MINUTES OF THE TOWN COUNCIL MEETING OF FEBRUARY 9, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - The monthly meeting of the Town Council was called to order at 9:30 AM by President Weinberg in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, President Weinberg, President Pro Tem Wiener, Councilwomen Douthit, Smith and Royal. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Chief Terlizzese, Chief Elmore, Mr. Elwell, Mr. Crouse, Mrs. Peters. Mr. Jakubiak, Mr. Moore, Mrs. Crozier, Mr. Zimmerman and Mr. Frank.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by Father Lechieria. Pledge of Allegiance was led by President Pro Tem Wiener.

Comments of the Mayor

III. COMMENTS OF THE MAYOR - Mayor Ilyinsky commented that one of the most successful golf tournaments has been completed at the Par 3 and gave thanks to the Golf Commission and the Par 3 staff. He reported approximately $20,000 was raised and will be distributed equally among St. Mary's Hospital, Good Samaritan Hospital and John F. Kennedy Hospital. He extended appreciation to each who contributed to this worthwhile cause on behalf of himself and the members of the Council.

Approval of Agenda

IV. APPROVAL OF AGENDA - Mr. Doney requested that the Beach Advisory Committee Report be heard at 1:30 PM in order that the Chairman and committee members may be present. Mrs. Peters requested the charitable solicitation application No. 367-94 Quest Theatre be considered. Mrs. Royal asked that Appointments of the various commissioners all be handled at the same time and that VIII. B. Appointments be moved to XXI.D under New Business. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion. Mr. Moore advised Item XVIII.C, the applicant has requested a deferral to the March 8, 1994 Town Council Meeting; and Item XXII.B.5 - Special Exception No. 6-94 with Variances - Palm V. Associates wishes to be deferred to the March 8, 1994 Town Council Meeting. -

Mrs. Wiener moved the agenda be approved as amended. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Approval of Minutes

V. APPROVAL OF MINUTES OF JANUARY 4, 18, 24, AND FEBRUARY 7, 1994 - Motion was made to approve the minutes as printed by Mrs. Wiener, seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Res. 11-94

VI. RESOLUTION NO. 11-94 - Certifying Election of February 8, 1994 - Attorney Randolph read the Resolution No. 11-94:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON FEBRUARY 8, 1994 BETWEEN THE HOURS OF 7:00 AM AND 7:00 PM ON SAID DATE FOR THE PURPOSE OF ELECTING THREE COUNCIL MEMBERS OF THE TOWN OF PALM BEACH FOR A TWO YEAR TERM.

Mrs. Douthit moved for approval of Res. No. 11-94. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Public Hearings

VII. PUBLIC HEARINGS

Dune Pres. Permit App. 1-94

A. Dune Preservation Permit Application No. 1-94 - Consideration of the Class I Permit Application of Palm Beach Hampton, 3100 South Ocean Boulevard, to perform general clean-up, exotic eradication, restoration plantings, seagrape pruning, and ongoing maintenance and management program - Deferred from January meeting. - Mr. Moore advised this permit application is to perform general clean-up and other things on the dune at 3100 South Ocean Blvd. Rob Cotleur, Landscape Architect, addressed the Council indicating in 1992, an initial clean up and pruning and eradication of exotics and the Code at that time allowed them to cut to ten feet and now the owner would like to cut to a hedge height so the first floor condominium owners may view the ocean. He gave a description of what they intended to do which would be prune back the taller seagrapes to 3.5 feet and eradicate further exotic plants and replant with native plants. He advised they will monitor it for several years as the Town requires for the health of the plants, for future root development and for the loss of sand, to ensure this will not be detrimental to the dune system. Mr. Cotleur advised the plan has been reviewed by George Gann-Matzen and he agrees with the conditions of increasing the number of species and other items he had in his report. He had a concern that he recommends they go ahead and prune to a height of about 3.5', noting some are eleven to twelve feet. He advised the County DERM wants them to systematically reduce the canopies by 33% each time, and that is a more involved process. He stated they want a maximum of only two cuts a year with only one third being addressed at this time. He noted the owner would like to prune it all at one time and would like the Council to approve that procedure.

Mr. Moore advised the application has been reviewed by Mr. Gann-Matzen and he is in concurrence with the project and recommends approval with conditions as set out in the January 27, 1994 letter to Mr. Brian House. He stated there is a disagreement between the Town and the County on the method of addressing the reduction of the seagrapes.

Mr. George Gann-Matzen of EcoHorizons, Inc. addressed the Council indicating that in the past cutting has been directly down to 3.5' which allows them to assess the amount of space which would be available for inter-planting of native species. He advised the County has approved other projects with the trimming at 3.5'. He requested the Council to provide the applicant the option of either following the County's permit application, which has been approved; or if they wish an adjustment or modification to the permit, that the change be pre-approved by the County. He advised it is his professional opinion that cutting down to 3.5' would be preferable as the seagrapes can be cut, they can do the inter-planting, and they can move with the project all at once. He advised the phase cutting has not been attempted and he viewed what will happen is they cut in phases, they will create some spaces and the seagrapes will again grow back and they won't have to be addressing this item again and from that perspective, he felt it was not as good as a position. He felt if that is what the County wants, that is another alternative and it can be tried and see how it works, as he is not directly opposed to it. Dune Pres. Permit App. 1-94 (cont'd)

Mrs. Smith saw no reason to not go along with what County DERM recommends and they should do it in phases, as it is more of a guarantee for the planting and she sees no reason for the Town to supersede DERM's requirements. Mrs. Douthit believed it would be easier to get it to the height they want it which will be easier than trimming it twice, and it is a question as to what should be done and what is healthy. Mr. Weinberg asked if it was a question of economics or health. Mrs. Smith did not think it was a question of economics.

Mrs. Royal asked if there was a danger of killing off the seagrapes if they reduced it to 3.5' all at once? Mr. Gann-Matzen advised he was not aware of any trees that had died as a result of pruning.

Mrs. Wiener noted the Town is not the only place that the cutting has been done, as recommended and wondered why would DERM suggest another way of doing this type of cutting. Mr. Gann-Matzen responded DERM is not entirely happy with granting permits of this type and there are members of that staff who would prefer to not have any trimming whatsoever, and they have gone through the process of trying to evaluate whether this type of trimming procedure was better than any other method and he doesn't know what they are after or what their rationale is, and perhaps what they are doing is permitting several types of trimming in order that they may evaluate same, but he cannot speak for the County. Mrs. Wiener asked if there was any proven scientific methods.

Mrs. Smith did not believe anyone knew what DERM was thinking in recommending this procedure and asked Mr. Gann-Matzen why he has not spoken to DERM as this has been an ongoing process. Mr. Gann-Matzen responded he has not been authorized to do so by the Town.

Mr. Doney acknowledged there are often different opinions from DERM and DEP, the CORPS and others and it is two different professional opinions and he doesn't think it should be the responsibility of the Town to go back to DERM to make a modification on the permit, as a considerable amount of money can be spent to do that.

Mr. Moore advised the Town takes the final position as far as DERM is concerned as they have their recommendations and permit requirements and the Town has the last word and does not negotiate with DERM because they don't recognize their authority in this area. Motion was made by Mrs. Wiener that the procedure that we did in the past and according to our expert, has caused no loss of seagrapes be followed, and she moved this cut back to 3.5 be used as she has heard nothing that stated that would be a detriment. Seconded by Mrs. Smith, asking if previous projects have been done in phases or in one fell swoop? Mr. Gann-Matzen responded as far as he can recall, they have all been cut back in one step.

Motion carried on roll call 4-1 with Mrs. Douthit voting against the motion.

B. Redesignation of Historic/Specimen Trees and Related Matters - Consideration of Resolution No. 4-94 - Continuation From January Meeting. Res. 4-94

Mr. Randolph read the Resolution No. 4-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, CONFIRMING THE DESIGNATION OF CERTAIN HISTORIC OR SPECIMEN TREES LOCATED ON PROPERTIES WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR THE RECORDING OF SAID DESIGNATIONS AGAINST THE LAND UPON WHICH THE TREE OR TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY.

Mr. Dusey advised he has been in touch with all of the property owners, either by phone or written notice, and they may now proceed. Mrs. Smith moved Res. No. 4-94 be adopted, seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

VIII. OLD BUSINESS

A. Ordinance - Second Reading

1. Ordinance No. 2-94 - Amendment to Ordinance Regarding Grievance Resolution Board - Mr. Randolph read Ord. No. 2-94 by title: Ord. 2-94

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER @, ARTICLE XII, OF THE TOWN CODE OF ORDINANCES RELATING TO RESOLUTION OF EMPLOYEE GRIEVANCES, SO AS TO DELETE THEREFROM THE SUNSET PROVISION IN SECTION 2-217; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Wiener moved for adoption of Ordinance No. 2-94, seconded by Mrs. Smith. On roll call, the motion carried unanimously.

C. Other

2. Consideration of Request by American Coastal Engineering, Inc. to Utilize PEP Reef Forms, Which Were Used on Mid-Town PEP Reef Project, for Project in Indian River County - Mr. Dusey advised American Coastal requests the Town's permission to use the forms which were used on the Mid-Town PEP Reef for a project in Indian River County. He stated the agreement states: "The contractor agrees that the forms constructed pursuant to this contract will not be used by contractor on any other project other than an authorized extension of this contract or another project with the Town, without the Town's prior written approval." He recalled a lot of time was spent during the negotiations on this subject of the future use of the forms, if they were to survive the initial castings and Mr. Rauch of American Coastal indicated to the Council at that time he didn't believe the forms would be worth anything, after the PEP project. Mr. Dusey reported that that was not the case and PEP Reef Forms

PEP Reef Forms (cont'd)

in fact, the forms are in pretty good shape. Mr. Dusey advised Mr. Rauch has made the request to use the forms and is willing to pay the town a salvage value, however, Mr. Dusey reported that he did not think the amount proposed was appropriate as if one took what the Town initially paid for them, which was $138,880 and subtract from that any costs to modify or rehabilitate the forms for their future use and divide whatever you get by doing that by two. He recommended that after this occurs, the Town may not have an interest in them, so they are recommending that they relinquish interest in the forms for future use.

Mrs. Wiener recalled the conversation with Mr. Rauch since she asked the question as to what the value of the forms would be after they had been used and was told, they probably would not be worth anything. She thought there were two options:

1. Keep them in the event the Town may want to further the project; or

2. Since they know what the cost was to the Town, a minimum of 50% be charged as if they had to rebuild them, they would have the initial set-up charge.

Mrs. Wiener thought the forms were the Town's property and the decision has to be made as to whether or not it would be wise to keep them for future use, or if they are unable to use them, then a decision has to be made as to what is the proper value and how it should be calculated.

Mrs. Douthit believed the forms could be used again if the Town wishes to extend the PEP reef, and they would have to be redesigned somewhat, but she didn't believe the Town actually owned the forms. She knows they were paid for but it was not a part of the contract.

Mr. Randolph understood that was the position taken by American Coastal and they relate it only to a sequence within the contract rather than to a cost, but in reviewing the minutes when this was discussed, Attorney Lickle indicated the total cost of the forms was $138,000 which lends credence to the fact that Mr. Lickle was indicating this was a cost which could be applied to the forms themselves.

Mr. Dusey commented it was his thinking that the Town does not own the forms, but by contract, the Town has an interest in them and it was established when the agreement was negotiated and that was for future use in the Town's projects; or they would have to get permission from the Town to use them on another project. He believed the value in the forms is not in the material in them, but in the fact that new units can be cast with them.

Mrs. Royal asked if the Town could cast new forms from the old? Mr. Randolph did not believe that would be possible as the control and ownership is in the care of American Coastal Engineering. He stated the Town has the right to consent to their subsequent use. Mr. Dusey advised the Town Council must give permission to American Coastal for the use that they are seeking and that is required by the contract.

Mrs. Smith noted that in the contract it states that if any re-segments are constructed which due to government imposed changes, render them unusable, the Town and the contractor agree to share the cost of the fabrication and construction equally. She thought that is saying the Town is equal owners or lessors of these forms and if that is the case, then American Coastal should pay us 50%. She stated American Coastal offered to pay $5000 which she thought was an insult to the Town. She recalled Mrs. Wiener asked them to come up with 50% and wondered if they would compromise and come up with 25%, or $38,000? Mr. Dusey responded that would have to be a Council decision.

Mrs. Wiener did not agree that they should accept 25%. She recalled American Coastal's statements when this was being discussed that once these forms were used, they would not be able to be used except for throw-a-way, but it was discussed at great length and she remembers asking the question, "but what if they are of any value, then what?" and that is when they came up with the language that they would need the Town's authorization to use them.

Mrs. Smith felt there must be some value as they offered $5000. Mr. Weinberg commented which offer is now being negated. Mr. Randolph advised in looking at the statements made, it isn't the desire of the Town Council to own them but to recover the costs for the fabricating of them. Mrs. Smith agreed they wish to recover some of the costs.

John Dotterer, appearing on behalf of American Coastal, addressed the Council, agreeing with the statements made by Mr. Dusey and Mr. Randolph that the forms are owned by American Coastal Engineering and the contractual provision does specify that any of the work put in the place at the project site, would be titled to the Town and they do acknowledge that, but the forms themselves were not part of the property transferred to the Town, and the ownership does remain with American Coastal Engineering.

