island and the northern ½ to 2/3 of the Island. However, the formations in geology are discontinuous and not sufficient information was available to justify going full speed into such a project. The Committee recommended that the Town proceed with the additional hydro-geo work, assuming that it may be subject to receiving cost sharing from the South Florida Water Management District. The Committee understood that SFWMD has funds for such projects.

Mr. McLendon said the latest draft of the water franchise agreement from West Palm Beach was received in November and the amendments are strictly for West Palm Beaches benefit. Mr. McLendon reviewed recommendations made by the Committee and stated that since he has been involved in the negotiations with the City of West Palm Beach, a spirit of cooperation early in the negotiating process appeared to exist. He was told the City had no objection to entering into a friendly law suit agreement, meaning each party would pay his own legal fees and the decision is not normally subject to appeal. The agreement for the friendly law suit was later withdrawn because the representatives at the meeting did not have sufficient authority to enter into the agreement. Mr. McLendon stated the Town has tried since May to get West Palm Beach to tell the Town how the value of the Palm Beach distribution system would be determined. Mr. McLendon said that Palm Beach will never be content to be at the whims of West Palm Beach and the amount spent to replace and maintain the distribution system. The Committee agreed that the Town should own the system and buy wholesale water. The Committee proposed a methodology for determining the cost of the distribution system and suggested a starting point for determining a wholesale water rate. The Town has not yet received any alternatives or suggestions as to what these numbers are and what the procedure should be to obtain the facility.

President Smith stated that due to the complexity of the various recommendations made by the Committee, the Town Council should take them one at a time. The recommendations and discussion regarding each are as follows:

1. Send a letter of rejection of the last draft agreement which was dated November 16, 1995, to the City of West Palm Beach stating the Agreement benefits the City of West Palm Beach and offers nothing to the Town of Palm Beach.

Mr. Wyett stated that the Committee spent a lot of time drawing a very fair and equitable business-like contract that was submitted to the City of West Palm Beach. When returned, in an untimely manner, West Palm Beach had crossed out all provisions that made it an equitable contract and totally rejected the Town's offer of a 10% surcharge that was offered as a compromise.

Mr. Wyett made a motion to approve recommendation # 1 from the Committee. Mrs. Smith suggested the Town fax the letter, and Mr. Wyett amended his motion to reflect that suggestion. Mr. Shaw seconded the motion. The Council directed the Mayor to write the letter. Mayor Ilyinsky stated he hasn't heard anyone complain in the last two years about the surcharge and wondered whether this was a point of contention for the City and questioned why the Town continued to spend money fighting a battle it cannot win. Mayor Ilyinsky stated that the lawyers he has spoken to have stated that it is absolutely legal. Mayor Ilyinsky stated that the Town has a bargain in its rates in comparison to what they pay in Broward and Dade Counties.

Mr. McLendon stated that the statute is a legal entity as it is being applied in many places, however. West Palm Beach discussed consumers equity in he system and questioned why the Town has not bought a share of that equity. Mr. McLendon stated that, as far as he was concerned, the surcharge statute was not intended for such a large operation as we have, but was intended for small segments adjacent to cities where there could not be agreements reached as to who was going to pay for what costs for extending the facilities to those units. The Town has been a part of this system long before the City of West Palm Beach owned it. The consumers in Palm Beach have contributed more per dwelling unit toward the equity in that system than the people in West Palm Beach. Mr. McLendon said the key component is the possibility that the application of the statute to these two communities could be proven incompatible with the statute.

In response to a question regarding cost and possible exposure to the Town of the law suit if the Town lost, Attorney Randolph stated that it is difficult to predict costs but a reasonable estimate of the legal costs ranged from $75,000 to $150,000. If the Town did not reach an agreement to proceed on a friendly basis, and if the Town was not successful in the law suit, a possibility exists of paying attorneys fees to the other side of approximately the same amount. President Smith stated that if the Town turned around and bought the system in 4 or 5 years, the question becomes moot. Mr. McLendon stated that he disagreed, pointing out that West Palm Beach has stated they will make the wholesale water rate as high as the tariff will bear.

Mr. Shaw stated that the Town may be looking at an issue that may not be an issue in five years. The Water Committee is looking at a two fold issue. One is to negotiate a contract with someone who doesn't have a need to negotiate, doesn't want to come forward and offer the Town anything and, from the Town's standpoint, is basically secure in knowing that the rates the Town is paying guarantees water is going to be provided to us with or without a contract. The real issue is how much water the Town wants to get from West Palm Beach and that is what the Committee is doing on behalf of the residents of the Town who are paying for water. Mr. Shaw said that to spend money for a law suit when the Town is probably looking at reducing the water tariff by about 60% once this plan is in place, because not only will the Town not be purchasing the water but will be eliminating the inverse rate, and the Council may be going about this the wrong way. Mr. Shaw said that the Council's obligation is to provide a supply of water at an equitable rate. A supply of water at an equitable rate exists and a means of distributing it to the public needs to be found.. In the water meeting, Mr. Shaw said he suggested a plan to eliminate almost $15,000,000 of a $30,000,000 program by eliminating the distribution system. The Committee realized that some of the big users were going to drill their own wells and completely bypass the Town's tariff process. Once the wells became established, Mr. Shaw looked at this from another standpoint and said it was viable. Mr. Shaw felt the Town should stop wasting time looking at law suits and contracts from the standpoint of what the Town is not going to buy and come up with a plan that states where the Town will buy water. If West Palm Beach wants to provide it fine, if not, there are two other municipalities who are willing to do it. The bottom line is West Palm Beach cannot stop Palm Beach from getting water. They are going to have to sell it to the Town at an established tariff.

On roll call, the vote on the motion to fax the letter carried unanimously.

Recommendation # 2 - Instruct the Town Attorney to proceed with a law suit to determine the legality of the surcharge.

Mr. Shaw made a motion not to proceed with the law suit.

Mr. Wyett stated that the purpose of the law suit was to reinforce the Town's position to the City of West Palm Beach showing the determination of the Town to solve the water problems without being held hostage. Mr. Wyett said that the City of West Palm Beach has treated the Town inferiorly and failed to recognize that the Town is a separate entity with legal rights and has the ability to protect itself. At this stage the instigation of a suit sends a message that the Town is determined to solve the problem. Mr. Wyett said the City had more to lose than it had to gain, and the Town would be depriving West Palm Beach of 60% of its revenue, or approximately $3,000,000 at 1996 rates. Mr. Wyett stated that the Town will stabilize the cost of water and a long term supply of water will be assured.

Mr. McLendon stated he is not in favor of proceeding full speed with a non-potable system without having negotiated some sort of an arrangement with West Palm Beach or someone else for a wholesale rate of potable water. When the pipelines are constructed, it would be more economical to do two lines in the streets than one. If the Town is unable to negotiate a price of a distribution system with West Palm Beach, then the Town has the option of replacing the pipes and letting the old ones rot. Mr. McLendon stated he agreed with Mr. Wyett that this was a means of putting the pressure on West Palm Beach.

Attorney Randolph stated that with reason the statutes could allow the surcharge to go to 50%, but without reason it can go to 25%. Attorney Randolph stated he researched some of the legislative history of the statute and the intention of the surcharge issue is less than clear.

Mr. Basillias the Chairman of the Water Committee for the Civic Association addressed the Council and stated the following:

"The Executive Committee of the Palm Beach Civic Association supports the recommendations of the Town Water Committee. We believe the time has come for action in the water contract negotiations with West Palm Beach.

"We not only strongly object to the 25% water surcharge imposed upon Palm Beach residents, but we also find unacceptable the use of these funds to support West Palm Beach police department expansion -- rather than to replace and repair our badly aging water distribution system. We reject the idea that Palm Beach should purchase that distribution system owned by West Palm Beach which is sorely in need of major improvements.

"The Civic Association endorses the call for a joint Palm Beach - West Palm Beach council meeting to discuss the surcharge and the water contract. This session should take place immediately and, if no substantial progress is made, Palm Beach should initiate a lawsuit to challenge the legality of the surcharge.

"We are convinced that a high cost overhaul of West Palm Beach's current distribution system will soon become necessary and that the city will be forced to dramatically escalate rates to all consumers. Looking ahead consequently, the cost and reliability of our own dual water system may well prove distinctly preferable to the alternative of continued dependance on West Palm Beach's potable water for all our water needs, whether destined for potable use or non-potable use. We, therefore, recommend that the Palm Beach Town Council proceed with further studies to implement a non-potable water supply with ASR, and determine the feasibility of our own dual water system.

"At the Civic Association, we support our elected officials in their efforts to resolve this water crisis. We stand behind them as they seek to protect the future of Palm Beach and guard the interest of the town's residents."

President Smith said that the recommendation to instruct the Town Attorney to proceed with a law suit was premature at this time. President Smith suggested that Mr. Basillias' request for a meeting with the West Palm Beach City Commission 10 days after their election, which is held on March 12, 1996, and the new members of the commission are not sworn in until March 28, 1996, is not realistic. President Smith requested the committee to change the time frame for the request for the meeting and then discuss the possible lawsuit with West Palm Beach after a meeting time has been determined, which should probably be sometime in early April. Mr. McLendon agreed with President Smith and suggested that recommendation #2 be held off until after that meeting, if such a meeting occurs. There was some discussion about a reasonable time frame, after West Palm Beach's new members are sworn in, to request this meeting.

Mr. Wyett agreed with President Smith that the lawsuit be rescheduled. Mr. Wyett stated that the negotiations have lasted one year and to put off this meeting until April is continuing the delays. Mr. Wyett suggested that the Town issue a letter asking for the joint commission meeting, let their present Council respond to it on the basis that they are willing to have negotiations with the 25% on the table for open discussion. If that is not the case, Mr. Wyett did not think the succeeding council is going to be any different. Mr. Wyett said the West Palm Beach Council must be put on notice that there should be no more delays.

President Smith did not agree with Mr. Wyett's approach on this subject and advised him that if he wanted to negotiate with West Palm Beach then he should start it on a more friendly manner.

Mr. Doney stated when the initial meetings when Mr. McLendon was designated as the Town Council representative, they met with Mayor Graham and had what they believed to be some progress, but this was not confirmed later by Mayor Graham. Mr. Doney suggested staff rekindle the issue from that point, where the initial letter would be sent from Mr. McLendon as Chairman of the Water Committee, to Mayor Graham recommending an additional meeting with Mr. McLendon, Mayor Graham, and Mr. Randolph and see where the Town stands at that point. Mr. McLendon could report back to the Town Council at the March 12, 1996 meeting and then plan from there. Otherwise, based on what the Town knows at this point, the Committee is in a limbo status with the City of West Palm Beach. Whatever the Council directs today, the staff will carry out, however, Mr. Doney asked that the first item be clarified if the Council's intent was that Mr. McLendon sign that letter. Mrs. Smith stated that it was the Council's intent that Mr. McLendon sign that letter.

Mr. Shaw said that West Palm Beach has had ample time to consider meetings with the Town and to review the contract. Mr. Shaw continued that if West Palm Beach wanted to do something, they should initiate it and thought the Town was just wasting time going back and forth over the same thing. Mr. Shaw stated the City did not want to discuss the contract and what the Town is trying to do by acquiring the system. Mr. Shaw stated the Water Committee has recommended eight points, the Council has agreed on the first recommendation, an the Council should just consider recommendations # 3 and # 8, which requested the application for the studies from the State for State funding and should start the negotiations with the South Florida Water Management District. If West Palm Beach wants to talk, they know how to get in touch with the Town.

Mr. Shaw made a motion to approve Recommendations # 3 and #8 of the Water Committee recommendations and put the rest of the recommendations on hold until some answers are received. The motion was seconded by Mr. Wyett.

Mr. Shaw read Recommendations 3 and 8 into the record as follows:

Recommendation # 3: Request staff to prepare an application to South Florida Water Management District for participation in the Hydro-Geology Studies to ascertain the feasibility of the aquifer storage and recovery wells and for help in this Water Conservation Program.

Recommendation #8: Authorize negotiations with the South Florida Water Management District for access to the C-51 Canal.

Mr. Shaw stated that the whole basis of this concept is access to the water, and that is where the Town should be taking time to negotiate a contract.

Mr. Dusey stated that the staff would attempt to complete the application, however, not having seen one before, he was not sure of the complexity of it and the degree of technical data that would be needed. If staff was unable to complete the application, Mr. Dusey stated the assistance of consultants from Hutcheon Engineers would be needed. Mr. Dusey requested the Town Council authorize monies in case this was needed.

Mr. Doney stated that staff would report back to Council the actual amount, however, he suggested up to $5,000 from the Undesignated General Fund Balance be authorized. Mr. Dusey, on an as needed basis, could authorize Hutcheon

Engineers to perform necessary professional engineering work. Mr. Shaw agreed to make this a part of his motion.

President Smith stated that Recommendations 4, 5, 6 and 7 will not be looked at this time, but will be prepared for a Special Town Council meeting to address this issue.

On roll call, the motion carried unanimously.

Mr. Wyett stated that the City of West Palm Beach would take no action and reach no compromise until they realize revenue will be lost. Until the Town has the shell aquifer certified as buildable and has a plan for a viable non-potable water system, West Palm Beach will not budge. Mr. Wyett said that the only way the Town could prove it has an independent course of action is to proceed with the $209,000 study. Mr. Wyett stated that he hoped that as soon as this letter is sent to West Palm Beach and is rejected by them, the Town Council immediately authorizes the aquifer study.

Mr. Shaw pointed out that the cost of drilling the well is the reason for the application for the study. The idea is that the South Florida Water Management District will partake in the study, making the cost considerably less. One or two municipalities south of Palm Beach were able to get almost 100% financing for similar projects.

XIX **OLD BUSINESS.**

4. Update Regarding the Proposed Downtown Master Plan for the City of West Palm Beach

Attorney Randolph stated that the Town Council asked that staff move forward regarding the actions taken by the City of West Palm Beach regarding their approval of the Comprehensive Plan change and the Zoning Amendment. Attorney Randolph stated that has been done, and the Notice of Intent came from DCA indicating that they were going to approve the City's Comprehensive Plan amendments. The Town has a period of 21 days from that Notice of Intent to file a petition for an administrative hearing, which the Town is in the process of doing. That petition is due Friday. Attorney Randolph stated that he called Scott Hawkins to attend this meeting to answer any questions the Town Council may have regarding details.

