MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 13, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 a.m. on January 13, 1998. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Leslie Shaw, Councilmen Jack McDonald, Sam McLendon, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Administrator Paul Castro, Police Chief Joseph Terlizzese, Police Major Frank Croft, Public Works Director Al Dusey, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Dr. Richard Cromic of Royal Poinciana Chapel. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Retirement of Earl Bradford, Paint & Sign Supervisor - 24 Years and 5 Months

Mayor Ilyinsky presented Mr. Bradford with a watch in honor of his valuable service to the Town.

B. Retirement of Benjamin Brown, Street & Sign Painter - 24 Years and 5 Months

Mayor Ilyinsky presented Mr. Brown with a ring in honor of his valuable service to the Town.

C. Retirement of George Prince, Equipment Operator I/Trash - 30 Years and 6 Months

Mayor Ilyinsky presented Mr. Prince with a ring in honor of his valuable service to the Town.

D. Retirement of Joe Ugi, Facilities Maintenance Division Manager - 21 Years

Mayor Ilyinsky presented Mr. Ugi with a watch in honor of his valuable service to the Town.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky reported that the Corps of Engineers hired Gulf Coast Trailing to perform maintenance dredging of the Lake Worth Inlet. The Corps estimates that approximately 150,000 cubic yards of sand will be pumped onto the beaches south of the South Jetty. Mayor Ilyinsky announced that the exact dates for commencement of the dredging will be forthcoming from the Public Works Department.

Mayor Ilyinsky announced the 15th Annual Palm Beach Par 3 Golf Course Pro Am featuring top Ladies Golf Association players will be held on Saturday, January 31st, 1998, beginning at noon. This event benefits the Rehabilitation Center for Children and Adults and also the Palm Beach Recreation Center.

Mayor Ilyinsky said the Town's Comprehensive Plan has been approved by the (State of Florida) Department of Community Affairs on first submittal. Mayor Ilyinsky congratulated the Planning, Zoning, & Building Department and all who participated in the review procedure as many municipalities do not have this success.

Director of Planning, Building & Zoning Robert Moore stated that the Comprehensive Plan was approved as of January 1, 1998, and would be in effect until the year 2002. He commented that the Town had been planning its growth and development since 1929, and the first Comprehensive Plan was donated to the Town by the Garden Club, as well as the first Zoning Ordinance of the Town.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Page 3, Item XI.A. - Report of the Finance & Taxation Committee Meeting on December 15, 1997 - Request by Mr. Doney and Mrs. Pollitt to defer this item to February 10, 1998.

Motion made by President Pro-Tem Shaw for approval of deferral of the Report of the Finance & Taxation Committee Meeting to the February 10, 1998 Town Council Meeting; seconded by Councilman Wyett. On roll call the motion passed unanimously.

Page 3, Item XII.B.2. - Consideration of Concerns by Residents on Park Avenue Relating to Commercial Establishments on Sunrise Avenue - Request for deferral to February 10, 1998, per letter dated 12, 1998, from Mr. Charles W. Millar, Jr.

Motion made by President Pro-Tem Shaw, seconded by Councilman Wyett to defer Item XII. B.2 (Consideration of Concerns by Residents on Park Avenue Relating to Commercial Establishments on Sunrise Avenue), with staff comments only to be heard under that item today. On roll call the motion carried unanimously.

Page 4, Item XII.B.4. - Consideration of Resident Complaints Relating to Comcast Cablevision's Installation and Upgrade Policies for Multi-Family Units and Businesses in Relation to its Cable Franchise Agreement - Request to be heard before Item XII.B.2 per letter dated January 12, 1998, from Mrs. Diane L. Christie

Motion made by Councilman Wyett, seconded by Councilman McLendon, to hear Item XII.B.4., (Consideration of Resident Complaints Relating to Comcast Cablevision's Installation and upgrade Policies for Multi-Family Units and Businesses in Relation to its Cable Franchise Agreement) before Item XII.B. 2. On roll call the motion carried unanimously.

Page 5, Item XVI.B.1. - Consideration of Appeal of the Architectural Commission Regarding ARCOM No. A3-97, 101 Nightingale Trail - Request for Deferral to February 10, 1998, per letter dated January 12, 1998, from Mr. Charles W. Millar, Jr.

Motion made by Councilman Wyett, seconded by Councilman McLendon to defer Item XVI.B.1 (Consideration of Appeal of the Architectural Commission Regarding ARCOM No. A3-97, 101 Nightingale Trail) to the February 10, 1998 Town Council Meeting. On roll call the motion carried unanimously.

Page 6, Item XVI.D.1. - Variance No. 31-97 - Maya Langes-Swarovski, 1676 South Ocean Blvd. - Request for Withdrawal per letter dated January 5, 1998, from Mr. James R. Brindell

Councilman Wyett moved approval of withdrawal of Item XVI.D. 1 (Variance 31-97 - Maya Langes -Swarovski, 1676 South Ocean Blvd.). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Page 6, Item XCI.D.5. - Special Exception No. 1-98 - 2875 Corp., 2875 South Ocean Blvd. - Staff Recommends Deferral to May 12, 1998

President Pro-Tem Shaw moved deferral of Item XCI.D.5 (Special Exception 1-98 - 2875 South Ocean Blvd.) to the May 12, 1998 Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Page 7, Item XVI.D.6. - Special Exception No. 2-98 - 231 Peruvian Avenue - Request for Withdrawal per letter dated January 12, 1998, from Mr. Jorge A. Sanchez

President Pro-Tem Shaw moved withdrawal of Item XVI.D.6 (Special Exception 2-98 - 231 Peruvian Avenue).

The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Page 3, Item IX.B.1 (Public Hearing - Consideration of Settlement Proposal Regarding Consideration of Settlement Proposal Regarding Barbara Martinuzzi vs. Town of Palm Beach (Case No. CL 96-6326 AE); Barbara Martinuzzi vs. Town of Palm Beach (Case No. CL 97-4312 AE); and Barbara Martinuzzi vs. Town of Palm Beach, et al (Case No. CL 97-8177AD)] - Request by Town Attorney Randolph for postponement until a time certain of 1:30 p.m.

President Pro-Tem Shaw moved approval of postponement of Item IX.B.1 to a time certain of 1:30 p.m. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Page 5, Add Item XIII.C.4. - Request from Fire-Rescue Chief Ken Elmore to add item to consider drafting of Ordinance.

Councilman Wyett made a motion to add Item XIII.C.4 - Consideration of Ordinance of the Fire Department relating to invoking penalties to operators of business that had violated fire codes after they had been duly warned and cited. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Councilman Wyett proposed a Resolution to have the Town Council authorize the Personnel Committee to review administrative positions in the Town, in particular the position of the Risk Manager. The motion was seconded by Councilman McDonald for discussion. On roll call the motion failed 2/3, with Councilmen McDonald and Wyett casting affirmative votes; President Smith, President Pro-Tem Shaw and Councilman McLendon casting negative votes.

Councilman Wyett moved approval of the amended Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. William Guttman, Chief Executive of the Palm Beach Civic Association, commented on the timetable of the Town Council regarding the feasibility of reverse osmosis and other water purification technologies. He indicated that the price of water could rise substantially when the City of West Palm Beach instituted a new water rate structure. He commented that the Civic Association believed that the Town Council could hold open workshops with suppliers, and then authorize the Public Works Department to develop a set of preliminary specifications for one or more reverse osmosis facilities that could purify sea water or water from the Aquifer. The preliminary specifications could be detailed enough to allow several competitive bids and presentations from suppliers.

Mr. Chris Kellogg thanked President Smith for expressing her concern for the preservation of ficus trees on North County Road, as well as Councilmen McDonald and Wyett for assisting him with information. He informed the Town Council that he had begun a "tree roots" movement to assist with maintaining and improving public trees in Palm Beach. He announced the formation of the Palm Beach Tree Society, which would be modeled after the Newport Tree Society, and noted that he had received a donation of two large ficus trees for the Town from Nancy Harrison of Palm Beach. The Society would work closely with other organizations, such as the Preservation Foundation and the Garden Club. Mr. Kellogg submitted a report he had written on the subject to Town Clerk Pollitt for the record.

