TOWN COUNCIL MINUTES OF MEETING ON DECEMBER 13, 1994

I. CALL TO ORDER AND ROLL CALL - The meeting was called to order at 9:30 a.m. by President Wiener. On roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, President Wiener, President Pro Tem Smith, Councilwoman Royal, Councilman Shaw and Councilman Goldsmith. Also attending for all or part of the meeting were Town Manager Doney, Town Attorney Randolph, Assistant Town Manager Elwell, Assistant to the Town Manager Jakubiak, Police Chief Terlizzese, Fire-Rescue Chief Elmore, Public Works Director Dusey, Town Engineer Bowser, Planning, Zoning and Building Director Moore, Assistant Director Zimmerman, Code Compliance Officer House, Planning/Project Coordinator Frank, Risk Manager Martinuzzi, Finance Director Crozier, Mrs. Gorman, Town Clerk Peters and Deputy Town Clerk Pollitt. Call to Order and Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Father Warren from Bethesda-by-the-Sea. The Pledge of Allegiance was led by Mayor Ilyinsky. Invocation

III. PRESENTATION Presentations

A. Presentation of "Certificate of Achievement for Excellence in Financial Reporting" for Fiscal Year ending September 30, 1993, to Town's Elected Officials and Staff- Mr. Doney, substituting for Ms. Georgette Carroll from the Palm Beach Sheriff's Office, presented the award to Finance Director Marie Crozier and complimented Mrs. Crozier and the Finance Staff for the exceptional efforts resulting in the Town receiving the award from the Government Finance Officers Association for the sixth consecutive year.

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky wished everyone in the audience and all the Council members a very happy season and a successful new year. He expressed his pleasure for the opportunity of working with the Council and the residents of Palm Beach. Comments of the Mayor

V. APPROVAL OF AGENDA Approval of Agenda

Mrs. Pollitt requested that item IX.A.2., the American Jewish Committee, be added to the agenda, subject to departmental approvals. Motion made by Mrs. Smith to add item IX.A.2., the American Jewish Committee to the agenda. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Mr. Moore requested that item XV.C.4., Special Exception Number 31-94 for Lawrence Cummings be deferred until the January 10, 1995, Town Council meeting. Mr. William Zenna, Attorney for Mr. Cummings, stated Mr. Cummings will appear at the January meeting and requested the Council's indulgence. Motion made by Mrs. Smith to approve the deferral. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Mr. Moore requested item XV.D.1., the Request for Amendment to the First Amendment of the Blossom Estate Subdivision Agreement, be deferred. Mr. Peter Broberg, Attorney representing the applicant, requested the item be deferred to the February 14, 1995, Town Council meeting.

Mr. Moore responded no requirements were necessary for the deferral since neither a special exception nor a variance was involved, and it was an amendment to a subdivision agreement.

Motion made by Mrs. Royal to defer item XV.D.1. to the February 14, 1995, Town Council meeting. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Mr. Moore requested that item XV.D.5. be added to the agenda for Jo's Restaurant at 375 South County Road to consider a Request for Waiver to Section 12-51, "Hours of Construction Work," of the Town Code. Motion made by Mrs. Smith to add item XV.D.5. to the agenda. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Moore requested item XV.C.3., Variance Number 62-94 for Palm Beach National Bank & Trust Company, 125 Worth Avenue, be deferred to the February 14, 1995, Town Council meeting.

Motion made by Mrs. Smith to defer item XV.C.3. to the February 14, 1995, Town Council meeting. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Doney requested item XII.E.2., Consideration of Appeal by A. Paul Prosperi of the Public Works Director to deny a curb cut access to North County Road from 351 Crescent Drive be deferred to the January 10, 1995, Town Council meeting.

Motion made by Mrs. Royal to defer item XII.E.2. to the January 10, 1995, Town Council meeting. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

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

APPROVED AGENDA (ITEMS VI. THROUGH VII.)

Motion made by Mrs. Smith to approve the approved agenda. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Mrs. Smith requested clarification of the ORS meeting mentioned in the November minutes that was to be scheduled prior to the December meeting concerning the charitable event ordinance.

Mr. Shaw replied he had been out of town and a meeting will be scheduled within the next few days and a report will be available at the January 10, 1995, meeting.

VI. APPROVAL OF MINUTES OF NOVEMBER 9, 1994

Licenses and Permits

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Albert Einstein College of Medicine, Yeshiva University; No. 10-95
2. JFK Medical Center Foundation; No. 16-95
3. The Jewish Theological Seminary of America; No. 27-95
4. Good Samaritan Foundation, Inc.; No. 35-95
5. Brandeis University; No. 76-95
6. Mental Health Association of Palm Beach County; No. 145-95
7. Woman's American ORT; No. 167-95
8. Bascom Palmer Eye Institute; No. 213-95
9. Beth Israel Hospital; No. 287-95
10. United Jewish Appeal - Federation of Jewish Philanthropies of New York, Inc.; No. 346-95

B. Beverage License

1. Consideration of Application for Transfer of Ownership and Change of Name of a 4COP Alcoholic Beverage License from Henry Baron/China Food Corporation d/b/a Singing Bamboo to David Nelson DuBuc/Duker Incorporated d/b/a L'Ambiance, 350 South County Road

Regular Agenda

Public Hearings

REGULAR AGENDA

VIII. PUBLIC HEARINGS

A. Consideration of Request for a Partial Abandonment of a Sanitary Sewer Easement at 1574 South Ocean Boulevard - Consideration of Resolution No. 57-94

Mr. Randolph read Resolution No. 57-94:

Res. 57-94 Abandoning a portion of sewer easement 1574 South Ocean Blvd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ABANDONING A PORTION OF A TWENTY FOOT WIDE SANITARY SEWER EASEMENT LOCATED ON PROPERTY COMMONLY KNOWN AS 1574 SOUTH OCEAN BOULEVARD, IN THE TOWN OF PALM BEACH, FLORIDA

Mr. Dusey stated the resolution was a request to abandon 95 feet of a twenty foot wide sanitary sewer easement that is no longer needed for that purpose because of the manner in which the property will be developed. He added the property owners have been notified, and the Staff has reviewed the resolution. Mr. Dusey said Mr. Richard Johnson, 3 Lagomar Road, responded that the easement has a potential benefit to the surrounding properties. Mr. Dusey stated Staff did not share Mr. Johnson's opinion because the easement does not transverse the entire property, essentially serves only one property and the Lagomar subdivision currently has an adequate collection system.

Mr. Randolph, responding to a question from Mrs. Smith, said the privilege fee is not appropriate because this is not a road right-of-way that is being abandoned but only the easement is being abandoned. Mr. Randolph stated there is no "down" side to this abandonment in his opinion.

Mr. Dusey added he did not think this was a low water area.

There were no comments from the public.

Motion made by Mrs. Smith to approve Resolution Number 57-94. The motion was seconded by Mr. Goldsmith. Mr. Dusey requested that the three items mentioned in his memorandum of December 1, 1994, be included in the motion. Mrs. Smith and Mr. Goldsmith accepted the three items as part of the motion;

1. That a new sanitary sewer manhole be built at the terminus of the revised sanitary sewer easement. That the existing facilities, which will no longer be used, be removed. All engineering and construction costs shall be at the expense of the property owner.

2. That a unity of title be recorded for the property. Should a lot split occur in the future on this property, all necessary easements to provide sanitary sewer improvements to the newly formed lots will be dedicated to the Town, and that all sewer main extensions will be paid for by the property owner(s).

3. That the property owner grant to the Town ingress/egress upon their property for access to the manhole, upon reasonable notice by the Town except for emergency purposes.

On roll call, the motion carried unanimously.

Dune Preservation Permit App. 4-94 2275 South Ocean Blvd.

B. Dune Preservation Permit Application No. 4-94 - A Class I permit application of The Reef Condominium Association, Inc., 2275 South Ocean Boulevard - Applicant proposes to trim seagrape, remove exotic vegetation, and revegetate with shrub species per plan on file at the Town Building Department.

Robert Waldmann, Manager of the Reef Condominium, addressed the Council and said Mr. Brian House, Mr. George Gann-Matzen and the Reef have been working together over the last few years to prepare a plan to trim the seagrapes and proceed with the dune restoration. Mr. Waldmann continued the second plan submitted meets the requirements of the State agencies and has been reviewed by Brian House.

Mr. Waldmann said the seagrapes were not planted when the Reef was built, but they were added by a homeowner in 1982.

Mr. Gann-Matzen stated he had no special comments concerning this case, and this project was consistent with other projects approved by the Town Council. He had recommended in his November 4, 1994, letter to Brian House that the permit request be conditioned on the fact that the final quantities of plants that will be installed be subject to approval by the Town.

Motion made by Mrs. Smith to approve Dune Preservation Permit Application No. 4-94 with the condition final quantities of plants that will be installed be subject to approval by the Town. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

IX. LICENSES AND PERMITS

Licenses & Permits

A. Charitable Solicitation

1. American Associates, Ben-Gurion University of the Negev., Inc.; No. 277-95

Leah Siskin, Regional Coordinator for the American Associates, Ben-Gurion University of the Negev, addressed the Town Council and apologized for the clerical delay in filing the required results forms for 1990 and 1993 and promised the forms would be filed in a timely matter in the future. She added the Town of Palm Beach is very important to the organization, and they regretted the inconvenience.

Motion made by Mrs. Royal to grant the Charitable Solicitation Permit No. 277-95 to the American Associates, Ben-Gurion University of the Negev. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. American Jewish Committee, No. 125-95

Mrs. Peters said no one was present to represent the group, and the reason for this item to be added to the agenda was the scheduling of an event in January. She added, if the application was not approved at this meeting, a request for a waiver of advertising would be presented at the January 10, 1995, Town Council meeting. Mrs. Peters requested this item be approved subject to departmental approvals.

Motion made by Mrs. Royal to approve Charitable Solicitation Permit No. 125-95 subject to department approvals. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

X. COMMITTEE REPORT

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING OF DECEMBER 7, 1994

Report of the Public Works Committee Meeting of 12-7-94

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairperson Lesly S. Smith. On roll call, Chairperson Smith and Committee Member C. Gerald Goldsmith were found to be in attendance. Also attending this meeting were Mayor Paul R. Ilyinsky, Messrs. Robert J. Doney, Town Manager; Albert P. Dusey, Director of Public Works; James Bowser, Town Engineer; and Mrs. Mary A. Pollitt, Deputy Town Clerk. Mr. Richard Silvestri, Engineer, Representing Southern Bell Telephone Company, attended the meeting.

II. APPROVAL OF AGENDA - The agenda was approved as printed.

III. RESOLUTION NUMBER 36-94 - STANDARDS APPLICABLE TO PUBLIC RIGHTS-OF-WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH.

A. Consideration of Proposed Southern Bell Cabinets in Easements/Rights-of-Way.

After hearing the comments of Mr. Doney, Mr. Dusey, Mr. Bowser and Mr. Silvestri, IT IS THE RECOMMENDATION OF THE COMMITTEE THAT the proposed 5 to 6 Southern Bell Cabinets tentatively scheduled to be installed at the rate of approximately one per year be considered on a case by case basis, and a complete study be conducted by the Town of Palm Beach Staff including location, landscaping and/or screening of the cabinets. The adjacent property owner(s) is to be notified in writing by the Public Works Department of the site specific property location of the control cabinet.

IV. ANY OTHER MATTERS

Mrs. Smith reported a letter dated December 1, 1994, was received from Christopher M. Larmoyeux, a resident of Clarke Avenue, complimenting Mr. Dusey on his handling of the recent flooding situation on that street resulting from Tropical Storm Gordon.

V. ADJOURNMENT

The meeting was adjourned at 10:30 a.m.

PUBLIC WORKS COMMITTEE:

BY:
Lesly S. Smith,
Chairperson

C. Gerald Goldsmith,
Committee Member

OLD BUSINESS

XI. OLD BUSINESS

Appointments

A. Appointments

Golf Commission

1. Golf Commission - Three Three-Year Terms to Expire November 1997 - Deferred from November meeting

Mrs. Smith declared a conflict of interest concerning appointments to the Golf Commission because one of the applicants was her daughter. A conflict of interest form is on file in the Town Clerk's office.

Mr. Shaw suggested the three present alternate members serving on the Golf Commission be moved to the permanent status.

Motion made by Mr. Shaw to appoint Alternate Member Stuart Shulman to a full time member of the Golf Commission. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to appoint Alternate Member Robin Weiss to a full time member of the Golf Commission. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to appoint Alternate Member Allan E. Shore to a full time member of the Golf Commission. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to appoint Danielle A. Hickox as an alternate member to the Golf Commission. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to appoint Colonel I. Henry Stern as an alternate member to the Golf Commission. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Motion made by Mr. Goldsmith to defer one alternate position to the January 10, 1995, Town Council meeting. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Seaview Park Commission

2. Seaview Park Commission - One Three-Year Term to Fill Balance of Term to Expire February 1995 - Deferred from November meeting

Motion made by Mrs. Royal to appoint Renee Fisher to fill the balance of the three year term on the Seaview Park Commission to expire February, 1995. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 4/1 with Mrs. Smith casting a negative vote.

Zoning Commission

3. Zoning Commission - One Three-Year Term to Fill Balance of Term to Expire February 1996 and One Three-Year Term to Expire February 1997 - Deferred from November meeting

Motion made by Mrs. Royal to defer all appointments to the Zoning Commission to the February 14, 1995, Town Council meeting. Mr. Goldsmith seconded the motion.

Mrs. Smith suggested the appointments be deferred to the March 14, 1995, Town Council meeting to allow for any new Council members to become familiar with the potential appointees.

Mrs. Royal amended the motion to defer all appointments to the Zoning Commission to the March 14, 1995, Town Council meeting. Mr. Goldsmith agreed to the amended motion. On roll call, the motion carried unanimously.

B. Other

1. Consideration of Future Water Supply Issues

Consideration of Future Water Supply Issues

a. Additional Notification to City of West Palm Beach by Town Attorney Concerning Condition of Water System.

