MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 10, 1996

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on December 10,1996. The roll called with the following Elected Officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manger Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Director of Recreation Russell Bitzer, Director of Public works Al Dusey, Town Engineer James Bowser, Director of Planning, Building & Zoning Robert Moore, Zoning Administrator Paul Castro, Police Chief Joseph Terlizzese, Fire Chief Vincent Elmore, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Father Warren of Bethesda by the Sea Church. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Retirement of Willie B. Hogan, General Maintenance, Public Works Department - From 1981 to 1996

Mayor Ilyinsky commended Mr. Hogan for his 16 years of loyal and invaluable service to the citizens of the Town of Palm Beach and his fellow employees, wishing him good health in his retirement. Mr. Hogan graciously accepted an engraved ring in honor of his retirement. He will be missed by all.

B. Recognition of Samuel J. Levy, Golf Commission - From 1993 to 1996

Mayor Ilyinsky presented Mr. Levy with a plaque in honor of his service from 1993-1996 on the Golf Commission.

C. Recognition of Col. I. Henry Stern, Golf Commission - From 1994 to 1996

Mayor Ilyinsky presented Col. Henry Stern with a plaque in honor of his service on the Golf Commission from 1994-1996.

D. Recognition of Garrison D. Lickle, Chairman, Shore Protection Board - From 1995 to 1996

Mayor Ilyinsky presented all the members of the Shore Protection Board with plaques in honor of their service on the Shore Protection Board from 1995-1996. The Mayor noted that although he had not been in favor of the creation of this board, he believed he had made a mistake and that the board had done a wonderful job.

E. Recognition of George M. Moffett, II, Vice Chairman, Shore Protection Board - From 1995 to 1996

(See above).

F. Recognition of Eileen C. Curran, Member, Shore Protection Board - From 1995 to 1996

(See above).

G. Recognition of Charles C. Isiminger, Member, Shore Protection Board - From 1995 to 1996

(See above).

H. Recognition of Gerald H. Levy, Member, Shore Protection Board - From 1995 to 1996

(See above)

I. Recognition of Joel Martino, Member, Shore Protection Board - From 1995 to 1996

(See above).

J. Recognition of Richard A. Raffo, Member, Shore Protection Board - From 1995 to 1996

(See above).

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky wished everyone a happy Holiday Season.

V. APPROVAL OF THE AGENDA

Mrs. Smith noted that there was a request for deferral of Item 2., A. Other, under XI. Old Business (Consideration of Request for Amendment to Encroachment Easement at 190 South Ocean Boulevard, Estate of Johanna Johnson - Deferred from October 8, 1996). Mr. Wyett made a motion to defer this item to the January 14, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Per memorandum dated December 9,1996 from Mr. Glenn Miller, Mrs. Smith noted that there was a request for deferral of Item 1., B. Resolutions, under XI. Old Business (Resolution No. 49-96 - Easement Request by Everglades Club, Inc. For Groundwater Monitoring Wells - Deferred from November 12, 1996) to the February 11, 1997 Town Council Meeting. Mr. McLendon made a motion to defer this item to the February 11, 1997 Town Council Meeting; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Regarding Item B. 1., under XV Development Reviews (Consideration of Appeal of Administrative Decision for Zoning Approval of an Alcoholic Beverage License Application for the Sea Lord Hotel, 2315 South Ocean Boulevard) Mr. Smith noted that per letter dated December 6, 1996 from Mr. Paul Thibideau there was a request for withdrawal. Mr. Wyett made a motion to approve the withdrawal of this item; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Additions to the Agenda: Under XII. New Business, B. Other, Item #10 - Special Town Council Meeting on Tuesday, January 21, 1997 at 9:30 A.M. to call the election. Mr. McLendon made a motion to add this item to the Agenda; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve the Agenda as amended; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS

Mr. Adrian Winterfield, resident, addressed the Town Council asking whether a statement or explanation would be made relative to the procedure for the granting of permission to the group requesting that a cross be erected at Bradley Park?

In addition, he asked if there was an indication of when the matter of appointment of a Charter Review Commission would be placed on the Agenda?

Mayor Ilyinsky replied that he believed the appointment of a Charter Review Commission would be placed on an Agenda in the near future.

Mr. Peter McCranie, resident, addressed the Town Council, stating that he had received a ticket as a result of new signs put up by the Town stating that from 6-12 P.M. any untended vehicles would be towed. He stated that he worked part time at Main Street News and had received a ticket, as he was parked in front of LaCocina. He maintained that the restaurants in Town had been handed private parking spaces, and the 2-3 parking spaces in between these signs were supposed to be empty, however, restaurants were using these parking spaces as private parking spaces. He remarked that he did not think this procedure was fair for all citizens.

Chief Terlizzese responded that the spaces were supposed to be passenger loading zones, and vehicles parking in those zones would be ticketed.

Mr. McCranie remarked that the valet would bring vehicles parking in those areas to the attention of the police.

Mr. Shaw explained that the reason for the spaces was to get vehicles off the street so that people would pull out of the driving lanes for passenger drop off or valet parking and not create a safety problem.

Mr. McCranie responded that those parking spaces were always full, prohibiting anyone from pulling in to drop off someone, etc.

Mr. Shaw replied that it was a matter of public education and may take a period of time to get organized.

Mrs. Smith stated that if the parking situation did not work, the Town Council could change the procedure.

In response to the query of Mr. McDonald, Mr. McCranie stated that his objection related to the *enforcement* of the parking regulations, rather than the *purpose* of setting aside of the parking spaces for that particular use.

Mr. McDonald asked if there had been any resolution on the issue of handicapped parking on Worth Avenue?

Police Chief Terlizzese responded that people with a handicapped permit could park in any legal parking space anywhere for an unlimited period of time, and the problem on Worth Avenue had been worked out--the gentleman had been told that he could park in any legal parking space on Worth Avenue as long as his permit was displayed.

Chief Terlizzese advised that the passenger loading zone spaces would be evaluated as a parking regulatory system.

Mr. Howard Rudolph, on behalf of 264 The Restaurant, addressed the Town Council, stating that 264 currently had a valet on the north east/west corner near Phipps Plaza, which he maintained was an inappropriate place for the valet area. He requested that the valet area be put in front of the sidewalk in front of the bank across the street, which was well it and had a cross walk, and had been the original location of the valet service. He also pointed out the area in front of the restaurant where there was space available for valet service. He suggested that 264 was being treated differently than all other restaurants in the Town.

Mayor Ilyinsky stated that this was an important issue that would require public discussion, and suggested that this issue be made part of an Agenda for another meeting, for example, the Public Safety Commission.

Mr. Rudolph replied that it was a critical issue, as it was the season and the restaurant could lose substantial business over the issue.

Chief Terlizzese stated that it was a public safety consideration to locate the passenger loading zone on the same side of the street as the restaurant. He explained that the bank owned part of the property outside their building on County Road where the valets were setting up--when the valet service was located in front of the bank the valets had used three large signs on the sidewalks, which was illegal on a State right-of-way; people were parking cars on the east side of County Road, exiting into a narrow traffic lane, and stepping into the travel portion of the roadway in order to get out of vehicles. The Police Department had attempted to accommodate the restaurant and its patrons as best it could.

Mr. Rudolph stated that he was asking that the valet service be returned to the area in front of the bank until some further resolution of the issue could be made.

Director of Planning, Zoning &Building, Bob Moore, addressed the Town Council, stating that the 5' east of the curbline area in front of the bank belonged to the public; any area between that and the face of the building belonged to the bank. In that particular area there was not 10' of sidewalk. He indicated that this matter was a Special Exception and the restaurant parking had been reviewed three times by the Town Council--the outcome of the Special Exception was the condition that the valet parking operation would be under the control of the Police Department and the Town Manager to set up. He suggested that the proper way to address this situation would be seeking a modification to the Special Exception.

Chief Terlizzese stated that he believed the valet parking was currently where it belonged.

Mr. Rudolph requested that this issue be put on the Agenda for the January Town Council Meeting as a request for modification of the Special Exception.

Mr. Moore pointed out that an application would be required for a review of the conditions of the Special Exception.

APPROVED AGENDA (ITEM VII THROUGH ITEM VIII)

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.

VII. APPROVAL OF MINUTES OF NOVEMBER 12 AND 20, 1996

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. American Heart Association; No. 6-97
2. Palm Beach County Chapter, American Red Cross; No. 20-97
3. United Jewish Appeal; No. 49-97
4. Anti-Defamation League of B'nai B'rith; No. 83-97
5. Mental Health Association of Palm Beach County, Inc.; No. 145-97
6. Junior League of the Palm Beaches, Inc.; No. 173-97
7. Palm Beach Crime Watch, Inc.; No. 182-97
8. Palm Beach Par III; No. 227-97

9. Food Relief International; No. 272-97
10. Sculpture Theatre, Inc.; No. 356-97
11. Lupis Foundation of America, South East Florida Chapter; No. 399-97
12. Crohn's & Colitis Foundation of America, Inc.; No. 415-97

Other

- Failure to File Prior Results Form Within Prescribed Time; Paid $25.00 Fee

13. Good Samaritan Foundation, Inc.; No. 35-97
14. Simon Wiesenthal Center; No. 264-97
15. Compass, Inc.; No. 374-97
16. Women's American ORT, North Palm Beach Region; No. 393-97

B. Beverage Licenses

1. Application for a 4COP-SRX Alcoholic Beverage License by Mr. Maurizio Ciminella for Galaxy Grille at 350 South County Road

2. Application for a 4COP-SRX Alcoholic Beverage License by San Domenico of Florida, Inc. for Acquario at 150 Worth Avenue, #234

3. Application for a 4COP-SRX Alcoholic Beverage License by Mr. Roger Estes for The Pleasant Peasant at 160 Royal Palm Way

Mr. Wyett made a motion to approve the Approved Agenda; seconded by Mr. Shaw.

Mr. McDonald stated that he had an addition to the Town Council Minutes of November 12, 1996--page 54 should include the reason he had recused himself from Site Plan Review, which was the fact that recusal was required by State Statutes. *(The Minutes of November 12, 1996 were so amended).*

Mr. McLendon apologized for the fact that he had not had a chance to read the minutes until this morning, and did not feel that he had properly reviewed them. He made a motion to defer approval of the minutes until the next Town Council Meeting in January, mentioning that he would send a memorandum to the Town Manager with any changes that he believed should be made. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

On roll call, the motion of Mr. Wyett to approve the Approved Agenda, with the incorporation of the addition of Mr. McDonald and the request of Mr. McLendon, was approved unanimously.

REGULAR AGENDA

IX. PUBLIC HEARINGS

A. Landmark Designation of 134 Seabreeze Avenue; Resolution No. 26-96 (Deferred from May 14, 1996, and November 12, 1996)

Planner/Projects Coordinator Timothy Frank addressed the Town Council, stating that the deferral of Resolution 26-96 had been as a result of the lack of clarity as to whether or not the property owner had been notified of the November Town Council Meeting. In the interim, a certified letter had been sent to the property owner, with return receipt requested, which had been received by Town staff. In addition, Mrs. Day had made two telephone calls, leaving two messages on an answering machine, which had not had a response. Mr. Frank explained that staff was convinced that the applicant had now been notified of the meeting being held today.

Town Clerk Pollitt confirmed that Proof of Publication had been received. At this time she swore in all those who would be speaking to this issue.

Mrs. Jane Day, Preservation Consultant, Research Atlantica, addressed the Town Council, stating that the property was a Mediterrian Revival style house at 134 Seabreeze Avenue, and had been built in 1925 by B. G. Zablockie for Charles Manning, as part of the Poinciana Park development, and represented the development of Palm Beach during the boom time era of the 1920's. It was also an important property because of its style, and because the architect of record, (who was not the architect who originally designed the house, but modified the house in 1927) was John L. Volk. It was the first project that Volk had done in the Town of Palm Beach beginning a career which spanned 60 years. Volk arrived in Palm Beach in 1926 and often reminisced that his first project was for Sam Harris, the theatrical producer, in this house. That information had been verified in a primary source document. The house was Italian in its influences, with symmetrical fenestration, and a Romanesque style recessed front door. Very few other building permits had been pulled on this house over the course of its history. There had been some bathroom remodeling, roof repair, and the addition of an elevator in the 1950's. The property fulfilled Criterion A, Criterion C, and Criterion D of the Town of Palm Beach Landmark Ordinance.

Mr. Shaw made a motion to accept the report of Mrs. Day; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mrs. Polly Earl, Director of the Preservation Foundation, addressed the Town Council, stating that the Landmarks Commission tried very hard to work with owners, however there remained areas where opinions were not congruent. She remarked that it was important for the Town Council to recognize the fact that when homes met the criteria and been duly considered by the Landmarks Commission that the preservation of these properties was of general benefit and welfare to the Town.

Mr. Shaw made a motion that Resolution 26-96 be adopted, designating the property at 134 Seabreeze Avenue as a landmark in the Town of Palm Beach on the basis that it met Criteria A, C, and D of Section 16-39 of the Town of Palm Beach Code, and the Landmark Preservation Ordinance 2-84; seconded by Mr. Wyett.

Mrs. Smith read Resolution 26-96:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AN DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOW AS CHAPTER 16, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

B. Request for De-designation of an African Tulip Tree and Removal from the Historic and Specimen Tree List - Consideration of Resolution No. 53-96; and to Relocate the Pink Trumpet Tree at 175 Via Palma by Mr. Timothy Benitz, Brennan Custom Homes

Director of Public Works Al Dusey addressed the Town Council, stating that Mr. Benitz had requested two actions at the property at 175 Via Palma--the designation of an African Tulip Tree, and the relocation of a Pink Trumpet Tree to accommodate a new home to be constructed. Both trees had been inspected by horticulture consultant Robert Haley, and he had recommended the removal of the African Tulip Tree and believed that the Pink Trumpet Tree could be relocated. At the same time, Mr. Haley noted two other trees on the property that he believed were worthy of designation, and Mr. Benitz had been asked to voluntarily designate those. The owner wished to have those inspected by his own landscape architect and was willing to come back at the next Town Council meeting regarding those trees. Mr. Dusey explained that staff was recommending approval both of the de-designation of the African Tulip Tree and the relocation of the Pink Trumpet Tree.

