

MINUTES OF THE TOWN COUNCIL MEETING

OF JANUARY 11, 1994

Roll Call

Invocation

Presentations

Comments of
the Mayor

Approval of
Agenda

Approved
Agenda

Licenses &
Permits

Charitable
Solicitations

Regular
Agenda

Public HEarings

Res. 1-94

I. CALL TO ORDER AND ROLL CALL - The monthly meeting of the Town Council was called to order by President Weinberg at 9:30 AM and 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 were Town Manager Doney, Town Attorney Randolph, Mr. Elwell, Mr. Jakubiak, Chief Terlizzese, Chief Elmore, Mrs. Peters, Mr. Crouse, Mr. Moore, Mr. Zimmerman, Mrs. Crozier and Mr. Dusey.

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

III. PRESENTATIONS

A. Retirement of Willie Bivins, Public Works Department, 19 Years, 3 Months - Mayor Ilyinsky presented Mr. Bivins with a plaque in honor of his years of service to the Town.

B. Retirement of Harry Findeison, Police Department, 14 Years, 7 Months - Mayor Ilyinsky presented Officer Findeison with a plaque in honor of his years of service to the Town.

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky commented he would like to give a final goodbye and commendation to the former President of the Town Council, Bernard A. Heeke, who was loved by all and who passed away on Christmas Day.

Mayor Ilyinsky congratulated Mrs. Royal and Mrs. Smith on completing their first year on the Council.

V. APPROVAL OF AGENDA - Motion was made by Mrs. Wiener to approve the agenda with changes. Seconded by Mrs. Smith. The changes were:

1. Consider Item X.A.1 after Item XIV.C.5.
2. Item XI.B.3 be deferred to the Feb. 9, 1994
3. Consider Item XI.B.4, presentation by the representatives of the Palm Beach County School Board between 10:30 AM and Noon.
4. Defer Item VIII.C - Dune Pres. Permit No. 1-94 to the February 9, 1994 Town Council Meeting.
5. Under XV., Any Other Matters, an item of donating fruit for the hungry.
6. Under XV., Any Other Matters, Mr. Doney's report on self-study.

APPROVED AGENDA (ITEMS VI. THROUGH VII.) Mrs. Smith requested a correction in the minutes to show that Robin Weiss was nominated to the Golf Commission. Motion was made by Mrs. Wiener to approve the Approved Agenda with the correction to the minutes. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

VI. APPROVAL OF MINUTES OF DECEMBER 14, 1993

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Palm Beach Crime Watch; No. 182-94
2. National Wheelchair Sports Fund, Inc.; No. 255-94
3. Food Relief International; No. 272-94
4. The Auxiliary of Bethesda Memorial Hospital, Inc.; No. 290-94
5. Best Buddies International, Inc.; No. 334-94
6. School of the Arts Foundation; No. 363-94
7. American Friends of the Israel Philharmonic Orchestra; No. 364-94
8. Marathon of the Palm Beaches for D.A.R.E., Inc.; No. 365-94

REGULAR AGENDA

VIII. PUBLIC HEARINGS

A. Landmark Designation for 1284 North Lake Way - Consideration of Resolution No. 1-94 -

The Clerk gave the oath to those who would be giving testimony. Mrs. Peters confirmed there was Proof of Publication received for the record.

Mr. Frank reported the subject property is 1284 N. Lake Way, indicating the Criteria selected by the Landmark Preservation Commission are:

- C. Embodies distinguishing characteristics of an architectural type, or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship.
- D. That it is representative of the notable work of a master builder, designer or architect, whose individual ability has been recognized, or who influenced his age.

Mr. Frank advised the architect was Gustav Maass.

Jane Day addressed the Mayor and Council, noting during the 1930's, the architecture was changed because of the Great Depression. She recalled the writing of local historian, Don Curl.

who wrote: "The great Spanish palaces of the previous decade gave way to smaller and less formal houses, often in the Georgian, Bermudian, British West Indies, Colonial and Monterey styles."

Res 1-94

Ms. Day advised this house was designed in 1936 for W. D. Hood in the Colonial Revival Style. This style was popular from 1885 to 1955 and it was based on the earlier Georgian and Adam prototypes from the northeastern United States, and this house reflects many of the common features of that style. On the eastern facade, the most prominent design element is the front entrance, which features a broken triangular pediment above the door.

She advised the rear or west facade of the house faces Lake Worth and the ribbon of five windows above the loggia on the second story. She reported the hip roof is covered with tile and the service areas of the house are on the north facade.

She advised Gustav A. Maass was a national renowned architect and was a partner with John Volk from 1927 to 1935, and he did design work for Harvey & Clark and the train station in Delray Beach, which is currently on the National Register.

Jane Volk read a letter into the record from Mrs. Van Norden, the present owner, which was sent on 9-27-93: "I was delighted to learn that my property has been placed on the list of properties under consideration for landmark designation. Thank you for your letter and I look forward to hearing from you and the Planning, Zoning and Building Department as well as the Landmark Commission."

Motion was made by Mrs. Wiener that the designation report become a part of the record. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Attorney Randolph read Resolution No. 1-94 with regards to 1284 North Lake Way.

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

Motion was made by Mrs. Douthit to approve Resolution No. 1-94, which meets the criterion C and D as set out in the Landmark Ordinance. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

B. Landmark Designation for 220 Monterey Road - Consideration of Resolution No. 2-94 - Mr. Frank reported the Landmarks Preservation Commission meets the Criterion C, which was read for the previous landmarked house and Criterion D, which was also read earlier.

Landmark
Designation
for 220
Monterey Road

Mr. Frank advised the architect was Maurice Fatio. Mrs. Day advised this house was designed in 1919 by Treanor and Fatio and built by E. B. Walton, Inc. and this is an eclectic style which was popular throughout the U. S. from 1925 to 1955, and was adapted from Spanish Colonial architecture from Northern California and added English Colonial and French Creole designs to the prototype and this house is reminiscent of the English Colonial detailing. She stated the second story balcony is cantilevered and covered with the principal roof and it is a main design feature.

Mrs. Day noted design interest is added with the scalloped edging under the cantilevered porch and has exposed rafters on the roof line. She stated the front door is a Colonial adaptation to the style and has fan lights on either side of the front entrance and a prominent design feature is the bay window which is to the west of the property. She pointed out the first and second floors are covered with different materials with the first story being rusticated white painted brick, and the second story is vertical boarding.

She advised the one story wing of the house contains the kitchen area and an addition was added but it was design sensitive to the original design of Fatio, and it has not lost its architectural integrity.

Mrs. Royal believed that Mr. Broberg wanted a conditional approval as he has plans for some future work on the house. Mrs. Day stated that was true and it has been approved by the Landmarks Commission, and the work is in the rear and in the front which is a redesign of a courtyard and driveway which will be added to the property.

Mrs. Wiener moved the designation report be a part of the record. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Attorney Randolph read Res. No. 2-94 with regards to 220 Monterey Road, by title:

Res. 2-94

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 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Moore recalled the conditions asked for by Mr. Broberg was the repair of a carport, the ability to install a patio and circular drive and that the structure only be landmarked, which the Landmark Commission has agreed to. Mrs. Smith asked if the carport was the awning on the front of the garage to which Mr. Moore answered affirmatively. Mrs. Smith asked if the Landmarks Commission had a problem with the carport attached to the front of the garage facing directly onto the street? Mrs. Volk responded she understood there was a concern about the parking of the cars but it will not in any way alter the facade or endanger the integrity of the building.

Res. 2-94
(cont'd)

Mr. Randolph indicated if the Council approves this, they should consider in the motion the acceptance of the conditions of the Landmark Preservation Commission and the Resolution would have to be revised, that the house is being landmarked and not the entire property.

Mrs. Royal moved that the recommendations of the Landmarks Preservation Commission be accepted with the conditions as imposed on the house at 220 Monterey Road, and that this house has met the Criteria C and D as stated in the Landmarks Ordinance. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Mr. Randolph suggested if they approve the Resolution, it should be with the condition that the structure itself is being landmarked and not the surrounding property. Mrs. Smith asked how could they approve a Resolution which needs to be amended to which Mr. Randolph responded, he could bring the Resolution back to them next month with the modified language.

Mrs. Wiener moved for adoption of Res. No. 2-94 which concerns 220 Monterey Road and this Resolution be amended in that only the house is being landmarked and not the surrounding property. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Dune Pres.
Permit App.
No. 1-94

- C. 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, seagrass pruning, and ongoing maintenance and management program - Memorandum dated January 4, 1994 from Brian House requesting deferral to February 9, 1994 Town Council meeting. - This matter was deferred to the Town Council Meeting of February 9, 1994.

Redesignation
of Historic/
specimen
Trees

- D. Redesignation of Historic/Specimen Trees and Related Matters - Consideration of Resolution No. 4-94. Mr. Randolph noted this is to provide that Ordinance with regards to the designation of the historic trees in the Town would be modified so as to provide the designations be recorded against the properties, which would give adequate notice to property owners.

He advised the purpose of the hearing is to give notice to all of those who own property upon which there are historic or specimen trees. Mr. Doney proposed that after the public hearing they would bring before the Council a Resolution. Mr. Doney reported Mrs. Peters has done the legal advertising of notification of this public hearing. Mrs. Wiener asked if all of the property owners have been notified by certified mail? Mr. Dusey responded they have not received nine of the return receipts, due to new ownership for one, and another the letter was returned "Addressee Unknown" which was for 160 Via del Lago. Mrs. Smith asked Mr. Randolph what legally was the Town's position, as they have sent a notice to all of the property owners, they have advertised and wanted to have the hearing held today as this is a housekeeping matter, as these trees were not recorded and wondered where they should go from here.

Attorney Randolph responded they can go ahead with the hearing, but they have heard from Mr. Dusey that there may be some question as to whether or not notice was received with regards to nine properties. He advised they could go ahead with the public hearing with regards to the others which have been properly notified and those could be ratified and the public hearing could be continued for the nine others.

President Weinberg called for public comment and there was none.

Mrs. Wiener moved for adoption of Ordinance No. 33-94 relating to preservation of historic and specimen trees, except for the nine property owners who we are not sure have been properly informed and this public hearing will be continued next month and in the meantime, all due diligence will be exercised by Mr. Dusey's department to see that the property owners are informed and that we are aware of the fact that they have been informed, so the other nine properties may be addressed next month.

Mr. Randolph suggested there be only one resolution to go to the County and since there has been no objection to all of those who have been notified, this be put over to the next meeting although they can make a motion to ratify and confirm the historic and specimen tree designations and at the conclusion of the next hearing, the Resolution be read and adopted.

Mrs. Wiener moved to ratify and confirm the designation of the historic and specimen trees and to record those in the public records against the properties on which they exist. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mr. Randolph advised the public record does identify those trees which have been ratified and the nine that they have not received the certified mail confirmation cards from will be heard at the next meeting.

IX. OLD BUSINESS

Methods of
nominating
for appoint-
ments

Mrs. Royal asked for consideration of a Nominating Board who would recommend to the Town Council citizens for appointment to the various Boards and Commissions in the Town. She indicated each Council member would appoint one person to this Nominating Board and these people would look at all of the people who are interested in serving on Town Boards and Commissions and make their recommendations. She asked them to refer it to the Ordinance, Rules & Standards Committee for consideration. She pointed out the individual members of the Council would always have the right to bring up a nomination, and she requested the Council to accept her suggestion to try this method and she suggested that this be given a one year trial period and she so moved. Mrs. Douthit stated her opposition to such a Board as they have to obey the Sunshine Laws and it would be submitting people to go through the same process twice, and she viewed it as another layer of government and thought it was totally unnecessary.

Mrs. Smith seconded the motion. Mr. Weinberg stated he also has a concern about the Sunshine Laws. He stated over the years he has urged each member of the Council to interview those who wish to be appointed to any Board or Commission, as he wanted to find people to serve the Town who are the most effective and the most responsible.

Mrs. Wiener pointed out everytime there is a new Commissioner, it involves staff work, and those things need to be kept in mind as the Town is small enough and another level such as this Board should not be required.

Methods of
Nominating
(cont'd)

Mrs. Smith stated her thoughts were that perhaps if this method was tried, the appointments would be taken out of the political arena. Mrs. Douthit recalled what had been done in the past and felt this new system of a Nominating Board could turn into a major political brouhaha. Mrs. Royal did not agree as she viewed the Board as bringing to the Council qualified candidates. Mrs. Douthit did not agree, indicating the Council has to make the final decision but the Board is also making a decision as to who to bring to the Council. Mr. Smith suggested it be taken to the Ordinance, Rules & Standards Committee.

Mrs. Wiener called the question. Mrs. Royal restated the motion that the Town Council send to Ordinance, Rules & Standards Committee the subject of having a Nominating Board for commission appointments.

On roll call, the motion did not carry 2-3 with opposing votes cast by Mrs. Douthit, Mrs. Wiener and Mr. Weinberg.

A. Appointments

Appointments

1. Seaview Park Commission - One Alternate Member With a Term to Expire February 1997 - Deferred from December Meeting -
2. Golf Commission - Two Alternate Members With Terms to Expire November 1996 - Deferred from December Meeting
3. Code Enforcement Board - One Alternate Member With a Term to Expire April 1994 - Deferred from December Meeting
4. Building Board of Adjustments and Appeals - One Citizen-at-Large Alternate Member - Deferred from December Meeting
5. Landmarks Commission - One Alternate Member With a Term to Expire March 1994 - Deferred from December Meeting
6. Zoning Commission - Two Alternate Members With Terms to Expire February 1997 - Deferred from December Meeting.

Seaview Park

Golf Comm.

Code Enforce.
Board

Bldg. Board
of Adjust. &
Appeals

Landmarks Comm.

Zoning Comm.