Mr. Randolph referred to his December 8, 1994, letter to Patrick Brown regarding the water distribution system. Mr. Randolph continued that since franchise negotiations began with the City of West Palm, it was recognized that capital improvements were going to be needed in order to bring the system up to par from the standpoints of pressure and lines. He stated the Town has not gone forward with the negotiations relating to the franchise, and the City of West Palm Beach has not gone forward with the contemplated capital improvements. Mr. Randolph said that Mr. Bowser and Mr. Dusey would be able to address the areas in which the City of West Palm Beach has performed work.

Mr. Randolph stated, regardless of whether the Town has a franchise or not, the distribution needs to be improved, and the purpose of the letter was to advise the City of West Palm Beach that the improvements needed to be done immediately because of lack of attention during the past few years. He added, although the Town is nearing the end of the franchise agreement, the obligation of the City of West Palm Beach is to provide a reasonably good system. Mr. Randolph continued the City of West Palm Beach has the obligation to continue to supply water and to supply it in a reasonable manner.

Mrs. Wiener asked Mr. Randolph why it took almost a month to write the letter after Council at the November Town Council meeting directed the City of West Palm Beach be contacted concerning the issue of the condition of the water delivery system?

Mr. Randolph responded he was not aware of a specific deadline for the issuance of the letter.

Mrs. Wiener replied this was an important issue and the City of West Palm Beach should realize they have obligations to the Town regarding the water delivery system, and she expected to receive a reply to Mr. Randolph's letter within a week or so.

b. Status of Water Franchise Agreement

Status of Water Franchise Agreement

Mr. Randolph reported the franchise agreement lapses February 9, 1995, and no further formal discussions relating to the franchise agreement have taken place. He added if any more discussions are to take place, the Council should provide direction requesting contact should be established with West Palm Beach. He added the letter of December 9 will probably evoke that type of discussion. Mr. Randolph said he was aware that the City of West Palm Beach was reluctant to enter into large capital improvements regarding the system without having some sort of commitment from the Town regarding the continuation of supplying water to the Town.

Mrs. Wiener responded the purpose of the December 9 letter was to point out to the City of West Palm Beach that they had the obligation to turn over the water system to the Town, if that was going to happen, in proper order. She requested that Mr. Dusey or Mr. Bowser inform the Council of any improvements to the system and express their opinions on what should have been done.

Mr. Randolph interjected, although the franchise expires February 9, 1995, the Town has the option at the end of the franchise or after the franchise has expired to purchase the system. He added an appraisal of the system would be needed, and a value determined based on depreciation, etc. Mr. Randolph continued this would have to be accomplished before the expiration of the franchise if improvements were going to be made as this would increase the price of the system.

Mrs. Wiener responded these improvements should have been made sometime back, and the fact that it was done belatedly does not enter into it. She added there are ways to figure that out.

Mr. Dusey reported that, recently, during the Town's reconstruction projects on Park Avenue and Seaspray, the pipes were old enough on those particular streets to be replaced. He added the City of West Palm Beach plans to continue that process with the two projects coming up this summer. Mr. Dusey said that the same work has been done in West Palm Beach, which the City of West Palm Beach claimed benefited the Town, such as installing storage tanks and increasing the size of the water mains in West Palm Beach. He added that some rehabilitation was done on the tank at the Country Club within the last four or five years.

Mrs. Smith asked what the condition of the pipes was when they went in on Seaspray and Clarke Avenue?

Mr. Dusey responded they were very, very bad--brittle, and deteriorated from age.

Mrs. Smith stated she thought the work West Palm Beach did was not in the area of improvements but in the area of maintenance. She asked Mr. Randolph if legal steps should be taken to verify that the system being used to supply the Town with water is maintained, and if that were an option?

Mr. Randolph responded that would be an option if the Town could prove, by expert testimony, that the system is not being reasonably maintained. He continued that at the expiration of the franchise, the Town may not have as much leverage as when a franchise is in effect. Mr. Randolph stated West Palm Beach's obligation is to provide a reasonable system, and if an expert would come in and say this is not reasonable, then that option is available.

Mr. Randolph, responding to a question from Mrs. Smith, replied he personally was not familiar with the system to know what testimony an expert would give regarding the system, nor did he know how the system would be appraised. He continued one of the ways to appraise this type of system is based on depreciation, and if the Town would purchase the system, the price would be based upon the depreciation value, and the system would cost a lot less than if the City of West Palm Beach would make improvements.

Mrs. Wiener said the Council at the November meeting directed a letter be written to the City of West Palm Beach to advise them that the Town was aware and dissatisfied with the fact that the City of West Palm Beach is not coming forth with anything, and they have not lived up to their obligation of maintaining the system in proper order. Mrs. Wiener continued it is not a question of upgrades, but the pipes should not be crumbling when the road is excavated, and the City of West Palm Beach has not done what they were charged to do under the contract with Palm Beach although the Town has complied with its part of the contract. She added this is a year by year situation and the Town may or may not continue receiving water from West Palm Beach and the Town is left with a corroded, difficult system that is not in order. Mrs. Wiener stated this was the whole point of the letter which should have been strongly worded.

Mr. Randolph replied he would appreciate direction from the Council if anything else is required at this point. He added West Palm Beach's response to the letter is the issue at the present time.

Mrs. Smith asked if Patrick Brown, attorney for the City of West Palm Beach, put this item on the agenda for the West Palm Beach City Commission. Mr. Randolph responded he was not aware of that. Mrs. Smith suggested that if it is not an agenda item, that means the City of West Palm Beach is not going to answer.

Mrs. Wiener proposed a meeting be arranged with West Palm Beach advocating development of a creative, financial approach. She added the price of water will be going up and the Town is faced with trying to have the availability and at the same time secure the lowest price possible for the Town. Mrs. Wiener continued that West Palm Beach has the availability and, unless the Town goes into salt/sea water desalinization, the South Florida Water Management District is going to have the final say as to the amounts of water the Town can have in times of drought. She encouraged the concept of a financially creative formula where the Town has rate protection that would be different from other groups.

Mrs. Wiener said the City of West Palm Beach has raised the rates and since the State permitted the supplier to raise rates, these rates will not be lowered regardless of all the conversation regarding the rates. She added the Town should be in a position to make the future water supply situation as painless as possible to the residents of Palm Beach.

Status of Water Franchise Agreement

Mr. Goldsmith stated the City of West Palm Beach is the only town in South Florida that is going to have an adequate, and almost unlimited, supply of water subject to the approval of South Florida Water Management, because of actions they have taken for the reserve and distribution systems as related to their water catchment reserve. He added, if South Florida Water Management permitted the City of West Palm Beach to use the water and not divert the water elsewhere, there will be almost unlimited water for the foreseeable future because of their diversion of water from the Everglades at the request of governmental bodies and others. He continued the Town should have a discussion with West Palm Beach in an attempt to arrive at a solution where the Town feels it is not being discriminated against economically and can live with that decision. Mr. Goldsmith said the future will be based on an adequate supply and not all of the other fancy things discussed by Council will work. He added, in the future, the other alternative suppliers presented to the Council will not be in a position to supply the Town with water. Mr. Goldsmith said, from his personal studies, Lake Worth and Riviera Beach will not be able to supply the Town in the future although a contract may exist. He added the manufacturing of water will not be economically viable in the foreseeable future. He reiterated discussions with West Palm Beach should continue.

Mrs. Smith said the Council has retreated to the point where they were previously, and no progress was made. She said the Town residents have two schools of thought--one school feels the Town should be independent, have its own independent water source in some area regardless of the cost. She continued the Town Council is attempting to find the most economically, viable solution for the residents of the Town. Mrs. Smith added she honestly does not know the answer at this point; although the studies she has looked at state the average cost to a resident would be $35, and if the Town were independent the proposed cost would be approximately $73, but that study was done four years ago.

Mrs. Smith stated the question is, do the residents of the Town of Palm Beach want to spend the money? She thought, at one point, the issue should be presented to the residents in the form of a referendum--water at any cost or back to the City of West Palm Beach who has the supply? She added she strongly supports discussions with West Palm Beach; although it may not be appropriate on the staff level as the two staffs had basically reached an accord almost one year ago when the new city attorney for West Palm Beach scuttled the efforts. Mrs. Smith suggested the Palm Beach Town Council may have to discuss the issue directly with the City of West Palm Beach Commission; she would not like to see the water supply question turned into a political issue but resolved with the best interest of the Town residents in mind.

Mrs. Royal stated two points are:

1. Although the City of West Palm Beach has large water supplies currently available, South Florida Water Management District will put limitations on every provider when there is a drought, and the Town of Palm Beach will not necessarily receive water when there are drought conditions.

2. The Town has to negotiate from some position of strength and if the Town returns to negotiations and simply says treat us more fairly, that is not a position of strength. The Town needs to have some viable alternatives in hand when negotiating with West Palm Beach to allow the Town to walk away from the negotiations.

Mrs. Royal added to negotiate with the City of West Palm Beach, the Town needs to have something of negotiable value, and the Town does not have this at the present time.

Mrs. Wiener stated, as the City of West Palm Beach's major customer, the Town does have something of negotiable value, and as the February deadline approaches, West Palm Beach must continue to supply water to Palm Beach. She continued everything they do within their system must meet the financial requirements including the Town of Palm Beach, and they cannot plan or move forward without including the Town.

Mr. Shaw questioned the geographic location of the City of West Palm Beach as it superseded the rights of the Town of Palm Beach to the same water that the State granted to West Palm Beach? He further questioned the fairness of the State's granting the rights to the water because of West Palm's location when all communities have equal rights to the same water.

Mrs. Wiener replied the City of West Palm Beach owns the system, but when South Florida Water Management District states only so much water will be available, the water will be allocated for each place. She continued the reason West Palm Beach has control is because the Town of Palm Beach let them have the distribution system years ago; however West Palm Beach will not be allowed to have great amounts of water and give Palm Beach none.

Mr. Goldsmith responded that water is located in certain places and because of the nature of the draining and solving the Everglades problem, the City of West Palm Beach has elected to store or retain that water in a water catchment area. He continued this is an act of location and not a State mandated issue. Mr. Goldsmith said the City of West Palm Beach has done a good job of reaching agreements with various governmental authorities to use the water they want to store somewhere, and those agreements have been signed. He added $40 million has been allocated by the Corps of Engineers to divert canals into the catchment area, and that project is underway at the request of the South Florida Water Management District and other governmental agencies involved in the Everglades.

Mrs. Smith recalled the water problem for South Florida originated when Disney World was built in the middle of the water catchment area in the State of Florida and the water table for the State was destroyed causing the water to flow south into West Palm Beach. She added the Army Corps of Engineers was part of the problem not part of the solution.

Mr. Goldsmith said when Florida was settled the idea was to drain water to have dry land, and such a good job was done that millions of gallons of water are presently dumped into the Ocean. He continued in an attempt to recapture some of that water, nearby areas have been polluted.

Mrs. Wiener reiterated the two possible paths for the Town of Palm Beach are for the Town to go out on its own or stay with the City of West Palm Beach where there is a supply of water and, the Town has to review the costs and have a plan to move forward.

Mr. Shaw said he thinks there is a third solution and that is to take water from all available sources including West Palm Beach as the main source for potable water and to secure a non-potable supply from another source such as Lake Worth or Riviera Beach. He continued that there may be times when one is able to supply more than the other, and the system would be so designed that as long as the Town needs to use potable water from non-potable irrigation sources, the Town has that option to do so. Mr. Shaw added the distribution has outlived its useful life, and it seems criminal to put additional funds to patch up small areas, and not define a program that will ultimately get the Town to the point it needs to be. He said the Town should take advantage of the fact that West Palm Beach has allowed the distribution system to deteriorate to the point where it is brittle.

Status of Water Franchise Agreement

Mr. Shaw suggested that perhaps the issue is not to have the existing water system replace for potable water, but to have a new modern system installed and use the existing system for non-potable water.

Mr. Goldsmith responded that if the distribution system is replaced, every road in the Town will be torn up over a very long period of time, and the residents of the Town would not put up with that. He added these projects have social consequences.

Mr. Shaw agreed there are social consequences, but the Town is going to have to make these difficult decisions in the next few years. He added other municipalities, such as Boca Raton, are already using gray water for irrigation, and other states have mandated that dual distribution systems be implemented. He continued this is reality, and it can be started piece meal or by areas.

Mrs. Smith mentioned the Clarke Avenue project is part of the capital improvements program for the Town of Palm Beach and a long range plan is in place for additional projects of this type. She continued the Council has been reviewing and looking at these projects, and other streets will be torn up regardless of the fact that leaky pipes are being replaced. Mrs. Smith said these projects are not done all at the same time because of the allocation of funds.

Mrs. Wiener asked Mr. Dusey if new water pipes were installed under Worth Avenue when that project was completed in 1980 or 1981?

Mr. Dusey replied he was not working for the Town at that time, but Mr. Doney remembered the pipes were replaced as were other utilities in need of upgrading. Mr. Doney offered to verify that information.

Mrs. Wiener summarized that different views had been expressed concerning the status of the water franchise agreement with the City of West Palm Beach, but the issues of the letter and forward movement came out of the discussion. Mrs. Wiener suggested the discussion continue with Item c.

c. Non-Potable Alternatives

Non-Potable Alternatives

Mrs. Royal referred to the letter from John Potts, Hutcheon Engineers, dated November 30, 1994, and revised December 2, 1994, outlining the scope of work that Hutcheon Engineers suggested concerning the feasibility and the costs of installing an irrigation quality water supply system.

Mr. Dusey responded the report was a series of proposals to cover the gamut of the choices to provide non-potable water to the Town. He added in a memorandum from Jim Bowser to Robert J. Doney dated December 5, 1994, the Public Works Department recommended that items I.A., I.B., II.B., III, V, VI and VIII be completed. Mr. Dusey explained that items I.A. and I.B. covered the estimate of the irrigation water that the Town was using.