Dondra Coniglio, 321 Oleander Avenue, presented letters from the Chamber of Commerce, Royal Poinciana Association, Greater South County Road Association, and petitions from Palm Beach residents requesting that the Publix parking lot be allowed to remain open to the public in evening hours. She commented that the two block commercial district between Royal Poinciana and Sunrise had many businesses open in the evening hours, and the area produced a great demand for parking. She requested that the proposal to close the Publix parking lot be deferred until a public hearing was granted, so that residents could express their opinions.

Mrs. Ann Herman, Chairman of the Golf Commission, announced that tickets for the Golf Tournament were $10.00, and requested that the Town Council support a hole at the tournament.

President Smith expressed that the Town Council members would support the project individually, however, the Town Council as a group did not support charities, as there were many requests each year.

Resident Mary Frankel expressed concern about the proposed closing of the Publix parking lot after store hours, commenting that it could cause a dangerous traffic situation, as cars would continue to circle to find a space. Closing the parking lot would have a negative impact on the ability of E.R. Bradley's to maintain a healthy business.

Gail Coniglio, 201 LaPuerta Way, petitioned the Town Council to defer the initiation of the unfair restriction to gate the Publix parking lot, which would burden the entire community. She urged that the issue be discussed openly at a public forum. She read two letters of support into the record, one from the manager of Publix in Palm Beach, and the other from Safeguard Security.

President Smith noted that the Town Council could not debate any of the issues brought up under Communications from Citizens, as only items publicized on the Agenda could be discussed at the meeting today.

APPROVED AGENDA

President Pro-Tem Shaw requested clarification regarding payment of late filing fees by Charitable Organizations.

Town Clerk Pollitt explained that an organization may have violated the ordinance before the late filing fee had become effective, and it had historically been noticed on the Approved Agenda.

Mr. Shaw maintained that Charitable Organizations that had not filed timely forms prior to the enactment of the Ordinance concerning the late filing fee should be exempted, and not be included as part of the Agenda in the future.

Town Clerk Pollitt indicated she would make the change per the direction of the Town Council.

VII. APPROVAL OF MINUTES OF DECEMBER 9, 1997

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Junior League of the Palm Beaches, Inc.; No. 173-98
2. Israel Tennis Centers Association, Inc.; No. 175-98
3. Palm Beach Crime Watch; No. 182-98
4. United Jewish Appeal; No. 346-98
5. Palm Beach Pops, Inc.; No. 354-98
6. Home Safe of Palm Beach County; No. 403-98
7. The Holy Land Foundation; No. 433-98
8. Towers League for Cancer Research; No. 434-98

Other - Results Forms Filed Late and $25 Late Fee Paid

9. Intracoastal Health Foundation (Good Samaritan Foundation); No. 35-98
10. The American Jewish Committee; No. 125-98

Other - Results Forms Filed Late, No Fees Paid

11. American Friends of the Hebrew University, Inc.; No. 101-98
12. American Society for Technion; No. 137-98

IX. NEW BUSINESS

A. Other

1. Authorization for Mayor and Police Chief to Execute Application for the Department of Community Affairs' Local Law Enforcement Block Grants Program of $8,900 Allocation to be Used for Digital Imaging Photography

Councilman Wyett moved approval of the Approved Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

REGULAR AGENDA

B. Public Hearing

1. Consideration of Settlement Proposal Regarding Barbara Martinuzzi vs. Town of Palm Beach (Case No. CL 96-6326 AE); Barbara Martinuzzi vs. Town of Palm Beach (Case No. CL 97-4312 AE); and Barbara Martinuzzi vs. Town of Palm Beach, et al (Case No. CL 97-8177 AD)

(This item was be heard at a time certain of 1:30 p.m.)

Town Attorney Randolph explained that there were three cases pending against the Town of Palm Beach that were filed by Risk Manager Barbara Martinuzzi. Case No. CL96-6326AE had been appealed, and the case number of the appeal was 97-3161. The intent of the settlement proposal was to address all pending matters involving Martinuzzi vs. Town of Palm Beach. A mediation had been held regarding Case No. CL97-4312AE, and an agreement had been concluded for presentation to the Mayor and Town Council. The proposal was as follows:

Barbara Martinuzzi would dismiss all pending cases, with prejudice.

Barbara Martinuzzi would execute a General Release, releasing the Town, its officers, employees, representatives, attorneys, and assigns from any and all claims or causes of action connected with the above-referenced lawsuits, her employment with the Town, or for any other cause of action which may have accrued up to and including the date of the General Release.

Barbara Martinuzzi would tender her resignation as an employee of the Town of Palm Beach, effective Tuesday, January 13, 1998 at 5:00 P.M.

The Town of Palm Beach would pay Barbara Martinuzzi a total of forty-five thousand dollars ($45,000), which would represent a severance package, and a Severance Agreement would be executed, which would provide that thirty thousand dollars ($30,000) of the forty-five thousand dollars ($45,000) would be part of the severance package, with fifteen thousand dollars ($15,000) being applied towards the attorney fees of Ms. Martinuzzi. The Town of Palm Beach would deduct the normal and customary deductions from the thirty thousand dollar ($30,000) payment, and would match the employee social security and medicare tax, as was customarily done. That match would amount to two thousand two-hundred ninety-five ($2,295.00).

The Town Manager would provide a favorable letter of recommendation for Ms. Martinuzzi. The settlement included no admission by the Town of Palm Beach of any liability or wrongdoing on its part, or upon the part of its officials, employees, representatives, attorneys, or assigns.

The settlement proposal was subject to consideration by the Mayor and Town Council. It had been approved by Ms. Martinuzzi and her attorney, and was now submitted for consideration of the Mayor and Town Council.

Councilman Wyett moved approval of the settlement proposal regarding the litigation relating to Martinuzzi vs. Town of Palm Beach. The motion was seconded by President Pro-Tem Shaw. On roll call the motion carried unanimously.

X. LICENSES AND PERMITS

A. Charitable Solicitations

1. Save A Pet; No. 236-98

Town Clerk Pollitt explained that a Charitable Solicitation Application had been received on December 1, 1997 from the Save-A-Pet organization, requesting to hold an event scheduled for January 4, 1998. The application had been incomplete, however, and all information had finally been received on January 12, 1998. Kathy Feltenstein, on behalf of Save A Pet, had been requested to appear before the Town Council to explain the situation.

Kathy Feltenstein apologized for the delay in providing information regarding Charitable Solicitation Application 236-98 for Save A Pet. She explained that inexperience and lack of knowledge were the contributing factors to the delay.

Councilman Wyett moved approval of Charitable Solicitation Application 236-98, with no fines attached. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XI. COMMITTEE REPORTS

A. Report of the Finance and Taxation Committee Meeting on December 15, 1997

Town Manager Doney reported that, because of time constraints, the report of the Finance and Taxation Committee would be deferred until the February 10, 1998 Town Council Meeting.

XII. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 16-97 - Telecommunications

Mr. Randolph read Ordinance 16-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REGARDING THE FRANCHISING AND LICENSING OF TELECOMMUNICATION SERVICE PROVIDERS USING PUBLIC RIGHTS-OF-WAY, OPEN VIDEO SYSTEMS, AND CABLE SYSTEMS, AND PRIVATE COMMUNICATION SYSTEMS, ESTABLISHING REQUIREMENTS AND CONDITIONS UPON THE USE OF THE PUBLIC RIGHTS OF WAY BY SUCH ENTITIES AND ESTABLISHING PROCEDURES FOR PROTECTING THE PUBLIC INTEREST IN SUCH FRANCHISES AND LICENSES.

Assistant to the Town Manager David Jakubiak commented that the ordinance had been reviewed and discussed extensively. The original ordinance had contained significant compensation issues, which had been removed from the final draft, since they were subject to potential litigation. It was the recommendation of staff to approve the ordinance.

President Smith asked for public comment.

Diane Christie, Director of System Development for Comcast Cable commented that there may be some legal issues concerning the ordinance, and that competition would be limited based on the ordinance. She pointed out that the ordinance and franchise agreement were fairly identical to those adopted by the Village of Wellington, which resulted in Comcast deciding not to compete in Wellington.

Councilman McLendon expressed concern regarding clarification of all franchise arrangements adopted by the Town.

Town Attorney Randolph responded that this area of the law was in the state of flux, and ultimately areas of concern would be determined by courts of law, and amendments to legislation. The reason for adopting the Telecommunications Ordinance was a result of the recommendation of special counsel to have an ordinance in place dealing with the use of rights-of-way, because communications companies would be approaching the Town concerning the use of the rights-of-way, and all of them would have to be considered in a competitively neutral fashion according to ordinance.

President Smith noted that the Florida League of Cities had urged all municipalities to adopt a telecommunications ordinance as quickly as possible, for the protection of residents and citizens. Special legal counsel had not been retained prior to the Florida League of Cities meeting regarding telecommunications issues.

President Pro-Tem Shaw expressed concern over the ongoing issue in the legislature with various utility companies seeking to circumvent the long tradition of funding for municipalities through franchise fees. He encouraged the continuation of the use of maintenance of financial needs through franchise fees, as well as maintaining the control issue involved. He maintained that the Town should not differ from the normal procedures it had followed in this regard.

Councilman McLendon moved approval of Ordinance 16-97, and requested that an item be placed on the Town Council Agenda for next month to set up a workshop with the full Town Council to study the entire franchise/occupancy fee situation. Councilman Wyett seconded the motion.

President Smith asked Public Works Director Al Dusey if builders/contractors and various companies that would be covered by the fees had requested review of the proposed Rights-of-Way Manual?

Mr. Dusey replied that no one had requested review of the rights-of-way issues being considered today. The proposal being made today did not incorporate many significant changes from the current manual.

Town Engineer James Bowser commented that one change was the incorporation of a degradation fee for cutting the right of way and loss of valuable roadway.

On roll call the motion carried unanimously.

B. Other

1. Consideration of Beach Cleaning Equipment for the Citizens' Association of Palm Beach, Inc.'s Beach Cleaning Program *(Deferred from December 9, 1997)*

Director of Public Works Al Dusey reported that the point had been reached where authorization and direction to purchase beach cleaning equipment was needed. He commented that Mr. Wolfe of the Citizens' Association of Palm Beach, Inc., had done an outstanding job of collecting approximately 84% of potential participants, which was approximately 90% of the total length that would be cleaned. At the December 9, 1997, the Town Council had authorized the bidding for a tractor to be used in the beach cleaning project. A competitively bid contract for the Orange County School District had been located, which contained the desired equipment, and Mr. Dusey recommended that be used, rather than going through a formal bidding process, which was in accordance with State and local requirements.

Mr. Irving Wolfe, Citizens' Association of Palm Beach, Inc., requested a specific date for the beginning of the contract with the Town, as each condominium would have to be alerted to terminate contracts with the current beach cleaner.

Mr. Dusey suggested that a firm date would be April 1, 1998.

Councilman Wyett moved approval of the contract to acquire the equipment. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. Consideration of Concerns by Residents on Park Avenue Relating to Commercial Establishments on Sunrise Avenue *(Deferred from December 9, 1997)*

Town Manager Robert Doney commented that a progress report would be given on actions of Town staff and the Town Attorney. He noted that there had been seventy (70) items of correspondence received to date on this issue.

Director of Planning, Zoning & Building Robert Moore indicated that he would divide his comments between the 251 Restaurant, and the Palm Beach Hotel issues.

Regarding 251 Restaurant, the use of the patio area on the north side of the building had ceased, and the area was being policed by the management so that patrons would not enter that area. The deliveries and the trash and garbage pick-ups were being made from Sunrise Avenue, and not through the alleyway adjacent to the home of Dr. Nasser, and the Palm Beach Hotel Annex.

Regarding the Palm Beach Hotel, C.J's Catering, and Ann Z. King, Mr. Moore noted that there were currently two separate violations that were before the Code Enforcement Board involving noise problems with the kitchen vent fan. The trash and deliveries were still being taken out through the alleyway, which involved an issue regarding the loading zone on Park Avenue in place.

Town Attorney Randolph cautioned that Chief Code Compliance Officer Brian House could not discuss the facts of the issue that would be coming before the Code Enforcement Board for consideration, as that would be limited to the Code Enforcement Board hearing.

Chief Code Compliance Officer Brian House reported that he had written two Notices to Appear before the Code Enforcement Board to the property owners of C.J.'s and Ann Z. King. One would be coming to the Code Enforcement Board on January 15, 1998, and the other would be coming to the Code Enforcement Board on February 19, 1998. He noted that there were currently no violations concerning the 251 Restaurant.

Police Chief Terlizzese reported that there had been at least six different groups that were in conflict in the vicinity, and as a result police officers had been instructed to monitor the area, and to take appropriate enforcement actions if there were any violations noted.

Police Major Frank Croft reported that the information he would be disclosing would involve the time since the last Town Council meeting in December 1997:

- Ten (10) noise complaints received.
- Twelve (12) parking complaints received.
- Two (2) theft complaints regarding parking sticker decals.

In response to President Pro-Tem Shaw, Major Croft replied that the noise complaints varied in location. He noted that two noise meter readings had been taken on two separate complaints involving the fans and neither case resulted in noise over the decibel limit.

Councilman Wyett commented that Sunrise Avenue was often blocked on the weekend, and was not being properly addressed. He noted that he had noticed that the rear door of the restaurant had sometimes been opened (often by employees taking a break), as well as the front window doors, resulting in noise.

Chief Terlizzese clarified that a police officer could not initiate a noise action, but a complaint would have to come from a citizen.

Fire Chief Elmore reported that an evening inspection had been initiated on December 19, 1997, visiting approximately thirty-five (35) establishments. Currently, approximately twenty-five (25) were being visited. Initially the inspection had been from 8:00 p.m. to 2:00 a.m., which had been extended to 3:00 a.m. Chief Elmore had requested that Town Attorney Randolph draft an ordinance that would give authority to close any establishment that was continuously overcrowded, and he would report in the near future on that. He estimated that there were two or three establishments that were continuously overcrowded.

President Pro-Tem Shaw expressed concern regarding patrons waiting in line outside establishments, causing noise and crowded conditions on public sidewalks.

Town Attorney Randolph advised that he was not prepared to discuss matters other than staff response to complaints made in the Park Avenue area, and suggested that ordinance modifications regarding overcrowding, etc., be discussed in the future.

Public Works Director Al Dusey reported that progress had been made regarding garbage pick-up, as 251 was being serviced from Sunrise Avenue, however, the hotel continued to be serviced from the rear alleyway, as that was the only alternative at this time. The hotel and the Park Avenue Association had met to discuss alternate locations.

Director of Planning, Zoning & Building Robert Moore noted that staff had been in contact with Dr. Welton, the owner of the Biltmore Galleria, to discuss using the area as an alternate garbage pick-up location. He noted that Code Compliance Officer House had advised that the 251 Restaurant had been requested to site screen the garbage on Sunrise Avenue and was working towards that end.

Councilman Wyett asked if there was any way to enforce public health standards?

Town Attorney Randolph responded that Palm Beach County could enforce those conditions, however, if there was a public nuisance involved the Town could deal with enforcement. Ordinances relating to public nuisances would be reviewed in order to cite someone for creating a public nuisance. He established that staff had reacted to complaints received, and had attempted to enforce ordinances. Any policy changes to be made in the future that would be reviewed by the Town Council.

3. Consideration of Proposed Donation by Residents on La Puerta Way to Beautify the Beach Access *(Deferred from December 9, 1997)*

Public Works Al Dusey reported that Deborah K. Avis, on behalf of the LaPuerta Way Beach Improvement Group had contacted the Public Works Department with a proposal of improving the public beach access on the street by residents of the street. If the Mayor and Town Council wished to accept the proposal in the amount of approximately three thousand dollars ($3,000), Mr. Dusey recommended that staff do a cost analysis, and receive that amount before proceeding.

Deborah H. Avis, 217 LaPuerta Way presented photographs of the beach access on LaPuerta Way, advising that the residents wanted to accomplish the project themselves, at their expense, rather than having the Town do the project. The improvements would involve landscaping, inserting a paver patio and table, and a new gate.

Mr. Dusey responded that he believed that it was important that the project be under the supervision of Town staff for control and implementation, as the Town was liable, and the project could then be done according to Town standards.

In response to the concerns of President Pro-Tem Shaw regarding maintenance of the beach access, Mr. Dusey advised that he believed maintenance should be done by the Town, as it was liable for any injury on the property.

Stacey Petricig, 236 LaPuerta Way commented that the proposal would involve very little maintenance: the majority of the area would be paved, and the perimeter would be xeriscaped. The Town currently removed garbage from the area on a regular basis.

Councilman Wyett moved approval of the proposal to beautify the beach access made by the LaPuerta Way Beach Improvement Group, with the condition that the contractor provide insurance (Mr. Dusey noted that was required as part of normal procedures). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

4. Consideration of Resident Complaints Relating to Comcast Cablevision's Installation and Upgrade Policies for Multi-Family Units and Businesses in Relation to its Cable Franchise Agreement *(Deferred from December 9, 1997)*

(This item was heard immediately following Item 2.)

Assistant to the Town Manager David Jakubiak reported that complaints had been received from several condominium residents relating to issues that were negotiated during the franchise agreements, and a response would be heard today from Mrs. Christie of Comcast Cable.

Diane Christe, Director of System Development Comcast Cable, reported that she had responded in writing to the three complaints received on December 3, 1997, and she was present today to respond to any questions regarding those incidents.

Fran Pokrop, President of La Renaissance Condominium, 3230 South Ocean Blvd., addressed the Town Council. She stated that in 1992 the condominium contract with Comcast Cable was renewed for a period of five years, and included the agreement that the building would be re-wired at no cost to the condominium. That re-wiring had never been done, however, the condominium association was not aware of that until March 1997. At that time the need for re-wiring had been discussed with Comcast Cable. The current contract had expired in November 1997 and negotiations regarding the contract had been started with Comcast Cable in September concerning the new contract. Six-year, or ten-year contracts were offered by Comcast Cable; the option of a three-year contract was not offered, although it had been requested by the condominium. She asserted that they were told that the condominium would have to pay for the re-wiring if a six-year contract was not signed, and that unless the contract was signed the condominium would be changed to individual billing, rather than bulk billing. On November 6, 1997, the contract was signed, however, there was an error in the billing amount, and a new contract was presented for signing. She asserted that the new contract was signed, and available for Comcast, however, in the meantime a rather threatening call had been made from Mr. Talley of Comcast, stating that the signed contract must be presented that day, or Comcast would change all of the owners to individual billing as of November 1, 1997.

Diane Christie responded that she had contacted the supervisor of Mr. Talley in order to hear the other side of what had happened. She addressed the wiring issue: when the rebuild had been done in 1992, condominiums had the option of being re-wired. At that time, depending upon the cost to re-wire, there was a clause in the contract that said that Comcast would have the option to review the contract and negotiate new terms and conditions. Currently, Comcast wanted contracts long enough to receive a return on dollars spent re-wiring. Apparently the new contract had been dropped off at the condominium during the summer months, and negotiations had been ongoing, with individual billing being a consideration. The contract was 30-days late, beyond the expiration date, in being returned to Comcast. She indicated that in order for Comcast to pay for the re-wiring of the building, it would not be cost effective unless a six-year contract was signed.

Mayor Ilyinsky suggested that this matter should be in a civil court, and requested the input of Town Attorney Randolph.

Mr. Randolph indicated that when the renewal franchise with Comcast Cable had been entered into, certain representations had been made by Comcast in regard to their bulk sale service, and some complaints from residents had been received, which could lead to a difference of opinion in regard to what was represented during franchise negotiations, and what was now actually being done. The information brought forward today was not presented for the Town Council to determine if there had been a violation of the franchise, but may be helpful in future negotiations with Comcast Cable.

Mr. Irving Wolfe commented that the Citizens' Association of Palm Beach, Inc., had received complaints from residents, and had met with Comcast Cable and resolved that the condominiums could sign a three-year contract at a higher price. He questioned if any condominium that signed the three-year contract had to pay for re-wiring?

Mrs. Christie responded that she was assured that the manager of La Renaissance had been told there was an option of a three-year contract, but not with Comcast paying the cost of the re-wiring. She noted that the law states that the wiring belongs to the condominium, not to the cable operator; therefore, Comcast could not expend the costs to re-wire a facility that would not be cost effective, when the condominium could actually use the wiring for a master antenna system in the future.

Mrs. Pokrop explained that the reason it was not known that the building had not been re-wired, was that the previous Board of Directors of La Renaissance, who had signed the contract in 1992, went out of office in 1995, and the new Board of Directors had assumed that the building had been re-wired. It was not until an owner had complained about the wiring in March 1997, that it was discovered that the building had not been re-wired.

President Smith expressed that she did not believe that there was anything further that the Town Council could do, other than take this discussion into consideration during negotiations of the new franchise with Comcast Cable.

Councilman Wyett suggested that La Renaissance could sign a six-year contract with Comcast, with Comcast agreeing to pick up the costs of re-wiring if the contract continued for the six year period. If the contract was terminated any time before the six-year period was up there could be negotiations between La Renaissance and Comcast regarding cost sharing of portions of the cost of the re-wiring.

Mrs. Christie agreed with that suggestion.

Mr. Jakubiak clarified that the reason this issue had been brought forward was that significant legal fees had been spent in negotiating a franchise agreement, and as a result of those negotiations language had been put into the franchise agreement addressing multi-dwelling units. An important issue that was under the Town's purview related to a contract that was represented by La Renaissance as having language in it which said that Comcast would have exclusive rights to match the rates of competitors, or program service offerings. That issue had been raised in franchise negotiations. Comcast was asked to remove that from all contracts. That exclusive language was in La Renaissance contract after a franchise had been negotiated between the Town and Comcast. The exclusive language was a violation of the franchise negotiations, and special counsel had commented that he believed there was a violation based on the exclusive language. There were penalties in the franchise agreement, and the Town had authority to assess a fine against Comcast, based on a franchise violation. Another issue related to the terms of contracts. It had never been the intent of the Town to get into private negotiations, however, the question was raised during franchise negotiations to offer the condominiums three-year contracts, consistent with the terms of the franchise agreement. That had not been granted to La Renaissance Condominium. Mr. Jakubiak noted that he had talked with Comcast on a monthly basis in 1992, and it had never been brought to his attention that any building in the Town had not been re-wired. There were significant discussions at that time to have the entire Town wired to an upgraded system.

Mrs. Christie responded that the exclusivity language should not have been included in the new contract, and had been crossed off, and initialed before the contract was signed. Comcast had agreed in the franchise agreement with the Town that first right of refusal language would not happen in the Town of Palm Beach.

5. Consideration of the Existing Traffic Signal on Sunset Avenue and North County Road *(Deferred from December 9, 1997)*

Town Engineer James Bowser reported that after discussion of the traffic signal at Sunset Avenue and North County Road by the Town Council, three proposals from traffic engineers had been requested relating to traffic flow and possible one-way pairing. The scope of work would include analysis, recommendations, development of a conceptual plan, and a summary report. If the Town Council wished to proceed, staff recommended a budget of fifteen thousand dollars ($15,000) with the expenditure coming from the Undesignated General Fund balance.

Ms. Balfour, 120 Sunset, addressed the Town Council, commenting that the situation was very hazardous in the area, with many vehicles violating the posted traffic signs. She maintained that some measure had to be taken to remedy the dangerous situation.

In response to the query of President Smith concerning accidents between Sunset Avenue and Bradley Chief Terlizzese responded he did not have the exact count on hand, although the whole area was congested and extremely busy.

President Pro-Tem Shaw requested serious consideration be given to removing the turn limitation signs, and allow the traffic light to control traffic.

Mr. Dusey responded that the traffic consultant could be requested to concentrate on that intersection in order to determine what approach to be taken as quickly as possible.

Councilman Wyett moved approval of the traffic study, with the provision that the location at Sunset Avenue and Bradley be particularly noted. President Pro-Tem Shaw seconded the motion.

In response to President Smith as to an opinion regarding having all restrictions on turns lifted going westbound on Sunset from the ocean block, Ms. Balfour responded that it would be logical for traffic to be guided by the one traffic light.

On roll call the motion to approve the traffic study carried unanimously.

6. Quarterly Update on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

Finance Director James Demming referred to the listing of outstanding fees and assessments owed to the Town as of November 30, 1997, and offered to respond to any questions.

Councilman McDonald suggested that unpaid fees that were less than $500 be included without itemization, as a total amount owed. In addition, he suggested that the status of the solid waste fines be included, and requested that Public Works Director Al Dusey and Finance Director James Demming coordinate the information. He inquired about the Consolidated General Limited fine, which had been turned over to the offices of Town Attorney Randolph.

Town Attorney Randolph replied that he would report the current status at a later date, since he did not have that particular information available today.

Councilman McDonald requested that Mr. Demming include the date fines were turned over to the Town Attorney.

President Pro-Tem Shaw suggested that a more aggressive approach be taken to collect monies due the Town.

Mr. Dusey explained that the Finance Department is noticed when solid waste fees are not paid. It is then put in a Lien Book, so that if and when the property was sold the lien would be applied.

Councilman McDonald expressed that a procedural time frame should be established so that the Finance Department, Public Works Department, and Town Attorney could work in concert regarding overdue fees/assessments due the Town.

Town Manager Doney advised that he would work with the departments and Town Attorney Randolph to establish a procedure.

President Pro-Tem Shaw referred to the Winterfield judgment included on the status report from the Finance Department. Councilman McDonald explained that it had been decided that the judgment would continue to be re-recorded if necessary, however, no collection action would be taken at this time.

Town Attorney Randolph advised that the judgment was in favor of his law firm, and was due because the Town had paid the law firm those fees.

XIII. NEW BUSINESS

A. Resolutions

1. Resolution No. 3-98 - Amendment to Rights-of-Way Standards Manual

Public Works Director Al Dusey reported that occupancy, degradation, and obstruction fees had been discussed for development. The Town Council had since decided that the obstruction fee issue would not be pursued, nor the occupancy fee at this point in time (as a result of the Telecommunications Ordinance). He explained that Town Engineer, James Bowser, had placed all right-of-way fees in one place through resolution.

President Pro-Tem Shaw requested that Town Attorney Randolph investigate fees for existing use of rights-of-way.

After further discussion, President Pro-Tem Shaw moved deferral of Resolution 3-98 to the February 10, 1998 Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. Resolution No. 4-98 - Tax Abatement for Landmarked Property at 210 El Brillo Way

Director of Planning, Zoning & Building Robert Moore explained that Resolutions 4-98, 5-98, and 6-98 would be filed with Palm Beach County, so that the property owners could take advantage of the tax deferment of landmarked structures, and the improvements thereto, that would qualify under the legislation passed to give tax breaks to landmarked properties.

Town Attorney Randolph read Resolution 4-98 by title:

> A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED, AND STATING THAT SUBJECT PROPERTY MEETS THE CRITERIA SET FORTH IN ORDINANCE 31-93, ALSO KNOWN AS CHAPTER 16, ARTICLE 3, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, RELATING TO LANDMARKS PRESERVATION, ENTITLED "TAX EXEMPTIONS FOR HISTORIC PROPERTIES."

Property Address: 210 El Brillo Way

President Pro-Tem Shaw moved approval of Resolution 4-98. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Resolution No. 5-98 - Tax Abatement for Landmarked Property at 440 Brazilian Avenue

Town Attorney Randolph read Resolution 5-98 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED, AND STATING THAT SUBJECT PROPERTY MEETS THE CRITERIA SET FORTH IN ORDINANCE 31-93, ALSO KNOWN AS CHAPTER 16, ARTICLE 3, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, RELATING TO LANDMARKS PRESERVATION, ENTITLED "TAX EXEMPTIONS FOR HISTORIC PROPERTIES."

Property Address: 440 Brazilian Avenue

President Pro-Tem Shaw moved approval of Resolution 5-98. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

4. Resolution No. 6-98 - Tax Abatement for Landmarked Property at 241 Sanford Avenue

Town Attorney Randolph read Resolution 6-98 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED, AND STATING THAT SUBJECT PROPERTY MEETS THE CRITERIA SET FORTH IN ORDINANCE 31-93, ALSO KNOWN AS CHAPTER 16, ARTICLE 3, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, RELATING TO LANDMARKS PRESERVATION, ENTITLED "TAX EXEMPTIONS FOR HISTORIC PROPERTIES."

Property Address: 241 Sanford Avenue

Councilman McLendon moved approval of Resolution 6-98. President Smith passed the gavel, and seconded the motion. On roll call the motion carried unanimously.

5. Resolution No. 7-98 - Expressing the Town's Support for the Florida League of Cities' Constitution Revision Resolution

Town Manager Doney explained that Town staff recommended that the Town Council adopt Resolution 7-98 to show support for the Florida League of Cities' Constitutional Revision Resolution.

Councilman Wyett moved approval of Resolution 7-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

B. Bid Awards

1. Sealed Bid No. 98-01 - Sixth Street Old Public Works Department Garage Demolition; Resolution No. 2-98

Town Engineer James Bowser reported that five bids had been received for demolishing the Sixth Street Old Public Works Department Garage. The low bid was $93,700 from KDG, Inc., d/b/a Wildcat. The demolition of the building was part of an agreement that the Town had with the City of West Palm Beach, with a March 19, 1998 deadline to have the building completely demolished. A Mutual Access Easement regarding the building immediately to the west, owned by Florida Crystals, would be necessary so that their roof could be utilized to help demolish the building, while they would utilize Town property to refinish their wall afterwards. Staff recommended that the Town Manager be authorized to sign the Mutual Access Agreement, conditioned upon Town Attorney and Risk Manager approval.

Dan Ross, in-house counsel for Florida Crystals, addressed the Town Council stating that they wanted to cooperate in every way to make the procedure safe, and were happy with the proposed agreement. He requested a longer term agreement in order to be able to maintain the wall, as any work that was done on the wall would have to be done from Town property.

Mr. Bowser explained that they would be willing to abide by the conditions such as notification of owner, restoration of any damage done to Town property, insurance requirements.

Town Attorney Randolph advised that an agreement could be formulated.

Director of Planning, Zoning & Building Robert Moore expressed concern with building rights on the part of the Town, and liability concerns with the City of West Palm Beach, who would maintain and landscape the property.

President Smith suggested that Mr. Ross speak directly with the City of West Palm Beach concerning an agreement to enter the property, and then report back to Town officials.

Councilman McLendon asked if an easement on the five southerly feet of the Florida Crystals property could be obtained by the Town for a future water main?

Town Attorney Randolph explained that Resolution 2-98 simply related to the access easements needed now, and future issues could be addressed later.

Town Engineer Bowser commented that future issues would be addressed next month.

Councilman Wyett moved approval of Resolution 2-98. The motion was seconded by President Pro-Tem Shaw.

Mr. Randolph read Resolution 2-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO KDG, INC., D/B/A WILDCAT, FOR THE SIXTH STREET GARAGE DEMOLITION.

On roll call the motion carried unanimously.

C. Other

1. Consideration of Shore Protection Board Issues:

a. Request for Funding for Economic Model and Educational Materials

Chairman of the Shore Protection Board Gary Lickle referred to his letter of January 6, 1998, that had been delivered to the Mayor and Town Council, explaining the need for an economic model in order to determine the basis on which to share the cost of the proposed beach restoration project. There were basically four alternatives:

1. Straight ad valorem tax.
2. A special assessment based upon the oceanfront footage.
3. Tiered assessment tax rates.
4. Ad valorem tax based upon an apportionment plan.

He explained that an economist and an engineer would work together to develop an economic model. The Shore Protection Board expected that Alternative #4 would survive as the best option, but it would first require the development of an economic model to determine if it was appropriate. The estimated cost of development of the economic model for the Palm Beach portion of the project (including South Palm Beach, Lake Worth and Lantana) was approximately $61,000. The Shore Protection Board would then be in a position to make a firm recommendation to the Town Council as to which alternative would be most appropriate. The economic model would also supply legal defensibility for the project.

In response to the query of Councilman Wyett, regarding the tiered system, Mr. Lickle explained that it had nothing to do with ad valorem tax, nor the value of property. The apportionment plan would be property value based, but would be weighted.

Councilman Wyett commented that property purchased before 1991 was under-assessed, and suggested that properties were not assessed equally, as it would depend upon when the property had been purchased.

Mr. Lickle responded that the process of developing the economic model would answer many assessment related questions.

Councilman Wyett suggested that the municipalities to the south were under no obligation to make the beach improvements, and the economic study would serve no purpose without a commitment from them to join the Town in the project.

Mr. Lickle explained that the other municipalities contained public beaches, which would assist in gaining County and State funding, which would more than make up for the costs advanced for the study. He noted that he had sent a letter from the Shore Protection Board to each of the municipalities to ask them to participate financially.

President Pro-Tem Shaw commented that a major beach restoration program would have a positive impact on the value of land, and he asked if there had been any interest in having that value exempted or capped, so that the net results of the improvements would not then in turn increase taxes?

Mr. Lickle responded that he was not able to answer that question, however, he would pursue it with the experts.

In response to President Pro-Tem Shaw regarding the surveys of recreational beach users, Mr. Lickle explained that this was an accepted standard in developing the economic survey. The term "recreation" included many items other than merely the use of the beach--for example, an oceanfront hotel room would command more dollars than a non-oceanfront room. He noted that the total survey package, if approved, was hoped to be available before the end of the summer, and the educational campaign could then be started.

President Pro-Tem Shaw expressed concern over conducting two surveys (winter and summer), and questioned the necessity?

Applied Technology & Management (ATM) Vice President Dave Decker responded that the surveys were necessary in the formula recommended by Dr. Stronge.

Councilman Wyett moved approval of the request for funding in the amount of sixty-one thousand, two-hundred dollars ($61,200) for the economic model, as requested by the Shore Protection Board. The motion was seconded by President Pro-Tem Shaw.

Town Manager Doney commented that funding could come from the FY98 reserves in the General Fund.

Mr. Lickle noted that reimbursement from the three participating municipalities would be pursued.

Shore Protection Board Member Joel Martino clarified that the four alternatives were not mutually exclusive, and that the term "recreational" was often associated with the word "amenity," which made a little more sense in the case of Palm Beach.

Town Manager Doney noted that there was an alternative funding source, the Capital Improvement Fund, where there was a Coastal Protection Reserve. He did not recommend that be used for this project. He mentioned that the Peer Review was a very important component of the project, and suggested that Public Works Director Al Dusey could given an update.

Public Works Director Al Dusey reported that the Peer Review would be completed within the week, and that he did not know of any conflicts found.

On roll call the motion carried unanimously.

b. Request for Funding for Professional Assistance in Preparation of "Educational Overview" Document

Chairman of the Shore Protection Board Gary Lickle explained that as the beach restoration project become more developed, it was becoming clear that professional assistance was needed in preparing the "Educational Overview" document. He noted that Kate Gooderham, of Gooderham & Associates, was extemely successful in her involvement with similar projects in developing the educational campaigns. The estimate received from her had amounted to approximately $5,000 for the first phase. He requested that the Town Council approve funding for the first phase, or "Educational Overview" document, as well as support for the second phase in the future.

Town Manager Doney suggested that parts I. (Finalize the Coastal Management Plan Update - 20 hours) and II. (Serve as consultant to the Shore Board and Town Council - 35 hours), of the proposed services by Gooderham & Associates be accepted, at which time the Town Council could then decide on the other phase of the educational program.

Mr. Lickle requested consideration of reimbursement of funds expended to date in the amount of three thousand nine hundred sixty one dollars and sixteen cents ($3,961.16) for services provided by Gooderham & Associates.

Councilman McDonald moved approval of reimbursement of funds in the amount of $3,961.16, based on the facts of this particular situation The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

President Pro-Tem Shaw suggested that no commission should expend funds beyond the sum of $5,000 without prior approval of the Town Council or at the discretion of the Town Manager.

Mr. Doney recommended that the appropriate Town policy should be that funds are requested for approval of the Town Council on a case by case basis.

Councilman McDonald clarified that commissions should not be restricted from paying for their own expenses if so desired.

Chairman Lickle responded that there were situations where expenditures were immediately necessary, and those could be handled on a case by case basis as far as reimbursement was concerned.

President Pro-Tem Shaw disagreed, stating that a definitive policy should be established and adhered to, and that the Town Manager should have the discretion to approve expenditures up to a certain sum.

Town Manager Doney stated that it was more important to address issues on a case by case basis.

President Pro-Tem Shaw moved that no commission or board could expend funds on behalf of the Town of Palm Beach without prior approval, and that the Town Manager had the right to authorize expenditure from the appropriate fund, not to exceed three-thousand dollars ($3,000), then notify the town Council of such expenditure. Councilman McLendon seconded the motion.

Councilman McDonald stated that boards and commissions should be allowed to spend money if they felt it necessary, with no expectations of reimbursement.

On roll call the motion of President Pro-Tem Shaw failed 2/3, with President Pro-Tem Shaw and Councilman McLendon casting affirmative votes; President Smith, Councilmen McDonald and Wyett casting negative votes.

President Pro-Tem Shaw moved approval of the five-thousand dollars ($5,000) estimated to complete the "Educational Overview" document. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

President Smith clarified that local consultants would have an opportunity to participate in the process of developing the remainder of the educational program.

Mr. Lickle established that the Shore Protection Board would advertise and interview other consultants and come back to the Town Council with several recommendations.

Mr. Doney clarified that Mr. Dusey would administer the advertisement of firms who could accomplish the services. He suggested that individual boards and commissions should not advertise for services, as that was the responsibility of staff.

President Smith clarified that the Town would then do the advertising, and if the input of the Shore Protection Board members was necessary it would be asked for. The members of the Town Council agreed in unison.

President Smith complimented the Shore Protection Board on an outstanding job.

2. Presentation by the Preservation Foundation of Palm Beach, Inc. Regarding Proposal for Funding the Restoration of the Town's Historic Street Lights in the Historic Loop Area

Executive Director of the Preservation Foundation of Palm Beach Polly Earl commented that the Preservation Foundation had a special interest in the historic area of the Town of Palm Beach, and proposed that the Preservation Foundation would raise the funds for restoring the lighting in that area. She requested that the Preservation Foundation:

- be allowed to supply the cash in a timely fashion, having the funds ready as soon as the Town would have to put any cash into the project;
- Obtain approval for a plaque where the names of major donors could be placed;
- Work with Mr. Dusey and the Florida Department of Transportation (FDOT) to ensure that the area north of Royal Palm Way, along County Road, would have historic types of lights installed in that area as well.

Director of Public Works Al Dusey commented that funding must be in place in order for the Town to award a contract to purchase supplies. Mrs. Earl was requesting that the Town front the money until the bill had to be paid, at which time the Preservation Foundation would submit the funds.

Town Manager Doney clarified that the Town Council would need to make an appropriation from FY98 reserves, and accounting would be set up so that when the Preservation Foundation submitted payment, it would be repaid to the General Fund.

Councilman McDonald moved approval of the proposal of the Preservation Foundation. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Public Works Director Al Dusey suggested that the most appropriate place for the plaque would be on the east side of County Road on Royal Palm Way in the median.

Mrs. Earl explained that <u>all</u> donors would not be recognized on the plaque, but only the major donors.

Councilman McDonald moved that the plaque be located on the east side of County Road on Royal Palm Way in the median area. President Pro-Tem seconded the motion. On roll call the motion carried unanimously.

3. Consideration of Installation of Raised Median for Westbound Left-Turn Movement on Royal Palm Way at Lake Drive

Director of Public Works Al Dusey reported that the Florida Department of Transportation (FDOT) had been contacted, and they had concurred that the Town could install a raised median for westbound left-turn movement on Royal Palm Way at Lake Drive at Town expense, [approximately eighteen-thousand dollars ($18,000)], if so desired. If approved, Mr Dusey suggested an appropriation from the General Fund reserves of the Capital Improvement Program with authorization to proceed in the spring.

President Pro-Tem Shaw moved approval of the installation of a raised median for westbound left-turn movement on Royal Palm Way at Lake Drive. The motion was seconded by Councilman McDonald.

Councilman Wyett asked how that would coordinate with the re-building of the road by the FDOT at some time in the near future?

Mr. Dusey replied that he would confer with the FDOT.

President Smith suggested that some civic groups may wish to contribute to the costs.

4. Consideration of Request from Fire-Rescue Chief Ken Elmore to add consideration of drafting of Ordinance

Mr. Wyett moved that this item be placed on the Agenda for the February 10, 1998 Town Council Meeting. He incorporated the report of Chief Elmore addressing same, explaining that the proposed ordinance would give authority to levy fines or close down offending operations, should they be repeat violaters. Councilman McLendon seconded the motion. On roll call the motion carried unanimously.

XIV. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McLendon referred to the presentation made by Engineer Potts at the last Town Council Meeting regarding the general status of reverse osmosis, and suggested that definitive guidelines were needed. He requested that Public Works Director Al Dusey prepare a report on the estimated costs and the use of reclaimed water on a dual system.

Mr. Dusey replied that he would outline the current status in a summary report.

Councilman Wyett suggested that an informational workshop be held. He made a motion to request that Public Works Director Al Dusey secure the information necessary for the Town Council to make a decision regarding proceeding with a reverse osmosis, water re-use program. Councilman McLendon seconded the motion. On roll call the motion carried 4/0, as President Smith was temporarily out of the room.

Councilman Wyett expressed concern over the tax abatement for landmarked properties, suggesting that it should be reviewed and limited to the actual landmarked property additions, as theoretically a small landmarked house could be approved, and then put on a large addition, which Mr. Wyett considered an unfair situation.

XV. APPROVAL OF CHECK REGISTERS FOR DECEMBER 1997

President Pro-Tem Shaw moved approval of the Check Registers for December 1997. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XVI. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of December 16, 1997 - Minutes Available in Town Manager's Office

B. DEFERRALS AND CONTINUATIONS - MAJOR PROJECTS

B87-97 Application by Donald Malasky, 251 Tangier Avenue, for demolition of existing residence and new two story residence - approved.

B38-97 Application by Donald Malasky, 167 Dolphin Road, for final landscape plan for previously approved project - approved.

B98-97 Application by Gregory Gozzo, 127 Ocean View Road, for new single family residence - approved.

B99-97 Application by Mr. and Mrs. John Zenko, 232 Tangier Avenue, for new two story Neo-Classic residence - deferred.

B100-97 Application by Euro-Homes, 306 & 314 Chilian Avenue, for new two story Mediterranean style duplex - deferred.

B106-97 Application by Mr. and Mrs. Charles Henderson, 231 Via Las Brisas, for new one story residence - deferred.

C. NEW BUSINESS - MAJOR PROJECTS

B107-97 Application by Mr. and Mrs. F. Quinn Stepan, 1554 North Ocean Way, for 1,242 square foot second floor addition - deferred.

B108-97 Application by Mrs. Lita Fromstein, 238 Via Las Brisas, for new one story single family residence - deferred.

B109-97 Application by Mr. and Mrs. Luis Fernandez, 246 Eden Road, for small addition to first floor on the North elevation and extension of second floor area over existing first floor rear porch - approved.

B110-97 Application by Mr. and Mrs. Wayne Diller, 1177 North Lake Way, for extension of existing entry with covered porch, simplified pickets/railing at existing balcony, columns re-spaced on same balcony, new windows to match existing to replace fixed glass jalousie windows south elevation, new covered patio/deck at west elevation with french doors, new french doors at breakfast area - approved.

B111-97 Application by Mr. K.P. Knudsen, 593 Island Drive, for demolition of existing residence - deferred.

B112-97 Application by Mrs. Sydell Miller, 1415 South Ocean Boulevard, for revisions to previously approved project - approved.

Councilman McDonald moved approval of the Major Matters considered by the Architectural Commission, and the report of the meeting held on December 16, 1997. The motion was seconded by Councilman McLendon, and carried unanimously.

B. Appeals

1. Consideration of Appeal of the Architectural Commission Regarding ARCOM No. A3-97, 101 Nightingale Trail, by Dr. and Mrs. Marvin Rosenberg - **Request for Deferral to February 10, 1998, per letter dated January 12, 1998, from Mr. Charles W. Millar, Jr.**

C. Time Extensions

1. Request for One-Year Time Extension for Variance No. 3-97 - Mr. Edward Townsend Wright, 332 Seaspray Avenue

Mr. Edward Townsend Wright, 332 Seaspray Avenue, addressed the Town Council, requesting a time extension on Variance 3-97 for approximately one year. He explained that the project had been delayed because of architectural complications, and working drawings were now ready.

President Pro-Tem Shaw moved approval for a one year time extension for Variance 3-97. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

D. Variances, Special Exceptions, and Site Plan Reviews

At this time Town Clerk Pollitt administered the oath to all those who would be speaking to the following issues.

Old Business

1. Variance No. 31-97 - Maya Langes-Swarovski, 1676 South Ocean Blvd.; located in the R-A Zoning District; to allow modification of conditions of approval of Variance No. 11-95 joining lots by Unity of Title, by dissolving the Unity of Title; and to allow a change in the property line between lots 1 and 5, reducing the lot width on Lot 1 from 129' to 88.64' in lieu of 125' minimum permitted. *(Deferred from September 9, 1997, and October 14, 1997)* - **Request for Withdrawal per letter dated January 5, 1998, from Mr. James R. Brindell**

New Business

2. Variance No. 1-98 - John & Jere Zenko, 232 Tangier Avenue; located in the R-B Zoning District; to allow construction of a new one-story residence providing 15' side yard setbacks in lieu of 26' required on a lot exceeding 20,000 sq. ft.

Ex-parte communications were declared by Councilman McDonald with Mr. Pandula and Mr. Broberg, by President Pro-Tem Shaw with Mr. Broberg regarding the size of the lot and the side yard setbacks; by President Smith with Mr. Broberg on the merits of the application; by Councilman McLendon with Mr. Broberg, and Mr. Pandula regarding the construction plans; and by Councilman Wyatt with Mr. Broberg and Mr. Pandula regarding the merits of the application.

Attorney Peter Broberg addressed the Town Council on behalf of John and Jere Zenko, stating that this was the first time the Town Council would be dealing with Footnote 28 of the Town Code regarding side yard and bulk regulations for lots over 20,000 square feet in an R-B zone. The intent of Footnote 28 was to keep massive houses from being built in zones that were not appropriate. Mr. Broberg commented that although the intent was meritorious, he would explain why it would not work.

The lot at 232 Tangier Avenue exceeded the 20,000 square foot threshold, and was 32,000 square feet, however, the property owner was forced to use the new section under Footnote 28, which said that lots 180-189 feet long had to have 26' setbacks. The house that had originally been on the lot was a two-story house, 9' from the property line, with a width of 89'. The proposed house was 92' wide, one story, and was an average of 19.7' from the neighbor. Therefore, it was smaller, further away, and lower than the original house.