Mr. McLendon made a motion to approve Resolution 53-96; seconded by Mr. Shaw.

Mrs. Smith read Resolution 53-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DE-DESIGNATING THE AFRICAN TULIP TREE AT A PROPERTY ALREADY DEFINED AS 175 VIA PALMA, LOCATED WITHIN THE TOWN OF PALM BEACH, PROVIDING FOR THE REMOVAL OF SAID TREE FROM THE LAND, PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

On roll call, the motion passed unanimously.

X. COMMITTEE REPORTS

A. Report of the Public Safety Committee of November 21, 1996

REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING HELD ON NOVEMBER 21, 1996

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order at 2:20 P.M. by Chairman Jack McDonald. On roll call, Chairman McDonald and Committee Member Sam McLendon were found to be in attendance. Other Elected Officials attending were Mayor Paul Ilyinsky, Council President Lesly Smith, and Councilman Leslie Shaw. Also in attendance were Police Chief Joseph Terlizzese, Police Major Frank Croft, Police Major Michael Reiter, Fire-Rescue Chief Vincent Elmore, Fire Marshal John Wandell, Fire Captain Chic Price and Town Clerk Secretary Susan Eichhorn.

II. APPROVAL OF AGENDA: The Agenda was approved as printed.

At this time Mayor Ilyinsky commented that there was an enormous parking problem near the area of the Palm Beach Hotel, as well as litigation concerning a fence being erected in the area. He reported that he had been called three times by citizens and thoroughly insulted on the telephone. There had been the erroneous suggestion that he had told the Police Chief to ignore the situation, and he requested that Chief Terlizzese address the situation.

Chief Terlizzese responded that any discussion of pending litigation regarding the easement on the north side of the building between Park Avenue and Sunrise must be avoided, however, the situation in general was a very serious matter. There had been more police activity in and around the building. The building was a former spa and resort hotel in the past and now had become a hotel/condominium association, with part of the building maintained as a hotel, and the other part used as condominiums that had been purchased by people. Some of the units were now being rented out at lower rents, attracting people that often required police intervention. There were also two restaurants that could sit 100 or more people each, a catering operation, and retail shops in the building, all needing services, i.e., deliveries, etc., however, there was absolutely no off-street parking left--there were only 49 on-street parking spaces, with over 200 units. He mentioned that he had been threatened with litigation concerning the parking situation four times in the current week.

Teresa SanFilipo, a winter resident at the Palm Beach Hotel, addressed the Public Safety Committee, stating that she disagreed with the approval of the Town Council for the development across the street from the hotel, because that area had been used for parking, and the area was becoming a parking nightmare.

Mrs. Christie addressed the Public Safety Committee, stating that every building going up in Town must have sufficient parking plus some additional spaces. She mentioned that parking was already very difficult in Poinciana Plaza, the Publix parking lot, and most other areas in Town.

III. COMMENTS BY FIRE-RESCUE CHIEF ELMORE REGARDING REVIEW OF 1996 FIRE-RESCUE DEPARTMENT ACTIVITIES:

Chief Vincent Elmore presented his report on the Fire-Rescue Department Activities, consisting of nine charts graphing the following:

1. Total calls by fiscal year including fire, medical, and service calls.
2. Total vehicle, structure and contents, and other fire loss.
3. False alarms.
4. Number of patients treated.
5. Number of patients transported to local hospitals.
6. Number of blood pressure screenings conducted at all three fire stations.
7. Number of occupancies inspected in accordance with fire codes. (Chief Elmore noted that any single family residence greater than 10,000 sq. ft. must have a sprinkler system, and mentioned that the Fire Department would be happy to conduct inspections of any single family residence in Town).
8. Number of citations issued for fire code violations.
9. Total number of training hours in fire and medical fields. (Chief Elmore mentioned that the average Fire Department employee trained an average of 2.5 hours per day, either with a class or a drill).

In response to Mr. McDonald, Chief Elmore remarked that Town Council support of the Sprinkler Ordinance would be an appreciated assistance for the Fire Department.

Mr. McDonald thanked Chief Elmore for a very nicely done report.

Mrs. Ann Herman, resident, addressed the Public Safety Committee, commenting that the Fire and Police Department participate in Food for Families for the Thanksgiving holiday, which was not a normal fire/police employee function. She thanked both departments.

IV. COMMENTS BY POLICE CHIEF TERLIZZESE REGARDING REVIEW OF 1996 POLICE DEPARTMENT ACTIVITIES AND DISCUSSION OF CRIME PREVENTION AND EDUCATION ISSUES:

Police Chief Terlizzese presented his report of 1996 Police Department activities, giving a brief overview of the crime situation nationally and locally: The crime rate in Florida was down from last year. The Town of Palm Beach itself had a wonderful year--year to date crime statistics comparisons for the past ten years showed a drop in the past year from a 1995 total of 471 to a 1996 total of 380; the graph comparing thefts for the past ten years showed a drop from the 1995 total of 396 to a 1996 total of 331; the graph comparing burglaries for the past ten years showed a drastic drop from a high of 89 in 1995 to a total of 38 in 1996. Chief Terlizzese referred to "Wanted Bulletins," which went out to every business and home in the Town of Palm Beach, as another crime prevention effort.

Chief Terlizzese commented on local news coverage, stating that some of it had given the impression that things were out of control and created fear in the public. He noted that the Police Department in Palm Beach was very proactive and arrests were duly made--a message was being sent to criminals that there was a good possibility that they would be picked up if they were wanted on criminal charges. He urged that residents not be fooled by article headlines, but read the content also. He noted that every resident in the Town of Palm Beach had received a packet recently with a brochure regarding self-protection from burglaries, as well as an application form to join the Crime Watch unit.

Chief Terlizzese reported on improvements on crime prevention efforts by the Police Department: Intelligence bulletins were exhibited, which were prepared by crime analysts and detectives; a Crime Prevention Bulletin to merchants from the Palm Beach Police Department was presented

Regarding operational and tactical units, Chief Terlizzese reported that all police cars were equipped with video cameras that were used on every stop, as well as night scopes. An All Terrain Vehicle (ATV) was being used in the mid-Town area for police patrols during the day, and for the Burglary Strike Force department use at night. He expressed the need for a second ATV.

Major Reiter of the Police Department discussed the tactical plans, which included using off duty Police officers. When there was a burglary event and the suspect was still in Town the department could very quickly get many police officers on the street.

Chief Terlizzese noted that the Town Council could assist the Police Department by encouraging residents to secure their premises by closing their garage doors, (nine opened garage doors were found opened recently) and using alarm/security systems.

Chief Terlizzese expressed thanks to the Town Council and the Mayor for the support in funding and staff requests.

Mr. McDonald thanked Chief Terlizzese, Major Croft and Major Reiter for the report and the good results for the year.

Mr. McLendon mentioned that he understood that the mid-Town condominium people had made some sort of offer towards a second ATV, however he believed Saks had also offered.

Chief Terlizzese responded that there had been several approaches made towards a second ATV, however none had been actualized.

In response to the query of Mr. McDonald, Chief Terlizzese noted that there was a bi-monthly mailing from the Crime Watch office that went to all Crime Watch members, totaling about 3,500, however the recent mailing to all residents was a first.

Councilman Shaw commented that perhaps a non-emergency Police Department number could be installed.

Chief Terlizzese replied that he believed it would be confusing to assign another three digit number, and that direct lines already came into the Police Department. Crime Watch mailers of magnets with Police and Fire numbers were distributed often, and Patrol Officers would be asked to hand them out to residents. He advised that he would bring the idea of a non-emergency number to the Chiefs Association in Palm Beach County.

In response to the question of Councilman McLendon regarding false alarms on the 911 number, Chief Terlizzese related that there were less than 12 per year, largely because when 911 was dialed the location of the phone was given.

Chief Terlizzese urged that people be alert and attentive to security, and be aware when laborers and strangers were in the area. He mentioned the voluntary I.D. program in the Police Department where employees could be fingerprinted, photographed and a computer check run on them. This information was included in the recent mailer that had gone to every resident.

Mr. McDonald remarked that each resident should be provided with information on self-protection and security at least once per year.

Chief Terlizzese responded that could be done.

Councilman Shaw reported that the Florida League of Cities was attempting to amend the bill addressing notification by alarm companies as optional rather than mandatory. That would be done so that if a municipality could not justify the costs of sending a police car out on every call that it would be an option of the municipality to opt out of the program. He pointed out a safety issue in that many security gate clickers could also work on other gates, as the manufacturer usually set the clickers on a default setting and many people did not re-set that code. Mr. Shaw recommended that a form be created that would contain a permissible dialogue that an employer could have with an employee regarding registering with the Police Department for I.D. cards.

Chief Terlizzese responded that he would look into the matter.

V. ANY OTHER MATTERS:

Fire Chief Elmore invited the Committee and the audience to view the new Special Operations Truck that was in front of the Fire Station.

VI. ADJOURNMENT: The meeting was adjourned at 4:05 P.M.

PUBLIC SAFETY COMMITTEE

Jack McDonald, Committee Chairman

Samuel C. McLendon, Committee Member

Mr. McDonald noted that the Police Chief and the Fire Chief had given excellent presentations, and gave several statistics from the Fire Department: There had been 2,564 calls, of which 778 were for fire, but there was less than $250,000 in fire loss. There were 1,125 hospital transports, and there were 638 occupancies inspected, and that was one area where the Fire Chief felt that the Town could assist the Fire Department by encouraging more owners of single family residences to have fire inspections made of their homes, which was a free service provided by the Fire Department.

Mr. McDonald remarked that the Police Department had done a great job; the Police Chief had made an appeal for two things regarding the public: keep garage doors closed, and keep alarm systems on.

XI. OLD BUSINESS

A. Other

1. Update on Maintenance Dredging at Lake Worth Inlet

Director of Public Works, Al Dusey, addressed the Town Council, stating that permits had been issued for the dredging of sand from the Inlet to Mid-Town; the modifications to the permit had been approved by the Department of Environmental Protection (DEP); an administrative process would now occur and requests for administrative hearing had been received by DEP. The process would take some time, and Mr. Dusey had recommended that the Town notify the Corps of Engineers that sand could not be moved to Mid-Town this year, which had been done.

Mr. Dusey addressed the Sand Transfer Plant outfall pipe, which had become buried and required excavation--two of the outfall pipes had been extended, however, problems were expected in the future. The need to extend the outfall pipes south with multiple discharge points was evident. The northeast storms had moved a great deal of sand to the north jetty, and the County had estimated a transfer of about 200,000 cubic yards so far. The County would need to continue to extend the pipes to keep the outfalls open on the south side. With respect to the dredging of the Inlet itself, Mr. Dusey explained that Town Engineer Bowser had attended a meeting at the Port of Palm Beach on December 3, 1996; the Corps of Engineers was moving fairly quickly and would be mobilizing at the north end of Town.

Mayor Ilyinsky commented that experts had determined that there was more sand than ever before in the history of the Town, and extension of the pipes would not deprive anyone of a private beach, however the Corps of Engineers had no choice but to honor any objections, which may hold things up for a long time. He noted that conditions were extraordinarily ideal to refurbish the entire beach, however objections had to be dealt with.

Mr. Wyett asked Mr. Dusey for an update of the condition of property south of the jetty where there were several small public beaches that no longer existed.

Mr. Dusey replied that sand placed south of the south jetty would make its way to the south, and would eventually build up and become a decent beach; part of the recommendation of the Shore Protection Board had been to have a uniform approach to beaches so that there would be sand everywhere, however, if Town Council wanted staff to start pursuing permits for a very small beach in the area south of the jetty, that could be done, although it would be a fairly expensive process.

Mr. Wyett replied that his concern was that all public beaches should be considered equally, and more importantly the long term safety of the wall.

Mr. Shaw mentioned that the beaches in that location were not public, but public accesses. Everything below the mean high water line was public; there was no above mean that was Town-owned or County-owned.

2. Consideration of Request for Amendment to Encroachment Easement at 190 South Ocean Boulevard, Estate of Johanna Johnson (Deferred from October 8, 1996) - **Request for Deferral to January 14, 1997**

3. Status Report on Proposed Water Franchise Agreement Negotiations with the City of West Palm Beach

Assistant Town Manager, Peter Elwell, reported that the Franchise Agreement that the City of West Palm Beach had sent to the Town had been annotated as directed by the Town Council, and transmitted to Mayor Graham. Staff was now awaiting a response.

4. Update on Proposed Franchise Agreement with Comcast Cablevision, Inc.

Mr. Dave Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that Comcast representatives had submitted annotated comments on the Franchise Agreement, there was a conference call with them, attorneys on both sides, as well as Town and Comcast Staff, to discuss the Agreement, and those negotiations were ongoing, with no finalized Agreement as yet. Hopefully all language disputes would be resolved by January. He mentioned that there were two main issues that should be discussed today relating to the bulk contracts--both residents and condominium managers were concerned with the issue and were present today to comment. He explained that some bulk contracts would expire in December and Comcast was presently in the process of negotiating those contracts with the condominium managers. He clarified that the Town would not be involved with personal negotiations on the rates, and Federal Law stated that as long as the bulk contract rates were consistent for the size of the building they could be negotiated between the cable company and the condominiums. He referred to a letter received from the consulting attorney in Washington, D.C., dated December 9, addressing the bulk contract, noting that Section 6 of the contract provided Comcast with the right of first refusal if a competitor came in when the contract terminated to provide a competing service at better terms. Town Staff was not in agreement with the bulk contracts, which differed from the opinion of Comcast.