Mrs. Wiener said a lot of this information was already available to Staff, and Staff could gather in much of this information that Hutcheon Engineers was proposing to charge $4,000 - $5,000 piece meal for. Mrs. Wiener objected to paying an outside firm to contact the major irrigation users in the Town when letters or phone calls from Staff could be made and the same results obtained. She continued this is not the type of information that needs to be gathered by an outside firm.

Mrs. Smith recalled Staff members including Mr. Moore had obtained similar information a year and a half ago when the water conservation program was considered.

Mrs. Royal asked if the Staff could summarize the information themselves or would Hutcheon Engineers be required to do a summary for a lesser fee?

Mrs. Smith and Mrs. Wiener agreed the Staff could do the summation. Mrs. Wiener reminded the Council that close to $500,000 was spent on a water study, and she could not believe that anything radical happened between the time the information was gathered and the present time. Mrs. Wiener requested that either Mr. Dusey or Mr. Doney review the items in the Hutcheon letter and determine which ones are needed for a report to the Council. Mrs. Wiener stated the Town should not have to pay repeatedly for information already on hand.

Mr. Dusey reported that the information gathered in the original study, particularly for the large users, was for the total usage. He continued the Breakers Hotel uses large quantities of water, not all for irrigation, but for services connected with the hotel such as laundry and room usage. Mr. Dusey said there was never an attempt to break out potable water usage from other uses for the Breakers because the need was not identified at that time. Mr. Dusey added, presently, irrigation needs are to be defined including the peak times of usage.

Mr. Goldsmith interjected that West Palm Beach will provide that information if anyone requests it.

Mrs. Wiener asked John Potts, Hutcheon Engineers, how information would be handled by his company differently than the Town Staff could handle the same information?

Mr. Potts responded some of the irrigation uses are well defined; however, some of the major ones are not. He added the entities may know how much water is used on a daily basis or maybe a weekly basis, but not necessarily the rate and hours of the day the water is used. Mr. Potts continued it may be necessary to determine the usage of the irrigation system on a permanent basis to determine a peak flow rate and the durations. Mr. Potts said he did not dispute that the issue was gathering of information, but this information is known by someone other than the Town at this

Non-potable alternatives

time. He stated the prices shown were estimates, and if, as the work progresses, the staff does part of the work, the company would adjust the prices accordingly as the contract could be carried out on an hourly billing basis.

Mrs. Wiener re-stated the Council's position that many dollars have been spent on water studies and additional monies should not be spent when information can be organized and obtained by the Town Staff.

Mr. Shaw asked Mr. Dusey if his department had the expertise to acquire the information and determine the hourly rate, the minute rate, etc.?

Mr. Dusey responded his department could obtain that information on a professional level, but a time factor may be involved. He said his department will do the best they can, but due to other daily priorities, the length of time may be longer than if someone else were gathering the information.

Mr. Shaw asked if it were feasible to design a system at an optimum flow rate and work backward--giving the large irrigation users the times for watering?

Mr. Potts replied those questions were part of the initial intent to hold discussions to determine if the major users intended to continue using water as they currently do. He added water is available twenty-four hours per day but water is put in the ground for short periods. Mr. Potts stated it is desirable to locate the water closer to the use site, store it and pump it out at a higher rate. He said the increments build upon each other, and it is not a single path from the beginning to the end.

Mr. Shaw responded that Mr. Potts had introduced the element of storage, and, at this point, the Town has considered distribution from other areas of storage, but storage by the Town may not be the issue at this point.

Mrs. Royal requested attention be given to the Montgomery study which projected the Town's average demand, identified the major users and the quantities used for the year 1990. She suggested adjustments be made for the intervening time. Mrs. Royal said the report indicated an average daily demand of approximately 8.4 million gallons, and .5 million gallons is used for daily irrigation of golf courses.

Mr. Potts replied that was a daily rate, but it did not indicate what time and what rate the water was to be delivered. He added this information relates to the sizes of the pipes.

Mrs. Wiener said any of the local hotels can supply the information concerning peak uses by the guests and the hotel staff, and the Town has an ordinance stating the hours of irrigation. Mrs. Wiener added the Public Works Department had performed well under pressure in the past concerning the reef situation, and this need may take some additional time, but could be handled by the department.

Mr. Doney stated he was concerned that although the Town Staff has the skills, knowledge and the ability to deal with the information, it is necessary to continue to maintain the day to day operational responsibilities, including personnel issues. He added he was aware of issues that Mr. Dusey needs to spend time on if the Staff is to maintain daily operational needs. Mr. Doney continued special studies, including the reef issue, do take an inordinate amount of time, and the Staff will do whatever amount of work is involved. Mr. Doney stated his concern is for the scope of work and the time it would take to accomplish the non-potable water analysis and be able to report to the Town Council. He said he wanted to make absolutely sure from Mr. Dusey's and his viewpoint that other very important operational issues were not being neglected. Mr. Doney continued that Staff, Mr. Dusey and Mr. Bowser will accomplish everything they can technically and time-wise.

Mr. Goldsmith stated the issue is, "Does the Town Council need the feasibility study of irrigation, quality water supply and distribution?" He added this is a basic decision to be made by the Council since much of this information was gathered before.

Mr. Shaw asked if Mr. Jakubiak would be available to spend time on the water supply issue now that the cable issue does not require so much of his time?

Mr. Doney responded Mr. Jakubiak would not be available because Mr. Dusey and Mr. Bowser are professional engineers with engineering backgrounds and have the ability to perform certain analytical functions and currently handle all the consulting engineering coordination for the Town. He suggested Mr. Dusey recommend a time table for reporting back to the Town Council in January after he has had the opportunity to evaluate his work load and determine what he can do.

Mrs. Wiener agreed with Mr. Doney's suggestion to report back to the Council at the January 10, 1995, meeting and have Mr. Dusey inform the Council what can be accomplished by Staff and how long it will take to compile the information utilizing the outline in the Hutcheon Engineers proposal.

Mrs. Wiener recommended Mr. Doney and Mr. Dusey return to the Town Council and estimate the number of hours the Staff will require to prepare the information rather than send it out. Mrs. Wiener said a decision can be made at the next Council meeting if the study should be done in house, or if it needs to be assigned elsewhere.

Mrs. Smith said during the holiday season this request puts an undo burden on the staff. She suggested Staff look at certain options on the Hutcheon report (as follows).

I. SYSTEM FLOW REQUIREMENTS

A. Major Properties in Town $4,000

B. All Other Residents and Businesses $5,000

II. TRANSMISSION AND DISTRIBUTION SYSTEM

A. Major Users Only	$4,000
B. Transmission Piping for Entire Town and Delivery to All Residences and Businesses	$11,000
III. TREATED WASTEWATER AS SOURCE OR IRRIGATION QUALITY WATER	$13,000
IV. LAKE WORTH WTP AS SOURCE OF IRRIGATION QUALITY WATER	$12,000
V. RIVIERA BEACH WTP AS SOURCE OF IRRIGATION QUALITY WATER	$12,000
VI. WEST PALM BEACH CANAL AS SOURCE OF IRRIGATION	$11,000
VII. AQUIFER STORAGE AND RECOVERY IN FLORIDAN AQUIFER	$18,000
VIII. AQUIFER STORAGE AND RECOVERY IN THE SHALLOW AQUIFER	$22,000

Mr. Shaw added that the storage items should be removed from the Hutcheon report for consideration by Staff at this time, and the Staff should be instructed to look only at the items of the report relating to sources and distribution.

Mrs. Smith suggested the report come back to the Council members prior to the January 10, 1995, Town Council meeting and not before December 23rd.

Mr. Doney requested the Council identify the items on the Hutcheon report that the Staff, Mr. Dusey and Mr. Bowser should be working with.

Mrs. Royal suggested that number III. on the report be eliminated.

Mrs. Wiener said that Mr. Shaw had suggested items VII. and VIII. not be considered at this time. Responding to questions from Mrs. Wiener, the Council members agreed Items III., VII. and VII. should not be addressed by Staff at this time. Mrs. Wiener advised Mr. Dusey that the Council will hear his report concerning the items on the Hutcheon Engineers feasibility report for items I., II., IV., V. and VI; items III., VII. and VIII. are to be excluded at this time.

Mrs. Wiener requested that the Town Attorney seriously follow up with the City of West Palm Beach, and if the Town Attorney does not hear from West Palm Beach within a week, Mr. Randolph should advise West Palm Beach that the Town would like to hear from them as promptly as possible.

Mr. Randolph responded he would contact the City of West Palm Beach right away and would not wait for a week.

Mrs. Royal reiterated her position that the Town of Palm Beach should not negotiate with the City of West Palm Beach until the Town has some strength.

Mrs. Smith replied the Town is their largest user and that is "strength".

2. Sand Bypassing at the Lake Worth Inlet

Sand Bypassing at Lake Worth Inlet

a. Status Report Regarding Restoration of Existing Sand Transfer Plant

Mr. Dusey reported the Public Works Department has been working with the County staff since an agreement was executed in July attempting to move forward with the restoration of the Sand Transfer Plant. He continued the County's schedule for the completion of the work calls for an engineering proposal to be submitted to the County Commission on December 20, 1994, concerning the discharge pipes that will be installed under the inlet. Mr. Dusey said the pump and motor for the Transfer Plant have been ordered and delivery of those items is expected in March, 1995. He added the pump should be ready to be tested sometime in June, 1995, and, optimistically, the discharge pipes will be installed at approximately the same time. Mr. Dusey said the County anticipates the plant will be operational in September, 1995.

Mrs. Wiener noted an entire year will be lost if the plant is not operational until September. She asked Mr. Dusey to explain the County's timetable since she expected an earlier completion date.

Mr. Dusey responded he could not explain the delay by the County other than they had difficulty obtaining engineering proposals for the discharge pipes. He said one firm had insurance problems; this firm could not meet County regulations, and the process began all over again. Mr. Dusey stated Mr. Bowser had attempted to move the process forward, but Mr. Dusey said he was not aware of the County's internal work processes.

Mrs. Wiener said the Council made the decision to move forward with the County, because the County was the agency that would be operating the Sand Transfer Plant.

Mr. Dusey concurred that the Town would have been unable to secure permits on its own and had to work with the County. He added, at this point, once the County Commission authorizes the engineering work to commence on the discharge pipes, his department can attempt to expedite that process. Mr. Dusey said his staff will be ready to bid the project once the plans and

Sand Bypassing at Lake Worth Inlet

specifications are released. He added Coastal Planning and Engineering will be doing the project, and the Town has a good working relationship with them. Mr. Dusey understood two to three months are required to complete the design process.

Mrs. Royal questioned the two to three month time frame since this was a design to replace an existing system.

Mr. Dusey said the method of replacement, boring under the inlet, is different; however, that replacement time may be lengthy. He added true replacement may have been faster, but permitting may have been more of a problem, and one approach balances out the other. Mr. Dusey explained that this plan does not disturb the inlet because boring is done under the inlet and permitting is not required.

Mr. Shaw suggested that the Town should consider the possibility of renting or borrowing a portable dredge or having the Corps of Engineers start dredging earlier than planned.

Mr. Dusey responded the Army Corps of Engineers is planning to start a project in the very near future at the Inlet and also at the turning basins.

Mr. Shaw asked if that dredge could be used temporarily at the Sand Transfer Plant?

Mr. Dusey replied he did not think this could be done since it would require permitting, and the Corps may have difficulty, but it could be explored with the Corps.

Mr. Shaw said if that could be implemented, some of the sand could be captured before the sand flow is northbound during the summer months.

Mr. Dusey responded the Corps has indicated the quantities of sand will be substantial if their plans work out and come close to the amounts the Town would like to recover on an annual basis.

Mr. Doney mentioned Richard Bonner, Deputy District Engineer from the Corps in Jacksonville, sent a FAX letter to the Town identifying the proposed dredging that would occur in the entrance channel, inter channel and turning basin.

Mrs. Smith recalled a discussion, last year, that stated the sand should not be put ten feet off shore but on the beach. She continued the result was the dune was damaged, the boat sank, and the sand was not put on the beach. Mrs. Smith indicated the sand was delivered later, but litigation occurred over the project. She asked Mr. Elwell if the request was to put the sand on the beaches again?

Mr. Elwell responded the Town through Mr. Dusey and the Coastal Engineering people have advised that the Corps should go into a maximum of 10 feet water depths, preferably shallower, for the process to be beneficial, because the waves will pick it up in shallow waters and deliver it to the beach. He continued the permit was written with those restrictions, and the State permit requires that the dredge go no further out than ten feet water depth.

Mr. Elwell stated that this year's maintenance dredging will result in a total of approximately 146,000 cubic yards between the three different phases of the project. Responding to a question from Mrs. Royal, Mr. Elwell said last year's dredging produced approximately 178,000 cubic yards; however, last year's figure represented more than a year's worth of shoaling. He added this year's maintenance dredging will result in less due to the shorter time period between dredgings.

Mr. Dusey, responding to a question from Mrs. Smith, indicated a final plan for the Sand Transfer Plant should be available for presentation to the Town Council at the February 14, 1995, meeting.

Mrs. Royal asked Mr. Dusey if the plan includes the use of a portable or moveable dredge that could be used at a location where a specific, critical situation exists such as Phipps Park?

Mr. Dusey responded it does not; however, the plan has an element for a portable dredge as an alternative for sand past the inlet, but that is just the inlet plan and has nothing to do with the rest of the needs of the Town.

Mrs. Royal asked what type of permitting is needed to use a portable dredge that would go to a crisis area when necessary?

Mr. Dusey responded that the permits for fill are the same because the methods of dredging are not that important; the permit is to allow sand to be put at a particular location. Mr. Dusey continued the permitting time can take as long as 7 - 8 years if federal and state monies are involved and perhaps 2 - 3 years if those monies are not involved.

Mr. Goldsmith reported that he and another concerned citizen have made a study to determine the best way to preserve the beaches for the future, and the conclusion to a certain extent has to do with a long term use and the permanent availability of a portable dredge for Palm Beach as well as for municipalities to the north and south. He added that other towns along the coast use a dredge, and it does work. Mr. Goldsmith said he believed if some of the donated monies were used, and if the Town had a permanent availability of a dredge to use as the source of sand, it would be worthwhile as part of a long term solution.