Mr. Wyett made a motion to allow the Town Attorney to proceed with legal filings in opposition to the Downtown Master Plan. Mr. McDonald seconded the motion. On roll call, the motion carried unanimously.

1. Consideration of Beach Erosion Issues.

A. Status Report on Restoration of the Lake Worth Inlet Sand Transfer Plant - Discharge Piping.

Mr. Dusey stated last Monday, a meeting was held and the results of a study based on seismic readings indicated the project could not be constructed as designed. Since that time, Dames and Moore has examined that study in great detail with their professionals. Additionally, borings were drilled in the jetty to further refine the actual location of the jetty rock. Mr. Tom Mullins is in attendance to summarize the results of those two investigations.

Mr. Tom Mullins of Dames and Moore, Inc., addressed the Town Council and stated that as a result of the last meeting, the contractor supplied Dames & Moore with results of a geophysical report that was performed on the jetty area. As a result of that report, an initial conclusion indicated the jetty material was located to a depth of 45 feet. At a meeting with Town Staff, it was agreed to look at the geophysical report. Mr. Mullins stated senior geophysicists from the West Coast Office reviewed the report. Dames & Moore provided Town Staff some detailed comments. The result questioned whether the seismic data was valid and the conclusion was that data is invalid. Dames & Moore did not think that the seismic data was sufficiently comprehensive, and the investigation was detailed enough to establish a definable and defendable basis to conclude that the jetty material was founded to a depth of 45 feet. Mr. Mullins stated that the technique utilized, with additional work and information, could arrive at a conclusion, however, the data presented was not considered valid. Mr. Mullins stated that it is his understanding that the contractor has taken another look at this data and another engineer did an assessment. Mr. Mullins had not seen that report as yet, however, it was highly unlikely that Dames & Moore's conclusions would change since the validity of the data base was in question. Mr. Mullins stated that the proof would be to simply do some borings through the jetty and find out where the jetty boulders and rocks are located.

Staff engaged a drilling contractor who used a recommendation from Dames & Moore that up to 3 additional borings be performed. The borings were done on Thursday through Sunday, and drilling through the jetty was very difficult. The results of the two borings performed on the cap of the jetty, indicated the jetty material was found down to a depth of 12 feet below the top. This indicates that back in 1925 when the jetty was constructed, the boulder wrip-wrap was placed on the existing sand and did not trench or key-in. As a result, the jetty material is essentially much shallower than the contractor's geophysical report had indicated.

Mr. Mullins pointed out that their geophysical report did not indicate any testing in the upper 15 feet of the soil profile and probably just missed the jetty material all together. The borings were drilled to a depth of 50 feet and encountered 12 feet of jetty material, underlined with dense to very dense sand down to coquina bedrock. They focused on the area where the contractor has proposed realigning and setting up to drill the next attempt. In that area and zone, the underlying bedrock was indicated to be at a depth of 23-26 feet. The original geo work indicated this has the strength of a poor quality concrete, with tests typically 300-1000 psi. The contractor had representatives available on site during the drillings and were aware of the results. Mr. Mullins stated he reviewed the results of the geotechnical borings with the contractor on Monday and met with Town Staff Monday afternoon. Based upon those conversations, Counties Corporation, Inc. faxed a proposed profile for the new line, which was deeper than Mr. Mullins thought appropriate.

Mr. Mullins met with Counties Corporation this morning and arrived at an agreeable profile. The profile has a point of connection on the north side of the jetty for the pipe that has to turn and go to the Sand Transfer Plant and is a little deeper than hoped for. The profile needs some fine tuning, however, an agreement on a new profile for the pipeline at a new location is imminent. The contractor expressed concerns and would like to see that the pipeline under the jetty in the proposed alignment area has a 10 foot rock cover. Mr. Mullins said the 10 foot rock cover could be accommodated within the proposed profile. The north end piping connection and "tweaking" the alignment pose some concerns, and further reviews may indicate the connection should be brought up to a little higher elevation from 3-4 feet below the ground water table.. The contractor has also expressed the desire for the Town and engineers to: (1) look at two separate lines. (Mr. Mullins stated it was too early to comment and respond to this, but thought it was something they would take a look at) (2) consider some additional costs of drilling two separate pipelines and (3) consider additional costs of a second discharge structure. The contractor has requested consideration of reimbursement for the second discharge structure. Considering the difficulties the Town has had with this project and the urgent need to get this pipeline in, Mr. Mullins felt the Town should look at this request seriously.

Mr. Mullins said that Counties Corporation would like the Town to consider an additional 5 foot depth for the drilling.. The Town has given him a 20 foot elevation band and a pipeline in which the pipeline can be installed. At the center line of the channel, the pipeline would be at a depth of 75 feet and an increase of five feet, as requested by Counties, would put the overall depth at 80 feet. Palm Beach County would have to review this request in detail, in addition to the Sand Transfer Plant people to determine any impacts that additional depth may have on their pumping system, motors, etc.

Mr. Mullins said that, as a result of the geophysical review and the borings that were done, a determination was made that the jetty does not extend to a depth of 45 feet. Dames & Moore is looking at a proposed alignment that can be constructed within the design band provided to the contractor. Mr. Mullins said negotiations with the contractor need to be conducted to finally approve the alignment. Based upon the results, Mr. Mullins said the project looked positive and will proceed.

Mr. Peter Wallace of Counties Corporation, addressed the Town Council, and stated that he has looked at the geophysical report however, has not had the opportunity to look at Dames & Moores comments. Mr. Wallace stated that Counties Corporation had a second look at the report and disagree with the issue about the data and consider the data to be accurate. Mr. Wallace pointed out that the seismic information is subject to interpretation and doing the borings was the prudent thing to do since information for three locations beneath the jetty was obtained.. Based on that information, Counties and Dames & Moore have been meeting to agree on an alignment that would allow this project to proceed forward. Mr. Wallace asked the Council to keep in mind that information derived from the borings show that the subsurface conditions are different than what was originally bid. One additional issue is the tie-in point. On the north side of the jetty it is an open issue as to what level the tie-in can be made. The original contract plans, called for a tie-in at 5 feet below ground elevation. Now, the new figure is in the order of 13 feet below ground elevation. Mr. Wallace stated there may be a way to technically get around that since once they are down to 13 feet there may be difficulty with dewatering the site because of the location of the inlet next to the tie-in site. Mr. Wallace stated that he would like the Town to agree, at least in concept, that if this tie-in becomes much more difficult (which is something that can be confirmed once the project is completed), a change order for the increased difficulty be considered.

Mr. Wallace stated that regarding the second issue - the discharge structure - a two line concept has less likelihood of encountering a problem. Two lines would allow an adequate support system underneath the jetty where the coquina rock can be a problem. Mr. Wallace stated that a smaller excavation which would require a bore of only 17 inches for the two line system versus 36 inches for a one line system has a greater likelihood of success. Mr. Wallace said the Town derived the benefit if all goes as planned, and one of those lines could be in operation earlier than two lines could. As far as additional costs, Mr. Wallace stated there may be additional boring costs, but the main concern is with the additional discharge structure on the south side of the jetty. Mr. Wallace stated they have not had a chance to do a detailed estimate as far, but the cost could be between $15,000 and $20,000 for the additional structure.

In response to a question from Council, Mr. Wallace stated there may be an issue of how to tieing the two pipes into the discharge pipe. Mr. Mullins stated that it depends on the exit locations of the pipes on the south side and the width of the pipes. Mr. Mullins said the pipes would probably be 30-50 feet apart. Mr. Mullins stated there is a possibility the lines could run along the bottom and merge into a singular discharge structure. The lines could be covered with sand on the bottom and stabilized but some unprotected length of pipe might be exposed on the bottom of the ocean.

Mr. Rick Duich of Counties Corporation addressed the Council regarding the Tensor Steering System's degree of accuracy that is highly accurate on land borings but the wave action in the Inlet makes it impossible to lay the grid. Mr. Duich stated that the degree of accuracy to pinpoint exactly is affected and is not as accurate as the grid system.

In response to a question from Mr. McDonald regarding additional boring costs, Mr. Wallace stated the cost is not known. Mr. Wallace said Counties Corporation knows additional costs for the discharge structure will be incurred.

Mr. Dusey stated that the staff does not object to the two lines if it makes the project successful. The contractor has an advantage, and Mr. Dusey said that the Town should pay for additional costs on the outfall, certainly not for the drilling itself. In the spirit of moving the project forward, Mr. Dusey suggested the Council may wish to consider authorizing a reasonable amount for the additional outfall structure.

Mr. Wyett stated that he did not think the Council should consider any additional costs at this time since the problems were the contractor's and the engineer's. Mr. Wyett said that the contractor received misinformation from the engineering firm and their recourse is from that engineering firm and urged the Council to take no action other than to urge the contractor and engineer to get together and solve this problem that could aggravate this Council into bringing a major lawsuit. Mayor Ilyinsky disagreed with Mr. Wyett.

President Smith asked for a time frame as to when this project can be brought to a conclusion. Mr. Wallace stated that they plan to meet with the contractor after this meeting and finalize an agreement on the alignment. Mr. Wallace stated they can relocalize on site starting on February 26 and projected operation could begin by March 30.

In response to questions from the Council, Mr. Wallace added that the biggest issues have occurred since the Council first suggested two lines. Counties Corporation has determined the conditions beneath the jetty and an alignment has been designed that could meet a tie-in point within the property line that is not 20 feet in depth. Mr. Wallace stated that while he understood the Council's frustrations, Counties Corporation has been diligent in proceeding with investigations. Mr. Wallace stated that he could not say time would be saved by drilling for the two lines, but from a risk standpoint due to variable conditions, the Town would be better off.

President Smith stated that there is a Special Town Council meeting on February 29 and suggested that by that time, Counties Corporation should be in place and available to give additional information to the Town Council.

Mr. Dusey stated he disagreed with the statement made by Mr. Wallace that conditions were changed as a result of the sublines. Mr. Dusey said that the borings that were performed indicated that the geological conditions encountered in those borings are consistent with those reported in the borings that were provided with the contractor in the design documents.

President Smith reminded everyone that the meeting would be on Thursday, February 29, at 2:00 p.m., and suggested the Council meet earlier to discuss this issue. Attorney Randolph stated that the Comcast meeting could begin at 2:00 p.m. as advertised and then adjourn to hear this issue if it would be short matter. Attorney Randolph stated that if the meeting has been advertised for 2:00 p.m., the Town Council needs to begin the meeting at that time.

President Smith suggested this issue be held at 3:00 p.m. on Thursday, February 29, and if need be return to the public hearing for Comcast Cable. There were no objections to the proposed schedule.

Dr. Sanford Kuvin, 149 E. Inlet Drive, asked if the Town had a fall back position given the apparent disagreement between the technical experts that the Town has hired. There seemed to be unknowns. Dr. Kuvin asked if there is a fall back position regarding the type of piping, or discharge pipe that has been there for 30-40 years, since the maintenance requirements and depth requirements are known?

Mr. Dusey replied a number of possibilities were investigated and the existing pipe was badly deteriorated and was not a feasible alternative. Mr. Dusey stated they investigated the use of other materials, including plastic and metal pipe to lay on the bottom of the inlet on a temporary basis and the permitting process was 2-3 months with 1 month construction time at a cost of approximately $125,000. Mr. Dusey said the old pipe could be removed and the new pipe be laid in the trench so it would have some measure of protection. Mr. Dusey continued that the staff talked to the State in an attempt to find another source of sand, and the State indicated a hybrid permit may be allowed to use the borrow site from Mid-Town and the Corps disposal site since both were approved. The State may be able to issue a permit with some kind of conditions to marry those two locations with the result some additional sand could be placed on the north end beach. Mr. Dusey said he was unable to make contact with the Corps representative regarding dredging costs or if they were interested in pursuing this issue. Mr. Dusey stated that trying to expand the settling base would take a full permitting process which would take the Town way beyond an acceptable time frame.

In response to a question from Mayor Ilyinsky about when dredging was supposed to start, Mr. Dusey stated a pre-construction meeting was held last week attended by one of our engineers. The contractor was now on a schedule that would have a starting date of the first or second week of March with an anticipated completion date of one month. Counties Corporation has not completed the pre-construction survey as of this date.

Mr. McLendon stated he would like to see Town Staff pursue this permit, if feasible. In response to President Smith, Mr. McLendon stated he made a motion to that effect. Mr. Shaw seconded the motion. The motion was to do whatever staff could do to obtain permission to have somewhere between 50,000 and 150,000 cubic yards of sand dredged from the borrow site onto the beach as an addition to the Corps of Engineers dredge contract with the Town. Mr. Dusey stated that the Town would have a Coastal Engineer apply on the Town's behalf for an estimated $20,000 cost for the permit. Mr. Dusey said he was guessing the cost would be $20,000, and the costs may be more.

Mr. McDonald said he would rather have a Special Town Council meeting in a few days once the exact costs have been determined.

Mr. McLendon withdrew the motion subject to a near term Town Council meeting. In response to Dr. Kuvin, Mr. Dusey stated the permitted disposal site starts from the south jetty, south 3000 feet, and the Corps can place the sand anywhere within that site.

2b. Update on Mid-Town Beach Restoration Project, Including Use of PEP Reef Units as Groins.

Mr. Dusey reported that this project is going great and that the contractor is at least one month ahead of schedule and on target with the budget. The contractor has three more groins to install and should be completed in another week or so. Mr. Dusey stated he would like to discuss the opening of the south end of the beach. Mr. Dusey said the opening has been coordinated with the lifeguards, the Police Department and Risk Management. With the hardware that the lifeguards have to patrol the beach, the lifeguards can safely patrol the south 250 feet, from Gulfstream north, which places the open beach just south of Hammon Avenue. Mr. Dusey stated they will be placing signs across the beach, and the contractor has agreed to place some fencing to restrict the access to the rest of the beach. Mr. Dusey stated he would like to have this done and open the beach this Thursday if the Council approves. Mr. Dusey said that when Mid-Town is completely open the lifeguards will have three towers to handle 1000 feet, and one tower would cover 250 feet of beach.

Attorney Randolph stated this would not take a motion of the Town Council, but could be handled administratively. Town Manager Doney said that, administratively, once the Risk Manager, the contractor, and the Public Works Director sign off on the rest of the project, the remainder of the beach administratively would be opened.

Mr. Dusey stated that the beach stairs are being placed at Brazilian and an ADA handicap ramp at the lifeguard building. A sand ramp is required where it would not interfere with landscaping so the equipment can have access to the beach to do maintenance on the groins or supply sand fill. Additionally, the lifeguards need access to the beach for the dune buggy. Mr. Dusey requested authorization to spend about $13,000 from the Contingency Fund.

Mr. Dusey stated that $25,000 was budgeted for the handicap ramp, and the request was to use $9500 of that budgeted money.

Mr. McLendon made a motion to approve the expenditures. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mr. Gilbertson, 151 Chilian, addressed the Council and expressed his appreciation to the Council for the opening the beach.

6. Further Consideration of Proposal by Palm Beach County School Board to Close the Middle School (Grades 6, 7, and 8) at the Palm Beach Public School (This item was heard at 12:15 p.m.)

Commissioner Joel Daves of West Palm Beach stated he appreciated the Town Council's invitation to attend this meeting. Commissioner Daves stated that Mayor Graham opposes the closing of any part of the Palm Beach Public School and has expressed her feelings in letters addressed to the School Board. Mr. Daves said he has attended the School Board meetings and has expressed his dismay at the prospect of closing this school. Mr. Daves stated this school has a history that contributes to the feeling the parents have about the school. Mr. Daves said that the closing of school creates a loss of identity with parents and children, and for that and a lot of other reasons West Palm Beach expresses the hope that the School Board and the new superintendent will reconsider and keep this valuable school open.

Paulette Burdick of the Palm Beach County School Board, addressed the Council stating that the School Board's main concern at Palm Beach Public School was the increasing overcrowding. She stated that the Board Chairman, Dr. Richmond is in attendance, as well as Ray Hickman, Facilities Manager, to address concerns of the Town Council. Mrs. Burdick reiterated the concern with the overcrowding situation and how they can work with the Town of Palm Beach as a school district to resolve this issue.

Dr. Richmond stated that the decision to close the school has not been made. The School Board has not met to discuss this issue at this time and all boundary decisions will be made at the meeting on February 28. This closing is a recommendation made by staff. Dr. Richmond said she has not met with top staff regarding the closing and will be doing that in the next few days. Dr. Richmond stated they attended the meeting to listen to the Town, and see if the Town has suggestions for the School Board.

Margaret Yansura, 714 Clairmore Drive, Flamingo Park, West Palm Beach, addressed the Council and stated she is a parent of three children who attend Palm Beach Public School. She personally thanked the Town Council and Staff for their support on this issue and stated that the Town held the key for some of the answers they are looking for. At the meeting last night at the Palm Beach Public School, the issue on placing portable classrooms on the site was discussed. The installation of the portables would allow the school flexibility to allow time to study the situation.

Mrs. Yansura said it was suggested that a graduate class at FAU or Palm Beach Atlantic could use the middle school as a study project for a year to consider the dynamics of the K-8 configuration to determine if this should be recommended in the future for other school sites or look at the smaller middle school as an example of what could be adapted to new middle schools. Mrs. Yansura felt the School Board should have this kind of information before making a decision as devastating as closing a school that would tear the fabric of a community.

Mr. Gilbertson, 151 Chilian, stated that the excuse of overcrowding is always being used. He said the school should be downsized, and the School Board was destroying a close knit unit that was giving the children something they could not receive at a larger school. He said that the Town wanted to keep the small school to keep the quality and all schools should be small. Mr. Gilbertson stated the School Board didn't care, and that once the school is gone it would be gone for good.

Mr. Wyett stated that the Town Council should express its strong support in maintaining the school at K-8, and the children should not be moved suddenly from small environment into a very large environment. The Town of Palm Beach is entitled to its school system and to lose the middle school would be to lose some of the Town's independence.

Mayor Ilyinsky said that what we have is a somewhat classic Palm Beach dilemma. Mayor Ilyinsky stated that at last night's meeting, Mrs. Burdick mentioned two reasons that concerned her more than anything else. One is overcrowding and the other was that the children that go to this middle school are being deprived of extracurricular activities. Mayor Ilyinsky stated that of all the people he has spoken to on the Island, he has never heard anyone complain that their children were being deprived of extracurricular activities. He has heard some complain of a little overcrowding, but if portable classrooms could be used, the School Board should give the school another chance. Mayor Ilyinsky stated he couldn't be in attendance at the February 28th meeting as he would be out of town, however, he would be in touch by telephone. Mayor Ilyinsky again stated that if we can work out something with portables to satisfy the needs of the School Board that perhaps something could be worked out and asked that the School Board consider that solution.

Mr. Shaw agreed with the Mayor and stated he would like to see the School Board come to the Council with what they needed to try to work this problem out. Mr. Shaw said it was a great benefit to the community to have the middle school and believed that if there is something missing in extracurricular activities there is so much more that this school gives them that keeping the school is definitely in the children's favor.

Mrs. Burdick stated that she understands the concerns of the parents at Palm Beach Public and her son was a student there. Mrs. Burdick said she was aware of the wonderful opportunities that it does give; however, there is a serious overcrowding problem with 30-50 new students at the school every year. She stated that Mr. Hickman is in attendance today to try to work out the solution of adding at least, at a minimum, of two portables at that site just for this particular year. Every year 30 to 50 additional students are added to the capacity of this school, which is on a very small site. Mrs. Burdick stated that if anything is done with permanent construction at this site, a waiver would be required from the Department of Education. According to them the School Board can only allow so many students per site and the Mayor said that the land in Palm Beach is at a premium. This site is only a 3 acre site, however, for the short term the 2 portables may allow them to move forward with keeping the children at the school, but they do need a long term solution to the problem. Most of the parents are concerned with safety, but when Mrs. Burdick's son went on to high school and she looked at the opportunities that other children had in the middle schools and the type of programs that were available to them, he was at a deficit. There were not enough students in the middle school to garner FTE to allow them to have the additional classes that will allow them to take electives. Mrs. Burdick felt these classes gave the children incentive to stay in school. Mrs. Burdick requested a time to set up an appointment with the Town Manager and Mr. Hickman before the February 28 meeting of the School Board so they could present a short term solution with the portables at that time.

Dr. Richmond stated she was overwhelmed by the enthusiasm and the support shown for this school and to the District. Dr. Richmond stated they needed the Town's help as this is one of many important issues that they needed to deal with and appreciated the Town's concern and offer to help. She stated they will be working diligently to find alternatives to the staff's initial recommendation.

President Smith stated that the Town does support the School District and this is an emotional issue because of the children. The parents she has spoken to are more concerned with their children's' safety and self-esteem and the nurturing attitude they have at Palm Beach Public School rather than their extracurricular programs. Many parents have told Mrs. Smith that they have undertaken the giving of these classes and studies to the children themselves and the parents of the Public School are very, very caring people. Mrs. Smith stated the Town is a little disturbed when the middle school will be closed, and the year after next, an additional 100 or 200 elementary school children will be added to the elementary grades resulting in what is now being called the impossible overcrowding scenario. Mrs. Smith stated this disturbs the Council because the School Board is giving a reason for closing that would be non-existent in 2 years.

Mr. Doney asked for direction from staff from the Town Council, stating the meeting on the 28th would require a member from the Town Council to convey the Town Council's message. Mr. Daves stated that besides a Council representative to appear at the February 28 meeting of the School Board, the other issue to contend with is the landmarks issue and with the Town Council policy direction to staff, a plan could be presented to the Council through a designated Council member. Mr. McDonald was designated as the Council member for this issue.

Mrs. Darla Cutler Daves, wife of West Palm Beach Commissioner Joel Daves, said that something unique is occurring, and the parties have a very rare opportunity for the City of West Palm Beach, the Town of West Palm Beach, and the School Board of Palm Beach County to come together to solve a very critical problem. Before a decision is made, she hoped a good faith effort was made showing that this problem could be resolved to keep this school open.

2. South County Road Beautification Project
    a. Consideration of Request by Greater South County Road Association, Inc. ForAlternative Tree Selection.

Christine Franks addressed the Council on behalf of the South County Road Association, Inc., and stated she has been elected as Chairperson for the Palm Tree Project. Ms. Franks said that previously the Council had approved the palms for the Palm Tree Project, and the South County Road Association requests the Town Council to review the alternate selection of a Fox Tail Palm. The reason for this is because the two major agencies that are funding the project will not approve the previously approved palms because the trees are susceptible to lethal yellowing. Besides using public money to fund this project, the lethal yellowing could serve as a host and spread. The Beautiful Palm Beaches supplied the Association with a list of 10 trees that they would approve and the Department Of Transportation concurred with their list, except for the Hurricane Palm which they would not approve as it was moderately susceptible to lethal yellowing. Ms. Franks stated that Mr. Jorge Sanchez is in attendance, and that he had studied and determined the best selection was the Fox Tail Palm.

Mr. Jorge Sanchez said that after careful consideration of the different types of palms, the Fox Tail Palms meet all qualifications. Mr. Sanchez stated that the Fox Tail Palms required little watering and would withstand winds and salt drift.

Mr. McDonald made a motion to approve the Fox Tail Palms as requested by the South County Road Association, Inc. Mr. Shaw seconded the motion. Mr. Shaw questioned how these trees would affect the narrowness of the sidewalk and the grating in front of the First National Bank Building so that people can get through. Mr. Shaw said this is a three foot sidewalk and asked if the trees could take a smaller grating. Mr. Bowser, Town Engineer, stated that not all areas may be able to receive the trees because of inadequate sidewalk width. Mr. Bowser added a minimum 5 feet of clear sidewalk will be maintained in areas where the trees would be planted. Mr. Bowser stated that there would be approximately 133 trees, with an overall height of 15 foot, with the bottom frond not being any lower than 8 feet above the sidewalk.

On roll call, the motion carried unanimously.

b. Consideration of Proposed Funding Program.

Mr. Dusey addressed the Town Council and stated that the Greater South County Road Association has been doing an outstanding job administering the project and has received State Grants from DOT and the local agency Beautiful Palm Beaches. Because of those grants, the agencies are requiring that the Town be the recipient of the grant and administrators of the grants and meet certain criteria with respect to bidding. Mr. Dusey stated that the Town Staff needed to take the project over from an administrative standpoint and the Association will give the Town a lot of support as always. Mr. Dusey requested Council permission to be the administrator on this project.

Mr. McDonald made a motion to approve the request. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Status Report on Changes in On-Street Parking Restrictions for 300 Block of Sunset Avenue and Consideration of Related Issues Concerning E.R. Bradley's Saloon, 111 Bradley Place.

Town Manager Doney stated the background on this issue is set forth in his memorandum of February 7, 1996, to the Mayor and Town Council. The matter of the on-street parking in the area of E.R. Bradley's was referred to the Police Chief and the Town Manager, in accordance with Chapter 11, Section 11-2 of the Town Code of Ordinances and as further identified in Chapter 316 of the Florida Statutes, the Police Chief and the Town Manager may, upon review of certain parking restrictions and signage, implement changes to on-street parking, signage restrictions and the other implementing ordinances. The review here is set forth in Chief Terlizzese's memorandum, attached to the 2/7/96 memorandum from the Town Manager. Chief Terlizzese's report is dated 1/11/96 and in that report the Chief has recommended and approved, in accordance with Section 11-2 of the Town Code, and the Town Manager has also approved, that the 300 Block of Sunset Avenue be changed to no parking from 10:00 p.m. to 6:00 a.m. nightly. This is based upon the Chief's evaluation of the competing parking interests in the area of E.R. Bradley's. Mr. Doney stated that changes in on-street parking restrictions are made from time to time at the staff level by the Police Chief or the Town Manager, based upon surveys. The reason this one is back before the Town Council is that, in particular, the matter was referred by the Town Council to the Chief and the Town Manager because there was such an interest expressed by not only the owners of E.R. Bradley's but those individuals from the apartment building on the 300 block of Sunset Avenue and others in the immediate area. The Town felt it was important to report this decision back to the Town Council.

Chief Terlizzese addressed the Town Council and stated in Captain Robinson was in attendance because he was the midnight shift commander for the three month period in which the survey was conducted.

In response to Mr. McDonald, Chief Terlizzese stated he had read the report from the Royal Poinciana Association regarding making this area a "quiet zone" instead of restricting parking. Chief Terlizzese stated that signs are hard to read at night, especially after a couple of drinks and as people come out late at night in a festive mood, quiet signs would not suffice. In response to Mr. Wyett, Chief Terlizzese stated that a standard is already established on the beach where parking has been restricted for the last 15-20 years in residential neighborhoods from 10:00 p.m. to 8:00 a.m. The Town Council established the 10:00 p.m. standard for Bradley's Saloon when they issued the variances and extensions of the variances, and instructed them to roll down their flaps and close the windows to diminish the noise at 10:00 p.m. The Chief stated there is plenty of parking in that area at 10:00 p.m., since the Publix was closed at that time and 20+ parking spaces in the 200 block of Sunset. Because of this, the Chief did not think this restriction would be a hardship. The Chief stated they picked this particular street to start their program to try to bring back a little more peace and quiet in the early morning hours for the residents in the neighborhood. Chief Terlizzese said this would be the least intrusive and have the least impact on the businesses there and also would attempt to look out for the interests of the residents.

Town Manager Doney stated that the Chief would continue to monitor the effectiveness of the changes and if changes in the on-street parking restrictions in that location or nearby locations needed to be made, they would be implemented.

Brooks Ricca, Attorney for E.R. Bradleys, stated that with respect to the Chief and the Town Manager, he wanted to commend them on being cooperative and sharing information with them. Mr. Ricca stated the issue was the 24 parking spaces just to the west of Bradley's. In that immediate vicinity, 46 on-street parking spaces are available.. Mr. Ricca stated that the reason they are here today is not to dispute the Police Chief and Town Manager's authority to place these restrictions, but wanted to emphasize to the Council that by allowing the neighbors to make presentations on 12/12/95 and basing the resulting actions on those presentations was a mistake. Mr. Ricca stated that Bradley's will be affected by this, and the action will be detrimental to the business. Mr. Ricca stated that the Council has been given documentation, a video tape and a transcript of the 12/12/95 proceeding and letters from attorneys. Mr. Ricca said the elimination of 24 parking spaces resulted from an original complaint about noise emanating from this restaurant. Supposedly this problem has been solved, and Mr. Ricca stated his problem is that parking is being eliminated for no good cause. Most of the complaints about noise are anonymous. None of the noise complaints related to those 24 parking spaces, and Mr. Ricca stated that the problem is the Town has a tooth ache and is putting a Band-Aid on their ankle. The problem, supposedly, is people making noise as they exit the restaurant. Mr. Ricca stated that if someone is disorderly or publicly intoxicated, the Police Officers should arrest them. Mr. Ricca stated his client takes offense at what was said in the transcript and what was represented to this Council in reference to nuisances created in this Town. Mr. Ricca said that the Council needed to focus on the idea where parking is being eliminated at 10:00 p.m. and this establishment does serve meals and if this elimination of parking continues, the Town is eliminating anyone from coming into this restaurant from 8:30 p.m. on for a meal. Mr. Ricca stated that he too thought the people in Palm Beach deserved peace and quiet, however, if peace and quiet were important to the condominium residents, then the residents should not move across the street from a restaurant or commercial establishment. Mr. Ricca stated that he had a copy of the residents from 333 Sunset and their telephone numbers. Of the 67 numbers listed, all but 10 moved into the area after the restaurant was established. Mr. Ricca requested that the Town Council look at the documentation and asked that the Police Chief and the Town Manager try to do the least that is offensive for all concerned. Mr. Ricca referenced a letter from Arnold Hoffman dated 2/13/96 of the Biltmore, and stated that he took offense at the comments that Bradley's only serves out-of-town kids and gets them inebriated so they can create disorderly conduct. Bradley's tried the valet parking as suggested, however, it was not effective, however, they are willing to try this arrangement again.

Michael Tamara, Attorney with the Carlton Fields Law Firm, representing Royal Poinciana South, stated that this was a popular bar with the late night crowd and appreciated the effort the Town has put into problems in the area during the last couple of years. Mr. Tamara thanked the Police Chief and staff for the study and reminded the Council that his clients have no interest in punishing Bradley's for it's success, but merely ask the Council to address the secondary effects of that success. Mr. Tamara said that restricting the parking in the immediate vicinity was a very reasonable step and asked the Town Council to support the Staff recommendations.

Mr. Shaw stated that reference was made to the fact that the dinner crowd often goes beyond 10:00 p.m. and asked if Mr. Ricca's client would be interested in a 12:00 midnight ban. Mr. Ricca stated that would be a more politically acceptable solution as opposed to 10:00 p.m. Mr. Ricca pointed out that the survey reports that over 70% of these parking spaces are occupied up until midnight.

Mr. Shaw asked whether banning the parking of the number of cars that are Sunset, would decrease the noise problem, and if the problem was in front of the building, would it simply be shifted around the corner. Mr. Tamara stated the noise would be shifted to the large commercial space that is available across the street. Mr. Tamara added that the Police Department selected 10:00 p.m. based upon a rational basis, and it was tied to the issue of people who live on the fringe of public/private/commercial/residential areas can have some peace and quiet. Mr. Tamara stated that his clients think the problem is really from 11:00 p.m. to 3:00 a.m.

Mrs. Smith asked whether the Biltmore asked to have the parking spaces eliminated on Bradley Place in front of the Biltmore? Mr. Doney replied the Biltmore did not make that request. Ms. Smith said that the Biltmore would make that request within a month as would every apartment that is next to a commercial enterprise that is disturbed at night. Mrs. Smith continued that all the residents in the Town should be given equal opportunity to lose their parking spaces.

Mr. Shaw noted that almost no cars are parked in front of the 200 block at night. Chief Terlizzese responded that 120 cars are parked within a few feet of the establishment, and this one street should not have an adverse impact on the business.

In response to Mr. McLendon, Chief Terlizzese replied that meters were not considered as part of the study. Mr. Doney added that relative to the evaluation made by the Chief, the area west of Bradley Place that was considered to be impacted by the on-street parking was in a residential zone and although it abuts a commercial district, the parking being referred to across from the Biltmore on the east side of Bradley between Sunset and Sunrise, is in the commercial zoning district. Staff has tried over the years to take into consideration where there are residential areas abutting commercial areas and tried to balance the competing demand in the residential or commercial areas. Mr. Doney continued that unless the Council wished to pass an ordinance to reserve the right to control the on-street parking regulations, then the Police Chief and Town Manager are to continue evaluating and regulating said parking.

Mrs. Smith asked how many times the Police Chief and the Town Manager have made a recommendation on a trial basis for 2 or 3 months to changes in the parking policy, such as this; and questioned whether they have previously made recommendations for any changes in the parking policy. Mrs. Smith stated she did have a concern with taking away the public parking spaces. Chief Terlizzese stated that the only reason this issue is before the Council today was because the Council asked staff to make a report and he is not seeking approval. Chief Terlizzese said he and the Town Manager have made such decisions hundreds of times over the years.

Mr. McLendon asked if Chief Terlizzese had a opinion from the staff's point of view realizing that most of the problem is not emanating from the premises of Bradley's but people getting into their car after having a number of drinks. Chief Terlizzese stated that when they close the flaps and drapes on the windows and keep the noise down to an acceptable level, it is not a problem outside the building. Ninety-percent of the noise complaints filed against the Saloon have been designated as unfounded because they are not legitimate complaints. The noise and disturbances are generated by the patrons out in the street, and these people are sometimes drunk and disorderly. There have been instances of squealing tires, yelling, fights, etc., and Town residents are not causing the disturbances. The Chief stated that is why this decision was made in an effort to get some of the problems out of the street.

Mr. Doney said the Bradley patrons should find parking spaces east of Bradley Place and the parking would be localized in the commercial district, although there are residences in that commercial district. Mr. Doney continued that when residents rent apartments in commercial districts, a certain amount of problems should be anticipated. Mr. Doney said this restriction should be effective for the problems experienced in this area, and if it is not then he and the Chief will consider other alternative parking restrictions. Mr. Doney said that he hoped this would not be the habit to resolve parking problems before the Town Council.

Mrs. Smith stated that the only reason the Council was hearing this item at this meeting was because of charges made at the December 15 meeting regarding drug deals and video tapes. Mrs. Smith said that as it turned out the video tape was something that was of no importance, with no evidence of anything that was said at the December meeting.

Mr. Wyett stated that this is not a political situation, but a matter of being a good neighbor. Mr. Wyett stated that he is concerned that the Town not interfere with the dinner hour and proposed that the parking ban begin at 11:00 p.m. instead of 10:00 p.m.

Mr. Ricca stated that the Chief's report did not state that the people coming out of Bradley's to use those spaces are causing the problem.

Mr. Shaw said that while he thought that midnight was a better time, he had no problem with 11:00 p.m. and suggested that perhaps the whole street should not be restricted, but just those spaces directly in front of the apartment house.

Mr. McDonald said that he did not particularly want to interfere with the Police Department's decision and suggested that spaces exist in the Publix parking lot or on Sunset for these cars. Mr. McDonald said that the Town was not saying the patrons could not park anywhere.

Mr. Doney said, after discussing the issue with Chief Terlizzese, a determination was made to enforce the parking ban from 10:00 p.m. to 6:00 a.m. seven nights a week. Mr. Doney suggested the parking ban from 11:00 p.m. to 6:00 p.m. nightly, with continued monitoring by the Police Department, be imposed with additional changes as needed. Mr. Doney added the Town should not continue the practice of the Town Council changing the on-street parking restrictions by motion.

Mr. Wyett changed his motion to read that the Town Council would <u>advise</u> staff to make this change. Mr. McLendon withdrew his second. President Smith stated that the Town Council supports the staff recommendations with no action necessary.

5. Monthly Status Report from Finance Director Regarding Enforcement Procedure for Collection of Fines, Fees and Other Monies Due to the Town.

Mrs. Crozier, Finance Director, reported a monthly status report regarding the issue of uncollected monies owed to the Town was prepared as directed at the Town Council at the 1/9/96 meeting. Mrs. Crozier said the report was subtotaled on page 5 to provide the Council with information regarding amounts paid since the initiation of the report. Since the report was originally prepared, $8,500 was added with $2,900 for hazardous materials cleanup and the balance consisted of unpaid solid waste disposal fees. From the inception of the report, the Town has collected, as of 2/7/96, $3,400 with another $128 for an outstanding sidewalk assessment. Mrs. Crozier stated the Town continues to send certified letters as the Town is notified of property owner changes or for any information on the report that was erroneous. Mrs. Crozier said the Finance Department did not mail notices for Code Enforcement, but property records for all of the outstanding special assessments and allow the property owners have been checked and corrected. Mrs. Crozier noted that on page 1 of the report she indicated that the Palm Beach Pier Corporation or Hammond Corporation and the Oro del Marco estate items will be uncollectible. Those records go back to the early 1970s, and the Town Attorney will review them and provide a legal opinion.

Attorney Randolph stated he provided a report regarding certain outstanding Code Enforcement Board liens. Liens for the Johnson property are recorded. Attorney Randolph requested direction from the Town Council regarding the pursual of those liens for collection purposes, and suggested the Town Council authorize collection by allowing the Town Attorney to either file a claim against the estate or foreclose.

Mr. McDonald made a motion that the Attorney proceed with either filing a claim against the estate or levied against personal property, foreclose on any other real estate, and any other legal measures. The motion was seconded by Mr. Shaw.

Mrs. Crozier referred to the outstanding assessment on page 1 of the report for Mr. Dudley that was erroneously released in May, 1989, to Mr. Rogers who was advised that no liens existed on this property. Mrs. Crozier requested the Council to determine if the lien was uncollectible.

Attorney Randolph stated while that was something the Council needed to look at, staff needed to look at this internally before the Council makes a decision as to whether it is uncollectible.

Mrs. Smith responded that the Council should act on the motion regarding the Johnson property first.

The motion carried unanimously.

Mr. McDonald made a motion to refer the Dudley question to legal counsel for a determination, seconded by Mr. McLendon. The motion carried unanimously.

Mrs. Crozier stated that at least 4 individuals have refused to claim their certified mail and the mail was returned to the Town. Mr. McDonald responded that the four individuals who refused the certified mail should be referred to the Town Attorney.

XX. **LICENSES AND PERMITS** - None

XXI. **NEW BUSINESS:**

A. Resolutions

1. Resolution No. 8-96 - Authorization for Town Manager to Execute Application with Florida Department of Environmental Protection Regarding Beach Erosion Control Assistance Program Funding for Implementation of the Lake Worth Inlet Management Plan.

Attorney Randolph read Resolution No. 8-96 into the record as follows:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN TO PROCEED WITH THE SUBMITTAL OF AN APPLICATION FOR FUNDS UNDER THE PROVISIONS OF CHAPTER 161 FLORIDA STATUTES, TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF BEACHES AND COASTAL SYSTEMS, FOR THE BEACH EROSION CONTROL ASSISTANCE PROGRAM FOR THE FISCAL YEAR 1998, FOR IMPLEMENTATION OF RECOMMENDATIONS OF THE INLET MANAGEMENT PLAN FOR THE LAKE WORTH INLET; AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID APPLICATION AND OTHER REQUIRED DOCUMENTATION; AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO INITIATE ANY RELATED ACTIONS INCIDENTAL THERETO.

Mr. McLendon made a motion to approve Resolution No. 8-96, seconded by Mr. McDonald. The motion carried unanimously.

2. Resolution No. 9-96 - Support of 1996 State Legislative Funding for Florida Beach Projects.

Attorney Randolph read Resolution No. 9-96 into the record as follows:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THE 1996 FLORIDA LEGISLATURE TO PROVIDE ADEQUATE FUNDING FOR THE PRESERVATION AND REPAIR OF THE STATE'S BEACHES, TO RECOGNIZE THE NEED FOR FUNDING NON-FEDERAL PROJECTS, AND TO IDENTIFY A LONG TERM DEDICATED FUNDING SOURCE.

Mr. Wyett made a motion to approve Resolution No. 9-96, seconded by Mr. McLendon. The motion carried unanimously.

B. Sealed Bids.

1. Request for Proposal No. 96-03A - Contract Plan Reviewer for the Planning, Zoning and Building Department.

Mr. Moore addressed the Council and stated that the Council authorized staff to go out for bid for this position for a contract employee. The first round of bids produced no qualified applicants. The second round of bids did produce five proposals running from $23.50 per hour to $47.00 per hour. One applicant had all four of the necessary qualifications, and his bid was $28.00 per hour. The staff recommended approval of this individual.

Mr. McDonald made a motion to approve staff's recommendation, seconded by Mr. McLendon. The motion carried unanimously.

C. Appointments.

1. Zoning Commission - Two 3-Year Terms to Expire February 1999.

President Smith stated two members of the Zoning Commission are eligible for reappointment for second terms, one being the present Chairman Robert Wood and the other is Mrs. Rita Taca. Mr. McLendon nominated Mr. Wood for reappointment. Mr. Shaw and Mr. Wyett nominated Mrs. Taca.

Mr. Wyett made a motion to reappoint Mr. Robert Wood and Mrs. Rita Taca to the Zoning Commission. The motion carried unanimously.

Attorney Randolph was directed to re-write the Ordinance to have the terms of the Zoning Commission expire in April or May, after the season has expired.

2. Architectural Commission - Two 3-Year Terms to Expire March 1999 and One
Alternative Term to Expire March 1998.

Mr. Wyett made a motion that the Council defer action on this item to the March 12, 1996 Town Council meeting. Mr. McDonald seconded the motion. The motion unanimously carried.

D. Other

1. Consideration of Proposed Rate Changes by Comcast Cablevision to Become
Effective March 1996.

Diane Christie, Director of System Development for Comcast Cable, West Palm Beach, addressed the Council and stated that as of March 1, 1996, Comcast Cable will be increasing the rates on the value pack and the standard service by $1.97 per month. This rate increase is based on inflation and additional new programming including the history channel.

Mrs. Christie said that before regulation on rates, as of January 1993, Comcast Cable charged $24.20 a month for all basic services, which equaled $ .59 per channel. Since that time Comcast has added 12 new program services to the line-up. As of March 1, 1996, the rates will be $26.50. This new cost is still $.08 less per channel then it was before regulation. After regulation went into effect, the FCC gave cable operators the first tier of very limited antenna services at "x" amount or the standard service which was really the cable programming services such as USA, CNN, ESPN. Satellite cable services became part of the second tier and value pack is the third service that is not regulated. Mrs. Christy detailed what the three tiers offered.

In response to Mr. McLendon's question, whether the rate in Palm Beach is the same as those in the surrounding communities, Mrs. Christy replied that today the basic rate in Palm Beach, before going into the rate increases, is $24.23 in all communities served out of West Palm Beach.

2. Consideration of Request for Menorah Display in Bradley Park for Chanukah
1996 by the Lubavitch Center of the Palm Beaches.

Mr. Wyett made a motion to approve this request, seconded by Mr. Shaw. The motion carried unanimously.

3. Consideration of Request for Sixth Annual Palm Sale for March 31, 1966, by
The Preservation Foundation of Palm Beach.

Mrs. Smith thanked The Preservation Foundation for bringing the palms into Palm Beach and for also contributing the palms to be planted on Town property at cost. This sale will be held on Palm Sunday, March 31, 1966.

Mrs. Polly Earl, representing The Preservation Foundation, stated that they are appreciative to all of the people in the Town who have given the Foundation donations that go directly for palm trees to replace the lethal yellow coconut palms, to be planted on Town owned property for the benefit of everybody in the Town. This is the sixth year the Foundation has held this sale, and they hope to fill up all the empty spaces that people recommend to them where Town property should have coconut palms.

4. Consideration of Request by Robert H. Baron on Behalf of the Residences
Of Sloan's Curve to Use Town Easement for Dune Restoration Project at
18 Sloan's Curve Drive.

Mr. Moore stated that Mr. Baron approached his office to obtain a permit to do the restoration work on the beach under the Town's Dune Ordinance. Staff made a determination that the project would certainly be a Class 2 dune maintenance project, not a Class 1. However, it does involve the use of the various properties owned by the Town and Mr.

Silverstein and the use of crossing South Ocean Boulevard, A1A at Sloan's Curve, to stage the dump trucks full of sand and then move across the road and dump the sand on the beach. Staff directed Mr. Baron to discuss this project with Mr. Doney, Mr. Dusey and Chief Terlizzese regarding the blocking of A1A. Mr. Baron had a time problem because of his State permits that required the work to be finished by March 1, before Turtle season. Mr. Moore reported that staff required conditions that Mr. Silverstein give written permission to use his property on the west side of Ocean Boulevard and that Mr. Baron appear before the Council to request the use of the Town's property to dump sand as a staging site.

Mr. Baron, representing the residences, stated that since they started discussions on this, the project has been simplified somewhat. In attempting to comply with D.O.T. right-of-way issues, it is extremely unlikely they will need to do any activity on the west side of the road. The Sloan's Curve properties have a trash removal disposal area at the end of the corner that will give them plenty of room to stage trucks if they do back up and that is unlikely. Mr. Baron proposed that a dump truck stop in the road and simply back off the roadway where there is adequate clearance at the corner. Mr. Baron stated they would have to comply with the D.O.T. Maintenance and Traffic Plans and with the Town's Maintenance and Traffic Plans. Those permits are applied for at this point. Mr. Baron continued that a 3 day period would be required for the work to allow between 24-36 truckloads of sand arriving at 45 minute intervals. The trucks would stop in the road and back out of the way. All other activities will be conducted off the roadway on the east side. Nothing exists on the Town owned property that is not expendable. The plants growing on the Town's property are Brazilian Pepper and Australian Pines, which are exotic plants that should be removed during the course of the project and replaced with native vegetation when the project is completed.

In response to Mrs. Smith's questions, Mr. Baron replied that the project should be completed by the end of this month, if the project could commence next Tuesday or Wednesday. The project would take approximately 4-5 days to complete. The portion of the project that involves traffic should require two days or possibly three to complete.

Mr. Moore stated that this was a heavily traveled one-way situation (one lane each way) and it would be most advantageous to have off-duty police officers controlling the roadway. Mr. McDonald said that police officers should be used to control traffic during this project--not just one flagman.. Mr. McLendon agreed with Mr. McDonald's suggestion.

Mrs. Smith stated that this project should be planned to do the actual work Monday through Thursday and not work on a Friday or a Saturday because of weekend traffic.

Mr. McDonald made a motion to approve the use of the easement owned by the Town for the Dune Restoration Project located at 18 Sloan's Curve to be completed by February 29, 1996, with the following conditions:

1. Hire off-duty police officers to control traffic.
2. No work on weekends.
3. No use of Mr. Silverstein's property without his written consent.
4. Restore Town property to original condition.

Mr. McLendon seconded the motion. On roll call, the motion carried unanimously..

5. Consideration of Request for Additional Funding to Purchase Two (2) Lifeguard Towers for the Mid-Town Beach.

Major Frank Croft, Police Department, addressed the Town Council and reported that the vendor the Town chose to construct the lifeguard towers made an estimate in September, 1995, and that estimate was updated in December. The Council voted to allow $32,000 for the two lifeguard towers. Major Croft reported that a purchase order was issued, and the vendor replied the price for the lifeguard towers increased since the December estimate. Major Croft said the vendor explained the cost of the material had gone up 15% for the resin and fiberglass cloth. Major Croft confirmed this with the wholesale distributor. Major Croft stated the vendor is the only firm available to construct these towers for the Town. Major Croft stated this vendor does quality work, and the increased prices were confirmed.

Mr. McDonald made a motion to approve the price increase for the two lifeguard towers. Mr. Shaw seconded the motion. On roll call, the motion carried unanimously.

6. Consideration of 1996 State Legislative Matters - Legislative Session is to Begin March 5, 1996 and is Scheduled for Completion May 3, 1996.

Attorney Randolph stated the background on this is the 1996 Legislative Bulletin from the Florida League of Cities. Attorney Randolph's note to the Council dated 1/29/96 indicated that the key issues are back on the floor, along with nine additional issues. As indicated in the report from the League of Cities, the report stated the Florida League of Cities position on the various legislative matters and the recommended actions. Town Staff reviewed these items, and unless the Town Council wishes to direct additional or alternative actions, the Town Staff will proceed on an as-needed basis with the Florida League of Cities requested actions as noted. Mr. Randolph noted that the staff does not write letters on every piece of legislation, only those that the Town considers to be of most direct impact to and importance to the Town of Palm Beach. However, if the Mayor or an individual Council member believed that one or more of these particular items should require the Town's position(s) to be different from the League of Cities' position(s), now would be the time to state the position so that Town Staff had clear directions.

Mr. McLendon said the League's position was strong enough on the issue of "Save Our Seniors". Attorney Randolph stated that League staff will continue to work with the sponsor to insure that municipal interests are protected. Mr. Randolph stated that many municipalities would benefit by passing of the legislation, and others would be impacted like the Town. Mr. McLendon responded that any higher valued area would suffer and lower valued areas would benefit.

President Smith pointed out that the report stated that due to the local option provision of this joint resolution, the League is not taking a position on this proposal in its current form and therefore, the Town did not have to take a position.

Attorney Randolph responded that the Town has written letters before expressing support for an amendment to the Homestead exemption provision to attempt to have those municipalities and counties that do not have properties within their jurisdictions on the role pay a portion. One alternative discussed earlier was to tax the first $25,000. Attorney Randolph pointed out that the League of Cities represents 400 cities, and letters that are signed by the Mayor or President of the Council are copied and sent to the key Florida League of Cities contact person.

Mr. McLendon directed, and the Council agreed, that the Town take a strong position regarding the Homestead Exemption. Mr. Doney stated that the Town does not have a paid lobbyist in Tallahassee, however, the Town monitors each issue by way of the Florida League of Cities bulletin.

7. Set Date for Ordinance, Rules & Standards Committee Meeting.

President Smith said a request was made to set a date for an ORS meeting to consider various matters. Mrs. Smith said that no meeting could be scheduled until committee assignments were completed.

The Town Council agreed to schedule a Special Town Council Meeting for Tuesday, February 20, 1996, at 10:00 a.m. to consider alternative contingency restoration of the Lake Worth Inlet Sand Transfer Plant - Discharge Piping.

XXII. **COMMUNICATIONS FROM CITIZENS:**.

Mr. Richard Georgio, Political Consultant with Save Our Water Front in West Palm Beach, updated the Council on the issue to limit heights of new construction in the Downtown West Palm Beach Plan. Mr. Georgio reported his group did secure enough qualified signatures on petitions to place the issue on the March 12, 1996, ballot. The West Palm Beach Commission voted on the issue, and it will be put on the ballot on March 12, 1996, for the voters to decide. Mr. Georgio requested financial assistance. Several groups including the Downtown Development Authority, Chamber of Commerce, and Scripps Howard, agreed to band together in an effort to fight the referendum and encourage voters to vote it down. Save Our Water Front needs the financial assistance for the political campaign before the March 12th election. Mr. Georgio requested the Town to use any influence the Town with the Civic Association.

Mr. Georgio, responding to questions from the Council, said the referendum will ask the voters to limit building heights in 3 districts - the two waterfront districts and the government center district - as originally approved in the downtown master plan. Basically this would limit the height of buildings along the waterfront east of Olive Avenue and in the area around the Government Center district, which includes the Town of Palm Beach properties located in West Palm Beach.

Attorney Randolph replied that the Town is pursuing its own actions vis-a-vis the Comprehensive Plan amendments with the City of West Palm Beach. Mr. Randolph recommended that the Council follow the actions initiated by the Town as opposed to joining in with these other efforts.

Mrs. Smith suggested that Mr. Georgio speak to members of the Civic Association who are in attendance at the meeting.

Hermine Wiener, 324 Garden Road, addressed the Council concerning the safety of allowing valet parking in front of Palm Beach restaurants. Mrs. Wiener stated that during the last year, the restaurants in Palm Beach increased the amount of valet parking. Mrs. Wiener said a serious accident situation exists. Mrs. Wiener reported that some of the valet car parkers fill up an entire street, back up, make u-turns, and speed all in an attempt to give good service. Mrs. Wiener continued that if the Council determined that this is something that is needed, then it should be regulated. A certain level of understanding needed to be communicated to the people who did this kind of work.

Mr. Wyett replied that the Public Safety Committee has considered this issue in great detail, and all of the issues mentioned by Mrs. Wiener, have been discussed by the Public Safety Committee. Mr. Wyett stated that he agreed with the comments made, however, the Committee is attempting to find adequate space for valet parking. The Public Safety Committee is looking into this problem.

Mr. John Matich, 3475 S. Ocean Boulevard, addressed the Council and stated that he is interested in the Town's water problem. Mr. Matich suggested changes be made to irrigation schedules in Palm Beach in an attempt to conserve water that would aid in reducing some of the water problems.

Mrs. Smith replied that the Town did discuss water conservation in the south end, and Mr. Dusey still has the guidelines and the plans for xeriscape projects.

Mr. Trent Steele, Attorney, addressed the Council with comments regarding the issue of huge, dangerous yard trash piles extending onto the street on North County Road. Mr. Steele stated that he serves on the Code Enforcement Board, and this problem has come before the Board several times. Mr. Steele suggested two alternatives for the problem. White lines, south of Miraflores, indicate a one lane road with no room for passing. Mr. Steele suggested that the residents on the east side of North County Road should not be permitted to place trimmings onto the street, but to keep them on their properties.

The Town Council discussed the traffic problem the yard trash piles create, and the problem with the passing vehicles trying to avoid the trash piles. Mr. Doney suggested the Town restrict and change the yard trash areas between Wells to Miraflores.

XXIII. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of January 24, 1996 - Minutes Available in Town Manager's Office.

Mr. Shaw stated he was interested in what the options were for relocation of a house at 740 Hi-Mount Road instead of demolition. Mr. Moore replied the particular item in question was listed on the Architectural Review Commission agendas in October, November and December and was deferred for 3 months. Heavy equipment normally used for demolition cannot be used until May 1 of any year. ARCOM requested to see plans for the house that was going to replace this particular home, and they voted to approve the demolition after viewing the new design. The existing house on the property could be moved if it is structurally sound. The only prohibition to moving the house would be if they had to use extremely heavy equipment to jack up the house, however, the Town Council would have to make the decision to allow the heavy equipment to be used during the season.

Mr. Wyett made a motion to approve the Architectural Commission Major Matters from the Meeting of January 24, 1996, with the exclusion of Item B66-95, 740 Hi-Mount Road, to allow the applicant time to see if the residence could be moved and not demolished. Mr. Shaw seconded the motion. On roll call, the motion carried 4-0. Mr. McDonald was not present for the vote.

B. Time Extensions

1. Variance No. 15-95 - Oleda D. Casscells, 756 North Lake Way, request by Mrs. Casscells for a one-year time extension.

President Smith pointed out that Mrs. Casscells lost her husband 2-3 days ago and requested the Council consider approval of this variance time extension. Mr. Frank Hamby, Mrs. Casscells' son-in-law, asked for a one year extension because of the death of Dr. Casscells.

Mr. Wyett made a motion to approve the one year extension. Mr. McLendon seconded the motion The motion carried 4-0. Mr. McDonald was present for the vote.

C. Variances, Special Exceptions, and Site Plan Reviews.

Mrs. Smith asked that everyone who would be speaking during this section of the agenda, stand and be sworn in. Town Clerk Pollitt read the oath to all witnesses.

Old Business

1. Special Exception No. 24-95 - The Mar-a-Lago Club, Inc., 1100 S. Ocean Boulevard; to allow conversion of existing tennis court (at north side of property) into parking, an accessory use to a permitted Special Exception R-AA District (This portion of the application was Deferred from November 14, 1995, December 12, 1995, and January 9, 1996 Meetings):

Paul Rampell, Attorney representing the Mar-a-Lago Club, Inc., stated that on November 14, 1995, the Town Council approved five tennis courts at the Club and deferred the conversion of the existing tennis court to a reconfigured parking area. A significant amount of confusion was created with respect to this application, and Mr. Rampell said it would be constructive to begin specifically where they left off on November 14 when Mr. McLendon requested two modifications to the parking plan. Mr. Rampell said a letter from Mr. Paul Castro, Zoning Administrator, dated 11/29/95, stated the first item was to eliminate stacked parking, and the second item was to widen an egress lane. Mr. Rampell stated that today he will present plans where these two modifications have been made. Mr. Rampell expressed the applicant's preference to make no changes to this area of the estate at this time. This would mean that the Club would have 6 tennis courts instead of 5, and this may be objectionable to some of the Council members. If the Council preferred the reconfigured parking area, the applicant will abide by the Council's choice. Mr. Rampell showed the Council an aerial of the Mar-a-Lago Club and the Bath & Tennis Club. The aerial showed the single tennis court that is to be converted to parking.

Mr. Rampell stated that he would like to address the issue of due process regarding this application. Before the applicant filed this application, on 10/13/95, Town Council member Wyett told him and many other people, that no additional tennis courts should be permitted at Mar-a-Lago until after this 1995/1996 season. Mr. Rampell said this pre-judgement of the application was unfair and was a denial of due process. Mr. Rampell said it was regrettable that Mr. Wyett reached a conclusion before he had a chance to prepare the application submittal and before the architect made drawings. On 11/14/95 during the approval of the Town Council agenda, this application was separated into two parts and two applications during the approval of the agenda. Mr. Rampell stated he was not in attendance at the meeting nor was any other member of the Mar-a-Lago Club. By dividing the application, Mar-a-Lago would end up with either 6 tennis courts or zero tennis courts. Mr. Rampell stated that when Mr. Wyett campaigned for office, he campaigned on the promise that he could stand up to Donald Trump and could control him and the Mar-a-Lago Club. Mr. Rampell stated that he has no problem with campaign promises, however, a few issues were note worthy. For many years, Mr. Wyett, through an entity, has owned Unit 34A in Trump Tower. The purchase of this unit constitutes a vote of confidence.

Mr. Wyett stated that he felt it was quite offensive to hear this personal attack at a Council meeting. Mayor Ilyinsky raised a point of order and did not believe that an attorney representing a client had the right to bring charges against a sitting member of the Council without him having a lawyer present.

Attorney Randolph stated that Council members would have to ask for a point of order from the Chair. If Mayor Ilyinsky is asking whether Mr. Rampell has the right to go on with his presentation, Attorney Randolph stated he could answer that question. Attorney Randolph stated that he did not think the issue was whether a particular Council member has a lawyer present in regards to statements being made.

President Smith stated that if Mr. Rampell wanted to continue his tirades by not discussing the tennis courts and parking he could, however, the purpose of his statements were not clear.

Mr. Rampell continued that at the November 14, 1995 hearing, Mr. Wyett made the following statement in response to the vote: "No. This is not an issue of tennis courts. It's premature to give up leverage before the Council was assured that Mar-a-Lago will comply with its agreement". Mr. Rampell stated that the Declaration of Use Agreement does not have any type of a trial period, and it was very unfair if anyone is attempting to use leverage against the Mar-a-Lago Club. Mr. Rampell pointed out this is not a negotiation. Mr. Rampell said that if the Mar-a-Lago met the criteria of a special exception as set forth in the code, then they were entitled to due process and equal protection and approval. Mr. Rampell stated that at the last meeting, an indication was implied that Mar-a-Lago was trying to "sneak" a 6th tennis court past the Town Council. Mr. Rampell assured the Council this was not the case. Mr. Rampell stated he appreciated the courteous manner in which Mr. Wyett had discussed various issues with him, and important legal issues were raised to protect the interest of the Mar-a-Lago Club.

Attorney Randolph stated that he has been in attendance through the hearings, and had not heard any due process or an equal protection violation by the Council or any member of the Council. Mr. Randolph stated that Attorney Rampell had the right at any time to cross examine any member of the Council in regard to any ex parte communications he either knew or expected they may have had. Because this is a quasi-judicial hearing, Mr. Rampell had the opportunity to make a determination as to whether or not, as a result of an ex parte communication, a person had any preconceived notion in regard to what they might do. Attorney Randolph stated the Council conducted an open hearing, a vote was taken, and an approval was made regarding a portion of the application. Mr. Randolph was not sure how relevant a statement made by one individual Council member who may not have voted for the issue would affect the due process and the equal protection allegations. Mr. Randolph understood the Town Council approved 5 tennis courts requested in the application.

Mr. McDonald responded that he made the motion for the approval of the five courts and approved the parking at the time, however, there was never an intent by him that there would be six tennis courts.

Mr. McLendon stated that he was very uncomfortable with Mr. Rampell's letter where he stated what he considered had been done to approve 6 tennis courts. Mr. McLendon continued that he also takes exception to Mr. Rampell's statement made that the application was separated. Mr. McLendon said that he reviewed the minutes and found no evidence that was done, and added that all the Council did was to act on the tennis courts so that construction could proceed and deferred the parking part of the application. Nothing in the records separated the parking lot into a separate application.

Mr. Wyett stated that Mr. Rampell was correct when he stated Mr. Wyett said he would stand up to Donald Trump. Mr. Wyett said his promise was to enforce the letter of agreement that Mr. Rampell made with this Council. At no time did Mr. Wyett campaign against the Mar-a-Lago Club and stated that Mr. Trump did a very fine job of restoration. Mr. Wyett stated that he did tell Mr. Rampell on one occasion and Donald Trump on another occasion when asked about his opinion of the courts, and he said that he wanted to wait until he could see evidence that the club could control the traffic and noise as promised to the Town. Mr. Wyett stated he could not vote to give the Mar-a-Lago Club additional facilities until he saw evidence of compliance. Mr. Wyett said he is happy to report he has seen evidence of that and is no longer concerned about the traffic or the noise. Mr. Wyett stated that for Mr. Trump or Mr. Rampell to continue to think that he is their enemy or to continue to attack him in person, especially in public, was extremely distasteful. Mr. Wyett said he did not understand what the owning of an apartment 12 years ago, before Mr. Trump ever came to Palm Beach, had anything to do with his relationship to Mar-a-Lago Club issues.. Mr. Wyett stated that his votes on Mar-a-Lago issues show an interest on behalf of the residents of this Town. Mr. Wyett stated that there will be times when he will vote against Mar-a-Lago when he did not think they are right, and there are times he will vote for them when he thinks they are right. Mr. Wyett stated that in order to facilitate Mar-a-Lago building the tennis courts, he separated the tennis from the parking because Mr. Rampell indicated the tennis courts were needed before the end of the season.

Mr. McLendon stated that Mr. Trump did call him before the first hearing. Mr. Wyett added that his contact was back in November as well. Mayor Ilyinsky did not recall any specific communication. President Smith stated that she did not talk to anybody since talking to Mr. Rampell, and she did not remember when that was, however, she did go on record that she did speak to Mr. Rampell. Mr. McDonald stated he had no communication. Mr. Shaw stated he had some communication with Mr. Rampell regarding parking.

Mr. Rampell stated that the Mar-a-Lago Club will abide by the Council's vote and decision, and he may have been mistaken that there were statements made to the effect that the Club was attempting to build a 6th court when they never had such a desire. Mr. Rampell stated the Club wished to reconfigure the parking area, and 70 parking spaces were approved for this vicinity and by the reconfiguration, there will be less movement by the valet drivers, thereby making the traffic flow less noisy.

Mr. Moore stated that advised Mr. Rampell in a letter dated 1/19/96 in response to his letter of 1/17/96, addressed to Mr. Castro, that the 5 courts were approved (4 new courts and 1 relocated) and that a 6th court was not an issue. Mr. Moore stated that the submitted plan was reviewed, and the plan showed some of the parking from the old plan. Mr. Moore recommended that the Council review a presentation indicating how the plan will function. Mr. Moore said the plan does achieve the goals the Town Council requested at the last meeting.

Mr. Wes Blackman, Director of Projects at the Mar-a-Lago Club, addressed the Council and stated that he also had Mr. Rick Gonzalez of REG Architects in attendance to make a presentation to the Town Council. Mr. Blackman said that the plan presented to the Council today addressed the two concerns as expressed at the November meeting. These concerns were the elimination of stacking, two cars parked tandem, and a wider eastern access to this new parking area. Mr. Blackman explained the parking area is taking the place of an existing tennis court east of the center drive. This maintains the same number of parking spaces in this area of the estate, and no parking spaces are being added. The plan improves the valet parking arrangements so that a quieter operation in the starting of cars and moving of cars can be achieved related to the stacked parking. The traffic pattern will be located further to the south, away from the adjacent residential properties on Woodbridge. The tennis court already has an impervious surface, and not too much asphalt will be added in the increased parking area. Mr. Blackman added that a significant amount of landscaping along the north property line will not be added, and reminded the Council of the new 6-foot high CBS wall that runs about 730 feet along the northern property line which is part of the Declaration of Use Agreement. Mr. Blackman stated that the plan shows the geographic concentration of parking moved further to the east.

Mr. Gonzalez provided details for the amendments to the plan as outlined by Mr. Blackman. Mr. McLendon recalled that one of the suggestions presented to the petitioner in November by the Town Council was to attempt to move the incoming traffic southerly as quickly as possible. Mr. McLendon said the plan indicated incoming traffic would move along the property line for roughly half the area shown on the plan.

Mr. Gonzalez replied that the plan was to leave the area as an emergency alley since it was too narrow to serve as a functional driveway. This was necessary for access by fire equipment in a case of emergency if the buildings had to be abandoned.

Mr. Wyett stated that it appeared to be a pretty good plan, however, he suggested the area on the plan that showed 8 parking spaces between the house and the existing building on the north side could have a planted area to add an additional buffer. Mr. Wyett pointed out the existing wall and solid landscaping in that area.

Mr. Blackman replied that if the Town Council was concerned about the amount of vegetation along the north property line and screening for residential properties on Woodbridge, photographs showed the significant amount of existing vegetation on the north side of the wall. Mr. Blackman stated that in addition to the new wall there is a wooden wall on the other side belonging to the neighbor creating a two wall buffer as well as the thick vegetative buffer.

Mr. Frank Lynch, on behalf of Nancy DeMoss, 185 Woodbridge Road, addressed the Council stating he was at the last 3 meetings, and the one thing he has yet to hear is why the special exception should be granted. Council has to make certain findings in order to approve a special exception, as follows: that the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located; that the use will be compatible with adjoining development on the intended purpose in the district in which it is to be located; that the use will not result in substantial economic noise, glare or odor impacts on adjoining properties; the proposed use will not attract the principal portion of its customers or clients from off-island locations; and that adequate landscaping and screening be provided. Mr. Lynch stated he has not heard anything on any one of those issues at any of the meetings he attended. Mr. Lynch said the issues regarding the compatibility to the neighborhood and the substantial injury to the value of the property may have been answered. Mr. Lynch noted that the Council is in the process of enacting an Ordinance prohibiting clubs in residential areas.

Mrs. DeMoss, the neighbor represented by Mr. Lynch, is very concerned with this application. Mr. Lynch recalled the original application depicted the parking spaces would increase from 70 spaces to approximately 110 spaces. Mr. Lynch continued that he heard at this meeting that the total parking spaces will number 70 and no more, however, the overall parking lot has increased in size. Mr. Lynch suggested that just because the parking lot was striped for 70 cars did not mean that valet parkers would put just 70 cars in that lot.

Mrs. DeMoss' other concern is the emergency lane next to the northern property line. Mr. Lynch questioned why that emergency lane along the northern boundary could not be moved and replaced with substantial planting that would further eliminate the noise problem? Mr. Lynch suggested that some of the parking spaces in the northern portion of the property could be located further west. Mr. Lynch stated that he heard Mr. Trump was concerned with what the neighbors have to say. The neighbors were not contacted for any input, and Mr. Trump's representatives said they did not understand any problems the neighbors may have to the plan. Mr. Lynch said that Mr. Trump should come to the Town with what he plans to do with this property and let the neighbors see it in its entirety. Mr. Lynch complained that if the Council approved this piece-meal, individual requests may receive approval that may not have been approved if the entire plan was presented.

Mr. Rampell stated the westernmost building was a storage building and the building to the south was used for storage and the superintendent's use. The slat house was only used for flowers and plants. The other two buildings, marked "existing building" on the plan, at the entrance to the parking lot are used for maintenance and janitorial services.

President Smith said that the buildings in question were not used for daily activities and questioned why the emergency lane could not be planted with additional heavier vegetation? Mr. Rampell replied that the emergency lane would be used in case of an emergency when the valet lanes are occupied.

President Smith questioned why the planting could not be installed up to the eastern side of the slat house which would provide access to the property. Mr. Rampell replied that an emergency vehicle still had to have access to the western part of the parking area. Mr. Rampell stated that the Mar-a-Lago Club is unable to accept that liability and have the Town indemnified for certain liabilities with respect to the pump station and any problems that may arise with that station. Mr. Rampell continued that President Smith is asking the Club to take a risk and expose themselves to liability. Mr. Rampell asked if the Town was willing to indemnify Mar-a-Lago? Mr. Rampell said it was important to have two means of ingress and egress to the west for safety reasons.

Mr. McLendon made a motion to approve the Special Exception No. 24-95 as presented. The motion was seconded by Mr. McDonald. The motion carried by a vote of 3 - 2 , with President Smith and Mr. Wyett casting negative votes.

2. Special Exception No. 30-95 With Variance - 264 The Grill, 264 South County Road; to allow the restaurant to expand from 1,931 sq. ft., thereby exceeding the 2,000 sq. ft. permitted use. To allow seating capacity to increase from 89 seats to 103 seats without providing additional 5 parking spaces required. C-TS District (Deferred from January 9, 1996 Meeting.):

Mr. Robert Deziel, representing the applicant 264 The Grill, addressed the Council and stated that the last time he was before the Council, the Council directed the owner of The Grill to meet with the residents who had objections to try to reach a compromise on the issues presented at that Council meeting. Mr. Deziel said he is prepared to give his presentation and review all of the requirements for a special exception and a variance again, however, to try to bring this matter to a conclusion, Mr. Deziel believed the two parties have a common understanding based upon the results of the meeting.

Mr. Deziel reported that the attorney for the residents wrote a letter outlining their objections and a copy of that letter was delivered to Mr. Moore. Subsequently, the two parties met and discussed those objections as well as some other issues that were raised. When the meeting ended, Mr. Deziel thought there was a common understanding as to all the concerns discussed at that meeting.

President Smith replied that it was not necessary to repeat the full presentation, but suggested the issues that were of concern should be discussed. Mr. Deziel stated that he gave a copy of the results of the meeting with the Phipps Plaza Residents to the Town Clerk.

Mr. Deziel stated the 3 major issues were the valet parking, delivery trucks and trash/garbage pick up. Mr. Deziel said that the owner of The Grill will instruct his valet subcontractor to: 1) have the parkers pick up the cars in front of the restaurant if permitted by Town and DOT. The residents would like the stand to be located in front of the restaurant. 2) not have the valet parkers park the cars in Phipps Plaza.

Mr. Deziel reported that several residents made comments concerning the trucks that not only park in front the Carriage House, but also park in the neck of Phipps Plaza with the fronts of the trucks pointed east. Mr. Deziel said he had determined Henry Marchman should be contacted in an attempt to obtain a loading zone for 264 The Grill. Mr. Deziel said he had not received a call back from Mr. Marchman, but he will diligently pursue trying to obtain a loading zone. In the event a loading zone would not be allowed, the owner of the Grill has committed to strict enforcement of the request to all deliverymen that no trucks be parked either in the neck of Phipps Plaza or in the back of the Carriage House.

Mr. Deziel said the third issue regarding the noise of the dumping of trash/garbage late at night resulted in a compromise. The restaurant agreed to separate the garbage into two sections--glass and non-glass materials. The non-glass materials would go out each night and the glass would be taken out the following morning. The Grill will try to obtain a rubber top for the dumpster, and in the event it cannot be obtained, a rubber cover will be installed around the perimeter of the existing metal lid. All garbage debris on the ground by the dumpster will be swept up before the area is washed down with a hose. The cleaning crew will be instructed to minimize the flow of water off the premises. The Grill will cooperate with the residents' request to have the garbage picked up on the weekends sometime later than the 7:30 a.m. pick-up. Mr. Deziel stated that The Grill is a commercial establishment, as well as some of Phipps Plaza, and the garbage is picked-up at 7:30 a.m. because that is the practice of the Town. Mr. Deziel will pursue the change in the garbage pick up schedule with Public Works.

These were the issues outlined at the meeting with the residents. Mr. Deziel stated that these were the solutions that were agreed upon and requested the Council's approval of the 264 request.

Mr. Deziel stated that another issue to be addressed is the request for a 5 parking space variance. Mr. Deziel said that the variance is for 5 parking spaces that are neither available on the site of 264 nor available within any distance that the Zoning Code would allow them to be associated with 264 The Grill. The hardship is the physical location of 264 The Grill that does not have any parking spaces nearby to make arrangements for parking.

Trent Steele, Attorney for Phipps Plaza residents, stated that a meeting was held where these issues were discussed, however, while he would like to validate Mr. Deziel's intentions that this was an amicable meeting, that simply has not been the case. The Phipps Plaza residents thought that no agreement was reached, and Mr. Deziel misled the residents with his representations and promises.

Mr. Steele reported that he did not receive the agreement until 4:00 p.m. the afternoon of the Town Council meeting. Mr. Steele said, if the residents could get ironclad guarantees that the problems that have existed in Phipps Plaza as presented at the last meeting would cease, that would solve many of the problems. Unfortunately, many promises made were not kept, as indicated by the record at the last presentation. Mr. Steele stated there is a fair amount of leeway in the agreements that allows Mr. Deziel's client to not comply with virtually every promised obligation. Mr. Steele continued that many "ifs" and conditions were included in the language of the promises. Mr. Steele suggested that a possible compromise would be to record an agreement with whatever conditions the Council might place on the restaurant by the present owner, and these conditions would be passed on subsequent owners (if any).

Mrs. Smith asked if there were any points outlined by Mr. Deziel that Mr. Steele thought were agreed upon or had the same interpretation? Mrs. Smith said that Mr. Steele could answer that question after the residents had an opportunity to speak.

Mrs. Elizabeth Bartram, 200 Phipps Plaza, said she represented five families who reside in the Plaza. In addition, Mrs. Bartram referred to a faxed letter written to the Council by Mr. Bruce Tucker, a partner in the firm of Tucker & Goldstein of Boston, Massachusetts. Mr. Tucker requested she read that letter to the Council. Mrs. Bartram read the letter into the record and submitted a copy to the Town Council.

Mrs. Bartram reported, subsequent to the Town Council's request, the Phipps Plaza Property Owners Association contacted Mr. DeMarinis, the owner of 264 The Grill, and his counsel Mr. Robert Deziel to request a meeting. The Association's counsel, Mr. Trent Steele, drafted a letter outlining the points of concern that were to be discussed. Mrs. Bartram stated that the meeting started on an unfriendly note when she was called an extremist and accused of blowing the whole problem out of proportion. Mr. DeMarinis indicated that she made statements regarding his operation that were untrue. For the record, Mrs. Bartram stated she object to being spoken to in such a manner and found it very unprofessional of an attorney and a businessman to conduct themselves in this manner. Mrs. Bartram continued that after some discussion, Mr. DeMarinis and Mr. Deziel were somewhat willing to work with the Association and consider their concerns, however, at the conclusion of the meeting, Mr. Steele requested that a letter be drafted on Mr. Deziel's letterhead clearing defining what Mr. DeMarinis would and would not do. Mrs. Bartram said that both gentlemen refused to put anything into writing, and despite some positive attempts made by both parties, it was Mrs. Bartram's personal feeling that Mr. Deziel and Mr. DeMarinis did not attend the meeting in good faith because not only did they refuse to put anything in writing, they offered no solutions as to enforcements of any future agreements. Mrs. Bartram stated that the issues were not resolved. Mrs. Bartram added that she is forced to consider selling her home and moving elsewhere. Mrs. Bartram concluded that she is representing four additional families and respectfully requested the Council vote for a denial of this variance.

William R. McCranie, resident of Phipps Plaza, stated that having heard Mr. Deziel's presentation to the Council, he was surprised at the interpretation of an agreement. Mr. McCranie reminded the Council of an application previously considered for outside dining. Mr. McCranie said, as that application was being considered, the Town Council requested the applicant to cease and desist from serving patrons on the outside of 264 The Grill. Mr. DeMarinis represented to Council that he would do so, however, Town files reflect that did not take place. Mr. McCranie said this was important because if the Town Council granted the variance, the Town Council should require any conditions to the approval be put in recordable form. Mr. McCranie suggested that was the least the Town Council should do for the residents of Phipps Plaza, and with additional space in the building, 264 The Grill will request additional future increases in size. Mr. McCranie concluded the residents of Phipps Plaza did not agree to any of the items in an agreement as enumerated by the applicant's attorney, and Mr. DeMarinis and Mr. Deziel did not agree to anything exactly as requested by the residents.

Police Chief Terlizzese stated no parking is allowed in front of the restaurant. South County Road is a State road, and it is against the law to have a valet parking stand on a state highway in a moving lane as it is considered obstruction of traffic.

Mr. Moore stated that under the current situation there is no way to put a valet parking stand on County Road.

Mr. Deziel said he would like to turn the conversation into how a common understanding could be achieved. Mr. Deziel continued, that by the residents own admission, the residents asked him to draft an agreement, and Mr. Deziel is attempting to accommodate the Town Council and arrive at a solution today.

Mr. Wyett suggested that the residents overwhelming fears could be alleviated in an attempt to reach an amicable agreement. Mr. Wyett questioned whether it was possible for the Town Council to incorporate conditions into the variance to achieve that end?.

Mr. Moore suggested that the Town could incorporate a Declaration of Use Agreement that could be recorded.

President Smith asked if Mr. Deziel and Mr. Steele would like to take 5 minutes to discuss the agreement and suggest some guidelines?

Mr. Steele said that not all of the residents who have objections are present at the meeting, and Mr. Steele did not have the authority to agree on items for them.

President Smith noted that some Phipps Plaza residents are in attendance, and the Town Council is attempting to reach a conclusion today. President Smith called a five minute recess to give both sides a chance to reach an agreement.

After the five minute recess, Mr. Steele spoke first.

Mr. Steele said that if the Police Department would not allow valet parking on South County Road, the only alternative would be to have the cars pull into the mouth of Phipps Plaza and park to the side. The Phipps Plaza residents are vehemently against this proposal, and that was an impasse that could not be resolved.

Mr. Steele reported that Mr. DeMarinis stated that regardless if the variance is approved at this meeting, he would have the cars pull into Phipps Plaza now. Mr. Steele continued the two sides attempted to discuss the problems, but Mr. Deziel cursed at him and called him a f------ liar. Mr. Steele stopped discussions at this point and said this is the problem the residents of Phipps Plaza have been dealing with all along. Mr. Steele stated that Mr. Deziel has continually displayed childish behavior that makes it impossible to resolve the situation. Mr. Steele said the residents tried to work the problems out in good faith.

President Smith stated the issues are a major problem, however, the restaurant is not going away. President Smith said that Mr. DeMarinis may have a problem with valet parking since the Town Council cannot condone valet parking after hearing the remarks from the Police Chief, and regardless of the Town Council's decision at this meeting, no valet parking will be allowed at 264 The Grill.

Mr. Wyett said that should the Council reject the petition, the Phipps Plaza residents would lose some potential advantages that could be conditions of an agreement. The restaurant would be under no requirement to separate glass garbage, to put a rubber lid on the dumpster, to keep the area much cleaner than it has been, or to schedule later commercial garbage pick-up. Mr. Wyett said if the 12 additional seats were allowed inside the restaurant and tied to an agreement, the additional seats would not add many problems for the Phipps Plaza residents. If this application is turned down, the Town would lose, because without valet parking, cars will be parked in Phipps Plaza. Mr. Wyett said he would like to see an amicable solution reached by both parties, and the residential and commercial areas both had rights.

Mr. Deziel stated he would like to see the Council make an affirmative decision based on the application, and his client's efforts were in good faith. Mr. Deziel said the application for a special exception with a variance met the criteria for approval of the special exception with a variance. Mr. Deziel said his client has attempted to cooperate with the neighbors, and if the Council is willing to consider some accommodations, his client is willing to try. Mr. Deziel said that his client will honor the agreements on paper.

Mr. McDonald made a motion to approve the special exception with the variance subject to the condition that Items 2 and 3 of Mr. Deziel's agreement be incorporated into the approval for a period of 6 months. If the restaurant is not able to meet these conditions, then the restaurant would revert back to where it was before. Mr. Shaw seconded the motion.

President Smith stated the Council did a similar thing with Jo's Restaurant and asked what the time frame was for the restrictions?

Mr. Moore replied that the Town Council granted Jo's special exception to occupy the area where the large dining room is for a period of 6 months dating from the issuance of the certificate of occupancy after the reconstruction took place. Jo's was instructed to return to the Council to discuss any problems. Mr. Moore said discussions between Jo's Restaurant and the neighbors to the east have taken place and the problems are beginning to be resolved.

Attorney Randolph stated that because the special exception includes a variance, both can be granted if the Town Council decides the criteria for the special exception have been met. Mr. Randolph said that the ordinance does not state that the Town Council must identify each of the criteria that have been met. As to the variance, the Ordinance indicates that the Council should indicate the hardship and the reason for granting the variance portion.

Mr. Deziel stated that the hardship is the geographic location of the property as there are no parking facilities that are more than 150 feet from a residential district within 500 feet of the facility. Mr. Deziel stated no facility exists within 500 feet that the restaurant can enter into an arrangement with to park cars. Since no parking exists on site, no other location is available for the parking. Many of the other retailers in Town are fortunate to be located near other lots where rental arrangements can be entered into. Mr. Deziel said last month, the bookkeeper submitted a letter for 264 The Grill stating that the restaurant caters mostly to local customers as outlined in that letter.

Mr. Shaw said that the garbage pick-up is scheduled by the Town, and he did not believe that the restaurant would be able to influence the garbage pick-up schedule. Mr. Shaw added that issue could not be part of this agreement.

Responding to questions from Mr. McLendon, Mr. Moore replied that a portion of the bank parking lot is zoned commercial but even at that, without shared parking off-site, it cannot be done legally. Mr. Moore stated that all of Phipps Plaza along County Road is zoned commercial town-serving. Portions of the buildings west of County Road are zoned R-C. Mr. Moore said some of the commercial uses within the building are grandfathered commercial uses.

Mr. McDonald stated that Mr. DeMarinis was to return to the Town Council in six months, similar to what the Council did with Jo's Restaurant. Mr. McDonald stated the Town would then have a Declaration of Use Agreement that would be enforceable.

Mr. Randolph stated that the Declaration of Use Agreement would be required to be in recordable form, and the agreement would be binding upon future property owners.

Mr. Deziel requested this not be put into effect and requested the same treatment as Jo's Restaurant because they are happy to come back before the Council in 6 months. Mr. Deziel stated that Mr. DeMarinis does not have fee simple title to the building and cannot enter into an agreement for that title without the owner being in attendance. Mr. Deziel said the property owner will be in attendance when Mr. DeMarinis returns to the Town Council in 6 months regarding the Declaration of Use Agreement.

Mr. Steele requested that the Town Council prohibit restaurant employees from parking in Phipps Plaza and require them to park in the bank parking lot.

President Smith replied that these suggestions should have been put on paper and presented to the Town Council. Mrs. Smith said the motion was made and seconded, and Mr. McDonald clarified his motion. Mrs. Smith said that the Town Council requested the parties to compromise on an agreement, and both parties stated they cannot reach a compromise agreement. The Town Council and take no further action on this issue.

Police Chief Terlizzese reiterated the fact that County Road is a state highway and the statutes prohibit anyone from using a moving travel portion of a state road for valet parking or stopping, standing or parking.

Jane Volk, resident of Phipps Plaza, said she did not understand the valet parking issue and questioned if valet parking is allowed in the Plaza or on East Drive?

Mrs. Smith replied that the Town Council will not allow valet parking in the Plaza and stated again that there will be no valet parking--period.

Attorney Randolph pointed out that the Chief Terlizzese referred to the street in front of the restaurant, South County Road. The Phipps Plaza residents in attendance who are opposed to this application would like to be assured that no valet parking would be allowed going into Phipps Plaza, and the Town Council could impose that condition.

Mr. Wyett stated that if no valet parking is allowed, by agreement, individual residents will pull into Phipps Plaza and park. Mr. Wyett said that the residents were better off agreeing to absolutely no valet parking for this restaurant.

Major Croft of the Police Department stated there will be no valet parking on South County Road because there is a state statute that prohibits it. Major Croft stated the Town will not allow valet parking in Phipps Plaza, the entire loop, because traffic will be obstructed and Chapter, 316 - Traffic applies to this situation. Major Croft said if the restaurant conducted valet parking in Phipps Plaza, traffic would be obstructed. Major Croft stated the Town will enforce that statute.

Mr. Shaw suggested adding a stipulation that the Town will not permit valet parking in Phipps Plaza or the East Drive in Phipps Plaza. Mr. McDonald accepted the amendment to his motion.

Mr. Deziel requested 5 minutes for his client to consider the Council motion because valet parking has been used. This application will be prohibit using valet parking in the future.

President Smith reconvened the meeting and asked Mr. Deziel to address the Council. Mr. Deziel stated Mr. DeMarinis would be willing to agree not to park in Phipps Plaza, but would be able to park in South County Road to the extent permitted by the Police Department. Mr. Deziel clarified that DOT is making a determination, and if that determination allows parking on South County Road, Mr. DeMarinis would not want to agree to not have valet parking.

The motion carried unanimously to approve Special Exception No. 30-95 with a variance subject to the following conditions:

1. (Item III.2 of Mr. Deziel's memo) The Grill will attempt to obtain a rubber lid for its dumpster, but at a minimum will install a rubber cover around the perimeter of the existing metal lid;

2. (Item III.3 of Mr. Deziel's memo) All garbage/debris on the ground by the dumpster will be swept up before the area is washed down with a hose. The cleaning crew will be instructed to minimize the flow of water off the premises;

3. Six months after a certificate of occupancy is issued, a Declaration of Use Agreement, in recordable form that would be passed on to future leasehold tenants, would be required after the Town Council ascertained

the stated conditions were complied with during the previous six months;

4. No valet parking in Phipps Plaza or the entrance.

New Business

3. Variance No. 1-96 - Sharon Talbot, 258 Seminole Avenue; to allow a group (5) of AC units to remain in the required east side yard. Three or more AC units must meet the requirements of accessory structure, per Section 5-50© of the Town Zoning Code. R-C District.

Sharon Talbot stated that she understood that the ordinance that she was cited for violating is an ordinance enacted for noise. Ms. Talbot said she spoke to Mr. Tim Frank who said this ordinance may be eliminated in the next 5 years because air conditioning units today are becoming much more efficient and quiet. The units in question are all on the east side of the property and are located together. Ms. Talbot said the units are very quiet, and no serious noise problems existed. Additionally the units are 1-1/2 tons apiece which are small units, however, the surrounding casing makes them appear to be much larger. One unit is a 3-ton unit. The Building and Zoning staff recommended that she construct an 8 inch cinder block wall around these units, which would be unsightly and overkill considering that the units have fans on top. Ms. Talbot suggested hedges be planted at both ends of the buildings. Additionally, Ms. Talbot offered to install a system that was programmable for each unit so that all the units would not be running at the same time..

Mr. Moore stated that this is not a Zoning study item, nor has it been a Zoning study item. Ms. Talbot knows the Town's rules very well, and this particular problem occurred because the existing building was rehabilitated. A note on Ms. Talbot's plan told the contractors to conform with the proper zoning section, which is only 2 units per side or rear yard. The contractor did not comply with the proper zoning section, the units are impossible to relocate at this point. Mr. Moore said the Town is attempting to solve the problem after the fact. The Building Department has no objections to this variance. Mr. Moore agreed that the 1.5 ton units are very quiet and the 2-ton unit is questionable. Mr. Moore stated that if in fact the noise does not meet the code requirement with all of the units on at one time, the Town would ask the Council to require a sequential system that would allow two units at a time to come on.

President Smith asked if Ms. Talbot planned to pay her solid waste assessment of $78.40 at this time? Ms. Talbot replied that all her mail goes to the office, and the problem was with the address. Ms. Talbot stated that the check was mailed today.

In response to Mr. McLendon, Ms. Talbot replied that she hired a contractor to install the units and apparently there was an item on the plan that said "per zoning ordinance". The plan was submitted and approved with the 5 units located on the side. The contractor was inexperienced and did not realize this meant he had to check the zoning ordinance to determine the location of the units, the units were in place when the building inspector discovered the problem.

Mr. Shaw made a motion to approve Variance No. 1-96 with the following conditions:

1. A six foot CBS wall is constructed on the property line;
2. Cover with noise protection material;
3. Annual noise level inspections of the units be made;
4. Install sequential devices for operation of air conditioning units.

The motion was seconded by Mr. Wyett. The motion carried unanimously.

4. Variance No. 2-96 - William & Elizabeth Greene, 214 Plantation Road; to allow construction of a one-story garage addition providing a 10' side yard setback in lieu of 12.5' required. R-B District.

Mr. Robert Deziel, attorney for the applicants, stated the property is an existing one-story, single family residence that was built according to previous zoning code requirements allowing a 10' setback as compared to the current 12.5' requirement. The addition, if approved, would be a one-car garage. Customarily the Council has approved requests of this nature so long as the proposed improvements do not violative good architectural integrity or are in conflict with the neighbors. Mr. Deziel reported no letters of objections were received from any neighbors. Mr. Deziel stated the hardship is the change in the zoning regulation subject to the original construction of the home. The current lot coverage for this one-story home is 23.7% and with the 210 sq. ft. addition, the lot coverage will be 25.5%.

Mr. McLendon made a motion to approve Variance No. 2-96. Mr. Wyett seconded the motion. On roll call, the motion carried unanimously.

5. Variance No. 3-96 - Bartlett Burnap, 740 Hi-Mount Road; to allow construction of a two-story residence with a portion of the sub-basement two (2) feet above the lowest street elevation, in lieu of entirely below the lowest street elevation as required. R-B District.

Mr. Robert Deziel, attorney for the applicant, stated this property is located at 740 Hi-Mount Road, and Gil Shaffer from the architectural firm of Ferguson Murray of New York City, was in attendance at the meeting. Mr. Deziel said the request is to allow the construction of a new single family residence with a sub-basement for utility storage and general purpose storage in the R-B Zoning District. As previously stated this variance is for the construction on a lot that is approximately 40,000 sq. ft. The lot coverage proposed is 18.2%, although 30% is allowed. The floor area ratio is 35%, and 45% is allowed. The landscaped area covers 66% , and 40% is required. The applicant proposes to remove the existing single family residence.

Mr. Deziel said this is the same property discussed under the Architectural Review portion of the agenda, and he committed to meet with the owner and the Building Department in an attempt to salvage the property as opposed to demolition. Mr. Deziel said when the property was presented to the Architectural Commission, the demolition was not granted because the Architectural Commission wanted to salvage the property if possible.

Mr. Deziel explained the variance request is to construct the sub-basement higher than the Town code permits. Mr. Deziel presented a drawing to the Town Council with three pink marks that represented the ceiling height in the basement (24.29). The Town code says that the highest point of a sub-basement (meaning the ceiling) has to be below the lowest point in the road. The lowest point in the road in front of this home is 21.34 feet going up to 28 feet. Mr. Deziel said there were two hardships: 1) a 7 foot grade difference from one end of the property to the other and 2) this property is located on the coral ridge area, just south of the cut, west of North Lake Way. Looking at the drawing, the southern edge of this sub-basement (the gray area on the drawing) is at elevation 24.60 feet. Before applying for a variance, the architect designed all of the basement area to comply with the code requirement. Mr. Deziel said the existing problem is the 24.6 elevation that decreases to 21.34feet. Mr. Deziel stated the basement is as far down as it can go, and the applicant would like the variance to avoid excavating deeper in the coral rock. This sub-basement can be built without the variance, however, two feet of coral rock would have to be removed.

Originally the owner proposed to locate the garage on the north side of the proposed residence. After discussing the location of the garage with Mr. Goldberg, an attorney representing the neighbor, Mr. Gottfried, Mr. Deziel agreed his client would heavily landscape the north property line and not locate the garage on the north side of the property. This sub-basement is not for a garage area, but was originally proposed to be a basement under the definition of a garage. Mr. Deziel reported his client changed the plans, and the sub-basement will be strictly limited to utility, mechanical storage as otherwise indicated in the code.

Mr. Moore stated that no storage was permitted in a sub-basement. A sub-basement is for mechanical and automobile storage and utilities only. Mr. Moore said that if plans were different than submitted, then the application has to be modified now or deferred.

Mr. Deziel replied the application meets the definition in the Code. Mr. Deziel said the architects designed a plan to place all of the utility equipment in the basement.

Mr. Deziel pointed out that the existing residence has a basement area, and the new residence's basement will not in any way affect the exterior elevations of the property. The proposed residence's main floor slab will be built at the same elevation as the existing residence. The only difference would be the additional two to three feet excavation of the basement.

Mr. Moore stated that the use of this area is a very critical issue with Staff because of the fact that it is not going to be counted as storage since it is a sub-basement. Mr. Moore said that a structure can be designed to meet the minimum code. The Building Department has no objections to a garage sub-basement as long as it is used for a garage. Mr.Moore said that the Architectural Commission approved a new residence that did meet the code.

President Smith stated that if the applicant receives an approval for the variance today, then the project will have to be reviewed by ARCOM. Mr. Deziel replied that the house that was approved by ARCOM is the one that the Council is reviewing. Mr Deziel said the project will return to ARCOM because a different house plan was filed for the variance that had the garages and a driveway on the north side facing the Gottfried house. Mr. Deziel said that Mr. Gottfried objected to the garage and driveway facing the north property line, and the plan was reconfigured with driveway and garage moved to the south side of the property.

President Smith suggested the Town Council review the plan with the variance and asked Mr. Deziel if the applicant discussed the location of the garage and driveway facing the south property line with the neighbor to the south?

President Smith stated she had a problem considering the variance at this time. Mr. Moore added that he had a problem also. Mr. Moore asked Mr. Deziel if the plan that was submitted for the variance consideration at this meeting matches the plan (100%) that was presented to the Architectural Commission and did that plan have the correct ceiling height in the basement? Mr. Deziel replied it was.

Mr. Moore stated that Mr. Deziel did submit a plan that was approved ARCOM that did not need a variance. Mr. Deziel explained that the variance was filed initially, and the ARCOM application was filed after that. Mr. Deziel continued that his client changed the plan in the intermittent period between the submission of variance application and the Architectural Commission meeting; however, the sub-basement was not changed.

Mr. Shaw made a motion to defer Variance Number 3-96, 740 Hi-Mount Road, to the March 12, 1996, Town Council Meeting. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

6. Variance No. 4-96 - Richard McCarthy, 520 South Ocean Boulevard; to allow construction of a single family residence at an elevation of 19.97' NGVD in lieu of the 14.97' required, a point of measurement variance. R-A District.

Mr. Shaw made a motion to postpone this issue to the March 12, 1996, Town Council meeting as there are outstanding issues, one of which is what is going to happen to the existing house. Mr. Wyett seconded the motion. On roll call, the motion carried unanimously.

7. Special Exception No. 1-96 - Nancy DeMoss, 185 Woodbridge Road, to allow a kitchen in an accessory building (guest house). R-AA District.

Mr. Frank Lynch, attorney representing Mrs. De Moss, presented plans to the Council showing detailed elevations.

President Smith stated this was a pretty standard request for a kitchen, and the applicant would have to execute the Kitchen Agreement.

Mr. McDonald made a motion to approve Special Exception No. 1-96 with the condition that a standard Kitchen Agreement be executed. Mr. Wyett seconded the motion. On roll call, the motion carried unanimously.

8. Site Plan Review No. 1-96 - Royal Poinciana Plaza, Cocoanut Row and Royal Poinciana Way; applicant has created a sculpture garden in the Cocoanut Row courtyard area by installing seven (7) sculptures. Site Plan Review is pursuant to Section 5.50(b) and 9.60 of the Town Zoning Code. C-PC District.

Mr. Doyle Rogers, representing the applicant, stated Royal Poinciana Plaza was seeking approval for a sculpture garden. Mr. Rogers said the Plaza planned to have seven world class sculptures, and the sculptures are in the courtyard at the present time. Mr. Rogers added the garden would be a prized cultural contribution to the Plaza.

Mr. Moore noted this will probably be the last application like this that the Council will see, unless it needs a variance, and pointed out that the site plan approval of sculptures on properties ordinance has changed. Mr. Moore said the Building Department had no objections, except that no sales or any signs of sales should be in the area where the sculptures are located. Mr. Rogers responded that the applicant has made a positive statement that there will be no negotiations of sales.

Mr. Wyett made a motion to approve Site Plan Review No. 1-96. Mr. McLendon seconded the motion.

Mr. Shaw stated that he was concerned that the owner of the gallery who is donating these items is supposedly going to be there for a very short period of time. Mr. Shaw said that the Town was giving him excessive showroom space, not giving the Plaza a permanent sculpture garden.

Mr. Rogers responded others may want to contribute to the sculpture garden. Mr. Shaw stated if this was for a revolving exhibit of sculpture that is going to go on for years to come, then it is a great idea. However, where does the Plaza plan to get more sculptures when this particular tenant leaves? Mr. Rogers replied that he did not know if the tenant intended to leave.

Mr. Moore said the Council had the ability to condition this approval whereby the applicant requested seven sculptures; however, if those statues are removed and new ones brought in, the applicant would have to return to Council for permission.

Mr. Wyett amended his motion to include the condition that no sales signs be allowed on the sculpture, and if the gallery owners leave, the issue must be returned to the Town Council. Mr. McLendon seconded the amendment. The motion carried by a vote of 4- 1 with Mrs Smith casting the negative vote.

XXIV. ANY OTHER MATTERS - There were no other matters.

Mr. Wyett stated that he had returned to Mr. Gilbertson his very generous gift as he did not think it was appropriate. President Smith stated she had turned her gift over to the Town Attorney.

1. Adjournment. There being no further business to discuss, the meeting was adjourned at 7:50 p.m.

Mary A. Pollitt
Town Clerk