Mr. Jakubiak stated that the other related issue was the term of the bulk contracts, for which Comcast was offering long term periods--6-10 years, and staff was advising that a short term be given. Bulk language would also be incorporated into the Franchise Agreement, and it was very important that the opportunity to appeal to the Town Council would be available to residents (as a violation of the Franchise Agreement) if there were problems with service to condominiums.

Mr. McLendon asked what the relationship between the Town and Comcast would be if the Agreement did not exist?

Mr. Jakubiak responded that the Agreement had expired, and Comcast had agreed with the Town to continue negotiations on a month to month basis on the basis of the old Agreement. Technically, Comcast would need a Franchise Agreement to operate a cable system, however it was legally acceptable that the Town and Comcast had agreed to work month to month for the present time. (Town Attorney Randolph agreed with that statement).

Mrs. Diane Christie, Director of System Development for Comcast Cable, addressed the Town Council, stating that a month to month basis for the Franchise Agreement had been agreed upon. She addressed the status of negotiations--an extensive conference call had been held with the Town's consultant, Comcast attorney, Comcast Area Vice President, Ms. Christie, Town Attorney Randolph, and Town Staff, which had been very successful. There was another conference call scheduled for Thursday, December 12, 1996, and it was hopeful that there would be resolution in January with more defined language in a final Franchise Agreement. She noted that negotiations were going very well, and she was pleased with that.

Ms. Christie noted that the bulk issue had been discussed during the conference call, and there were differences of opinion as to legalities under Federal Law. A review of the 1996 and 1984 Telecommunications Act would be reviewed and discussed by representatives of the Town and Comcast.

In response to the question of Mrs. Smith concerning continuance of service to condominiums whose contracts had run out, Ms. Christie responded that service would only be continued under a new agreement--she clarified that Comcast did not have *only* 6 and 10 year agreements. The terms for the contracts would not all expire in December, but would depend on when they had been originally signed, and currently condominiums had an option (based on the number of units and the number of years) to sign a 3, 6, or 10 year contract, with rates depending on the number of years of the contract. She clarified that *all parts of the contract were negotiable.*

Mrs. Smith then asked if service would be continued while contract negotiations with the buildings were ongoing?

Ms. Christie replied that Comcast would not cut the service off, however, if a condominium owner refused to sign a new contract with the new rates they would go into the new rate structure, rather than the reduced rate currently used.

Mrs. Smith expressed that there was some confusion, as various condominiums would like direction from the Town Council, and would be hesitant to sign a contract until the Town Council had worked out the Agreement for the Town.

Ms. Christie explained that there were two different issues of concern: the contract with an individual, and the Franchise with the Town, which caused some confusion. She explained that she had talked with some of the managers of condominiums, and one of the concerns was if the Town chose a 3 year term Franchise Agreement and an individual condominium owner signed a 6 year contract, what would happen if the Town and Comcast could not reach agreement after the 3 year term expired? She noted that there was a clause in the individual contract that said if Comcast was not allowed to do business in the Town the contract would be null and void, with no obligation for the remainder of the 6 year contract.

Mr. McLendon asked how many attorneys worked on Comcast agreements?

Ms. Christie responded that there were three corporate attorneys and local attorneys were hired on an as needed basis.

Mr. McLendon asked if there had been a problem with getting one of the Comcast attorneys to conduct discussions with the Town's attorney?

Ms. Christie replied that at this point it would be premature for an attorney to make a personal visit when things like conference calls were available. She explained that the current Franchise Agreement would be the one that would be finalized, and when it was down to agreement on every dotted "i" and every crossed "t" then Comcast attorneys could appear before the Town Council to explain differences in opinion.

Mr. Shaw clarified with Ms. Christie that if a condominium did not renew an expired contract, all owners would be faced with "rack" rates.

Ms. Christie replied that the rate would indeed be higher, which was only fair for people in existing contracts.

Mr. Shaw asked what would happen if, for example, Showtime was given as part of the bulk contract with a condominium, and the contract expired--would the owner then be billed for Showtime at the new rates?

Ms. Christie responded that the owner would not have to take Showtime unless it was wanted, and owners would be notified if a contract agreement could not be reached. She noted that Comcast was not required to offer bulk rates, nor was anyone required to sign bulk contracts, so it was really a consideration for each condominium.

Mr. Shaw stated that he wanted to assure residents of the fact that if there was not a signed contract, there would be a 30-60 day notification before rate adjustments were made by Comcast.

Ms. Christie agreed, noting that there had been cases in the past when condominiums had chosen not to continue bulk contracts, and Comcast had written letters to residents advising them of the date when the bulk contract expired, noticing rates for continuance of service on an individual basis

Mr. Irving Wolfe addressed the Town Council, stating that he was disturbed with comments made by individuals from condominiums relating to rate hikes when contracts expired. He explained that he had advised that individuals wait for resolution of the Franchise Agreement with Comcast and the Town.

Ms. Christie explained that there was a rate schedule--if someone signed a 10 year contract there would be a lesser rate than a 3 or 6 year contract. If a bulk contract was not signed, individuals would go to a residential rate, which was substantially higher than a bulk rate.

Mrs. Smith asked if there was an interim rate available while Comcast/Town negotiations were ongoing?

Ms. Christie replied if a bulk contract expired, and a new contract was not signed, residential rates would be used.

Mrs. Smith clarified that would be the highest rate permitted by law.

Ms. Christie agreed. If a bulk contract was then signed, the residential rate would be dropped.

Mr. Shaw asked if a rebate would be offered to condominium owners using the residential rate when the Town signed a Franchise Agreement with Comcast?

Ms. Christie replied that could not be done because of internal costs. She noted that a bulk contract with a condominium was not tied into a Franchise Agreement with the Town.

Mr. Shaw explained that he was attempting to gain a level of comfort for the condominium owners, who wanted to know that they were signing a contract that was backed up by a Franchise Agreement with the Town.

Ms. Christie proposed a letter of intent saying that the normal contract bulk rates would go into effect, but if agreement was not reached with the Town the contract would be null and void. The only difference would be that if an agreement was not reached with the Town, there was an option to get out of the bulk contract. She explained that there was a bulk rate schedule in place, and it would only be fair that those signing bulk contracts pay the new rate just like everyone else. If the concern was that there was no protection under a Franchise Agreement with the Town, then there could be a letter of intent saying that if agreement was not reached with the Town, the bulk contract would be null and void. She explained that the letter would say that a bulk contract with a yearly term (for example, 6 years) would be desired if the Franchise Agreement was resolved--if there was no resolution there would be no bulk contract.

Mr. Jakubiak clarified that there were two issues: one was the rate, but more importantly was the issue concerning Section 6 in the contract. Regardless of the length of term selected by the condominium, the language in the contract said that Comcast had the exclusive right to meet any terms provided by competitors. Assuming that a condominium signed a 6 year contract, and the Town franchise continued for that time, if a competitor could provide a competing service for better rates with more channels, Comcast essentially could say that the competitor could not provide service for the condominiums because Comcast could match those rates in 60 days. He noted that was a violation of the Federal Law. The Telecommunications Act was put into effect in February of 1996, and the contract was drafted before that time. The language in the contract and the Franchise Agreement did not agree. Essentially Comcast was saying that if the condominium manager was informed of the Federal Law the contract would not be signed, however, if the condominium manager was *not* aware of the Federal Law and signed the contract there would be a loss of the right to have a competitor come in for services. He noted that if someone signed the individual contract it would be separate from the Franchise Agreement. He explained that he was suggesting that the language be omitted from the contracts.

Mr. Shaw proposed that the bulk contract contain a phrase saying that nothing in the contract was in violation of Federal Law.

Ms. Christie explained that discussion regarding this issue had taken place in the aforementioned conference call, and both Comcast attorneys and Town attorneys were investigating the language of the Federal Law for discussion together. She mentioned that Comcast served 19 communities, and the language was becoming very acceptable in such contracts. Typically, it was a negotiating point--if a condominium did not want it in there was room for negotiation. She explained the historical background of the language--in some communities Comcast would have to spend thousands of dollars to build a complex; the rate of return would be considered by Comcast, and Comcast wanted the right at the end of a contract to compete with other companies in order to assure the opportunity to get a return on the dollars spent. She explained that when Comcast spent $60,000-$100,000 to rewire buildings, for example, and a contract was signed for only 3 or 6 years, Comcast wanted the right to come back with the right to at least match competitors.

Mr. Harold Epstein, condominium representative, addressed the Town Council, questioning the fact that there was no competition for cable services in Town, noting that competition kept prices in line and assured reasonable behavior. His condominium had been offered only the 6 and 10 year contract, and the enormity of the increase in price was beyond imagination--a 20% increase for the first year, and 6% for every year beyond that in the 6 year contract, with the 10 year contract being a little less expensive. He stated that he was not interested in seeing condominium owners tied up when there was new technology available, and wanted the opportunity to take advantage of competition in this area. He proposed that the Town Council had the obligation to look for competing prices so that residents could make judgments.

Mr. Wyett noted that the Town signed a non-exclusive agreement, which meant that any competitors could come in, and he had advised the executive board of Mr. Epstein's condominium that they should also sign a non-exclusive agreement, as there were two technologies available: satellite and wireless TV.

Mr. Jakubiak stated that the Town was concerned about rates, but Federal legislation said that the Town had no authority in 3 years to do anything about the rates. The intent of Federal legislation was to create competition. Other companies had been invited by the Town to participate, along with Comcast, but had turned down the offer. The bulk contract excluded competition, and Mr. Jakubiak urged elimination of the language.

Mr. McDonald made a motion to defer consideration of the Comcast Franchise Agreement to the February Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

5. Status Report from Finance Department Regarding Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town - Update by Town Attorney (Deferred from October 8, 1996, and November 12, 1996)

Chief Code Compliance Officer, Brian House, addressed the Town Council, stating that on case no. 89422, Garden City Company, the fine began on August 30, 1995. As of the time that the demolition began the fine was approximately $63,000. There was an offer from Garden City Company to settle the case for $19,250, plus $2,500 in attorney fees and costs for a total of $21,750. There was some disagreement with the Garden City Company, as they believed they began meaningful work in the first week of September, 1995. Mr. House did not agree that it was meaningful work, however, after negotiations and costs were considered, he recommended that the settlement amount be accepted.

Director of Planning, Zoning & Building, Robert Moore, addressed the Town Council stating that meaningful work was a subjective decision that was arrived at in the Building Department, and did not have a true definition. He suggested that the settlement offer was reasonable.

Mrs. Smith stated that she did not consider the offer reasonable, and that it was a dangerous precedent to accept such offers.

Mr. Shaw clarified that the negotiation was between the date of what Garden City Company believed was compliance and what the Town staff believed was compliance.

Mr. Shaw made a motion to reject the offer, to negotiate further, and to defer the filing of a lawsuit for 30 days; if the company said they were not interested in further negotiation, the lawsuit would be filed immediately; seconded by Mr. Wyett.

Mr. McDonald pointed out that the Town Council had authorized Mr. Randolph to file foreclosure suit if an agreement could not be reached.

On roll call the motion carried unanimously.

In reference to the Catherine Bradley solid waste fine, Mr. McDonald reported that he had discussed the matter with Mrs. Bradley, and she had indicated that she would be willing to pay the principal amount if all penalties were waived.

Mr. Shaw made a motion to approve the offer of Mrs. Bradley, subject to confirmation of the actual figure of $386.00; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

6. Report by the Police Chief Regarding Temporary Suspension of Fines for False Alarms (Deferred from September 10, 1996)

Chief Terlizzese addressed the Town Council, reporting that he had been directed at the September Town Council Meeting to return today, and according to information supplied by the Finance Department, suspended alarm fines for the period of December 13, 1995 through October 31, 1996, totaling $124,600. Since December 13, 1995, the Police Department had handled 6,200 alarm calls, which required 3,100 work hours to process, times approximately three personnel (over 10,000 work hours). Effective January 1, 1997, Florida Statute 489.529 was amended to require alarm monitoring companies to call the premises where alarms were installed. Consequently, Chief Terlizzese advised that the number of false alarms would drop approximately 50% or more in the coming year. Based on the legislative changes, the loss of revenue due to the suspension of alarms, and expense incurred by the Police Department to respond to alarm calls, Chief Terlizzese recommended that the suspension of alarm fines be lifted effective January 1, 1997.

Mr. Wyett asked if police staff could also be dropped in accordance with the drop in alarms?

Chief Terlizzese replied that staff could be dropped if the Town Council so recommended, although he would not recommend it. The purpose of the fee system was to cover those expenses.

Mr. Doney explained that the time that the police officers were using in responding to false alarms could be better used in other necessary activities.

Mr. McLendon made a motion to restore the alarm fine system effective January 1, 1997; seconded by Mr. McDonald. On roll call, the motion carried 4/1 with Mr. Wyett casting a negative vote.

7. Consideration of Lease/Purchase Program for New Public Safety Radio System and New Police Mobile Computing System (Deferred from November 12, 1996)

Cheryl Somers, Acting Finance Director, addressed the Town Council, stating that three responses had been received for the lease/purchase of the new public safety radio system and police mobile computing system. Quotes had been requested for both a 60-month and 72-month term, and Mrs. Somers was recommending that the proposal of SunTrust Central Florida be accepted, on a 60-month basis versus the 72-month term, thereby saving $22,000 in interest expense. She pointed out that there was no pre-payment penalty on the quote received from SunTrust Central Florida.