Mrs. Smith replied the portable dredge has been discussed at other meetings, and it was suggested at an earlier meeting to see if the Lake Worth Inlet Management Plan included a dredge as part of the entire picture. Mrs. Smith continued that if the particular areas to receive the sand could be agreed upon by the Council, then the permitting process could begin.

Mr. Goldsmith responded that he thought the entire project could be speeded up and would like to include the neighboring towns. He said he would like to have Riviera Beach, South Palm Beach, Manalapan, etc. included because a dredge will serve a larger area.

Mrs. Wiener stated Palm Beach needs sand on the beaches and a method of holding it. She added the permitting has to be done agency by agency, town by town, and the Town had the money from the

State and had federal funds when a decision was made not to go in that direction. Mrs. Wiener continued sand cannot be created by putting a reef down, and the entire Town is entitled to beaches. She said the wave of the future is the dredge, but it will not happen quickly.

Sand Bypassing at Lake Worth Inlet

Mrs. Royal suggested the Council may want to take the first step and look into the permitting process.

Mr. Elwell, responding to a question from Mrs. Smith, stated the Council of Beaches and Shores has discussed the technology, but applying it to specific locations throughout the County or any kind of inter-local effort to obtain a dredge and use it up and down the coast line have not been discussed in the last several years.

Mrs. Smith said a meeting of the coastal communities that would be involved with the dredge should be arranged led by the Town of Palm Beach. She continued the permitting process could begin when participants determined what could be done and where it could be done. Mrs. Smith agreed with Mr. Goldsmith that a coalition of coastal communities would move the process along and the Town of Palm Beach should take the lead. Mrs. Smith added a permitting process cannot be started when details such as locations, participants or other information is not yet known.

Mrs. Wiener added that every single community must obtain its own permitting; permits will only be issued on an individual basis and the Town should move forward. Mrs. Wiener suggested Mr. Elwell should mention this issue to the Council of Beaches and Shores, and let them know the Town of Palm Beach is moving forward in this area. She continued the neighboring communities should get together on the cost.

Mr. Doney suggested the Staff should draft an appropriate letter to frame the request that everyone needs to be thinking about and copy the permitting agencies, so that at the January Countywide Beaches and Shores Council meeting, people are ready to have a productive discussion.

Motion made by Mrs. Smith to have the Town of Palm Beach take the lead to host a meeting and have the Mayor draft a letter to the municipalities in the Countywide Beaches and Shores Council presenting the issue of sharing the use of a portable dredge to address the beach erosion problem along with related issues to be discussed, with the idea that the Town of Palm Beach is happy to assist other coastal communities so they all can permit at the same time albeit separately. The motion was seconded by Mr. Shaw.

Mrs. Royal added if no other coastal community cares to be involved, that should not stop the Town of Palm Beach from proceeding.

Mrs. Smith responded since each municipality has to apply for permitting separately, that would not stop the Town.

On roll call, the motion carried unanimously.

XII. NEW BUSINESS

NEW BUSINESS

A. Town Council Organizational Item

1. Consideration of Appointment to Vacant Town Council Seat - January 1, 1995 Through Remainder of Term).

Appt. to Vacant Town Council Seat Jan. '95 thru remainder of term

Mrs. Wiener advised the Council that this issue has nothing to do with the President of the Council who has resigned effective December 31, 1994, rather it is the duty of the Council to discuss, when a vacancy occurs on the Town Council, whether or not that vacancy, regardless of the length of time, should be addressed. Mrs. Wiener stated several people came forward when one vacancy existed on the Council and offered their services to the Town, and those people may still be interested. Mrs. Wiener reminded the Town Council that several meetings are scheduled for January that have to do with zoning, and at least one of the persons who applied to the Town was the Chairman of the Zoning Commission. Mrs. Wiener asked that the Council make a decision concerning the appointment.

Mrs. Smith responded she was surprised to see this item on the agenda, and she recalled discussions held in the fall that Mr. Goldsmith was appointed to the Council on the basis there would be four people sitting on the Council in January since Mrs. Wiener's resignation would become effective December 31. Mrs. Smith stated, at this time, the Council does not have an opening, and the opening will be in January. She continued that at the time Mr. Goldsmith was appointed, the Council stipulated that Mr. Goldsmith not run in the February election, and he agreed to that stipulation. Mrs. Smith said it would not be appropriate to appoint someone for one month.

Mrs. Wiener replied the issue was bookkeeping and requested comments from other members.

Mayor Ilyinsky stated he agreed with Mrs. Smith and did not think the seat needed to be filled for one month.

Motion made by Mr. Shaw to leave the seat vacant in January. The motion was seconded by Mrs. Royal. On roll call the motion carried 4/1 with Mrs. Wiener casting a negative vote stating this was a conflict on her part.

B. Ordinance - First Reading

1. Ordinance No. 12-94 - Community Service Fee Amendment

Ord. 12-94 Community Service Fee Amendment

Mr. Randolph read Ordinance No. 12-94:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 5, ARTICLE X, "DEVELOPMENT AND/OR MAJOR REMODELING COMMUNITY SERVICE FEE", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-402, "AMOUNT OF FEE"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Randolph, responding to questions from members of the Council, explained the ordinance was drafted by Mr. Moore on the advice of an actuary.

Mr. Moore stated the auditors, during the annual audit, requested a determination for the method of calculating fees for the Community Service Fee as the language in the ordinance was not clear. Mr. Moore continued the ordinance was re-written to clarify the calculation of the fees.

Mr. Goldsmith requested an explanation of a Community Service Fee.

Mr. Moore responded these fees are charged for residential and commercial construction and major remodeling.

Mr. Goldsmith asked if these fees had anything to do with taxes or were they permit fees connected with building?

Mr. Moore responded the fee was due upon the issuance of the certificate of occupancy based on the time of the year the certificate is issued. He continued that the fees are not changing; however, the method of calculation is being clarified for the auditors' benefit.

Mrs. Smith asked why the fee was called "community service"?

Mr. Moore responded that was the title of the fee that was modified in the early 1980's.

Adrian Winterfield addressed the Town Council and stated the Community Service Fee may not be called a tax, but it is undoubtedly a tax and unlawful under State law. Mr. Winterfield continued that the Town has limited authority to tax and does not have authority to do it in this situation. He added the name may have something to do with the effort to have it passed as an impact fee; however, the text makes it clear that it is not an impact fee.

Mr. Moore pointed out the ordinance is presently in effect and the first reading of this ordinance is a modification to the existing ordinance.

Mr. Goldsmith stated the Town does charge other fees, and he did not consider it a tax. Mrs. Wiener concurred with Mr. Goldsmith's remarks.

Motion made by Mr. Goldsmith to approve the first reading of Ordinance Number 12-94. The motion was seconded by Mrs. Smith. On roll call, the motion carried 5-0.

C. Resolutions

Res. 58-94 Town Self-Insurance Program for Property and Casualty

1. Resolution No. 58-94 - Formally Adopting the Town's Self-Insurance Program for Property and Casualty.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING A SELF-INSURED PROGRAM FOR PROPERTY, CASUALTY AND WORKERS' COMPENSATION INSURANCE.

Motion made by Mrs. Smith to adopt Resolution Number 58-94. The motion was seconded by Mrs. Royal. On roll call, the motion carried 5-0.

Res. 59-94 Proposed Statewide Mutual Aid Agreement for Catastrophic Disaster Response and Recovery

2. Resolution No. 59-94 - Proposed Statewide Mutual Aid Agreement for Catastrophic Disaster Response and Recovery

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE STATEWIDE MUTUAL AID AGREEMENT FOR CATASTROPHIC DISASTER RESPONSE AND RECOVERY BETWEEN THE STATE OF FLORIDA, PALM BEACH COUNTY, TOWN OF PALM BEACH AND OTHER POLITICAL SUBDIVISIONS OF THE STATE.

Motion made by Mr. Goldsmith to adopt Resolution 59-94. The motion was seconded by Mr. Shaw. On roll call, the motion carried 5-0.

Mr. Doney commented that through the mutual efforts of Mrs. Martinuzzi, Risk Manager, and other risk managers, amendments were achieved in the proposed statewide mutual aid agreement that were of great benefit to the Town.

D. Bid Award

Bid Award Bid. 95-002

1. Sealed Bid No. 95-002 - Replacement of Yard Trash Crane

Mr. Dusey reported that the proposed crane will replace the department's 1985 rebuilt hydrocrane which will be placed in reserve. Mr. Dusey said Southeast Waste System was the low bidder at $74,742, under the $78,500 amount budgeted.

Motion made by Mr. Goldsmith to approve sealed bid number 95-002 for the purchase of a yard trash crane from Southeast Waste System. The motion was seconded by Mr. Shaw.

Mr. Shaw asked if the method of yard trash collection were changed, would this unit be useful?

Mr. Dusey responded its usefulness would depend on how the system would be changed, and the crane would still be used if a chipper method were adopted.

On roll call, the motion carried 5-0.

E. Other

1. Royal Poinciana Theatre - Request for Additional One (1) Year Extension of Lease Agreement to Continue Wednesday Matinee Program from November 15, 1994 to April 1, 1995 - Consideration of Request for Modification for Change in Date for Matinee

Phil O'Connell, Jr., Attorney representing Royal Poinciana Theatre, addressed the Council and requested that a matinee performance be changed from Wednesday, January 25, 1995, to Thursday, January 26, 1995. He stated the performance requires some technical requirements that cannot be started until Wednesday, January 25, and will not be completed in time for the scheduled Wednesday matinee.

Mr. O'Connell said all the tenants in the shopping center will be notified of the change pursuant to the Town Staff's request. He continued the Wednesday plan including policemen will be implemented on Thursday.

Mr. O'Connell said he was not aware of the change in the technical installation schedule until mid November, and the Town was notified immediately.

Mrs. Wiener asked Mr. O'Connell to explain why the performance later in the week, Thursday as opposed to Wednesday, was better in his opinion.

Mr. O'Connell responded, in his experiences, the first three days of the week are busier and the last two days things wind down somewhat.

Mrs. Wiener said that may be true in the legal business but was not necessarily true in other businesses.

Mr. Doney referred to his memorandum of November 30, 1995, and stated the Staff recommends approval of the change with the two conditions as stated in his memo.

Mrs. Wiener said she would like to emphasize the fact that people have complained about the parking in that area, and if Mr. O'Connell and his client could improve the situation in any way, it would be appreciated.

Mr. Doney requested a copy of the notice of change be provided to the Police Chief, the Director of Planning, Zoning and Building and the Town Manager's Office.

Motion made by Mrs. Smith to approve the request for an additional one year extension of the lease agreement to continue Wednesday Matinee Program from November 15, 1994 to April 1, 1995 with the modification for the change in date for the matinee with the conditions:

1) The Theatre will notify all tenants at the Royal Poinciana Plaza of the date change of the matinee performance date immediately upon receipt of permission from the Town.

2) All of the mitigation factors in place for the matinee performance parking would be in full force and effect on the Thursday afternoon performance.

3) Copy of the matinee notification change be sent to the Police Chief, the Director of Planning, Zoning and Building and the Town Manager's Office.

The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 5-0.

2. Consideration of Appeal by A. Paul Prosperi of Public Works Director to Deny a Curb Cut Access to North County Road (351 Crescent Drive) - Letter Dated December 12, 1994 from A. Paul Prosperi Requesting Deferral.

This project was deferred to the January 10, 1995, Town Council meeting.

3. Consideration of Yard Trash Collection Program - Letter Dated December 2, 1994 from Town Resident Peter W. Mettler.

Mr. Dusey reported the Public Works Department issued a large, red citation notice to Mr. Mettler's yard man causing objections from Mr. Mettler to the Garbage and Trash Ordinance. Mr. Dusey continued that the purpose of the citation is to indicate to the resident that a problem exists, and the citation requests the problem be remedied. He said Mr. Mettler's primary objection to the ordinance was probably the one day set out time.

Mrs. Wiener replied, as the season progresses, the piles of trash along the roadways create difficult problems for traffic movement. She suggested the problems should be addressed and perhaps the ORS Committee could review the problems and advise their the Council of their comments.

Mrs. Smith responded the Public Works Committee continues to review the problem of trash collection schedules in the Town. Mrs. Smith said she understood Mr. Mettler was disturbed, because it was not his trash that received the citation. She continued this was an honest mistake, and the citation should have been given to the appropriate person.

Mr. Dusey said he did not disagree; however when trash is placed in front of someone's property, the trash is assumed to belong to that property.

Mrs. Smith said every situation has to be considered on a case by case basis, and this was a mistake where the gardener put the yard trash in front of Mr. Mettler's residence that belonged to the adjoining property. She suggested the Public Works Department should cite the correct property owner, and the Public Works Committee will have an answer on the trash scheduling, pick-up and the violations in the ordinance sometime in February.

Mrs. Smith suggested that the Council give notice that if a resident's gardener places trash on the street, regardless of the location of the trash, the resident is responsible for that pile of trash. Mrs. Smith said the current ordinance states the trash should be placed in front of the trash owner's residence the day before the scheduled pick up unless other arrangements are made.

4. Consideration of Proposed Lighting of Royal Park Bridge Roadway and Also Lighting of Arches.

Mr. Dusey said the Florida Department of Transportation contacted the Town some months ago regarding different aspects of the repairs to the three bridges in the Town. One of the proposals regarded the changing of the lighting on the upper structure on the Royal Park Bridge, the center Town bridge. He continued the Council conceptually agreed with the proposals at that time, but FDOT has returned to the Town with two requests. Mr. Dusey said one of the requests relates to the upgrading of the lighting on the upper decking and requesting that the Town maintains that lighting. He added the second request concerns the accent lighting on the arches, and this request has been divided into two parts.

Mr. Dusey said the FDOT proposed to replace the current five fixtures with ornamental, historically accurate fixtures and to increase the number to eighteen to obtain the same level of lighting. He added that four poles on the approaches to the bridge will be replaced also for a total of twenty-two fixtures.

Mr. Dusey reported he anticipates an increase of approximately $2,000 per year for maintenance costs on the additional fixtures. He continued the Public Works Department has no objections to the lighting that is being proposed; however, the project agreement is undergoing Staff review and some problems may be identified after that review. He suggested if the Town Council does approve the installation of these fixtures that the approval be subject to the final review and approval of the Public Works Department.

Mr. Dusey, responding to questions from Council members, said the Public Works Department currently maintains the fixtures without an agreement.

Mr. Shaw asked if the material for the new fixtures could be anodized aluminum to reduce the maintenance cost of painting every 3 - 5 years?

Ellen Daniels, Florida Department of Transportation, responded the poles will be painted black to match the rest of the light fixtures in Town, and these poles, replicas of the 20's originals, will be formed from dye cast aluminum. Ms. Daniels said she had not specifically investigated the aspect of using anodized aluminum for the replacement of the poles, but she would do so.

Mrs. Jane Volk, Chairman of the Landmarks Preservation Chairman, said the Commission reviewed the lighting fixtures at the last meeting but had not reviewed the lighting of the arches, and since the lights have not been on as previously promised, she suggested the lights for the arches be viewed by the Landmarks Commission before a decision is made.

Motion made by Mr. Goldsmith to approve the 18 lighting fixtures for the bridge and the 4 additional poles for the approaches in black anodized aluminum if possible. The motion was seconded by Mrs. Smith.

Jim Wolfe, Director of Production, Florida Department of Transportation, addressed the Town Council, and stated he will be returning to the January 10, 1995, Town Council meeting concerning the possibility of the under deck lighting, and they would have an answer concerning the anodizing of the 22 fixtures, and this item could be deferred until that time without affecting FDOT's schedule.

Mr. Goldsmith withdrew his motion.

Mr. Wolfe said the design for the bridges should be completed in February, and the lighting maintenance agreements are one of the last things to be completed. He continued the January meeting will be the time to make the decision concerning the under deck lighting; however the construction is not imminent. He said at least nine months after the execution of a contract are required to fabricate the parts for the electro-mechanical upgrade for the bridge mechanism which is the most important part of the project. Mr. Wolfe stated the actual construction time for any of these elements will not begin until after the 1996 season or approximately 18 months from now.

Mr. Wolfe explained that FDOT had planned to have the sample for the under deck lighting on every night during the week prior to the Council meeting; however, problems prevented the lights from being on every night. He continued the lighting will be on before the January 10, 1995, meeting.

Mr. Wolfe said one arch out of the twelve arches has been lighted for the test, and the purpose of the lighting is not to light the exterior of the bridge but to create a general glow inside of the arches. He continued this concept has been used on several other arched bridges including the Parliament Bridge in London which has a pale green glow. Mr. Wolfe said different filters can be placed over the lights to change the color at any time.

Ms. Daniels pointed out on an illustrated drawing that the test arch is on the west side of the bridge next to the draw span. Responding to a question from Mrs. Smith, Ms. Daniels said the arch will appear as it is viewed from the south, and that is the desired effect.

Mr. Wolfe continued the lights will be installed behind a false front, and the fixtures are not visible. He continued, as viewed currently from the north, the bulbs are visible, and this is not the effect FDOT is after. He added louvers are being ordered to shield the bulbs.

Mr. Wolfe said he would notify Town Hall when the lights will be on, and the lights will be turned on for the test arch a week prior to the January 10, 1995, Town Council meeting. He added an engineer will be available on January 9, on site, to answer any questions. He said parking will be available at the Baptist Church on the West Palm Beach side, and that is a good place for viewing. He said the engineer will be available at that site at 6:30 p.m.

Responding to a question from Mrs. Wiener regarding an arch closer to the Palm Beach side of the bridge, Mr. Wolfe responded the effect of the lighted arches will be similar on all of the arches.

Mr. Wolfe continued no other plans have been made for lighting of any of the other bridges as this middle bridge is unique. He added the lighting will cost FDOT approximately $90,000, and if the Town does not like the appearance of the lighting, it will not be done.

Mr. Shaw said the idea was great, but questioned if the views from the north and south would be different?

Mr. Wolfe responded when the louvers are in place, the appearance will be the same; however, the intensity of the lighting may differ.

Mr. Shaw asked Mr. Wolfe if the lights will affect the fishing?

Mr. Wolfe responded the fishing should be enhanced, and this is the first bridge DOT has planned for lighted arches. He added DOT has done some up-lighting on columns on other bridges.

Mrs. Smith asked why the Town of Palm Beach was paying more for the project than the City of West Palm Beach when the bridge has the same number of arches?

Ms. Daniels replied that the bridge has more arches on the Palm Beach side.

Mrs. Smith responded the Palm Beach side should see what the lights are going to look like because the lights on the Palm Beach side of the bridge may impact on the residential area to the north if they are not shielded properly, and one of the Palm Beach side arches should be lighted. Mrs. Smith explained to Mr. Wolfe that the Council could not meet as a group the night before the Council meeting since the body operated under the Sunshine law, and each council member would have to meet individually with the FDOT representatives. Mrs. Smith stated that the Council will have the fiscal responsibility, and it would be helpful to have a viewing from the Palm Beach side particularly as it affects the neighbors to the north along the Bike Trail.

Mr. Wolfe replied the manufacturer of the fixtures has supplied the fixtures for the test free of charge, and obtaining fixtures for an additional charge is not feasible. He continued the lighting was located at the arch closer to West Palm Beach because of the proximity of the power source, and a conduit would have to be installed for the final installation to provide power to all of the arches.

Motion made by Mrs. Smith to defer the light poles to the January 10, 1995, meeting with the question of the anodized aluminum and to defer the arches to allow the actual lighting of the arches to be seen by Town Council members and the Landmarks Preservation Commission. The motion was seconded by Mr. Shaw. On roll call, the motion carried 5-0.

Mr. Goldsmith requested that Mr. Wolfe consider lighting the north bridge also.

Mrs. Wiener, responding to a question from Mr. Shaw concerning the issue of $5,000 for a boat for maintenance of the lighting, replied this discussion would be premature, and the lighting issue would have to be resolved first.

5. Consideration of Modification of the Mid-Town PEP Reef Monitoring Project.

Mr. Dusey stated the Town was contacted by the State Department of Environmental Protection regarding a modification of the P.E.P. Reef Monitoring Program, and that modification is to install two additional wave gauges south of the installation of the P.E.P. reef to attempt to define the amount of lost energy. Mr. Dusey agreed the modification was important, and the wave gauges should be installed. He continued that no immediate effect would impact the budget, and the State Department of Environmental Protection suggested a summer survey should be eliminated to cover the costs. Mr. Dusey said that a survey at the end of the project should be eliminated and not the one indicated by the DEP.

Mr. Dusey stated that it does not compromise the validity of the study.

Motion made by Mrs. Royal to modify the P.E.P. Monitoring Program as delineated in Mr. Dusey's memorandum to Mr. Doney, dated December 7, 1994. The motion was seconded by Mrs. Smith. On roll call, the motion carried 5-0.

6. Consideration to Authorize the Payment of the Waiver of Recourse/Fiduciary Liability for Retirement System Board Members.

Mr. Doney said a waiver of recourse endorsement that is purchased as a part of the fiduciary liability policy which eliminates the insurance company's right to subrogate against the individual trustees. He added the endorsement has a premium cost of $25 per trustee and cannot be paid out of retirement system fund assets, and the total cost of the endorsement is $225. He continued this matter requires Town Council consideration and action to allow it to be procedurally effective.

Motion made by Mr. Goldsmith to approve the authorization for payment of the waiver of recourse/fiduciary liability for retirement system board members. The motion was seconded by Mr. Shaw. On roll call, the motion carried 5-0.

7. Consideration of Extraordinary Longevity Pay for December 1994.

Mr. Doney stated a list of eligible Town Employees who have been recommended by their department heads and the Town Manager to receive extraordinary longevity pay for 1994 was provided to the Town Council members in his December 6, 1994, memorandum. Mr. Doney stated an employee must have more than 21 years of service with the Town to be eligible for extraordinary longevity pay. He continued last year extraordinary longevity pay was awarded to 13 employees for a total expenditure of $15,624.40, and this year 18 employees will receive $14,217.17. Mr. Doney reported that the FY95 budget contains $14,420. which was the estimated dollar amount for this program. Mr. Doney said he recommended approval of this request.

Motion made by Mr. Goldsmith to approve the extraordinary longevity pay in the amount of $14,217.17. The motion was seconded by Mr. Shaw.

Mr. Shaw requested that Mr. Doney explain the calculation of the pay. Mr. Doney responded the amount is calculated at .5% per year for each year of service over 20 years.

On roll call, the motion carried 5-0.

8. Consideration of Proposed Application to Florida Pollution Recovery Program.

Mr. Dusey reported that the Department of Environmental Protection (DEP) has a program for pollution recovery, and the Public Works Department, after studying the Town's eligibility, determined that the Town's Comprehensive Plan contains some elements of doing restoration on the spoil islands that are overgrown with Australian pines and Brazilian peppers. He continued this type of situation appears to qualify for this program, and the criteria for funding is loose.

Mr. Dusey requested this project be referred to the Public Works Committee to consider the scope of the work, and to see if the Town wants to pursue the project since some expenditure may be involved.

Motion made by Mr. Goldsmith to refer the pollution recovery program to the Public Works Committee. The motion was seconded by Mrs. Smith. On roll call, the motion carried 5-0.

XIII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR NOVEMBER 1994.

Motion made by Mr. Shaw to approve the warrant registers and funds expenditures report for November, 1994. The motion was seconded by Mrs. Royal. On roll call, the motion carried 5-0.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Sebastian Ruta, 3230 South Ocean Boulevard, addressed the Town Council and reported that construction at the La Renaissance Condominium is not being conducted in proper sequence. Mr. Ruta said he had problems with the noise ordinance concerning the use of an electric jack hammer, and he also had a problem with a balcony in number 311.

Mrs. Wiener told Mr. Ruta that his complaints will be referred to Mr. Moore in the Building Department.

Mr. Allen Wyett, 1145 North Lake Way, addressed the Town Council concerning the water issue. Mr. Wyett continued water is a business and should be treated like a business. He said being the largest customer of the City of West Palm Beach for water has not accomplished anything. He stated the Town has to have a plan to present to the City of West Palm Beach that if they continue the 25% surcharge, the Town will consider alternate methods, and the Town should show they would have a sharp reduction in their income. Mr. Wyett said if the Town were to have a non-potable water source, the impact on the City of West Palm Beach would be approximately $3.25 million per year, and the water rates for the residents of West Palm Beach would have to be raised.

Mr. Wyett stated that until the Council appoints a water study committee and puts together a comprehensive plan, the water issue will not be resolved.

Mr. Adrian Winterfield addressed the Council concerning the water issue and stated the legality of the surcharge is questionable. He added strong arguments exist to attack the surcharge; specifically, the surcharge is designed for individual customers living outside municipal boundaries and is not applicable in the framework of an inter-governmental agreement. He continued a surcharge should cover cost of service, and the Mayor of West Palm Beach declared that the City of West Palm Beach would hire three additional policemen with the additional funds. He stated the issue of the surcharge should be admitted to adjudication in court or by binding arbitration as decided by counsel. Mr. Winterfield said the issue of water should be decided once and for all regardless of the decision.

Mr. Winterfield stated articles and letters have appeared in the press regarding the issue of Mar-a-Lago. Mr. Winterfield would like to know the exact status of the project as this is not like any other project. He requested that the January Town Council meeting have Mar-a-Lago as an agenda item.

Mr. Winterfield stated Mar-a-Lago has been used for three purposes that are not permitted. He said the Code Enforcement Officer stated he did not find sufficient evidence in one instance. He continued the second purpose generated a warning being issued, and the third, perhaps the most critical, no evidence of investigation is apparent. Mr. Winterfield said the newspaper stated that meals were being served presently to members, and, if that is the case, the club is being operated without a certificate of occupancy.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of November 16, 1994 - Excerpt Available in Town Manager's Office.

Motion made by Mrs. Smith to approve the major items previously considered by the Architectural Commission at the November 16, 1994, meeting. The motion was seconded by Mr. Shaw. On roll call, the motion carried 5-0.

The major matters were:

B86-94 - Addition for Edgar Blanch, 298 Tradewind Drive - deferred.

B87-94 - Renovations for O. T. Berkman, 357 North Lake Way - approved.

B88-94 - Addition for Toga Corporation, 175 Via Palma - deferred.

C89-94 - Addition for Cidaline Henriques-Balasco, 136 Woodbridge Drive - deferred.

C90-94 - Addition for Jay Dewing, Jr., 156 Dolphin Road - deferred.

C91-94 - Demolition for Colony Hotel, 155 Hammon Avenue - approved.

B52-94 - Addition for Paul Maddock, 215 Jamaica Lane - deferred.

B54-94 - Addition and remodeling for Mr. and Mrs. Peter Dupois, 315 Caribbean Road - approved.

B56-94 - New residence for Mr. and Mrs. Lewis Rudin, 1 LaCosta Way - deferred.

B61-94 - Samples and a landscape plan for Stuart Scharaga, 288 Via Marila - approved.

B64-94 - Addition and renovation for Dorothy DePaola, 124 Onondaga Avenue - removed from the agenda.

B69-94 - Remodel facade for Via Parigi Properties, 330 Worth Avenue - deferred.

B76-94 - Gates for George Milidrag, 445 Antigua Lane - deferred.

B80-94 - Alterations and additions for Addison Development, 450 North County Road - deferred.

B82-94 - Demolition for George Welch, 254 Atlantic Avenue - deferred.

B83-94 - Remodel for Mr. and Mrs. Aspenwall, 3000 South Ocean Boulevard - deferred.

