MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 9,1996

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE:

The invocation was given by Father Michael Woodcock from St. Edward. The Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS:

A. Recognition of Joseph Berkow, Golf Commission - From 1990 to 1995. Mr. Berkow was not in attendance.

B. Retirement of LeRoy Powell, Public Works Equipment Operator II - 30 years. A watch was presented to Mr. Powell by Mayor llyinsky.

IV. COMMENTS OF THE MAYOR:

The Mayor announced that The Breakers Hotel will be celebrating it's centennial on January 16, 1996, and personally congratulated the Breakers and the owners. Mayor Ilyinsky stated that on January 27, 1996, there are more birthdays, along with his own, including President Smith's mother, Mrs. Fortrin, Henry Marchman of the Police Department, and Mr. Rosenthal.

V. APPROVAL OF THE AGENDA:

The following changes were made to the agenda:

Add item XI.C Other 8., page 5, Discussion of the Closing of the Public Middle School in the Town of Palm Beach.

Add item XI.C. Other 9, page 5, Consider Referral of the issue of Fines and Penalties to the Ordinance, Rules & Standard Committee.

Add item XI.C Other 10, page 5, Discussion of Cost of the Legal Report Submitted by the Town Attorney.

By a unanimous vote of the Town Council, Item XIV, C-i was denied withdrawal from the agenda.

Motion to approve the agenda as amended made by Mr. Wyett. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Approved Agenda: A motion was made by Mr. Wyett, seconded by Mr. Shaw, to approve agenda Items VI through VII. Motion unanimously carried. Those approvals are as follows:

VI. APPROVAL OF MINUTES OF NOVEMBER 30, 1995, AND DECEMBER 12, 1995.

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1.Good Samaritan Foundation, Inc.,; No.35-96
2.Palm Beach Day School; No.130-96
3.Israel Tennis Centers Association, Inc.; No.175-96
4.Bascom Palmer Eye Institute; No.213-96
5.National Wheelchair Sports Fund, Inc.; No.255-96
6.Jewish Arts Foundation; No.299-96
7.Best Buddies International, Inc.; No.334-96

8.United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc.; No.346-96
9.Palm Beach Kiwanis Club, No.380-96
10.Jewish National Fund, Broward and Palm Beach County Region; No.402-96

Other

- Failure to File Prior Results Forms Within Prescribed Time

11.Polish Cultural Society of the Palm Beaches, Inc.; No.311-96

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

12.The American Jewish Committee; No.125-96

13.The American Ireland Fund; No.260-96

- Failure to File Application Within Prescribed Time

14.Rotary Club of Palm Beach; No.231-96
15.Dreher Park Zoo; No.233-96

A. Beverage Licenses

1. Application for a New 4COP-SRX Alcoholic Beverage License by Mr. Norbert M. Goldner for Cafe L'Europe at 331 South County Road.

2. Application for a New 4COP-S Alcoholic Beverage License by Brazilian Court, Inc. At 300 Australian Avenue.

REGULAR AGENDA

VIII. LICENSES AND PERMITS - None

IX. PUBLIC HEARINGS:

A. Landmark Designation of 130 Brazilian Avenue - Consideration of Resolution No.1-96

Mr. Frank of the Landmark Commission, addressed the Town Council, and stated that the Landmark Preservation Commission studied this property, prepared a report and found that it met the following criteria for designation of a landmark in the Town of Palm Beach:

*Meets criterion A and exemplifies the request of broad cultural, political, economic or social history of the nation, state, county or town.

*Meets criterion C and embodied the distinguishing characteristics of an architectural type or is a specimen of apparent value for the study of period, style, method of construction or use of indigenous materials or craftsmanship.

Mr. Frank reported that the architect was not known. Mr. Frank stated that the Town has received a verbal communication from the owner who stated he is happy to participate in the Town's Landmark Program.

Mrs. Day gave a description of the building at 130 Brazilian Avenue, built in 1924, stating it is a Mediterranean revival style and is an example of that style in its A-Symmetrical Form. Mrs. Day noted the central block of the stmcture was a 3-story tower like feature. Mrs. Day presented pictures and a brief history of the house to the Town Council for their consideration.

The witnesses were sworn in by Town Clerk Pollitt. In response to questions from the Council, Mrs. Day stated that the Town has approved approximately 30-35 homes of this nature for landmark designation and that there have only been additions to the second floor where another room had been added. The footprint of the home remains the same as it did in 1924.

Mr. Shaw made a motion to make the Designation Report part of the record. Mr. McLendon seconded the motion. The motion was carried unanimously.

Mr. Shaw made a motion to approve Resolution No.1-96, 130 Brazilian Avenue, that it meets criteria "A" and "C" for Landmark Designation. Mr. Shaw added to his motion that he was moving that the Resolution as part of 16-38 of the Town of Palm Beach Code and the Landmark Preservation Ordinance 2-84. Town Attorney John Randolph read Resolution No.1-96, by title only, as follows:

RESOLUTION NO.1-96

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 seconded by Mr. McLendon and was unanimously carried

B. Landmark Designation of 249 Brazilian Avenue - Consideration of Resolution No.2-96.

Mr. Frank of the Landmark Preservation Commission, addressed the Town Council, and stated they have reviewed this subject property and has found that it meets the following criteria for designation of landmark of the Town of Palm Beach:

*Meets Criteria A that it exemplifies and reflects broad cultural, political, economical or social history of the nation, state, county or town.

*Meets Criteria C that it embodies distinguishing characteristics of an architectural type or is a specimen and apparently valuable to the study of a period, style, method of construction or use of indigenous material or craftsmanship.

Mr. Frank stated that the architect of this home is also unknown. Mr. Frank read a note from the owner into the record which stated that while he cannot be in attendance, he is in agreement with the Landmark Preservation Commission's decision. In response to a question regarding the Florida Master Site File sheets, Mrs. Day stated that this report was completed in 1981 and since that time the State has updated the report twice. The Town re-looked at that survey in 1988 and just received a grant to update it again and study the developmental history of the Town. The numbers originally put in the report were for the State to computerize this information and put it in a data bank. It acts as a planning tool for the State and gives an inventory of all those residences that are 50 years old. Mrs. Day stated that 249 Brazilian Avenue was also built in the early 1920's. This particular residence was built in 1923 for J.C. Gallagher and the builder was R.C.Warner. Mrs. Day presented pictures and a brief history of the residence for the Council's consideration, stating that this was the same style as the last residence, however, has more Italian overtones. The residence does have all the embellishments of the Mediterranean revival style. The landscaping is lush and again the owner has completely redone the building.

Mr. Shaw made a motion that the Designation Report be made a part of the record. Mr. McLendon seconded the motion. The motion carried unanimously.

Mr. Shaw made a motion to approve Resolution 2-96, 249 Braililian Avenue, hat it meets criteria "A" and "C" for Landmark Designation. Mr. Shaw added to his motion that he was moving that the Resolution be approved as part of 16-38 of the Town of Palm Beach Code and the Landmark Preservation Ordinance 2-84. Town Attorney John Randolph read Resolution No.2-96, by title only, as follows:

RESOLUTION NO.2-96

A RESOLUTION OF THE MAYOR AND TOWN COUNCW OF
THE TOWN OF PALM BEACH, COUNTY OF PALM BEACH,
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 THE TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. McLendon seconded the motion. The motion was carried unanimously.

C. Landmark Designation of Wells Road Scenic Vista - Consideration of Resolution No.3-96.

Mr. Frank of the Landmark Preservation Commission, addressed the Town Council and stated they are considering a landmark district. The district is known as Wells Road Scenic Vista and generally includes the town-owned property right-of-way known as Wells Road. The Landmark Preservation Commission has found that it meets the following criteria for designation as a Landmark of the Town of Palm Beach:

*Meets criteria A that it exemplifies or reflects a broad cultural, political, economic or social history of the nation, state, county or town.

*Meets criteria E that it constitutes a unique area of architecture, landscaping and planning.

The architect in this case is unknown. Mrs. Day stated this is a two-lane residential street in the heart of Palm Beach, running east and west across the island and is perpendicular to County Road. Wells Road goes from the Atlantic Ocean to Lake Worth and is flanked by an alley of Australian Pine Trees. It qualifies as a historic landscape under the Department of the Interior standards as designed historic landscape and flirther in the category of City Planning and Parkways, Drives and Trails. Although the paving date is unknown, the 1929 Garden Club of Palm Beach Plan that was adopted by the Town Council stated this street was noted, and there is a map of that in what the Garden Club published in 1929-1930. Mrs. Day stated that by early postcards of the Town of Palm Beach this road is pre-1914 and Australian Pines were used extensively in the Town and, in fact, were one of the preferred landscaping plants to be used in highways, walkways, and bikeways. Mrs. Day presented a postcard for consideration by the Council. In response to a question from the Council regarding that the State had officially designated the Australian Pine as a tree that needs to be eliminated, Mrs. Day did not know if the State would be able to tell the Town to eliminate the Australian Pines. Mrs. Day stated there is a difference of opinion as to whether or not the tree is a "pest tree."

Mr. McLendon stated that he had a problem if anticipated problems in the ft~ture of things that may have to be done on that street, and if this meant before the Town could put a water main or a sewer or anything else needed, the Town would have to get the approval of the Landmark Commission to do so. Mrs. Day stated that there was a difference of opinion, even on the Council, regarding the Australian Pines, however, she said that this was one of the finer streets in Palm Beach.

Mr. Shaw made a motion to make the Designation Report part of the record. Mr. McLendon seconded the motion. The motion was carried unanimously.

In response to a question from the public regarding why the actual pavement of a street would fall under the Landmark designation, Mr. Frank stated that normally when the Town approves a District, to save the Town legal expense, if asphalt is removed and replaced that does not go to the Landmark Commission, however, if the material of the street is changed then it would go to the Landmark Commission for approval. It was further pointed out that the residents do not remove or replace the Australian Pines, and that the residents were not being precluded from planting Hibiscus between the Australian Pines.

Town Clerk Pollitt swore in Mr. Dusey. Mr. Dusey stated that at the present time you cannot buy Australian Pines on the open market as they are illegal in the State of Florida, however, everything would be done to find replacements. Mr. Dusey stated there were no guarantees that replacements could be found.

Mr. Shaw made a motion to approve Resolution No.3-96 Wells Road Scenic Vista, that it meets criteria "A" and "E" for Landmark Designation. Mr. Shaw added to his motion that he was moving that the Resolution be approved as part of 16-38 of the Town of Palm Beach Code and the Landmark Preservation Ordinance 2-84. Town Attorney John Randolph read Resolution No.3-96, by title only, as follows:

RESOLUTION NO.3-96

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,OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Motion was seconded by Mr. McLendon and was unanimously carried.

X. **OLD BUSINESS**

A. OTHER

1. Consideration of Beach Erosion Issues.

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

Mr. Dusey addressed the Town Council and stated that he has been working with the contractor over the last month trying to obtain a schedule. The contractor has obtained two proposals from seismology companies to try to locate the bottom of the jetties. The contractor believes that they are somehow interfering with his operation and causing the breakage in his pipe. Mr. Dusey stated that this morning he received a schedule that indicates testing will begin within 14 days, and after the results of that testing, the contractor would be prepared to remobilize and start rebuilding at the end of February with an approximate completion date of May 1, 1996. The original completion date was November 13, 1995. Mr. Dusey stated that the contractor could not be present because of prior commitments. If his proposal is not acceptable, Mr. Dusey stated that the Town could ask the bond company to expedite the work or discuss this schedule with the contractor to see what he can do to expedite this work. In response to Mr. McLendon, Mr. Dusey stated that liquidated damages are $1000 a day. A discussion ensued as to the possible cause of the problem, however, the contractor will be doing some additional investigation. Mrs. Smith stated that the projected completion date was not acceptable to the Town. In response to Mr. Wyett, Mr. Dusey stated that he felt that the delay in completion seemed excessive. Mr. Wyett stated that he was disappointed that the contractor had other obligations when he is faced with possible action by this Town Council, i.e. a $1000 a day fine and also putting the bonding in jeopardy. Mr.

Mr. Dusey stated that he felt that the delay in completion seemed excessive. Mr. Wyett stated that he was disappointed that the contractor had other obligations when he is faced with possible action by this Town Council, i.e. a $1000 a day fine and also putting the bonding in jeopardy. Mr. Wyett felt that the Town Council should demand the contractor appear at the next Town Council meeting. Mrs. Smith felt that Mr. Dusey should be firm with the contractor and reiterated that the proposed schedule is not acceptable. Mr. Dusey stated that the proposed schedule was just received today, and he has not had the opportunity to discuss this with the contractor.