She noted in response to the request of Mr. Shaw to research advantages of having the term coincide with cash flow, that shortening the 60-month term and making a balloon payment in June would increase the interest expense to the Town.

Mr. Doney remarked that the Florida League of Cities had instituted a new lease/purchase arrangement agreement and Mrs. Somers had investigated that. It was determined that it would not be more cost effective than the competitive quote program engaged through SunTrust Central Florida.

Mrs. Somers noted that the rates from the Florida League of Cities had been about 60 basis points higher than the rates from SunTrust Central Florida, who had quoted 4.7258% for a 60-month term.

Mr. Wyett made a motion to accept the quote from Sun Trust Central Florida; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

8. Consideration of Request by the Public Works Director to Appoint Town Council President as Liaison to Assist in Modifications of the Town Council Chambers

Mr. Dusey stated that modifications were being made to the Town Council Chambers, and he had found it helpful in the past to have a liaison from the Town Council to assist in the final decision making.

Mr. McDonald made a motion to approve the request as presented; seconded by Mr. McLendon. On roll call, the motion carried 4/1 with Mrs. Smith casting a negative vote.

B. Resolutions

1. Resolution No. 49-96 - Easement Request by Everglades Club, Inc. for Groundwater Monitoring

Wells (Deferred from November 12, 1996) - **Request for Deferral to February 11, 1997 Meeting per memorandum dated December 9, 1996, from Mr. Glen Miller**

XII. NEW BUSINESS

A. Resolutions

1. Resolution No. 54-96 - Establishing Commercial Solid Waste Collection Fees to Encourage Recycling

Mr. Dusey reported that the proposed surcharge for customers not re-cycling was determined to be 10% added on to the commercial fees. In order to purchase the necessary containers another $11,500 would need to be added to the budget from the Undesignated General Fund Reserve.

In response to the query of Mrs. Smith, Mr. Dusey responded that over two years, with a decent participation rate, the costs of $11,500 could be paid off. He estimated that approximately $6,000 could be made annually.

Mr. Shaw made a motion to approve Resolution 54-96; seconded by Mr. Wyett.

Mr. Doney read Resolution 54-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 51-96 TO INCLUDE THE ESTABLISHMENT OF COMMERCIAL SOLID WASTE COLLECTION FEES FOR CUSTOMERS WHO DO NOT RECYCLE TO BECOME EFFECTIVE APRIL 1, 1997.

On roll call the motion carried unanimously.

Mr. Shaw made a motion to approve the appropriation of $11,500 from the Undesignated General Fund to purchase the necessary re-cycling containers; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Other

1. Consideration of Proposed Solid Waste Disposal Survey of Town Residents Regarding Garbage and Yard Trash Issues

Mr. Dusey reported that at the October 8, 1996, Town Council Meeting a survey of residents had been approved in order to determine several yard trash issues, i.e., the perception of yard trash in the street, the set-out schedule, and a poll regarding a reduction in garbage service. He presented the proposed surveys for Council review:

Single Family Survey: Description of yard trash collection set-out schedule; asks residents whether they consider that to have a significant impact on the general appearance of the Town, or have any impact on the general appearance of the Town. The second question regarding trash was--To what degree are you concerned that this trash is a hazard to traffic? The garbage collection portion explained that in January, 1997, it was expected that a program would be started of four days a week garbage pick up, and one day of re-cycling for single family homes, which was equivalent to the five day a week service previously provided, and asked residents if they would be willing to reduce that to a three day a week garbage collection with one day re-cycling for a savings of approximately $120,000 per year. The second question on that portion asked residents if they would be willing to reduce garbage collection to two days a week garbage collection, with one day of re-cycling, with a savings of approximately $200,000 annually. Estimates were included of savings to homeowners using a $400,000 property assessment.

Mr. Wyett suggested that the property assessment be $700,00 or $800,000 rather than $400,000 as that was more the average.

Mr. Dusey agreed to substitute the $800,000 property assessment in lieu of the $400,000 assessment.

Mr. Shaw asked if there had been any offers of assistance in the distribution of the survey?

Mr. Dusey replied affirmatively, however, he was recommending a mailing to all single family residents.

Multi-Family Survey: This survey was broken into two sections--one for yard trash, asking the same questions as the Single Family Survey regarding yard trash. The second portion was garbage collection, and it was felt that sending it to residents would not be effective, and that the survey should be sent to the Board of Directors of the multi family facilities. There was a very unique situation with multi family facilities in that they had been built with a five day collection schedule in mind, and their storage areas would only fit garbage for a five day service schedule. In the winter season 20 of those facilities paid the Town extra money for weekend service.

Mr. McDonald agreed that the survey should be mailed to the Board of Directors.

Mr. Wyett stated that he did not believe it was necessary to send out the garbage collection survey to multi family facilities, as he did not believe there could be a reduction. He pointed out that if the survey did go to the Board of Directors, the numbers would have to be adjusted regarding fees and cost savings.

Mr. McLendon stated that he preferred to have the survey sent out to single family homes through a bulk mailing, with the multi family surveys being directed to the Board of Directors of the facilities.

Mr. Shaw stated that individual property owners in a condominium may not be concerned about where the garbage goes, however, the yard trash issue may be of concern to them as it was an aesthetic issue throughout the Town. He suggested that the garbage survey should not go to multi family facilities, however, the yard trash survey should. In addition he suggested that the water conservation ordinance notices and the surveys could be included together in a bulk mailing.

Regarding the Single Family Survey, Mrs. Smith asked Mr. Dusey how he anticipated reading the results of the survey, suggesting that the wording should be changed to eliminate the word "how" and continue with "Do you feel this set-out schedule impacts on the appearance of the Town?"suggesting that results may not be clear as there were five categories for the residents to consider, and that three choices would make it simpler (significant negative impact; no impact; significant positive impact). Regarding the degree of concern with trash to traffic, Mrs. Smith suggested: very concerned, or no concern.

Mr. Shaw suggested that three categories be included regarding the degree of concern with trash, and that the spaces for filling in names and addresses be eliminated from the survey, as some residents may be hesitant to return the survey for that reason.

It was decided by the Town Council that the name and address would be optional.

Mr. Shaw made a motion to approve the single family survey with the following changes:

The average property assessment used would be $800,000 rather than $400,000.

Regarding the single family survey, the word "how" would be eliminated from the first question.

Regarding the single family survey, the choices in the first question would be limited to three (significant negative impact; no impact; significant positive impact), rather than five.

The word "optional" would be included in the portion asking for name and address.

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

Regarding the multi family yard trash collection the Town Council agreed that the questions would be changed in the same way, with additional changes.

Mr. Wyett made a motion to approve the multi family survey with the following changes:

The survey for multi family facilities should be mailed to the Board of Directors of those facilities.

The surveys would be passed out to all Civic Groups in Town for comments and in-put.

On roll call the motion carried unanimously.

Mr. Dusey referred to the garbage portion of the surveys, requesting feedback on giving an indication of the cost savings for each million dollars in property assessment.

Mr. Shaw made a motion to approve **including the cost savings for each million dollars in property assessment in the surveys;** seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Dusey mentioned that the survey would be mailed in January, bulk rate fees would cost about $2,000 and an appropriation from the General Fund would be needed.

Mr. Wyett made a motion to **send the survey and the public notification regarding water conservation together in one mailing** (per the suggestion of Mr. Shaw); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

2. Consideration of the Consultants Competitive Negotiations Act (CCNA) for the Selection of Electrical Engineers

Mr. Dusey advised that the Selection Committee had met and interviewed four electrical engineers and the recommendation was to enter into a contract with Resource Management International, Inc. Town Council authorization was now being requested for the Town Manager to enter into a Continuing Services Contract with that firm.

Mr. McLendon made a motion to approve Resource Management International, Inc. as recommended by the Selection Committee; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

3. Consideration of Proposed Ordinance Regarding New Methodology for Easements/Rights-of-Way Permit Fees

Town Engineer Bowser addressed the Town Council, stating that he had attended a telecommunications conference that provided good information. He suggested that fees be broken into three categories: occupancy fees, obstruction fees, and degradation fees.

Occupancy fees would be paid by someone who would have to occupy a Town right-of-way with infrastructure. They would not be charged to those companies who had Franchise Agreements with the Town. Town residents could also be charged when easements were granted for unique situations. There were some recommended fees, and there was a drastic change in charges for permit fees, which would significantly impact revenue costs and income. The occupancy fee would be charged on the occupancy of a right-of-way on a per square foot basis, calculating the value of the land, which would be an average of $40 per square foot for residential and $115 for commercial, with 5% of the value of the land per year per easement being charged by the Town--a residential section occupying 20 sq.ft. would be $40 per year (5% of $800).

Mr. Wyett commented that the survey had not been broad enough, as there were three values in the Town other than condominium areas--ocean front property, lake front property, and in between. Recent sales for ocean front property were close to $100 per foot; lake front property was close to $80 per foot; and in between property was close to $60 per foot.

Mr. Bowser responded that he had used the Palm Beach County Property Appraiser's office figures.

Mr. Wyett pointed out that the Town Council adopted market value, not appraisal value, and there was a big difference between appraised value and market value. In addition, he noted that the depreciation schedule was too low in evaluations, suggesting that revenue could be increased by grouping the period of years, with the lowest value being 25%, rather than 4%. In general, he agreed with the concept presented by Mr. Bowser.

Mr. Shaw referred to the occupancy fees, noting that Franchise holders who pay Franchise fees to the Town would be exempt from these fees. He suggested that Franchise holders should not be exempt entirely, but should be obligated to pay an occupancy fee for the land.

Mr. Bowser noted that the new telecommunications providers would be subject to an occupancy fee

Mr. Shaw responded that he believed the current Franchise holders should also pay for an equipment facility in the right-of-way that exceeds a minimum.

Mr. McLendon congratulated Mr. Bowser on developing the concept. He suggested that it be referred to the Town Attorney regarding what would be permitted by State law with Franchise holder fees.

Mr. Bowser explained that this concept was being brought to the Town Council today for review--it was anticipated that it would be several months before it would be refined with all comments by staff, Town Attorney, telecommunications consultants, etc.

Mr. Doney suggested that an MAI appraiser be used to establish the market value versus the numbers used by the Property Appraiser's office.

Mrs. Smith remarked that today opinions would be gathered, staff would then blend it together and come back to the Town Council. She suggested that it could become a monthly agenda item until it was completely resolved.

Mr. Bowser commented that an MAI appraiser may be more defensible, should there be a challenge to the property values assessed. Using the Property Appraiser's assessed values would be conservative, and would be less likely to be challenged. He mentioned that when the AT & T Agreement had been accomplished, an MAI appraiser had been hired, to find the values of the land in the area, and the value of the easement was based upon the adjacent property values.

Mrs. Smith suggested that, as Mr. Randolph had laryngitis today, he could come back next month with his recommendations in this regard.

Mr. Bowser then addressed the next category, Obstruction Fees. The obstruction permit would allow the holder to hinder free and open passage over a specified portion of right-of-way by blocking off or placing equipment. The fee would be established to cover administrative costs plus a fee based upon the area to be obstructed.

Mr. McDonald commented that the Town Council agreed with the concept.

Mr. Bowser continued with the last item, degradation fees for degradation of the Town rights-of-way resulting from excavations. The fees were based upon depreciation schedules for new roadways, asphalt overlays and slurry sealcoating.

Mr. Wyett made a motion to proceed with determining a new methodology for easements/rights-of-way permit fees, incorporating the suggestions given today, and return to update the Town Council in January; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

4. Consideration of Public Notification Program Regarding Water Conservation

Mr. Dusey explained that in May of 1996, the Town Council had approved Ordinance 10-96, amending Chapter 24, restricting irrigation to three times per week. A public notification program was recommended, and the following were proposals for the program:

- Letter notification to Condominium managers.
- A bulk mailing to all single-family homes, condominium board of directors, and commercial properties in Town detailing the irrigation restrictions.

- A distribution via the West Palm Beach Water bills to all Town customers.

- Periodic News Releases.

- Modification of the Irrigation Guidelines prepared about 3 years ago.

The costs would be approximately $300, and the approval of Town Council was now being requested.

Mr. Wyett made a motion to approve the proposed public notification program; seconded by Mr. McLendon. On roll call the motion carried unanimously.

5. Consideration of Waiver of Recourse/Fiduciary Liability Policy for the Board of Trustees of the Town's Retirement System

Mr. Doney stated that as a result of the Retirement Board Meeting of November 15, 1996, the Board of Trustees authorized renewal of the Fiduciary Liability Policy, which afforded protection for the Retirement System. The insurance premium for the coverage was paid out of plan assets. There was a requirement, pursuant to the Employee Retirement Income Security Act of 1974 that an insurance company had the right to subrogate against an individual trustee in the event of a claim or litigation. There was a Wavier of Recourse endorsement purchased as part of the Fiduciary Liability policy eliminating the insurance company's right to subrogate against the individual trustee. The endorsement had a premium cost of $25.00 per trustee and could not be paid out of plan assets. Town Council was now being requested to authorize $225.00 be paid as noted in the memorandum of Barbara Martinuzzi, Risk Manager, dated November 18,1996.

Mr. McDonald made a motion to authorize the amount of $225.00 for the cost of the Waiver of Recourse endorsement; seconded by Mr. Shaw.

Mr. Shaw suggested that the fee be a budgetary item included in the budget next year.

Mr. Doney explained that this was subject to change on an annual basis and would need the vote of the Town Council annually.

On roll call the motion carried unanimously.