Paul Prosperi, Attorney representing Addison Development Corporation, stated his client appeared before the Architectural Commission at two meetings for the approval of the architectural design of the entrance archway and the out buildings for the proposed Phipps Subdivision. Mr. Prosperi stated the Commission refused to discuss the matter at the November meeting because the Commission had received no guidance from the Town Council regarding the Council's approval. He added the position of his client is either the project continues ad infinitum or guidance be given by the Town Council.

Mr. Prosperi requested that the Town Council provide guidance to the Architectural Commission to allow the project to move forward. He continued that on October 25, the proposed subdivision agreement was circulated among the Town Staff and members of the Town Council seeking their comments so the project can move forward and the subdivision agreement can be executed.

Mr. Moore replied that Mr. Prosperi's statements were correct and due to trial commitments, Mr. Randolph and Mr. Moore were not at the Architectural Commission meeting. He continued the agreement that related to the subdivision improvements was assembled by the Staff and by the attorneys representing the seller and the purchaser. He added the agreement was circulated and some comments have been received; however, the comments were sent to Mr. Prosperi on November 28, and Mr. Moore is waiting for Mr. Prosperi to submit a final agreement for circulation to see the concerns of all the participants were met.

Mrs. Wiener recalled decisions were made at Town Council meetings, and some of the members wanted to see the final agreement.

Mrs. Smith responded that the issue has been subjected to misunderstandings, and the project was approved in August with nothing in writing before the Town Council. She stated it was her concern that the agreement would be put in writing to clarify the determinations of the three previous months. Mrs. Smith said she understood that when the original draft agreement came, the staff was reviewing the agreement and the comments of the staff would be reviewed by Mr. Moore by November 7, and that draft agreement would be given to Mr. Prosperi. She continued that when the second draft agreement was available, the Council members' comments and remarks would be addressed and that would be in December. Mrs. Smith stated she has comments and questions, but as late as December 12, the second draft had not been returned from Mr. Prosperi. Mrs. Smith said a delay is not the question, but a major project affects the Town and it should not go to the Architectural Commission until every member of the Town Council is clear on the agreement issues.

Mr. Prosperi responded he viewed a memo, which is a matter of public record, that requested responses be made by November 7 and on November 27, some responses were received. He continued that on December 7 or 8, he received another page of comments and was told that other comments would be forthcoming. He requested that instead of a series of drafts, that the comments be submitted so that a final agreement can be drafted.

Mrs. Smith replied she had not seen any of those comments, and she had not made any comments as she has not received the second draft of the agreement.

Mr. Randolph said two separate issues have been presented, and the first one related to the agreement. He recalled the agreement was to move forward at the staff level and unless any Town Council member had a disagreement with the staff's draft, it would not go back to the Town Council. He continued the Town Council members were not involved in the drafting of the agreement, and the staff was drafting the agreement incorporating Council's comments.

Mr. Randolph stated the second issue resulted from the two Architectural Commission meetings. He said he made a statement to the Architectural Commission concerning the issue of the gates to the effect that the role of the Architectural Commission related solely to the architectural design of the gates. Mr. Randolph recalled the Town Council in approving the subdivision had approved the dimensions of the gates. He continued that his statement may have been misunderstood, and the Architectural Commission had requested clarification or guidance from the Town Council regarding its role. Mr. Randolph said the staff is moving forward with the agreement based on the size and the dimensions shown to the Town Council on the day of the subdivision approval. He added clarification of that issue is the issue before the Town Council at this time.

Mr. Prosperi replied he concurred with Mr. Randolph's presentation of the case.

Mrs. Wiener concurred that this is a 5 to 6 year project, and differences exist between architectural designs and the concept the architectural design delivers to the public. She continued that in her opinion the feelings of the public rather than the reality have resulted in a serious problem relating to the subdivision. Mrs. Wiener added that ill will, preconceived notions and other issues may damage this project.

Mrs. Wiener stated that Addison Development has agreed to many wonderful things related to the development of the subdivision including lots that are twice as large, in most cases, than code requires and green space; however, not one of them overcomes the basic problem. Mrs. Wiener asked Mr. Prosperi, in a spirit of cooperation between Council members and staff to move the project forward, if his client would reconsider the architectural concept of the gate which has become almost a reality in many residents' minds of creating a community within a community.

Mrs. Wiener stated she did not have a problem with the architectural design, but a problem has been created in the community, and the perception is the majority of reality.

Mr. Prosperi replied that the applicant does have a design for a smaller arch that was submitted to ARCOM, and this design was different than the one presented at the Town Council meeting when the subdivision was approved.

Mrs. Smith asked Mr. Prosperi to recall the specific style and placement of the arch as approved by the Town Council. Mrs. Smith said she read in the Architectural Commission minutes that five or six arches were presented to the Town Council before the final selection was approved, and she had no recollection of a final Town Council decision on style and location of the arch and the landscape easement on County Road. She continued that was her reason for wanting to review, in writing, the terms of the subdivision agreement before a vote was taken. Mrs. Smith said she did not recall agreeing to a design but there was an understanding that the design of the arch would be determined by the Architectural Commission since the Council was discussing size and placement--not gate design. Mrs. Smith said Council could review the agreement in January, and it should not be necessary for this project to come back to the Council again.

Mr. Prosperi stated Mr. Swanson did not wish to pursue a course that would meet with community disapproval and he was prepared to forego an archway on North County Road. He continued that Mr. Swanson does want to have a designed entrance but with no tops.

Mrs. Wiener suggested the community would respond to the perception of open ingress and egress. She continued that greenery could be substituted for any structures at the entrance other than the storage buildings.

Mr. Prosperi said Addison Development Corporation is willing to settle the issue of the arches so the project can move forward with the Architectural Commission and have the subdivision agreement signed.

Mrs. Wiener suggested Mr. Prosperi discuss with his client the removal of the arch over the entrance way and alternatives for that arch. She said the Council would take a short recess to allow that discussion and consider Mr. Prosperi's comments after the break.

After the recess, Mr. Prosperi reported that his client, Mr. Swanson, Addison Development, would like to return to the Architectural Commission in January to work out the details of the entrance to the subdivision with the understanding there will not be an automotive arch. Mr. Prosperi continued Mr. Swanson would like to retain the arches over the pedestrian entrances.

Mrs. Wiener said her understanding was there would be no arch over the main entrance.

Dan Swanson, Addison Development Corporation, addressed the Council and stated an alternative has been presented that will hopefully be pleasing to the Town that will do away with the major portion of the arch. He added he believed the arch had been approved by the Town Council, but since it has become a major issue, he will compromise. Mr. Swanson said the plan is to drop two sides down to a lower elevation and remove the entire center. Responding to a question from Mrs. Wiener, Mr. Swanson said the pedestrian walkways would have covers. Mr. Swanson stated 2/3 of the mass of the entrance structure as previously presented to the Town Council would be removed.

Mrs. Wiener stated the arches and dimensions were approved by the Town Council, in her opinion, but that did not help the perception of the neighbors or the residents in the Town. She said that Mr. Swanson's compromise is a step in the right direction.

Mr. Swanson said part of his proposal is to let the vines grow over the entrance structures which will provide an appearance of greenery. He continued that the 1100 feet of frontage has all the big trees that everyone wanted to save. Mr. Swanson said that several drawings had been submitted to the Council, and each one had a reduction of the heights for the arches. He said the approved drawing had an arch height of 26 feet, and after the removal of the overhead arch, the height of the pillars or columns is 23 feet.

Mrs. Smith responded she had not seen those numbers in writing, and this was the main reason she wanted to review it. Mrs. Smith said the proposed design was a very significant improvement.

Motion made by Mrs. Smith to approve the design for the two columns, 23 feet high, with no arches at the North County Road entrance. The motion was seconded by Mr. Shaw.

Mr. Shaw clarified that the drawing showed two columns with an arched pedestrian walk thru at the entrance, and the automotive arch has been removed.

On roll call, the motion carried 5-0.

B. Appeals

1. Consideration of Appeal of Planning, Zoning and Building Director's Decision to Deny Construction Work at 16 Via Mizner, Worth Avenue, Beyond November 15th Deadline.

Paul Prosperi, Attorney for the applicant, Via Mizner Associates Limited Partnership, and Robert Kanuth, contract purchaser, addressed the Council. Mr. Prosperi stated this Landmarked structure was the residence of Addison Mizner at one time, and several commercial projects have been planned including clubs and restaurants for that space over the years.

Mr. Prosperi reported that Mr. Kanuth has begun the process of restoring this Landmark, including the removal of the windows.

Mr. Prosperi contended that Chapter 5, Buildings, Article IA, Building Code, Section 5-22, Amendments, Paragraph 103.6.3, as amended by Ordinance 6-94, does not apply to the interior renovations to the applicant's property. He continued this unit is located on the second floor and higher and has no first floor space, just the entrance on the Via. Mr. Prosperi stated his applicant would agree to adhere to the following conditions if he were allowed to continue work during the season:

1. No on street parking for construction personnel.

2. All of the construction work would be interior to the unit.

3. The construction personnel would change into work clothes inside of the unit.

Mr. Prosperi stated the amount of work could not be accomplished during a six or seven month period. He continued access to the unit is available through Via Mizner from Peruvian Avenue, and no one has to enter from Worth Avenue.

Mr. Prosperi said he had letters from the owners and residential tenants of Via Mizner and the owners of the shops in the Via that would be involved, and these people had no objections. He added they welcome the restoration of a residential use for this Landmark.

Mr. Moore replied the appeal was before the Town Council, because his decision was not to approve the application. He continued the intent of the section of the ordinance that is being appealed states the Building Official has the discretionary right to issue a permit for emergency work on Worth Avenue during the time period from November 15 through May 1. Mr. Moore said, in this particular case, this was not an emergency; however, Mr. Prosperi has addressed the concerns that the ordinance had intended such as traffic on Worth Avenue.

Mr. Moore said the conditions suggested by Mr. Prosperi and the approvals of the merchants in Via Mizner and their understanding of any inconveniences is crucial to the granting of the appeal. He stated the Building Department has no objections to the appeal being granted by the Council with those conditions as outlined by Mr. Prosperi.

Mrs. Wiener recommended that the workmen <u>will never</u> come through the Worth Avenue entrance as part of the appeal approval.

Mr. Randolph clarified that Mr. Moore's comments should be construed as approving the appeal WITH the conditions imposed and not interpreting his remarks so that the ordinance does not apply to this project. Mr. Randolph advised if the appeal is granted, it should not include Mr. Prosperi's allegation that the ordinance does not apply.

Mrs. Smith requested that truck deliveries be accomplished between 8:30 a.m. and 9:30 a.m.

Motion made by Mrs. Smith to approve the appeal with the following conditions:

1. No on-street parking on Worth Avenue.

2. Construction workmen will change into work clothes inside the unit.

3. Access will be from Peruvian Avenue through Via Mizner only.

4. Deliveries will be made between the hours of 8:30 a.m. and 9:30 a.m. from Peruvian Avenue only.

5. Construction workmen will never enter from Worth Avenue.

6. All construction work will be on the interior of the unit.

The motion was seconded by Mr. Goldsmith. On roll call, the motion passed 4-1 with Mrs. Royal casting a negative vote.

2. Consideration of Appeal of Planning, Zoning and Building Director's Decision to Deny Construction Work at Via Bice, 313 1/2 Worth Avenue Corporation, Beyond November 15th Deadline.

Eugene Lawrence, Architect, representing Via Bice, addressed the Town Council. Mr. Lawrence, presenting a drawing of Via Bice, identified Via Bice and the two story building occupied by Bice Restaurant on the first floor facing Peruvian Avenue. Mr. Lawrence stated the interior of the building has never been finished or occupied. He continued the property is in the C-WA zoning district, which neither he nor the contractor was aware of when application for the building permit was made. Mr. Lawrence said that the building may be accessed from Peruvian Avenue, and the building does not face Worth Avenue.

Mr. Lawrence explained this situation is different from other construction projects, because it is accessible from Peruvian and all exterior work is completed. He continued the contractor would agree to early morning deliveries, and no residential property is close to the restaurant--the area is totally commercial. He added parking will be provided for the construction workers off the site.

Mr. Lawrence said when the new owners purchased the property from a bank, the property needed a lot of repair. He continued many improvements have been made to the property and 4-5 months would be lost if the work would have to be stopped at this point.

Mr. Moore responded this property involves commercial use only and with the access from Peruvian, he has no objection to the approval of the continued construction work. He recommended restrictions, as outlined by Mr. Lawrence, be imposed on any approval.

Mr. Lawrence said the front windows are blocked off so construction work would not be visible from the Via, parking will be off-site and workmen will not be in the via during breaks.

Responding to questions from Mrs. Smith, Mr. Lawrence said the contractor's estimate of the completion of the work is 65 -70 calendar days. Mr. Lawrence added he would be willing to solicit the approval of the neighboring shopkeepers. He continued the building contains approximately 7,000 - 7,600 square feet, and the first floor will contain two shops.

Motion made by Mr. Shaw to accept the appeal of Planning, Zoning and Building Director's Decision to deny construction work at Via Bice, 313 1/2 Worth Avenue Corporation, beyond the November 15th deadline provided that the following conditions are met:

1. Written consent be obtained from the neighbors between Peruvian Avenue and Worth Avenue.

2. The easement be used whenever possible in lieu of the actual via.

3. Deliveries be between 8:30 a.m. and 9:30 a.m. or earlier but not later than 9:30 a.m.

4. Construction employees must park off-site.

5. The windows will remain blocked off to conceal interior construction work.

6. No interference with pedestrians or merchants in the area.

The motion was seconded by Mrs. Smith. On roll call, the motion carried 4-1 with Mrs. Royal casting a negative vote.

C. Variances, Special Exceptions and Site Plan Reviews

Old Business

1. Amended Variance No. 25-94 - Cathleen McFarlane, 456 and part of 458 Worth Avenue; applicant proposes to purchase a portion of 458 Worth Avenue creating a west side yard setback of 0 in lieu of 15' required. To allow the cubic content ratio to be 4.8 in lieu of 4.25 required, and to allow 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from October meeting.

Gus Broberg, Attorney representing Mrs. McFarlane, addressed the Town Council and identified Mr. Stephen Myers who was present in the audience with his attorney.