Mr. Dusey was asked that due to the fact that the sand is not on the beach, where it should be, which is at the Inlet, and the fact that nature is not taking it's course to bring it down the beach to do some nourishment, does the Town have recourse in order to get the sand brought across and placed on the beaches where it would naturally have been by April or May. The concern was that if the Army Corp of Engineers is going to put the sand on the beach on the north end where the pumping would be discharging, the Town could be six months behind on the flow southbound, thereby making the integral part of the north end and the mid-town beach not meeting. It was furrther questioned if these damages could be included.

Mr. McLendon stated that throwing the problems in the bond company's lap would be the beginning of the delay procedure. Mr. McLendon stated that his experience with bonding companies over the years has not been that you get the work done promptly. Mr. McLendon did not feel that the Town should invoke the bond before talking to the contractor and discussing his proposal.

Mr. Bowser, Town Engineer, stated that the consultant felt that the material is binding up and he is not having enough return material, with too much ground material staying in the pipeline. This contractor has successfblly completed hundreds of these projects around the country, and Mr. Bowser felt that it was a reputable company. Mr. Bowser stated that the Town has not made any recommendations to the contractor on what they should or should not do.

Mr. Gilbertson, a resident of 151 Chilian Avenue, addressed the Town Council and congratulated the Council and Administration for doing this job. Mr. Gilbertson felt that the company hired by the Town was the right company and felt that the Town must stick with this company.

Dr. Sanford Kuvin, resident of 149 E. Inlet Drive, addressed the Town Council and stated he felt the Town is doomed to repeat history. Dr. Kuvin stated his disappointment with the Council reacting to something, as welt as the Department of Public Works, and they should be pro-active. Dr. Kuvin felt that the Council had an obligation to the taxpayers to see that this job is done correctly.

Mr. Jim Koontz, resident of 232 La Puerta Way, addressed the Town Council stating that he felt the mid-town beach was doomed, feeling that there was not enough sand to keep the beach alive. Mr. Koontz felt that the Town Attorney has not taken a good look at the contract to see if the Town is getting what it is due.

Town Manager Doney stated that he felt the Town Administration and the Town Council have done what they could do with the contract, and that he and the Town Council had been advised continuously of what is happening with this project. This item has been on every agenda since November, 1995, when it was realized that the job would not be completed on schedule.

Mr. Louis Brown, 227 Brazilian, addressed the Town Council and stated that instead of looking at whether we have a problem, we should be looking for a solution. Mr. Brown stated that there are alternatives. Mr. Brown suggested that perhaps the Army Corp of Engineers should be requested to dredge further south then they have in the past.

Dr. Kuvin rebutted that with regard to what Mr. Doney stated in defense of his staff, Dr. Kuvin felt this was a reputable company, however, taxpayers also had an obligation to call on the Administration and Town Council to see how the tax monies are being spent, and if they are being spent in a proper, sufficient and in a way that will protect the survival of this town. Dr. Kuvin felt that what he offered was constructive criticism to save this town. Dr. Kuvin felt that for 40 years the Town worked with a sand transfer plant that worked and the supplementary, at no cost to the taxpayers, dredging by the Army Corps of Engineers and felt there is no reason why that should not continue to work. Dr. Kuvin felt that the Town should not interfere with the process that worked in the past and not giving the matter the due attention that it deserves.

Mrs. Smith stated that the Council had the County here at many meetings that Dr. Kuvin had not attended and the Council has been working on the sand transfer plant. Mrs. Smith stated that when she ran for Council 3 years ago, she discussed the sand transfer plant and the beaches and, ftirther, pointed out that the Town has not received the $250,000 from Mr. Gosman. Mrs. Smith stated there was an original check for $50,000, however, the additional $200,000 has not been received at this time.

Mr. Wyett made a motion, seconded by Mr. McLendon, to demand the contractor, Counties Corporation, appear, with appropriate staff if necessary, to explain his current position, how the situation is going to be resolved and a more timely timetable be established at the January 16, 1996, Town Council meeting, with a timetable for completion of the job.

Mr. Shaw stated that the staff has been keeping the Council advised, however, what he would like to point out is that the work that has been done has been approved. Mr. Shaw asked that the engineers of the design specs look at alternatives, and the Council was pro-active. Mr. Shaw stated that mitigated damages are something dealt with after the fact, after your losses are determined and then determine how to get them back. Mr. Shaw stated that this was the first time the Council has been told they are looking at a 6 month delay.

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

Mr. Dusey, Director of Public Works, stated that the fill contract was completed at the end of December when the last structure was removed. The groin contractor has mobilized his equipment and some materials and has removed 31 units from the ocean. The contractor has started building the first groin and has slightly changed the method of operation, working from the south to the north for benefits for delivering materials. All materials at this point have been delivered via the beach which means they won't have boulders lifted over the mid-town wall. Mr. Dusey felt the work was going very well. The contractor is requesting to work in the water on Sunday and Monday (Martin Luther King Day), which is a violation of our ordinances regarding work days. The work, however, would be without noise and without any work on the beach. Weather permitting, the contractor would like to retrieve a many units as he possibly can without bringing anything onto the beach. The contractor would bring all units retrieved over to the Port of Palm Beach. Staff recommended approval of the contractor's request.

Mr. McLendon made a motion to approve the contractor's request as recommended by staff, seconded by Mr. Wyett. The motion carried unanimously.

XI. <u>NEW BUSINESS</u>

A. Ordinances - First Reading

1. Ordinance 6-96 - Amending Ordinance 6-80 of the Code of Ordinances regarding the Public Employee Relations Commission.

Town Attorney John Randolph read, by title only, Ordinance 6, 1996, as follows:

ORDINANCE NO.6-96

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO.6-80 OF THE CODE OFORDINANCES, PUBLIC EMPLOYEE RELATIONS, PURSUANT TO PROVISIONS OF SECTION 447.603 FLORIDA STATUTES.

Mr. Wyett made a motion to approve Ordinance NO.6-96 on first reading, seconded by Mr. Shaw. The motion carried by a vote of4 ayes, with Mr. McDonald being out of the room at the time of the vote.

B. Resolutions

1. Resolution No.4-96- Support of House Bill No.173 and Senate Bill No.16 in efforts to amend Florida's Felony/Murder Statute to include hit and run offenses (Letter request dated 12/13/95 from Mr. W.H. Wagner, Mayor, Town of Lake Park).

Mayor Ilyinsky stated that Mayor Wagner's son was killed in a hit and run accident, and apparently when the person who committed the hit and run surrenders to the police he is judged on a different set of rules and regulations then he would have been if he had not surrendered at all. Mayor Ilyinsky stated that the Palm Beach Post once bad a headline that said "New Law Needed to Catch Up With Hit and Run Murderers". Mayor Ilyinsky felt that every town should support this bill. Town Manager Doney stated that Mayor Wagner of Lake Park is requesting each of the municipalities in Palm Beach County to adopt a similar resolution. The purpose of the resolution is that it be passed on to the Palm Beach County legislative delegation in order that they support House Bill No.173 and Senate Bill No.16 in the efforts to amend the Florida felony murder statute, which is Section 782.04 Florida Statutes, to include the act of vehicular hit and run among the enumerated offenses of said statute. Mr. Doney felt this was a very important issue and one that is offered for the Town Council's consideration as far as adopting this resolution today. Mr. Doney stated that the Police Chief also supports the resolution.

Mr. Wyett made a motion to approve Resolution No.4-96, seconded by Mr. McLendon. The motion was unanimously carried. Attorney Randolph read Resolution No.4-96.

RESOLUTION NO.4-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, URGING THE PALM BEACH COUNTY LEGISLATIVE DELEGATION TO SUPPORT HOUSE BILL NO.173 AND SENATE BILL NO.16 IN EFFORTS TO AMEND FLORIDA'S FELONY MURDER STATUTE TO INCLUDE THE ACT OF VEHICULAR HIT AND RUN AMONG THE ENUMERATED OFFENSES OF SAID STATUTE; PROVIDING AND EFFECTIVE DATE.

C. Other

1. Consideration of Request to Renew Contract for BellSouth ESSX Telephone System for Town Hall.

Town Manager Doney stated that as indicated in the memorandum in the Council's backup from Mr. Jakubiak dated 12/22/95, the ESSX (known as the Essex contract) with BellSouth is up for potential renewal. On behalf of the service and the pricing the town has received from BellSouth (formerly Southern Bell), Mr. Doney stated the Town received very good reliable, quality service. Mr. Doney stated that the major advantage that the staff sees in continuing and recommending the Town Council authorize another 5 year contract with BellSouth, is that the central

Town Council authorize another 5 year contract with BellSouth, is that the central office of BellSouth is located locally for reliability. Mr. Doney felt that this was especially important because the town's telephone services provide for the police, fire rescue and other essential town services. As indicated in the memorandum, it is flirther recommended that the Town Council authorize that staff, namely the Town Manager, be authorized to execute a contract to confirm that the Town would enter into this contract for 5 years for what is known as a special contract assembly with Bell South to continue services. Mr. Doney felt it was important to recognize that on behalf of Bell South, Frances Rhinesmith was in attendance. Mrs. Rhinesmith stated that ESSX will now be called Multi-Serve and the tariff is being filed as of 1/15/96 and will hopetully be approved by 1/31/96. Mrs. Rhinesmith stated that does not change anything that the Town has if the Town were to extend the contract. The reason BellSouth is asking the Town to extend the contract is because Multi-Serve is going to be much higher in cost then what the ESSX system is today, especially for customers who have more than 100 telephone lines as does the Town of Palm Beach. Mrs. Rhinesmith stated they have gone to their product team and requested they re-examine this as it is not in line with what the customers were going to agree. They have re-examined and if the Town does agree to extend the contract, flirther on in the year, if Multi-Serve is allowed to be readjusted in the pricing and is more in line with what the Town is now paying for ESSX the Town would have the option to migrate to Multi-Serve.

Mr. Shaw stated that although the correspondences refers to a 24-36 and 60 month contract, the proposal indicates an 84 month contract. Mrs. Rhinesmith stated that the terms of the 84 month contract would be the same, however, costs are a little less a month. Mr. Shaw stated he is not concerned with the minimal savings, but is more concerned with what happens at the end of 5 years and questioned why the Town Council should not be considering the 7 year contract to secure the lower rate. Town Manager Doney stated that the reason staff selected a 5 year contract was because they felt with the changes that are taking place in the entire telecommunications industry protecting the Town's rate for 5 years would be reasonable. Mr. Doney stated that if the Town could be assured, by Mrs. Rhinesmith, that they will allow the extension of Multi-Serve System to the Town and give the Town that protected fee up to the 84 months then staff would recommend the Town Council consider the 84 month contract. Mrs. Rhinesmith stated that the Multi-Serve product will be available to where BellSouth can put in special service arrangements, which is what the Town is under now with the ESSX and can ask to have that pricing to be readjusted to bring it closer to the ESSX costs. Mrs. Rhinesmith stated that BellSouth is requesting that the Town sign under ESSX because they will at least have the phone service and the dollar amount the Town is used to, and then if they agree on matching the Multi-Serve number to the ESSX number, BellSouth just rolls the service over to Multi-Serve.

Mr. Shaw made a motion to approve the contract for an 84 month term, seconded by Mr. Wyett. In response to Mr. McLendon's question regarding intercom station costs, Mrs. Rhine-Smith stated that price would be adjusted to the 84 month contract. Mrs. Rhine-Smith stated the Town had 220 telephone lines and ESSX is billed by intercom charges per telephone line, allowing the employees to call each other by a 3 or 4 digit number without having to dial the 7 digit number. The motion carried unanimously.

2. Consideration of Methodology for Charging Commercial Properties for Yard Trash Pick-Up and Disposal (Per Town Council's Direction at December 19, 1995 Special Town Council Meeting).

