

TOWN COUNCIL MINUTES OF MEETING HELD ON
JANUARY 9, 1990

Call to
order &
roll call

I. CALL TO ORDER AND ROLL CALL: A meeting of the Town Council was called to order by President Douthit at 9:30 AM on January 9, 1990 in the Town Hall Council Chambers. On roll call, all elected officials were found to be in attendance. Also attending for all or a portion of the meeting were Town Manager Doney, Town Attorney Randolph, Mr. McPhail, Mrs. Peters, Chief Terlizzese, Chief Elmore, Mr. Moore, Mr. Crouse, Mr. Elwell and Mr. Jakubiak.

Invocation
& pledge

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Mrs. Peters gave the Invocation and the Pledge of Allegiance was led by Mr. Doney.

Approve
minutes

III. APPROVAL OF MINUTES OF NOVEMBER 14 AND DECEMBER 12, 1989. On motion of Mr. Ilyinsky, the minutes were approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Approve
agenda

IV. APPROVAL OF AGENDA: On motion of Mr. Heeke, with 11 (b) (1), Variance No. 94-89 was deferred to the February meeting, the agenda was approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Presenta-
tions

V. PRESENTATIONS:

A plaque was presented to each of the following employees on their retirement from active employment and the employees were congratulated by the Mayor and the Town Council:

1. Retirement of Harold Christie, Public Works Inspector - Public Works.
ten years.
2. Retirement of Grace Lewis, Occupational Health Nurse - Personnel Department - ten years.
3. Retirement of Steve Middleton, Police Officer - Police Department
twenty-five years.
4. Retirement of Kenneth Splete, Firefighter/Driver Operator - Fire-Rescue Department -
twenty-five years.
5. Retirement of B. Val Williams, Assistant Fire Chief - Fire-Rescue Department - twenty-five
years.

Mayor's
comments

VI. COMMENTS OF THE MAYOR:

Mayor Marix gave her comments on mangroves and leafblowers:

"These are the Mayor's comments for January 9, 1990. We know that the mangrove is part of what must be preserved and at times we discuss hours discussing aspects of where a building or a dock can be placed in that regard. It has come to my attention, however, that an area of mangroves in our Town is very endangered. On the Southern Boulevard Park area, on the south side of the approach, we have a lovely park which is bordered by these plants. The most westerly portion which is a bird sanctuary - these plants are protected by a fence, which is hardly visible because of the growth around it. But from where the fence stops, easterly, this is nearer to Palm Beach, not only are the larger plants being cut, but the seedlings are dying. I think it is most important that a fence be placed up next to them for their protection. In a few weeks it would hardly be visible, but it would serve to protect them. In several places they have been severely hurt. One area where there is a garbage dump, it is obvious that the equipment that picks up the trash encroaches on them. If a fence were placed there, the garbage would remain northerly of the fence allowing the mangrove to continue to flourish. The park area would remain as it is for the pleasure of those driving by or stopping to enjoy it.

On another matter, I would like to answer some of the letters to the news media on the subject of leaf blowers. We have all read rather a lot of those lately. The Town has a Noise Ordinance, Chapter 12, Article 4 of the Town Code of Ordinances, which has quantitative limits for enforcement action against noise violation which include leaf blowers. In December of 1985, the Town Council adopted an Ordinance to further regulate the noise created by leaf blowers and other lawn maintenance equipment. That Ordinance provides restrictions on when leaf blowers and similar equipment may be used. The intent of that Ordinance is to protect the peace and repose of the residents of our Town. Unfortunately, the Town has been advised by the Town Attorney that leafblowers may not be banner, however, when complaints are filed with the Town's Building and Zoning or Police Departments, they are forthwith investigated. To legally enforce the Town Ordinance, a noise meter must be used at the site to determine whether or not the particular machine exceeds acceptable decible limits. Often the use of leafblowers for a very short period and when a complaint is made, the Town Police Officer or Code Enforcement is unable to arrive at the site with a decible meter while the blower is still being used; also the Town Police Officers have many other law enforcement responsibilities which must be attended to with higher priorities. More and more, these issues are being resolved amicably between residents without intervention by the enforcement personnel, however, the Town is continuing to try to enforce the Ordinance covering this problem."

Mayor Marix said she had read so many letters lately in the press on leaf blowers that she felt an answer must be given as we do have an Ordinance and we try to enforce it but it is difficult to enforce, but cooperation usually works better than antagonism.

Mr. Heeke asked if the Town Manager needed a motion from to implement this?

Mr. Doney did not believe so advising that the fence was extended on the east end, not only to protect the mangroves but to prevent trespassing on the southern part of the island, so he thought the fence should be extended. Mr. Doney indicated he will work with Mr. Dusey to have this fence installed.

Licenses
& permits

VII. LICENSES AND PERMITS:

A. Charitable Solicitations:

1. The Jewish Federation of Palm Beach County, Inc., No. 22-90.
2. United Cerebral Palsy of the Palm Beach Treasure Coast, Inc., No. 55-90.
3. Fraternal Order of Police Lodge, No. 19 - No. 79-90.
4. Center for Family Services, No. 252-90.
5. Opera Antica of Palm Beach, Inc., No. 271-90.

6. Friends of Akim, USA, Inc., Palm Beach Chapter, No. 280-90.
7. The Historical Society of Palm Beach County, No. 289-90.
8. The Auxiliary of Bethesda Memorial Hospital, Inc., No. 290-90.
9. Gospel Rescue Mission of the Palm Beaches, Inc., No. 291-90.
10. Edna Hibel Art Foundation; No. 292-90.
11. Israel Histradrut Foundation; No. 294-90.