6. Consideration of Authorization for the Town Manager to Modify Agreements with the Golf Pro/Manager and Tennis Pro/Manager, to Terminate Agreements with the Contract Building Inspector and Contract Fire Inspector, and to Reclassify these Positions as Town Employees

Assistant Town Manager, Peter Elwell, addressed the Town Council, stating that this action was being recommended as part of the Nowlen, Holt, & Miner report. Recommendation was to request authorization for the Town Manager to proceed with necessary changes for implementation.

Mr. Wyett asked the reasons for the change?

Mr. Elwell responded that the recommendation was based on a 20 point test issued by the IRS, and the employer was responsible for applying it to each employee situation. That test had been applied to each contractual employee serving the Town, and it was very clear that the two inspectors should be Town employees with no contract; there were several contracts that needed no change; and there were several in the grey area, which included the Golf Pro/Manger and Tennis Pro/Manager. To ensure that the two managers could pass the 20 point test the vast majority of their responsibilities should be made to fall during the part of the day in which they were Town employees with a very limited amount of work being done through their contract on a commission basis.

Mr. Wyett suggested that adding a fleet vehicle for inspectors be deleted, and that the employee own the vehicle and be reimbursed for expenses.

Mr. Moore explained that multi persons could use a Town vehicle, which was not used for personal use.

Mr. Doney commented that the majority of the employee's activities during the day were field related inspections.

Mr. Wyett made a motion to approve; seconded by Mr. Shaw.

Mr. Shaw stated that he agreed with the inspectors being brought into employee status; however, he did not agree with the Golf and Tennis Pro/Managers being brought into employee status, due to costs to the Town. He suggested that perhaps there should be a split in the way they were paid on a dual duty basis. He noted that all costs to the Town should be brought forward before approval.

Mr. Elwell replied that financial impact to the Town would be minimal in the proposed new arrangement, however, the grey area could not be left as it was currently. There were certain specified obligations in the agreements with the two pro/managers. Based on those obligations, the pro/managers were Town employees, not independent contractors. They would either need to be free to operate more independently, i.e., setting their own hours, not being responsible through the Town chain of command, or operate the facilities as Town facilities under the direction of the Town. The way to do that would be to make them Town employees, although there would still be agreements with them.

Mr. Doney commented that the Town auditors had given their input, as well as the Town Attorney. The intention for the overall change in the status of the employees was not punitive to the employees or the Town, but there were costs that the Town would incur incidental to moving the contractual employees to full employee status. The reason for the proposed changes was because of IRS regulations (the 20 point test).

Mr. Shaw explained that he would like to see the new Agreements before they were approved, as well as the costs for the change.

Mr. Elwell commented that the reason for the request at this time was because staff believed it was important for tax purposes, and January 1, 1997, seemed an appropriate date for the transition, with the assurance that it would be approximately dollar for dollar, costing the Town a minimal amount.

Mr. Shaw responded that he was interested in the long term basis of the transition.

Mr. Moore remarked that this was a sensitive issue with the contract employees, as they had come to work for the Town with an understanding. Negotiations were still in the process, and there were no assurances, however, Mr. Moore noted that approval for the inspectors was being requested as of January 1, 1997, specifically for tax purposes.

Mr. Wyett withdrew his motion and made a new motion: to approve the building and fire inspectors and have further investigation as to the golf and tennis pro/managers. He also noted that he had a liability concern with alcohol being served on Town property, as specified in the Golf Pro Agreement.

Recreation Director Russell Bitzer, stated that alcohol (beer only) was served at the Par III Golf Course, which was exempted from the Town Ordinance prohibiting alcohol being served on Town property.

Mr. Elwell stated that the liability question was of great concern to Town staff also, and that was why the suggestion was to leave the sale of beer as a contractual arrangement with the Golf Pro.

Mr. Wyett responded that there was still a liability concern on the part of the Town.

Mr. Shaw seconded the motion of Mr. Wyett to approve the new arrangements for the building and fire inspectors. On roll call, the motion carried 4/1, with Mr. McDonald casting a negative vote.

Regarding the Golf Pro Manager and Tennis Pro Manager, Mr. Shaw made a motion to defer to the next Town Council Meeting (specifically the relationship of an independent contractor engaged in a business including sale of merchandise, maintenance of a retail store, dealing with their own scheduling of lessons, the long term impact of converting them from independent contractors to Town employees). The motion was seconded by Mr. Wyett. On roll call, the motion carried 3/2 with Mr. McLendon and Mrs. Smith casting negative votes.

Mr. Elwell asked for clarification on the figures that would be provided to the Town Council regarding the Golf and Tennis Pro Managers?

Mr. Wyett explained that figures should be given for having the managers as employees as well as independent contractors, and the liability issue should also be addressed.

7. Consideration of Extraordinary Longevity Pay for December 1996

Mr. Doney advised that he was recommending Town Council approval of the extraordinary longevity pay for 1996, in accordance with Town Policy, Section 3-5.2. The total costs of awarding the extraordinary longevity pay for individuals having more than 21, but less than 30 years of continuous service to the Town was $10,601.85.

Mr. McLendon made a motion to approve the extraordinary longevity pay for 1996; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

8. Consideration of Change of Date of the November 1997 Council Meeting from Tuesday, November 11, 1997 (Veterans Day) to Wednesday, November 12, 1997

Mr. McDonald made a motion to approve the change of date of the November 1997 Council Meeting from Tuesday, November 11, 1997 to Wednesday, November 12, 1997; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

9. Consideration of Request from Hedrick Brothers to Occupy Right-of-Way at 230 Sunrise Avenue to Complete Construction Project

Dale Hedrick, President of Hedrick Brothers Construction Company, addressed the Town Council, requesting permission to use the right-of-way to finish the construction project across from the Palm Beach Hotel on Sunrise Avenue. A sidewalk would be taken out, curbs would be put in, as well as landscaping and associated electrical work.

Mr. Shaw made a motion for approval; seconded by Mr. Wyett.

Mr. Wyett commented that the street had been involved with construction all summer, a good part of which had now been completed, and he asked if the work vehicles could now be parked off the street?

Mr. Hedrick responded that the company had been paying for off-site parking, and would continue to do that.

Mrs. Smith asked if work would continue for two weeks on driveway entrances and sidewalks with the upcoming holidays?

Mr. Hedrick replied that they would like to do the work between December 16-24.

Mrs. Smith stated that she objected to that time frame, as residents and people using the supermarket would have to deal with enormous congestion problems.

Mr. Wyett withdrew his second.

Mr. Hedrick explained that there were delays because of rain, and work was being done as fast as possible. There were a number of events to be held at the Palm Beach Hotel, and parking was needed. He was very aware of the public access problems, and had been and was willing to work with residents and the public in this regard.

Mr. Shaw explained that the five day inconvenience would alleviate the congestion and mess for the upcoming holiday.

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

Mr. Wyett made a motion to approve commencement of construction work by Hedrick Brothers on January 6, 1997; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

10. Consideration of Scheduling a Special Town Council Meeting to be held on January 21, 1997, at 9:30 a.m. to Call the Election.

Town Clerk Pollitt confirmed that this meeting would have normally been scheduled for January 20, 1997, in compliance with the Town Charter and Town Code (3 days after the last date of filing, which was January 17, 1997). This year, the Martin Luther King would fall on Monday, so the Town Hall would be closed, therefore the date of January 21, 1997 at 9:30 was being requested.

Mr. Shaw made a motion to approve the Special Town Council Meeting to Call the Election on January 21, 1997 at 9:30 a.m.; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

XIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. Wyett commended the Citizens Association South of Sloane's Curve for the excellent newsletter which was very informative and helpful to the public.

He commented that interpretation of the Sunshine Law allowed two or more members of the Town Council to be present in the same room, and to talk-- as long as there was no debate; two or more Town Council members could be invited to a meeting.

Mr. McLendon reminded people of the upcoming election.

XIV. APPROVAL OF THE WARRANT LIST AND FUND EXPENDITURES FOR NOVEMBER 1996

Mr. Wyett made a motion to approve the Warrant List and Fund Expenditures for November, 1996; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of November 22, 1996 - Minutes Available in Town Manager's Office

The major matters were:

Deferrals and Continuations - Major Projects:

B80-96 Application by Lodar, Inc., 107 Indian Road, for new construction of 5,584 sq.ft. One story residence - deferred.

B81-96 Application by Mr. and Mrs. Sullivan, 246 Monterey Road, for addition to increase the size of kitchen; removal of some second story windows - deferred.

B82-96 Application by Sylvia Chilton, 446 Brazilian Ave., for demolition of existing structure and a new two family dwelling - approved.

New Business - Major Projects:

B84-96 Application by Tom Turner, 411 Seabreeze Avenue, for renovations to the front facade of the structure - approved.

B85-96 Application by Frederick J. Keitel III, 230 Royal Palm Way, for renovation of building and style change - deferred.

B86-96 Application by Townsend Wright, 332 Seaspray Ave., for addition and open porches - approved.

B87-96 Application by Jeffrey Fisher, 146 Seminole Ave., for demolition of existing residence - approved

Mr. Wyett made a motion to approve the minutes of the Architectural Commission of November 22, 1996; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

B. Appeals

1. Consideration of Appeal of Administrative Decision for Zoning Approval of an Alcoholic Beverage License Application for the Sea Lord Hotel, 2315 South Ocean Boulevard - **Request for Withdrawal per letter dated December 6, 1996, from Mr. Paul Thibadeau**

2. Consideration of Appeal of Administrative Decision on the Use of the First Floor Tenant Space and the Conditions Placed on the Occupational License Issued for Mike's Place, Inc., Winthrop House, 100 Worth Avenue

Attorney Jonathan Cole, accompanied by Attorney Gregory Young, representing Mike Burrows, the applicant, addressed the Town Council, stating that permission was being sought to use a commercial space designed and built in what had been a commercial building in a modest and economically rational way, consistent with both the interests of the residents of Winthrop House, and with the applicable zoning ordinance. As a matter of accommodation to Winthrop House, Mr. Burrows had agreed to restrictions which Mr. Cole did not believe was part of the fair meaning of the zoning ordinance, however, he was unwilling to be subject to the conditions imposed by Town staff for the issuance of an Occupational License. The issue was one of fundamental fairness-- whether the economical value of this commercial space could be destroyed by an unjustified interpretation of the zoning ordinance. Also relevant was the fact that this appeared to be the only commercial space in the Town of Palm Beach to which this ordinance and interpretation was applicable. The questions for decision today were whether the Town Code permitted conditions to be attached to an Occupational License without the consent of the applicant, and whether there was compliance with the Zoning Ordinance.

Mr. Cole summarized the conditions imposed within the occupational license:

The space could be used *only* to serve the multi-family dwelling tenants in the Winthrop House and their bonafide guests. Mr. Burrows had an objection to that condition.

The other two conditions were that the Department of Agriculture regulated exercise facilities, and that subsequent owners must comply with the Zoning Ordinance of the Town of Palm Beach.

Mr. Cole expressed that the language of the accessory use category said that the space could be used for personal service for the convenience of tenants and their bonafide guests in a multi-family dwelling, which was not clear and difficult to analyze. Town staff read this to mean that it must be a personal service *only* for the convenience of tenants and guests, however the word "only" was not present. Town staff also read the language such that "tenants" meant only the people living in the residential units in the building. In fact, this was a condominium building, and there were not really any tenants--the only tenant was the commercial tenant, which was Mike's Place. Town staff interpretations would limit the use of the commercial space in this building to personal service establishments who get by solely on the trade of the people who live in the building, which was unrealistic and uneconomical. In addition, it did not permit the use of the commercial space in the manner in which it was originally intended, and effectively destroyed the economic value of the commercial space. In its most natural and reasonable way, the Ordinance would permit any personal service business which ordinarily and rationally was the kind of service usable by people occupying the building and their guests. The Ordinance would also include such use by the guests of all of the tenants or occupants of the building, including the commercial space occupants. Even though it was the position of Mr. Cole that the Ordinance would permit usage by others, outside of tenants, as guests, as a matter of accommodation, Mr. Burrows had agreed to limit the use of Mike's Place to guests of Mike Burrows and Dennis Wayne, and others involved in the operation of Mike's Place. If this limited authorization was not received, other alternatives would be investigated in order to more fully utilize the authority granted under the Zoning Ordinance. Mr. Cole emphasized that this was a special case of unfairness and hardship visited upon a single commercial space and owner in the Town. Mr. Burrows had attempted to work things out with an agreeable accommodation with Winthrop House, and had been repeatedly rebuffed. He was willing to compromise his full rights. He urged that the Town Council make a rationally based decision that would not destroy the value of the property.

Mr. Cole gave a brief history of Winthrop House, and distributed a brochure of Winthrop House to Town Council members. He indicated that it was the applicant's position that Town staff interpretation limiting the space to a use <u>only</u> to serve the residential occupants

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Mr. Cole gave a brief history of Winthrop House, and distributed a brochure of Winthrop House to Town Council members. He indicated that it was the applicant's position that Town staff interpretation limiting the space to a use <u>only</u> to serve the residential occupants of Winthrop House and their guests was irrational and unjustified, destroying the commercial value of the space, and was the equivalent of the taking of the property without compensation.

Mr. Moore recounted some of the history addressed by Mr. Cole: when the property was built it was built in a different zoning district, which subsequently became residential. The uses that were permitted during the time that the property was built were no longer available, and the only use that the property had according to Town records was for storage for the owner, Mr. Burrows. This matter had been brought to the Town several times over the years, and the position of the Town had remained the same--this particular space was of nonconforming status as far as commercial, and had never been used on a commercial basis. Therefore, under the terms of Ordinance 2-74, as amended, it fell under an abandonment of commercial space, and an abandonment was defined as either voluntary abandonment or discontinuance of any use for a period of two years.