Mr. Dusey, Public Works Director, addressed the Town Council and stated that as directed they looked at a methodology to charge commercial property in town for trash pick-up. The division manager went to each property in town and estimated, based on the greenery at those properties, the amount of trash that would be generated on an annual basis. Applying an approximate cost of $170 per full truck load to those figures, if the Town were to charge for commercial trash pick-up, it would generate about $230,000 a year in fees. Mr. Dusey stated the Town could use the existing billing system used for garbage, which is a quarterly system. Mr. Dusey stated that if the Town chooses to charge for yard trash pick-up it be done on a quarterly basis for garbage bills so that the billing systems are not duplicated. Mr. Dusey felt that the minor generators should not be tracked as far as quantity is concerned, but that they be charged based on the estimated quantities. The larger generators, 100 loads per year or more, are trackable and a tabulation was submitted to Council. Mr. Dusey stated he was concerned with the estimates, feeling that some owners would state the estimates were too high and also that some areas in Town should have the trash removed by others; thereby requiring additional provisions be made for that situation. Mr. Dusey stated there were a number of properties (58) that would generate no trash and should not be charged at all. Mrs. Smith and Mayor Ilyinsky thought that some of the owners should have been notified of this item being on the agenda since they may be charged with a significant amount for trash pick-up. Mr. Wyett felt the Council should take note that 409 properties are charged for garbage pick-up and that it was inconsistent that the Town does not charge them for trash pick-up. Mr. Wyett gave as an example one of the larger owners, a golf course, that had a pile of trash that took 20 public works trucks to pick up and felt that these property owners were very low taxpayers and needed to pay their share of the trash pick-up costs. Mr. McLendon stated that the volume of trash generated by the golf courses far exceeds what they paid for in taxes. Mr. McLendon's only reservation was the possibility of being accused of discrimination, however, he needed more answers. Mr. Shaw stated that the character of the Town is maintained by the fact that there is greenery and that people have lush landscaping. Mr. Shaw asked whether, excluding the 3 golf courses, if it would be beneficial to provide a chipper in an effort to save the Town money if that was used in conjunction with the major cuttings. Mr. Dusey stated the trucking charges would be substantially reduced, however, he was not sure how it would work Out if the Town purchased the chipper.

Mr. Shaw made a motion to table this item as the Council has received the information they asked for, however, the Council needs to decide what to do with that information. Mr. Shaw did not feel comfortable with charging for something they are already essentially paying for - as part of a service that the Town has prided itself on, especially in the smaller quantities; on the other hand, agreed that where there were excessive amounts there needed to be an alternative. Mr. Shaw recommended that the Town try to establish a methodology to define excessive and then look into the possibility of asking someone that goes over the limit to arrange for a chipper and schedule the pick-up and how that would financially affect the town. Mr. McLendon seconded the motion. Mr. Wyett stated that the Town now charges for garbage pick-up on these 409 commercial properties and felt that if the Town was worried about discrimination, it shouldn't charge for garbage either. Mr. Wyett felt we were rapidly moving into the growing season and felt this problem needs about 2-3 months of readings and hearings and felt that if chippers reduced the amount of trash, it would also reduce the financial burden. Mr. Wyett stated the Town provides this service at a cost of over $230,000 and it's not a service that he felt should be provided free to commercial users unless the Town did not want to charge for garbage. Mr. Wyett felt that the taxpayers were subsidizing the largest commercial users in this Town, and he did not feel that was something the taxpayers should be paying for.

Mrs. Smith stated that this is something that is very complicated and should be deferred and examined in depth. Mrs. Smith suggested that Mr. Shaw motion be amended to direct the Public Works Committee to review this problem in one meeting, dealing with Mr. McLendon's concerns, noticing the large commercial property owners and ask them to appear. Mr. Shaw accepted Mrs. Smith's suggestions as part of his motion. Mr. McLendon seconded the amended motion. Motion carried by a vote of 4 ayes and 1 nay, with Mr. Wyett casting the nay vote.

Mr. Winterfield stated he was confused by the word "subsidize" since commercial property paid taxes and felt that commercial properties subsidized garbage pick-up. Mr. Winterfield added that if one is to treat all properties equally, then there should be user charges for all property owners for both trash and garbage.

3. Consideration of Amending Town Ordinances Regarding Boards and Commissions:

The Town Council recessed at this time for lunch break from 12:00 noon until 1:45 p.m.

a. Move Alternate Members Directly to the Regular Member Status When Openings Occur.

Mr. McDonald stated that last year the Council decided that alternates would automatically be moved up to any vacant positions on their respective boards and business has been conducted as such since then. Mr. McDonald stated that he is opposed to that procedure and preferred the Council to have the freedom of choice every time a vacancy occurs to appoint whomever they felt were best suited to that position Mr. McDonald made a motion to not move alternate members directly to regular member status when openings occur. The motion was seconded by Mr. McLendon.

Mrs. Smith stated that she agreed with Mr. McDonald and believed that has not been the Town's position, citing two instances where they did not move two alternates to regular positions. Mrs. Smith saw no reason not to go along with what Mr. McDonald stated. Mrs. Smith pointed Out that the alternates are listed on the top of the ballots and if the Council elects to move them they can do so.

There being no further comments on this item, the roll was taken, with a vote of 4 ayes and 1 nay, with Mr. Wyett casting the nay vote.

b. Attendance Requirements.

Building Official Robert Moore stated that Mr. Shaw had written a memo dated 12/22/95 regarding his understanding of the ordinance. Mr. Moore stated that this issue has come up twice, once at the Landmarks Commission and once at the Architectural Commission. Essentially what the members of both commissions were interested in was the rigidity of the number of required attendances, for alternates as well as regular members. The Architectural Commission has put forward a thought regarding the ability to have an absence that would be considered a floating absence that would be applied to any absence at any time. As an example if a member was absent without benefit of court appearances or illness or family illness that would be excused, for two times during the year, under the current reading of the ordinance that would make them subject to dismissal from the commission. They felt it would be of benefit if the Council would consider either amending or sending to the ORS Committee, to allow for a floating absence to be used as the member saw fit during the course of the year. Mr. Moore stated that there have been no problems in the past, before we introduced the rigid attendance, of having a quorum. Mr. Moore pointed out that some members of the committees were appointed previous to this ordinance being passed and were not subject to the rigidity of this ordinance.

Mr. Shaw stated that it was his understanding that when the Town had the meetings for all the committee requirements that the discussion was that everyone would be entitled to 3 absences. There was a point in the discussion where the Council considered the possibility of 4 absences in light of the fact that we were creating the more stringent rule of not having two consecutive absences. Mr. Shaw felt that from the point of the committee discussions through the Council meeting where again it was discussed that there would be 3 absences and the suggestion was made that in the event that a member of a committee had a problem, he or she could always come before the Council. While that made it into the ordinance, it seems that in looking at the way it is written it implies that if they miss the third then they are off, and Mr. Shaw did not feel that was the intent. Mr. Shaw stated the way he reads the ordinance they were supposed to have 3 absences, pointing out a member could miss a meeting in September, one in March and one in April, but could not miss May and June. If that is the consensus of the Town Council, Mr. Shaw requested that phrase be addressed.

Attorney Randolph stated that the ordinance was clear and did not recall the intent of the Council, however, the ordinance was drafted with what he felt was the intent at the time. Attorney Randolph stated that if the Town Council felt a change was necessary then they needed to instruct staff to do so. Attorney Randolph remembered that there was a concern regarding consecutive meetings as well as total meetings and does not recall any discussion regarding being able to appear before the Council in regard to absences. Attorney Randolph remembered appearing before the Council would be in regards to conflicts of interest. Attorney Randolph stated that he recalls the dismissal being automatic if a board member missed three meetings or 2 consecutive meetings.

Mr. Wyett pointed out that a member could have 3 unexcused and 3 excused, and that if they were excused absences they were not covered by the ordinance. Mr. MeLendon felt that he reads the ordinance to read 3 or more meetings missed, and referred to the last sentence of the ordinance which stated.. "A member may petition the Council in the event of extenuating circumstances to excuse an absence not otherwise automatically excused."

Mrs. Smith stated that it would appear that the Council is trying to get too precise and that the Council did not have a problem earlier with the Architectural Commission. Mrs. Smith added that every time the ordinance is changed, and every time Attorney Randolph looks at the ordinance it costs the Town money. Mrs. Smith felt if the Council felt it has been too precise then it should be cleared up today once and for all. Mr. McLendon stated he was opposed to making it too liberal, feeling that the way it was written it meant more than 2 absences and felt it should stay the way it is written. There were no members of the public in attendance to address this issue.

A motion was made by Mr. Shaw stating that the sentence on Page 2, Line 5, be changed to read: "Lack of attendance is defined as failure to attend more than 3 meetings." Motion died for lack of a second.

Mr. Wyett suggested that the only adjustment needed was to allow one vacation absence and felt it was reasonable to allow a member that extra absence.

Mrs. Smith stated that no members of any of the committees were here to speak to this issue and felt there was no reason to change the ordinance at this time

Mr. McLendon made a motion to leave the ordinance as it presently reads. Mr, Shaw seconded the motion, which unanimously carried.

4. Consideration of Proposal to Conduct Adult and Children Programs Operated and Organized by the Town's Recreation Department at the Palm Beach Rehabilitation Center for Children and Adults.

Recreation Director Russell Bitzer addressed the Town Council and stated that in his memo of 12/22/95 this item is an offer by the Rehabilitation Center for the Town to use their swimming pool for recreational programs. Mr. Bitzer stated he met with Pam Anderson, the Executive Director of the Palm Beach Rehabilitation Center, who advised him they have times when their pool was not being used and, although it was not appropriate with their mission statement to offer recreational types of programs, it would be available for the Town's recreational programs if it so desired. Mr. Bitzer stated that while the temperature and size of the pool was not suitable for most aquatic programs, it was suitable for a few activities. Mr. Bitzer stated he discussed this matter with the risk manager who advised him that she did not have a problem with utilizing this off-premise facility providing the town received proof of the Rehabilitation Center's general premises liability and insurance coverage. Mr. Bitzer stated this is not setting a precedent since the Town has done this in the past with using the YWCA in West Palm Beach for recreational swimming programs as well as the Lake Worth and Palm Beach County's munlcipal pools. Mr. Bitzer felt this proposal was a good idea and would be a closer facility for some of the Town's aquatic programs. Sufficient enrollment would be required in order that registration fees offset program expenses, including program instructors and supplies. There would be no cost to the taxpayer for these programs. Mr. Bitzer stated that some items need to be reviewed, such as reviewing any problems with the Town Attorney.

Mr. Shaw stated he was glad to see this happen, hoped that it gets publicized well enough and felt it was nice to have this facility available to the residents.

The Town Council agreed that the proposal to conduct programs at the Palm Beach Rehabilitation Center was a good idea. The Town Attorney said a motion by the Town Council was not necessary because the Recreation Department operates other programs in a similar manner.

Ann Herman, Chairman of the Golf Commission, addressed the Town Council and announced that the Golf Par 3 LPGA Tournament is being held on February 14, 1996. The two recipients from this event are the Rehabilitation Center for Children and Adults and the Recreation Center. She stated this is the only Town sponsored charity that there is and all monies stay within the Town of Palm Beach.

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

Police Chief Joseph Terlizzese addressed the Town Council and introduced Dr. John Fletemeyer, Lifeguard Supervisor. Dr. Fletemeyer stated that the Town has a new beach and would like to provide lifeguard service to it. Dr. Fletemeyer stated there was approximately 1000 feet of beach, and according to industry standards the Town needs 3 lifeguard towers. He stated that the Town currently has the staff to man the lifeguard towers, however, at this time there is only 1 tower that was purchased approximately 8 years ago. Dr. Fletemeyer requested the Town Council approve the purchase of 2 additional towers at this time. Dr. Fletemeyer stated that no lifeguards would be taken away from other beaches to place them on the Mid-Town Beach.

Mr. Gilbertson, 151 Chilian Ave., addressed the Town Council and asked whether Lake Worth had the same set-up since the proposed towers are very expensive.

Dr. Fletemeyer stated these towers are located in Pompano Beach and the majority of towers that are now being built are made out of fiberglass. Fiberglass towers have more longevity, and it was pointed out that the one the Town currently has that is 8 years old has cost the Town exactly $8.10 in maintenance costs.

Mr. Wyett made a motion to approve the purchase of two lifeguard towers for Mid-Town Beach, with monies to be taken from the General Fund Balance. The motion was seconded by Mr. Shaw and unanimously carried.

6. Consideration of Town-Owned Properties - Potential Purchase, Sale, Lease, or Other Change of Status.

Town Manager Doney stated this item was before the Council because Mr. McLendon inquired about the manner in which Town staff currently responds to inquiries for either lease, sale or other uses of town properties and in support of that he provided the Council with Mr. McLendon's memorandum dated 12/11/95 and his previous correspondence that addressed how the Town staff handles this matter.