Mr. Dotterer commented that the issue is whether the Town should consent to the request of American Coastal for the use of the forms. He stated the request was made to the Town last week and the contractor agrees to put the forms back in the same configuration as they are in now, as to use them for the Vero Beach project, the two end sections would have to be unbolted and would be modified for the conditions in Vero Beach, which is a hard bottom ocean rather than the sand bottom as in Palm Beach. He reported it is the position of his client that when there is a provision like this which provides for consent, that consent can only reasonably be withheld. He noted there is no provision in the Agreement which requires compensation to the Town in order to obtain that consent and it is their position that no payment would be required under the terms of the Agreement. He acknowledged that when the next project came along, they would have to again request permission and to dispense with going through that again, an offer was made to pay the Town which essentially would be a release from the contractual provision, which requires consent.

Mr. Dotterer indicated he does not know what the cost of modifying the forms would be, but Mr. Dusey's numbers in his memorandum seem to be reasonable. He believed what has not been taken into account is the devaluation which occurs with the use of having cost the whole project, which has already been done, and he wished to agree to a figure with the staff which would be suitable to the staff for recommendation to the Town Council and also would be suitable to his client, and he recommended to Mr. Randolph an offer of $15,000 which would be payable at the time the corresponding funds would be paid by Indian River County. He stated the project at Vero Beach is almost ready to be started and if they are not going to be able to make use of the forms used in Palm Beach, they will have to make other arrangements, and he requested some level of agreement be given to the Town Administration, so they can make their plans and asked that this be done at this time, so the opportunity of benefit will not be missed by both parties. PEP Reef (cont'd)

Mr. Dotterer advised his client is very thankful to the Town of Palm Beach for being the first municipality to undertake such a project and is interested in preserving its relationship with the Town and wishes to be cooperative.

Mrs. Royal asked what the cost would be to fabricate the new forms if the Town doesn't give them the right to use the older forms? Mr. Dotterer stated they have filed for the appropriate permits, which application is pending and there is constantly correspondence going back and forth for new information and modifications and the permit has not been approved and until that is on hand, they are not able to get a final estimate. He stated if they used the same number of forms, which was ten, it would probably be in the same neighborhood of $138,000, and that was a progress payment which was paid on the way to the total lump sum which the Town paid for the completed project, but he did not believe that was specifically earmarked to purchase the forms. Mrs. Royal asked how many times could the forms be used, as if at the end of the monitoring period, the Town may want to extend the reef, would the forms be available and would there be any value after they have been used several times? Mr. Dotterer responded the forms remained in good condition after their use in Palm Beach and they cast 330 units and his client expects they could be used for the Vero project, which will be 250 units and it is hoped they could continue to be used, but there are no assurances.

Mrs. Royal suggested that there be a combination of payment to the Town and perhaps a bond which would bring them up to the value later, in the event the Town wanted to use the forms. Mr. Dotterer stated their proposal was that this would be a one time payment to the Town and this was consistent with Mr. Dusey's recommendation. He stated if the Town wished to extend the reef, they would consider reusing the forms again, if possible. Mrs. Royal stated her concern was that if this was a huge success and the Town wanted to extend the reef, and having let American Coastal use the forms for whatever amount of payment, the forms may be obsolete and as the next customer, the Town would have to pay again for something that if the Town had not consented to authorize the use of the forms elsewhere, the Town would have had the forms for their use in the future, for free.

Mrs. Smith noted the stipulation in their letter that the payment they are making is for the future use without any limitations on this form and the Town will never recover anything else from the company, if they agreed to this. Mr. Weinberg believed they should pay more than the $15,000 offered and asked him to be in touch with his client and see if that figure could be adjusted upward. Mr. Dotterer responded he does have authorization to go to the $15,000 but not beyond, however, he could get in touch with his client and come back at the end of the meeting, as they are anxious to move on this.

Mrs. Smith recalled Mr. Dotterer stating the Town could not be paid until after American Coastal was paid by Indian River County and she did not agree with that, as if they came up with a figure that was acceptable to the Council, it should be payment made at the time, and the Town wasn't going to wait for the monies to come from Indian River County. Mrs. Wiener agreed, noting the Council represents the taxpayers in this Town and it is up to them if they are leasing, selling, or giving a service, that the taxpayers be compensated properly and in an orderly fashion. She recalled there was never information forthcoming as to the profit area of this organization, which she had requested.

Mrs. Douthit commented in the Town's dealings with other businesses, they have never been aware of the profit margin. Mr. Dotterer explained it is not a large profit margin, if at all.

Mrs. Wiener felt they needed to have a fair response to this request and perhaps 50% is too high but $15,000 is too low, and perhaps there can be a compromise in between.

Mr. Dotterer responded it is their position that no compensation should be required, but they wish to remain in the good will of the Town and be cooperative and would like to arrive at a fair solution. Mr. Weinberg advised Mr. Dotterer to come back at the end of the meeting and they would consider whatever his client wished to offer.

Mrs. Wiener moved that this matter be deferred to the end of the day. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mr. Dotterer asked if it would be possible to poll the Council as to each individual's feeling on the payment being made either immediately or when the corresponding payment is made to American Coastal from the other project. Mr. Weinberg responded he should come back with the figure and they will consider it at that time.

X. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR JANUARY 1994 - Motion was made by Mrs. Wiener, seconded by Mrs. Smith to approve the Warrant List and Fund Expenditures for January, 1994. On roll call, the motion carried unanimously. Approval of Warrant List

XI. ANY OTHER MATTERS - To be considered later.

XII. RECOGNITION OF TOWN COUNCIL MEMBER NANCY S. DOUTHIT (1984-1994) - Mayor Ilyinsky congratulated Mrs. Douthit on her tenure as Town Council Member and presented her with a plaque and a gift and wished her well. Recognition of Councilwoman Douthit

XIII. ADJOURN SINE DIE - Meeting was adjourned sine die. Adjourn Sine Di

XIV. SWEARING IN OF NEWLY ELECTED OFFICIALS - The Honorable Thomas E. Sholts, Judge, 15th Judicial Circuit, Palm Beach County - Judge Sholts gave the oath to the newly elected Councilmembers, Mr. Weinberg, Mrs. Smith and Mr. Shaw. Swearing in of newly elected officials

XV. CALL TO ORDER AND ROLL CALL - Meeting was reconvened and on roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, Mr. Weinberg, Mrs. Wiener, Mrs. Smith, Mrs. Royal and Mr. Shaw. Roll Call

XVI. ORGANIZATIONAL ITEMS

Election of Town Council President

A. Election of Town Council President - Pursuant to Section 3.01 of Town Charter Mayor Ilyinsky called for nomination for Town Council President and Mrs. Smith nominated M. William Weinberg as President, which was seconded by Mrs. Wiener. Mr. Weinberg read a statement: "During the past few weeks, he has been debating with himself regarding the privilege and honor which has been his as President of the Town Council of Palm Beach. For the past seven years, three terms, he has completely dedicated himself and his time to the service of our beloved community. This past year with the additional duties of the President has taken a tremendous amount of time, energy and concern in the conduct of this important post. So much so, that I must now evaluate the cost of my personal family and health conditions. Most reluctantly, but after most careful review, and the strong advice and needs of my family caused me to reconsider my continuation in the post of president and accordingly, but with pride in the past and utmost humility and thanks, I must decline the presidential nomination at this time. However, with the elimination of presidential duties, I would be able and grateful to serve in the coming year as President Pro Tem in order to lend continuity and experience to the ongoing Council. I am not leaving the Council, but would merely be helping it to grow as it should. My colleagues and the Mayor have my complete confidence, friendship and admiration for all times. Thank you."

Mrs. Wiener's name was put into nomination to be President by Mrs. Smith, seconded by Mrs. Royal. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

Election of Town Council Pres. Pro-Tem

B. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of Town Charter - Mr. Weinberg's name was put into nomination as President Pro Tem, seconded by Mr. Shaw. On roll call, the motion carried unanimously. Mrs. Wiener assumed the duties of President of the Town Council.

Comments of the Mayor

XVII. COMMENTS OF THE MAYOR - Mayor Ilyinsky commented: "Now that the election is behind us, we can continue to make Palm Beach the best place in the whole world. Many times during our consideration of complexing problems, we are pressed for solutions that despite the fact that there may not be sufficient evidence at the moment to make a judgment. Pressure to produce solutions can produce premature judgments that could prove unproductive. We did not wish to be guilty of preempting judgments in the conduct of the business of this Council. In many instances, exploring the problems further will inevitably point to the best resolution. As your Mayor, I offer this observation and suggest that despite the pressures put upon us that the instant dispatch of problems by quick solutions does not always serve the community too well - nor does it serve the government - nor does it serve the United States. Thank you."

XVIII. PUBLIC HEARINGS

Landmarks Designation for 990 Adam Rd

A. Landmarks Designation for 990 Adam Road - Consideration of Resolution No. 7-94 - Mr. Frank advised the Council the Landmarks Preservation Commission has recommended the landmarking of 990 Adam Road which meets the Criteria in the Ordinance:

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 and craftsmanship.

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

Mr. Frank reported the architect is John Volk, whose biography has been attached to the designation report.

Jane Day of Research Atlantica, Inc. reported to the Town Council this house was the fifth house to be built in the Garden of Eden Subdivision and was commissioned by Mr. Volk, built in 1939. She advised it is a neo-classical architecture and this is the most prominent type architecture built in the U.S. in the first half of the century. She stated the central facade that was symmetrical in fenestration and it has service wings and bedroom wings which extend to the north and to the south. She felt the most prominent feature is the classical front portico that extends from the front of the property and this is a pedimented portico which is held with iconic columns. She believed the reason this is such a good example is because the architect took Adam, Georgian and Classical motifs and blended them. She noted this is a frame construction building with white painted brick exterior and a good work of John Volk, and does qualify as a landmark.

Motion was made by Mrs. Smith to accept the report of designation. Mrs. Smith reported Mrs. Dolly O'Brien who was the builder of the house was also the owner of what is known as the Garden of Eden Subdivision, and that should be included in the record as to the historic importance of the house and of the property. Motion was seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mrs. Peters confirmed that proof of publication has been filed for the record.

Mr. Randolph read the Resolution No. 7-94 on 990 Adam Road:

Res. 7-94

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 NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mrs. Smith moved for adoption of Resolution No. 7-94 which the Landmarks Preservation Commission found met Criteria C and D. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Landmarks Designation for 300 Queens Lane

Res. 8-94

B. Landmarks Designation for 300 Queens Lane - Consideration of Resolution No. 8-94 - Mr. Frank explained 300 Queens Lane has been recommended for landmarking by the Landmark

Preservation Commission, which meets the Criteria C and D (read for the previous application). Mr. Frank advised the architect was John Volk.

Res. 8-94 Landmakrs Designation for 300 Queens Lane (cont'd)

Jane Day of Research Atlantica addressed the Council noting this house was built in 1938 and was built by the Arnold Construction Co. for Palm Beach Modern Homes and was one of a series of homes that was built during this time period and was a spec house. She reported this is the Monterey style of architecture which is an eclectic style popular throughout the U. S. in 1925 through 1955 and its major design characteristic is the cantilevered front porch that extends from the roof line over the first floor of the building. She stated it has French Creole design elements which were popular in Louisiana and has a cast iron balcony on the second floor and the floor length shutters on the first floor. She noted on the north side of the house are the service areas and garages and the house is wood frame construction covered with white painted brick with a brick chimney on the east and is a good example of this style and is recommended for landmarking.

Mrs. Peters reported the proof of publication has been filed for the record.

Mr. Weinberg moved the Designation Report be accepted for the record. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mr. Atterbury, the owner of the property, addressed the Council who concurred with the recommendation of the Landmark Preservation Commission but would like a modification that the designation not cover those portions of the south and west elevations of the house which are not visible from the street, as he does not see any architectural significance and he may wish to make changes.

Mr. Moore recalled there was discussion on this at the Landmarks Preservation Commission meeting and the request would give him the same type of jurisdiction that the Architectural Commission would have on the property and the staff has no objection.

Mrs. Smith asked if this would be setting a precedent for other properties to be landmarked to which Mr. Moore responded it has been done in the past. Mrs. Day reported there are no real design or architectural features which should be preserved on the south facade and there is no objection by the Landmarks Commission.

Motion was made to approve the Resolution No. 8-94 with the amended language and noting this property meets Criteria C and D of the Landmarks Ordinance. Seconded by Mrs. Royal.

Attorney Randolph read Resolution No. 8-94:

Res. 8-94

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 NO. 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 for 162 Peruvian Avenue - Consideration of Resolution No. 9-94 - Letter dated January 6, 1994 from Peter S. Broberg requesting deferral to the March 8, 1994 meeting - Deferred to the March 8, 1994 Town Council meeting.

Res. 9-94 (deferred)

XIX. APPROVAL OF AGENDA - Motion was made by Mrs. Royal to approve the Regular Agenda with the following amendments: withdrawal of Item XXI.E.2, request for fireworks display by Best Buddies, Int'l.; add an item XII.E.8, letter from Congressman Shaw; under XXIII. Any Other Matters - (a) Consideration of American Coastal request on the PEP Reef which was heard earlier and deferred to the end of this meeting; (b) Request by Palm Beach County Municipal League for a member to serve on the Palm Beach County Criminal Justice Commission; (c) Consideration of a letter dated 1-14-94 from Virginia Wetherhall, Executive Director of Department of Environmental Protection regarding Port of Palm Beach expansion; (d) Consideration of Mr. Weinberg's representation on CCAN; (e) Proposed Interchange for I-95 at Palm Beach International Airport; (f) Discussion on temporary fence erected at Tradewind and North County Road.

Approval of Agenda

APPROVED AGENDA(ITEM XX) - Motion was made by Mr. Weinberg to approve the "Approved Agenda" as printed. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mrs. Wiener requested that in the future all items be listed on the agenda, if it is at all possible, so there are not a long list of items to be included at the end of the agenda.

XX. LICENSES AND PERMITS

Licenses & Permits.

A. Charitable Solicitations

Charitable Solicitations

1. Israel Tennis Centers Association, Inc.; No. 175-94
2. Palm Beach Rotary Foundation, Inc.; No. 231-94
3. Polish Cultural Society of the Palm Beaches, Inc.; No. 311-94

REGULAR AGENDA

XXI. NEW BUSINESS

Charitable Solicitation Permit for 367-94 - Quest Theatre & Institute. Mrs. Peters advised the Quest Theatre wants to have a charitable event on February 21, 1994 at the Royal Poinciana Playhouse and the application was received yesterday and if Town Council approves it, it should be done conditionally as it has not been reviewed by all departments. Mrs. Smith moved for approval of the Charitable Solicitation Permit for Quest Theatre and Institute, provided they go through the departments and get the necessary approval. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Consideration of Request to Schedule a Town Council Workship re: interlocal water agreement

3. Consideration of Request to Schedule a Town Council Workshop Meeting Regarding Proposed Interlocal Agreement Regarding Potable Water Supply with the City of West Palm Beach - Mr. Doney reported there have been several discussions with the staff of the City of West Palm Beach and a proposed franchise agreement was received on February 4, 1994.

Attorney Randolph reported he has sent a letter to the Mayor and Town Council enumerating his concerns about the proposed draft franchise agreement and in his opinion it bears little resemblance to what the Town had proposed and it was not a draft put together by the Town but was put together after months of negotiation and input from the staff of the City of West Palm Beach. He felt it was disappointing to receive a document which ignored the concerns of the Town for many substantive issues, particularly rates, rate making and involvement by the Town in rate making and issues relating to surcharges and other matters which are detailed in his letter.

Mr. Randolph reported it is the intent of the staff to immediately thoroughly review the document in detail and will address the concerns with the staff of the City of West Palm Beach, however in the meantime it may be propitious to explore other alternatives available to the Town if the City of West Palm Beach is unwilling to address the concerns of the Town with regards to a long-term franchise agreement. He wished to assure the Council it was not the intent of the Town staff that they spend a lot of time or expense in doing this, as all they wish to do is bring back to the Council potential alternatives.

Mrs. Wiener stated she was also disappointed as the proposal has totally either ignored many of the substantiative issues. Mr. Weinberg asked if consultants needed to be brought in again? Mr. Doney reported he has been in touch with Howard Osterman of Diversified Utility Services on an as needed basis, and he would like to continue that usage as there were some other thoughts by Mr. Osterman as to how it should be approached with the City of West Palm Beach.

Mrs. Smith stated her concern with the negotiations up to this point as we have been waiting for this draft and we now have it, but it doesn't pay any attention to what had already been negotiated and now we want to bring in another expert and we are still nowhere. She felt there should be a time limit on the City of West Palm Beach addressing our concerns, or we will have to take other action. She was against extending the contract for a thirty year period as she thought it needed to be reviewed more often than every thirty years, perhaps more like five years.

Mrs. Wiener recalled they have been discussing this matter for over three years.

Mr. Shaw asked if there was any discussion at the last Council meeting as to what will happen in the event this contract is not renewed, could they shut off the water? Mrs. Wiener responded they could not do that. Mr. Randolph explained the franchise does expire next February and he is not concerned that on the day the franchise does expire, that the Town will not have water as the City of West Palm Beach will continue to serve the Town just as they do now. Mr. Shaw asked what the rate would be to which Mr. Randolph responded they would continue with the present rate structure. Mr. Shaw believed they could change it to which Mr. Randolph agreed.

Mr. Weinberg wondered if this Council should meet with the City of West Palm's City Commission and there be a form of confrontation. Mrs. Wiener recalled this has been discussed before and perhaps they are at a point where the two Councils should meet face-to-face and suggested they move in that direction.

Mr. Doney suggested the Town Council allow the staff and the Town Attorney to report back to the Council at the March 8, 1994 Town Council Meeting and then it be decided whether or not there should be a Workshop with the City of West Palm Beach Commission some time after that meeting.

Mr. Shaw suggested they set a date prior to the next Town Council meeting to meet with the City of West Palm Beach. Mrs. Wiener believed there was some work to be done by staff before that time.

Mrs. Royal asked if the staff could look at Item 6 A which is the right of the City to impose a statutory surcharge and wondered if the Town had any veto power in the City's rate-making? Mrs. Smith suggested there be several tentative dates presented to the City of West Palm Beach City Commission. After discussion and review of their calendars, the Mayor and Town Council offered tentative dates for submission to the City of West Palm Beach of March 17, 18 or 22 and the time can be set at anytime after 9:30 AM and the place will either be the Town Council Chambers in Palm Beach or the City of West Palm Beach Commission Chambers, whatever is convenient. Mr. Doney will make the arrangements and get the information to the Mayor and Town Council, as soon as possible.

Mr. Doney advised he has used Mr. Osterman to some degree already and would appreciate authorization to utilize those services further. Mrs. Wiener asked for a motion to authorize this up to $5000. Mr. Weinberg believed they did need Mr. Osterman's expertise and he so moved. There was no second to the motion.

Mrs. Royal moved that authorization be given for the Town Manager to spend up to $3,000 for the services of Mr. Osterman. Seconded by Mr. Weinberg. On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion.

Consideration of Conditions for Proposed Settlement agreement re: Lake worth Inlet Sand Transfer Plant Lawsuit

4. Consideration of Conditions for Proposed Settlement Agreement Regarding Lake Worth Inlet Sand Transfer Plant Lawsuit Between Palm Beach County and the Town of Palm Beach - Mr. Randolph advised the County has acknowledged its responsibility for the downdrift beaches from the Inlet; and secondly, in any agreement reached, they acknowledge they will contribute 50% to the solution or a lesser share in the event there are other participants. Mrs. Wiener noted back-up information has been received from the Town Attorney on this matter. Mrs. Smith asked if there were any possibilities of getting State funding? Mr. Randolph thought it may be premature to be definitive but he thought it would be safe to say that State funding ultimately will be available.

Mr. Doney believed upon completion of the Inlet Management Plan, there will be some State funding available and through the efforts of Congressman Shaw through the Corps of Engineers, there may be Federal assistance.

Lake Worth Inlet Sand Transfer lawsuit (cont'd)

Mrs. Wiener recalled several months ago, the Council decided to move forward on getting this Plant operational and this is an agreement to settle our differences with the County and she thought they should focus on this and on the question as to whether or not the Council approves of the recommendation and say to staff they should move forward. Mrs. Smith moved that the staff move forward. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

5. Replacement Aerial Platform Truck for the Fire-Rescue Department

Aerial Platform Truck for Fire-Rescue Dept.

a. Consideration of Quotations from Financial Institutions for Financing of Replacement Aerial Platform Vehicle - Consideration of Resolution No. 5-94 - Deferred from January Meeting

Mr. Doney explained the total price for the truck and the related equipment will be approximately $500,000, and a down payment of $110,000 was included in this year's budget, the amount to be financed is approximately $390,000. He reported there have been five bids received and Mrs. Crozier recommends and he concurs, that the Town Council authorize the staff to proceed with obtaining a lease purchase agreement for $390,000 at a rate of 3.60% with Barnett Bank.

Attorney Randolph read Res. No. 5-94:

Res. 5-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE TOWN MANAGER TO ENTER INTO A LEASE-PURCHASE AGREEMENT WITH BARNETT BANK OF PALM BEACH COUNTY.

Mrs. Royal moved for the adoption of Res. 5-94. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

b. Consideration of Request for Trade-In of Existing Aerial Platform Vehicle and Authorization for Town Manager to Execute Letter Agreement Dated January 10, 1994 on Same - Mrs. Smith noted Chief Elmore feels this is the very best deal and she moved for approval of the trade-in and the Town Manager be authorized to execute the necessary agreement. Seconded by Mrs. Royal. Motion carried unanimously on roll call.

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

6. Consideration of Status Report by Town Council President Weinberg Regarding Proposal to Have Branch Library of the Society of the Four Arts Library at the South Fire-Rescue Station Multi-Purpose Room - Mr. Weinberg advised he has met with the people from Four Arts and the possibilities are being explored and he will have a further report at a future meeting. Mr. Doney reported the architects are proceeding with design and interior features and layout for that meeting room which is now being considered and he advised if there are going to give consideration to book shelves and whatever else, he thought these items needed to be addressed. Mr. Weinberg stated he has not been able to solidify anything as yet. Mr. Dusey advised the final design has been completed and the project is currently being bid, however modifications can be made later, but they are beyond making the room a different size. Mrs. Smith saw no reason for the Town to undertake any additional expense when this will be an extension of the Library of the Society of the Four Arts and she wondered if any proposal had been made by the Society to have a bookmobile which could be used during the time the South Fire Station is being constructed to which Mr. Weinberg responded they are not interested in providing a bookmobile at this time.

Mr. John Matich, the new President of the Citizens Association South of Sloan's Curve was congratulated by the Mayor and Council and he addressed the Council indicating that on behalf of the Citizens Association, he would like to inform the Council that they do have a great deal of interest in having a library at the south end of Town and he hoped that this project could be carried on.

Meeting was adjourned for lunch. Meeting reconvened by President Wiener.

Consideration of Interim Status Report re: Beach Cleaning Advisory Comm.

1. Consideration of Interim Status Report by Chairman Bruce McAllister of the Beach Cleaning Advisory Committee - This item was heard at 1:30 PM. Bruce McAllister, Chairman of the Beach Cleaning Advisory Committee addressed the Council, indicating they are all outraged by the condition of the beaches and feel it is a danger and something needs to be done about it. He suggested perhaps an ordinance needed to be adopted mandating litter on the beaches needed to be cleaned up by those who owned the beaches, or have access to them; or the Town would clean them for a fee; or they could do nothing.

He stated the Committee discussed whether or not an Ordinance should be passed that the beaches are a valuable asset of the entire Town and litter is prohibited, and all citizens are encouraged to clean their beaches. He noted also discussed was there be encouraged a voluntary effort.

He noted they discussed the Town providing funding for barrels and recycling bins and rakes and plastic bags and they thought in order for there to be a voluntary effort to have any chance of success, the Town should do the organizing of the voluntary efforts with cooperation by the various civic associations who he was sure would be glad to be of assistance. He thought there should be training and key people would be appointed to coordinate. He reported the consensus of the Committee was that there needed to be more than voluntary clean-up of the beaches.

Mr. Weinberg advised in the south end of the Town, the condominiums hire a beach cleaner who keeps those beaches quite clean as there are already a couple of Ordinances on the books which cover beach cleaning. Mr. McAllister responded he knew that, however, they favored an Ordinance applying specifically to the beaches.

Mr. McAllister indicated he has received quotes from Beach Kleener and he would share that with the Council, if they so wish. He stated the Committee discussed mechanical means versus handcleaning. He noted that medical waste is an issue. He knew there were pooper scooper laws, however, they are difficult to enforce and they wish to move in a new direction.

Report - Beach Cleaning Advisory Comm. (cont'd)

Mrs. Wiener thanked Mr. McAllister and his Committee for their efforts and told of the Council's gratefulness. She thought the recommendations and ideas would be considered by the Mayor and Council and the Committee continue to move forward and the Council will come to some sort of a decision.

Mrs. Royal stated it was her opinion that the beaches from Sunset to Wells are the worse and asked what it would take to clean that area.

Mr. McAllister responded he believed that stretch of beach would have to be subjected to a daily or every other day cleaning. Mrs. Wiener wondered if it was reasonable to think that a beach of this type could be cleaned on a daily basis. Mr. McAllister responded he believed that through some funding, it could be done.

Mr. McAllister felt an Ordinance directed specifically towards the beaches should be adopted and asked the Town and the Town Council to join in a new and publicized effort, and he thought that would be a wise choice.

Mrs. Royal asked if the Committee was aware of any municipality that received State or Federal funds for beach cleaning. Mr. McAllister responded he was not sure that question was asked but in the communities he was in contact with, he didn't recall any such help.