Licenses
& permits

Mrs. Peters indicated the permits for 1 thru 11 are recommended by staff for approval. Motion was made Heeke, seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Other:

1. Dana-Farber Cancer Institute, No. 288-90 - deferred from Dec. meeting. Letter dated Dec. 29, 1989 from Francine M. Roller requesting withdrawal. Mrs. Peters explained they will not be raising funds and will not need a permit, so this can be removed from the agenda.

2. United Jewish Appeal, No. 49-90 - Deferred from Dec. Meeting. Mrs. Peters explained this was deferred because of the charitable event being held in a residential zone. Attorney Metzger addressed the Council indicating they did want to hold their event in a residential zone and it was a determination by the Council that this would not be permitted and he is back here today as the Town Council has heard the recommendation of the Zoning Commission to allow one event to be held per season per residence and he knows that will not be in effect until after the two readings of the Ordinance, with the second one being in February and he would not be able to appear before the Council prior to the March 1st event and he has submitted a revised application to hold a telephone solicitation in the Town of Palm Beach so the campaign can be conducted. He requested conditional approval be granted on the permit in the event the Ordinance is adopted. Mr. Weinberg moved a conditional approval be granted to United Jewish Appeal for their Charitable Solicitation Permit, and this would be if the Ordinance is adopted. Mr. Metzger stated he would like the permit to be received for the telephone solicitation so they may begin their campaign. Mr. Heeke suggested the requests be handled separately and he moved that the Charitable Solicitation Permit be granted for the telephone solicitation. Mr. Randolph pointed out there already is a motion on the floor which has not be seconded. Mr. Heeke asked the requests be handled individually and since there was no second to the previous request, he moved for the approval of the application for telephone solicitation of the United Jewish Appeal. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mrs. Wiener recalled there was a 4 to 1 vote on the proposed new ordinance which would allow one charitable function in a residential district and she doesn't know of anyone wanting to make a turnaround on what has been accepted as the other two meetings to discuss the zoning recommendation are pro forma as the Council has already pretty well moved in that direction and she wondered if based on that reasoning, whether or not the Council may give a conditional approval on this applicant as it has been discussed and the Zoning Commission has already recommended it. Mayor Marix realized the 5:01 PM meetings on this subject may seem like they are pro forma, but they are public hearings and that is why they are obliged to hold them after 5 PM, and she wondered if this type of approval is given, is the Council kind of riding over the head of the public. Mr. Randolph did not believe they were based on the type of approval that is being requested by the United Jewish Appeal as all he wants to do is not come back at a subsequent meeting if the Ordinance is adopted. He didn't believe they wished to do anything between now and the time the Ordinance is adopted and in fact, the Council can make that request.

Mr. Weinberg restated his motion that a conditional permit be given to United Jewish Appeal, conditioned on the proposed new zoning ordinance being adopted after the two public hearings. Seconded by Mr. Ilyinsky. Mr. Heeke asked how many people would be attending the event? Mr. Metzger responded they are expecting between 150 to 200 and they will make the provisions for the off-duty police officers to be on duty the night of the event. On roll call, the motion carried unanimously.

3. The Salvation Army, No. 197-90 - Mrs. Peters explained the Salvation Army has always observed the Ordinance in the past but due to a complete change in personnel, the application has been submitted after the fact. Mr. Ilyinsky moved the Permit be granted after the fact. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. Mrs. Douthit requested the applicant to not let this happen again. Mrs. Wiener asked if there is a fine provision in the Ordinance to handle things such as this? Mr. Randolph stated there is no fine procedure but the leverage would be in regards to future applications. Mrs. Wiener felt their staff must be aware of the fact that there are requirements and they shouldn't put the Council in this kind of position as they probably intend to be law-abiding, but there should be something in the Ordinance which would prevent this from happening. Mr. Heeke agreed there was some kind of control and perhaps Ordinance, Rules & Standards should look at this and think along the line of a penalty clause. Mr. Ilyinsky felt that could be a hardship on a charity. Mr. Heeke felt there should be some inducement to follow the rules. Mayor Marix noted the event was held at the Breakers and she has stated before the places where these events are being held should not give out the dates for the function until they are positive there is a charitable solicitation permit has been issued. She wondered if the fine should be imposed against the place where the charitable event is being held.

Attorney Randolph indicated there are some housekeeping amendments which will be made to the Ordinance and perhaps this is something that he can look at. Mrs. Ilyinsky reminded the Council that when a charity goes for an event booking, they have to do the booking over a year ahead of time. Mr. Heeke felt this was a subject they needed to explore a little more and he suggested this be studied and see what is recommended. Mrs. Douthit asked the Ordinance, Rules & Standards Committee to look at this.

4. Greater Palm Beaches Business & Professional Women's Club, Inc., No. 203-90. Mrs. Peters indicated this is this charity's first solicitation in Town and they were not aware of the fact they needed a permit and need a waiver to the advertising rule as they wish to hold their event on January 20, 1990. Mayor Marix felt the people at the Flagler are the ones that should have told them they needed a permit. Mr. Heeke moved for the approval of and the granting of a waiver to the Greater Palm Beaches Business & Professional Women's Club, Inc. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

B. BEVERAGE LICENSES:

1. Request for a New Beverage License by Samuel Lyon Sachs/J.V. Associates d/b/a The Ocean Grand at 2800 South Ocean Blvd. - 4 COPS. Mr. Doney indicated the staff recommends approval. Mr. Ilyinsky moved for approval. Seconded by Mrs. Weinberg. On roll call, the motion carried unanimously.

Beverage
Licenses

Licenses
& permits

2. Request for Transfer of Beverage License by Brett Gideon Tollman of T-H Court Limited Partnership d/b/a Chesterfield Hotel Deluxe Palm Beach at 363 Cocoanut Row from Alan Tremain of Hotels of Distinction, Inc., d/b/a The Palm Court - 4 COPS. Mr. Doney advised the application has been found to be in order and is recommended for conditional approval with the condition that the dining room and the bar is for the convenience of hotel guests and not to be advertised separately.

Mr. Weinberg asked if they accepted that condition? Mr. Moore indicated they have no choice as the zoning ordinance mandates this. Mr. Weinberg asked how the dining room in the Palm Beach Towers is operated as they advertise. Mr. Moore stated he would have to research it. Mrs. Wiener recalled an advertisement by the Garden Restaurant near the Sun and Surf. Mr. Moore stated he would review these. Mr. Ilyinsky moved for the conditional approval on the Beverage License for the Chesterfield Hotel. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. Mayor Marix asked if they have been notified of this condition? Mr. Moore responded they have been verbally fully advised of the restrictions regarding the license and he has looked at their brochure and found it not to be in violation.

VIII. OLD BUSINESS

A. APPOINTMENTS

Appoint-
ments

1. Architectural Commission - Balance of Term to expire March, 1992, deferred from December meeting. Motion was made by Mr. Heeke to defer this matter to next month. Seconded by Mr. Ilyinsky. Mr. Weinberg asked if the Golf Commission and Architectural Commission appointments can be addressed separately and he moved the Architectural Commission appointment be deferred. Mr. Heeke withdrew his previous motion. Mr. Ilyinsky withdrew his previous second. Mr. Heeke seconded Mr. Weinberg's motion. On roll call, the motion carried unanimously.

2. Golf Commission - Balance of Term to Expire November, 1991 - Deferred from December meeting. Mr. Weinberg nominated Eugene Pollack to the Golf Commission believing he would be a very well qualified member. Seconded by Mrs. Wiener. Mr. Moore pointed out this candidate is a current member of the Town's Zoning Commission and he would have to resign from the Zoning Commission and Mr. Weinberg advised he will do so. On roll call, the motion carried unanimously.

IX. NEW BUSINESS:

A. Bid Awards:

Bid
awards

1. Sealed Bid No. 003-89/90 - Underground Fuel Storage Tanks Removal at Loftin Street Properties, South Fire Station and the Par 3 Golf Course. Mr. Doney indicated Mr. Dusey has written a memo on this subject dated 1-3-89 and it is staff's recommendation the bids received be rejected and the Town readvertise. Mr. Heeke asked if the low bidder had staff people who had experience in the removal of underground storage tanks? Mr. Dusey indicated they claim no experience in underground tank removal and all that is needed is to be a general contractor or licensed contractor to remove the tanks and he prefers them to have prior experience as this can cause environmental problems in the event there is a problem. Mr. Heeke wondered if bonding or some insurance could be requested in case there is a problem. Mr. Dusey agreed. Mrs. Douthit felt it should be required because of EPA regulations. Mr. Ilyinsky moved the bids be rejected. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

2. Sealed Bid No. 004-89/90 - Five (5) 1990 Ford Crown Victorias (Police). Mr. Doney indicated they have this item budgeted and the low bidder is Don Reed Ford and the total amount is \$70,090 and the budgeted amount was \$85,000 and staff recommends this award to Don Reed Ford. Mrs. Wiener moved the award of the Bid No. 004-89/90 to Don Reed Ford as recommended by staff. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

B. Other

Flagler
fireworks
application

1. Consideration for Approval of Fireworks Application by the Henry Morrison Flagler Museum for Saturday, Feb. 3, 1990 from 7 PM to 8 PM for Annual Open House. Mr. Doney explained Fire/Rescue Personnel will be in attendance as well as Police Department personnel. Mayor Marix asked if they pick up the tab to which Mr. Doney responded affirmatively. Mayor Marix suggested the media mention this is upcoming so there won't be a lot of calls as some of the residents would be concerned. Motion was made by Mr. Heeke to approve the fireworks at Flagler Museum. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Fla.
League of
Cities

2A. Florida League of Cities 29th Annual Legislative Conference on February 8 and 9, 1990 in Tallahassee and Upcoming Palm Beach County Legislative Delegation Meetings. Mr. Doney advised he will attend and both Mr. Ilyinsky and Mayor Marix have indicated they may attend, if their schedules will allow. Mayor Marix indicated there is a conference by the Florida Shores & Beaches Preservation Association which she would like to attend in St. Petersburg on hurricane damage on the 14th through 16th and she wasn't sure if she would be able to attend both of these events. Mr. Weinberg volunteered to go if his schedule will permit. Mr. Heeke moved the Council approve the travel expenses of the Town Manager and such members of the Town Council who wish to attend these conferences and the member of the Town Council attending or the Mayor as the case may be, will be the delegate and the Town Manager will be the alternate. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Doney reminded there will be Palm Beach County Legislative Delegation Meeting and he would like Town Council authorization to continue the use of the services of Mr. LaFace to assist the Town on legislative matters and this will be a different approach but he thought it would be advantageous to ask Mr. LaFace to appear with the elected officials and staff at the local meetings here of the Delegation and Mr. LaFace has agreed to do this. He stated Representative Frankel has indicated her willingness to speak on behalf of the project and they are working to ensure she will be in attendance at the meeting on the 12th and the 26th and he will coordinate it with Mr. LaFace and make arrangements to be in the agenda, which request has to be made three weeks in advance of the meeting date. Mr. Heeke felt the Town appreciates this involvement by Mrs. Frankel and he moved that Mr. LaFace be engaged as recommended by the Town Manager. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mayor Marix thought there are two possibilities and that is either we get the funding for the beach renourishment or we do not get the funding, and she believed the Council has to take the time to think about two things - one - if we don't get the funding, what will they be doing - do nothing or two -

will they try to pursue the possibility of being permitted for a reef. She felt if they pursued getting a permit for a reef, it does not mean they have to do it, but merely allows us the right to do so, if we think it would be helpful.