Mr. McLendon stated that the Town should be interested in leasing any properties that are unused if the lease would be profitable to the Town and not preclude the Town on any long term lease. Mr. Shaw did not believe that it was Town's position not to consider an offer, however, up until now, the Town has never received from an interested party a detailed proposal. Mr. Shaw felt that if someone was interested in leasing Town property then they should come to the Council with their proposal. Mr. Shaw felt that direction to staff should be that if someone does inquire about a piece of property to inform them without any indication that the Town would consider accepting a proposal that they should provide the Town with a detailed proposal showing the lease terms, the income that would be generated, and with that the Council can make an educated decision. Town Manager Doney referenced a memo dated 2/24/95 from him to the Town Council, the subject of which is inquiries regarding Town property, potential sale, purchase, lease or other change of status. Mr. Doney highlighted the memo, which outlined the manner in which Town staff responds to either verbal or written inquiries. Mr. Doney stated that in the past this has been a problem because real estate individuals who may or may not have a bonafide client would want to spend a tremendous amount of staff time to have them make recommendations. Mr. Doney did not feel it was proper to have staff spend a large amount of time, energy and expense to the taxpayer without Town Council policy direction. In lieu of that, a procedure was developed as set out in the 2/24/95 memorandum which stated if the Town Council wishes to formally consider an inquiry, the Town staff and Town Attorney would do advance research and analysis of the potential impact of the proposed transaction and would thereatter review with the Mayor and Town Council at a minimum the following; 1) legal considerations, 2) structural condition of the property in question, 3) insurance matters and liability exposures, 4) current uses of the property and anticipated impact of the potential real estate transaction on town operations, 5) administrative considerations in the case of a lease or other ongoing business relationship. Mr. Doney stated that staff does have an inventory of all town-owned property. Mr. Doney stated that the most recent inquiry the town has had is from a Mr. Nize of West Palm Beach, who stated an interest in the Town-owned property at the northwest corner of Quadrille and Dixie Highway. That property is currently used for storage and equipment by the Town employees. Mr. Doney stated that various Town records are stored at this premises as well as the piece north of sixth street where the police department mechanic is located. The piece of property owned between Olive and Dixie is put in several different usages, such as housing the parking enforcement scooters and storage of other equipment. Therefore, given the use of these properties, the staff doesn't see where there is an opportunity to put the equipment elsewhere unless the Town Council directs staff to investigate other alternatives. Mr. Doney stated that he has always asked any interested individual to produce the request in writing and state specifics so the Mayor and Town Council would know exactly what the proposal was.

Mr. Doney stated the structure is not in a dangerous condition. The areas that require some structural improvements have just been cordoned off within the building and are not accessible for use for any purpose. Mr. Doney stated that the town has properties on Okeechobee where we have the yard trash disposal site and also on Skees Road. There have been inquiries from time to time where an individual wanted to open a dog training operation on the Okeechobee Boulevard site. At the time the Town Council was interested, however, required the proposal to fully investigate and produce a full written proposal. After flilly investigating the proposal, for liability purposes, the Town Council denied the request. If there was space available, the Town would have to make a public notice so that any individual could request use.

There was no action taken on this issue by the Town Council.

7. Consideration of Request to Rezone Town-Owned Property on Pike Road in Unincorporated Area of Palm Beach County and for Town Council to Appropriate Funds for Necessary Professional Services to File Rezoning Application with Palm Beach County.

Mr. Castro of the Planning, Building and Zoning, addressed the Town Council and stated that the request is one of development action in order to make the property more marketable, based on the Calloway and Price appraisal that was done for the Town. The rezoning of the 20 acres on Pike Road, between Southern Boulevard and Belvedere, just west of the Turnpike, is to rezone the property from the Agricultural/Residential County Designation (somewhat of a hold zoning) to a Light Industrial Zoning Designation which would raise the value of the property by approximately $70,000. Mr. Castro presented an estimated cost to undergo this procedure and ask to re-evaluate those numbers based on discussions with the traffic engineers and Town Attorney related to the traffic statement. Mr. Castro stated that he no longer believed that it can be done in-house. Along with another item, which is the extracted survey, he found that it would cost approximately $1200 more than originally anticipated. Mr. Castro reiterated that the request is to rezone the property and request expenditures out of the Undesignated General Fund Balance not to exceed $9000 to undergo this action.

In response to Mrs. Smith, Mr. Castro stated that an in-house traffic study could not be done because there are certain requests of the petitioner by the County in terms of roadway segments, projected trips based on the estimated maximum use of the property and he believed in order to make the application more viable that an expert in traffic engineering analysis would be needed. The Town has owned the property for approximately 30 years, and it was initially acquired by the town along with 2 other properties in unincorporated Palm Beach County. Mr. Castro gave a brief history of the property. Mr. Castro stated that the yard trash disposal use needs by the Town could be absorbed by the other remaining 2 properties. Mr. McLendon stated that the Town owned 3 parcels, and staff is suggesting that we keep 2 parcels and sell one, however, he felt that perhaps the parcels should be reversed since there is a difference in valuation. Mr. Castro stated that the property on Pike Road would not be a suitable site for yard waste disposal.

Mr. Dusey, Public Works Director, stated that the Okeechobee site is not badly encumbered by yard trash operation; in fact, the commercial part of it could be sold very easily if the Town Council so desired, without impacting the yard trash site. Mr. Dusey stated that the Skees Road site takes care of the bulk of the trash and the Okeechobee site is used in the winter time each year to handle the winter operation. Mr. Dusey stated that the FOP uses the rear of the Okeechobee site and has a 99 year lease, and the Town would need to maintain access.

Mr. Wyett made a motion to approve the request to rezone the Pike Road property with frinding, not to exceed $9,000, to come ftom the Undesignated General Fund Balance. Mr. Shaw seconded the motion. In response to Mr. McDonald, Mr. Castro stated that the estimated market value of the property if zoned to Light Industrial as stated in the 1994 appraisal report is $870,000. If it stayed as is the market value is $800,000. Mr. McLendon felt that he would rather sell it to somebody subject to rezoning, letting them do the expense and work to have it rezoned. Mr. McDonald stated that if the Town rewnes it, taxes will probably go up, however, if the Town holds it for a while then the amount spent on increased taxes may exceed the appreciation in value. Mrs. Smith pointed out that Town-owned properties in West Palm Beach do not pay taxes.

The motion was approved by a vote of 3 ayes and 2 nays, with Mr. McDonald and Mr. McLendon casting the nay votes.

8. Discussion of the Closing of the Public Middle School in the Town of Palm Beach.

Mrs. Smith stated that she put this on the agenda because she received a letter from a member of the Palm Beach Public School PTA, the SOS (Save Our Schools) Committee.

Margaret Yansura, 714 Clairmore Drive in West Palm Beach, addressed the Town Council, stating she was a member of the Palm Beach Public School PTA and a former vice-president of the PTA and a member of the SOS Committee. She stated that Dr. Schulman, Acting Superintendent of Palm Beach County Public Schools, is considering recommending to the School Board the closing of grades 6 through 8 at Palm Beach Public School. Mrs. Yansura stated this was the only school in Palm Beach County that goes K through 8 and has been in the Town of Palm Beach since the 1920's. Parents of the school strongly wish to support the continuation of grades K through 8 at this school, stating there is a strong interaction with the Town of Palm Beach although most of the children that do attend come from West Palm Beach. Mr. Yansura felt that since the Town of Palm Beach contributes $43,000,000 a year in school taxes (45% of every resident tax bill) that is one very strong reason to keep a public school here in the Town. If the students were transferred, the school is approximately 5 miles away for the children who do attend the middle school who live on the island. These children would have to be bused from the north end of Palm Beach to Southern Boulevard and Parker. This is being proposed to the School Board stating that it would save money and provide a better education for our children and the SOS Committee does not feel that either one of those goals would be achieved through this closing and requested the Town Council stand together with this Committee to oppose the change. Mrs. Yansura stated the Committee has also received support from the City of West Palm Beach and from the Palm Beach Chamber of Commerce.

It was determined that Out of 600 students, approximately 67 students live in Palm Beach. Mrs. Yansura stated that the School Board feels this would lessen the overcrowding, however, stated that her children have less than 30 students in their classes. Mrs. Yansura stated that the only classes that cannot be offered at the middle school are shop and foreign language classes, and the parents don't feel they want to trade the atmosphere at this middle school to get the children in a shop class.

Mr. Shaw felt that the character of any community needed the presence of a school and was agreeable to support the school in any way possible to keep the school open. Mayor Ilynsky stated that there is very little crime around this school and asked what the town can do to assist in the plight of this school. Mayor Ilynsky asked for suggestions on what the Town could further to assist to keep the school open. Mrs. Yansura requested a representative from the Town Council attend their meeting tonight at 7:00 p.m. in the school cafeteria to meet with the School Superintendent. Mrs. Yansura stated that the Committee is trying to shortcut this before it ever reaches the School Board and want information on what they intend to do with the school building since they cannot leave it empty. Mrs. Yansura stated that further, the remaining students cannot be spread left over the entire space and possibly they were going do import more children from West Palm Beach and that would not effectively improve the situation.

Mr. Wyett made a motion authorizing and approving a resolution supporting the continued operation of the middle school in Palm Beach; a letter from the Mayor and Town Council President stating the Town Council's position; and an appearance by President Smith at a public meeting scheduled for 7:00 p.m., January 9, 1996, at the school to state the Town's position. Mr. Shaw seconded the motion, which carried unanimously.

9. Consider Referral of the Issue ofEstablishing a Policy and/or Ordinance to Recover Fines and Penalties Owed to the Town to the Ordinance, Rules & Standard Committee.

Mr. McDonald recommended that the Council refer to the ORS Committee the matter of establishing a policy and/or ordinance covering the collection and enforcement of outstanding fees, penalties and costs against any property owner of the Town that has been assessed such fees and costs for whatever reasons.

Mrs. Smith asked Mr. House whether or not the subject of monies owed to the Town was brought up at the last Town Council meeting. Mr. House stated that one resident owing money, $132.50, paid fines to the Town. In response to Mr. McDonald re: efforts made by the Finance Department to collect these monies, Mrs. Crozier, Finance Director, stated she is still in the process of preparing the letters for disbursement to those owing fines. Mrs. Crozier went back to the original resolution to capture all the information relative to the assessments that were passed and any payments that might have been made before. These letters should be ready for distribution tomorrow, however, she stated there was one solid waste assessment on the list that was paid for $2358. Another assessment of $135 was paid because the property changed hands and the money was paid through the title company.

Town Manager Doney, after a discussion regarding waiving interest due, read from Page 34 of the minutes from a previous meeting where the Council discussed this issue, as follows: "Mr. Wyett repeated his motion that each individual be given 90 days do pay outstanding fines without interest, after which staff would indicate which were non-collectable. Mr. Wyett amended his motion to be 60 days rather than 90, and he suggested that the Town Council instruct the staff that if fines are noncollectable they would be wiped off the books. The motion was seconded by Mr. McLendon. Mr. McDonald suggested that one fine that amounted do over $1,000,000 be given some attention. Mr. Randolph advised that a report would be forthcoming. Mr. Wyett accepted this as part of the motion. Mrs. Crozier clarified that a letter would be sent out with a 60 day deadline do include a waiving of the interest for all items except code enforcement fines and judgements.

Mr. McDonald stated that he was conflised how property sales were taking place over the years and why the fines were not showing up in the change of title. Mrs. Crozier stated that first ajudgement had do be filed against the property at the County. Mrs. Crozier stated that the title companies have not researched records entirely and therefore some property has been transferred for people that were on this list. Town Manager Doney stated that all code enforcement liens are properly recorded and are reported to the title companies. Attorney Randolph stated that the offer to remove interest payments was a "carrot" in an attempt to induce people to pay their fines. Attorney Randolph stated that the issue to be addressed at this time is maybe not addressing letters to those people owing interest at this time but referring that particular issue to ORS because what the Council is doing by waiving the interest in the amount of $7000 is giving up the opportunity to collect the money when that property is sold.

Mr. McDonald stated that his recollection of the motion was that a letter be written to those people who owed money with the offer that if they paid the principal the interest would be waived. In response do Mr. McDonald, Mrs. Crozier stated that other than the $7000 interest payment due, the rest are negligible.

Dr. Small, resident, stated that based on what was read by Town Manager Doney, the Town Council obviously passed approval of an amnesty of interest for people who pay the principal. If that is changed based on the amount of interest involved, Dr. Small felt the Council was being arbitrary. Dr. Small felt that you don't give amnesty for only the small amounts of interest, but for all interest owed.

Mr. McDonald made a motion to approve the referral of the issue of establishing a policy and/or ordinance to recover fines and penalties owed to the Town to the Ordinance, Rules and Standard Committee, with the stipulation that the Finance Director prepare a monthly update report. The Town Council directed that interest be waived on all assessments currently outstanding, including those assessment accounts which only owe interest at this time. The motion was seconded by Mr. McLendon and unanimously carried.

Attorney Randolph stated he would have a report available re: Johnson lien collection prior to the next Council meeting.

10. Discussion of the Cost of the Monthly Legal Report Submitted by the Town Attorney.

Mr. Wyett stated he received a nine-page report from the Town Attorney and requested the cost of this litigation status report and could an update be substituted for the report? Attorney Randolph stated this is an update and the reason past action is included on the report is because they are still pending. Once an action is concluded it is removed from the report. Attorney Randolph stated that the report for these previous cases is on the word processor so there is no time involved on his part in reporting on that portion of the case. The only time involved is updating the Council on what actions may have taken place between the last report and this one.

Mr. Wyett withdrew this item.

XII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR DECEMBER, 1995.

Mr. Shaw made a motion to approve the Warrant Registers and Funds Expenditures Report for December, *1995*. Motion seconded by Mr. McLendon. The motion was carried unanimously.

XIII. COMMUNICATIONS FROM CITIZENS -3 MINUTE LIMIT PLEASE

Mr. Bill Lanting of 119 Sea Spray addressed the Town Council stated that at the request of the Chief of Police he wrote a letter outlining the January birthday party that they planned do throw for their 4 year old son. Mr. Lanting received a response from Town Manager Doney which basically said that Town ordinances, specifically Chapter 4, prohibits them from having a camel, a donkey and a monkey at this birthday party. Mr. Lanting stated that it was to be an Aladdin Birthday Party and thought it would be appropriate to have these animals at the party. Mr. Doney provided him with a copy of Chapter 4, and Mr. Lanting read that Chapter 4 stated it would be unlawtul do keep, possess or maintain any live animal, including fowl, in the town. From that point, Chapter 4 gives two instances which certain animals will be allowed as house pets. Mr. Lanting stated that his reading of this ordinance addresses what animals will be allowed in the Town of Palm Beach as house pets. Mr. Lanting stated that he spoke to someone in Code Compliance who stated that this ordinance came about because somebody in the Town was trying to keep a kangaroo as a house pet. Mr. Lanting also talked to several animal handlers, since they were obviously looking to rent animals and several people in this town who put on events and were told that on many occasions animals that are not listed in the ordinance have been used at these events. Mr. Lanting stated that last year, when there was a circus party for his son, they were told they could not have an African elephant as that was a nuisance and the elephant was sent back. Other animals such as horses and a llama were allowed to stay. Mr. Lanting stated that it appears this ordinance, if it does go beyond animals kept as pets, and includes animals rented for a two hour party, then the enforcement of this ordinance has been selective. Mr. Lanting stated that selective enforcement of any ordinance is not lawful. Mr. Lanting expressed concern that residents and perhaps members of the Town Council to not like that fact that the Lantings throw these parties to begin with and that this ordinance is being used to stop these parties. Mr. Lanting stated they are not looking for press, but simply coming before the Town Council at the suggestion of staff, and asking for permission to have these 3 animals at this 2 hour party. Mr. Lanting pointed out that Chapter 4, Section 4. lB states that any person desiring do keep or maintain an animal as a house pet and not enumerated above, may do so only after a request therefore to the Town Council whose discretion in such cases shall be absolute and final. Mr. Lanting stated that, therefore, that is what he is requesting from the Town Council today.

Attorney Randolph stated that the request is for the Town Council to grant a waiver to the ordinance to allow for the keeping of these animals for a two hour period. Attorney Randolph stated that it is his understanding that the ordinance has been interpreted to mean that it is unlawfiil to keep, possess or maintain any live animal, except those specified, for any period of time. It does not indicate that they cannot be kept as household pets because there is a provision which states that certain animals may be kept as household pets but that animals other than those specified may not be kept, possessed or maintained in the Town. Attorney Randolph stated that the way we interpret the ordinance is for any period of time. As a result, under the provisions of this ordinance, it is interpreted that the animals designation - camel, donkey and a monkey - if kept for any period of time at that property would be in violation of this ordinance.

Mr. House, Code Enforcement Officer, in response to questions by Mrs. Smith, stated he is not aware of any instances in which animals such as donkeys, camels and monkeys have been on the island with permission from the Town Council.

Mrs. Lanting, thanked the Town Council for the enforcement of the Town ordinances and laws. As a resident of Palm Beach Mrs. Lanting stated that she appreciated the fact that garbage is picked-up 5 days a week and the fact that cars are not blocking the streets that her children play on, and she can even appreciate the ordinances pertaining to wild animals. Mrs. Lanting stated that what she does not appreciate is being judged or discriminated against by a certain member of this Council, Leslie Shaw, since he does not know her or her children. Mrs. Lanting stated that Mr. Shaw did not once call or contact the Lantings regarding their parenting or their parties. Mr. Lanting stated she did not appreciate Mr. Shaw's comments in the press about sending one's children to Paris for a party and felt Mr. Shaw missed the point of their parties. Mrs. Lanting stated she enjoys her home, her Town and her friends and these parties are sometimes the only time of the year that they meet the family members of their children's fliends. Mrs. Lanting stated that they try do attract entire families to their parties. Mrs. Lanting stated that with whatever theme they picked for the parties, they try to educate as well as entertain. Mrs. Lanting stated that the monkey is smaller than most dogs; the camel with be taken care of by a person concerned with its care and will not be violated or abused; and the donkey will be lovingly available for the children to pet and ride by a licensed animal care person. All of these people are licensed by the County of Palm Beach and have insurance. Mrs. Lanting felt 30 years was a long time for any ordinance, especially a vague and unclear ordinance that make a frog, a cockatoo or a water snake illegal for even a minute in the Town of Palm Beach. Mrs. Lanting requested the Town Council to reconsider their position to allow permission for reasonable animals on a temporary basis.

In response to Mr. Wyett's question regarding whether these animals would cause a problem for the Town, the Chief of Police asked where you draw the line. The Chief stated that the Town has an ordinance that is to be enforced. If the Town allows a donkey, camel and a monkey, the next person may want a tiger or a lion, and felt the purpose of the ordinance was to regulate the wild animals. Mr. Lanting stated that at this time they are not contesting the ordinance, but merely trying to comply with the ordinance by asking special permission as the ordinance requires.

Mrs. Smith stated that what the Lantings are asking is for an exemption from the ordinance. Mr. Wyett did not feel it was an unreasonable request. Mr. Wyett stated he had no problem with the request.

Mrs. Dorry Steves, an animal trainer, care giver, researcher and educator for 20 years, stated that animals are playing a bigger part in our lives and felt the education of children regarding animals is important. Mrs. Steves related a story about bringing two camels to West Palm Beach approximately 3 weeks ago and said there were no problems with the animals. Mrs. Steves stated that she has taken these animals to the Breakers Hotel and it has been an enriching experience for everyone involved. Mrs. Steves stated that these animals are domesticated and are only taken to safe environments.

Mr. Winterfield addressed the Council stating he had seen a horse at the Breakers Hotel, but it was there for a specific purpose, to demonstrate the utility of horses for handicapped children. Mr. Winterfield stated that is a far different use then entertainment.

Mrs. Polly Earl, a resident of Sea Spray Avenue, addressed the Council stating she lives slightly less than a block away from where these parties are held. Mrs. Earl stated she remembers the kangaroo that lived on Sea Breeze. Mrs. Earl stated that we should all recognize that it is a privilege to live in Palm Beach and sometimes we have to give things up. The people that owned the kangaroo had do give him up and made the decision do move elsewhere. Mrs. Earl stated that Palm Beach has these rules and regulations to protect everybody and did not feel the emotional issues should be a part of the decision. It was further pointed out that residents on the streets notice when these parties take place, and that they are located on private property. People also note when the party such as the one last year resulted in the house being draped in camoflauge netting. Mrs. Earl felt this was startling and that it was important for everybody to think about the practicality no matter how much we love our children. Mrs. Earl felt that we all had to be responsible residents and people who are responsive to the community around us.

Mayor Ilyinsky stated he was deeply offended by one party given by the Lantings, stating that he too has a purple heart, and believed that was a mistake that brought a lot of discourse about a Town that he is very fond of The Mayor further stated that Mrs. Pauly Earl made a valid point. Mayor Ilyinsky stated that there is no doubt that the animal laws in this town have got to change a little bit and agreed with what the Chief of Police said. His charge is to protect all the citizens that fall under his authority. Mayor Ilyinsky felt there was a way of separating the different types of creatures and stated in the past there were hundreds of parties where children rode donkeys. The Mayor stated that Mr. and Mrs. Lanting learned a lesson regarding the military party, however, he felt the Lantings had the right to use the 3 animals they have requested. The Mayor felt that something should be worked out for the Lantings if it can be worked out without breaking any laws.

Mrs. Smith stated that if the request was for donkeys and monkeys that were under trainer control she would not have a problem, however, a camel was too large for a 4 year old. Mrs. Smith stated that she would rather see more donkeys but was against the larger animals.

Mr. Wyett made a motion to grant the special exception for a donkey, the monkey and any other small animal of the same category to substitute for the camel, and wished the Lanting's son a happy birthday. Mr. McLendon seconded the motion. Mr. Shaw stated that he agreed with Mrs. Smith, and felt that trained monkeys that are used for children are different from those that are used in a controlled habitat. Mr. Shaw did not feel that monkeys around children that scream and yell are safe even with a trainer, and felt that if it was confined to donkeys that would not be objectionable. Mr. Shaw did not feel this was a party just for children that included 3 animals, but understood that there was a 60 foot playhouse and a whole theatrical company to perform Aladdin. Mr. Shaw stated that while that may not be objectionable he felt the whole scope of the party should be explained and hoped the request would be withdrawn and modified to include just donkeys. Mrs. Lanting stated that this particular monkey is an organ-grinding monkey that is used to hundreds of children.

Attorney Randolph suggested that the Town be included as additional insured. Mr. Lanting stated that he would have the Town of Palm Beach named as additional insured. Town Manager Doney requested Mr. Wyett's motion be amended do be more specific. Mr. Wyett amended his motion to grant a special exception to approve the use of two donkeys and one monkey at a birthday party with the Town of Palm Beach named as additional insured. The motion was unanimously carried.

Other Communications from Citizens: Mr. Gilbertson, 151 Chilian Ave., addressed the Council stating there has been a decade of great resentment that we do not have a beach and hoped that a small section could be roped off for public use. For the past 8 years most of the residents have used the private beach south of Mid-Town Beach. Mr. Gilbertson stated we already have access to a stairwell at Gulfstream, have a lifeguard tower as well as the lifeguard, but felt we should have a beach and something should be done. Mr. Gilbertson stated he sued the Town of Palm Beach when the Council tore out the groins, which he withdrew. He stated he withdrew the lawsuit because he wanted the citizens as well as the Council to get together do solve this erosion problem. Mr. Gilbertson stated that if his father had not passed away in 1984 he probably would have continued with the lawsuit because the groins should have been repaired, not removed. Mr. Gilbertson stated that our present Mayor and Council are the most dedicated, most brilliant, most resourceful and best dressed he has ever seen. Mr. Gilbertson stated that he has been in attendance in these chambers for over half a century and he is therefore aware of these facts. He felt it would be a great tragedy do change horses in the middle of the stream. Mr. Gilbertson stated that Councilman Leslie Shaw has given his best to bring the beach project do a successful conclusion. He felt Mr. Shaw's opponent should withdraw.

Mr. Winterfield, resident, addressed the Council, stating the problem of clubs was one that was considered at the last Council meeting and will be considered again at the next meeting at which an ordinance will be read at first reading. Mr. Winterfield suggested that there is an attempt to define club and it was decided do postpone the definition for a year;

nonetheless, there is a proposition that something that is not clearly defined be prohibited. Without going into the substance, Mr, Wintertield suggested consideration be given to postponing the proposed prohibition of clubs in residential districts.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of December 19, 1995 - Minutes Available in Town Manager's Office.

Mrs. Smith stated that in the minutes of the Architectural meeting she noted there was a recommendation of the Commission that the staff prepare color charts, guidelines and outlines for the Town Council to consider. Mrs. Smith stated that the motion was made by Mr. Bell for recommendation to the Town Council to consider having variable standard house, trim and shutter colors with all other colors to be ARCOM approved and to have staff prepare a color pallet for presentation at a later ARCOM meeting. Robert Moore, Building Official, stated that was up to the Council to direct staff to go forward, however, it was contrary to the Council's standing policy. Mr. Moore stated that this would be brought in the next few months to the Council for consideration.

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

B. Time Extensions - None

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business

1. Special Exception No.24-95 - The Mar-a-Lago Club, Inc., 1100 5. Ocean Boulevard; to allow conversion of existing tennis court (at north side of property) into parking, an accessory use to a permitted Special Exception. R-AA District (This portion of the application was Deferred from November 14, 1995 and December 12, 1995 Meetings).

Robert Moore, Building Official, stated that after the Council's action this morning he contacted Mr. Paul Rampell's office, the attorney for Mar-a-Lago Club, Inc. and author of the letter for withdrawal, and found he was out-of-town at a seminar in Miami. Mr. Blackman, Project Coordinator, is here to address that request.

Mr. Blackman, Project Coordinator for Mar-a-Lago Club, Inc. addressed the Council stating that they were not expecting this to become an issue and explained that was the reason Mr. Rampell attended the conference in Miami.

Mrs. Smith stated that the application last month was split and the question of the tennis courts was voted on and the question of the parking was another issue. Now, with the withdrawal, the Council is not entirely clear as to what the status is on the parking. Mr. Blackman stated that he is requesting that this be deferred and heard next month.

Mr. McLendon stated that it was not intended that the option be given to withdraw the parking changes that were requested by the Council the day the tennis courts were approved and hoped that was clear. Mr. Blackman stated it is their intention do be good neighbors regarding the increased noise. Mrs. Smith stated the Council would like Mr. Rampell to be in attendance to discuss this and is giving him the opportunity do withdraw his letter do withdraw and was sure the Council would give him a deferral until a later time.

Mr. Wyett stated he took exception do the words "may resubmit", feeling that was very ambiguous and added that if it was their intention to come back next month because they needed more time, he was in agreement. However, if it was their intention to not go forward with their plans then the Council is concerned. Mr. Blackman stated he was not prepared to elaborate on this issue.

Mr. McLendon made a motion to defer this issue to the February meeting. The motion was seconded by Mr. Wyett. The motion was carried unanimously.

2. Variance No.63-95 - Alan L. Shulman, 377 North Lake Way, to allow construction of an addition on a single family dwelling with a setback from the south property line of 10' in lieu of the 15' required. R-B District (Deferred from December 12, 1995 Meeting).

Peter Broberg, representing Alan Shulman, addressed the Council and stated last month the application came before the Council, but because of a timing issue and improper notification this was deferred to this meeting. Building Official Robert Moore stated that the Town has received no correspondence from any of the neighbors other than the neighbor to the north who came in to review the project. Mr. Broberg pointed out that hardships were that this house was built off center on an undersize lot.

Mr. McLendon stated that he originally had a reservation, and questioned whether the white area shown between the two winged extensions is actually going to be new also. Mr. Broberg stated that was correct and stated that the pool, which is built off center also, is centered to the house and the addition is being centered to the pool.

Mr. Wyett made a motion do approve Variance No.63-95 - Alan L. Shulman, 377 North Lake Way, to allow the construction of an addition on a single family dwelling with a setback from the south property line of 10' in lieu of the 15' required. Mr. McDonald seconded the motion. The motion was unanimously carried.

New Business

3. Variance No.64-95 - Lowry Bell, Jr., 220 Banyan Road; to allow construction of an addition (pergola and a cabana bath) providing a 5' rear yard setback in lieu of 15' required. R-A District.

Lowry Bell, resident at 241 Banyan Road, addressed the Council and stated that the property he is here to discuss is across the road at 220 Banyan Road. Mr. Bell stated he is interested in building a pergola and a cabana. Mr. Bell stated that the pergola required a 10' setback and he is requesting a 5' setback from the property line. The cabana, which would be classified as an enclosed structure, requires a 15' setback and Mr. Bell requested a 5' setback to run in line with the pergola. Mr. Bell stated that the purpose of putting it so close to the property line was to have a structure that was permitted to be left there when a demolition permit was granted for this property to the south. Mr. Bell presented pictures of the building to the south and the proposed construction would be to block this building as much as possible.

Robert Moore, Building Official, stated that there was an issue regarding an easement and requested Mr. Bell discuss this with the Council. Mr. Bell stated the engineer who was doing the site drainage plan met with Mr. Bowser without Mr. Bell reviewing the drawings. Once Mr. Bell reviewed the drawings, he noted that the drawings requested an easement on this property to handle the water on the 700 South County property. Mr. Bell objected to this request as he did not want any easements at all on this property because he felt it was unnecessary. The engineer met with Mr. Bowser, who approved the drawings with no easement stating that both pieces of property contain the water successfully without running a pipe from one property to the other. Mr. Moore stated that Mr. Bowser has confirmed that there is no longer a need for an easement. Mr. Moore added that one of the concerns of staff review was regarding the hardship and requested Mr. Bell needed to discuss the hardship with the Council. Mr. Bell stated that the hardship being imposed upon him was because of the demolition of the property where you have a non-conforming building. A few years ago when they tore down the house on this particular property, he had a carriage house that could have been left had the ordinance not required him do tear it down. After that period, the ordinance was changed to permit non-conforming structures to be left on the property and that is the case next door. Mr. Bell stated that when the house next door is torn down, they are leaving the guest house, which is directly on the property line. Mr. Bell stated that the pergola is more of a visual screen, and that it does not block the neighbor's air or ventilation of any kind.

Town Clerk Mary Pollitt swore in all witnesses that would be testifying regarding this and all variances on this agenda.

Mrs. Smith asked each member of the Council to state whether they have had ex parte communication on this issue. Mr. Wyett stated he talked to Mr. Bell, as did Mr. McLendon who stated he was contacted by Mr. Bell and he did look at the site. Mayor Ilyinsky stated he was not contacted by Mr. Bell. Mrs. Smith stated that Mr. Bell did call her and she did visit the site by herself Mr. McDonald stated that he spoke with Mr. Bell and visited the site by himself Mr. Shaw stated that he too had spoken with Mr. Bell and visited the site by himself

Mr. James Brindell, representing the resident at 240 Banyan Road, the lot to the north of part of this property and to the west of part of this property, and the resident is requesting the Council to deny this request based on the ground that there is no hardship in this case. Mr. Brindell stated that Mr. Bell could accomplish what he wants with vegetation that does not require setbacks. Mr. Brindell stated that the variance provision which requires the hardship demonstration also has a provision that says that adjacent non-conforming use of neighboring lands, structures or buildings in the same zoning district shall be considered grounds for the authorization of a variance, and based on this he does not feel the request passed the hardship test.

Mr. Bell stated that the cabana would not be attached to the pergola. Mrs. Smith questioned why the pergola could not be lined up with the western end of the house, therefore, not requiring the setback. Mr. Bell stated that he was contacted by Mr. Brindell this morning who informed him that the neighbor would not object if he was given certain rights across the frontage of Mr. Bell's property toward the lake. Mr. Bell stated he is actually putting the building further away from Mr. Brindell's client, not closer to him and does not understand his reason for the objection.

In response to Mr. Shaw's question, Mr. Bell stated that the width of the pergola was 10-12 feet. Mr. Bell felt that Mr. Bell could reduce the width of the pergola in order to meet the 10 foot setback and could still accomplish the screening of the property. Mr. Bell felt that more screening would be accomplished, the closer the pergola was built to the building. Mr. Shaw stated that if the pergola was brought back 10 feet no variance would be needed. A discussion ensued as to whether the cabana was an enclosed structure or not, as the bathroom portion was the only part that was enclosed. An enclosed accessory structure requires a 15 foot setback.

Mr. Wyett stated that the non-conforming structure to the south is not attractive and stated he is sympathetic with Mr. Bell's wish to hide the structure. Mr. Wyett stated he took note of the neighbor's objection, however, felt it was contrary to his own interest since Mr. Bell could move the structure closer to the neighbor's property. Mr. Wyett further stated that the nature of this property being completely hidden from the street, the likelihood of the structure to the south coming down is unlikely as it is the only good structure on that property, feeling that anyone who tears down the main house would leave the non-conforming structure and it should not be a detriment to the property to the north. Mr. Wyett stated that Mr. Bell is requesting this construction without infringing upon anyone else and the Council should be able to find some plausible reason to give him the variance requested.

Mr. Shaw asked if Mr. Bell would be agreeable to bringing the pergola to a 10 foot setback and allow the cabana to stay in line with the pergola so it would be a 5 foot variance. Mrs. Smith pointed out that the pergola setback variance would be eliminated and would only require a 5 foot variance for the cabana. Mr. Shaw stated he would also add a stipulation that the cabana should never be used as a habitable structure. Mr. Bell stated that he had no intention of turning the cabana into a bedroom, however, he would hate to encumber the structure in that way for someone who may buy the property in the future. Mr. Bell stated there was not enough room in the cabana for a bedroom.

Mr. Shaw made a motion for approval of the variance. Mrs. Smith stated that there would be no motion on the pergola since it was being moved further to the north and would not require a variance. The motion died for a lack of a second.

Mr. McLendon made a motion do approve as presented and find the hardship to be the irregular size of the land. The motion died for lack of a second.

Mr. Brindell stated that he wanted the Council to understand that the configuration of these lots was configured by Mr. Bell and is not a situation that was imposed on him. Building Official Moore stated that the accessory structure on the property to the south was permitted to stay by way of a zoning ordinance clarification and added that there was always a question as to whether accessory structures had do remain or be removed. Mr. Bell stated that he did divide the property, however, he did it in concert with the Town at the time he tore the house down and pointed out that the zoning would have permitted 5 lots because of the size of the land. At the time this was done, he worked with the Building Official to work this out to be only 3 properties and because of that there is obviously an unusual configuration of the land.

Mr. Moore stated that the Council has already seen one variance related to this property. Mr. Moore gave a brief history of the property and how it became developed as it stands today. Mr. Moore pointed out that while there is enough square footage for 5 lots if this was considered under subdivision, however, not enough street frontage existed and therefore would have required a street installed. It has been the history of this Council not to approve 5 lots with any subdivision.

Mr. McDonald made a motion for denial based on the lack of a hardship. Mr. McDonald stated that he did not feel there was a hardship shown. Mrs. Smith passed the gavel and seconded the motion. Mr. Bell stated that, taking everything into consideration, he felt the shape of the lot is grounds for the hardship, plus the change in the ordinance during the development. Mr. Bell stated that he has met all other requirements in applying for the variance. Mr. Bell stated there are other pergolas in Town that have been granted setback variances and felt he was not doing anything to hurt the owner to the south who has his structure on the property line nor cutting off any air or ventilation. Mr. Bell felt he met all requirements of the request for the variance.

Mrs. Smith pointed out again that the pergola and the cabana could both be built without a variance.

On roll call, the motion passed for denial of the variance by a vote of 3 ayes and 2 nays, with Mr. Shaw and Mr. Wyett casting the nay votes.

Mr. Shaw made a motion, seconded by Mr. McLendon, to re-arrange the agenda to hear D. Other -1 at this time. Motion carried unanimously.

D. Other

I. Consideration of Request for Waiver to Section 12-51, "hours of Construction 32 Work," by Mr. Mero Susnar at 331 South County Road for Repavement of Parking Lot.

The agent for Mr. Susnar addressed the Council stating they have been working with the Post Office in redoing the parking lot because it is in bad shape. The Post Office is closed on Monday because it is a holiday and has agreed to divert the 4 trucks to the north station so the asphalt people can perform the work on Monday. The prep work would be completed on Saturday and the asphalt work completed on Monday.

Mr. Shaw made a motion to approve the request for a waiver do Section 12-51, "Hours of Construction Work" at 331 South County Road for repavement of the parking lot. Mr. Wyett seconded the motion. The motion was unanimously carried.

C. A. Special Exception No.29-95 - Keith and Renata Jones, 139 Sea Breeze Avenue; do allow a kitchen facility to remain in an accessory structure pursuant to Section 5.5 1(b)(5) of the Town Zoning Code. R-B District.

Peter Broberg, representing Mr. and Mrs. Jones, stated they are remodeling the house and the guest house was approved to have a kitchen by the Town Council in the 1950's, subject to being removed upon resale. Mr. Broberg stated that upon resale it was not removed and had been sold 2-3 times since the original approval. Mr. and Mrs. Jones are staying in the guest house while they are remodeling the main house, and it was brought to their attention that the kitchen was in violation of the code, which prompted their filing the variance request. Mr. Broberg stated that they are willing to enter into the agreements according do the Code, 5.51, and would like to legitimize what is there and approved in the 1950's.

Robert Moore, Building Official, stated Mr. Broberg's history of the building is correct and staff has no objections providing the standard kitchen agreement is entered into.

Mr. Shaw made a motion to approve Special Exception No.29-95, to allow a kitchen facility to remain in an accessory structure at 139 Sea Breeze Avenue pursuant do Section 5.51(b)(5) of the Town Zoning Code. The motion was seconded by Mr. Wyett and unanimously carried.

5. Special Exception No.30-95 With Variance - 264 The Grill, 264 South County Road, to allow the restaurant do expand from 1,931 square feet, thereby exceeding the 2,000 square feet permitted use, To allow seating capacity to increase from 89 seats to 103 seats without providing additional 5 parking spaces required. C-TS District.

Mr. Robert Deziel, attorney representing the applicant, addressed the Council stated he would like to incorporate the application previously submitted to two handouts given to the Council, as well as a picture board and the accountant's letter submitted to Mr. Castro. Mr. Deziel stated that he reread the application and the code provision that deals with the special exception and the variance. He stated he would like to bring he special exception provision down to two provisions that he felt were applicable. These two provisions are whether the application is town serving and whether the application and proposed use interferes with the public health, wealth and safety or interferes with any odor or noise ordinance with the restaurant's neighbors. With respect to theTown serving issue, Mr. Deziel stated that during the month of December the owner of 264 canvassed approximately 1200 customers, and it was concluded that 74% of those customers met the requirement of greater than *50%* of town serving. At this time, Mr. Deziel stated he felt that the application and the materials that he handed out described what they were doing, therefore, he felt the issue to be discussed was how the property affects the neighbors and how the expansion would affect the neighbors. Mr. Deziel stated they did not bring a court reporter to the meeting. Their approach is to come up with a solution and hopeflilly gain a small expansion of use that would put this restaurant 50% smaller than the average restaurant in town.

Building Official Moore stated that the Police Department comments show that the restaurant needs the 5 additional parking spaces. The Fire Department made no comments. The Landmarks Architectural Commission commented that this does not meet any of the conditions for granting this variance stating that the arguments are not valid and the parking problems may be injurious to the neighborhood. Public Works commented that solid waste facilities needed improvement. The Town Engineer commented that the applicant's operation continues to allow garbage can washing to flow onto adjacent property and roadway and felt this must be corrected. The Building Department commented that the issue of town serving must be addressed and parking needs to be provided. The Town Manager commented that he concurred with Public Works and the Building Department.

Mr. Deziel responded to these comments with the picture boards showing how the proposed expansion is intended to be used. Some of the expansion would be used for storage to clean up some of the clutter that may even find it's way out back and keep it in a more enclosed atmosphere. One section is an existing room that has a fire place that is approximately 7 feet high constructed out of stone. The applicant is proposing to put 4 tables in this room, with 16 seats. Regarding the parking problems, Mr. Deziel stated that last night the restaurant was filled, and they did a parking count. Mr. Deziel stated there are 43 parking spaces and there were only 16 spaces occupied, with no cars parked in front of the commercial area of the building known as the Plaza Building. Mr. Deziel stated he visited the site this morning do research the garbage problem. He presented pictures and stated that the garbage picked-up is not just from the restaurant but from the other establishments in the area as well. Mr. Deziel stated he talked to the sanitation workers who stated that the garbage is in the dumpsters where it was suppose to be and not on the ground. He further stated he spoke to the Code Enforcement Officer who stated he has been called to the site and when he has visited the site he had not found garbage anywhere but in the dumpsters and stated that one problem with the walkway was employees at the restaurant would empty out garbage buckets by spraying a hose, allowing the garbage to go onto the ground; however, it ultimately gets picked up before it goes into the street. However, the water from this cleaning does go out onto the street. The owner stated that he is willing do remedy the situation. Mr. Deziel stated he has addressed and met the requirements with the survey. With respect to the parking needs, Mr. Deziel stated that they are adjacent to an area with ample parking space for evening parking and did not feel the 5 parking spaces were an issue.

Mrs. Smith asked if any members of the Council had ex parte communication with the applicant. Mr. Wyett stated he has spoken to Mr. Deziel. Mr. McLendon stated he has had no communication. Mrs. Smith and Mr. McDonald stated they also spoke to Mr. Deziel. Mr. Shaw stated he has not spoken to anyone regarding this item.

Mr. Deziel stated he noted there was a letter in the file from the law firm of Shutts and Bowen who represents Mr. Handelsman who owns the property to the north. Mr. Deziel stated he would be happy to respond to any questions from his attorney.

President Smith asked for comments from the public.

Jane Volk, resident of Phipps Plaza for 49 years, gave the Council copies of a plat plan and stated she was in attendance do speak on behalf of the Phipps Plaza Property Owners Association, who object strenuously to the granting of this special exception and variance as requested by the owners of the restaurant. Mrs. Volk stated this restaurant faces South County Road, however, the rear of the restaurant, including garbage pick up, deliveries and some utilities are on the Phipps Plaza side and squeezed into a very inadequate, confined space. Mrs. Volk stated that the east drive, the entrance to the Plaza, is 30 feet wide, and pointed out that today trucks were parked on both sides of that street making entrance very dangerous. The road behind the restaurant is 20 feet wide with a very shallow sidewalk. There are always cars parked on that sidewalk and throughout the day delivery trucks totally block the roadway detaining residents of the Plaza. Mrs. Volk stated that the residential areas to the west of the restaurant are less than 50 feet away. Across the east drive, the exit drive, are apartments. When the Plaza was planned the residents and owners were to park around the perimeter of the park since there was no off street parking and remains this way today except in a few instances where owners have been able do carve out a space or two. As noted in the request for the special exception and the variance it states that the restaurant operates within 1586 Sf for years and in the last 60 days it was increased do 1931 Sf and now the request is to increase the size to 2461 Sf, an increase of 531 Sf The variance request ignores the fact that no spaces have ever been provided for the restaurant. The restaurant, even while under different management, has been a source of unending problems as Town and police records will confirm. Mrs. Volk stated she had a transcnpt of a Town Meeting in 1980 which stated that they have been discussing Phipps Plaza for 3 years and every month someone was there complaining about the parking. Mrs. Volk stated that approving the clutter of more cars and trucks would be a hazardous route to take for the Plaza and the Town. Mrs. Volk stated the arguments for the reason this special exception and variance should be granted, were not based on fact. Mrs. Volk stated that the code required ample parking and this restaurant does not provide such and has applied for a variance since this requirement cannot be met under the present zoning code. Mrs. Volk argued that the increased traffic generated by a larger business, coupled with a shortage of required parking, is indeed a threat to the safety of the residential area. Mrs. Volk pointed out that in years past they have had a noise problem with the restaurant doors being open, noisy bands, drunken brawls and all of this is a matter of police record and existed even before an enlargement of 264. Mrs. Volk read from the technical memorandum prepared by the Town's consultants dated 3/28/79 regarding the rezoning of Phipps Plaza to multi-family residential which stated that Phipps Plaza is one of Palm Beach' historic landmarks and felt the increase of this restaurant would harm the value of the property around it. Mrs. Volk felt the use was not compatible with the adjoining areas and felt the structure was not conforming. She also stated that the use does not conform with the Comprehensive Plan, with states that intensity of use should not be allowed or increased. The valet parking, instituted a week ago, has been the worst experience with the restaurant, as it used every available space in Phipps Plaza. The property has been the result of many code enforcement problems. The location, availability and compatibility of the utilities are not satisfactory. Mrs. Volk discussed reasons why the property did not qualify for a variance based on requirements of the code.

Tibby Bartrum addressed the Council stating she has been a resident in Phipps Plaza for 15 years and is the elected president of the Phipps Plaza Condominium Association and represents 5 individual unit owners located in the Plaza building. Citing the history of the restaurant with broken beer bottles, parking problems, garbage concerns (including noise of garbage being through out), traffic problems that have denied her aceess to her own home plus the odor from the restaurant. Mrs. Bartrum stated that on numerous occasions the patrons have used the permit parking for Phipps Plaza, precluding visitors do the residents at the Plaza. Mrs. Bartrum stated she is opposed to the increase in size of the restaurant, adding that it does not benefit those who live in Phipps Plaza.

William Wertz, a resident for 30 years, stated the reasons the special exception should be granted list a statement regarding other restaurants that are located nearby. Mr. Wertz felt this was irrelevant because none of them abut the Plaza or discharge into the Plaza. Mr. Wertz emphasized the overcrowding with the parking and stated he had to direct a car going the wrong way in Phipps Plaza because they could not get out the proper way.

Trent Steele, representing James Bridgeman who owned the property located at 232 Phipps Plaza, stated Mrs. Volk expressed his concerns. Mr. Steele did not feel that Mr. Deziel was accurate when he stated this item only dealt with two issues. Mr. Steele stated that the history of this restaurant proves that it is not compatible with Phipps Plaza. With each encroachment of the neighboring business it is impacting negatively on Phipps Plaza which has been designated a landmark district. Furthermore, Mr. Steele was bothered by Mr. Dezeil's comments he received by discussions with adjoining property owners and Town staff Mr. Steele said that code enforcement will tell you about continuing problems with the restaurant. Mr. Steele stated that the intended purpose of the TCS District is to create, preserve and enhance areas of attractive small scale retail services. This restaurant is large enough and does not need to be any larger, with a number of restaurants in Town to serve the needs of the residents. Mr. Steele felt that the Council must find that the special exception use meets the requirements of the site plan review pursuant to Section 9.63 and the purpose of the review is to examine adverse impacts on adjacent areas and to assure that the use results in a positive contribution to the neighborhood and the Town. Mr. Steele failed to see how making this restaurant larger and worsening the problems would be a positive contribution to the area or neighborhood. Furthermore, Mr. Steele stated the Council must make a finding that approval of the site plan would not adversely affect the public interest and that satisfactory arrangement has been made concerning the intensity and use or purpose of the proposed development in relation to adjacent and nearby properties and the effect thereon. Time after time, 264 has appeared before the Council making requests and promising do fix existing problems and time after time the residents of Phipps Plaza had been let down. With regard do the variance, Mr. Steele did not understand why the issue of undue hardship has not been discussed. The owners bought this restaurant knowing it was adjacent to a residential area and owners have been able to successtully run the restaurant at its present size for many years. Mr. Steele does not find the hardship in this case to be valid. Mr. Steele stated that the Council must also find that the granting of this variance must not confer a special privilege pursuant do Section 10.13 and felt this set a dangerous precedent by opening the chance for other restaurants in residential neighborhoods to request the same variance.

Polly Earl, speaking for the Preservation Foundation, felt the application should be looked at in a slightly different way. Mrs. Earl felt that the Council should consider the 1979 zoning recommendations read by Mrs. Volk. There is an implicit agreement between the Town and the residents of this area that they gave up their commercial rights because the town rezoned their Plaza. They no longer had the option of the many different types of charming lucrative commercial development. Mrs. Earl felt that carried some responsibility for the Town to protect that residential quality. Mrs. Earl stated that the applicant is asking approving and saying they will deal with the problems after the variance is granted. Mrs. Earl felt that the restaurant should address the difficulties before any expansion is granted.

Mr. Deziel responded to public comments, stating that the situation needed to be placed into perspective. Mr. Deziel stated that Mrs. Volk has a tenant that occupied her space five years ago with 7 employees. Today that business has 11 employees with 11 cars and has grown over 50% without adding any additional parking spaces. Mr. Deziel stated the Phipps

Plaza has 10,000 Sf of commercial space, with residential uses above, and pointed out that there are only 7 parking spaces allotted for 10,000 Sf of commercial usage. Mr. Deziel stated that there may be problems in the area with parking and traffic, however, there were commercial uses in the area including restaurants and office uses. Mr. Deziel stated that this restaurant has been in this location for over 50 years and everyone who has moved in did so knowing the restaurant was there. Mr. Deziel stated his client wanted the expansion and was willing to work with the neighbors to try do make their life better and would like this discussion to be geared toward how to make this situation better. Mr. Deziel felt as though he had explained the application fully and honestly and was willing to address their comments and did not understand how some of the interest was not toward making accommodations.

Mr. Deziel stated that presently there is no outdoor seating at the restaurant. Mr. Deziel stated that his client is willing to agree, not withstanding the outcome of any litigation, there would be no night time outdoor dining and if ever given the opportunity would only like to serve lunches outdoors if this Council were to approve. Mr. Deziel stated that there may be an outdoor seating area for people waiting to get into the restaurant. In regard to the delivery truck problems, Mr. Deziel stated that they are only requesting 12 more seats and the delivery problems would not increase.

Jeanne Marks, owner, stated in the last 5 years she was not in control, however, since she has rented the space to Victor Demerinus, everything has been improved. At one point there was a truck stop in the back of Phipps Plaza. That was taken away and moved to the side of the building. That was taken away and there was one in the front which was also removed. In the last few years there have been very few trucks in the back. Phipps Plaza is the only entrance, however, parking is a lot better than it ever was and she flirther stated that the restaurant is the cleanest that she has ever seen. Mr. DeSusa, a resident in Phipps Plaza, has been accommodated by a trellis blocking the view of boxes in the back, and it was pointed out that he also washes his car in Phipps Plaza that results in water running into the street. Before the valet parking, many patrons would park in Phipps Plaza, however, today there is control of that problem. Mr. Deziel stated that the valet parking was instituted because they thought it was a means to better manage the parking at the restaurant in the evening.

Mr. Wyett asked if the applicant would be acceptable to no valet parking in Phipps Plaza, pointing out that there is plenty of parking on South County Road that is metered, however, the meters are turned off after 6:00 p.m. Mr. Deziel stated they would make an agreement to not valet park any cars in Phipps Plaza. Mr. Wyett stated that Mrs. Earl make some solid suggestions and felt that if problems could not be solved today, then this item should be deferred. Mr. Wyett added that he is concerned about the traffic problems even if the expansion was not granted and wanted to know where the trucks are going to park without blocking egress and ingress to Phipps Plaza. In response to Mr. Wyett, Mr. Deziel stated that the increase of an additional 350 Sf of space occurred 60 days ago and was an expansion that could be done without asking for a special exception. This expansion took booths and set them back approximately 15 feet. Mr. Deziel stated that the requested expansion is in addition to the expansion that occurred 60 days ago. The hours of operation are 5 days a week for lunch from 11:30 am. to 3:00, with dinners being served 7 nights a week beginning at 5:00 p.m. to approximately 10:00 p.m. The employees leave the premises anywhere from 10:30 p.m. to 11:00 p. m. Mr. Wyett asked if there were any steps that could be taken to trap the odors from the restaurant. The owner reported that new filters have been put in and the system is periodically cleaned by professionals and he had not received too many objections from the neighbors until today.

Mr. Shaw stated the applicant provided the Council with a statement on the percentage of Town residents that were served on a given evening, and the accountant who did the survey was not a certified public accountant. Mr. Shaw stated that he was concerned with a part of the drawing that indicated "tenant separation" and asked if that piece was a direct access to the street. Mr. Deziel stated it was not, it was Mrs. Marks' direct access. Mr. Deziel stated that tenant separation was their way of telling the Council that they will build a wall there that meets with Building Department requirements and there is no new access. In response to Mr. Shaw's question to the applicant referring to valet spaces available, Mr. Deziel stated that historically the spaces have been located on the street and First National Bank across the street has allowed cars to be parked in their lot. It was determined that there was no formal compensation agreement. Mr. Shaw stated that the client could not have the spaces on the street, they had to be confined to a parking lot. Mr. Shaw stated that from a safety perspective, patrons that use the valet parking are stopping in a no stopping and no standing zone and questioned the safety of this practice. Mr. Shaw pointed out that without valet parking fewer people stopped in front of the restaurant, and fewer people made u-turns in front of the restaurant. Mr. Shaw stated that they have asked a number of restaurants in town that haye appeared before the Council not to take any garbage out after 6:00 p.m.

Building Official Moore addressed the Council stating that the history of Phipps Plaza is that the zoning changed in 1979 for all of the Town, not just for Phipps Plaza, however, it is correct when Mrs. Volk stated the Phipps Plaza is a split area. It is an area that has commercial town serving now instead of the old CA zoning (Commercial) which it had prior to 1980, CTS on the area of South County Road and on the interior RC Multi-Family. Mr. Moore stated that what the Town does have inside the RC Multi-Family Zoning District are multi-family uses, single-family uses and indeed commercial uses. Mr. Moore stated that the Town was successtul in defending a lawsuit brought about by a resident of Phipps Plaza against the Town granting occupational licenses in areas that were grandfathered for commercial use within Phipps Plaza. The area now known as 264 has always had problems with delivery trucks, garbage odors and traffic. The residents call to complain and have come to tolerate the problems on an on-going basis, however, they do turn out when there is an application such as this to register their complaints because they feel this is their only forum to prevent the problems from increasing. Mr. Moore pointed out that there have been fewer complaints with the present occupant then ever before. The restaurant is non-conforming not as to use, but because there is no parking. Mr. Moore pointed Out there is not one space, however, Chuck & Harolds and Bradley's restaurants have no parking spaces at all. Mr. Moore stated that what is before the Council today is a request for an increase from 79 seats to 103 seats, using phantom parking spaces because of existing retail, which translates to a variance of 5 parking spaces. Mr. Moore stated that in other cases where there have been variance requests, the Council has had to make a determinations as to whether there was parking available on site or was there availability in adjacent lots within 500 feet that could be granted a special exception. In this particular case, the Council has already heard that there really isn't any special exception that could be granted because it is in a residential zoning district and there is not an off-site shared parking agreement. Mr. Moore was not sure a shared parking agreement would be permitted because of the shared residential zoning to the east of the bank. Mr. Moore felt the question before the Council came down to the intensity of use and the 5 parking spaces creating a hardship for a variance.

Mrs. Smith passed the gavel to Mr. McDonald as she had to attend a meeting of the School Board.

Mr. Shaw stated that in reality the restaurant has the opportunity to expand already within the guidelines and if granted the additional space, requested the approximate building time. Mr Deziel stated it would take approximately 60-90 days. Mr. Shaw requested the applicant defer this request since he has had a sizable increase and would like do see how the restaurant operates and what it does for the season. Mr. Shaw stated that the applicant could request a deferral or the application could be denied. Mr. Shaw stated that the applicant has stated that the problems can be resolved, which would be do his advantage. Mr. Shaw stated that the residents had the opportunity to address these problems that already exist with the restaurant and perhaps satisly both parties.

Jane Volk stated that the residents have tried to be cooperative with the restaurant and added that Mrs. Marks signed an agreement with Phipps Plaza in 1977 when they wanted an expansion of the liquor license for that area, promising that they would not park in the Plaza if they agreed to the expansion. Mrs. Volk felt they did not have a firm grip on issues at the restaurants as there are always new owners and questioned whether any promises made by this owner would carry over to the next owner.

Polly Earl addressed the Council and stated that it was difficult for five people to move with a common mind on a lot of very necessary details at this hour of the evening and believed that this situation required a total focus on detail. Mrs. Earl stated she sees the beginnings of agreements but has not heard details of such and that this area has relied on the good faith of the Town that has not been completely met. Mrs. Earl stated she would like do see the question of the delivery trucks solved and the question of the valet parking completely answered, feeling that this was a safety matter. Mrs. Earl felt the issue of outdoor dining has not been nailed down and felt that the situation needs to be better for everybody and the issue needs to be deferred so the residents can review the situation to determine what they need in the way of an agreement.

Mr. McDonald stated that it may be to the benefit of the applicant to defer this request for one month do see if anything could be worked out with the residents. Mr. Deziel stated that the outdoor dining issue is in litigation; the owner would agree to direct the valet parkers to not park on South County Road, and if any code violations were received because they broke that agreement they would abandon their rights to valet parking; and the issue of the delivery trucks could be solved with the opening of a wall and the installation of a fire wall. Mr. Deziel asked what the residents would like in regarding the delivery truck problems.

Tibby Bartrum stated that there are still other issues such as the noise and odor issue. Regarding the odor issue, there are still dumpsters that need do be emptied into the garbage vehicles. There is still a problem with the trucks arriving early in the morning. As far as the odor issue, Mrs. Bartrum did not feel this has been addressed.

Mr. Deziel stated they agree to investigate new odor controls and agree to put them in place. The noise regarding the garbage trucks, perhaps it is possible to work with Public Works to reroute those trucks do a later time of day.

Mayor Ilyinsky stated that Phipps Plaza has been a problem, some of which is self-imposed. On the other hand, there are issues to worry about since we are mostly a single-family town and not a commercial town. Mayor Ilyinsky strongly suggested that the applicant postpone for 30 days because without working out some of the problems there could be a denial this evening.

Mr. Deziel questioned if it would be deemed to be a different application if there was a determination made on this request today, knowing the rules regarding the same variance not being permitted for one year, if next month there is no request for a variance and they ask for an expansion of the restaurant to the corner for a total of 3600 Sf there would be 100 seats with no variances. Town Attorney Randolph stated that would be considered the same application as far as the special exception. Building Official Moore stated that he could not answer that question tonight without reviewing the question in detail, however, if an answer was needed this evening it could be subject to be overruled, however, it would be basically the same application without the variance request.

Mr. Shaw made a motion to defer this application to the February 13, 1996, Town Council Meeting. For clarification, Mr. Deziel again questioned if he changed the request to drop the variance and change the special exception to 3600 square feet if that would be considered the same application.

Mr. Moore restated that he cannot give Mr. Deziel an answer from a technical standpoint.

Mr. McDonald stated that staff was unable to answer his technical questions at this time and asked whether the applicant wished to proceed on the deferral to afford the applicant the opportunity to work on solving problems and hopefully come back before the Council at the next meeting for approval. Mr. Shaw stated he felt it was the applicant's duty to answer and defend each question on the application and the public bad the right to respond, and felt that the applicant would have that opportunity at the next Town Council meeting. Mr. Moore did not feel that the applicant tulfilled his obligation under the terms of the special exception conditions by only addressing the town serving aspect and the issue regarding the noise.

Mr. McDonald stated that there was a motion on the floor to defer this issue to the February 13, 1996 Town Council Meeting. Mr. Wyett seconded the motion. The motion was carried by a vote of4 ayes and 0 nays, with Mrs. Smith being absent for the vote.

Attorney Randolph stated there was still one issue for Council consideration, Resolution No.6-96 and read the following into record:

RESOLUTION NO.6-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWNOF PALM BEACH, PALM BEACH COUNTY, FLORIDA,OPPOSING THE PROPOSAL BY THE SCHOOL BOARD OF PALM BEACH COUNTY TO CLOSE THE MIDDLE SCHOOLGRADES 6,7, AND 8 OF PALM BEACH PUBLIC SCHOOLS.

Mr. McLendon made a motion to approve Resolution No.6-96, seconded by Mr. Shaw and carried by a vote of 4 ayes and 0 nays, with Mrs. Smith being absent for the vote.

XV. ANY OTHER MATTERS

Town Manager Doney stated that earlier today the Council adopted on first reading, Ordinance No. 6-96, and in order to ftirnish it to the appropriate state agency, requested permission to place on the January 22, 1996, 4:00 P.M. Special Town Council Meeting.

Mr. McLendon made a motion to place Ordinance No.6-96 on the January 22, 1996, Special Town Council Meeting agenda for consideration of second reading and approval. The motion was seconded by Mr. Shaw and carried with a vote of 4 ayes and 0 nays, with Mrs. Smith being absent for the vote.

Town Manager Doney stated that Mrs. Smith asked him to bring to their attention the discussions today about the animals. Mrs. Smith suggested that the Town Council refer this issue to the ORS Committee where it could be carefully reviewed for recommendation to the Council.

Mr. McLendon made a motion to refer the animal issue to the ORS Committee for their review and recommendation. The motion was seconded by Mr. Shaw and unanimously carried by a vote of 4 ayes and 0 nays, with Mrs. Smith being absent for the vote.

Town Manager Doney reminded the Council to take a look at the list of meetings scheduled for this month and felt it would be helpful to include them at the end of the agenda for easy reference.

XVI. ADJOURNMENT

There being no further business to discuss, the meeting was adjourned at 7:20 P.M.

Mary A. Pollitt, Town Clerk