Zoning Administrator, Paul Castro, addressed the Town Council further explaining the position of staff. Relating to the accessory use for a residential building, he had interpreted the code literally, and in doing so believed that an exercise facility used for residents and bonafide guests would be an acceptable accessory use. As such, he had concerns relative to the creation of a business at this location, because the nonconforming status relating to the commercial tenant space as it was had lapsed, and the only uses available were those customarily incidental, for the convenience of residents in the Winthrop House and their bonafide guests. The conditions had been placed on the Occupational License simply to let Mr. Burrows know and understand the parameters under which he must operate upon acceptance of the license. Those conditions were as follows:

1. The"exercise facility" in the subject tenant space may <u>**only**</u> be used to serve the multi-family dwelling unit tenants in the Winthrop House and their bonafide guests.

2. Pursuant to the Department of Agriculture and Consumer Services, the subject business shall not engage in selling future services or selling only single, non-renewable contracts of 30 days or less.

3. Any subsequent owner of the subject tenant space shall be entitled to the above, subject to any and all requirements of the Zoning Ordinance.

Mr. Castro explained that the word "only" had been underlined to emphasize that Mr. Burrows' did not use bonafide guests to attract business clientele within the exercise facility. Looking at the specific language in the Code, specific regulations related to accessory uses had been considered and the language was as follows: "newsstands, dining rooms, bars, beauty shops, and similar personal service uses for the convenience of tenants and their bonafide guests in a multi-family dwelling." A multi-family dwelling was defined as "a building or a portion thereof used or designed as a residence for three or more families living independently of each other, having individual living units with each unit having cooking facilities and containing a living room and one or more bedrooms." From the code language and the definition of multi-family dwelling, Mr. Castro had determined that the convenience of these types of uses were for the tenants and bonafide guests. For that reason, the conditions had been placed on the Occupational License to ensure that Mr. Burrows, as well as any other person operating a business at this location, understood that it was not a commercial space and that it was to be used for the convenience of the residents in the building and their guests.

Mr. McDonald asked Mr. Castro the definition of the word "tenant" in the Code?

Mr. Castro replied that he did not believe that there was a definition of that word in the Code.

Mr. McDonald noted that the Code changed in 1974, which impacted the property, but since there was never a commercial use he asked if the Harris Act could apply?

Mr. Randolph replied that he did not believe so. He asked Mr Castro if he would have issued an occupational license without the aforementioned conditions?

Mr. Castro replied negatively.

Mr. Randolph clarified that if the allegation was that the Town did not have the authority to place conditions, the alternative would be not to have received the Occupational License.

Mr. Castro agreed.

Mr. Shaw asked if there was a definition of guests, noting that customers were not guests.

complying with the Ordinance, then those issues could be raised down the road via the Code Enforcement Board. The actual language of the Ordinance must be evaluated, not the way that it had been construed by Mr. Castro. Clearly, the language of the Ordinance did not include some of the modifiers that Mr. Castro had included in his reading of it.

Mr. Castro responded that since 1972 there had been much correspondence on this issue, and the issue of who was allowed to use the space and what it had been intended to be used for; staff had consistently stated that it was to be used for the convenience of the residents in the Winthrop House and should be used by them. In 1977 there had been a judgment in favor of the Town and the Condominium Association related to a use that Mr. Burrows wanted to put in that space, and the Condominium Association had stated that they were not going to use the dining room, and the Courts held a judgment in favor of the Town as follows: "This cause was tried before the Court. Having heard and considered the testimony and other evidence together with the arguments and briefs of counsel, the Court finds that the action of the Town of Palm Beach constituting the basis of the plaintiff's complaint was lawful, and is not subject to being disturbed by the Court. Plaintiff's request for a judicial determination with reference to future applications for building permits does not permit a justifiable issue subject to determination by the Court at this time. It is thereupon adjudged that the complaint herein be and the same is hereby dismissed..."

Mrs. Smith asked if there had been any action taken to turn the space into another use between 1977 and 1996?

Mr. Cole replied that there had been other discussions with Mr. Burrows and Winthrop House, and one of the matters that had come up in connection with the case referred to by Mr. Castro was the question of what "the convenience of the tenants" meant, and the position of the Town at that time was that they would go ask the people living in the building, which Mr. Cole did not believe was a rational and reasonable position to take. Mr. Burrows had owned the space for 25 years and was trying to find a way to use it in some rational and reasonable way. A definitive determination was now being sought on using the space in a way permitted under the accessory use category, not the commercial space category.

Mr. Moore stated that was exactly what the Town had attempted to do by issuing the Occupational License under the accessory use.

Mr. Wyett asked if it was permissible to create one or more apartments out of the space?

Mr. Moore replied affirmatively, stating that the applicant could apply, through the zoning process, to have a residential use and convert that nonconforming space to a conforming space.

Mr. Young displayed his second exhibit, showing that Mike's Place space was divided by a hallway, and commenting that it would be very difficult to have the entire space conform to an apartment usage.

Mr. Wyett responded that a portion of the space (approximately 3,600 ft.) could be used.

Mr. Young replied affirmatively, but with limited outside viewing.

Mr. McDonald asked what kind of plumbing facilities were located in the space presently?

Mr. Young replied that there were no plumbing facilities at this point. There was a common area restroom for both male and female. That would have to be included to accommodate a residential usage of the space.

Mr. McDonald stated that he was not sure that the common elements could be altered to convert the space to units.

Mr. Young stated that clearly it was a possibility, however, whether it was a viable possibility for Mr. Burrows for the use of the space as opposed to the accessory uses that were availed to it was the question.

Mr. McDonald stated that he believed the Ordinance was somewhat ambiguous, however, this may not be the forum where it would be resolved.

Attorney Karen Roselli, representing the Winthrop House Condominium Association, addressed the Town Council, stating that Mr. Burrows was actually asking to re-zone the property to allow a primary commercial use in what was now a residential zoning district. Mr. Burrows had never commenced any commercial use of the property, and when the property was zoned business he had the opportunity to seek approval for commercial use. He had not done that, and when the zoning changed to RD-2, Mr. Burrows had no vested rights to do anything commercial with the property. She noted that current code prohibited the proposed use. She commented that in 1988 the Condominium Association had offered to purchase the space from Mr. Burrows, which he rejected. Since that time they had been willing to work with Mr. Burrows to help him effectuate a use permitted under the current zoning code. None of the uses proposed by Mr. Burrows had been lawful accessory uses. The Association had serious concerns regarding safety, security, noise, parking, building and fire code compliance. In addition there was no compliance for accessibility for the handicapped. Ms. Roselli urged that the Town Council deny the appeal of Mr. Burrows.

Mrs. Smith asked Mr. Castro what the Occupational License had been granted for?

Mr. Castro replied that it was granted for an exercise facility for the convenience of the residents that lived in Winthrop House and their bonafide guests.

Mr. Moore noted that the restrooms were adjacent to the common area and there would be equal rights to use the facilities for those using the exercise facility.

Ms. Roselli stated that the point was that the restrooms were common elements of the Condominium Association and as long as was zoned business he had the opportunity to seek approval for commercial use. He had not done that, and when the zoning changed to RD-2, Mr. Burrows had no vested rights to do anything commercial with the property. She noted that current code prohibited the proposed use. She commented that in 1988 the Condominium Association had offered to purchase the space from Mr. Burrows, which he rejected. Since that time they had been willing to work with Mr. Burrows to help him effectuate a use permitted under the current zoning code. None of the uses proposed by Mr. Burrows had been lawful accessory uses. The Association had serious concerns regarding safety, security, noise, parking, building and fire code compliance. In addition there was no compliance for accessibility for the handicapped. Ms. Roselli urged that the Town Council deny the appeal of Mr. Burrows.

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Mr. Moore noted that the restrooms were adjacent to the common area and there would be equal rights to use the facilities for those using the exercise facility.

Ms. Roselli stated that the point was that the restrooms were common elements of the Condominium Association and as long as the property was being used for the residents of the dwelling, there was probably not a problem with the restrooms, however, expansion and additional usage would require restrooms being installed inside the facility itself. Presently, users would have to exit the facility, go into the hallway, and then go into the restrooms, and the property would be taken away from the Association for private benefit.

Mr. Young responded that Mr. Burrows had been paying dues into the Condominium Association since 1971, and was entitled to use those common areas, including the restrooms. His guests at the facility were also entitled to use those common areas; clearly those restrooms were not there only for the residential tenants, but were there for every member of the Association, including Mike Burrows and his guests. He noted that Ms. Roselli raised the point that the use intended was prohibited; however, this was an accessory use allowed by the Town according to Mr. Moore, and Mr. Randolph. There had never been a question that there was conformance to an accessory use--the point had been reached that perhaps there were some issues around who would be entitled to use it, but the use itself was shown as appropriate.

Mr. Moore agreed that the actual appeal was the question--could Mr. Burrows bring in his guests or must they be the residents and bonafide guests of residents of the building?

Mr. Young continued with his response to the statements of Ms. Roselli. He responded to her statement that the residential tenants needed the quiet use and enjoyment of their space, and noted that Mr. Burrows was also entitled to the quite use and enjoyment of his space. Each time he had gone to the Condominium Association he had been systematically denied the ability to use the property with conforming accessory use. The last time he had gone to them he had even outlined a way that it would be of no impact to any resident of the building, alleviating any traffic of persons using the facility who were not residents, so they would not interfere with residents of the building. They threw him out, locked up the east entrance (making it an emergency exit), and there was no cooperation from the building. Ms. Roselli alluded to several purchase offers, however, Mr. Young noted that he was not aware of any offer to purchase that came to the level of writing.

Mrs. Smith remarked that a great concern of all resident in Town was security, and she offered that the residents may have had concerns about an opened door where anyone could walk in and out.

Mr. Young replied that there had been discussions of how to put locks on the doors that exited the common areas, except for the areas that would be occupied by Mike's Place, so that any resident that came in through that east door, or that had any reason to enter into the space occupied by Mike's Place, would have a pass key so that no one in the space, except for residents, could exit the common area into the residential portion of the building. Safety was a key issue for Mr. Burrows as well.

Mr. McDonald remarked that the only issue to be decided today was the question of who was considered a guest.

Mr. Moore commented that was the way staff saw the issue. The conditions on the license were to reinforce the limitations to the owner, and any successors.

Mrs. Jean Green, President of Winthrop House Condominium, representing the 118 unit owners, addressed the Town Council. She presented a petition signed by 99% of the unit owners who were presently in the building. She explained that there was no objection to an exercise facility in the building if it was for the use of the tenants in the building and their guests. There *was* objection to outsiders coming into the building, using the facility, and then using the hallway to get to the restrooms, with the freedom to wander through the building. Security was the concern, and the owners were merely trying to protect their property. She mentioned that there could be a noise problem for the units above the exercise facility. She urged the Town Council to abide by the rules and the Code as it was written.

Mr. Maurice Linker, tenant of the Winthrop House, addressed the Town Council, stating that his concern was that if this became a commercial space, everyone would have the right to use it, whoever they were, day or night. He posed a hypothetical question: supposing at the end of a year Mr. Burrows was dissatisfied with the exercise facility. If he had commercial space and was free to use it as he chose, what could prevent him from turning it into a flea market, or fish market? Furthermore, he referred to the offer to buy the property, and noted that there had been an offer made several years ago that was turned down. He stated that the building was a fine residential building and should be maintained as such.

emphasized that all of the money earned would go directly to the Children's Cultural Center, and Mr. Burrows would not be taking one penny.

Ms. Roselli responded that the facility should be geared to residents of the Winthrop House; there were only four parking spaces allocated to Mr. Burrows in the building; the rest of the people using the facility would all have to walk to the Winthrop House from other condominiums in the area. Security was a problem, as well as the restroom situation being inadequate, requiring entrance into the common elements of the building. She expressed that the word "guests" was being used to camouflage the fact that the facility would be opened up to the general public. This use would therefore no longer be an accessory use, but a primary commercial use; the facility was a commercial enterprise with contributions to charity.

Mr. Phil Whitacre addressed the Town Council, stating that people would be paying from $50-$75 per hour to use the facility, and guests of a tenant would be asked to come to share this. He read a note from Mrs. Louise Stefanich had sent to the Town Council:

I would like to let you know that I am very much in favor of having a Palladus Studio in the Winthrop House. It will be very beneficial to all concerned and I find Mike Burrows extremely generous in having all the proceeds benefit the Children's Cultural Council. I know Dennis Wayne, who will be running the studio, as well as the Children's Cultural Council, and there is no one better qualified. He is a real teacher. As far as security goes, there should be an easy solution with the other tenants of Winthrop House and their guests knowing the combination to the inside door. My family and I have been doing Palladus for years and I look forward to being one of the very first guests to participate. I say this because truly a facility of this nature is Town-serving.

Mr. David Jones addressed the Town Council stating that the key issue was the definition of what was a guest. He urged that the Town Council deny the appeal of Mr. Burrows.

Mr. Young interjected that the subject matter must be narrowed, and the words "tenants" and "only" used by the Zoning Administrator were the issues.

Mr. Castro responded that the entire language of the Code must be looked at, specifically the words--*similar personal service uses for the convenience of tenants and their bonafide guests in a multi-family dwelling.* He explained that his interpretation was based on the definition in the Zoning Ordinance of multi-family dwelling, which said that it was a building or a portion thereof dedicated for three or more residential units...; that was what he had relied upon in interpreting a "tenant" and a "bonafide guest."

Mr. Mike Burrows addressed the Town Council, stating that thirty years ago he had started the drawings for Winthrop House, ever mindful of security and privacy. There were four other nearby buildings such as Winthrop House with commercial spaces within them. The public then and now used the buildings constantly. In each of those cases people enter the buildings through the lobby. He remarked that had he been better represented at the time when the Zoning Ordinance changed he might well have come to the Town Council in objection. He suggested that the word "tenant" as used in the Code should have been owner or occupant. He pointed out that accessory uses such as a newsstand or delicatessen would not be free of charge either. He noted that twenty-five years ago he had been approached by the Condominium Association concerning selling the commercial space, and after the verbal exchange he had heard nothing from them. He proposed that as long as he owned the space, and the exercise facility was there, it would remain that way. If it was decided that the facility would no longer exist, the space would be donated to United Way, and could be disposed of according to the choice of United Way. He urged that the Town Council give this fair consideration.

Mrs. Smith asked Mr. Burrows if he would accept an offer if it was made to him by the Winthrop House?

Mr. Burrows replied that Dennis Wayne had spent a great deal of money, and there were many subcontractors who had made contributions to the Children's Cultural Center in supplying materials and labor for the space. He replied affirmatively to the question of Mrs. Smith--that he would entertain an offer.

Mr. Moore remarked that there had been a court case regarding the Winthrop House, and it had been decided once before. He explained that the case required a decision regarding a restaurant and dining room as to the ability to place such a facility in the space that was in question today. The fourth affirmative defense as outlined was read by Mr. Moore:

"Any accessory use must be designed for the convenience of the residents of the building, whereas the building residents through their duly represented Condominium Association do not want and would not patronize such a facility, Section 4.20, copy of which marked is attached hereto and made part of the record..."

Mr. Moore explained that fourth defense addressed the issue of the accessory nature and who the users of the accessory use must be. The case was dismissed and the court found in favor of the Winthrop House and the Town.

Mr. Cole stated that Mr. Moore was reading from the Town's defense, however, the judge's decision did not set forth any basis upon which the decision was made and there was no ruling on that particular ground. He noted that this was the opportunity to address the issue of why "only" appears in the Town staff interpretation, but not in the ordinance itself.

Mr. Castro explained that the issue related to what a guest was, and since there was not a definition in the Zoning Code of what a guest was, nor how many guests a resident or commercial tenant could have, the specific language under Accessory Uses was relied upon. He noted that he had looked up the definition of guest in the dictionary, and as a Zoning Administrator he had made a determination--if the use could not be supported by the residents in the Winthrop House, or primarily supported by the residents of the Winthrop House, there was no threshold in order to determine when one was not a guest, and then became a client or customer of the exercise facility, which was and is required by Code to be for the convenience of the residents in that building as he interpreted that section of the Code.

Mr. Burrows stated that the court decision may have been made based on what the owners of Winthrop House wanted or did not affirmatively to the question of Mrs. Smith--that he would entertain an offer.

Mr. Moore remarked that there had been a court case regarding the Winthrop House, and it had been decided once before. He explained that the case required a decision regarding a restaurant and dining room as to the ability to place such a facility in the space that was in question today. The fourth affirmative defense as outlined was read by Mr. Moore:

"Any accessory use must be designed for the convenience of the residents of the building, whereas the building residents through their duly represented Condominium Association do not want and would not patronize such a facility, Section 4.20, copy of which marked is attached hereto and made part of the record..."

Mr. Moore explained that fourth defense addressed the issue of the accessory nature and who the users of the accessory use must be. The case was dismissed and the court found in favor of the Winthrop House and the Town.

Mr. Cole stated that Mr. Moore was reading from the Town's defense, however, the judge's decision did not set forth any basis upon which the decision was made and there was no ruling on that particular ground. He noted that this was the opportunity to address the issue of why "only" appears in the Town staff interpretation, but not in the ordinance itself.

Mr. Castro explained that the issue related to what a guest was, and since there was not a definition in the Zoning Code of what a guest was, nor how many guests a resident or commercial tenant could have, the specific language under Accessory Uses was relied upon. He noted that he had looked up the definition of guest in the dictionary, and as a Zoning Administrator he had made a determination--if the use could not be supported by the residents in the Winthrop House, or primarily supported by the residents of the Winthrop House, there was no threshold in order to determine when one was not a guest, and then became a client or customer of the exercise facility, which was and is required by Code to be for the convenience of the residents in that building as he interpreted that section of the Code.

Mr. Burrows stated that the court decision may have been made based on what the owners of Winthrop House wanted or did not want. He did not believe that was the issue at all. It was not a question of whether they like it or not, but a question of whether he had the right.

Mr. Joseph Kersner addressed the Town Council, stating that he was the owner of an apartment directly above the space in question, and he had correspondence that stated unequivocally that the space below his apartment was residential in nature and could not be used for any other purpose. He noted that the noise was unbelievable during construction. He brought up the issue of perpetuity if the variance was granted.

Mr. Harold Lerner, a resident of the building, addressed the Town Council, stating that there were parking problems, and agreed with the suggestion of Mrs. Smith that the Winthrop House and Mr. Burrows obtain a divorce, however, the settlement and alimony would probably be much more generous if Mr. Burrows would graciously say that whatever was paid for the building would go to the charity.

Mrs. Smith suggested that a five minute break be taken at this time in order for the attorneys to discuss the situation.

Upon return from the break, Mr. Cole stated that there was no one present from the Board of Directors to speak with, and it was the position of Mr. Burrows that he would like the Town Council to act to remove the conditions to the occupational license, deal with the use of the facility on a compliance basis, and in the meantime he pledged to discuss in good faith some way of disposing of this facility to Winthrop House if that was what they saw fit.

Mr. Moore summarized staff position in this matter, referring to the exhibit displayed. If the word "only" was eliminated from Accessory Uses then the opportunity for a principal use would be opened. The staff position was that any accessory use would have to be for the residents of the building and their bonafide guests. The word "bonafide" was inserted by the original framers of Ordinance 2-74 to relate to the multi-family dwelling owners. That had been the position of the staff for many, many years, and still was the position of the staff.

Mr. Young raised the point that the Council had the power to issue the Occupational License without the conditions because the Code of Ordinances did not say that occupational licenses could be issued conditionally.

Mr. Moore replied that it was not uncommon for occupational licenses to have conditions attached.

Ms. Rozelli stated that Mr. Burrows wanted a commercial designation for his property and wanted to make a principal commercial use of his property, and suggested that if the Town Council adopted the interpretation suggested by Mr. Burrows and his attorneys, it would effectuate a re-writing of the Code in an inappropriate fashion.

Mr. Shaw read from the December 4, 1996 memorandum from Mr. Castro:

"On June 14, 1996, Mike Burrows applied for an occupational license for an exercise facility at Winthrop House. On August 7, 1996, after an exchange of correspondence between myself and Mr. Burrows, the occupational license was conditionally signed off on the Building & Zoning approval."

Mr. Shaw pointed out that this was not a new license, and was in fact the second license with the same conditions, and he made a motion to uphold the license as presented in support of the Building Department.

The motion died for lack of a second.

Attorney Greg Kino, representing Alio Gasbarra, addressed the Town Council, stating that the request was for approval of seven off-site parking spaces for commercial use. It was proposed to operate a small, traditional restaurant in a quaint dining atmosphere in a small two-story building, with restaurant seating downstairs. With the existing parking, 24 seats could be accommodated. A joint valet program with Bice restaurant had been accomplished. All cars would be parked in the Apollo Parking Lot, which was in the C-TS Zoning District.

Zoning Administrator Castro remarked that Mr. Kino had worked closely with Mr. Marchman in the Traffic Division of the Police Department to try to resolve the parking issues related to off-site parking. Staff comments included the requirement of a grease trap, no landscaping in the rear utility easement, the Town-serving issue be brought back to the Town Council at a future date, and an off-site Parking Agreement between the owner of the lot, the restaurant, and the Town.

Mayor Ilyinsky asked that the manager of the restaurant talk, at least once a week, to resident Rose Edwards, who had been a resident for 70 years. He explained that she was concerned with the restaurant being there.

Mr. Kino agreed.

Mrs. Smith urged Mr. Gasbarro to talk to Mrs. Edwards before the restaurant was opened.

Mr. Shaw suggested that both restaurants be included in the Parking Agreement, that scrubbers be put on, and fire protection be incorporated.

Mr. Moore commented that scrubbers were part of a hood ventilation system that killed smells from the kitchen; fire sprinklers were required for both first and second floors; and the grease trap would be required with coordination of the Town Public Works Department, as it would require tapping into the sewer line.

Mr. Kino suggested that a letter be obtained from Bice stating that the two restaurants would work together and operate a coordinated valet program, which could be incorporated into the Parking Agreement required by the Town.

Mr. Wyett stated that validated parking at the Apollo Lot during the day must be provided, and coordinated with a visible sign in the front of the restaurant. He explained that was the only way it could be justified to give the restaurant parking spaces that it did not own. In addition, the ventilation process would have to be completed, and Mrs. Edwards would have to be satisfied. He also suggested the condition of no new service in the restaurant after 11:00 P.M.

Mr. Moore stated that the applicant must come back after six months to prove the Town-serving requirement.

Mr. Wyett made a motion to approve Special Exception 34-96 with the following conditions:

1. The requirement of a grease trap.
2. No landscaping in the rear utility easement.
3. The Town-serving requirement be met and presented to Town Council after six months.
4. A Parking Agreement be signed, to include both restaurants and the Apollo Lot.
5. Scrubbers be installed with a hood ventilation system.
6. Fire sprinklers be installed on both first and second floors.
7. Validated parking at the Apollo Lot will be provided during the day and coordinated with a visible sign in the front of the restaurant.
8. There would be no service in the restaurant after 11:00 P.M.
9. The concerns of Mrs. Edwards, residential neighbor, would be addressed.

The motion was seconded by Mr. Shaw. On roll calll, the motion carried unanimously.

2. Amended Special Exception No. 37-96 with Variances and Site Plan Review - Ray & Sharon Flow, 1350 North Ocean Blvd.; located in the Beach Area Zoning District; to allow construction of a beach house providing a front yard setback of 5' in lieu of 10' required. (Deferred from November 12, 1996)

Ex-parte communication was not declared by any Council Member.

Attorney Peter Broberg addressed the Town Council, stating that the applicant was requesting to build a beach house in the Beach Area Zoning District, with a variance to the front setback of 5' instead of 10'. The beach house would be 10' x 20', one story with an eight foot beam and four foot roof, and would have a 10' x 20' patio. A previous cement foundation would be removed. The main problem with building the beach house had been that it was east of the Coastal Construction Control Line, which required the Flows to make an application to the Department of Environmental Protection for permission to build, which had been completed and approved. He read from that approval:

The activities indicated in the project description are of such nature that they will result in no significant adverse impacts to the beach dune areas or adjacent properties...The direct and cumulative impacts to the beach and dune system that will be caused by eastward location of proposed construction represent the maximum such impacts that are acceptable to the department. Therefore, future construction...shall not extend further seaward of the proposed structures approved pursuant to this permit.

Mr. Broberg noted that there were special conditions to the permit--the revised structure drawing showing cabana securely anchored the front of the restaurant.

8. There would be no service in the restaurant after 11:00 P.M.
9. The concerns of Mrs. Edwards, residential neighbor, would be addressed.

The motion was seconded by Mr. Shaw. On roll calll, the motion carried unanimously.

2. Amended Special Exception No. 37-96 with Variances and Site Plan Review - Ray & Sharon Flow, 1350 North Ocean Blvd.; located in the Beach Area Zoning District; to allow construction of a beach house providing a front yard setback of 5' in lieu of 10' required. (Deferred from November 12, 1996)

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Mr. Broberg noted that there were special conditions to the permit--the revised structure drawing showing cabana securely anchored to adequate pile foundation and a revised site plan showing the cabana relocated five feet landward. Based on literal interpretation of the Code, the cabana could not be built, as requested by DEP, and Mr. Broberg suggested that this was the hardship.

Mr. Castro stated that staff did not object to the request and would recommend approval, however, requested that a revised plan showing the exact location of the beach house be provided, along with the exclusion of the portion that showed a proposed future expansion of the beach house, as the beach house now met the maximum area and dimension for a beach house in that district at this time.

Mr. Moore explained that as the State moved the Construction Control Line further landward there would be more situations such as this one; usually the engineer submitting proposals to the State would submit it in conformance with the local zoning regulations. The State would then review it and was the superior authority for approval. The Town Council could then either grant a variance, or make the applicant wait until they had State approval, and then submit the proposal to the Town Council for approval. This application was for an accessory use that would be granted by way of Special Exception at the discretion of the Town Council.

Mrs. Smith asked what would happen if a project was approved by the State, but was denied by the Town? She stated that she believed that the property owners would have to work with the Town because of the proximity to the road, as well as the blocking of the ocean view.

Mr. Moore replied that if the Town Council continued to consider itself as the final authority, then an applicant could chose to build smaller, not build, or go back to the State for appeal and let the State change their provisions. He noted that normally variances were granted only for the condition of the land.

Mr. McLendon suggested that a letter be sent to the State setting forth the zoning guidelines, and saying that the Town would not approve the beach house in the location recommended by the State. He noted that the State may not be aware of the minimum setback required by the Zoning Code of the Town.

Mr. Broberg explained that there were a certain number of days allowed to apply for revision of an order after the final order was granted by the State, which would require the applicant to begin the process all over again.

Mr. Ron Schram addressed the Town Council, stating that his petition would be coming up asking for a 4' setback, and that two and one-half years ago he had received Town Council approval for a variance from 10' to 5'. He had then applied to the State and it had taken two and one-half years for approval. By that time the time limit on the variance approved by the Town Council and ARCOM had both expired. He suggested that the real problem was that properties platted along the ocean such as his property at 121' x 14', requiring a 10' setback would require that his beach house would be 4' deep. He noted that the majority of the homes in the area did have beach houses.