A motion was made by Mrs. Smith that all appointments be deferred. Mrs. Wiener seconded the motion. Mrs. Royal asked if she could make a nomination. Mr. Randolph stated she could only do that if she wished to make an amendment to the motion. Mrs. Smith would not accept an amendment to her motion to defer and called for the question. Mayor Ilyinsky wondered when these appointments would be made. Mrs. Wiener noted they were alternate appointments and all the Commissions and Boards seem to be functioning. On roll call, the motion carried 3-2 with Mrs. Royal and Mrs. Douthit voting against the motion.

B. Other

1. Consideration of Request to Schedule a Town Council Workshop Meeting Regarding Cleanup of Beaches, Request for Mayor and Town Council to Appoint a Special Advisory Committee on Cleaning of Beaches and Other Beach Cleaning Issues - Mr. Doney noted information has been provided to the Mayor and Town Council on this issue. He advised the Town represents about one-quarter of the County beaches and they have surveyed all of the other oceanfront communities to make a determination as to how they are dealing with the cleaning of their beaches. He noted the Florida Shore & Beach Preservation Association and the Florida Department of Environmental Protection have been contacted to obtain information on the issue of beach cleaning. He noted he has heard from ten of the eighteen coastal municipalities.

Town Council
Workshop
Re: Cleaning
of Beaches

Mrs. Wiener indicated she was interested in finding out how communities resolve the cleaning of private beaches and has found that most of the communities have no private beaches and she thought they needed to find those communities which are similar to this Town, where there are a large amount of private beaches.

Mr. Doney noted Mr. Tate who is with the Florida Shore and Beach Preservation Association and Mr. Sole of the Florida Environment and Protection Agency have been contacted and neither of those individuals were aware of any formalized municipal cleaning program which entailed cleaning private properties. He noted the Town of Palm Beach Shores does have a program but it only covers one half dozen properties. Mrs. Wiener thought they needed to look at such places like California which have a large number of private homes on the beach. Mrs. Douthit believed under California Law all beaches were public.

Mr. John Matich, 3475 South Ocean Blvd. addressed the Council advising a private contractor south of the Lake Worth Public Beach cleans the beaches and each condominium pays him individually. He comes three times a week and has the proper permit and it takes about three or four hours of cleaning and their beaches are quite clean. He felt the individual home owners should get together and hire a contractor to clean their beaches. Mr. Weinberg believes the contractor goes from Sloan's Curve to 3475 South Ocean Blvd and is paid by the multi-family buildings, and one of the problems to which Mrs. Douthit alluded, is someone who owns a huge estate would not want anyone to come onto their property.

Mrs. Douthit advised the north end receives a greater amount of debris due to the Inlet and the freighters anchoring there, so it is a bit more intense. She didn't believe the Town could get into the business of cleaning private beaches.

Mrs. Smith recalled last month she recommended that the Mayor and Town Council members each appoint one member to a special committee on beaches, to look at the problem of not only beach cleaning but preventive measures that could be taken to keep the trash off of the beaches. She believed they needed to deal with the problem and she knows the people of this Town are quite concerned about the problem of dirty beaches and she felt this special commission was a way to address the problem. President Weinberg suggested it be a Committee that would serve as Advisory

Cleaning of
Beaches (cont'd)

to the Council and he believed that in addition to those appointed by the Council, there should be two members from the Civic Association and two members from the Citizens Association. She suggested the Committee would address the problem of the beaches and would make their report to the Council and then would be disbanded.

Mrs. Wiener suggested there be a workshop on this subject and at the end of that time, they would appoint the members to this Committee, as she would like to be an active part of this. Mrs. Smith agreed they would all want to be an active part of it, noting that she would rather see the Commission acquire the information which is being talked about and then the Town Council have a workshop to deal with it. She advised she is not concerned with the Palm Beach County coastal communities but is concerned with Dade and Broward and the counties to the north and on the west coast, as this is not a local issue, and the preventive measures is what should be addressed. She believed the amount of trash coming onto the shore is coming from the ships and she thought they needed to address what could be done to prevent that, and that is why she suggested a Commission review, analyze and assimilate the information and then have the Workshop with the Council reaching the final decision.

Mrs. Wiener stated she would be agreeable but it should be realized that any Commission does have to work with the staff to get their information and that is why she felt there staff should be directed to research certain questions about the beaches and then have the Workshop and appoint the people.

Mrs. Royal asked if the Inlet Management Plan had any information about mitigating this problem to which Mr. Doney responded within the scope of work within the Inlet Management Plan, there are no studies of this kind anticipated.

Mr. Doney noted this is a complex issue and has been studied before and if the Mayor and Town Council direct him, staff and the Town Attorney to do certain research, that can be done and they will report at a special meeting or at the next Council meeting, and from that point, the Council could consider whether there should be a Special Advisory Committee. He knew that in matters of this kind, there is considerable staff work involved, recalling the Bicentennial Eagle Restoration Committee took staff time. He thought there would be legal issues which would need to be addressed with regards to private property concerns and jurisdiction. Mrs. Smith thought a Commission of this type would save staff time and asked if an attorney could be a member of that Commission to which Mr. Doney responded he didn't think that would be a problem. He felt, however, the responsibility needed to be where it should be and that would be with the Town Attorney, to give guidance on this issue. Mrs. Smith felt the bottom line was the Town Council would be making the final decision. She added they are talking about a problem which has been facing this Town for a long time and she simply wants to address it.

Ned Barnes from the Civic Association of Palm Beach, addressed the Council indicating the Civic Association is very interested in this and is happy to see that the Town would be taking the lead in addressing the problem and offered his help, noting they do have a Committee which has been looking into this for some time.

Mrs. Smith moved that the Town Council appoint a special committee to look into the question of beach cleaning and preventive measures to keep the beaches clean. She advised she will accept the form which the Council feels is best, as each member of the Council should designate one person to serve on this Committee and there be representatives on the Committee from the Civic Association and the Citizens Association South of Sloan's Curve and any other civic organizations that are interested in serving. Mrs. Wiener asked if Mrs. Smith would accept an amendment to the motion that within forty-five days from the appointment of this Committee, there would be a public hearing, to which Mrs. Smith agreed. Mrs. Royal asked if there could be sunset language so this Committee would be disbanded when the public hearing is complete. Mrs. Smith believed the Committee would be disbanded at the end of the forty five days. Mrs. Wiener agreed it should be after the workshop is held. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Doney asked the Mayor and Council to hear from Mr. Randolph as to how this Committee should be created, by way of a Resolution and also they should be made aware of the Sunshine Law.

A short break was taken and the meeting was reconvened by the Council President.

Mr. Randolph recalled some committees are created by way of ordinance which would indicate the size and the manner of the appointment, and he heard them say each member of the Council should make a nomination and also there be representatives from the two civic associations, so it could be a seven member committee. Mrs. Smith made a motion that the Beach Committee be a seven member committee. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mrs. Douthit asked how long do they have to make their appointment to which Mrs. Smith responded 24 hours and it should be into the Town Manager's Office by Noon, tomorrow.

Mrs. Wiener noted there would be a public hearing within the forty five days after which the Committee would be disbanded. Mayor Ilyinsky asked if he could also make a nomination to which the Council agreed, noting it will now be an eight member Commission.

2. Consideration of Status Report on Water Negotiations with the City of West Palm Beach

Attorney Randolph reported he was in receipt of a phone call from the City Attorney for the City of West Palm Beach indicating he has not as yet completed his review of the proposed draft of the Agreement.

Mrs. Smith asked what the staff feeling was of what exactly is going on here. Mr. Randolph responded he did expect to have a more comprehensive report before the Council today, and what he thinks should happen is having heard nothing from the City of West Palm Beach, he does not know exactly what to do but perhaps it should be to move forward with an agreement and place that on the table again before the City Commission and ask them to place it on their agenda. Mrs. Smith did not understand why nothing was happening here, to which Mr. Randolph responded he could ask them to act on the document which has been presented to them. Mrs. Wiener asked if there was a legal way the Town could put some teeth into this, wondering if there was any way the Town could ask them to respond? Mr. Randolph stated the only thing he could advise is the Town be insistent on being in receipt of something from them. He believed the responsibility for the franchise is with the City of West Palm Beach, if they are going to be the water purveyor of the Town, we need something from

Status Report
on Water
Negotiations

them upon which we can agree, but if they do not at the conclusion of the franchise come up with an Agreement, the Town is in no danger as the City of West Palm Beach has to continue to serve the Town of Palm Beach.

Status Report
on Water
Negotiations
(cont'd)

Mrs. Wiener felt they needed to do something and wondered if the South Florida Water Management District could do something about the City of West Palm Beach's unresponsiveness after all of this time. Mr. Randolph suggested he take these concerns back to them and see if that should trigger some kind of a response and if nothing is received prior to the next Town Council meeting, the staff will then suggest alternative options. Mrs. Royal suggested one of those options should be dusting off a contingency plan and look at other water sources.

Mrs. Wiener advised the Council had already agreed that those options were not viable. Mr. Doney responded the staff has looked at what is available around the Town, but the feasibility and costs are high and he thought they needed to extract a response from the City of West Palm Beach and then deal with that, and he felt that was the most prudent course.

3. 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 reported there have been several meetings on this subject and another meeting has been set for the near future and he will report to the Town Council after this meeting is held.

Branch Library
of the Soc.
of the Four
Arts

X. LICENSES AND PERMITS

Licenses &
Permits

A. Beverage License

Bev. License

1. Consideration of Application for a New 2COP Alcoholic Beverage License by Henry Williams Sage, Jr. d/b/a Mizner's Moveable Feast, Inc. Located at 8 Via Mizner (See Item XIV.C.5.) This item was deferred to later in the agenda.

B. Charitable Solicitations

Charitable
Solicitations

1. Ballet Florida; No. 156-94 - Mrs. Peters advised the results of the previous solicitation has not been received for their event in 1992. Vicky Freeman of Ballet Florida addressed the Council indicating there have been significant changes in staff at the executive and administrative level, however, they are trying to retrieve some accounting records and will send the Results form within the next two weeks. A motion was made by Mrs. Wiener to grant the permit with the stipulation that the results of the 1992 event would be received within the next two weeks. Seconded by Mrs. Royal. Motion carried unanimously. Mrs. Smith requested Ms. Freeman to notify her Board that this is a requirement of the Town's Ordinance, so there is information in their office that this is something which must be complied with, to which Ms. Freeman agreed.
2. The Nature Conservancy; No. 349-94 Helen Bertles reported her gallery is hosting an exhibition which will benefit the Nature Conservancy and the application was not filed timely. Mrs. Peters advised the application has just been received and if this is granted, it should be done conditionally with the proviso that all Departments will approve it and she also needed a waiver of the advertising rule. Mrs. Douthit so moved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

XI. NEW BUSINESS

A. Ordinance - First Reading

1. Ordinance No. 2-94 - Amendment to Ordinance Regarding Grievance Resolution Board - Mr. Randolph read the Ordinance 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 2, 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 APPEAL OF ORDINANCES IN CONFLICT THEREOF; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

After discussion, a motion was made to approve the Ord. No. 2-94 by Mrs. Douthit, seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

B. Other

1. Consideration of Request by the Preservation Foundation of Palm Beach for the Fourth Annual Palm Sale Proposed for Sunday, March 27, 1994 Mrs. Polly Earl requested the Town Council to approve the annual Palm sale for the Preservation Foundation of Palm Beach. Motion was made by Mrs. Douthit that the Town Council heartily approves with vast appreciation what the Preservation Foundation has done and she moves for approval of the fourth annual Palm sale set for March 27, 1994. Seconded by Mrs. Smith, who pointed out not only does the Preservation Foundation make the trees available but will deliver them and plant them.
2. Report by Town Attorney on Landmarks Preservation Commission Members and Certified Local Government Status - Attorney Randolph recalled the issue was raised as to whether or not under the current ordinance, if the Ordinance continued to meet the guidelines to be qualified as a certified local government in the State. He advised there was a recent amendment to the Ordinance which states that all of the members of the Commission should be residents of the Town, as previously there was a provision there could be one non-Town resident as a member.

4th Annual
Palm Sale -
Pres. Found.

Certified
Local Gov't.
Ordinance
Guidelines

Mr. Randolph believed the Ordinance does meet the certified local government guidelines as there is a provision in the guidelines which provides that members of the Commission shall be residents of the local jurisdiction within which the Commission operates. He noted the language in

the Ordinance states that a majority of the members shall have to the highest extent practical a special knowledge of and a lone interest in Landmarks Preservation.

3. Consideration of Quotations from Financial Institutions for Financing of Replacement Fire-Rescue Department Aerial Platform Vehicle. Deferred.
4. Consideration of Comments from Representatives of Palm Beach County School System Regarding Proposal to Eliminate Grades 6-8 at Palm Beach Public School (Information Only) - David Williams, Acting Coordinator of Planning and Real Estate for the Palm Beach County School District with Linda Howell, Planning Specialist appeared before the Council. Mr. Williams gave a history of why the boundaries are being changed, advising the School Board has committed to purchase land for three new high schools in the County, and are considering changing North Shore back to a High School where the School of the Arts moves to Twin Lakes, which means they needed to apportion the District to include those four new high school facilities.

Mr. Williams exhibited a chart which showed the boundaries and it showed the Town of Palm Beach splits at Southern Blvd., with the south half of the Town going to Forest Hill High School and the north half going to Palm Beach Lakes. He advised the proposal is to move the split from Southern Blvd. to Royal Poinciana Way which would still go to Forest Hill and the northern part of the Town students would go to North Shore beginning in 1997.

Mrs. Wiener asked about the information regarding the removal of grades 6 through 8 from the Town of Palm Beach, as that that is a concern. Mr. Williams responded he wanted the Town to be made aware of this high school change as it does affect the Town.