Mr. Doney advised every oceanfront municipality in Palm Beach County was contacted as well as the Department of Environmental Protection who was not aware of any funds available for beach cleaning for private beaches. Mrs. Royal pointed out there would be funds available if a tanker discharged oil at sea and it came upon the beaches to which Mr. McAllister agreed. Mrs. Royal asked about the litter found on the beaches wondering if a significant amount is brought there by beach goers and how much was washed ashore? Mr. McAllister responded there is a considerable amount brought by each. He reported the large containers of empty motor oil are thrown into the sea by the yachts. He recalled cups and sun tan lotion containers could be from the beach goers but also could have washed ashore from northern beaches. He believed there also is cruise ship dumping.

Jesse Newman, President of the Palm Beach Chamber of Commerce addressed the Council and wanted to go on record that the Chamber would be happy to participate financially to make sure the public beaches are cleaned to give a nice impression to the visitors who come to the Town. He commented on the private beaches, noting he lived on the oceanfront and several of his neighbors get together and pay for a weekly hand clean-up which is never enough and suggested there be block captains in the residential areas to get the residents involved so all the private beaches can be cleaned. He advised Mrs. Temple goes out into the neighborhood for several blocks and collects monies which may last for six months to a year to have the beaches cleaned in his neighborhood. He reiterated his offer to help pay for the clean-up of the public beaches for which Mrs. Wiener thanked him, indicating when they come to the point where it is needed, the Chamber will hear from them.

Mr. Weinberg pointed out the beaches in the south end are cleaned mechanically, however, he doesn't believe they take the seaweed away.

Mrs. Wiener asked if there was consideration given to banding the Beach Associations together and see what can be done to which Mr. McAllister responded there has not been a specific mention of that, however if those Associations have any chance of being effective, they have to be organized and work in conjunction with each other. Mrs. Smith noted an Association may clean up its beach very effectively and so may a property owner, but to the south of those areas, there may be a dirty beach due to an owner not wanting to do so and wondered if the Committee had looked into that? Mr. McAllister felt it would have to be worked out gradually and if that piece of property or an association remains stubborn, the Town Council would have to take some action.

Mrs. Smith asked about the pick-up of the trash, wondering if the trash was collected and bagged and left at the entrance to the beach or the street, if the trash could be picked up, and what about the overflowing trash bins which would be on the beach at the end of a weekend? Mr. Dusey responded they have not refined to the point what the pick up scheduling would be, but they are looking at those details as a determination has to be made as to what they actually are going to do. He recalled collections have been made for the volunteer groups after their beach clean-up and they have always arranged to get the garbage to the point where it could be collected.

Mrs. Wiener thanked the Chairman and his Committee.

Joel Martino, 109 Ocean Terrace addressed the Council noting he is President of the Ocean Terrace Beach Club and has concerns about the beach conditions. He urged the Council to look at all of the beaches in the same way and they have to be cleaned up to the same degree and visibility of the beach should not be a factor as to whether it should or should not be cleaned up. He thought the Town should be primarily responsible for the beaches in the Town and they should be done manually. Mayor Ilyinsky asked if he was suggesting that the Town should be responsible for the clean up of the private beaches to which Mr. Martino responded the area between the high water mark and the water is the recipient of beach litter at any given time. He suggested the Town clean up to the dune line and from that point to the property line of the beach front owners, the Town should urge those property owners to keep their areas clean.

Donation & Distribution of Fruit to Homeless

7. Consideration of Request for Donation and Distribution of Fruit to Homeless Food Centers Mr. Dusey advised the Mayor and Council he was asked to examine the mechanics of having a collection distribution center and he thought it could be done but he needs to work out the liability concerns, and he thinks it is a doable project. Mrs. Wiener requested that Mr. Dusey come back to the Council with a reasonable, workable schedule at the next Town Council meeting.

Communications from Citizens

Ned Barnes Palm Beach Civic Assoc.

VIII. D. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE. Ned Barnes of the Palm Beach Civic Association addressed the Council noting they have three membership meetings a year and at each of the meetings, they have an educational program and the next program will be on the beaches. He stated he would like to have a panel and three members of the panel will be Beth Mitchell who will talk about the reef and George Frost who will talk on the Sand Transfer Plant and Ben Murphy from the Port of Palm Beach. He thought to make a complete panel, he would like to have someone from the Town who was familiar with the Inlet Management Study and he talked to Peter Elwell and Robert Cutcher who is doing the Study. He noted they would be willing to do it, but authorization needed to be secured from the Mayor and Town Council.

Mrs. Smith asked why they wouldn't be including in that panel discussion the previous report given by the Beach Cleaning Advisory Committee? Mr. Barnes responded he would like to do that, but he didn't want to lose the focus and he knew the report from that Committee does not come out until the day after their scheduled meeting. Mrs. Smith thought they should wait until after the report is out before they have their meeting, recalling she had recommended that to Mr. Barnes in an earlier conversation. Mr. Barnes stated this is an educational topic and that meeting date was scheduled some time ago, and basically they are concerned about the beach renourishment, although beach cleaning is an important thing to consider, but he doesn't want to take that on right now, as the timing is important. Communications from Citizens (cont'd) Ned Barnes, Palm Beach Civic Assoc.

Mrs. Smith thought Mr. Elwell should speak to them later after the report is received, rather than being a part of the panel. Mr. Doney felt that when staff does appear at various organizations on various issues, it does take away from Town time and if the Town Council is accepting that staff participate in these various forums, then so be it. Mrs. Wiener noted Mr. Cutcher is not a part of the Town staff and they are certainly free to make that request as that doesn't need Council approval. Mr. Barnes advised he was only asking for authorization for the Assistant Town Manager. Mrs. Wiener felt that was not in order as there are a number of organizations who would be making the same request and historically, the Town Manager makes a state of the Town address to the two civic organizations, but there has never been anything beyond that.

Mr. Doney reported that often times department heads do appear at the various organizations to give a talk on a given topic, such as Chief Elmore on smoke detectors or the Police Chief on crime subjects, but often it is done at the initiative of staff, however, on this type of an issue, he has a question on the timing. He thought if they wished to have Mr. Cutcher, that is their prerogative, however, the Town would not pay him for that and it would be hoped information on the Inlet Management Study would not be shared with the public before the Mayor and Town Council and staff had an opportunity to review it.

Mrs. Smith recalled she has appeared with Mr. Moore to discuss for instance xeriscaping as an educational issue for the residents, however, she is not aware of how educational this forum would be as it is not known what the experts would be saying as they have not spoken to the Mayor and Town Council as yet. Mr. Barnes explained there is so much going on out there now for instance with the Sand Transfer Plant. Mrs. Smith didn't think that issue was a confusing one. Mr. Barnes did not agree as he felt there was a lot of confusion on the part of the residents.

Mrs. Wiener stated she was going to end the subject as Mr. Barnes only had three minutes on this subject and this is one of those items which should have been listed on the agenda. Mr. Doney took the responsibility for it being heard under Communications from Citizens as that is what he advised Mr. Barnes to do.

Mayor Ilyinsky stated his concern about Mr. Cutcher who is working for the Town as a consultant and wondered what he could tell the Civic Association and he would be bothered if he did address the Civic Association and tell them information before the Mayor and Town Council had a chance to digest it. He thought the timing was terrible. Mrs. Smith believed that if the management consultant wishes to be a member of the panel, that would be up to him, however, he will not be speaking for the Town. Mrs. Wiener believed Mr. Barnes had the sense of the Council.

Adrian Winterfield addressed the Council inviting their attention of the Council to the use of non commercial properties for what can be characterized as commercial uses, recalling a reception held at a private residence on which the newspaper reported there were two Council members in attendance. He recalled the reception was to celebrate the second anniversary of a bank in Palm Beach. He stated a second subject is the reception held at Mar-a-Lago for bonds, which was not processed through the Town.

IX. DEVELOPMENT REVIEWS

A. Variances, Special Exceptions and Site Plan Reviews

<u>Old Business</u>

1. Variance No. 2-94 - Heinz Gundlach, 150 Algoma Road; to allow construction of a two story garage and guest house providing a 5' side yard setback in lieu of 15' required. Concurrently, applicant would be reducing the width of his lot to 96.68' frontage from an existing 102.7' frontage, thereby expanding the nonconformity of the (front) lot width from the 125' required minimum lot width. R-A District. Deferred from the January Meeting. - Mr. Gundlach addressed the Council noting he was representing himself as his architect, Mr. Bennett, was out of Town. He stated the size of the garage has been reduced and if necessary, there may be a possibility of decreasing it further, although his architect is not in agreement with any further reduction. Mr. Gundlach states he is willing to do whatever it takes to get this variance approved. He stated he purchased the house approximately eight years ago and at that time he was a bachelor, however since that time he has married and needs further room and a garage. He advised the absence of a garage is a problem as the airport traffic is over his house and the jet fuel which comes out of the exhausts of the aircraft ruins the paint on his cars and he has to trade them in annually. He is requesting a guest room on the second floor over the garage and the height of the garage with guest room will not exceed the present height of the residence. Var. 2-94

Mr. Gundlach states he is concerned with the appearance and will do everything to make it look very pleasant and an asset to the property.

Mr. Moore gave his comments, indicating that originally they felt the garage area should be located as far west as possible, however, the new plan has located it eight feet from the property line, rather than the original five feet. He noted it appears the building could be further moved from the east property line. He explained fifteen feet set back is required.

He inquired how they would be able to maintain the height of the main residence since it is a single story. Mr. Gundlach responded the residence does have high ceilings and the garage would be a flat roof. He advised he has asked his architect to downsize the garage and guest quarters even more, but they cannot move it more to the west as it would be difficult to get the cars in and

Var. 2-94 (cont'd)

out. He recalled at the last meeting he told the Council he was able to swap some land with his neighbor, Mr. Beall, to straighten out the property line and the distance to the new property line from the proposed garage would be eight feet and if the garage was further reduced from 22' to 21', they would be able to provide nine feet. He requested it be moved further to the north in order to have more green space behind the garage.

Mr. Moore reported they have no objection to the straightening out of the lot line and the applicant has complied with the spirit of the request of the Town Council last month to reduce the garage.

Mrs. Smith believed the new residence was going to be at 20' and she believed the height of the residence is around 12'. Mr. Gundlach responded the way he reads what his architect has drafted is that the height of the residence is 20' at the highest point of the roof, and he has asked Mr. Bennett if it is necessary to lower the ceiling of the garage so there could be a normal size ceiling on the second floor with a flat roof. Mrs. Smith asked what the height of the house to the south was to which Mr. Gundlach responded it is a three story house and he exhibited pictures.

Mrs. Smith asked if the garage could be moved a little more to the west as there are a lot of garages in the Town which are a straight shot from the driveway and a little swing needs to be made to get the cars into the garages and if he moved it over, there would not have to be a variance. Mr. Gundlach stated he has discussed this with his architect and Mr. Bennett believes there would be problems backing out of the garage. Mrs. Smith knew of a lot of people who do back out of their garages. Mrs. Wiener did not believe they should create a problem. Mrs. Smith pointed out it if it were moved a little more to the west there would not have to be a variance.

Mr. Gundlach did not agree as he thought he needed a fifteen feet setback and even if they did move it to the west, they would only have ten feet. Mrs. Royal did not think it would have a great impact on the neighborhood as the neighbor to the north has a garden adjoining the applicant's property and she moved the Variance request for Mr. Gundlach, No. 2-94 be granted.

Mrs. Wiener asked for an amendment to the motion which would address the height and that would be it be no higher than the main residence? Mrs. Royal believed the new plans show that the proposed garage and guest quarters not be higher than the main house. Mr. Gundlach agreed the roof line of the main house would be about equal. Mr. Weinberg seconded the motion.

Mr. Moore noted the statement of Mr. Gundlach today was that the garage would be 21' instead of 22' and there would be nine feet setback from the property line, to which Mr. Gundlach agreed. Mr. Moore asked if other than that, all other aspects of the garage would remain the same to which Mr. Gundlach responded affirmatively, noting he does not have a final architectural drawing but he has verbally agreed to the 21'.

Mrs. Smith wondered how could they vote on this without a definite plan? Mrs. Wiener responded the Council knows what he is asking for and Mr. Gundlach has assured us of the height, which is part of the motion and the variance request is that the building be located nine feet from the property line. Mrs. Smith stated he had a problem in voting on something she has not seen and although Mr. Gundlach has assured the Council what the height might be, she was disturbed that his thought may be something different, as the architect is not here with the specifics.

On roll call, the motion carried 4-1, with Mrs. Smith voting against the motion.

Mr. Gundlach asked how much time he had to start the construction as his neighbor has informed him the land swap may take several months. Mr. Moore responded he has one year from this date.

Spec. Excep. 1-94 with Variance

2. Special Exception No. 1-94 With Variance - Daniel Fox, 222 Worth Avenue; to allow commercial use in a second floor apartment increasing the retail space from 3,612 square feet to 6,812 square feet. Applicant proposed to provide the required 14 additional parking spaces at an alternate location, outside the C-WA District (in C-TS), and in excess of 500' from the use, requirements of Section 6.21(D) from the Town Zoning Ordinance. C-WA District. Deferred from the January Meeting. - Attorney Paul Prosperi addressed the Council, indicating he was asked by the Town Council last month to prepare an analysis of their customer listing to indicate that they were Town serving and he has filed that with the Town Building Department. Mr. Prosperi recalled he was asked to contact the neighbors on Golf View who had objections and he has met with their counsel and prepared on behalf of his client to stipulate to seven separate conditions in connection with the granting of this variance request. He listed those conditions:

1. The daytime use of the second floor will be restricted to:

(a) special customers, private showings and fittings
(b) employee access to use of the storage and tailoring pressing room.

The upstairs will not be used for general display of merchandise or sales floor area and will not be accessible from the first floor sales area, except through a restricted access door.

2. The use of the second floor after 6 PM will be restricted to no more than eight special events in any twelve month period to be concluded by 9 PM. Such special events will not utilize music that is a nuisance to any of the residents on Golfview Road. If more than ten guests are expected, will utilize valet parking.

3. Daniel Foxx will not permit serve or deliveries to access the building from the south, which would be adjacent to the Golf View alley.

4. Daniel Foxx will not install exterior lights facing or shining south that is a nuisance to anyone on Golf View Road.

5. All second floor windows will be shut, curtained, or otherwise covered to avoid any light shining south that would be a nuisance to any of the residents on Golf View Road.

6. Daniel Foxx shall certify annually to the Town that it is Town-serving and is in compliance with the stipulation. Spec. Excep. 1-94 with variance(cont'd

7. This Special Exception and Variance will expire on the termination of the occupancy of Daniel Foxx, or a success entity conducting a similar business in size or quality and shall not run with the land.

Mr. Moore advised the applicant has addressed some of the issues that were raised by the Town Council last month. He noted Mr. Prosperi indicated there was to be restricted access to the second floor but there is an elevator. Mr. Prosperi responded there is an elevator but to get to it, you would have to pass the door to which he referred. Mr. Moore recalled another issue is the use of the patio on the second floor, and he wished to point out that any restriction on that patio would have to take into consideration the fact that it would have to be used as an emergency exit, in the event there is an emergency. He thought other than that, there is no other problem with the application.

Mrs. Smith recalled last month she heard Mr. Prosperi stipulate that the second floor loggia would not be used, if that were to be a problem to which Mr. Prosperi responded affirmatively.

Mayor Ilyinsky noted there was a letter of complaint which stated it would be a precedent set, if granted, for all second floor space on the south side of Worth Avenue. Mr. Moore responded there are permitted uses on Worth Avenue which are commercial and on the second floor, it should be residential, so the application is going from a permitted Special Exception Use to a Permitted Use, and second floor commercial is permitted on Worth Avenue, but for conversion of the use, it is more intense and more parking is required. He noted the parking in this case will be relocated to a different zoning district.

Mr. Shaw asked if this is granted, could it be reviewed after a year in operation to see if there are any problems. Mr. Moore agreed that could be done.

Mrs. Smith moved for approval of Special Exception No. 1-94, conditionally, which included the seven items which Mr. Prosperi distributed and read into the record and will be part of the approval. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

A. Ordinances - First Reading

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

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

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

2. Ordinance No. 4-94 - Amendments to Turtle Protection Ordinance - Attorney Randolph read Ordinance No. 4-94: Ord. 4-94

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

Mrs. Smith asked the language be changed where it refers to the reflection of the light upon the beach and she thought it should also state "on the water" also as the sea turtles swim to the light. Mrs. Smith moved the Ordinance No. 4-94 be adopted with the incorporation of the language to be added in Section One, Section 14-66, "no artificial light shall illuminate any area of the beach or water" and the same change in Section 14-69. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 9 OF THE TOWN CODE OF ORDINANCES, GARBAGE AND TRASH, AT SECTION 8.21 THEREOF PROVIDING THAT SAID SECTION SHALL NOT APPLY TO EXISTING CONTRACTS; PROVIDING A NEW SECTION 8-18 RELATING TO APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Smith to adopt Ordinance 5-94. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Resolutions

1. Resolution No. 6-94 - Authorization for Town Council President to Execute Department of Environmental Protection Contract No. C-8345 Grant Agreement for Lake Worth Inlet Sand Transfer Monitoring Project - Attorney Randolph read Res. No. 6-94 by title: Res. 6-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE TOWN COUNCIL PRESIDENT TO EXECUTE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION DET CONTRACT NO. CA345GRANT AGREEMENT FOR THE LAKE WORTH INLET SAND TRANSFER MONITORING PROJECT.

A motion was made by Mr. Weinberg to approve Res. 6-94 and seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Res. 12-94

2. Resolution No. 12-94 - Urging Thomas Gallagher, Insurance Commission, to Review the Joint Underwriting Association Regarding Property Insurance Coverage - Attorney Randolph read the Resolution No. 12-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, URGING THOMAS GALLAGHER,TREASURER AND INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, TO REVIEW THE JOINT UNDERWRITING ASSOCIATION (J.U.A.) PROPERTY INSURANCE COVERAGE WHEN OTHER INSURANCE MARKETS OR CARRIERS REFUSE COVERAGE; TO BE AWARE THAT J.U.A. DOES NOT PROVIDE COVERAGE FOR COMMERCIAL BUILDINGS OR CONDOMINIUMS, THEREBY, CREATING ADDITIONAL HARDSHIPS FOR COMMERCIAL AND RESIDENTIAL PROPERTY OWNERS TO SECURE COVERAGE FOR THEIR PROPERTY DURING THE INSURANCE CRISIS IN THE STATE OF FLORIDA.

Mr. Weinberg moved for adoption of Resolution No. 12-94. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Ten minute break was taken.

Mrs. Wiener reconvened the meeting.

Res. 13-94

3. Resolution No. 13-94 - Urging Palm Beach County to Seek Membership in the Florida Windstorm Association in Order for Residents to Apply for Windstorm Insurance Coverage - Attorney Randolph read the Resolution No. 13-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, URGING THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY TO SEEK MEMBERSHIP IN THE FLORIDA WINDSTORM UNDERWRITING ASSOCIATION TO PROVIDE RESIDENTS OF PALM BEACH COUNTY THE OPPORTUNITY TO MAKE APPLICATION FOR WINDSTORM INSURANCE COVERAGE THROUGH THIS ASSOCIATION.

On motion of Mr. Weinberg, seconded by Mrs. Smith, Resolution No. 13-94 was adopted. On roll call, the motion carried unanimously.

Bid Award

C. Bid Award

Sealed Bid No. 94-005

1. Sealed Bid No. 94-005 - Brazilian Dock Reconstruction - Recommend Cone Constructors, Inc. in the Amount of $789,746 Per Memorandum Dated January 28, 1994 from Mr. Dusey - Consideration of Resolution No. 10-94 - Attorney Randolph read the Resolution no. 10-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO CONE CONSTRUCTORS, INC. FOR THE BRAZILIAN DOCK RECONSTRUCTION.

A motion was made by Mr. Weinberg, seconded by Mrs. Smith to adopt Res. 10-94. On roll call, the motion carried unanimously.

Appointments

B. Appointments

Bldg. Board of Adjustments & Appeals

1. Building Board of Adjustments and Appeals - One Citizen-at-Large Alternate Member - Deferred from January Meeting - Motion was made by Mr. Weinberg to nominate to the Building Board of Adjustments and Appeals the name of Peter Broberg. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Code Enforcement Board

2. Code Enforcement Board - One Alternate Member With a Term to Expire April 1994 - Deferred from January Meeting - Motion was made by Mr. Weinberg to nominate John Matich to the Code Enforcement Board as an alternate member. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Golf Comm.

3. Golf Commission - Two Alternate Members With Terms to Expire November 1996 - Deferred from January Meeting - Motion was made by Mr. Weinberg to nominate to the Golf Commission as an Alternate Member Robin White. Seconded by Mrs. Royal. On roll call, the motion carried unanimously. Motion was made by Mr. Shaw to nominate Stewart Shulman as an Alternate to the Golf Commission. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Landmarks Comm.

4. Landmarks Commission - One Alternate Member With a Term to Expire March 1, 1997 - Deferred from January Meeting (See Item XXI. D.1.) Mayor Ilyinsky noted he cannot vote but he would like to make the recommendation that Anne Keresey's name be put into nomination as an alternate to the Landmarks Commission. Mr. Moore reminded that there are two alternates which should be voted on for the Landmarks Preservation Commission. Motion was made by Mr. Weinberg to nominate the name of Anne Keresey to the Landmarks Preservation Commission as an Alternate Member. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Smith proposed the name of Elizabeth Shields as the second Alternate to the Landmarks Preservation Commission and she so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Seaview Park Comm.

5. Seaview Park Commission - One Alternate Member With a Term to Expire February 1997 - Deferred from January Meeting (See Item XXI.D.2.) - This item was deferred to the April Town Council Meeting.

Zoning Comm.

6. Zoning Commission - Two Alternate Members With Terms to Expire February 1997 - Deferred from January Meeting (See Item XXI.D.3.)

Mrs. Smith moved that the alternate member appointments to the Zoning Commission be considered at the April Town Council meeting. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

D. Appointments

1. Landmarks Preservation Commission - Two Three-Year Terms to Expire March 1, 1997 (See Item VIII.B.4.) - Motion was made by Mr. Weinberg that Mr. Arthur Silverman, who now serves as an Alternate on the Landmarks Preservation Commission, be moved to the regular spot. Seconded by Mrs. Smith. On roll call, the motion carried unanimously. Motion was made by Mrs. Smith that Jackie Albarran deMendoza be reinstated for a second term on the Landmarks Preservation Commission. Seconded by Mrs. Royal. On roll call, the motion carried unanimously. Landmarks Pres. Comm.

2. Seaview Park Commission - Three Three-Year Terms to Expire February 1997 (See Item VIII.B.5.) Mrs. Smith for the reappointment of Mr. Morton Shor and Mr. Larry Ochstein to the Seaview Park Commission. Seconded by Mr. Shaw. On roll call, the motion carried unanimously. Motion was made by Mrs. Smith to defer to the April Town Council Meeting the appointment of the third member to the Seaview Park Commission, as well as the alternate member. On roll call, the motion carried unanimously. Seaview Park Comm.

3. Zoning Commission - Three Three-Year Terms to Expire February 1997 (See Item VIII.B.6.) - Motion was made by Mr. Weinberg to reappoint to the Zoning Commission Mr. C. Gerald Goldsmith. Seconded by Mrs. Royal. On roll call, the motion carried unanimously. Motion was made by Mrs. Royal who nominated Martin Klein to the Zoning Commission. Seconded by Mrs. Smith. Motion carried unanimously on roll call. Zoning Comm.

Motion was made by Mrs. Smith to reappoint Robert Deziel to the Zoning Commission. There was no second to the motion. Motion was made by Mrs. Smith to reappoint William Cudahy to the Zoning Commission. Seconded by Mrs. Royal. Mr. Weinberg thought he had heard that Mr. Cudahy did not want to serve another term. Mr. Beal, Chairman of the Zoning Commission addressed the Council indicating he thought Mr. Cudahy should be reappointed. On roll call, the motion carried unanimously.

E. Other

1. Consideration of Status Report by Representatives of First Union National Bank Regarding Investment Management Services Experience Since December 1993 - Valerie Pettibone reported as of the end of January, they had produced a net excess return of $27,000. She noted the portfolio has done well on the income basis and that figure does not include the gains which were incorporated from the securities appreciating in value. First Union Investment Management Services

2. Consideration of Request by Best Buddies International for Fireworks Display at Kennedy Property - Letter Dated February 4, 1994 from Anthony Shriver Requesting Withdrawal - This matter was withdrawn. Best Buddies Fireworks Display

3. Consideration of Extension of Lease to F.O.P. Lodge No. 19 for Property on South Side of Okeechobee Boulevard West of Haverhill Road - Mr. Randolph noted the initial lease has an option to extend, which option is exercised as of March 1, 1994 for an additional 20 year period. He advised the representatives of FOP wish to extend the lease, however, the Town has asked there be consideration given to certain amendments, and those relate to insurance coverage, the use of the premises and bringing it up to compliance with the American Disabilities Act and there was discussion with regards to the firing range. F.O.P. Lodge No. 19 lease

He stated they have had discussions with the FOP attorney, Mr. Coburn and they are in agreement on everything except they would like the insurance coverage to be one million dollars rather than two million, and they would like to change the renewal date to come into effect as of April 7, 1994 as opposed to March 1. He reported the FOP has agreed to amend the lease to include provisions that the property would be brought up to the regulations of the American Disabilities Act and would also include language that they would have full duty and responsibility for the maintenance, safety and use of the premises and all of the premises would be subject to State, County and local permitting.

Mr. Randolph reported on the fire range, which is not presently in use, because of safety concerns and apparently it will take a great deal of money to bring it into satisfactory conditions and they are not interested in expending those funds, so it has been suggested that in the event the firing range were to be used, that would be subject to subsequent approval by the Town Council.

Barbara Martinuzzi, Risk Manager, addressed the insurance limits, stating she has been working with the representatives of the FOP and their insurance broker and the FOP has agreed to the requirements that the Town has outlined, so this is not an issue any longer.

Mr. Doney advised this is a twenty-five year lease renewal. Mrs. Royal asked if the Town owns a piece of valuable property, do they want to lease to anyone for twenty-five years? She also wondered if another possible use was ever addressed of this property for a Town need, as perhaps they were tying up a valuable asset.

Mr. Randolph recalled the lease that we now have with FOP does give them the option to extend the lease and they need only exercise that option by telling us that they wish to do so, so he was not sure that the Town had a real choice. He reminded them that by tying this up in the form of a lease, the Town doesn't tie up their right to convey the property in the event it is determined that this is a property they wish to convey.

Mrs. Wiener asked if they were as owners of the property affected by discrimination clauses, as she understood that members of the FOP are limited to gentlemen only. Edgar Burroughs, State Trustee for the Fraternal Order of Police Palm Beach Lodge No. 19 addressed the Council, advising the associate lodge members, who live within the limits of the parent lodge, have eligibility to both male and female and throughout the State there are also female members, however, for some unknown reason the associate members have never allowed women in their associate lodge, and he does

F.O.P. Lodge No. 19 lease (cont'd)

not know if they are simply not allowed or whether or not application has not been made for them. He stated he just became aware of this information today and he will speak to the President of the Associate Lodge and try to solve this problem but in the parent organization of the FOP Lodge, there are already several women.

He reported the FOP have agreed to the two million dollar insurance policy and the Town's name will appear on the insurance certificate as the owner of the property.

Attorney Randolph recalled they did in their meetings discuss the request to close down some of the property which relates to the firing range, and he doesn't anticipate that is anything that is tied to the lease and they would just come to the Town Council and make a request if they wish to use it. Mr. Doney recalled he has discussed this with Mr. Dusey and someone is looking as to what the site clearing would be to eliminate further liability for both parties. He thought there may be a minimal amount of work also. He noted there is a long entrance road back to the FOP and he thought there may be a need for the joint use of the property to do some paving to keep that road in good condition.

Mrs. Smith moved the lease be extended with the conditions discussed. Mrs. Royal seconded the motion with the stipulation that the Council consider having an appraiser look at the property and give us the sense of whether the Town is getting the full use of the properties. Mrs. Smith did not agree to the stipulation. Motion was then seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Reconsideration of motion to appoint Martin Klein to Zoning Comm.

RECONSIDERATION OF MOTION TO APPOINT MARTIN KLEIN TO THE ZONING COMMISSION: Motion was made by Mr. Weinberg that he believed Mr. Klein was a good attorney but he is not an architect and he is not in the Town year round, therefore, he would like to make the motion that the nomination for Mr. Klein be withdrawn and the post for the regular membership in the Zoning Commission be transferred through to Mr. Eugene Lawrence. Mr. Randolph advised that whoever voted on the prevailing side would have to make a motion to reconsider the motion made previously to appoint Mr. Klein. Mr. Weinberg moved the Council reconsider the nomination of Mr. Klein to the Zoning Commission. Seconded by Mrs. Smith. Motion to reconsider carried 3-2 with Mrs. Royal and Mrs. Wiener voting against the motion.

Mr. Weinberg moved that Mr. Eugene Lawrence be the nominee for the regular membership on the Zoning Commission. There was no second to the motion.

Mrs. Smith recalled they moved very quickly on this when it was adopted and she knows that Mr. Klein is an excellent candidate. Mrs. Wiener believed they were both highly qualified. Mrs. Royal pointed out there will be openings on the Architectural Commission and perhaps Mr. Lawrence being an architect would better be used on that Commission. Mrs. Smith pointed out that Mr. Lawrence is already an alternate on the Zoning Commission. Mrs. Wiener announced a slight error has been made and she doesn't know how to rectify it. She knew that Mr. Klein was a prominent attorney and has been waiting for five years to serve on the Zoning Commission.

Consideration of appeal to Ord. 26-93

4. Consideration of Appeal to Town Ordinance No. 26-93 Regarding Commercial Solid Waste Collection Schedules

Breakers Hotel

a. The Breakers Hotel - Mr. Dusey stated a letter has been received from Mr. Wighan of the Breakers requesting they be allowed to have a variance from the collection requirements of the Ordinance which require seven day a week collection, as they have three compactors at their location, and he has inspected the site and he believed the variance can be given as their facility is maintained without odor and it will not be a detriment to the neighbors or anyone else. He felt the request should be granted. Motion was made by Mrs. Smith that the variance be given to the Breakers regarding the commercial solid waste collection schedule. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Bath & Tennis Club

b. Bath and Tennis Club - Mr. Dusey reported this request is similar and they too have compactors and he visited the site and their service level has been changed to once a week as they are clean, odor and rodent free, as well as insect free, and he thought it should be granted. Motion was made by Mrs. Smith to grant the variance to the Bath and Tennis Club. Seconded by Mrs. Royal. Motion carried on roll call with Mr. Weinberg not voting on the motion as he was out of the room at the time the motion was called.

Consideration of 1992 Cable Act

5. Consideration of 1992 Cable Act

a. Customer Service Standards - Request to Schedule an Ordinance, Rules and Standards Committee Meeting - Deferred from November 9, 1993 Town Council Meeting - Mrs. Wiener announced she would be making the appointments of the Committees after which an Ordinance, Rules & Standards Committee meeting will be called. Mr. Doney commented the Town Council should reconsider the Customers Standards issue after the ORS Committee meets to review. He reported a report is being prepared by Mr. Jakubiak who is keeping a log of actual complaints received which will be forwarded to the Committee.

b. Consideration to Contract with Coopers and Lybrand for Auditing Services to Review FCC Form 393 and Cable Franchise Fee Revenue - Mr. Doney reported the cost to audit these services by Coopers and Lybrand will be approximately $4000. He stated the second proposal is to review Comcast's franchise and that auditing cost will involve ten hours of work or $1000. Mr. Doney noted that although the proposed auditing costs are necessary, there are ongoing changes constantly by the FCC relating to the Cable Consumer Protection and Competition Act of 1992, and these proposed modifications need to be carefully monitored and may delay the Town's use of Coopers and Lybrand services. He requested authorization for the auditing services be granted and Coopers and Lybrand will not be authorized to specifically proceed unless it reaches the point where they felt it had to be done.

Ms. Diane Christie of Comcast addressed the Council indicating they serve 19 municipalities and 10 have filed the form to become certified. Mrs. Royal wanted to know if perhaps the auditing cost could be shared with other communities to which Mr. Jakubiak responded there is a deadline to meet which has already been extended. Mrs. Wiener believed the Town had a different set of standards. Mr. Doney recalled the Town Council previously authorized the Town not go with other municipalities but go it alone. 1992 Cable Act. (cont'd)

Motion was made by Mrs. Royal, seconded by Mr. Shaw to authorize the auditing services, if necessary. Motion carried unanimously on roll call. Mr. Doney clarified that this motion applied to the two audits to which the Council President agreed.

6. Consideration of Request to Schedule Date and Time for a Town Council Workshop Meeting Regarding Legal and Procedural Town Matters - Deferred from December 14, 1993 Meeting. After discussion, February 28th , 1994 was set as the date for a Town Council Workshop commencing at 9:30 AM. Schedule Town Council Workshop

7. Consideration of Refinancing of Bonds Concerning East Central Regional Sewage Treatment Plant - Mr. Dusey advised the Town Council previously authorized the Town to participate in a State revolving fund loan to finance improvements at the regional treatment plant and the State has a requirement for certain coverage on the loan of 115% and the Town's bond rating is so good that generally, there are no coverages of this type needed, however, it has been requested and he requested authorization that the Town accept this provision in the State revolving loan. Motion was made by Mrs. Smith to authorize this procedure. Seconded by Mrs. Royal. On roll call, the motion carried unanimously. Consideration of Refinancing of Bonds - East Central Reg. Sewage Treatment Plant

8. Mid-Town PEP Project. Lake Worth Inlet Management Plan. Mrs. Wiener noted a letter has been received from Congressman Clay Shaw in which he has offered assistance to the Town on pending legislation before Congress. Mr. Doney stated there are two issues for which he would like to continue to request assistance from Congressman Shaw and one is the Mid-Town PEP Project. He recalled Congressman Shaw has already provided assistance by meeting with officials of the U. S. Army Corps of Engineers in Jacksonville and Washington requesting funds appropriated previously for the Mid-Town Beach Nourishment project be transferred for use at the Mid-Town PEP project and he is awaiting an official response from the Corps of Engineers on this matter. He stated if the response is not favorable, he will ask for additional assistance from Congressman Shaw. PEP Project

Mr. Doney reported the second item is the Lake Worth Inlet Management Plan, which is a Federally maintained navigation inlet, and coordination with the Corps for possible federal funding assistance will be essential to the successful implementation of this long term project.

Mrs. Wiener commented this requests are reasonable and she announced she would certainly support the staff on these items to which the Mayor and Council agreed.

Mrs. Smith suggested Mr. Shaw's help should also be solicited to get the Army Corps of Engineer to repair the beach at the north end which was destroyed by the caved in equipment and to expedite the permits on the Inlet.

XXI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

This matter was considered earlier and comments were already had.

XXII. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting on January 26, 1994 - Excerpt Available in Town Manager's Office - Motion was made by Mrs. Royal to approve the Major Matters. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. Major Matters Architectural Commission

The major matters were:

B49-93 - Mr. & Mrs. Robert DeMario, front wall. Removed from the agenda.
B84-93 - Addition, remodeling and site changes for Carol Martino, 144 Seminole Ave. Approved conditionally.
B68-93 - Landscape Plan for Town of Palm Beach South Fire Station. Approved conditionally.
B3-93 - Joel Martino, 109 Ocean Terrace - Revisions to previously approved project. Approved conditionally.
B25-93 - Revisions to previously approved project for Mr. & Mrs. George Straub, 10 Blossom Way. Approved.
B92-93 - New residence for Palm Beach Development Group, Inc., 1530 S. Ocean Blvd. - Approved conditionally.
B11-93 - Landscape plan for Agnes Rosenthal, 218 Miraflores Dr. - Approved.
B21-93 - Revisions to read and side elevations for Solcon 3000, Inc., 127 Everglades Ave. - Approved conditionally.
B24-93 - Landscape Plan for James Held and Kenneth Karakul, 214 El Brillo Way - Approved.
B80-93 - Cabana for Mr. & Mrs. Harding Willinger, 324 El Bravo Way. Approved.
B75-93 - New residence for Renate and Thomas McKnight, 310 Clarke Ave. - Approved conditionally.
B1-94 - Renovations for 125 Worth Ave. Ltd. Partnership. Approved conditionally.
B2-94 - New residence for Robert C. and Nina Lawrence, 30 Middle Rd. Deferred.
B3-94 - New residence for Noiseau Enterprises, Inc., 146 Atlantic Ave. - Deferred.
B4-94 - Demoltion of main house, guest house, and garage for Harvey and Linda Saligman, 738 S. County Rd. - Approved conditionally.

B. Variances, Special Exceptions and Site Plan Reviews

<u>New Business</u>

1. Variance No. 3-94 - Faraway Shores Limited, 144 Chilean Avenue; to allow construction of an addition providing an 8.5' side yard setback in lieu of 12.5' required. R-B District. - Robert Bell, Architect addressed the Council requesting a 8.5' sideyard setback in lieu of 12.5' to construct a single car garage. He believed this should be granted because: Var. 3-94

1. The existing residence does not have a garage as required.
2. All requirements with regards to lot coverage and landscaping are met.
3. No other variances are required.

Var. 3-94 (cont'd)

Mr. Bell advised this lot is 80 x 125 feet and in the eighties, an existing carport was enclosed to provide a third bedroom, which left the residence without an enclosed garage. He believed the location requested was the best for this lot and exhibited a site plan.

Mr. Moore commented the hardship is that the property is a narrow lot. He believed the garage could be located on the west side. Mrs. Smith agreed as she would rather see the variance on that side of the lot as what they are creating with the variance requested is three cuts into the house, and in spite of the fact there is ample landscaping space, it does not give that appearance and she felt the garage should be placed on the west side where it can be set further back. Mr. Bell advised this would block out windows in an existing bedroom and there needs to be egress windows in the bedroom area. Mrs. Smith thought it would be less obtrusive on the west side. She believed the variance could be lessened with its impact if it were restudied and suggested it be deferred so the architect could give it more study. She knew that the present owner did not close in the carport but thought it needed to be restudied so it would not be as obtrusive.

Mrs. Royal asked about the hardship to which Mr. Moore responded the hardship is the narrow piece of property, and the enclosure of the carport was not created by the present owner.

Mrs. Smith moved that Variance No. 3-94 be deferred to the March meeting to give the architect an opportunity to incorporate the suggestions and concerns of the Town Council which have been discussed today. Seconded by Mr. Weinberg. On roll call, the motion did not carry (2-3) with three dissenting votes cast by Mr. Shaw, Mrs. Royal and Mrs. Wiener.

Mrs. Wiener indicated her concern about creating a wall outside of a bedroom and kitchen window if this garage is placed on the west side of the house and that is why she voted against the motion.

Mr. Shaw asked Mr. Bell if he was willing to remove the cut and the concrete on the west side of the property to which Mr. Bell responded affirmatively. Mr. Shaw asked how they would handle the screened parking, wondering if he could bring the driveway to the right so there would be a curve and not be able to be seen from the street. Mr. Bell believed he could work that into the plan, but they would still like to have some area for parking for the overflow parking. Mr. Shaw stated his concern about having one entrance to the property. Mr. Bell stated he will try. Motion was made by Mrs. Royal that the Variance No. 3-94 be denied. Mrs. Smith who felt they painted themselves into a hard spot as originally she asked for a deferral so the architect could study and redesign and come back next month and the Council chose not to pass that. Motion died for lack of a second.

Mayor Ilyinsky suggested they go with the deferral as the architect has agreed to some of the suggestions.

Mr. Shaw moved that Variance No. 3-94 be deferred for redesign. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to defer.

Var. 4-94

2. Variance No. 4-94 - Mr. and Mrs. William H. Lanting, 110 Seaspray Avenue; to allow construction of an addition joining two non-conforming structures which are located 7.5' from the west side property line in lieu of 15' required; said addition would also provide a 7.5' west side yard setback. R-B District. - Eugene Lawrence, Architect, addressed the Council on behalf of Mr. & Mrs. Lanting, requested the variance. Mr. Moore indicated this is a minimum variance and staff does not find objection to the request. Mr. Weinberg moved for approval of Variance No. 4-94, which was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Spec. Excep. 4-94 with variance

3. Special Exception No. 4-94 With Variance - Ronald Schram, 1420 North Ocean Boulevard; to allow construction of a beach house per Section 5.47(1) and to allow a 5' front setback in lieu of 10' required. Beach Area District. - Mr. E. G. Fagan, Architect addressed the Council on behalf of Mr. Schram requested there be a variance to the setback off North Ocean Blvd. from ten feet to five feet to erect a beach house. He advised his client owns the house directly across the street to the west and they are willing to furnish a Unity of Title. He showed photographs showing many beach houses which are built with less than the required setback, and some have only a two or three foot setback. Mr. Fagan showed a plan which shows the property being 14.5' off the road, leaving 3 and 1/2' to the bulkhead and the building would be 9.6' by 20' and the height and the length and the width of the building would be within Code and the only variance needed is the setback. Mr. Moore suggested the building be moved further away from the road to keep the variance at a minimum.

The applicant, Ron Schram addressed the Council, noting he is an attorney and a real estate developer and he does not know with any degree of certainty who owns the property from the 14.5' in depth which he owns but the additional 3.5' is unknown. He wishes to have the five foot variance rather than ten feet as every beach house on North Ocean Blvd does not have the required ten feet and some have none. He has a letter from his immediate neighbor who has no objection. He told of building a wall to meet the new requirements of half being 4.5' and half being 2.5' high and the twenty foot building would lie within the section where the wall is 4.5'. He noted if he does discover that he owns the additional 3.5' it would be his desire to increase the width of the building, which is currently 9.5' wide and he would like to add the additional 3.5' to it. Mr. Moore corrected the applicant, noting the maximum width allowed is ten feet for the beach house so even if he owned the additional 3.5', he would need a variance to go beyond the 9.5'. He reported the position of the Building Department is the additional 3.5' does belong to the applicant and the building should be moved away from North Ocean to lessen the variance request, recalling there have not been any recent grantings of the waiver of the setback that close to North Ocean Boulevard.

Mr. Schram pointed out the survey he obtained when he purchased the property early last year shows he owns 14.5' and a survey in 1989 also shows the property is 14.5' and he would love to say he owns the additional 3.5', and it doesn't much matter except when you want to build a building on the property.

Mrs. Wiener believed there should be some way to find out who is the owner. Mr. Schram responded the only way is to file a quiet title suit. He reported he has gone to the property appraiser's office and researched this and those plats indicate the property is 14.5' up to the wooden bulkhead, which does not exist although there is a concrete bulkhead and that is 18' off of Ocean Blvd. He didn't believe he was requesting anything unusual as every beach structure from the Kennedy Estate northward to N. Ocean Blvd. is within five feet of the road, so what he is requesting is what they have permitted everyone else to do in this area. Spec. Excep. 4-94 with variance

Mr. Moore responded he doesn't wish to be adversarial, however, it was his belief that not one of the beach houses was within five feet of the road and the issue is there appears there is an extra 3.5' created when the concrete bulkhead was placed in front of the wooden bulkhead and it was his belief that the tax rolls would not show anyone else owning that property. He believed this should be a bare minimum variance and it should be moved 3.5'.

Mrs. Smith noted if he wished to reduce the size of the beach house, there would be no variance necessary. She didn't think he should use the fact that all of the other beach houses are built close to the road, as she recalled when the new seawall was installed, it was put in front of the wooden one and that land belongs to the Town as it always has, so that he could move the house and make it one foot narrower and there would be no variance needed.

Mr. Schram commented that the title he has taken to the property is a platted lot, 14.5' by 121', and even if he did own it, to follow the suggestion, it would mean the beach house would have to be reduced to eight feet and taking into consideration the thickness of the concrete block walls, he would have a room hardly worth building. Mrs. Smith felt he would have a beach house as the others along there, and she doesn't believe a real hardship has been described.

Mrs. Wiener asked the applicant if he would consider a variance which would be somewhere in between the figures discussed and not move it 3.5' but 2'. Mrs. Royal did not think it made that much difference it was five feet or three feet, as most of the beach houses in that area do not come up to the required ten feet.

Mr. Shaw asked what would be the timeframe for Mr. Schram to file this lawsuit. Mr. Schram responded after he gets this approval, he needs to go to the Corps of Engineers and get other approvals from the State of Florida before he is allowed to build. Mr. Shaw noted he was asking about the lawsuit that he referred to earlier to get a clear title. Mr. Schram responded he doesn't believe he has right to that 3.5', but if he took an aggressive stand, he would have to sue the State and the Town to assert he does own it and he doesn't wish to institute such a lawsuit.

Mr. Schram described the property, noting there is a wall which has been built along North Ocean Blvd. and he owns 14.5 from that wall, and 3.5' beyond that for a total of 18', there is a bulkhead which is actually below the ground and when he walks from his property he walks onto State of Florida and Town of Palm Beach property. He is requesting permission to build the beach house five feet east of North Ocean Blvd. Mrs. Smith asked if there was native vegetation beyond the bulkhead to which Mr. Schram responded the dune line is east of his property. Mrs. Smith believed a 12' high building five feet from the road is a high looking building.

Motion was made by Mr. Shaw that the Special Exception No. 4-94 be granted with variance. Seconded by Mrs. Royal. On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion.

4. Special Exception No. 5-94 - Patricia Sousa, 1300 North Ocean Boulevard; to allow construction of a beach house. Beach Area District. - Mrs. Sousa addressed the Council, noting she is not requesting a variance but a Special Exception is required to build a beach house and that is her request. Mr. Moore advised staff has identified there was a problem with the removal of the vegetation in the area of the Construction Control Line and that issue was resolved with the County and the Town, however, the mitigation that was agreed upon has never fully been complied with and he recommended that if the Special Exception is granted, there be mitigation on the rest of the property which would meet the Town's and the County's original settlement with the property owner. He advised the Town Engineer, Mr. Bowser points out utility site connections need to be bored under North Ocean Blvd. Mr. Moore recommended that if this is granted, there be a mitigation on the remainder of the property which would meet both the Town and the County's original settlement with the property owner. Mrs. Sousa believed all the mitigation has been completed on the first part. Spec. Excep. 5-94

Mr. Moore recalled the Code Enforcement action was a settlement and this has never been complied with to the satisfaction of the County or the Town. Mrs. Sousa did not agree, noting she has a letter from the Town which gave release. Mr. Moore responded that was done in order that she could apply for the other permits necessary and the mitigation on the other areas of the property have never totally been satisfactorily done. He stated the replanting and the vegetation has to be brought up to the standards agreed upon. Mrs. Sousa responded there is no other place on the property where she could put the plantings. She announced she has been overplanting and that is the reason she has her permit as she is in compliance. Mr. Moore responded he had information from the County that she was not in compliance. Mrs. Sousa commented she has a permit from the County, who would not have granted it if she was not in compliance.

Mr. Moore announced that if the Town Council wishes to grant the Special Exception, and the County has agreed, this is a moot issue and all she is here today for is to receive permission to build a beach house.

Mrs. Smith moved Special Exception 5-94 be approved if everything is in order with the County and the Town. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

5. Special Exception No. 6-94 With Variances - Palm V Associates, 240 Worth Avenue; to allow Nature's Way Restaurant to establish outdoor seating. A variance to Section 6.61 is required to allow proposed 40 outdoor seats as an expansion to the maximum number of permitted seats for this restaurant space. Applicant proposes to provide off-street parking within 500' of the cafe pursuant to Section 6.20(d)(1), and requests a variance to Section 6.20(d)(1) requiring said parking to be in the same zoning district. C-WA District - Letter dated February 8, 1994 from Peter Broberg requesting deferral to March 8, 1994 meeting. Spec. Excep. 6-94 with Variances

This matter was deferred at the beginning of the meeting to the March 8, 1994 Town Council Meeting.

C. Other

American Coastal eng. Inc. - PEP REEF

Reconsideration of request by American Coastal Engineering, Inc. to utilize PEP Reef forms which were used on Mid-Town PEP Reef Project, for Project in Indian River County. Mrs. Wiener recalled many hours ago, the Council agreed to hear this matter further.

Mr. Dotterer addressed the Council indicating he has consulted with his client as requested by the Town Council earlier in the meeting, and they are willing to increase their offer to the Town for the use of the forms to $33,000, however, the only way the company is able to do that is to pay over to the Town the funds once they are received from Indian River County, and they will make the payment to the Town within short order after the receipt of those funds from Indian River County.

Mr. Shaw asked what the payment schedule would be to which Mr. Dotterer responded Indian River Co. has provided for payments to be made in various stages, and the relevant stage of completion of the first stage after the use of the forms would be upon the completion of the casting only of the first one thousand feet of the Reef which would be approximately 80 units. He stated the contractor does hope to install the reef during the summer and will commence in May, contingent upon the proper permits being issued from the State DEP.

Mr. Shaw asked if the Town Council agreed to this, could he agree to make the payment no later than a certain date? Mr. Dotterer responded they are subject to when Indian River County makes their payments, which is a function as to when that stage of construction would be completed. Mr. Shaw suggested that the company take out a loan or some other means as if they are in the process of doing work with another governmental agency, they should be able to have cash to run their business. Mr. Dotterer stated his client is a pioneer in this industry and he has been advised they would not be able to make this payment to the Town until they are in receipt of the monies from Indian River County, as there is nothing flowing to the contractor for the use of these forms until it gets to that stage.

Mr. Weinberg asked what the timing schedule would be for the payment. Mr. Dotterer responded the company would like to build the Reef between May and September and they hoped to be finished by September, however he cannot assure that will be the actual timing, as they have to procure permits from the State. Mrs. Wiener agreed that sometimes it takes forever to secure the proper permitting and then if they find they are not getting the permit from the State, and they have the forms, where would that leave the Town? Mr. Dotterer responded they do not intend to use the forms until the State Permit is received, which they hope to receive sometime this month, but they all know, no-one can control the time schedule in Tallahassee and it may not be until March or April until they actually receive the permit. He explained in the meantime the forms will continue to stay where they are at the present time and would not be used.

Mrs. Wiener asked if a partial payment could be arranged to which Mr. Dotterer responded his client is truly grateful to this Council for having built the first PEP Reef and are pleased with the results, however, they have advised him that they just could not come up with the partial payment.

Mr. Shaw asked if the Town does decide to expand the reef in the future, would they be willing to give the Town the right to use the forms at no charge? Mr. Dotterer responded he believed the proposal was for a one time payment. Mr. Shaw wanted to have this as part of the Agreement that if anything is done in the future with American Coastal the forms would never have a charge to this Town. He knew the forms were now in good condition and he did not want to find out that the forms could not be used again and the Town would have to buy new forms if they wished to expand the reef. Mr. Dotterer stated he was sure that American Coastal would make every effort to use what is available. Mr. Shaw stated he wanted it stated that the Town would never have a charge for the forms, as the Town is allowing them to use the forms and he would like to see it in writing contractually that so long as the Town comes to American Coastal to extend, repair or replace anything to do with the Reef, that American Coastal will provide the forms at no charge, so the only thing the Town would be paying for is the module, the steel, etc. but not the forms.

Mrs. Smith asked if Mr. Shaw wanted to amend the original contract which states if anything happens to the forms, the Town and the Company will share in the cost of the replacement, which is in the original contract. Mr. Dusey stated what the stipulation was if the State decided after fifty forms were manufactured that they could not be installed, the Town was saying in that case they would pay half and the contractor would pay half and it had nothing to do with the forms. Mr. Shaw noted the forms are at the American Coastal site and the Town could reuse them as they are presently, but now they are asking for permission to use the forms in Indian River County, and what he is requesting that there be an Agreement for the next go-around, if it ever happens, that American Coastal will provide the Town with the forms at no charge.

Mr. Dotterer responded the Agreement does provide for the ownership of the forms to remain with American Coastal and the Town has the right to consent or not to consent for the use of the forms for a future project, which is what is being sought here. He stated the cost of the forms for the Town's project, was approximately $140,000 and the proposal here is to return a benefit to the Town in the amount of $33,000 for the use of the forms, which have been used in the Town's project. He believed what Mr. Shaw was requesting was if there was a new reef to be built, which may be of the same design and suitable to use the existing forms or they could be a different design and perhaps part of the forms could be used, and Mr. Shaw is asking that these be provided absolutely free of cost and he thought this was a higher obligation than $33,000 and probably is not a provision that could be assured. Mr. Shaw pointed out he is only asking for use of the forms, not the reef.

Mr. Dotterer responded to build another project in the Town may require a whole new set of forms, or it may require a rehabilitation of the existing forms. Mr. Shaw stated if it is found that the forms can be reused in that configuration, and that would be the way they are right now, he doesn't want to see a bill for new forms and he would like that assurance.

Mr. Dotterer commented it was his thought that having access to the existing forms at no charge would be no problem, but to guarantee a new section of reef to be built and formed at no additional charge would not be possible.

Mr. Shaw stated it was his concern that if the present forms are used up and would no longer be available, he didn't want to spend additional monies to replace those forms. Mr. Dotterer explained they have entered into a contract with the Town to build a reef for a stated amount of money and that was done. He advised the Town owns the Reef and the contractor owns the forms and is seeking permission to use the forms and is agreeable to pay a sum of money to the Town to obtain its consent. He stated they could not say even if the forms were not touched at all and the Town requested an addition to the Reef, they could not guarantee the use of the forms and would be able to build a new project for the Town without any additional cost of form fabrication and he doesn't know the answer to that and he didn't think anyone knew the answer.

American Coastal eng. Inc. - PEP REEF (cont'd)

Mrs. Wiener called for a motion. Mr. Shaw made a motion that the Town Council accept their offer on the contingency that they guarantee us there will be no charge to the Town for new forms, in the event they decide to extend the reef. Mrs. Wiener pointed out that Mr. Dotterer has already told them they could not accept that provision. Mr. Shaw commented he does not want to find out sometime in the future that the forms got damaged and there are no forms and American Coastal is going to come back and tell us the forms were damaged and now we have to purchase new forms. Mr. Dotterer stated if Mr. Shaw is concerned about damage to the forms, he is sure his client would be happy to repair them, but what he was saying that if the Town commissions a new reef, there is no guaranty that the forms would be adequate to build that new reef. Mr. Shaw stated his feeling is the acceptance of the funds should be with the understanding that the forms will be available in the event the Town wanted to use them in the future, or perhaps he should modify the motion and state the Town will accept $50,000 with $10,000 up front and the balance no later than November of 1994 and he so moved. There was no second to the motion.

Mrs. Wiener suggested they be realistic as the realism of it being that the forms may never be used by the Town again and we have an opportunity to recoup some of the expense, and if they go too far in one direction, they will not recoup any of the expense and the forms will just lie there and Indian River Co. would have to build new forms.

Mrs. Smith asked if it was possible for them to pay $35,000 to which Mr. Dotterer responded he would have to be in touch with his client before he could respond. Mrs. Smith thought they were attempting to approve something and she will make a motion to authorize American Coastal to use the forms but the amount should be between $33,000 and $35,000 for the good will of the Town of Palm Beach to continue with American Coastal, but with the parameters that the money be paid to the Town of Palm Beach within six months of the appointed time, with the money coming from Indian River County. Mr. Dotterer stated he would have to see if this is acceptable to his client. Mrs. Smith stated she is trying to meet them half way for a degree of comfort for the Council and for American Coastal. Mr. Dotterer again reminded that American Coastal cannot control the State and when it might grant a permit.

Mrs. Royal asked about the future protection that the Town would not have to pay again for forms? Mrs. Smith responded the future protection cannot be guaranteed to the Town according to Mr. Dotterer. Mrs. Royal thought she heard Mr. Dotterer state they would be willing to repair the forms. Mr. Weinberg explained this would be if they were damaged. Mrs. Wiener agreed that was if there was an accident, but not if they are worn out as that is an entirely different matter.

Mr. Randolph advised if the forms happen to be available and in good shape when the Town wants to use them, can they use them free of charge? Mr. Dotterer responded the forms are owned by American Coastal and subject to the patent rights of American Coastal and the contract states the Town can give consent to reuse the forms or not give consent, and he didn't believe American Coastal would have any problem complying with what Mr. Randolph suggested and that is if the forms are still available and useable, that the Town would have the benefit free of charge for whatever they are worth at the time, as they might work and they might not work and that would have to be a evaluation that is made at the time, depending on how long they last.

Mrs. Wiener asked again if the forms are available and in good condition, would the Town have to pay again and she is losing a lot of comfort with Mr. Dotterer's hesitation. Mr. Dotterer explained he was trying to get to the reality of it as the forms may or may not be useable at that time, but if they are, the Town could use them free of charge.

Seconded by Mr. Weinberg. On roll call, the motion carried 3-2 with Mrs. Royal and Mr. Shaw voting against the motion.

1. Consideration of Request for Window Display Program for Window Treatments in Commercial Zoning Districts - Mrs. Polly Earl of the Preservation Foundation addressed the Council exhibiting photographs she would like to have available for property owners who have empty shops or are remodeling their shops, and would like the authorization of the Town Council to do so. Mr. Moore explained this is a display for store fronts at the owner's request within the Town of Palm Beach. He thought it was appropriate that the Town Council see the displays which will be placed in the storefronts so the Town Council had an understanding of what was being proposed. He thought any group could request their materials to be placed in vacant or under construction storefronts. He noted this same presentation was made to the Architectural Commission and the Landmarks Preservation Commission and the Town Council have the final say on the type of displays for this request and any future requests they may receive from other organizations.

Window Treatments in Commercial Zoning District

Mrs. Wiener recalled it was her idea that the empty storefronts have a clean white background and a clean window and a display of whatever, she didn't think it was the Council's business what they wanted to display. Mrs. Smith recalled the Architectural Commission also made a request when there was construction, the store owners not leave their windows in disarray. Mrs. Wiener thought it was a good idea but she didn't think the Council needed to be involved.

XXIII. ANY OTHER MATTERS

A. MAYOR ILYINSKY'S COMMENTS ON POOP AND SCOOP. Mayor Ilyinsky reported he wanted the following comments to be a part of the public record as he knows it is a concern of many residents: "Recently we have received a number of complaints from Town residents regarding pet owners who fail to pick up after their dogs. This is a serious ongoing enforcement problem that I do not take lightly. I believe that each pet owner in Town has the responsibility to abide by our local laws and respect the property of their neighbors and public grassed areas. Pet owners who

Mayor's Comments on Poop and Scoop

fail to abide by Town ordinances regarding leash laws and the care of their animals on public and private property will continue to be ticketed by the Town's Police Department. Unfortunately, with the heavy demands on our local courts, this type of problem has considerably less judicial priority and the Town' enforcement is at the mercy of the County court system. Through public education, the Town will do its best to address this problem. Collectively, our Elected Officials will consider any cost-effective alternatives that may help to control this problem in the future."

Mrs. Royal left the meeting room at 6 PM.

Temporary Protective Screening installed at 960 North Ocean Blvd.

B. TEMPORARY PROTECTIVE SCREENING INSTALLED AT 960 NORTH OCEAN BOULEVARD. Mrs. Wiener stated she asked this be on the agenda today and called on Mr. Moore for his comments. Mr. Moore explained there was a temporary hedge and screening erected at the Alan D. Bleznak residence. He recalled some time ago, there was an application before the Architectural Commission for the property across the street from this property for a demolition of the Scripps house. He was advised by the architect for the Scripps, Eugene Lawrence, that he was unable to obtain the proper permits for the seawalls and in mid-December, Mr. Bleznak came to the Building Department advising his hedge was dying because of the increased wind, blowing sand and salt spray which was coming across the now vacant lot. He recalled Mr. Bleznak requested authorization to erect a shade structure which was netting and the use of 4 x 4's approximately 16' in height on his property in order to endeavor to save his hedge and he was granted that permission on a temporary basis. He noted after this was discussed at the last Town Council meeting, his yard man was informed that the temporary screening needed to be removed and a subsequent letter to Mr. Bleznak was sent on February 7, 1994.

Mr. Moore advised he has also informed Mr. Scripps that the empty lot needed to be sodded and there should be an irrigation system so the sand would not blow and be a detriment to the neighbor's hedge. He advised if Mr. Bleznak does not comply with the request, he will be asked to appear before the Code Enforcement Board.

Mrs. Smith believed this was a hardship because the hedge on Mr. Bleznak's property is dying and she knew it was a real problem as she lost a ficus hedge also and the way she handled it was to cut it back and shield it and wait until the growing season started to see what could be salvaged. She thought it would be fair to help him out in any way they could and she knew this very high hedge will die, so it does need to be cut down somewhat and have protection on it until the growing season.

Mrs. Wiener believed the way it is now is an eyesore and she asked if he had permission to put up the fence originally to which Mr. Moore responded affirmatively. Mrs. Wiener commented fences of that height are not allowed and she thought it was an outrage. She thought if originally he had lowered the height of the hedge and come to the Council for authorization for a higher fence to be installed, they might have been able to work with him. She requested Mr. Bleznak be asked to remove the fencing and the screening and reduce the height of the hedge as it isn't going to make it.

Mrs. Smith suggested he be asked to take the hedge down to eight feet and then leave the six foot screen in front of it with the fencing. She agreed it was an eye sore, but she knew why he needed it. Mrs. Wiener understood that but she thought he had put up a fence which is extraordinarily high and it is not permitted in the Town.

Mr. Moore responded the understanding was that the fence was to be temporary and shouldn't be there for more than thirty days. Mrs. Wiener did not agree noting she complained in December and here we are in February and she didn't believe he was about to remove the eyesore.

Mr. Shaw suggested if he is going to put up protective screening, he should purchase it in green as then it would blend with the hedge.

Mrs. Wiener wanted to know how they go about telling him that the Council didn't want to look at that fence anymore and he is outside of the Town requirements. Mr. Moore responded a letter has been written to Mr. Bleznak and Mr. Scripps. He explained that rightly or wrongly, this was an emergency measure to save the hedge. He would advise Mr. Bleznak that he could have a fence 6' in height with green screening and reduce the height of the hedge, but as of Feb. 7, he has been advised he must remove the entire structure.

Mr. Weinberg suggested they tell him personally that this has been decided by the Town Council at this meeting as he viewed a personal visit would be better than sending letters, to which Mr. Moore agreed. Mrs. Smith suggested it be in writing and hand delivered.

Mr. Shaw believed the problem was caused by the absence of a house on the property across the street and wondered if a fence could be put on that property as if it is the house that blocks the wind, he thought if the fencing was on that property, it would solve the problem. Mrs. Smith advised it wouldn't be screened as it is wide open. Mr. Moore advised this empty property is to be a garden for an adjacent house, so this could be an ongoing problem.

Criminal Justice Comm.

C. PALM BEACH COUNTY MUNICIPAL LEAGUE REQUEST FOR AN ELECTED OFFICIAL TO SERVE ON THE CRIMINAL JUSTICE COMMISSION. Mrs. Wiener asked if anyone wished to serve, they submit their name.

Fl. Dept. of Environ. Pro. re: proposed port of PB excpansion project

D. LETTER FROM VIRGINIA WETHERELL OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ON THE PROPOSED PORT OF PALM BEACH EXPANSION PROJECT TO EXTEND A BULKHEAD SIXTY FEET WATERWARD OF ITS EXISTING LOCATION. Mr. Doney noted the Mayor has been in receipt of a letter from Ms. Wetherell on this subject and he asked if the Mayor or Town Council President wished to send additional letters telling of the Town Council's objection to which Mrs. Wiener responded negatively.

Citizens Comm. against airport noise

E. CITIZENS COMMITTEE AGAINST AIRPORT NOISE. Mr. Doney recalled a letter was sent by Mr. Weinberg to the Chairman of the Metropolitan Planning Organization on March 15, 1993 in opposition to the proposed I-95 Interchange Project at the Palm Beach International Airport and the Mayor and Town Council has received a memorandum from Mr. Jakubiak on this subject. Mr. Weinberg advised as a member of CCAN he has been there to represent 38 communities and he has told them in the past that he cannot represent 38 communities and the Town of Palm Beach at the same time, as most of the time there is no agreement. He recalled at the last meeting he communicated with Mary McCarthy and Carol Roberts, who are both interested in solving this situation, as he would like to be able to be the representative for just the Town of Palm Beach, to which Mrs. Roberts responded she could not consider that request but if it was on behalf of a neighborhood, they may be able to something about it. He requested authorization to send such a letter that the Town is now a neighborhood to which the Council agreed and Mr. Weinberg was authorized to send the letter. Airport Noise (cont'd)

Mr. Doney noted the related item is the I-95 Interchange and the Mayor and Council suggested another letter be sent to reiterate the Town's opposition to this interchange.

E. CITY OF WEST PALM BEACH WORKSHOP WITH THE TOWN COUNCIL OF THE TOWN OF PALM BEACH ON THE PROPOSED WATER FRANCHISE AGREEMENT. Mr. Doney advised he will be in touch with the Mayor and Council on the dates the City of West Palm Beach Commission will be available for a joint meeting. Workshop re: water franchise agreement

F. REMINDER OF MEETINGS: Mr. Doney requested all to review the Schedule of Meetings.

XXIV. ADJOURNMENT - Meeting adjourned at 6:20 PM. Adjournment

Grace T. Peters
Town Clerk