The purpose of the design was to utilize the green space. The pool house was 16.9' from the property line on the east side and was 55' long. This would be the only house on the street that would be different than the other houses that had a defined 15' setback or 12.6' setback. He stated that the new code section inordinately burdened the property owner, and a hardship ran with the land, as the code section was triggered only by the size of the land. He explained that the code was making a property owner set back to maximums, even though a maximum house was not being built.

Architect Gene Pandula addressed the Town Council, stating that the requirement for 26' side yard setbacks resulted in 49% (15,000 square feet) of the total site dedicated only to setbacks, and forced the house to be built in the center of the site, which completely broke the rhythm of the street, which was at 12.6' or 15' or less setbacks. He stated that he believed the floor area ratio (FAR) and cubic content ratio (CCR) were significantly less than the maximums and equal to the balance of the neighborhood. He suggested that the setbacks requested through Variance 1-98 were appropriate and compatible with the neighborhood, as he explained the statistical information regarding the architectural plans.

Zoning Administrator Paul Castro commented that the specific provision that the applicant was requesting a variance from today was adopted last year during the Zoning Season, and the intent of that provision was to increase the setback according to the width of the lot and depth of the lot in the R-B District. The applicant was requesting relief from the requirement of a 26' setback, based on a lot width of 185'. Staff had considered the application and did not believe there was a hardship, because the intent of the zoning provision was to address these specific situations, and to provide more of setback on the larger lots, so that the neighbors would not be so greatly impacted. He advised that in the proposed plans the driveway to the east appeared to be too close to the property line at the entrance portion.

Attorney Broberg responded that many times a hardship was granted when a zoning ordinance changed the use of a property from the way it had been used in the past. Footnote 28 did not address any mitigation for a property owner.

President Smith commented that when the zoning provision referred to had been passed, she had believed it addressed much larger properties..

Director of Planning, Zoning & Building Robert Moore explained that one of the issues that had been involved in passage of this ordinance had been the fear that two or three properties would be parceled together to create larger lots, and huge homes would be built. The proposed architectural plans of the applicant did not maximize the use of the lot.

President Pro-Tem Shaw commented that the house would be a great addition to the street, although he suggested that there be a deed restriction prohibiting a second story, as well as an average side yard setback at 20'.

Councilman Wyett commented that the architect could possibly take a few feet off the side of the house, shift the placement of the house, bringing the variance request down to a lesser number.

Councilman McDonald noted that this was a variance for new construction, and he asked what precedent would be set in determining relief from setback requirements?

Town Attorney Randolph responded that unless something specific could be identified in regard to the application, which entitled it to a variance, there would be problems with similar applications in the future.

Councilman McDonald commented that he did not see a major hardship in this case, and expressed concern over setting a precedent.

Mayor Ilyinsky commented that the house was a beautiful one-story house, and suggested that with certain conditions it was very suitable for the area.

President Pro-Tem Shaw moved that Variance 1-98 be approved with the following conditions, as the hardship laid with the land:

- that there be unity of title;
- that a deed restriction be put on the property that there be no second story;
- that no future construction exceed the .35 floor area ratio (FAR);
- that the cubic content ratio (CCR) not exceed 3.5 for any future construction that may be considered on the property;
- that the driveway setback requirement be met;
- that the setbacks have an average of 20'.

He explained that the proposed house was in a predominately single family area, with lots that were fairly large, and that the owner and architect were working with the code applying to the district. He commented that the intent had been to have the R-B District have an FAR of .35, and a CCR of 3.5. He noted that this property did fall below those figures.

Attorney Broberg explained that the driveway was not the problem, and that it was merely a graphic problem on the site plan. He accepted the conditions attached to approval by President Pro-Tem Shaw.

The motion was seconded by Councilman McLendon.

Director of Planning, Zoning & Building Robert Moore commented that a hardship identified by Mr. Broberg was that the property was two-platted lots, and because there were two lots that must be built on as one, it could be considered as part of the hardship.

Councilman Wyett commented that the 20' average setback was not sufficient, and that the architect and owner could adjust the plans to make the variance request more minimal.

On roll call the motion carried 3/2, with President Smith, President Pro-Tem Shaw, and Councilman McLendon casting affirmative votes; Councilmen McDonald and Wyett casting negative votes.

3. Variance No. 2-98 - El Vedado Way, Inc., 328 El Vedado Road; located in the R-A Zoning District; to allow construction of a 2nd story addition providing a 9.7' side yard setback in lieu of 15' required.

Ex-parte communication was not declared by any Council member.

Attorney Robert Deziel addressed the Town Council, stating that staff had contacted him a week ago, and noted that the application had not included an additional variance that was needed in connection with the building height plane. He asked for the opportunity to defer the application, and to be heard next month.

Councilman Wyett moved approval of deferral of Variance 2-98 to the February 10, 1998 Town Council Meeting. The motion was seconded by President Pro-Tem Shaw. On roll call the motion carried unanimously.

4. Variance No. 3-98 - Sydell Miller, 1415 or 1420 South Ocean Blvd.; located in the R-AA Zoning District; to allow construction of a side property wall at a height of 6' to 18' in lieu of 7' maximum permitted.

Attorney Robert Deziel, on behalf of Sydell Miller, clarified that the owner had combined two property addresses into one, and the new address was 1420 South Ocean Blvd. He distributed photographs of the property, explaining that the variance request concerned construction of a retaining wall inside of the already existing boundary wall. The only property affected belonged to the applicant.

Director of Planning, Zoning & Building Robert Moore explained that the variance was necessary because of the height of the wall; the hardship ran with the lay of the land, and staff had no objection.

Councilman McDonald moved approval of Variance 3-98. The motion was seconded by President Pro-Tem Shaw. On roll call the motion carried unanimously.

5. Special Exception No. 1-98 - 2875 Corp., 2875 South Ocean Blvd., Suite 217; located in the C-TS Zoning District; to allow Hardman Financial Group, a financial consulting firm, to occupy the same space as a brokerage firm. - **Staff Recommends Deferral to May 12, 1998**

6. Special Exception No. 2-98 - Edward & Adele Kahn, 231 Peruvian Avenue; located in the C-TS Zoning District; to allow expansion of a professional office on the first floor, not fronting on a street sidewalk, from 1,000 sq. ft. to 1,365 sq. ft. - **Request for Withdrawal per letter dated January 12, 1998, from Jorge A. Sanchez**

7. Special Exception No. 3-98 - Dr. John Welton, 265 Sunrise Avenue; located in the C-TS Zoning District; to allow expansion of the Mildred Hoit retail store to occupy 3,674 sq. ft. In lieu of 3,096 sq. ft. previously approved which was in lieu of 2,000 maximum permitted.

Ex-parte communication was declared by President Pro-Tem Shaw with Attorney Broberg in reference to mention of the variance being on the agenda today.

Attorney Peter Broberg, on behalf of Mildred Hoit retail store, addressed the Town Council, presenting graphics of the proposed expansion area. He noted that the store was Town-serving, and requested approval of the request.

Director of Planning, Zoning & Building Robert Moore noted that the use would be for storage and office, and commented that the Town-serving documentation had been supplied.

Councilman McDonald moved approval of Special Exception 3-98. The motion was seconded by President Pro-Tem Shaw. On roll call the motion carried unanimously.

E. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction, for the Peruvian Dock Replacement, by the Town's Public Works Department

Town Engineer James Bowser reported that there was a short time period in which to complete the replacement of the Peruvian Docks. Contractors would begin selective demolition in April, and beginning May 1, 1998 it would be necessary to extend the normal work hours to 7:00 A.M. to sundown.

Councilman McDonald moved approval of the request for waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction for the Peruvian Dock Replacement by the Public Works Department of the Town of Palm Beach. The motion was seconded by President Pro-Tem Shaw. On roll call the motion carried unanimously.

XVII. ANY OTHER MATTERS

There were none.

XVIII. ADJOURNMENT

The meeting was adjourned at 6:00 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk