MINUTES OF TOWN COUNCIL MEETING HELD ON DECEMBER 12, 1995

I. CALL TO ORDER AND ROLL CALL: The Town Council meeting was called to order by President Lesly Smith at 9:30 A.M. in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Samuel McLendon, Leslie Shaw, and Allen Wyett. Also attending the meeting were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager Dave Jakubiak, Town Attorney John Randolph, Fire Chief Ken Elmore, Police Chief Joseph Terlizzese, Director of Building & Zoning Robert Moore, Planner/Projects Coordinator Timothy Frank, Zoning Administrator Paul Castro, Director of Recreation Russell Bitzer, Director of Public Works Al Dusey, Finance Director Marie Crozier, Assistant Finance Director Cheryl Somers, Risk Manager Barbara Martinuzzi, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: The invocation was given by Reverend Warren of Bethesda-by-the-Sea, and President Smith led the Pledge of Allegiance.

III. PRESENTATIONS:

A. Recognition of Joseph Berkow, Golf Commission - From 1990 to 1995 -

Mr. Berkow was not in attendance.

B. Recognition of S. Ashton Clark, Jr., Golf Commission - From 1989 to 1995 -

Mayor Ilyinsky presented Mr. Clark with a plaque in recognition of his service on the Golf Commission form 1989 - 1995.

C. Recognition of Danielle Hickox, Golf Commission - From 1994 to 1995 -

Ms. Hickox was not in attendance.

D. Retirement of Frank A. Agnew, Public Works Parks Laborer -

Mayor Ilyinsky presented Mr. Agnew with an engraved ring in recognition of 20 years and 7 months of service.

E. Retirement of Leslie H. Penfield, Public Works Mechanical Foreman -

Mayor Ilyinsky presented Mr. Penfield with an engraved ring in recognition of 21 years of service.

F. Retirement of Charles M. Saxton, Fire-Rescue Captain Paramedic -

Mayor Ilyinsky presented Mr. Saxton with an engraved ring in recognition of 22 years and 11 months of service.

G. Retirement of Samuel R. Scott, Police Sergeant -

Mayor Ilyinsky presented Sergeant Scott with an engraved ring in recognition of 25 years and 4 months of service.

H. Presentation of "Certificate of Achievement for Excellence in Financial Reporting" by Representative of Government Finance Officers Association for Fiscal Year Ending September 30, 1994, to Town's Elected Officials and Staff -

Ms. Georgette Carroll of the Government Finance Officers Association presented a Certificate of Achievement for Excellence in Financial Reporting to Finance Director Marie Crozier for the 7th consecutive year, remarking that only 3% of government agencies receive this award.

Mrs. Crozier accepted the award, and asked that Ms. Lisa Gorman of the Finance Department stand and be recognized, commenting that without her diligence and assistance the Town would not be receiving such an award.

IV. COMMENTS OF THE MAYOR: Mayor Ilyinsky wished everyone a very Happy Holiday Season, and a successful New Year.

V. APPROVAL OF THE AGENDA:

The following items were added to the Agenda:

Mr. Shaw made a motion to add an item involving an expansion of the Recreation Program to possibly utilize the pool facilities of the Rehabilitation Center. Mr. Wyett seconded the motion. On roll call the motion carried unanimously. This was added as XII. NEW BUSINESS, C. Other, Item 8.

Mr. Wyett made a motion to add a Public Safety Report on the Crime Scene in the Town of Palm Beach. Seconded by Mr. McLendon. On roll call the motion carried unanimously.
This was added as XII. NEW BUSINESS, C. Other, Item 9.

Mr. McLendon made a motion to discuss the rental ability of Town-owned buildings and property. Seconded by Mr. McDonald. On roll call the motion carried unanimously. This was added as XII. NEW BUSINESS, C. Other, Item 10.

Mr. McDonald made a motion to add discussion of the Town Council policy of moving alternates directly to a commission. Seconded by Mr. Shaw. On roll call the motion carried unanimously. This was added as XII. NEW BUSINESS, C. Other, Item 11.

Motion made by Mr. Shaw to approve request for withdrawal of item XV.C.1., Variance No. 39-95. Seconded by Mr. Wyett.. On roll call the motion carried unanimously.

Motion made by Mr. Shaw to approve request for withdrawal of item XV.C.2., Variance No. 41-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Motion made by Mr. Shaw to approve request for withdrawal of item XV.C.6., Special Exception with Variance No. 22-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Motion made by Mr. Wyett to defer item XV.C.7., Variance 24-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Motion made by Mr. Wyett to approve the agenda as amended. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

NOTE: Items listed on the "Approved Agenda" will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that certain items be deleted from same and be individually considered.

APPROVED AGENDA (ITEMS VI. THROUGH VIII.)

VI. APPROVAL OF MINUTES OF NOVEMBER 14, 1995

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Albert Einstein College of Medicine of Yeshiva University; No. 10-96
2. Brandeis University; No. 76-96
3. Palm Beach Crime Watch, Inc.; No. 182-96
4. Friends of Youth Award, Inc.; No. 351-96
5. Vetsville Cease Fire House, Inc.; No. 372-96
6. Lupus Foundation of America, Southeast Florida Chapter; No. 399-96
7. Jupiter Christian School; No. 400-96
8. Palm Beach Fellowship of Christians and Jews, Inc.; No. 401-96

Other

- Failure to File Prior Results Forms Within Prescribed Time

9. Jewish Federation of Palm Beach County, Inc.; No. 22-96
10. The Jewish Theological Seminary of America; No. 27-96
11. American Friends of the Hebrew University, Inc.; No. 101-96
12. Ballet Florida, Inc.; No. 156-96

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

13. Hanley-Hazelden Foundation, Inc.; No. 239-96
14. Compass, Inc.; No. 374-96

B. Beverage Licenses

1. Application for a New 2APS Alcoholic Beverage License by Ian Mackay Kean for Via Mizner of Worth Avenue, Inc. d/b/a Mizner's Moveable Feast at 8 Via Mizner

VII. NEW BUSINESS

A. Other

1. Consideration to Authorize the Payment of Premium for the Waiver of Recourse/Fiduciary Liability for the Town's Retirement System Board Members

Motion made by Mr. Shaw to approve the Approved Agenda. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

REGULAR AGENDA

IX. LICENSES AND PERMITS - None

X. COMMITTEE REPORTS

A. Report of the Finance and Taxation Committee Meeting of November 28, 1995

REPORT OF THE FINANCE & TAXATION COMMITTEE MEETING HELD ON NOVEMBER 28, 1995

I. CALL TO ORDER AND ROLL CALL: The Finance & Taxation Committee meeting was called to order by Chairman Lesly Smith at 10:00 a.m. On roll call, Mrs. Smith, Chairman, and Mr. Jack McDonald, Committee Member, were found to be in attendance. Other Elected Officials in attendance were Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also attending were Town Manager Robert Doney, Finance Director Marie Crozier, Assistant to the Finance Director Cheryl Somers, Public Works Director Al Dusey, Personnel Director William Crouse, Fire-Rescue Chief Ken Elmore, Risk Manager Barbara Martinuzzi, Director of Planning, Zoning and Building Robert Moore, Administrative Aide Wendy Zamecnik, and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA: The agenda was approved.

III. FY96 BUDGET - Overview and Financial Position of Year End Balances of Funds for Fiscal Year Ending September 30, 1995, and Potential Additional Designated Reserves

After overview comments by Mr. Doney, Mrs. Crozier reported the audit process for FY95 is in progress and is anticipated to conclude by mid to late December. Mrs. Crozier referred to her memorandum (with attachments) dated November 27, 1995, (copy attached) and said she reviewed the FY95 fund balances including all expenditures and revenues. As a result of that review, the preliminary unaudited undesignated fund balances (or working capital) for all funds as of September 30, 1995 have been determined as shown in Exhibit A. Mrs. Crozier advised that Exhibit B is a summary of General (Operating) Funds reserved for specific purposes.

Mrs. Crozier stated it is important to note that because the audit process is not concluded for FY95, these balances could change as a result of required audit adjustments; however, adjustments were not anticipated that would change the recommendations as shown in her November 27th memorandum to the Finance and Taxation Committee.

Mrs. Crozier stated, in her opinion, the Town's financial condition continues to remain sound, and the General (Operating) Fund, which accounts for the majority of the Town's operations, is projected to have a preliminary unaudited, undesignated fund balance of $7,333,516 as of September 30, 1995. Mrs. Crozier noted that this represented approximately 25% of the FY96 General Fund budget of $29,570,588 which excluded the transfer of $1,912,000 to the Capital Improvement Fund for FY96. This exclusion was made because fund balance reservations are intended to cover two months of operating expenditures and would not include one time payouts such as the Capital Improvement Fund transfer.

Mrs. Crozier stated that the Town Council approved appropriations on June 13, July 11 and August 8, 1995, to fund the $6,000,000 P.E.P. Reef Removal and Mid-Town Beach Restoration and Groin Project. The Town Council approved utilizing the following reserve accounts to finance this project:

		Mid-Town Beach Funds Appropriated	Anticipated Fund Balance* 09/30/95
1.	Beach Protection Reserves	$1,050,000	$ 45,753
2.	Oceanfront Roadway Protective Seawall Reserve	$2,500,000	$ 78,492
3.	Capital Improvement Program Undesignated Fund Balance	$ 700,000	$ 668,976
4.	Self Insurance Liability Reserve	$ 1,750,000	$1,055,051

*Preliminary unaudited projected reserve balances <u>after</u> Mid-Town appropriations and other FY95 Revenues and Expenditures are considered.

Mrs. Crozier said she had spoken to Mr. Dusey, Director of Public Works, and he believes the Beach Protection Reserve Account and the Oceanfront Roadway Protective Seawalls Reserve Account should be combined under one reserve account titled "Coastal Management Reserve Account". Mrs. Crozier said she concurred with Mr. Dusey that it would be appropriate to establish one reserve account for coastal management, and these two reserve accounts would have a preliminary unaudited balance of $124,245 as of September 30, 1995.

Mrs. Crozier said she believed the Finance and Taxation Committee should consider recommending to the Mayor and Town Council the replenishment of these Coastal Management funds beginning in FY96. She continued that, according to Town policy, the Undesignated General Fund balance must be maintained at a level of 12-15% of current year budgeted expenditures, and a 15% retention for FY96 would equal approximately $4,435,600. Mrs. Crozier said the projected FY96 Undesignated General Fund Balance is anticipated to be $7,333,516 which is approximately $2,900,000 higher that required by this policy. Mrs. Crozier recommended the appropriation of $1,000,000 from the Undesignated General Fund Balance to begin replenishing reserve funds utilized from the Beach Protection and Oceanfront Roadway Protective Seawall Reserve accounts and combining these into a new reserve account entitled the "Coastal Management Reserve Account". She noted that after that appropriation, the 9-30-95 Undesignated General Fund Balance would be $6,333,516, or approximately $1,900,000 more than required by policy. Mrs. Crozier said the Finance Department has reviewed appropriations authorized to balance the budget in FY95 ($1,000,193) and FY96 ($1,600,162), together with additional appropriations in FY95 of $339,328 for necessary expenditures not budgeted (Council authorized uses of Undesignated General Fund Balance, as identified in the attached copy of Exhibit C). Mrs. Crozier believed the $1,900,000 should be retained above required retention for Town Council authorized uses, if necessary, in FY96 and/or to help balance the FY97 proposed budget. Mrs. Crozier said that available monies from undesignated General Fund balances are utilized on an annual basis to help reduce the need for ad valorem revenues and reduced the need for ad valorem revenues in FY96 by $1,600,000, from $20,400,000 to $18,800,000.

Mrs. Crozier recommended that the Self Insurance Liability Reserve and Undesignated Capital Improvement Fund balance not be replenished. She said the $700,000 utilized from the Undesignated Capital Improvement Fund Balance was not previously appropriated for a single specific purpose, and this balance represented the combined result of interest earned on Capital Improvement Program invested funds and the net savings from projects completed under budget over a period of years. Mrs. Crozier noted that there was no need to return those monies to the Capital Improvement Fund.

Mrs. Crozier reported that the $1,750,000 utilized from the Self Insurance Fund Liability Reserve resulted in a preliminary unaudited fund balance of $1,055,051 as of September 30, 1995. She stated that positive experience over the last several years had contributed to the actuarial soundness of the Self Insurance Liability Reserve Fund, and she did not believe that return of monies to this reserve account is presently necessary. Mrs. Crozier said that actuarial required retention for the liability and worker's compensation reserve accounts according to The Government Accounting Standards Board (GASB 10) was approximately $868,000 and combined preliminary unaudited reserves are estimated to be $2,350,078 for these accounts on September 30, 1995. She continued that while this amount appeared high when compared to actuarial required retention, it was important to note that the Town continued to remain purely self insured for essentially all Town owned and/or maintained infrastructure such as oceanfront roadway protective seawalls, underground utilities, roadways and bridges. Therefore, Mrs. Crozier believed it prudent to maintain this reserve at a level that is above actuarial requirements; although, she did not believe it was necessary to replenish funds utilized at this time, she did believe the Town should allow this Self Insurance Liability Reserve to continue to build up over time.

Mrs. Crozier said, as needed, the Town Staff would request that the Town Council consider additional appropriations from the available Undesignated General Fund Balance or from other sources to maintain an appropriate reserve level for the Coastal Management Reserve Account. Mrs. Crozier reported the Town had requested that Palm Beach County contribute $1,000,000 for the Mid-Town Beach Project and if the County appropriates these funds, she recommended that the monies received be added to the Coastal Management Reserve Account.