Mr. Broberg summarized the events relating to this request and Variance No. 26-94 since the two projects were first presented to the Town Council several months ago. Mr. Broberg said, during that time, Mrs. McFarlane and Mr. Myers, working with their architects and attorneys, have worked out a revised plan that is acceptable to both parties.

Jeffrey Smith, Architect representing Mrs. McFarlane and Mr. Myers, presented a plan identifying a new property line that will save the arch on the property formerly owned by Mrs. Whitmore. Mr. Smith said the set back area between the properties will be the area of the arch, and he identified all of the zoning data for both properties.

Mr. Moore responded that Mr. Smith had done an excellent job on the modified application. He continued that, at the start of the project, the three pieces of property involved in the former Warburton Estate were severely nonconforming. He added the present plan called for one piece of property to be divided and attached to two other pieces of property, reducing the non conformities of the two properties. He continued the second story over the subject arch will be removed but the historically significant arch will not be demolished although the demolition had been approved by the Landmarks Commission. Mr. Moore complimented the owners and the architect in their attempt to save the arch and to do more with less. Mr. Moore recommended that Variance numbers 25-94 and 26-94 be approved.

Mr. Shaw questioned the existence of the three lots and the possibility of unities of title between the two lots and the division of the third lot.

Mr. Broberg and Mr. Cliff Hertz, Attorney representing Mr. Myers, agreed to a unity of title for each piece of property.

Mr. Shaw asked which commission, Landmarks or Architectural will have jurisdiction over the two houses and the arch concerning color selection, etc.

Mr. Smith responded other buildings in Town have areas that are partially landmarked, and the Landmarks Commission will review the entire piece. Mr. Smith replied both parties agreed that the Landmarks Commission will do any future reviews.

Motion made by Mr. Shaw to approve Variances 25-94 and 26-94 with the condition the two properties enter into a unity of title with the divided third lot. The motion was seconded by Mrs. Smith.

Responding to Mrs. Royal's question concerning construction work, Mr. Moore said these properties are located in the R-B zoning districts, and construction could begin after approvals from the Landmarks Commission.

On roll call, the motion carried 5-0.

2. Amended Variance No. 26-94 - Stephen Myers, 460 and part of 458 Worth Avenue; applicant proposes to purchase a part of 458 Worth Avenue creating a 0 side yard setback on the east side in lieu of 15' required. In adding this parcel to 460 Worth Avenue an angle of vision of 136 degrees in lieu of 100 degrees will be created. Additionally, applicant proposes to construct a guest house at a lot coverage of 38% in lieu of 30% maximum allowed with a cubic content ratio of 7.0 in lieu of 4.5 allowed. To allow an 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from October meeting.

This variance was approved previously with Variance number 25-94.

3. Variance No. 62-94 - Palm Beach National Bank & Trust Company, 125 Worth Avenue; to allow applicant to occupy an additional 739 square feet on the first floor, abandoning the second floor square feet approved as Special Exception No. 8-93; total approved square feet would remain the same at 9,981 square feet. C-WA District. Deferred from November meeting - Letter Dated December 8, 1994 from A. Paul Prosperi Requesting Deferral to the February 14, 1995 Meeting.

This variance was deferred to the February 14, 1995, Town Council meeting earlier in the meeting.

4. Special Exception No. 31-94 - Lawrence Cummings, 217 Clarke Avenue; to allow kitchen facilities in the guest house to remain. R-B District. Deferred from November meeting.

Deferred to the January 10, 1995, Town Council meeting.

New Business

5. Variance No. 63-94 - Patterson Swanson I Corp., 560 South Ocean Boulevard; to allow construction of a single family dwelling with the point of height measurement being elevation 21.5' in lieu of 15.12'. R-A District.

Mr. Paul Prosperi, Attorney for the applicant, addressed the Town Council and stated the request was for a point of measurement variance. He stated the applicant is seeking permission to construct a new residence; the same elevation as the residence to the north and 16 inches lower than the residence to the south.

Replying to Mr. Goldsmith's question concerning the presentation of this project at a prior Town Council meeting, Mr. Prosperi said the project had been presented to the Town Council previously with a request for a variance for the height of the house in addition to the point of measurement. Mr. Prosperi continued that the finished floor elevation of the presented design was in line with all of the neighboring properties. He stated the elevation of South Ocean Boulevard is a geographic hardship and precedents have been set for the granting of this variance. Mr. Prosperi stated all other zoning criteria have been complied with, and a variance was requested for the point of measurement only.

Mr. Moore stated the project was presented two months ago with a request for three variances, and this re-submission has been substantially modified. The Staff's request previously and presently has been that the residences to the north and to the south not have an unfair advantage due to the point of measurement variance for an artificial increase in height. He continued the Staff has no objections to this project.

Motion made by Mrs. Royal to approve Variance number 63-94. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

6. Variance No. 64-94 - Robert M. Fomon, 974 South Ocean Boulevard; to allow construction of a road easement, in conjunction with a proposed subdivision, which would give this existing residence a street side yard of 31.27' in lieu of 35' required. R-A District. (Should be heard following Item XV.D.2.).

Mr. Moore requested that this variance request be heard with item D. Other 2. Consideration of Proposed Palm Grove Subdivision, 974 South Ocean Boulevard. Mr. Moore explained if the subdivision were approved, this variance would then be required. He continued if the subdivision is not approved, this variance request will not be necessary.

Mrs. Wiener, after ascertaining the applicant agreed, said this will be heard after the Palm Grove Subdivision item. (see page 52)

7. Variance No. 65-94 - Marjorie S. Fisher, 931 North Lake Way; to allow construction of a swimming pool in the street side yard providing a 25' setback from North Lake Way in lieu of 30' required. R-B District.

Mr. Frank Chopin, Attorney representing Mr. and Mrs. Fisher, addressed the Town Council. Mr. Chopin stated the variance request was for five feet to build a swimming pool five feet into the side setback on a corner lot. He continued these types of requests have been granted by the Town Council many times in the past.

Mr. Moore stated several requests through the years have been granted for the construction of swimming pools in side yard setbacks. Mr. Moore asked if Lindley Hoffman, the architect for the project, could explain why the swimming pool could not be built closer to the house thus avoiding the need of a variance.

Mr. Hoffman replied the site plan shows the pool close to the house presently, and if no variance were granted the pool would be nine feet from the residence.

Mr. Moore said a letter from Trent Steele, received December 10, 1995, the neighbor to the south of the residence, stated concerns about the hedge between the two residences.

Mr. Chopin replied he was aware of Mr. Steele's concerns and time will be needed to address the issue of planting a very large hedge.

Mr. Prosperi, representing Trent Steele, said that Mr. Steele's pool is presently exposed, and he would appreciate any hedging material that could be installed as soon as possible.

Mr. Chopin responded that Mr. Steele's pool is in the setback area, and the residence was recently purchased by Mr. Steele with that known condition. Mr. Chopin and Mr. Hoffman assured Mr. Prosperi that everything possible concerning the hedge would be completed as quickly as possible.

Mrs. Smith said that, according to the Architectural Commission minutes, the hedge was part of the condition of approval. She said a hedge was existing at the time of the approval, and she assumed that hedge would stay during the construction.

Mr. Chopin replied that different landscaping would be installed.

Mr. Hoffman added the original hedge was going to be retained; however, the roots of the hedge were wrapped around the gas line which was in the utility easement. He continued that when the area was excavated for new lines, it was determined that new hedging would have to be planted.

Mrs. Wiener suggested the hedging be in place if this request is approved, and the neighbor should have privacy from the workmen and the construction.

Motion made by Mrs. Smith to approve Variance number 65-94 to allow construction of a swimming pool in the street side yard providing a 25 foot setback from North Lake Way in lieu of the 30 feet required, with the condition the 12 - 15 foot hedge be replaced prior to the pouring of the footer.

Mr. Shaw suggested that the residence be moved to the rear 2 - 3 feet and remove 2 feet from the patio thus eliminating the variance.

Mr. Hoffman explained the configuration of the garage, the turn around area and the landscaping as they related to the rear setback.

The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Royal casting negative votes.

D. Other

1. Consideration of Request for Amendment to the First Amendment of the Blossom Estate Subdivision Agreement by Peter S. Broberg, Esq. - Deferred from November meeting - Letter dated November 28, 1994 from Peter S. Broberg, Esquire regarding postponement to January meeting.

This item was postponed until the February 14, 1995, Town Council meeting.

2. Consideration of Proposed Palm Grove Subdivision, 974 South Ocean Boulevard, by Dean Vegosen, Esquire - Request Authority for Town Manager to Execute Plat, Agreement to Construct Improvements and Initiate Related Actions. R-A District. (See Item XV.C.6.)

Requested Waivers to Subdivision Regulations:

a. Street pavement width 20 feet in lieu of 24 feet.

b. "T" type turn-around in lieu of 100 foot diameter cul-de-sac.

c. Lot #3 deficient in size and area.

Dean Vegosen, Attorney representing Lewis and Robert Fomon, owners of the property at 974 South Ocean Boulevard. Mr. Vegosen, using a site plan, identified the property that extended from the Ocean to the Intercoastal Waterway. He said that the property east of South Ocean Boulevard presently has a single family residence on it, and the property to the west of South Ocean Boulevard has a single family residence located near South Ocean Boulevard. He continued to the west of that residence, a long extension of property goes to the Intercoastal Waterway, and the measurement from South Ocean Boulevard to the Lake is approximately 1,045 feet or 3.5 acres. Mr. Vegosen said the property closest to the Intercoastal is planted with many trees, and this is the area that will be subdivided if approved. He continued the lake front lot will contain approximately 50,000 square feet.

Mr. Vegosen said, if the project is approved, three waivers need to be considered:

1. The access road which runs along the northern portion of the property to the proposed lakefront parcel, would be a paved road of twenty feet in width in lieu of twenty-four feet. Mr. Vegosen reported this issue had been discussed with staff including Public Works, Public Safety and Building Department officials and none of the departments had difficulty with the width of the street. He stated the street is private and serves one residence.

2. The ordinance requires a 100 foot diameter cul de sac when a lot does not front on a public street. Mr. Vegosen reported that the Town, in the past, has approved "T" type turn arounds in other subdivisions and one of those is proposed for this subdivision. He continued this turn around is in the shape of a "Y", making the angles less sharp and turning easier.

3. The third lot, east of South Ocean Boulevard, which has the single family home on it, is nonconforming at 9,800 square feet and the depth to the water is approximately 65 feet. He continued no changes have been made to this existing lot or structure; however, any approval of a plat would require a waiver for this lot.

Mr. Vegosen introduced Kevin McAdams from Hutcheon Engineering who supervised the surveying of the plat and prepared the preliminary engineering plans, and Mr. and Mrs. Fomon, owners of the property.

Mr. Moore said that when the Comprehensive Plan was done, properties from Sloan's Curve north to the Gulfstream/Hammon Avenue location, and this property was included in that study as a developable piece of property. He added that the property on the west side of Ocean Boulevard, with a street and some "T" turn around configurations could sustain five lots. Mr. Moore continued this subdivision has plans for one additional oversized lot, and Staff has no objections to the division.

Mrs. Wiener asked how close the proposed road will be to the north property line? Mr. Vegosen reported four feet of landscaping will be between the road and the property line. Mr. Vegosen explained when the plat was prepared, an effort was made to retain the existing landscaping and buffer and that was the main reason to request a variance for the width of the paving.

Mrs. Wiener replied her concern was for several of the properties immediately to the north and the effect this will have on them.

Mr. McAdams, responding to questions from Mrs. Smith, stated the existing driveway extends to the existing greenhouse, and the new road way will extend approximately 1/3 farther than the existing driveway.

Mrs. Wiener said she was concerned about the construction traffic while the new house is being built and suggested additional screening be added to the landscape buffer.

Mr. Vegosen replied no plans are presently being considered for a new residence on the lot.

Mr. Randolph, replying to a question from Mrs. Royal, said a non conforming lot cannot be created, except by variance, by way of a plat. He continued the reason lot 3 can be included in this subdivision is that the lot is already existing and described by metes and bounds as opposed to a plat.

Mr. Moore concurred that lot 3 is shown in the records as a single family residence with a kitchen. Mr. Vegosen agreed that this residence was created independently of the main house. Mr. Moore said the house could presently be sold independently as are other houses in this R-A zoning district that are on the east side of South Ocean Boulevard.

Peter Broberg, Attorney representing a number of concerned neighbors including Mr. and Mrs. Robert Jenney, 165 Via Bellaria; Shirley and H.R. Prudden, 171 Via Bellaria; Edward Cook, 150 Via Bellaria; and Nancy Mendel, 100 Via Del Lago. Mr. Broberg said a letter was sent by another neighbor, Mrs. Anne Young, 161 Via Bellaria.

Mr. Broberg stated the first area of concern was the notice to the neighbors that did not state this was a notice to subdivide the property but a notice of variance. He continued the variance stated Mr. and Mrs. Fomon requested a three foot variance from the setback from the road, and it did not state that the notice was for a subdivision.

Mr. Broberg continued that at Mr. Jenney's request, his office called many of the neighbors in the area and only one knew that the notice related to a subdivision because he had talked to Mr. and Mrs. Fomon. Mr. Broberg requested that the subdivision issue be deferred to the January 10, 1995, Town Council meeting until Mr. Cook returns from England to give all the interested neighbors an opportunity to review the entire project and the impact on the neighbors. Mr. Broberg reiterated that the notice for the variance must be explicit because these neighbors did not understand the notice that was sent included a subdivision request.

Mr. Broberg compared the site plan with the aerial photographs Mr. Vegosen presented and said the creation of the twenty foot wide street would require the removal of some of the larger trees that presently serve as a buffer between the Fomons and the neighbors on Via Bellaria.

Mr. Broberg said the subdivision site plan shows three lots; however, the lot with the existing Fomon residence on it can be divided into two additional lots with one variance. He continued that if that is done after approval of the subdivision the twenty foot wide road could be serving three residences, and two of these lots could be undersized. Mr. Broberg suggested if the Town Council could put restrictions on any approval regarding future subdividing, many of the concerns would go away.

Mr. Moore replied that the creation of any additional lots would require a variance because of the lot depths, and the Town Council would have to approve any variance requests.

Mrs. Wiener said that anything could happen in the future; however, the Council deals with "what is", and applicants do not normally appear before the Council to do damage to their neighbors. She suggested concerns of applicants and neighbors can be worked out.

Mrs. Smith noted that the Fomon property is surrounded by approximately 16 houses, and the addition of one house on the west end of the Fomon property is not unreasonable.

Mr. Moore stated proper notices were sent to the neighbors regarding the Fomon's request to subdivide the property, and he talked to one neighbor and explained the details on the application. He continued that Mr. Broberg had not brought this issue to his attention before the meeting; although he had been meeting with him on other matters.

Mr. Broberg replied he was simply repeating the comments neighbors of the Fomons had made to him. Responding to questions from Mr. Shaw, Mr. Broberg said the concerns of the neighbors were the placement of the road and the possible division, later, allowing two additional lots.

Mr. Shaw suggested that if there was no intent to further subdivide the property, the road could be moved from the property line past the residence toward the center of the western part of the property and save the trees.

Mr. Moore pointed out, regardless of the location of the road, a variance would be required to develop any additional lots.

Mr. Vegosen replied the placement of the road in the middle of the back yard would negate its use for a tennis court, shuffleboard or any recreational area.

Mrs. Patricia Supper, 260 Via Bellaria, addressed the Town Council and stated the entire property is not large enough for a subdivision. She said she did not receive a proper notice for the subdivision.

Lisa Rowan, 200 Via Bellaria, stated she represented her parents, Rena Rowan and Sidney Kimmel. Ms. Rowan objects to the proposed subdivision because it creates a deficient side yard setback for the existing residence, a substandard new lot, a substandard roadway width and a substandard cul-de-sac. She continued the new road will destroy the quiet and serenity of the gardens for five houses on Via Bellaria. Ms. Rowan questioned the Fomons' hardship that justifies this variance. Ms. Rowan also questioned the public safety issues with the narrow roadway and the entering and exiting of traffic on South Ocean Boulevard which will be very close to Via Bellaria. She added this is an additional hardship for emergency vehicles, and requested denial of the request.

Robert Jenney, 220 Via Bellaria, addressed the Town Council and stated his concern for the proposed road connected with the subdivision because of its proximity to the neighbors boundary line to the north and the removal of a wide swath of mature planting. Mr. Jenney said some of the planting is 60 or 70 years old. He requested time be allowed for the interested neighbors to confer with the engineers, planners and landscape architects for the project. Mr. Jenney said he had not spoken to Mr. Fomon.

Mrs. Smith stated Mr. Fomon was a recognized horticulturist and had planted the vegetation in question.

Mr. Jenney responded he and the neighbors would like to work with the Fomons and their representatives. Mr. Jenney confirmed that an approximately seven foot high wall exists on his property.

Mrs. Lewis Fomon, applicant, addressed the Town Council and stated she and her husband had no intent to do this project without notifying the neighbors. Mrs. Fomon said they would have been delighted to speak to any of the neighbors and had no idea of their concerns. Mrs. Fomon continued they have planted 200 trees including 100 different species of palms, some of which were planted at a full 60 year growth. She said they are very concerned with the trees and their survival.

Mrs. Wiener suggested that the neighbors and the Fomons could work out the details and perhaps a deferral was in order.

Mr. Vegosen replied before a deferral was granted, he would like to suggest that some of the issues presented at this meeting did not have any bearing on the variance request itself. He continued one of these was the apparent dissatisfaction of the neighbors with the type of notice they received from the Town. He continued the requirements for the notice have been in existence for some time, and this subdivision has not been treated differently from any previous subdivision. He said the notice was not an issue since neighbors did appear, with lawyer representation, at this meeting.

Mr. Vegosen stated the applicant was not requesting approval for five houses which was one of the main concerns of the neighbors. He said if the neighbors want to tie up future variance requests now, then he would request that the neighbors do not apply for any variances in the future for any reasons. Mr. Vegosen said he had not heard any concrete argument against the a subdivision with one additional lot when they could have requested approval of four additional lots. He requested the Town Council consider and approve the applicants' request at this meeting.

Mayor Ilyinsky said that Mr. and Mrs. Fomon certainly have the right to subdivide their property, but the postponement of this project may be the kindest way to proceed to provide the opportunity for all those parties who are interested to meet and resolve many of the differences expressed at this meeting.

Mr. Vegosen replied the Mayor was a great mediator; however, his client has been involved with this procedure for 90 days and, in his opinion, nothing will be gained by deferring the project as no hardship will be imposed on any of the neighbors. He stated the Fomons have sensitivity to the neighbors' concerns.

Mr. Moore said one letter was received December 13th from Collette Meyer, Attorney representing Mrs. Anne Randolph Young, 161 Via Del Lago, requesting the relocation of the proposed yard trash bin to the northern end of Palm Grove Road so that the trash bin would be concealed. He added this letter confirmed Ms. Meyer's discussion with Mr. Zimmerman that the proposed private wastewater pump station adjacent to Mrs. Young's property will contain an underground pump which will produce no noise or odor.

Mr. Moore stated lot 1 on the site plan will be 150 feet wide and 325 feet long on the narrow portion.

Mr. Randolph, responding to Mrs. Wiener's questions, stated the Town Council, in the past, has imposed conditions on other subdivisions often by deed restrictions, and if the intent of the property owners is to have only one additional lot, a deed restriction could be required that would restrict the development of this property. He continued a deed restriction would be binding on the property owners and may be helpful to those who object to it. Mr. Randolph said the Town Council and the property owner would be bound to that restriction and that restriction could only be removed by mutual agreement of the parties.

Mr. Vegosen replied this issue had been dealt with earlier in the meeting, and if the Fomons are to have this type of restriction, then the neighbors should agree not to apply for any variances either. Mr. Vegosen said the Fomons plan only the one additional lot, and Mr. and Mrs. Fomon are willing to sign documentation that would bind them to that.

Mrs. Wiener asked Mr. Broberg and the neighbors who were present if the deed restriction would satisfy their concerns? She said property owners do have certain rights, and the Fomons have stated they are going to add one extra house although they have a right to do more than that, but they are stating legally they will not do more than that.

Mr. Jenney responded he would be satisfied with that and since only one house will be built, the road could be moved toward the center of the lot.

Mr. Vegosen replied the Council did not mention changing the road location in any manner.

Mrs. Wiener concurred that was correct.

Ms. Rowan stated her concern was for the neighbors who were not present and requested the project be deferred.

Mrs. Wiener continued the Fomons have certain rights and the notice that was mailed is an invitation for the neighbors to call or contact the property owner. She said the Council attempted to reach a solution to retain the good feeling that the neighbors obviously have for each other and still provide the Fomons with the opportunity to exercise their legal rights.

Motion made by Mrs. Smith to approve the proposed Palm Grove Subdivision with the deed restriction limiting lot 1 to one residence and including the following waivers to the subdivision regulations:

a. Street pavement width 20 feet in lieu of 24 feet.

b. "T" type turn-around in lieu of 100 foot diameter cul-de-sac.

c. Lot #3 deficient in size and area.

Mr. Randolph advised the waivers are part of the subdivision approval and must be included with the decision on the subdivision. He stated a separate variance would be addressed later.

The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

6. Variance No. 64-94 - Robert M. Fomon, 974 South Ocean Boulevard; to allow construction of a road easement, in conjunction with a proposed subdivision, which would give this existing residence a street side yard of 31.27' in lieu of 35' required. R-A District.

Mr. Dean Vegosen, Attorney for Mr. and Mrs. Robert Fomon, explained the existing residence became a corner lot with the subdivision approval and the request is for a 3.7' variance to the side yard setback to allow the construction of a road easement.

Mr. Moore stated that the existing driveway will be a road way, and the western 1/3 of the existing residence will be affected. He said the staff has no objections to the request.

Mr. Vegosen explained, using a site plan, the part of the house that is affected by the variance request.

Motion made by Mr. Goldsmith to approve Variance Number 64-94 to allow construction of a road easement. The motion was seconded by Mr. Shaw. On roll call, the motion carried 5-0.

3. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Robert E. Deziel, for Work at Casa Apava, 1300 South Ocean Boulevard.

Mr. Robert Deziel, Attorney representing the applicant, addressed the Town Council and requested an extension of the permitted working hours for interior construction work only. Mr. Deziel said that an on-site inspector has been present during all hours of construction, and an inspector would continue to be on-site if an approval was granted for an extension of work hours.

Mr. Deziel explained the location of the residence was south of the Kramer residence and north of the former Peter May residence. He said no east/west streets were involved.

Mr. Moore said the Casa Apava the Kramer house to the north is presently under construction and should not be a problem. He continued the Malcolm Healey house to the south has been newly completed and the Staff would recommend, if this is granted, it would be with the consent of Mr. Healey, the neighbor who would be affected by longer hours of construction.

Mr. Deziel replied his client has been dealing with Mr. Healey for 4-5 months, and there have been no problems. Mr. Deziel said his client would agree if Mr. Healey had a problem with the extended hours, construction would return to the allowable working period. Mr. Deziel stated notification of Mr. Healey is difficult.

Mrs. Wiener asked Mr. Deziel to respond to the issue of the truck deliveries and the noise of the construction workers.

Mr. Deziel replied 24 hours on-site security utilizing at least five men has been established, and a designated construction parking lot is located on the boat house site across South Ocean Boulevard to the west.

Mr. Moore responded the site has more security and inspections since hi-rise apartments were built in the Town. He continued Mr. Healey is directly to the south located approximately 60 feet from Casa Apava, and the Staff has no objections if Mr. Healey has no problems.

Mrs. Wiener said that Mr. Healey should be notified in writing, and if Mr. Healey has any problems or complaints to notify the Town.

Mr. Deziel offered to work with Mr. Moore and draft a letter to Mr. Healey.

Motion made by Mr. Goldsmith to approve the extension of interior construction work hours at Casa Apava, 1300 South Ocean Boulevard, from 8:00 a.m. to 8:00 p.m. with the condition Mr. Malcolm Healey receive notification in writing that this extension has been approved. The motion was seconded by Mrs. Smith. On roll call, the motion carried 5-0.

4. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Maurizio Ciminella, for Work at Amici, 288 South County Road.

Maurizio Ciminella, applicant, addressed the Town Council and requested an extension of construction working hours to allow the restaurant to be opened by Christmas. He continued he would like to have his deliveries made between 7:00 and 8:00 a.m. to avoid the traffic rush in that area after 8:00 a.m. He added the construction workers park in the rear of the restaurant to alleviate any parking problems.

Mr. Ciminella said the apartment immediately above Amici's is vacant at the present time.

Mr. Moore replied the hours of 8:00 a.m. to 7:00 p.m. may be appropriate given the fact there are three apartments above the restaurant.

Mr. Ciminella agreed the time extension is for interior work only, and the exterior work will begin at 9:00 a.m.

Motion made by Mr. Shaw to approve the request for the extension of interior construction hours from 8:00 a.m. to 7:00 p.m. with the conditions deliveries be made between 7:00 a.m. and 8:00 a.m., the construction workers park in back of the building and if any of the apartment residents complain, work hours will revert to 9:00 a.m. to 5:30 p.m. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 5-0.

5. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Jo's Restaurant, 375 South County Road.

Mr. Peter Broberg, Attorney representing Jo's Restaurant, addressed the Town Council and requested an extension of the construction work hours to complete interior renovations to the restaurant.

Motion made by Mr. Shaw to approve the extension of the hours for interior construction between 8:00 a.m. and 7:00 p.m. The motion was seconded by Mrs. Royal. On roll call, the motion carried 5-0.

XVI. ANY OTHER MATTERS

Mayor Ilyinsky reported that an airport meeting was held at Kravis Center which turned into a minor disaster; however, the meeting was postponed. He added the two subjects that were going to be discussed were airport expansion via the I-95 route and also the extension of various runways. Mayor Ilyinsky said the Town has been on record numerous times as to what it objects to and what it does not object to, and some criticism has been levied that more of us should attend these meetings. He stated his decision has been quite simple, between himself and Mr. Jakubiak, they would cover every meeting as long as it pertained to something that affects the Town directly. The Mayor saw no reason why representatives from the Town should attend these meetings, which are scheduled for very strange times, and discuss, for example, the moving of tree houses from Cloud Lake. He added this example is not of concern to the Town.

Mayor Ilyinsky said he could, if the Council so directed, to reiterate one more time, through Mr. Jakubiak's office, to write another letter of enormous objection to this I-95 thruway business; he will be happy to do it. He continued, unfortunately, the funding is in place and even Clay Shaw is trying to do everything he can to de-fuse this thing, and so is Harry Johnston. He asked the Council if they wished him to continue to write letters of objection as the Town is on record about as hard as it can be.

Mrs. Wiener replied that the Mayor should keep up the good work and write letters.

XVII. ADJOURNMENT

The meeting was adjourned at 5:25 p.m.

PREPARED BY MARY A. POLLITT
DEPUTY TOWN CLERK

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Smith, Lesly S.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE TOWN COUNCIL
MAILING ADDRESS N. OCEAN BLVD.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: X CITY [ ] COUNTY [ ] OTHER LOCAL AGENCY
CITY Palm Beach, COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED 12/13/94	MY POSITION IS: X ELECTIVE [ ] APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

Item

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Lesly S. Smith, hereby disclose that on December 13, 19 94:

a) A measure came or will come before my agency which (check one)

___ inured to my special private gain; or

___ inured to the special gain of ____________________, by whom I am retained.

b) The measure before my agency and the nature of my interest in the measure is as follows:

The Council considered appointments to the Golf Commission. One of the applicants was Danielle Hickcox, daughter of Lesly Smith.
(Ms. Hickcox was appointed to the Golf Commission on 12/13/94)

13 December 1994
Date Filed

Lesly S. Smith
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.