Roll Call

I. CALL TO ORDER AND ROLL CALL. The December Town Council meeting was called to order by President Heeke at 9:30 AM on Dec. 14, 1990 in the Town Hall Council Chambers. On roll call, the Mayor and all members of the Council were found to be in attendance. Also attending for all or a portion of the meeting were Attorney Randolph, Town Manager Doney, Mrs. Peters, Mr. Moore, Chief Terlizzese, Chief Elmore, Mr. Myers, Mr. Dusey, Mr. Bowser, Mr. Jakubiak, Assistant Chief Frazier, Mr. Boggs, and Mr. Zimmerman.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was give by Rev. Robert Pollard. Pledge of Allegiance was let by President Pro Tem Ilyinsky.

Approval of Minutes

III. APPROVAL OF MINUTES OF NOVEMBER 13, 1990. Motion was made by Mr. Ilyinsky to approve the minutes with modifications on Page 16 and 19. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Approval of Agenda

IV. APPROVAL OF AGENDA: Agenda was approved on motion of Mr. Weinberg, seconded by Mr. Ilyinsky with the following changes:

Var. 62-90

XII.B 3 - Variance No. 62-90 Rolla and Tim Campbell, postponed to February Town Council meeting.

Spec.Excep. 13-90

XII.B 6 - Special Exception No. 13-90 Old Guard Society, postponed to January 8, 1991 Town Council Meeting.

On Page 5, Schedule of Meetings, Town Council Meeting on Recommendations and Report of Zoning Commission should be changed to January 3, 1991 and standby date of January 4, 1991.

VIII.A 18 - Charitable Solicitation of Adam Walsh Child Resource Center was removed to VIII. C. Other.

Addition of IX. Old Business A. 3 - Mid-Town Beach Nourishment and PEP Permit Issue.

Addition of Item XIV A - under Any Other Matters, the Port of Palm Beach Commission - Re: Peanut Island.

On roll call, the motion carried to approve the agenda, as amended.

Presentations

V. PRESENTATIONS:

A. Retirement of Walter Holt, Driver/Operator - Fire Rescue Department. Plaque was awarded to Walter Holt for his 31 years 5 months of service.

B. Retirement of Kenneth Kay, Driver/Operator - Fire Rescue Department. Plaque was awarded to Kenneth Kay for his 23 years 7 months of service.

C. Retirement of Robert Foose, Lieutenant - Fire Rescue Dept. Mr. Doney advised Mr. Foose is on jury duty and this item will be put over to the next Town Council meeting.

Comments of the Mayor

VI. COMMENTS OF THE MAYOR: Mayor Marix gave her comments: "This is the last regular meeting of the Town Council for the year, and it is time for New Year Resolutions. I suggest that a Resolution be made to abide by our Code regarding Committee meetings. Our Town system calls for Committees made up of two council members to meet regularly with other appropriate persons and discuss matters connected with (1) Public Safety, (2) Personnel and Administration; (3) Public Works (4) Ordinances (5) Finance and Taxes. This is not being done, although the Committees are appointed every year. Exception for a few meetings of the Ordinance Committee, and the Finance Committee during the Budget preparation, I can not recall when we last had a Personnel Committee Meeting, Public Safety or Public Works. It was so very long ago!!!"

The system, which was basically discarded during the time of Town Manager Delano, had been effective and time saving for many years, and was in effect when I came on the Council in 1970. It allowed for an informative, rather informal review of matters before presenting them for decisions at the Council; it gave opportunity to gather information, listen to points of view, saved heaps and heaps of paper, which at this time we are sent daily, and saved hours of the Town Manager's and Department Heads; time, as well as that of the elected officials, who upon receipt of much of the paper work then try to discuss many of the matters individually with the Town Manager, or Department Heads, who certainly have other things to do. The work of the Committees was then presented with or without a recommendation to the Council.

A Town Manager, who will remain nameless, once said "Pile enough paper on the elected officials and they will not be much trouble."

There is no way that meaningful discussions of many matters can be done at the monthly meetings. They are just too long....besides it ties up not only residents, their representatives, other department heads, let alone the entire Council, with the result that many items do not get the review that our residents have reason to expect.

Two cases in point - in October the Council was asked to approve a bid of almost $60,000 to rebuild a shed on the Palmo Way property to basically store fertilizer. The bid was approved. However, never having been through a Committee, the project itself had not been fully discussed. Did we really need it? Maybe, and maybe not. Most fertilizer companies deliver when needed, even if ordered in bulk. Is it the best location, miles up north? Should that property be used for that type of activity? Why was this expenditure not mentioned when I asked for possible budget cuts? A Public Works Committee meeting would have included this, and maybe saved $60,000.

(2) In our "bins" this week was an item concerning a new pay system (costing the Town more) for the Tennis Pro, to be voted on at this meeting. The previous Pro quit after a rather unsuitable appearance at a Council meeting, (never having gone through a Personnel Committee Meeting). In this day of unemployment, I doubt that we must pay more than before to get a Pro. This should have been discussed not only at a Personnel Committee Meeting, but also at a Finance Meeting. Too many of our residents are being hit by higher property taxes, gas taxes, etc....and are either being affected by the stock market, business slow downs, lower interest rates, and of course, inflation, most often not offset by any added pension benefits. Is this really the time to change the pay system for the tennis pro? Maybe...but maybe not...It needs to be properly examined.

We have been elected to do a job. If a better way can be found, let us look into it, and make suggestions. Until that time let us work by the system as it is laid out...A system that worked well for many years saving time for all, often money for tax payers, and added to overall efficiency."

Public Hearing

VII. PUBLIC HEARING

Res. 37-90

A. Landmark Designation for 403 Seabreeze Avenue - Consideration of Resolution No. 37-90

- Deferred from June meeting. Mrs. Peters gave the oath to those people who will be testifying in this matter.

Mr. Frank explained this is a shingle-style house and the Landmark Commission when they were studying this type of house found a great many in the Town, but few of them met the criteria however, in this case, the house is in good condition and consists of original materials and the zoning is such that the density on this site that has been developed far exceeds what is allowable in that zoning district at this point in time. Res.37-90

Mr. Frank reported staff believes this property meets the following criteria for designation:

(a) Exemplifies and reflects the broad cultural, political, economic or social history of the nation, state, county or Town.

(c) Embodies distinguishing characteristics of an architectural type or is a specimen ingerently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.

Mr. James Sved, consultant to the Landmarks Commission, then addressed the Council noting the property is very visible and a very worthy example of the bungalow style and is a significant piece of Palm Beach history, occupying a corner lot on Seabreeze Ave. and Cocoanut Row. He reported the notable features are chimney and piers of battered limestone and there is decorative woodwork in the eaves and the dormer which punctuates the roof and the large L shaped opening which is a protective covered porch. He stated the building was built in 1910 and the architect is not known, but is a textbook example of this early type of architecture in Palm Beach before the Mediterranean Revival and Mizner and the grant mansion era. He considered it worthy of landmark consideration. He recalled another house was designated last year of a similar style at 345 Brazilian Avenue, but the difference is this house is virtually unrestored and original materials have been maintained very well.

Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky that the Designation Report be made a part of the record. Motion carried unanimously for approval.

Mrs. Harwood, owner of the property, addressed the Council requested a two year deferral on the designation as the house is up for sale. She felt there were a lot of other bungalows in the Town and in other areas of the country such as this one. She believed there were several bungalos in the Town which have already been landmarked.

Mr. Heeke asked for an explanation of the "C" category. Mr. Frank indicated this was a category designation done when the original survey was made in 1979 of structures in Town. He stated it should be noted that there were actually five categories and A and B were the highest categories and the difference between A and B was the extent of restoration and renovation. He stated the "C" category was the second highest rating and when properties were put on a list for possible designation, A, B, C and D categories were considered. He stated the evaluations were made on the exterior only.

Mayor Marix asked how big this lot was for the 403 Seabreeze Avenue property to which Mr. Heeke responded it is 50' wide. Mayor Marix noted it would be difficult to rebuild on that lot as it is not a buildable lot according to today's standards. Mrs. Harwood advised there were no plans to change the house in any way at this time.

Mrs. Wiener agreed with the Mayor that this would not be a buildable lot if this house was torn down and recalled Mr. Sved's comments that this is a significant piece of Palm Beach history and wondered how many homes of this type were landmarked and if any had been turned down. Mr. Frank responded originally submitted were ten and four have been designated and the others are either pending or denied.

Mr. Heeke explained there is a theory that landmarking does enhance the value of a property to which Mrs. Harwood did not agree.

Mr. Moore was given the oath by Mrs. Peters and testified that the Architectural Commission would retain jurisdiction for changes to the exterior of this home to be viewed from the street, and as to demolition. Mr. Sved advised the history of this area starts much earlier than the 1920's and predates Mr. Flagler who came to Palm Beach on a seasonal basis and this house is virtually in its original condition and offers an example of how people lived before the people came to Town and built the larger mansions. Mrs. Wiener understood the general period and what he was saying but recalled him stating this was a significant piece of Palm Beach History and asked why it was. Mr. Sved stated this house is unrestored and is in pristine condition. and gives an unbiased view of the houses that were built in that day. Mrs. Wiener felt that just because the house was kept in good shape did not make it a significant piece of Palm Beach history and the fact that it was built at a certain and has been kept up has nothing to do with being a piece of history. Mr. Sved amended his opening statement to state this was a significant example of Palm Beach History. Mrs. Wiener personally felt there could be a case found for every single house in the Town, if desired and she thought they needed to be careful about the wishes of the owners. She strongly believed that there were some homes the Town could not afford to lose, and she thought they needed to meld the whole thing together and do what is important to the Town and what is important to the residents.

Mr. Ilyinsky disagreed as he felt this Town and all over the world towns and cities are a patchwork of small insignificant and large imposing houses and he felt the bungalows were a part of the heritage of Palm Beach and although not all should be landmarked, he felt there were some that should be.

Mr. Heeke noted on the report it states 403 Seabreeze was a pure example of the bungalow style in Palm Beach and he found that impressive adn this was constructed prior to the signing of the Town Charter and it buttresses the fact that this was the style of residence which many had at that time.

Mrs. Douthit noted the owner of the property has requested a two year deferment, after which time it could be again considered. Mr. Moore stated this would be a policy decision on the part of the Council, however, it could open the door for others. Mr. Moore indicated if this was being rebuilt, since the property is undersized, it would require a variance as the current zoning for a two story house would require 25% lot coverage.

Mrs. Douthit moved that this matter be deferred for a one year period. Seconded by Mrs. Wiener. Mr. Heeke felt there should be some notice to the public that this property is under active consideration for landmarking and there should be no modification to the exterior of the property during the deferral.

Mr. Randolph asked if the timing requirement as set out in the Ordinance was being waived by the current owner, as there are problems not only from a policy standpoint but there may be some legal problems with a subsequent owner coming in asking why they were not put on notice of the fact that it was under consideration for being landmarked.

Mrs. Harwood stated she has been telling potential buyers that this is under consideration for landmarking, Mrs. Wiener felt they had here a home which would be protected and she didn't feel that was a problem and did't believe they were setting a precedent that would be destroying landmarking by granting a deferral. She would like to see research on how many homes were being considered for landmarking which were on fifty foot lots.

Mayor Marix believed the Landmarks Commission was concerned that if it were not landmarked, it could be bought up and demolished and they could buy the lot next door and build a bigger house and then the house would be gone. Mr. Heeke thought the house was worthy of landmarking, but wondered if it could be preserved without being landmarked and he felt there were compelling arguments with regards to lot size and the involvement of ARCOM.

Mr. Moore stated he failed to mention this and this would be for reconstruction of a home on the property. He stated if the property to the west was acquired, the home could be removed and put by Unity of Title with the home to the west and the house on Wells Road and Bradley Place, the Ira Harris tennis court, an accessory structure could be put there and if they are going to consider that as an alternative on the thinking of the 50' lot and the de facto preservation, some sort of condition should be stated that the home stay there and never be used for accessory use or any acquisition.

Mrs. Harwood reported her neighbors the Athans, are not considering buying the house and using the property in any way. Mr. Heeke stated he was thinking about the future. Mrs. Harwood reminded she was only requesting a two year deferral.

Mr. Adrian Winterfield felt the best evidence of what was contained in the Survey done in 1979 was the Survey itself. He recalled the Ordinance was enacted in 1979, but the survey was not completed until 1981 and the first two categories did not have anything to do with restoration or renovation. He recalled Category A was eligible for National Register Designation. He recalled Category B was eligible for meeting the criteria of the Town Ordinance. He did not recall what "c" was but it was obviously below "a" and "b". He thought if the Town Council decided to designate this property, without reference to all the other specific questions to 403 Seabreeze, he wondered if the A, B, and C categories had any meaning at all, as if one was going to designate a "c" category before exhausting "A" or "B" as he was sure there were still "A's" and "B's" which were not as yet designated.

Mr. Winterfield felt the fact that this property was maintained so very well should dispel any fears that this could be one that would have to be demolished because of neglect.

Mr. Winterfield addressed the criteria feeling it has been shown that the historic criteria is unnecessary and is possible to designate the property by stating it has distinguishing characteristics of an architectural type.

Mr. Randolph explained the notice requirements to Mrs. Harwood and she indicated she would have no problem in waiving these requirements.

Mr. Moore recalled there was some discussion that there be some sort of notice to prospective buyers that there is a pending action of possible landmarking and wondered if that should be part of the motion. Mr. Heeke did not believe that was part of the motion.

On roll call, the motion carried 3-2 with Mrs. Douthit, Mrs. Wiener adn Mr. Weinberg voting affirmatively and Mr. Ilyinsky and Mr. Heeke voting against the motion.

Licenses & Permits

VIII. LICENSES AND PERMITS:

A. Charitable Solicitations

1. Albert Einstein College of Medicine of Yeshiva University; No. 10-91.
2. United Jewish Appeal; No. 49-91
3. Brandeis University, No. 76-91
4. Anti-Defamation League of B'Nai B'Brith; No. 83-91.
5. Rehabilitation Center for Children and Adults, Inc., No. 126-91.
6. American Committee for the Weizmann Institute of Science; No. 151-91.
7. Hanley-Hazeldoen Foundation; No. 239-91.
8. The Center for Family Services; No. 252-91.
9. Simon Wiesenthal Center No. 264-91.
10. Friends of Akim USA/Palm Beach Chapter, No. 280-91.
11. Beth Israel Hospital; No. 287-91.
12. Israel Histradrut Foundation: No. 294-91.
13. Palm Beach County Medical Society Auxiliary Foundation, No. 296-91.
14. The National Italian American Foundation, Inc., No. 298-91.
15. Polish Cultural Society of the Palm Beaches, Inc., No. 311-91.
16. Variety Club of the Palm Beaches; No. 312-91.
17. Palm Beach Day School, No. 313-91

Mrs. Peters reported all of the Charitable Solicitation Permits listed above are recommended for approval. Motion was made to approve the 17 applications submitted for Charitable Solicit ation Permits. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously with Mr. Ilyinsky objecting to those which keep not a single panny in the County or in the United States.

B. Transfer of 3 PS Alcoholic Beverage license from Thomas Joseph Taylor to Stephen Lynn Kaidaish Enterprises, Inc., d/b/a Scotti's Wines & Liquors, 333 South County Road. Mr. Heeke believed this complies with all the rules and is not for consumption on the premises. John Bannister, Attorney, addressed the Council on behalf of Stephen Keidaish requested the approval of the transfer of the liquor license. Mrs. Douthit moved for approval of the transfer. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Other

C. Other

Char.Sol. Permit 314-91

18. Charitable Solicitation Permit Application for Adam Walsh Child Resource Center, Inc., No. 314-91. Mr. Doney explained the reason this is being considered separately has nothing to do with the applicant but is due to the fact that they wish to hold a First All Women Golf Pro AM at the Par on January 22 or 23. Mr. Doney talked with Mr. Dytrych on this matter and he had no details on the matter but

more importantly it is the policy consideration of using Town owned properties for this purpose, as if one applicant be allowed to utilize the Town facility for a charitable purpose, it could get out of control by way of other applicants wanting to use the facility for this purpose. Mr. Doney recalled the only time the Par 3 is used for something of this type is the Town sponsored Pro Am tournament which benefits area hospitals. Mr. Heeke called for comments from the Adam Walsh Resource Center representative and there was no-one in the room representing them. Mrs. Rose Harwitz expressed her opposition to any charity being permitted to use the Par 3 for this purpose.

Mrs. Douthit moved to deny, with regret, the request of the Adam Walsh Child Resource Center, Inc., No. 314-91 because of their request to use the Par 3, and not anything to do with the charity itself. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

IX. OLD BUSINESS

Old Business

A.

1. Consideration of Future Water Supply Study by James M. Montgomery, Consulting Engineers, Inc. Mr. Heeke recalled there was a Workshop held earlier this month and no decisions could be made at that meeting. Mr. Weinberg stated the water study has gone a long way but still has more miles to traverse and he would like to make a motion on future action - in an effort to achieve the goals of quality, quantity, flexibility, cost-effectiveness, independence and other goals as outlined at the Town Council Workshop on Dec. 6, 1990, he moved that William Sundstrom and Howard Ostermann be authorized to negotiate on behalf of the Town of Palm Beach with the City of West Palm Beach to achieve the best possible water quality, pressures, and assurances regarding water quantity and rates in the context of a new long-term Franchise Agreement and to negotiate simultaneously the potential terms and conditions for the construction of a Reverse Osmosis Facility as a joint venture with the City of West Palm Beach and such other regulatory agencies as appropriate; with funding for these negotiations authorized from the Undesignated General Fund Balance. Seconded by Mrs. Wiener.

Future Water Supply Study

Mrs. Douthit wished to add to the motion that since Mr. Weinberg has worked so diligently on this project up to this point, he be authorized to attend these meetings, whenever possible and when he feels it appropriate. Mr. Heeke agreed that Mr. Weinberg has put in a lot of hours on this project and within his framework of his schedule, the Council would like him to continue these efforts. Mr. Randolph noted this should not be a part of the motion but noted as a request. Mrs. Douthit agreed. Mayor Marix wondered if there was any kind of a time frame set up? Mr. Heeke stated there was not and he would not want to put a time frame on this at this point. Mayor Marix hoped it would not have to continue on forever and ever. Mr. Heeke felt it should be accomplished with all due haste.

Mr. Winterfield asked if there was a limitation on the amount of funds which would be authorized? Mrs. Douthit felt it would be untimely to do that at this time and it should be addressed when there is a Progress Report. Mr. Heeke agreed and felt monitoring it on a monthly basis was a good way to keep up with this.

Mr. Winterfield asked who were the men designated in the motion? Mr. Heeke responded they were at the Workshop and are very impressive, noting Mr. Sundstrom was retained by the Town Council months ago and is probably the leading utilities expert in the State of Florida. He stated the second man is Mr. Ostermann, who also has a state-wide reputation as a utilities consultant and expert and who is a professional engineer and was a special consultant to James Montgomery.

Mr. Winterfield asked if the gentlemen in question were selected after the application of the Consultant's Competitive Negotiations Statute? Mr. Heeke believed that question has been covered and the answer is yes, with respect to one of them and he believed there was discussion on whether they needed to go through that step with the other consultant.

On roll call, the motion carried unanimously.

2. Consideration of Proposed Text for Bronze Plaque to Commemorate Site of Former Palm Beach Pier as Donated to the Town by Palm Beach Board of Realtors, Inc. Mr. George Lewis addressed the Council for the Palm Beach Board of Realtors, Inc. on the Plaque. Mr. Heeke suggested the date be put on the plaque to which Mr. Lewis agreed. Mrs. Wiener noted it is already in the text of the letter. Mrs. Douthit moved the proposed final wording be approved as submitted by the Palm Beach Board of Realtors, Inc. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Plaque - Site of former Palm Beach Pier

Mr. Lewis explained there will be artistic detailing of what the pier actually looked like.

The wording as submitted was: "Site of the Palm Beach Pier" ERECTED AND OPENED TO THE PUBLIC IN 1925, THE PIER EXTENDED OUT 1,095 FEET FROM THIS POINT. FOR OVER FORTY YEARS, IT WAS A FAVORITE TOWN ATTRACTION, FEATURING A COFFEE SHOP, COCKTAIL LOUNGE, RESTAURANT, TACKLE SHOP AND FISHERMENS' LOCKERS. A SERIES OF SUCCESSIVE STORMS AND HURRICANES GRADUALLY ERODED THE STRUCTURE, CAUSING IT TO BE REMOVED IN 1969." A COMMEMORATIVE DONATION BY THE PALM BEACH BOARD OF REALTORS, 1991.

A brief break was taken.

President Heeke called the meeting back to order.

3. Mid Town Beach Nourishment and PEP Permit Issue. - Mr. Dusey addressed the Council indicating last week he received a call from Mr. Pace Wilbur of Department of Environmental Regulation in Tallahassee regarding the Mid-Town Beach Nourishment project and he was preparing to issue a permit for that project and called our consultant in Boca Raton requesting information on how the PEP reef would interact with the Mid-Town Beach Nourishment project and of course, the consultant is not involved with the PEP, so Mr. Wilbur was referred to him. He stated the DER is ready to issue a permit for the Mid-Town project, but appear unwilling to do so because of potential conflicts with the PEP reef project. He pointed out at the same time the PEP people have been pursuing their permit for the reef and are a bit hung up with the Department of Natural Resources (DNR) and he wasn't aware of what the problems actually were. He recalled they started out pursuing two separate projects which now appear to be blending somewhat and will have an impact on each other. He thought it appropriate to come back to the Council to discuss these issues, but he wondered if the Council would like to have a special meeting to discuss what is happening with the two projects and set out a plan of action on how they wished to proceed.

Mid Town Beach Nourishment & PEP Permit Issue

President Heeke indicated he has been involved with staff on some of these discussions and has expressed his strong concern over the fact they have two applications which seem to be independent of each other and not mutually reliant upon each other, but suddenly it has been stated that one is co-dependent or involved with the other and he really fails to see this and wondered if they were saying these two projects now inter-twine. He is always troubled when someone is trying to force them to choose between the two projects or make a blend of the two, when this is not the issue.

He felt this ended up with two individual permits with each project standing on its own, acceptable to the various agencies, there may be other options. He thought if Federal funding was not gotten from one source, they could look to the other. He didn't want to be undercut in their negotiating abilities.

PEP Permit

Mr. Dusey advised they have arranged for Mr. Wilbur to be available by phone and they have installed a speaker phone in the Town Hall Council Chambers. Mr. Heeke felt they should tell us what their problem is and then they will negotiate.

Mrs. Douthit felt they ere sending out confusing signals. Mayor Marix indicated she has written a memorandum to the Council members, suggesting the Town Manager write a memo to the Council describing the meetings she has had with the staff members and Mr. Rauch and Mr. Dotterer and she believed at those meetings there was no confusion.

Mr. Pace Wilbur of the Department of Environmental Regulation in Tallahassee was dialed and available by phone. Mr. Doney explained to Mr. Wilbur that there are several related questions that pertain to the permitting of the Mid-Town project and also as it pertains to the PEP reef project.

Mr. Heeke asked Mr. Wilbur what his Agency's concern was with regards to the Beach Nourishment project. Mr. Wilbur responded if they look at the Beach Nourishment project completely by itself, he was prepared to recommend issuance of the permit and the variance to Secretary Twaupman and he is confident that the permit will be issued as well as the variance. He indicated they have been happy with now the Town and the Town's consultant have worked to resolve the various environmental concerns and have come up with something to meet those responsibilities and yet at the same time, provide storm protection and a public recreational beach that the Town needs.

Mr. Heeke asked if the permit could be issued based on our application standing alone? Mr. Wilbur responded they could and he was prepared to start doing that but the only problem is they are obligated to look at the cumulative impacts of a project and that means a lot of different things under the Statute and they must look at the project in the context of the other permits that are out there for work that has not yet been done and in this case, that is the PEP reef.

Mr. Heeke asked if at any time there has been any indication there would be a merger of these two projects and not the Town electing an option to proceed with one or the other? Mr. Wilbur responded negatively stating the Town has not indicated that they specifically intend to do both projects at the same time, but the problem is that they haven't come out and stated specifically that they intend to do one of the projects and given, there is an existing permit out there to do the PEP project, and he has to treat that in his review of the cumulative impactsof what is going to happen through the fill permit.

Mr. Heeke responded if there are two separate permits issued which do not refer to the other, the Town would only then be able to act under one of those permits, without a modification of either one. Mr. Wilbur indicated what they need to do is to understand what the interaction of the two projects are before the would be willing to have two permits out there that would allow both projects to be done. He indicated this problem could be dealt with in a number of different ways and the simplest way for them, which would probably be difficult for the Town is for the Twon to decide which one of these two projects they wanted to do and if they wanted to do the PEP project, they could withdraw the application for thefill permit or vice-versa. He stated another option is that they could issue the Fill permit, but in doing so, technically revoke the PEP permit, but at the same time, take the PEP project and incorporate it into as more or less as an appendix or an addendum to the Fill Project, and then at that point, they can say they have got a conglomerate Fill/PEP permit and Part A is for the Fill and Part B is for the PEP reef and then the Town would decide which of those two they want to proceed from this point, without any further review from DER and then DER will place a restriction on the other part indicating the Town could not do this other part until the interaction of the project is totally understood.

Mr. Heeke informed Mr. Wilbur that that was not the Town's initial request, nor has the Town ever given any indication that those two approaches were being taken, as it was an all or nothing, as between the two separate permits. He asked if it would not be simpler for the Town to state that we will only operate under one of the two permits and make the decision at a later date as to which one it will be.

Mr. Wilbur stated that would be possible and in that case, what they probably prefer to do is they would still want to technically revoke and PEP permit and go ahead and issue the Fill Permit with the PEP project incorporated into it and then at that point, they will issue the conglomerate permit again with two sections, a Fill section and a PEP section and indicate the Town could not do either of these two projects until they choose which one they are going to do. He indicated in which case, they are issuing a permit that basically says you have a permissible project that you can't do until it is decided which one of the two they are going to do.

Mr. Wilbur felt this was adding an extra step into the process. He stated if they issued a permit for the Fill project and then put the PEP into that permit and then say they basically can't do the PEP portion yet, and if the Town should decide later that they actually want the situation reversed and put the Fill project on hold and proceed with the PEP, that is a very simple paper work exercise to go through and could be done.

Mr. Heeke did not believe that Mr. Wilbur understood the question and repeated it by stating they are looking at two independent permits, neigher one relying on the other. He believed Mr. Wilbur was mixing the two and what Mr. Heeke would lkie to have is the two permits proceed independently. He stated if the PEP Reef does not meet the requirements standing alone, so be it; but the Town would like the option at some future date, for example, if we are not assured of funding for the nourishment and Mr. Wilbur should be aware of that. He stated Mr. Wilbur also has to be aware that if the Town had the two permits, that creates an option to the Town in negotiating the cost of the bidding on beach nourishment among competitors and that would be in the Town's best interest. He stated the issue before the DER is - "is the application on the Beach Nourishment standing by itself acceptable?" If it is, they should issue the permit. Similarly, if standing alone, the PEP application is acceptable as a project irrespective of the beach nourishment, then that is what they want to hear from Mr. Wilbur and the Town is not at a point of saying there is a mixture of a marriage of these permits.

Mr. Wilbur asked to clarify his earlier remarks stating there already is a permit for the PEP reef, so in the eyes of the District Office, that project was acceptable, however, looking solely at the Fill Project that too is acceptable at this point except for one component and that is he is obligated to look at cumulative impacts and this does include other projects that are permitted to occur that reasonably could affect the performance of the project that he is evaluating. He felt in this case the PEP Reef since the footprint of it is within the footprint of the Fill project, it is very reasonable for him to assume that the two projects have an interaction. He stated except for the cululative impact point, the Fill permit is acceptable. He indicated he was not trying to come up with any sort of mechanism to take away the Town's option on this but was trying to make sure that they can't do both of the projects without having additional review at DER. He stated they are willing to let the Town pick one of the two and basically, they could encumber both projects so neither could be done until the Town made a decision or DER could pick one project just by default and let it go ahead without any further review and basically encumber the other project. He stated they were not trying to do anything to take away any options the Town may have and the only thing they are trying to prevent is for the Town doing both projects without further review. PEP Permit

Mr. Heeke felt that was fair and asked if the DER could take a third step and that would be to make the permits mutually exclusive of the other project. He stated in other words, if the Town opts for Beach Nourishment, they may not proceed with the PEP without modification of the permit request and similarly, if they should proceed with the PEP reef, it has to be exclusive of beach nourishment without any modifications.

Mr. Wilbur stated that was what he was trying to do but the problem is he needs to set up the correct legal framework for that to happen through the DER and from talking with his legal department and other people involved in the Division, they felt the best framework for that is to stick both projects into one permit.

Mr. Heeke asked if this would make them mutually exclusive, without further application to the DER? Mr. Wilburn responded affirmatively. Mr. Heeke felt they didn't want to interfere with either project by either application, but did want to reserve the right and ability to move forward fairly and promptly and with cost effectiveness. He cited an example as if they are denied Federal funding, then they would like to be in a position of seeing if another permit or other permission should be explored and proceeded with. Mr. Wilbur had no objection to that. Mr. Heeke felt that sounded fine to him and thought then they were not confusing the two this way, but each of the applicants would understand that only one of the projects could go forward without further approval by the DER.

Mr. Wilbur explained the way that they would want to do this is more or less technically revoke the PEP Reef permit, but then put the PEP Reef into the Fill Project and it would be understood that both projects could not be done. Mayor Marix and Mrs. Douthit did not agree. Mr. Wilbur indicated the Town has to make the decision and if they choose to do both, then they would have to come in and do a more detailed modification to the Permit.

Mrs. Wiener felt this was a very serious matter and noted the Mayor and Mrs. Douthit are shaking their heads. Mr. Heeke felt it needed to be discussed further suggesting Mr. Wilbur's staff talk to the Town's staff to make sure we are all on the same wave length, noting if there is a revocation of a permit, it should be contingent upon the issuance of a subsequent permit.

Mr. Wilbur stated it can be made very clear that that contingency is there.

Mayor Marix stated her concern at the wording used to revoke the permit which has been issued for the PEP. She stated she could see no reason to revoke that permit. She thought if there was some Federal Funding, the Town might elect to do the sand, but if not, perhaps we would want to go with the PEP Reef, however she could see nothing but trouble ahead if the DER would revoke the PEP permit.

Mr. Heeke recalled he had asked if the revocation would be contingent upon the issuance of the PEP permit as part of the overall permit and the answer was affirmative and as he understands it, there would be no revocation of the permit until another one was granted.

Mr. Heeke thought what he was saying is - is it better to deal with one project for both projects, rather than have two separate permits that cross reference each otehr. Mayor Marix felt it needed to be exceedingly clear that DER is not revoking the PEP permit just because they are issuing the Sand Permit. She stated at the time they issue the Sand Permit, that they won't revoke it. She felt if we asked to have it altered in some way and they do alter it at our request, if they revoke the old one to put the new one, she can see that, but was afraid if it is going to get automatically revoked at the time the sand permit is issued and would like some clarification that that indeed was the case.

Mrs. Wiener statedthis is a very serious matter and we are sitting here talking about it with Mr. Wilbur on the other end of the phone and they were all interpreting it slightly differently and she thought it needed to be quite clear so there was no confusion on anybody's part so far as the whole major project is concerned and that none of it is endangered and we do not let go of anything that may be of benefit to the Town. Mr. Heeke agreed and asked Mr. Wilbur if he could give an outline, referring to the point where we could have the two permits where they would be rolled into one, but Mr. Wilbur is saying that he has to go through the administrative exercise of revoking one of thepermits and agreed that that would only happen and be contingent upon the issuance of the other permit and wondered if they could send us something in writing outlining that.

Mr. Randolph stated his concern about DER putting something into writing regarding this is that until the Town Council identified their concerns, rather than have them put something in writing that they may or may not wish to amend or retreat later. He thought perhaps the staff should relay to DER the concerns that have been expressed today and ask DER to comment on whether or not those options are available to us to which the Town Council agreed.

Mr. Heeke summarized the Town's objective. He stated one was would be to do nothing that would interfere with the beach nourishment permitting and move it along as quickly as possible. He stated to do nothing to interfere with the permitting of the PEP and move it along, but not to have the two projects intertwined. He stated one is involved with the other and it will be one or the other at this point. That is what we know they will issue and if we amend it later, we have to go back for agency approval.

Mrs. Wiener stated her concern as she believed it sounded that if we did one, we were closing the option on the other for all time. She believed they had to have the ability to go forward and beyond one permit if that is what they wanted to do and felt that that was correct and proper and it may be just that the timing of this whole thing was a little bit peculiar.

Mr. Heeke felt they always have the option of combining the two projects but that will require additional approval of DNR and DER.

Mr. Randolph advised the result that the Council is looking for and what Mr. Wilbur is enunciating is the same and he thought the methodology by which they go about it is what needs to be worked out. He believed DER's Legal Department had concerns about language within the Statutes which talk about cumulative effect regarding separate permits, so he thought they advised to avoid that concern and to achieve the end that is being sought, they will combine the two projects into one permit and have a Part A and a Part B and make them mutually exclusive, and in other words, if you do one, you can't have the other. He thought they needed to work out exactly the methodology by which they will do that tnd be assured that they are not putting themselves in jeopardy with either permit by combining them into one, the way it has been suggested. He thought the result that they are both seeking is the same, but they need to be certain the methodology is correct.

Mrs. Wiener wanted to be sure thev were not going to close out any options to which Mr. Heeke agreed and asked the Attorney if he would work with Mr. Wilbur and the staff to coordinate this and bring it back to the Council.

Mr. Randolph stated he would do so. Mr. Heeke felt that was the best way to do this and if a Special Town Council meeting is needed, it can be scheduled.

New Business

X. NEW BUSINESS

A. ORDINANCES - FIRST READING

Ord. 16-90

1. ORDINANCE NO. 16-90 - Amendments to Noise Ordinance.

Attorney Randolph read the ordinance by title:

ORDINANCE NO. 16-90 - AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER XII, NUISANCES, AT ARTICLE IV, NOISE OF THE CODE OF ORDINANCES OF THE TOWN, SECTION 12.48 AND 12.49 PROVIDING FOR THE PROHIBITION OF CERTAIN NOISES DEFINED HEREIN; PROVIDING SAME SHALL BE UNLAWFUL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained this was drafted as a result of a case which the Town was involved in the County Court and Section 12-48 was attacked as being vague, and therefore, unconstitutional. He believed that as a result of the Court's determination, they have researched the Case Law and Statutes relating to similar language and find the Supreme Court has upheld the language proposed in Section 12-48 and State Statutes has a similar provision, however, he would like to further research this and have some time to receive copies of other municipalities ordinances on this subject and bring this to an Ordinance, Rules & Standards Committee meeting.

Mrs. Douthit was requested to schedule a meeting of the Ordinances, Rules & Standards Committee to which she agreed. Mr. Weinberg requested when the Town Attorney checks with the other communities on their restrictions that he also check on how they enforce this particular ordinance.

Bid Awards

B. Bid Awards

Sealed Bid 010-90/91

1. Sealed Bid No. 010-90/91 - Sale of Surplus IBM System 36. Motion was made by Mr. Ilyinsky, seconded by Mr. Weinberg that the Enterprise Data Systems' high bid for the IBM System 36, Model 5360 in the amount of $42,595 and for the IBM System 36, Model 5363, Diskomp Computer Sales for the bid of $6905, as outlined in Mr. Doney's memorandum of Dec. 10, 1990. On roll call, the motion carried unanimously.

Other

C. Other

Longetivity Pay

1. Extraordinary Longevity Pay for Eligible and Recommended Town Employees with 21 to 30 Years of Service with the Town. Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit, the memorandum dated 12-4-90 of Mr. Doney recommending those eligible employees recommended for Extraordinary Longevity Pay was approved. On roll call, the motion carried unanimously.

Five-Year Renewal of Mutual Aid Agree. with Police Dept. of Lake Worth

2. Proposed Five-Year Renewal of Mutual Aid Agreement with the Police Department of the City of Lake Worth. Motion was made by Mr. Weinberg to approve the renewal of five years of the Mutual Aid Agreement with the Police Department of the City of Lake Worth. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Agreement - Tennis Pro Manager

3. Consideration of Agreement for Tennis Pro Manager. Motion was made by Mrs. Douthit that this matter be referred to the Administration and Personnel Committee. Seconded by Mr. Ilyinsky. Mr. Doney indicated they currently have an Acting Tennis Pro and he believes this arrangement could be continued until the Committee meets and makes their recommendation to the Council. On roll call, the motion carried 3-2 with Mrs. Wiener and Mr. Weinberg voting against the motion.

FL.League of Cities

4. Florida League of Cities 30th Annual Legislative Conference on January 17 and 18, 1991 in Tallahassee - Designation of Voting Delegate. Motion was made by Mrs. Douthit, seconded by Mr. Weinberg that Mrs. Wiener, Mr. Weinberg and Mrs. Douthit be the voting delegates at the Florida League of Cities 30th Annual Legislative Conference on January 17 and 18, 1991.

Mr. Heeke announced they will recess to the north end of Town Hall at the Fire Department for the dedication of the MICU and then have lunch and return at 2PM.

Mr. Heeke called the meeting to order after the lunch break.

Approval of Warrant List

XI. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR OCTOBER, 1990. Motion was made by Mr. Ilyinsky, seconded by Mrs. Wiener the Warrant List and Fund Expenditures for October, 1990 be approved. On roll call, the motion carried unanimously.

Development Reviews

XII. DEVELOPMENT REVIEWS:

Major Matters ArchComm.

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of November 28, 1990 - Excerpt Available in Town Manager's Office.

Mrs. Douthit noted the monies have been allocated for the work to be done on Palmo Way at the Town's Nursery but she had some doubts about whether this should move forward as the house is not being used at all and with the water situation not definitely decided, she would like to see that property kept as open as possible on the grounds it may be necessary to use it for other purposes. She incidated she did walk around the property and wondered why the fertilizer would be stored there when the Public Works vehicles are garaged in West Palm Beach and it would make better sense to save on the gas costs to have the items necessary closer to where the trucks are normally parked, which would save fuel costs. Major Matter Arch.Comm.

Mr. Heeke recalled the bid has been awarded at a previous Council meeting. Mrs. Douthit agreed that was the case, but she didn't believe it was cast in stone and perhaps it could be reconsidered. Mrs. Wiener asked how they stood legally as this was originally considered several meetings ago and she believed when an item is being reconsidered, it is usually done at the same meeting.

Mr. Randolph advised from that standpoint, the Council could readdress the matter without it being someone making the motion who was on the prevailing side. He indicated this doesn't relate to the item before them at this time which is approval of the Architectural Commission's decision on it. He suggested if they want to reverse a previous action, they would have to give consideration to the things that have already been done, one of which is the award of the bid.

Motion was made by Mrs. Douthit that the matter of the bid award on the Palmo Way Nursery property be readdressed.

Mr. Heeke believed there should be a motion on accepting the Architectural Commission's actions first.

Motion was made by Mrs. Douthit to receive the Architectural Commission's actions of Nov. 28, 1990 with the exception of B109-90 - New Storage Building. Seconded by Mr. Ilyinsky. Motion carried unanimously on roll call.

Mrs. Douthit moved the B-109-90 New Storage Building at the Nursery be readdressed under "Any Other Matters". Seconded by Mr. Ilyinsky. ON roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion.

The major matters approved were:

B29-90A - Revisions to the previously approved project for The Wells Road Land Co., 133 Wells Road. Deferred.

B16-90A - Revisions/additions to resident of Michael J. Civitella, 272 Country Club Road. Approved.

B77-90 - New Residence for Mr. & Mrs. Stephen Levin, 446 North Lake Way. Approved revised plans with deferral of the roof tile color and the submission of a landscaped plan and not to hear the boat house project until all property owners in the area are botified.

B82-90 - New Residence for Richard Doan, 218 Miraflores Dr., Removed the item from the agenda.

B91-90 - Addition to residence of Seymour and Rhoda Cole, 233 List Road. Approved conditionally.

B86-90 - New residence for Peter Stanley, 1332 N. Ocean Blvd. Deferred.

B102-90 - Renovations and New Auxiliary Structure for Lawrence Gordon, 1260 N. Ocean Blvd. - Approved.

B105-90 - Addition and Remodeling to residence of Gerard Harriman, 112 Woodridge. Deferred.

B106-90 - Renovation to residence of George Phillips, 264 Dunbar Road. Deferred for restudy.

B107-90 - Additions and New Pool House for Gregory and Claire Papadopoulos, 111 El Brillo Way Approved conditionally.

B108-90 - New storage building for Town of Palm Beach at 265 Palmo Way. Considered later in the Town Council meeting.

B. Variances, Special Exceptions and Site Plan Reviews:

OLD BUSINESS — Old Business

1. Var. No. 60-90 - Peter Schuster, 1375 S. Ocean Blvd. - to allow a kitchen in a guest house previously approved under Var. No. 31-78 and 32-87, which stipulated that any subsequent owners seek an agreement to continue. R-AA District. Deferred from November meeting. Mr. Eugene Lawrence representing the Schusters addressed the Council indicating his clients have recently purchased the property and the variances granted in the past do not run with the land and they wish to use the property for a single family residence and will enter into any agreement to continue the kitchen. Mr. Ilyinsky moved Var. No. 60-90 be approved and the extension be granted, subject to the kitchen removal agreement being executed with the new owners. Seconded by Mrs. Wiener. Motion carried unanimously on roll call. Var.60-90

2. Special Excpetion No. 11-89 - NIcholas Raich, 173 Sunset Ave. - to review the use of previously constructed racquet ball court. R-C District. Mr. Moore reported the approval was granted conditionally and the condition was that six months from time of the Certificate of Occupancy, this should be reviewed to see if any problems had been reported and Building and Zoning Department has not received any complaints nor has the Police Department had any complaints and evidently, this Special Exception has caused no problems in the neighborhood. Mrs. Wiener moved for the finalization of the granting of Special Exception No. 11-89 removing the review condition that was placed on the application when first granted by the Town Council and that is there have been no complaints filed. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously. Spec.Excep. 11-89

NEW BUSINESS — New Business

3. Variance No. 62-90 - Rolla and Kim Campbell, 257 Dunbar Rd.; to allow installation of a dish antenna 8.5 in diameter exceeding the maximum allowable 6.5' per Section 5.51 (f). R-B District. Mr. Var. 62-90

Heeke reported this variance has been deferred until February.

Var. 63-90 4. Variance No. 63-90 - Mrs. Darcy Leeds, 120 Jungle Rd.; to allow construction of a two story addition at a 103 degree angle of vision in lieu of 100 degree maximum allowed. R-A District. Mrs. Jacqueline Albarron, Archicect addressed the Council for Mrs. Leeds requested the Variance indicating they wish to demolish a portion of the house but there is still a small corner of the house which is non-conforming. She noted the original sketches by the original architect, Wyeth, showed the house to be as wide as they are now showing so the design is going back to the original. Mrs. Douthit felt this vastly improves the property and she moved for approval of Variance No. 63-90 . Seconded by Mrs. Wiener. Mr. Heeke noted it is a minimal variance and a great reduction in thenon-conformity. On roll call, the motion carried unanimously.

Var. 64-90 5. Variance No. 64-90 - Leonard and Lillian Schneider, 1089 South Ocean Blvd.; to allow modification to Variance approval No. 22-90 to permit installation of a window on the west side of the existing second story at the northerly portion of the front facade. R-A District. Attorney Frank Lynch addressed the Council on behalf of the Schneiders, indicating he was here in May for approval of a second story on this house and he read from the minutes of Sept. 9, 1980 when the application for Var. No. 27-80 was approved and the condition was there be no windows. He requested a window be placed in the west elevation facing the road, which would be 45' from the street, on the second floor. Mrs. Douthit recalled Mr. Lynch was here six months or so ago and the roof was done cleverly so it maintained its continuity. She felt the room already has cross ventilation and to come back for another variance was not necessary as they had cross ventilation and the north-south light and she moved the Variance No. 64-90 be denied, on the grounds that coming back and triple-dipping every six months or so was beyond the pail and she saw no hardship. Mr. Lynch advised Mr. Schneider does not like the triple-dipping either but he wasn't originally involved in the first dip and on the second, Mr. Schneider was looking to minimize the variance. Mrs. Douthit felt they had already granted him use of the second story and this variance is just too much. Mrs. Wiener seconded the motion, asking what was the purpose of the window? Mr. Lynch advised it was for ventilation coming off the water. Mrs. Wiener stated they already had ventilation and also light and she could see no purpose for the variance. Mr. Lynch advised it would increase the light and also the ventilation.

Mrs. Wiener recalled the intention of the variance was for the roofline and she didn't recall it was granted for habitable space. Mr. Lynch agreed the roof line did not change but a second floor was allowed, within the confines of the existing roof line. Mr. Moore agreed this was the variance granted and that was to allow living space on the second floor. Mr. Heeke recalled it was not to disturb the appearance of it being a one story and if the variance is granted, it would make it two story in appearance. Mr. Moore reported there is a requirement in the Building Code which requires at least one escape window from every bedroom area and they have complied with that on both the north and south elevations of the building, which would not give the appearance of a two story building from South Ocean Blvd. He indicated the staff does not believe this application is appropriate and the main reason it was granted originally is that it was never to appear to be a second story and that was the agreement struck with subsequent property owners across the street who were assured this would remain one story, even with the large roof that was put on the house.

Mr. Heeke asked if there was a hardship demonstrated to which Mr. Moore responded negatively. Mr. Weinberg asked if any neighbors have complained to which Mr. Moore responded negatively. Mr. Lynch advised the windows put in the north elevation do oeverlook the neighbor's property and the window requested in this variance will overlook Ocean Blvd and is 45' from the Blvd. and is directly above the driveway entrance to the property. Mr. Heeke felt the whole roof scheme was thrown out of balance.

On roll call, the motion carried unanimously for denial.

Spec. Excep. 13-90 6. Special Exception No. 13-90 with Variance - Old Guard Society of Palm Beach Golfers, 223 Sunset Ave.; to allow a social club to locate in a C-TSzoning district and further to allow occupancy of 3,500 square feet in lieu of 2,000 maximum allowed. A variance is requested to Section 6.21 which would require 54 parking spaces; 14 parking spaces would be assigned this tenant. C-TS District. Letter dated 11-27-90 from Mr. Broberg requesting a one-month postponement. Mr. Heeke reported this item was postponed to the January meeting.

Spec. Excep. 14-90 7. Special Exception No. 14-90 With Variance - Hy Goldgeld, 313 1/2 Worth Ave.; to permit 24 outdoor restaurant seats pursuant to Section 6.61. Applicant also seeks a Special Exception in accordance with Section 6.20 (d) (1) to permit off-street parking within 500' therefore providing the required eight parking spaces for the 24 outdoor seats; said addition of 24 seats is an increase to the total allowable seating capacity, therefore, applicant requests a variance from Section.6.61 of the Town Zoning Ordinance. C-TS Zoning District. Attorney Peter Broberg addressed the Council indicating he represents the owner of this new restaurant and seeks a Special Exception for outdoor dining. He stated he felt this should be granted as the restaurant will be Town-serving and the variance requested is because of a technical wording in the Ordinance, which states the Special Exception can be granted if the tests can be adhered to, but however, the additional Special Exception shall not increase the present allowable capacity. He stated he is asking the Council to consider increasing the capacity by 24 seats outside. He stated the variance is for parking and he has worked out a deal with the Apollo Lot, whereby they can provide eight parking spaces around the clock, twenty-four hours, which would allow them to have twenty-four seats. He indicated his clients have spent a lot of money in decorating the inside and the seating requested outside is for outdoor type seating and they cannot take those seats inside, as it would interfere with the decor. He believed the Fire Marshall had no problem with the proposed plan and he requested Council to grant the Special Exception to allow the outdoor 24 dining seats and they will provide the off-street parking within five hundred feet of the restaurant.

Mrs. Wiener asked what the total seating would be to which Mr. Broberg responded it would be 125 seats. Mrs. Douthit noted the original plan showed a request for thirty-four seats. Mr. Broberg explained this was quickly done by an architect and he apologized for that mistake, but it was potential spaces.

Mr. Heeke stated he would not be in favor of putting the chairs along the west wall in the Via as there are plantings there which would be growing, and it would be a risk in teh event of an emergency, and he felt the access should be relatively unencumbered.

Mr. Moore indicated the staff comments are that no seating be permitted on the west side and all seating, if found appropriate would be confined to the center area in front of the front door.

Mr. Ilyinsky asked if where the tables were to be placed was owned by the restaurant? Mr. Broberg stated it is private property and would be their responsibility. He stated they do have a minimum of aisles to pass through and the seating could be placed closer together. Mr. Broberg stated they would abandon the chairs on the west wall. Mrs. Douthit asked it there was any residential area in the area. Mr. Moore did not believe there was.

Mr. Heeke suggested they go with four tables and two singles which would be twenty seats and they could stagger the other four seats so more room could be created for emergency passage. Mr. Moore wondered if they could arrange the seating to provide 44" on the east and west for passage.

Mayor Marix asked if she understood correctly that the owner of the restaurant was going to open up a small shop in the area. Mr. Moore felt if this space is going to be used for a shop, it would be in excess of the space for the restaurant and they would have to determine what the use of the space was going to be and make a decision.

Mr. Broberg stated this space has been leased to a Dress Shop for a year.

Mr. Moore requested the floor to clear up one question, as this application is not for accessory serving tables and is for tables and seats and all the rest of the restaurant operation would have to be contained inside of the building and he wished the applicant to know that all serviee station work needed to be handled inside the building.

Mr. Heeke noted that the one table shown next to the entrance on the north side; the two single tables shown on the sides of the fountain and the one foursome table next to the fountain were the onew granted for twenty seats, which would be arranged with four at the north west corner and two twos on either side of the fountain and three foursomes on the north end of the fountain, set in a triangular fashion. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Broberg advised they are willing to provide off-street parking which is formulated at one parking space for three seats and that would mean they have to furnish seven seats and within 500' lineal feet along the sidewalk, and he asked the Council to grant this.

Mr. Ilyinsky moved the Variance with the Special Exception for the parking be granted. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Attorney Randolph indicated they would still need a variance to grant them the additonal square footage under Section 6.61. Mrs. Wiener moved for granting of the variance under Section 6.61 for twenty additional outdoor seats. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

C. Other — Other

1. Request by Glace & Co., General Contractor, to Increase Normal Working Hours to an Overtime Situation for Island National Bank, 285 Sunrise Ave. Mr. Moore indicating Glace & Co. are the inside contractors for this project and would like a waiver of the Town's working hours for the inside work only from 8AM to 6PM, which is not 9-5:30, so it would be one and one half hours per day and he requested if the Council does approve, they condition that if their first offense would be their last and noisy work would eliminate the agreement; and secondly, the noisy work on the exterior be confined to 9-5PM. Mr. Heeke asked what kind of work do they contemplate doing that will be noisy: Mr. Glace indicated they are trying to have the Bank be able to use this facility this season and their work hours heed to be extended or the completion dates are moved up. He will adhere to the hours of having normal work conditons between the hours of 9 to 4:30 although they would have start up and tear down times earlier than that and later. He indicated this is a congested area, so they will car pool. He stated the building will have a roof on it and windows and doors and a self-contained environment to work within and by granting this request, they can knock thirty days off their schedule. Mr. Heeke asked if all the work would be done inside to which Mr. Glace responded affirmatively, indicating they contemplate finishing the job by March 1, 1991. He stated they are doing as much as they can off site with pre construction work, which will reduce the time factor and noise levels. — Glace & Co. request to increase Normal Working

Mrs. Wiener recalled that construction people love to work with loud music and she asked if there was some way that could be precluded and get their cooperation that there will be no loud music. Mr. Glace indicated they have worked here before and there are no radios on the job or trucks with radios outside. He stated there will be a full time supervisor on the job at least forty hours per week, and that person would be responsible for that type of activity.

Motion was made by Mrs. Wiener, seconded by Mr. Ilyinsky that the Town Council grant the request by Glace & Co., General Contractors, to increase thenormal working hours in an overtime situation by one and one half hours per day for Island National Bank, 285 Sunrise and it is the understanding of this motion that it is a sudden death situation and they are not prepared to listen to complaints in this regard and based on the assurances given to Council, there should be none and the conditions that they will car pool and any violation would be immediate cessation of the permission granted. On roll call, the motion carried unanimously.

XIII. COMMUNICATIONS FROM CITIZENS: None. — Communication from Citizen

XIV. ANY OTHER MATTERS: — Any Other Matters

A. Port of Palm Beach. Mr. Heeke explained they had extended the opportunity to the to the Commissioners of the Port of Palm Beach to be heard at this time. He recalled several years ago, a representative from the Port of Palm Beach came before the Council and then we asked them if we could be heard on their agenda and were told that we could speak under the General Comments. He believed the Port Commissioners have stated that being heard under Any Other Matters was not good enough and wanted to be listed on the agenda as a separate item, however, they were told they would be heard under Any Other Matters and he didn't believe there was anyone in the room to address the Council on this subject. — Port of Palm Beach

Mrs. Wiener asked if there was anyone in the room from the Port Commission and there was not.

Mr. Heeke recalled there are many different stories about Peanut Island and the Council;s concern by the position taken previously is the Port can wash their hands of Peanut Island and sell it indicating it is not their responsibility. Mr. Heeke reported Peanut Island has a lengthy history of being a passive, regional recreational which is extremely important to the Town and to the region around us as this is a preferred anchorage for boats going to and from the Islands.

Mrs. Douthit stated her concern was there has been talk of selling the island or a portion of it to FIND, which is a separate taxing district who would use it to dump dredge materials on forty acres and trees do not do well when they are buried. She indicated it would interfere with patterns of the Port, which is also taxing district, but has so far refrained from taking advantage but she knows the Port does wish to grow, wihtout sharing its profits with anyone else and she is very concerned about that. She visualized more taxes to clean up the mess that one taxing district has created.

Mayor Marix asked the attorney if FIND had condemning authority? Mr. Heeke asked if that would be the case against another sovereign? Mr. Randolph indicated he would have to check this out. Mayor Marix felt they needed to take any steps they possibly can, to avoid that happening. Mr. Randolph stated the Town could probably intervene in the condemnation proceedings and prior to that, legal objections could be raised to try to dissuade them.

Mr. Heeke asked the Council to visualize the amount of dumping taht would happen on Peanut Island as they want to bury the Australian Pines which have been declared an invader species, and this would create quite an odor.

Mrs. Wiener felt this was a very haughty attitude for the Port Commissioners to not be in attendance today to address the Council on this very important matter. Mr. Heeke agreed noting the dredging material could very well be available for beach restoration, if it is found to be of good quality.

Mrs. Douthit recalled hearing figures as high as a million cubic yards, which could fill up channels and they probably would need barrier walls to hold the fill and she suggested a letter be sent to them asking for answers to these questions.

Mr. Heeke did not know what the real plan was as it seems to constantly change and he too was disappointed that there are no straight answers to all of these questions and he suggested the move on to another item.

Nursery at Palmo Way

B. NURSERY AT PALMO WAY. Mr. Heeke stated the Council has voted to reconsider the construction of the shed. Mr. Doney indicated they have acted on this and this was discussed during the budget process and a Sealed Bid was considered and awarded.

Mr. Dusey indicated the project was budgeted in the Capital Improvement Program in Fiscal Year 1990 and it was discussed the debated at the time it was proposed and then was adopted as part of the Capital Improvement Program and they have proceeded with the project. He recalled in October, 1990, the Sealed Bid was awarded and he believed there now was a question proposed as to need. Mr. Heeke indicated a question was asked if this is needed at this particular location. Mr. Dusey responded it is more than a fertilizer storage place and there were two buildings there, one of which has been demolished as part of the contract. He stated the buildings were in poor condition and they were investigated as to whether or not they should be rehabilitated and the contractors who looked at it, felt they could not be saved, and it would be used for storage of chemicals, and some are restricted chemicals and are potent and the other is for bulk storage of fertilizer used during the course of the year.

Mayor Marix stated she was not convinced this Palm Beach real estate was a suitable place to store chemicals, especially since they have spent so much for the new Public Works facility. Mr. Dusey indicated the new facility was not designed to house chemicals and it would cost in the neighborhood of $13,000 to have the facility meet the criteria to store the chemicals. He indicated they have expended approximately six thousand dollars on engineering adn technical investigations and some of the work has been commenced, for which the Town would be responsible in the range of fifteen to twenty thousand dollars. Mayor Marix remarked the new building is $60,000 compared to $13,000 to store the chemicals in West Palm Beach.

Mr. Dusey stated he hates to waste Town money and works very hard to not do so, and if we proceed with designs of these projects, it will be expending money which may not be necessary if down the line, it is then decided they don't want them. He doesn't know at what point the decision making should come together so money is not wasted. He thought this was discussed at the budget process. Mayor Marix believed the budget process was discussing money and what wasn't discussed was the necessity and/or the location. Mr. Dusey pointed out there has been a contract awarded on this project and it seems like this is the wrong time to be talking about this.

Mrs. Douthit believed the materials should be stored at the location where the trucks are, as now they would have to drive to the north end of Palm Beach to get their materials and with the price of gas going up, it may not be a good idea.

Mr. Dusey indicated he has explored this with Mr. Ugi and it was thought there was no advantage to where the location would be, and it was equally sited. He stated they could save about $2200 a year in bulk purchases.

Mr. Doney indicated when they go through the Capital Improvement Program, the staff is prepared to go into any level of detail to discuss each proposed project and they did go through that process through the adopted budget. Mr. Heeke agreed noting they now have awarded a contract and work is being performed on it.

Mrs. Wiener believed staff was instructed to move forward on this and they would have no reason to assume otherwise, and especially in in hearing the amount of money that has been expended and they are moving forward and a decision needs to be made in an orderly fashion and staff proceeds with that decision. She felt since they have already expended monies to initiate this project, she didn't think it was reasonable to stop and instruct staff to spend further monies to have the Public Works Facility meet the criteria in order to store materials there in West Palm Beach.

Mr. Dusey stated what was originally proposed was to construct the new building between the two older buildings so they could continue to store the materials while they built the new structures, however after looking at the site, they found there was a large tree in that location, so they modified the plans and moved it to the one building that has now been demolished, and minimize the impact to the site and allow the fine trees on the site to remain which will screen the proposed structure. They have removed three maleluca trees.

Mr. Weinberg asked how large the proposed building is? Mr. Bowser responded the new building is 20 x 40 and the old structure was 15 x 38'. Mr. Dusey indicated they have removed the garage and the potting shed, which is no longer used. Mr. Dusey stated there still remains on the property a building which will be demolished.

Mr. Dusey indicated the site will be substantially cleaner than it was before. Mr. Heeke reminded all they also have an investment on Loftin Street and these are thoughts we should have been discussing earlier. Mrs. Douthit recalled it was discussed as something that was needed, but they didn't get into this type of discussion, since they were thinking mostly of the budget.

Mr. Weinberg asked if this fertilizer was combustible? Mr. Dusey responded it could very well be.

Mr. Weinberg asked if a Public Storage Facility could be used? Mr. Dusey stated this could be a possibility but he would have to investigate this further.

Mrs. Wiener stated after due consideration, she would like to make a motion that the project be reinstated on the original terms. Seconded by Mr. Weinberg. Mr. Randolph suggested the motion should be that they move ahead with the project to which the maker and seconder agreed.

Mrs. Douthit asked what they were doing with the old residence that is currently on the premises? Mr Susey advised this is not occupied and they had explored the possibility of renting this, but it would place the Town in a position of being a landlord. Mr. Heeke agreed this was not a municipal purpose. Mr. Dusey suggested it could be torn down.

Mrs. Douthit asked if it was feasible to store these materials in that building? Mr. Dusey responded it was not suited for that purpose.

On roll call, the motion carried with a negative cast cast by Mrs. Douthit.

C. ARCHITECTURAL COMMISSION'S REPORT OF NOVEMBER 28, 1990 on the Palmo Way Nursery building. Motion was made by Mr. Ilyinsky to approve. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Arch.Comm. Report on Palmo Way

D. GILDA RIZZO VS. TOWN OF PALM BEACH. Mr. Doney explained Kathy Haynie-Timmons had provided a recommendation on this matter which involves a settlement as outlined in her memorandum of 12-07-90. Mr. Ilyinsky moved the settlement be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Gilda Rizzo vs. Town of Palm Beach

E. TASK FORCE FOR PALM BEACH COUNTY MUNICIPAL LEAGUE AND PROPOSED 1991 STATE LEGISLATIVE PRIORITIES. On motion of Mr. Weinberg, Councilwoman Wiener was appointed as a member of this Task Force. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously. Task Force for PB Co. Municiapl League

F. 1991 LEGISLATIVE PRIORITIES. Mr. Doney indicated the Palm Beach County Municipal League has sent a list of their concerns and the Town has a number of these items as their concerns, such as the $25,000 Homestead exemption; retain the cap on liability limits for severeign immunity. Mrs. Wiener noted they also suggest the Solid Waste Authority be supported in its present state and she did not approve that. 1991 Legislative Priorities

Mr. Heeke supported the item "Enhance home rule and local determination". Mrs. Douthit wondered about the Tax on Optional Real Estate Transfer Fee - Documentary Fee - 50 per $100 which she thought was high.

Mr. Heeke thought they should stick to the issues which greatly affect the Town. Mr. Doney indicated this will be brought back to the Council in February, which is done annually.

G. PALM SALE. Mrs. Earl of the Preservation Foundation indicated they wish to offer palm trees for sale for planting in the Town. Mr. Doney indicated this is a policy matter and up to the discretion of the Council members. The members of the Council thought it was a wonderful idea. Palm Sale

H SPECIAL EXCEPTION NO. 19-87 was granted by the Council three years ago and declined to include a clause that would allow the applicant the reversion of the property from private club, which was the subject of the Special Exception to a restaurant. Mr. Winterfield explained this was at one time called "Harold's" then the "Palm Beach Club" and now bears the name of "Au Bar" on the door and he thought it was operating as a private club and he did not believe there was a Special Exception granted to them nor did they have a liquor license granted by the Town. Mr. Heeke asked Mr. Doney to investigate this matter. Spec.Excep. 19-87

XV. ADJOURNMENT. Motion was made by Mrs. Wiener to adjourn the meeting. Adjournment

Grace T. Peters, Town Clerk