Mr. Wyett suggested that the size of the beach house be reduced slightly.

Mr. McLendon made a motion to approve the beach house at 9' x 20' with a 6' setback; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

5. Variance No. 48-96 - Robert & Helen Messic, 209 Barton Avenue; located in the R-B Zoning District; to allow construction of an addition providing: an east side yard setback of 5.5' in lieu of 15' required; a cubic content ratio of 5.09 in lieu of 4.5 maximum allowed; a lot coverage of 46.9% in lieu of 30% maximum allowed; and a floor area ratio of 68.6% in lieu of 45% maximum allowed.

Ex-parte communication was declared by Mr. McLendon with Mrs. Messic.

Attorney Doyle Rogers, representing Mr. and Mrs. Messic, addressed the Town Council, stating that this lot was one of the smallest in Town, creating a hardship for the Messics. The four requested variances were nonconformities that were now existing, so anything that was asked for would expand the nonconformities, thus the request for variances. He asserted that the Messics should not be prohibited from improving the appearance and use of their house if it did not create any problems for anyone else.

Architect Gene Lawrence addressed the Town Council, displaying elevations of the proposed construction. He explained that the vacant lot to the east was owned by Bethesda by the Sea Church. He had contacted the church and there was no objection to the variance request.

Mr. Moore stated that the variance was a fill-in variance, so new construction would not exceed the sideyard of the existing. The Town Manager had asked for additional information regarding the hardship involved, which had now been identified by Mr. Rogers.

Mr. Rogers clarified the hardships--the nonconformities existed because the house had been built prior to the zoning code; the lot was extremely small, and nothing could be done without expansion of the nonconformities; in addition the welfare of neighboring property would not be endangered.

Mr. Wyett made a motion to approve Variance 48-96 based on the fact that the house existed prior to zoning changes, with the hardship being the size of the lot; the variance was a fill-in, and there were no objections; seconded by Mr. Shaw.

Mr. McLendon expanded on his ex-parte communication--Mrs. Messic and he had met with Mr. Castro to discuss the situation.

On roll call, the motion carried unanimously.

6. Variance No. 49-96 - Mr. & Mrs. Roderick Stewart, 1435 South Ocean Boulevard; located in the R-AA Zoning District; to allow installation of four lion statues on four gate posts at a 9.8' height in lieu 8' maximum allowed.

Ex-parte communication was not declared by any Council member.

Attorney Peter Broberg, representing Mr. and Mrs. Stewart, addressed the Town Council, stating that there was precedence in the Town for having ornamentation on gate posts and asked that the request be granted. He noted that the request was minimal and the applicant would be deprived of what had been allowed on similar properties.

Mr. Moore stated that the Town Manager had requested more information and justification for the Variance; the Building Department had no objection, noting that there were higher gate posts in the vicinity; the hardship was that the land slopes upward considerably, which placed the gate posts themselves higher than the crown of the road.

Mr. Wyett made a motion to approve Variance 49-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

7. Special Exception No. 41-96 with Variance - Ronald Schram, 1420 North Ocean Boulevard; located in the Beach Area Zoning District; to allow construction of beach house providing a 4' front yard setback in lieu of 10' required.

Mr. Ronald Schram addressed the Town Council, stating that the Town Council had approved a 5' setback over two years ago. The reason for that was his lot was 14 1/2' deep and 121' wide. The State of Florida had moved the beach house project back, and in order to build the beach house, Mr. Schram was requesting the 4' setback. When he had purchased the house three and one-half years ago he noted that he had erected a wall along the beachfront, and the beach house would be behind the higher portion of the wall, with blockage of the view minimized. The beach house would be 10' x 20'.

Mr. Moore gave staff comments: The Town Engineer recommended that the condition of the seawall and the tie backs be verified; the Building Department noted that this was a repeat of an approval that had been given several years ago.

Mr. Schram advised that he had not known that he could request an extension of the approval that had been granted several years ago. He noted that it had taken almost two and one-half years to obtain State approval. He explained that he had agreed to the conditions of tying into the existing sewer and to leave the existing bulkhead undisturbed; his hardship was that the lot was only 14' deep.

Mr. McLendon made a motion that the beach house be 9' x 20'; seconded by Mr. McDonald.

6. Variance No. 49-96 - Mr. & Mrs. Roderick Stewart, 1435 South Ocean Boulevard; located in the R-AA Zoning District; to allow installation of four lion statues on four gate posts at a 9.8' height in lieu 8' maximum allowed.

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Attorney Peter Broberg, representing Mr. and Mrs. Stewart, addressed the Town Council, stating that there was precedence in the Town for having ornamentation on gate posts and asked that the request be granted. He noted that the request was minimal and the applicant would be deprived of what had been allowed on similar properties.

Mr. Moore stated that the Town Manager had requested more information and justification for the Variance; the Building Department had no objection, noting that there were higher gate posts in the vicinity; the hardship was that the land slopes upward considerably, which placed the gate posts themselves higher than the crown of the road.

Mr. Wyett made a motion to approve Variance 49-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

7. Special Exception No. 41-96 with Variance - Ronald Schram, 1420 North Ocean Boulevard; located in the Beach Area Zoning District; to allow construction of beach house providing a 4' front yard setback in lieu of 10' required.

Mr. Ronald Schram addressed the Town Council, stating that the Town Council had approved a 5' setback over two years ago. The reason for that was his lot was 14 1/2' deep and 121' wide. The State of Florida had moved the beach house project back, and in order to build the beach house, Mr. Schram was requesting the 4' setback. When he had purchased the house three and one-half years ago he noted that he had erected a wall along the beachfront, and the beach house would be behind the higher portion of the wall, with blockage of the view minimized. The beach house would be 10' x 20'.

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Mr. Schram advised that he had not known that he could request an extension of the approval that had been granted several years ago. He noted that it had taken almost two and one-half years to obtain State approval. He explained that he had agreed to the conditions of tying into the existing sewer and to leave the existing bulkhead undisturbed; his hardship was that the lot was only 14' deep.

Mr. McLendon made a motion that the beach house be 9' x 20'; seconded by Mr. McDonald.

Mr. Shaw suggested that the height of the beach house be 11'. He asked that the motion be amended to allow the 4' setback in exchange for the 1' reduction in height, making the beach house dimensions 10' x 20', with a height of 11', and with a 4' setback.

Ex-parte communication was not declared by any Council member.

On roll call the motion carried 3/2 with Mr. McDonald and Mrs. Smith casting negative votes.

At this time Mr. Wyett made a motion to reconsider Variance 37-96; seconded by Mr. McLendon. On roll call, the motion carried 4/1, with Mrs. Smith casting a negative vote.

Mr. Shaw explained that the lot on Variance 37-96 was 18', whereas the lot on Variance 41-96 was 14', which was a big difference.

Mr. Wyett suggested that perhaps the decision on Variance 37-96 had not been practical, and made a motion that the beach house be approved with the dimensions of 10' x 20' with a maximum of 11' on the roof; seconded by Mr. McLendon. On roll call, the motion failed 2/3, with Mr. McDonald, Mr. Shaw, and Mrs. Smith casting negative votes; Mr. McLendon and Mr. Wyett casting affirmative votes.

Mr. McDonald made a motion that the original approval be approved once again (dimensions of 9' x 20' with a 6' setback); Mrs. Smith passed the gavel and seconded the motion. On roll call, the motion carried unanimously.

8. Special Exception No. 42-96 - Leta Austin Foster, 64 Via Mizner & 7 Via Parigi; located in the C-TS Zoning District; to allow a temporary use of 2,113 sq.ft. of space in lieu of 2,000 maximum allowed, as applicant occupies 871 sq.ft. at 7 Via Parigi while renovations proceed at 64 Via Mizner, the applicant's new location.

Town Clerk swore in all those who would be speaking to this issue.

Mr. Jay Comp, 143 Seminole Ave., addressed the Town Council, stating that he believed the proposal would cause injury to his property value, as the ocean view would be blocked by the proposed beach house, as well as limit access to the beach itself.

Ms. Carol Martino, resident of Seminole Ave., addressed the Town Council, stating that she was opposed to the proposed beach front wall and beach house.

Mr. Castro noted that the property of the applicant was just to the north of Seminole Ave., and the proposed wall did meet code requirements; the property was private and there was no public beach access.

Town Clerk Pollitt swore in the next speaker, Arlene Rotchen, 135 Seminole Ave.

Ms. Rotchen addressed the Town Council, stating that the beach house could be situated on the property in a more acceptable location.

Mr. Wyett commented that he was very sympathetic to the neighboring property owners, as the applicant was positioning the beach house for the maximum ocean view, and suggested that the owner could move the house 10-20' up.

Mr. Deziel replied that the applicant owned the ocean front property, and the view. He declared that the neighbors should be thanking the applicant for what was being done in the neighborhood, as the property could have been four homes, and the home would be one of the great homes that had not been built in Palm Beach in a long time.

Mr. Wyett made a motion to defer Special Exception 43-96 in order to give Mr. Deziel and his clients more time to consider the location of the beach house with the condition that the applicant return with pictures of the view to the beach house from Seminole Ave.; seconded by Mr. Shaw.

Mr. Shaw suggested that the beach house could not be moved further north.

On roll call, the motion carried unanimously.

D. Other

1. Consideration of Letter Dated September 5, 1996, from James Brindell regarding the Right-of-Way at 1330 North Lake Way (Deferred from October 8, 1996, and November 12, 1996)

Attorney James Brindell addressed the Town Council, stating that a settlement proposal had been presented to the Town, however, the Ocean Terrace parcel was actually a dedicated parcel, so the Town did not have a deed to that--that would need to be abandoned. He reported that he, Mr. Randolph and Mr. Moore had discussed the matter, and were suggesting that the Town Council accept the concepts of the settlement, allowing adjustment of the timing and verbiage relative to the exchange of property.

Mr. Moore commented that Mr. Brindell's client held a deed to the walkway running to the bike trail, and the south portion of Ocean Terrace abutted the property. Mr. Dusey had advised that Southern Bell had been given an easement for a telephone box on the north side of the property, however, it would not affect the transaction being addressed today. He noted that this was essentially a trade of 892 sq. ft. for 1,008 sq. ft. for the Town. The Town would be required to construct a fence along the property line. Staff was recommending that the settlement proposal be accepted; papers be filed for the abandonment; and Mr. Brindell would give an extension in time so that the property would not be closed off by fence.

Mr. Brindell stated that he would work out a schedule with Mr. Moore and Mr. Dusey for the abandonment.

Mr. McDonald made a motion to approve the settlement with the timing and the verbiage relative to the achievement of the exchange to be resolved with the Town Attorney and Mr. Brindell; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Moore brought up another item concerning Mr. Brindell and his client, the Flagler System. He reported that it had come to his attention that the Flagler System had been asked to stop doing work in the Alcazar Lounge, and they had asked for and been granted permission to begin work at 8:00 A.M. until Christmas, which was one hour earlier.

Mr. Wyett made a motion to approve the request to allow the Flagler System to start renovation work in the Alcazar Lounge at 8:00 A.M. until Christmas; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

2. Consideration of Request for Abandonment of Palm Grove Subdivision Plat, 974 South Ocean Boulevard, by Mr. and Mrs. Foman

Ex-parte communication was not declared by any Council member.

Mr. Wyett made a motion to defer Special Exception 43-96 in order to give Mr. Deziel and his clients more time to consider the location of the beach house with the condition that the applicant return with pictures of the view to the beach house from Seminole Ave.; seconded by Mr. Shaw.

Mr. Shaw suggested that the beach house could not be moved further north.

On roll call, the motion carried unanimously.

D. Other

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Mr. McDonald made a motion to approve the settlement with the timing and the verbiage relative to the achievement of the exchange to be resolved with the Town Attorney and Mr. Brindell; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Moore brought up another item concerning Mr. Brindell and his client, the Flagler System. He reported that it had come to his attention that the Flagler System had been asked to stop doing work in the Alcazar Lounge, and they had asked for and been granted permission to begin work at 8:00 A.M. until Christmas, which was one hour earlier.

Mr. Wyett made a motion to approve the request to allow the Flagler System to start renovation work in the Alcazar Lounge at 8:00 A.M. until Christmas; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

2. Consideration of Request for Abandonment of Palm Grove Subdivision Plat, 974 South Ocean Boulevard, by Mr. and Mrs. Foman

Ex-parte communication was not declared by any Council member.

Attorney Dean Vegosen, representing Mr. and Mrs. Foman, addressed the Town Council, stating that the Town Council had approved the plat for the Foman property, which had been recorded, however, there had not been any work done on the property. The Fomans would now like to abandon the plat.

Mr. Wyett made a motion to approve the abandonment; seconded by Mr. Shaw.

Mr. Moore commented that there was an easement on the property, and asked that a condition of granting the abandonment request be that the City of West Palm Beach abandon the water easement that had been granted to them in the subdivision.

Mr. Wyett accepted that condition as part of his motion; Mr. Shaw accepted it as part of his second.

On roll call, the motion carried unanimously.

3. Consideration of Request for Waiver to Sections 12-51 and 5-22 of the Town Code of Ordinances, Hours of Construction Work, by Mr. Peter S. Broberg for Spa Thiera, 230 Worth Avenue

Attorney Peter Broberg requested a deferral of this request until the next Town Council Meeting.

Mr. Moore requested that the current paper window dressing be replaced by a false wall erected behind the store front, decorated for the interim period of time, as required by code.

Mr. Broberg agreed to that.

Mr. Shaw made a motion to defer the request to the January Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XVI. ANY OTHER MATTERS

There were none.

XVII. ADJOURNMENT

The meeting was adjourned at 9:45 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn