MINUTES OF THE TOWN COUNCIL MEETING
HELD ON FEBRUARY 11, 1997

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on February 11,1997. The roll was called with the following Elected Officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Police Chief Joseph Terlizzese, Fire Chief Vincent Elmore, Director of Public Works Al Dusey, Town Engineer James Bowser, Director of Recreation Russell Bitzer, Director of Planning, Building, & Zoning Robert Moore, Zoning Administrator Paul Castro, Planning/Project Coordinator Timothy Frank, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Father Frank Lechiara from St. Edward Church. President Smith led the pledge of allegiance.

III. COMMENTS OF THE MAYOR

Mayor Ilyinsky complimented the Palm Beach Daily News on the centennial edition published on Sunday, February 9, 1997.

Mayor Ilyinsky then recognized and introduced the Mayor of Palm Beach for the Day, eleven year old Graham Wolf.

IV. APPROVAL OF THE AGENDA

Mr. Wyett made a motion to approve the Agenda, to include the moving of Communications From Citizens as Item V. To Item XIII.A; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

V. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

This item was moved to become item XIII.A. in the Regular Agenda.

APPROVED AGENDA

VI. APPROVAL OF MINUTES OF JANUARY 6, 14, 16, AND 21, 1997

Mr. Wyett made a motion to approve the Approved Agenda (Minutes of January 6, 14, 16, and 21, 1997); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

<u>REGULAR AGENDA</u>

VII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR JANUARY 1997

Mr. Wyett made a motion to approve the Warrant List and Fund Expenditures for January 1997; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

VIII. ANY OTHER MATTERS

There were no other matters.

IX. ADJOURN SINE DIE

The meeting was adjourned, sine die, at 9:37 a.m.

X. SWEARING IN OF NEWLY ELECTED OFFICIALS - The Honorable Richard L. Oftedal, Chief Judge, 15th Judicial Circuit, Palm Beach County

Judge Richard L. Oftedal swore in Mayor Paul Ilyinsky, Councilman Sam McLendon, and Councilman Allen Wyett. Mayor-for-a-Day Graham Wolf participated in the swearing in ceremony.

XI. ORGANIZATIONAL ITEMS

A. Elected Officials

1. Election of Town Council President - Pursuant to Section 3.01 of Town Charter

Lesly Smith was nominated by Councilman McLendon to be Town Council President. No other nominations were made, and Mayor Ilyinsky declared Mrs. Smith to be the Town Council President.

2. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of Town Charter

Mayor Ilyinsky requested nominations for President Pro-Tem and received none. Mr. Shaw volunteered for the position and was declared to be President Pro-Tem.

B. Administrative Official

1. Appointment of Finance Director - Pursuant to Section 2-2 of the Town Code

Mr. Doney announced that negotiations were continuing with the leading candidate for the position and additional information would be presented at the February 17, 1997, 5:01 p.m. meeting.

XII. COMMENTS OF THE MAYOR

Mayor Ilyinsky commented on the history of Town Council members who served in the positions of President and President Pro-Tem on previous councils. He explained that no relationship existed between election to those offices and being elected as Mayor of the Town.

XIII. APPROVAL OF AGENDA

The following changes were made to the agenda:

Page 4, Withdraw item XVI. A.1., Resolution No. 49-96, Easement Request by the Everglades Club.

Mr. McLendon made a motion to approve withdrawal from the Agenda of item XVI.A.1., Resolution No. 49-96, Easement Request by the Everglades Club; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Page 6, Defer item XIX. B.1. to the March 11, 1997, Town Council Meeting, Special Exception No. 43-96, Sandsong Investments, Inc. 206 North Ocean Boulevard;

Mr. Wyett made a motion to approve deferral of item XIX.B.1. (Special Exception 43-96, Sandsong Investments, Inc., 206 North Ocean Boulevard) to the March 11, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 6, Add item XVII. D. 5, Discussion of Attorney/Client Session to Discuss the West Palm Beach Release Agreement;

Town Attorney John Randolph explained that he had requested the addition of this item, and he would be asking for advice in regard to the settlement, requesting that the Town Council schedule a closed door session in order to discuss the matter.

Mrs. Smith stated that a time certain would be set when this item was discussed.

Page 6, Add item XVII. D. 6, Consideration of a Water Desalinization Partnership Between the Town and Florida Power & Light (FPL) to be added to the March 11, 1997, Agenda;

Mr. Shaw made a motion to add item XVII.D.6, Consideration of a Water Desalinization Partnership between the Town and Florida Power & Light (FPL) to the Town Council Agenda for March 11, 1997; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Page 6, Add item XVII. D. 7, Consideration of the Levels of Service for the Residents of the Town of Palm Beach;

Mr. Shaw made a motion to add item XVII.D.7. Consideration of the Levels of Service for the Residents of the Town of Palm Beach; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Page 6, Add item XVII. D. 8, Discussion of Parking on Worth Avenue and at the Town Docks;

Mr. McDonald made a motion to add item XVII.D.8, Discussion of Parking on Worth Avenue and at the Town Docks; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Page 6, Add item XVII. D. 9, Consideration of adding a 311 non-emergency Number to be Used by the Police and Fire Departments.

Mr. McDonald made a motion to add item XVII.D. 9, Consideration of adding a 311 non-emergency number for use by the Police and Fire Departments; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve the Regular Agenda as amended; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

A. COMMUNICATIONS FROM CITIZENS

Mrs. Evangelica Kardaras, 152 Sunset, requested the $108.94 penalty assessed on her solid waste disposal bill be waived. Mr. McDonald made a motion to waive the penalty of $108.94; seconded by Mr. Wyett. Mr. McDonald explained that Mrs. Kardaras was out of town most of the year, and there had been a problem in payment of the solid waste disposal bill; she had initially asked that payments be rebated, however, Mr. McDonald had indicated that could not be done but waiving the penalty would be considered. On roll call, the motion carried unanimously.

Mr. Eric N. Gilbertson, 151 Chilean, addressed the Council and said the County School Board was still a problem. Mr. Gilbertson recommended the closed Palm Beach Middle School be re-opened, as it was a model school servicing the highest percentage of minority students in the County middle school system.

Mr. Adrian Winterfield, Australian Avenue, addressed the Council concerning the Save Our Homes Amendment, commenting that increases could be expected every year.

XIV. LICENSES AND PERMITS

A. Charitable Solicitations

1. YMCA of the Palm Beaches, Inc.; No. 73-97
2. Fraternal Order of Police, Palm Beach Lodge #19; No. 79-97
3. Palm Beach Habilitation Center, Inc.; No. 110-97
4. Big Brothers/Big Sisters of Palm Beach County, Inc.; No. 142-97
5. Best Buddies International, Inc.; No. 334-97
6. Jackson Memorial Foundation; No. 405-97
7. City of Hope-Donna Shaw Abrams Chapter; No. 419-97
8. Florida Tennis Foundation, Inc.; No. 420-97

<u>Other</u>

- Failure to File Prior Results Form Within Prescribed Time; Paid $25.00 Fee

9. Bascom Palmer Eye Institution; No. 213-97
10. The Lord's Place Auxiliary; No. 229-97
11. The American Ireland Fund; No. 260-97
12. Polish Cultural Society; No. 311-97
13. The Salvation Army Women's Auxiliary; No. 362-97
14. Seagull Industries for the Disabled, Inc.; No. 370-97

B. Beverage Licenses

1. Application for a transfer of a 4COP-SRX Alcoholic Beverage License by Mr. Effren R. Cavazos for Jezmac, Inc., d/b/a Dempsey's at 50 Cocoanut Row

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

XV. PUBLIC HEARINGS

A. Landmark Designation of 142 Seabreeze Avenue; Resolution No. 2-97 *(Deferred from January 14, 1997)*

Planner/Project Coordinator Timothy Frank addressed the Town Council, confirming Proof of Publication.

At this time, Town Clerk Pollitt swore in all those who would be speaking to items under Public Hearings.

Mr. Frank stated that the property had been studied by the Landmark Preservation Commission, and had met the following criteria for designation: Criterion A - exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county, or town. Criterion C - embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship. He read a letter from Paul Thibadeau, attorney for the property owners, addressed to the Mayor and Town Council:

> *Dear Mayor and Members of the Town Council:*
>
> *I represent Mr. and Mrs. Wallace S. Wakem in the consideration of their property for landmark status as scheduled before you at your February 11, 1997 meeting on the designation recommendation of the Landmarks Preservation Commission. As the file reflects, Mr. and Mrs. Wakem strongly object to this designation. It is believed that the designation of this property would adversely affect the value and salability of the property and would not create any real benefits to the Town. They ask the Council to honor their wishes as owners, and not approve the recommendation of the Landmarks Preservation Commission. The desires of the property owners ought to be a legitimate matter of concern to the Council.*
>
> *Respectfully,*
>
> *Paul Thibadeau*

Mr. Frank pointed out that no evidence had been given to staff that would adjust the recommendation on the landmarking criteria associated with the property.

Historic Preservation Consultant Jane Day, of Research Atlantica, Inc., continued with the presentation. The property at 142 Seabreeze Avenue was a good example of the bungalow style architecture built in the early years of the Town of Palm Beach. It was known that it pre-dated 1919 because it was listed on the Sanborn Fire Insurance Map included in the report. The bungalow style was the most popular style of middle class domestic architecture in the United States between 1910 and 1926. After the start of Palm Beach and the beach front mansions, a group of men came in to make more affordable winter housing, and the home on Seabreeze was a good example of that. Placement of the windows allowed for ventilation within the unairconditioned property. The house was unadorned, simple architecture and one of the best examples of the style still standing within the Town. At the present time there were only three true bungalows designated of the 204 properties designated in the Town of Palm Beach, and this home would be a fine addition to the landmarks in the Town of Palm Beach. Mrs. Day pointed out that if only a portion of the building was designated, property owners would be entitled for ad valorem tax relief only on the designated portion of the property. She noted that the most outstanding architectural elements were the extended front porch along the north facade of the house with the columns that started out wide at the bottom, getting narrow near the roof, the gable dormer facing the street, and the ribbon of three windows that were original to the property.

Mrs. Smith expressed concern about the objections of the property owners and suggested that a compromise be reached. She noted that Mr. Shaw had recommended a deferral so that suggestions could be considered, and she agreed with that recommendation.

Mr. Randolph explained that a deferral would have to be agreed to by the property owner.

Mrs. Polly Earl, speaking for the Preservation Foundation, stated that the landmark designation should be put in context--she believed it was very important to remember that the Landmark Ordinance was supposed to preserve not only the unique mansions, but also what was typical about the Town. The house met the criteria of the Ordinance, and bungalows must be taken care of and safeguarded as part of the early history of Palm Beach.

Mr. Frank stated that he had a conversation with Mr. Thibadeau after receiving the letter mentioned above, and he had pointed out that the health problems in the family that had caused the deferral initially were still present; that the issue was being submitted to the Town Council for a decision to be made; they had not authorized him to come to the meeting, but had only authorized him to send the letter.

Mr. McDonald asked Mrs. Earl if her recommendation included designation of the entire property?

Mrs. Earl replied that her recommendation did include designation of the entire property, as she believed it would afford these owners or subsequent owners the cleanest approach to the benefits of landmarking. She recognized that there may be instances where compromise was in order. She noted that the current owners were elderly and were not well.

Mr. McDonald made a motion to approve the Designation Report for 142 Sea breeze Avenue; seconded by Mr.

Mr. Randolph read Resolution 2-97:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. McDonald asked if the designation had been objected to by the property owners?

Mr. Frank replied affirmatively.

Mr. Randolph explained that if a motion to deny was accepted at this point, that may be the last opportunity to address the issue, because there may be arguments as to administrative res judicata--that there had been an opportunity to hear this, it was heard and denied and there would not be another opportunity to address it.

Mr. McLendon made a motion to disapprove the landmarking of 142 Sea breeze Avenue; seconded by Mr. Wyett.

Mayor Ilyinsky commented that designations should be treated individually, and begged the Council to consider what would happen to the property if it was not landmarked.

Mrs. Day remarked that the ad valorem tax abatement program should be looked at seriously. If this Resolution was denied and could not be brought forward, the owner would not qualify for that. In addition, if the property was lost in a hurricane it could not be rebuilt on the same footprint if it was not a landmark of the town of Palm Beach.

Mr. Moore reminded the Town Council that there were some residual benefits to going forward with landmarking the house; there was a garage apartment on the property in a single family zoning district which could not be reproduced again; in the event of a storm or a fire the Landmarks Ordinance would allow for the property to be rebuilt in its configuration. The approval would give the house protection; there was no economic disadvantage to the property owner by having the landmark status. Mr. Moore recommended that the Town Council strongly consider landmarking the property; the property owner and future owners would have a much better chance at saving the house and at getting some economic advantage out of it. He explained that a full designation would be needed in order to have full protection.

Mr. McLendon asked if the owners were aware of the comments made this morning?

Mr. Frank replied that the attorney for the owners was well aware of the benefits of landmarking.

Mrs. Day stated that the problem with many landmarking issues was education, and the owners of the house had not been available to speak with directly.

On roll call, the motion of Mr. McLendon to disapprove the landmarking of 142 Sea breeze Avenue failed by a vote of 2/3, with Mr. McLendon and Mr. Wyett casting affirmative votes; Mr. McDonald, Mr. Shaw, and Mrs. Smith casting negative votes.

Mr. McDonald made a motion to approve the designation as a landmark; seconded by Mrs. Smith (who passed the gavel to second the motion).

Mrs. Smith asked if Mr. McDonald would consider amending the motion to eliminate the garage apartment?

Mr. McDonald replied that if the garage was destroyed it could not be rebuilt, and he would prefer to leave the motion as it was.

On roll call the motion carried 3/2, with Mr. McDonald, Mr. McLendon, and Mrs. Smith casting affirmative votes; Mr. Shaw and Mr. Wyett casting negative votes.

B. Landmark Undesignation of 219 Clarke Avenue; Resolution No. 6-97

Town Clerk Pollitt confirmed proof of publication.

Planner/Projects Coordinator Tim Frank stated that Section 16-43(N) of the Ordinance it stated that designation, or undesignation of a landmark site of a historic district may be withdrawn by using the same procedure as used for designation. He explained that the criteria for the designation of this particular parcel no longer existed.

Historic Preservation Consultant Jane Day stated that 219 Clarke Avenue was now a vacant lot. It had been originally designated in 1982 as part of an address that was 217 Clarke Avenue. At that time it was brought forward voluntarily and on the lot at 219 Clarke Avenue a non contributing addition was added in 1976 to the original 1924 house. During the course of the last year, as it came to the Landmarks Commission, approval was given to demolish the inappropriate 1976 portion of the house. Since year, as it came to the Landmarks Commission, approval was given to demolish the inappropriate 1976 portion of the house. Since that time the property had been subdivided and all that was left at 219 Clarke Avenue was a vacant lot. It was being requested to take the landmark designation off of the property so that it could be built upon.

Mr. Shaw made a motion to accept the designation report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve the de-designation of 219 Clarke Avenue; seconded by Mr. Wyett.

Mr. Randolph read Resolution 6-97

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION OF THE PROPERTY HEREINAFTER DESCRIBED DOES NOT MEET THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOW AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AND DOES HEREBY UNDESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

C. Landmark Designation of 2 Golf Road; Resolution No. 7-97

Town Clerk Pollitt confirmed proof of publication.

Planner/Project Coordinator Tim Frank stated that the Landmark Preservation Commission had studied the above referenced property and found that it met the following criteria for designation: Criterion A - exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town; Criterion C - embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship; Criterion D - is representative of the notable work of a master builder, designer, or architect, whose individual ability has been recognized, or who influenced his age. The architect was Marion Sims Wyeth, and the master builder was Harry Raymond Corwin.

Historic Preservation Consultant Jane Day continued with the presentation: In 1919 Marion Sims Wyeth moved to the Town of Palm Beach, and one of his first projects was "Hogarcito" the E.F. Hutton house on Golf Road. The land was purchased from Paris Singer, adjacent to the Everglades Club, and then Singer and Hutton financed the development of the Golf View Road Development Company. A number of houses were built along Golf View Road, and 2 Golf View Road was one of those homes built for speculation in 1922. The house was a good example of the Mediterranean Revival style, constructed of hollow clay tiles with stucco as the exterior on a heavily landscaped lot.

Mr. Shaw made a motion to accept the designation report of 2 Golf Road; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Wyett made a motion to approve Resolution 7-97; seconded by Mr. Shaw.

Mr. Randolph read Resolution 7-97:

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

On roll call, the motion carried unanimously.

D. Landmark Designation of 10 Golf Road; Resolution No. 8-97

Planner/Projects Coordinator Tim Frank confirmed proof of publication. The Landmark Preservation Commission had studied 10 Golf Road and found that it met the following criteria for designation: Criterion A - exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county, or town; Criterion C - embodies distinguishing characteristics of an architectural type or as a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship; Criterion D - is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Mediterranean Revival style that was done by Marion Sims Wyeth and the Golf View Road Development Corporation. The house had been built in 1922, was altered by John Volk in the 1950's, and was a beautiful example of both architects, and showed the development of the Golf View Road Development Company.

Mr. McLendon made a motion to accept the designation report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Wyett made a motion to approve Resolution 8-97; seconded by Mr. McLendon.

Mr. Randolph read Resolution 8-97:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

E. Landmark Designation of 145 Root Trail; Resolution No. 9-97

Town Clerk Pollitt confirmed proof of publication.

Planner/Projects Coordinator Tim Frank stated that the Landmarks Preservation Commission had studied the property at 145 Root Trail and found that it met the following criteria for designation: Criteria A - exemplifies or reflects the broad cultural, political, economic or social history o the nation, state, county or town; Criterion C - embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship; Mr. Frank reported that although it was not a criteria of the ordinance the owner had agreed with participation in the program.

Historic Preservation Consultant Jane Day continued with the presentation: 145 Root Trail was a frame vernacular house (built by the people who would reside in the building with available skills and available materials). The Palm Beach County Tax Appraiser's office had recorded 1900 as the effective date of construction for 145 Root Trail. Town records of the property date as early as 1920 when the owners spent $250 for repairs.

Mr. Shaw made a motion to approve acceptance of the designation report; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

John Ferrell, 145 Root Trail, addressed the Town Council and thanked the Preservation Foundation for its interest and the Town Council for its consideration.

Mrs. Smith thanked Mr. Ferrell for his support in coming to the meeting today.

Mr. Wyett made a motion to approve Resolution 9-97; seconded by Mr. Shaw.

Mr. Randolph read Resolution 9-97:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OR ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

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Because of a scheduling problem, Mrs. Smith requested that Item XVII.C.1 (Request for Proposal (RFP) No. 97-08 - Financing for Australian and Peruvian Docks Reconstruction; Resolution No. 14-97) be moved forward on the Agenda to be heard at this time.

XVII. NEW BUSINESS

C. Request for Proposals and Sealed Bids

1. Request for Proposal (RFP) No. 97-08 - Financing for Australian and Peruvian Docks Reconstruction; Resolution No. 14-97

Mr. Doney explained that a financing package had been put together with the help of Michael G. Hole of Smith Barney, who had assisted with the 1992 and 1993 refinancing bond issues of the Town. It was necessary to have the expertise of Bond Counsel Richard J. Miller of Edwards and Angell, who had also assisted the Town in the issuance of the 1992 and 1993 bond refinancing issues. The back-up material for this item was detailed in the memorandum of Acting Finance Director Cheryl Somers, dated February 7, 1997. The Bond Resolution was prepared by the Bond Counsel, Richard J. Miller. Alternative financing options were obtained to compare which financing options were in the best interest of the Town and which one would meet the cash flow requirements as projected for the Town docks. He noted that it was important to remember that the Town docks were an Enterprise Fund and had functioned without the benefit of any revenues from the Town General Fund. The Town did not have on hand the necessary finances to accomplish improvement projects at the docks, therefore, proposals were requested from banking institutions for a loan to finance the reconstruction. Mr. Doney identified that the recommendation was that the Town accept the proposal from Barnett Bank and enter into a loan agreement for 25 years at 5.63% with fixed annual payments of $223,875 for a total of $5,596,876.45. Resolution No. 14-97 was being presented for adoption. He pointed out that Resolution No. 14-97 was styled as a bond resolution and it referred to "$3,000,000 Utilities Service Tax Revenue Bonds" in several places. This was for legal reasons which Mr. Richard Miller, Bond Counsel, would address. The actual method of financing proposed was a 25-year loan to be repaid with Marina Fund revenues.

Acting Finance Director Cheryl Somers addressed the Town Council, stating that over the past 13 years there had been a net income in the fund (with the exception of the year that the Brazilian dock was reconstructed); the net income during FY96 was $220,000.

Michael G. Hole of Smith Barney addressed the Town Council, stating that he had analyzed both on a revenue basis and on an ad valorem tax basis. To pledge the full faith and credit of the Town for a project such as this would require a voter referendum. The Town would receive a Aaa rating when it did pledge its full faith and credit, therefore receiving a slightly lower interest rate than if it pledged on a revenue bond basis.

Mr. Wyett asked if any consideration had been given to a shorter term with a balloon payment which could be refinanced?

Mr. Hole replied that a number of options from each of the banks had been requested: fixed rate scenarios, variable rate scenarios, long term 20-25 year amortization, and a 7 year balloon letter of credit structure. Some attractive bids had been received on the 7 year scenario, however, the interest rate was only guaranteed through those 7 years. The balloon would give the Town the ability to pay as much or as little principal off on the loan during the 7 year period as the Town chose, however, at the end of the 7 years the interest rates would have to be reset and could be at a higher rate.

Mr. Doney mentioned that there would be no pre-payment penalty, so that if cash flow allowed earlier pay off the Town could move toward that end.

Mr. Shaw remarked that he was uncomfortable with the 25 year term, and suggested that cash flow be considered. He asked the amount of money that had transferred from the Enterprise Fund back to the Town during the period when the Brazilian Docks were being rebuilt?

Mrs. Somers responded with the figure of $650,000.

Mr. McLendon stated that he would prefer the 25 year term because the construction could be paid for during the period of time of usefulness.

Mr. Hole explained that with the lower payments on the 25-year option, the extra money that the Town would not be spending on the loan would be invested with the Town's General Fund, and the investment rate that the Town would earn on its money would have to be considered.

Mr. Doney commented that he believed the recommendation was appropriate from the cost perspective, the projected useful life of the facility perspective, and the pre-payment proposal that the Town would have through Barnett, as well as the market analysis comparisons that were done by Mr. Hole. He noted that it was hoped that the principal could be reduced by a grant from the Florida Inland Navigational District (FIND) for approximately $360,000. In addition, it was anticipated that the expansion of the Australian Dock would generate approximately $150,000 annually.

Bond Counsel Richard Miller, of Edwards and Angell, addressed the Town Council stating that there were several small amendments to the Bond Resolution:

Requirement of a project construction fund, where monies from the proceeds of the bonds would be deposited in a construction fund with the bank.

No further liens on utility service tax revenues without the consent of the bank.

utilities taxes to ensure that the loan would be repaid; that was the reason for the low interest rate.

Mr. Miller explained that it would be normal for a bank or any other party to restrict a future lien on revenues provided to them.

Mr. Wyett commented that the bank could then negotiate with the Town if another revenue bond issue was needed--they would have the veto power over any future revenue bonds that the Town may wish to issue.

Mr. Miller replied that the bond referred to only the utility service tax, and would not affect the revenues from the Marina, which were not seen as stable or sufficient enough to provide the quoted interest rate and payment scheme. The exclusive payment mechanism was the utility service tax revenues--each month the cost of the debt would be taken out from the utility service tax revenues with the rest remaining in the General Fund for general purposes. The only restriction was that there could not be further debt against those particular revenues without the consent of the bank.

Mr. Randolph asked if the bank would be satisfied as long as the debt was covered by 125%, or a substantial percentage, of Town revenues without having to pledge 100%?

Mr. Miller responded that it was possible to enter into an arrangement with the bank, and he would negotiate the issuance of additional debt on a parity to this debt without the consent of the bank, as long as there was a coverage factor of 125% of all indebtedness from the utilities services taxes.

Mr. Hole added that the utility service tax was something that had been looked at as a viable stream for whatever the project might be in the future, if the Town wanted to do a revenue bond as opposed to an ad valorem bond. The thought had been that the pledge would be made, rather than complicating the loan, knowing that there was no pre-payment penalty. If there were additional projects 3-4 years from now that the Town would want to bond, they could be bonded on a parity lien with the bank's consent to this, or the loan could simply be paid off and rolled into a bond issue.

In response to Mr. Shaw, Mr. Hole explained that the market typically grouped all utility service taxes together, and it was deemed initially that all utility taxes would be put together as a package in an effort to get the absolute lowest possible interest rate.

Mr. Shaw stated that he was uncomfortable with giving the bank a position of control over annual franchise taxes when the annual liability was $250,000, and if the Town wanted to do something else the bank would control the pledging of those assets.

Mrs. Smith expressed concern over committing the utilities service tax revenue to the banks, as the Council was uncomfortable being held in the palm of Barnett Bank.

Mr. Hole explained that Barnett Bank was not controlling the funds--it was merely a condition that they did not want the Town to pledge the funds to other long term debt. It was the intention to never use the first penny of the funds for this loan--the Marina was scheduled to pay it. If for some reason the Marina revenues were insufficient and the Town had no other means to pay off the loan, then the bank wanted the right to compel those monies from the utilities service tax.

Mrs. Smith explained that was the problem--the Town was not going to be under the fist of the Barnett Bank for 25 years.

Mr. McDonald asked why the parity issue would not resolve this?

Mr. Randolph explained that negotiations and discussions could take place, and it seemed that would be the way to address the issue--the bank could be allowed to have consent, as long as the Town could show them 125-150% each year to cover the debt, that consent would not be withheld for those funds beyond that.

Mr. Miller clarified that the Town Council wanted permission to issue additional debt based on this particular revenue so that other parity debt could be issued on the same basis. He agreed that could be negotiated and he would present any resolutions at the February 17, 1997 Town Council Meeting.

Mr. Miller continued with the other conditions to the bond resolution:

If the project was changed, the bank wanted to consent to whatever different project the Town may have.

An annual financial statement from the Town.

Mr. Wyett made a motion to defer this item to the meeting of February 17, 1997, requesting that the Bond Counsel negotiate the points just discussed; seconded by Mr. Shaw.

Mr. Shaw asked that the loan be structured so that it was worded more specifically as to which of the utility taxes would be pledged.

Mr. Miller stated that negotiations would take place with the bank.

Mr. McDonald asked Mr. Wyett if he would consider making his motion a positive motion in the sense that it be approved contingent upon that one change being made and accepted.

Mr. Wyett agreed to amend his motion accordingly (approval of Resolution No. 14-97, contingent upon negotiations with Barnett Bank to not pledge the full utility tax revenue stream as collateral for the bond); the seconder, Mr. Shaw, accepted that

Barnett Bank to not pledge the full utility tax revenue stream as collateral for the bond); the seconder, Mr. Shaw, accepted that amendment.

The matter would return to the Town Council at the February 17, 1997 Town Council Meeting.

On roll call, the motion carried unanimously.

2. Sealed Bid No. 97-04 - Australian Avenue Dock Replacement; Resolution No. 12-97

This item was removed from the Agenda today, to be heard at the February 17, 1997 meeting in conjunction with the above matter.

Mr. Wyett made a motion to defer Sealed Bid No. 97-04, Resolution 12-97 to the February 17, 1997 Town Council meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Wyett commented that the expansion of the docks would increase the demand on parking; he had discussed a solution with Public Works Director Al Dusey which he would like the Town Council to consider next month.

Mr. McDonald suggested discussing the docks parking along with the Worth Avenue parking.

It was agreed that the docks parking would be discussed along with D.Other 8., (Discussion of Parking on Worth Avenue).

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XVI. OLD BUSINESS

A. Resolutions

1. Resolution No. 49-96 - Easement Request by Everglades Club, Inc. for Groundwater Monitoring Wells *(Deferred from November 12, 1996, and December 10, 1996)* - **Withdrawn per letter dated February 3, 1997, from Mr. Glen A. Miller, P.E.**

B. Other

1. Coastal Management Issues

a. Consideration of Report of the Shore Protection Board *(Continued from January 16, 1997 Special Town Council Meeting)*

Town Manager Doney stated that after discussion with staff, and in consideration of the information given at the January 16, 1997 Town Council Meeting, a reasonable approach for the Town Council to consider was presented in his memorandum of February 5, 1997:

1. Town Council should authorize funding to update the Comprehensive Coastal Management Plan (CCMP) dated August 1986. The plan is more than ten years old, and due to both natural forces and coastal management projects, conditions of the shoreline have changed over the years. The Town has obtained a proposal dated January 31, 1997, from Applied Technology and Management (ATM) to update the CCMP. ATM's proposal includes a cost estimate of $115,400 for this project. If the Town Council wishes to proceed at this time, the Town Council will need to authorize funding from the Undesignated General Fund balance.

Mr. Doney explained that timing was a key issue because ATM was under a continuing contract.

Mr. Wyett agreed that the CCMP must be updated.

Mr. McLendon agreed that it must be done.

Mr. McDonald agreed.

Mr. Shaw stated that the CCMP needed to be upgraded, however, he believed a more important issue was whether the upgrades would be accepted as a program that the Town as a whole could implement. With 12 miles of beach including only 1 mile of Town owned property, a commitment from both the Town and residents would be needed.

Chairman of the Shore Protection Board, Gary Lickle, recommended that the CCMP needed to be updated, however, there was a lot of work that needed to be done prior to any update.

Mr. Wyett commented that the private vs. public was a very sensitive area and education and public relations was definitely

Mr. Lickle agreed; the number one priority was the public relations side. In addition, there was work that needed to be done in getting other communities to participate in the inlet to inlet concept.

Mrs. Smith stated that she had received many phone calls urging that the plan be updated as to specific areas where the sand would go. Until a plan done by a coastal engineer told people what areas needed sand no one would know where the public and private issue would come into play.

Mr. Doney noted that the CCMP produced in 1986 had been used for implementation not only at the Lake Worth Inlet, but also at the mid-Town public beach area. Every year when the Mayor and Town Council went through the budget process the CCMP was used as a tool in budgeting, as well as for engineering purposes.

Mr. Lickle expressed concern that since the presentation of ATM the Shore Protection Board had not held further discussions with ATM, suggesting that ATM and any other engineering firms chosen be heard from to be sure that the update fits in with the overall future plan.

Mrs. Smith replied that would be covered under the Consultants Competitive Negotiations Act, which would adhere to Town guidelines.

Mr. Doney explained that coastal engineering firms could submit letters of interest and statement of qualifications so that the Town Council could chose the firm most qualified.

David Decker, Vice President of Applied Technology Management (ATM) addressed the Town Council, stating that ATM works on a day to day basis with the Public Works Department on many coastal engineering issues. A scope of services had been developed for the Town by ATM, with the focus on the recommendations of the Shore Protection Board. The scope of service was basically prepared to give the Town Council a feel for the level of effort that would be required to update the plan to address all of the issues highlighted. ATM was anxious to move forward and identify projects for the Town Council to consider. He added there was a significant public awareness and interactive process envisioned in the finalization of the plan.

In response to the query of Mr. Wyett, Mr. Decker explained that in reference to Category 6, ATM had recognized that there would need to be a discussion of funding alternatives the Town would consider for projects. The Town's needs from a beach management perspective would be identified, and then funding alternatives would be considered. He commented that if ATM received the assignment to go inlet to inlet, approximately 30% of the total project cost could be attributable to the neighboring communities.

Mr. Lickle stated that if the Town Council wanted to continue the Shore Protection Board, it would go through the scope of the employment agreement with the engineering firm to review it.

Bob Clinger of Palm Beach County addressed the Town Council, stating that the CCMP should be updated. He referred to the memorandum outlining staff recommendations, which he agreed were in order.

Mr. Shaw made a motion to approve updating the CCMP with an expenditure of $115,000; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Public Works Director Al Dusey stated that the purpose in bring the proposal of ATM to the Town Council was to give an idea about the approximate cost, and to give the option to move very quickly with ATM or to step back and ask for other bids on the update.

Mr. Wyett commented that going with ATM would allow movement forward, without delay.

Mr. McLendon agreed that he would prefer to proceed with the well qualified ATM rather than waste more time.

Mayor Ilyinsky agreed with Mr. McLendon.

Mr. McDonald agreed.

Mr. Shaw stated that he believed the project should go to bid, since it would give the Town Council time to obtain commitment from neighboring communities in regard to financing.

Mr. Wyett made a motion to reconsider the reappointment of the Shore Protection Board after the lunch break; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

After the break, Mr. Lickle reported that there would be 100% agreement by all nine members of the Shore Protection Board that they would agree to serve on the Board.

Mr. Wyett made a motion to approve the reappointment of the Shore Protection Board; seconded by Mr. McLendon.

Joel Martino of the Shore Protection Board, asked for clarification of the ATM proposal.

Mr. Randolph stated that it was his understanding that ATM do an update of the CCMP, without necessarily incorporating being the engineer on the solutions that result, such as the future construction of groins, etc.

Mr. Martino stated that there was a question of whether Mr. Isiminger would serve on the Board as it would preclude his

Mr. Martino stated that there was a question of whether Mr. Isiminger would serve on the Board as it would preclude his bidding on any of the projects.

Mrs. Smith stated that she would be very reluctant to reappoint Mr. Isiminger to the Board if there was a question of his participation in bidding.

Mr. McDonald asked Mr. Lickle if the Board should meet monthly?

Mr. Lickle replied that would be discussed at the first meeting of the Board.

It was decided that Mr. Isiminger be reappointed on a temporary basis until the March 11, 1997 Town Council Meeting, at which time further discussion would take place as to how many members there would be, as well as the length of time that the Board would exist.

On roll call, the motion, as amended, carried unanimously.

b. Consideration of Potential Federal Funding Assistance for Town's Coastal Projects and Related Issues

Assistant Town Manager Peter Elwell addressed the Town Council, stating that he was following up on a question of Mr. McLendon at the November Town Council Meeting regarding the potential to obtain some retroactive funding assistance from the Federal Government for the mid-Town project. He advised that there was no opportunity to obtain retroactive Federal funding assistance for what had already been done, but there was some indication that there was opportunity to get into the Federal pipeline for future projects of renourishment and maintenance of the mid-Town project. Further contact with the Congressional Delegation, as well as the Corps of Engineers had taken place, with some relatively positive feedback.

Mr. Elwell referred to his memorandum of February 5, 1997 with recommendation for additional follow-up action to authorize follow-up communication with Congressman Shaw and Senators Graham and Mack to aggressively seek a Congressional Add authorizing Federal participation in the maintenance of the mid-Town project. Mr. Dusey had obtained a cost estimate of $85,000 for a coastal engineer to prepare the GDM Addendum and perform related tasks to obtain required Federal approvals. Two additional recommendations were also included that would involve some financial considerations with the technical side of the issue.

Mr. McLendon suggested that the $85,000 not be spent until there was a positive indication of Federal aid.

Mr. Wyett made a motion to approve recommendation (1) -- authorization of communication with Congressman, as well as (2)A --to await the outcome of the Congressional process because the Corps of Engineers could not be authorized to work with the Town on the technical side until Congress had directed them to do so; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

2. Report on the Status of the Beach Stairs in the El Pueblo and La Puerta Areas *(Deferred from January 14, 1997)*

Public Works Director Al Dusey addressed the Town Council, stating that he had been asked to present information regarding the cost of concrete stairs for El Pueblo and La Puerta, as well as the wood stair option. His memorandum of February 4, 1997 detailed both of those items--the cost of the concrete stairs was estimated at $25,000 each, with a 20-year life. The stairs installed at La Puerta in October had proven to be more substantial than estimated, and had done very well. Therefore, staff recommended that the Town Council authorize proceeding with new wood stairs at El Pueblo based on the lowest quotation received, which was estimated to be approximately $6,100.

Mr. Wyett asked what the first set of stairs had cost?

Mr. Dusey replied that the out of pocket cost had been $2,200 for wood; labor had been accomplished with Public Works employees as well as help from the Fire Department, however, there was one person missing from the three-person maintenance crew, and it would be difficult for them to build the stairs while maintaining their normal work.

Mrs. Smith asked if the one person would be replaced?

Mr. Dusey replied affirmatively.

Mr. McDonald made a motion to approve the installation of wooden stairs as soon as possible at the El Pueblo location; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Update on Proposed Franchise Agreement with Comcast Cablevision, Inc. and Other Related Issues

Assistant to the Town Manager, Dave Jakubiak, addressed the Town Council stating that there were two issues relating to the existing franchise agreement: a letter received from the Citizens' Association South of Sloan's Curve, Inc., dated January 29, 1997; and a request from the Bath & Tennis Club. These would be discussed after the update.

Attorney Nick Miller, special counsel to the Town, addressed the Town Council, stating that Town staff had done an enormous amount of work over the course of the last year in meeting with Comcast and bringing a number of issues to closure. There were still a few issues of some real substance that were outstanding, however, all of the major issues had been effectively closed--language was being exchanged between the company, Mr. Randolph and Mr. Miller to be sure that it embodied the verbal agreement. If that language was acceptable to both sides, there would be a final document ready for circulation to the Town Council early next week. He emphasized that the language was not in final form yet.

Mr. Miller continued that several major issues had been brought to closure: exactly what Comcast obligations would be relating to governmental access services going forward in the next term; the level of insurance that the company would be carrying; and resolving a process that was fair to the company, but also protected the Town with respect to potential non-compliance of the franchise. There was an agreement between the company and the staff negotiators that there should be a three year franchise because the Town would not be requiring substantial new capital investments by the company, but in return the Town was reserving the right to revisit (in three years) the state of the art and the state of the system to make a determination at that time. There were three additional issues of consequence: exactly how the bulk agreements with the condominium associations would be integrated into the franchise; how to define exactly what the revenue base would be that the franchise fee would apply to; and the issue of what would actually constitute a transfer of control of the company that would require Town concurrence before it could go forward. Mr. Miller commented that the company had been very forthcoming, the ground had been closed verbally on all of these issues, however, he was disappointed that the deadline of February 11, 1997 had not been met, but asked for a few more days.

In response to Mr. Wyett, Mr. Miller expressed his understanding of the agreement with regard to revenues--the compromise that had been reached had been that revenues that they realized from service provided in the Town of Palm Beach would be subject to the Town's franchise fee. That included revenues from advertising sales on channels that were run in the Town of Palm Beach. What was not included was revenue from affiliates that were doing business in the Town of Palm Beach, but were not doing business pursuant to the franchise. The distinction was that when an advertising insert was put into a cable channel by the local system the revenues, or the equivalent of those revenues, would be added to the franchise fee, but when Comcast paid an affiliated programming service for making programming available in the Town of Palm Beach that would not be subject. He explained that this agreement applied to cable services <u>only</u>. The Town had indicated that a right of way telecommunications ordinance would be created that would apply to everyone who wanted to provide telecommunications services.

Mr. Wyett asked why rates had been substantially increased while revenues had been relatively flat?

Mr. Miller responded that he could not respond specifically as to whether those numbers were accurate, however, when he saw them he had recommended that this type of circumstance warranted the Town doing an independent review of the finances to be sure that the reporting was accurate and complete. The Town had not had a chance to look at the numbers independently and verify them.

Mr. Wyett referred to the bulk rate agreements, commenting that if the converter was eliminated there could be an 11% savings, based on the fact that the average condominium resident was in Town for six months of the year, and could go on standby for the other six months.

Mr. Miller explained that the property managers needed to be aware of such things, with discretion to negotiate deals.

Mr. McDonald suggested that the completed franchise agreement could be reviewed at the February 17, 1997 Town Council Meeting.

Diane Christie, Director of System Development for Comcast Cable, addressed the Town Council, introducing Doug Gaston, legal counsel for Comcast, and Michel Champagne, General Manager of Comcast.

Mr. Gaston echoed the sentiments of Mr. Miller--progress had been made in the last four weeks, and the spirit of cooperation was present. He noted that the final language would need to be worked out on paper, and although Comcast was not happy about the 3-year term, it was a concession they were willing to make.

Mrs. Christie addressed the bulk rate issue--she had read and responded to the letter received from the Citizens' Association South of Sloan's Curve, Inc. With the initial meeting with the Sloan's Curve Association Cable Committee there had been concern on the right of first refusal language, and since that meeting the language had been taken out of all contracts issued since that time. The second meeting with the Association on January 30, 1997 had dealt with the concern on 3-year contracts. A policy had been made that no contracts would leave the Comcast office without a 3-year, so every association would have the opportunity for a 3-year, 6-year, or 10-year deal. Concerning the rates, Ms. Christie noted that many of the contracts went into effect in 1991-92 before the system had been rebuilt to 56 channels of basic program. Based on that, programming rates had increased substantially, and a lot of the channels carried were things like Sports Channel, ESPN II, The Learning Channel, The History Channel, Comedy Central, Home and Garden, Food Channel. The rates offered in the early '90's were no longer appropriate, but the rate card for the Town of Palm Beach and South Palm was the lowest bulk rate card between Palm Beach County and Martin County, which was actually a discount off the residential rate anywhere from 50-63%, depending on the number of units and the term of the contract.

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Mr. Shaw asked how the current rates compared to the prior rates used for bulk?

Ms. Christie replied that it would depend on where the contract was--she believed the rates were going up $2-3.

Mr. Wyett referred to the letter from the Bath & Tennis Club responded to by Ms. Christie with a letter of explanation that they were a commercial user, and asked why the cable had to come across the road at such expense since there were homes to the south and north where wires had to be on the east side of the road.

Ms. Christie replied that the cable would have to come over from right outside of Mar-a-Lago, go under the road, and that was the shortest distance to get back to where they wanted the television.

General Manager of Comcast Cable, Michel Champagne addressed the Town Council, stating that the Federal government was very clear in its definition of how rates would be regulated and the installation portion to be separated and broken out from the monthly service rate itself. In this situation, there was a standard service route of 150'--if the customer was within 150' Comcast could provide installation at the standard installation rate. Commercial and residential were not treated any differently--if the service drop length was over 150' the customer must pay the difference.

Ms. Christie commented that based on the Comcast franchise existing with the Town of Palm Beach the cable operator was required to provide cable service in a certain time frame to 80% of the residents within so many months, then 100%. She assured the Town Council that the cable plant runs throughout the Town and all rights of ways, so anyone within the Town could have cable service. The issue was if they were set back further from the road than the normal 150', or if there was the necessity to do underground, there were associated costs.

Art Silverman, 2150 Ibis Isle Road, Cable Committee Chairman of Citizens' Association South of Sloan's's Curve, addressed the Town Council, stating that the language dealing with exclusive service would pre-empt competition. He noted that he had been handed a new set of rate cards this morning, which had seemed to include very fair rates, however, condominium residents had reported that the rates they were now paying were at an average of 20-25% over what the old rate was. The rate card he had received this morning was fine, and things were working out, however, he objected to the six percent per year increase, which he believed was exorbitant. There would be meetings scheduled with Comcast and the Citizens' Association South of Sloan's Curve for rate discussion. Comcast had already been working with the Association and addressing concerns of residents.

Mr. Miller clarified that there was no disagreement about the obligation of Comcast concerning the Bath & Tennis Club. Under the prior franchise, the company had an absolute obligation to provide 100% service throughout the Town of Palm Beach, and all evidence was that system was there and available. What could occur was when a particular resident of the Town asked for service beyond the 150' Town staff had asked that the company comply with the prior franchise, which said that all businesses, all commercial establishments, as well as all homes have the right to be hooked up on a time and materials basis. He assumed that Town staff would talk further with Comcast and the Bath & Tennis Club to be sure that the price quote given was appropriate. He explained that he wanted to make it clear that he did not think there was a dispute between Comcast and the Town as to the obligation of Comcast; it was a question of whether the quote was in compliance with that obligation.

Mr. Doney noted that there was no representative from the Bath & Tennis Club present.

Mr. Miller thanked the Town Council for their diligent work on this issue.

4. Consideration of Palm Tran's Bus Service Routes in the Town of Palm Beach

Wayne Speight, representing Palm Tran, addressed the Town Council, giving information on various routes and ridership. A transfer facility on the island had been requested. He explained that there was a built in transfer system as a result of redesign of Route 41, which overlaps Route 42, providing shopping services for everyone at both ends of the island, plus everyone could go to West Palm Beach without having to transfer. He addressed the issue brought up by Mr Shaw of possibly running a route south toward Plaza Del Mar, and the property owner of the Plaza Del Mar had been gracious enough to give an okay for temporary use of the parking lot only when the Lantana bridge was closed for maintenance. Turning around at the park involved a sunrise/sunset issue, which could prohibit bus turn around at certain times, creating a safety issue. Mr. Speight noted that bus stop sign complaints were being addressed by removal of specific bus stops; later on if it was determined that created a problem for a resident an attempt to re-establish a bus stop nearby would be made. The condominium association on Bradley across from Publix had asked for removal of a bus stop--relocation was made but it was still not to their satisfaction. The bus had been relocated on Sunrise, with the blessings of the Palm Beach Police Department, and hopefully that would take care of the problem. Service had been increased one hour earlier coming from West Palm Beach over to the island in response to complaints. The Route 42 bus was being turned routes, as referred to by Mr. Shaw.

Mr. Shaw commented that he still felt that if a bus went from north to south and transfers went east/west there would be a lot less driving around Town. The Sunset and Sunrise streets were difficult for buses to navigate, and he suggested that the turnaround point should be behind the Post Office and Royal Palm Way was used as the main access point.

Mr. Speight reported that the Post Office area was really not an issue as that was a designated parking lot area and there was not room for one bus, let alone two buses.

Chief Terlizzese complimented Mr. Speight on the job done by Palm Tran, stating that he was impressed with the service and cooperation.

5. Consideration of Water Franchise Agreement Negotiations with the City of West Palm Beach

Town Attorney Randolph stated that the joint meeting with West Palm Beach in regard to this matter had revealed that it would be beneficial for the parties to continue to meet to discuss those issues of the franchise which were still in contention. A date had been suggested by Mayor Graham for Tuesday, February 18, 1997 at 10:00 A.M. in the Town Council conference room for further discussion. Mr. Randolph suggested that a member of the Town Council be selected to attend this and subsequent meetings, without making a specific appointment, so that staff could select whoever might be appropriate at a particular time.

XVII. NEW BUSINESS

A. Ordinances

1. Ordinance No. 3-97 - Amending Chapter 8, "Garbage and Trash," of the Town Code of Ordinances

Mr. Randolph read Ordinance 3-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 8 OF THE TOWN CODE OF ORDINANCES, GARBAGE AND TRASH, BY ADDING A NEW SECTION 8-16, CHARGE FOR COLLECTION OF TRASH, AND BY RENUMBERING THE SUBSEQUENT SECTIONS 8-16, 8-17, 8-18, 8-10 AND 8-20 TO 8-17, 8-18, 8-19, 8-20 AND 8-21 RESPECTIVELY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Public Works Director Al Dusey addressed the Town Council, stating that he and Mr. Randolph had co-authored the ordinance that would be followed by second reading next month if approved, with a resolution that would establish the rates for commercial customers.

Mr. Wyett made a motion to approve Ordinance 3-97; seconded by Mr. McLendon. On roll call, the motion carried 4/0, as Mr. Shaw was out of the room.

2. Ordinance No. 4-97 - Amending Chapter 6, "Bulkheads, Pierheads, and Groins," of the Town Code of Ordinances

Mr. Randolph read Ordinance 4-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 6, BULKHEADS, PIERHEADS AND GROINS, AT ARTICLE III, BULKHEADS AND PIERHEADS ON LAKE WORTH, AT SECTION 6-33 AND SECTION 6-34, SO AS TO PROVIDE AN EXEMPTION FROM THE PROVISIONS THEREIN RELATING TO LENGTHS OF PIERS AND LANDING DOCKS OWNED AND OPERATED BY THE TOWN OF PALM BEACH; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Public Works Director Al Dusey stated that the existing Town Marina was currently in excess of the pierhead line, and this would provide for the expansion of the Australian Dock beyond that point and legalize them otherwise.

Mr. Wyett made a motion to approve Ordinance 4-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

ARTICLE III, BULKHEADS AND PIERHEADS ON LAKE WORTH, AT SECTION 6-33 AND SECTION 6-34, SO AS TO PROVIDE AN EXEMPTION FROM THE PROVISIONS THEREIN RELATING TO LENGTHS OF PIERS AND LANDING DOCKS OWNED AND OPERATED BY THE TOWN OF PALM BEACH; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Public Works Director Al Dusey stated that the existing Town Marina was currently in excess of the pierhead line, and this would provide for the expansion of the Australian Dock beyond that point and legalize them otherwise.

Mr. Wyett made a motion to approve Ordinance 4-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Ordinance No. 5-97 - Signage Requirements for Passenger Loading Areas

Mr. Randolph read Ordinance 5-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE XI, OF THE TOWN CODE OF ORDINANCES RELATING TO SIGNS AND AWNINGS SO AS TO PROVIDE A NEW SUBSECTION (G) UNDER SECTION 5-421, ALLOWING FOR TEMPORARY SIGNS DESIGNATING PASSENGER LOADING ZONES LOCATED WITHIN THE COMMERCIAL AREAS OF THE TOWN; PROVIDING FOR REGULATIONS RELATING TO SAME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that this was in response to a request made by the Town Council regarding an ordinance addressing concerns relating to some of the signs that were appearing at the various restaurants which did not comply with the current ordinance, so as to draft provisions which would comply and not necessarily be objectionable to the Town. He explained that the Town would control these signs by actually being the issuer of the signs, so size, etc., was not included within the language, except to say that the only thing that would be on the sign would be the words "Passenger Loading." These would be the only signs that would be allowed for a restaurant to designate a passenger loading zone adjacent to the restaurant, and the sign could only be used during the time that the passenger loading zone was effective. The sign could not be placed within the Town's right-of-way, but could only be placed on a sidewalk in a manner so as not to impede pedestrian traffic, and if the ordinance or the sign was mis-used the establishment could sacrifice not only the use of the sign, but the passenger loading zone.

Police Chief Terlizzese stated that the Police Department believed the ordinance was sufficient; the Public Works Director had no problem with the signs.

Mr. Wyett recommended that the restaurants pay for the cost of the signs.

Mr. Wyett made a motion to approve the first reading of Ordinance 5-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Appointments

1. Retirement Board of Trustees - One Citizen Member Four-Year Term to Expire January 2001

Town Manager Doney reported that Mr. Wearn had served the Town very well as a Retirement Board member, and was one of two citizen appointees by the Town Council under the Town Ordinance. Mr. Crouse had recommended, and Mr. Doney concurred, that Mr. Wearn be considered for re-appointment by the Town Council for a four year term.

Mr. McLendon made a motion to approve the reappointment of Jim Wearn to the Retirement Board of Trustees for a four year term to expire January 2001; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

2. Seaview Park Commission - Three Member Three-Year Terms to Expire February 2000 and Three Alternate Member Three-Year Terms to Expire February 2000

Recreation Director Russ Bitzer announced that the ballot included six vacancies--three regular members and three alternate members.

James C. Gavigon, Morton E. Shor, and Renee Fisher were appointed to three year terms to expire February, 2000.

Marc Katzenberg, Michael Spaziani, and Charles P. Levin were appointed to serve as alternate members with terms to expire

C. Request for Proposals and Sealed Bids

1. Request for Proposal (RFP) No. 97-08 - Financing for Australian and Peruvian Docks Reconstruction; Resolution No. 14-97

(This item was heard previously in the Agenda immediately following Item XV. E.)

2. Sealed Bid No. 97-04 - Australian Avenue Dock Replacement; Resolution No. 12-97

(This item was heard previously in the Agenda in conjunction with Item C. above, immediately following Item XV. E

(The Town Council directed that Resolution No. 12-97 be considered at the February 17, 1997, Town Council meeting at 5:01 p.m after Resolution No. 14-97 has been reviewed.)

3. Sealed Bid No. 97-05 - Pump Installation at D-14 Stormwater Pumping Station; Resolution No. 13-97

Town Engineer Jim Bowser addressed the Town Council, stating that the project was phase II of the installation of pumps that were purchased by the Town previously. The cost to provide electrical components and install the pumps was $119,800, which was well within the funds budgeted for the project. Staff was recommending the award.

Mr. McLendon made a motion to approve Sealed Bid 97-05, Resolution 13-97; seconded by Mr. Wyett.

Town Clerk Pollitt read Resolution 13-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO MARINE ENGINEERING CONTRACTORS, INC. FOR THE D-14 STORMWATER PUMP STATION - PHASE II PUMP INSTALLATION.

On roll call the motion carried unanimously.

D. Other

1. Consideration of Code Enforcement Board Fine/Lien Settlement Payment of $25,000 from Garden City Co., Inc., Regarding 5, 6, and 7 Ocean Lane - Town Council Potential Appropriation

Director of Planning, Building & Zoning Robert Moore addressed the Town Council, stating that the item was on the agenda at his request, as a payment for $25,000 had been received in settlement of the Garden City Co. lien, and the Town Manager had indicated that the Town Council would designate which fund the $25,000 would be allocated to.

Mr. McDonald made a motion that the $25,000 be deposited in the Undesignated General Fund; seconded by Mr. McLendon. On roll call, the motion carried 3/2, with Mr. Shaw and Mrs. Smith casting negative votes.

2. Consideration of a Proposed Town Charter Study Commission

Mayor Ilyinsky made the following statement:

My initial few words of encouragement to revisit the Town Charter has indeed produced interest and response. The real answer to that was however I merely referred to redefining the role of the Mayor perhaps, and it went a little beyond that. I do offer my compliments, however, to Mr. Bill Guttman for the excellent work he voluntarily contributed, and he truly came up with a document which is worth reading, studying and possibly acting on some of its various parts. Mayor Earl Smith and Mayor Bill Cudahy have in the recent past appointed commissions to study our charter. Both of these commissions presented their recommendations to the Town Council and our electorate for approval. In that tradition I wish to assume responsibility for appointing a skilled, experienced, and representative commission to study this matter. Fortunately we have many valued former members of the Town Council including Mrs. Marix, an ex-Mayor, and other skilled individuals with vast experience in government structure and practice to call on for input, mostly having to do with the Town of Palm Beach, and that is what we are really interested in. In due course, Mr. Guttman and his collaborators will be invited to present their findings and suggestions before this commission. Their initial study is well founded and offers, as I have said, much to consider, and once again, my congratulations. I respectfully suggest, Madam President, a motion for approval by this Town Council may be in order at this time for this idea. If, however, you wish other people to speak--I know Mrs. Marix wants to address us, why, please use your own judgment. Thank you very much.

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Yvelyne deMarcellus Marix, 1570 North Ocean Blvd., addressed the Town Council, stating that she had the privilege of serving on the Town Council for eight years under the old charter, including being president of the Council, then serving as Mayor for 10 years under the present charter. She stated that she was completely opposed to altering the charter, as this Town was constantly referred to as unique, and the jewel of the gold coast. She explained that the Town was different in many ways, one of which was the form of government, which was ideally suited to a small, but sophisticated town. When the Town Charter was revised in 1979 the general format remained the same, although the changes were made particularly in the role of the mayor, who previously could suspend certain department personnel with the proviso that the Council looked into the problem and made a determination within 30 days. That had never been used to her knowledge, and had been dropped from the charter. Most importantly, under the new charter, the mayor had been made ombudsman for the residents, which made the mayor the representative to the Town, which was a very special relationship. If the mayor had a vote on all matters he/she would be in effect the president of the Town Council. In that case, the residents would lose, because the person who was supposed to represent them to the Council would become part of the legislative branch rather than the executive. Secondly, the president of the Council ran the meetings, and as such is not meant to engage in back and forth discussions until after the other Council members, and prior to the vote. The present system allows the mayor, who normally would not be voting, to enter into the discussion at any point that he/she was recognized by the Chair, to ask many questions and to bring in other opinions. This valuable asset of someone normally present at all committee meetings would be lost. Thirdly, the president of the Council held an extremely important position, which, in itself, carried special duties, such as working with the Town Manager on the agendas, choosing committee members, etc., and combining the two positions would make for a major burden, if done well, or an unfortunate situation if not. If the Mayor was part of the vote it would seem that the veto power would be lost, and while it was not often used it should be there. In regard to having more Council members, it must be remembered that not many people have shown interest in running for office with the small size of the Town and the low number of residents. The quality of the Council members was far more important than the number, which would cost the Town more time and money. Previously elected officials with whom she had spoken were all against the proposal for more members, and felt that most of those promoting that could have done more home work and maybe visited with those who has served under the charter, rather than changing the entire system. The feeling that the old charter was old fashioned was simply not valid, because new situations could be addressed through amendments to the charter. At the time the charter was re-written, casino gambling was a null issue, however, when the matter was being broadly discussed in Florida, Mrs. Marix, as Mayor, had asked the Council to consider a Charter Amendment, making it illegal in the Town of Palm Beach unless accepted through referendum. The matter was taken to the public through a vote and passed, and was now part of the charter, and not as merely an ordinance which could be altered by the Council. Perhaps the Council should consider a charter amendment allowing the public to recall officials, which was almost impossible at this time, but again, it could be done by a vote of the public as a Charter Amendment. A completely new form of government would be very hard to fully explain, since most people could not fully understand the present form, but they did know it worked well. The United States Constitution had many amendments to keep it up to date without being re-written. Mrs. Marix then thanked the Town Council.

Mr. Adrian Winterfield addressed the Town Council, stating that he did not feel it was appropriate to presume to discuss substantive items, however, a Charter Review Commission could well take up individual problems without changing the basic structure, which he believed would be appropriate after 18 years.

Mayor Ilyinsky commented that in the days of Mayor Smith and Mayor Cudahy, commissions were appointed to study the Town Charter, and both commissions had presented their recommendations to the Town Council for approval. He suggested that the same be done now, and he reserved the right to appoint the basic members of the commission with the permission of the Town Council.

Mrs. Smith remarked that the Mayor did not often make requests of the Town Council, that there was a precedent for the Mayor appointing the Charter Commission, and serious consideration should be given.

Mr. Wyett suggested that a Charter Commission should include people who have the time, inclination, desire and ability to serve, as well as geographically covering all segments of the Town. He recommended that all Council members have input on who should be on the commission.

Mrs. Smith noted that the Mayor had said that he would bring the recommended members of the Commission back to the Town Council for approval.

Mr. Wyett made a motion to approve the Mayor appointing a Charter Commission to be presented to the Town

Mr. Randolph read Resolution 15-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, CREATING A FUND KNOWN AS THE 'FUND FOR THE LEGAL DEFENSE OF THE TOWN OF PALM BEACH'; ESTABLISHING ITS PURPOSE; PROVIDING FOR ITS MANAGEMENT; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that he would like to change the name of the fund to the "Town of Palm Beach Legal Defense Fund".

Mr. Wyett made a motion to approve Resolution 15-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. McDonald suggested that the residents who had volunteered to contribute to the fund be contacted.

4. Consideration of Appeal of the Public Works Director's Decision Regarding a Masonry Wall and Easement at 208 Cocoanut Row by Mr. Peter S. Broberg

Public Works Director Al Dusey stated that there was a property being renovated at 208 Cocoanut Row, where a wall was being constructed for the purposes of safety. The site plan had shown the wall coming across the easement and connecting with the neighbor to the south, which would provide continuity for the property. The standards established by the Town Council for easements, prohibited the placement of structures, walls, fence, slabs, turf blocks, private utility service lines, mechanical equipment, trees, hedges, or other obstacles that would restrict access and maintenance of public utilities. The appeal actually should be to the standards established for easements and rights of ways rather than of an administrative decision. The easement was a rear easement, five feet wide, there was a three-inch gas main, an overhead telephone, and FPL and cable TV wires. Mr. Dusey noted that he understood that the Telephone Company and FPL did not object to the wall as long as they would have access across the property. There had been verbal communication that the gas company would not mind having the wall as long as they had access across the property. Mr. Dusey recommended that if the Town Council chose to provide relief to the provisions of the standards, it be done with a Removal Agreement whereby the property owner would be responsible for removal and/or replacement of the wall at their own expense, and also that they provide access to all the utilities in the case of emergency.

Mr. McLendon suggested that the wall foundation could be interrupted with a short beam across the 5' easement, which would make it easily accessible.

Mr. Dusey replied that had been done in other cases, and the advantage was that the wall would not have to be taken down for replacing wiring, etc.

Attorney Peter Broberg, on behalf of Emily Kilvert, the owner of the property at 208 Cocoanut Row, addressed the Town Council, stating that the owners were willing to allow any access to the easement at any time, and were willing to enter into a Removal Agreement to remove the wall if necessary at any time for access. They would also agree to interrupt the wall foundation with a bridge over the easement in order to provide access for underground utilities. Letters had been received from FPL and Comcast, which were submitted for the record.

Mr. McDonald asked Mr. Moore what had been done in such instances in the past?

Mr. Moore replied that normally fences were considered easily removable, and the Public Works Department could handle a standard agreement, approved by the Director of Public Works, permitting a fence with permission of all utilities. It was usually a subjective decision on a case by case basis, looking at the number of utilities, and the area served by the easement.

Mr. Dusey added that fences were not permitted in the easements <u>at all</u>. He noted that each situation could be looked at on an individual basis, and the mitigating factor in this case was that the utilities involved did not appear to have a problem. He saw no harm in allowing the fence connection to occur with the Removal Agreement and all the conditions stipulated.

Mr. Wyett made a motion to approve the request to allow the wall as the house was very close to the street, it was very near the school district and a heavily traveled area, the wall would provide security for the home owners, and there was no detriment to the Town; seconded by Mr. McLendon.

Mr. Shaw added that a structural beam and Removal Agreement be included as a condition. Mr. Wyett agreed with that and added it to his motion.

Mr. McDonald asked if an Indemnification Agreement was relevant in this situation?

Mr. Dusey replied that there was a standard form to be used, and if it was required it would be part of that agreement.

Emily Kilvert, owner of the property, stated that Comcast and FPL had both written letters agreeing to the fence. She did not have a letter from the telephone company as of yet, who had advised her that all she had to do was get the form from the Town and submit it to them for signature.

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On roll call, the motion carried unanimously.

5. Discussion of Attorney/Client Session to Discuss the West Palm Beach Release Agreement

Town Attorney Randolph stated that he had received a proposed compromise settlement regarding the case of Town of Palm Beach vs. City of West Palm Beach, Case No. 96-0873 GM from the attorneys for West Palm Beach. As the attorney for the town, Mr. Randolph advised that he desired advice concerning the proposed settlement. Therefore, it was his recommendation that an attorney/client session be scheduled, which would be a closed door session, when discussion of this matter could take place. There were specific provisions that would need to be applied in setting such a meeting, according to State Statute. There was a scheduled 5:01 P.M. meeting on February 17, 1997, and he proposed that same date for the attorney/client session, although that date was beyond the deadline given by the City of West Palm Beach.

Assistant City Attorney Pam McNierney addressed the Town Council, stating that she had the authority to extend the date, and agreed to extend it until Wednesday, February 19, 1997.

It was agreed that the attorney/client session would be held on February 17, 1997 at 3:00 P.M.

Mr. Randolph then discussed the criteria: reasonable public notice of the time and date of the attorney/client session must be given, as well as the names of persons who would be attending the session. Those people would be: Mrs. Smith, Mr. Shaw, Mr. McDonald, Mr. McLendon, Mr. Wyett, Mr. Doney, Attorney Randolph, Attorney Hawkins, and a court reporter. Today the Town Council was giving reasonable public notice of the time and date of the session, and the names of persons attending. The Statute allowed only the members of the political body to meet, along with the Executive Officer (Mr. Doney), and the entity attorney. The subject matter of the meeting would be confined to settlement negotiations, and the entire session would be recorded by the court reporter, with the times of commencement and determination of the session, all discussions and proceedings, the names of all persons present at anytime, and the names of all persons speaking being recorded. No portion of the sessions should be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting. The session would commence at an open meeting, so the meeting would begin as an open meeting of the Town Council. The person chairing the meeting would then announce the commencement and estimated length of the attorney/client session and the names of the persons attending. At the conclusion of the session the public meeting would be re-opened and the person chairing the meeting would announce the termination of the session. The transcript would be made part of the public record upon conclusion of the litigation.

Mr. Wyett made a motion to approve the attorney/client session to be held at 3:00 P.M., Monday, February 17, 1997; seconded by Mr. McLendon.

Mr. Doney asked if other staff members could be present.

Mr. Randolph replied negatively; the only people that could meet were those that had been announced and listed. According to Statute, only the chief administrative or executive officer of the governmental entity could attending the meeting.

On the roll call, the motion carried unanimously.

8. Discussion of Parking on Worth Avenue and at the Town Docks.

Mr. McDonald stated that each Council person had received a letter from the Worth Avenue Association requesting that the Town look at all of the parking on Worth Avenue and South Lake Way in order to increase the amount of parking for Worth Avenue customers and employees. He made a motion to place this item on the Agenda for the March Town Council Meeting, to be included with the discussion of dock parking; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

9. Consideration of Adding a 311 non-emergency Number to be used by the Police and Fire Departments

Mr. McDonald suggested that the possibility of implementing a 311 phone line for non-emergency matters be placed on the Town Council agenda for March.

Police Chief Terlizzese commented that the 311 system was used in cities where communication centers were overwhelmed with incoming calls, which was hardly the case in Palm Beach, as there were 5,200 calls to 911 per year which staff and equipment could handle nicely. He considered that the non-emergency phone number was well known, as there were 114,000 incoming calls on the regular eleven police lines. He advised that the 311 number would be very confusing, as well as require space for additional electronic equipment in the communications area.

Fire-Rescue Chief Elmore commented that there was some experimentation taking place across the country with non-emergency lines, however, Palm Beach was a fairly small community that did not have the problems associated with larger communities that had too many calls coming in. In many of the larger communities the fire, EMS and police were all separate numbers, with a fourth non-emergency number. He explained that he had recently been in a communications center in the New York area with 6-8 fire dispatchers and 17-20 police dispatchers, with 3-4 set up for the non-emergency number who received both emergency and non-emergency lines. Palm Beach was not in the same situation, and if a 311 number was established along with the 911 number the same person would be answering the phone, since there were only 2-3 dispatchers working. He expressed concern with a change of numbers since there were many out of town guests who would not know what number to call.

It was decided that the issue would not be on the March agenda.

XVIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. McLendon asked for a report on the status of Mr. Prudden's offer to donate land at the north end of the island to the Town of Palm Beach.

Mr. Randolph explained that there would be liability factors to look at in the acceptance of any land offered.

Mr. Doney replied that he requested comments concerning several issues relating to the proposed property donation, including the Town's liability, from staff by February 19, 1997. Mr. Doney planned to present all comments at the March 11, 1997, Town Council meeting.

XIX. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of January 22, 1997 - Minutes Available in Town Manager's Office

The major matters were:

Deferrals and Continuations - Major Projects:

B81-96 Application by Mr. and Mrs. Sullivan, 246 Monterey Road, for 275 sq. ft. addition to increase the size of kitchen and removal of some second story windows - approved.

B85-96 Application by Frederick J. Keitel III, 230 Royal palm Way, for renovation of building and style change - deferred (Landscaping portion - approved)

B88-96 Application by Felice Forman, 150 Canterbury Lane, for demolition of all structures on the property - deferred.

New Business - Major Projects:

B1-97 Application by Ronald Schram, 1420 North Ocean Blvd., for construction of a new beach house - deferred.

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B1-97 Application by Ronald Schram, 1420 North Ocean Blvd., for construction of a new beach house - deferred.

B2-97 Application by Brazilian Avenue Vilas of Palm Beach, 230 Brazilian Avenue, for new two-story villa - approved.

B3-97 Application by Ray and Sharon Flow, 1350 North Ocean Blvd., for new cabana and landscaping - deferred.

B4-97 Application by Mr. and Mrs. Norman Bahary, 160 Kings Road, for change in style from contemporary to Spanish and the addition of a two-car garage - deferred.

B5-97 Application by Mr. and Mrs. Burkhead, 680 Island Drive, for removal and replacement of existing two-story wing; removal and replacement of pool and deck, and facade changes - deferred.

B6-97 Application by R.H. Trust, 1495 North Ocean Blvd., to remove the tennis court and construct a new guest house/tandem garage - approved.

B7-97 Application by Mr. and Mrs. Coleman, 662 Island Drive, for new one-story residence, Bermuda style with stucco exterior - approved.

B8-97 Application by Addison Development, 229 Via Las Brisas, for new one-story residence with a flat concrete tile roof - deferred.

Mr. Shaw made a motion to approve the major matters heard by the Architectural Commission at its January 22, 1997 meeting; seconded by Mr. Wyett. On roll call, the motion carried 4/0, as Mr. McLendon was out of the room.

B. Variances, Special Exceptions, and Site Plan Reviews

At this time all those who would be testifying in the following proceedings were sworn in by Town Clerk Pollitt.

Old Business

1. Special Exception No. 43-96 - Sandsong Investments, Inc., 206 North Ocean Boulevard; located in the R-B Zoning District; to allow construction of a beach house. *(Deferred from December 10, 1996, and January 14, 1997)* - **Deferred to April 8, 1997, per letter dated February 4, 1997, from Mr. Robert E. Deziel**

2. Special Exception No. 2-97 with Variances and Site Plan Review - Alex Art et Decor, Inc., 336 South County Road; located in the C-TS Zoning District; to allow a retail establishment to occupy 5,695 sq.ft. in lieu of 2,000 maximum permitted. A variance is requested to allow the expansion of a non-conforming building by enclosing a covered planter area and converting it into a display area. A six (6) parking space variance is also required to convert office space to retail space and to construct the display area. *(Deferred from January 14, 1997)*

Mrs. Smith asked if parking would be available for another business?

Mr. Moore responded that there would be no parking available for a subsequent business, however, there was a business upstairs which needed to have three parking spaces allocated for its use.

Mr. Broberg stated that if the parking for the business upstairs had not been computed into the figures, the request would be for nine parking spaces.

Mr. Shaw stated that he was pleased with the presentation, however, he expressed concern about building out from the space, seeing no reason to close out the front section by adding another 215 sq.ft.

Mrs. Smith expressed concern regarding the storefront.

Architect Steve Trezise explained that currently the front of the building was a colonnade of free standing columns supporting an overhanging roof area. There was an existing window in the front wall of the building, and the request was to fill in the area between the arches and create a display area, while removing some of the front wall to allow visual penetration to the remainder of the store, which he determined was essential to the success of the business.

Owner of the property, Lilly Rousseau noted that the partial roof and planter had been added on.

Mrs. Smith stated that she had no problem with the variance for the expansion of the space, as she believed it would be more aesthetically pleasing.

Tenant John Mandeville stated that there was an overhang in place as an automatic awning, and to bring the windows to the front would agree with every other storefront along that sidewalk.

Mr. McDonald stated that he liked the idea of filling the area, which improved the appearance, as well as having the space rented, making a motion to approve Special Exception 2-97 with Variances and Site Plan Review with staff conditions as outlined; seconded by Mr. Wyett.

Attorney Greg Kino addressed the Town Council regarding the fire sprinkler request, disagreeing as to whether Town Code requried them since the building was going from office to retail use. He submitted a letter from Ms. Rousseau's CPA, reflecting the out of pocket expenses incurred over the past three years of over $340,000, as well as a loss of rental income of approximately $430,000. He questioned the need for the fire sprinklers, and asked if some relief could be given in light of the fact that the space had been vacant for many years and a tenant had finally been found.

Mr. Moore replied that the life safety code was not a Buidling Code requirement, but a requirement of the Fire Marshal, who had the ability to retroactively visit any building to determine requirements for fire sprinkling. He respectfully disagreed with the position of Mr. Kino. He strongly recommended that the fire sprinkler requirement be included as part of approval.

Mr. Kino stated that the Town Code provided that if there was a change of occupancy the building, electric, gas, mechanical, and plumbing systems should be upgraded--which did not include a fire protection system, which was in a separate section of the code. He cited the fire protection portion of the code where the provision was that if the building was a new commercial or renovation of over 50% then fire spriniklers would be required.

On roll call the motion of Mr. McDonald, to approve Special Exception 2-97 with Variances and Site Plan Review with the inclusion of conditions recommended by staff, to include Town serving requirement being addresed; building must be fire sprinklered according to Fire Marshal directives, carried unanimously.

3. Amended Special Exception No. 3-97 - Frank Coniglio, 262 Sunset Avenue; located in the C-TS Zoning District; to allow the required five (5) parking spaces, (required in conjunction with a new commercial use on a first floor of a residence) to be located off-site within 500' of the commercial use. *(Deferred from January 14, 1997)*

Attorney Mariano Garcia, on behalf of Frank Coniglio, addressed the Town Council, stating that the application had been amended to a Special Exception Application to include the provision of five parking spaces, which would be located directly across the street from the home. A letter of intent from List Management was provided in connection with the five parking spaces.

Director of Planning, Building & Zoning, Robert Moore, recommended that any approval granted be tied to the five parking spaces before Building Permits would be issues, and before the Special Exception was accepted as enforced.

Mr. Wyett pointed out that another condition was that there would be one residential occupant in the house, as well as the commercial space.

Mr. Wyett made a motion to approve Special Exception 3-97, on the basis that the five parking spaces would be secured before a Building Permit would be issued, that a Town-serving statement would be provided, and that the space be occupied by one party, excluding the garage apartment; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

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4. Reconsideration of Site Plan Review No. 1-97 with Variance - Frederick Keitel, 230 & 240 Royal Palm Way; located in the C-OPI Zoning District; request to consider condition placed on the approval granted on January 14, 1997, which requires Unity of Title acceptable to the Town which unifies Lots 39 & 40 as one site for development purposes.

Town Clerk Pollitt swore in Fred Cohen, who represented Mr. Keitel.

Mr. Cohen stated that the format of the Declaration of Unity had been requested to be in the form of a Declaration of Restrictive Covenants, which would cover the property entirely, and the common areas be incorporated into these Restrictive Covenants. This had been submitted it to Mr. Randolph for submission to Town representatives. Mr. Randolph had approved, in concept, except for the legal descriptions, which would be provided shortly.

Mr. Randolph explained that he had been advised after the last meeting that the Unity of Title was not appropriate for the concerns of the applicant. From the standpoint of the Town, it was necessary to see the two buildings tied in together so that the parking would be tied in together. The Declaration of Covenants and Restrictions for the Seminole Buildings would indeed tie all of the common areas for both buildings together, so that they could not be separated. An amended agreement had been provided today, as review of the previous agreement had indicated that additional information was needed. Mr. Randolph noted that he had asked that another change be made, which the applicant had indicated would be made. He specified that he would approve the document subject to the presentation of a final agreement which was satisfactory, if the Town Council desired to grant the substitute document.

Mr. McDonald asked Mr. Randolph to describe the difference between the Unity of Title and the Declaration of Restrictions.

Mr. Randolph explained that the Unity of Title would actually unify the title of the properties into one title, so that the properties could never be separated. The Declaration of Covenants and Restrictions would not unify the title to the properties--in fact, there was a statement within it that said that these were separately platted lots--however, it would tie in the use of the common areas, common to each building, together with each building. He did not know the reason why one was preferred by the applicant over the other.

Mr. McLendon made a motion to approve Site Plan Review and Variance 1-97, subject to receipt of the approved final agreement; seconded by Mr. Wyett.

Mr. Cohen added that there would be no change, no termination, no modification in the Declaration of Covenants and Restrictions without the approval of the Town of Palm Beach, so the Town had total control over the property. He explained that the property had historically been platted in two separate legal descriptions and there was a mortgage issue on one that affected improvements made.

On roll call, the motion carried unanimously.

In response to the question of Mrs. Smith concerning the date the plans had been submitted, Zoning Administrator Paul Castro explained that the plans had never been received, but a very preliminary site plan had been received. The applicant had been deferred to this Council meeting from last month. The Building Department had requested plans by February 3, 1997, which had never been received.

Mr. Moore explained the lot coverage calculations: The Building Department calculated 17% of 25% because the lot was 17% deficient, giving a lot coverage of 20.75%. Applied to the lot of 16,604 sq.ft., it totaled 34345.33 x 2, which was 6,890 sq.ft. as the maximum amount of square footage that could be put on the property.

Architect Craig Hollinquest explained that the square footage being requested was 6,378 sq. ft.

Mr. Deziel objected, stating that when homes were approved there was a certain objective criteria applied to the percentages to be sure that the homes would fit in the neighborhoods. The 17% would give the new maximum figure.

Mr. Broberg stated that the lot was undersized, must be kept within the building requirements for an R-A lot, and that had been done.

Mr. Castro clarified that with a 17% deficient lot, a total of 3,445 sq.ft. of lot coverage could be determined; however, the applicant had a proposed 3,900 sq.ft. of lot coverage, which was 23.5% lot coverage.

Mr. Wyett made a motion to defer the request on the basis that the house was much too large for the lot, and there had not been an opportunity to review plans; seconded by Mr. McLendon.

Mr. Moore explained that he did not believe it was totally fair of the applicant to bring the figures and new design to the Town at the eleventh hour. The design of the house was actually an Architectural Commission matter.

Mr. Hollinquest stated that the Building Department had only received a site plan, and he apologized for its late arrival.

Mrs. Smith suggested that it should be a policy in the Building Department that if the drawings are not received in time then the application should not be considered complete and should not be heard by the Town Council, as time was wasted because no one had seen the plans.

Mr. Moore accepted responsibility for not recommending at the beginning of the meeting that the matter be deferred until next month. He recommended that Mr. Broberg leave today with the knowledge that if the deficit percentage was applied there should be a reduction of lot coverage of 555 sq. ft.

On roll call, the motion to defer carried unanimously.

C. Other

1. Reconsideration of Agreement to Renovate the Landmarked "Octagon" Building at 765 Hi-Mount Road

Attorney Peter Broberg introduced George Kantor, the owner of the house at 765 Hi-Mount Road, called the "Octagon" building. He noted that a piece regarding this building had been published in the Palm Beach Daily News containing many inaccuracies.

Dr. George Kantor addressed the Town Council, stating that there was no demolition by neglect, and he had decided to keep the "Octagon." He stated that the trees on the property had been preserved according to agreement. He had never made any deals, made any requests or asked for any variance regarding the "Octagon." He had lived within the decrees that had been made by the Sweitzer family, from whom he had purchased the property--that specifically was that there was a landmarked building which was more than the "Octagon." The "Octagon" was merely a room in the home; the four wings as well as the entranceway were then de-designated, so essentially 60-70% of the home was de-designated, leaving only the room. He explained that this was not demolition by neglect because that room, after removal of the four wings as well as the entranceway, was in disrepair. He had spent $16,000 moving it, $19,000 shoring it up and building the foundation, and $3,000 exterminating it. It had been his intention at the start of the project to preserve the room. The only variance was for a 2' setback request.

Dr. Kantor stated that he found it very ironic and very disingenuous that there were two people on the Landmarks Commission who were interviewed for architectural positions for the design of his house who became very vocal and vindictive about the "Octagon." One of those individuals was also on the Architectural Commission, and he believed that in a Town such as Palm Beach everyone was a neighbor. He explained that the "Octagon" would be repaired, and requested that members of the Architectural Commission and Landmarks Commission should understand that no one took the time to come up and take a look at the property, although they had said that it was demolition by neglect.

Mrs. Smith explained that this matter had come to the Town Council for a very specific reason--at the June 11, 1996 meeting Mr. Wyett had recommended that an extension be given until December 1, 1996. When the extension was up the Building Department put it on the Town Council agenda. When Mr. Broberg was asked how it had come to the Town Council at the Landmarks meeting of January 15, 1997 he had said, "I don't know. I believe the time was up sometime in December, and so they brought up the issue. As to what happened, I don't know how it got tickled and put on their agenda, but I think maybe it was Mrs. Smith who might have brought it up. Nobody was noticed about it. She just brought it up and said I think I want this to go to Landmarks and let them review the situation."

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Mrs. Smith stated that she was quite surprised by the statement, and explained that it went to the Council because the time extension was up and the Building Department put it on the agenda; this had not been some sleight of hand that came out of the blue. She commented that it would have been more appropriate to say that it had come to the Council as part of the process because the extension granted in June had expired.

Mr. Broberg stated that he did not know the reason when he was asked, and only had second hand knowledge.

Mr. Moore stated that there was an agreement in place with the Town upon the Certificate of Occupancy executed by Dr. Kantor and by Mr. Doney, which addressed the issue of the repair of this house; it was to be repaired within one year of the date of the agreement, which was August 3, 1995, and an extension had been applied for. He stated that he had not talked to anyone from the newspaper regarding this matter, and hopefully the newspaper would be advised that indeed Dr. Kantor had a signed agreement with the Town, and the Town let nothing get through the cracks, as was indicated in the editorial of the Palm Beach Daily News. He applauded Dr. Kantor's commitment.

Dr. Kantor commented that towards the end of the deadline there had been a flurry of activity and Mr. Broberg and he had exhausted a few leads and thought that were very close to having someone to take the "Octagon," and thus the reason for the December delay.

Mr. Wyett thanked Dr. Kantor for coming up with a solution.

Mr. Shaw noted that he had spoken with Dr. Kantor earlier and had looked at the house, however he had not been able to make it. There had been an offer by Dr. Kantor to assist in the relocation of the property, and Mr. Shaw suggested that the property could be donated to the Town for relocation on the Par III property, where more space was needed.

Dr. Kantor responded that he had made some offers, and his phone had never rang. He explained that there were some qualities to the "Octagon," and it had never been offensive to him. He stated that he believed there was a flaw in the process when a building was landmarked because an octogenarian requested it, and because she was not in control of her faculties her family then fights the landmarking process and the Landmarks Commission, and then they make a compromise essentially de-landmarking 70% of a house, leaving only a room. He commented on his treatment by the Landmarks Commission, noting that preservation should not be done in an antagonistic or vindictive way.

Mr. McDonald asked Dr. Kantor if he would be interested in donating and moving the building to the Town?

Dr. Kantor replied negatively; he was in the process of renovation.

XX. ANY OTHER MATTERS

There were none.

XXI. **ADJOURNMENT**

The meeting was adjourned at 7:45 p.m.

Mary Pollitt
Town Clerk