Mr. Williams stated there also has been suggested a major change to the middle school boundaries. He explained they have been asked to look at this by the Board and Superintendent of Schools who wish to realign the middle school so they closely reflect the high school boundaries, which fits into an educational standard and they feel that establishing a consistent feeder system whereby all the middle schools would progress to a single high school. He advised they as planners have been looking at how to realign the middle school boundaries to accomplish that end, and as part of that exercise was to take the middle school grades, 6, 7 and 8 out of the existing Palm Beach School and put them into Roosevelt Middle School, which is scheduled to be rebuilt.

Mr. Williams advised the property north of 15th Street and east of Australian will be utilized for the construction of the new Roosevelt Middle School, and this will be the first one to be built of that design with construction slated for later this year and as soon as that school is completed, the students in Palm Beach middle school will be utilizing that school and that transition is planned for the Fall of 1996.

Mrs. Douthit asked what will happen to the improvements done at the Middle School in Palm Beach for thousands of dollars to update the Middle School and she hoped this was not a whittling effect to remove the school completely. Mr. Williams responded they are not planning to remove the elementary grades at all.

Mrs. Linda Howell addressed the Council, indicating within Palm Beach Public's current boundaries there are approximately 120 Middle School students, although they currently have close to 200 students, as it is taking in some students for whatever reason outside of their District.

Mrs. Douthit acknowledged students do learn more in smaller classes and she would like to see the middle school continue where it is, as she viewed doing the improvements as a waste of taxpayers' money with no benefit for the students.

Mrs. Smith asked if they anticipated the school taxes would be reduced in the Town of Palm Beach if three classes were being eliminated, to which Mr. Williams responded this is a county wide district and they will be providing education for the Palm Beach students, although it may not be within the Town limits, it would still be provided.

Mrs. Royal asked what the current boundaries were for the Town of Palm Beach Public School to which Mrs. Howell responded the entire Town of Palm Beach and South Palm Beach southward to the Ocean Ridge area and also some students to the west from Southern Blvd. to Okeechobee.

Mrs. Wiener asked if they would send these students elsewhere if the proposed new building was not completed to which Mr. Williams stated they are looking at that and the advantages to make a transfer would be minimal.

Mrs. Smith felt the main concern should be the children and in this era when there is a lot of emphasis on family values and stability, it is important that students not be moved around. She hoped the School Board would take that into consideration and leave the middle school students in Palm Beach as it is one of the best schools in the County. Mr. Williams responded they would not want to make any moves which are temporary, and they are still looking at sending them to Roosevelt in 1994 or if they should wait until the new construction is completed and that decision will be made shortly, and he believes that decision would be that the students be allowed to remain in Palm Beach until the new Roosevelt Middle School is completed.

Mrs. Douthit felt this whole situation was appalling and they should just leave the middle students where they are.

Lucy Leach, Principal of the Palm Beach Public School addressed the Council indicating she has been receiving many calls on this proposed change. She advised she has been there for seven years and there are 47% white and 51% minority students, so they are serving Palm Beach and some students from City of West Palm Beach, and it is a safe campus. She reported they have 205 middle school students and many of them are on reassignment since their parents work in Palm Beach. Mrs. Douthit suggested that Mrs. Leach report to the School Board the complaints she has received from the middle school parents and hope this will not fall on deaf ears. Mrs. Leach asked the representatives of the school board what the dates were for the public hearings to make a decision on this to which Mrs. Howell responded the dates as it effects middle school students are February 14, 1994 at 6 PM in the District Chambers on Forest Hill Blvd. which will address the middle school boundary changes. She advised the public hearing on February 15, 1994 will address the proposed high school boundary changes. She noted the final public hearing and board adoption of any

proposed boundary changes will occur on March 23, 1994 at 6 PM at the Board Chambers on Forest Hill Blvd.

Mrs. Wiener asked what use would be made of the middle school facilities in Palm Beach if and when they are vacated to which Mrs. Leach responded this does involve nine classrooms and she doesn't know what use will be made of those classrooms and she didn't believe that Mr. Williams could answer that question either, however, proposals would be made. Mrs. Wiener wondered what plans the School Board had to take the students out of the Middle School here in Palm Beach and what would be the use of those facilities? Mr. Williams responded next year they will be looking at the elementary school boundaries and will be looking for additional elementary school facilities with a realignment of elementary school boundaries, and if it is found after this change is made, and they move the middle school students out and it is found there is still some capacity there to accept additional elementary school students, they would make that adjustment one year from now.

Mrs. Wiener reminded Mr. Williams that they are dealing with young children here as once they get to the high school stage, there is much more ability to move around, however, these children should not be moved for the sake of some high school master plan and for the sake of changing another boundary for other younger children coming here and she hoped they would be extremely careful as this is something that does pervade on the entire society and she hoped it would not be furthering the break-up of routine of family, and those things that make children feel secure.

Mr. Williams advised he will be meeting with the Superintendent of Schools later in the week and will pass these ideas along to her.

5. Appeal of Public Works Director's Decision to Deny Right-of-Way Permit by Serraes Construction General Contractor, Inc. to Work in Right-of-Way Adjacent to St. Edward's Catholic Church at 142 North County Road Mr. Dusey advised there was a permit application to install a glass protective finish over the stained glass windows and they would have to use the Town's right-of-way in order to do this work and he turned it down as this is a very busy commercial area of the Town and he felt this was not an emergency and the work could be completed after May 1st. He advised part of the work could be done now which would not require the use of the right-of-way and the rest could be completed after the season.

Martin Serreas addressed the Council indicating he has been contracted by St. Edwards Church who have been advised by their insurance company to provide protection for their stained glass windows and special laminated panels manufactured by the Monsanto Co. were obtained, which have been approved as a hurricane shutter and they would like to install them. He noted they can install three sides from the church property but would like to use the Town's property for two weeks to install them on the south side and have provided a safety plan to route pedestrian traffic around the equipment, however, he has been denied the permit by the Public Works Director.

Mrs. Douthit noted they could complete the other three sides and she moved that the denial of the permit by the Director of Public Works for the south side of the property to use the Town's right-of-way be upheld and this work be held over until after the first of May. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

- XII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR DECEMBER 1993 - Motion was made by Mrs. Douthit, seconded by Mrs. Wiener to approve the Warrant List and Fund Expenditures for December, 1993, with an amendment that the Council request Finance & Taxation Committee to look over the warrant list. On roll call, the motion carried unanimously.

- XIII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE
Adrian Winterfield addressed the Council recalling a short time ago the Council directed the Fire-Rescue Department to renew the transporting of patients to local hospitals, which eliminated the participation of private ambulance services. He suggested the Council may wish to reconsider the proposition of charging for ambulance services, and this be referred to the appropriate committee for consideration of this proposal. He knew one big consideration is who will do the paper work and he knew of private organizations who would do the paper work for a percentage fee. He felt the portion of the population that might not be covered by insurance and that would be individuals working in the Town and he had some ideas on an approach to that which he will share with the Committee.

XIV. DEVELOPMENT REVIEWS

- A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of December 15, 1993 - Motion was made by Mrs. Smith, seconded by Mrs. Wiener to approve the Major Matters considered by the Architectural Commission on Dec. 15, 1994. On roll call, the motion carried unanimously.

The major matters were:

- B75-93- New residence for Renate and Thomas McKnight, 310 Clarke Avenue - Deferred.
B49-53 - Front wall for Mr. & Mrs. Robert DeMario, 275 N. County Road - Deferred.
B84-93 - Addition remodeling and site changes to residence of Carol Martino, 144 Seminole Avenue - Deferred.
B85-93 - Carport awning for Joyce and John Alban, 422 Australian Avenue - Approved.
B86-93 - New residence for Sidney Kimmel, 1236 S. Ocean Blvd. Removed from agenda.
B66-92 -Driveway Revision for Sandy Pam Beach Property, Inc., 248 Bahama Lane - Approved conditionally.
B98-92 - Hardscape Plan for Mr. & Mrs. Augustine Falcione, 970 N. Lake Way - Approved conditionally.
B59-92 - Revised Landscape Plan for Bernard Green, 585 N. Lake Way - Approved.
B51-93 - Driveway Change for Ted Blanch, 686 Island Drive - Approved.
B68-93 - New South Fire Station, Town of Palm Beach, 2185 S. Ocean Blvd. - Approved with conditions.
B35-93 - Wall renovation for Preservation Foundation, 386 Hibiscus Ave. - Approved.
B3-93 - Revisions on approved project for Joel Martino, 109 Ocean Terrace - Deferred.
B25-93 - Revisions to previously approved project for Mr. & Mrs. George Straub, 10 Blossom Way - Approved.
B56-93 - Roof modification for Michael J. & Deborah D. Pucillo, 224 Dunbar Rd. - Approved.
B92-93 - Demolition and new residence for Palm Beach Development Group, 1530 S. Ocean Blvd.

P.B. County School System
- PB Public School Boundary Changes (cont'd)

Appeal of Public Works Decision re: Serraes Const.- 142 N. County Road project.

Approval of Warrant List & Expenditures

Communications from citizens

Development Reviews

Architectural Comm. Major Matters

Approved demolition and deferred the new residence plans.
B93-93 - Addition to kitchen for Ronald Fraser, 205 Colonial Lane - Approved.

B. Appeal

Appeal -
request for
fund raising
event
at Bethesda-by-
the-sea

1. Appeal of Planning, Zoning and Building Department's Decision to Deny a Request for a Fund Raising Event in December 1994 at Bethesda-by-the-Sea - Deferred from December Meeting - Attorney Randolph explained this is an appeal of the Planning, Zoning & Building Department's decision to deny a request of Bethesda by the Sea to hold a fund raising event and they should hear Mr. Moore's reasons for the denial.

Mr. Moore reported they were approached by representatives of the Church to hold this three day event and they have had meetings with representatives of the Church. He advised the actual event involves a commercial-type event where an antique show sponsor would come to the church grounds and put on a show and sale of antiques. He advised the exhibitors are persons who travel with the company which promotes these shows and they would be coming to Town for a three day period, setting up business for that time and the aspect of them doing business on the church property is a problem under the Zoning Ordinance, which states there cannot be commercial or quasi-commercial activities in residential zoning districts. He advised the problem is this church is in a R-B Zoning District, unlike St. Edwards or the Temple which are in commercial districts and this type of activity would not be precluded at those locations.

He stated numerous discussions with the church representatives have been had with regards to alternatives, such as having the goods donated to the church and then it would be the church's property and they held the sale exclusive of others handling the transactions for profit on their property. He advised those discussions have not produced any change in the desire of the church and what they are doing here today is to appeal the decision that classifies this type of activity as commercial or quasi-commercial, even though it would only be for three days.

Karen Steele, a member of the Vestry of Bethesda-by-the-Sea addressed the Council, indicating she was also the Vestry Liaison for the Episcopal Church Women, which is the group who are organizing this event. She commented she has served for three years on the vestry and looking at the financial statements and the need for capital repairs, they need to have a fund-raising event for restoration purposes and that is the reason they wish to hold this event.

Mrs. Steele referred to the packet of information which they have prepared with the help of professional building consultants they have identified capital needs in excess of 1.4 million dollars and to date they have expended \$300,000. She noted the areas needing consideration are window repair and replacement, roof repair, wall restoration, all of which need urgent repair and she prefaces her comments with this information as this is the main reason they are before the Council.

She advised over the years ECW has been instrumental in raising funds for various community outreach programs and church improvements. She recalled the Parish Hall, the woodwork within the church, the church organ and at present they are working on a lighting and walkway project as well as providing handicap access into the church. She informed the Mayor and Council their principal fund raiser is the Annual Spring Festival which they have been doing for 20 years. She advised funds are raised on baked goods and slightly used treasures, homemade foods, children's games and rides. She recalled they were looking for a new project to help with this restoration and one that could raise substantially more funds.

Ms. Steele advised they have talked to other churches in other areas and there is one in Naples which conducts this type of an event through a professional manager and the one recommended is Robert Armocost and they have had extensive conversations with him. She noted Mr. Armocost would help them mount the show with the selection of professional dealers, floor design, booth vignettes, administrative management, public relations, advertising in national trade publications, security and dismantling.

She advised they would like to hold this event December 1st through 3rd preceding a show Mr. Armacost would do in Jacksonville and he is confident that many of the same dealers involved in Jacksonville would be anxious to come to Palm Beach. She reported Armacost manages seven antique shows annually, all for charity, in Alexandria, Va., Annapolis and Baltimore, Md., Greenwich, Ct., Chadd's Ford, Pa., Naples and Jacksonville.

She indicated based on the preliminary design, he has identified they could comfortably include 21 exhibitors in the Parish Hall, first floor church school rooms, the library and guild rooms. She advised this would all be inside and they are not looking to do anything outside. She advised the event would start with a preview party, Wed., Nov. 30 and the show would open Thursday, Dec. 1st through Saturday, Dec. 3rd from 10 AM to 5 PM. She advised they will have 20 volunteers working two shifts daily and anticipate 300 people each day would attend the event.

She advised they have had preliminary discussions with the Flagler Museum and the First Union Bank regarding parking and will use a shuttle service to get people to and from those locations. She stated there would be much publicity prior to the event encouraging people to park at those parking locations instead of the church. She advised all antique transporting vehicles would be parked off the island. She confirmed they would hire off-duty police for traffic control and security. She noted their insurance committee would insure proper insurance was required of all vendors.

Ms. Steele advised funds would be raised through the preview party and the admission charge and from refreshments served in the Garth, which they would probably tent, and lectures, program book and a Christmas Boutique that would be sponsored by their book shop.