Florida
League of
Cities

Mayor Marix felt if the money is forthcoming, then we have to give serious thought as to whether the sand should be dumped into the ocean or consider putting in a reef to hold onto the sand. In any event, it will cost the Town a lot of money and if we do get it, she doubts whether it would be forthcoming every year. She felt they were ignoring one of their responsibilities. She went last week with Mr. Doney and Mr. Elwell with a tourist group to look at the rocks and after a storm, they went down to look at the Dupont reef with Mr. Messersmith and some other political people and they were dumbfounded at the beach that was there. She stated they were elated at the thought there might be another solution and distressed to know of the difficulty of getting permits to do so, so she felt the Council has to make up its mind whether or not it will seriously pursue the possibility of permitting a reef, which doesn't mean they have to install it.

2b. Comments by George R. Frost, Chairman, South Lake Worth Inlet District, Regarding Lake Worth Inlet - Proposed State Legislation for 1990. Mr. Frost addressed the Council indicating he was appearing as the Chairman for the Inlet District and as a lobbyist for the Palm Beach Civic Association. He stated the subject is two-fold - legislation and beach erosion. He advised the Inlet District is in litigation having to do with sand losses and have just completed the first week of a trial which was continued to February and it involves, sand, the loss of sand and the lack of sand. He informed them there is a river of sand which flows down the beach and in the summer time when there is a quadrant of easterly winds, it moves northward at a slow rate and in the wintertime when there is heavy northeastern winds, it moves southward at a good rate. He noted the annual losses along this section of beach is about a quarter of a million cubic yards a year. He stated intrusions into this river sand cause changes in the distribution of the sand and the longer the intrusion, the more interruption there is and if there is an Inlet which goes along with that, all the sand is lost that comes down to that point, unless it is transferred mechanically with a Sand Transfer Plant.

Lake Worth
Inlet

Mr. Frost knows this Council saw the losses in the public beach when the groins were removed. He stated what the Palm Beach Inlet does to the beaches in Palm Beach and every beach southward, indicating the first recipient of the damage is the Town of Palm Beach and the second recipient is the Town of South Palm Beach, then Lantana, Manalapan and then the Inlet. He noted if the sand flow is interrupted in its entirety at the Palm Beach Inlet, the sand is lost which would normally come to the Town of Palm Beach. He stated the Corps of Engineers has done several studies, a few of which have been hidden, but they state the sand losses to the down-drift beaches in the Town of Palm Beach was eight million cubic yards when the study was done two years ago, and this is for the period since the Inlet has been created in 1924. He felt that eight million yards would equate to forty or fifty million dollars if the sand were to be retrieved, and he viewed this as someone owing this Town forty or fifty million dollars in sand, and that is what Section 111 of the River and Harbors Act is all about. He stated Ports are held responsible for the down-drift damage they do to the beaches and they haven't been able to make them fess up, but it is hoped they will be able to do so.

Mr. Frost then addressed the legislation - the Florida Statutes require inlets in the State of Florida to balance the sand flow across the Inlet so that neither side is unduly damaged and this law was enacted in about 1987, Chapter 161.142. He indicated at the same time this law was passed, they craftily exempted the real damager, the Port of Palm Beach, and a certain number of other ports in the State. He felt this was wrong that they were not required to transfer sands. He stated Chapter 403.02 of Fl. Statutes identifies certain ports and he views them as the major ports in the State. He stated Chapter 161 gives them this exemption. He would like the Town of Palm Beach to join with the neighbors to the south, including the Inlet District in trying to remove that exemption in the State Law, and he thought this could be done as any legislator should realize the long jetties at the Port of Palm Beach and the fast flowing inlet, 37 feet deep, has destroyed the beaches in Palm Beach. He felt the big ports should be doing the same thing the little inlets are required to do - transfer sand and balance the interest.

Mrs. Wiener asked if this case should be won, would there be large financial damages awarded? Mr. Frost believed there would be a chance and he would consider suing the U. S. Government for the down-drift damage they have caused as a result of Federally maintained inlets. He stated the law is on the books and it states the Federal Government is responsible for down-drift damages where a federal inlet is involved, but they have been waffling on it. He thought the case was clear and the Section 111 study has been completed, and he viewed the Town of Palm Beach's case as a very clear cut case of down-drift damages.

Mr. Randolph did not believe the legislation was being proposed to obtain damages, but stating the Chapter 163 provides the State may intervene if an Inlet interrupts the literal drift so as to interrupt the sand flow which normally comes and they can force the Inlet to bypass certain quantities of sand pursuant to the Legislation, which now exempts the Port. He believed what Mr. Frost was saying is let's not have the Port of Palm Beach exempt and let them do what every other inlet is supposed to do and bypass the sand.

Mayor Marix thought this important and asked Mr. Frost to get together with Mr. Doney. Mr. Frost reminded all the legislative delegation is the key and if they should be encouraged to be in the Town's corner, and he would be glad to work with Mr. Doney on this.

Mr. Heeke asked if Mr. LaFace would be of any assistance to which Mr. Frost responded he would be. Mr. Heeke believed the Town Manager should be authorized to engage Mr. LaFace in this activity on the Town's behalf and perhaps he could be contacted and come up with a figure which can be brought back to the Council at the February meeting.

Mr. Doney indicated he will be talking to Mr. LaFace about the mid-Town project, and will meet with Mr. Messersmith and the other municipalities and see if Mr. Messersmith would be willing to introduce this at the local delegation meetings and that will be coordinated with Mr. LaFace.

Mr. Heeke moved the Town Manager proceed with discussions with the neighboring communities southward to the South Lake Worth Inlet to have a coordinated effort to have corrective legislation introduced in the 1990 Session of the Legislature and secure from Mr. LaFace a proposed estimate of his fee for representations in this effort. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mid-Town
beach
nourish-
ment

3. Department of Environmental Regulation Application for FY 1992 Public Works Program for Mid-Town Beach Nourishment Project - Federal Funding Via Corps of Engineers. Mr. Doney explained DER has an annual water resources conference and the request is to have the Town Council authorize the Town Manager to file an amended application for the 2.5 mile project for the Mid-Town Beach Nourishment Project and as a back-up for the Federal Funding Request for 1991, this would be a Federal funding request for fiscal year 1992, if the 1991 request is unsuccessful. He stated he would also like to pursue the other related actions with the Department of Environmental Regulations. Mr. Heeke so moved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mayor Marix asked if there was any cost involved in this process? Mr. Doney responded this will be an amended letter application and there is no expense.

Sales Tax
Allocation

4. Proposed Legislation Regarding "Tourist/Resort Cities" by City of Daytona Beach Shores - Proposal to Revise State Sales Tax Allocation Formula. Mr. Doney stated the proposal is to encourage 1990 Legislation which would modify or amend the current formula for the distribution of State Sales Tax as currently it is based upon population estimates and what he is requesting Town Council's authorization to support the City of Daytona Beach Shores and other municipalities who are requesting an amendment to the formula to allow a more equitable distribution, because of the manner in which resort communities are required to serve the seasonal population and because the State Sales Tax Distribution Formula doesn't return the sales tax money based upon point of origin, but on a per capita basis, which he viewed as an inequitable formula. He noted the request is to cooperate with the other cities in an attempt to achieve an amended formula by way of State Legislation. Mr. Weinberg moved the Town cooperate. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

Approve
warrants

X. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR DECEMBER, 1989. Mr. Ilyinsky moved the approval of the Warrant List and Fund Expenditures Report. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Develop-
ment
reviews

XI. DEVELOPMENT REVIEWS:

A. Major Matters Previously Considered by the Architectural Commission at their Meeting on Dec. 20, 1989. Motion was made by Mrs. Wiener to approve the matters considered by the Architectural Commission on Dec. 20, 1989. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

The major matters considered were:

B74-89 - Landscape Plan for Sloan's Curve Homeowners' Assoc., - item removed from agenda.

B33-89 - Demolition of residence and construction of new residence by RVW Investments, at 275 Ridgeview Avenue. Item was removed from the agenda.

B70-89 - New roof and front entry for residence of Mr. & Mrs. Keenan Morrow, 593 Island Dr., Deferred.

B84-89 - Construct two commercial buildings - Biltmore Galleria, 255 and 265 Sunrise Avenue - Deferred.

B90-89 - Addition to residence of F. Deseta, 201 Banyan Rd. Approved conditionally.

B93-89 - Front Facade Change for Mark and Eileen Miller, 259 Clarke Ave Approved conditionally.

B 92-89 - New residence for the Estate of Paul L. Maddock, 1150 N. Ocean Blvd. - Approved conditionally.

B 94-89 - Pool House for Donna G. Keller, 220 Sanford Avenue. Approved.

B. Variances, Special Exceptions and Site Plan Reviews:

Old Business

Variance
94-89

1. Variances No. 94-89 - P. B. Land Investments, Inc., Graham-Eckes Academy Proposed Plat, 690 N. County Rd.; to allow construction of a residence providing a street side yard setback of 15' in lieu of 32' as required. R-B District. Deferred to Feb. meeting.

New Business

Variance
1-90

2. Var. No. 1-90 Gordon Sinclair, 324 El Bravo Way - to allow construction of a single family dwelling providing a front yard setback of 35' in lieu of 40' required per Section 5.14 (a) of Town Zoning Ordinance. R-A District. Since there was no-one in the room, a motion was made by Mr. Ilyinsky, seconded by Mr. Heeke to defer this item to the end of the agenda. Motion carried unanimously on roll call.

Variance
2-90

3. Var. No. 2-90 - Dorothy Price, 11 Via Vizcaya; to allow construction of an addition providing a ten foot north side yard setback in lieu of 15' required. R-A District. Mrs. Marjorie Meek addressed the Council noting the property is owned by her mother and she would like to enclose a terrace but needs to lengthen it a small amount. Mr. Heeke asked if it would bring it within the same plane as the other wing of the house? Mrs. Meek responded it would not change the present line of the building. Mr. Moore stated it would be a little off, but only slightly and he wished the Council to know staff has no objection to the request, as it is a minimum variance. Mrs. Wiener asked about the hardship. Mr. Moore indicated there is no identifiable hardship other than it is a very small continuation of an existing home that was built at a time when a ten foot sideyard was required. He stated the home is now non-conforming due to the requirement now of a larger sideyard area and he did not find this objectionable but there is not a true hardship. Mrs. Wiener asked if this type of variance was usually granted? Mr. Heeke indicated it usually is a split vote. Mr. Ilyinsky moved the variance application be approved. Seconded by Mr. Weinberg. On roll call, the motion carried, 3-2 with a negative vote cast by Mr. Heeke and Mrs. Wiener.

Variance
3-90

4. Variance No. 3-90 - David Jones, 215 Seminole Ave., to allow installation of a dish antenna 5' from the rear property from the rear property line in lieu of ten feet required. R-C District. Mr. Jonathan Knapp, the contractor, addressed the Council indicated they have a permit to install the dish but they wish now to install it closer to the property line in the rear of the property and the

reason is if they would install it in the area where they have the permit, they would have to remove a concrete bench and relocate fruit trees which would obstruct the inception of the signal. He felt the proposed location will be less noticeable from the adjacent properties. Mr. Weinberg asked how tall the trees were? Mr. Knapp explained they were above fifteen feet. Mr. Weinberg asked how tall the dish was? Mr. Knapp responded it is 17.6'. Mr. Heeke asked what the hardship was running with the land? Mr. Knapp stated this proposed location is the only place on the property where they could have an unobstructed signal. Mr. Heeke did not see anything unusual about the topography or the shape of the lot which would be a hardship and he moved for denial. Mr. Moore stated the staff also sees no hardship and he doesn't recall any variances granted in cases such as this in the residential district. The motion was seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously for denial.

Variance
3-90

5. Variance No. 4-90 with Site Plan Review - Rose Edwards, 32 Peruvian Avenue to allow placement of sculptures in variance with Town Zoning Ordinance Section 5.42 (b) requiring three off-street parking spaces and a variance from off-street parking spaces and a variance from the provision of shelter and toilet facilities. A variance from Section 5.50 (b) is required to allow one of the sculptures which is 16' in height to exceed 12' height limitation. C-TS District. Mr. Harold Dignatoff speaking for the applicant addressed the Council requested the variance. Mr. Weinberg asked if the sculptures were to be displayed for beautification or for sale? Mr. Dignatoff felt it would beautify Peruvian Avenue, however, he does believe the sculptor would sell them if someone were interested. Mr. Heeke asked what the hardship was for the variance? Mr. Dignatoff stated they own the back end of the via and the front end is owned by Mr DeMarco who wants to sell the property and has vacated his shops and as a result they get no traffic in the Via and have rented some of their shops for a smaller figure than they normally would get. Mr. Weinberg asked what the dimensions were of the sculptures. Mr. Dignatoff responded it is in the area of 20 x 60. Mr. Weinberg felt they were rather large and it will be crowded and it doesn't give them any air. Mr. Heeke did not believe they would be permanent on the property and he views this as an extension of a shop. Mr. Heeke moved the application for Variance 4-90 be denied. Seconded by Mr. Ilyinsky. Mr. Weinberg asked if they would consider reducing the number of sculpture there to beautify the area and serve as a park rather than a sales area? Mr. Moore indicated whether it was one of five, the staff's opinion would still be the same as they view it as an extension of a business. On roll call, the motion carried unanimously.

Variance
4-90

C. Other

1. Request by Hunzinger Construction Co. to Utilize Right-of-Way on Everglade Ave. for Villa Plati Project - Deferred from Dec. Meeting. James Frick, Project Manager with Hunzinger Construction Co. addressed the Council indicating he had been before the Council last month and was in receipt of a letter from Mr. William Warden, the L'Ermitage's manager and they have no objection to the expeditious completion by Hunzinger. Mrs. Wiener understood that this was with regards to the western portion of the work only. Mr. Frick agreed. Mrs. Wiener asked if this was the only part they were contemplating? Mr. Frick responded affirmatively. Mrs. Wiener moved this be approved as long as it stays within the boundaries agreed between Hunzinger and the people who live in the building closest to the western area. Mr. Frick stated this will be everything that is west of the L'Ermitage entrance. He stated they wondered if there were any provisions made for lighting on Everglade Avenue as there was no lighting required as a condition of the Building Permit and he understood that Mr. Tambone, the owner of L'Ermitage and Mr. Enrico Plati, the owner of Villa Plati have agreed in concept to share the cost in donating street lighting along Everglade Avenue and the details are being worked out. Mr. Heeke asked if this would be an amendment to the Site Plan? Mr. Moore stated it would be but Mr. Dusey would have to address it.

Hunzinger
Const. right
of way.

Mr. Ilyinsky seconded the motion. Mayor Marix asked why this had to come up as this is not the problem they were supposed to be addressing.

Mr. Doney pointed out that Mr. Moore had recommended the hours of construction be limited and no jackhammers be permitted and he wanted to be sure that was understood. Mr. Frick agreed. Mrs. Wiener amended her motion that the conditions be included that there will be no jackhammers and the hours would be 10 to 4 with an hour out for lunch. Seconder agreed to the amendments. Mrs. Wiener referred to a paragraph in the letter which stated and asked that this be adhered to and it stated: "We were further informed that any repair to the storm sewer will be made at the extreme western end of Everglade Avenue and will in no way interfere with vehicular traffic." On roll call, the motion carried unanimously.

2. Request by Fleischer's, Inc. to Utilize Right-of-Way at 363 Cocconut Row (Sidewalks on Cocconut Row and Australian Avenue) Chesterfield Hotel, (Formerly Palm Court Hotel) - Postponed from December meeting. Mr. Dino Gibaldi, the President of Fleischer's Painting addressed the Council and requested use of the right of way. Mr. Heeke asked if the Managing Director was an employee or was he a principal in the hotel? Mr. Gibaldi believed he was the Managing Director. Mr. Heeke indicated he has a conflict and will not participate in the discussion or the vote on this matter. Mr. Moore stated he had the same recommendations about the hours be 10 to 4 with an hour for lunch and he believed it would take about two weeks. Mr. Doney indicated a memorandum is in the back-up from Mr. Dusey where the conditions are outlined for the granting of approval. Mr. Dusey addressed the Council indicating if the conditions as specified in his Dec. 8th memorandum, and with the recommendations of Mr. Moore, he believed the work could be done with little disruption to the public. Mr. Ilyinsky moved the approval be granted with the conditions as outlined in Mr. Dusey's memo and the memorandum of Mr. Moore dated Dec. 11, 1990. Motion carried unanimously on roll call.

Fleischer's
Inc. right-
of-way

2. Var. No. 1-90 - Gordon Sinclair, 324 El Bravo Way. Mr. Sinclair addressed the Council indicating the variance is for a setback and in trying to keep the tone of the neighborhood, they would like the building to be set closer to the road, in keeping with the other houses on the street, which are landmarked structures. Mr. Heeke believed the hardship was that the contour of the road does and pointed out this house actually sits further back on the street than the others, and he moved for approval of Variance No. 1-90. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Variance
1-90

XII. COMMUNICATIONS FROM CITIZENS:

A. Mrs. Ellen Rampbell addressed the Council on the issue of traffic congestion at Publix during the season. She reported last week she and her daughter, age 5, were almost run over by a car who was using this roadway as a thoroughfare to get to his home across the street from Publix. She looked for the security officer and was told there was none as they had cut back on security. She believed there were too many shoppers for the parking area as people circle around and around looking for parking spaces. She was sure the Town never anticipated the closing of the super markets in West Palm Beach as now a lot of people from West Palm Beach shop at Publix. She pointed out people park in the Fire Lane and it terribly congested.

Communication
from citizens

Communi-
cations
from
citizens

She has talked to the Police Department about this but there was nothing they could do, as they didn't witness this incident. She suggested Sunrise and Sunset be made one way streets and that a sign be posted saying this roadway is not a thoroughfare. She suggested security men be posted at both entrances to Publix, which would have prevented the almost accident she and her daughter had experienced. She wanted to bring this to the Town Council's attention so that this couldn't happen to anyone else and when she reported it to the manager, Mr. Ramos, he stated if someone does get run over, it is their problem. She suggested perhaps a "Lot Full" sign could be posted so people would not keep circling around.

Mr. Heeke suggested another approach might be to look at the hedging at the exits of Publix as some of it is fairly high and a normal size person could probably not be seen if a driver was coming out.

Mayor Marix suggested that perhaps the Town Manager and the Police Chief could have a conference with Mr. Ramos and encourage them to give some thought to purchasing the lot behind the Publix and renting some of the spaces out to other people.

Mrs. Wiener commented on the fact that perhaps it may be that Publix may now be in a position possibly of not being Town-serving. She realized we need the market here but she felt that we should sit down with their people as there is a serious problem there with the parking and if a survey was made of how many cars go in and out of that place in a one day or one week period, we would be amazed and perhaps find that we are way off on the amount of parking we now require.

Mayor Marix felt there should be a meeting set up between all interested parties and she wished the Town would give some thought as to purchasing that lot and renting the spaces to Publix.

Mrs. Wiener disagreed stating they should be strongly encouraged to purchase

Mrs. Ilyinsky addressed the Council recalling she has been before the Council several times on this subject and was told the police can't really stop anybody from parking in the wrong places as it is private property.

Mrs. Rose Harwitz asked the Town Attorney if it was true that Publix could not be held responsible for something that happened in their lot? Mr. Randolph responded a person is responsible for what happens on their property. He suggested there should be a meeting and see what could be worked out with the store owner as there are a number of partial solutions that could probably be reached. Mr. Heeke felt nothing was going to control the irresponsible driver.

Mr. Ilyinsky asked if the Town police cannot make an arrest on private property for an illegal motion by a car? Mayor Marix responded they could but they have hired off-duty officers to be there. Mr. Heeke recalled the main reason they have sworn officers are because of the 212 complaints we have had between Jan. and August of a particular year and the officer is there to enforce the law. Mayor Marix stated she has seen the officers arresting people there.

Mrs. Douthit believed it was for shoplifting not illegal parking.

Mrs. Harwitz asked the Council if anyone has ever asked Publix to buy that lot? Mr. Ilyinsky stated they were asked and they refused. Mrs. Wiener pointed out that was a few years back. Mayor Marix thought like many things, with a cooperative suggestion of some kind, one gets much further than just telling them to go spend millions of dollars on their own. Mrs. Harwitz commenting she wouldn't want to see the Town subsidize Publix. Mayor Marix didn't believe they were. Mrs. Harwitz felt she believed in cooperation and if they were forced, for safest purposes, they might consider the buying of the property much more so than the continuous payment of additional people to prevent accidents. Mayor Marix pointed out the Town Attorney just indicated we cannot force them to buy more.

Mr. Winterfield addressed the Council suggesting that all contact with Publix be thoroughly their main office as that will get a lot more action than speaking on the local level. He wondered if Publix would be willing to nominally rent the property to the Town, if they did buy it, although there would be insurance problems, but if there is a question of authority, there would not be that question, if the Town were the lessor of the property. Mrs. Douthit believed this should be discussed with the Chief of the Police Department. Mr. Weinberg suggested perhaps it should be the Publix Safety Committee would should address it. Mayor Marix thought it should be referred to one person in the Town Administration to sort it out. Mrs. Douthit agreed with Mr. We

interfield about going to the main office.

Mr. Doney advised he would get together with the Town Attorney and the Police Chief and meet with representatives of Publix concerning the concerns expressed here today and ask for their cooperation and assistance in attempting to address an items of mutual concern.

B. Mr. Winterfield advised he has given two written memoranda and filed them with the Clerk on items considered on zoning and requested authorization for these memoranda to be included in the minutes of the meeting. Mrs. Douthit agreed.

Mr. Winterfield referred to the major items acted on by the Architectural Commission B94-89 Pool House and asked if an accessory structure was being built prior to the primary structure. Mr. Zimmerman responded the situation is there are two lots owned adjacent to each other and the primary dwelling is on one lot and another dwelling on an adjacent lot and there is a unity of title and Council acted on it last month.

XIII. ANY OTHER MATTERS:

A. DEDICATION CEREMONY OF TOWN HALL: Mr. Doney explained iron gates have been ordered and will not be ready for delivery until late March and suggested the dedication ceremony could be scheduled and it be recognized the renovation is complete except for a few items, and after discussion, it was decided to have the dedication at Noon on Feb. 13, 1990.

B. DEDICATION CEREMONY FOR SEAVIEW PARK TENNIS BUILDING. Mr. Doney indicated this will be held Monday, January 29, 1990 at 4 PM.

C. RETIREMENT MATTER. Mr. Doney reported Mr. Wojcik, a retiree of the Town, is attempting to raise money to supplement existing retirees pension amounts and if he is looking to raise funds for this purpose, would need to secure a Charitable Solicitation Permit. Mr. Doney felt there would be problems in the administering of these funds, if and when they are raised and he wished to make the

Town hall
dedication

Retirement
supplement

Council aware of it. Mayor Marix asked if someone wanted to donate money to the Town for retirees, could we not accept it? Mr. Doney did not know how this would be fairly distributed. Mr. Heeke knew there were State requirements also which may not allow this. Mr. Doney stated it is too complicated and has too many pitfalls and he will be telling Mr. Wojcik it cannot be done. Mr. Heeke agreed indicating it was not a function of the Town. Mayor Marix recalled the retirement benefits have been raised to bring the older retirees up to a minimum of \$300, which is paid out of the General Fund, and asked if this was to be in addition? Mr. Doney stated that was correct. Mrs. Wiener stated she would back the Town Manager's opinion on this matter to which the remainder of the Council agreed.

Retirement
supplement

D. FIRST FLOOR RENOVATION PLANS FOR FINANCE/TOWN CLERK'S OFFICE. Mr. Doney indicated the first floor renovation plans are in the Mayor and Town Council's office and asked them to look at them.

First floor
renovation

XIV. ADJOURNMENT. Meeting was adjourned at 12:25 PM.

Grace T. Peters, Town Clerk

TOWN COUNCIL MINUTES OF MEETING HELD AT 3 PM

JANUARY 11, 1990

I. CALL TO ORDER AND ROLL CALL: A specially called meeting of the Town Council was called to order by President Douthit at 3 PM on January 11, 1990. On roll call, Mayor Marix, President Douthit, President Pro Tem Heeke, Councilmen Weinberg and Ilyinsky and Councilwoman Wiener were found to be in attendance.

Call to
order &
roll call

II. INVOCATION AND PLEDGE OF ALLEGIANCE. Invocation was given by Mrs. Peters. Pledge of Allegiance was led by Mr. Doney.

Invocation

III. APPROVAL OF AGENDA. Mr. Heeke moved for approval. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

approve
agenda

IV. CONSIDERATION OF PROPOSED ALTERNATIVE ASSESSMENT PROGRAMS - OCEANFRONT ROADWAY PROTECTIVE SEAWALLS. President Douthit explained the procedure which will be followed which will be to hear staff's report; secondly, comments from the public; and third, consideration by the Council.

Alternative
assessment
programs

COMMENTS FROM STAFF: Mr. Doney reported the Oceanfront Roadway Protective Seawall has a long history. He stated there has been no formal decision made concerning the issue of assessments for identified work within the Oceanfront Roadway Protective Seawall Capital Improvement Program. He indicated at the end of 1989, the Council considered this issue and requested the Town staff notify the property owners within the proposed project area and the purpose of this meeting was identified in that letter dated 12-5-89 and identified also was the methodology being considered by the Town to attempt to equitably set both how the private property owners and the public property was especially benefitted. He stated regarding the issue of protection of Ocean Blvd., it is addressed in the Town's Code, and prescribes the ability to assess for those improvements when necessary and also contains emergency repair provisions. He noted this project has been studied in past years by Mock Roos & Associates, the coastal consulting engineers to the Town; by Coastal Planning & Engineering and Cubit Engineering within the Comprehensive Coastal Management Plan and has been an ongoing program. He commented on the fact there was major rehabilitation work done in 1975 and 1976 and the historical information is referenced in the Comprehensive Coastal Management Plan. He stated today the methodology needs to be discussed and the input from the abutting property owners was solicited in order they may make known their concerns.

Staff
comments

Mr. Dusey reported the seawall south of Hammon Avenue to Southern Blvd. was installed in 1929, basically in response to a number of hurricanes which occurred in 1926 and 1928 which were devastating to the Town. He indicated the basic construction at that time was the steel sheet piles with the thickness of about one-third of an inch, which were driven into the sand and a tie back system was constructed to constrain it. He stated in the late 1950's a gunite concrete surface was placed on the seawalls in an effort to impede corrosion. He noted at various times since 1964, toe walls have been constructed at a number of different locations and all of the maintenance work was cost-shared between the property owner and the Town on a 50-50 basis. He recalled in 1984, the Town Engineer, Mock, Roos & Associates, completed a study of the Town's Roadway Protective Seawall and a number of deficiencies were identified in that study, including deteriorated anchor rods, the tie-back systems, gunite's spalling and the need for toe-wall construction at a number of locations.

Mr. Dusey explained in the area between Via Bellaria and a bit south of Banyan Road, the Mock Roos study identified the need to make anchor tie-rod repairs, as well as gunite repairs. He stated prior to starting this work, however, Cubit Engineering was engaged to evaluate this segment of the seawall to make a determination if this repair method was appropriate, as staff had a concern that the proposed construction may be a little bit more than was necessary. He recalled at that time Cubit Engineering recommended an evaluation of the sheet steel because of the long term time it was exposed and to make a determination as to whether the sheet steel had deteriorated to the point where it could no longer support itself. He stated as part of the tie-back repairs which was done in 1986, portions of the gunite was removed and they measured the thickness of the sheet steel with specialized equipment and it was found that the sheet steel was indeed badly deteriorated and was structurally deficient and in a number of areas, there were holes in it. He indicated that because the Mock Roos study did not contemplate the need for structural repair or replacement of this steel sheet piling, the Town hired Coastal Planning & Engineering, Inc. to build on the Mock Roos study and make a determination as to exactly what had to be done for the entire Roadway Protective Seawall System and their recommendation was to replace the wall. He indicated final design plans were completed and the project was bid last summer, but the Town Council had been considering alternative assessment formulas and the award of a contract to complete the replacement has never been done.