Mrs. Crozier reviewed Exhibits A, B, and C, commenting that the Reserves for Encumbrances for FY96 were projected at $534,746 or monies committed in FY95 for the purchase of goods or services, and the Reserve for the Renewal/Replacement Sanitary Sewer Treatment Plant was $1,228,098. Mrs. Crozier said that the average of Use of Fund Balance, over seven years, was approximately $1,300,000 per year; however, in FY 95, the Town Council authorized uses of Undesignated General Fund Balance or $339,328. She continued that in FY 93-94, the authorization was $457,813. When these numbers were combined and added to the average Use of General Fund Undesignated Balance Budget, the number was approximately $1.7 million. Mrs. Crozier referred to her earlier recommendation of $1.9 million being retained for those two purposes resulting in an amount of $200,000 above the average, which was not a very large cushion. Mrs. Crozier summarized her previous recommendations:

1. Appropriate $1 million from the Undesignated General Fund Balance to begin replenishing Reserve Funds utilized and place these monies in a new reserve account entitled, The Coastal Management Reserve Account.

2. Approval not to replenish $1,750,000 of Self Insurance funds utilized from the Self Insurance Liability Fund and not to replenish $700,000 from monies used from Undesignated Capital Improvement Fund Balance.

3. Approval to place any monies received from Palm Beach County for the Mid-Town Beach Project in the Coast Management Reserve Account.

After discussion of Mrs. Crozier's recommendations, Mr. McDonald said he would like to name the new account, The Coastal Protection Reserve Account. **THE COMMITTEE RECOMMENDED:**

(1) THE APPROPRIATION OF $1 MILLION FROM THE UNDESIGNATED GENERAL FUND BALANCE TO BEGIN REPLENISHING RESERVE FUNDS UTILIZED AND PLACE THESE MONIES IN A NEW RESERVE ACCOUNT ENTITLED "THE COASTAL PROTECTION RESERVE ACCOUNT";

(2) THE SELF INSURANCE LIABILITY RESERVE AND UNDESIGNATED CAPITAL IMPROVEMENT FUND BALANCE NOT BE REPLACED;

(3) IF AND WHEN THE TOWN RECEIVES ANY CONTRIBUTIONS FROM PALM BEACH COUNTY, THE MONIES RECEIVED SHOULD BE ADDED TO THE COASTAL PROTECTION RESERVE ACCOUNT.

IV. Consideration of Investment Management Services Agreement with First Union National Bank Capital Management Group

The Committee discussed the year-to-date performance of First Union Capital Management Group, comparing yields of the Town's First Union account to the State Board of Administration's yields from November 30, 1993 through October 31, 1995. Charts for the General Fund and SIF Fund were presented to the Committee listing the par value, tax cost, current price, market value, annualized income, current yield, and yield to maturity for each security in the funds. Mr. J. E. Morgan, Jr., President, First National in Palm Beach (First Union's Private Bank); Mr. Gerald J. O'Leary, Vice President, Regional Trust Officer, Capital Management Group; Mr. George Prattos, Director of Fixed Income and Senior Portfolio Manager; Mr. Brad Ridinger, Vice President and Senior Portfolio Manager; and Mr. Stephen T. Faries, Consulting Services Manager, Capital Management Group, addressed the Committee explaining the performance of the account during the last approximately two years. Mr. Ridinger emphasized the improvement of the Town's yields in the First Union account since 1994.

After discussing the fees which First Union charges the Town for managing the account, **THE COMMITTEE RECOMMENDED THAT FIRST UNION NATIONAL BANK CAPITAL MANAGEMENT GROUP SUBMIT, IN WRITING, BY DECEMBER 5 OR 6, A FEE PROPOSAL TO BE CONSIDERED AND/OR NEGOTIATED BY THE TOWN.** The Committee requested that a representative from First Union National Bank Capital Management Group be present at the December 12, 1995, Town Council meeting.

V. ANY OTHER MATTERS

Mr. Robert L. Moore, Director of Planning, Zoning and Building, requested $28,000 be authorized to hire a full time contractual plans examiner that would be State certified in structural, electrical, plumbing and mechanical fields. The $28,000 was estimated, using a $20 hourly rate, for the period from February through September, 1996. Mr. Moore identified the revenue source for the request to come from the $350,000 increase in permit fees over last year's revenue in the Building Department. **THE COMMITTEE RECOMMENDED THE AUTHORIZATION OF $28,000 FROM THE UNDESIGNATED GENERAL FUND BALANCE TO BE USED FOR THE HIRING OF A FULL TIME CONTRACTUAL PLANS EXAMINER IN THE PLANNING, ZONING & BUILDING DEPARTMENT.**

Mr. Moore requested the authorization of $7,500 for the purpose of hiring Frederic R. Harris, Inc to provide traffic analysis for the Comprehensive Plan's Evaluation And Appraisal Report (EAR) program. Mr. Moore, referring to a

November 9, 1995, letter from William F. Brisson, Consultant, said Frederic R. Harris would assemble data, evaluate the Town's achievement of its objectives; analyze potential amendments, identify future actions and would attend two of the public hearings. Five hours were included in the $7,500 request for the cost of attending the meetings. Mr. Moore explained the $7,500 cost was overlooked in the preparation of the FY96 budget.

THE COMMITTEE RECOMMENDED THE AUTHORIZATION OF $7,500 FROM THE UNDESIGNATED GENERAL FUND BALANCE TO BE USED TO PROVIDE TRAFFIC ANALYSIS FOR THE COMPREHENSIVE PLAN EAR PROGRAM.

VI. ADJOURNMENT

The meeting was adjourned at 11:30 a.m.

LESLY S. SMITH, CHAIRMAN

JACK MCDONALD, COMMITTEE MEMBER

Mrs. Smith reported that it was the recommendation of the Finance & Taxation Committee to appropriate $1 million from the Undesignated General Fund Balance to begin replenishing reserve funds utilized and place these monies in a new reserve account entitled "The Coastal Protection Reserve Account."

Mr. Wyett made a motion to approve the recommendation. Seconded by Mr. Shaw.

Mr. McLendon stated that there may be some serious deficiencies in capital needs in the future, and commented that Mr. Dusey could let the Town Council know how the five year capital program was meeting the needs for replacing sewers, for example, on a timely basis. He stated that he thought additional capital funds for the future should be accumulated.

Mr. Al Dusey, Director of Public Works, addressed the Town Council, stating that evaluation of the sanitary sewer system was taking place, and that there were some management changes taking place in that division, and he thought they would be seeing some additional expenditures in the capital improvement program over time. He commented that he understood that the reserves were monies that had accumulated from earned interest, and projects that came in under budget, and that the reserves were intended to cover those items that come up during the course of the year that Town Council may wish to pursue, as well as covering overages on other projects.

Mr. Doney commented that during the budget process a hard look is taken at every facility in Town, along with going back and referencing the long range Public Works Plan. He suggested to Mr. McLendon that projects be looked at in greater detail, and that he thought there was a very good renewal and replacement program in effect, as well as a good preventative maintenance program.

Mrs. Smith stated that Mr. Dusey would know the costs and expected life of many of the systems in Town, and that he would be able to give costs for replacement.

On roll call the motion carried unanimously.

The second recommendation of the Finance & Taxation Committee was that the Self Insurance Liability Reserve and Undesignated Capital Improvement Fund Balance not be replaced.

Mrs. Crozier explained that actuarial requirements for the Self Insurance Liability and Workers Compensation Reserve were anticipated to be approximately $868,000. The preliminary projection for the two reserve accounts put that balance at just over the $2 million mark. She suggested that it was prudent to retain that dollar balance in that reserve since the Town was purely self insured, and at this time there was no need to return the $750,000 that was used. She recommended that the reserve be allowed to build up over time.

Mr. Wyett made a motion to approve the recommendation of the Finance & Taxation Committee that the Self Insurance Liability Reserve and Undesignated Capital Improvement Fund Balance not be replaced. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

The third recommendation of the Finance & Taxation Committee was that if and when the Town receives any contributions from Palm Beach County, the monies received should be added to the Coastal Protection Reserve Account.

Mr. McLendon made a motion to accept that recommendation. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

In regard to First Union fees, the Finance & Taxation Committee recommended that First Union National Bank Capital Management Group submit, in writing, by December 5 or 6, a fee proposal to be considered and/or negotiated by the Town. Mrs. Smith said that representatives from First Union were present, and after the report had been accepted, they would make a presentation.

In addition, the Finance & Taxation Committee had recommended the authorization of $28,000 from the Undesignated General Fund Balance to be used for the hiring of a full time contractual Plans Examiner in the Planning, Zoning & Building Department.

Mr. Moore identified a backlog in the permitting process had taken the normal turn around time of 10 working days to 15-20 working days, with part of the problem being that revisions needed to be reviewed. He recommended that a contractual employee be hired, rather than a full time employee for whom the Town would pay benefits.

Mr. Shaw made a motion to approve the recommendation for authorizing $28,000 from the Undesignated General Fund Balance to be used for the hiring of a full time contractual Plans Examiner in the Planning, Zoning & Building Department. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

The last recommendation of the Finance & Taxation Committee was that $7,500 be authorized from the Undesignated General Fund Balance to be used to provide traffic analysis for the Comprehensive Plan EAR Program.

Mrs. Smith asked Mr. Moore if this was part of the original approved $36,000?

Mr. Moore replied negatively.

Mrs. Smith continued that Mr. Brisson had recommended the $7,500, but that he would not be doing the work, and she questioned why this was a separate item?

Mr. Moore replied that Frederic R. Harris was the Town's traffic engineer for the Comprehensive Plan purposes, for evaluation of the Town's traffic goals and objectives as outlined in the 1989 Comprehensive Plan, and although there was an independent engineer to review the counts on an annual basis, Frederick R. Harris was the Town's engineer regarding the analyzation and implementation of any of the issues relating to the Comprehensive Plan traffic goals and objectives. Mr. Brisson was the consultant, and the work of Frederic R. Harris would be used to put together the Evaluation and Appraisal Report. This amount would also include time to come to the various Town Council Meetings that would be taking place regarding the adoption of the Evaluation and Appraisal Report. Mr. Moore added that, frankly, this item had not been budgeted.

Mrs. Smith asked why Mr. Brisson would have to analyze a traffic report, and why it would not come directly to the Town?

Mr. Moore replied that Mr. Brisson was charged with preparing the Comprehensive Plan with the assistance of experts in particular areas.

Mrs. Smith said that as she understood it, Mr. Brisson was subcontracting a job, and usually the contractor would pay for a subcontracted job, and she questioned why the Town was paying for it?

Mr. Moore replied that it was because it was not budgeted by Mr. Brisson, and he had notified the Building Department in September, however, it had not been included in the budget.

Mr. McLendon asked if this was the only external cost other than staff input?

Mr. Moore responded that he was not sure if the seawall protection element portion of the Coastal Protection Plan was contracted out or not, but as much as possible was done inhouse, however, there were no traffic engineers on staff.

Mr. Adrian Winterfield addressed the Town Council, stating that he saw the approved proposed service for the consultant, and it had given a flat figure of $36,000, with the only breakdown being reproduction. He stated that he was concerned that there was not more precision. If, indeed, this was not to include services required for an essential portion of the report, this should have been specified. Mr. Winterfield added that he found it difficult to understand how the general consultant could allocate part of the $7,500 to himself.

Mr. Shaw asked if Mr. Brisson gave the Building Department an outline of the elements that he would need?

Mr. Moore responded affirmatively. Mr. Moore stated that Mr. Brisson had not left the amount out, but that he had left it out of the Building Department budget.

Mr. Shaw asked if the traffic study had been included in Mr. Brisson's plan?

Mr. Moore replied that they *knew* that a traffic study was required, but it had not been included in the budget.

Mr. McDonald made a motion to approve the recommendation of the Finance & Taxation Committee to authorize

$7,500 from the Undesignated General Fund Balance to be used to provide a traffic analysis for the Comprehensive Plan EAR Program. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Smith said that the presentation from First Union would now take place.

Mr. Jake Morgan, the Area President for First Union in the Town of Palm Beach addressed the Town Council, stating that in compliance with the request of the Finance & Taxation Committee, a proposal had been submitted on December 5, 1995, which had since been negotiated, and Mr. Steve Faries, Vice President and Consulting Services Manger for First Union would make the presentation as to the conclusions to those negotiations.

Mr. Steve Faries addressed the Town Council, stating that he was the Consulting Services Manager for First Union, and was responsible for the employee benefits and institutional relationships throughout the State of Florida. With him today was Brad Reidinger, a chartered financial analyst and Vice President and Senior Portfolio Manager for First Union. He informed the Town Council that he and Mr. Reidinger would go through the presentation booklet that had been passed out today, and were at the meeting to propose a performance fee-based arrangement with the Town of Palm Beach that would be implemented retroactively to the inception of the relationship between the Town of Palm Beach and First Union. He referred to page 1 of the booklet containing a summary of the interest earned by First Union through October 31, 1995, and, along with Mr. Reidinger, explained the management of Town funds in the presentation booklet further. It was noted that the objective of the investment policy was to achieve a market rate of return over an economic cycle, which most professionals agree was four to seven years. A performance fee proposal was discussed, with a base fee consisting of five basis points; the second portion was the benchmark, involving comparison of performances. It was proposed that the fee proposal would go into effect as of January 1, 1996, and would continue for nine months, until the end of the fiscal year on September 30, 1996. Mr. Reidinger went over the fee schedule in detail.

Mrs. Marie Crozier, Finance Director, addressed the Town Council, stating that she had reviewed the proposal from First Union, and wished to clarify several things: She had no problem with having performance evaluated at fiscal year end, and she suggested that monthly reports be received from First Union, so that the Finance Department could evaluate on a monthly basis. In addition, she asked for clarification that the agreement would go forward at any point in time--they would forego their fee as long as there was a deficit, including past December 31, 1995 and into the future.

Mrs. Smith asked if Mrs. Crozier was saying that she would like to see the December 31, 1995 date taken out?

Mrs. Crozier replied it could either be taken out, or at least clarified--perhaps it was already being said in the report, but she would like assurance of the meaning. She explained that she would also like agreement on a relative performance, which she believed should be based on book value, which would include the cost of securities including amortization of premiums and discounts. Once that measurement was agreed upon, she stated that First Union and the Finance Department should meet approximately January 15, 1996, in order to agree on what the actual December 31st number was. She added that in reviewing the proposal she believed that First Union had been responsive to issues as they had arisen with the Town, and that they had been willing to compromise over the existing 24-month relationship. She noted that if the proposal was accepted, the performance fee to First Union for the 24-month relationship would be zero; the custodial fee of $6,500 would be charged for the two year relationship, and with the exception of that the Town would remain as it would have been had it stayed with the State Board.

Mrs. Smith asked how Mrs. Crozier would address the question of $30,000 that First Union and the Town seemed to disagree on?

Mrs. Crozier replied her calculations were based on the proposal as First Union had presented it, which spoke to approximately $19,000 at this time. She noted that the intent was to make the Town whole, and the $30,000 would have accomplished that. She explained that there had been representations made to the Town with respect to the earnings of the portfolio in September, and that she thought that First Union felt it was necessary to make those representations realistic by making the number whole, but it was not a loss to the Town--there were no dollars lost--it was a paper number that was represented as having been earned.

Mrs. Smith stated that she believed part of the problem came from the Town Council Meeting of September, 1993, where "Mrs. Cantor, representing First Union, said the State Board is currently a very liquid type of investment vehicle. We feel that by actively managing your account that we cannot only make up our fee, but add value between 30-50 basis points to the Town net of our fees." Mrs. Smith stated that was one of the very big inducements for the Town to go from the SBA to First Union, and that was also one of the big disappointments to the Finance Committee, however, today the Council was trying to find the best fiscal vehicle for the Town's investments. She noted that First Union must give the Town a great deal of assurance as to the amount of money that would be coming into the Town net of their fees.

Mr. Wyett stated that he would like to see a projection of exactly what First Union fees would be so that they could be analyzed. He added that he would also like to hear discussion about restoring the excess fee from last year for under performance.

Mr. Steve Faries stated that the performance evaluation reporting could be done on a monthly basis, and the only way the Town and First Union would benefit was if First Union could outperform the SBA. If September 30, 1996 arrived and performance was less than or equal to the SBA, then First Union would not have outperformed the SBA and there would be no recoupment of the deficit by the Town of Palm Beach, and no bonus fee paid to First Union. He noted that as far as the income adjustment, First Union believed that the objective of the approach was to try to make the Town whole and to get the Town to a point where it would have been had it not been made the decision to remove the money from SBA to First Union, and so, in that regard, the $30,257 income adjustment would be utilized to offset the $58,000 deficit. Mr. Faries continued that regarding representations made by Ann Cantor in 1993, at that time existing market conditions contributed to that being a reasonable outcome, however, there had been a very extreme bond market in 1994 that prevented that outcome. He offered to do a projection looking at the cost of the current proposal versus the current fee structure, and the whole projection would have to be based on different assumptions as to what the market was going to do.

Mr. Wyett stated that he would also like First Union to consider restoration of any deficit as of December 31, 1995.

Mr. Faries stated that the loss would be carried over to 1996 under the current proposal, because the proposal would not commence until January 1, 1996, and First Union felt very strongly that part of the agreement with the Town would be that they would be given a market cycle in order to perform.

Mr. Wyett stated that he agreed with a long term approach, but would like to start with a clean slate.

Mr. Faries pointed out that was not part of the proposal because the proposal was to carry it in 1996, and through performance to recoup that.

Mrs. Smith commented that perhaps the Town Council could hear from First Union on January 22,1996, after the January 15 meeting of First Union with the Finance Department.

Mr. McDonald made a motion that the meeting be held at 4:00 P.M. on January 22, 1996. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw stated that the past was history, and he was more concerned with what was going to happen in the future. He made a motion to accept the Finance & Taxation report. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

XI. OLD BUSINESS

A. Other

1. Consideration of Beach Erosion Issues

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

Mr. Dusey addressed the Town Council, stating that the contractor had suffered another breakage on the drill line--they had looked at patterns of breakage, and believed there was something occurring underground that was causing the breakage and were pursuing that, as well as consulting a seismologist and testing their pipe again. They were reluctant to proceed until some results were found, and would provide a new schedule, and they remained committed to completion of the project.

Mayor Ilyinsky asked exactly what it was that breaks?

Mr. Dusey explained that it was a flexible pipe that turns and pulverizes material and enlarges a hole, and that pipe was breaking at a particular point.

Mr. Shaw asked if it would be possible for the contractor to use a smaller drill size in order to get the project going?

Mr. Dusey replied that they had made a smaller hole and enlarged that, and they had asked if they could drill dual holes, but staff preferred that not be done because when there was limited control the pipes could end up far apart.

Mr. Shaw suggested that it may be beneficial to drill dual holes in order to get the plant up and running. Mr. McLendon stated that he thought the plans should remain as recommended by Mr. Dusey.

Mr. Wyett asked the cost to the Town of the delay?

Mr. Dusey replied that the County has employed several people to run the Plant, and would be billing the Town for those people, which he felt was reasonable, since the anticipation was that the Plant be operational. Approximately $180,000 had been budgeted, which included materials, fuels, electricity and parts, and there was a figure available on a monthly basis.

Mr. Wyett suggested that the staff be layed off if the delay should become lengthy.

Mr. Dusey responded that the County could be approached in that regard, however, he was trying not to have it go in that direction.

Mr. McLendon commented on the procedure of the contractor in connection with the increased diameter of the reamers.

Mr. Dusey stated that he was very concerned, but that the contractor was continuing to pursue the project with good intentions.

Mrs. Smith stated that this should be done before the January meeting, and if the contractor could not get results at that time, they were not getting the job done.

Mr. Dusey stated that he thought the contractor was actively pursuing the project and was doing the very best they could.

Mr. Wyett asked if sand would be received from the U.S. Corps of Engineers?

Mr. Dusey replied affirmatively.

Mr. Wyett asked if the Corps of Engineers would be dumping the sand on the beach itself?

Mr. Dusey replied affirmatively, it would be just south of the Inlet.

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

Mr. Dusey addressed the Town Council, stating the sand pumping portion of the project had been completed on Saturday, December 2, 1995, and the contractor immediately started demobilizing, removing pipe and dredge equipment, and are continuing to do that. The derelict structure removal, which was part of the original renourishment project was scheduled for completion on December 19th or 20th. The drainage adjustments had been completed as of December 1st. The groin contractor had been given a notice to proceed, and there will be a mobilization effort starting Monday, December 18, bringing in equipment, and the PEP units would be retrieved. Large amounts of materials would be received, and there would be a lot of activity associated with the project. He added that actual construction of the groins should start in January. Mr. Dusey said that the company appeared to be very well organized and he expected great things from them. The work would take place during daylight hours, Monday through Saturday. Completion was expected in early April.

Mr. Doney announced that the area under construction would be further signed, so that individuals attracted to wanting to use it before it was ready would be forewarned.

Mr. McLendon asked Mr. Dusey to advise the public of the design features of the beach.

Mr. Dusey stated that the beach that was constructed was there for construction purposes only, and the berm expected was 25' sloping down to the ocean, which would give a dry beach of about 100'. Right now there was a dry beach of about 220', which was artificial and should not be there. In about a year or so it should be down to what was expected, about 100' of dry beach.

Mrs. Smith remarked that there was a mid-Town dune planting program that was part of the project, and she had heard that there would be contributions made to that program.

Mr. Dusey responded that the dune project would commence as soon as the contractor had completed the groin construction.

Mr. Wyett asked how far out the groins would be going?

Mr. Dusey replied the largest was about 178'.

Mrs. Smith asked what the problem was on El Vedado Way?

Mr. Dusey responded that the streets were torn up as drainage, irrigation pipes, water and sewer lines were being restored and the work should be done by December 25th.

Mr. John Matich addressed the Town Council, stating that he thought the beach restoration was a wonderful project, however, he questioned whether the beach would be restored by the Sand Transfer Plant in the future, or would this project have to be repeated?

Mr. Dusey responded that the transfer of sand, in the long term, affects all downstream beaches, so anything done with the Inlet was beneficial to all beaches in time. The Mid-Town would need to be renourished on occasion, and the current estimate was five years. It was expected that the Corps of Engineers would be asked to place sand at Mid-Town every one or two years, depending on what happened once the Sand Transfer Plant was operational.

c.. Consideration of Questions Posed by Palm Beach County Regarding Potential for Including the Par 3 Golf Course and Phipps Ocean Park in the County's Proposed Dune Restoration Project

Mr. Peter Elwell, Assistant Town Manager, addressed the Town Council, stating that he in reference to the previous matter, he believed it was important for the public to know that the beach would need to be maintained, although the future maintenance projects would be on a much smaller, and less expensive scale.

Mr. Elwell continued that regarding the Dune Restoration Project in the south end, the Town Council had addressed the project, and approved Town participation in a portion of it with several very specific conditions. Staff had worked with Palm Beach County on addressing some of those conditions, and others remained to be addressed pending the outcome of further consideration at the State level about which portions the State would provide funding assistance for, and which portions would be funded locally. One of the conditions placed on the project by the Town Council was that at Phipps Ocean Park the County had committed to pay that local share without any cost to the Town, so that was to be included, and there had been some question about the Par III Golf Course. There were some private properties that agreed to be included. Since the project was continuous, if the Par III property was included in the project, there would be a few private property owners that would have to be contacted.

Mr. Elwell continued that the reason this item is back before the Town Council today was that the funding application was beginning for State funds, and Palm Beach County had submitted the application for the State Funds. They had requested reinforcement of the Town Council action that had been taken in February to do two things today. Authorization was needed for Mrs. Smith to send letters to both the Department of Environmental Protection and to the Legislative Delegation supporting the County request for State funding assistance. In addition, the commitment of the Town to participate as a property owner at Phipps Ocean Park was needed.

Mr. McDonald made a motion to authorize Mrs. Smith to send the above mentioned letters and to reiterate the commitment of the Town to participate as a property owner at Phipps Ocean Park. Seconded by Mr. McLendon.

Mr. Wyett suggested that 2500 South Ocean Blvd. Condominium be contacted, since as he understood it, if the County went in there was an area extending north and south that may involve that condominium.

Mr. McLendon asked what the ocean frontage was at Phipps Park, as opposed to Par III?

Mr. Elwell stated that information could be located.

Mayor Ilyinsky referred to the Town Council Meeting of February 14, 1995, and asked if the Town had been satisfied on the A-1-A right-of -way matters?

Mr. Elwell responded that satisfaction had not been attained in regard to the acceptable legal language, however, satisfaction has been attained in communication with Palm Beach County in that both sides agree that needs to happen in order for the project to happen. County attorneys were relatively comfortable, and Mr. Randolph was relatively comfortable that language could be drafted that would set that issue aside.

Mrs. Smith asked when the project would start, if approved, and how long would it take?

Mr. Elwell replied that at this point one of the issues to be resolved would be whether summer construction would be allowed because of turtle nesting, so construction would take place in the winter, and if the funds were appropriated by the State Legislature in the spring, construction would begin sometime after October 31, 1996.

Mrs. Smith commented that the Town had been very diligent in pursuing funding for the Town on this project.

On roll call the motion carried unanimously.

d. Coastal Construction Control Line (CCCL) - Consideration of Official Town Comments on the Exemption Rule Proposed by Florida Department of Environmental Protection -

Mr. Elwell again addressed the Town Council, stating that the proposed relocation of the Coastal Construction Control Line (CCCL) would come back for additional public meetings in Palm Beach County when the State was ready to do that. The issue today was a proposed rule which addressed some concerns raised by the Town as well as other coastal municipalities, which was that the method of identifying where the relocated line was proposed did not include any consideration of seawalls or other coastal armory. The coastline in the Town and most of Palm Beach County was well armored, and there was a substantial amount of protection, and the model did not take that into account. Therefore, the line that was proposed was substantial, landward of where most coastal engineers felt was reasonable. The State had decided to address that concern--rather than to incorporate seawalls and other armory into the model they used, they believed it was more reasonable to address each property on a case by case basis, because the walls require maintenance, and the State would like to review what the condition of the armoring was and then decide whether or not a property was exempted. There were some concerns with the specific wording of the proposed rule, and the recommendation was that Mrs. Smith be authorized to appear on behalf of the Town at a workshop scheduled for Wednesday, December 13, 1995, where the DEP would be receiving public comment on the rule, and that Mrs. Smith be authorized to recognize that this was a step forward to address the concerns, and to put into the record the specific wording of the Town.

Mr. Wyett made a motion to authorize Mrs. Smith accordingly. Seconded by Mr. McLendon.

Mr. McDonald asked Mr. Elwell if there had been any inventory of the south end properties in terms of which properties might meet the new criteria?

Mr. Elwell stated that the criteria were not now well enough defined in order to know what the measure would be. The State would be asked to be more definitive. There was a good inventory of what armoring was in place along the Town coastline, however the actual condition of what was there needed to be analyzed.

Mr. McDonald asked Mr. Elwell if there were properties that had no armoring at all?

Mr. Elwell responded that Clarke Ave. Beach had no armoring at all, and there were a few other properties in Town.

Mr. McDonald asked if the Citizens Association should be encouraged to attend the workshop on December 13, 1995?

Mr. Elwell replied that any member of the public should feel very much welcomed.

Mrs. Smith stated that she would think every civic group in Town would be there representing the residents.

Mr. McLendon complimented staff in pursuing this matter.

On roll call the motion carried unanimously.

Mrs. Smith complimented Mr. Elwell on his nomination as Chairman of the Beaches and Shores Council.

2. Update Regarding the Proposed Downtown Master Plan for the City of West Palm Beach -

Mr. Randolph, Town Attorney, addressed the Town Council, stating that he, President Smith, Mr. Doney, Mr. Moore, and Mr. Frank had attended a meeting at the City of West Palm Beach which lasted from 6:00 P.M. until 3:00 A.M. Each Council Member had been provided with a packet containing remarks from the meeting, and the Town had not received any satisfaction in regard to concerns. The City of West Palm Beach went forward and passed four ordinances relating to the adoption of the Downtown Master Plan, which included amendments to the Comprehensive Plan and to the Zoning Ordinance itself. The primary concern had been to have enough information as to traffic in order to determine the affect that the plan would have on the Town. The plan would now go forward without that information. In addition, Mr. Randolph had asked that the Town owned property within the Downtown Master Plan be given a Type IV designation, which would allow a 15-story height, as opposed to a Type III designation, which allowed a 5-story height, and that request had received no satisfaction. Mr. Randolph concluded that the Town Council now needed to give consideration to where it wants to go from this point.

Mr. Randolph stated that he thought one of the steps that would need to be taken would be within the purview of Mr. Frank's office, and that would be to pass any objections of the Town on to the State regarding the Comprehensive Plan Amendments. Mr. Randolph continued that in regard to the amendments, consideration would have to be made as to what action the Town Council wishes to take. Referring to the Property Rights Act, Mr. Randolph explained that the position of the City of West Palm Beach was that the new Property Rights Act did not apply to the amendments, because the amendments were noticed for adoption prior to May 11, 1995, which was the adjournment sine die of the Legislature. The legislation provides that the Act would not apply to legislation which was adopted or noticed before the Act. Mr. Randolph suggested that the Town explore the Property Rights Act avenue.

Mrs. Smith stated that the Town must explore this, and take whatever legal means necessary.

Mr. Wyett made a motion to authorize the Town Attorney and Town Staff to prepare information for the review of the Town Council in order to consider necessary legal means. Seconded by Mr. McLendon.

Mr. Timothy Frank, Planner/Projects Coordinator for the Town of Palm Beach addressed the Town Council stating that the development potential of various properties had been looked at in the studies conducted by the City of West Palm Beach. Eventually, traffic generation and traffic flows had to be ascertained. Mr. Frank expressed that it was his opinion that the City of West Palm Beach was trying to justify a return to two-way traffic on Olive and Dixie. Mr. Frank stated that little attention had been given to east-west traffic, and that further study was needed.

Mrs. Smith pointed out that the proposed 3,000 trips daily on the north bridge was significant, as well as the reconfiguration of the ramp on the north bridge.

Mr. Frank replied that there are traffic difficulties on the first intersection after the bridge, and specific figures and projections from the City of West Palm Beach must be obtained.

On roll call the motion of Mr. Wyett carried unanimously.

Mr. Randolph suggested moving forward with objections to be filed with the State, and recommended that Mr. Frank be authorized to file such objections.

Mr. Wyett made a motion to authorize Mr. Frank to file objections with the State in this regard. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

3. Consideration of Study on Potential Charges for Emergency Medical Transports by the Town's Fire-Rescue Department (Deferred from July 11, 1995 Meeting)

Chief Ken Elmore, Fire Rescue Department, addressed the Town Council, stating that a study had been conducted on charging for Emergency Medical transportation, with results to be presented at the July, 1995 Town Council Meeting, although it had been deferred to the current Town Council Meeting. Chief Elmore continued that potential revenues, projected expenditures, and advantages and disadvantages of charging were included in his report, as well as a bulletin from Medicare concerning fraud and abuse.

Mrs. Smith asked Mr. Randolph to speak to legal concerns in this matter.

Mr. Randolph stated that a legal opinion in regard to the matter of co-payments had been written previously, and he would want to address this in more detail at the appropriate time. He added that was the primary legal concern, although there may be some related concerns.

Mr. Shaw made a motion that this matter be given to the Public Safety Committee for review. Mrs. Smith passed the gavel and seconded the motion for purposes of discussion.

Mr. McLendon suggested that a Special Town Council meeting be called to discuss this matter, and it was decided to include it immediately following the Special Town Council Meeting on January 16, 1996.

Mr. Shaw amended his motion to consider the matter immediately following the Special Town Council Meeting on January 16,1996.

On roll call the motion carried unanimously.

Mrs. Rose Horwitz commented that she would present her position regarding this matter at the Special Town Council Meeting.

XII. NEW BUSINESS

A. Resolutions

1. Resolution No. 45-95 - Request Palm Beach County to Add Implementation of Lake Worth Inlet Management Plan on List of Projects for State Funding

Mr. Randolph read Resolution 45-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THAT PALM BEACH COUNTY ADD IMPLEMENTATION OF THE LAKE WORTH INLET MANAGEMENT PLAN TO THEIR LIST OF PROJECTS FOR STATE FUNDING IN FISCAL YEAR 1997.

Mr. Wyett made a motion to approve Resolution 45-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. Resolution No. 46-95 - Hazard Mitigation Grant Program - Town Request for Funding Assistance for Major Drainage Improvements

Mr. Randolph read Resolution 46-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE AVAILABILITY OF FUNDING FOR THE TWENTY-FIVE PERCENT (25%) SHARE OF APPROVED PROJECTS THROUGH THE HAZARD MITIGATION GRANT PROGRAM FOR FEMA-1074.

Mr. Wyett made a motion to approve Resolution 46-96. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Doney commented that he would like to thank Mrs. Martinuzzi, Risk Manager, for her efforts in this matter.

3. Resolution No. 47-95 - Endorsement of Countywide Graffiti Eradication Program per Request by Palm Beach County Municipal League

Mr. Randolph read Resolution 47-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ENDORSING A POLICY OF ZERO TOLERANCE FOR GRAFFITI; FURTHER ENDORSING THE GRAFFITI ERADICATION PROGRAM; REQUESTING THE CRIMINAL JUSTICE COMMISSION TO COORDINATE THE IMPLEMENTATION OF THE PROGRAM; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Mr. Wyett made a motion to approve Resolution 47-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

B. Bid Awards

1. Sealed Bid No. 96-02 - 1995 Isuzu Diesel Truck Chassis/Cab

Mr. McDonald made a motion to approve Sealed Bid 96-02. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

C. Other

1. Consideration of Request by Lubavitch Center of the Palm Beaches to Place a Menorah Display in Bradley Park for Chanukah

Mr. Randolph stated that attorney David S. Cohen had submitted an application for his client, Lubavitch Center of the Palm Beaches, requesting that a Menorah be placed in Bradley Park for Chanukah from December 15 through December 26. Mr. Randolph explained the specifics of the request, and mentioned that he had provided case law information relating to the request in order for the Town Council to consider the application.

Mr. Randolph established that Case Law had indicated that parks and rights-of-way of the Town were traditionally public forums for purposes of allowing free speech, and that the Town Council should consider this application as a type of consideration that would be made with the placement of any structure in the right-of-way. He advised that to comply with the Establishment Clause, the Town should have no involvement in the placement of the structure, but should merely be involved in the decision regarding the placement of the Menorah in the park. In addition, Mr. Randolph indicated that the applicant should bear all costs associated with the installation, maintenance, and removal of the Menorah. Mr. Randolph suggested that the applicant should also bear the costs of restoring the grounds upon which the Menorah was placed to the condition it was in prior to the placement of the Menorah. He also stated that there should be assurance that the Menorah would be stabilized so that there would be no public safety hazards. He remarked that the Menorah would be lighted, and that the Public Works Department had indicated that electrical power was not available--therefore, any responsibility for lighting should be with the applicant with the approval of the appropriate departments of the Town. He recommended that any sign erected in conjunction with the Menorah should read as a disclaimer in order to avoid running afoul of the Establishment Clause. He suggested that an appropriate sign could read "this display is provided by a private organization at no public expense, and does not constitute an endorsement by the Town of Palm Beach of any religion or religious doctrine."

Mr. Randolph expressed that considerations in regard to this application would be the constitutional aspects, the rights of the applicant in regard to construction, and conditions that would apply to the placement of the Menorah.

Mr. Shaw stated that this had come before the Town Council year after year with the idea that an immediate decision must be made. The Town Council had requested in the past that the matter be discussed after the first of the year so that an early resolution could be made. Mr. Shaw mentioned that the Lubavitch Center did not have a base in the community, and was coming to the Town Council with a request five days before the display was to be erected. He suggested that the community could have input in an open forum in March or April.

Mr. Wyett stated that he agreed with Mr. Shaw, and that he believed that Menorahs belonged in the Temple and private homes and not in the public right-of-way.

Rabbi Ezagui addressed the Town Council, stating that the same request had come before the Town Council in past years, and that there were many Jewish residents in the Town of Palm Beach, and any individual in the country was free to express himself.

Mrs. Smith asked why the request came before the Town Council during the December meeting, rather than earlier in the year pursuant to the request of the Town Council?

Rabbi Ezagui replied that Mr. Shaw's statement in reference to membership in the community was totally irrelevant to the request, and that there was a sizeable number of residents in the Town of Palm Beach that were members of his organization who supported the request. He continued that he supported the Christmas trees and lights and believed that the Jewish people deserved the same representation by having a Menorah. He indicated that the matter had been brought to the attention of Mr. Randolph a few weeks ago.

Mrs. Smith pointed out that it was a matter of forgetting to bring this matter to the attention of the Town Council earlier in the year.

Mayor Ilyinsky commented that the request was enormously complicated, and that he was concerned that most of his Jewish friends were surprised by the request and were not altogether in favor of it. The Mayor remarked that much effort had been made to bring the community together. He stated that he believed the Christmas Tree was a symbol of the holiday season, and not a Christian symbol, and that the Menorah was a very sacred religious symbol. He commented that if he could vote on this matter he would vote against it, with all due respect.

Mr. Shaw made a motion to deny the request for the Menorah Display in Bradley Park at this time, and that the matter be subsequently readdressed. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

2. Consideration of Request by Marine Industries Association of Palm Beach County for Town Council to Amend Official Town Comments on Proposed Deepening of Intracoastal Waterway Channel

Mr. Doney addressed the Town Council stating that there had been a request by Marine Industries Association of Palm Beach County to present specific information on the deepening of the Intracoastal Waterway Channel.

Mr. John Sprague, Past President and Director of Governmental Affairs for Palm Beach County Marine Industries Association, addressed the Town Council, stating that the project had positive value to Palm Beach and Palm Beach County. He explained that they were seeking to rescind the historical position of the Town Council with the information that would be presented today.

Mr. Sprague gave the background of the project parameters: The project was approximately nine miles, starting at the north end lake near Old Port Cove, with the bottom part of the project ending about 200' south of the Palm Beach Docks. In 1945, Congress authorized the Intracoastal Waterway to be dredged to 12' of depth with 125' of bottom width. Subsequently, from Fort Pierce south it was only dredged to a depth of 10'. In 1960, the Army Corps of Engineers reported that the 10' depth with a 125' base was sufficient at that time. Presently the boating industry and the size of boats had changed, and many of those boats are owned by Palm Beach County residents who are now denied access due to restrictions of the Intracoastal Waterway depth. The proposed project entailed a minimum of approximately one million cubic yards of sand. Mr. Sprague addressed the concerns stated in the letter from the Town of Palm Beach to Mr. Hodge of Marine Industries Association, on March 24, 1995:

1. More Frequent Bridge Openings. A survey had been done for the Department of Environmental Protection of the State of Florida which involved a boat study where boats leaving marinas were logged in and out, as well as where they were going, in order to get an idea of boat traffic in Palm Beach County. It was found that the bigger boats generally did not go out; in fact, the Palm Beach Docks reflected no boats leaving.

2. Further degradation of water quality in Lake Worth. The vessels to be used for deepening the waterway were state of the art, and water standards from the sanitation devices exceeded any in government waste treatment. Additionally, they would not discharge.

3. The Intracoastal had been dug in order to get the swampy, mosquito water out, and every time there was a tidal change the polluted water from storm water run-off was discharged out in the ocean and fresh, clean water was brought into the Inlet. The more the water quality was increased, the more sea grasses would grow. Mr. Sprague stated that he believed that the depth increase would bring a better flushing in the Intracoastal.

Mr. Sprague summarized that the project had positive environmental benefits, positive economic benefits, and the sand was of beach quality. He asked the Town Council to reconsider its historical position, since all information was not available when the decision had been made.

Mayor Ilyinsky pointed out that the Intracoastal Waterway was not deep enough in some places for certain boats, and that many larger yachts would like to use the docks in Palm Beach. He encouraged everyone to think the situation through.

Mr. McLendon commented that there had been a concern about the detrimental effect of too much fresh water coming into the Lake, and he believed deepening would be a step in the right direction.

Mr. Wyett expressed concern about the size of boats that would be using the deepened waterway, as well as the expansion of the Port of Palm Beach.

Mr. Sprague replied that with larger boats, there would be less slips, and therefore less available room for more boats. Additionally, he stated that bridge openings would be less often, while any commercial traffic from barges would be south of the Palm Beach Docks where the waterway was less deep and would curtail barge traffic anyway.

Mr. Shaw stated that the government need not spend an enormous amount of money to deepen the Intracoastal when it is being satisfactorily utilized now.

Mrs. Smith stated that there was no guaranty that the sand would be beach quality, and if it was the Council may be more sympathetic.

Mr. Sprague stated that he was not asking the Council to say that they agree with the project, but merely to consider rescinding disagreeing with it.

Mr. Breese of West Palm Beach, addressed the Town Council, stating that if resistance was changed in one part of a system, such as would be happening in the dredging operation, then the whole system would be affected, meaning that more water would be moved. If more water was moved, extra erosion would result in some areas. In addition, if more water was moved it would cause a larger flooding hazard during storm periods.

Mr. McLendon stated that he had no objection to the deepening of the channel.

Mr. Shaw made a motion that there be no amendment to the official Town comments on the deepening of the Intracoastal Waterway. Seconded by Mr. Wyett. On roll call the motion carried 3/2 with Mr. McDonald and Mr. McLendon dissenting.

3. Consideration of Official Town Comments to the U.S. Army Corps of Engineers Regarding a Permit Application Submitted by Mr. Jeff Prudden to Construct Shoreline Protection at the Northwest Corner of the Town (Lake Worth Inlet)

Mr. Doney stated that the applicant proposed to fill approximately 4/1000 of an acre of tidal waters with 25 cubic yards of clean fill material. The work would consist of construction of a 75' seawall with 25 cubic yards of riprap placed at the toe at a 2H:1V slope. The purpose of the project was shoreline protection. The site could be characterized as open tidal waters with no vegetation present. Mr. Doney continued that the reason this item was before the Town Council today was to provide an opportunity for comments or objections to the Corps of Engineers. He added that staff had no particular comments or objections regarding the project.

Mrs. Smith saluted the project as very worthwhile.

4. Consideration of Extraordinary Longevity Pay for December 1995

Mr. Doney stated that individuals with more than 20 years of service were being recommended for Extraordinary Longevity Pay, with a total amount to be awarded being $16,062.34, to 17 employees. He continued that the FY96 Budget estimate for this expenditure was $15,064.00. He recommended that the Town Council consider awarding the Extraordinary Longevity Pay to the individuals noted.

Mr. McDonald recommended approval only within the budgeted amount of $15,064.00.

Mr. McLendon suggested that perhaps the budget number had not been quite high enough, and thought that the recommended expenditure should be approved.

Mrs. Smith stated that she found it difficult to understand why an expenditure of $7,500.00 for a traffic study consultant could be paid while $998.00 would be taken away from Town employees if the budgeted amount was approved.

Mr. Doney recommended that the Town Council authorize the amount from the Undesignated Fund General Balance.

The motion of Mr. McDonald died for lack of a second.

Mr. Shaw stated that it would be impossible to know at budget time which employees would be eligible, and he moved that the Extraordinary Longevity Pay of $16,062.34 be approved. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

5. Consideration of Authorization for the Mayor or Council President and Town Manager to Execute Fire-Rescue Interlocal Emergency Services Agreement for Governmental Agencies in Palm Beach County

Fire Rescue Chief Ken Elmore addressed the Town Council, stating that the Interolocal Agreement was developed in 1994, and Mr. Randolph and Ms. Martinuzzi had been concerned with one of the clauses dealing with the time frame, which the Fire Chiefs Association would not amend. It was decided to hold off to see what the rest of the municipalities did, and in the past 18 months all of the other municipalities had approved the agreement.

Mayor Ilyinsky why the agreement had not been approved previously?

Chief Elmore remarked that Mr. Randolph had some concerns with the mentioning of a time frame in a clause indicating that whenever an agency was called for mutual aid, the calling agency should be notified of a response within a 5-minute time frame. He noted that the Agreement was strictly a voluntary mutual aid agreement.

Mr. Randolph stated that his purpose had been to identify the issue at the beginning, and if Chief Elmore felt comfortable with it, he had no problem with moving forward.

Chief Elmore remarked that this was a rarely used agreement, and was mainly for major disasters, and the time frame clause was in there in order for the caller to be notified within 5-minutes as to whether an agency could or could not respond.

Mr. Shaw made a motion to approve authorization to execute the Fire-Rescue Interlocal Emergency Services Agreement for Governmental Agencies in Palm Beach County. Seconded by Mr. McLendon. The motion carried 4/0, with Mr. Wyett being absent.

6. Consideration of Authorization for the Town Manager to Execute Agreement Between the Town and Palm Beach Community College for Paramedic Clinical Practicums

Chief Elmore stated that this was the third of three agreements that the Town had with local educational institutions for training of paramedics, fire fighters, and emergency medical technicians. There was an agreement with South Tech Institute for training fire fighters; an agreement with the Board of Education for training emergency medical technicians; this agreement with Palm Beach Community College was for training paramedics. The agreements provide a place for the Town to train employees, while students are given clinical training by the Town.

Mr. Shaw made a motion to approve authorization for the Town Manager to Execute the Agreement between the Town and Palm Beach Community College for Paramedic Clinical Practicums. Seconded by Mr. McLendon. On roll call the motion carried 4/0, with Mr. Wyett being absent.

7. Status Report from Finance Director Regarding Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town

Mrs. Marie Crozier, Finance Director, addressed the Town Council, stating that she had compiled a list of individuals or groups with outstanding balances of money due to the Town, with a total of $1,511,441.00.

Mr. McDonald stated that he was stunned by this amount, could not believe that the condition had been allowed to continue, and could not understand why there had been no attempt to collect these fines.

Mr. Shaw clarified that it was his understanding that one of the assessments was in excess of $1,000,000 as a result of a continuing penalty that was building on a daily basis.

Mr. Randolph remarked that figure was a Code Enforcement fine in regard to a specific property, and the reason that the amount was so large was that a fine had been accumulating on a daily basis for a lengthy period of time because the problem had not been rectified. He noted that in that particular situation, the property was homestead property and therefore exempt from foreclosure, even though a lien had been filed on the property. He referred to a provision in the Code Enforcement Board Statute which would allow foreclosure on personal property, and that could be done, although a lawsuit to foreclose on personal property would be quite time consuming. He added that often, in extreme cases, a fine levied on a daily basis becomes out of proportion and beyond reality. What would need to be considered would be the intent and purpose of the Code Enforcement Board, which was to require that people correct conditions that are in violation of Town Code.

Mrs. Smith stated that Mr. Brian House, Chief Code Compliance Officer should give an explanation.

Mrs. Crozier explained that bulkhead assessments and sidewalk assessments date back to the early 1980s and there is a point in time, after due diligence in an effort to collect, where it was no longer prudent to carry them on the books. At a certain point, the auditors would recommend that the list be retained, but that billing would not continue. The Finance Department keeps an ongoing list of every individual who had an outstanding fee, fine, assessment, and when an attempt was made to sell, transfer, or refinance a piece of property, the Title Company contacts the Finance Department, and the Town will not sign off until the outstanding amount is paid. As a result, a lot of the outstanding dollars had been collected.

Mr. McDonald remarked that often the property was not recorded and the Title Company would not pick it up. He mentioned the minutes from the Code Enforcement Board of two months ago where there was an instance of a $10,200 fine and the new owner appeared at the meeting declaring that the fine was against the previous owner, so obviously there had been no contact by the Title Company. He mentioned that personal property could be attached, and this could result in the collection of some of the fines.

Mr. Brian House, Chief Code Compliance Officer, addressed the Town Council stating that after a period of time of noncollection by the Code Enforcement Board, a lien is filed and that the property on Queens Lane was already under foreclosure at the time the fine was running on the property. The foreclosure had begun by the time the 90-day filing period had expired.

Mr. McDonald asked why there was a 90-day requirement to file a lien?

Mr. House stated that he believed that it was in the State Statutes that a lien could not be filed for 90 days.

Mr. McDonald said that this was a Code Enforcement Board lien and he did not think there was a time period involved.

Mr. Randolph stated that the order itself may be recorded, and that could include a notice that the payment must be made by a specified date or the fine would continue to accrue. After that, a certified copy of the order may be recorded in the Public Records.

Mr. McDonald noted that if the fine had been recorded even during the foreclosure it would have shown as a lien, and that he thought there was a better method of collecting on fines.

Mr. McLendon asked if unpaid bills to municipalities would go on tax liens after a period of time?

Mr. McDonald said that he was suggesting that there be a method of collection.

Mr. Randolph stated that the ways to collect were very specific under the Code Enforcement Board Statute, and liens are recorded against property--he had not stated that a lien could not be filed against homestead property, but that homestead property could not be *foreclosed*. Additionally the property could be foreclosed in the event the lien was not paid, after the specific period of time had expired.

Mr. McDonald stated that he thought a lot of properties were not homesteaded, which would mean that foreclosure would be possible.

Mr. Randolph explained that Code Enforcement Board fines were treated specifically under the Code Enforcement Board Statute, and the way collection took place was to file the lien against the property, and then pursue foreclosure if it was decided to foreclose against the property. Other assessments could be prescribed particular to Ordinances of the Town, i.e., sidewalk assessment liens, seawall liens, etc. These were handled as municipal liens by the Finance Department, and usually would have to be reduced to judgements before becoming attached as a lien against the property.

Mrs. Smith asked Mrs. Crozier how sidewalk assessments were handled?

Mrs. Crozier replied that the lien books in the Finance Department do not pertain to Code Enforcement fines and fees. The sidewalk assessment resolutions were passed in 1981, and those individuals who had not paid were retained in the lien book. It was her understanding that a lien could not be filed for an assessed property for an improvement until a judgement was filed.

Mr. McDonald stated that a municipal lien was an exception on the Title Policy, and that a claim could always be made against the owner, who could then claim against the Title Policy.

Mr. Wyett suggested that an offer be made to waive interest to people who would pay the outstanding fines within 90 days in an effort to clean up the books.

Mr. Wyett stated that the Queens Lane case was hopeless, and that the resident had been abandoned and the property had gone into foreclosure.

Mrs. Smith asked Mrs. Crozier what the policy had been in attempting to collect the Ocean Dune Assessment Resolution 13-76?

Mrs. Crozier stated that the property owner was notified of the assessment, and would have received notices every 90 days, at least six times, after which a record was kept in the Finance Department and Title Companies calling were advised accordingly.

Mr. Randolph stated that staff had been looking at these issues and dealing with them on a one-on-one basis since their inception. The Queens Lane issue had been addressed, and a specific report can be made to the Town Council. There had been a bankruptcy filed in that instance which had affected persual. Mr. Randolph commented that the background on each of the cases should be looked at in order to understand how to collect on them.

Mrs. Smith said that she believed it was worthwhile to look at what could be collected today, although several cases were known to be uncollectable.

Mr. Shaw suggested that one last attempt be made before legal means were taken.

Mr. Wyett repeated his motion; that each individual be given 90 days to pay outstanding fines, without interest, after which staff would indicate which were noncollectible.

Mr. Wyett amended his motion to be 60 days, rather than 90, and meanwhile he suggested that the Town Council instruct the staff that if fines are noncollectible they would be wiped off the books. Seconded by Mr. McLendon.

Mr. McDonald suggested that the one fine that amounted to over $1,000,000 be given some attention. Mr. Randolph advised that a report would be forthcoming.

Mr. Wyett accepted this as part of the motion.

Mrs. Crozier clarified that a letter would be sent out with a 60 day deadline, to include waiving of the interest, for all items except Code Enforcement fines and judgements.

On roll call the motion carried unanimously.

8. Expansion of the Recreation Program to possibly utilize the pool facilities of the Rehabilitation Center.

Mr. Shaw stated that he was asking that this item be put on the Agenda for the January Town Council Meeting. Mr. Wyett made a motion to add the item to the Agenda. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

9. Public Safety Report on the Crime Scene in the Town of Palm Beach.

Mr. Wyett stated that public safety was the concern of the entire Town Council and the Police and Fire Departments. He referred to the recent outbreak of home burglaries. He stated that everyone should be aware that Palm Beach County ranked 5th in the overall crime rate in the United States, and 2nd in burglary rates. Chief Terlizzese had added extra patrols on those streets most affected and placed police officers on over-time, working in close cooperation with State and Federal Law Enforcement Departments. Last month the Police Department arrested numerous suspicious persons with outstanding warrants and records for crimes. To date, over 1,100 arrests had been made. Mr. Wyett continued that the solution did not start or end with the Police Department, but involved protective action by the homeowners. Preventive measures were summed up in the Crime Watcher publication which was mailed to Palm Beach homeowners.

Mrs. Smith said that she was aware that many residents were hesitant to turn on their burglar alarms because of false alarm fee charges, and she asked Chief Terlizzese if the fees could be waived for the next few months?

Chief Terlizzese stated that was an excellent idea, and that burglar alarm companies, at the request of consumers, do not call the Police Station right away when an alarm goes off, but use every means at their disposal to try to determine if the alarm is false or malfunctioning. Consequently, the Police Department was answering about 15,000 false alarms per year and an Ordinance was introduced to fine people after six false alarms.

Chief Terlizzese pointed out that 2/3 of the houses that were burglarized were unsecured, with unactivated burglar alarms. The Police Department was working with the FBI, Florida Department of Law Enforcement, and the South Florida Crime Information Center because this was a regional problem. A four wheel ATV (all terrain vehicle) had been purchased that would be used on the beaches on patrols.

Mr. Shaw made a motion that the false burglar alarm fines be waived through the season, that alarm companies be notified that they are to go on a zero wait time, and to ask residents to communicate with the Police Chief about the fax watch program.

Mrs. Smith said that she believed that the whole Council supported that motion.

On roll call the motion carried unanimously.

10. Discussion of the rental ability of Town-owned buildings and property.

Mr. McLendon stated that there had been requests to consider leasing some of the Town property, with potential of revenue to the Town, and he suggested that staff advise what uses are being made of the buildings now, and if there is the ability to rent them.

Mrs. Smith asked if it was his intention to ask that all of the Town-owned properties be looked into?

Mr. McLendon replied that he would like to set a policy as to whether this was possible or not.

Mr. Doney suggested that the Mayor and Town Council refer to his memorandum dated February 24, 1995 which identified the past Town Council directed policy on how inquiries on the sale, lease or other usage of Town property should be handled. He mentioned that the properties on Quadrille were currently in use for storage, and perhaps at the January Town Council meeting the matter of Town-owned properties could be discussed further.

Mr. Shaw made a motion to add the discussion of the rental ability of Town-owned buildings and property on the Agenda for the January 9, 1996 Town Council Meeting. Mr. McLendon seconded the motion. On roll call the motion carried unanimously.

11. Discussion of the Town Council policy of moving alternates directly to a commission.

Mr. McDonald made a motion to add the discussion of the Town Council policy of moving alternates directly to a commission on the Agenda for the January 9, 1996 Town Council Meeting. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

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

Mr. Shaw made a motion to approve the Warrant Registers and Funds Expenditures Report for November, 1995. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Reg Stambaugh addressed the Town Council, stating that the issue of the Downtown Master Plan had already been addressed earlier in the meeting, and he wished to update the Town Council by the introduction of Mr. Richard Georgio and Mr. Richard High, who represented a Petition Committee by citizens of West Palm Beach to petition the Downtown Master Plan specifically on the height limitation. He informed the Town Council that petitions and signatures were being gathered in order to get the height limitations changed from 15-stories to 5-stories on the waterfront. This must be done within 30 days, and as the enactment occurred December 4, 1995 the Charter of the City of West Palm Beach required that the petition be done by January 3, 1996. Five percent of the electors were required. Mr. Stambaugh asked for the support of the Town Council in any way possible.

Mr. Richard Georgio, a political consultant in West Palm Beach introduced himself to the Town Council, stating that if the number of signatures needed was received, the issue would be put on a referendum before the voters in the City of West Palm Beach on the March 12, 1996 ballot. Assistance from the Town would be needed at that point as the move was made toward a city-wide campaign.

Mrs. Smith asked how may signatures were needed?

Mr. Stambaugh replied that 1,732 signatures were needed.

Mr. Richard High, an architect, introduced himself to the Town Council, stating that his concern was not merely the height, but some of the densities that would exist when the Type IV Zoning went into place.

Mr. Stambaugh mentioned that the Petition Committee would be meeting at 6:00 P.M. on this date at his office, and he would provide his address with the Town Clerk.

Mr. Adrian Winterfield addressed the Town Council, stating that he had heard from an individual who had asserted that a function had been prohibited at Mar-A-Lago on the grounds that it was commercial. He suggested that selective enforcement not be practiced, as he knew that other clubs had held functions which were primarily commercial in nature, and that if a prohibition was applied against Mar-A-Lago, it should also be applied against every club in the Town.

Mr. Winterfield added that he was distressed to see the photograph of a Town employee at a gala at Mar-A-Lago in the Shiney Sheet newspaper. He remarked that he had no idea of the circumstances, however, perception was the point, and many people seeing that photograph would ask themselves if the attendance of a Town employee who had jurisdiction over requests coming from the club would be in accordance with Town policy.

Mr. Winterfield addressed the number of reports that the Town Council routinely receives from department heads and outside consultants that are not known to the public. He suggested that these reports be accepted at public meetings, which would call the attention of the public in the event an individual wished to see what was in the reports.

Mrs. Patricia Hudsmith addressed the Town Council, stating that she was the first woman to have served on the Board of Zoning and Adjustment in her hometown. Following two three year terms she had been appointed to create and chair a Board of Aesthetic Review, to be charged with keeping the town safe, beautiful and harmonious for all citizens. This background had given her broad knowledge in use and attempted abuse of zoning and a proper respect for all people who pay taxes. She asserted that she was being held hostage by a greedy landlord, who was being held hostage by E.R. Bradley, and the misguided, dangerous use of the Publix parking lot from 9:00 P.M. to 4:00 A.M. She said that on her first night of residency she awoke at 2:00 A.M. to what she thought must be Armageddon--just an average Thursday night at Bradleys--and her first acquaintance with the very courteous Palm Beach Police. She alleged that the saloon was a meeting place for skin heads, hookers, Harley hogs, and all other manner of low life creatures of the night. In an attempt to become good neighbors, glass windows had now appeared on the porch of Bradleys, and Friday night had brought a rather remarkable and very unique poor man's rope and stanchion arrangement seeking to comply with Fire Department regulations on maximum occupancy. Said rope and stanchion exacerbated the problem, leaving disgruntled, would be patrons standing in line on the sidewalk screaming obscenities while waiting admission. Mrs. Hudsmith said that the jukebox had mysteriously died. She said that yesterday a power pressure cleaner spent two and one-half hours removing the stench of urine and alcohol from the public sidewalk in front of E.R. Bradleys. She remarked that E.R. Bradleys had turned from a neighborhood nuisance to a monster destroying the fiber of all of Palm Beach.

There were no further public comments.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of November 29, 1995 - Minutes Available in Town Manager's Office

Mr. Wyett made a motion to approve the Major Matters previously considered by the Architectural Commission at its Meeting of November 29, 1995. Seconded by Mr. Shaw.

B. Time Extensions

1. Consideration of Request for Six-Month Time Extension to Begin Construction by E.R. Bradley's Saloon, 111 Bradley Place - Variance No. 17-94; to allow enclosure of awning covered patio area; said glass enclosure constitutes an expansion of a nonconforming structure, prohibited by Section 8.20 of the Town Zoning Ordinance. C-TS District

Attorney Mariano Garcia, an associate of the law firm on Brooks Ricca, on behalf of E.R. Bradley's, addressed the Town Council, stating that there was an eviction currently pending to evict the landlord of E.R. Bradley's by the owners of the structure. At this time, it was impossible for the Coniglios, who run Bradley's, to determine what their legal standing was--they were facing the very real possibility that if their landlord was evicted their rights under their lease would be terminated. He expected a resolution in the next 60 days, and once the eviction proceedings were resolved it would be clearer to know who must be dealt with in regard to improvements to the outside enclosure. At this time Mr. Garcia was merely requesting an extension on the permit which had been pulled last September, and which had been held in abeyance pending the legal complications.

Mr. Robert Moore, Director of Building & Zoning, addressed the Town Council, stating that the authority of a permit grants only 90 days before work must commence, and today E.R. Bradley's was asking for an extension of the building permit. He added that as a means of mitigating some of the noise and associated problems, E.R.Bradley's had come forward and modified the old windows and placed them in as a stop gap measure, however, the basic permit for the hard construction was in need of an extension at this time.

Mr. Shaw asked if the building permit had been granted on the basis that Bradleys would be enclosed with glass?

Mr. Garcia replied affirmatively.

Mr. Shaw stated that part of that discussion had been to go ahead and put in the glass windows, and asked what more needed to be done.

Mr. Moore replied that initially the request had been for CBS construction, which was an addition replacing the awning and the drop sheer curtains. The glass windows had deteriorated in storage and were a stop gap measure. At this point, the hard construction cannot continue without some acknowledgment from the landlord.

Mr. Moore continued that the reason for the request for the extension was that a substantial permit fee had been paid for the hard construction, and he did not have the authority to grant an extension beyond a 90-day period. He noted that they had certainly complied with the intent, and were asking to preserve the fact that they had received a permit, paid for their drawings, but could not install until the issue with the landlord was resolved. Mr. Moore said that he understood that the intent was to move ahead as soon as permission was given to add the construction--the effort now was to preserve the permit and variance in order to save the cost of going through the whole process all over again.

Attorney Mimi McAndrews, representing Royal Poinciana South, addressed the Town Council stating that the sliding glass windows installed did open and had been opened on occasion since they had been installed. She asked the Town Council to condition an extension with the same conditions that had been attached to the Variance, which was to make sure that the flaps remain closed by 11:00 P.M. with the music turned down; since the sliding glass windows could be opened she requested that these same conditions be put on an extension. She also addressed the parking issue which affected more than 300 residents who wanted peace and quite from 12:00 A.M. - 3:00 A.M.; she asked that parking be banned in front of Royal Poinciana South after 11:00 P.M. Ms. McAndrews remarked that petitions advocating a parking ban signed by residents would be forwarded to the Town Council. She continued that there was evidence in the form of a video tape of the goings on in the Bradley area. The tape was taken night after night, where everything from fights in the streets to drug deals in the Publix parking lot could be seen. She indicated that Royal Poinciana South has had to hire their own police officers to deal with this public nuisance. She commented that she understood the legal problems, and the limited authority available in dealing with Publix, however, she asked that the Town Council send a letter to Publix asking that their parking lot no longer be used by E.R.Bradley patrons.

Mr. Moore stated that all conditions for Variance 17-94 were still in place.

Mr. Shaw made a motion to approve the requested six-month time extension to begin construction by E.R. Bradley's Saloon with the conditions that were part of the original Variance. Seconded by Mr. Wyett.

Mrs. Smith stated that she was sure Publix would be very interested to learn of drug dealing in their parking lot, as well as Town Police.

Mr. Garcia clarified that the original conditions were that the plastic drapes would be lowered at 11:00 P.M., and recommended that just as the plastic drapes were lowered at 11:00 P.M., the sliding glass windows could be closed at 11:00 P.M.

Mr. Moore repeated the original conditions of Variance 17-94:

Approval was requested for an enclosed patio dining area by removing existing awning cover, vinyl roll up curtains, and constructing equivalent sized room addition with french doors and windows and barrel tile roof as shown on numbered drawing. Approval was granted with stipulation that doors and/or windows would close not later than 10:00 P.M.

Mr. Garcia clarified that the sliding glass door would be closed at 10:00 P.M. He reiterated that this was being done to control noise.

On roll call the motion carried unanimously.

Mrs. Smith asked why the video tape was not sent to the Police immediately, particularly since earlier discussion had taken place wherein any suspicious action should be reported immediately?

Ms. McAndrews stated that Royal Poinciana South employed an off duty police officer, and this video was taken for the purpose of being able to present the tape to the Town Council and to Publix, and that a copy could be furnished to the Police Department. She noted that she believed that the Police Department had been called at the time, either by the off duty police officer or by the door guard.

Mrs. Smith stated that this would be looked into.

Mr. Wyett stated that the noise was not coming out of E.R.Bradley's, but from the happy patrons entering and leaving Bradley's at the hours between 11:00 P.M. and 3:00 A.M., and he suggested that the Town ban parking after 11:00 P.M. in the area.

Mrs. Smith asked how many parking spaces were involved?

Ms. McAndrews replied approximately 23 or 24 parking spaces.

Mrs. Smith suggested that the Police Department look into this and come back with recommendations to the Town Council, as she believed all of the residents should be protected.

Mr. Shaw questioned the regulation of parking lots. Mr. Moore pointed out that parking lots were not regulated in the Town.

Mrs. Smith stated that the recommendations of the Police Department and the Town Manager would be needed before a decision could be made on the public parking spaces.

Ms. McAndrews stated that Publix was contributing to a public nuisance, which could be addressed by the Town Council.

Mrs. Smith stated that she could not understand why Publix had not chained off their parking lot when it was not being used by customers.

Ms. McAndrews stated that Publix had been asked to do that, and the first response had been that they did not do that with any of their lots statewide.

Mr. Wyett made a motion to refer the parking problem to the Police Department and the Town Manager. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Patricia Hudsmith stated that she was objecting to the use of the Publix parking lot.

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business

1. Variance No. 39-95 - David Gilmour, 5 Golfview Road; to allow installation of a backup generator on a 4' x 4' pad, with enclosure, providing a front yard setback of 15.5' of 35' required. R-A District (Deferred from September 12, 1995 and November 14, 1995 Meetings) **Request for Withdrawal per letter dated December 11, 1995, from Robert E. Deziel**

2. Variance No. 41-95 - Fred Keller, 225 Dunbar Road; to allow construction of a second story addition over a one-story that provides a 9.5' side yard setback in lieu of 15' required. R-B District (Deferred from September 12, 1995 and November 14, 1995 Meetings) - **Request for Withdrawal per letter dated November 30, 1995, from Fred Keller**

Mr. Moore explained that there was a question of a garage being converted to a rental apartment, and the Code Enforcement Board had dismissed a complaint made about the property because entry to the property could not be gained.

Mrs. Smith asked if it was possible to obtain a search warrant to enter the property in order to determine whether or not the building was in compliance or not?

Mr. Moore replied that the policy of the Town had been that the Building Department would bring such a matter to the Town Council for direction.

Mr. McDonald made a motion that the Town Attorney be authorized to obtain a search warrant in this matter. Seconded by Mr. Wyett.

Mr. Randolph asked Mr. Moore if it was normal procedure to bring these types of matters before the Town Council?

Mr. Moore stated that normally, the Building Department must get a search warrant if refused entry, and the policy had been that a search warrant could not be obtained without bringing it before the Town Council.

On roll call the motion carried 4/0, with Mr. McLendon abstaining as Mr. Keller was a personal friend.

Mr. Randolph pointed out that normally it would not be allowed to abstain from voting merely on the basis that someone was a friend, but that a determination must be made as to whether or not there was a conflict of interest.

Mr. McLendon remarked that he had visited the premises on more than one occasion, and did not feel it appropriate that he vote, although he had no problem with proceeding with the matter.

Mr. Randolph clarified that he would then file a conflict of interest form.

3. Variance No. 53-95 - Adele Raffo, Penthouse A, Park Place Co-op Inc., 369 S. Lake Drive; to allow installation of an awning on an open balcony, a variance from Section 5.32(c) of the Town Code. R-D(2) District (Deferred from November 14, 1995 Meeting)

Mr. Jim McCann, representing the owner, addressed the Town Council, explaining that the owner was not able to attend due to illness. He explained that the penthouse apartment had an unusually large terrace with two existing awnings, and that the request today was for a new awning which would allow one continuous line of awning around the entire apartment, which would be an aesthetic improvement to the look of the building.

Mr. Moore stated that staff had no objection, however the hardship must be addressed.

Mr. McCann stated that the building had recently installed a new cooling tower that had not existed previously, and the tower was right over the terrace where the new awning was proposed. The thought was that the awning would help with the noise abatement.

Mr. Wyett made a motion to approve Variance 53-95. Seconded by Mr. McDonald.

Mr. Hugh Pierce, 455 Australian Avenue, addressed the Town Council, stating that he lived directly across the street from the apartment in question, and he had no problem with the awning, but with the noise and visual impact of the cooling tower, which had been erected with no consideration of the immediate neighbors. He noted that he was speaking against the Variance, not because of the substantive matter of the awning, but by virtue of the fact that the applicant was admitting that the cooling tower was ugly and noisy.

Mrs. Smith stated that she did not believe that the cooling tower was a part of the awning application.

Mr. Randolph asked if the maker of the motion could state a reason as to the hardship involved?

Mr. Wyett stated that the hardship was the noise caused by the cooling tower.

Mr. Moore referred to the portion of the Ordinance addressing this issue; it involved the concept of closing in balconies that would not normally be permitted as habitable space, primarily addressing balconies on residential units on multi-family buildings that were not designed for enclosed rooms. This particular area was set back and was a structural area that would not be harmed as far as location, so the hardship would be related to the penthouse structure having pre-existing areas which had been patio areas rather than balconies, although technically it was a balcony and would need a variance. Mr. Moore offered to have Mr. House investigate the cooling tower.

On roll call the motion carried unanimously.,

Mrs. Smith expressed to Mr. Pierce that the matter would be investigated.

4. Variance No. 55-95 - Jean Kilborne, 417 Peruvian Avenue (4 Major Alley); to allow construction of a pool/spa providing a 4' north side yard setback in lieu of 10' required, and providing a 2' west rear yard setback in lieu of 10' required. R-C District. (Approved at November 14, 1995 Meeting subject to no objections being received prior to or at the December 12, 1995 Meeting)

Mr. Moore explained that re-notice had been done and no objections had been received. Therefore, there was automatic approval.

5. Variance No. 56-95 - Oceanic Holding Estates, Ltd.. 641 North County Road; to allow construction of additions and modifications to the existing residence and to add a new accessory structure permitting the building height to be measured from elevation 10.28' in lieu of 7.5', as required. R AA District. (Approved at November 14, 1995 Meeting subject to no objections being received prior to or at the December 12, 1995 Meeting)

Mr. Moore stated that no objections had been received. There was no one present to speak to this matter, therefore there was automatic approval.

Mrs. Smith asked that everyone wishing to speak to an issue stand and be sworn, as this was a quasi-judicial process. Mrs. Pollitt, Town Clerk, gave the oath to all those giving testimony.

6. Revised Special Exception No. 22-95 with Variance - James Brindell, 241 Royal Palm Way; to allow the addition of a third story to an existing two-story building pursuant to Section 5.48 of the Town Zoning Code at a lot coverage as it presently exists at 58.8% exceeding the 25% maximum lot coverage allowed. A variance from Section 6.21 to allow 31 off-street parking spaces in lieu of the 38 parking spaces required. C-OPI District (Deferred from October 10, 1995 and November 14, 1995 Meetings) - **Request for Withdrawal per letter dated December 6, 1995, from Kimberly M. Anderson**

7. Special Exception No. 24-95 - The Mar-a-Lago Club, Inc., 1100 S. Ocean Blvd.; to allow conversion

of existing tennis court (at north side of property) into parking, an accessory use to a permitted Special Exception. R-AA District (This portion of the application was Deferred from November 14, 1995 Meeting) - **Request for Deferral to January 9, 1995, per letter dated December 11, 1995, from Paul Rampell**

8. Consideration of Request for Waiver to Sections 12-50 and 12-51 of Town Code of Ordinances by Ronald M. Dixon, P.E. for New Lakefront Bulkhead at 1840 South Ocean Boulevard (Deferred from November 14, 1995 Meeting)

Mr. Ronald M. Dixon, Professional Engineer, representing the owner, Mrs. McLaughlin, addressed the Town Council, stating that during the October storms a portion of the bulkhead on the property collapsed and reconstruction is needed in order to avoid further harm to the property.

Mr. Moore stated that both Mr. Bowser and the Building Department had reviewed the request, and as it was an emergency repair there was no objection.

Mr. Jim Bowser, Town Engineer, expressed support for the request.

Mr. Wyett made a motion to approve the Waiver to Sections 12-50 and 12-51 of Town Code of Ordinances for a new lakefront bulkhead at 1840 South Ocean Blvd. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

New Business

9. Variance No. 58-95 - Robert W. Gottfried, 748 Hi-Mount Road; to allow installation of electric gates set back 5' from Hi-Mount in lieu of 22' required. R-B District

Mr. Peter Broberg addressed the Town Council on behalf of the applicant, Robert W. Gottfried, stating that the request was for a variance of 13' from the Town Ordinance requiring a 15' setback for electric gates. He explained that the requested variance would not confer any special circumstances upon the applicant, and he passed out photographs of other gates on Hi-Mount Road showing the distance of each gate from the curb. Mr. Broberg displayed illustrations showing the proposed gates and the movement of vehicles within them. He explained that the hardship was that the slope of the land prohibited gates from being placed at the 15' required setback, and asked the Town Council to approve the variance in that it would not confer any special privileges upon the applicant that any other similarly situated residents did not have.

Mrs. Smith stated that she was not sure that she saw the hardship.

Mr. Broberg explained that Hi-Mount Road was a cul-de-sac, an infrequently traveled road; that the intent of the Ordinance was simply to get cars off busy roads in order to avoid accidents, that there was a need for increased security, and because other houses in the neighborhood had gates that were 2-8' from the curb, Mr. Gottfried was requesting to have the gates installed at the requested location.

Mr. Moore stated that staff comments ranged from the fact that re-design could meet Code, site planning should have been considered for the gates when the house was built, to low traffic, no objection. Mr. Moore pointed out that it was a low volume street, and previous variances had been granted on the street for heights and placements.

Mr. Shaw asked if there could be a compromise, putting the gate posts further back to the point of hedging, and if gates had been included on the original building plans?

Mr. Broberg explained that Mr. Gottfried had indicated that gates were always contemplated, but he did not know whether they were on the original building plans.

Mr. Wyett stated that he had previous communications with Mr. Gottfried, and that the posts were wired for gates, but had been deferred because of the high costs and the private street; now, the gates would be added protection.

Mr. Shaw declared he had ex-parte communication with Mr. Gottfried, and made a motion to approve the Variance if the gates on both sides were moved back 10' inside the curb that was presently in place. The motion died for lack of a second.

Mr. Moore stated that in the past the criteria used involved whether there were similar circumstances in the area, as well as the use of the street.

Mr. Wyett made a motion that the gates be moved back inside the curb for a total of 7'. Seconded by Mr. Shaw. Mr. Wyett added that the hardship went with the slope of the land.

On roll call the motion carried 4/1 with Mrs. Smith dissenting.

10. Variance No. 59-95 - Mrs. Gerard Lind, 149 Via Palma; to allow construction of an 800 sq.ft. pergola, increasing the lot coverage from 29.5% to 34.3%, exceeding the 25% maximum permitted. R-A District

Mr. George Sanchez addressed the Town Council, stating that the request was to cover the pool as a result of a skin condition of the owner, and it had been suggested that the pool be covered with a pergola and have a vine over it which would be attractive and not a permanent structure. Mr. Sanchez displayed an illustration of the project.

Mr. Moore expressed staff comments: increases a nonconforming condition, no hardship, structure was open over an existing pool, additional information requested. Mr. Moore noted that this was quite an unusual condition as structures over pools were usually screen enclosures which had been dealt with in the past.

Mr. Sanchez remarked that instead of a solid awning, which he believed was permitted, they were looking for a more open, graceful approach.

Mr. Wyett asked the space in between the beams?

Mr. Sanchez replied approximately 2', with the vine resulting in coverage.

Mrs. Smith asked the height?

Mr. Sanchez replied 9'.

Mrs. Smith clarified that since the structure was not permanent, it could come down if the house was sold.

Mr. Sanchez agreed.

Mr. McDonald asked the hardship?

Mr. Sanchez replied that the owner had been told by her physician that she could not swim in the open sun, and she was a daily swimmer.

Mr. McDonald expressed his surprise at this type of structure as a shield from the sun.

Mr. Sanchez replied that the type of vine being put in was rapidly growing, and can be obtained in mature tubs. He remarked that a full mat could be obtained by late spring or early summer.

Mr. Wyett stated that he found a hardship in the fact that the house was built before the re-zoning took place, and moved approval of Variance 59-95. Seconded by Mr. Shaw with the amendment that the entire pergola would be removed in the event that the property was sold. Mr. Wyett accepted that amendment.

Mr. Randolph cautioned against using the reason that the house was built before the Zoning Ordinance went into effect, because there were many properties that would apply to and a precedent could be established.

Mr. Wyett adjusted his motion for approval with the condition that the entire pergola be removed upon a change of ownership, or when the pergola was no longer needed, and be deed restricted. He noted that he was not putting it under a hardship, but under a special accommodation.
Upon roll call the motion carried 4/1 with Mrs. Smith dissenting.

11. Variance No. 60-95 - Sid H. Eibl, 286 Jamaica Lane; to allow a point of measurement variance to begin calculation of building height at the finished floor elevation of 17' NGVD in lieu of 15.64' required. R-B District

Mr. Sid H. Eibl addressed the Town Council, stating that the hardship for Variance 60-95 lay with the land, which consisted of coral rock. He asked that the Variance be granted, as it was a minimal request.

Mr. Moore stated that the house could be built to Code with the removal of 1' of coral rock. In the past there had been other homes required to remove the rock, and staff found no hardship in the request.

Mrs. Smith stated that another owner, in the past year, had to remove several feet of the coral rock, and although she understood the desire to preserve it she questioned how that could be accomplished when a house was being built on top of it.

Mr. Eibl stated that the property was highly elevated and if a hurricane hit the island his house would be 1'6" higher than the crown of the road, thus sustaining more damage and incurring a financial hardship.

Mrs. Smith stated that the Town Council could not look at financial hardships.

Mr. Eibl replied that the hardship was in the lay of the land, and that nature should not be disturbed.

Mr. Moore stated that if the owner adjusted the ceiling heights he would not need the variance at all, or he could remove the coral rock.

Mr. Moore remarked that the hardship was that the property did slope, not the coral below. He noted that the house could be re-designed by dropping the ceiling heights or the one foot of coral rock could be removed.

Mr. Wyett made a motion for approval of Variance 60-95, based on the hardship of the slope of the land. The motion died for lack of a second.

Mr. Shaw made a motion to deny Variance 60-95. Seconded by McLendon. On roll call the motion carried 4/1 with Mr. Wyett dissenting.

Mr. Eibl remarked that it was a shame that he had to take out the coral rock.

12. Variance No. 61-95 - Ashleigh Enterprises, Ltd., 395 Caribbean Road; to allow construction of a single family dwelling on a lot using a 12' wide alley as the street frontage, thus providing the required lot width and frontage required by the Ordinance. R-A District

Attorney Paul Rampell, representing Ashleigh Enterprises, Ltd., addressed the Town Council, stating that the company was the owner of a vacant parcel of land bordering Lake Worth to the west, single family residences to the north and to the south, and a public road to the east. He continued that permission was being sought to use the public road to provide primary access for the construction of a new single family residence. He stated that the hardship was that the eastern road was the only means of public access to the land, and that with respect to the requirements of Section 10.13 of the Code of Ordinances, special circumstances existed, including the unusual configuration of the land; it was a landlocked parcel if the roadway could not be used; the circumstances had not been caused by the applicant, but had existed for 15 or more years; the granting of the variance would confer no special privileges; the denial of the variance would deprive the owner of any use of the property, rendering it valueless; the proposal was minimal in its deviation from the Ordinances. He added that another way to look at it, would be to use the eastern public road as frontage, and no party would be prejudiced by the use of the public road.

Mr. Moore stated that this was a very unusual case, as the Town had a lot split that occurred 20 years ago, when this parcel was accepted as a lot with an alley which was originally located closer to the west. Acknowledgment of the lot split was made with the feeling that the variance was proper to allow frontage to be counted along the alley, although the Ordinance did not permit the alley to be called street frontage. There was mixed opinion as to where the property should be accessed, and it was the opinion of the Town Engineer that the property should be accessed from the original designated area. The Building Department did not believe the primary access should be from the alley.

Mr. Gosman displayed a rendering of the proposed access point.

Mrs. Pollitt administered the oath to Mr. Gosman.

Mr. Gosman stated that the proposed entrance to the house put the center of the driveway right on the intersection of the alley property line and the dedicated easement for ingress/egress. He noted that the center line intersected the center line axis of the house, at which point a fountain was planned. If the driveway had to be relocated, the fountain location would have to be moved and it would be difficult and awkward to enter and leave the house.

Mrs. Smith clarified that to change the alley into a road would require the replatting of an entire subdivision. She remarked that when the lot was divided there was no anticipation that there would be an access problem to the south area of the property.

Mr. Wyett asked if Mr. Gosman could move the gates back and yield that area to the street in order to make it easier for a large vehicle, such as a fire truck, to turn around.

Mr. Gosman replied that the gate posts were some 30' back from the property line, and an emergency vehicle could drive on the grass if necessary.

Mrs. Smith stated that the gates were 35' back already.

Mr. Bowser stated that from a traffic standpoint, there was the potential of four cars ending up at the same spot, and the way the property was split originally was to use a common driveway so that cars could come out in line with Caribbean. He stated that this was more of a safety issue, and that the site plan layout coming into Caribbean onto the access way and making a 90 degree turn the fountain feature and driveway alignment would not change; this was more of an aesthetic issue.

Mr. McLendon made a motion to approve Variance 61-95, with the hardship being that there was no public street.

Seconded by Mr. Shaw. On roll call the motion carried 4/1 with Mr. McDonald dissenting.

Mrs. Smith added that the hardship was that when the property was subdivided the intention had been to have a common driveway used for two properties, and the property should have been accessed in more than one way.

13. Variance No. 62-95 - Town of Palm Beach, D-14 Storm Water Pumping Station, NW of the Society of the Four Arts parking lot, Royal Palm Way and Four Arts Plaza; to allow construction of a new pump station on a lot 50' wide in lieu of 100' required providing north and south side yard setbacks of 9'4" in lieu of 12.5' required. R-B District

Mr. Bowser, Town Engineer, addressed the Town Council stating that a number of years ago the Society of the Four Arts had come to the Town desiring to renovate their site and proposed abandoning Lake Trail on their property. The Town knew the pump station project was coming forward, and the Society was asked to grant the Town some property in exchange for the land that the Town would be giving up as road right-of-way, and they had agreed to do that. The Town obtained a parcel approximately 50' wide and 103' long, which was adequate in order to construct a storm water pumping station, however it was deficient in size per zoning regulations. He noted that a variance was being asked for in order to build a storm water pump facility as this would alleviate flooding in the area.

Mr. Paul Castro, Zoning Administrator, addressed the Town Council, stating that the Building Department agreed with the Town Engineer.

Mr. Shaw made a motion to approve Variance 62-95, based on the hardship to the entire neighborhood being underwater during rain. Seconded by Mr. Wyett. On roll call the motion carried 4/0 as Mr. McLendon was out of the room.

14. Variance No. 63-95 - Alan L. Shulman, 377 North Lake Way; to allow construction of an addition on a single family dwelling with a setback from the south property line of 10' in lieu of the 15' required. R-B District (Not Advertised, subject to no objection prior to or at the January 9, 1996 Meeting)

Attorney Peter Broberg, on behalf of Alan L. Shulman, addressed the Town Council stating that the request sought was a variance from the side yard setback requirement of 15' on the south side, allowing a new construction of an addition to be 10' in lieu of 15'. Mr. Broberg pointed out that the neighbor most affected to the south had indicated that there was no objection to the project. Mr. Broberg continued that special conditions existed on the property in that the lot was undersized, but exceeded square footage requirements; the house was located off center to the south side of the property and the pool constructed was centered to the house--the proposed addition was lined up with the pool terrace. Mr. Broberg established that the hardship was the size of the lot, the location of the existing house, and an architectural problem with aesthetics of the project. He mentioned that if this house was leveled and a new construction placed on the property a much more massive house could be constructed; thus this could be considered a minimal variance because it was merely for the section of the new addition, which was approximately 32' long; the green space was well in excess of Code requirements; the vegetation existing would not be touched.

Mr. Moore stated that the property did have a deficiency in the lot width; the minimum variance would be closer to 2' rather than 5' based on the percentage of the deficiency in the lot frontage and the request for a side yard variance, however, the property did enjoy a great deal of green space already, and a larger home could be built on the property.

Mr. Wyett made a motion to approve Variance 63-95. Seconded by Mr. Shaw.

Mr. McLendon suggested that the plan be modified so as to not require a variance.

Mr. Wyett declared ex-parte communication with Mr. Shulman.

Mr. Shaw and Mrs. Smith both declared ex-parte communications with Mr. Shulman.

Mr. Randolph commented that this had not been advertised subject to no objection prior to or at the January 9, 1996 meeting, and obviously nothing could be done in regard to this application until that particular time. He noted that it was his understanding that Mr. Broberg was allowed to go ahead because he wanted to make the presentation today, however, it was premature to act on this until a determination was made as to whether or not other people wished to speak, because the ultimate determination should be based on all of the comments received in regard to a particular application.

Mr. Moore stated that Mr. Broberg had not made the delivery on a timely fashion, however, he had called and asked if he would be permitted to bring the application in Monday, while the deadline fell on a Sunday. Mr. Broberg delivered the application, however, it did not go into the file folder for records research and subsequent mailings. Mr. Moore noted that in discussions with Mr. Randolph it had been ascertained that it could be put on the Agenda at the January meeting to take final action.

Mrs. Smith clarified that the problem was not with the applicant, but that the application had been lost in the Building Department and did not make the advertising deadline.

Mr. McDonald asserted that this should not be heard until it was advertised.

Mr. Wyett amended his motion to approve, with the provision that this item come back for automatic confirmation at the January 9, 1996 Town Council assuming there was no objection.

Mr. Randolph suggested that the motion to approve was not appropriate, and he recommended that the motion be withdrawn, with a motion to defer made until the next Town Council Meeting in order to give the public the opportunity to hear the presentation; if no one came to the meeting in regard to this item, Town Council action could be taken at that time without having to go through the entire presentation.

Mr. Wyett withdrew his original motion, and made a motion to defer Variance 63-95 to the January 9, 1996 Town Council Meeting, allowing approval if there were no objections at that time. Mr. Shaw withdrew his original second, and re-seconded the new motion. On roll call the motion carried unanimously.

15. Special Exception No. 27-95 with Site Plan Review - The Henry Morrison Flagler Museum, Cocoanut Row and Whitehall Way; to allow the addition of 72 required parking spaces, thereby reducing the existing nonconformity. R-C District

Mr. Eugene Lawrence, an architect representing the Flagler Museum, addressed the Town Council, exhibiting a drawing with the proposed modifications for parking, with the addition of 72 parking spaces.

Mr. Moore stated that there were no objections from the Police Department, Fire Department, Mr. Bowser had indicated that the parking area must meet the Town drainage codes, Mr. Doney concurred with the Building Department in eliminating the eastern nine spaces and matching the green space with the green space to the south.

Mr. Wyett made a motion to approve Special Exception 27-95 with the elimination of nine parking spaces in the southeast corner to be used for green space with seven spaces to be picked up in the re-configuration of the approved additional parking spaces. Seconded by Mr. McDonald.
On roll call the motion carried 4/0, as Mr. Shaw had left the meeting.

16. Special Exception No. 28-95 - BRP Trust, 100 Emerald Beach Way; to allow the continuation of a kitchen in an accessory structure pursuant to previous owner's approval (Special Exception No. 10-95). R-AA District

Attorney Frank Lynch addressed the Town Council on behalf of BRP Trust, stating that this was a follow up to a Special Exception granted earlier this year to allow a kitchen in what was a pool house, and there had been an agreement required that the new owner come before the Town Council to ask for a continuation. There was no intention of using the facility except for owners and guests, and a similar agreement with the Town could be entered into regarding a transfer of the property.

Mr. Moore stated that there was no objection from staff.

Mr. Wyett made a motion for approval of Special Exception 28-95. Seconded by Mr. McDonald. On roll call the motion carried 4/0 as Mr. Shaw had left the meeting.

D. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances by James R. Brindell for Le Bateau Restaurant, The Esplanade, 150 Worth Avenue

Attorney James Brindell, on behalf of LeBateau Restaurant, addressed the Town Council stating that a work construction extension had been granted on September 12, and a schedule had been submitted at that time from Hedrick Brothers. He continued that essentially all of the items on that list had been completed, and it was believed that will be the case by December 15, however, there would still be some work left to do that would require a few more days. That work would include installation of custom lighting, installation of furniture, installation of kitchen equipment, and installation of stained glass ceiling.

Mr. Moore asked Mr. Brindell if the construction company was responsible for the finishing work until the 30th of the month?

Mr. Brindell replied that the work would be essentially Mr. Benfante's work, with Mr. Hedrick's work completed by the 15th.

Mr. Moore stated that this work would still be considered under the responsibility of the general contractor, who had a problem with a parking citation earlier this morning. Mr. Moore noted that there was a need for a contractor who would be responsible for the additional work until the Certificate of Occupancy was issued. There would be no Certificate of Occupancy issued until the work was finished.

Mr. Rampell stated that the general contractor would be staying.

Mr. Moore stated that Mr. Benfanti must understand that he must have a responsible contractor, and based on that understanding staff had no objection to the continuation of the work extension request until December 31, 1995.

Mr. McLendon made a motion to approve the request for Waiver to Section 12-51 of the Town Code of Ordinances for LeBateau Restaurant. Seconded by Mr. McDonald. On roll calla the motion carried 4/0 as Mr. Shaw had left the meeting.

XVI. ANY OTHER MATTERS

Mr. Moore explained that there was no work permitted on Worth Avenue from November 15 through April 30, and if there was an emergency repair a permit would be issued based on the nature of the problem. A grey area had come up today regarding the issuance of permits for installation by Bell South for telephone and cable TV along Worth Avenue. There was no objection by the Building Department as long as cars and trucks are parked off of Worth Avenue, but Council direction was requested.

Mrs. Smith stated that these requests were ongoing and last year Bell South wanted to do their work in front of Publix. She remarked that she thought this was something that should not be allowed until after the first of the year.

Mr. Moore clarified that he was speaking about installations for individual cable hook-ups within stores or apartments on Worth Avenue, and phone system hook ups. Permits were required for these things, but approval was being requested from the Town Council to issue the permits with the condition that trucks and cars be kept off Worth Avenue. Mr. Moore clarified that these particular permits would be handled through the Building Department.

Mr. McLendon mentioned that he had attended the Shore Protection Board Meeting, and thought that there would be consideration to hire outside advice. He remarked that he was impressed with Dr. Charles Finkel when he spoke at The Breakers, and a resume from him had been requested. Mr. McLendon requested authority to present Dr. Finkel's credentials to the Shore Protection Board.

Mrs. Smith suggested that the resume of Dr. Finkel be received by staff in order to submit to the Shore Protection Board.

Mr. Doney commented that a copy of the resume of Dr. Finkel could be provided to the Shore Protection Board.

Mrs. Smith stated that the Town Council would eventually be able to decide on the hiring of outside advice.

XVII. ADJOURNMENT

The meeting was adjourned at 7:05 P.M.

Mary A. Pollitt
Town Clerk

Prepared By:
Susan Eichhorn

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

LAST NAME—FIRST NAME—MIDDLE NAME McLendon, Samuel	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach Town Council
MAILING ADDRESS 300 S. Ocean Blvd	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: [ ] CITY [ ] COUNTY [X] OTHER LOCAL AGENCY Town
CITY Palm Beach FL COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED 12-12-95	MY POSITION IS: [X] ELECTIVE [ ] APPOINTIVE

RECEIVED
CLERK'S OFFICE
DEC 13 1995
TOWN OF PALM BEACH

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.

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.

RECEIVED
CLERK'S OFFICE
DEC 13 1995
TOWN OF
PALM BEACH

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Sam McLendon, hereby disclose that on December 12, 1995:

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:

225 Dunbar Rd. - Variance 41-95

The subject variance was withdrawn by the applicant (Mr Keller) and approved as withdrawn unanimously by the Council.

The conflict potential arises from my inspection of the proposed variance addition to the house (with shortage on side yard.) While there, applicant showed me the alleged not-permitted structure. It was this matter's pursuit that I felt I had a conflict or biased attitude

12/12/95
Date Filed

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.