She advised the administrative set-up and dismantling charges would be covered through underwriting and a fee charged to the dealers and this fee would include any necessary licensing required by the Town. She believed participation by local merchants could be encouraged by involvement in the lecture series and they are also going to offer a hospitality table which will allow the local merchants to display their brochures and business cards.

Ms. Steele advised the Worth Avenue Association initially objected to the idea but have since withdrawn their objection to this event, after learning it was not a flea market type of event, but a highly organized professional event.

She noted a review of the residences within 200 feet radius of the church show a majority of them are members of the church. She indicated every consideration would be made for their continued comfort. She stated they wished to hold this event as it offers them an opportunity to showcase their facilities and grounds as they have experienced the staging of special events at the church such as the Spring Festival, the Boar's Head Festival and this sale being on site would encourage greater volunteer involvement. She believed the church facility would be more warm and welcoming than a hotel or other facility. She advised they wish to conduct tours of the church and finally, it will be financially more favorable for them.

She recalled they have looked to other sources to raise funds and have applied to the State for a grant of \$250,000, but no funding was available.

She noted they have considered having another campaign for capital improvements and a feasibility study is being commenced. She advised Bethesda does serve as a community center for many Town-serving nonreligious events, such as public music performances, polling precinct, meeting site for more than 25 social service agencies. She stated their doors are open to those who need help and she requested the Mayor and Council to help the church continue their service to the community by allowing this Special Event Permit.

Mrs. Douthit noted the Worth Avenue Association has removed their objection and she would like to make a motion to approve this Special Event next December 1 through 3rd.

Mrs. Smith asked why they chose this type of fund raiser wondering if there was an amount guaranteed to the Church. Mrs. Steele responded there are no guarantees but by Armacost's estimates, they can make from \$25,000 to \$100,000 based on their experience with other shows. She stated they have estimated approximately \$65,000 to \$75,000. She responded they chose this event after careful consideration, since they felt it was in keeping with the style of the Town.

Mrs. Smith commented her problem is the three day period, asking how long will be needed to set this up? Mrs. Steele responded they will start up on Monday as the dealers will come in after they have dropped off their items at the church and secured them. She reported the vans will then be taken off the Island. She believed there would have to be a three day set-up and a half day removal. Mrs. Smith felt it would be an inconvenience to the residents of that area in what will actually be a week's time span. She stated she would have no problem if this was going to be held in a commercial area, but she believes this would be setting a terrible precedent by allowing a commercial event in a residential area and hoped there was some other alternative.

Mrs. Steele recognized their concern, but she didn't believe setting-up would be an inconvenience to the residents, as the access will be on the north side which is where the trucks will be unloaded. She stated the set-up time is needed to mount the booths and all of that would be internal. She felt if off-site parking is used, there will be less impact to the neighborhood than the Spring Festival or the Boar's Head Festival. Mrs. Smith viewed the Spring Festival as a town tradition and they all look at it in that way and asked if they would be continuing that event to which Mrs. Steele responded they would like to continue that but it may not be done annually, as part of the problem with the Festival which is why they were looking for another vehicle by which to raise funds, was that there is a lack of enthusiasm on the part of the members of the Parish.

Mrs. Smith asked if the local merchants would be able to set up booths for their merchandise to which Mrs. Steele responded the Armacost people manage the function and choose the antique dealers who are part of the show.

Mr. Weinberg asked if there would be a monitored time for dealers to set up to help with the traffic? Mrs. Steele responded this could be arranged.

Mrs. Wiener recalled Mrs. Steele mentioned in her presentation that they would require licenses for each antique dealer and she asked if that was the plan to which Mrs. Steele responded affirmatively, noting if it is required by the Town, it will be done.

Mr. Moore stated the license would be required for each person who has an exhibit. Mrs. Royal asked if they would be charged a half year fee to which Mr. Moore responded it would have to be a full year as the half year does not start until April, and it would be probably \$260 per exhibitor. Mrs. Steele commented if this is a successful event, they would hope to have them come back and have it on an annual basis. Mrs. Douthit asked if the church was getting a percentage of the proceeds to which Mrs. Steele responded they were not and the profit will come through admissions, lecture fees and various other things.

Mrs. Douthit restated her motion to approve the request for this Special Event to be held at Bethesda-by-the-Sea Church which will be held Dec. 1 through 3rd, however, the set-up time would start the Monday before, or November 28, 1994 and to have several days afterward to carry everything away. Mrs. Smith asked Mrs. Douthit if she would amend her motion that each dealer would have to pay the license fee to which Mrs. Douthit agreed. Mrs. Wiener stated she will second the motion based on the amendment that the license fee be paid for each individual dealer that would be displaying his wares; and also that there be plans for parking and moving people about which will be worked out to the satisfaction of the Police Department.

Mrs. Royal asked what the Spring Festival made last year to which Mrs. Steele responded approximately \$20,000. Mrs. Royal noted The Church Mouse shop made significantly more. Mrs. Steele explained The Church Mouse annually donates \$100,000 to the Mission Outreach Committee. Mrs. Douthit thought perhaps the estimated amount by Armacost may be a lot over what could be raised in this community as the population in the cities where they hold their antique shows is much more than what is here in this area. Mr. Weinberg agreed, noting that if they made the \$65,000, it would mean a lot of people would be coming into town.

Mrs. Wiener stated that is why she included as an amendment the plan for the parking and she recalled Mrs. Steele stating the unloading would be in the alleyway north of the church. Mrs. Smith pointed out that Via Bethesda is the entry for some of the residences on that street. Mrs. Douthit responded they could get to their homes from the easterly end of the street.

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

Appeak -
Request for
Fund Raising
Event at
Bethesda-by-
-the-sea
(cont'd)

Mrs. Royal asked Mrs. Steele if she would inform the Council if there is any objection to the payment of the licensing fees to which Mrs. Steele responded she would do so. Mrs. Wiener pointed out this is what the Town Council instructed. Mrs. Smith asked that the residents in the area be made aware this is coming up and they do everything possible for their comfort on Via Bethesda and the other streets in the area.

C. Variances, Special Exceptions and Site Plan Reviews

New Business

1. Variance No. 1-94 - Mrs. Patricia M. Kessler, 695 Island Drive; to allow construction of a second floor addition providing a 9.7' north side yard setback in lieu of 15' required. R-B District. Mr. Michael Johnson addressed the Council on behalf of Mrs. Kessler, noting this is a two story residence and the second story covers approximately 20% of the ground floor, and the request for variance is to build within the setback of 15' and the addition would be located no further into the setback than what the existing second story now encroaches and would be put over a roof top patio area and behind the existing second story, which would screen it further from view from the street, as the hedge would be maintained as well as the landscaping.

Mr. Moore advised staff has no objection, as they are matching the existing wall line and Council has granted similar requests in the past.

Mrs. Wiener moved the approval of Variance No. 1-94. Mrs. Smith asked how this would look from the neighboring properties to which Mr. Johnson responded he does not have a plan nor photographs but the addition would be at a height lower than the parapet, which wraps around a majority of the second story. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

2. 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. - Ames Bennett, Architect, addressed the Council on behalf of Mr. Gundlach. He advised the common property line on the east which is owned by Mr. Gundlach and the neighbor, Kenneth Beall and for some reason, it was laid out on a bias and they have determined that by straightening the property line, they can improve the setback to all but one of the existing conditions. He stated by doing this, they can eliminate a useless piece of ground on the front of the property. He noted the property line will be moved by approximately 11' and an equal exchange of land will be affected, where the front line of Mr. Gundlach will be decreased by 11' and Mr. Beall's property will be increased by 11'. He stated there is no garage on this property and they wish to construct one with guest quarters on the second floor in the rear of the property.

Mr. Moore advised staff has looked at this application and the straightening of the property line will lessen the nonconformity and the staff has no objection. He suggested the garage be a minimum size to accommodate two vehicles as well as considering the proximity to the property line for a two story structure, so the building should be located as far west as possible and careful consideration should be given for the second story as it will be close to the rear property line.

Mrs. Royal noted the garage will be facing the street and the garage doors will be visible and she wondered if the Architectural Commission would approve the request as she believed they did not like to see the garage doors facing the street. Mr. Bennett responded he did not believe there was an Ordinance which precluded garage doors facing the street, although he knew that the Architectural Commission liked to see it shielded somehow, but in this case, he did not believe it could be done as it is a tight situation.

Mrs. Wiener noted they were requesting a sideyard setback of 5', whereas 15' is required and asked if that could be adjusted in some way as she did not view that as a minimum variance. Mr. Bennett responded they wish to continue with the same architectural style as the main residence and to get it all to work and the garage door to be located for maneuverability, two feet at the most would be as far west as they could put it as backing out will be a problem. Mrs. Wiener asked if he was saying he could accomplish all this with an eight foot variance instead of five feet? Mr. Bennett responded they could accept one foot or possibly two, but then it would get in a hardship area where the door would have to be reduced. Mr. Moore stated there are 16' garage doors and 20' garage doors, but it would all depend on the style and what the architect can design. He thought the request was a maximum request rather than a minimum. He understood the reason they could not move the garage to the west was due to the ficus trees located there and also, that is why the pool is in the front yard.

Mrs. Smith recalled this house was originally designed as a guest house for the house to the west and when this was before ARCOM for a carport, it was not an enhancement to the neighborhood and now they are here talking about a two story structure next to a one story house. She finds it unacceptable to have a five foot sideyard setback although she realizes the garage is a necessity but she has a problem with the second story, as that is pushing the Council to the limit. She suggested he come up with another solution as he is a good architect. Mr. Bennett stated he could come up with a solution but wished to point out the property to the rear is a massive two story house, which will loom over this property. Mrs. Smith felt it was an excessive variance as they wish to build almost half as much as the residence, as they are adding 1300' for the garage and guest quarters whereby the house is approximately 2500'.

Mrs. Wiener suggested this be deferred and she so moved. Mrs. Douthit asked if they were enlarging an existing nonconformity. Mr. Moore responded this does increase a nonconformity and the front yard is deficient by the realignment of the property line. Mr. Bennett noted there was no way they could make this a conforming lot. Motion was seconded by Mrs. Smith. On roll call, the motion carried 4-1 with Mrs. Royal casting the dissenting vote.

3. Special Exception No. 1-94 With Variance - Daniel Foxx, 222 Worth Avenue; to allow commercial use in a second floor apartment, increasing the retail space from 3,612

Spec.Excep.
1-94 with
variance

square feet to 6,812 square feet. Applicant proposes 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) of the Town Zoning Ordinance. C-WA District. - Attorney Prosperi addressed the Council, noting he is representing the applicants, who own the business known as Daniel Foxx, and they have leased the old Sara Fredericks building. He advised they wish to obtain permission to use the building as it was traditionally used by Mrs. Frederick when she lived there, which was the use of her apartment for private showings, soirees of a type, charity luncheons and an occasional party. Mr. Prosperi indicated what they are asking for is an increase in the size of the retail store from the existing 3612 square feet by approximately 3200 square feet which will allow the limited commercial use of the existing second floor apartment. He advised the variance is to allow the tenant to provide an additional 14 required parking spaces outside the C-WA Zone which is in excess of 500' from the site, as 14 additional parking spaces are not available in the C-WA Zone and less than 500' from the site.

Spec.Excep.
1-94 with
variance
(cont'd)

Mr. Prosperi reported the proposed use would be for occasional private showings, which would be by invitation only. He noted there would also be a small packaging and storage area, and that would be a less intensive use for this second floor space than a second tenancy. He would agree to a stipulation that in the event there were a charitable showing or something additional, they would have valet parking.

Mr. Prosperi stated the hardship is the current surrounding uses of Worth Avenue for use of the second floor space for residential uses, as there are no parking spaces available nor access on the street to support a residential use, the large volume of vehicular and pedestrian traffic on Worth Avenue and the resulting noise and the night use of the nearby restaurants and bars with valet parking activity, all which generate nighttime traffic and noise well past midnight, which he considered incompatible with residential use. He felt the limited commercial use of the second floor would have a minimal impact on Worth Avenue as the use of the space would be by invitation only and there would be no access to the second floor space by the general public, as it will be kept locked, except for eight times a year when charitable special events are proposed to be held.

Mr. Prosperi advised the excess fourteen parking spaces have been provided to be taken care of in the Peruvian lot. He advised the second floor would require sixteen parking spaces, of which two have been grandfathered in and the additional fourteen spaces would be leased from the Appollo lot on Peruvian Avenue.

Mayor Ilyinsky asked how late would these eight functions be held? Mr. Prosperi responded they would be willing to limit the time to 9 PM in the evening. Mrs. Douthit commented it is commercial use of residential space. Mrs. Wiener asked for assurances that there will be no sales on the second floor, such as hanging racks with tags and people going up there from the first floor space, to which Mr. Prosperi responded they are trading a Special Exception Use for a Special Exception Use as residential use on the second floor of Worth Avenue is currently a Special Exception.

Mr. Moore stated the application is before the Town Council because they wish to change the use from residential to commercial and they wish to use space which will be over the allowable 2000 square feet.

Mr. Weinberg asked if they would be willing to commit there would be no more than eight limited minimum functions per year to which Mr. Prosperi responded affirmatively.

Mrs. Wiener asked if the Town-serving aspect would come into play with regards to the fact they are over the allowable 2000 square feet? Mr. Moore responded that issue must be addressed. Mr. Prosperi responded their application states this is a new business and they would agree to certify every year that the majority of customers are Town-serving. Mrs. Wiener noted they have been open since November. Mr. Moore believed they were keeping records which shows they are Town-serving.

Mrs. Douthit commented she wishes this space to remain as residential but that doesn't appear to be where they are going, and she wished to ask if they would be willing to put a curfew on the time when there would be events held there, as it will disturb their backdoor neighbors which are the Gulfstream Road residents, perhaps no later than 11 PM?

Attorney Randolph responded the letter states they will only be using this area during store hours.

Mrs. Smith noted many of the neighbors on Golf View Road have objected and correspondence from them has been received and asked if Mr. Prosperi could offer any comfort to the neighbors and for the use of the Golf View Road alleyway, which has created major problems for these residents. Mr. Prosperi responded he has read the correspondence and he wished to again point out the applicant is the tenant, who has leased the entire building, so this applicant does not benefit the landlord. He is aware there was a gate installed by the landlord in a wall that did not belong to the landlord and his clients are willing to stipulate they will not use the alleyway or easement or go near that wall in an attempt to service their business from the south.

Mrs. Smith understood it was not Mr. Prosperi's client who created the problem, but there is an ongoing problem with the residential neighbors to the rear, and she would like to know what his clients could do to make sure their special events held on this second floor would not be serviced through the alley in any form of delivery, caterers, etc. Mr. Prosperi noted the wall and the alley belongs to Golf View Road and they would have no problem with this request.

Mr. Randolph noted Mr. Prosperi's statement was they would limit the events to eight annually, but he wished to point out to the Council that the letter of application indicates the sole purpose for this would be for Special Events and there would be no retail on the second floor. Mr. Prosperi responded the use of the space during the daytime, before the hour of six pm would be limited to private showings by invitation only or by prearrangement and would not be an expansion of the regular walk through retail selling space which would be accessible to the public, nor would it have racks. He advised there would be a small packing and handling and storage area on the second floor. He advised up to eight occasions per year, they would have special charity fashion shows, where instead of having one or two people going upstairs, there might be a larger group. He

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(cont'd)

was willing to state that on those occasions, they would use the space in conjunction with valet parking and would limit the use to no later than 11 PM at night and that would be limited to eight times per year.

Attorney Robert Deziel representing Dr. & Mrs. Samuel Scher, Mr. & Mrs. Leigh Demmler, Dr. & Mrs. John Whelton, Mr. & Mrs. Henry Briar, Mr. Frank Butler, Mrs. Gay Sincue, and Mr. & Mrs. Henry James. He did not believe there was anything in this Town called "Limited Commercial Use" and also, he wondered when residential use became a Special Exception Use. He believed what existed here was an existing non-conforming use, and also, he wondered if there were a commercial use on Worth Avenue of 1999 square feet, that in itself would be a Permitted Use. He felt 2001 square feet of commercial use would be a Special Exception Use and what they have here is an applicant who recently received permission for a Special Exception to have 3,812 square feet on the first floor. He noted they haven't been in business for more than three months and now they are requesting to double that use and he wondered if in order for this application to be approved, the requirements of Town Zoning Code Section 6.40 and 10.13 of the Town's Comprehensive Plan must be in compliance. He stated the second item is they must balance and weigh the interest of this application and the surrounding property owners. He did not believe the application itself refers to the property owners on Golf View Road and he contended those property owners would be most affected by the application.

Mr. Deziel noted the mere fact that it is not the landlord who is applying for the application, it will run to his benefit, and if this is approved, they are opening the door for K-Mart to have a store at that location abutting the residential property owners. He felt they needed to consider that this application is much different from any other application of this kind on Worth Avenue, because of its proximity to residential property owners. He believed the residents on Golf View Road have a very unique situation as they abut a commercial area on one side of their properties and a recreational area on the other side and that is unique.

He referred to the criteria in the two sections he quoted earlier as he does not believe any have been met:

1. That the use proposed will not violate the public health, safety or welfare and the morals will be protected of the area.
2. That the use will not cause substantial injury to the value of other properties in the neighborhood where it is located.
3. That the use will be compatible with adjoining development and that the intended purpose of the district in which it is to be located.

He felt the second floor on Worth Avenue is a buffer zone between Worth Avenue and Golf View Road, and for the most part, they probably did not meet that. He didn't believe it met the criteria of the hardship.

He believed the application flies in the face of the recent regulations adopted with respect to the Worth Avenue District. He contended this second floor on Worth Avenue is a buffer zone between Worth Avenue and Golf View Road, and for the most part, they probably can't visually see the lights on the first floor, but on the second floor they would.

He didn't believe there was any evidence that this particular store which has been opened for three months is Town-serving to the extent of the 6800 square feet.

He referred to the variance conditions that there be special conditions and circumstances - he did not think they existed. He didn't believe there was a hardship. He didn't believe also that the special conditions and circumstances do not result from the applicant's actions and the granting of the variance would grant them special privileges.

He noted another criteria is that the variance granted would be the minimum variance and this is not the case.

He advised the grant of the variance would be in harmony with the general intent and purpose of this Ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. He commented if this is approved today, they would be flying in the face of no less than fifteen out of twenty criteria, and it will set a precedent for the south side of Worth Avenue. He felt it flew in the face of general zoning principles and the Worth Avenue Study.

Mr. Deziel addressed the application which asks for Limited Commercial Use, which the Town doesn't even have in the Code. He noted the application states this Limited Commercial Use will have a limited impact on Worth Avenue and demonstrably less than if a separate use were located on the second floor and possibility less than a residential use. He did not see how 3300 square feet of commercial space would require less traffic and less parking than one residential unit.

He noted they state on the application under the reasons why the variance should be granted: "the lack of available parking spaces on Worth Avenue" and "the large volume of vehicular and pedestrian traffic on Worth Avenue" and "all the night use by the nearby restaurant" and he viewed that as the application telling them there is no parking and too much traffic on Worth Avenue, but they want to add 3200' of commercial space. He felt the problem is there is not enough parking and there is too much traffic. He felt the Town dealt with that on a daily basis and they are now talking about granting this application which would exacerbate this problem.

He noted on the application there is a statement that if this is approved, they will ask their employees to park their cars elsewhere and park over 500' away, to which Mr. Deziel did not think this would ease the problem of congestion. He did not believe the application nor the presentation by the applicant's attorney met the requirements of the Town of Palm Beach's Zoning Ordinance, particularly Sections 6.40 and 10.13 nor do they meet the requirements of the Town of Palm Beach Comprehensive Plan. He believed they violated and infringe upon the property rights of the neighboring property owners. He urged the Council to not approve this application with any conditions until the applicant and his counsel have consulted with the neighboring property owners, which has been done in the past.

Mrs. Smith asked if this was approved, would it go to the landlord and not to the tenant. Attorney Randolph responded the Ordinance has been amended that on a change on an occupational license, the new tenant would have to come back before the Council for approval.

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(cont'd)

Mrs. Wiener asked what is considered an abutting property to which Mr. Randolph responded abutting properties are all of those property owners which have an interest as defined in the Ordinance and those who are required to be notified on variance applications and that would be all within 200' of the property. Mr. Moore reported there were 17 property owners notified within the 200' radius.

Mrs. Wiener asked about the property owner who abuts this property on the rear on Golf View to which Mr. Moore responded five property owners on Golf view were notified.

Mrs. Wiener recalled that each case is reviewed on its own merits and asked the Town Attorney to clarify that point. Mr. Randolph stated that is correct as in determining the criteria relating to any particular application, he is speaking of that criteria on special exceptions and variances, and the special circumstances of each particular property are considered. Mrs. Wiener asked if the rear of this second floor had windows across the whole building or cement block? Mr. Moore responded it is an unusual configuration as the east side is enclosed with a utility room, kitchen and laundry area, and then there is a living room which has sliding glass doors which open onto a patio, which would face Golf View. He stated the west portion of that area has a hallway which leads to the south and there is a bathroom and bedrooms which are located on the southwest corner of this second floor area.

Mrs. Douthit asked if the next tenant who would occupy the premises would have to sell ladies' clothes. Mr. Randolph explained if the purpose changed or the occupational license changed, the new tenant would have to come back before the Council as it relates to the Special Exception application, which would be the additional 3000' over and above what is on the first floor. He advised the variance does run with the land and it will continue to do so, however a new tenant would have to come back before the Council with regards to the Special Exception use. Mrs. Douthit asked if there was some way this could be controlled by the Council? Mr. Randolph recalled conditions are put onto properties by the Council, and some of those conditions only run during the time a particular applicant lives on the premises and when they move out, the condition would be lifted. He stated normally the variance does run with the land.

Mrs. Smith asked if the attorney would state if this is granted today, this space would become a 6000 square foot retail area to which Mr. Randolph responded affirmatively. Mrs. Smith thought the confusion seems to stem from the letter that was sent to the neighbors, it stated there will be no retail selling on the second floor and would be limited in use during store hours and asked if that was a true statement? Mr. Prosperi responded the use of the premises for retail would be strictly limited to store hours, but they wish to receive permission to hold up to eight functions, which are anticipated to be charitable events, and might extend beyond store hours, but no selling would occur during those times. He pointed out a commercial use on the second floor of this building is a permitted use and he doesn't understand why this use should fly in the face of the Zoning Ordinance or the Comprehensive Plan, as it is a permitted use. He indicated the Special Exception is to say that it will be one tenant rather than two, but if K-Mart would be content with a 3000 square foot shop rather than 6000 square foot shop, they could go in there, provided they could find the parking. He thought the idea of this Special Exception request was for a limited Special Exception Use and they are voluntary as they are sensitive to the Golf View residents.

Mrs. Smith noted the letter was sent to the Golf View residents on January 7th, she asked if there was any communication with them as obviously there has been a problem with previous tenants or other shops on Worth Avenue and asked if Mr. Prosperi has spoken with these residents to which Mr. Prosperi responded he talked to one of them. Mrs. Smith asked if some of their concerns could be met if Mr. Prosperi met with them and discussed this matter completely? Mr. Prosperi responded he would consider doing that and he thinks he has, and he could make a further stipulation by reducing the time for the charitable events from 11 PM to 9 PM and they would agree to fix the windows on the south side of the building so they will not be able to be opened. Mrs. Smith asked if that meant they would not use the open terrace on the second floor to which Mr. Prosperi responded they would not use it and there would be no deliveries in the alley and they would end their events by 9 PM. Mrs. Wiener believed the applicant's attorney has addressed many of the problems that have been brought up and she would like to see a time limit be placed for the conditional approval to be for one year, to see if it is working. She believed the hard feelings with the neighbors have been created by someone other than the present tenant, and perhaps this can be resolved with the kind of usage described by their attorney.

Mayor Ilyinsky asked if this much space has been granted in the past before they have proven themselves Town-serving to which Mr. Moore responded each application is decided on its own merit, and the Council and Mayor have listened to the presentations of each of the applicants and decisions are made on the presentations. He did not believe there was a parallel to this application, other than the single family usage being converted to commercial space but they are asking to go to a permitted use and he thought the aspect of town-serving needs to be addressed quite carefully.

Mrs. Wiener asked if the applicant came with a Special Exception to use the apartment as living quarters, what would prevent the applicant of having private parties every night of the year to which Mr. Moore responded that was exactly how this space was used in the past and what is occurring here is a more restricted use being requested and coming under the regulation of the request for Special Exception with the first floor being grandfathered space.

Mrs. Smith made a motion that this project be deferred until next month so that all of the questions raised in the discussion today and the serious points that are not agreed upon be answered and the Council will have the information next month. Seconded by Mrs. Wiener.

Mrs. Royal wondered if this should be conditionally approved upon them proving they are Town-serving to which the maker and the seconder of the motion did not agree.

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

Mr. Prosperi clarified that other than proving they are Town-serving and a clear statement of the conditions, are there additional items the Council wanted to have addressed? Mrs. Douthit noted the Town-serving aspect would have to be addressed once a year to which Mr. Prosperi agreed.

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(cont'd)

Mrs. Wiener asked if there was an ability for the attorney and his client to at least call the residents. Mr. Weinberg suggested it be done within the next week or two. Mrs. Smith suggested the Council have it all in front of them with regards to the limited commercial use.

Mr. Deziel wondered if Mr. Prosperi could respond to his question on traffic and his hardship. Mr. Deziel contended that no matter what use goes in there, other than residential, they should have a variance for parking purposes. Mrs. Wiener thought if his clients wanted it to be residential, she was sure that could be arranged, noting that would mean the patio in constant use with the doors to the apartment open. Mr. Deziel responded his clients would much prefer residential use to the commercial use.

Special Excep.
2-94

4. Special Exception No. 2-94 - Edward and Adele Kahn, 235 Peruvian Avenue; to allow first floor offices in compliance with Section 4.10, C-TS Schedule of Use Regulations, Special Exception Uses #16. C-TS District. Attorney Peter Broberg addressed the Council for the applicants, Mr. & Mrs. Kahn. He advised all of the shops on this property on the west side have been empty for over three years, with the last tenant being a hairstyling salon. He advised recently the front shop has been rented to the store manager of Eugene's who has opened his own optical store, but the rear space has been completely empty. He advised the Special Exception Uses No. 16 would allow use of offices on the first floor provided there is no frontage on or entrance directly onto a sidewalk fronting a roadway, to which this would apply. He advised there is no second floor and is sixty feet away from the roadway. He requested the Special Exception be granted in accordance with the Use regulations. Mrs. Douthit moved for approval of the Special Exception No. 2-94 as she has looked at these empty spaces for ages and is totally happy with this being usefully occupied. Seconded by Mrs. Royal. Mr. Moore asked if the applicant would be willing to produce documentation that they are Town-serving to which Mr. Broberg agreed. Motion carried unanimously on roll call.

Special Excep.
3-94

5. Special Exception No. 3-94 With Variances - Mizner's Moveable Feast, 8 Via Mizner; to establish an indoor restaurant and allow outdoor restaurant seating pursuant to Section 6.61 of the Town Zoning Code; permit a variance to Section 6.61 requiring no increase in number of seats. Pursuant to Section 6.20(d)(1), allow applicant to provide off-street parking within 500' of the restaurant and permit a variance to that section allowing parking in another zoning district (C-TS). C-WA District. (See Item X.A.1.) - Attorney Peter Broberg addressed the Council on behalf of his client, who explained this is located in the same proximity of two prior food courts, one was Pari Sorbet and the other C'Est Si Bon and now Mizner's Moveable Feast wishes to occupy this area. He advised all three of these were take-out food and the food was taken to the west courtyard of Via Mizner. He advised there have always been tables and chairs provided in the courtyard here. He stated on the east court yard are teak tables with awnings which have been there for six or seven years. He noted in the west court yard there were three cement tables and benches with eighteen seats. He stated there is a fountain surrounded by trees with four seats per tree, or 16 seats. He advised there was another bench sitting near the doorway which went upstairs, so there is a total of 36 seats which have always been in this courtyard, and at times there have been other cement benches in the courtyard.

He advised these cement seats were not very comfortable and they have been removed and been replaced with more comfortable seats in the same configuration. He wishes to keep the tables clean and the idea is not to really serve them, but to make sure the tables are always clean. He stated if they are sitting there having a glass of wine and their order is called, it may be the food will be brought to them, but the idea is not to have a formal restaurant. He has taken the liberty of setting the court yard up with the 36 chairs they are asking to be used and they will be spaced quite nicely and is a pleasant showing.

He read a letter from Scott Snyder, Inc. who felt Mizner's Moveable Feast would be a positive addition in all ways making the Via Mizner a complete package of shopping with an eating enclave. Mrs. Smith asked if these letters were from store owners to which Mr. Broberg responded they are from store owners and lessees.

Mr. Weinberg felt it was a good idea and he believed the remainder of the Council agreed with that, as it is very beautiful but he felt it was overloaded and beautiful. He suggested perhaps some of the seats should be removed so there would not be overcrowding and a destruction of the beautiful ambiance.

Mrs. Smith did not believe it looked too crowded as she has been there and found it quite compatible. Mrs. Wiener thought it was attractive as it is and she believed the owners would be delighted if the chairs were filled all the time, but that is not always the case. She moved for approval of Special Exception No. 3-94 which would allow the applicant to provide off-street parking within five hundred feet. She thought the people who would be using the area are those who are passing through and this would not be their final destination. Mr. Randolph asked if the motion included the variance also to which Mrs. Wiener responded affirmatively with 36 seats.

Mrs. Douthit asked how many seats would be inside to which Mr. Broberg responded fourteen to which Mr. Zimmerman commented that would be what would be allowed and they would have to provide the parking for the outside seating. Mrs. Royal asked if there were any objections from the residential neighbors in the area? Mr. Moore responded there were none but he wished to address several other items, and that would be the Police Department wanted the additional parking spaces addressed; the Public Works Department would like to have addressed the location and type of garbage containers which would be used for this area. He advised the Town-serving aspect must be addressed. He advised the items of garbage needs to be addressed also, which is requested by the Town Manager.

Mr. Broberg commented on the trash, noting it has been disposed of quite properly in the past with the two tenants who operated this previously and he does not recall any complaints. He advised on the Town-serving, and since this is a new business, they will provide on an annual basis the documentation that the majority of the patrons are Town-persons.

Mrs. Smith asked how they would be able to prove the Town-serving aspect in a cash only business. Mr. Broberg responded as he has in the past as by its very nature, restaurants draw from

a five mile radius in all directions and they will see the geographics that the majority of the people coming here will be living or working in Palm Beach.

Spec.Excep.
3-94

Mrs. Douthit asked Mr. Dusey if he had any problems with the picking up of the garbage for the prior two tenants and the way they handled it. Mr. Dusey responded he would have to check with his field people to answer that question although he is not aware of any particular problems. Mrs. Douthit believed they were increasing the space which would automatically increase the amount of garbage and asked if they had space for the extra containers.

Ian Kean, the owner of Via Mizner addressed the Council, noting there are five dumpsters situated in the easement between the north and south half of the property on the west side of the main walkway and this was increased from four dumpsters. He advised they differentiate between wet and dry garbage and the cardboard cartons are broken down and placed in a storage room. He stated the dumpster capacity has been increased by 25% and if further dumpsters are necessary, there is room to put them there in this area. Garbage pick-up is done on a daily basis.

Thomas DeMarco, attorney for Worth Avenue Restaurant, Inc. addressed the Council in opposition, believing this was a fifty seat restaurant, of a delicatessen type which is by its nature a high velocity business and there will be a vast turnover of people, and is not the type of restaurant where people will come and enjoy a leisurely meal and a lot of people will be coming through here on any given day, which means more traffic. He recalled hearing earlier in the day a lot of comments on the parking and traffic problems on Worth Avenue. He advised that Worth Avenue Restaurant, Inc. provides valet parking for restaurants on Worth Avenue and other restaurants on the island to park their customers. He believed it would be a tremendous drain on the Peruvian Avenue lot as every applicant who needs extra parking advises they will park their cars on this lot and it does not have sufficient spots to serve the existing businesses on Worth Avenue. He recalled last month the Council did approve a 6000' restaurant in the Merrill Lynch building, which would be another source of significant parking problems and traffic that will be compounded if this application is granted. He was concerned about the garbage problems as this type of operation does generate a lot of paper garbage and most of the seating is outside and on a windy day, there will be a problem.

Mr. DeMarco believed there would also be a noise problem as the seating is outside and this will cause a disruption to the neighbors. He had no objection to the catering aspect of the application as that would not cause the problems with traffic, but the concept of a delicatessen on Worth Avenue does create concern on parking, traffic and trash. He opposes the application for his client. Mr. Weinberg asked who is the Worth Avenue Restaurant Association to which Mr. Demarco responded it is Taboo Restaurant.

Mrs. Wiener asked Mr. Kean what hours would they be in operation to which he responded they are a take-out lunch time and breakfast operation and that has been there for about ten years with the previous restaurants. He advised they wish to provide pre-made food service for people in the Town for pick up or for delivery to their homes. Mr. Kean thought since they are not applying to increase anything but this is just a change of occupant and a name and style but there is no quantitative change, so all of Mr. DeMarco's remarks were irrelevant. He stated if the garbage does increase because of the paper, they will handle it. He stated they have committed to provide the appropriate number of parking spaces for this application and by doing these things, they have complied with the requirements of the Zoning Ordinance and he urged the Council to approve the application.

Mr. Dusey asked if the application is approved, they be required to recycle. Mrs. Wiener added that to her motion, to which the seconder agreed. Mr. Kean asked how often to they pick up the recycled items to which Mr. Dusey responded once a week. Mr. Kean stated that would be a problem. Mrs. Smith asked if other restaurants were a part of the recycling program to which Mr. Dusey responded affirmatively.

On roll call, the motion carried 3-2 with Mrs. Douthit and Mr. Weinberg voting against the motion.

Mr. Broberg asked if he could have Town Council action on the Beverage License for Mizner's Moveable Feast. Mr. Moore advised everything was in order. Mrs. Smith moved for approval of the beverage license for Beer and Wine for Mizner's Moveable Feast. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

6. Flood Insurance Variance No. 1-94 - Mrs. Eli Lippman, 225 Wells Road; to allow remodeling of an existing structure for more than 50% of the assessed value with an existing flood elevation of +7.0' in lieu of the required +7.5'. R-B District. - Jackie Albarran, Architect, addressed the Council on behalf of the applicant, noting the house was damaged by a roof leak and after the repair of the roof leak and the damages that were caused in the ceilings and walls and cabinets, they were left with a certain amount of money to continue the remodeling and they wished to bring the house into code by replacement of the air conditioning system, rewiring of the house and installed a underground service, and in continuing with the additional work, they are requesting a Flood Variance to be at elevation of 7.0 rather than the required 7.5'. Mr. Moore reported this is worthy of consideration and would probably not cause the Town to be suspended from the Federal Flood Insurance program, if it was granted. Mrs. Wiener asked if this was probably not or will not? Mr. Moore stated he cannot guarantee that as this is administered by the Federal Government and their position in the past has been if there is a legitimate reason by the policy making body and it is not below seven feet, that it could be granted. Ms. Albarran advised this does not involve the floor structure and what they are trying to do is make this house liveable. Mr. Moore agreed additional square footage was not being added but maintaining it so the odds will be high they would not be suspended as a result of the granting of this application.

Flood Ins.
Variance 1-94

Mrs. Wiener moved to grant Flood Insurance Variance No. 1-94 be approved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

D. Other

Reconsideration
of Spec.Excep.
10-92 with
variance

1. Reconsideration of Special Exception No. 10-92 With Variance - Linda A. Gary Real Estate, 420 South County Road; to allow 2,200 square feet of gross leasable area for office and professional use on the first floor. C-WA District. Deferred from December Meeting. Mr. Moore reported Town Council asked them to readvertise this Special Exception application at the November meeting for the December meeting, and because of some confusion between his office, the applicant and the applicant's attorney, a deferral was asked until the February meeting, which was not allowed and the Council asked this be heard today. He indicated this matter is before the Council for clarification of the Special Exception.

Mrs. Smith asked if this was an appeal of the Code Enforcement Board's decision? Mr. Randolph explained actually this is not a rehearing as the matter was brought back before the Town Council as a result of a member of the Town Council's request that it come back since there has been some apparent confusion as to the intent of the conditions that were placed on the granting of the Special Exception and that is why the Town Council wanted it called back before them, and he viewed it not as a rehearing but an opportunity for the Council to address the matter and give clarification as to the conditions which were previously imposed. Mrs. Smith understood the applicant was before the Code Enforcement Board because they did not meet those conditions and the Code Enforcement Board found her not guilty, to which Mr. Randolph agreed, noting that was an entirely separate and independent body from the Town Council and they are a quasi-judicial body which look at these matters and makes a determination as to whether or not there is guilt on the basis of the citation. He recalled that subsequent to that the Council had a concern as to whether or not the applicant had an understanding of the conditions that were imposed on the application by the Council, and also there perhaps was a lack of understanding by the Code Enforcement Board.

Mrs. Wiener referred to the minutes that were taken at the time the application was considered at the Town Council meeting of July 14, 1992, which clearly stated the entrance to the real estate office would be on County Road and the office would have a South County Road address. Mrs. Wiener stated the problem is what relates to the address. Mr. Moore reported there is an additional problem with regards to signage on the Worth Avenue side and there has been a letter from Attorney Rampell representing the Martha Gottfried Real Estate Office. He advised the Ordinance does state if there is a corner piece of property, they could have signage on both streets. He gave an administrative opinion to Mrs. Gary that a small sign could be put on the Worth Avenue side, which would be identification of the office with an arrow pointing to the entrance on South County Road. He stated some have interpreted, by the reading of the minutes, that there should be no signage on Worth Avenue. Mrs. Wiener stated she wasn't thinking about the signage, but the minutes are abundantly clear that the address was to be South County Road.

Mrs. Wiener stated a Worth Avenue address is being used currently and has been used for some time. Mrs. Smith pointed out it refers to the Worth Avenue building but the legal address is South County Road. Mrs. Wiener did not agree noting the stationery and ads are different than the agreement that was made with the Town and they have been using the Worth Avenue address. Mr. Randolph announced that is what needs to be resolved today. He thought the applicant is indicating they have a mailing address which is different from South County Road and they would like to be able to use that mailing address, and secondly, they feel they have complied with the Council's request by moving the door to South County Road and giving the premises themselves a South County address and by doing that, they indicate they have complied with the request of the Council. He noted they want the mailing address as this is a service which is offered to all occupants of that building, and wish to be able to describe their location in their ads.

Mr. Randolph explained the problem has come about that by doing both, by representing the mailing address and describing the location, the information put out is an address different than the South County Road address. He felt the legal issue is they feel they have complied with the Council's conditions relating to the use of the property and there is no restriction on advertising and how they tell people how to find them, and they also feel the Council has no right to tell them what mailing address to use as others in the Town have post office boxes which they use.

Mr. Randolph explained the problem is the Agreement that was imposed at the Town Council meeting and the confusion that has arisen as representing themselves to the public with whom they deal as being at a different address than what was imposed by the Town Council. He recalled he has addressed this item in a letter dated April 19, 1993, and in that letter he wrote that the intention of the Council appears clear as the record indicates the Council conditioned the granting of the Special Exception with the Variance on the fact that the real estate office would have a South County Road address. He recalled hearing from the applicant's attorney, Robert Deziel that she does indeed have a address on South County, but the applicant also happens to have a mailing address of 205 Worth Avenue. He stated the problem is that this Worth Avenue address is used in the advertising of the real estate office and shows the office being located at the corner of South County Road and Worth Avenue, and then uses 205 Worth Avenue, the Worth Avenue Building. He felt this makes it appear that the office address is 205 Worth Avenue and it was his opinion that the Linda Gary Real Estate Office should not represent itself as having an address at 205 Worth Avenue. He advised the applicant's attorney that this could be brought back to the Council for clarification, however, the Council asked that it come back and that is why it is here before them today.

Mrs. Wiener thought that if they go through the minutes, it is very clear that the intent was not to have this type of office on the first floor on Worth Avenue and that the South County Road address would solve that problem, as well as the entrance to the office being on South County. She stated the problem is the agreement has been made and that agreement is not being honored by the applicant. Mrs. Douthit asked if the mail at 205 Worth Avenue which is the 205 Worth Avenue Building - do they have a mail service or is it delivered to her door. Mrs. Smith thought it was merely a mailing address, but her point is this can be amended as this is the building in which this office is located, and she wondered if they were splitting hairs. She asked if the Council wishes, they may change any agreement. Mr. Randolph stated that is so, however, if someone has relied to their detriment to some agreement made in the past, then it could be argued that the terms of an agreement cannot be changed.

Mrs. Douthit recalled in the original agreement the address was to be County Road. Mr. Weinberg agreed it was granted conditionally that the office would be on County Road with the entrance to the office on County Road and it would carry a County Road address.

Attorney Robert Deziel addressed the Council on behalf of the applicant, informing the Mayor and Council that the applicant is fully complying with the terms of the variance approval. Mr.

Weinberg did not agree. Mr. Deziel responded he is here on a special appearance and not to renegotiate a variance agreement and as an accommodation to the Council, he was willing to help them out with the background which he felt was not clearly stated here today. Mr. Weinberg disagreed noting there has been discussion today about what the minutes say and the Council is bound by that. Mr. Moore pointed out the occupational license for Linda Gary is at 420 South County Road and what is at issue is the advertising that is done in association with the identification of where the office is located, and the administration felt it went beyond what was in the agreement to identify the address as 205 Worth Avenue and they negotiated with the applicant who changed the advertising to state "205 Worth Avenue Building" as it is known as the Worth Avenue Building and that was not satisfactory to all parties concerned. Mr. Weinberg heard the Town Attorney indicate there was no question that the firm should be using the South County Road address. Mr. Randolph clarified that was the opinion of staff and they are seeking clarification on the intent and it is not as easy as simply saying the address will be on County Road as the argument will be presented that they have complied and the entrance to the office has been moved onto South County Road and they have changed their address to South County Road, but they have a mail service within the 205 Worth Avenue Building, as do the other tenants, and they wish to use that mailing address on their stationery and in their ads as far as the location is concerned. Mr. Randolph commented it is his opinion that they shouldn't be representing to the public their address is 205 Worth Avenue Building, as it is not known as the 205 Worth Avenue Building but as the Worth Avenue Building, however, he doesn't mean to speak for the applicant, but wanted to relate the history as he recalls it.

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Attorney Deziel recalled the exact issue which was before the Code Enforcement Board was the issue now being discussed. He believed the Code process does provide for an appeal process in the event the Town Council doesn't like the results from the Code Enforcement Board and actually what they are doing here is appealing that decision, which is contrary to the provisions of the Code. Mr. Randolph disagreed, stating the Code Enforcement Board dealt with a set of facts and they are a quasi-judicial body and the Council cannot tell them what to do as they have to act on the facts before them. He advised there was no appeal of that and the question before this Council is not the same as they are not trying to cite a violation and find the applicant guilty of any violation. He stated the Code Enforcement Board had before them a particular set of minutes, which they interpreted on the basis of the information they had before them at that particular time, and if the interpretation of the legislative body, the Council, as reflected in the minutes was different then the legislative body has the right to clarify that. He felt if there was a continued violation and the clarification goes before the Code Enforcement Board again, they will have that information before them at that time.

Mrs. Smith asked if the minutes that were before the Code Enforcement Board were different than the minutes that the Council has, to which Mr. Randolph responded negatively.

Attorney Deziel addressed the Council stating the resolving issue is the Code and it states: "Findings of Fact: Use of 205 Worth Avenue Building is not a violation of the conditions set by the Town Council for the Special Exception No. 10-82 with Variance." He reported the Code Enforcement has stated the use of that address is not a violation of the variance. Mr. Randolph agreed that the Code Enforcement has made that decision based on what they had in front of them, but it is this Town Council that imposed those conditions and has the right to clarify the intention of those conditions.

Mrs. Smith wondered why the Council doesn't have the minutes of the Code Enforcement Board as she would like to know the background. Mr. Moore reported the staff had asked for additional clarification on this subsequent to that order by the Code Enforcement Board, as it was felt there were additional advertising liberties that were taken and the use of the 205 Worth Avenue Building was omitted and just 205 Worth Avenue was used and at that point, notwithstanding the decision of the Code Enforcement Board is when Attorney Randolph was contacted and an opinion was rendered that this went beyond the Code Enforcement Board action by dropping the word "Building" and simply using 205 Worth Avenue, did constitute another violation. He informed the applicant and her attorney of the Town's staff decision and it was at that point a member of the Town Council raised the issue and stated they wanted to revisit this matter and straighten it out once and for all and he didn't believe it was a rehash of the Code Enforcement action.

Mr. Deziel asked to make a correction of Mr. Moore's statement as the address for the mailing office is 205 Worth Avenue and all Ms. Gary did in the subsequent mailing is use the address of the mailing service and then was in receipt of letters from the Town's Building Department stating she can't use the mail service. Mr. Weinberg asked why a mail service was being used as an avoidance. Mrs. Smith stated she would like to hear Mr. Deziel's presentation as she wants to have all the facts. Mr. Deziel addressed the Council responding that in today's business environment when people are getting pounds of mail a day, they have the post office with a multitude of post office boxes; and there are private mail services; and it has become a part of every day's activities to have individual business entitles sort through the mail and collect it and help their customers out with the process. He summarized what has happened - the variance was granted in July of 1992, and Linda Gary opened her office in November and the stipulations were to move the door to South County Road, which was done and the address is on the door of 420 South County Road, so those changes were made and an occupational license is issued and she is in business and then all of a sudden, her competitor down the street contacts the Building Department and tells them Linda Gary is using 205 Worth Avenue. Mr. Deziel reported he was called to a meeting with Mr. Moore and Mr. Zimmerman who asked that it be changed and there were two compromised positions which he took to his client who picked one and he went back to the Building Department and it was agreed by Mr. Moore and Mr. Zimmerman that administratively, they now complied with the terms of the variance.

He advised his client was back in business and everything was okay and then a letter was received by the Town Council from the competitor's lawyer, who states she is violating the conditions of the approval. He noted then the Code Enforcement Board gets into the act and the question presented to them was if using that address was violating the terms of the variance and the Code Enforcement Board did not think so and found his client not guilty. He pointed out all his client is doing is using the building address for the mail box and the situation is there is one competitor who is driving all of this situation. He did not recall anything in the Code that would restrict the use of a mailing address and how a business advertises where they want people to send them mail. He thought everyone was making up stuff to try and prevent his client from following the rules which are she has to have a South County door and a South County address, which she does. He advised his client has spent \$15,000 on legal fees for him to pursue this and he wondered how much the Town has spent on this issue.

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He recalled there was no reference to signage in the minutes as they never discussed it. He felt they were making up the rules as they go along and they can't do that. He has come here today to see if something needs to be cleared up, but he doesn't feel there is as there have been findings right and left and his client is doing okay and has complied with the conditions.

Mrs. Wiener responded she has no problem with the signage as that was not stipulated anywhere, however, she stated the variance was granted that there be a South County Road address and questioned if the 205 Worth Avenue Building has a mailing service for the tenants of that building, when this motion was made and everyone agreed upon it, why didn't Mr. Deziel volunteer that information so it could be discussed and they could make a decision as to whether or not they would be willing to grant the variance. She felt if that information came forward after the fact and she was sure the applicant could have lived very well without that mailing service and she should have taken into consideration the Council's conditional approval.

Mr. Deziel advised the mail service was not made available to his client until the following December. Mrs. Wiener thought then Ms. Gary shouldn't have taken the mail service. Mr. Deziel did not think the Town Council could regulate one's use of a mail service as the stipulations that go along with the variances granted, run with the land and where one gets their mail - that is not a subject of regulation.

Mrs. Royal asked if the mail service in that building was the same as others in the Town and was that specifically a mail box? Mr. Moore responded that he assumes they have an occupational license to have this mail service. Mrs. Royal commented she could pay a fee and get her mail in that building, to which Mr. Moore agreed. Mrs. Wiener commented she did not have a variance which had a condition on it that the address would be on South County Road. Mr. Weinberg asked if there were tenants in that building who did not utilize the mail service to which Mr. Moore responded he does not know the answer to that question, nor did Mr. Deziel know the answer. Mr. Deziel indicated the mail service was made available to his client by the landlord. Mrs. Royal asked if the landlord was the one who ran the mail service? Mr. Deziel responded affirmatively.

Mrs. Wiener asked Mr. Deziel that in order to have a happy, friendly relationship, if the applicant would be willing to have the address as the Council had indicated when the variance was granted and that is the South County Road address. Mr. Deziel responded they have already compromised this as the mail service address is 205 Worth Avenue and it was a big thing for the Building Department that they modify that to the 205 Worth Avenue Building and to take advantage of the mail service, they have to have the 205 there. Mrs. Wiener responded the deal was not struck with the Building Official nor with the Code Enforcement Board but with the Council and as far as she is concerned, it is very clear what the condition was and the minutes show the motion restated by President Heeke mentioned specifically the South County address. Mr. Deziel again pointed out the use of a mail service is not regulated by the Town Council.

Mr. Randolph noted in response to Mr. Deziel's statement that the Code does not regulate the use of mailing addresses and does not regulate how a person represents its location, he is correct - the Code does not do that, however, in considering variances and special exceptions, the Council very often prescribes conditions and limitations and he believes that the Council is stating regardless of what the Code says, they provided a condition which states that this is what your address is going to be, and interestingly enough, the final motion in that regard came about after the request by Mr. Deziel that they leave the Worth Avenue address as it is as that is what is shown on the building. Mr. Randolph recalled Mayor Ilyinsky stated the Worth Avenue address is a strong, potentially attractive address and referred to the zip code, which is greatly in demand, and perhaps the applicant would prefer to have the Worth Avenue address. Mr. Randolph read from the minutes: "Mr. Heeke appreciated what Mayor Ilyinsky was saying but his argument was that he wanted to protect Worth Avenue as a retail address for retail shops and he believed the applicant should be using the County Road address."

Mr. Deziel responded there are at least a dozen realtors who have the Worth Avenue address so that argument makes no sense. Mrs. Douthit commented that this did not apply to business in any way but refers to offices on the ground floor on Worth Avenue, and that is what started the whole thing, and recalled that is why they made the stipulation for the County Road address. Mr. Deziel commented that those stipulations can only apply to the real estate office and cannot state one can use a post office box and one can't or one can use a mail service and one can't. Mrs. Douthit agreed.

Mr. Randolph recalled there have been applications granted for restaurants that they cannot advertise to the outside and that is the same type of condition that the Council is talking about imposing today, even though they cannot impose conditions relating to the use of a mailing address.

Mayor Ilyinsky read the motion from the minutes which Mr. Heeke restated. He stated it was for an entrance to be on South County Road with a South County Road address. He asked Ms. Gary if there was going to be such a difference in her net income that she would be willing to fight this because she cannot use a Worth Avenue address, pointing out she has many pictures on her windows, and she is very noticeable there and he just didn't understand what all this nonsense was about and he didn't see why she needed another address as she already had one on South County Road. Mr. Deziel felt the Council should just let her have it as he felt they have lived up to their agreement. Mayor Ilyinsky did not believe they had, recalling he has seen an advertisement in the Town and Country magazine using a Worth Avenue address.

Mrs. Gary addressed the Council advising them the mailing service was offered to her by her landlord and it was not her understanding at the time she received the variance, but her landlord called her several months after the variance was granted and she pointed out to the Mayor and Town Council that she is paying extremely high rent without a Worth Avenue entrance or mailing address. She stated her landlord offered the mailing service which he thought she had a right to use and she did not think it was deceptive and she felt it was her right to utilize it. She felt she had the right to use this mailing address in her advertisements and did not view it as doing anything against the Town.

Mrs. Douthit thought it all boiled down to the mail service that was offered. Mr. Weinberg thought it all boiled down to the fact that this Council acted and it intends that their requirements be followed. Mrs. Smith thought if there was no mail service, there would be no problem. Mrs. Wiener commented on the fact that this variance grant was a contract between two parties and both parties have to act in good faith in order for the contract to be valid; and this Council granted permission for Ms. Gary to open a real estate office on the first floor on the

corner of Worth Avenue and South County Road and in return for that, the applicant's part of the bargain was not to use the Worth Avenue entrance nor a Worth Avenue address and she believed that was understood very thoroughly because she heard Mrs. Gary just state a few months after the variance was received, she informed her landlord she did not have a Worth Avenue address and the fact of the matter is she was correct in that statement and that was because of the variance the Council granted to her. She advised Mrs. Gary her landlord is not empowered to change the actions of the Town Council and she thought that was the bottom line.

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Mr. Deziel commented he and his client were asked to come before the Council by the staff and were not given any indication as to the subject matter, and he has no back-up information with him. He recalled he requested a meeting with the Town Attorney and Mr. Moore so they could be prepared, and he was told the Council wanted to talk to him. Mr. Deziel felt they should just leave it this way:

1. His client has a physical address of 420 South County Road.
2. His client has been given the opportunity to use a mail service and is going to use it, even though it has been modified as a compromise to the Code Enforcement Board.

He felt all this was is double jeopardy as it has already been considered by the Code Enforcement Board. Mrs. Wiener explained that the Code Enforcement Board does not stand on the level of the Town Council. Mr. Deziel responded that may be so, but there are certain rules that if the code is being violated, which the variance was part of, the first measure is to go before the Code Enforcement Board and they did that and it found there was no violation. He recalled the Town Council did nothing until more complaints were filed by one individual, and he didn't understand how it could be distinguished what is being considered today, which was distinguished by the Code Enforcement Board and why they need to go to another quasi-judicial tribunal to argue their case when they have already done so and the appeal period has lapsed.

Mr. Weinberg asked if this Council can overrule the Code Enforcement Board to which Mr. Randolph responded they cannot, nor does he believe any time period has gone by with regards to appeal, because in the event they had appealed it, they may not have been successful since the Code Enforcement Board was dealing with the situation as they understood it. He advised the Council they are simply here today clarifying the intent and if they want to do that, they may certainly do so, and that will be the record before the Code Enforcement Board, in the event there is a continued violation which would again go before the Code Enforcement Board. He advised the Code Enforcement Board did not have the benefit of the understanding of the Council with regard to this as all they had before them were minutes, with no explanation of what they meant and they were acting in a judicial capacity and not in a legislative capacity. He stated the Council may clarify the intent of the legislation.

Mrs. Royal asked the Town Attorney if the Special Exception with Variance grant can be rescinded, or could it be modified? Mr. Randolph responded if they go into the sign issue, they would be going beyond what had been considered in the past and if they were getting into that, there would be some questions of equitable estoppel raised. He advised the Mayor and Council they are here simply to clarify the intent of what they did and it should not be changed as he would not consider that appropriate, but simply clarify to the applicant what the intent was of the approval.

Mrs. Wiener asked how the Council could clarify it so it would be crystal clear? Mr. Randolph responded he thought that in the event the Council's intention was by stating that the address was going to be County Road, that in all instances the address be represented as County Road and that that was their intent and they could simply state that. He doesn't believe they would be stating anything different than before and nothing is being changed, but advising the applicant what these minutes meant at the time the application was granted. He believed the Council thought the minutes were clear, but apparently Mr. Deziel and his client do not think they were clear. Mr. Deziel asked to make a comment indicating they do think they are very clear as they state the door has to have a South County Road address and it does.

Mrs. Wiener disagreed that it states the door should have the address, but it states the office will have a South County Road address. Mr. Deziel asked what is "it" referring to. Mrs. Wiener responded the business. Mr. Deziel did not agree stating it refers to the space. Mr. Randolph recalled when Mayor Ilyinsky suggested at the meeting when this was being considered, that perhaps they ought to allow Mrs. Gary to have the Worth Avenue address, the Council turned it down as they wanted the address to be South County Road. Mrs. Wiener read from the minutes and felt it was very clear and hoped that Mr. Deziel understood what the Council was saying and not what he believed they were saying. Mrs. Smith pointed out it is on County Road and they have a County Road address. Mrs. Wiener recalled they were sending the mail someplace else other than a post office box. Mrs. Smith pointed out the occupational license has the South County Road address and she didn't know what else could be said as the Council voted on this unanimously in 1992 and she wondered why this was being considered here today. Mr. Randolph responded they needed to make a motion to clarify and the clarification should be stated in the motion and that is the way this would be resolved.

Mrs. Wiener asked if the attorney had any suggestions on how that clarification should be stated so that it was fully understood by all involved. Mr. Randolph suggested they move that the condition relating to the use of a Worth Avenue address was intended to be all encompassing and deal not only with the address that was placed upon the building, but the address as represented to the public in either advertisements or in mailings. Mr. Weinberg felt it should also contain the language "as stated in the minutes of the July 14, 1992 Town Council Meeting."

Mrs. Smith suggested there be something in writing which would actually specify what the Town Attorney feels is the clarification necessary as there are points which are not being agreed upon.

Mrs. Wiener stated she would be very happy to take Webster's interpretation of the word "address". Mr. Randolph did not understand why there was a misunderstanding now, as there may have been a misunderstanding prior to today, but today it has been stated what the Town Council intended by requiring a County Road address and that that would relate not only to a sign on the building but also to advertising and to mailing address, and he doesn't believe it could be clearer.

Mrs. Smith reminded the Town Attorney that they can't stipulate it refers to signage and the mailing address as that was not stipulated when it was granted. She thought she could have an understanding one way and the rest of the Council could understand it another way. Mr. Randolph

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advised if the Council does not believe in the interpretation, they can vote against the motion for clarification. He knew it was difficult and he was sure there would be an allegation that by doing this, the Council is changing the terms of the condition. Mrs. Smith felt also they were dealing with a difficult situation and are constantly referring to Mr. Heeke, who is no longer with us.

Mrs. Wiener recalled she made the motion and Mr. Heeke restated it. Mrs. Smith recalled there was no mention of the signage and she would like to see the motion to clarify it very clearly.

Mr. Deziel requested the Council to not make any decision right now as they were never put on notice that this is what was going to happen, and he requested a meeting of the staff and the Town attorney to address the concerns, and now they are saying they want to address it, after a year and a half after granting. He asked where does it state a mail service cannot be used? Mrs. Wiener asked where does it state you can't ax murder someone, stating this is getting ridiculous. Mr. Deziel responded he doesn't see where it says a mail service cannot be used? Mr. Weinberg responded it doesn't have to say. Mr. Deziel did not agree noting he has sent a legal memorandum to the Town Attorney that states when stipulations go along with a variance, they must be specific and you cannot go on and clarify them down the road and that is what they are doing.

Mr. Deziel commented his client can get to the same end by another method and it would not have to come before the Council. He doesn't know why they have spent so much time on this as it means nothing and nowhere does it state a mailing address cannot be used. He felt it was in nobody's mind when it was granted. He didn't think about it either. Mrs. Wiener commented a deal was made. Mr. Deziel felt it was a deal after the fact, according to what this Council wants to make it now. He pointed out the deal was she had to use a South County Road address which she is using; and he didn't see anything that would prohibit her from using a mailing address.

Mrs. Wiener stated the fact is that this Council has tried to deal fairly with people and give people the ability to do business where they want to do it and the applicant was granted the variance and all required were two conditions and they are not getting them and that is why they are here today.

Mr. Deziel asked Mr. Moore if the door to the office was on South County Road to which Mr. Moore responded affirmatively. Mr. Deziel asked Mr. Moore if the office had a South County Road address to which Mr. Moore responded affirmatively. Mr. Deziel felt that was it. Mrs. Wiener asked if the applicant was using that South County Road address to which Mr. Deziel responded she was. Mrs. Royal thought it was for walk-in purposes only to which Mr. Deziel did not agree, stating people can send mail there and she takes mail there from the Post Office and from Federal Express. Mrs. Royal pointed out they have two mailing addresses. Mr. Deziel agreed she could take mail at both locations. Mayor Ilyinsky asked what address she uses on her stationery to which Mr. Deziel responded she uses her mailing address, 205 Worth Avenue Building. Mayor Ilyinsky thought that is what they are talking about.

Mr. Deziel stated this was after the fact and after the fact the Council is saying maybe they were thinking this and nobody contemplated this or talked about this. Mrs. Wiener felt the Council was very clear in the address they wanted her to use and they didn't say that she couldn't use a mailing address on Worth Avenue but the deal that was made that the address would be on South County Road and if Mr. Deziel did not understand it as Mrs. Gary's attorney, that is too bad.

Mr. Deziel asked if it was so clear, why did the Code Enforcement Board make their finding? Mrs. Wiener responded she does not intend to state them but Mr. Deziel knows them as well as she does.

Mr. Moore clarified that when Mr. Deziel was notified of the Council's decision at the November 9, 1993 Town Council meeting to ask this to be clarified, the staff specifically stated the following in a letter to Mr. Deziel: "At the regular Town Council meeting of Nov. 9, 1993, under Any Other Matters, the Council voted unanimously to require your client, Linda Gary Real Estate to return to the December 14, 1993 Town Council Meeting to discuss the subject Special Exception and the conditions of approval attached thereto." Mr. Moore felt that was proper notice that in fact they were asked to discuss the conditions, the Special Exception and the Variance.

Mr. Deziel agreed there was a lot of discussion, but he was never put on notice that they were going to change the conditions. Mrs. Wiener and Mr. Weinberg commented they were not changing anything. Mr. Deziel felt they were all squared away then.

Mrs. Wiener asked what the next move of the Town Council should be as she did not intend for anyone to fly in the face of the Town Council's decisions. Mr. Randolph suggested a motion be made to clarify the intent when the Council indicated they should use the South County Road address.

Mrs. Wiener moved to clarify the motion made at the July 14, 1992 Town Council meeting with regards to Special Exception No. 10-92 with variance and that the condition relating to the use of the South County Road address was intended to be all encompassing and deal with not only the address placed upon the building but the address represented to the public in either advertising or in mailing. Mrs. Royal asked Mrs. Gary if she understood the meaning of the motion? Mrs. Gary responded with the question "now?", stating she did understand it but it was not presented to her in this fashion at the July, 1992 meeting. Mrs. Royal responded she could appreciate that but wanted to be sure she understood what it meant for the future and she seconded the motion. On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion.

Consideration of
Request of
Letter from
Paul Prosperi
for waiver
to Zoning in
Progress at
738 So.County
Road.

2. Consideration of Request of Letter Dated December 9, 1993 from A. Paul Prosperi for Waiver to Zoning in Progress at 738 South County Road; to allow demolition of the main house, guest house and garage building without demolition of the existing tennis court and "recreation cottage" on the property. R-A District. Attorney Prosperi addressed the Council representing Mr. & Mrs. Saligman, who are contract purchasers of 738 S. County Road and stated this matter comes before them due to a zoning in progress issue, and the Zoning consultant had a proposal which would have mandated the demolition of all non-conforming accessory structures to be in connection with the demolition of a principal structure. He believed the Council also decided against that and he is requesting a waiver from zoning and variances with respect to that issue so the main structure can be demolished, (which is below the flood grade) but would be able to retain the tennis court and retain an accessory structure called the Recreation Cottage, which are non conforming. Mrs. Smith asked if there was no zoning in progress because the Town Council ruled not to

do this, and wondered if there was a question here on the zoning in progress. Mr. Prosperi noted the zoning in progress is not over as yet. Mr. Randolph explained they still have two 5:01 hearings and the Council could take further action at those hearings, if it so wished.

Consideration
of Request of
Paul Prosperi
for waiver to
Zoning in Pro-
gress at 738
So. County Rd.
(cont'd)

Mrs. Smith recalled she was in favor of retaining accessory structures, such as gazebos, when the Council considered this earlier and she would be happy to move the waiver of zoning in progress be granted, and they be allowed to do the demolition of the main house, the guest house and the garage building, but they would leave the tennis court and the swimming pool and the "Recreation Cottage". Mr. Prosperi advised these would be specifically located at the northwest corner of the property. Seconded by Mrs. Wiener.

Mrs. Douthit asked how he would be able to demolish after December 1st? Mr. Moore responded they can demolish but they must comply with the noise ordinance plus the type of equipment is generally smaller.

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

XV. ANY OTHER MATTERS

A. DISTRIBUTION OF FRUIT: Mrs. Wiener asked if there was any way that fruit could be picked up by the Public Works Department and transported to the Food Kitchen in the City of West Palm Beach for distribution to those who have nothing and she would like to see this done without great financial damage to the budget? Mrs. Wiener wondered if there was a way that the fruit not used in the Town by the residents could be distributed to the needy? Mr. Dusey stated they need to know where it was to be taken. He wondered if they wished his Department to pick the fruit? Mrs. Wiener stated she would hope that the fruit would be picked by the residents and placed in the front of their premises and it be picked up by the Public Works Department who would take it to a distribution point.

Distribution
of fruit

Mrs. Royal noted there are a number of service providers who should be able to pick up the fruit for the homeless and she would be happy to talk to them and see if anything of this nature has been done in the past.

B. COMCAST RATE ANALYSIS. Mr. Doney believed there may have to be authorization for an audit to carry on with this project and he will report back to them at the February 9, 1994 Town Council Meeting.

Comcast Rate
Analysis

C. SCHEDULE OF MEETINGS: Mr. Doney reminded the Mayor and Town to look at the schedule of meetings at the end of the agenda. Mrs. Wiener asked if the Mayor's Proclamation and the adoption of the resolution with regards to the election could not have been done at this meeting to which Mrs. Peters responded the Code calls for this meeting to Call the Election to be done within three days after the candidates qualify and that will not be until the 14th of January.

Schedule of
Meetings

D. SELF STUDY: Mr. Weinberg described what he meant by a self-study, noting every once in a while there should be self-examination of what we look like and he would like them to take a good look at ways money can be saved; or reduce staff if possible; and improve services. He didn't mean to call on an outside organization to do this and he has talked to Mr. Doney about this and hoped the staff could come up with a study of this type and then the Council would look at it with the staff and then make a decision as to what to do thereafter.

Self Study

Mr. Doney advised the Mayor and Council there is an ongoing and continuous self-study, and new procedures have been adopted such as a 60 day lag of not filling vacancies when someone leaves the Town, except for Police and Fire-Rescue personnel. He advised that during that time, they look at whether or not that particular position can be eliminated, or whether it can be absorbed by transferring responsibilities to another individual. He advised because of this, certain positions have been eliminated.

Mr. Weinberg noted it is a late hour, but he would like this self-study to be done and then at an appropriate time, when they can all work together, they may be able to eliminate some of the problems and maximize some of the assets. Mrs. Wiener asked Mr. Weinberg if he could be more specific as the entire Council needs to know what this is all about. Mr. Weinberg stated what he wants to see is having a most efficient organization in a most economical circumstances and he thought they needed to have some sort of a review. Mrs. Wiener responded that is why she suggested the Finance & Taxation Committee should review the Warrant List, but she didn't want them to make this a major project. Mr. Doney reported this is an ongoing effort on the eliminating of positions as they do have the policy in place and he wished to announce that since 1986, 18 positions have been eliminated in the Public Works Department, and there have been independent organizational analysis studies of the Police and Fire-Rescue Departments.

Mr. Weinberg stated he knows Mr. Doney and all of the Departments are doing a good job, but he was hopeful that if at all possible, they may all be able to do a better job.

Mrs. Smith thought it was a very good idea and perhaps it needed to be addressed and they should put it on the agenda for the Finance & Taxation Committee.

Mr. Doney reported they are constantly looking for ways to reduce personnel and it is an ongoing process. Mr. Weinberg stated all he was asking for to keep looking for those ways and see where they are and perhaps there may be other places where they can go to and he hoped that was not too much.

Mr. Doney reminded all they also had looked into the unfunded mandated issues.

XVI. ADJOURNMENT - Meeting was adjourned at 6:03 PM.

Adjournment

Grace T. Peters,
Town Clerk